

MEMORANDUM

DATE: March 13, 2009

TO: All Members of the Delaware State Senate
and House of Representatives

FROM: Ms. Daniese McMullin-Powell
Chairperson
State Council for Persons with Disabilities

RE: H.B. 58 [Misdemeanor: Speeding in Excess of 95 MPH]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B 58 which makes speeding in excess of 95 miles per hour a class A misdemeanor and revokes the violator's driver license. SCPD believes the intent of the bill is good and generally supports vehicular traffic safety legislation since it reduces accidents resulting in disability. However, H.B. 58 raises the following concerns.

First, a fundamental principle in criminal law is that a penalty should be commensurate with the offense. This concept is incorporated into Delaware's criminal code. See, e.g., Title 11 Del.C. §201(4). This bill ostensibly violates this principle. Consider the following:

A. Title 21 Del.C. §§4168-4177M regulate many motor vehicle offenses, including reckless driving, aggressive driving, and driving while intoxicated. There is only one offense which qualifies as a misdemeanor - operating a vehicle causing death. [Title 21 Del.C. §4176A]. Moreover, operating a vehicle causing death is an "unclassified" misdemeanor, a much lower category than a class A misdemeanor. See Title 11 Del.C. §4206. Even first and second offense DUIs are not misdemeanors. Third and subsequent DUIs are low level felonies. See Title 21 Del.C. §4177(d).

B. Conceptually, the most analogous activity to speeding in excess of 95 mph would be "speed exhibitions" or drag racing. See Title 21 Del.C. §4172. Such activity would be more dangerous than simply speeding since it ordinarily involves multiple speeding vehicles. For a first offense, the maximum penalty is a \$200 fine and 30 days of incarceration. In contrast, the maximum penalty for a class A misdemeanor is more than 10 times the penalty for "speed exhibitions", i.e., \$2,300 fine and 365 days of incarceration. See Title 11 Del.C. §4206(a).

Second, H.B. 58 directs the automatic revocation of a license. This is probably unnecessary since DMV already enjoys the discretion to revoke or suspend a license even prior to conviction of traffic offenses. See Title 21 Del.C. §2733. Moreover, under DMV standards, actual conviction of driving 50 mph over the speed limit or 100 mph on a highway automatically results in a 1 year license suspension. See attached DMV Drivers Manual, p. 23.

Third, since H.B. No. 58 creates a new crime which would ostensibly be prosecuted by lower courts, it may require a 2/3 vote. See, e.g., Article IV, §28 of the Delaware Constitution. Compare S.B. 174 from 144th General Assembly. The bill lacks the customary “2/3 vote” recital.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations on the proposed legislation.

cc: The Honorable Jack Markell
Mr. Brian Hartman, Esq.
Ms. Jennifer Cohan
Ms. Tricia Roberts
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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