

MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Recent Legislative Initiatives

Date: January 24, 2011

I am providing my analysis of six (6) bills in anticipation of the February 10, 2011 meeting. Alternatively, I may request that the Council review the bills at its meeting this afternoon to facilitate prompt submission of comments to policymakers. Given time constraints, my commentary should be considered preliminary and non-exhaustive.

1. S.B. No. 13 (Needle Exchange Program)

As background, legislation (S.B. No. 60) was adopted in 2006 requiring the Division of Public Health to operate a pilot needle exchange program in the City of Wilmington. The purpose of the program was to reduce the incidence of HIV, Hepatitis B, and other blood borne diseases and to facilitate referrals to treatment programs. The legislation “sunsets” on February 1, 2012. The SCPD endorsed the 2006 legislation. S.B. No. 60 easily passed the Senate by a vote of 16 yes, 4 no, and 1 not voting. The House vote was closer - 24 yes, 14 no, 1 not voting, and 2 absent.

S.B. No. 13 was introduced on January 20, 2011. As of January 24, 2011, it remained in the Senate Health & Social Services Committee. The bill would repeal the existing enabling statutes and substitute a new set of enabling statutes. An amendment has been placed with the bill to limit operation of the program to the City of Wilmington. Although the new enabling statutes would parallel the current law, there are a few differences:

A. The current law literally limits participants to City of Wilmington residents [Title 29 Del.C. §7990(4)]. The bill would eliminate that restriction (lines 46-47). Since 70% of Delawareans with HIV/AIDS are in New Castle County (line 7), a rigid Wilmington residency requirement makes little sense.

B. The current law literally limits the program to a “1-for-1 exchange, whereby the participants shall receive 1 sterile needle and syringe unit in exchange for each used one” [Title 29 Del.C. §7992(2)]. The bill maintains safeguards but it would not impose the inflexible 1-1 exchange requirement in the statute (lines 60-64).

C. The current law requires the program to operate out of mobile vans [Title 29 Del.C. §7992 (9)]. The bill would eliminate this requirement.

D. The current law requires DPH to establish an oversight committee comprised of a law enforcement representative, legislators, a recovered injecting drug user, physician, and member of faith community [Title 29 Del.C. 7994]. The bill modifies the required membership (lines 88-95).

The prudence of reauthorizing the needle exchange program is amply addressed in the preamble to the bill (lines 1-34). Delaware has consistently ranked among the top ten states in the rate of new HIV cases with 70% of Delawareans living with HIV/AIDS living in New Castle County. Federal studies have demonstrated that needle exchange programs are effective in reducing the incidence of HIV/AIDS. Needle exchange programs have been endorsed by the American Medical Association, the American Academy of Pediatrics, the U.S. Conference of Mayors, the National Association of State Alcohol and Drug Abuse Directors, and a host of other groups. Consistent with the attachments, the Delaware HIV Consortium has compiled a supportive position paper and an impressive list of more than thirty (30) Delaware agencies which support the needle exchange program.¹ The SCPD is included in the list of supporting agencies. It is important to note that the City of Wilmington, in which the program will exclusively operate, supports the needle exchange program.

I recommend a strong endorsement subject to consideration of two (2) amendments:

A. In line 47, the reference to “Section 7981” should be corrected to read “Section 7991”.

B. While S.A. No. 1 limits the operation of the program to the City of Wilmington, the oversight committee includes “one elected official from each county” and “one citizen from each county” (lines 92-93). If the program is limited to the City of Wilmington, the merits of including representatives from Kent and Sussex Counties on the oversight committee should be reconsidered.

A courtesy copy of the Council’s comments should be shared with the HIV Consortium.

¹I have requested an updated list from the HIV Consortium which could be included with any comments to policymakers.

2. S.B. No. 12 (Removal of Bar on Food Supp. Program Eligibility Based on Drug Conviction)

This bill was introduced on January 20, 2010. As of January 24, the bill remained in the Senate Health & Social Services Committee.

As background, the attached statute (Title 31 Del.C. §605) currently bars Food Supplement Program (a/k/a Food Stamps) eligibility for persons convicted of drug felonies subject to some exceptions. This bill would result in the following simplified §605:

Pursuant to the option granted the State by 21 U.S.C. §862a(d)(1), an individual convicted under federal or state law of a felony involving possession, distribution or use of a controlled substance shall be exempt from the prohibition contained in 21 U.S.C. §862a(a) against eligibility for food stamp program benefits for such convictions.

This bill would have the same effect as legislation (S.B. No. 255) introduced in the last General Assembly. That bill passed the Senate by a vote of 16 yes, 3 no, and 2 absent. It was also released by the House Health & Human Development Committee on June 9, 2010. It did not receive a House vote. The SCPD endorsed S.B. No. 255.

Given the common co-occurrence of substance abuse with mental health and other disorders the bill would ostensibly enhance flexibility in State “safety net” programs. On a practical level, if a person lacks access to basic sustenance for self and family, the prospect for recidivism may increase. The attached December 17, 2009 article notes that enforcement of the ban seriously undermines successful reintegration of persons released from prison into the community and has a disproportionate effect on women. The House Committee report on the predecessor bill noted the favorable effect on inmate transition efforts:

Committee Findings: The committee found that this law legalizes Delaware’s “opt out” option from the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996. The committee also found that this bill aligns with the state’s prisoner re-entry effort.

[emphasis supplied]

Moreover, it is anomalous to bar food benefits from a person convicted of a drug offense when no such bar exists under federal law for persons convicted of other crimes (e.g. murder; rape).

Consistent with the attached May 10, 2010 DHSS memo commenting on the predecessor bill, at least nineteen (19) states have already lifted the lifetime drug felony conviction ban altogether.

I recommend endorsement.

3. H.B. No. 9 (Felon Voting Restriction)

This bill was introduced on January 18, 2011. As of January 24, it remained in the House Administration Committee.

The bill is identical to legislation (H.B. No. 17) introduced in the preceding General Assembly. That bill passed the House by a vote of 32 yes, 8 no, and 1 not voting. It was never released from the Senate Executive Committee. The SCPD endorsed H.B. No. 17.

The bill would amend the Delaware Constitution to remove a 5 year waiting period after expiration of a felony sentence to vote. The bill would apply to most felonies with the exception of offenses against public administration, murder, manslaughter, and sex crimes. I attach an informative April 1, 2009 News Journal article describing the predecessor bill which confirms that felons would have to complete all aspects of sentencing, including restitution and payment of fines, prior to restoration of eligibility to vote. The bill would have to pass in both this General Assembly and the General Assembly beginning in 2013 to amend the Constitution.

A number of studies have revealed that a disproportionate number of persons with mental illness and cognitive impairments are incarcerated. This bill would therefore have a disproportionate effect on persons with disabilities.²

Consistent with the attached March 21, 2009 Associated Press article, 2 states do not take voting rights from felons, 14 states restore voting rights upon release from prison, 5 states restore voting rights upon completion of parole, and 20 states restore voting rights upon completion of prison, parole, and probation. Thus, the current Delaware 5-year waiting period is more constrictive than standards in 41 states.

Last Fall the New York Times published the attached editorial which concluded as follows:

Democracy is strengthened when as many citizens as possible have the right to vote. Fully integrating ex-offenders back into society is also the best way to encourage their lasting rehabilitation. It is past time for all states to restore individual voting rights automatically to ex-offenders who have served their time.

I recommend endorsement.

4. S.B. No. 11 (Dental Care for Pregnant Medicaid Beneficiaries)

This bill was introduced on January 20, 2011. As of January 24, it remained in the Senate Finance Committee. The legislative Website lists an “incomplete” fiscal note. Almost identical legislation was introduced in the 145th General Assembly (S.B. No. 64) and the 144th General Assembly (H.B. No. 123). The predecessor bills were never released from the Senate

²The attached Web-based materials also confirm that disenfranchisement has a disproportionate effect on minorities. The Council may wish to assess the extent to which this merits highlighting.

Finance Committee and House Appropriations Committee respectively. The SCPD endorsed the prior legislation.

S.B. No. 11 authorizes both urgent and preventative dental care for Medicaid beneficiaries who are pregnant or who become pregnant while receiving assistance. If passed, the enabling legislation would not become effective until the General Assembly appropriated funds to implement the initiative (lines 18-19).

Authorizing Medicaid coverage of dental services for pregnant beneficiaries is important for several reasons. The attached materials, including a policy brief published by the National Oral Health Policy Center, underscore the following.

First, research suggests that periodontal disease may be a significant risk factor for pre-term, low birthweight babies.

Second, pregnancy causes hormonal changes which increase the risk of developing gum disease. This is commonly referred to as “pregnancy gingivitis”.

Third, pregnant women are at risk of developing “pregnancy tumors” which arise from swollen gums.

Fourth, periodontal disease is linked to gestational diabetes.

I recommend endorsement. A courtesy copy of commentary should be shared with the Division of Public Health.

5. H.B. No. 2 (CHIP Expansion)

This bill was introduced on January 6, 2011. As of January 24, it remained in the House Health & Human Development Committee.

The bill is almost identical to legislation (H.B. No. 22) introduced in the 145th General Assembly. The SCPD endorsed the predecessor bill which was released from the House Health & Human Development Committee with the following report findings:

Committee Findings: The committee found that this legislation is well-intentioned, but that the high fiscal note in the legislation is an issue that needs consideration. The committee determined that the bill should be released from the Health & Human Development Committee for consideration by the Appropriations Committee.

The attached fiscal note on the prior bill predicted that it would expand enrollment eligibility in the Delaware CHIP by 5,000 children at an annual cost in excess of \$6 million. The predecessor bill was never released from the Appropriations Committee. The legislative Website lists the fiscal note on the current bill as “incomplete”.

The preamble to the bill recites that there are 20,000 uninsured children in Delaware, the percent of uninsured children has risen from 7.5% in 2000-2002 to 10.7% in 2004-2006, and that lack of access to health care has many unfortunate results. I am attaching some updated statistics from the Kaiser Foundation indicating that 10% (21,300) of Delaware's children were uninsured in 2008-2009. I am also attaching some 2006-2007 News Journal articles with supplemental information, including statistics indicating that the rate of uninsured Delawareans is highest in Sussex County.

Substantively, the bill would extend financial eligibility for Delaware's CHIP program "to include reduced-cost health insurance coverage for children of families with personal incomes up to 300% of the Federal Poverty Level." Consistent with the attachment, this would mean that a two-parent family with 2 children could have countable income up to approximately \$66,150.

Since the bill would enhance access to health insurance, I recommend endorsement.

6. H.B. No. 3 (Ban on Trans Fats in Public Schools)

This bill was introduced on January 6, 2011. As of January 24, it remained in the House Education Committee. There is no fiscal note.

The bill is identical to legislation (H.B. No. 60) introduced in the 145th General Assembly. H.B. No. 60 passed the House by a vote of 26 yes, 1 no, and 14 not voting. It was released from the Senate Finance Committee on June 30 but did not receive a Senate vote. A similar bill (H.B. No. 65) was also introduced in the 144th General Assembly. The SCPD endorsed the latter bill.

The House Education Committee report on H.B. No. 60 contained the following findings:

Committee Findings: The committee found that mandating schools to disallow the availability or distribution of food with more than 0.5 grams of artificial trans fatty acids to be an important step in providing nutritious meals to students. The committee acknowledged the nutritional measures some of the state school districts have already taken, such as providing whole grains and fresh fruit and vegetables to students but believe all districts would benefit from following this state regulation. It was also discussed that limiting the amount of artificial trans fatty acids will not only help decrease the occurrence of child obesity but will also encourage food industries and suppliers to minimize the artificial trans fat in their products. The bill was voted out of committee.

Consistent with the attached excerpt from the National Council of State Legislatures (NCSL), many state and local governments are enacting bans or limits on trans fats in a variety of settings, including schools. Obesity is a national epidemic with enormous consequences. Consistent with the attached October 17, 2010 News Journal article, nearly 17% of U.S. medical costs (\$168 billion) can be linked to obesity. The attached July 13, 2010 News Journal article

notes that Delaware is the 20th most obese state with a child obesity rate in excess of 13%. The attached October 8, 2009 News Journal article notes that 37% of Delaware children are either overweight or obese. The same article has an extensive description of local school initiatives demonstrating that this bill reflects best practice:

The Delmar School District also has started offering healthier choices at its concession stand. Cheeseburgers are made with lean ground beef and low-fat cheese and served on whole wheat buns. Instead of regular potato chips, baked chips and 100-calorie packs of other snacks are sold. ...

Nancy Nadel, school nurse at Red Clay Consolidated's Forest Oak Elementary, said gearing the school toward healthier eating has been a difficult process. When she stopped allowing parents to bring in cupcakes to celebrate their children's birthdays, some complained, arguing that special occasions call for special treats. "Have you seen the cupcakes? They're like on steroids. It's way too much," she said. "And when you have 25 kids in a class, there can be several birthdays a month." Nadel suggests parents bring in fresh vegetables and a low-fat dip, fresh fruit, animal crackers or low-fat popcorn. ...

Cape Henlopen's Milton Elementary School has made changes to its classroom holiday and birthday parties, too. "At every party, you would have 100 cupcakes, brownies, chips, and soda. Everything was junk food," said Kathy Capozzoli, Milton's school nurse. Teachers now assign students with specific items to bring to holiday parties, such as carrots and celery, fruit and cheese and crackers. One baked good is allowed.

I recommend endorsement. The Council should consider sharing a courtesy copy of its commentary with the DHSS Secretary and DMMA and DPH directors since childhood obesity has a direct impact on Medicaid costs. The July 13, 2010 article notes that obesity is more prevalent among the poor and minorities.

Attachments

8g:legis/211bils
F:pub/bjh/legis/2011p&l/211PartAbils