



STATE OF DELAWARE
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MEMORANDUM

DATE: March 15, 2011

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

FROM: Ms. Daniese McMullin-Powell, *DMP/KH* Chairperson
State Council for Persons with Disabilities

RE: H.B. 12 [Child Sex Abuse Statute of Limitation]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 12 which would ensure that, for a period of two (2) years beginning July 1, 2011, victims of childhood sexual assaults by adult public sector employees may bring actions. Additionally, sovereign immunity is waived as to the State and its political subdivisions, including school districts, for sexual abuse of a minor by an adult. As background, in 2007, legislation (S.B. 29) was enacted which removed the statute of limitations for child victims of sexual abuse by adults. The bill also established a 2 year window for victims to sue perpetrators if the pre-existing statute of limitations had already expired. Employers of perpetrators could be held liable only upon a finding of gross negligence. H.B. 12 is the latest attempt to replicate the effect of S.B. 29 for victims of public-sector employees. It is similar to H.B. 155, as amended, from the 145th General Assembly.

SCPD endorses the proposed legislation since it would provide public employers with a legal incentive to be vigilant and responsive to evidence of sex abuse of students. Moreover, sex abuse within public settings appears to be a pervasive problem justifying redress if public agencies are determined to have been negligent in protecting students.

As the attached May 28, 2008 article indicates, it is anomalous for the Delaware Child Victim's Act to only apply to private entities since more (125,000+) children are subject to sex abuse within public settings. The article provides some examples of victimization within Delaware public school settings. Consistent with the attached June 10, 2002 News Journal article, sex abuse of children by public school employees has historically received "little attention beyond a few sensational cases" despite the scope of the problem. The article cites an Education Week national study which documented 244 cases of teacher-student sex abuse in a 6 month period.

Consistent with Rep. Lavelle's website, a news report indicated that since 1999 there have been at least 15 public school teachers and employees in Delaware arrested for the rape and sexual assault of children. The issue is not unique to Delaware. An Associated Press investigation in 2007 "found more than 2,500 cases over five years in which educators were punished for actions from bizarre to sadistic."

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

cc: The Honorable Jack A. Markell
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

Hb 12 child abuse 3-11



May 28, 2008

All of the state's children deserve to be protected

By GREGORY F. LAVELLE

Delaware's Child Victim's Act has now been in effect for almost one year.

It has allowed a number of victims of childhood sexual assault to gain access to the courts for previous assaults and more may step forward in the coming year.

Before Senate Bill 29, victims had two years from the time of an assault to file a civil action against the individuals that assaulted them and the institutions who were charged with their safety and protection.

In addition to the two-year window of opportunity to allow past victims access to the civil courts when the statute had tolled, S.B. 29 also eliminated the civil statute of limitations for future assaults.

This will allow future victims access to the courts and it will also force institutions to make sure their policies and practices do everything possible to protect children.

A significant problem with the Child Victim's Act is that it exempts the institution in Delaware that is responsible for the most children – the State of Delaware itself.

Unfortunately, the recent arrest of the Sussex Central High School principal for rape is not an anomaly.

According to news reports, since 1999 there have been 14 public school teachers and employees in Delaware arrested for the rape and sexual assault of children.

The victims were as varied as their predators in terms of gender, age and race. This issue is not unique to Delaware.

An Associated Press investigation from last year "found more than 2,500 cases over five years in which educators were punished for actions from bizarre to sadistic."

In the Colonial School District, a 60-year-old man sexually assaulted a male special needs student in a bathroom.

In the Capital School District, according to The News Journal, an employee of the Department of Special Education was charged with 100 felony counts of first degree-rape, continuous sexual abuse of a child and other offenses.

At the time of his arrest, he had been victimizing two 14-year-old girls for more than nine years.

Allegations have surfaced in another case that an employee of the Brandywine School District falsified the file of Rachel Holt after she was seen kissing a male student.

Ms. Holt was temporarily suspended for her actions but the file did not state the real reason for the

suspension.

She was later arrested for multiple rapes of the student she had been seen kissing.

She was employed in a number of Delaware school districts in a relatively short period of time.

Did the state and school districts act properly in these cases and take every effort to protect the children under their supervision?

Were employees removed at the first hint of impropriety?

Rumors abound on most of these cases and questions often remained unanswered due to "personnel issues."

Delaware has told private institutions and organizations that they will be held accountable for their actions.

It is now time for Delaware to live under the same law.

As it stands today, agencies of the State of Delaware and public schools can employ a defense called "sovereign and limited immunity" that no other institutions in Delaware can utilize.

Essentially, a victim cannot sue the State of Delaware for its failure to properly protect them from abuse.

Public schools have defenses available to them that other institutions do not have, thus making it more difficult for a victim to prevail.

Some have argued that the defenses available under limited immunity are meaningless. If so, than why not either eliminate them or extend them to private institutions?

It has been suggested to me that school district employees are not really state employees, and therefore, the state should not be held accountable for the actions -- or failed actions -- of school districts if their employees sexually assault a child.

Given the fact that the state pays 70 percent of school district salaries, provides a state-funded pension and sets up rules and regulations for most aspects of public education, this argument fails any test of reality.

The protections available to children under S.B. 29 need to be extended to the 125,000 children who attend public schools in Delaware.

These protections need to be extended to special-needs students who are often unable to understand, defend or even tell what has happened to them.

These children suffer abuse at a much higher rate than their typical peers and are often left to the care of the state with no other options.

House Bill 242, which unanimously passed the House of Representatives, would extend the provisions of S.B. 29 law to all children in Delaware.

The bill currently rests in the Senate and it should be passed before June 30.

The sexual abuse of children is a horrible thing. The predators are just as diverse in their makeup as

those who employ them. There should be no double standard when it comes to institutional accountability in connection with the sexual assault of children.

While S.B. 29 made significant changes and is one of the toughest laws of its kind in the country, it is hard to truly consider it landmark legislation, considering there are 125,000-plus children who do not benefit from its protections.

Fourteen arrests and thirteen convictions in nine years. While many reasons exist for the passage of House Bill 242, this record alone is a sufficient argument to enact this needed legislation.

Experts urging attention to teacher-student sex

By **CHELSEA J. CARTER**
Associated Press

SAN BERNARDINO, Calif. — A California high school teacher runs off to Las Vegas with her 15-year-old student. A Louisiana teacher is accused of having an affair with her 14-year-old student. In the Bronx, a teacher is charged with statutory rape involving a 16-year-old former student.

Such cases aren't uncommon across the country. But unlike the Roman Catholic Church's troubles with pedophile priests, teacher-student sex cases have received little attention beyond a few sensational cases.

Some experts point to what they see as a permissive attitude

toward such relationships and a double standard because cases involving female teachers and male students are treated less severely.

No single national agency tracks sex-related cases against teachers. However, it's estimated there are at least several hundred such incidents each year across the country, said Nan Stein, director of a project on sexual harassment in schools at the Center for Research on Women at Wellesley College.

In 1998, Education Week searched newspaper archives and computer databases and found 244 cases in a six-month period involving allegations ranging from unwanted touching to sexual relationships and serial rape.

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