



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney,
Governor

John McNeal, Director
SCPD

MEMORANDUM

DATE: April 5, 2022

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

FROM: Ms. Terri Hancharick, Chairperson *TH*
State Council for Persons with Disabilities

RE: H.B. 306 (Driver's License for Individuals Registered as Sex Offenders)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 306 which would revise existing law related to the issuance of driver's licenses for registered sex offenders¹. SCPD opposes the proposed legislation given the myriad of restrictions and public disclosure already required for individuals required to register as sex offenders. It is unnecessarily intrusive and Council questions what state interest is served by identifying sex offenders to third parties in this manner, when law enforcement and others can already identify them with the restriction "Y" if necessary.

SCPD has the following observations.

¹ Although the exact data is unclear, there is substantial evidence that there are a disproportionate number of individuals with intellectual disabilities who are convicted sex offenders. Callahan, Jeglic, et al, **Sexual Offenders With Intellectual Disabilities: An Exploratory Comparison Study in an Incarcerated U.S. Sample** <https://journals.sagepub.com/doi/10.1177/0306624X211066825> (12/2021).

Currently, state law requires that individuals required to register as sex offenders for a felony conviction must surrender their driver's license to the sentencing court, be issued a temporary license, and report to the Division of Motor Vehicles (DMV) for issuance of a new license where letter code "Y" indicating sex offender status appears in the "restrictions" area of the card. See 21 Del. C. § 2178(e). The law also states the person will need to pay \$5.00 fee for issuance of the new license.

The bill proposes to change the coding that appears on the license to "SO" indicating sex offender. It is not clear from the synopsis of the bill provided why the change in coding has been proposed, though presumably "SO" would more clearly indicate the individual is a registered sex offender.

The bill also imposes a requirement that individuals who must register as a sex offender for a felony conviction who have a nondriver identification card follow the same process of surrendering the identification card to the court, receiving a temporary card, and reporting to the DMV for issuance of a new card that has the same coding ("SO" indicating sex offender). In these circumstances the individual would also need to pay a \$5.00 fee to the DMV for issuance of the new card.

While in most cases, the underlying offense that would result in a person would be a felony, there are some circumstances contemplated by the relevant statute (11 Del. C. § 4120) where a person could be required to register based on one or more misdemeanor convictions. In those cases, the requirement to obtain and carry a new driver's license with the letter code to indicate sex offender status would appear to not apply.

Several other states require some designation for registered sex offenders on state-issued licenses, and in some states these laws have faced legal challenges. In 2019, a federal trial court found that the state of Alabama's requirements for labelling of driver's licenses and state IDs for registered sex offenders violated individuals' First Amendment rights. *Doe v. Marshall*, 367 F. Supp. 3d 1310 (M.D. Ala. 2019). Similarly, in 2020, the Louisiana Supreme Court similarly found that laws requiring that registered sex offenders to carry ID cards branded "sex offender" and criminalizing alteration of such cards were unconstitutional because they constituted "compelled speech" and were not the "least restrictive means" of serving the state's interest in public safety. *State v. Hill*, No. 2020-KA-03232020, WL 6145294 (La. 2020). Louisiana filed a petition for a writ of certiorari with the U.S. Supreme Court in 2021; however, this petition was denied without a written opinion on October 4, 2021. It is important to note, however, that in both cases the required labelling was far more obvious (in Alabama the law had required driver's licenses be labelled

“Criminal Sex Offender” in bold, red text, and in Louisiana, IDs were required to be labeled “Sex Offender” in all capital, orange text) as opposed to a letter code as used on Delaware’s licenses; in the Alabama case the Court actually mentioned Delaware’s use of the letter “Y” to label driver’s licenses in a footnote as an example of a more subtle means of enabling law enforcement to identify individuals registered as sex offenders while “reducing the unnecessary disclosure of information to others.” *Doe* at 1327.

It is unclear whether changing the letter coding to “SO” rises to the unconstitutional level of compelled speech found in the Alabama and Louisiana cases. It certainly will increase the likelihood that others will be made aware of a person’s status as a sex offender, as at least anecdotally, there are many circumstances in public life where presentation of identification is a requirement.

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

cc: Ms. Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HB 306 [Driver’s License for Sex Offenders (4-5-22)]