



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. 324 (Criminal Penalties for Assault of Health Care Workers)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 324 which seeks to amend existing provisions in the Delaware Code to broaden the statutory definition of assault in the second degree at 11 Del. C. § 612 to include qualifying offenses committed against a wider range of health care workers. SCPD opposes the proposed legislation unless language is added to clarify that the new provisions would not apply in certain circumstances where an individual is actively receiving psychiatric treatment or other behavior related support. SCPD has the following observations.

In 2016, the Legislature passed HB 214, which expanded the automatic re-designation to assault in the second degree to include cases in which the perpetrator had intentionally caused physical injury to a “the operator of an ambulance, a rescue squad member, licensed practical nurse, registered nurse, paramedic, or licensed medical doctor while such person is performing a work-related duty,” as well as “any other person... rendering emergency care.” See 11 Del. C. § 612 (4)-(5).

HB 324 proposes to further expand the conditions in 11. Del. C. 612 (3)-(4), to include hospital constables, in addition to “any person providing health care treatment or employed by a health care provider while such person is performing a work-related duty.” This language is extremely broad, and in many cases would essentially include anyone employed by a particular facility or program. This would potentially include direct service professionals serving individuals with disabilities in community settings, as well as all employees at facilities such as group homes and psychiatric hospitals. Presumably the perpetrator in the vast majority of such cases would be a patient or service recipient, a person with a disability, most likely a behavioral health related disability. As second-degree assault is considered a felony, the consequences could be significant for individual defendants in terms of sentencing as well as the collateral consequences of a felony conviction.

Balancing the safety of health care workers with the rights and wellbeing of the individuals they serve is always a delicate balance. Advocates on both sides of the issue agree that the assault of health care workers is a serious problem that needs to be addressed. It has been widely reported that approximately 75% of workplace assaults take place in health care settings. See e.g., ABC News coverage available at <https://abcnews.go.com/Health/epidemic-75-workplace-assaults-happen-health-care-workers/story?id=67685999>. Additional strain on the health care system caused by the COVID-19 pandemic as well as controversies surrounding masking and vaccination policies have only increased concerns about threats and violence toward health care workers. See, e.g., PBS News Hour, “Health care workers once saluted as heroes now get threats,” Sep. 29, 2021, available at <https://www.pbs.org/newshour/nation/health-workers-once-saluted-as-heroes-now-get-threats>. At the same time, staffing and retention of health care workers is a growing concern. The inability of health care providers to maintain staffing also impacts people with disabilities, potentially compromising safety and quality of care in a variety of settings.

While an act must be “intentional” to be deemed an assault in the second degree, this threshold would not clearly protect individuals with behavioral health conditions from unnecessary criminalization in all situations. There is no explicit exception in the statute for individuals with mental health conditions or other conditions that may impact behavior in circumstances that may increase the likelihood of such incidents. Some individuals may be easily agitated or prone to bursts of aggression as a result of their condition but could still legally be found to have “intentionally” caused injury to another person. Incidents involving individuals receiving inpatient care at psychiatric facilities are already often reported to police; expanding when such incidents would be considered felonies may encourage further reporting of these incidents and

increasing criminalization of these individuals, as opposed to focusing on treatment and supporting the development of appropriate behaviors and coping skills.

In programs and facilities serving individuals with disabilities, inadequate staffing and poor training of direct care staff often contribute to incidents escalating to the level of physical assault. Staff may not be paying sufficient attention to an increasingly agitated individual or may not feel empowered to de-escalate conflict when an individual starts behaving aggressively. In these situations, the alleged perpetrators should not face greater punishment for not receiving the appropriate care. Further, as the ACLU's op-ed regarding the prior bill pointed out, alleged perpetrators of assault in these circumstances would still face consequences such as prison time or a fine for the misdemeanor charge. Saddling often vulnerable individuals with felony convictions would potentially create larger obstacles to employment as well as certain types of housing and residential programs.

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

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

HB 324 [Penalties for Assault of Health Care Workers (4-5-22)]