



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
MARGARET M. O'NEILL BUILDING
410 FEDERAL STREET, SUITE 1
DOVER, DE 19901

VOICE: (302) 739-3620
TTY/TDD: (302) 739-3699
FAX: (302) 739-6704

MEMORANDUM

DATE: March 2, 2010

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

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

RE: H.B. 304 [Rape by Persons in Position of Trust, Authority or Supervision]

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 304 which would enhance the authorized penalties for a person who stands in a position of trust, authority or supervision over a child who is at least 16 years old but not yet 18 years old and intentionally engages in sexual intercourse or sexual penetration with such child. SCPD endorses the proposed legislation since persons with disabilities are disproportionately victims of violent crimes, including sexual assaults. See attached October 1, 2009 DOJ Press Release. SCPD has the following observations on the specifics of the bill.

The Code [Title 11 Del.C. §770] currently characterizes the following conduct as a class C felony:

A person is guilty of rape in the fourth degree when the person:

...(4) Intentionally engages in sexual intercourse or sexual penetration with another person, and the victim reached that victim's sixteenth birthday but has not yet reached that victim's eighteenth birthday and the defendant stands in a position of trust, authority, or supervision over the child, or is an invitee or designee to a person who stands in a position of trust, authority or supervision over the child.

The bill, as amended, would not affect the elements of the above crime. Instead, it amends the Code [Title 11 Del.C. §771] to characterize the same conduct, if there is at least a 4 year age

difference between perpetrator and victim, as a Class B felony:

A person is guilty of rape in the third degree when the person:

...(3) Intentionally engages in sexual intercourse or sexual penetration with another person, and the victim reached that victim's sixteenth birthday but has not yet reached that victim's eighteenth birthday and the defendant is at least 4 years older than the victim and the defendant stands in a position of trust, authority, or supervision over the child, or is an invitee or designee to a person who stands in a position of trust, authority or supervision over the child.

The difference in authorized penalty is significant. The term of incarceration for a Class C felony is up to 15 years with no minimum. The term of incarceration for a Class B felony is 2-25 years. See Title 11 Del.C. §4205(b).

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

cc: The Honorable Jack A. Markell
Mr. Brian Hartman, Esq.
Ms. Stephanie Hamilton, VRTF
Delaware Department of Justice
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

Hb304 rape 3-2-10

BJS: Bureau of Justice Statistics

ADVANCE FOR RELEASE AT 9:00 A.M. EDT

THURSDAY, OCTOBER 1, 2009

<http://bjs.ojp.usdoj.gov/>

Bureau of Justice Statistics

Contact: Kara McCarthy 202-307-1241

After hours: 202-598-0556

FIRST NATIONAL STUDY ON CRIME **AGAINST PERSONS WITH** **DISABILITIES**

Young and middle-age persons with disabilities experienced higher rates of violence than persons of similar ages without disabilities

WASHINGTON – The first national study on crime against persons with disabilities was released today by the Justice Department's Bureau of Justice Statistics (BJS), Office of Justice Programs. In 2007 persons age 12 or older with disabilities experienced about 716,000 nonfatal violent crimes, including rape or sexual assault (47,000), robbery (79,000), aggravated assaults (114,000) and simple assaults (476,000). They also experienced about 2.3 million property crimes during the year.

Based on interviews for the National Crime Victimization Survey (NCVS), the study identified six types of disabilities among persons who experienced criminal victimization: sensory, physical, cognitive functioning, self-care, go-outside-the-home and employment. A disability was defined as a long-standing (six months or more) sensory, physical, mental or emotional condition that makes it difficult for a person to perform daily living activities.

To compare victimization of persons with and without disabilities, the study generated age-adjusted rates for persons with disabilities, who typically are older than persons without disabilities. The age-adjusted rate of nonfatal violent crimes against persons with disabilities was 1.5 times higher than the rate for those without disabilities (32 per 1,000 persons age 12 or older compared to 21 per 1,000).

Examining specific age groups, the risk of violence was higher for young and middle-age persons with a disability than those of similar age groups without disabilities. Persons age 12 to 19 and those age 35 to 49 with a disability experienced violence at nearly twice the rate as persons of the same age groups without a disability. The rate of violence did not differ by disability status for persons age 50 or older. Persons age 65 or older, with or without a disability, had the lowest rates of violent crime.

The age-adjusted rate of violent crime against females with a disability (35 per 1,000 persons age 12 or older) was almost twice the rate for females without a disability (19 per 1,000 persons age 12 or older). Males with a disability also experienced higher age-adjusted rates of violence than males without a disability (30 per 1,000 compared to 24 per 1,000).

Sixteen percent of violent crimes against females with a disability were committed by an intimate partner, defined as a current or former spouse, boyfriend or girlfriend. Five percent of violence against males with a disability was committed by an intimate partner. Among persons without disabilities, intimate partners were responsible for 27 percent of nonfatal violence against females and 3 percent of nonfatal violence against males.

More than half of violent crimes against people with disabilities were against those with more than one

type of disability. Persons with cognitive disabilities had a rate of nonfatal violent crime higher than the rates for persons with other types of disabilities.

Nearly one in five violent crime victims with a disability believed that they became a victim because of their disability. Victims with disabilities perceived offenders to be under the influence of either alcohol or drugs in about a third of all violent crimes against them. Violent crime victims with or without a disability were equally as likely to face an armed offender, report the crime to the police or suffer an injury during the crime.

The 2.3 million property crimes against households with a disabled person included 527,000 household burglaries, 107,000 motor vehicle thefts and 1.7 million thefts; however, these estimates are believed to be an undercount as information about a disability was obtained only for if the person interviewed reported a disability.

Data in this report represent the first estimates of victimization of people with disabilities produced in response to the Crime Victims with Disabilities Awareness Act. Disability was measured in the NCVS using procedures developed for the U.S. Census Bureau's American Community Survey.

The report, *Crime Against People with Disabilities, 2007* (NCJ 227814), was written by BJS statisticians Michael Rand and Erika Harrell. Following publication, the report can be found at <http://bjs.ojp.usdoj.gov/index.cfm?ty=pbdetail&iid=2022>.

For additional information about the Bureau of Justice Statistics' statistical reports and programs, please visit the BJS Web site at <http://bjs.ojp.usdoj.gov/>.

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The Office of Justice Programs (OJP), headed by Acting Assistant Attorney General Mary Lou Leary, provides federal leadership in developing the nation's capacity to prevent and control crime, administer justice, and assist victims. OJP has five component bureaus: the Bureau of Justice Assistance; the Bureau of Justice Statistics; the National Institute of Justice; the Office of Juvenile Justice and Delinquency Prevention; and the Office for Victims of Crime. In addition, OJP has two program offices: the Community Capacity Development Office, which incorporates the Weed and Seed strategy, and the Office of Sex Offender Sentencing, Monitoring, Apprehending, Registering, and Tracking (SMART). More information can be found at <http://www.ojp.gov>.

BJS09160