



Governor's Advisory Council for Exceptional Citizens (GACEC)
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MEMORANDUM

DATE: April 26, 2016

TO: The Honorable Members of the Delaware General Assembly

FROM: Robert D. Overmiller, Chairperson
GACEC

RE: **House Bill No. 214 (Nurse Workplace Violence Protection)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed **House Bill No. 214**, which expands current law so that an assault on a nurse performing a work-related duty would qualify as a class D felony. Council previously submitted comments in the attached March 24 memo to the General Assembly. The Committee report for House Bill No. 214 includes the following commentary: "The committee found that the language in this bill needs to be reworked in order to address punishments for individuals who are mentally handicapped."

Council would like to reiterate and share the following observations.

Under current law, if a person intentionally causes "physical injury" to a member of the general public, the crime is a misdemeanor A punishable by up to one year in prison. See 11 Del.C. §§611 and 4206. There is special statute [11 Del.C. § 612] which elevates the misdemeanor to a felony D if a person intentionally causes "physical injury" to a nurse "while [the nurse] is rendering emergency care". The penalty for a class D felony is up to eight years in prison. See 11 Del.C. §4205(b). The definition of "physical injury" is "impairment of physical condition or substantial pain". See 11 Del.C. §222(23). Therefore, the current law elevates the maximum one year prison term to a maximum eight year term for an assault on a nurse providing emergency care with no significant injury apart from "pain". House Bill No. 214 would expand the application of the 8-year prison term to nurses in non-emergency contexts, i.e., while "performing a work-related duty" (lines 17-18). While well intentioned, Council is concerned by the authorization of a prison term that is not double, triple, or quadruple but eight times more for an assault resulting only in some pain. This seems extremely disproportionate to the offense. One compromise would be to elevate

the offense against a nurse to a felony F or G which carry two and three year prison terms respectively.

Authorizing excessive prison terms runs counter to recent, highly publicized legislative initiatives to deter sentences disproportionate to the offense. See attached March 27, 2016 and April 3, 2016 News Journal articles. The March article highlights the following information:

Nationally, lawmakers are revisiting the tough sentencing laws that made the United States the world's number 1 jailer. In recent years, voices from the left and right have joined together in challenging the scale of incarceration. Delaware has engaged in similar efforts too, but lags behind the country in downscaling its prison population....The growth of incarceration in Delaware resulted from the choices of lawmakers to increase the use and severity of prison sentences. Delaware's correctional population has grown by more than 207 percent since 1980; taxpayers spend more than \$32,900 to incarcerate each prisoner.

Council suggests that policymakers consider the unintended consequences of this legislation. As mentioned in our earlier letter, the bill could easily result in prosecution of patients with compromised capacity at the time of the alleged crime. For example, individuals with urinary tract infections may display symptoms akin to mental illness. Individuals with an intense fear of needles may defensively strike out at a nurse attempting to perform an injection. An elderly patient may strike out defensively at a nurse attempting to impose wrist or mechanical restraints to prevent the patient from removing tubes or aggravating wounds. Medications or a high fever may compromise executive functioning and self-control. A patient who does not speak English may defensively try to block an injection or push a nurse away out of a lack of understanding. A patient may experience involuntary movements or seizures which a nurse could misinterpret as voluntary acts of aggression. A patient with an undiagnosed traumatic brain injury (TBI) may strike out as a function of brain injury. The "unintended consequence" of the bill may be to unnecessarily "criminalize" a large number of vulnerable patients.

Finally, Council doubts that there would be any practical deterrent effect if the legislation were enacted. It is unlikely that aggressive or disoriented patients will consciously think about and gauge their behavior based on whether an assault is a misdemeanor versus a felony under the Delaware Code.

Council understands and approves the desire to protect nurses from violence but would like to reiterate that though well intentioned, this legislation authorizes a penalty disproportionate to the offense and may unnecessarily "criminalize" a large number of vulnerable patients. Please consider other less severe penalties that are not so extreme in relation to the offense.

Thank you for your time and consideration of our observations. Please feel free to contact me or Wendy Strauss should you have any questions.

CC: The honorable Matthew Denn, Attorney General
Brendan O'Neill, Office of the Public Defender
Kathleen MacRae, American Civil Liberties Union
Sarah Carmody, MBA, Delaware Nurses Association

Attachments