



SEAN M. LYNN
STATE REPRESENTATIVE
31st District

HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
411 LEGISLATIVE AVENUE
DOVER, DELAWARE 19901

COMMITTEES
Judiciary, Chair Agriculture Education
Health & Human Development
Public Safety & Homeland Security

House Judiciary Committee Meeting Minutes
6.15.22

This committee meeting has been recorded and may be accessed via legis.delaware.gov

Chair Lynn called the meeting to order at 1:05. Members present included Reps. Bush, Cooke, Dorsey Walker, Gray, Griffith, Smyk, Spiegelman, and Vanderwende. For a list of guests present, please see the attendance list below.

Chair Lynn introduced **HB 379, AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO THE JUVENILE OFFENDER CIVIL CITATION PROGRAM AND EXPUNGEMENT OF A JUVENILE'S RECORD.**

Chair Lynn invited Rep. Dukes, sponsor of HB 379 to explain the legislation.

Rep. Dukes explained that the legislation was proposed to him by Dan Wright, Chief of the Laurel Police Department. Rep. Dukes said that Chief Wright mastered the art of community policing in Laurel, Delaware. He thanked Chief Wright for his service. He explained that the legislation would allow for the automatic expungement of civil citations from the record of a juvenile who chooses to participate in the Juvenile Offender Civil Citation Program after one year of successful completion of the program.

Rep. Griffith thanked Rep. Dukes for sponsoring this legislation.

Rep. Spiegelman asked how many civil citations would be expunged upon passage of this legislation.

Chief Wright estimated that this legislation would result in thousands of expungements.

Rep. Spiegelman commented that an individual would volunteer to enter the Juvenile Offender Civil Citation Program and would need to complete the program to get their record expunged.

Chief Wright explained that Rep. Spiegelman was correct in his assertion.

Rep. Smyk pointed out that background checks have different levels of severity. He noted that the military personnel, for instance, have a more extensive background check.

Rep. Dorsey Walker expressed her support for the legislation.

Rep. Cooke asked Rep. Dukes about the fiscal note for the bill.

Rep. Dukes replied that the fiscal note includes a cost of \$21,850 for the Fiscal Year 2023. With the permission of the chair, Rep. Dukes invited Jason Smith of the Office of the Controller General to explain the legislation's fiscal note.

Jason Smith confirmed that there will be a one-time cost of \$21,850 to complete the necessary programming for the automatic expungements.



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Rep. Cooke asked for clarification on what the funding would be used for specifically.

Jason Smith replied that the funding would be utilized by the Delaware Criminal Justice Information System (DELJIS) to hire specialized contractual programmers to complete the programming updates.

Rep. Cooke expressed concern that the one-time funding may not be enough and is concerned DEJIS will need to come back to the legislature for more support. He said that he supports the legislation.

Rep. Smyk thanked Jason Smith for his testimony.

Chair Lynn opened the floor to public comment.

John Reynolds, representing the American Civil Liberties Union of Delaware, indicated that civil citations of those participating in the Juvenile Offender Civil Citation Program are not visible to the public. He emphasized that these records should not be accessible to law enforcement upon expungement.

A motion was made by Rep. Bush and seconded by Rep. Cooke to release HB 379 from committee; motion carried. Yes= 9 (Bush, Cooke, Dorsey Walker, Lynn, Gray, Griffith, Smyk, Spiegelman, Vanderwende); No= 0; Absent= 1 (Mitchell). The bill was released from committee with a F=9, M=0, U=0 vote.

Chair Lynn introduced **HB 462 w/ HA 1, AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO ABUSE OF CHILDREN.**

Vice Chair Griffith explained that the legislation allows multidisciplinary team members to share information freely amongst themselves to better protect the welfare of abused children in Delaware. She asked Mark Hudson, representing the Office of the Child Advocate, to comment on the legislation.

Mark Hudson said that there is not currently a framework for parties in Family Court civil proceedings to have access to records created and maintained by a child advocacy center related to the forensic interviews it conducts. This legislation would allow the Family Court to utilize those records to avoid retraumatizing children by having to interview them again as part of court proceedings.

Chair Lynn opened the floor to public comment. Seeing none, he requested a motion.

A motion was made by Rep. Dorsey Walker and seconded by Rep. Bush to release HB 462 w/ HA 1 from committee; motion carried. Yes= 9 (Bush, Cooke, Dorsey Walker, Lynn, Gray, Griffith, Smyk, Spiegelman, Vanderwende); No= 0; Absent= 1 (Mitchell). The bill was released from committee with a F=7, M=2, U=0 vote.



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Chair Lynn introduced HB 461 AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO COURT REPORTERS.

Chair Lynn invited Rep. Griffith, sponsor of HB 461 to explain the legislation. Rep. Griffith explained that the legislation allows multidisciplinary team members to share information freely amongst themselves to better protect the welfare of abused children in Delaware. She asked Mark Hudson, representing the Office of the Child Advocate, to comment on the legislation.

Mr. Hudson said that there is not currently a framework for parties in Family Court civil proceedings to access records created and maintained by a child advocacy center related to the forensic interviews it conducts. This legislation would allow the Family Court to utilize those records to avoid retraumatizing children by having to interview them again as part of court proceedings.

Chair Lynn opened the floor to public comment. There was no public comment.

A motion was made by Rep. Dorsey Walker and seconded by Rep. Bush to release HB 461 from committee; motion carried. Yes= 9 (Bush, Cooke, Dorsey Walker, Lynn, Gray, Griffith, Smyk, Spiegelman, Vanderwende); No= 0; Absent= 1 (Mitchell). The bill was released from committee with a F=7, M=2, U=0 vote.

Chair Lynn introduced SB 144 w/ SA 1, AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO OFFENSES AGAINST PUBLIC HEALTH, ORDER, AND DECENCY.

Chair Lynn invited Rep. Morrison, sponsor of SB 144 w/SA 1 to explain the legislation.

A motion was made by Chair Lynn and seconded by Rep. Griffith to lift SB 144 w/ SA 1 from the table. Without objection, the motion carried.

Rep. Morrison explained that the legislation would designate an offense as a hate crime if it was motivated, in whole or in part, by a bias. The focus would be on the defendant's belief or perception of the victim as part of a group with immutable characteristics, whether or not the victim is part of said group. It also establishes a right of civil remedies to allow individuals to seek relief from hate crime, desecration, and religious symbol burning-related injury. He mentioned that there is a memo addressing the concerns expressed by the committee at a previous hearing.

With the permission of the chair, Rep. Morrison called up David Skoranski of the Delaware Department of Justice to testify on behalf of this legislation. David Skoranski mentioned that there have been instances of hate crimes in the past that the state has been unable to prosecute due to the limitations of the current statute. David Skoranski assured the committee that individuals will not be prosecuted under this statute unless there is proof of an intent to intimidate or victimize a certain person or group due to an immutable characteristic such as race or sex.



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Chair Lynn pointed out that this legislation holds legal guardians liable for civil remedies awarded due to hate crimes committed by minors in their care, whether or not they were aware of the crime. He added that this is a major departure from precedent regarding parental liability previously established by Delaware law.

Rep. Griffith also expressed concern about holding legal guardians liable for acts committed by minors in their care if they were unaware of the crimes. She asked the Department of Justice to revisit this provision of the legislation.

David Skoranski replied that they are holding legal guardians liable for civil remedies because a juvenile would, in most circumstances, be unable to pay the damages. This would result in the victim not being able to recover the civil remedies awarded to them.

Rep. Griffith said that she appreciated that the legislation is attempting to ensure that civil remedies awarded can be paid to the victim. However, she continued to express concern about parental liability without a knowledge requirement.

David Skoranski replied that the Department of Justice would be open to an amendment.

Rep. Griffith said that she supports holding legal guardians liable for hate crimes committed by their children if the legal guardians have prior knowledge of the crime.

Rep. Morrison thanked Rep. Griffith for her feedback. Rep. Morrison stated that he will draft an amendment.

Chair Lynn indicated that minors may be in the custody of someone who is not a biological parent or relative, or may be in the foster care system, which would complicate the implementation of the legislation regarding civil remedies.

Rep. Spiegelman noted that minors who have been radicalized are often taught to hide their behavior from their parents or guardians.

David Skoranski mentioned that he has reached out to the Office of Defense Services and the Delaware Trial Lawyers Association to discuss the legislation. David Skoranski said both organizations are not opposed to the legislation in its current form. He added that while there has been concern about the Attorney General representing private citizens in civil remedies cases, they will only do so through an agency. The Department of Justice views this as a last resort if a plaintiff's attorney or a member of the private bar does not or cannot take the case. He predicted that, upon passage of the legislation, it would be a rare occurrence for the Attorney General to seek civil remedies on behalf of a victim of a hate crime. Instead, the legislation will give the Department of Justice the option to do so if necessary.

Chair Lynn thanked David Skoranski for addressing the concerns of the committee. He asked if the private bar has voiced opposition to the bill.



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David Skoranski confirmed that the Delaware Trial Lawyers Association has not voiced any opposition to the legislation.

Rep. Dorsey Walker expressed concern about liability if the minor who has committed a hate crime is in an unusual custody situation. Rep. Dorsey Walker said there should be some culpability for a parent if the child is living in the home.

Chair Lynn concurred and asked how a civil remedies case would be handled if the minor was in the custody of a foster care agency or permanent guardians who are not biological parents.

David Skoranski replied that adding a requirement of awareness to the portion of the legislation related to parental liability would resolve these issues.

Rep. Bush asked if an individual would face a hate crime charge in addition to a regular charge if they committed an offense against a person specifically because they perceived them as a convenient or easy victim due to a perception that they may be weaker because of an immutable characteristic like age or sex.

David Skoranski said that, for an individual to be charged with a hate crime, there would need to be evidence that the victim was selected because of hatred or bias against a group. He pointed out that, under this legislation, incidents of domestic violence targeted toward women would not be considered a hate crime, because the victim is not chosen due to an overall hatred of the female sex.

Rep. Bush asked what would happen if a person was charged with a hate crime for targeting an individual over ninety years of age because the perpetrator believed they would be easy to victimize.

David Skoranski replied that even if a person was charged with a hate crime in such a circumstance, a prosecutor would still need to prove beyond a reasonable doubt that the perpetrator was ageist.

Rep. Morrison added that evidence of a bias could include social media posts, confessions, or written manifestos.

David Skoranski noted that a jury could not infer that an offense was a hate crime without additional evidence that proves motivation. David Skoranski expressed that hate crimes are difficult to prosecute.

Chair Lynn pointed out that the only way an individual who has victimized an elderly person could be charged with a hate crime is if they had previously made statements specifically regarding their hatred of elderly people in general. Chair Lynn added that there is a blurred line, particularly in domestic violence offenses.



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Rep. Smyk asked if other states that have added age and sex to their hate crime legislation have experienced regular offenses being charged as hate crimes.

Rep. Morrison said that, according to the Anti-Defamation League, no states that have implemented this type of legislation have begun designating offenses such as domestic violence as hate crimes.

Rep. Griffith said that the legislation would seem to require additional proof of sexism or misogyny to designate an incident of domestic violence against a woman as a hate crime.

David Skoranski noted that he believes that a jury would acquit individuals if the DDOJ convicted persons of hate crimes without the proper evidence of intent or motivation.

Rep. Smyk said that vulnerability is the primary motivator of crimes. Rep. Smyk asked how the perception of a victim would play into hate crimes.

David Skoranski referred to a case where in New Castle County a person painted a racial slur on another individual's car. The owner of the car was white, so the racial slur did not apply to them. The DDOJ investigated the incident as a hate crime. However, the case did not fit the criteria to be considered a hate crime because the racial slur did not apply to the victim. David Skoranski said that most people, however, would consider the incident to be a hate crime.

Rep. Smyk clarified his question which asked how the victim perception affects how hate crimes are prosecuted.

David Skoranski said victim perception is not an element of a crime. He explained that the law looks at the defendant's perception.

Rep. Morrison clarified that the law looks at the perception of the offender.

Chair Lynn opened the floor to public comment. There was no public comment.

A motion was made by Rep. Bush and seconded by Rep. Griffith to release SB 144 w/ SA 1 from committee; motion carried. Yes= 9 (Bush, Cooke, Dorsey Walker, Lynn, Gray, Griffith, Smyk, Spiegelman, Vanderwende); No= 0; Absent= 1 (Mitchell). The bill was released from committee with a F=4, M=5, U=1 vote.

Chair Lynn introduced **HB 253, AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE DELAWARE CRIMINAL CODE.**

Chair Lynn invited Rep. Spiegelman, sponsor of HB 253 to explain the legislation. Rep. Spiegelman stated the current Delaware law essentially defines a firearm as anything that could fire anything. Rep. Spiegelman noted that this legislation matches Delaware's definition of firearms to the federal definition.

Chair Lynn opened the floor to public comment.



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Rick Armitage of the National Rifle Association (NRA) and the Delaware State Sports Association expressed support for HB 353.

Rep. Griffith asked Rep. Spiegelman why the legislation removes BB guns as being classified as a firearm in this legislation.

Rep. Spiegelman explained that BB guns are never propelled through chemical means. He noted that BB guns are propelled through mechanical or spring-loaded means.

Rep. Griffith asked why BB guns were included in Delaware's initial definition of a firearm.

Rep. Spiegelman replied stating at the time the legislation was crafted there was no uniform definition of a firearm.

Rep. Griffith asked if Rep. Spiegelman ran HB 353 through DDOJ to see how the legislation might impact any criminal code as it pertains to firearms, dangerous weapons, or instruments.

Rep. Spiegelman said that he consulted the DDOJ in previous general assemblies.

Rep. Griffith said she would like a statement from the DDOJ addressing any impacts this legislation may have on the Delaware criminal code.

Rep. Dorsey Walker stated that there are many crimes where BB guns are utilized. She noted that oftentimes BB guns look like firearms.

Rep. Spiegelman noted that BB guns can still fall under the deadly weapons statute.

A motion was made by Rep. Bush and seconded by Rep. Cooke to release HB 253 from committee; motion carried. Yes= 9 (Bush, Cooke, Dorsey Walker, Lynn, Gray, Griffith, Smyk, Spiegelman, Vanderwende); No= 0; Absent= 1 (Mitchell). The bill was released from committee with a F=4, M=3, U=2 vote.

Chair Lynn introduced **SS 1 for SB 258, AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO CIVIL ACTIONS FOR TORTIOUS INJURIES, INCLUDING DEATH, TO LAWFULLY OWNED PETS.**

Chair Lynn invited Senator Lopez sponsor of SS 1 for SB 258 to explain the legislation.

Sen. Lopez explained SS 1 for SB 258 will provide new relief within the Delaware Code for pet owners. The legislation includes an amendment that adds a three-year sunset provision.

Chair Lynn opened the floor to public comment.

Laird Stabler, representing State Farm Insurance, expressed support for the legislation.

Rebecca Kinder, representing American Property Causality Insurance Association, said they are not opposed to the legislation.



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A motion was made by Rep. Bush and seconded by Rep. Dorsey Walker to release SS 1 for SB 258 from committee; motion carried. Yes= 9 (Bush, Cooke, Dorsey Walker, Lynn, Gray, Griffith, Smyk, Spiegelman, Vanderwende); No= 0; Absent= 1 (Mitchell). The bill was released from committee with a F=7, M=3, U=0 vote.

Chair Lynn introduced HB 461, AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO COURT REPORTERS.

Chair Lynn invited Rep. Griffith, a sponsor of HB 461, to explain the legislation.

Rep. Griffith noted that this legislation was brought up by the Superior Court of the State of Delaware. She expressed that the Superior Court is asking for the passage of this bill to update statutory language to permit the organization to utilize technological advances to record certain hearings. The Superior Court will use electronic court recorders to monitor court proceedings to ensure the records are accurately captured. With the permission of the chair, Rep. Griffith introduced Linda Carmichael, Chief Staff Attorney at the Delaware Superior Court.

Ms. Carmichael thanked Rep. Griffith for sponsoring this legislation.

Chair Lynn opened the floor to public comment. There was no public comment.

A motion was made by Rep. Bush and seconded by Rep. Dorsey Walker to release HB 461 from committee; motion carried. Yes= 9 (Bush, Cooke, Dorsey Walker, Lynn, Gray, Griffith, Smyk, Spiegelman, Vanderwende); No= 0; Absent= 1 (Mitchell). The bill was released from committee with a F=5, M=4, U=0 vote.

Chair Lynn introduced HB 447, AN ACT TO AMEND TITLES 10 AND 11 OF THE DELAWARE CODE RELATING TO EXPUNGEMENT.

Chair Lynn invited the sponsor of HB 447, Rep. Chukwuocha to explain the legislation.

Rep. Chukwuocha said this legislation came from the African American Task Force. Rep. Chukwuocha stated there are many challenges to getting records expunged. He noted that many individuals who have met all criteria to expunge their records were unable to do so based on old cases showing up on their record as unknown, unattainable, or pending. Rep. Chukwuocha indicated this legislation will grant expungement for cases that are over seven years old. He continued by expressing that he believes this legislation is a good start to addressing some of the barriers that are already present in Delaware's current expungement process.

Rep. Spiegelman clarified that if any individual is arrested but there was no decision made on their case, this legislation would allow the arrest to be expunged after seven years.

Rep. Chukwuocha said that Rep. Spiegelman is correct under the assumption that the individual did not have any additional charges or outstanding warrants.



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Chair Lynn provided an example where he received a client who was arrested in 1989 for drinking a beer on the beach. Chair Lynn stated that he filed for an expungement on behalf of his client. However, the State Bureau of Identification (SBI) report disposition came back as unknown. He explained the court expected the attorneys to find out what happened in a thirty-year-old case.

Rep. Spiegelman added that he had further questions on this legislation. However, in the interest of time, he will speak to Chair Lynn at a later date.

Rep. Smyk asked if there are currently unknown or unattainable dispositions now that recordkeeping is completed online.

Chair Lynn said that from his experience most of these dispositions are from older cases. Chair Lynn stated that if a case is more than seven years old it is presumed the case is expunged in favor of the applicant. Chair Lynn expressed that the burden should not be on the applicant to maintain the court records.

Rep. Smyk concurred with Chair Lynn's comments.

Chair Lynn opened the floor to public comment.

John Reynolds, Clean Slate Delaware Campaign Manager for the ACLU of Delaware expressed support for the intention behind HB 447. Mr. Reynolds said the impact of the bill is hampered by the bill's reliance on the petition-based discretionary expungement process. Mr. Reynolds pointed to data that found that 280,000 people were eligible for a petition-based expungement in Delaware, but less than 1,500 people received an expungement.

Clarence Cummings of the Clean State Delaware Campaign noted that Delaware can maximize the impact of HB 447 by including mandatory eligible felony charges and ensuring record clearing happens automatically for cases under consideration.

Chair Lynn thanked Mr. Cummings for his comments.

Linda Carmichael of the Delaware Superior Court expressed impact concerns on HB 447, which she has voiced to the House Attorney.

Lisa Minutola, Chief of Legal Services, Office of Defense Services expressed support for HB 447.

Kailyn Richards of the Delaware Center for Justice stated support for HB 447.

A motion was made by Rep. Griffith and seconded by Rep. Dorsey Walker to release HB 447 from committee; motion carried. Yes= 8 (Bush, Cooke, Dorsey Walker, Lynn, Griffith, Smyk, Spiegelman, Vanderwende); No= 0; Absent= 2 (Mitchell, Gray). The bill was released from committee with a F=4 M=4, U=0 vote.



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Chair Lynn introduced **HB 476, AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE GOLD ALERT PROGRAM.**

Chair Lynn invited the sponsor of HB 476, Rep. Griffith to explain the legislation.

Rep. Griffith noted the gold alert system allows law enforcement to alert the public when someone is a danger to themselves. Rep. Griffith noted that one of the consequences of the program is the gold alert stays on several website and social media after the individual is located and received the necessary mental health treatment. Rep. Griffith explained this may have several unintended consequences for individuals in instances such as seeking a job or relationships. She explained HB 476 will include an additional amendment. With the permission of the chair, Rep. Griffith invited Lieutenant Leonard of the New Castle County Police Department to testify on behalf of the legislation.

Lieutenant Leonard noted that gold alerts have affected individuals' ability to obtain a job and that he worked together with Senator Gay and Rep. Griffith to remedy these unintended consequences.

Chair Lynn opened the floor to public comment.

Jacqueline Contreras expressed support for the legislation.

A motion was made by Rep. Bush and seconded by Rep. Spiegelman to release HB 476 from committee; motion carried. Yes= 8 (Bush, Cooke, Dorsey Walker, Lynn, Griffith, Smyk, Spiegelman, Vanderwende); No= 0; Absent= 2 (Mitchell, Gray). The bill was released from committee with a F=4, M=4, U=0 vote.

Chair Lynn introduced **SB 289, AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO SEXUAL EXTORTION.**

Chair Lynn invited Rep. Griffith, sponsor of SB 289 to explain the legislation.

Rep. Griffith explained SB 289 expands the definitions of sexual extortion to include threatening to reproduce, distribute, exhibit, publish, transmit, or otherwise disseminate a visual depiction of a person who is nude, or who is engaging in sexual conduct.

Chair Lynn thanked Rep. Griffith for her work on this legislation.

Chair Lynn opened the floor to public comment. There was no public comment

A motion was made by Rep. Dorsey Walker and seconded by Rep. Smyk to release SB 289 from committee; motion carried. Yes= 8 (Bush, Cooke, Dorsey Walker, Lynn, Griffith, Smyk, Spiegelman, Vanderwende); No= 0; Absent= 2 (Mitchell, Gray). The bill was released from committee with a F=5, M=4, U=0 vote.

Chair Lynn adjourned the meeting at 2:25 p.m.



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Respectfully submitted by:

Rachel Widom and Wyatt Patterson



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Attendance List

- Clarence Cummings of the Clean State Delaware Campaign
- Dan Wright, Chief of the Laurel Police Department
- David Skoranski of the Delaware Department of Justice
- John Reynolds, American Civil Liberties Union of Delaware
- Kailyn Richards of the Delaware Center for Justice
- Laird Stabler, State Farm Insurance
- Lieutenant Leonard of the New Castle County Police Department
- Linda Carmichael of Superior Court
- Lisa Minutola, Chief of Legal Services, Office of Defense Services
- Mark Hudson, Office of the Child Advocate
- Rebecca Kinder, American Property Causality Insurance Association
- Rick Armitage, National Rifle Association (NRA) and the Delaware State Sports Association