



**Krista Griffith**  
STATE REPRESENTATIVE  
12th District

HOUSE OF REPRESENTATIVES  
STATE OF DELAWARE  
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## House Judiciary Committee Meeting Minutes

1.17.24

### House Committee Recording

Chair Griffith called the meeting to order at 11:08 a.m.

Members present:

Rep. Griffith, Chair

Rep. Romer, Vice Chair

Rep. Cooke

Rep. Dorsey Walker

Rep. Dukes

Rep. Jones Giltner

Rep. Phillips

Rep. Lynn

Rep. Schwartzkopf

Rep. Shupe

Chair Griffith introduced **HB 266, AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO COUNTY AND MUNICIPAL POLICE/FIREFIGHTER PENSION PLAN.** *Time Stamp: 11:12*

Chair Griffith noted that the committee heard some concerns from the public regarding HB 266 and would likely defer action on the bill.

Vice Chair Romer, sponsor of HB 266, explained that the bill aims to include wages earned from mandatory additional work hours in the definition of "compensation" for pension calculation in the County and Municipal Police/Firefighter Pension Plan. This excludes voluntary overtime. The bill addresses situations where municipal police and firefighters are compelled by their superiors to work overtime, risking repercussions if they refuse. Currently, such mandatory overtime isn't factored into pension plans, despite being integral to their work. Pension calculations are based on the average of the highest paid 36 consecutive months of their career. The associated costs would be borne by relevant agencies, though concerns have been raised.

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Romer stressed the unique challenges faced by firefighters and police officers, drawing from her personal experience with her firefighter father. She acknowledged concerns about costs but disagreed with estimates, citing support for police recruitment grants as indicative of potential benefits from the bill. She introduced expert witness Captain Joe Malloy, a firefighter from the City of Wilmington.

Chair Griffith invited Joe Malloy to comment on the legislation.

Joe Malloy stated that, apart from overtime, he typically works around 2,400 hours annually. He pointed out that the high frequency of job vacancies is directly related to the demanding schedule, which often necessitates other firefighters to fill in extra shifts. Malloy highlighted the disparity between firefighters' work hours and those of typical state employees, equating to approximately 63 additional days per year. He emphasized that this calculation does not incorporate overtime. Additionally, he mentioned that his department has experienced the loss of 18 personnel during his tenure, which has led to increased workload for remaining staff members like himself.

Rep. Phillips thanked Rep. Romer for introducing this legislation. She asked if the mandatory overtime addressed in the bill is scheduled or unscheduled.

Joe Malloy detailed the operational procedures of the City of Wilmington fire department, stating that they receive their schedules only a day in advance. If a scheduled firefighter is unable to fulfill their duty, it falls upon the on-duty personnel to locate off-duty colleagues willing to cover the additional shift. This arrangement is categorized as voluntary overtime. However, if no off-duty firefighters agree to take on the extra work, those on duty are obligated to report for duty again the following day, constituting mandatory overtime.

Rep. Cooke expressed gratitude to Joe Malloy for his dedication to service. He acknowledged instances where certain firefighters or municipal police officers might attempt to manipulate the system by falsely portraying voluntary shifts as mandatory. Cooke highlighted The News Journal's annual publication of overtime pay for state employees, noting that some individuals reportedly earn as much as \$200,000 in overtime. He voiced apprehension regarding the financial strain smaller municipalities might face in covering additional hours. Cooke sought clarification on how the legislation would apply in municipalities with volunteer fire departments.

Joe Malloy replied that even within volunteer fire departments, there's a requirement for eight paid personnel who might encounter similar challenges with mandatory overtime. He stressed the importance of this legislation due to ongoing difficulties in adequately staffing the department.

Rep. Cooke inquired about the present retention rate within the City of Wilmington fire department.

Joe Malloy approximated that the current retention rate stands at approximately 30 to 40 percent, highlighting that a decade ago, it was closer to 50 or 60 percent.

Rep. Dukes asked how many employees currently work in the City of Wilmington fire department.

Joe Malloy said that there are approximately 150 firefighters in his department.

Rep. Schwartzkopf expressed appreciation for Joe Malloy's service and thanked Representative Romer for agreeing to postpone action on the legislation to address concerns from the public and fellow legislators. He advocated for establishing a clear definition of "mandatory overtime," emphasizing that without such clarity, employees could exploit the system. Schwartzkopf raised a point regarding police officers' special duty assignments, which inherently involve overtime, and questioned whether the bill would encompass these situations.

Vice Chair Romer specified that special duty assignments would fall under voluntary work and therefore remain unaffected by the proposed legislation.

Rep. Schwartzkopf highlighted the need for a clear definition of mandatory overtime to avoid confusion regarding the inclusion of special duty jobs.

Rep. Shupe inquired about the pension procedures for volunteer firefighters.

Vice Chair Romer clarified that volunteer firefighters follow a distinct pension process separate from paid officers and would not be subject to the legislation in question.

Rep. Shupe acknowledged the author's intentions, but voiced shared concerns among fellow legislators about the fiscal challenges municipalities may face due to the proposed legislation. He proposed granting departments additional time to devise a comprehensive plan for implementing the new pension process.

Vice Chair Romer concurred with Rep. Shupe's suggestion, citing a similar concern raised by Rep. Jones Giltner in an email.

Rep. Jones Giltner affirmed her alignment with Rep. Shupe's stance.

Rep. Schwartzkopf expressed optimism that deliberation on this legislation would prompt broader discussions on strategies to mitigate the underlying issue of mandatory overtime.

Chair Griffith opened the floor for public comment.

No members of the public provided testimony in support of the bill.

Members of the public who provided testimony in opposition of the bill included Joanna Adams, James Dechene, Robert Overmiller, John Looney, Charlotte Barnes, Rob Winkeler, and Gene Dvornick.

Chair Griffith expressed gratitude to Joe Malloy for his service and commended Rep. Romer for her openness to collaborating with stakeholders on the matter.

Vice Chair Romer expressed anticipation for additional discussions concerning the legislation.

Rep. Dorsey Walker extended gratitude to Joe Malloy and all other individuals who provided testimony during the meeting.

Chair Griffith introduced **HB 267, AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO VIOLATIONS OF CHILD SUPPORT ORDERS.** *Time Stamp: 11:52*

Rep. Dorsey Walker, sponsor of HB 267, outlined that individuals who are in breach of child support orders commonly face penalties such as imprisonment or license revocation. However, this punitive action often exacerbates the situation as the individual may be unable to fulfill their child support obligations or pay fines while incarcerated or without a license, hindering their ability to maintain employment. HB 267 aims to prevent the Family Court from imposing incarceration or license suspension on individuals failing to pay child support unless it determines that the failure to pay is deliberate and not due to financial incapacity. She introduced Julie Shahan, Deputy Director of the Delaware Division of Child Support Services, as an expert witness on the matter.

Chair Griffith invited Julie Shahan to comment on the legislation.

Julie Shahan stated that the Division of Child Support Services does not oppose the bill.

Rep. Shupe inquired about the proportion of child support cases in Delaware that encompass a failure to pay.

Julie Shahan approximated that roughly 30 percent of cases involve a failure to pay. She then deferred to expert witness Ashley Dibert, a social service administrator for the Division of Child Support Services, for further insight.

Ashley Dibert responded that while she does not possess an exact percentage at present, she committed to furnishing Rep. Shupe with more detailed information at a later date.

Rep. Shupe inquired whether the number of child support cases involving non-payment would range in the hundreds or thousands.

Ashley Dibert indicated that the number would likely be in the thousands.

Rep. Shupe asked whether imprisonment is mandatory for individuals failing to meet child support obligations.

Julie Shahan clarified that the decision regarding incarceration for non-payment lies within the discretion of the Family Court.

Rep. Shupe sought information on the current number of individuals incarcerated for failure to pay child support.

Julie Shahan indicated that the number of individuals incarcerated for this reason is presumably very low.

Rep. Shupe inquired about alternative measures besides incarceration that are employed to ensure child support payments.

Ashley Dibert highlighted additional methods such as holding the individual in contempt of court, imposing supplementary payments, and suspending licenses.

Julie Shahan provided an example wherein an individual was instructed to settle two months' worth of child support or face potential imprisonment.

Rep. Dukes inquired about the process the court would employ to discern whether the failure to pay child support was deliberate or stemmed from an inability to pay. He recounted a past initiative where, faced with over \$250 million in arrears, he convened a task force that introduced seven legislative measures to tackle the issue. He highlighted license suspension and imprisonment as frequently utilized enforcement measures.

Chair Griffith specified that Family Court commissioners would determine willfulness and welcomed input from expert witness Addie Asay, Director of Legal Affairs at Delaware Family Court.

Addie Asay clarified that the Family Court lacks a defined protocol for assessing the willfulness of non-payment. While the Family Court refrains from taking a stance on the legislation, Asay voiced concerns regarding its language, advocating for revisions to align with existing legal standards.

Chair Griffith underscored that a legal standard, if established, would guide judges or commissioners in evaluating the willfulness of non-payment.

Addie Asay reiterated that the current legal system doesn't incorporate a concept of willfulness in this context.

Rep. Dorsey Walker said that an example of willful non-payment would be deliberate concealment of income to evade higher child support obligations. She cautioned against exacerbating financial hardships with punitive measures like license suspension or imprisonment. She expressed doubt in the accuracy of \$250 million in arrears.

Rep. Dukes clarified that the \$250 million in arrears exclusively pertained to child support and has since increased substantially.

Julie Shahan confirmed the \$250 million arrears figure and noted the current arrears amount to approximately \$400 million.

Rep. Dukes acknowledged that some debtors may have deceased but emphasized the persisting concern over the substantial arrears.

Chair Griffith emphasized that imprisonment or license suspension fail to address the underlying arrears issue.

Rep. Dukes reiterated concerns about the lack of clarity on determining willfulness in the legislation.

Chair Griffith stressed that Family Court would only consider willfulness in the context of last-resort options like license suspension or imprisonment.

Rep. Dukes sought clarification on the guidelines judges would adhere to when considering willfulness alongside incarceration or license suspension.

Chair Griffith inquired if Rep. Dorsey Walker would be open to meeting with the Family Court to address their apprehensions regarding the definition of "willful."

Rep. Dorsey Walker affirmed her willingness to engage with the Family Court to discuss their concerns. She recounted a case where a custodial parent erroneously received orders to pay arrears, leading to missed job opportunities and eventual license revocation.

Rep. Dukes highlighted that incarcerated parents have the option to contact child support enforcement to suspend their payments.

Addie Asay clarified that payments do not automatically cease upon incarceration.

Rep. Sophie Phillips voiced similar concerns regarding the definition of "willful" and suggested reviewing the previous work of Rep. Dukes' task force.

Rep. Cooke expressed apprehension that eliminating penalties for failure to pay child support could lead to a lack of justice for those owed arrears. He requested information on the number of individuals incarcerated for this reason.

Rep. Shupe inquired about the current assistance provided by the Division of Child Support Services to individuals owed child support from non-compliant payers.

Julie Shahan responded that the Division's authority is limited to enforcement actions previously mentioned and relies on decisions made by the Family Court. She noted the effectiveness of measures like license suspension, passport denial, and credit reporting in compelling payment.

Addie Asay added that they also conduct tax and lottery intercepts to ensure compliance.

Rep. Shupe emphasized the importance of prioritizing the protection of individuals owed child support rather than those who have defaulted on payments. He highlighted that the majority of child support recipients are women, many of whom have fled from unsafe marriages.

Rep. Dorsey Walker recounted a personal encounter with a woman who was incarcerated for five years due to failure to pay child support. Despite being a victim of domestic violence, she did not receive custody of her children.

Rep. Phillips reiterated the necessity for the legislation to define "willfulness" and advocated against incarcerating individuals who are unable to afford child support.

Rep. Jones Giltner inquired about the typical duration of incarceration for those failing to pay child support, mentioning hearing about sentences lasting up to thirty days.

Addie Asay clarified that individuals failing to pay child support are held in civil contempt. Before sentencing, they are usually provided an opportunity to make a "purge payment" to avoid incarceration. She confirmed that individuals incarcerated for this reason typically serve a thirty-day sentence.

Representative Lynn highlighted various concerns regarding child support enforcement mechanisms, particularly in Delaware, where administrative actions such as license suspension and passport denial are undertaken without involving Family Court, leading to immediate financial strain on non-custodial parents who may be suddenly liable for significant retroactive payments. He explained the Division of Child Support Services' process for revoking licenses, emphasizing the lack of due process and the potential for exacerbating financial burdens, especially when court delays lead to retroactive arrears. Additionally, he criticized the state's calculation of child support using the Melson formula, which disregards individual circumstances and often results in unfair outcomes, such as fathers being estranged from their families and custody battles being driven by financial incentives rather than the child's well-being. He argued for reforms to address these issues, including clearer definitions of willfulness in non-payment cases and consideration of individual financial situations in determining child support obligations.

Chair Griffith noted that Rep. Dorsey Walker had agreed to work with the Division to establish definitions of willfulness.

Chair Griffith opened the floor for public comment.

Alanna Mozeik, Coby Owens, Robert Overmiller, and Lynne Kielhorn provided testimony in support of the bill.

No members of the public provided testimony in opposition of the bill.

A motion was made by Rep. Lynn and seconded by Rep. Cooke to release HB 267 from committee; motion carried. Yes = 8 (Phillips, Lynn, Jones Giltner, Dukes, Dorsey Walker, Cooke, Griffith, Romer); No = 1 (Shupe); Absent = 2 (Spiegelman, Schwartzkopf). The bill was released from committee with a F=2, M=6, U=0 vote.

Chair Griffith adjourned the meeting at 12:37 p.m.

Respectfully submitted by:

Wyatt Patterson

**Attendance List**

- Joe Malloy
- Joanna Adams
- James Dechene
- Robert Overmiller
- John Looney
- Charlotte Barnes
- Rob Winkeler
- Gene Dvornick
- Julie Shahan
- Ashely Dibert
- Julie Shahan
- Addie Asay
- Alanna Mozeik
- Coby Owens
- Lynne Kielhorn