
O. Box 351, Silver Street, Middletown, CT 06457
Telephone (860) 262-5030 · Fax (860) 262-5035

TESTIMONY OF KIRK W. LOWRY
to the
Public Health Committee

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OPPOSITION TO SB 970

Concerning Workplace Violence Prevention and Response in Health Care Settings

I am the Legal Director of the Connecticut Legal Rights Project, Inc. (CLRP) a statewide nonprofit organization that provides free legal services to low income adults with psychiatric disabilities.

CLRP supports reduction in workplace violence, but opposes those sections of SB 970 that are overbroad and may criminalize behavior of people with disabilities that is related to that disability. When a person with a psychiatric disability or developmental disability seeks treatment, that person should not be subject to criminal prosecution for exhibiting behavior for which they are seeking treatment. Generally, the Americans with Disabilities Act considers conduct resulting from a disability to be part of the disability itself, meaning that such conduct cannot constitute a separate basis for adverse action. (*Nanos v. City of Stamford*, 609 F.Supp.2d 260 (D. Conn. 2009), a case in the employment context.)

CLRP supports the provisions in New Section 1 that require the creation of a workplace safety committee, require covered employers to perform risk assessments, and require covered employers to develop and implement a workplace violence prevention plan. CLRP opposes subsection (f) of New Section 1 that prohibits a covered employer from requiring a health care employee to treat or provide services to a patient who has “verbally or physically abused or threatened” the employee. This provision is profoundly misguided, naïve, and betrays a deep misunderstanding of the treatment of people with disabilities. Many people with psychiatric disabilities or developmental disabilities exhibit behavior that is a direct and clear result of their disabilities, not the result of intent to harm or assault staff. In most instances, people with disabilities who exhibit behaviors should be treated with a treatment plan and a behavior modification plan, not by

calling the police or allowing staff not to provide the treatment they were hired to provide.

CLRP opposes New Section 2 which mandates that all covered health care employers report “any act that may constitute an assault or related offense” to local law enforcement and to DPH. This section is overbroad. A more thoughtful response is demonstrated by the DMHAS Commissioner’s Policy 6.23 – Arrest of Clients. The Commissioner’s policy allows for the use of professional discretion taking into account the seriousness of the behavior and the extent to which the behavior is a manifestation of the person’s psychiatric disability. The policy recommends that in the vast majority of the cases, the behavior should be treated, not criminalized.

CLRP strongly opposes New Section 3, which amends by significantly expanding the scope of General Statutes § 53a-167c, Assault of public safety, emergency medical or public transit personnel. The current law makes it a class C felony to assault a public safety officer, emergency medical or public transit personnel. None of these categories of public civil servants are in the business of treating inpatient psychiatric patients with severe and persistent mental illness or people with significant developmental disabilities. The proposed amendment would require state hospitals and ICF-MR’s, institutions that treat persons with severe disabilities, to call the police and subject patients to class C felony charges for nothing more than exhibiting behavior that is a clear and direct manifestation of their mental illness, is usually well-known, for which they may be receiving powerful medication to treat, and for which they may even have a professional behavior management plan. This is nothing more than disability discrimination that violates the Connecticut Constitution, the ADA, and the Rehabilitation Act.

The only practical effect may be to charge a person who is not able to form criminal intent with felony assault, have the court order a competency evaluation at Whiting Forensic Institute, transfer the person from CVH general psychiatric division to Whiting, confirm that the person is not competent and not restorable, resulting in unnecessary utilization of a bed at the overburdened WFI, or simply be transferred back to the CVH general psychiatric division.