

MELANIE L. GEORGE
STATE REPRESENTATIVE
Fifth District



HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
LEGISLATIVE HALL
DOVER, DELAWARE 19901

COMMITTEES
Judiciary, Chair
Appropriations
Joint Finance
Public Safety & Homeland
Security
Veterans Affairs

Judiciary Committee
Meeting Minutes
June 9, 2010

Chairwoman George called the meeting to order at 12:05pm. Members present included Representatives J. Johnson, Lee, Wilson, D. P. Williams, Carson, Kovach and Mitchell. For a list of guests, please see attached.

After calling the meeting to order, Chairwoman George brought up **HS 1 for HB 348 AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO SPECIFIC OFFENSES**, and recognized Rep. Longhurst, the bill's sponsor. Rep. Longhurst explained that the bill provides greater protection for Delaware's vulnerable adults by increasing the availability of sentencing in crimes where vulnerable adults are taken advantage of.

Chairwoman George then recognized Susan Del Pesco of the Delaware Department of Health and Social Services, Division of Long Term Care Residents Protection. Judge Del Pesco explained that the bill would expand the time period available to judges for sentencing and that the bill broadens the power of judges

Rep. J. Johnson asked if the bill focused more on restitution than the penalty for crimes. Judge Del Pesco explained that the bill is focused on the penalty for crimes and broadening the range of sentencing.

Rep. J. Johnson motioned to release the bill from committee; Rep. Carson seconded the motion. The bill was released from committee on a vote of 5-0-0.

Rep. Longhurst thanked the Judge Del Pesco and the Attorney General's office for their work.

Next, Chairwoman George brought up **HB 443 AN ACT TO AMEND TITLES 10, 11, 16 AND 21 OF THE DELAWARE CODE RELATING TO DRUG LAWS, CRIMES AND CRIMINAL PROCEDURE, SENTENCING ACCOUNTABILITY, COURTS AND JUDICIAL PROCEDURE, AND MOTOR VEHICLES**, and thanked the Attorney General, the Public Defender, the various law enforcement agencies involved and SURJ for their help with the legislation. Chairwoman George also explained that this bill would benefit the citizens of Delaware greatly. She continued by expressing her gratitude to Ned Carpenter, who fought tirelessly for revisions to the state of Delaware drug laws.

Chairwoman George then recognized Rich Andrews, the Delaware state prosecutor. Mr. Andrews offered a summary of the bill, which is included in the addendum to the meeting minutes. Mr. Andrews also explained a few highlights of the legislation, including the fact that this legislation consolidates and simplifies an enormous portion of the drug code. In addition, Mr. Andrews explained that this bill makes the most serious drug offense dealing instead of trafficking to ensure clarity in sentencing. Finally, Mr. Andrews expressed his confidence that

the legislation would provide a comprehensive overhaul to the drug laws of the state of Delaware while creating adding simplicity and clarity to sentencing.

Chairwoman George then recognized Brendan O'Neill, the Delaware Public Defender. Mr. O'Neill offered his support for the legislation and explained that the bill simplifies the drug law, imposes a logical structure in drug law sentencing and establishes a difference between users and dealers.

Chairwoman George then recognized Major Joe Papili of the Delaware State Police. Major Papili explained that the bill offered more structure and simplicity in dealing with drug laws.

Chairwoman George then opened the floor to comments and discussion from the Representatives. Rep. Carson commented about the possibility of having a vehicle confiscated if it is used in drug trafficking. Rep. Kovach then asked about the elimination of mandatory minimum sentencing to which Mr. O'Neill replied that this was done to eliminate the horror stories that currently exist with mandatory minimum sentencing especially with first time offenders. Rep. Kovach then asked about how many first time offenders are affected by mandatory minimum sentencing, to which Mr. Andrews replied around 5 a year.

Rep. J. Johnson offered his gratitude to all of those involved and found the bill to be very strong and great attempt to alleviate some of the devastating effects that drugs have on lower socioeconomic communities. Rep. Kovach offered his concern for the lowering of the size of the drug-free school zone from 1000 feet to 300 feet and offered suggestions instead of limiting the drug-free zone. Both Mr. Andrews and Mr. O'Neill explained that this shrinking of the drug-free school zone was one of the compromises made throughout the deliberation over the legislation, but that they would be open to changes. Rep. Kovach then asked about how aggravators would be affected by this legislation, and Mr. O'Neill explained that they most likely wouldn't.

Rep. D. P. Williams offered his concern over the legislation especially with the lessening of drug crimes and how victims would be affected. Chairwoman George explained that this bill gives stiff penalties to those that need it and lets the other individuals contribute to the community. Rep. D. P. Williams explained that in the perfect world individuals would contribute back to the community, but possibly the answer could be more addiction centers for those struggling with drug addiction. Mr. Andrews explained that it would be beneficial to create more addiction centers, but the lack of funding at this time most likely doesn't allow for it. Rep. D. P. Williams mentioned that this issue should have been brought up during JFC hearings.

Rep. J. Johnson explained that he saw this bill as an objective way to review drug laws. Rep. Kovach asked about the laws that will be repealed as a result of this legislation, to which Mr. Andrews replied maintaining a dwelling or vehicle with drugs, obtaining a needle without the permission of a doctor, putting prescription medication into a different container would all be repealed as a result of this legislation. Rep. Kovach asked why churches were excluded from the drug free school zone section of the legislation. Mr. Andrews replied that churches do not necessarily have immediate relation to children and also explained that Sunday schools are not covered in the drug free school zone. Rep. Kovach then asked how the weight and tiers for drug crimes were set, to which Mr. Andrews replied through statistical and practical experience.

Chairwoman George then recognized Joanna Champney from SURJ, who offered her sincere support for the legislation as it clearly simplifies drug charges and makes distinctions between users and dealers.

Chairwoman George then recognized Lisa Pertzoff of the League of Women Voters, who offered her support for the legislation. Ms. Pertzoff also expressed support for increased funding for addiction centers in Delaware.

Rep. Kovach then asked if the sponsor was open to amendment dealing with the drug-free school zone, to which Chairwoman George replied yes.

Rep. J. Johnson motioned to release the bill from committee; Rep. Mitchell seconded the motion. The bill was released from committee on a vote of 5-2-0.

Next, Chairwoman George brought up **HB 455 AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO DURABLE POWERS OF ATTORNEY AND ADDING A CHAPTER 49A THERETO RELATING TO DURABLE PERSONAL POWERS OF ATTORNEY**, and recognized Rep. Barbieri, the bill's sponsor. Rep. Barbieri explained that the bill offers protection to the citizens of Delaware by making them aware of the durable powers of attorney.

Chairwoman George then recognized Judge Del Pesco who explained that this bill would protect Delawareans from financial exploitation by way of the durable powers of attorney. Judge Del Pesco states that this bill sets for standards for the durable power of attorney and creates a form for individuals to use to grant the durable powers of attorney.

Chairwoman George then opened the floor to comments and discussion from representatives. Rep. J. Johnson expressed his concern the public has not been given significant time to review the bill. Rep. Barbieri stated that this bill has been a work in progress for a long time. Judge Del Pesco also stated that the business side had been included in the creation of the bill. Rep. Kovach expressed his support for the bill.

Rep. Wilson motioned to release the bill from committee; Rep. Kovach seconded the motion. The bill was released from committee on a vote of 6-0-0.

Next, Chairwoman George brought up **HS 1 FOR HB 428 AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO ALCOHOLIC LIQUORS, OFFENSES CONCERNING PERSONS AND THE CREATION OF A CIVIL CAUSE OF ACTION FOR INJURIES CAUSED BY CERTAIN PERSONS**, and recognized Rep. Barbieri, the bill's sponsor. Rep. Barbieri explained that the substitute bill takes precautions to avoid being a dram shop bill, but that it still creates civil liability and increased penalties with regard to social hosting.

Chairwoman George then opened the floor for comments and discussion from representatives. Rep. Lee questioned if the bill still applies to bartenders to which Rep. Barbieri replied no due to an additional clause at the end of the bill preventing establishments or their employees from being included under the bill.

Rep. Kovach commented on the possibility that this legislation creates an additional level of specific liability above and beyond dram shop liability. Rep. Kovach also stated that he believes in its current state the bill is somewhat unclear. Rep. Barbieri stated that the intent of the bill is to address social hosting. Rep. J. Johnson commented that he shares the concerns of Rep. Kovach and Rep. Lee, and that he also was not sure if the necessary individuals were alerted to this legislation being presented today. Rep. Barbieri stated that a notice had been sent out the previous evening and that the bill was announced by the chair prior to the meeting.

Rep. Kovach then asked about how the statute of limitations applies and found that it is 2 years in general and 3 years for contracts. Chairwoman George expressed concerns with the language of the legislation and stated that more work should be done to make the legislation clear. Rep. Barbieri stated that he didn't believe any reworking of the bill would solve this problem. Chairwoman George stated that a great deal of innocent parents could be affected by expensive law suits and hence much more work should be done in drafting.

Rep. J. Johnson motioned to table the bill; Rep. Lee seconded the motion. The committee respectfully tabled the bill.

Chairwoman George adjourned the meeting at 1:54pm.

Respectfully Submitted,

Christopher Lang