

LEGISLATIVE COMMITTEE MINUTES

SB455

Bill as
Introduced

SB 455 - AS INTRODUCED

2018 SESSION

18-2960
04/05

SENATE BILL **455**
AN ACT relative to state employees injured in the line of duty.
SPONSORS: Sen. Gray, Dist 6; Sen. Bradley, Dist 3
COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill exempts from public disclosure the details of an injury sustained by a state employee in the line of duty.

Explanation: Matter added to current law appears in **bold italics**.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Eighteen

AN ACT relative to state employees injured in the line of duty.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Compensation for State Employees Injured in Line of Duty. Amend RSA 21-I:43-a to read as
2 follows:

3 21-I:43-a Compensation for State Employees Injured in Line of Duty. Any injury received by
4 any state employee who is injured in the line of duty by a hostile act, or by an act caused by another
5 during the performance of duties which are considered dangerous in nature, that requires the
6 employee to be hospitalized or renders the employee temporarily unable to perform the duties of his
7 or her position shall not be charged against annual leave or sick leave for the time lost due to the
8 injury. During such time, the employee shall remain on the active payroll. In this event, no
9 employee shall be terminated from state service until he or she has applied for disability retirement
10 and a final decision on the application is made by the board of trustees of the New Hampshire
11 retirement system and appeals of such decision, if any, are finalized; provided, that the employee
12 shall make such application within 18 months of the injury contemplated by this section. The
13 executive head of the employee's agency shall make the determination as to whether an injury is in
14 the line of duty and due to a hostile or overt act, or an act caused by another during the
15 performance of duties which are considered dangerous in nature, and, after approval by the
16 governor and council, the determination shall be final. ***The employee's name and details of the***
17 ***injury shall be exempt from public disclosure pursuant to RSA 91-A:5, IV.*** During the time
18 in which the injured employee remains on active payroll at full base salary pursuant to this section,
19 his or her state compensation shall not be offset by state workers' compensation payments and he or
20 she shall not receive state workers' compensation payments to supplement his or her full base
21 salary. Nothing in this section shall prohibit medical payments or final settlements.

22 2 Effective Date. This act shall take effect upon its passage.

Committee Minutes

Senate Executive Departments and Administration Committee
Deb Chroniak 271-1403

SB 455, relative to state employees injured in the line of duty.

Hearing Date: February 14, 2018

Time Opened: 10:27 a.m.

Time Closed: 10:34 a.m.

Members of the Committee Present: Senators Carson, Reagan, Gannon, Soucy and Cavanaugh

Members of the Committee Absent: None

Bill Analysis: This bill exempts from public disclosure the details of an injury sustained by a state employee in the line of duty.

Sponsors:

Sen. Gray

Sen. Bradley

Who supports the bill: Senator James Gray, District 6; Lori Shibinette, Chief Executive Director, New Hampshire Hospital; John Williams, Director of Legislative Affairs, Department of Health and Human Services; Brian Hawkins, State Employees Association (SEA); Judith Stadtman, NH AFL-CIO

Who opposes the bill: No one

Who is neutral on the bill: No one

Summary of testimony presented in support:

Senator Gray spoke to his prime legislation stating the genesis of the bill was brought forward by a phone call from a constituent who was injured while working at the state hospital.

- To receive full compensation for an injury, approval has to come from the Executive Council.
- The current policy is those names become public at that time.
- Constitute opens paper while convalescing from injury and her name is documented in the paper.
- The Department of Health and Human Services (DHHS) came to the Senator and discussed statute changes.

John Williams, Director of Legislative Affairs, DHHS (in support) (talking points submitted)

Lori Shibinette, Chief Executive Officer, New Hampshire Hospital

John Williams:

- Department requested legislation.
- In the bill, lines 16 and 17 is added language, "the employee's name and details of the injury shall be exempt from public disclosure pursuant to RSA 91-A:5, IV".
- DHHS worked collaboratively with the Department of Justice (DOJ).
- DOJ recognized this was an issue.
- Want to make sure employees are compensated, but the concern is disclosure of personnel and medical information.
- Distributed a copy of RSA 91-A IV and discussed the relevant sections of the statute, noting "records pertaining to ... personnel, medical, ... other files whose disclosure would constitute invasion of privacy".
- This is what the legislation is attempting to do.

Lisa Shibinette, Chief Executive Officer, NHH (in support)

- Legislation is in response to assisting the employees of New Hampshire Hospital and others who are injured by clients.
- Due to clients they take care of, employees get injured.
- In recent past, details around assaults and injuries appeared in newspapers, shocking to their employees.
- Results with the media reaching out to the employees, while they are convalescing at home.
- Protection for employees to have privacy and allow them to heal from injuries.
- This legislation will clearly state these items (name and details of injury) be held confidential when going to Governor and Council.

Senator Reagan asked if there were any clippings of where these have appeared in the paper. Ms. Shibinette stated she can get that. Ms. Shibinette stated the reason the information is disclosed is because the employee is entitled to 100% of their pay when their injury is a result of an assault. There would be no other reason that a name would be released or the details of an injury.

Hearing closed at 10:34 a.m.

Future Action: Pending

dac

[SB0455]

Date Hearing Report completed: February 16, 2018-F

Speakers

Testimony

#1 ✓

TITLE VI PUBLIC OFFICERS AND EMPLOYEES

CHAPTER 91-A ACCESS TO GOVERNMENTAL RECORDS AND MEETINGS

Section 91-A:5

91-A:5 Exemptions. – The following governmental records are exempted from the provisions of this chapter:

I. Records of grand and petit juries.

I-a. The master jury list as defined in RSA 500-A:1, IV.

II. Records of parole and pardon boards.

* III. Personal school records of pupils.

IV. Records pertaining to internal personnel practices; confidential, commercial, or financial information; test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examinations; and personnel, medical, welfare, library user, videotape sale or rental, and other files whose disclosure would constitute invasion of privacy. Without otherwise compromising the confidentiality of the files, nothing in this paragraph shall prohibit a public body or agency from releasing information relative to health or safety from investigative files on a limited basis to persons whose health or safety may be affected.

V. Teacher certification records in the department of education, provided that the department shall make available teacher certification status information.

VI. Records pertaining to matters relating to the preparation for and the carrying out of all emergency functions, including training to carry out such functions, developed by local or state safety officials that are directly intended to thwart a deliberate act that is intended to result in widespread or severe damage to property or widespread injury or loss of life.

VII. Unique pupil identification information collected in accordance with RSA 193-E:5.

VIII. Any notes or other materials made for personal use that do not have an official purpose, including but not limited to, notes and materials made prior to, during, or after a governmental proceeding.

IX. Preliminary drafts, notes, and memoranda and other documents not in their final form and not disclosed, circulated, or available to a quorum or a majority of the members of a public body.

X. Video and audio recordings made by a law enforcement officer using a body-worn camera pursuant to RSA 105-D except where such recordings depict any of the following:

(a) Any restraint or use of force by a law enforcement officer; provided, however, that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.

(b) The discharge of a firearm, provided that this exemption shall not include those portions of recordings which constitute an invasion of privacy of any person or which are otherwise exempt from disclosure.

(c) An encounter that results in an arrest for a felony-level offense, provided, however, that this exemption shall not apply to recordings or portions thereof that constitute an invasion of privacy or which are otherwise exempt from disclosure.

Source. 1967, 251:1. 1986, 83:6. 1989, 184:2. 1990, 134:1. 1993, 79:1. 2002, 222:4. 2004, 147:5; 246:3, 4. 2008, 303:4, eff. July 1, 2008. 2013, 261:9, eff. July 1, 2013. 2016, 322:3, eff. Jan. 1, 2017.

#2 ✓

**DRAFT INTRODUCTORY REMARKS/TALKING POINTS
PREPARED FOR SENATOR JAMES GRAY - SENATE DISTRICT 6**

SB 455, relative to state employees injured in the line of duty.

Senate Executive Departments & Administration Committee (LOB RM 101)
Public Hearing, Wednesday, February 14, 2018 at 10 a.m.

- SB 455 was made at the request of the New Hampshire Department of Health and Human Services (HHS) in consultation with the New Hampshire Department of Justice (DOJ).
- Amends RSA 21-I:43-a dealing with compensation for state employees injured in line of duty.
- As a condition of receiving compensation, RSA 21-I:43-a requires a state agency head (commissioner) to determine whether an employee's injury was in the line of duty and due to a hostile or overt act, or an act caused by another during the performance of his or her duties which are considered dangerous in nature.
- This determination is subject to Governor and Council approval and is a matter of public record.
- In order to protect the state employee of an invasion of privacy, SB 455 exempts from public disclosure the details of an injury sustained by a state employee in the line of duty.
- Staff from HHS are here today to provide additional information on the need for SB 455 and to respond to questions from the Committee. Thank you for support of this important legislative initiative.

Chroniak, Deborah ✓

#3 ✓

From: Williams, John <John.Williams@dhhs.nh.gov>
Sent: Monday, March 05, 2018 5:20 PM
To: Chroniak, Deborah
Subject: FW: Article

Deb, hi, here's a link to the UL article Lori Shibinette, NHH CEO, sent to Senator Reagan regarding SB 455. She sent it as a text message to his cellphone while Senate ED&A Committee was still meeting. I was present afterwards when he confirmed receiving the text from Lori. Hope this is helpful. John

John L. Williams, Esquire, Director of Legislative Affairs, New Hampshire Department of Health & Human Services
129 Pleasant Street
Concord, NH 03301

(603) 271-9395 (office)
(603) 545-2934 (cell)

STATEMENT OF CONFIDENTIALITY: This message may contain information which is privileged and confidential and is intended for the exclusive use of the individual(s) to whom it is addressed.

From: Shibinette, Lori
Sent: Wednesday, February 14, 2018 10:39 AM
To: Williams, John
Subject: Article

<http://www.unionleader.com/health/call-for-change-as-more-workers-at-state-run-medical-facilities-claim-to-have-been-injured-20170926>

September 25, 2017 9:06PM

Call for change as more workers at state-run medical facilities claim to have been injured

By DAVE SOLOMON
State House Bureau

CONCORD — Efforts are under way at the State House to strengthen protections for health care workers in the wake of injury reports by nurses and other staff at state-run facilities like New Hampshire Hospital and the Sununu Youth Services Center.

NHH registered nurse June Garen of Gilmanton set the process in motion after she saw her name published in a **New Hampshire Union Leader article last month**



(/storyimage/UL/20170926/NEWS12/170929451/AR/0/AR-170929451.jpg?q=100)

New Hampshire Hospital in Concord. (Union Leader photo)

Related Stories

Dave Solomon's State House Dome: Worker protection bill stalls
(/article/20180304/NEWS0604/180309759)

Executive Council to hear injured health-care workers' payment requests (/health/Executive-Council-to-hear-injured-health-care-workers-payment-requests-10242017)

Dave Solomon's State House Dome: Anonymity for injured health workers sought
(/article/20171001/NEWS0604/171009976)

(<http://www.unionleader.com/health/5-health-workers-injured-in-less-than-a-month-at-state-run-facilities-20170822>), citing her workplace injury and four others

that occurred in late June and early July.

"While seeing my name in print in that context caused me more than a little sense of intrusion and panic, I feel that it opened the door to opportunity for improvement," she wrote in an opinion piece in the **Union Leader** and other publications (<http://www.unionleader.com/article/20170922/OPINION0204/170929768>). She called for better legal protections for nurses and other practitioners.

Garen's identity and the nature of her injury were revealed in documents presented by the Department of Health and Human Services to the Executive Council, which has to approve the continuation of pay and benefits for workers "injured in the line of duty."

The council will consider another such request on Wednesday, when DHHS will present the case of Larry Ellis Jr., a Sununu Center youth counselor who suffered a dislocated ring finger after being assaulted by a resident on July 25. He has yet to return to work.

Brian Hawkins, government relations coordinator for the State Employees Association, says "there's definitely been an increase" in assaults on health-care workers, particularly at New Hampshire Hospital, the state's psychiatric facility. He said addressing the problem is a "top priority" for the union.

Hawkins was among those present for an informal meeting of stakeholders hosted last Thursday by Sen. Jim Gray, R-Rochester, who was prompted to act after being approached by Garen, one of his constituents.

In addition to the state employees union, the meeting included representatives of the state Hospital Association, Nurses Association, physicians and DHHS.

Party-line vote in 2016

Much of the meeting with Gray focused on a Senate bill introduced in 2016 by Sen. Jeff Woodburn, D-Whitefield, which Garen hopes to see reintroduced. **SB 516** (http://gencourt.state.nh.us/bill_status/results.aspx?lstr=2956&sortoption=&txtsessionyear=2016&txtbillnumber=sb516) would require all health care facilities in the state to establish violence prevention programs and to conduct violence prevention training for employees.

The bill failed in a straight party-line vote of 14-10, with all Republicans opposed, after hearings in which representatives of the hospital association expressed opposition, citing existing OSHA regulations.

"We do not believe this bill is necessary," said Paula Minnehan, NHH vice president for government regulations, at the 2016 hearing. "The hospitals are already complying with the requirements outlined in the bill."

Judith Stadtman, a field director with the AFL-CIO, says OSHA provides guidelines, but not requirements that come with fines or legal consequences for non-compliance. Some hospitals have great programs, she said, others do not.

"OSHA does have a very comprehensive guideline that they publish regarding best practices for preventing violence in health care workplaces, but it's not statutory. It doesn't have any weight in terms of requiring health care facilities to put these practices in place," she said.

Seeking a solution

Gray said he is looking for a solution that will win widespread support, and not meet the same fate as SB 516 did last year.

"There was no one associated with state government or any of the hospitals or any of the nursing homes who think it's acceptable to have workplace violence where staff or visitors are subject to injury," he said of the Thursday meeting. "The question is what to do?"

According to others who attended the meeting at Gray's invitation, a consensus emerged around the need for better reporting and tracking of the incidents.

"From our perspective, violence prevention training programs are already going on, and what we would like to support is more reporting," said Pam Dinapoli, chair of the Commission on Government Affairs for the N.H. Nurses' Association. "The phenomenon is way under-reported, and nurses think it's part of their job in caring for people who may get violent. We are looking for mandatory reporting, like hospitals do for falls and infections."

The 12-member commission is meeting tonight to further consider its position.

Hawkins said the state employees union is hoping to work with the new CEO recently appointed at New Hampshire Hospital to work on solutions outside the legislative process. "There may be legislation, or not, but we're not waiting for that," he said. "We want to go ahead and try, at least at the state-run institutions, to go ahead with a collaborative effort."

Fear of speaking out

According to the American Psychiatric Nurses Association, the rate of workplace violence is highest among hospital workers, at 8.3 incidents per 10,000 workers compared to two incidents per 10,000 workers on average across other industries.

Garen cites statistics like that when calling for something more aggressive than an

improvement in reporting protocols. She said she was surprised to find the 2016 vote on SB 516 had fallen along party lines. "When I started this journey, I really didn't think of this as a partisan issue," she said.

Gray plans to convene another session with stakeholders in October, before deciding how to proceed. "The fact that Sen. Gray has interest gives me hope that we can break the logjam of partisanship and find a way to move forward," said Woodburn.

More front-line nurses would come forward to support legislative measures if not for fear of speaking out, according to Garen. "People are afraid of losing their jobs," she said. "The first thing I was asked is, 'What could you have done to prevent this?' Obviously if there was something I could have done, I would have done it."

dsolomon@unionleader.com

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Wednesday, March 7, 2018

THE COMMITTEE ON Executive Departments and Administration
to which was referred SB 455

AN ACT relative to state employees injured in the line of duty.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 4-0

Senator Sharon Carson
For the Committee

Deb Chroniak 271-1403