

ALASKA STATE LEGISLATURE

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REPRESENTATIVE STEVE THOMPSON HOUSE DISTRICT 2

MEMORANDUM

To: Senator Mike Dunleavy, Chair
Senate State Affairs Committee

From: Representative Steve Thompson

Date: March 31, 2017

Re: Senate State Affairs Committee Concerns Regarding HB 16 Voluntary Designation on Driver's License

ATCH: Legal Memo Addressing HB 16 [1. "Liability" and 2. "Guardianship"]

Dear Senator Dunleavy and Members of the Senate State Affairs Committee,

Thank you for hearing HB 16 on Thursday, March 23, 2017 and for moving the bill out of the State Affairs Committee.

During the hearing, Senator David Wilson voiced three specific concerns about the bill:

1. The possible liability to the State by having a designation on a license or ID;
2. The possibility of a guardian applying for a disability designation on behalf of the ward without the ward's consent, and
3. The need to clarify or define "hidden disabilities".

1. Liability

If a person has the disability designation on his/her state identification card or driver's license, it would not increase the liability to the State based on discrimination.

The State statute AS 09.50.250 sets out actions that may be brought against the State. The types of claims that can be brought forward are limited. If a lawsuit were to be brought forth, the court would consider whether the peace officer acted in the line of duty pursuant to the peace officer trainings received. As with any suit involving a peace officer, the training the officer received is reviewed for consideration in making a final determination. (Please see pages 2, 3, and 4 of the Legal Memo attached).

The designation on a driver's license or ID card is voluntary. The designator merely acts as a notification to a peace officer that a person has a disability.

2. Guardianship

Under AS 13.26.201, an incapacitated person (ward) for whom a guardian has been assigned is not considered to be incompetent and retains all civil and legal rights with the exception of those that are specifically limited by court order. That being said, if a guardian has been appointed by the court, the ward has been deemed to be incapable of making certain decisions. Under these circumstances, the guardian may have the option of requesting a voluntary designation for his/her ward if it is in the purview of the items specifically limited by the court and if it will promote or protect the well-being of the ward. The guardian would still be required to provide proof of a disability that would be verified by a licensed medical person [AS 28.15.111(d) as appears in SCS HB 16 (STA)].

If a guardian is making poor choices for his/her ward, any interested party can petition the court and/or the court itself may review and amend the guardian's actions, amend the responsibilities of the guardian, remove the guardian and appoint a successor, and/or terminate the guardianship. [AS 13.26.286].

3. Clarify "hidden disabilities"

A hidden or invisible disability is the term now used to describe a medical condition that is not readily apparent to the untrained eye. Examples of hidden disabilities include illnesses such as epilepsy, Lyme disease, and schizophrenia.

The World Health Organization [WHO] has recognized "invisible" or "hidden" disabilities as a bona fide category of disabilities. In WHO's World Report on Disability (2011), disabilities were described as "...health conditions [that] can be visible or invisible; temporary or long term; static, episodic, or degenerating; painful or inconsequential." (p. 8).

There is a new paradigm shift that has redefined disabilities as more than just a physically apparent medical condition.

In 2001, the WHO established a new definition of disability that is based on human rights or social models and focuses on the interaction between a person with a disability and the environment. The WHO report included the definition of disability as explained by Leonardi during the consortium on Measuring Health and Disability in Europe (2006). "Disability is the umbrella term for impairments, activity limitations and participation restrictions, referring to the negative aspects of the interaction between an individual (with a health condition) and that individual's contextual factors (environmental and personal factors)" (WHO Report on Disability. p.4).

As the definition of disability continues to evolve and becomes more inclusive, so too will the list of hidden disabilities. The intention of this bill is to give disabled persons another option to ensure that communication improves between law enforcement and persons with disabilities.

I hope that this information was helpful in addressing your concerns. Please feel free to contact me or my staff, Lynette, if you have further questions.

Respectfully,



Representative Steve Thompson

References

Leonardi M. et al MHADIE [Measuring Health and Disability in Europe] Consortium. 2006. "The Definition of Disability: What is in a Name?"

World Health Organization [WHO]. 2011. World Report on Disability. Ch.1 "Understanding Disability". http://www.who.int/disabilities/world_report/2011/chapter1.pdf?ua=1