

COLLEEN P. MURPHY, PROFESSOR OF LAW
ROGER WILLIAMS UNIVERSITY SCHOOL OF LAW

April 24, 2025

Re: Support of H 5904 with Amendments

Dear Members of the House Judiciary Committee,

I write in support of H 5904, with the amendments proposed at the end of this testimony (amendments that I understand Representative Kazarian has previously forwarded to Chair Craven). I have been on the faculty of the Roger Williams University School of Law for 28 years, specializing in Civil Procedure and Remedies, and I am an elected member of the American Law Institute, which for over 100 years has been devoted to the advancement and reform of law through its highly influential Restatements of the Law, Model Codes, and Principles of the Law. My experience in both organizations informs my support of this bill, although the views I share here are my own.

The amended bill would advance the elimination of statistical discrimination on the basis of race, ethnicity, or sex in Rhode Island with respect to proof of life expectancy, work-life expectancy, and earnings expectancy in various settings. First, the bill would repeal and amend certain portions of R.I. Gen. Laws § 9-19-38; that statute currently makes admissible into evidence in any court, commission, or agency statistical data on life expectancy and work-life expectancy that is segregated according to race, ethnicity, or sex. This bill instead contains a life-expectancy table that is based on population-wide statistical data, and it forbids considerations of race, ethnicity, or sex in the determination of life expectancy. Second, the bill as amended adds a provision to the statute mandating that in civil actions arising from personal injury or wrongful death, any estimations, measures, or calculations of compensation for lost earnings or impaired earning capacity shall not be based on race, ethnicity, or sex.

In a 2024 article in the Roger Williams University Law Review, a student co-author and I advocated eliminating the possibility of statistical discrimination in personal injury and wrongful death compensation here in Rhode Island, and I will focus my remarks on how the bill advances that goal.¹

By way of background, sawyers, economists, and courts commonly use statistical data to “predict the future” in personal injury and wrongful death cases as to how

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There are two broad problems with the use of segregated statistical data on life expectancy, work-life expectancy, and earnings expectancy in personal injury and wrongful death cases. First, using segregated statistical data enables the result that victims harmed by similar wrongful acts can receive vastly different compensation based on their race, ethnicity, or sex. This offends what the American Law Institute terms “a fundamental principle of nondiscrimination law: that no person should be treated as merely the average of a racial or sexual group.” The problem of statistical discrimination is exacerbated when victims are children. When children are physically injured or killed, they usually don’t have a work history, so decisionmakers rely heavily on statistics to estimate earnings expectancy, which in turn enables systemic inequality in compensation. For example, statistics segregated according to race, ethnicity, and sex will produce a much higher estimate of the future earning capacity of a newborn who is a white male than a newborn who is a female of color. Although statistics and expert opinion based on those statistics are not binding on the decisionmaker, those statistics might heavily influence settlement negotiations or the finder of fact.

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The best answer to both problems---systemic inequality in compensation and the mismatch between statistical tables and some victims' demographic identities—is to allow only statistics based on the U.S. population as a whole into evidence in personal injury and wrongful death cases. That is what this bill would accomplish.

Allowing compensation in personal injury and wrongful death cases to be based on race, ethnicity, or sex is not just morally wrong—it is legally questionable. Several scholars have concluded that the admissibility of such evidence violates the Equal Protection Clause of the U.S. Constitution, and some courts have excluded such evidence on constitutional and non-constitutional grounds.³ The American Law Institute has recently taken the position that only population-wide data should be admissible in civil cases with respect to predictions of life expectancy, work-life expectancy, and earnings expectancy.⁴ Other states have already taken action to prohibit statistical discrimination in personal injury and wrongful death cases, including California, Maryland, New Jersey, and Oregon.⁵

I urge this committee to advance H-5094 with proposed amendments so that statistics on life expectancy are based on population-wide data rather than race, ethnicity, or sex and that in personal injury and wrongful death cases, neither race, ethnicity, nor sex may be factors in compensation.

Thank you very much for your consideration.

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(Suggested amendments to H 5904 on following pages)

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SECTION 1. Section 9-19-38 of the General Laws in Chapter 9-19 entitled "Evidence" is hereby amended to read as follows:

9-19-38(1) Proof of life ~~or work life~~ expectancy.

(a) In any proceeding commenced in any court, commission, or agency, when the life ~~or work life~~ expectancy of a person shall be at issue or when it is necessary to establish the expectancy of continued life ~~or work life~~ expectancy of any person from any period of the person's life, whether he or she is living at the time or not, ~~the most recent issue of "The United States Abridged Life Tables" (United States Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics) or Tables of Work Life Expectancies as published in "Work Life Estimates: Effects of Race and Education" (United States department of labor, bureau of labor statistics)~~ the table hereto appended shall be received in all courts and by all persons having power to determine litigation as evidence of such expectancy represented by the figures in the columns headed by the words "completed age" and "expectation," respectively, shall be admissible in evidence as competent evidence of such matter. The admissibility of evidence provided for in this section shall not be deemed to render inadmissible evidence as to the health, constitution, habits, or occupation of the person or any other evidence otherwise admissible under the laws of this state. Determinations of life ~~or work~~ expectancy shall not be based on race, ethnicity or sex.

[life expectancy tables in HR 5094 are omitted here]

(b) The life ~~and work life~~ expectancy tables may be evidenced by an official publication of the tables or by a copy of the tables as published in a compiler's

note under this section in the general laws of Rhode Island. The tables as published in the general laws of Rhode Island shall be sufficient proof of life ~~and work-life~~ expectancy without further foundation or authentication; provided, however, that written notice of the intention to offer the life ~~or work-life~~ expectancy tables as evidence, ~~together with a copy of the tables,~~ has been given to the opposing party or parties, or to his or her or their attorneys, ~~by mailing it by certified mail, return receipt requested,~~ not less than ten (10) days before the introduction of the tables into evidence, ~~and that an affidavit of the notice and the return receipt are filed with the clerk of the court immediately after the receipt has been returned.~~

19-19-38 (2) Evidence Concerning Compensation in Personal Injury and Wrongful Death Actions

In any civil action arising from personal injury or wrongful death, any estimations, measures, or calculations of compensation for lost earnings or impaired earning capacity shall not be based on race, ethnicity, or sex.

SECTION 2. This act shall take effect upon passage.

EXPLANATION

BY THE LEGISLATIVE COUNCIL OF

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE--PROCEDURE GENERALLY – EVIDENCE

This act would provide that evidence of life ~~or work-~~expectancy shall be based on statistical data using blended statistics and shall not be based on race, ethnicity or sex, ~~and that in wrongful death and personal injury actions, evidence of lost earnings or impaired earning capacity shall not be based on race, ethnicity, or sex.~~

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Thank you very much for your consideration.

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There are two broad problems with the use of segregated statistical data on life expectancy, work-life expectancy, and earnings expectancy in personal injury and wrongful death cases. First, using segregated statistical data enables the result that victims harmed by similar wrongful acts can receive vastly different compensation based on their race, ethnicity, or sex. This offends what the American Law Institute terms “a fundamental principle of nondiscrimination law: that no person should be treated as merely the average of a racial or sexual group.” The problem of statistical discrimination is exacerbated when victims are children. When children are physically injured or killed, they usually don’t have a work history, so decisionmakers rely heavily on statistics to estimate earnings expectancy, which in turn enables systemic inequality in compensation. For example, statistics segregated according to race, ethnicity, and sex will produce a much higher estimate of the future earning capacity of a newborn who is a white male than a newborn who is a female of color. Although statistics and expert opinion based on those statistics are not binding on the decisionmaker, those statistics might heavily influence settlement negotiations or the finder of fact.

A second problem with using segregated statistical data is that statistical tables on life expectancy, work-life expectancy, and earnings expectancy typically do not

² On life expectancy, R.I. Gen. Laws § 9-19-38(a) makes admissible the United States Abridged Life Tables from the United States Department of Health and Human Services, Centers for Disease Control and Prevention, National Health Center for Statistics. The tables report data in both a blended (population-wide) format and in non-blended (segregated according to race, ethnicity, and sex). On work-life expectancy, R.I. Gen. Laws § 9-19-38(a) makes admissible the 1986 Tables of Work Life Expectancies as published in *Work Life Estimates: Effects of Race and Education* (United States Department of Labor Statistics). This publication contains no blended tables as to work-life expectancy for the U.S. population as a whole; rather, it divides data according to race, sex, and education level.

reflect the reality of victims of personal injury or wrongful death who are biracial, multiracial, of multiple ethnicities, intersex, gender non-conforming, or gender nonbinary.

The best answer to both problems---systemic inequality in compensation and the mismatch between statistical tables and some victims' demographic identities—is to allow only statistics based on the U.S. population as a whole into evidence in personal injury and wrongful death cases. That is what this bill would accomplish.

Allowing compensation in personal injury and wrongful death cases to be based on race, ethnicity, or sex is not just morally wrong—it is legally questionable. Several scholars have concluded that the admissibility of such evidence violates the Equal Protection Clause of the U.S. Constitution, and some courts have excluded such evidence on constitutional and non-constitutional grounds.³ The American Law Institute has recently taken the position that only population-wide data should be admissible in civil cases with respect to predictions of life expectancy, work-life expectancy, and earnings expectancy.⁴ Other states have already taken action to prohibit statistical discrimination in personal injury and wrongful death cases, including California, Maryland, New Jersey, and Oregon.⁵

I urge this committee to advance H-5094 with proposed amendments so that statistics on life expectancy are based on population-wide data rather than race, ethnicity, or sex and that in personal injury and wrongful death cases, neither race, ethnicity, nor sex may be factors in compensation.

Thank you very much for your consideration.

Colleen P. Murphy
Professor of Law
Roger Williams University School of Law
cmurphy@rwu.edu

(Suggested amendments to H 5904 on following pages)

³ For citations and fuller discussion, see Part II B of DeAngelis, Natalie and Murphy, Colleen P., *Removing Statistical Discrimination in Personal Injury and Wrongful Death Compensation in Rhode Island*, 29 Roger Williams University Law Review 555 (2024).

⁴ See *id.* at Part IIA.

⁵ See *id.* at Part IIC.

Colleen P. Murphy suggested amendments to H 5904 in GREEN

SECTION 1. Section 9-19-38 of the General Laws in Chapter 9-19 entitled "Evidence" is hereby amended to read as follows:

9-19-38(1) Proof of life ~~or work life~~ expectancy.

(a) In any proceeding commenced in any court, commission, or agency, when the life ~~or work life~~ expectancy of a person shall be at issue or when it is necessary to establish the expectancy of continued life ~~or work life~~ expectancy of any person from any period of the person's life, whether he or she is living at the time or not, ~~the most recent issue of "The United States Abridged Life Tables" (United States Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics) or Tables of Work Life Expectancies as published in "Work Life Estimates: Effects of Race and Education" (United States department of labor, bureau of labor statistics)~~ the table hereto appended shall be received in all courts and by all persons having power to determine litigation as evidence of such expectancy represented by the figures in the columns headed by the words "completed age" and "expectation," respectively, shall be admissible in evidence as competent evidence of such matter. The admissibility of evidence provided for in this section shall not be deemed to render inadmissible evidence as to the health, constitution, habits, or occupation of the person or any other evidence otherwise admissible under the laws of this state. Determinations of life ~~or work~~ expectancy shall not be based on race, ethnicity or sex.

[life expectancy tables in HR 5094 are omitted here]

(b) The life ~~and work life~~ expectancy tables may be evidenced by an official publication of the tables or by a copy of the tables as published in a compiler's

note under this section in the general laws of Rhode Island. The tables as published in the general laws of Rhode Island shall be sufficient proof of life ~~and work-life~~ expectancy without further foundation or authentication; provided, however, that written notice of the intention to offer the life ~~or work-life~~ expectancy tables as evidence, ~~together with a copy of the tables,~~ has been given to the opposing party or parties, or to his or her or their attorneys, ~~by mailing it by certified mail, return receipt requested,~~ not less than ten (10) days before the introduction of the tables into evidence, ~~and that an affidavit of the notice and the return receipt are filed with the clerk of the court immediately after the receipt has been returned.~~

19-19-38 (2) Evidence Concerning Compensation in Personal Injury and Wrongful Death Actions

In any civil action arising from personal injury or wrongful death, any estimations, measures, or calculations of compensation for lost earnings or impaired earning capacity shall not be based on race, ethnicity, or sex.

SECTION 2. This act shall take effect upon passage.

EXPLANATION

BY THE LEGISLATIVE COUNCIL OF

A N A C T

RELATING TO COURTS AND CIVIL PROCEDURE--PROCEDURE GENERALLY – EVIDENCE

This act would provide that evidence of life ~~or work~~-expectancy shall be based on statistical data using blended statistics and shall not be based on race, ethnicity or sex, ~~and that in wrongful death and personal injury actions, evidence of lost earnings or impaired earning capacity shall not be based on race, ethnicity, or sex.~~

This act would take effect upon passage.

COLLEEN P. MURPHY, PROFESSOR OF LAW
ROGER WILLIAMS UNIVERSITY SCHOOL OF LAW

April 24, 2025

Re: Support of H 5904 with Amendments

Dear Members of the House Judiciary Committee,

I write in support of H 5904, with the amendments proposed at the end of this testimony (amendments that I understand Representative Kazarian has previously forwarded to Chair Craven). I have been on the faculty of the Roger Williams University School of Law for 28 years, specializing in Civil Procedure and Remedies, and I am an elected member of the American Law Institute, which for over 100 years has been devoted to the advancement and reform of law through its highly influential Restatements of the Law, Model Codes, and Principles of the Law. My experience in both organizations informs my support of this bill, although the views I share here are my own.

The amended bill would advance the elimination of statistical discrimination on the basis of race, ethnicity, or sex in Rhode Island with respect to proof of life expectancy, work-life expectancy, and earnings expectancy in various settings. First, the bill would repeal and amend certain portions of R.I. Gen. Laws § 9-19-38; that statute currently makes admissible into evidence in any court, commission, or agency statistical data on life expectancy and work-life expectancy that is segregated according to race, ethnicity, or sex. This bill instead contains a life-expectancy table that is based on population-wide statistical data, and it forbids considerations of race, ethnicity, or sex in the determination of life expectancy. Second, the bill as amended adds a provision to the statute mandating that in civil actions arising from personal injury or wrongful death, any estimations, measures, or calculations of compensation for lost earnings or impaired earning capacity shall not be based on race, ethnicity, or sex.

In a 2024 article in the Roger Williams University Law Review, a student co-author and I advocated eliminating the possibility of statistical discrimination in personal injury and wrongful death compensation here in Rhode Island, and I will focus my remarks on how the bill advances that goal.¹

By way of background, sawyers, economists, and courts commonly use statistical data to “predict the future” in personal injury and wrongful death cases as to how

¹ DeAngelis, Natalie and Murphy, Colleen P., *Removing Statistical Discrimination in Personal Injury and Wrongful Death Compensation in Rhode Island* 29 Roger Williams University Law Review 555 (2024).

long a victim is likely to live (“life expectancy”), how long the victim would likely have worked to earn income (“work-life expectancy”), and the workplace compensation the person likely would have received (“earnings expectancy”). Life expectancy predictions often affect assessment of compensation for future medical or related expenses and for future pain and suffering or emotional distress, while predictions of work-life expectancy and earnings expectancy together often affect compensation for future lost earnings or impaired earning capacity.

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I urge this committee to advance H-5094 with proposed amendments so that statistics on life expectancy are based on population-wide data rather than race, ethnicity, or sex and that in personal injury and wrongful death cases, neither race, ethnicity, nor sex may be factors in compensation.

Thank you very much for your consideration.

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(Suggested amendments to H 5904 on following pages)

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