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February 10, 2026

TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER REGARDING:

House Bill No. 7488

ENTITLED, AN ACT RELATING TO HEALTH AND SAFETY – ABUSE IN HEALTHCARE FACILITIES

Chairwoman Hagan McEntee and Members of the House Judiciary Committee:

The Office of the Public Defender opposes House Bill 7488, which would remove the words "intentionally" and "willful" from two sections in the chapters concerning "Abuse in Healthcare Facilities" (§ 23-17.8-1 et seq.) ("AHF") and the "Office of Healthy Aging" (§ 42-66-1 et seq.). We have two very strong concerns about this bill, particularly as it relates to the proposed changes in § 23-17.8-1.

First, removing the "intentional" language from one of the definitions of "abuse" in § 23-17.8-1(a)(1)(v) would remove the intent requirement (or *mens rea*) from that subsection. As currently written, this subsection outlaws a person from "[i]ntentionally engaging in a pattern of harassing conduct that causes or is likely to cause emotional or psychological harm to the patient or resident, including but not limited to: ridiculing or demeaning a patient or resident; making derogatory remarks to a patient or resident or cursing directed towards a patient or resident; or threatening to inflict physical or emotional harm on a patient or resident."

The proposed change would transform this statute into one of strict liability. Strict liability statutes are disfavored in the law—and with good reason. Without an intent requirement, we risk criminalizing negligent or even accidental conduct. Courts, legal scholars, and lawmakers have long recognized that "the general rule is . . . that no crime can be committed unless there is *mens rea*."[1] Accordingly, any bill that proposes to remove this bedrock requirement must be examined very carefully.

It does not appear that there is significant justification for removing this intent requirement from § 23-17.8-1(a)(1)(v). It is important to prevent the abuse of patients in health care facilities, who are some of the most vulnerable members of our population—but it is also important to make sure that only intentional acts are criminalized. Notably, § 23-17.8-1(a)(1)(v) is a verbal crime, meaning that there is already an inherent risk of overbroad prosecution. For example, under the proposed statute, even curse words *accidentally* uttered in the presence of a patient could be

[1] *See* Frances Bowes Sayre, *Mens Rea*, 45 Harv. L. Rev. 974, 974 n.2 (1932) (quoting *Williamson v. Norris*, [1899] 1 Q. B. 7, 14, *per* Lord Russell, C. J.).

grounds for criminal charges. Imagine an overworked caregiver who stubs her toe and, almost without thinking, lets loose a colorful barrage of expletives. Maybe she does it more than once.[2] Removing the intent requirement would mean that she had violated § 23-17.8-1(a)(1)(v), opening herself up to criminal liability and perhaps even the loss of her employment and license. Working in these facilities is one of the most difficult and under-appreciated jobs in the state, and workers should not be charged criminally for words accidentally or negligently uttered. Unprofessional language should not be given a pass, but it is better dealt with internally than within an already overburdened criminal justice system. Moreover, by keeping the word "intentionally" in the statute, acts of true intentional cruelty could still be punished criminally.

Beyond the general concerns about removing the *mens rea* requirement from the statute, the Public Defender's Office is even more worried that this bill could open up other residents, even those suffering from cognitive-related disorders, to criminal liability. The penalty portion of this section, § 23-17.8-10(b), does not limit the criminal liability to the workers of such facilities; rather, it prohibits "[a]ny person [from] commit[ing] any act of abuse as that term is defined by § 23-17.8-1(a)(1)(v) against a patient or resident of a facility."[3] The term "person" is further defined in § 23-17.8-10 to include "any natural person." There is nothing in this section that would prevent another patient from being charged under this subsection, which becomes particularly problematic when one considers that many people residing in such facilities face mental, emotional, and physical challenges, and may have issues with cognition. At the very least, maintaining the intentionality requirement in § 23-17.8-1(a)(1)(v) would prevent the AHF from criminalizing the very people it was created to protect.

Accordingly, the Office of the Public defender opposes the passing of HB7488.

Sincerely,

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[2] Section 23-17.8-1 requires that the curse be "directed towards a patient or resident," so one might argue that this example is overblown. But the opposite is true; this example only further highlights the problem with removing the *mens rea* requirement from a criminal statute. Under such a scheme, it would not matter if the healthcare worker in question *meant* to direct the curse at the patient; rather, if the patient was in earshot and felt like the was addressed to them, criminal charges could be brought.

[3] Importantly, this subsection, which covers the conduct outlined in § 23-17.8-1(a)(1)(v), already lacks a *mens rea* requirement, meaning that the inclusion of the intentionality requirement in the definitional section is even more essential.