

Written Testimony in Support of the Labor and Employment - Occupational Safety and Health (Davis Martinez Public Employee Safety and Health Act)

By Dr. Jane Lipscomb, PhD, RN

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Dear Chair Barnes, Vice Chair Chang, Delegate Solomon (bill sponsor) and members of the Maryland House Appropriations Committee,

Thank you for the opportunity to submit this written testimony in support of this bill. My name is Dr. Jane Lipscomb. I am a public health nurse and epidemiologist. I spent 15 of my 20 years as Professor of Nursing and Medicine at the University of Maryland, Baltimore conducting federally funded research into how to prevent workplace violence in high-risk settings. In addition, I have consulted with numerous state and federal agencies on how to advance workplace violence prevention, specifically, the U.S. Veterans Health Administration (VHA), the National Institute for Occupational Safety and Health (NIOSH), the Occupational Safety and Health Administration (OSHA), and the University of West Indies in Kingston, Jamaica. In each of these projects, I have worked closely with multiple stakeholders to develop, implement, and evaluate workplace violence prevention programs. In 2012, I provided consultation to the Maryland Department of Health and Mental Hygiene (DHMH) that operates freestanding behavioral health facilities for acute, intermediate and long-term care across the state. The purpose of my consultation was to improve the existing staff training in workplace violence prevention, as part of a comprehensive effort to improve staff and patient/resident well-being and safety.

I have also conducted workplace violence site visits and environmental surveys in four large New York State (NYS) in-patient psychiatric centers, as well as 13

NYS residential alcohol and substance abuse treatment facilities (Lipscomb et al., 2006, 2012, McPhaul et al., 2008). I have published more than twenty peer-reviewed papers and book chapters on the topic. In 2015, I authored a book that was published by the American Nurses Association (ANA) on workplace violence prevention entitled “Not Part of the Job: How to Take a Stand Against Violence in the Work Setting” (Lipscomb & London, 2015). I have testified before state legislatures in NY and MD considering workplace violence legislation, as well as before the U.S. House of Representatives Subcommittee on Workforce Protections.

In the course of this work, I have come in contact with families of workers, who were murdered by clients in their care. One of these public sector workers was Judie Scanlon, an RN/intensive case manager who in 1998, was killed by a client while conducting a home visit in Buffalo NY. Her death was an impetus for this focus during my research career.

In 2006, in part related to findings from this research, New York State enacted legislation requiring public employers to develop and implement programs to prevent and minimize workplace violence and help ensure the safety of public employees. This legislation, as well all health and safety legislation that covers NYS Public Employees is regulated by the Public Employee Safety and Health Bureau (PESH), created in 1980 to enforces safety and health standards promulgated under the United States Occupational Safety and Health Act ([OSHA](#)) and several state standards. The [Public Employee Safety and Health \(PESH\) Act](#) created this unit to give occupational safety and health protection to all NYS public sector employees.

Before describing the need for and prevention measures to prevent workplace violence, I will begin by defining workplace in the public sector workplace.

Workplace violence is any physical assault or act of aggressive behavior occurring where a public employee performs any work-related duty in the course of his or her employment, including, but not limited to:

- An attempt or threat, whether verbal or physical, to inflict physical injury upon an employee;
- Any intentional display of force which would give an employee reason to fear or expect bodily harm;
- Intentional and wrongful physical contact with a person without his or her consent that entails some injury; or
- Stalking an employee with the interest in causing fear of physical harm to the physical safety and health of such employee when such stalking has arisen through and in the course of employment.

Today, workplace violence is one of the most dangerous occupational hazards facing public health employees, especially those who work in the health care, social service, and corrections (including parole); in both the institutional and community settings. However, most public sector employees who work directly with the public, experience verbal threats, and in some cases physical threats, in the course of their work, as such this bill must cover all all MD public employees.

The lack of attention to the prevalence and severity of workers' injuries, is in part due to the failure to recognize workplace violence as a public health problem amenable to an occupational health approach to prevention. In addition, the view that working with individuals with cognitive impairment, mental illness or a tendency towards violent acts "is part of the job" is all too common (Lipscomb & Rosenstock, 1997, Lipscomb & London, 2015). I would like to highlight that although these individuals may not "intend" to assault a state employee, an employee is still injured (often both physically and emotionally) and in the case of Mr. Davis Martinez, murdered while he was conducting a routine house visit as part of his job as a parole and probation agent when he was killed by a parolee.

Based on my research and experience, workplace violence prevention plans, tailored to the specific risk, workplace and employee population, work. In addition, deep employee involvement in the form of Workplace Safety Committees, in my opinion and experience, is the only way to successfully address the risk.

This legislation establishing the Public Employees' Safety and Health Unit in the Division of Labor and Industry to administer and enforce certain duties regarding the oversight of certain public bodies; altering the Maryland Occupational Safety and Health Act as it applies to certain public bodies; establishing and applying certain civil and criminal penalties to public bodies and persons in government; etc. will provide the structure and guidance to engage employers and employees in developing and implementing measures to prevent workplace violence in MD public sector workplaces.

Evidence that workplace violence prevention plans are feasible and work includes research from Wayne State University, the Veteran Health Administration, numerous other researchers, as well as my own.

As I stated earlier in my testimony, my research career has focused on how to prevent workplace violence in high-risk work settings. Specifically, my federally funded research focused on the feasibility and impact of OSHA's voluntary Guidelines to prevent workplace violence in NYS public sector health care and social assistance workplaces. Additionally, one of these research projects addressed public employees across all State Agencies. The first of these studies, published in 2006, described a non-experimental intervention study focused on three state-run in-patient psychiatric hospitals in New York State. Findings from this peer-reviewed publication provide evidence for the feasibility and positive impact of a comprehensive violence prevention program in the in-patient mental health workplace (Lipscomb, 2006).

More recently, evidence from a randomized, controlled intervention study (the “gold standard” in research methods), published in 2017 demonstrates that a data-driven, worksite-based intervention based on the OSHA Guidelines was effective in decreasing the risk of patient-to-worker violence-related injuries by 60%, 24 months following the intervention (Arnetz, 2017).

In addition to research examining the risk factors for workplace violence in high-risk settings and research demonstrating the effectiveness of workplace violence prevention programs, there is ample research showing that workers feel more confident and prepared to address violence in the workplace where a workplace violence prevention program exists.

As stated above, workplace violence prevention plans, tailored to the specific risk, workplace and employee population, work. By contrast voluntary guidelines, such as those that were first published by OSHA in 1996, do not protect the vast majority of employees, because of the lack of incentive for their employers to act voluntarily to address this hazard. I can attest to that fact because the vast majority of workers, I have spoken with, report that they do not have a workplace violence prevention plan or that they have a “paper plan” that does little to nothing to protect them from the ongoing risk of violence.

I believe that the proposed bill will provide the structure and guidance needed to protect and benefit MD public employers, their employees and the public. Evidence of the prevalence of the problem and the inadequacy of current voluntary measures in the health care sector are clearly delineated in the 2016 GAO study and report.

Finally, I would like to address workplace violence protection afforded by MOSH’s General Duty Clause. Currently, it is the only tool employees have for advancing workplace violence prevention in their workplace, when their employer has failed to address the problem voluntarily. The GDC is a cumbersome and ineffective means of seeking protection. Currently, the few workers who have

risked filing a complaint have to wait years before OSHA is able to mandate common sense changes to a workplace. The GDC requires a very high burden of proof that the “employer did not furnish to each of its employees a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm.” In a number of recent and current cases where OSHA cited an employer under the GDC, the employer has contested the citation, requiring the DOL and the company to expend resources fighting the citation rather than investing in preventing the hazard. I know this first hand, as I have served as a DOL expert in nearly a dozen of these cases.

Violence towards public sector employees is finally being recognized as a major public health problem in MD. Fortunately, there is much that can be done to prevent or minimize the hazard and passage of this bill will facilitate such prevention.

Thank you for considering my expert opinion and strong support for the bill.

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