

# Senate Judiciary Committee

*Matthew Schelzi 271-3266*

**SB 58**, relative to arrests without a warrant while in the care of a medical professional on the premises of a residential care or health care facility.

**Hearing Date:** January 17, 2023

**Members of the Committee Present:** Senators Carson, Abbas, Whitley and Chandley

**Members of the Committee Absent:** Senator Gannon

**Bill Analysis:** This bill authorizes a law enforcement officer to arrest a person without a warrant for interfering with the provision of medically-necessary health care services.

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**Sponsors:**

Sen. Gray  
Sen. Carson

Sen. Bradley  
Sen. Rosenwald

Sen. Gannon

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**Who supports the bill:** Paula Minnehan (NH Hospital Association), Celina Frost (Convenient MD), Henry Veilleux (HCA), Michael Padmore (NH Medical Society), Dr. Thomas Lydon, Pam DiNapoli, Carla Smith, Paul Fulone, John Patti, Senator James Gray (District 6), Senator Sharon Carson (District 14), Marcy Doyle, Carol Townsend, Raelene Shippee-Rice, Polly Champion, Senator Cindy Rosenwald (District 13), Susan Smith, and Kim Danis.

**Who opposes the bill:** In total, 96 individuals signed in in opposition to SB 58. The full sign in sheets are available upon request to the Legislative Aide, Matthew Schelzi.

**Who is neutral on the bill:** None.

**Summary of testimony presented in support:**

**Senator Gray** introduced Senate Bill 58. He said he chaired the Commission that came up with the language for SB 459-FN (2022). He said the Commission tried to tailor this language very narrowly, so that people who cannot leave their job, and are getting assaulted, would be able to call the police. The police would then be able to make a warrantless arrest. He said, currently, if someone is acting inappropriately, the police must get a warrant before the arrest. He noted section C of SB 58 has a provision that will allow law enforcement to make an arrest if they have probable cause in a health care setting. He noted for those who are concerned with due process,

the rest of the bill that was passed last year requires that hospitals and officers practice de-escalation techniques first. Senator Gray said the officer will know if there is a threat because they have used de-escalation techniques. He said it is probably going to be rare to invoke this part of the statute. He said this warrantless arrest statute is tailored very narrowly, and only for people who can't leave their job in a health care setting.

**Paula Minnehan**, Senior Vice President for State Government Relations at the New Hampshire Hospital Association, accompanied by **John Patti**, Director of Services at Catholic Medical Center, said they are in strong support of this bill. Ms. Minnehan noted the language in the bill was in SB 459-FN (2022), which was the health care violence prevention bill that passed into law. The language of SB 58 was removed from SB 459-FN (2022) because the House Health, Human Services, and Elderly Affairs Committee said the language in this bill should have been heard in the House Criminal Justice and Public Safety Committee instead. SB 100 (2020) was the bill to create a study committee on workplace safety. The study committee was chaired by Sen. Gray, and they worked closely to come up with the language in SB 58. She noted the issue that this bill addresses is not a pandemic issue; it has been going on long before the pandemic.

Mr. Patti said the statistics indicate that health care workers are four to five times more likely than other private industry employees to be the victim of workplace violence. He said on many occasions they would call the police to report an assault on a health care employee, only to be told by the police that they would not make a warrantless arrest. He said health care workers are having to remain near their attacker because the police will not make a warrantless arrest. He noted the police are basing the decision to not arrest on language in RSA 594:10. He stated the current language essentially requires the officer to predict future behavior of the suspect to make a warrantless arrest. As a former state trooper, and now director at a hospital, he would like to revise this statute to create safety for healthcare workers.

**Senator Abbas** asked if there must be an actual or physical threat of violence to perform the warrantless arrest.

Mr. Patti said that was correct.

Sen. Abbas asked if it must interfere with medically necessary health care services. He asked if the idea of this bill is to protect those who are providing medical services.

Mr. Patti said yes. He said they wanted to limit the scope of this language, so it must be directly related to the care.

Sen. Abbas said he believes this is a narrow application for when it would apply. He said if a doctor is being attacked in the cafeteria of the hospital the statute won't apply. He wondered if they should broaden the language.

Mr. Patti said it is intended for patients assaulting health care workers as opposed to a visitor. He said police can remove a visitor, but a patient cannot be removed if they are not medically cleared. He said this statute is intended for patients attacking health care workers.

Sen. Abbas said he believes the language will only apply if a doctor is in the emergency room or performing medically necessary services. He asked if the language is intended to be that narrow.

Mr. Patti said he was conscious of the concerns raised by some, so he made the language narrow. He said it's important to understand police have the authority to make a warrantless arrest currently. This law is just clarifying that they may also make a warrantless arrest in a health care setting.

**Paul Fulone**, Director of Security at St. Joseph's Hospital, said he supports SB 58. He said over the last three years they have seen a rise in workplace violence against healthcare workers. He said this bill provides a much-needed step in the right direction. He said law enforcement cannot always make an arrest, and it causes the victim to feel unsupported and unimportant. He said this bill will send a strong message to perpetrators.

**Senator Carson** asked if law enforcement would be able to make a warrantless arrest for someone who committed inappropriate touching or sexual assault.

Mr. Fulone said yes, as that would be considered workplace violence.

**Carla Smith** is a registered nurse in New Hampshire. She noted her scope of practice as a registered nurse is in RSA 326-B:12. She said a registered nurse must provide care for all clients, but that violence does not only happen in an emergency room. She said RSA 326-B:33 states that a nurse's duty is to warn of a client's behavior. She said she supports SB 58, and that it is long overdue.

**Dr. Thomas Lydon** is an emergency room doctor and is representing the NH Medical Society and the Chapter of the American College of Emergency Physicians. He said his organizations are in support of this bill. He said the wording is specific but thinks it is right. He noted in the post-pandemic world many nurses have left the field. He said he currently has no people to work on registrations or technicians because they have quit. He said wait times have been as long as eight hours in certain hospitals. Dr. Lydon said there has been increased violence in the emergency rooms over the last several years. This bill will give law enforcement the ability to arrest those who threaten health care workers. He said the bill is not aimed at people with mental health issues, but just for those who assault healthcare workers.

Sen. Abbas asked, if violence were to be reported to law enforcement, how would the staff explain to law enforcement that the violence interfered with medically necessary healthcare services without making violations of the Health Insurance Portability and Accountability Act of 1996.

Dr. Lydon said he isn't an expert on HIPAA so he can't speak to it.

**Pamela DiNapoli**, said she represents the New Hampshire Nurses Association, and said SB 459-FN (2022) defined violence as verbal, physical, or sexual aggression, harassment, or intimidation. She said this issue has been an issue for nurses for a long time. They did a study in 2019 and found out that violence in the workplace is a serious problem. They repeated that study in 2022 and the evidence was that 75% of

nurses had been subject to violence in the past six months. She said only 43% of nurses felt protected at work. She noted this bill will give some tools to the nurses. As of now, all they can do is an administrative discharge, but patients can still come back through the emergency room. This bill will hopefully stop that cycle. She said a cafeteria worker would also be protected by this bill because feeding a patient would be considered medical care. She said all the nurses are asking for is policies that will make them feel safe in the workplace.

**Summary of testimony presented in opposition:**

**Representative Kelley Potenza** said there were several people last year who voiced opposition against SB 459-FN (2022). She said she was involved in what happened during the COVID-19 pandemic and was an advocate for several patients who were in hospitals. She said she assisted a wife who wanted information on her husband during the pandemic, but the hospital said the wife was threatening them, and the hospital called the police on her. Rep. Potenza said SB 58 is unconstitutional. She believed that the bill opens the door up for abuse and believes it will silence those with dissenting opinions. She said she strongly opposes this bill.

**Neutral Information Presented:** None.

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Date Hearing Report completed: January 24, 2023