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To All Parties Involved in the June 11, 2015 Joint Committee Meeting between Military and Veterans Affairs and Senate Veterans, Military Affairs and Homeland Security:

Psychiatric Service Dog Partners (PSDP) is a 501(c)(3) nonprofit dedicated to advocating for justice and responsibility for all parties where the use of service dogs is concerned. We have constituents in Michigan and Michigan is among the candidates for our international conventions.

We have written this comment with 17 hours notice before the meeting to which it applies, so please forgive any omissions of custom or brevity, or other infelicities of expression. Our hope is to bring our state and federal advocacy experience and subject matter expertise to bear on the issues before the joint committee in very short order, so that major concerns may be addressed before the bills continue along the path toward being cemented into law.

The bills in question are HB 4521, HB 4527, SB 298, SB 299. We are pleased that Michigan sees fit to develop its laws regarding service animals through these bills. We would like to offer our expertise to help prevent these efforts from bearing any fruit that is bound to spoil on the grounds of ethical examination and practical experience, or by juxtaposition with federal regulations. We offer our recommendations for improvement in §§1–5 below.

§1: *"Person with a disability"; irrelevance and harm caused by conjunctive definition*

The definition of "person with a disability" used throughout the bills is highly unusual, and we are perplexed by it. Typically—as with all other states' regulations we've seen, and federal regulations—there is a disjunction of three components involved in defining this term. This means that regulations usually say (roughly) "person with a disability" means *either* the person has an impairment, *or* has a record of having an impairment, *or* is perceived by others as having such an impairment.

Instead of following the long-established disjunction paradigm, "person with a disability" is defined in the present bills as a conjunction of the three components in the paragraph above: the person must not only have an impairment, but *also* must have a record of that impairment *and* be perceived by others as having an impairment.

How disability should be defined is particular to the purpose for defining it. For instance, the third component about being perceived by others as having an impairment is traditionally included when a bill is intended to prevent discrimination on the basis of disability—which would include on the basis of a perceived disability. However, the four bills up for discussion do not serve that purpose. This means that there is no need for the third component, even as part of a disjunction.

One might think that SB 298 requires the third component regarding perception by others in

order to enable prosecution of those harassing or harming an individual (with a dog or miniature horse) whom the harmer merely *thinks* is disabled and using a service animal. However, since the three definition components are presented as a conjunction (and thus are all required), the person would actually be required to have an impairment anyway for this reasoning to be satisfied. We highly recommend the third component be stricken from each bill.

SB 298 would easily and with great improvement be rewritten throughout to focus on the animal (which either is *or* is perceived by the harmer as a service animal), rather than focusing at all on the person. It seems to us that what is important in such bills is whether the harmer takes themself to be addressing their actions toward a service animal, not whether the animal is a service animal or whether the person has a disability. We believe this to be the intention in SB 298, but did not glean that clearly from our reading.

The second definitional component, regarding having a record of an impairment, is usually included in legislation for the same reason as the third component: to prevent discrimination on the basis of disability—in this case, even if that disability was in the past. This definitional component is not relevant here, either.

A service animal is only a service animal if the person actually has an impairment the animal presently mitigates (not every second of the day, but in an ongoing manner otherwise). No matter the disability, if it is only in the past, the condition is not something a non-time-traveling service animal can mitigate. Having a record of an impairment does not contribute to whether someone has a service animal.

We've discussed why the second and third definitional components are not relevant, and therefore *not helpful*. Now we turn our attention to how including them in a conjunction can be *harmful*.

First, let's get down to earth with some easily-agreed-on common sense. Clearly someone who "Has a physical or mental impairment that substantially limits 1 or more major life activities" is disabled. That's the real, everyday definition. The other stuff is just included *in legislation* when needed for specific related purposes, and then as components of a disjunction so they're not each required.

If Tom can't walk, we don't really think Tom needs to have a record of not being able to walk in order to be disabled. Tom may not have enough money or the wherewithal to go to the doctor to establish a record of not being able to walk, but that doesn't change that he's obviously disabled. With the conjunctive definition in these bills, even though it would be obvious to everyone on the street that Tom's disabled, Tom would not qualify as someone who could have a service animal. Tom would miss out on the benefits of the proposed Michigan laws because of the uniquely unfortunate wording of a simple definition. Fortunately, federal law at least would still recognize Tom's ability to have a service animal!

Similarly, if Margaret has severe schizo-affective disorder that impacts everything in her life but her appearance, it seems that "others" wouldn't think Margaret is disabled, no matter how unable to work she would be. Margaret could be even worse off than Tom, but she, too, would not be considered disabled under the bills, and thus unable to benefit from Michigan's proposed laws. Again, federal law would recognize her right to have a service animal, and we are left wondering why Michigan wants to depart so strangely from precedent.

So again, PSDP is perplexed by the conjunctive ("and") nature of the "person with a disability" definition. As far as we know, not only is it unprecedented, but there a glaring lack of justification for it and it would exclude certain classes of people we do sincerely hope the

drafters did not intend to exclude.

We do not advise it, but if you wish to include each of the three components in the bills' definitions of "person with a disability" merely for consistency with extant laws and regulations, then go ahead and include them in a disjunction (with "or" between each part). However, since definitions of disability should be purpose-drafted, we advise that bills addressing disability only as related to service animals should have only the first, actual impairment component. That is the only relevant component in the definition, and eliminating the others will cut off unintended interpretations.

§2: *"includes a veteran…"; unclear justification and overly broad criteria*

As part of the "person with a disability" definition, the bills specifically grant greater rights to veterans than to non-veterans, whether intended or not. We are all for honoring our veterans, including certain of these bills' sponsors, but on reflection we do not believe veterans served in order to protect a society that unduly creates two separate classes of people. We support programs that serve the special needs of veterans and their communities, but we cannot support legislation sections that privilege veterans in ways that step outside what a just society demands.

As we believe with respect to everyone, we believe that a veteran with a disability should be able to use a service animal, if such a disability-mitigating tool is appropriate for that individual. If the "person with a disability" definition were to omit reference to veterans, this right would still be guaranteed for veterans. No reasonable person would believe veterans with disabilities would somehow be excluded from the rights granted to non-veterans with disabilities by these bills. This means that the reference to veterans is gratuitous: it is without apparent justification.

We understand, however, that beyond cold reasoning such special reference to veterans is often made as a concession to the practicalities of politics. If the reference is unattached to effect in execution, so be it. We must press a more important point here, though.

In the definition portion referencing veterans, specific diagnosed conditions are named as automatically qualifying a veteran (but not a non-veteran) as being a "person with a disability". This is a shortcut for a veteran to benefit from Michigan's disability laws, but is not allowed for a non-veteran with the exact same condition.

Excluding shortcuts where not sufficiently relevant is theoretically important, but more practically important is that we realize the conditions named are not automatically disabling.

Diagnosed mental illness comes in degrees of severity, and for some it is substantially limiting of a major life function, but for others it is not. If someone has PTSD, that does not on its own mean they are disabled (especially to the point of needing accommodation), just as having back pain could be a minor annoyance—or could make one bedridden.

The Social Security Administration makes disability determinations for the great majority of diagnoses on an individual basis, because a diagnosis alone doesn't tell them the severity of the condition for the individual. Clearly some people with PTSD (veteran or not) thereby have a disability because of their particular manifestation of PTSD. We are intimately familiar with this. But it is not the case that every veteran diagnosed with PTSD has a disability, and we are confused as to why these bills would grant veterans diagnosed with PTSD that is non-disabling as having automatic disabled status.

Similarly we believe that traumatic brain injury (TBI) should not be a free pass to disability

rights. TBI comes in degrees, as well, and in many types. Many people do not realize that a concussion is among the most common TBIs, and a concussion may have little to no lasting effects. Again, we know that TBI can be severe and in dire need of all the accommodation our laws can throw at it, but that is not a result of the diagnosis, but the individual circumstances.

Some may misread this and think we are against veterans, and as a community that includes many veterans, we would sorrily regret this misperception. We believe strongly that veterans should get what they deserve—and that is a lot—but we also believe we cannot dishonor the values they served to protect by legislating first- and second-class disability tiers by the kind of special treatment in these bills. Disability is as disability does, and everyone deserves equal opportunities of accommodation, integration, and dignity. If we don't speak up to reign in the overreaches that come about when good hearts pump with blind zeal, our enthusiastic good intentions will age into regret.

§3: *HB 4521 service animal gear; drawbacks of identification and individualization of gear*

In HB 4521, there is a section regarding the provision of service animal gear (Sec. 3.) to the effect that the department of civil rights is to provide service animal equipment to any person who signs off that their animal is a service animal and who provides documentation from a healthcare professional. We believe it is wise that the bill does not make the use of such equipment mandatory, not the least because that would contravene federal regulations. However, we do not only believe the use of state-provided equipment should not be mandatory, but we further believe Sec. 3. should be stricken from the bill altogether. Below we explain two of the main reasons we are opposed to this section.

First, there are serious drawbacks to service animal handlers using identification, whether that identification is required or not. One part of the problem is that the use of identification to gain access trains gatekeepers (any business employee) that identification can—or even should!—be required for access. This leads to more access challenges for legitimate teams, which is unjust for people with disabilities who are just trying to go about their daily lives.

Another facet of the problem takes effect even if identification could be made mandatory (which it can't due to federal law, thank goodness), which is that it is a barrier to basic access and a catalyst for harassment. Understand that identification—in the form of a parking placard or license plate—for access to a parking place reserved for individuals who would most benefit from that place is different from identification to access the goods and services everyone else is allowed to access without identification.

One of our board members uses an electric wheelchair. If he forgot his parking placard, he would still be entitled to park his ramp-van anywhere the general public is allowed to park. Fortunately, he does not need to provide identification to gatekeepers to prove that he is in fact allowed out in public with his wheelchair. We want to prevent laws that facilitate a world in which members of any class of persons with disabilities are asked to show identification in their routine doings where others aren't, just because of the way they mitigate their disability and so they become capable of engaging with the world.

Gatekeepers, who may be anyone hired off the street, will in practice believe that they are not only entitled but required to ask for identification when they see a service animal. If this perception is encouraged through legislation and allowed to foment, it can easily lead to harassment, whether intended or not, as the person with the service animal is forced to show their papers again and again as they make their way through a large shopping center.

Please put yourself in the shoes of someone who is asked to show i.d. at the whim of every employee they come across. Service animals are comparable to wheelchairs in that those

who need them use them because they have a disability that requires mitigation to allow them to engage in life. The recent media-hyped trend toward punishing those with disabilities by instituting identification systems is backward, and we strongly advise instead that people serious about disability rights push for strengthening, enforcement, and education around existing anti-fraud/faking laws.

The second main objection we have to Sec. 3. pertains to the department of civil rights' directive in SB 4521 to provide a vest for service animals. There is a great variety of options on the market because there is a great variety of needs. We don't see how the department could possibly meet these needs equitably, unless the department were to provide funds for the petitioners to purchase the vest of their choice on the open market.

Service animals come in a breadth of breeds and sizes, and serve an unimaginable plethora of functions that we should not attempt to limit by the bounds of our personal experience. Some handlers need a special leash, or a special harness for the animal that cannot be worn with another vest. Some service dogs are 5 pounds because their work or tasks, such as alerts to extremes of blood sugar, do not require them to be larger and the handler prefers a smaller dog. Some service dogs are 200 pounds, because the handler is large and needs a proportional dog for mobility work.

So if the department is supposed to meet the needs of all comers, we do not see how this can be done unless the department is not providing the gear itself but lets the individuals choose what would work best for them. We would support this kind of inclusive implementation regarding vests or harnesses, but we remain resolutely opposed to state-mandated identification (or tags) in all forms.

Of note in this discussion is that there are no practical means of access for out-of-state visitors to service animal gear provided by or through Michigan. If Michigan gatekeepers were encouraged by any standardized state-issued gear to create a climate in which those without the gear were not made to feel welcome, that would be a sufficient disincentive for us to consider Michigan as a host to our future conventions.

§4: *HB 4527 Sec. 2.; persons with disabilities should not be exempt*

In Sec. 2. of HB 4527 the wording is infelicitous. It unfortunately allows persons with disabilities to falsely represent that they have a service animal. Not everyone who has a disability and an animal has a service animal. Since we oppose anyone, regardless of disability, falsely representing that they have a service animal, we recommend that the following proposed language in the bill:

> A person, except a person with a disability, shall not falsely represent that he or she is in possession of a service animal or service animal in training in any public place.

be changed to the following, wherein ", except a person with a disability," is removed:

> A person shall not falsely represent that he or she is in possession of a service animal or service animal in training in any public place.

Just like we oppose undue privileges to any special class of those with disabilities, such as veterans, the pursuit of justice dictates that we must also oppose undue privileges to the whole category of those with disabilities. We want what is right—no more, no less.

§5: *SB 298 "service animal"; tethering can sometimes interfere with work or tasks*

SB 298 has a definition of "service animal" that is unique among the other bills: it requires that for an animal to be a service animal, and thus subject to the protections of the bill, that the animal is tethered and under control. We concur that service animals must remain under control, especially if they are to be eligible for the protections of SB 298. However, as the U.S. Department of Justice has explained, some disabilities and some service animal work or task performances prohibit tethering.

Among the situations that may be prohibited by the proposed definition in SB 298 is one in which the person with a disability requires the service dog to momentarily become untethered from the handler in order to perform a service. An example of this involves a person dropping their cane beyond the reach of the leash, when that person requires a cane to walk. The person's dog may be trained to reliably retrieve the cane, but if the dog is required to remain tethered to the person at all times, the person has lost this independence-enabling service.

In general, we support constant tethering as part of what it means to have a service dog under control. However, we recommend against an absolute requirement of constant tethering, with very specific prescriptions detailed in the suggested language below.

In Sec. 50a(5)(f) and Sec. 502c(3)(c), we advise that between the words "handler" and "that", the following is inserted: "in close proximity, unless the tether or its holding in close proximity interferes with the service animal's safe, effective performance of work or tasks,". This provides a precise and needed exception that respects the diversity of individuals' needs.

Conclusion

There is much that is laudable in these bills, and we sincerely appreciate the hard work that has gone into them. We also sincerely hope our concerns will be reflected in a reconsideration and redrafting of the bits of language that are detrimental to the course of justice, respecting the labor pains of previous generations of advocates who birthed well-considered precedents into our nation so that all members of society have fair access to that society.

A major part of our mission is to work with legislators and regulators to make the world more just. Please contact us if we there is any way we can continue toward this goal together.

Earnestly and warmly,

Veronica Morris

Veronica Morris, PhD
President & Executive Director
on behalf of the PSDP Board of Directors

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