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MEMORANDUM

DATE: June 13, 2013

TO: The Honorable Members of the Delaware General Assembly

FROM: Terri Hancharick, Chairperson
GACEC

RE: House Bill No. 125 (Reinstatement of Parental Rights)

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed House Bill No. 125 on the reinstatement of parental rights if the Court determines that certain conditions are met and reinstatement is in the best interest of the child.

Current law authorizes the termination of parental rights ("TPR") based on multiple grounds. Some of the authorized bases for a TPR do not implicate fault. For example, a parent can consent to a TPR and a parent could be determined, due to mental illness, to be simply unable to fulfill parental responsibilities. See Title 13 Del.C. §§1103(a)(1), 1101(9), and 1103(a)(3). There are seven conditions that must be met (lines 9-17) in order for reinstatement to occur. These are not "involuntary" actions - the child and parent or parents must consent (lines 14-15). The Court must also find that adoption "is not possible or appropriate" (line 13). Council endorses the legislation subject to consideration of the following amendments.

First, line 22 characterizes the action as one brought "against one or both parents". This is an unusual approach since the petition cannot be filed without parental consent (line 15). It would be preferable to amend line 22 as follows: "~~...against one or both parents~~ in the interests of the child".

Second, the legislation amends a definition in Title 13 Del.C. Ch. 11, including §1101. Section 1101(9) contains derogatory disability-related references:

(9) "Mentally incompetent" shall be interpreted as referring to a parent who is unable to discharge parental responsibilities by reason of mental illness, psychopathology, mental retardation, or mental deficiency.

Section 1103(a)(3) then refers to "the alleged incompetent".

The Legislature attempted to delete such pejorative references through the adoption of House Bill No. 91 and House Bill No. 214 in the 146th General Assembly. The references noted above were overlooked. Since this bill is amending Ch. 11, it does provide an opportunity to include a "housekeeping" amendment to remove objectionable language in §1101(9) and §1103(a)(3). Indeed, consistent with the Policy Research Brief,

justifying a TPR based on a mental diagnosis or “competency” focuses undue attention on a diagnosis rather than behavior. The Brief notes that fourteen states do not refer to the disability of a parent in their state TPR statutes. At 4.

Thank you in advance for your time and consideration of our position. Please feel free to contact me or Wendy Strauss should you have questions or concerns.