



**Governor's Advisory Council for Exceptional Citizens (GACEC)**  
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**MEMORANDUM**

**DATE:** April 23, 2014

**TO:** The Honorable Members of the Delaware General Assembly

**FROM:** Terri Hancharick, Chairperson  
GACEC

**RE:** **Senate Bill No. 181 (Child Protection Registry)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed Senate Bill No. 181 which would amend the standards and procedures for inclusion on the Child Protection Registry. In general, the changes are either relatively benign or enhance some due process rights. However, Council asks that the sponsors consider some features that would enhance due process even more and foster the validity and reliability of findings. The observations of the GACEC are as follows.

First, the bill changes existing law by requiring the Division of Family Services (DFS) to file a petition for substantiation before any child is entered on the Registry (lines 128-129), requires the Family Court to appoint counsel for any unrepresented child (lines 155-156), and requires a hearing (lines 112-113). These are important protections designed to promote a fair process in which a child's qualifications for inclusion on the Registry are subject to more robust review. For similar reasons, it would be advantageous to also authorize appointment of counsel for adults who wish to contest inclusion on the Registry. The ramifications of inclusion on the Registry are comparable and adults may defer requesting a court hearing based on the intimidating prospect of representing themselves against a state agency with counsel from the Office of the Attorney General.

Second, the bill authorizes the Court to place a child or adult on the Registry based on the "preponderance of the evidence" (lines 158-159) rather than adopting a more exacting "clear and convincing evidence". Since the proceedings are quasi-criminal in nature, adoption of a "clear and convincing evidence" standard would be justified.

Third, there is an abnormality in the law in the context of the effect of a Court finding in criminal and juvenile delinquency proceedings. If the Court enters a finding of guilt in such a proceeding, the individual cannot contest inclusion on the Registry (lines 194-196). It is automatic. Conversely, if the individual is determined not guilty, DFS is not bound by the finding and can pursue inclusion in the Registry without any regard to the earlier Court finding (lines 197-201). Reasonable persons may differ on the merits of this approach. Proponents may justify this approach based on the higher standard of proof applied in criminal proceedings. Detractors may suggest that it subjects the individual to extended, protracted proceedings and the expense of representation despite acquittal.

Thank you for your time and consideration of our observations. Please feel free to contact me or Wendy Strauss should you have any questions.