



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

DATE: March 7, 2014

TO: The Honorable Members of the Delaware General Assembly

FROM: Terri Hancharick, Chairperson
GACEC

RE: **House Bill No. 228 (Child Placement Review Act)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed House Bill No. 228 which states that its intent is to make adjustments to the existing code to be consistent with current practices, clarify ambiguities and eliminate sections that no longer apply. The GACEC would like to share the following observations.

As background, current Delaware law [Title 31 Del.C. Ch. 38] establishes a child placement review process with several components to ensure conformity with federal law, including the federal Adoption and Safe Families Act of 1997 [hereinafter "Federal Act"] (lines 19-20; 144-146). Panels conduct reviews of case plans to ensure they adequately address the safety, best interests and special needs of a child. See Title 31 Del.C. §3810(1). The panels also assess the appropriateness of placements and progress toward achieving stability and permanency. See Title 31 Del.C. §3810(3)(4)(5). The focus of panels on child safety, best interests, special needs, and permanency is required by the Federal Act. See lines 19-20 and 144-146 and 42 U.S.C. §675. The latter statute requires panels to assess case plans which must include comprehensive information about the child, including school performance, medical problems, medications, and programs and services to prepare for independent living. See 42 U.S.C. §675(5). The synopsis to House Bill No. 228 suggests that it is a "housekeeping" measure:

SYNOPSIS

The intent of this bill is to make adjustments to the existing code to be consistent with current practices, clarify ambiguities and eliminate sections that no longer apply.

Unfortunately, instead of promoting a more robust review system, the legislation weakens the review process.

First, the existing State law mirrors the Federal Act by focusing on promoting permanency, health,

safety, on-going care to meet physical, mental and emotional needs, and best interests:

§3801. Purpose

Establishing an independent voluntary, citizen organization whose mission is to advocate on behalf of Delaware's children in out of home placement and to identify and periodically review children in the care and custody of a placement agency is in the best interests of the health and welfare of all citizens of Delaware. The purposes of this chapter are to provide a citizen based independent monitoring of Delaware children in the care and custody of a placement agency to ensure that they receive continuing efforts to obtain permanent homes, adequate provision for their stability, health, and safety; and ongoing care addressing their physical, mental, and emotional needs; and to advocate as necessary for the paramount concerns of best interest and safety for the children.

[emphasis supplied]

House Bill No. 228 strikes this section in its entirety and trims the focus to a single domain - permanency (lines 12-15). This is inconsistent with both the Federal Act and the balance of the Chapter. Compare 42 U.S.C. §675(5) and Title 31 Del.C. §§3813, 3814, and 3809(7).

Second, the current law requires panel members to have community service or professional expertise so panels will possess ample background in assessing case plans, special needs, and placement options. Panel members are derived from a board with the following credentials:

§3804 Qualifications of Board members.

(a) A board member must be a citizen of Delaware who has demonstrated an interest in children and their welfare through community service or professional experience or who possesses a background in law, sociology, psychology, psychiatry, education, theology, social work, medicine or related fields.

See also Title 31 Del.C. §3803(b).

House Bill No. 228 strikes this language in its entirety also. It substitutes a much weaker background standard:

Members shall include persons who have demonstrated interest in children (lines 79-80).

The effect is to dilute the expertise and knowledge base of panelists. In turn, this will result in superficial, cursory reviews since panelists will lack the background to assess special needs, placement options, etc. A high percentage of children in foster care have disabilities. Indeed, an estimated 30-45% are special education students. See National Council on Disabilities, "Youth with Disabilities in the Foster Care System: Barriers to Services and Proposed Policy Solutions" (February 26, 2008) [http://aypf.org/publications/documents/ncd96_FosterYouth_w_cover.pdf].

The complexity of the needs of foster children and alarming statistics on outcomes of the foster care system, were highlighted in House Bill No. 163 which was signed by the Governor on September 18 2013. The findings reflected in that bill underscore the need for robust reviews of service plans and services.

Finally, the panel reports, with findings and recommendations, are to be filed with the Family Court (lines 23-25). In turn, the Court is required to review the report and consider the recommendations. See Title 31 Del.C. § 3815(e). If the quality of the reports is weak, this adversely affects the ability of the Court to act on behalf of the child in an informed manner.

In addition to the substantive concerns noted above, the legislation may benefit from correction of several minor errors.

A. In line 40, the term “chapter” should be “section”.

B. In line 52, the term “they are” should be “the member is” to avoid use of a plural pronoun (“they”) with a singular antecedent (“member”).

C. Lines 83-84 contain a bar on “discrimination” which deletes the list of prohibited bases (e.g. race, sex, disability). This creates unnecessary ambiguity. For example, is discrimination based on “familial status” barred by this provision? Compare Title 6 Del.C. §4603(b) [includes term] with Title 19 Del.C. §711(a) [omits term]. The current statute bars discrimination based on “socioeconomic status” (line 84). This basis does not generally appear in other Delaware anti-discrimination laws. What is the effect of striking it from this section?

D. Although Title 1 Del.C. §109(d)(1) contemplates including the entire section of a statute being amended in legislation, House Bill No. 228 is formatted in an unusual manner. Lines 120-129 contain three of eight subparts to §3809. Lines 130-136 contain two of eight subparts to §3810. Lines 153-166 contain five of eight subparts to §3814. This approach makes it difficult to follow changes.

E. Lines 168-169, read literally, require submission of a panel report to either placement agencies, parents, and guardian ad litem/CASA. The word “or” at the end of line 169 should be deleted and the word “and” substituted.

F. In line 177, the term “the person’s” should be substituted for “their” to avoid use of a plural pronoun (“their”) with a singular antecedent (“person”).

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