



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: **House Bill No. 256 with House Amendment No. 1 (Sexual Solicitation of a Child)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed House Bill No. 256 which is designed to enable prosecution of individuals who solicit a child to engage in prohibited sexual acts. A "prohibited sexual act" is defined at Title 11 Del.C. §1100(7) as including a host of activities ranging from intercourse to nudity and sexual contact. "Sexual contact" is defined at Title 11 Del.C. §1161(f) and includes touching personal body parts either uncovered or covered by clothing. There is a modest fiscal note which predicts that only three persons would be imprisoned annually based on the legislation.

A March 17, 2014 News Journal article presents some of the advantages and disadvantages of the legislation. The Attorney General's Office highlights the advantages of mandatory sentencing and disallowance of a "fantasy" defense. The defense attorney counters that mandatory sentencing demeans the role of Delaware's judiciary and that overzealous undercover officers can press individuals who otherwise have no intention of arranging an actual encounter. The GACEC would like to share the following observations.

First, consistent with a March 31, 2014 News Journal article, mandatory minimum sentencing is becoming increasingly unpopular among the states.

Second, Delaware criminal law has historically acknowledged that older teens can consent to some sexual acts. See, e.g., Title 11 Del.C. §§767 and 761. Reasonable persons may have differing opinions on the practicality of criminalizing conduct which could often occur among consenting teens and young adults.

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