



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

**DATE:** May 25, 2016

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

**FROM:** Robert D. Overmiller, Chairperson  
GACEC

**RE:** **House Bill No. 310 (Family Court Jurisdiction and Outpatient Treatment)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed **House Bill No. 310**, which would expand the jurisdiction of the Family Court. Youth who have severe and persistent mental or behavioral health disorders, and who require services or treatment but are not amenable to or compliant with such services could be ordered by Family Court to participate in services or treatment.

A petition could be filed affecting a youth in DSCY&F custody upon turning 18 with a mental illness diagnosis (lines 8-11, 93-100). The petition could be filed when the respondent is between 17 ½ years of age through 20 ½ years of age (lines 10-11) and court jurisdiction could continue until the 26<sup>th</sup> birthday (lines 12 and 80-81) of the individual. A wide array of entities could file the petition, i.e., the Department of Health and Social Services (DHSS), Division of Services for Children, Youth and their Families (DSCY&F), the youth, youth's attorney, or current or former guardian ad litem (lines 17-18). The Court would, at least on an annual basis, conduct a review of the youth's circumstances (lines 50-65). The Court would be authorized to order the youth to participate in services or outpatient treatment (lines 66-69). If the youth fails to comply, the youth could be committed to a mental hospital (lines 78-79). The youth could also apparently be jailed under the Court's criminal contempt authority. See line 79 and Title 10 Del.C. §925(3).

Council would like to share the following observations.

First, outpatient mental health commitment is an outdated and disfavored approach in the mental health system. Consistent with an April 3, 2013 News Journal article, the federal Court Monitor has been highly critical of Delaware's historical "overuse" of outpatient commitment.

Second, the Family Court has previously been authorized to exercise extended jurisdiction when it would facilitate access to services, i.e., the Court can direct agencies to provide support services to dependent and

neglected youth up to age 21 [10 Del.C. §929]. This feature is absent from this bill. Indeed, the bill explicitly eschews any support role of the DSCY&F once a youth reaches 18 (lines 90-91). As a result, the bill is purely a vehicle to promote forced treatment of individuals who happen to have a mental health diagnosis.

Third, recognizing the fundamental liberty interests implicated in similar civil commitment and guardianship proceedings, the judiciary and Legislature require a host of procedural safeguards. Such safeguards are absent from the bill. Consider the following:

A. There is no right to appointed counsel for the youth in initial proceedings (lines 30-31). It is illogical to assume that a 17 - 20 year old with mental health limitations will be able to effectively self-represent in covered proceedings. Furthermore, initial proceedings are not nonthreatening. They involve authorizing Court oversight of every conceivable aspect of the youth's life for an eight-year period (lines 56-65) and the prospect of involuntary orders if the Court disfavors the choices the youth makes. In later proceedings the Court may offer the youth an attorney rather than appointing counsel (lines 69-71). Council queries whether a youth with mental health limitations will be able to knowingly and intelligently waive counsel. Contrast 16 Del.C. §5007(3). Cf. Title 12 Del.C. §3901(c) and Chancery Court Rule 176 [Chancery Court automatically appoints counsel for persons subject to involuntary loss of autonomy via guardianship]

B. There is no right to an independent expert witness to contest either the diagnosis or need for involuntary treatment. Contrast 16 Del.C. §5007(3).

C. There is no explicit right to conduct discovery or invoke the right against self-incrimination. Contrast 16 Del.C. §5007(4).

D. The description of initial proceedings omits any reference to the burden of proof or the evidentiary standard. Contrast Chancery Court opinion holding that "clear and convincing evidence" standard should apply in civil actions which potentially limit individual rights of self-determination and self-control. At pp. 3-4. The initial proceedings which may culminate in eight-year judicial oversight of a youth's life should require a higher standard of proof.

E. Court oversight is not limited to mental health. The Court may engage in an unlimited inquiry about the youth's choices in finances, education, housing, and clothes (lines 58-65).

Fourth, the bill is distinctly unnecessary. There are extensive procedures in place for involuntary mental health commitments and guardianship proceedings. Adding overlapping Family Court proceedings in anticipation of expanding regressive outpatient treatment orders will complicate rather than improve the mental health system.

Thank you for your time and consideration of our observations. Please feel free to contact me or Wendy Strauss at the GACEC office if you have any questions.

CC: The honorable Rita Landgraf, DHSS  
The honorable Carla Benson-Green, DSCYF  
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