



STATE OF DELAWARE  
STATE COUNCIL FOR PERSONS WITH DISABILITIES

MARGARET M. O'NEILL BUILDING  
410 FEDERAL STREET, SUITE 1  
DOVER, DE 19901

VOICE: (302) 739-3620  
TTY/TDD: (302) 739-3699  
FAX: (302) 739-6704

MEMORANDUM

DATE: May 1, 2014

TO: Members of the Delaware Senate and House of Representatives

FROM: Ms. Daniese McMullin-Powell, Chairperson  
State Council for Persons with Disabilities

RE: S.B. 181 (Child Protection Registry)

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 181 which would make several changes to the Child Protection Registry. The bill effects many discrete amendments to 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, the sponsors could consider some features that would enhance due process further and foster the validity and reliability of findings.

First, the bill changes existing law by requiring 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 preferable to authorize appointment of counsel for adults who wish to contest inclusion on the Registry. The ramifications of inclusion in the Registry are comparable and adults may defer requesting a court hearing based on the daunting prospect of representing themselves against a state agency with counsel from the Attorney General's Office.

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 anomaly 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 deference 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 posit that it subjects the individual to extended, protracted proceedings and expense of representation despite acquittal.

Thank you for your consideration and please contact SCPD if you have any questions regarding our observations on the proposed legislation.

cc: Mr. Brian Hartman, Esq.  
Governor's Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

sb 181child protection registry 4-30-14