



DISABILITIES LAW PROGRAM

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MEMORANDUM

To: SCPD Policy & Law Committee

From: Brian J. Hartman

Re: Recent Legislative & Regulatory Initiatives

Date: May 9, 2017

Consistent with the request of the SCPD, DDC, and GACEC, I am providing analyses of eleven (11) legislative and regulatory initiatives in anticipation of the May 11 meeting. Given time constraints, the analyses should be considered preliminary and non-exhaustive.

1. DOE Final DOE Scholarship Incentive Program Reg. [20 DE Reg. 894 (5/1/17)]

The SCPD and GACEC commented on the proposed version of this regulation in March, 2017. A copy of the March 20, 2017 SCPD letter is attached for facilitated reference. The Department of Education has now adopted a final regulation with only minor edits.

First, the Councils recommended the review of numbering in §4.0. The DOE consulted the Registrar of Regulation and determined that the numbering is acceptable.

Second, the Councils noted the existence of a statutory authorization for scholarships based on reciprocity agreements omitted from the regulation. The DOE observed that there are currently no reciprocity agreements in place.

Third, the Councils recommended clarification of a table's treatment of pass-fail course work. The DOE responded that the table is no longer used and will be deleted from the DOE's website.

Fourth, the Councils identified pros and cons of the approach to scholarship calculation reflected in the table. The DOE responded that the table is no longer used and will be deleted from the DOE's website.

Parenthetically, based on a third party comment, the DOE deleted a requirement that qualifying students be enrolled in a minimum of 12 credit hours in deference to students with disabilities who may be considered full-time students by a college with fewer credit hours. At 894. The resulting revision is as follows:

“Full-Time Student” means [an undergraduate student enrolled in 12 or more college credit hours or a graduate student enrolled in 9 or more credit hours a student enrolled in a minimum of college credit hours as required by the student’s college or university for full-time status. Generally, for an undergraduate program, this is a minimum of 12 credit hours per term and for a graduate program, a minimum of 9 credit hours.]

Since the regulation is final, and the DOE responded to each comment proffered by the Councils, no other action appears warranted.

2. DMMA Final Medicaid Eligibility for Former Foster Youth Reg. [20 DE Reg. 908 (5/1/17)]

The SCPD and GACEC commented on the proposed version of this regulation in March, 2017. A copy of the March 20, 2017 SCPD memo is attached for facilitated reference.

The Councils endorsed the proposed regulation with no suggested changes. The Division of Medicaid & Medical Assistance has now acknowledged the endorsements and adopted a final regulation which conforms to the proposed version.

No further action appears warranted.

3. DMMA Final E&D Waiver Provider Policy Manual Reg. [20 DE Reg. 903 (5/1/17)]

The SCPD and GACEC commented on the proposed version of this regulation in February. A copy of the February 21, 2017 SCPD memorandum is attached for facilitated reference. The Division of Medicaid & Medical Assistance has now adopted a final regulation with some edits prompted by the commentary.

First, the Councils noted that the proposed standards incorporated approximately nine (9) amendments prompted by DLP comments on a pre-publication draft. The Division acknowledged the earlier input resulting in amendments.

Second, the Councils noted that the title to the manual should be changed since the E&D waiver no longer exists. The Division responded that the title has been changed.

Third, the Councils suggested a revision to §2.2.1. The Division declined to effect a revision since the language is based verbatim on a CMS standard.

Fourth, the Councils suggested substituting “must” for “should” to emphasize that certain rights are mandatory and not discretionary. The Division agreed and modified the terminology.

Fifth, the Councils suggested adding a provision authorizing DHSS representatives to visit and access day programs. DHSS effected no change.

Sixth, the Councils suggested a grammatical change in §3.3.2.6. The Division agreed and revised the section.

Seventh, in §3.4.2, the Councils suggested substituting “authorities” for “authority” since there may be more than 1 entity to which critical incidents must be reported. The Division agreed and adopted a conforming amendment.

Eighth, in §3.4 the Councils suggested amendments to reflect the change in licensing authority of acute care facilities to the DLTCRP. The Division agreed and adopted a conforming amendment.

Ninth, the Councils suggested adding a reference to reporting of critical incidents to the P&A. The Division made no change.

Tenth, the Councils suggested adding some services included in the MCO contracts. The Division made no change.

Eleventh, the Councils endorsed some specific references to persons with ABI or TBI. The Division acknowledged the endorsement.

Since the regulation is final, and the Division adopted several amendments prompted by the commentary, no further action appears warranted.

4. DLTCRP Final CNA Regulation [20 DE Reg. 901 (5/1/17)]

The SCPD and GACEC commented on the proposed version of this regulation in March, 2017. A copy of the March 23, 2017 GACEC letter is attached for facilitated reference.

First, the Councils identified three ostensible typographical errors. The Division corrected two of them.

Second, the Councils suggested expanding the time period for fulfilling recertification requirements for military personnel. The Division declined to modify the standard which it characterized as aligned with nurse practice regulations.

Third, the Councils suggested enhancing the qualifications of CNA trainers. The Division declined to amend the standards which it deemed adequate.

Fourth, the Councils suggested that experience teaching in a classroom should not be considered interchangeable with experience achieved in a clinical setting. The Division declined to amend the standards which it deemed appropriate.

Fifth, the Councils suggested adding several AT devices to the list of minimum training equipment, including AAC devices, mechanical lifts, oral hygiene devices, and pulse oximeters. The Division effected no change.

Sixth, the Councils suggested a clarification in §4.3.1. The Division effected no change.

Seventh, the Councils suggested adding an authorization for an appellant to be represented by an attorney. The Division added a conforming reference.

Since the regulation is final, and the Division responded to each comment, no further action appears warranted.

5. DOE Prop. Processing of Attorney General's Report Reg. [20 DE Reg. 867 (5/1/17)]

The Department of Education proposes to adopt a new regulation establishing uniform procedures for processing Attorney General's reports as authorized by Title 14 Del.C. §122(b)(26). The reports address "1) an enrolled student's alleged criminal conduct, regardless of jurisdiction, which shows disregard for the health, safety, or welfare of others, including, but not limited to, acts of violence, weapons offenses, and drug offenses; 2) wanted persons enrolled in a school and 3) missing persons enrolled in a school." See §2.0, definition of "Attorney General's Report".

I have the following observations.

1. Section 1.0 applies the regulation to both public school districts and charter schools. Section 2.0, definition of "district", then recites that a "district" includes a "charter school". This is counterintuitive and contrary to the commonly understood concept of a district. The Delaware Administrative Code & Style Manual, §7.2, offers the following guidance:

In general, keep the language in the text as clear and simple as possible. When drafting, remember that documents should be written so that the general public can understand them....Consistency of expression, ...and adherence to accepted usage aid readability. ...Avoid using the same word or term in more than one sense. Conversely, avoid using different words to denote the same idea.

To add to this confusing approach, there are several references to charter schools as distinct from districts. See, e.g., §2.0, definition of "administration"; §2.0, definition of "board of education"; §2.0, definition of "consortium discipline alternative program"; §2.0, definition of "principal"; §2.0, definition of "school property"; and §2.0, definition of "superintendent". In other cases, the regulation uses the term "school district/charter". See, e.g. §2.0, definition of "alternative program"; §2.0, definition of "assignment to an alternative program"; and §5.1.

2. The regulation contains several references to “crimes” and “criminal conduct”. In general, minors who commit certain offenses are characterized as “delinquent” but not “criminal”. See, e.g., Title 10 Del.C. §901(7), 1002, and 1009(c)(h). At a minimum, the DOE could consider incorporating a definition. See, e.g., 14 DE Admin Code 614.2.0, definition of “crime”; and 14 Del.C. §4112.

3. In §2.0, the definition of “appropriate educational services” establishes an “anemic” level of entitlement which is, particularly for special education students, inconsistent with law. See Title 14 Del.C. §3101(5). See also Andrew F. v. Douglas County School District, No. 15-827 (March 22, 2017).

4. In §2.0, many of the definitions (“disciplinary action”; expulsion; suspension long term; suspension short-term) are problematic since a) they contain many substantive standards; and b) are unnecessarily brittle. The Delaware Administrative Code & Style Manual, §4.3, provides the following admonition:

Regulatory information should not be included in the definition.

Example of a Definition that is Too Substantive:

“Lockup facility” means a secure adult detention facility used to confine prisoners waiting to appear in court and sentenced prisoners for not more than 90 days. In addition to the cell, a lockup facility must include space for moderate exercise and activity, such as weight lifting, ping-pong, table games, reading, television, and cards.

This definition should end at “90 days”. [emphasis supplied]

Even on a practical level, there is no need for detailed information about the ramifications of suspension, expulsion, etc. since the standards are designed to solely focus on processing of Attorney General’s Reports. There are other regulations (e.g. Parts 611-616) which contain specifics on suspension, expulsion, due process, etc. Finally, public schools have discretion to relax some of the normal consequences of a suspension. For example, if the school is a student’s polling place, the school could make an exception to allow a suspended student to be on school property to vote or obtain health services at a wellness center.

5. In §2.0, the definition of “parent” omits persons appointed by a power of attorney or DOE grant of authority form or appointed by an IEP team. See 14 DE Admin Code 926.20 and 14 Del.C. §§3101(7) and 3132.

6. In §2.0, the definition of “regular school program” consists of a single 71-word sentence with many clauses. It is convoluted and difficult to understand.

7. If the DOE opts to retain substantive standards in the definition of “suspension, long term”, it merits correction since it ignores federal guidance holding that a pattern or practice of short-term removals aggregating 11 days in a school year may constitute a long-term suspension. See codification of caselaw at 34 C.F.R. 300.536.

8. Section 3.1.4 contemplates retention of the report during the time for initiating a dispute resolution application under the IDEA. The DOE may wish to consider adopting a conforming standard for Section 504-identified students since they are also entitled to a manifestation determination meeting. See, e.g., OCR Senior Staff Memo, 16 IDELR 491, 493 (November 13, 1989).

9. Section 4.1.2 ostensibly authorizes disciplinary action based on off-campus conduct which does not present a risk to school students and employees. Delaware caselaw authorizes schools to consider off-campus activities if they present a risk to school students and employees. Cf. Howard v. Colonial School District, 621 A.2d 362 (Del. Super 1992), *aff'd* 615 A.2d 531. Thus, an otherwise exemplary student who faces a single charge of driving under the influence of alcohol who rides the school bus to school should not be the subject of school discipline. There is simply no nexus to a risk of harm to the school body. The recitation that “all off-campus, non-school activity conduct which shows disregard for the health, safety and welfare of others... may subject a student to Disciplinary Action” is “overbroad”.

10. Section 6.0 contains the following standard: “If any portion of this regulation is in conflict with any Memorandum of Understanding or Agreement in existence, the Memorandum of Understanding or Agreement shall control.” This is an “odd” recitation. It is difficult to interpret. First, query if this is a “grandfather” provision which allows an agreement currently “in existence” to “trump” the regulation while a prospectively revised agreement would not “trump” the regulation. Second, query if a district or charter school could avoid the entire regulation by simply adopting a memorandum of agreement with any entity? There is some “tension” between the enabling statute [14 Del.C. §122(b)(26)] promoting uniform processing regulations and authorizing non-uniformity based on undefined agreements which supersede the uniform regulatory standards.

The Council may wish to share the above observations with the DOE, SBE, and ACLU.

6. H.B. No. 145 (ABLE Act Revision)

This legislation was introduced on April 25, 2017. As of May 8, it had been released by the House Health & Human Development Committee and placed on the Ready List for action by the full House.

As background, Congress enacted enabling legislation authorizing Achieving a Better Life Experience (ABLE) savings accounts in 2015. The accounts permit individuals with disabilities to accumulate funds to be applied to qualified disability expenses without jeopardizing eligibility for means-based federal programs such as SSI and Medicaid. See attached Delaware News Journal article, “Delaware family celebrates new law for disabled” (February 11, 2015). Delaware enacted implementing legislation (H.B. No. 60) a few months later. See attached article, “Delaware 19th state to enact ABLE legislation (June 14, 2015).

Upon the death of the ABLE account holder, the federal model allows states to recover the costs of Medicaid expenditures on the deceased's behalf made since the inception of the account. See attached excerpt from proposed federal regulation. This "claw back" provision is characterized as a "significant drawback for many families" since it deters family contributions to an ABLE account. See attached Reuters.com article, "The limitations of ABLE accounts for the disabled" (May 18, 2015). Recognizing the "downsides" to the "claw back" model, some states have opted to include an exemption from "claw back" recovery in their enabling legislation. For example, Pennsylvania included the following exemption in its 2016 enabling law (S.B. No. 879):

(d) Death of beneficiary. – Unless prohibited by Federal law, upon the death of a designated beneficiary, proceeds from an account may be transferred to the estate of a designated beneficiary, or to an account of another eligible individual specified by the designated beneficiary or the estate of the designated beneficiary. An agency or instrumentality of the Commonwealth may not seek payment under section 529A(f) of the Internal Revenue Code from the account or its proceeds for benefits provided to a designated beneficiary.

Delaware House Bill No. 145 adopts the Pennsylvania exemption almost verbatim. Compare lines 6-10. Therefore, it removes a disincentive for contributions to an ABLE account. It is also consistent with Delaware public policy in related contexts. For example, Delaware law authorizes the operation of the Delaware CarePlan Trust, a non-profit group trust for individuals with disabilities. See 12 Del.C. Ch. 40. That law requires the disregard of the participant's interest in the trust "in assessing financial eligibility and liability under any program of government benefits or assistance." See 12 Del.C. §4009. Moreover, the Delaware Employment First Act [19 Del.C. §§740-747) encourages remunerative employment by individuals with disabilities. Elimination of the "claw back" from ABLE accounts facilitates savings of earned income and accumulation of a "nest egg" in the safe harbor of an ABLE account.

The SCPD may wish to consider an endorsement.

7. H.B. No. 142 (School Resource Officer Training)

This legislation was introduced on April 25, 2017. As of May 8, 2017, it awaited action by the House Education Committee.

As background, the role of school resource officers (SROs) in schools has generated considerable debate in recent years. See attachments. Student advocates posit that the routine presence of law enforcement officers in schools contributes to the school-to-prison pipeline, escalates minor behaviors into crimes, and perpetuates discriminatory patterns of punishment. SRO proponents counter that the presence of SROs fosters safer environments and develops personal trust between students and law enforcement representatives.

To mitigate objections to the presence of SROs in schools, some states require specific training which includes evaluation of risk of harm, de-escalation techniques, and debriefing strategies. See, e.g., attached article, “Texas HB 2684, Requiring School Resource Officers to Complete De-escalation and Restraint Training” (August 6 2015); and “Armed But Untrained: Why So Many School Cops Are Unprepared for the Classroom” (November 1, 2015) [noting that “twelve states have laws that specify additional training required to become a school resource officer”].

H.B. No. 142 is intended to promote the training of SROs active in Delaware public schools. It would require participation of SROs in annual training with emphasis on interventions with students with disabilities (lines 10-25 and 35-36). It would also require the SRO to meet with building staff at the outset of the school year to become familiar with expected disability-related behaviors and responses (lines 26-28). Each district or charter school would be expected to have a memorandum of agreement (MOA), based on a DOE template, with each agency providing the SROs (lines 32-34). The legislation would be effective on July 1, 2018 (line 50). The bill contemplates implementation through existing funds (line 44) but the bill is earmarked with an incomplete fiscal note.

Since the training should reduce prospects for uneven or inappropriate responses to student behavior, the SCPD may wish to consider endorsement subject to addressing some technical concerns.

First, the scope of individuals subject to the training standards is not clear. On the one hand, it would cover anyone defined in §4112F(a)(4). See lines 4-6). However, that section includes not only an SRO but also “an employee or contractor providing educational services within a Department of Correction or Division of Youth Rehabilitative Services facility”. There are many YRS employees who would be expected to “assist with or independently intervene with students with disabilities” (lines 6-7). Moreover, while the bill imposes obligations on districts and charter schools (lines 10-11, 19-22, 23-25, 32-36), DOC and YRS personnel are not employees and contractors of districts and charter schools.

Second, there is some “tension” between characterizing the education as “awareness training” (lines 11, 13, and 17) and the expectation that the education include some meaningful, hands-on training which is not merely “fluff”. Consistent with the attached descriptions of training offered by the National Association of School Resource Officers and the N.J. Safe Schools Resource Officer/School Liaison Training, there are readily available, robust curricula for SRO training. The references to “awareness” training implies that the education will be diluted and anemic.

A courtesy copy of any comments could be shared with the Attorney General and the ACLU.

8. H.B. No. 120 (Health Insurer Cancer Treatment Coverage)

This legislation was introduced on March 30, 2017. As of May 8, it had been released from the House Economic/Banking/Insurance/Commerce Committee and placed on the Ready List. It is earmarked with an incomplete fiscal note.

For background, see the attached summaries from the April 3 and May 8, 2017 Delaware House Democrats e-newsletters. It is estimated that 5,600 Delawareans will be diagnosed with cancer in 2017. Delaware women have the ninth-highest cancer death rate in the country. Unfortunately, some health insurers restrict access to the most effective treatments approved by the FDA. Instead, insurers may require patients to demonstrate failure to respond to a less efficacious drug regimen as a precondition of qualifying for cutting-edge treatments.

The legislation is based on legislation adopted in Georgia which was inspired by former President Jimmy Carter. President Carter was rendered cancer-free after undergoing immunotherapy which shrunk his metastatic melanoma tumors. Immunotherapy is considered one of the most promising approaches to cancer since it activates a patient's immune system to fight cancer instead of attempting to directly destroy cancer cells through chemotherapy. Since enactment in Georgia, the summary notes that similar legislation has been introduced in Maryland and Connecticut.

H.B. No. 120 would bar health insurers regulated by the Delaware Insurance Commissioner which cover treatment of stage 4 advanced metastatic cancer from limiting or excluding access to FDA-approved drugs. Patients would not be required to prove failure of other drugs or demonstrate a history of failed treatment using other drugs. The bill would affect both individual and group health insurance policies. It would be apply to policies issued, delivered, renewed, modified, altered, or amended on or after September 1, 2017.

Given the advantages of prompt access to effective cancer drugs, the SCPD may wish to consider endorsement.

9. H.B. No. 79 (Motor Voter Program)

This legislation was introduced on March 16, 2017. As of May 8, it awaited action by the House Administration Committee.

A brief summary of the bill is included in the attached March 27 Delaware House Democrats e-newsletter. The legislation is part of package of bills intended to encourage participation in the electoral process.

Consistent with the synopsis, current Delaware law is interpreted as allowing Delawareans applying for, renewing, or replacing a driver's license or identification card to register to vote or update voter registration. H.B. No. 79 would presumptively consider applicants for such DMV services to be registering to vote or updating their voter registration. Applicants would have to affirmatively "opt out" to obviate sharing of DMV information with the Department of Elections (lines 51-52 and 61-64). There are some exceptions. For example, the DMV would not forward information to the Department of Elections for non-citizens (lines 67-68). Both the DMV and Department of Election could issue regulations to facilitate implementation of the program (lines 87-88). Six states and the District of Columbia have enacted similar "opt out" approaches to motor-voter systems. The intent of the legislation is to promote a higher proportion of registered voters.

H.B. No. 79 also amends the statutory authorization to register to vote through some State agencies, including DSS and DVR. Consistent with the synopsis, amendments are intended to conform to the Delaware Legislative Drafting Manual "with no intent to change the substance of these sections". The bill also updates some outdated references. For example, line 106 substitutes a reference to the Division of Social Services for the former Division of Economic Services.

Since the legislation is intended to facilitate voter registration and update references to State agencies serving persons with disabilities, the SCPD may wish to consider endorsement. Parenthetically, the Council may wish to recommend that the sponsors consider an amendment. Under current law, authorized State agencies can only provide voter registration services to their employees and agency clients (individuals served by the agency) (lines 102, 112, and 122). It would facilitate voter registration if authorized State agencies were not limited to offering registration to only agency clients. For example, if a couple appears at a State agency seeking services only for one of the spouses, the agency could ostensibly register only the individual applying for services. This is arguably unduly brittle. Consistent with the attached excerpt (42 U.S.C. 1973gg-5) of the National Voter Registration Act of 1993, states are not limited to authorizing state agencies to offer voter registration services only to agency clients.

A courtesy copy of comments could be shared with the State Election Commissioner, the League of Women Voters, and the ACLU.

10. H.B. No. 140 (Infants with Prenatal Substance Exposure)

This legislation was introduced on April 13, 2017. As of May 8, it awaited action by the House Judiciary Committee. It is earmarked with an incomplete fiscal note.

Consistent with the synopsis, the bill is intended to implement the federal Child Abuse Prevention and Treatment Act (CAPTA) requirements for states to adopt standards to address the needs of infants born with and identified as being affected by substance abuse, withdrawal symptoms, or Fetal Alcohol Spectrum Disorder. Additional background is provided in the attached excerpt from the House Minority Caucus e-newsletter.

As background, approximately 3% of babies born in Delaware qualify for a diagnosis of neonatal abstinence syndrome (NAS) in which the infant undergoes opiate withdrawal. That percentage has been growing in recent years. DFS substantiates abuse in approximately 10% (44/448) of cases of suspected neglect or abuse reported to it among babies born with drugs or alcohol in their system. See attached Mach 7, 2016 News Journal article. Medical professionals prefer to place pregnant women with addictions on methadone resulting in only short-term effects on babies treated for withdrawal upon birth. See attached "Addicted babies", Delaware News Journal (November 20, 2015).

House Bill No. 140 would require health care providers to report substance exposed infants to the Division of Family Services (lines 39-40). Upon receipt of a report, DFS would determine if the case requires an investigation or family assessment, develop a plan of safe care, provide copies of the plan of safe care to providers and the family or caretaker, and implement and monitor the plan of safe care (lines 55-62).

DFS is authorized to contract for remedial services (lines 63 and 67). This is an important feature since, historically, the lack of substance abuse resources has posed a significant barrier to expectant and new mothers. This was highlighted in the attached article, "More treatment key for addicted moms", Delaware News Journal (March 4, 2016):

Holly Rybinski, of Newport, said she had to go to jail in order to get the drug treatment she needed. That was almost two years ago. She had stayed clean for five years, but while she was pregnant with his child, her partner overdosed and died. Consumed with grief, Rybinski turned to heroin and cocaine during the last five months of her pregnancy. After she gave birth to the son James April 8, 2014, at Christiana Care's Wilmington Hospital, she was ready to be clean. She said the Division of Family Services told her that they had to take custody of him since James tested positive for drugs, she wasn't in a treatment program and Rybinski had a record. They told her she had 90 days to find employment, treatment and stable housing and then they could discuss putting him back in her care. That request was easier said than done. ..."I tried five different times to get into treatment," Rybinski said. "It was one obstacle after the other." As the number of pregnant and addicted mothers grows, the need for treatment is even more critical. Community members, families and those now in recovery, like Rybinski, have long lamented Delaware's lack of residential treatment options. Many people have to wait days and even weeks to get a bed. ...Currently, there is one state-run treatment program for expectant or new mothers recovering from addiction in Delaware, but it is only for women who are incarcerated and it is in Newark. ...Brandywine Counseling ran a program for expecting moms wrestling with addiction, called Lighthouse, downstate in Ellendale, but is closed in September due to budget cuts and staffing shortages. ...(I)t was extremely successful. Nearly 100 percent of women were able to give birth to babies free of drugs.

The lack of ready access to substance abuse services is also highlighted in pending legislation, H.B. No. 100.

I have the following observations.

First, the legislation represents a major improvement over a predecessor bill (H.B. No. 268) introduced in 2016. For example, that bill required development of a DFS plan of safe care for any “medically fragile child” (lines 42-44 and 126-127) and did not authorize sharing of the plan with the family (line 48).

Second, the bill could be improved by supplementing the “plan of safe care” provisions (lines 24-28, 59, and 71) as follows:

- A. Ensure parental input and collaboration in development of the plan;
- B. Ensure that the plan specifically identifies appropriate support services. For example, consider the following amendment:

The plan shall identify all material impediments to family preservation and the itemized, available resources specifically offered to the parent to overcome each impediment including, if relevant:

- a. mental health treatment;
- b. substance abuse treatment;
- c. safe housing; and
- d. any public assistance program operated or administered by a State agency.

Third, the bill could be improved by explicitly requiring referrals to the DHSS early intervention program for infants who may qualify as eligible under 16 Del.C. §212(3) (which includes being diagnosed with a condition which has a high probability of resulting in developmental delay). The Infants and Toddlers Early Intervention program implements Part C of the Individuals with Disabilities Education Act and is federally subsidized. This free program is the most comprehensive resource for infants with disabilities in the State. See 16 Del.C. §§210-218. This is the approach adopted by analogous health screening laws. See, e.g., 16 Del.C. §806A.

The Council may wish to consider endorsement subject to consideration of the above amendments.

11. S.B. No. 38 (Realty Tax Exemptions for Individuals with a Disability)

This legislation was introduced on March 21, 2017. As of May 8, it had been released by the Senate Judicial and Community Affairs Committee and placed on the Ready List for action by the full Senate.

As background, New Castle, Kent, and Sussex Counties currently have ordinances which provide partial exemptions from real property taxes for homeowners with a disability. In New Castle and Kent Counties, "disability" is defined as equivalent to the standard in Social Security law. In Sussex County, "disability" is defined as being "physically prevented from pursuing any remunerative occupation". Income limits in all three counties generally disregard Social Security benefits. The domicile and residency requirements vary by county. The relevant ordinances for the three counties are attached for facilitated reference.

The New Castle County ordinances authorize a \$32,000 exemption from the assessed value of a principal residence for qualifying homeowners with income at or below \$50,000. An additional \$2,000 exemption applies to such homeowners based on loss of use of two limbs. If the disability is connected to military service, an additional \$5,000 exemption applies. See §§14.06.303 and 14.06.304.

The Kent County ordinances authorize a \$25,000 exemption from the assessed value of a residence owned by qualifying homeowners under certain income limits (\$16,000 for individual and \$22,000 for couple plus \$3,100 for each dependent residing in residence). If the disability is connected to military service, an additional \$5,000 exemption applies. See §191-9.

The Sussex County ordinances authorize a \$12,500 exemption from the assessed value of a residence owned by qualifying homeowners under certain income limits (\$4,500 for individual and \$6,500 for couple). I did not identify any additional exemption for service-connected disabilities.

Senate Bill No. 38 would essentially codify in State law the above county exemptions for individuals with disabilities (including the service-connected supplements). Counties could increase or expand the exemptions, but not eliminate or reduce them (lines 25-26). The synopsis observes that Delaware may be the only state "that is silent at the state level with regard to exemptions for service-related disabilities".

I have the following observations.

The disability-based exemptions are relatively modest. Indeed, the Sussex County standards are manifestly low (e.g. authorizing only a \$12,500 exemption of assessed value for an individual with countable income of \$4,500 or below). With inflation and predictable increases in real estate values, setting the existing standards as a minimum should not prove burdensome for counties. Counties could also diminish the impact of the exemptions by increasing assessed values either on a county-wide basis or as properties change hands.

Given the modest exemptions authorized by existing law, and their beneficial impact on persons with disabilities, the Council may wish to consider endorsement.

Attachments

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STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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302-739-3621

The Honorable John Carney
Governor

John McNeal
SCPD Director

March 20, 2017

Ms. Tina Shockley, Education Associate
Department of Education
401 Federal Street, Suite 2
Dover, DE 19901

RE: 20 DE Reg. 685 [Proposed DOE Scholarship Incentive Program Regulation (3/1/17)]

Dear Ms. Shockley:

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Education's (DOE's) proposed regulation to adopt regulations implementing the State Scholarship Incentive Program established by the attached Title 14 Del.C. §§3411-3413. The proposed regulation was published as 20 DE Reg. 685 in the March 1, 2017 issue of the Register of Regulations.

The enabling law authorizes scholarships only to full-time students in degree programs. A student can qualify for a scholarship only if attending: 1) an undergraduate educational institution in Delaware; or 2) an undergraduate educational institution in another state with a reciprocity agreement; or 3) an undergraduate or graduate educational institution in another state offering courses not available in state-supported institutions in Delaware when the course work is deemed in the best interest of the State. Scholarships are awarded based on both financial merit and academic merit. The amount of the scholarships is small. Consistent with the attached excerpt from the DOE website, they range from \$700- \$2,200 annually. The regulations contemplate allocating up to 80% of funding to undergraduates and up to 20% of funding for graduate students (§5.1.1).

SCPD has the following observations.

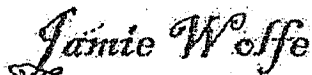
First, the numbering in §4.0 should be reviewed. There should be no §4.1 since there is no §4.2. See attached §3.3 from the Delaware Administrative Code Drafting and Style Manual.

Second, the regulations ostensibly omit the statutory authorization to approve scholarships to attend institutions outside Delaware "that have established scholarship reciprocity agreements with the State and the Office of Undergraduate study". Compare Title 14 Del.C. §3413(3)b with regulatory §4.1. Perhaps there are no reciprocity agreements. If there are reciprocity agreements, the DOE should consider adding a conforming provision to the regulations. The statutory authorization is an independent basis for a scholarship distinct from enrolling in course work not offered in Delaware. Third, it's unclear how a scholarship for a graduate student enrolled in pass/fail course work would be calculated. Section 5.2.2.3 authorizes scholarship eligibility for such students. However, based on the table on the website, query whether such a student would only be eligible for a needs-based \$700 award with no opportunity to qualify for a merit supplement. The DOE may wish to clarify if a graduate student qualifying for a scholarship under §5.2.2.3 is only eligible for a needs-based award.

Fourth, the table suggests that awards are weighted in favor of academics as juxtaposed to need. Students qualify for the same \$700 need-based stipend whether they are in abject poverty or whether they barely meet the threshold for need. In contrast, students can qualify for the academic stipend based on more discriminating standards ranging from \$0 to \$1,500. Reasonable persons could differ on whether this approach should be reversed, i.e., anyone with a 2.5 GPA would receive the same stipend while the needs-based stipend would vary based on extent of need. The enabling statute does not prioritize academic merit versus financial need and vice versa. See Title 14 Del.C. §3413(4). I infer the rationale for the current table is ease of administration, i.e., it's easier to document a GPA than financial need.

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

Sincerely,



Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

cc: The Honorable Steven Godowsky, Ed.D, Secretary of Education
Mr. Chris Kenton, Professional Standards Board
Dr. Teri Quinn Gray, State Board of Education
Ms. Mary Ann Mieczkowski, Department of Education
Ms. Laura Makransky, Esq., Department of Justice
Ms. Terry Hickey, Esq., Department of Justice
Ms. Valerie Dunkle, Esq., Department of Justice
Mr. Brian Hartman, Esq.
Developmental Disabilities Council
Governor's Advisory Council for Exceptional Citizens



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621

The Honorable John Carney
Governor

John McNeal
SCPD Director

MEMORANDUM

DATE: March 20, 2017

TO: Ms. Kimberly Xavier, DMMA
Planning & Policy Development Unit

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: 20 DE Reg. 694 [DMMA Proposed Medicaid Eligibility of Former Foster Youth Regulation (3/1/17)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA's) proposed regulation to expand the eligible population to young adults who aged out of the foster care system of another state. The proposed regulation was published as 20 DE Reg. 694 in the March 1, 2017 issue of the Register of Regulations.

Consistent with federal law, DMMA currently provides Medicaid coverage to former foster care youth who have aged out of Delaware's foster care system until age 26. The financial impact of this initiative would be modest:

In state fiscal year 2016 there were approximately 150 former foster youth that aged out of Delaware's foster care system that were eligible for Medicaid under the ACA. Extending this rule to former foster youth from other states would most likely result in very few new clients and therefore won't have a significant fiscal impact.

At 696.

There would be no income or resource cap for this population. Id.

A disproportionate number of foster care youth have disabilities and transition to adulthood is often

difficult. The availability of Medicaid to this constituency would be a significant support and is analogous to the option of youth who remain on their parent's private health insurance through age 26.

The SCPD is endorsing the proposed regulation. may wish to consider endorsement with a courtesy copy to the Office of the Child Advocate and Steve Yeatman at DSCY&F.

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

cc: Mr. Stephen Groff
Ms. Tania M. Culley, Esq.
Mr. Steve Yeatman, DSCYF
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

20reg694dmma-medicaid eligibility former foster youth 3-20-17



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES

Margaret M. O'Neill Bldg., Suite 1, Room 311
410 Federal Street
Dover, Delaware 19901
302-739-3621

MEMORANDUM

The Honorable John Carney
Governor

John McNeal
SCPD Director

DATE: February 21, 2017

TO: Ms. Kimberly Xavier, DMMA
Planning & Policy Development Unit

FROM: Ms. Jamie Wolfe, Chairperson
State Council for Persons with Disabilities

RE: 20 DE Reg. 612 [DMMA Proposed E&D Waiver Provider Policy Manual Regulation
(2/1/17)]

The State Council for Persons with Disabilities (SCPD) has reviewed the Department of Health and Social Services/Division of Medicaid and Medical Assistance's (DMMA) proposed major revisions to its Elderly & Disabled Waiver Provider Manual. The proposed regulation was published as 20 DE Reg. 612 in the February 1, 2017 issue of the Register of Regulations.

The primary impetus for the revisions is to promote conformity with the CMS HCBS settings rule. Overall, the initiative mirrors CMS standards and provides helpful, affirmative guidance to MCOs and providers. SCPD has the following observations.

First, DMMA provided an early draft of the revised policy to the DLP in December, 2015 which prompted the DLP to share 3 pages of recommendations in January, 2016. The current draft reflects approximately nine (9) amendments based on the recommendations.

Second, the Elderly and Disabled Waiver no longer exists. It was merged into the DSHP+ program in 2012. See, e.g., attached excerpt from DMMA May 18, 2011 overview. See also §1.0, deleting reference to E&D waiver. The title to the Provider Manual should therefore be revised. Consistent with §1.0, the following title could be considered: "Long Term Care Community Services (LTCCS) Provider Policy Manual" or "Long Term Care Community Services/Diamond State Health Plan Plus Provider Policy Manual".

Third, §2.2.1 does not match the formatting in the balance of the section and is merely a non-directive statement. Consider the following substitute:

2.2.1. The LTCCS setting must be integrated and support full access of LTCCS recipients to the greater community, including:...

Fourth, §§2.2.6 and 2.2.7 recite that recipients “should” have the freedom and support to control their own schedules... and be able to have visitors of their choosing at any time. This is not co-terminus with the federal regulation, 42 C.F.R. 441.530, which recites that states “must” make available a list of supports, including the following:

Individuals have the freedom and support to control their own schedules and activities, and have access to food at any time.

Individuals are able to have visitors of their choosing at any time.

For consistency with §§2.2.2-2.2.5, DMMA may wish to use the term “must” rather than “should”, i.e., “individuals must have the freedom” and “individuals must be able to have visitors...”.

Fifth, §3.1.5 requires providers to provide DHSS with access to participant records. DMMA may wish to consider adding a provision addressing access by DHSS authorized representatives to provider-owned or leased settings (e.g. day habilitation; adult day services) in which covered services are provided. This is a DHSS statutory right for licensed residential LTC facilities. See Title 16 Del.C. §1105(a)(5), 1107 and 1134(d)(11). However, day programs are not covered by the residential LTC statutes so DHSS may wish to include the right in the policy manual.

Sixth, DMMA should correct the grammar in §3.3.2.6. The section recites that the person centered planning process is required to include nine (9) listed features. All of the items in the list begin with a verb. Subsection 3.3.2.6 is inconsistent. See Delaware Legislative Drafting Manual, Rule 27, published at <http://legis.delaware.gov/docs/default-source/Publications/legislative-drafting-manual.pdf?sfvrsn=4>

Seventh, in §3.4.2., DMMA should consider replacing “authority” with “authorities” since there may be more than 1 entity to which critical incidents must be reported. For example, the DHSS PM 46 policy, §V.K.2 (Rev. 8/16) contemplates covered entities reporting to both the police and DHSS for conduct amounting to a crime. There is also overlapping jurisdiction between the Ombudsman (§3.4.2.2.2) and DLTCRP (§3.4.2.2.3).

Eighth, §§3.4.2.2.3 and 3.4.2.2.4 merit review. I understand that licensing of acute and outpatient health care was switched when the DPH OHFLC was placed under the DLTCRP effective July 1, 2016. See <http://www.dhss.delaware.gov/dhss/dlterp/>

Ninth, DMMA may wish to add a reference to the requirement of critical incident reporting concerning patients of psychiatric hospitals and residential centers to the Protection & Advocacy agency pursuant to 16 Del.C. §5162. See also DHSS PM 46 policy, §V.K.2 (Rev. 8/16).

Tenth, §6.2, entitled "Available Services", omits some services included in the MCO contract, including minor home modifications, home-delivered meals, transition services, and nutritional supplements. Each of these services enhance community-based living as much as the listed personal emergency response system. DMMA should consider adding the omitted services.

Eleventh, §6.2.1 and 6.2.2 contain specific references to additional services for individuals with brain injuries in the contexts of adult day services and attendant services:

Members with an acquired brain injury (ABI) or traumatic brain injury (TBI) will receive additional prompting and/or intervention as needed, and as indicated in the person-centered service plan.

SCPD is endorsing the proposed regulation.

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

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

20reg612 dmma-e&d waiver provider policy manual 2-16-17

EXCEPT: 6-22-11
ON DSHP - PLUS INITIATIVE

DHSS PRESENTATION

Populations Included in Expansion

- ✦ Nursing Facility/Institutionalized
- ✦ HCBS groups
 - ✦ Existing E/D and AIDS waiver participants; existing 1915c waivers will be "folded into" the 1115 waiver
- ✦ Money Follows the Person (MFP) will be incorporated into the DSHP-Plus expansion
- ✦ Other full benefit dual eligibles in the community
- ✦ Medicaid for Workers with Disabilities (MWD)

**GOVERNOR'S ADVISORY COUNCIL FOR EXCEPTIONAL CITIZENS**

GEORGE V. MASSEY STATION
516 WEST LOOCKERMAN STREET
DOVER, DELAWARE 19904
TELEPHONE: (302) 739-4553
FAX: (302) 739-6126

March 23, 2017

Renee Purzycki, Social Service Chief Administrator
Office of the Director for the Division of Long Term Care Residents Protection
Delaware Department of Health and Social Services
3 Mill Road, Suite 308
Wilmington, DE 19806

RE: DLTCRP Proposed Certified Nursing Assistants Regulation [20 DE Reg. 693 (March 1, 2017)]

Dear Ms. Purzycki:

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed the Division of Long Term Care Residents Protection (DLTCRP) proposal to do a full revision of the existing regulation covering certified nursing assistants. Council would like to share the following observations.

First, there are a few typographical errors:

- A. In §2.3.10, there appears to be an extraneous comma after the term "CNA".
- B. In Appendix A, Psychosocial Needs Module, Competencies Section, 6th bullet, there is a reference to "self?care".
- C. In Appendix A, Physical Needs Module, Competencies Section, 15th bullet from the end, there is a reference to "self?help".

Second, per section 2.3.7, CNAs are exempt from fulfilling recertification requirements if on active military duty in a "theater of hostilities". This may be unduly narrow and could be expanded to cover active duty military not in a "theater of hostilities". Furthermore, granting such individuals only 30 days to complete 24 hours of community education post deployment is seemingly too short

a timeframe.

Third, the qualifications of trainers may benefit from enhancement. An RN with only two years of overall experience and one year of clinical experience (§3.2.1) and supplemental personnel (e.g. occupational, physical or speech therapist) with only one year of experience (§3.6.1) are authorized to serve as CNA training program instructors. These are relatively weak credentials to teach a wide array of skills to CNA trainees. While a nurse with one year of clinical experience in an NSF may have been exposed to many types of needs, a nurse with more years of experience would generally have greater exposure to a variety of patients and treatment modalities.

Fourth, section 3.3.2 requires instructors to have “experience teaching adults in a group classroom/clinical setting.” There are two concerns with this provision. First, experience teaching in a classroom versus a clinical setting should not be treated as interchangeable. Second, the Division may wish to adopt a more precise experience standard than the “open ended” provision in §3.3.2.

Fifth, §3.10 lists minimum equipment to be available for training. It would benefit from some additions.

A. Appendix A, Psychosocial Skills Module, Competencies Section, includes the following skill: “Recognize and utilize augmentative communication devices and methods of nonverbal communication.” Likewise, Appendix A, Physical Needs Module, Competencies Section, includes the following skill: “Demonstrate use of assistive devices”. It would therefore make sense to include a typical Augmentative and Alternative Communication (AAC) device in the list of minimum equipment in §3.10.

B. Appendix A, Physical Needs Module, Competencies Section, includes the following recital “Assist the resident/patient with ambulation aids, including, but not limited to cane, quad-cane, walker, crutches, wheelchair and transfer aids, such as a mechanical lift.” These forms of assistive technology (AT) are included in §3.10 with the exception of the mechanical lift. DLTCRP may wish to consider adding mechanical lift to the list of minimum equipment.

C. Appendix A, Physical Needs Module, Competencies Section, includes the following recitals: “Assist the resident/patient with oral hygiene, including prosthetic devices” and “Administer oral hygiene for the unconscious resident/patient”. In contrast, §3.10 omits all oral hygiene devices, including water flossers, electric toothbrushes, and ultrasonic denture cleaners.

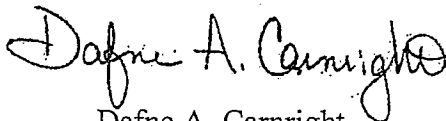
D. Appendix A, Physical Needs Module, Competencies Section, includes the following recital: “Accurately measure and record with a variety of commonly used devices: blood pressure, height and weight, and temperature, pulse, respiration. Section 3.10 would benefit from the addition of a pulse oximeter.

Sixth, §4.3.1 could be clarified to note that it only applies to CNAs who have previously worked in a facility. Otherwise, the 80 hour orientation requirement in §4.1.1 would apparently apply.

Seventh, §5.3.6 could be improved by clarifying an individual's option to be represented by an attorney of the individual's choice.

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

Sincerely,

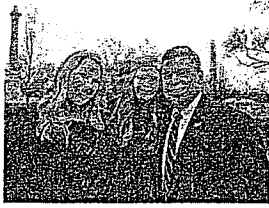
A handwritten signature in cursive script that reads "Dafne A. Carnright". The signature is written in black ink and is positioned above the printed name and title.

Dafne A. Carnright
Chairperson

DAC:kpc

Delaware family celebrates new law for disabled

Nicole Gaudiano, News Journal Washington Bureau Published 6:19 p.m. ET Feb. 10, 2015 | Updated 10:37 a.m. ET Feb. 11, 2015



(Photo: H. DARR BEISER/USA TODAY)

WASHINGTON — Rick and Amy Kosmalski of Bear wanted their 8-year-old daughter to be able to save for her education and other needs, just as their son could.

But a Medicaid rule prevented Kayla, who has Down syndrome, from having more than \$2,000 in her name. Unlike her 2-year-old brother, Logan, Kayla couldn't use a tax-advantaged account to save money she received as gifts from relatives.

A new law changes that rule — and Kayla's future. On Tuesday, Kayla's family participated in an event hosted by Vice President Joe Biden to celebrate passage of the ABLÉ (Achieving a Better Life Experience) Act.

"She'll be able to save for and pay for the things that she needs to be the best person she can be," said Rick Kosmalski, a marketing manager at JPMorgan Chase & Co. "That's really what the ABLÉ Act does. It gives her more financial freedom in her life."

Amy Kosmalski said, "Now we'll finally be able to save for her future."

The Kosmalskis spent five years lobbying Congress for the law, signed by President Barack Obama. It allows eligible people with disabilities to establish ABLÉ accounts, which resemble qualified college-savings programs known as 529 plans, while protecting their eligibility for Medicaid and other federal benefits.

The accounts can be used to save for education, housing, transportation, employment training and other expenses. States still must take action to make the accounts available to residents.

Biden, speaking to advocates and parents of children with disabilities, said the law is "simply the right thing to do, but it's also in the economic interest of the country."

If it makes sense for families to set aside money in a 529 college-savings account, he asked, "Why in God's name does it not make as much sense for you to be able to do that to care for the needs of your children with disabilities?"

Biden, who represented Delaware in the Senate for 36 years, called "Princess Kayla" to the front of the room as he was speaking because of their home-state connection. Biden gave Kayla a stuffed animal, named after his dog, Champ, and signed her program. The Kosmalskis and a few other families met privately with Biden before the event.

"Kayla, like so many others here, has a chance at an incredibly bright future," he told the group gathered at the Eisenhower Executive Office Building.

[With Wilmington schools at crossroads, TNJ to host forum](#)

[\(http://www.delawareonline.com/story/news/education/2015/02/10/city-schools-crossroads-tnj-host-forum/23212233/\)](http://www.delawareonline.com/story/news/education/2015/02/10/city-schools-crossroads-tnj-host-forum/23212233/)

Kayla, a third-grader at Cedar Lane Elementary School, loves music, dancing, swimming and shopping. She goes by "Princess Kayla" on her business cards, which include her Twitter handle, blog, email and Instagram account. She counts former Delaware Attorney General Beau Biden and Delaware Gov. Jack Markell among her Twitter followers.

Her parents' goal has always been for her to live a productive and independent life, have a job someday and contribute to the community. They spent the first few years of her life focusing on her health and meeting her basic needs, such as signing her up for Medicaid. It was "devastating" to learn that Kayla's efforts to save money would cost her federal benefits, Rick Kosmalski said.

"It's hard enough that she has medical problems that you have to deal with and understand, but then there's financial problems that you never considered," he said.



(Photo: H. DARR BEISER/USA TODAY)

Rick Kosmalski is a National Down Syndrome Society board member and president of the 321foundation, a new nonprofit focusing on advocacy, education and support for people with Down syndrome.

The family's advocacy started five years ago with the National Down Syndrome Society's "Buddy Walk on Washington," a conference that brings the Down syndrome community together to push for key legislative issues.

The family held follow-up meetings in Delaware with members of the congressional delegation's staff. They also spent time tracking down people in other states who would lobby their own members of Congress.

"The issue at the top of the list was the ABLE Act," Rick Kosmalski said. "That was the thing that we saw to be the most achievable."

"Great moments" on the way to the bill's final passage include decisions by Rep. John Carney and Sen. Chris Coons to co-sponsor the bill last Congress, Kosmalski said.

But there were plenty of letdowns. Even as more co-sponsors signed onto the bill, that session of Congress ended, forcing the Kosmalskis to start over. They worried that would happen again last year as Congress delayed action until December.

But the House passed the measure 404-17 on Dec. 3 and the Senate followed suit, 76-16, on Dec. 16, just before recessing. Delaware's congressional lawmakers voted in favor.

The Kosmalskis were in the gallery for the House vote and watched the Senate vote on C-SPAN.

"It's so exciting," Rick Kosmalski said. "Everyone was taking screenshots of the TVs."

Coons, in a statement after the vote, said the law means families "will no longer need to choose between their family's present and their child's future."

The next step is for states to implement the law. Markell supports it and is awaiting federal guidance to implement it appropriately, said his spokesman, Jonathon Dworkin.

"We advocated for this law to help people with disabilities become more financially secure and embrace the opportunity to help implement it," Dworkin said in a statement. "It's also an important part of helping individuals to become employed and to receive the support they need in their employment."

Contact Nicole Gaudiano at ngaudiano@gannett.com. Follow her on Twitter @ngaudiano.

[Christiana Care to end key mental health services](http://www.delawareonline.com/story/news/health/2015/02/08/christiana-care-end-key-mental-health-services/23100989/)

[\(http://www.delawareonline.com/story/news/health/2015/02/08/christiana-care-end-key-mental-health-services/23100989/\)](http://www.delawareonline.com/story/news/health/2015/02/08/christiana-care-end-key-mental-health-services/23100989/)

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Delaware 19th state to enact ABLÉ legislation

59

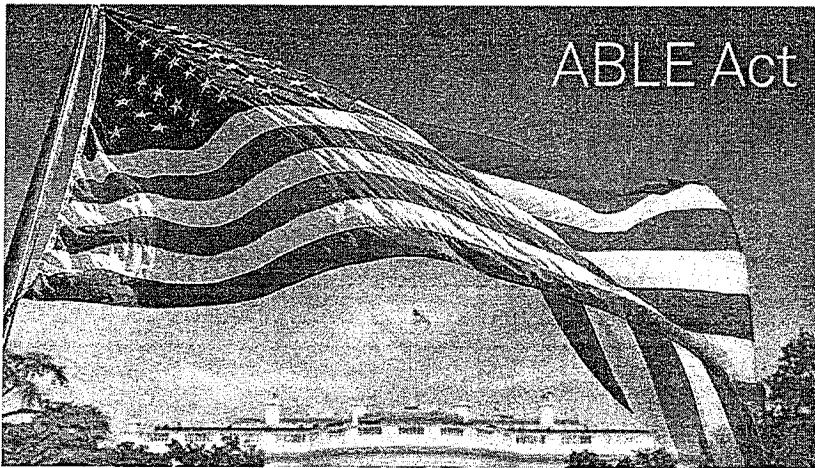
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June 14, 2015



Dover, DE- Governor Jack Markell has signed into law HB60, legislation that allows families to set up tax-free 529A savings accounts for disability-related expenses.

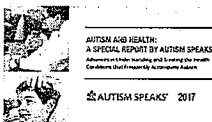
The Delaware ABLÉ law follows upon enactment by the federal government of the Stephen Beck, Jr., Achieving a Better Life Experience Act of 2014. The federal law allows ABLÉ account funds to be disregarded for means-tested federal programs such as SSI and Medicaid, which cap (usually at \$2,000) the amount an individual with a disability may save. Delaware's ABLÉ law was sponsored by Representative Melanie George Smith.

"ABLÉ's passage in Delaware would not have been possible without the multitude of champions in the General Assembly and the tremendous support of grassroots advocates across the state," said Stuart Spielman, Senior Policy Advisor and Counsel at Autism Speaks. "We, along with all of the Delaware families affected by autism, are extremely grateful to Governor Markell for signing the ABLÉ that will prove to be an invaluable financial tool for families across the state."

ABLÉ laws have been enacted in 19 states: Arkansas, Colorado, Delaware, Florida, Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Montana, Nebraska, Nevada, North Dakota, Tennessee, Utah, Vermont, Virginia, Washington, and West Virginia. ABLÉ bills have now passed the legislatures in seven other states: Alabama, Connecticut, Hawaii, Illinois, Iowa, Missouri, and Texas.

Explore more: [Advocacy \(/section/advocacy\)](#), [ABLE \(/site-wide/able\)](#), [ABLE States \(/site-wide/able-states\)](#), [Advocacy \(/site-wide/advocacy\)](#), [Autism Votes \(/site-wide/autism-votes\)](#), [Delaware \(/site-wide/delaware\)](#)

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as other expenses that may be identified from time to time in future guidance published in the Internal Revenue Bulletin. See § 601.601(d)(2) of this chapter. Qualified disability expenses include basic living expenses and are not limited to items for which there is a medical necessity or which solely benefit a disabled individual. A qualified ABLÉ program must establish safeguards to distinguish between distributions used for the payment of qualified disability expenses and other distributions, and to permit the identification of the amounts distributed for housing expenses as that term is defined for purposes of the Supplemental Security Income program of the Social Security Administration.

(2) *Example.* The following example illustrates this paragraph (h):

Example. B, an individual, has a medically determined mental impairment that causes marked and severe limitations on her ability to navigate and communicate. A smart phone would enable B to navigate and communicate more safely and effectively, thereby helping her to maintain her independence and to improve her quality of life. Therefore, the expense of buying, using, and maintaining a smart phone that is used by B would be considered a qualified disability expense.

(i) *Separate accounting.* A program will not be treated as a qualified ABLÉ program unless it provides separate accounting for each ABLÉ account. Separate accounting requires that contributions for the benefit of a designated beneficiary and any earnings attributable thereto must be allocated to that designated beneficiary's account. Whether or not a program provides each designated beneficiary an annual account statement showing the total account balance, the investment in the account, the accrued earnings, and the distributions from the account, the program must give this information to the designated beneficiary upon request.

(j) *Program-to-program transfers.* A qualified ABLÉ program may permit a change of qualified ABLÉ program or a change of designated beneficiary by means of a program-to-program transfer as defined in § 1.529A-1(b)(14). In that event, subject to any contrary provisions or limitations adopted by the qualified ABLÉ program, rules similar to the rules of § 1.401(a)(31)-1, Q&A-3 and 4 (which apply for purposes of a direct rollover from a qualified plan to an eligible retirement plan) apply for purposes of determining whether an amount is paid in the form of a program-to-program transfer.

(k) *Carryover of attributes.* Upon a rollover or program-to-program transfer, all of the attributes of the former ABLÉ account relevant for purposes of

calculating the investment in the account and applying the annual and cumulative limits on contributions are applicable to the recipient ABLÉ account. The portion of the rollover or transfer amount that constituted investment in the account from which the distribution or transfer was made is added to investment in the recipient ABLÉ account. Similarly, the portion of the rollover or transfer amount that constituted earnings of the account from which the distribution or transfer was made is added to the earnings of the recipient ABLÉ account.

(l) *Investment direction.* A program will not be treated as a qualified ABLÉ program unless it provides that the designated beneficiary of an ABLÉ account established under such program may direct, whether directly or indirectly, the investment of any contributions to the program (or any earnings thereon) no more than two times in any calendar year.

(m) *No pledging of interest as security.* A program will not be treated as a qualified ABLÉ program unless the terms of the program, or a state statute or regulation that governs the program, prohibit any interest in the program or any portion thereof from being used as security for a loan. This restriction includes, but is not limited to, a prohibition on the use of any interest in the ABLÉ program as security for a loan used to purchase such interest in the program.

(n) *No sale or exchange.* A qualified ABLÉ program must ensure that no interest in an ABLÉ account may be sold or exchanged.

(o) *Change of residence.* A qualified ABLÉ program may continue to maintain the ABLÉ account of a designated beneficiary after that designated beneficiary changes his or her residence to another State.

(p) *Post-death payments.* A qualified ABLÉ program must provide that a portion or all of the balance remaining in the ABLÉ account of a deceased designated beneficiary must be distributed to a State that files a claim against the designated beneficiary or the ABLÉ account itself with respect to benefits provided to the designated beneficiary under that State's Medicaid plan established under title XIX of the Social Security Act. The payment of such claim (if any) will be made only after providing for the payment from the designated beneficiary's ABLÉ account of all outstanding payments due for his or her qualified disability expenses, and will be limited to the amount of the total medical assistance paid for the designated beneficiary after the establishment of the ABLÉ account (the

date on which the ABLÉ account, or any ABLÉ account from which amounts were rolled or transferred to the ABLÉ account of the same designated beneficiary, was opened) over the amount of any premiums paid, whether from the ABLÉ account or otherwise by or on behalf of the designated beneficiary, to a Medicaid Buy-In program under any such State Medicaid plan.

(q) *Reporting requirements.* A qualified ABLÉ program must comply with all applicable reporting requirements, including without limitation those described in §§ 1.529A-5 through 1.529A-7.

(r) *Effective/applicable dates.* This section applies to taxable years beginning after December 31, 2014.

§ 1.529A-3 Tax treatment.

(a) *Taxation of distributions.* Each distribution from an ABLÉ account consists of earnings (computed in accordance with paragraph (c) of this section) and investment in the account. If the total amount distributed from an ABLÉ account to or for the benefit of the designated beneficiary of that ABLÉ account during his or her taxable year does not exceed the qualified disability expenses of the designated beneficiary for that year, no amount distributed is includable in the gross income of the designated beneficiary for that year. If the total amount distributed from an ABLÉ account to or for the benefit of the designated beneficiary of that ABLÉ account during his or her taxable year exceeds the qualified disability expenses of the designated beneficiary for that year, the distributions from the ABLÉ account, except to the extent excluded from gross income under this section or any other provision of chapter 1 of the Internal Revenue Code, must be included in the gross income of the designated beneficiary in the manner provided under this section and section 72. In such a case, the earnings portion of the distribution includable in gross income is equal to the earnings portion of the distribution reduced by an amount that bears the same ratio to the earnings portion as the amount of qualified disability expenses during the year bears to the total distributions during the year. For this purpose, all amounts relevant under section 72 are determined as of December 31 of the year in which the designated beneficiary's taxable year begins, and all amounts distributed from an ABLÉ account to or for the benefit of the designated beneficiary during his or her taxable year are treated as one distribution. If an excess contribution or excess aggregate contribution is

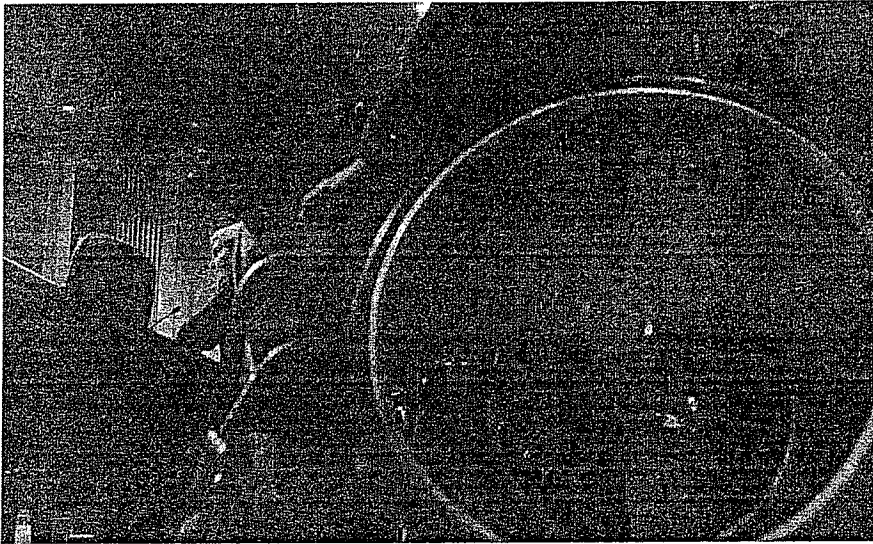
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The limitations of ABLE accounts for the disabled

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The limitations of ABLE accounts for the disabled



U.S. Secretary of State John Kerry (L) testifies at the Senate Foreign Relations Committee regarding the "Convention on the Rights of Persons with Disabilities" in Washington November 21, 2013. REUTERS/Gary Cameron

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By Liz Weston | LOS ANGELES

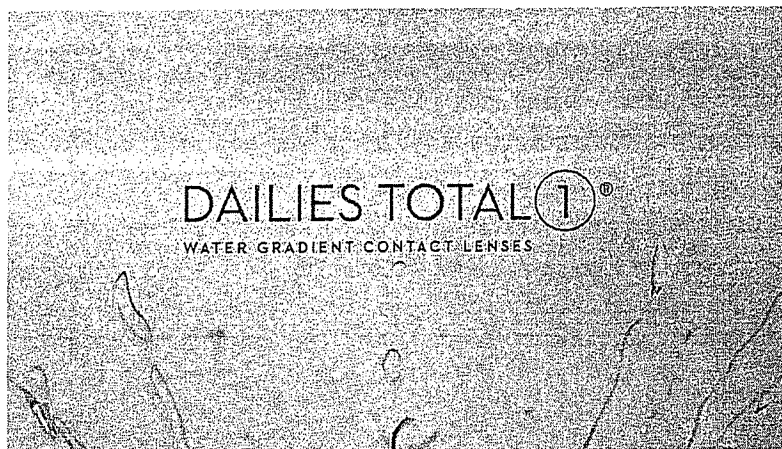
The limitations of ABLE accounts for the disabled

Nearly six million people with disabilities may benefit from new tax-free savings plans approved by Congress last year, but the accounts may not be as helpful or available as quickly as originally promised.

After a decade of lobbying by disability advocates, Congress passed The Achieving a Better Life Experience (ABLE) Act in the final hour before adjourning in December.

The ABLE Act allows families to set aside money that can be used tax-free for a disabled person's expenses without risking the loss of government benefits.

ADVERTISING



The beneficiary must have experienced the disability before age 26 to qualify for an ABLE account, which will be administered by the states' 529 college savings programs.

The National Down Syndrome Society has estimated that about 5.8 million individuals and families could benefit from the accounts.

Disability advocates had predicted that ABLE accounts would start becoming available later this year.

But one of the states that's farthest along in creating them, Virginia, will not be able to offer the accounts until "the first half of 2016," said Mary Morris, chief executive of the Virginia529 College Savings Plan.

Another state, Massachusetts, plans to make an announcement "in late fall" about its program but currently is not committing to a roll-out date, said Martha Savery, communications director for the Massachusetts Educational Financing Authority.

'TREMENDOUS INTEREST'

So far, 11 states have enacted laws to create ABLE accounts, while six other states have passed bills and are waiting for gubernatorial signatures. Another 23 are considering such legislation, said Stuart Spielman, senior policy advisor and counsel at Autism Speaks, a research and advocacy group.

The 11 states that have laws in place include Arkansas, Kansas, Louisiana, Maryland, Massachusetts, Montana, North Dakota, Utah, Virginia, Washington and West Virginia.

"It's gratifying that there is tremendous interest in having this vehicle available," Spielman said. "The states have said, 'We really like this.'"

PICTURES

Families have to wait for their states to act, since the law allows them to open just one account per beneficiary and only in the state where the disabled person resides.

That contrasts with college savings plans, which don't limit where or how many accounts can be opened.

To further reduce the accounts' cost in lost tax revenue, Congress limited the amount that can be saved to \$14,000 each year and required that any money remaining in the accounts after the death of a disabled person be subject to reclamation by Medicaid.

Currently, people with disabilities cannot have more than \$2,000 in assets and still qualify for Medicaid, the government health program for the poor, and Supplemental Security Income, which provides stipends to low-income people who are elderly, blind or disabled.

With ABLE accounts, people could have up to \$100,000 in assets before their savings affects their ability to qualify for these benefits.



CLAWBACK DRAWBACK

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But just as the estates of elderly people are subject to what is known as a "clawback" if they receive Medicaid benefits, the estates of disabled people who die with money in their ABLE accounts would also be subject to Medicaid claims.

That's a fairly significant drawback for many families, said financial planner, John W. Nadworny.

These families may prefer to save for their children in their own names and then set up a special needs trust in their wills to take care of their children after the

parents' death, said Nadworny, director of special needs financial planning at Shepherd Financial Partners in Winchester, Massachusetts.

Still, ABLE accounts would be a boon for disabled people who want to save on their own without jeopardizing government benefits, Nadworny said.

And publicity about the accounts will help families focus on the need to save for children with disabilities, rather than simply hope the government will take care of them.

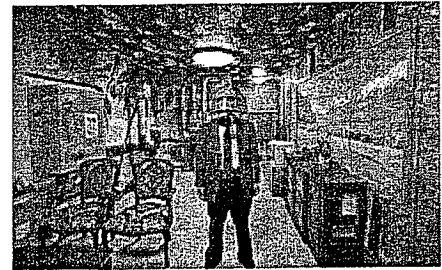
"The government will do the best it can" but benefits aren't guaranteed, said Nadworny, who co-authored the book, "The Special Needs Planning Guide: How to Prepare for Every Stage of Your Child's Life."

"This educates people that they have to save."

(Editing by Beth Pinsker and Bernadette Baum)

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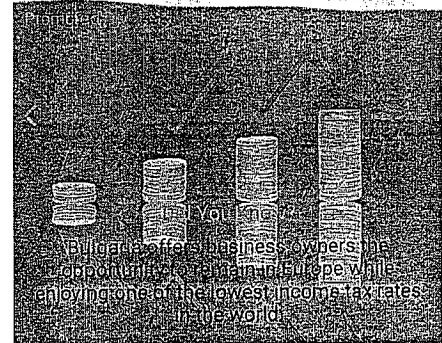
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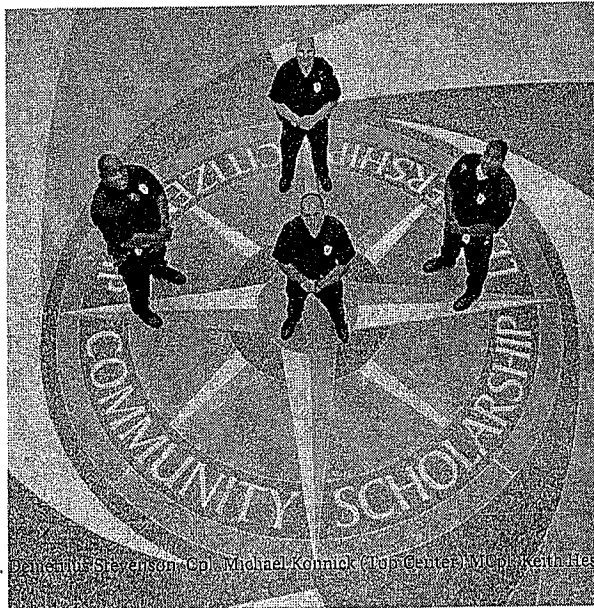
School resource officers emphasize empathy

School resource officers say they're more than just enforcers.



COMMENT 0

0



Left: Cpl. Dan Smith, Stevenson; Cpl. Michael Komick (Top Center); Cpl. Keith Heste...

By David Paulk
David.paulk@doverpost.com
@PaulkatDover
Posted Nov. 4, 2015 @ 3:00 am

The position of school resource officer has come under fire in recent weeks. In the wake of an officer's treatment of a student in South Carolina, organizations such as the Delaware American Civil Liberties Union have expressed their disapproval of police presence in public schools.

"Generally, we don't feel that armed police officers are necessary in schools to keep the children safe and to create a positive climate in the school," said Kathleen MacRae, executive director of ACLU of Delaware.



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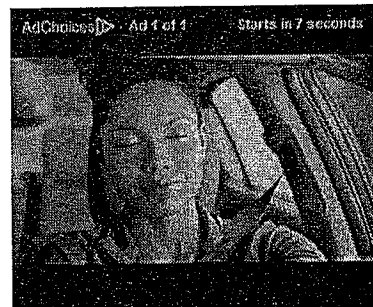
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But Dover High School's Demetrius Stevenson sees being a school resource officer as a calling, and a way for him to give back to his community.

Stevenson has been an SRO at Dover High for the past four years. He said the key to being effective is communicating with students and developing relationships with them.

"I can relate to a lot of these students," Stevenson said. "Coming up not having it so good, I understand the nature of these students and why they act out the way they way do."

More than just enforcers

Across the country, school resource officers have been assigned to schools since 1997 amid a series of high profile shootings, including the 1999 Columbine High School shooting in Littleton, Colo. where two teens killed 13 students and wounded another 20.

According to a 2013 congressional report, policymakers expressed renewed interest in SROs after the 2012 mass shooting at Sandy Hook Elementary School.

Cpl. Mark Hoffman, spokesman for the Dover Police Department, said the officers are assigned to schools by the department. Police interested in being an SRO must apply for the position.

Around Dover the number of SROs varies – Caesar Rodney and Polytech have them only at their high schools – but all districts have at least one.

Capital has total of four: James Piazza at Central Middle School, Cpl. Michael Konnick at William Henry Middle School, Patrolman First Class Terrance Knight at Parkway and Stevenson at Dover High School.

Their position is about more than being an enforcer.

"We wear a lot of different hats," Stevenson said. "We're not just police officers in the school; we're more like a counselor, a teacher or an administrator."

James Piazza, who watches over students at Central Middle School, said his goal is to make sure parents understand their kids are being taken care of while he's on the job.

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"From Monday to Friday the students and staff experience a positive interaction with a police officer so they know that not all cops are bad," Piazza said.

But he said the position does become challenging when trying to understand different personalities.

"Every student comes from a different background, so you don't know what's on their plate," he said.

Criticisms: 'School to prison pipeline'

The ACLU does not take the same view of community benefits. It asserts their presence is only needed in violent neighborhoods.

"We don't accept SROs in schools except in extreme circumstances, such as an inner city school that has a history of weapons in the building or gang activity in the building," MacRae said. "And even then we feel they should have a limited role in terms of interacting with the students."

MacRae said the ACLU opposes school resource officers otherwise because they feel it contributes to what they call the "school to prison pipeline."

"The presence of a police officer in the schools criminalizes common adolescent misbehavior and we don't feel that's the way to go," she said. "African American boys are arrested for behavior in school and then put into juvenile detention, prisons or get involved with the criminal justice system and we feel that pipeline needs to be cut off."

Focus on de-escalation

Stevenson said he is no stranger to interacting with unruly students, but said the goal is to always try and de-escalate the problem before it grows out of control.

"The SRO that was in South Carolina – I've been in that situation about a half dozen times," Stevenson said. Whenever he encounters a disruptive student, the first thing he does is empty the classroom.

"You take the audience away," he said.

Stevenson is referencing a South Carolina Senior Deputy, who flipped a student backward in her desk and then tossed her across the room. He was fired for his actions.

By emptying the classroom, Stevenson said, it's easier to speak with the student. He then tries to reach the root of the student's problem.

"I usually pull up a chair and ask what's going on," he said "Nine times out of 10 they tell me what's going on and we get up and walk out of the class."

If the student refuses to cooperate Stevenson said he or she has to be restrained.

"If a situation ever arises where that student becomes a combatant, at the end of the day, we're police officers and we have to do what we gotta do."

Capital School District Superintendent Dan Shelton said the relationship with Dover police has been productive.

Rather than a source of friction, he sees it as a potential bridge with the community.

"One of the issues that we're having is this whole chasm of trust between the police and the community, and I think by having them in the schools they can help shape that positive relationship."

Shelton said increasing trust with law enforcement could potentially prevent future crimes.

"If you're a student that knows about something you'll be comfortable to report it, which will put everybody's safety in a better situation, that's what community policing is all about.

"The more trust our community has with our police the safer we're all going to be."

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COMMENT

More police in our schools is not the answer

DELAWARE VOICEKIRSTIN CORNNELL,
LISA MINUTOLA
AND KATHLEEN MACRAE

The Delaware Center for Justice, along with our partners at the Office of Defense Services and the ACLU of Delaware, were incredibly disheartened by the recent article that highlighted Sen. Bob Marshall's called for more police in schools.

There is no evidence that placing police officers in schools improves public safety, but we do know from research that the presence of more police in schools has caused a national surge in arrests and misdemeanor charges for behavior that would have previously been considered a school discipline matter and handled by a principal, a teacher or a guidance counselor.

A study published by the Washington University Law Review found that the presence of school resource officers increases the likelihood of students being involved in the justice system for virtually every offense that occurs in schools, including lower-level offenses like fighting and theft. Further, countless studies have shown that high schoolers who have early run-ins with the law are more likely to drop out or potentially be rearrested.

During the 2014-2015 school year, 111 students arrested in school were referred to DCJ's School Offense Diversion Program by the Attorney General's Office. SoDP is a resource for students who have been arrested on school property to learn to skillfully and mindfully resolve problems so that what may have been their first experience with the juvenile justice system is their last.

Since the program's original implementation in 2004, we have frequently taken pause to examine the underlying issues that contribute to behaviors that may lead students as young as 11 to have criminal records. Though there are School Resource Officers who work hard to build relationships with students, their power to arrest can inherently become a crutch for schools that lack the capacity to adequately address the issues that lead to conflict.

Of the students referred to SoDP, the most common charges are inherently subjective in nature: one student who disrupts their classroom may be escorted to a guidance counselor, while another may be reported to an SRO.

The same behavior can result in drastically different outcomes, dependent solely on how a school is staffed. This ambiguity leads to inconsistent applica-

tions of policies and disproportionate levels of arrest in schools with fewer resources.

Police in schools raise concerns about the criminalization of typical teenage misbehavior, about the discriminatory enforcement of vague laws and about the excessive use of physical force against children in school spaces where they should be able to feel safe.

We absolutely agree that our students need more support. But they need school-based social workers. They need guidance counselors. They need mentors. They need tutors. They do not need an increased presence of police.

Kirstin Cornnell is the director of operations at the Delaware Center for Justice. Lisa Minutola is the chief of legal services at the Office of Defense Services. Kathleen MacRae is the executive director of the ACLU of Delaware.

OPINION

Susan D. Leath President and Publisher
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EDITORIAL

CALL FOR POLICE IN SCHOOLS SHORT-SIGHTED

There are certainly merits to the notion that more Delaware public schools could benefit from having police officers assigned to their buildings.

Sen. Bob Marshall, a Democratic candidate in Wilmington mayor's race, intends to propose legislation and seek funding for so-called school resource officers in elementary and middle schools. Such officers already work in Delaware high schools. Such officers being of every single Delaware school student.

But, in a time when districts have to use referendums to beg voters for more resources (or to maintain the status quo) and plans to overhaul our schools are consistently buried beneath a landslide of political apathy, we find the call for more police in schools to be yet another short-sighted "easy way out."

In reality, research shows that the jury is out on the overall effectiveness of school resource officers. Success stories are told not on a state-by-state basis, but school by school.

For example, the Center for Problem-Oriented Policing, points to a successful effort at what was once a violence-plagued Boston High School. Police and teachers worked together and brought discipline and safety by implementing an additional rule each week.

There is no doubt some Delaware schools have experienced similar success. Proponents say having resource officers in schools helps develop lifelong trust between students and law enforcement.

Again, research and real-world experience do not support that theory. Distrust of law enforcement is a complex, multigenerational issue that goes far, far beyond the capabilities of a singular school resource officer, no matter how skilled they might be.

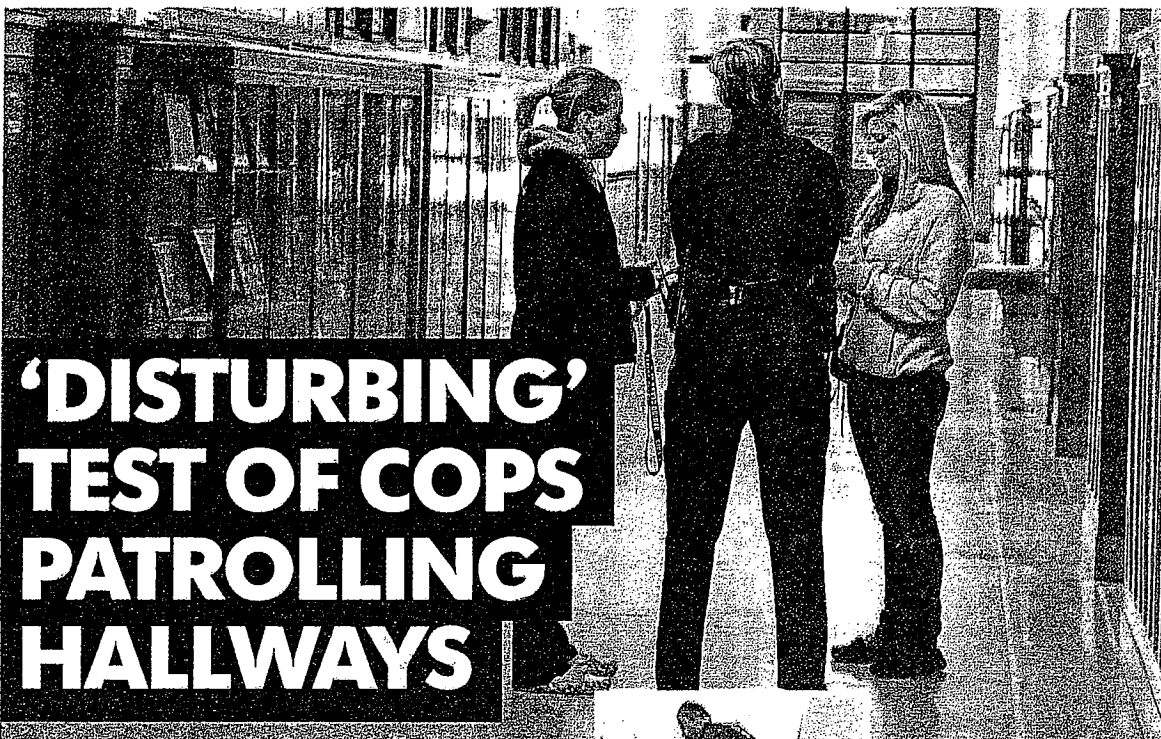
Research does show that the presence of school resource officers can lead to more disciplinary action against students, and, as a result, more suspensions or other punishments.

Some officers say district rules can make it very difficult for them to respond to a situation but not document it. So infractions that once would have been considered minor are now made part of the student's disciplinary record.

Some believe the presence of police in schools has formed what groups like the American Civil Liberties Union call a school-to-prison pipeline. We, on the other hand, believe condemning the concept as a whole is simplistic.

Our schoolchildren need all of the help they can get. They need it academically. They need it socially — especially online. In too many cases, they rely on schools for food, shelter and love.

You can't deny the causes of these problems all you want, but if we as a state and as a society are going to break this cycle of struggle — and make our schools safer — we need to invest primarily in the teachers and support staff that can make a difference for generations to come.



DAVID PURDY, GANNETT

'DISTURBING' TEST OF COPS PATROLLING HALLWAYS

1 in 4 schools have at least part-time security, which riles civil rights groups

Greg Toppo
USA TODAY

A viral video of a South Carolina school resource officer slamming a student to the floor of a classroom is focusing attention on the increasing presence of police officers in schools. But cops in classrooms have long been a source of tension.



Lott: "Not acceptable."

Richland County, S.C., Sheriff Leon Lott said an investigation found that the force Senior Deputy Ben Fields used to arrest a student who was disrupting a class Monday at Spring Valley High School on Monday was "not based on training or acceptable." Fields was terminated from his job Wednesday, Lott said.

Communities nationwide have spent the past several years increasing the presence of police on school campuses, even as crime rates have dropped precipitously in the USA's schools.

The National Center for Edu-

cation Statistics reported this year that the number of crimes against students has plummeted more than 80% since 1992, with the rate of victimization for students in the USA's middle schools and high schools dropping from about 182 incidents per 1,000 students to 30 in 2013.

Yet in its most recent report on school safety nationwide, the Justice Department in 2014 said 43% of public schools reported the presence of one or more security guards, security personnel, school resource officers (SROs) or sworn law enforcement officers during the 2009-10 school year.

Civil rights groups have long said that cops in schools actually make safety worse for many children, increasing the likelihood that students will end up severely disciplined for minor infractions.

In early 2013, shortly after the Sandy Hook Elementary School shootings in Newtown, Conn., and amid calls for more armed police in schools, Advancement Project, a Washington, D.C.-based civil rights group, proposed that schools use the money they would spend on more police to develop long-term safety plans and invest in conflict resolution, as well as better access to mental health services for students.



AP

Senior Deputy Ben Fields tries to forcibly remove a student who refused to leave class at her Columbia, S.C., high school, in an image recorded by a fellow student.

"This thing went from a school discipline issue to a criminal matter in two minutes."

Curt Lavarello, expert on school law enforcement

As part of its proposal, the group tracked school referrals to Florida's juvenile justice system in 2010-11 and found that of 16,400 referrals, 69% were for misdemeanors.

On Tuesday, Advancement Project co-director Judith Browne Dianis said the video from South Carolina "underscores the problem with police in

Des Moines school resource officer Deb Van Velzen counsels students at Lincoln High.

schools." Instead of de-escalating the situation, she said, the officer "dehumanized and criminalized a black teenage girl."

Curt Lavarello, a school law enforcement expert, said that if administered properly, an SRO program "can have incredible value to schools." Its most important effect is to help young people develop a trusting relationship with law enforcement. That pays dividends if they're bullied or are crime victims, he said.

But the video that surfaced on Monday was "disturbing," Lavarello said. "This thing went from a school discipline issue to a criminal matter in two minutes," he said. Lavarello, who founded the National Association of School Resource Officers in 1991, said a well-trained SRO would have tried to "verbally de-escalate" the situation.

Civil rights groups say more police officers in schools often mean more suspensions, which disproportionately affect minority students. A study issued in February by the Civil Rights Project at UCLA found that since 1972, suspension rates for white students have risen 2 percentage points, from 3% to 5%. Meanwhile, suspension rates for African-American students nearly tripled, rising from 6% to 16%.

Armed But Untrained: Why So Many School Cops Are Unprepared for the Classroom

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November 1, 2015

by MARK KEIERLEBER
(HTTPS://WWW.THE74MILLION.ORG/CONTRIBUTOR/MARK-KEIERLEBER)

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Why advocates say school police officers need more youth-specific training

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Civil rights advocates say inadequate school police training contributes to the school-to-prison pipeline



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Updated Nov. 9

A high school girl who refuses to follow school rules is body-slammed to the ground, pulled out of her chair, and flung past rows of desks. The school resource officer's use of force, caught on video, unleashes national outrage and costs him his job.

A 9-year-old girl with ADHD who screams and disrupts class finds herself confined to the back of a police cruiser for more than an hour until her mom gets home.

An 8-year-old boy is cuffed above the elbows as a cell phone captures the scuffle. "You can do what we ask you to or you can suffer the consequences," the school resource officer says to the boy in a video that prompted a lawsuit over his use of restraint.

In Irving, Texas, a boy who shows a clock to his science teacher, proud of his ingenuity, finds himself in handcuffs — accused of building a "hoax bomb." In Round Rock, Texas, an SRO called to stop a gym fight chokes a 14-year-old boy to the floor.

There are about 19,000 sworn police officers stationed in schools nationwide, according to U.S. Department of Justice estimates, and stories about their school discipline disasters cross Mo Canady's desk all the time.

"The first thing I do is search our database to see 'Did this person come through our training?'" said Canady, executive director of the National Association of School Resource Officers, which offers specialized training to SROs — primarily on a voluntary basis. "And the answer is consistently 'no.'"

These incidents, youth rights activists and federal officials argue, show that the school resource officers lacked the proper training needed to interact effectively with children, especially when they are black, Hispanic, or disabled. Police officers' encounters with students in the hallways are being increasingly scrutinized in the same way that their exchanges with adult civilians in the larger community are, for bias and alleged brutality.

Sometimes what happens in the streets is mirrored in the schools. A U.S. Department of Justice report found "police action that is unreasonable for a school environment" among SROs in Ferguson, Missouri. The probe followed the fatal police shooting of 18-year-old Michael Brown, whose death sparked months of protests and the Black Lives Matter movement. Overall, the Ferguson Police Department's disproportionate number of arrests and its use of force stemmed from "unlawful bias" against black residents, according to the DOJ report.



Attempts to crack down on school violence have come at the expense of students of color and those with disabilities, who are disproportionately punished — including through restraint and arrest, U.S. Department of Education data show.

Too often, they're being funneled into the school-to-prison pipeline, say advocates concerned that disadvantaged students are systematically pushed from classrooms to courtrooms.

For example, black students were 16 percent of the total student enrollment in the 2011-12 school year but 27 percent of students referred to law enforcement and 31 percent of students involved in a school-related arrest, according to U.S. Department of Education Office for Civil Rights data (<http://ocrdata.ed.gov/Downloads/CRDC-School-Discipline-Snapshot.pdf>).

Students with disabilities represented about 12 percent of the total student population but accounted for a quarter of those arrested and referred to law enforcement, 75 percent of those who were physically restrained at school and 58 percent of those placed in seclusion or involuntary confinement.

A range of factors may cause variations in student discipline rates, but research suggests (<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201401-title-vi.html#note7>) racial disparities are not caused by more misbehavior, but because “racial discrimination in school discipline is a real problem.”

High-profile cases elicit outrage

Last year, residents in Columbia, South Carolina, came to Lisa Thureau, founder and executive director of Strategies for Youth, a school resource officer training program, with their concerns about the Richland County Sheriff's Department, the same department whose deputy was caught on video last week violently handling the teenage girl who refused to leave her classroom at Spring Valley High School or put away her cell phone.

Community members had heard horror stories about officers' use of force, arrests, and suspensions in their schools, Thureau said. They asked for her help.

Strategies for Youth gave the residents a set of training recommendations, which they delivered to the sheriff's department. Recommendations included the nonprofit organization's five-day train-the-trainer program, which uses a police training coach and a psychologist to teach officers how to train their co-workers. They also recommended a second, three-day session.

The training would have cost the department \$75,000, according to the proposal. Thureau said she provided a list of organizations that could help pay for the program but communication between the community members and the sheriff's department fell flat.

"We encounter this in a lot of places. There is no money," she said. "We're increasing the demands on police and doing nothing to support or equip them to be first responders to youth and families' needs."

The conduct of Deputy Ben Fields, the Spring Valley High School SRO, has sparked national outrage and prompted a criminal civil rights probe by the Federal Bureau of Investigations and the Justice Department.

Fields "did not follow proper training, did not follow proper procedure when he threw the student across the room," Richland County Sheriff Leon Lott said at a news conference on Wednesday to announce Fields had been fired.

In this incident, school officials made the first mistake when they called on a police officer to address a school discipline incident, said Dennis Parker, director of the ACLU Racial Justice Program. But once the officer was there, he should have known how to de-escalate the situation without the use of force.

"It would be good to have clear training requirements for all schools and a clear understanding of what the role of school resource officers in schools should be," Parker said. "I think that should be part of an agreement that is entered into between the school resource officers and the school district."

(In a column for The Seventy Four, Cynthia Tucker Haynes explains why police officers' presence in schools is often problematic.) (<https://www.the74million.org/article/tucker-when-the-schoolhouse-becomes-the-station-house-confronting-too-many-cops-in-the-classroom>)

Under South Carolina law, police officers must complete basic training as provided or recognized by the National Association of School Resource Officers or the South Carolina Criminal Justice Academy before they're placed in schools.

But Canady, the NASRO executive director, said SROs in South Carolina, including Fields, don't take his training because his program wasn't approved by a state regulatory commission that certifies SRO training programs in the state.

According to the Strategies for Youth survey, the state police academy gives recruits 3.5 hours of training on juvenile justice issues. This does not include training on youth development and psychology, demographic issues, or cultural influences.

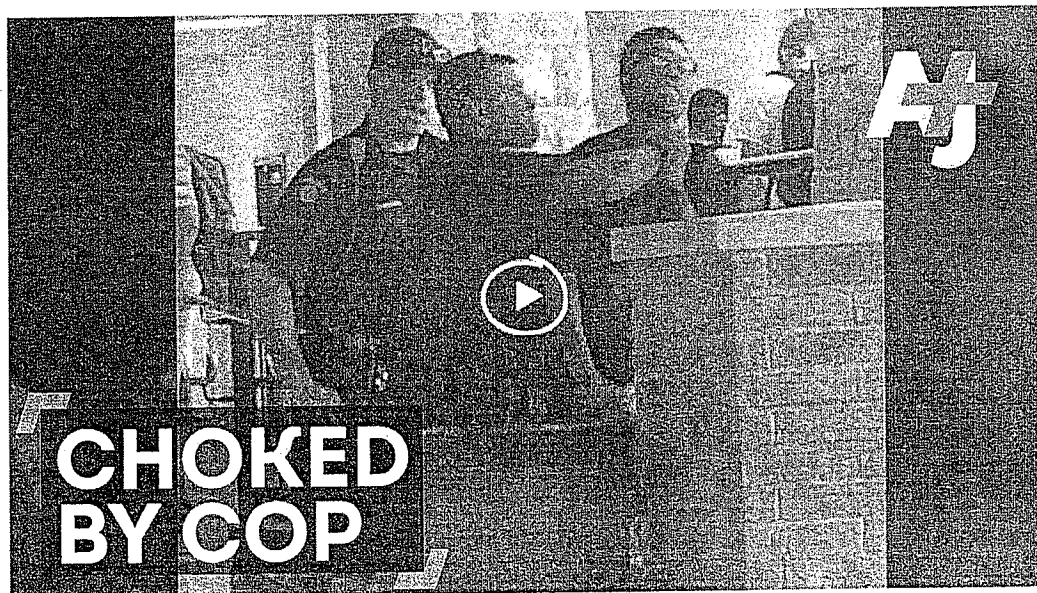
Blurred lines

On Oct. 8, two school resource officers were called to a central Texas high school when a school administrator was unable to de-escalate a fight between two boys in the cafeteria. Two Round Rock Police Department SROs responded to break up the fight at Round Rock High School, separating the students, according to a news release from the police department.

One of the boys, identified as 14-year-old Gyasi Hughes, refused to calm down and attempted to get past the officers to continue fighting, according to the department.

“After repeated attempts to calm the non-compliant student, and stop him from going after the other student,” according to the release, “officers were forced to detain him for his safety and the safety of others.”

Video footage from the incident appears to show the officer choking the boy and slamming him to the ground.



The officer has since been suspended.

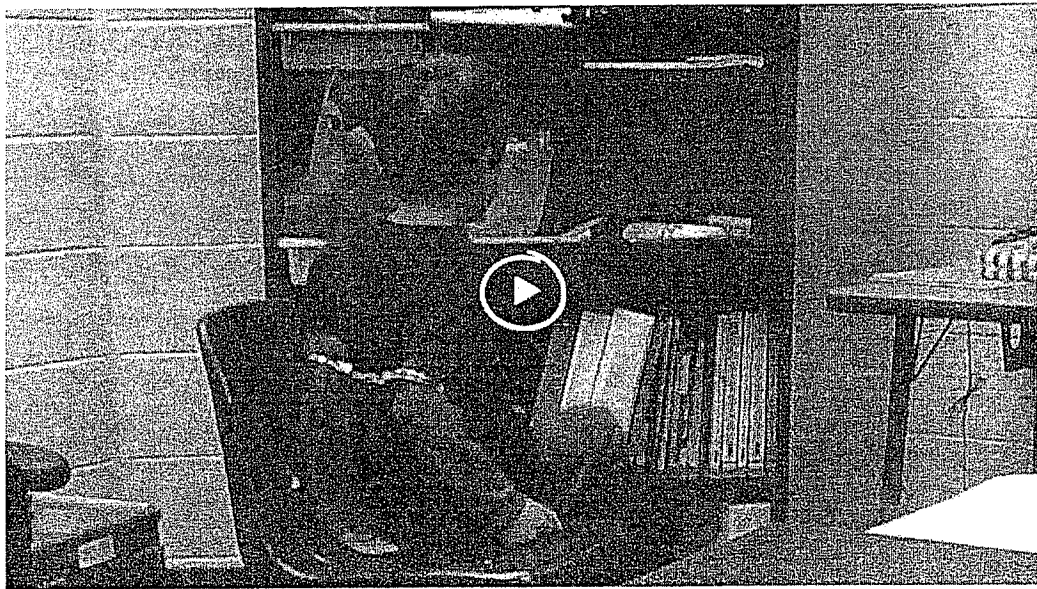
The boy's father, Kashka Hughes, told local television station KXAN (<http://kxan.com/2015/10/09/round-rock-high-police-incident-caught-on-camera/>) that he plans to press charges against the officer, whose name has not been released, for excessive force. The police officer “should have been trained well enough to know that this is a 130-pound child,” Hughes said. “The action that was taken was totally unnecessary.”

The ACLU filed a federal lawsuit this summer against the Kentucky sheriff's deputy and his department for handcuffing the two disabled children who were acting out at school, including the 8-year-old boy with attention deficit hyperactive disorder and post-traumatic stress disorder.

In August 2014, Kenton County Sheriff's Deputy Kevin Sumner placed a plaintiff, a 9-year-old girl identified as L.G., also with ADHD, in the back of his cruiser because she was screaming and disrupting class, according to the ACLU complaint. Sumner and the girl waited in the cruiser outside the girl's house for more than an hour until her mother got home from work. In October 2014, the girl had a second run-in with Sumner. The officer handcuffed her around the biceps because she "was attempting to injure the school staff," Sumner wrote in an incident report.

The boy, a third-grader also enrolled in the third grade at Latonia Elementary School and identified only as S.R., was sent to the vice principal's office in November 2014, because he refused to listen to his teacher. While there, S.R. tried to leave the room, claiming he needed to use the restroom; the principal and a special education teacher restrained him and restricted him from leaving, according to the ACLU complaint.

When Sumner was called to the scene, a school official captured a cellphone video of his interactions with the child. The video soon went viral online.



In it, the boy is seen crying and squirming in the chair as the officer demands compliance — handcuffing him above the elbows because the cuffs were too large for his wrists. "It's your decision to behave this way," the officer is heard saying as the boy complains of pain. "If you want the handcuffs off, you're going to have to behave and ask me nicely."

Despite a [Kentucky Board of Education policy](http://www.lrc.ky.gov/kar/704/007/160.htm) (<http://www.lrc.ky.gov/kar/704/007/160.htm>) restricting the use of restraint and seclusion in schools, the sheriff's office failed to create or maintain policies, practices, or training on the use of physical restraints on elementary schoolchildren, the ACLU complaint alleges.

The complaint argues that Sumner's desire for compliance motivated his use of the handcuffs, not any imminent danger of physical harm as spelled out in the policy.

"That cuffing technique alone, we would never teach that," said Andre Hill, a California police lieutenant who specializes in training cops in schools. "I've never heard of that."

On Oct. 9, the Justice Department issued a Statement of Interest (<http://www.justice.gov/opa/file/780346/download>) in the case, highlighting the need for SROs to be properly trained "to recognize and respond appropriately to youth behavior that may be a manifestation of disability."

"Appropriate training can help law enforcement agencies avoid interactions that violate children's rights under federal civil rights laws, including the ADA (Americans with Disabilities Act)," according to the statement.

A motion to dismiss the case, which was filed with the court on Sept. 9, argued Sumner couldn't have known about the students' disabilities because such information is protected by the Family Educational Rights and Privacy Act, the federal student privacy law. Assistant Kenton County Attorney Chris Nordloh, who represents the police department and the SRO, declined to comment on the pending litigation.

Three levels of training could have helped prevent the problem from the start, Susan Mizner, disability counsel for the ACLU, argued. First, she said, school staff and officers should know the SRO's job is to keep schools safe from a threat, not to engage in routine discipline.

"We can't have that line blurred," she said. "Just because they're there doesn't mean we use them. That's the first level of training, and that's probably the hardest piece of training for both school staff and school resource officers."

But when an officer does become involved, Mizner said, training in de-escalation techniques is the second step. That includes diversion, not direct commands for compliance. And third: training to help recognize students with disabilities.

"School resource officers should understand and expect that they will be called in, primarily, to interact with kids with disabilities because our school systems really haven't learned how to accommodate those disabilities and to work productively with most of these kids," she said, adding that in order to hold authorities accountable for this level of training, it should be required.

"There should be laws that they have, at a minimum, those three types of trainings and policies that go with them," she said. "Many more kids are hurt and traumatized by this than caught in fires in schools each year, so I see it as essential."

Growth of school cops

Since at least the 1950s, educators across the country have relied on sworn police officers to help keep kids safe in school, but their prevalence really kicked off in the 1990s when “zero-tolerance,” tough-on-crime policies became mainstream.

Hundreds of millions of federal dollars have been spent to ramp up that police presence, particularly after a rash of school shootings. At the same time, cops in schools were also supposed to establish personal relationships with students, showing younger ones that police officers were their friends and older ones that they could be trusted with sensitive information about trouble at home or crime in school.

In the '90s, Kristen Amundson served as chairwoman of the Fairfax County, Va., school board, where she supported the growth of resource officers in her schools. Now as executive director of the National Association of State Boards of Education, she still does.

If school police are properly trained and employ community-based policing techniques, Amundson said their presence can be a “gamechanger” in maintaining a positive school culture. The officers’ presence helped steer her schools away from criminal activity.

“We never had metal detectors at the doors, we never had to move football games from night to afternoon because it was just a culture of safety, and the SRO was there to be part of it,” she said.

Discipline problems have preoccupied educators for decades. The public policy research agency Public Agenda released a [report \(http://www.publicagenda.org/press-releases/discipline-problems-unruly-behavior-seriously-threatening-student-achievement\)](http://www.publicagenda.org/press-releases/discipline-problems-unruly-behavior-seriously-threatening-student-achievement) in 2004 on the “tyranny ... a handful of trouble makers” can inflict on their schools, affecting other students’ learning and teacher turnover. About 75 percent of teachers surveyed said school officials often treated students with special needs too lightly, “even when their misbehavior has nothing to do with their disability.” About half said they had been accused of unfairly disciplining a student.

Public interest in school-based police surged following the 1999 shooting at Columbine High School in Colorado, and again in 2012 after the the death of 20 children and six adults at Sandy Hook Elementary School in Connecticut. Then, President Obama reacted with an executive order that paid to put a new batch of resource officers and counselors in schools.

As the use of police in schools has increased, so has the number of students arrested in school, according to an August [report \(http://www.nasbe.org/wp-content/uploads/ELR_Advancing-School-Discipline-Reform.pdf\)](http://www.nasbe.org/wp-content/uploads/ELR_Advancing-School-Discipline-Reform.pdf) for the National Association of State Boards of Education. And those arrests are not necessarily resulting from the cops responding to violent criminal activity but in-house disciplinary incidents.

“Where there is muddier ground that people are concerned with, and part of it involves training, is when SROs get involved in internal school discipline matters,” said David Osher, an American Institutes for Research vice president who co-authored the NASBE report on ways state lawmakers can work to advance school discipline reform.

Federal justice and education officials have recommended school-based officers receive specialized training (<http://www2.ed.gov/policy/gen/guid/school-discipline/guiding-principles.pdf>), including on implicit bias and cultural competence, and offer grants to current and future SROs. On several occasions, Congress has heard testimony over the need for consistent SRO training guidelines.

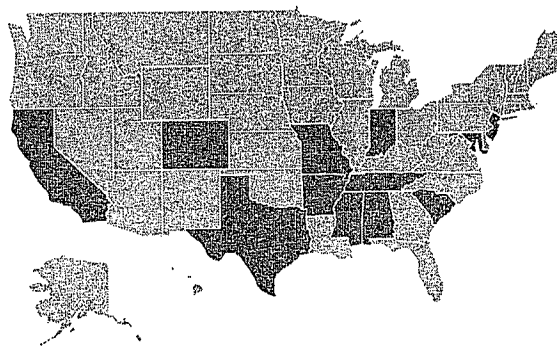
A hodgepodge of SRO training

Little data has been collected on the level of training officers receive. Only 12 states have laws that specify training requirements for officers deployed to classrooms. Those laws are inconsistent: Some states mandate training on how to respond to an active shooter. Fewer focus on dealing with children differently than adults.

“All officers are getting a certain level of training that they’re required to get as police officers,” said Nina Salomon, a senior policy analyst at the Council of State Governments Justice Center. “The additional training that we’re talking about — on youth development, on working with youth, on prevention and de-escalation — hasn’t typically been received by the majority of law enforcement that work with youth inside a school building, or that are called to campus.”

State laws address school resource officer training requirements

Twelve states have laws that specify additional training required to become a school resource officer. These laws vary in complexity state-by-state. The U.S. Department of Education has released training recommendations, but national training requirements do not exist for officers working in classrooms.



State Law on SRO Training No State Requirements

Source: [American Institutes for Research](#)



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New policies in Colorado are often touted as a progressive approach. A 2012 revision in the state's education statute set minimum requirements for SROs, so the Colorado Peace Officer Standards and Training Board developed an SRO curriculum. Before then, some departments offered extensive specialized training, others relied on a 90-minute video describing some of the problems they could encounter on the job. Some departments didn't even do that.

Survey results from a 2012 study show most police academies do not teach recruits about research on adolescent psychology and behavior.

In 37 states, police academies spent 1 percent or less of total training hours on juvenile justice issues, according to the study (http://strategiesforyouth.org/sfysite/wp-content/uploads/2013/03/SFYReport_02-2013_rev.pdf) by Strategies for Youth, a nonprofit that provides training to law enforcement officers. And while most academies do not teach recruits how to respond to children with mental health, trauma-related and special education-related disorders, only one state — Tennessee — provides specific training for officers deployed to schools. In five states, police academies do not require any training focused specifically on juvenile justice issues.

Once on the job, about 80 percent of police officers said they receive department-level training in juvenile justice issues, according to an International Association of Chiefs of Police survey, and almost 75 percent said they receive training through state-level agencies. However, most officers said they receive fewer than 10 hours of juvenile justice interview and interrogation training over their entire careers.

Although California law does set SRO training requirements, Hill, the lieutenant who offers school-specific SRO training through Strategies for Youth, said his boss at the Richmond, California police department is progressive about training.

Before he was asked to lead the department's youth services division, Hill said he didn't realize the effect officers can have on kids' lives. He does now.

"Especially in urban schools, kids are hard to reach," he said. "If they're not getting structure at home, they are going to continue to act out, even when confronted by an authority figure."

Hill is in the process of developing a training model to present to other officers in his Richmond department. For him, training is important, he said, because "we don't want to find ourselves in front of a judge being asked what kind of training is necessary."

A Texas town listens

A high-profile case not connected to school discipline still prompted action by an advocacy group worried about student vulnerability.

In August, Texas Appleseed sent a letter to the McKinney Independent School District superintendent, calling for changes in its memorandum of understanding with the city's police department, noting that the agreement does not require student-focused training or

prior experience with students as a prerequisite for employment as a school resource officer.

The letter was prompted by a viral cellphone video from this summer, showing a McKinney police officer pointing his gun at teenagers and shoving a young black girl to the ground. Texas Appleseed argued inadequate training policies leave students at risk of similar situations.

"In terms of dealing with students of color, one thing that is super important and one thing we asked McKinney to do is to have training that allows people to understand the unconscious biases for their behavior," said Morgan Craven, director of the School-to-Prison Pipeline Project at Texas Appleseed. "It can be uncomfortable for people to say 'I am biased against people with color,' but a majority of people in this country, and a majority of teachers, have those biases."



African-American students in the McKinney schools, while making up only 13 percent of enrollment, accounted for 39 percent of arrests by school resource officers and 36 percent of misdemeanor tickets, according to data compiled by the advocacy group from January 2012 to June 2015,

In June, Texas Gov. Greg Abbott signed a law requiring school resource officers working for school districts with more than 30,000 students to receive youth-specific training, including de-escalation techniques and child development instruction. Although the McKinney district didn't meet the requirements, with an enrollment of about 24,500 students, Texas Appleseed asked them to comply voluntarily.

It appears the McKinney Police Department took Texas Appleseed's concern to heart.

The department previously required SRO applicants to complete the National Association of School Resource Officers' basic SRO certification program, to have two years of experience on the force, and to possess an intermediate Texas Commission on Law

Enforcement Certification, department spokeswoman Sabrina Boston said. Maintaining consistency with the new state law, Boston said all school-based officers at the department will attend NASRO's advance SRO certification school, coursework that exceeds the law's requirements.

Training a matter of 'common sense'

The Justice Center doesn't see police stepping away from schools any time soon, Salomon said. So in 2014, the center released more than 60 policy recommendations to help ensure students are in productive classrooms, not courtrooms.

Several training requirements were recommended, starting with knowledge of the school's code of conduct so school officials and police are on the same page. The Justice Center administered the report in coordination with the Supportive School Discipline Initiative launched in 2011 by the U.S. Attorney General and the U.S. Secretary of Education. More than 100 advisers including policymakers, school administrators, teachers, behavioral health experts, and police collaborated on the recommendations.

"We don't take a position on whether law enforcement should be in school or not," Salomon said. "But if they are going to be in school, as is the case in a lot of jurisdictions around the country, then they need to have the right training, resources and support to be able to do their job well."

Most members of the National Association of School Resource Officers, which does not cover every cop who works in a school, receive at least some training beyond what is required by police academies or school orientation, according to a Justice Center survey. Training covers a variety of scenarios, including investigation protocols, active shooters, conflict resolution, addressing trauma, and working with school administrators. Some said they were trained on bullying and suicide prevention.

Canady, the NASRO executive director, gets frustrated when people say there isn't any training available for school-based police officers. His organization has trained school resource officers for more than two decades — but "we only train the ones that come to us."

NASRO, the largest provider of school-based training, instructs about 1,500 officers each year, Canady said.

His program teaches officers concepts in law enforcement, and in teaching and informal counseling.

"The SROs should become as if they're a member of the school team, and certainly another trusted adult in the building that certainly is there to protect students, but certainly also to be aware of any criminal issues going on in the schools," Canady said. "They serve a lot of different roles, especially if they're doing the job the proper way."

However, since school-based police are usually recruited from law enforcement, according to a [Justice Policy Institute report](#)

(http://www.justicepolicy.org/uploads/justicepolicy/documents/educationunderarrest_fullreport.pdf), even officers trained by NASRO typically have years of law enforcement training and only three days of training in counseling and education.

With Strategies for Youth, officers are taught about the brain structure and capacity of youth during their adolescence and young adulthood — information that promotes positive interactions and lessens conflict.

Thurau, the organization's executive director, said some officers do resist specific training about child behavior, but others take an active approach to their training. Her program teaches officers in their techniques, who then teach their peers.

Los Angeles Police Department Detective Richard Askew said his time as an educator and as an SRO influenced his understanding of the way children behave and interact with authority.

Before joining the LAPD, Askew worked for two years at a charter school serving at-risk students aged 16-24 who were unable to stay engaged with traditional or alternative methods. Joining LAPD's juvenile narcotics division, Askew was planted in L.A. schools as an undercover investigator.

In 2009, Askew joined LAPD's mental evaluation unit, a partnership with the department of mental health to interact with people who struggle from mental health issues. He also became a Strategies for Youth trainer.

"SROs generally have a pretty big impact on campuses for students because of their authority positions and how they're perceived," Askew said.

Once an officer is selected as an SRO, they receive in-house training on school district policies and procedures and 40 hours of SRO training from the state police academy, he said. Just a few months ago, all of the department's officers were taught how to avoid implicit bias.

California does have a law setting training requirements for SROs. But until standardized training is required, most of the officers who do seek additional coursework are acting out of common sense, Canady said. Police departments would ensure officers in investigations units are properly trained. So why not those who work in schools?

"Officers working in schools, just out of the nature of the assignment, are going to become the most well-known police officers or sheriff's deputies in your community, and you'd better have some additional training for them, and you'd better make sure it's the right person," Canady said, "or you're going to wind up potentially giving your department a black eye."

Correction: An earlier version of this story said that Virginia was among the states with laws requiring special training for officers deployed to classrooms. However, while district-hired school security officers in Virginia are required to receive student-specific training, the state does not require any such training for school resource officers, who are sworn police officers.



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Texas HB 2684, Requiring School Resource Officers to Complete De-Escalation and Restraint Training

By Terry Vittone | August 06, 2015 | Texas | In Effect



Photo: moodboard / moodboard / ThinkStock

Texas HB 2684, effective June 20, 2015, requires school resource officers in districts with over 30,000 pupils to complete an education and training program that includes child development, positive behavioral interventions, conflict resolution techniques, de-escalation techniques, and techniques for limiting the use of force, including the use of physical, mechanical, and chemical restraints.

Key points of the bill include:

- It requires the Texas Commission on Law Enforcement to create a model training curriculum for district peace and resource officers for use in training and certification of officers' completion.
- The officers must go through at least 16 hours of training, unless they have completed a similar course.
- It requires the Texas Commission on Law Enforcement to make available the curriculum to the school district by February 1, 2016.
- The education and training program cannot require a peace officer to pass an examination.
- The bill requires the commission to administer an examination to qualify officers to provide the education and training to other officers.

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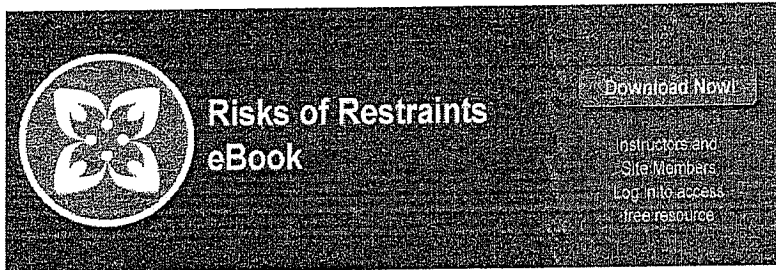
CPI also offers courses and resources on autism spectrum disorders, trauma-informed care, integrating PBIS with training, and many more topics to help you increase care and safety for everyone in your school.

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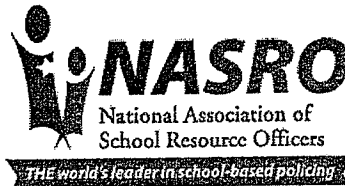
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Training Courses

BASIC SRO COURSE

The NASRO Basic School Resource Officer Course is a forty-hour (40) block of instruction designed for law enforcement officers and school safety professionals working in an educational environment and with school administrators. The course provides tools for officers to build positive relationships with both students and staff.

The course is also beneficial for educational professionals dedicated to providing a safe learning environment and provides a more in-depth understanding of the role and functions of an SRO.

The course emphasizes three main areas of instructions:

Law Enforcement Function – Instruction on the differences between law enforcement when conducted inside a school environment including understanding the teen brain and de-escalation techniques.

Mentoring Students – Instruction designed to provide tools to be a positive role model for youth including informal counseling techniques.

Guest Speaking – Instruction on a variety of instructional techniques as well as classroom management tools to provide law-related education to students.

Attendees will gain a solid working knowledge of the School Resource Officer concept and how to establish a lasting partnership with their schools.

Duration: 5 days (40 hours)

Cost: \$495 per person for non-NASRO members and includes one year NASRO membership/ \$445 per person for NASRO members

ADVANCED SRO COURSE

The Advanced School Resource Officer Course is a twenty-four (24) hour block of instruction designed for any law enforcement officer working in an educational environment. This course, following the SRO Triad model, advances the SRO's knowledge and skills as a law enforcement officer, informal counselor, and educator.

Duration: 3 days (24 hours)

Cost: \$345 per person for NASRO members/ \$395 per person for non-NASRO members

School CPTED (Crime Prevention Through Environmental Design)

CPTED (Crime Prevention through Environmental Design) uses design, management, and activity strategies to reduce opportunities for crime to occur, to reduce fear and to improve overall safety of schools. The CPTED concept emphasizes the relationship of the physical environment, the productive use of space, and the behavior of people. Upon completion of this 24-hour course, successful completion of a written test is required to obtain a course certificate. The course will include a hands-on CPTED evaluation of a school and attendees will be provided with tools to use on their school campus or in their associated activities with school safety.

Duration: 3 days (24 hours)

Cost: \$345 per person for NASRO members/ \$395 per person for non-NASRO members

School Security Officer Course

The School Safety Officer Course is a 3 day/ 24 hour training course for non – sworn safety and security officers working in schools with an SRO or solo. The course will emphasize three main areas of instruction:

- Functioning as a security officer in the school setting
- Working effectively with students
- School Safety and Emergency Planning

Attendees will gain a working knowledge of the School Safety Officer concept and how to establish a lasting partnership with their schools.

Duration: 3 days (24 hours)

Cost: \$345 per person for NASRO members/ \$395 per person for non-NASRO members

SRO Supervisors and Management

NASRO has developed this three day (24 hr.) SRO Supervisors and Management course for police supervisors and school administrators who have the responsibility of implementing, supervising, managing, and evaluating school-based police officers and/or programs. The goal is to provide managers with information, skills and strategies to develop, coordinate, and maintain a successful SRO program in their school community.

Duration: 3 days (24 hours)

Cost: \$345 per person for NASRO members/ \$395 per person for non-NASRO members

Effective Internet Safety Presentations

This 24-hour course is designed to provide SROs with the tools needed to stay current with ever-changing technology, investigate Internet crimes, and learn how to prepare and conduct Internet safety presentations for students, parents, and staff.

Duration: 3 days (24 hours)

Cost: \$345 per person for NASRO members/ \$395 per person for non-NASRO members

School Law Update

This one-day, specialized National School Law Update has been designed at the urging of School Administrators and School Resource Officers from across the country. By addressing such timely subjects as search and seizure, student interviews, custody issues, sexual harassment, and civil liability. It is taught by Dr. Bernard James, J.D., Professor of Constitutional Law at Pepperdine University.

Duration: 1 day (8 hours)

Cost: \$149 per person for NASRO members/ \$199 per person for non-NASRO members

Risk Management for Interscholastic Athletics and After-School Activities

NCS4 Risk Management for Interscholastic Athletics and After-School Activities course focuses on developing prevention/mitigation, preparedness, response and recovery techniques at interscholastic athletic events and for after-school activities. Participants will learn and discuss concepts relative to vulnerability and risk assessment, planning and preparedness, hazard mitigation, crisis communication, sustaining efficient safety and security programs and organizational teamwork. The modules and activities in this course are intended to complement existing school emergency operations plans and programs. The course is designed to help prepare school districts for developing and coordinating after-school safety and security management programs. Group activities, facilitated discussions, exercises, examples and templates serve as the foundation to the course delivery and provide participants with the resources needed to begin implementing or improving their after-school safety and security programs. *This course is offered by the National Center for Spectator Sports Safety and Security (NCS4). NCS4 partnered with NASRO, the National Federation of State High School Associations, and the National Interscholastic Athletic Administrators Association to develop this course. For more information or to register visit: <http://www.ncs4.com/train/high-schools>*



National Association of School Resource Officers
2020 Valleydale Road, Suite 207A, Hoover, AL 35244

Safe Schools Resource Officer/School Liaison Training

This Police Training Commission Certification course shall be made available to (1) any law enforcement officer or public school employee referred by the board of education of the public school to which assignment as; a safe schools resource officer or school liaison to law enforcement is sought; and (2) any safe schools resource officer or school liaison to law enforcement assigned to a public school prior to the effective date of P.L.2005, c.276 (C.52:17B-71.8 et al.), effective January 6, 2006.

For more information on this training, please call the New Jersey Association of School Resource officers at 973.486.9453.

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Description: Designed for medium and large agencies wishing to train their own in-house cadre of instructors for the 16-hour Advanced De-escalation course. This course provides in-depth instruction that will enable attendees to properly facilitate the 4-hour Basic, 8-hour Intermediate or 16-hour Advanced De-escalation course. Upon successful completion of the course, all instructors will receive their certification and receive complimentary access to the CSI De-escalation Train-the-Trainer portal where they can download all course documents, videos and instructional materials.

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Attendees: Certified law enforcement trainers ONLY

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Questions? Call CSI at 972.576.8662 or email info@csi1.org

- **July 31, 2017, 8:30am to 4:30pm: Safe Schools Resource Officer Training - Union County NJ**

Presented by the New Jersey Association of School Resource Officers

Course Dates: July 31-August 4, 2017

Location: John H. Stamler Police Academy

Attire: Uniform/business Casual

Tuition: \$350.

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- **August 21, 2017, 8:30am to 4:30pm: Safe Schools Resource Officer Training - Ocean County NJ**

Presented by the New Jersey Association of School Resource Officers

Course Dates: August 21-25, 2017

Location: Ocean County Police Academy

Attire: Uniform/business Casual

Tuition: \$350.

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December 4-8, 2017

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Longhurst, Schwartzkopf Bill Addresses Insurance Coverage for Metastatic Cancer Patients



DOVER – Delawareans diagnosed with Stage 4 metastatic cancer would not be forced to first fail a series of treatments before getting approved for cutting-edge therapies under legislation proposed by House Majority Leader Valerie Longhurst and Speaker Pete Schwartzkopf.

Insurance companies have the ability to set coverage guidelines that govern how and when treatments are approved. However, sometimes those guidelines require patients to prove that they failed to respond to initial treatments before they can try advanced therapies.

Under House Bill 120, insurance companies offering health plans that cover treatments for stage 4 metastatic cancers would not be able to limit or exclude innovative treatments for those patients if the treatments have been approved by the U.S. Food and Drug Administration and are consistent with best practices for stage 4 metastatic cancer treatment.

It's critical to improve access to the most innovative treatments for metastatic patients in their time of need, Rep. Longhurst said, adding that these patients cannot afford to delay their care.

"I'll never forget when my grandmother was diagnosed with a brain tumor. I was three months pregnant with my son when doctors gave her six months to live," said Rep. Longhurst, D-Bear. "After my son was born she was able to hold him, but she passed away shortly thereafter. I would have loved for her to have a glimmer of hope, and the chance to try cutting-edge treatments. I know she would want me to work so that future patients have that opportunity and have access to therapies they deserve."

Cancer rates have persisted; the [American Cancer Society \(https://www.cancer.org/research/cancer-facts-statistics/all-cancer-facts-figures/cancer-facts-figures-2017.html\)](https://www.cancer.org/research/cancer-facts-statistics/all-cancer-facts-figures/cancer-facts-figures-2017.html) estimates that in 2017 there will be more than 1.6 million new cancer cases diagnosed in the United States and 600,000 deaths.

In Delaware (<https://www.cancer.org/content/dam/cancer-org/research/cancer-facts-and-statistics/annual-cancer-facts-and-figures/2017/cancer-facts-and-figures-2017.pdf>), the estimated number of cancer cases to be diagnosed in 2017 will exceed 5,600. State health officials say that Delaware women still have the ninth-highest cancer death rate in the country.

HB 120, the Jimmy Carter Cancer Bill, was inspired by President Carter, who was deemed cancer-free after an immunotherapy called Keytruda shrunk his metastatic melanoma tumors.



Rep. Schwartzkopf also knows firsthand how a malignant melanoma diagnosis can change someone's life. The former lifeguard had found a strange spot on his back – right along his spine – that eventually was diagnosed as spindle cell desmoplastic melanoma.

"When I was diagnosed with melanoma, my doctor told me that if the cancer had spread to my bloodstream I would have two months to live," said Rep. Schwartzkopf, D-Rehoboth Beach. "After a painstakingly long week of waiting for test results, I was relieved to learn the cancer had not spread. I feel thankful that doctors were able to catch my cancer early and I was able to get the appropriate treatment and I want the same for patients diagnosed today. With this bill, patients and their families will have the opportunity to receive the treatment they need and not need to fail once, twice or three times before they can utilize a 'wonder drug.' "

Immunotherapy is one of the most promising new cancer treatments, according to the [Cancer Research Institute \(https://www.cancerresearch.org/cancer-immunotherapy\)](https://www.cancerresearch.org/cancer-immunotherapy). These therapies activate a patient's immune system to fight cancer instead of directly destroying cancer cells like chemotherapy treatments.

Similar legislation [recently passed \(http://www.ajc.com/news/state--regional-govt--politics/bill-inspired-jimmy-carter-cancer-treatment-passes-georgia/4A0I4WAFPXz2XPX4eCclaO/\)](http://www.ajc.com/news/state--regional-govt--politics/bill-inspired-jimmy-carter-cancer-treatment-passes-georgia/4A0I4WAFPXz2XPX4eCclaO/) overwhelmingly in Georgia, and measures have been introduced in Connecticut and Maryland.

"I know from personal experience that when it comes to cancer treatment, time is of the essence," said **Senate President Pro Tempore David B. McBride**, D-Hawk's Nest, a survivor of colorectal cancer. "This legislation allows patients in immediate need of care to move forward with potentially life-saving treatments without having to jump through hoops established by an insurance provider."

Delaware's bill is also sponsored by Sens. Brian Bushweller, David Sokola and Bryan Townsend, as well as Reps. Joseph Miro and Ramone.

HB 120 has been assigned to the House Economic Development, Banking, Insurance & Commerce Committee.

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31 Mar



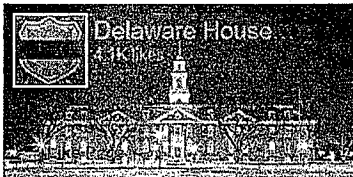
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Delawareans can see the impact of #climatechange everyday, and the Regional Greenhouse Gas Initiative helps mitigate those risks #RGGI

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EXCERPT:

MAY 8, 2017

HOUSE DEMOCRATS
E NEWSLETTER

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Jimmy Carter Cancer Bill Advances

Delaware metastatic cancer patients deserve to have access to the most innovative treatments in their time of need.

Stage 4 patients cannot afford to delay their care, and legislation helping them get the treatments they need moved forward last week. Known as the Jimmy Carter Cancer Bill, House Bill 120, sponsored by House Majority Leader Valerie Longhurst, was released from a House committee and could head to the floor for a full vote this week.

Under HB 120, insurance companies offering health plans that cover treatments for stage 4 metastatic cancers would not be able to limit or exclude innovative treatments for those patients if the treatments have been approved by the U.S. Food and Drug Administration and are consistent with best practices for stage 4 metastatic cancer treatment.

Cancer rates have persisted; the American Cancer Society estimates that in 2017 there will be more than 1.6 million new cancer cases diagnosed in the United States and 600,000 deaths.

In Delaware, the estimated number of cancer cases to be diagnosed in 2017 will exceed 5,600. State health officials say that Delaware women still have the ninth-highest cancer death rate in the country.



EXCERPT:
MARCH 27
HOUSE DEMOCRATS
E NEWSLETTER

Bills encourage more Delawareans to vote

Lawmakers unveiled a trio of bills Wednesday aimed at increasing voter turnout and encouraging more people to participate in the electoral process.

The measures would consolidate state and presidential primaries, open early voting and establish automatic voter registration at the Division of Motor Vehicles. Taken together, the bills would have the effect of registering more Delawareans to vote while increasing opportunities to vote.

House Bill 90, sponsored by Rep. David Bentz, would have Delaware join the other 34 states that have early voting, allowing residents to cast ballots before Election Day. The measure would require the Department of Elections to offer early voting to Delawareans for 10 days before a general, primary or special election, including the weekend before Election Day. Maryland and New Jersey are among the states that offer early voting.

House Bill 89, sponsored by Rep. Stephanie T. Bolden, would move Delaware's state primary elections to coincide with its presidential primary elections. Currently, Delaware holds its presidential primaries for both major parties on the fourth Tuesday in April. However, the First State's primaries for statewide and local political offices are held on the second Tuesday after the first Monday in September. The separate dates can create confusion among voters, while turnout for the state primary dramatically drops off from the presidential primary.

*

A third bill, House Bill 79, sponsored by Rep. Bentz, would establish automatic voter registration at state DMV offices. Delaware's Motor Voter Law, an "eSignature" model, is considered one of the better such policies in the country. The bill would require eligible voters to decline having their information automatically shared with the Department of Elections for registration. Six states and the District of Columbia have enacted similar policies.

Read more about the legislation [here](#).

Sec. 1973gg-5 Voter registration agencies

(a) Designation

(1) Each State shall designate agencies for the registration of voters in elections for Federal office.

(2) Each State shall designate as voter registration agencies -

* (A) all offices in the State that provide public assistance; and

* (B) all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities.

* (3)(A) In addition to voter registration agencies designated under paragraph (2), each State shall designate other offices within the State as voter registration agencies.

(B) Voter registration agencies designated under subparagraph (A) may include -

* (i) State or local government offices such as public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, government revenue offices, unemployment compensation offices, and offices not described in paragraph (2)(B) that provide services to persons with disabilities; and

(ii) Federal and nongovernmental offices, with the agreement of such offices.

(4)(A) At each voter registration agency, the following services shall be made available:

(i) Distribution of mail voter registration application forms in accordance with paragraph (6).

(ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.

(iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.

(B) If a voter registration agency designated under paragraph

(2)(B) provides services to a person with a disability at the person's home, the agency shall provide the services described in subparagraph (A) at the person's home.

(5) A person who provides service described in paragraph (4) shall not -

(A) seek to influence an applicant's political preference or party registration;

(B) display any such political preference or party allegiance;

(C) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote; or

(D) make any statement to an applicant or take any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.

(6) A voter registration agency that is an office that provides service or assistance in addition to conducting voter registration shall -

(A) distribute with each application for such service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance -

(i) the mail voter registration application form described in section 1973gg-7(a)(2) of this title, including a statement that -

(I) specifies each eligibility requirement (including citizenship);

(II) contains an attestation that the applicant meets each such requirement; and

(III) requires the signature of the applicant, under penalty of perjury; or

(ii) the office's own form if it is equivalent to the form described in section 1973gg-7(a)(2) of this title, unless the applicant, in writing, declines to register to vote;

(B) provide a form that includes -

(i) the question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";

(ii) if the agency provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";

(iii) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of subparagraph (C)), together with the statement (in close proximity to the boxes and in prominent type), "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";

(iv) the statement, "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private."; and

(v) the statement, "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with _____.", the blank being filled by the name, address, and telephone number of the appropriate official to whom such a complaint should be addressed; and (C) provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.

(7) No information relating to a declination to register to vote in connection with an application made at an office described in paragraph (6) may be used for any purpose other than voter registration.

(b) Federal Government and private sector cooperation

All departments, agencies, and other entities of the executive branch of the Federal Government shall, to the greatest extent practicable, cooperate with the States in carrying out subsection (a) of this section, and all nongovernmental entities are encouraged to do so.

(c) Armed Forces recruitment offices

(1) Each State and the Secretary of Defense shall jointly develop and implement procedures for persons to apply to register to vote at recruitment offices of the Armed Forces of the United States.

(2) A recruitment office of the Armed Forces of the United States shall be considered to be a voter registration agency designated under subsection (a)(2) of this section for all purposes of this subchapter.

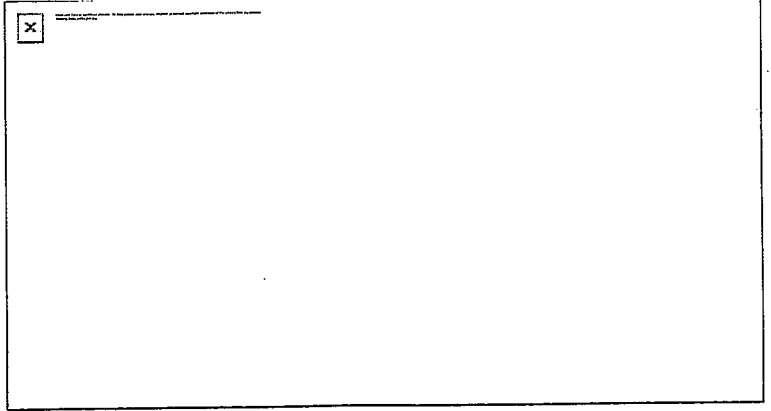
(d) Transmittal deadline

(1) Subject to paragraph (2), a completed registration application accepted at a voter registration agency shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

(Pub. L. 103-31, Sec. 7, May 20, 1993, 107 Stat. 80.)

Bill Seeks to Protect Abused Infants



Protecting Delaware's most vulnerable citizens is the goal of a bipartisan bill introduced in the General Assembly this week.

House Bill 140 would bring Delaware into compliance the federal Child Abuse Prevention and Treatment Act. That law, among other things, sets standards for child abuse and neglect and provides assistance to help states deal with those issues.

The Delaware measure would satisfy a federal requirement for creating procedures to address the needs of newly born infants affected by substance abuse, withdrawal symptoms, or Fetal Alcohol Spectrum Disorder. It includes a mandate for health care providers involved in the delivery or care of affected infants to notify child protection services.

Upon receiving notification, state officials would have to determine if an investigation was warranted; develop a "Plan of Safe Care" for the infant; and ensure the plan was implemented and followed.

This bill, to be known as "Aiden's Law," is sponsored by State Rep. Melanie George Smith (D-Bear-Newark).

Among the members of the House Republican Caucus co-sponsoring the legislation are: State Reps. Ruth Briggs King (R-Georgetown), Joe Miro (R-Pike Creek Valley), Mike Ramone (R-Pike Creek South), and Dave Wilson (R-Cedar Creek Hundred).

The bill is pending action in the House Judiciary Committee.

Delaware's heroin babies: Starting life in withdrawal

While heroin and methadone are much less likely to affect a child later in life than other drugs expectant mothers are urged to avoid during pregnancy – such as alcohol, tobacco and cocaine – the quick rise in NAS cases in Delaware is an unsettling trend.

In Lewes, Forsyth's daily work involves caring for infants born with neonatal abstinence syndrome (NAS), caused by their in-utero dependence on illegal drugs, like heroin.

(Photo: JASON MINTO/THE NEWS JOURNAL)

Christiana Hospital, which has seen more than twice as many NAS babies since 2010, announced plans Thursday for a \$260 million overhaul of its women and children's services at its Stanton campus. That expansion will create eight new floors and provide more room for its neonatal intensive care unit and a new nursery just for high-risk infants, such as those exposed to opioid drugs during pregnancy.

To medical staff accustomed to giving care in stressful conditions, infants with NAS can seem to be in agony. And caring for them is agonizing.

"What's different about babies who are born to moms on opiates is it does cause fairly immediate withdrawal symptoms," said Dr. David Paul, chief of pediatrics at Christiana Care. "Immediate means babies can show symptoms of withdrawal in the first hours after birth."

Delaware's heroin babies: Starting life in withdrawal

Adds Nancy Forsyth, a neonatal nurse at Beebe Hospital in Lewes: "They may cry inconsolably. If you listen to their cry, it's the cry of a baby that is in pain. It's really distressing to see a baby going through this."

Like other states around America, Delaware is struggling through the heroin pandemic. Overdose deaths have nearly tripled in the past decade — from 63 in 2004 to 185 in 2014.

High school nurses are being trained to give emergency doses of opiate-blocking drugs to prevent fatal overdoses, and police officers and emergency medical technicians carry the drug Narcan to save the lives of those who have overdosed.

In New Castle County, heroin seizures climbed 400 percent between 2012 and 2013, and emergency rooms are being inundated with overdose victims.

The signs of stress are visible statewide.

"The addiction epidemic is straining our public system beyond its capacity, with many people turned away for services when they are ready for treatment," Gov. Jack Markell said in August.

Jim Martin, the leader of a Georgetown home for homeless men and a director of a Seaford addiction resource center, knows of parents in Seaford who routinely sweep heroin baggies off their sidewalks so their children don't find them.

Heroin "has just exploded in our communities. It's like a nuclear bomb went off and little heroin packets are going everywhere," Martin said. "The experience I'm having dealing with heroin is folks seem to have so much more relapse. The drug just pulls you back, even if you've had some clean time. It's just a terribly addictive drug."

Three years into treatment for heroin addiction, Courtney Murphy, 31, brought her baby girl, Sophia, into the world on Oct. 27. Murphy had taken methadone and the baby showed signs of NAS in the hours after her birth, but made it through the rough patch and was discharged without much fuss six days later.

"Her tremors did scare me a little bit. I'd never experienced that," Murphy said as she rocked Sophia, in her Nike booties and a pink-and-white outfit, to sleep in her New Castle apartment.

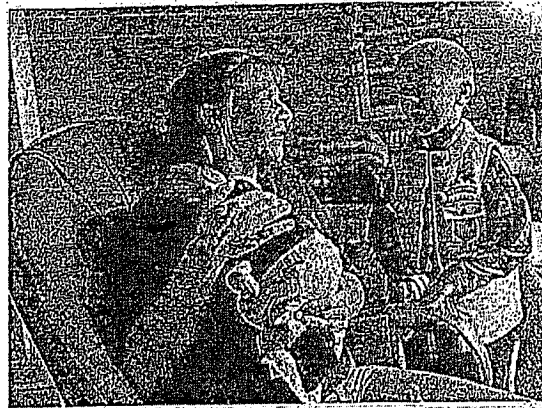
Murphy's sons, ages 2 and 6, watched cartoons in a bedroom while, nearby, her 11-year-old daughter fussed with her hair. The church where Murphy attends addiction group therapy each week is just a few minutes' walk down the street.

"It's an everyday struggle," she said of her recovery from addiction. She said it began at age 18 after a car crash when she was prescribed opiate painkillers. She's been clean three years now.

"It's made me become a better mom," Murphy said. "My daughter's 11 — she'll be 12 soon — and I was actively using when she was younger" — taking street drugs in the child's presence. "Now, I've been able to

Delaware's heroin babies: Starting life in withdrawal
be there a lot. Not just physically. Mentally. Knowing
what's going on with my kids. I mean, it's a big
difference.

"I am doing the right thing. It's not being embarrassed
by my drug history. I'm proud of myself today, from
where I came from," she said.



31 year-old Courtney Murphy rocks her 2-week-old daughter Sophia
while talking to Daniel, her 6-year-old son. A younger son, 2-year-old
Duke, and Sophia were both born while Murphy was using methadone
to treat her addiction to heroin.

(Photo: JENNIFER CORBETT/THE NEWS JOURNAL)

Drugs and delivery

CHAPTER 2

More than it ever has, heroin is reshaping lives throughout the United States. In 2005, 380,000 people said they had used heroin in the past year, according to the National Institute on Drug Abuse. By 2012, 670,000 people were in that group.

As public policy measures deliberately made it harder for people to access and abuse prescription drugs, they often turned to heroin (<http://www.drugabuse.gov/about-nida/legislative-activities/testimony-to-congress/2015/americas-addiction-to-opioids-heroin-prescription-drug-abuse>), "which is cheaper and in some communities easier to obtain than prescription opioids," the NIDA says.

The rise in heroin use is happening even as use of most other illegal drugs is dropping, according to the institute's research. Fewer people use cocaine and hallucinogens now than they did 10 years ago. But heroin's popularity is soaring.

Delaware's heroin babies: Starting life in withdrawal

In interviews around the state, doctors and nurses who work in obstetrics departments say an increasing amount of their time is spent in the care of women who are actively using heroin and other opiate drugs or, more commonly, being treated for addiction with methadone. It is a clinical scenario that used to pop up on occasion, but is now a near-daily reality.

"This is constant. It's pretty much all the time. It's rare that I don't have a baby who's been exposed [to opiates] here," said Beebe's Forsyth. "We used to have a lot of moms coming in on oxycodone, street or otherwise, when they came in to deliver. Now, we're not seeing that. All we're seeing, pretty much, is the methadone. ... It's pretty much a constant. Ask anybody else at a birthing hospital and they'll say the same thing."

Nationwide, about 16 percent of pregnant teens and 7 percent of pregnant women ages 18 to 25 use illegal drugs when pregnant, according to a federal survey of recent data. Between 2000 and 2009, the number of mothers using opiates during pregnancy increased 500 percent, according to a 2012 report by the American Medical Association.

The obstetrics field has seen the effects of drug abuse on pregnant women before, when the drugs involved were different. Alcohol abuse during pregnancy can lead to fetal alcohol syndrome and can cause facial deformities and brain damage; cocaine use by the mother can cause premature birth.

But heroin, as well as methadone, can lead to neonatal complications all their own, said Paul, of Christiana. About 60 to 80 percent of babies born dependent on either heroin or methadone develop symptoms of NAS.

An infant with NAS can show symptoms like tremors, irritability, an unsettling high-pitched cry, seizures, poor feeding, sneezing a lot, vomiting, diarrhea and difficulty breathing. All of this is because after birth, "the infant then begins to withdraw from the narcotics previously received from the mother in utero," as a 2013 article in the *International Journal of Childhood Education* put it. If not treated, NAS can be fatal.

In 2010, Paul said, 100 infants were treated for NAS at Christiana. In 2014, 170 were diagnosed there, the hospital where more babies are delivered in Delaware than at any other hospital. Statewide, 300 babies delivered at Delaware hospitals were diagnosed with NAS in 2014, compared to 242 babies in 2013, according to data Paul presented to other physicians in April.

About 10,900 babies were born in Delaware in 2014, according to federal health data. That means 2.7 percent of babies born that year were treated for NAS. More than that were evaluated for it because their mothers were known to have methadone or opiates in their systems, but not diagnosed.



Dr. David Paul, chair of the pediatrics department at Christiana Care Health System, talks about the hospital's care for drug-dependent infants right after they're born.

(Photo: JENNIFER CORBETT/THE NEWS JOURNAL)

Delaware's heroin babies: Starting life in withdrawal

The increased incidence of NAS is an echo of overall heroin use in Delaware. Drug treatment programs funded by the Delaware Division of Substance Abuse and Mental Health admitted 1,263 patients in 2011 whose primary drug was heroin. In 2014, that number was up to 3,182 heroin-dependent people, and for the third year in a row, those programs treated more heroin addicts in Delaware than users of any other drug.

"I've had 22-year-olds sit in my triage chair and they're crying. They're devastated. They know their lives have changed. They've burned through all their support systems," said Kathy Keating, a forensic nurse examiner program coordinator at Nanticoke Memorial Hospital in Seaford, speaking to a community group in September about the heroin crisis. "But when people are honest with me about their drug history, I thank them. As long as you know what's in them it's much easier to treat them."

"I am hopeful that at some point it's going to peak," Paul said of the heroin epidemic. "If we learn lessons going back to crack cocaine in the 1980s, it seemed like that was never going to end, but it largely went away as a problem. So it's my hope as a clinician, and as a citizen of Delaware, that we're going to see this wane at some point."

Pills led to addictions

CHAPTER 3

For many, opiate drugs legally prescribed for pain following an injury become the gateway to heroin addiction. Brittny Yost, 23, of Seaford was a 16-year-old playing school sports when injuries aggravated by softball and martial arts led to physical therapy. A doctor wrote her a scrip for Tramadol, an opioid pain medication; when Tramadol's usefulness faded, she said, she was prescribed Percocet, another narcotic.

"Percosets became my new addiction and the way I coped with a lot of the pain," Yost said in an interview at New Expectations, a Department of Corrections-supported home for pregnant women who have been sentenced for criminal offenses and are also undergoing methadone treatment. "And I found myself, every single time I got depressed, using more and more all the time. Heroin was introduced by my brother."

Criminal offenses and probation violations, the first at age 17, led Yost to one of state's substance abuse programs for offenders, and then supervised probation. But while on probation, she used drugs again and her probation officer found out, landing her back behind bars this year.

"I was three weeks' pregnant when I went to jail. I didn't even know I was pregnant," Yost said. "Going through withdrawal, the risk of losing the baby and miscarriage and stuff, that definitely isn't an option for me."

Women in Delaware's correctional system can get methadone treatment while in prison only if they are pregnant, and Yost did so. But she said she knew other women in the prison considered her and other pregnant, methadone-using women beneath them, contemptible.

"There's a lot of other inmates who look down on you being in a pregnancy pod" and getting methadone treatments, Yost said. "It was depressing, in a way, but at the same time I knew it was the best option."

If she had not been caught using and learned of her pregnancy, Yost isn't sure she would have sought treatment for her addiction.

"Probably not, to be honest," she said quietly. The parole violation conviction, she said, "was sort of a blessing. The influences that were around me back then, they're not now, being that I'm in treatment."

To an outsider, it might seem surprising that medical professionals encourage expectant mothers addicted to opiates to use methadone instead of finding a way to completely flush opiates from their bodies by the time the baby is born.

But doctors and nurses interviewed for this story said outcomes are better for the baby if an expectant mother is following prescribed treatment for methadone, even though there is a decent chance the baby will develop NAS.

"The long-term outcomes seem to be a lot better for these babies than with fetal alcohol syndrome or your cocaine-addicted babies," said Dr. Erin Fletcher, a Lewes pediatrician who is on staff at Beebe Healthcare. "There are some studies showing possibly some higher ADHD or learning disabilities in the long term. But for the most part, it's not causing any major obvious birth defects. For the most part, once we get them through this treatment period, these babies tend to do very well."

For most people, going cold turkey is simply ineffective as a way of battling heroin addiction; the cravings for the drug are just too powerful. Methadone helps block the nervous system receptors in the brain that create the craving for the drug.

"Mothers in methadone programs are doing the best they can under unbelievably difficult circumstances," said Forsyth, the Beebe nurse practitioner. "That is a piece I always share with them. By seeking treatment and getting prenatal care, they have done the best thing they can for their unborn baby."



Britny Yost poses for a portrait at New Expectations in Newark.
(Photo: KYLE GRANTHAM/THE NEWS JOURNAL)

Stigma an issue

CHAPTER 4

Underlying the concerns about NAS and newborn's health is a recognition that the infants' mothers, in most cases, are struggling, often in the middle of difficult recovery from addiction, and routinely stigmatized for being pregnant at the same time they're addicted to drugs.

"Having a child is difficult; babies are very demanding. When you add into that the stress of a parent who is, whether they are actively using or are in treatment, there's a tremendous burden of guilt," said Forsyth. "Dealing with those issues, as well as the guilt that they're feeling and a baby that is far more irritable and difficult to care for than most, is overwhelming."

Bridget Buckaloo, who directs women's health services at Beebe Healthcare, says medical staff should be careful not to stigmatize such women more than they already are.

"Nursing curricula, medical school curricula, dental school curricula: All these different aspects of health care really don't prepare us to deal with addiction. We don't have a good understanding of addiction as a disease," Buckaloo said. "We see it as a choice... A diabetic, we don't judge them for taking their insulin. People who have an addiction, who are substance dependent, they're at a point where they are taking the drug to feel OK. They're not taking the drug to get high. Most of these women have had some kind of trauma if you strip away the drug. The medication makes them feel better; it makes the pain of the trauma go away.

"As a health care profession, there's a lot of judgement and stigma we place on these mothers. It becomes a barrier to their recovery. It's sad, but it's true."

For pregnant women in the justice system, the New Expectations house can be a novel road to recovery. A joint project of the Department of Corrections and its contracted health care provider, Connections Community Support Programs, the Newark home blends in on a block sprinkled with college-student housing.

Delaware's heroin babies: Starting life in withdrawal

Women there are transported to prenatal care appointments; take part in group therapy and support counseling; and can see visitors once a week. If they complete their required probation term without breaking house rules, they can retain custody of their babies, which they couldn't do if they gave birth while incarcerated. The women can even stay at New Expectations for up to six months with their new babies, taking time to get on their feet.

Some of the women said they made the choice to seek treatment because of their pregnancies.

"When I found out I was pregnant, I was on the run for, like, 9 months," said Bonnie Quill, 32, of New Castle, in an interview at New Expectations. "I guess I was tired of running and I wanted to get it over with before the baby was born so I wouldn't have to be away from him."

As worried as the women in New Expectations are about methadone's possible effect on their babies, they are most concerned about the path their sober lives, out of the justice system, will take.

"They're trying to avoid incarceration, and they're trying to avoid having the baby taken away from them," said Catherine Devaney McKay, Connections' president and CEO. "Those are pretty serious first-order issues to address. The motivator is wanting to be out of jail when the baby is born, so you have a shot at keeping your baby."

Many women interviewed said they were determined not to return to the hometowns where they first became addicted, and where their circles of friends had, for years, included other addicts.

"Everybody that you seem to know is either doing pills or actually still on heroin," said Morgan, the Harrington woman due in January, recalling the times when she was at home in between probation violations. "They say change people, places, things. Even doing that, the new people that you meet seem to have a drug of choice, whether it be alcohol, marijuana or heroin. It seemed like somebody was always doing something."

The mothers have also given thought to how they will explain to their children, years down the road, what their lives were like when the children were born. Should they explain the whole scenario, drugs, addicts, handcuffs, courtrooms, tears and all?

"Without this program, I would be out there still," said Tanya Broxton, a New Expectations client who was cuddling her two-month-old son, Makai Brown, born while Broxton was recovering from an addiction to PCP. "I'll tell him this was a time in my life I had to get myself together."

Carlos Duran, a neonatologist at Christiana Care, is the director of Child Development Watch in New Castle County, a public health effort that keeps tabs on children at risk for developmental delays. To persuade more mothers of babies who were drug-dependent at birth to take part in the program, he said, doctors linked up with Brandywine Counseling to see the mothers and their infants once a month at the same Brandywine facility they go to for rehabilitation and addiction treatment.

"The wave of new patients, that was really one of the main driving forces. We'd been seeing these babies before in our regular program, but it was a much smaller number," Duran said. "Within the last two years or so is when we have really seen the most need."

Doctors and social workers keeping tabs on NAS babies, he said, tend not to think the babies' development is held back by their brief opiate withdrawal window alone. If those children show developmental delays, he said, it's more likely because of other factors: unstable home lives, and parents still distracted by their own addiction problems.

"They don't have medical problems. Their needs are different. And we have a fairly high no-show rate for these families. They may not understand what we're doing, or they may not have transportation," Duran said. "We are working through the process of how much



Tanya Braxton and her two-month-old son Makai Brown pose for a portrait at New Expectations in Newark.

(Photo: KYLE GRANTHAM/THE NEWS JOURNAL)

Delaware's heroin babies: Starting life in withdrawal

more we can really screen or ask. We don't want to be too intrusive, because this is a voluntary program. We don't want to be seen as Big Brother. We're still working on that: How much can we ask without driving them away?"

But, he said, even the parents struggling to raise their children want to do better.

"These moms, they love their babies and they want to do everything they can for them," Duran said. "We help the mom to better manage the baby."

For Murphy, the mother of two-week-old Sophia, her new normal is this: Her oldest daughter catches a bus to a charter school at 5:45 a.m. A 2-year-old son who was also born when she was taking methadone, Duke, walks to her father's house, where he'll be cared for. Murphy's husband, a painter, goes to his 12-hour shift at a Dover work site. Then, Murphy and Sophia make their way to the clinic where Murphy's methadone treatments are administered.

"I take the baby with me to the clinic. It's a job just to get there, back and forth every day," she said. When she can, Murphy makes time for Narcotics Anonymous meetings and church meetings on addiction. She's learned, in recovery, to plan a day ahead wherever she can — making lunches, laying out school clothes. It's a choreography she never could have sustained when she was abusing heroin.

In high school, "I was a cheerleader. I hated, despised anyone who did drugs. I never thought this would be my outcome," Murphy said as she got her children ready for a lunchtime walk to the corner deli. "But I'm making the best of the situation. So, that's all that matters."

Staff writer Jen Rini contributed to this story. Contact James Fisher at (302) 983-6772, on Twitter @JamesFisherTNJ or jfisher@delawareonline.com.



Courtney Murphy holds her 2-week-old daughter Sophia, who was born with symptoms of NAS, including tremors.
(Photo: JENNIFER CORBETT/THE NEWS JOURNAL)

Newborn addictions rise, triggering new hospital rules

Jan 18, 2016 | The News Journal | 1:14 a.m. EST January 18, 2016



(Photo: JENNIFER CORBETT/THE NEWS JOURNAL)

Following an increase in babies born with drug or alcohol dependencies in Delaware, statewide hospital discharge forms for "high-risk" cases will be amended to ensure that the baby will go home to the safest environment and mom will have the necessary support system in place.

A committee of medical professionals, community leaders and state officials charged with studying and recommending how to care for infants who are born substance-exposed or medically fragile voted to add six conditions that will automatically trigger high-risk medical discharge reports from the hospital to the Delaware Division of Family Services.

The move is one of the first steps the committee, an arm of the Child Protection Accountability Commission, has made to figure out how to best help babies born with the dependencies and their families thrive.

The conditions originally were crafted by the Delaware Healthy Mother and Infant Consortium, a group that reviews and recommends programs and guidelines concerning maternal and fetal care.

The conditions are:

- Significant noncompliance with care of the infant, such as not visiting or participating in care.
- Mom is using substances, but is not in a treatment program.
- Evidence that drug use impairs caregiving ability.
- Addicted infants must stay in the hospital for more than 30 days.
- Multiple substance use.
- Infant needs medically complex care.



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<http://www.delawareonline.com/story/news/local/2015/11/20/heroin-babies-starting-life-withdrawal/73208368/>

According to the form that is submitted to DFS, a high-risk medical discharge is called for if there is an "increased risk for physical, developmental, behavioral or emotional conditions that require health and related services of a type or amount beyond that required by a child generally, and the child's family is unable or unwilling to provide or ensure the necessary care."

If a pregnant woman heavily uses opiates, such as heroin, codeine, oxycodone and even methadone or buprenorphine — which are used in drug treatment, those substances filter through the placenta. The baby is then born drug-dependent and soon suffers withdrawal.

When an expecting mom drinks alcohol while the baby is developing in the womb, the baby can develop fetal alcohol syndrome disorders as well.

Jennifer Donahue, child abuse investigation coordinator of Delaware and co-chair of the committee, said it is important a plan of safe care is established for these children when they leave the hospital.

Hospitals are already required to report to Delaware Division of Family Services if a baby is diagnosed as being substance exposed or with a fetal alcohol spectrum disorder.

There were 448 reports made in 2015. Not all require follow-up, however. DFS investigated 289 cases of babies who tested positive for drugs and 88 who tested positive for alcohol.

But the follow-up for families can be inconsistent, Donahue said.



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Hospitals adopt to handle more drug-addicted moms

<http://www.delawareonline.com/story/news/2015/11/20/hospitals-adopt-more-drug-addicted-moms/76033968/>

State and community agencies are doing "damage control" now to try to connect families to services such as home visiting nurses and are tasked with investigating near-death, injury and death instances that involve drugs. For instance, such a child death could be the result of a mom on methadone rolling over onto a baby in bed, suffocating the infant.

Draft legislation is in the works to formalize a plan of safe care for babies that will engage social workers, nurses, hospitals and other groups to ensure that families will not fall through the cracks and the baby is not in danger. Mothers would need to sign off on the plan at the hospital and would be monitored to make sure they are following it appropriately.

"We are trying to make it clear and formal," Donahue said. "It's not a discharge plan; it's a follow-through plan."

Others, such as Dr. David Paul, chair of the Delaware Healthy Mother and Infant Consortium and head of pediatrics at Christiana Care Health System, feel that the legislation is not the cure-all.

He is concerned that the legislation would actually deter moms from getting prenatal care or dissuade them from drug treatment. The legislation may be part of the solution, but it's not the only solution, Paul added.

"There's not going to be a silver bullet," Paul said.

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Editorial: To save the kids, treat the addicted parents

Editorial 6:01 p.m. EST March 4, 2016



(Photo: File)

At first glance, the deaths of kids like Aiden Hundley and Autumn Milligan (<http://story/news/local/heroin/delaware/2016/03/04/delaware-falling-heroin-babies/80930474/>) point to Delaware's failed effort to safeguard children born to drug-addicted parents.

But in the bigger picture, such deaths also intensify the spotlight on our state's need for more addiction treatment services.

A proposed measure called "Aiden's Law" would require addicted mothers to sign an agreement with the state that they will properly care for their addicted children — or risk losing custody.

While we support any effort to keep kids safe, it's critical to remember this: We can send all of the case workers in the world to check in on kids, but if their parents don't receive adequate treatment for their addictions, the child always will be in danger.

Just as children born with addictions need treatment, so do their parents.

As pointed out in the Sunday News Journal front-page story, more than 130,000 children born in the United States in the last decade entered the world hooked on drugs, according to a Reuters investigation.

Reuters identified 110 cases since 2010 in which babies and toddlers whose mothers used opioids during pregnancy later died preventable deaths.

In Delaware, four addicted babies died in the care of a parent or caregiver in 2015, and three others were severely abused.

To combat this tragic trend, it's critical that addicted mothers-to-be feel comfortable seeking and have easy access to the prenatal and addiction care they and their babies desperately need.

We know this can be done.

The News Journal highlighted such an effort (<http://story/news/local/2015/11/20/heroin-babies-starting-life-withdrawal/75209368/>) in November. While it may not be practical or ideal to use several group home settings across the state, we believe further investment in and expansion of such a program will lead to far more positive outcomes.

And while it's a given that mothers and children are the first priority, addicted fathers need access to help, too. Addicts say that the already difficult task of getting clean is made all the tougher when they're around people who continue to use.

On top of that, access to effective services remains limited, though additional facilities are opening this year.

In 2015, there were 9,877 admissions into state-funded treatment facilities — the highest number in more than 10 years, according to data collected by the state health department. In 3,723 of those admissions, people identified heroin as their primary drug.

As we have written in this space before (<http://story/opinion/editorials/2016/01/10/wrenching-film-shows-heroin-deadly-impact/78599492/>), opiate/opioid addiction is a scourge that does not discriminate.

There remains for some the belief that addicts can choose to get and stay clean — that opiate addiction itself is a choice.

Yet, while the decision to first use opiates rests with the user, the power of the subsequent addiction overwhelms all logic and reason.

Still, one would hope that the risk of losing custody of a child would be motivation enough for any addicted parent to accept help if offered.

That help may cost us more in the short term, but the long-term benefit of such an investment is seeing all of our children grow up to be healthy and productive members of society. As it stands now, too many kids die before they even know what the word "addiction" means.

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Hospitals adapt to handle more drug-addicted moms

James Fisher, The News Journal 7:39 p.m. EST November 21, 2015



(Photo: JENNIFER CORBETT/THE NEWS JOURNAL)

Hospital systems in Delaware are trying to adapt to a world in which heroin use and methadone treatment are increasingly marked "yes" on maternity ward intake forms.

At Christiana Hospital in Newark, those adaptations have included remodeling a section of the maternity unit into the Continuing Care Nursery, a place where NAS infants and their parents, as well as other babies who need special care, can stay several weeks after delivery. A \$500,000 contribution from the Junior Board of Christiana Care helped the nursery open.

"One of the major functions of that unit, and the reason we designed it, is to be able to handle a quieter environment," said Dr. David Paul, chair in Pediatrics at Christiana. Babies with NAS are more sensitive to light and sound than healthy infants; the constant beeping and foot-shuffling of a neonatal intensive care unit is a challenge to handle.

"Ultimately, they can go home faster if they stay out of the NICU," Paul said.

On Thursday, Christiana Care unveiled a \$260 million capital construction proposal that would turn the existing women and children eight-story haven for expecting moms with more room for its neonatal intensive care unit and create single-family patient rooms.

If approved by a state board that guides hospital expansion efforts, the new building could be complete by 2020, hospital officials said.

To treat babies with NAS, doctors and nurses administer tiny doses of morphine. Morphine relieves the pain of withdrawal from opiates, and within three to six weeks, also draw down the dose of morphine. The drug also helps with seizures, fever and weight loss.

"It's a substitution drug," said Fletcher, the Beebe pediatrician. "It occupies the same receptor sites and neurons in the brain so that withdrawal symptoms, minimizes cravings."

It may seem odd to give infants morphine, but it's a common treatment for NAS throughout the country. Still, doctors don't want to give newborns any more than they have to.

"There are emerging data that there's an association between length of medical treatment with morphine with adverse neurodevelopmental outcomes. The longer the time we can keep babies on morphine in the hospital, potentially the better the baby's outcomes are," Paul said.

There are plenty of ways to soothe the babies that don't involve drugs, too. Tracey Bell, a NICU nurse educator at Christiana, said she tells parents that "just holding them, cuddling them, giving them a quiet environment, talking to them softly and feeding them in a quiet area" can help. "They don't like a lot of additional stimulation," Bell said.

Volunteers assigned to the CCU will also cuddle and rock infants when parents aren't there. "That soothing, rhythmic rocking helps to settle any baby," said Pamela Jimenez, a nurse practitioner and coordinator of the CCU.

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Raising awareness for fetal alcohol syndrome

<http://www.delawareonline.com/story/news/health/2015/11/20/raising-awareness-fetal-alcohol-syndrome/76056634/>

On average, Paul said, babies with NAS stay in the hospital for 15 to 18 days postpartum. In the NICU, there's no place for parents to sleep that many nights. But in the CCU, each room is private and has a pull-out sofa.

The medical community is coming up with ways to track the progress of these infants into their second and third years of childhood. At Christiana, Jimenez keeps tabs on the babies and their families by encouraging them to take part in Child Development Watch, a state-supported early intervention program. "It's making sure that mom's needs are being met, and making sure the baby is developing appropriately," Jimenez said.

Bridget Buckaloo, executive director of women's health services at Beebe Healthcare, said Beebe also follows state guidelines and facilitates referrals of all NAS babies for developmental screening.

Staff writer Jen Rini contributed to this story. Contact James Fisher at (302) 983-6772, on Twitter @JamesFisherTNJ or jfisher@delawareonline.com.

Read or Share this story: <http://delonline.us/1j0ELbS>

More treatment key for addicted moms

Jon Rini and Eriqian Parra, The News Journal 6 p.m. EST March 4, 2016



(Photo: JENNIFER CORBETT/ THE NEWS JOURNAL)

Holly Rybinski, of Newport, said she had to go to jail in order to get the drug treatment she needed. That was almost two years ago.

She had stayed clean for five years, but while she was pregnant his child, her partner overdosed and died. Consumed by grief, Rybinski turned to heroin and cocaine during the last five months of her pregnancy.

After she gave birth to her son James April 8, 2014, at Christiana Care's Wilmington, she had to be clean.

She said the Division of Family Services told her that they had to take custody of him because she was positive for drugs, she wasn't in a treatment program and Rybinski had a record. They told her she had 80 days to find employment and housing and then they could discuss putting him back in her care.

That request was easier said than done. There were issues with insurance coverage and doctors who would not approve her care because she had given birth only weeks before, she said.

"I tried five different times to get into treatment," Rybinski said. "It was just one obstacle after the other."

As the number of pregnant and addicted mothers grows, the need for treatment is even more critical. Community members, like recovery, like Rybinski, have long lamented Delaware's lack of residential treatment options. Many people have to wait days for a bed. Many have to go out of state.

That was the case with Rybinski. She tried to get admitted to rehabs in Maryland and Pennsylvania before turning back to her home for access.

The treatment options available do boast results.

Over the last three years, about 774 women were helped by a Brandywine Counseling program that helped connect women to training and case management. In that same period, 188 babies were born and 167 were born free of illicit drugs, data from the program. About 145 were delivered to full term and 133 were born within a healthy weight.



35 year-old Holly Rybinski, of Newport, plays 3 year-old daughter Scarlet after she got home from daycare. Rybinski just got out of prison over a week ago for burglary and possession charges that stemmed from her drug addiction. She is currently living with her parents during her recovery. (Photo: JENNIFER CORBETT/ THE NEWS JOURNAL)



35 year-old Holly Rybinski, of Newport, plays with her 3 year-old daughter Scarlet after she got home from daycare. Rybinski just got out of prison over a week ago for burglary and possession charges that stemmed from her drug addiction. She is currently living with her parents during her recovery. (Photo: JENNIFER CORBETT/ THE NEWS JOURNAL)

Currently, there is one state-run treatment program for expectant or new mothers recovering from addiction in Delaware, but it is only for women who are incarcerated and it is in Newark.

Run through the Delaware Department of Correction and Connections Community Support Programs, the DOC's healthcare provider, a judge can sentence women to the program, called New Expectations, as a condition of probation instead of house arrest or prison. The women live in a group home, receive prenatal care and take parenting classes.

Brandywine Counseling ran a program for expecting moms wrestling with addiction, called Lighthouse, downstate in Ellendale, but it closed in September due to budget cuts and staffing shortages.

About 28 to 40 women participated in the program at any one time over the five years it was active, said Lynn Fahey, Brandywine chief executive officer.

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<http://www.delawareonline.com/story/opinion/editorials/2016/03/04/save-kids-treat-addicted-parents/81335512/>

Lighthouse wasn't just a group home – it offered a residential level of care to help women manage cravings with around the clock staffing. Fahey estimated it cost about \$700,000 a year to support, but data from Brandywine shows it was extremely successful. Nearly 100 percent of women were able to give birth to babies free of drugs, Fahey said.

In the year before it closed, about 98 percent of women enrolled in Lighthouse re-established relationships with their children or immediate family members. Nine cases investigated by DFS closed during the women's treatment and all women were able to find jobs.

"If the children had been taken, we were able to help the mom re-unify and get the children out of foster care," Fahey said. "It is an expensive level of care to do it right."

One of the other problems is spotty insurance coverage, explained MaryBeth Cichocki, a member of the advocacy group atTAack Addiction.

There is a set amount of time people can stay in residential treatment programs, typically up to 30 days, and then people are back out on the streets.

"Medicaid pays thousands and thousands and thousands of dollars for all these babies in the hospital," Cichocki said. "Yet if they would just get the mothers into a good rehab and keep them there until their brain starts to heal so the cravings aren't so powerful and the mom wants to use again."

Rybinski was one such mom that had difficulty getting treated.

Frustrated that she couldn't get care, she ramped up her drug use and started stealing from vehicles in New Castle County neighborhoods to feed her habit. Eventually she was arrested and sentenced to two treatment programs run through the DOC. DFS terminated her parental rights.

Buy Photo



35 year-old Holly Rybinski, of Newport, plays 3 year-old daughter Scarlet after she got home from daycare. Rybinski just got out of prison over a week ago for burglary and possession charges that stemmed from her drug addiction. She is currently living with her parents during her recovery. (Photo: JENNIFER CORBETT/THE NEWS JOURNAL)

Rybinski was just released after being incarcerated for 18 months. While she was in jail, a foster family brought James to see her every month. Her two other kids, Scarlet, now 3, and Gage, 6, stayed with her mom, and thought she was in "time out."

Had she been connected to treatment services immediately or had a halfway house to stay after she was discharged from the hospital, Rybinski said her life might have taken a different turn.

"I might have 18 months clean and been home for the past year," she said.

Though it wasn't a perfect scenario, she is grateful she was separated from James when he was born. She acknowledged that caring for a newborn and trying to manage her addiction could have been detrimental to his health.

"I don't think they should have given him back to me right then," she said.

Now she's happy that she gets to see him every other weekend and he is going to be adopted by her partner's, his dad's, family. She's enjoying life with her other children, Scarlet and Gage, finishing her college degree in multimedia design, and counseling people struggling with addiction. Hearing Scarlet say "I love you to pancakes," the three year old's favorite food, is music to her ears.

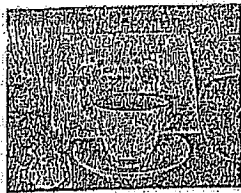
"I let [addiction] become my life. I need to stay clean," she said. "I forgot what my purpose was."

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Delaware failing heroin babies

Delaware failing heroin babies

Esteban Parra and Jen Rini, The News Journal 11:38 a.m. EST March 7, 2016



(Photo: ESTEBAN PARRA/THE NEWS JOURNAL)

Delaware is failing babies born addicted to heroin and other drugs, the state Children's Department acknowledges.

Four addicted babies died in the care of a parent or caregiver in 2015, and three others were severely abused.

The September death of 8-month-old Aiden Ryder Hundley, who police say suffered horrible abuse at the hands of his parents, demonstrates gaping holes in the state's protocol for following up care of hundreds of addicted children annually discharged from Delaware hospitals to their parents.

A state commission and 16 state lawmakers are pushing legislation, named "Aiden's Law," that would require mothers under investigation to sign an agreement with the state that they will properly care for their addicted children — or risk losing custody. It also would establish a unified plan all state agencies and community groups must follow in regard to at-risk children, eliminating the patch-work approach now being used statewide.

"We are going to have dead babies" without meaningful changes, Jennifer Donahue, statewide child abuse investigation coordinator for the Office of the Child Advocate, told a committee studying care for substance-exposed infants in January.

On Feb. 19 of last year, Aiden was born at Beebe Healthcare, one of several Delaware hospitals that tests all newborns for addictions. His first 27 days were spent in withdrawal, or neonatal abstinence syndrome, a condition (<http://story/news/local/2015/11/20/heroin-babies-starting-life-withdrawal/75208368/>) that makes babies sleep-deprived, irritable, prone to tremors and vomiting, and difficult to feed.

After enduring that ordeal, the Division of Family Services permitted Aiden to be discharged into the custody of his parents, Doyle J. Hundley Jr., 37, and Casey R. Layton, 28, of Harbeson — both of whom have a long history of drug addiction, court records show.

The caseworker assigned to Aiden should have performed a thorough investigation on the parents and their wherewithal to provide a safe environment for the child, said Carla Benson-Green, cabinet secretary of the agency that oversees DFS. That didn't happen. And Hundley and Layton, like many addicts who frequently move from place to place seeking shelter from friends and family, were lost by DFS.



Carla L. Benson-Green, Secretary of the Department of Services for Children, Youth and Their Families talks about the children born with addictions. (Photo: JENNIFER CORBETT/THE NEWS JOURNAL)

Sixty-four days after the baby was discharged from the hospital, the caseworker found and visited the family but raised no red flags, Benson-Green said.

Two days later the parents called 911, explaining to first responders that the boy was having seizures. Doctors found freshly broken bones and bones beginning to heal from earlier breaks. He also suffered retinal hemorrhaging in both eyes, and he had an E. coli infection in his brain.

Aiden never left the hospital. He died Sept. 22 after being on life support four months.

The parents were charged with murder, contending the baby's injuries stemmed from abuse.

Hundley claims injuries to his son occurred when he tripped on a duffel bag while holding the baby.

The caseworker who failed baby Aiden will be held accountable, Benson-Green said. But rather than instituting sweeping reforms, she said she has made changes to get DFS employees to do a better job.

"If the process was followed, it would not have been neglect by the agency," said Benson-Green. "You've got to see the child. You've got to see the family. ... You have to assess the home. All of that did not happen in this

case."

Bringing agencies together

The Department of Services for Children, Youth and their Families has come under fire for other high-profile cases, such as the August 2014 death of Autumn Milligan (<http://story/news/crime/2014/11/07/mom-charged-girls-death-investigated-four-times/18671593/>).

The 4-year-old girl was beaten to death by her mother in a seedy New Castle-area motel after being investigated four times for neglect by DFS. <http://www.delawareonline.com/story/news/local/heroindelaware/2016/03/04/delaware-failing-heroin-ba...> 3/11/2016

Delaware failing heroin babies

A News Journal investigation detailed how DFS looked into four neglect complaints about her mother, Tanasia Milligan, including one brought by her sisters, who wanted the division to investigate the care of Autumn and her older brother, Ethan. That investigation was active at the time of the girl's death.



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To save the kids, treat the addicted parents

<http://www.delawareonline.com/story/opinion/editorials/2016/03/04/save-kids-treat-addicted-parents/81335512/>

Although the sisters told child protection officials that the kids' bodies had marks on them, authorities never examined Autumn or her brother Ethan for bruises.

Rather than forcing Milligan to better care for her children, state officials ruled that the complaint was unsubstantiated, DFS made the same ruling in three previous investigations, even though Milligan was living with a man alleged to be a pimp at a motel on U.S. 13, where Milligan sold her body and abused drugs.

Tiffany Greenfield, Milligan's older sister, said the state fumbled several chances to save a vulnerable child from her troubled mother. She would welcome a new law with teeth that holds parents accountable, but points out that her sister agreed to a DFS demand that she take better care of her children or potentially lose them. At the end of the day, Greenfield said, the state didn't enforce the agreement and the lack of followup resulted in Autumn's death.

"They made Tanasia sign an action plan," Greenfield said. "They told her she had to do this, and if she didn't, she was told this would happen. She (Milligan) did nothing that they had listed and nothing happened, except the death of my niece."

While these incidents are ultimately the parent's fault, Greenfield said, the state must step into the breach when children are at risk.

"I just hope they can get it together before another child loses their life," she said.

DFS admitted to flaws into the investigation of Milligan and acknowledged it was riddled with errors, confusion and systemic problems. In February 2016, the month Aiden was born, the state announced the results of an internal review and proposed several reforms aimed at averting a similar tragedy.

Four children have died since.

Jennifer R. Ranji, then-secretary of the Children's Department, said that in retrospect, it was clear they didn't do enough to protect Milligan's children. Last October, Ranji was appointed a judge on Delaware's Family Court by Gov. Jack Markell.

Benson-Green, who has worked in the department since its inception in 1982, took over in November. Even when caseworkers follow protocols, she said, there can be bad outcomes.

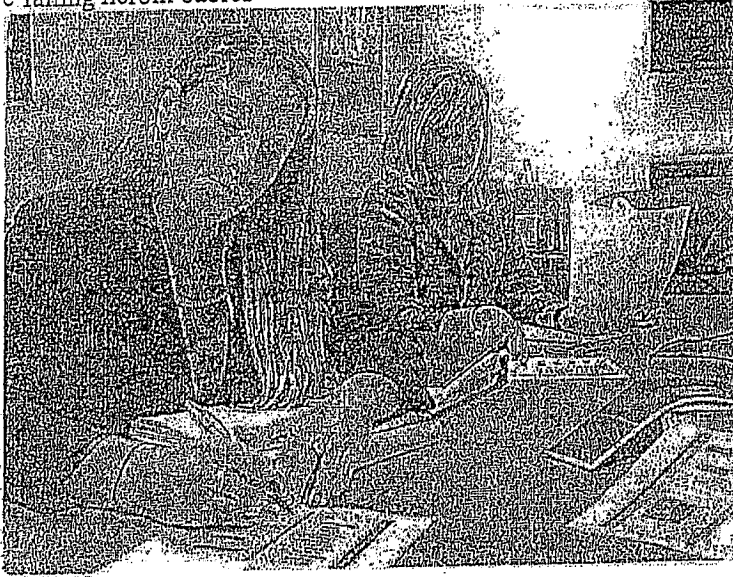
Sometimes the initial contact with a mother and baby occurs months after a referral is received. Other times, DFS gets wrong names or bad addresses or is hampered by a lack of communication between state agencies, including police and the Department of Justice.

"As of now there is no Delaware law that outlines what each agency has to do when there is a substance exposed infant," said Donahue, the investigator.

Federal law requires that a plan of safe care be established and that states have policy and procedures in place. While DFS has a protocol, other state agencies follow their own rules in regards to children at risk — meaning some newborns with drug dependencies won't be under the watchful eye of the state.

"We've seen because of that disparity, because of the different cases, there are breakdowns and some agencies do not know what their role is," Donahue said.

Delaware failing heroin babies



Jen Donahue, left, child abuse investigator for the state of Delaware, and Tania Culley from the Office of the Child Advocate go over statistics related to abuse and death in cases involving substance exposed infants Thursday at the Department of Services for Children, Youth and their Families. (Photo: DANIEL SATO/THE NEWS JOURNAL)

There were 448 cases of suspected neglect or abuse reported to DFS among babies born with drugs or alcohol in their system, and the agency reported it found enough evidence to investigate 296 of them. Those 296 cases involved 364 children. In 44 cases, abuse was substantiated, 11 more are still pending.

A DFS spokeswoman said that they do not keep more accurate statistics of the types or severity of neglect or abuse.

"This is our problem," said Tania Culley, child advocate for the state of Delaware, one of the leaders of the legislative effort. "This is Delaware's problem and we all need to hold hands together to help solve it and support these mothers while making sure these babies are safe."

Nationwide, more than 130,000 children born during the past decade entered the world hooked on drugs, according to a Reuters investigation. Reuters identified 110 cases since 2010 in which babies and toddlers — whose mothers used opioids during pregnancy — died unnecessary deaths.

Being born drug-dependent didn't kill these children. Each recovered enough to be discharged from hospitals, but they were sent home to families ill-equipped to care (<http://story/news/health/2016/01/17/newborn-addictions-rise-triggering-new-hospital-rules/78851632/>) for them, the report found.

More than 40 of those children suffocated. Thirteen died after swallowing toxic doses of methadone, heroin, oxycodone or other opioids. In one case, a baby in Oklahoma died after her mother, high on methamphetamine and opioids, put the 10-day-old girl in a washing machine with a load of dirty laundry.

Linda Carpenter, a program director with the National Center on Substance Abuse and Child Welfare, is helping states avoid issues related to substance-exposed deaths among infants. Carpenter said she worked with Delaware officials on amending state code to align with federal law that requires a plan of safe care for moms and substance-exposed babies.

The legislation, co-sponsored by Reps. Melanie George Smith, D-Bear, Ruth Briggs King, R-Georgetown, Senate President Pro Tem Patricia Blevins, D-Elsmere, Sen. Cathy Cloutler, R-Heatherbrooke, and 12 others would define what a plan of safe care means for babies and moms. It would require social workers, nurses, hospitals and other groups to make reports and share information to ensure that families can't move without notifying authorities, and that babies are not in danger.

To print the document, click the "Original Document" link to open the original PDF. At this time it is not possible to print the document with annotations.

"One of the concerns in Delaware is we send moms and babies home sometimes and then there's nobody monitoring or not monitoring on a regular basis and then something happens. And that shouldn't surprise anybody," Carpenter said. "The plan of safe care and timing is critical. That should be written and everyone is on board before the baby even leaves the hospital."

At a community meeting last fall, Briggs King heard cases where a substance-exposed child was sent home with a parent struggling with addiction and died, or nearly died. She wanted answers, but found they were hard to find – even for a lawmaker.

"It just seems to be a big question mark there," Briggs King said. "We need to protect these children."

To draw attention to the lack of follow-up, she drafted a bill that would have allowed police or a physician to take temporary custody immediately if a child is born drug-dependent or suffering from fetal alcohol syndrome.

Briggs acknowledged that it could deter women from receiving the substance abuse treatment they need, so she dropped the legislation and instead is backing the other effort.

Helping moms get into a successful recovery program is one of the best ways to start her and baby on a good path, says Dr. Elizabeth Drew, medical director of Summit Behavioral Health in Pennsylvania.

But moms-to-be who are in recovery are often afraid to disclose their situation.

"We need to make women who are pregnant feel like they can come forward with an addiction without already feeling like they are going to lose custody of their child," Drew said.

'We've got to catch up'

Of the three deaths besides Aiden's last year, two involved instances in which a mother using methadone, a drug taken to kick a heroin habit, fell asleep and smothered her baby. The other baby died of Sudden Infant Death Syndrome.

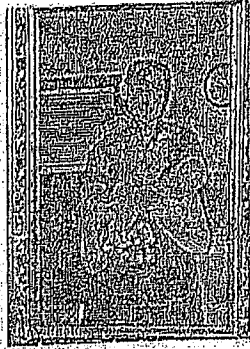
Benson-Green said in these cases, her caseworkers did everything properly.

Delaware failing heroin babies

There have been many cases across the country where moms have had adverse reactions to methadone after giving birth, unintentionally harming their babies, Carpenter said. Studies have shown that methadone can increase the likelihood of SIDS.

After a mother gives birth her body changes, Carpenter explained, noting that the mom may not respond to methadone as she did before giving birth. If she is not being closely monitored and the dose is too high, she may feel sleepy or dizzy, which can affect how she cares for the baby.

There have been a number of cases in which moms on methadone have fallen asleep, inadvertently rolling onto the child and smothering it.



Doyle J. Hundley Jr., 37, and Casey R. Layton, 28, have been charged with the death of their 8-month-old son, Alden. (Photo: ESTEBAN PARRA/THE NEWS JOURNAL)

Benson-Green said caseworkers take it hard when a child dies because the state likes to believe it has everything in place to keep children safe. After Alden's death, DFS has changed its protocol. Now a supervisor must sign a hospital discharge letter acknowledging the caseworker's findings and clearing the newborn to be released to parents or caregivers.

There also is more training to help caseworkers recognize child abuse and its triggers, and a substance abuse counselor accompanies caseworkers to the hospital when parents test positive for drugs. An informal assessment is made about whether the parent needs additional services.

In spite of lapses that have resulted in the deaths of infants, Benson-Green said citizens should not give up on the state to care for children at risk.

"The vote of confidence should still be there from the public," Benson-Green said. "There should be no reason for them to waiver from it. It's a challenging job when you are always dealing with constant changes in family dynamics and family behavior and the fact that the culture within the community is changing."

"We've got to catch up and work with those things that are now set before us."

Sitting on the shelf of a messy home in Harbeson is a white ceramic tile, with "Alden Ryder" printed in black. A heart stands in for the the dot over the "i" in Alden, and tiny blue footprints decorate either side of Alden's date of birth and death — 02-19-15 to 09-22-15 ([/story/news/crime/2015/12/11/mother-father-charged-killing-8-month-old-son/77143184/](http://story/news/crime/2015/12/11/mother-father-charged-killing-8-month-old-son/77143184/)).

A tea cup with a broken handle and the word "Mother" holds the tile upright. Those objects and the proposed law in the boy's name appear to be the only physical memories left of him.

Contact Esteban Parra at (302) 324-2299, eparra@delawareonline.com or Twitter @eparra3. Jen Rini can be reached at (302) 324-2386 or jrini@delawareonline.com. Follow @JenRini on Twitter.

Child Protection Accountability Commission findings

A review of findings reported last month to the Child Protection Accountability Commission, the committee writing the new legislation, cited instances of breakdowns:

- One child was not able to be seen by a local child abuse expert because of a dispute between the hospital and insurance company.
- A report was not made to the state Division of Family Services' when a victim's sibling was born substance-exposed in 2013.
- The same division did not verify a mother's participation with a substance abuse provider.
- There was a delay in planning for the safety of a dead baby's siblings residing in a home where the death occurred because the mother did not sign a safety agreement. The division also entered into a safety agreement via telephone with an out-of-state relative for the other children six days after incident.

Don't miss a thing



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del.com/cannett/local/library/news.delawareonline&hl=en) | iPad app (<https://itunes.apple.com/us/app/the-news-journal-for-ipad/id600071892?mt=8>) Don't forget to "like" us on Facebook! (<https://www.facebook.com/delawareonline>)

Sec. 14.06.301. - Definitions.

The following words, terms, and phrases, when used in this Division, shall have the meanings ascribed to them in this Section, except where the context clearly indicates a different meaning:

Blindness means central visual acuity of 20/200 or less in the better eye with the use of a correcting lens. An eye that is accompanied by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty (20) degrees shall be considered for purposes of this definition as having a central visual acuity of 20/200 or less.

Disabled means a person who is unable to engage in any substantial gainful activity by reason of blindness or any other medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than twelve (12) months.

Income means adjusted gross income, as defined under the Internal Revenue Code of 1986 or any successor thereto, as amended from time to time, but excluding social security and tier 1 railroad retirement benefits, plus the amount of capital gains excluded from such adjusted gross income. For any fiscal year for which an exemption is claimed, income shall be the income received during the calendar year immediately preceding the fiscal year for which exemption is sought.

Resident means one legally domiciled within the State as of July 1st of the fiscal year for which exemption is sought. Mere seasonal or temporary residence within the State, of whatever duration, shall not constitute domicile within the State. Absence from this State for a period of twelve (12) months shall be prima facie evidence of abandonment of domicile in this State. The burden of establishing domicile shall be upon the claimant.

(Ord. No. 98-050, § 1(14-256), 5-26-1998; Ord. No. 10-113, § 1(Exh. A), 1-18-2011)

Sec. 14.06.302. - Qualifications for and amount of elderly exemption.

A.

Elderly exemptions for those making application on or before tax year 2007:

1.

Qualifications. Every resident who is sixty-five (65) or more years of age and who has reached that age prior to July 1st of the fiscal year for which the exemption is sought and who or whose spouse resides in a house owned by him or her that is his or her principal residence shall be entitled to an exemption as set forth in Subsection B provided his or her income does not exceed fifty thousand dollars (\$50,000.00) per year or, in the case of a married couple the combined income of the two (2) of them does not exceed fifty thousand dollars (\$50,000.00) per year. No application under this Section shall be approved unless, at the time of the approval thereof, all taxes and sewer service charges then due to or collectible by New Castle County have been paid in full.

2.

Amount of elderly exemption. An elderly resident who meets the qualifications set forth in Subsection A shall be entitled to an exemption from all real property taxes, exclusive of any local light and ditch taxes, to an assessed value of fifty thousand dollars (\$50,000.00) on such principal residence.

3.

Continuation of exemption upon death. Notwithstanding Section 14.06.305, this exemption shall remain in effect for the entire fiscal year, so long as the applicant or spouse remains on the parcel for which the exemption is granted.

B.

Elderly exemptions for those making application on or after tax year 2008:

1.

Qualifications. Every resident who is sixty-five (65) or more years of age and who has reached that age prior to July 1st of the fiscal year for which the exemption is sought and who or whose spouse resides in a house owned by him or her that is his or her principal residence shall be entitled to an exemption as set forth in Subsection 2 provided his or her income does not exceed fifty thousand dollars (\$50,000.00) per year or, in the case of a married couple the combined income of the two (2) of them does not exceed fifty thousand dollars (\$50,000.00) per year; and further provided that the assessed value of the property does not exceed one hundred twenty-five thousand dollars (\$125,000.00.) For those whose assessed property value exceeds one hundred twenty-five thousand dollars (\$125,000.00), the State senior property tax exemption for those with incomes not in excess of three thousand dollars (\$3,000.00) shall apply. No application under this section shall be approved unless, at the time of the approval thereof, all taxes and sewer service charges then due to or collectible by New Castle County have been paid in full. A resident shall be defined as one legally domiciled within the state for a period of three (3) years immediately preceding October of the pretax year, as set forth in 9 Del. C. Ch. 81 (Limitations upon taxing power).

2.

Amount of elderly exemption.

a.

A resident who is sixty-five (65) or older who meets the qualifications set forth in subsection B, and whose property is not assessed at more than one hundred twenty-five thousand dollars (\$125,000.00), shall be entitled to an exemption from all real property taxes, exclusive of any local light and ditch taxes, to an assessed value of thirty-two thousand dollars (\$32,000.00) on such principal residence.

b.

An elderly resident whose property has an assessed value which exceeds one hundred twenty-five thousand dollars (\$125,000.00), but whose income does not exceed three thousand dollars (\$3,000.00) per year shall be entitled, on proper claim being made therefore, to exemption from taxation on such real property to an assessed valuation not exceeding five thousand dollars (\$5,000.00) as set forth in 9 Del. C. § 8131.

3.

If a resident who qualifies for a sixty-five (65) exemption on or before July 1, 2007 transfers his or her property and acquires a new property, the resident may transfer his or her exemption to the new residence upon the submission of a new application for exemption, accompanied by proper documentation of such transfer.

No application under this Section shall be approved unless, at the time of the approval thereof, all taxes and sewer service charges then due to or collectible by New Castle County have been paid in full, or the applicant is actively enrolled and making monthly payments of any tax or sewer charges due to or collectible by New Castle County as determined by the Office of Finance at the time of the application.

(Ord. No. 98-050, § 1(14-257), 5-26-1998; Ord. No. 98-088, § 1, 7-28-1998; Ord. No. 98-094, § 3, 9-22-1998; Ord. No. 99-043, § 1, 4-13-1999; Ord. No. 00-046, § 1, 4-25-2000; Ord. No. 04-155, § 1, 11-16-04; Ord. No. 07-131, § 1, 10-9-2007; Ord. No. 07-132, § 1, 10-9-2007; Ord. No. 10-113, § 1 (Exh. A), 1-18-2011; Ord. No. 11-052, § 1, 5-10-2011)

Sec. 14.06.303. - Qualifications for and amount of disability exemption.

A.

Disability exemptions for those making application on or before tax year 2007:

1.

Qualifications. Every resident who is disabled, as defined by Section 14.06.301, and who has become disabled prior to July 1st of the fiscal year for which the exemption is sought and who or whose spouse resides in a house owned by him or her that is his or her principal residence shall be entitled to an exemption from all real property taxes, exclusive of any local light and ditch taxes, to an assessed value not exceeding forty thousand dollars (\$40,000.00), providing his or her income does not exceed forty thousand dollars (\$40,000.00) per year or, in the case of a married couple, the combined income of the two (2) of them does not exceed forty thousand (\$40,000.00) per year. No application under this section or Section 14.06.304 shall be approved unless, at the time of the approval thereof, all taxes and sewer service charges then due to or collectible by New Castle County have been paid in full.

2.

Amount of disability exception. A person who is disabled as defined by Section 14.06.301 and who meets the requirements prescribed in Subsection A shall be entitled to an additional exemption from all real property taxes, exclusive of any local light and ditch taxes, to an assessed valuation not exceeding forty-two thousand dollars (\$42,000.00), provided his or her disability is due to the loss or loss of the use of both lower extremities or both upper extremities or both an upper and lower extremity such as to preclude locomotion without the aid of a brace, crutch, cane, or wheelchair and such as to require a home with special fixtures.

B.

Disability exemptions for those making application on or after tax year 2008:

1.

Qualifications. Every resident who is disabled, as defined by Section 14.06.301, and who has become disabled prior to July 1st of the fiscal year for which the exemption is sought and who or whose spouse resides in a house owned by him or her that is his or her principal residence shall be entitled to an exemption from all real property taxes, exclusive of any local light and ditch taxes, to an assessed value not exceeding thirty-two thousand dollars (\$32,000.00), provided his or her income does not exceed fifty thousand dollars (\$50,000) per year or, in the case of a married couple the combined income of the two (2) of them does not exceed fifty thousand dollars (\$50,000.00) per year. No application under this section or Section 14.06.304 shall be approved unless, at the time of the approval thereof, all taxes and sewer service charges then due to or collectible by New Castle County have been paid in full. A resident shall be defined as one legally domiciled within the State for a period of three (3) years immediately preceding October of the pretax year, as set forth in 9 Del. C. Ch. 81 (Limitations upon taxing power).

2.

Amount of disability exemption. A person who is disabled as defined by Section 14.06.301 and who meets the requirements prescribed in Subsection A shall be entitled to an additional exemption from all real property taxes, exclusive of any local light and ditch taxes, to an assessed valuation not exceeding forty-two thousand dollars (\$42,000.00), provided his or her disability is due to the loss or loss of the use of both lower extremities or both upper extremities or both an upper and lower extremity such as to preclude locomotion without the aid of a brace, crutch, cane, or wheelchair and such as to require a home with special fixtures.

3.

If a resident who qualifies for a disability exemption on or before July 1, 2007 transfers his or her property and acquires a new property, the resident may transfer his or her exemption to the new residence, upon the submission of a new application for exemption, accompanied by proper documentation of such transfer.

No application under this Section or Section 14.06.304 shall be approved unless, at the time of the approval thereof, all taxes and sewer service charges then due to or collectible by New Castle County have been paid in full, or the applicant is actively enrolled and making monthly payments of any tax or sewer charges due to or collectible by New Castle County as determined by the Office of Finance at the time of the application.

(Ord. No. 98-050, § 1(14-258), 5-26-1998; Ord. No. 01-104, § 1, 11-27-2001; Ord. No. 03-021, § 1, 3-25-2003; Ord. No. 07-131, § 2, 10-9-2007; Ord. No. 07-132, § 2, 10-9-2007; Ord. No. 09-028, § 1, 5-12-2009; Ord. No. 10-113, § 1(Exh. A), 1-18-2011; Ord. No. 11-052, § 2, 5-10-2011)

Sec. 14.06.304. - Disabled veteran's exemption.

A person meeting the requirements of Section 14.06.303 who became so disabled as a result of service in and while in the service of any branch of the United States armed services shall receive an additional exemption from all real property taxation, exclusive of any local light and ditch taxes, to an assessed valuation not exceeding five thousand dollars (\$5,000.00).

(Ord. No. 98-050, § 1(14-259), 5-26-1998)

Sec. 14.06.305. - Full taxation of property after termination of exemption.

A.

When, because of the change in health or death of the eligible resident, transfer of ownership, or any other change in status, a property no longer qualifies for an exemption granted under this Division, the exemption shall terminate at the end of the current tax quarter. The tax on the property shall be deemed to be levied upon the commencement of the next tax quarter and, if not paid, shall be subject to penalties as prescribed by State law. The tax shall be prorated in accordance with 9 Del. C. § 8340 (Levy of tax and creation of a lien based on the supplemental assessment roll).

B.

It shall be the obligation of the property owner receiving an exemption, his heirs, successors, or assigns, to provide timely notice to the County of any factor that renders the property no longer eligible for exemption under this Division. If the owner or his representative fails to provide such timely notice to the County, the County may back-bill the account in accordance with the provisions of Section 14.06.1110.

(Ord. No. 98-050, § 1(14-260), 5-26-1998; Ord. No. 10-113, § 1(Exh. A), 1-18-2011)

Sec. 14.06.306. - Waiver of penalty for social security pensioners.

A.

No penalty for failure to make timely payment of County taxes or sewer fees shall be assessed against any social security pensioner until after the fifth day of the month following a month in which the County tax or sewer fee is due to be paid. If the fifth day of that month falls on a weekend or other day on which the Office of Finance is properly closed for business, the penalty shall not be assessed until after the next business day.

B.

A social security pensioner, for purposes of this Section, shall be defined as anyone who is entitled to receive and does receive a social security pension and is obligated to pay County taxes or sewer fees. Proof of entitlement to the limited exemption from the penalty shall be made by the taxpayer with documentation from the Social Security Administration.

C.

The limited exemption of penalty granted by this Section shall be limited to County taxes and sewer fees for the residence of the social security pensioner.

(Ord. No. 98-050, § 1(14-261), 5-26-1998)

Kent County, DE
Monday, May 8, 2017

Chapter 191. Taxation

Article I. Disabled Property Owner and Senior Citizen Exemption

§ 191-1. Authority.

This article is adopted pursuant to the powers conferred upon the Levy Court of Kent County, Delaware, in Article VIII, Section 1 of the Constitution of the State of Delaware, as amended, and in 9 Del. C. § 8141, as amended.

§ 191-2. Title.

This article shall be known as the "Program Providing Partial Tax Relief for Totally Disabled Property Owners and Property Owners 65 Years of Age and Older."

§ 191-3. Qualifications for participation.

- A. To qualify under this article an applicant must be either:
- (1) Totally disabled and able to document said disability by meeting the definition of "totally disabled" as defined by social security disability or by filing certified copies of award letters from government agencies indicating that the applicant is totally disabled; or
 - (2) Sixty-five years of age or older at the beginning of the tax year for which application is made.
- B. However, an individual may only apply for inclusion in this program under one of the two provisions above.

§ 191-4. Residency requirement.

[Amended 4-15-1997 by Ord. No. 97-04; 2-24-1998 by Ord. No. 98-02; 8-26-2003 by Ord. No. 03-20; 4-12-2005 by Ord. No. 05-04]

The applicant shall have maintained his/her principal place of residence in the State of Delaware for the five years immediately preceding the tax year for which application is being made. In addition, the dwelling for which the exemption is sought must be the principal place of residence of the applicant at the time of application and must have been the principal place of residence for the 12 months immediately preceding the tax year for which application is

being made. If an applicant is totally disabled and incurred his or her disability as a result of and while in the service of any branch of the United States armed services, the foregoing residency requirements are waived for said applicant, other than the requirement that the dwelling for which the exemption is sought must be the principal place of residence of the applicant at the time of the application.

§ 191-5. Ownership of property.

[Amended 10-9-2007 by Ord. No. 07-27]

Title to the property for which the exemption is sought must be in the name of applicant or in the name of the applicant and the applicant's spouse, or in the name of a revocable grantor trust, as reflected in the official records of the County. In the event that the ownership of the residence dwelling is shared by the applicant and spouse, or revocable grantor trust, with others who do not qualify for participation in this program, then the exemption permitted in § 191-9 shall apply only to the proportionate share of the residence dwelling owned by the applicant and spouse or revocable grantor trust.

§ 191-6. Eligible property.

Property considered eligible for inclusion under this article shall be only the residence dwelling owned by an eligible applicant and, if applicable, up to one acre of land upon which it is located. Land which has been included under the State of Delaware Farmland Assessment Act shall not be eligible for partial tax relief under this program.

§ 191-7. Income limits.

[Amended 4-15-1997 by Ord. No. 97-04; 4-9-2002 by Ord. No. 02-09; 10-10-2006 by Ord. No. 06-37^[1]; 11-29-2011 by Ord. No. 11-21]

The total adjusted gross annual income of a single applicant shall not exceed \$16,000. The combined total adjusted gross annual income of an applicant and spouse residing together in the subject dwelling shall not exceed \$22,000. An additional \$3,100 per year may be added to the maximum adjusted gross annual income for each additional dependent residing in the dwelling of a qualified applicant for whom the applicant is the sole means of support. For the purposes of this article, the word "dependent" shall be defined by the Internal Revenue Services.

[1] *Editor's Note: This ordinance also provided an effective date of 6-1-2007.*

§ 191-8. Income exclusions.

Social security, Railroad Retirement Tier I and, if disabled, pension income directly related to the applicant's disability shall be excluded from the calculation of gross annual income.

§ 191-9. Exemption limit.

[Amended 4-15-1997 by Ord. No. 97-04; 4-12-2005 by Ord. No. 05-04]

An applicant who otherwise qualifies under this article shall be entitled to an exemption from all real property taxes on the first \$25,000 of assessed value of the applicant's eligible property

as defined in § 191-6. This exemption shall not apply to local ditch taxes or sewer, trash or other fees. If a totally disabled property owner incurred his or her disability as a result of and while in the service of any branch of the United States armed services, an additional \$5,000 of assessed value of the applicant's eligible property shall be exempt from all real property taxes.

§ 191-10. Filing for exemption.

[Amended 11-29-2011 by Ord. No. 11-21]

Applicants or their legal agents must file for exemption in the office of the Board of Assessment of Kent County in the manner determined no later than April 30 prior to the tax year for which the exemption is sought and must verify their eligibility, in writing, every year thereafter to continue to qualify for the exemption.

§ 191-11. Determination of eligibility.

- A. Based on the information submitted by the applicant and on County records, the Board of Assessment shall determine whether the application qualifies for the exemption permitted by this article.
- B. No application shall be approved unless all taxes, user fees, sewer service charges, I&E liens and all other taxes and fees then due to or collectible by Kent County have been paid in full by the application submission deadline date.
[Added 11-29-2011 by Ord. No. 11-21]

§ 191-12. Termination of eligibility.

Eligibility under this article shall terminate automatically when the applicant fails to meet any of the conditions stated herein.

§ 191-13. Appeals.

[Amended 11-29-2011 by Ord. No. 11-21]

An applicant may appeal the disposition of an exemption claim in the same manner as is provided for appeals from assessments. The deadline for filing written appeals shall be May 30 prior to the tax year for which the exemption is sought. In calendar year 1988, a later deadline date may be established by the Board of Assessment. Appeal hearings will be scheduled at the convenience of the Board.

§ 191-14. Administration.

The Board of Assessment, with concurrence of the Levy Court, shall establish written procedures providing for the administrative implementation of this article.

Sussex County, DE
Monday, May 8, 2017

Chapter 103. Taxation

Article I. Real Property Tax Exemption for Disabled Persons

§ 103-1. Exemption granted.

Every person who shall be a resident of this county, who shall be totally disabled and who has an income not in excess of \$4,500 per year or, if married, an aggregate income for husband and wife not in excess of \$6,500 per year and who shall reside in a dwelling owned by him which is a constituent part of his or her real property shall be entitled, upon proper claim being made therefor, to exemption from taxation on such real estate to an assessed valuation not exceeding \$12,500.

§ 103-2. Contents of application.

Every application for such claim shall contain the following declarations:

- A. That the applicant has been a resident or owner of a residence in Sussex County for three years immediately past preceding the application.
- B. That the applicant is the owner of the real property and the dwelling for which such exemption is claimed.
- C. That the applicant resides in said dwelling.
- D. That the applicant is totally disabled and has attached the certificate of a medical doctor in support of such claim.
- E. That the applicants income is not in excess of \$4,500 or, in the event of a marriage, that the aggregate income for husband and wife is not in excess of \$6,500.

§ 103-3. Application procedure.

Application for exemption pursuant to this article shall be made in the same manner as exemption applications for residents over 65 years of age shall be made.^[1]

[1] *Editor's Note: See § 103-10 of this chapter.*

§ 103-4. Applicability to surviving spouse.

The surviving spouse of such applicant shall remain exempt from taxation upon the death of the applicant so long as said surviving spouse shall:

- A. Remain a resident of this county,
- B. Remain the owner of the real property and of the dwelling for which such exemption was granted;
- C. Reside in said dwelling;
- D. Have an income not in excess of \$4,500 per year; and
- E. Remain unmarried.

§ 103-5. Term of exemption.

An exemption granted pursuant to this article shall remain in effect so long as the real property and the dwelling house thereon are owned by the applicant or his surviving spouse under the conditions set forth in §§ 103-1 and 103-3 hereof.

§ 103-6. Definitions.

For the purposes of this article, the following terms shall have the meanings indicated:

INCOME

Shall not include social security benefits or railroad retirement benefits.

TOTALLY DISABLED

A person who, as a result of accident, injury or disease, shall be permanently physically prevented from pursuing any remunerative occupation.

§ 103-7. Appeals.

Any applicant for this exemption who shall be aggrieved by the disposition of his claim may appeal such disposition in the manner provided by law.

Article II. Real Property Tax Exemption for Senior Citizens

§ 103-8. Exemption granted.

Every person who shall be a resident of this county and has reached his/her 65th birth date and has an income not in excess of \$6,000 per year or, if married, an aggregate income for husband and wife not in excess of \$7,500 per year and shall reside in a dwelling owned by him or her which is a constituent part of his real property shall be entitled, upon proper claim being made therefor, to exemption from taxation on such real estate to an addressed valuation not exceeding \$12,500.

§ 103-9. Contents of application.

Every application for such claim shall contain the following declarations:

- A. That the applicant has been a resident of Sussex County for five years immediately past preceding the application;
- B. That the applicant is the owner of the real property and the dwelling for which such exemption is claimed;
- C. That the applicant resides in said dwelling;
- D. That the applicant is 65 years of age; and
- E. That the applicants income is not in excess of \$6,000 or, in the event of a marriage, that the aggregate income for husband and wife is not in excess of \$7,500.

§ 103-10. Application procedure.

Applications for exemption pursuant to this article shall be made in accordance with 9 Del. C. § 8133.

§ 103-11. Term of exemption.

An exemption granted pursuant to this article shall remain in effect so long as the real property and the dwelling house thereon are owned by the applicant under the conditions set forth in §§ 103-8 and 103-10 hereof

§ 103-12. Interpretation of income.

- A. For the purpose of this article, income for those presently receiving the exemption shall not include social security benefits or railroad retirement benefits.
- B. With the adoption of this article, income shall not include social security benefits. All pension benefits, with the exception of Tier I railroad retirement and survivor benefits, shall count as income.

§ 103-13. Appeals.

Any applicant for this exemption who shall be aggrieved by the disposition of his claim may appeal such disposition in the manner provided by law.