



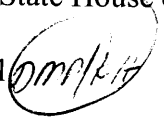
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MEMORANDUM

DATE: June 17, 2010

TO: All Members of the Delaware State House of Representatives

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

RE: S.B. 264 [Disposition of Juveniles Pending Delinquency Adjudication]

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 264 which, in general, expands the scope of justification for placement of children in secure settings. As background, current law (Title 10 Del.C. §1007) addresses the status of children charged with delinquency pending adjudication. The Family Court is deterred from placing such children in a DSCYF secure detention setting unless the Court lacks confidence that the child will appear for the adjudicatory hearing and other factors support secure detention. According to the synopsis, this legislation was prepared by a set of agencies comprising the “Juvenile Justice Collaborative”. SCPD has the following observations.

First, lines 16-18 create a new “justification” for secure detention for first offenders or children who have no history of failure to appear for adjudicatory hearings. The following standard would support secure detention: “circumstances demonstrate a substantial probability that the child will fail to appear at a subsequent hearing”. The term “substantial probability” is difficult to interpret. Is a “substantial probability” more than a “probability”? Is it 51%, 61%, 71%? It would be preferable to adopt a more understandable benchmark which establishes a somewhat elevated standard justifying secure detention of an unadjudicated child. Consider substituting “circumstances demonstrate a high probability that the child will fail to appear at a subsequent hearing.” Cf. Title 11 Del.C. §255; Title 16 Del.C. §212(3)b; and Title 20 Del.C. §3131(11)b for examples of use of “high probability” in the Code.

Second, lines 19-20 add a new justification supporting secure detention if a child is simply alleged to be unlawfully interfering with the administration of justice.” This is manifestly too sweeping and vague a standard to justify locking up a child. For comparison, minor transgressions (less than Class A Misdemeanors) and non-violent offenses are generally

correlated with non-secure placement of a child (lines 12-14). “Interfering with the administration of justice” is an amorphous concept which would encompass even non-criminal or non-delinquent activity (e.g. failing to appear at a school suspension hearing).

Third, line 29 is problematic. SCPD assumes the drafters intended the word “changes” to be “charges”. However, query how a person can “commit a charge”? SCPD recommends deletion of lines 28-30 altogether since new charges could simply be considered under the standards compiled in lines 12-14. Otherwise, an allegation of any offense justifies secure placement.

Fourth, in line 41, it would be preferable to substitute “based” for “base”.

Fifth, in line 63, the sponsors may wish to consider inserting “without good cause” between “refuses” and “to”. Conceptually, a parent who justifiably declines to accept a juvenile back into a home (e.g. charged juvenile threatens arson or harm to co-habiting infant), could face thousands of dollars in liability based on the per diem costs of institutional placement. In addition, the court could assess the “good cause” justification proffered by the parties as part of the hearing or subsequent proceeding.

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

cc: The Honorable Jack A. Markell
Delaware State Senate
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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