



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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MEMORANDUM

DATE: June 13, 2013

TO: All Members of the Delaware State Senate
and House of Representatives

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

RE: S.B. 99 [Dependent Children]

The State Council for Persons with Disabilities (SCPD) has reviewed S.B. 99 regarding the placement of dependent children. The proposed legislation would essentially have the following effects.

First, while current law requires the Department of Services for Children, Youth and Their Families (DSCY&F) written consent to placement of children with non-relatives, the legislation would only require DSCY&F assessment (lines 10-12 and 40-44). Exceptions are identified, including placements involving licensed child placement agencies (lines 45-70).

Second, current law generally requires the Family Court to obtain a DSCY&F evaluation and report prior to granting custody of a child to a non-relative (lines 18-21). The legislation deletes this requirement (lines 18-21) and merely cross references a statute which requires assessment unless one of multiple exceptions applies. This change is problematic since it may bar the Family Court from exercising any discretion to direct a DSCY&F evaluation if an exception is literally met. For example, if the Court is considering placement of a child with a distant relative (cousin; great uncle) and there is little or no positive or negative information about the relative, the Court could not obtain a DSCY&F assessment since, by operation of law (lines 21 and 54-55), the assessment is exempt. It would be preferable to clarify that the Family Court may exercise judicial discretion to direct a DSCY&F assessment even if facially exempt under Section 351 of Title 31. To remedy this concern, consider substituting the following for the proposed §1009(b)(3) [lines 18-21]:

(b)(3) Grant custody of a child to any person or agency where satisfactory arrangements can be made but, in the event the child is placed in a home ~~other than the home of a relative,~~ of an "adult individual" who fails to meet the definition of relative in §901 of

this Title, the Court shall require order an evaluation written assessment and report from the Department of Services for Children Youth and Their Families or its licensed agency if required by Section 351 of Title 31, or, notwithstanding Section 351 of Title 31, in the sound discretion of the Court.

The synopsis recites that the sponsors intend to make it “clear that the Family Court has the final authority to determine whether or not the placement is appropriate”. The Court’s exercise of this authority should be “informed”. If the Court has reservations about a distant relative, it should have some discretion to direct an assessment even if technically exempt under Section 351 of Title 31.

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
Mr. Brian Hartman, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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