



STATE OF DELAWARE
STATE COUNCIL FOR PERSONS WITH DISABILITIES
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The Honorable John Carney,
Governor

John McNeal, Director
SCPD

MEMORANDUM

DATE: April 5, 2022

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

FROM: Ms. Terri Hancharick, Chairperson *TH*
State Council for Persons with Disabilities

RE: H.B. 319 (Constitutional Amendment Regarding Parental Rights)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 319 which, according to the synopsis, affirms Delaware parents and legal guardians have a fundamental right to the care, custody, and control of their children. The Act indicates this amendment would require government officials to prove that State interference with these rights is a necessary “compelling interest” and the least intrusive means. It purports to fill a void in the Delaware constitution and caselaw. SCPD strongly opposes this bill as currently drafted. Extending equal rights to legal guardians would create conflict between State law and the U.S. constitution. This could result in numerous court challenges, wasting the time of parents with disabilities and delaying the adjudication of their rights, as well as taxpayer dollars and court resources. SCPD has the following observations and concerns.

While the synopsis sounds compelling, a closer read of the statute reveals that, in fact, it would undo a Delaware Supreme Court case, that has been crucial to many parents, including those with disabilities, to have their children returned to their care once concerns about their “fitness” to parent have been addressed; *Tourison v. Pepper*, 51 A.3d 470 (Del. 2012). HB 319, notably, extends parental rights as a

fundamental right to not only biological and adoptive parents but also legal guardians. Tourison, has been used by many parents who have regained fitness to parent, to terminate a legal guardianship that gave care and custody to another party.

The assertion that there is a void in the Delaware constitution and caselaw protecting parental rights is inaccurate. The Delaware Supreme Court has affirmed that parents have a fundamental right to make decisions concerning the care, custody, and control of their children. Tourison, citing Troxel v. Granville, 120 S. Ct. 2054 (2000); Shepherd v. Clemens, 752 A.2d 533, 541; Black v. Gray, 540 A.2d 431, 435 (Del. 1988). Therefore, what HB 319 adds, substantively, is extending this same right to legal guardians, by adding “or legal guardian” to section (b) of this bill, which is problematic for individuals with disabilities, and others, who have had their children placed into a guardianship. The proposed amendment would put legal guardians on equal footing with parents in asserting rights to raise the child. Likely this would result in more parents with disabilities being deprived of the right to raise their own children.

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

cc: Ms. Laura Waterland, Esq.
Governor’s Advisory Council for Exceptional Citizens
Developmental Disabilities Council

HB 319 [Parental Rights (4-5-22)]