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MEMORANDUM

DATE: June 8, 2016

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

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

RE: H.B. 382 (Representation of Minors in Delinquency Proceedings)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 382 which guarantees that all children facing criminal charges and allegations of delinquency have the right to an attorney, codifying the Office of Defense Services' current practice of representing every juvenile that requests representation. SCPD endorses the proposed legislation and has the following observations.

Background is provided in the attached May 17, 2016 News Journal article. Under existing practice, the Office of Defense Services offers free legal representation to minors charged with a crime or act of delinquency even though not required by State law. Representation is available irrespective of family income. In 2014-15, the Public Defender represented youth in approximately 3,500 cases statewide. The article notes that juveniles are even less likely to be able to understand judicial proceedings than adults. Without counsel, they are more likely to end up in DSCY&F custody at State expense which exceeds the cost of representation.

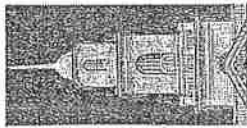
H.B. 382 would codify current practice in the Delaware Code to ensure the continued availability of such representation. The following sentence is added to the Code: "Any person under the age of 18 facing criminal charges and allegations of delinquency shall be automatically eligible for representation by the Office of Defense Services." Historically, juveniles with disabilities have been disproportionately subjected to school discipline and criminal justice referrals. Moreover, the percentage of students in YRS custody with special education classifications has always been high. Therefore, the bill would have a disproportionate effect on juveniles with disabilities.

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

cc: The Honorable Brendan O'Neill, Office of Defense Services
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council
HB 382 representation of minors in delinquency proceedings 6-7-16

Bill would guarantee defense for minors

DELAWARE LEGISLATIVE SESSION MATTHEW ALBRIGHT



Top Delaware lawmakers want to guarantee juveniles have access to a public defender, regardless of family income or the level of their alleged crime.

The state Office of Defense Services already offers free legal representation to young people facing charges, even though it's not required by state law. House Bill 382 seeks to set the policy in stone so that future budget cuts or changes in leadership don't change that.

Speaker of the House Pete Schwartzkopf, D-Rehoboth Beach, who sponsored the legislation, said in a statement, "We can't rely on current practice as a guarantee for the future."

The change, if approved, would mean the courts and Public Defender's Office will be required to continue the practice.

"This legislation takes the small but important step of codifying an existing practice so going forward there is no question that minors being charged with a crime in our state have the same rights to public defenders as adults," said Senate President Pro Tempore Patricia Blevins, D-Elsmere, lead sponsor of the bill in the Senate.

Schwartzkopf and Blevins are the highest-ranking lawmakers in their chambers of the Legislature. The fact that they are sponsors, along with a lengthy and bipartisan list of co-sponsors, suggests the bill will easily pass.

Lisa Minutola, chief of legal services with the state Public Defender's Office, said representing children is a different task than representing an adult. Kids are more likely to be scared and stressed out in a courtroom setting, and they have a harder time understanding the legal language, and they need more coaching in how to interact with court officials.

Adults facing charges usually have to prove they can't afford to hire their own attorney before they get a public defender.

They also don't automatically get public representa-



Speaker of the House Pete Schwartzkopf, D-Rehoboth Beach, sponsored the legislation.

tion for minor offenses, like traffic tickets.

"These youth are facing very significant and sometimes life-altering consequences," Minutola said. "They need to be informed of those consequences and know what all their options are."

Not every juvenile necessarily gets a public defender. In fiscal year 2014-2015, the public defender represented almost 3,500 cases statewide. During the same period, there were almost 5,000 delinquency filings, so about 1,500 youth went without public representation.

For some offenses, mostly minor ones, juveniles can choose to go through the court process without an attorney if the court rules they are capable of doing so. In other cases, families may choose to hire private counsel.

But if a public attorney is necessary, the state shouldn't hesitate to provide one, Minutola says.

"Children are our most vulnerable population, and we want to make sure we provide them with every constitutional safeguard they can have," she said.

Criminal justice reforms have been a central topic of this legislative session, with a particular focus on juveniles.

Legislation in the works would overhaul the expungement process for juvenile offenses so that youth can more easily get criminal charges and convictions on lesser crimes removed from their records. There is a push to expand the state's civil citation program, which gives students who commit certain lower-level offenses community service and probation without putting a mark on their criminal record.

Some lawmakers also are pushing to end the practice of automatically shackling juveniles for their appearances in Family Court.

And others are trying to reduce the frequency with which schools refer students to law enforcement for



Senate President Pro Tempore Patricia Blevins, D-Elsmere, is the lead sponsor of the bill in the Senate.

things like in-school fights.

Said Schwartzkopf: "Navigating the judicial system is difficult enough for an adult, so you can only imagine how daunting it is to a juvenile. We need to guarantee that all youth will have legal representation in court to ensure fairness and the best possible outcome for all parties involved."

Laura Cohen, director of the Criminal and Youth Justice Clinic at Rutgers University Law School, praised the bill.

"It's something that national juvenile defense standards strongly urge," Cohen said. "I think Delaware's probably a little ahead of the curve, which is fabulous."

Cohen says the financial bar to qualify for public defense sometimes means that parents feel they can't afford to pay for a lawyer for their child.

"As difficult as it is for adults to navigate the justice system and understand what's happening to them — and I'd suggest it's almost impossible for a layperson to do that — it's absolutely impossible for a child to do that," she said.

Cohen argues there's a long-term fiscal benefit to the state to providing representation. Juveniles who don't have a lawyer are more likely to end up in the state's custody for the long term, costing the state far more than it takes to provide counsel.

She also says it's important for the guarantee to be in law, not just organizational policy.

"Policies come and go with changes in administration," Cohen said. "When we're talking about a due process guarantee, it shouldn't be left to the caprice of whoever happens to be in charge or fall prey to budgets."

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