



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

John McNeal
SCPD Director

MEMORANDUM

DATE: February 21, 2017

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

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

RE: H.B. 39 (Mental Health Commitment)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 39.

As background, the legislation is almost identical to legislation which passed the House in 2016, H.S. No. 1 for H.B. No. 310 with H.A. No. 1. The SCPD had shared an analysis on the initial version of the legislation (H.B. No. 310) which identified several concerns. The 2016 substitute bill and the current H.B. No. 39 address some of the concerns.

In a nutshell, the legislation would extend Family Court jurisdiction in the mental health commitment context. If an individual is subject to mental health commitment as an adult, the case would automatically be transferred from Superior Court to Family Court if the individual were in DSCY&F custody at age 18 and identified or diagnosed with a mental condition (as defined in 16 Del.C. §5001) as a minor. See lines 7-12. The Family Court would utilize and apply the same procedures and legal standards contained in Chapter 50 (lines 28-30).

SCPD has significant reservations about the legislation, but would like to provide the following observations.

First, there could be some benefit to extending Family Court jurisdiction if the Family Court has active mental-health related proceedings at the time a youth in DSCY&F custody is turning 18. The Court would have familiarity with the individual which would be correlated with more

informed dispositions. On the other hand, the bill would cover individuals with no recent mental health related proceedings in Family Court and no recent diagnosis. For example, an individual who had a qualifying mental diagnosis at age 6 which resolves would still be “captured” by the bill if a commitment proceeding is initiated at age 25 based on a new diagnosis.. It may therefore be preferable to consider amending lines 9-10 as follows:

~~Prior to~~ At the time of attaining 18 years of age, the youth has been identified or diagnosed with a mental condition as defined in §5001 of Title 16.

Second, extending Family Court jurisdiction to age 26 is an anomaly. In other contexts in which Family Court jurisdiction is extended into adulthood, the limit is generally age 21. Compare Title 10 Del.C. §§928 (juvenile delinquency) and 929 (abused, dependent or neglected youth). See also Title 10 Del.C. §921(12) and 14 Del.C. §3101(1) (special education students). Indeed, the bill (line 17) explicitly envisions “concurrent” jurisdiction with §§928 and 929. The sponsors may therefore wish to consider changing references from “26” to “21” in lines 11, 14, and 23.

Third, there may be circumstances in which it would be preferable for the Superior Court to retain jurisdiction. For example, there may be pending Superior Court adult criminal charges or proceedings related to competency or insanity related to an individual’s mental status. Unfortunately, the bill establishes a “brittle” standard in which commitment proceedings involving a covered individual must be transferred from Superior to Family Court (line 20). The sponsors could consider changing alternate approaches to address this anomaly:

A. The word “shall” could be changed to “may” in line 20.

OR

B. Line 19-20 could be amended as follows:

(1) In any proceeding under Chapter 50 of Title 16 involving a youth who meets the criteria of this section, the Superior Court shall, in the absence of countervailing considerations, upon notification by the youth or its own initiative, transfer the case to the Family Court...

The latter alternative would provide a presumption of transfer while giving the Superior Court some discretion to consider other factors (e.g. other proceedings pending in Superior Court).

Fourth, juveniles are generally committed through parental consent rather than involuntary commitment proceedings. See, e.g., Title 50 Del.C. §5003(f). Therefore, there are typically few State costs (e.g. appointed counsel; expert witnesses) related to commitment of minors. Adult commitment proceedings, on the other hand, typically involve State costs. See, e.g., Title 16 Del.C. §§5007(3)(4). While the Superior Court may have an existing fund for such costs, it is unclear if the Family Court would have such a fund to cover the costs of its extended

jurisdiction. The bill has no fiscal note and there is no provision addressing Family Court costs attributable to its enhanced jurisdiction.

Fifth, identification of individuals subject to the bill may be difficult. It applies to youth "identified or diagnosed with a mental condition as defined in §5001 of Title 16" (lines 9-10). That statute does not provide a discrete list of qualifying conditions. Rather, it contains several imprecise functional criteria:

(13) "Mental condition" means a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, capacity to control behavior, or capacity to recognize reality. Unless it results in the severity of impairment described herein, "mental condition" does not mean simple alcohol intoxication, transitory reaction to drug ingestion, dementia due to various nontraumatic etiologies or other general medical conditions, Alzheimer's disease, or intellectual disability. The term "mental condition" is not limited to "psychosis" or "active psychosis," but shall include all conditions that result in the severity of impairment described herein.

Query whether the courts or the DSCY&F will be able to validly and reliably identify persons who have met the above standard at any time between ages 1-18.

Sixth, it is unclear what advantages are contemplated for diverting jurisdiction over some adult commitment proceedings to the Family Court. In other contexts in which the Family Court is authorized to extend its jurisdiction into adulthood, the Court is explicitly given a role in promoting access to services. See, e.g., Title 10 Del.C. §929:

c) The purpose of extended jurisdiction is to enable youth who are provided developmentally appropriate, comprehensive independent living services from age 14 to 21 to assist with their successful transition into adulthood under the John H. Chafee Independence Act (P.L. 106-169) or the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351), and other relevant services, to have a legal mechanism for Family Court review of the appropriateness of such services. Extended jurisdiction may continue until the youth attains 21 years of age. Notwithstanding extended jurisdiction, the youth shall attain the age of majority at age 18, and DSCYF custody shall terminate at that time by operation of law.

H.B. No 39 has no analogous provision describing the advantages of Family Court jurisdiction versus Superior Court jurisdiction. The Family has historically been authorized to entertain broad injunctive relief: See, e.g., Title 10 Del.C. §925, which grants the following general power:

15) In any civil action where jurisdiction is otherwise conferred upon the Family Court, it may enter such orders against any party to the action as the principles of equity appear to

require.

It is unclear if the Family Court could order DSAMH , a Medicaid MCO, or other State or State-contacted entity to provide needed support services. The bill could be improved by including a description of the Family Court's role and authority in directing or arranging remedial services. Without such a component, the bill grants the Family Court authority to restrict adult liberties without countervailing authority to prompt State agencies to provide necessary support services identified by the Court.

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

cc: The Honorable Matthew Denn, Attorney General
The Honorable Sarah Goncher, DAG
The Honorable Michael Newell, Family Court
Mr. Richard Morse, Esq., Delaware ACLU
Mr. Steve Yeatman, DSCYF
Mr. Brian Hartman, Esq.
Governor's Advisory Council for Exceptional Citizens
Developmental Disabilities Council

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