

DELAWARE LEGISLATIVE ACTION PACKET

PURPOSE: ADVOCATING CHANGE TO DELAWARE LAWS TO BETTER PROTECT CHILDREN AND FAMILIES FROM FRAUD AND ABUSE.

Delaware does not permit direct citizen legislative action. HEAL recommends Delaware advocates create a petition directed at Delaware State Legislators (Delaware Governor, State House and Senate) requesting that the following recommended changes to State law be enacted. HEAL can support these efforts by creating an action alert to sign any petition created and for Delaware supporters to write their legislators supporting the petition and recommended changes.

Most States require that petitions and letters must be by, for, and/or from constituents of the State. HEAL does not currently have a Delaware chapter and we have provided this recommended action packet to assist Delaware advocates with information and support.

1. Create a petition (hard copy or online) suggesting one, some, or all of the recommended changes to Delaware's laws below. If you need help, just ask. The petition should be to "Delaware Lawmakers: State House of Representatives, State Senate, and Governor of Delaware". If you wish, you can copy/paste the recommendations below into the body of the petition. The petition should begin with, "We, the people of Delaware, demand state lawmakers enact the following laws, regulations, and policies:" (If you choose to create an online petition, make sure that you select that only Delaware residents may sign it to make sure the legislators accept the petition.)
2. Notify HEAL that the petition has been created and let us know if it is hard copy or online. If it is hard copy, we will promote your efforts and do our best to get you the local support you need. If the petition is online, send us the link and we will create an action alert asking Delaware supporters to sign your petition and write a letter to their legislators in Delaware in support of the policy changes you seek to have enacted.

CHILDREN AND YOUTH'S BILL OF RIGHTS

HEAL recommends that the following children and youth's bill of rights be enacted into law in all States:

1. No child shall be involuntarily placed in a secured, lockdown facility without due process of law. (US Constitution, 14th Amendment—law supported by Supreme Court Rulings in Bellotti v. Baird (1979) U.S. Supreme Court and Ingraham v. Wright (1977) U.S. Supreme Court)
2. No child shall be forced to act as Staff or perform the duties of an employee of any institution involuntarily. (US Constitution, 13th Amendment—law supported by Supreme Court Ruling in Tinker v. Des Moines Independent School District (1969) U.S. Supreme Court)
3. No child shall be forced to act as Staff or perform the duties of an employee of any institution without fair compensation (i.e. minimum wage). (US Constitution, 13th Amendment- law supported by Supreme Court Ruling in Tinker v. Des Moines Independent School District (1969) U.S. Supreme Court)

DELAWARE

Statute of Limitations Suggested Revision(s)

HEAL recommends Delaware Code Title 11 § 205 be amended to include kidnapping, sexual abuse/rape of minors, and physical assault/battery resulting in serious injury or death of a child in the list of offenses having no Statute of Limitations.

Alaska provides one example of a State that includes kidnapping, sexual abuse of minors, and rape in the list of offenses that have no Statute of Limitations for prosecution. (Source: ALASKA STAT. § 12.10.010)

Alabama includes assault and battery resulting in serious injury or death in list of offenses having no statute of limitation for prosecution. (Source: ALA. CODE § 15-3-5)

HEAL recommends Delaware revise Delaware Code Tit. 10 §8119 to extend the Statute of Limitations for child victims to file suit upon reaching age of majority. HEAL recommends child victims be given 20 years from time of injury or 15 years upon reaching age of majority to file a tort claim against the tortfeasor.

Alternatives to the above extension of time to file a claim for injured minors include judicial system providing accessible and competent attorneys required to represent minors on a contingency basis with no fees due unless case is won and amount to be paid to attorney may not exceed 50% of the damages and 50% total must include all attorney fees and expenses.

Child Abuse Laws Suggested Revision(s)

Please amend Delaware's child abuse statutory definitions to include the following:

Emotional Abuse

Citation: Ann. Stat. § 9:6-8.21 (New Jersey Statutory Definition)

Abused child or abused or neglected child means a child under age 18 years who is in an institution, and:

- Has been placed there inappropriately for a continued period of time with the knowledge that the placement has resulted or may continue to result in harm to the child's mental or physical well-being
-
- Who has been willfully isolated from ordinary social contact under circumstances that indicate emotional or social deprivation

The definitions and laws pertaining to child abuse and/or endangering the welfare of a child in Delaware are found in Delaware's Ann. Code Tit. 16, § 902. Please amend Delaware's laws to include the above definitions as applied under our Child Endangerment, Child Welfare, and Child Abuse laws.

In addition, HEAL recommends that Abandonment be added to Delaware's Child Endangerment Laws and defined as in the following Kansas Statute:

Kansas § 38-2202. Definitions. "As used in the revised Kansas code for care of children, unless the context otherwise indicates: "Abandon" or "abandonment" means to forsake, desert or, (a) without making appropriate provision for substitute care, cease providing care for the child."

HEAL recommends that "appropriate provision for substitute care" be limited to the least restrictive environment within the child's community of residence and/or within the State of Delaware if institutionalization is required.

****Special Note: Unlicensed Facilities**

Unlicensed facilities are illegal in Delaware. (Source: *DE Code, Title 31, Chapter 3, Subchapter III, **The Delaware Child Care Act**, requires a person or entity to be licensed* whenever child care services are provided for a fee, on a regular basis and outside of the child's home for even one (1) unrelated child.) It is unclear whether or not Delaware criminalizes running an unlicensed child care facility or whether or not unlicensed facilities will be closed by authorities.

Delaware Code TITLE 31, PART I, CHAPTER 3, Subchapter III §345 states, "Anyone who violates a provision of this subchapter shall be fined not more than

\$100 or imprisoned not more than 3 months, or both.” This is a civil penalty and includes unlicensed care violations. This Department has submitted legislation in the past and will be doing so this legislative session to strengthen this section. (Source: Patricia Quinn, DSCYF: Office of Child Care Licensing)

HEAL finds Delaware’s laws related to unlicensed facilities acceptable, with possible exception of faith-based exemptions. (Discussed below.)

Faith-Based Exemptions Suggested Revision(s)

I was unable to find a specific law showing the extent of exemptions and from what form of oversight/regulation in regards to programs operating in Delaware. But, I found reference to a law through Delaware’s DHSS giving exemptions to faith-based service providers. See: <http://www.dhss.delaware.gov/dss/files/ccdfplan0607.txt>

HEAL recommends Delaware adopt the language found in California Health and Safety Code § 1596.792, which requires licensure of faith-based/religious childcare providers unless they meet standard exemption requirements such as caring solely for their own family members. (Source: <http://www.childcarelaw.org/docs/ganda-licenseexempt.pdf> and <http://law.onecle.com/california/health/1596.792.html>.)

HEAL recommends that Delaware clearly defines Ministry so that charlatans cannot pose as ministries while hurting children, exploiting families, and defrauding parents. Merriam-Webster defines ministers as follows:

min·is·ter

noun \ˈmi-nə-stər\

Definition of *MINISTER*

1

: [agent](#)

2

a : one officiating or assisting the officiant in church worship

b : a clergyman especially of a Protestant communion

(Source: <http://www.merriam-webster.com/dictionary/ministers?show=0&t=1361078281>)

And, Ministry is defined as:

Definition of *MINISTRY*

1

: ministration

2

: the office, duties, or functions of a minister

3

: the body of ministers of religion : clergy

(Source: <http://www.merriam-webster.com/dictionary/ministry>)

A ministry by standard definition does not include nor extend to operating for-profit residential treatment centers, group homes, nor unlicensed academic nor behavioral health programs. It includes officiating in church worship. To extend the word ministry to cover all operations and facilities that claim faith-based/religious status sacrifices public welfare and safety and does so without a sound basis in reasoning. As shown, the State of California does not permit child-caring agencies exemption from licensure and regulation based on faith. Nor should any other State, including Delaware.

Educational Consultants/Referral Services Suggested Revision(s)

HEAL recommends that Delaware establish professional guidelines and professional licensure standards and certification requirements for any individual engaging in a business of making referrals to any mental health or educational institution.

Teen/Youth Transport Services Suggested Revision(s)

HEAL recommends that Delaware establish professional guidelines and professional licensure standards and certification requirements for any individual or business engaging in involuntary transport of youth for mental health, behavioral health, medical care, and/or educational purposes. HEAL recommends that anyone engaged in such a business at minimum be required to be licensed Emergency Medical Technicians (EMTs) with ambulance driver certification with special licensing/certification requirements for transport services taking children across state lines. HEAL recommends that only law enforcement personnel engaged in transporting adjudicated youth who have been court-ordered to a secured treatment facility be permitted to transport youth across state lines for such purposes and that private placements of youth be outlawed as we recommend all youth be recognized as having the right to due process when enrollment/placement violates a minor's civil liberty interests.

Seclusion and Restraint Suggested Revision(s)

HEAL suggests Delaware amend State laws regarding seclusion and restraint of children to match Sen. Harkin's (D-IA) and Rep. Miller's (D-CA) Keeping All Students Safe Act of 2011 (S. 2020, H.R. 1381).

Reparative/Conversion Therapy Revision(s)

HEAL suggests that Delaware enact a law similar to California's law banning reparative/conversion therapy on children and youth. HEAL believes the methods involved in reparative/conversion therapy are inhumane and harmful whether or not they are used to change sexual behavior or any legal behavior or beliefs that may not align with those of families or service providers seeking to use coercive thought reform/conversion therapy techniques to change behavior. See

http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB1172 for more information.

Facilities and Occupational and Professional Licensure Database Revision(s)

HEAL recommends that Delaware create an online searchable database including any and all programs offering 24-hour supervised care to children living outside the home whether the programs call themselves therapeutic boarding schools, boot camps, wilderness programs, residential treatment centers, specialty boarding schools, or the like. Arizona provides the most user-friendly searchable database on licensed facilities and the database includes inspection and complaint records. See

<http://hsapps.azdhs.gov/ls/sod/SearchProv.aspx?type=BH>. HEAL recommends Delaware create a searchable database similar to that provided by the State of Arizona.

HEAL recommends that Delaware create an all-encompassing online searchable database of all individuals that hold occupational or professional licenses in Delaware that allows for one-stop online verification to determine if an individual claiming occupational or professional licensure is properly licensed and in good-standing with the state. Utah provides the most user-friendly searchable database on licensed individuals and the database includes disciplinary records/actions. See <https://secure.utah.gov/llv/search/index.html>. HEAL recommends Delaware create a searchable database similar to that provided by the State of Utah.

Delaware may wish to include educator/teacher license verification with the overall professional licensure verification recommended above or continue to maintain a separate searchable database to verify educator qualifications as found at https://deeds.doe.k12.de.us/public/deeds_pc_findeducator.aspx.

The above measures would help Delaware protect consumers from fraud and abuse by making such information easily accessible.

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