

## SENATE JUDICIAL PROCEEDINGS COMMITTEE

### SENATE BILL 191 – Children in Need of Assistance - Unlicensed Settings

January 14, 2025

POSITION: OPPOSE

Disability Rights Maryland (DRM) is Maryland's designated Protection and Advocacy agency and is federally mandated to advance the civil rights of people with disabilities. DRM advocates for systemic reforms and policies that improve services and supports for youth with disabilities and ensures that their rights are protected. We regularly advocate for children in DHS care and custody who are stuck in unlicensed and illegal hospital settings long past their discharge dates because DHS has not located a placement for them and are co-counsel in a lawsuit against DHS and other state agencies on behalf of a putative class of foster children who have experienced hospital overstays. We also advocate for foster children who are placed in other unlicensed settings such as hotels, motels, and DSS offices. Senate Bill 191 attempts to legalize the placement of foster children in unlicensed settings and immunize the state against liability under the Americans with Disabilities Act for placing foster children in unlicensed settings that are overly restrictive and least approximate a family setting. For this reason, **DRM opposes SB 191**. The true root of the grave hospital overstay and unlicensed placement problem is the lack of sufficient community placements for foster children in Maryland. Placement of foster children in unlicensed settings will not fully be remedied until new community placements, preferably therapeutic foster care or small community group homes, are developed and funded, as well as preventive and wraparound services to prevent crises, placement disruptions and psychiatric hospitalizations whenever possible.

We strongly believe that youth with disabilities have the right to live and thrive in their communities. DRM regularly receives calls from foster families, guardians and family members of youth in DHS custody who lack appropriate placements and services. Under the *Americans with Disabilities Act*, public entities, including DHS, are required to "administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities." 28 C.F.R. § 35.130(d). SB 191 (section 5-601.1(C)(4)) creates an unconscionable end-run around the ADA by allowing DHS to seek an order from a juvenile court finding that a foster child can be placed in an unlicensed setting because DHS has attempted to comply with the ADA but failed because of a lack of sufficient community-based placements. Moreover, it is unclear how DHS would seek to avail itself of section 5-601.1(C)(4)(II)<sup>1</sup>, which allows DHS to ask a juvenile court for a finding that an unlicensed, illegal placement is a reasonable accommodation under the ADA.

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<sup>1</sup> Note that the citation to the ADA is incorrect in the bill. The correct citation is 42 U.S.C. 12132.

Foster children, some of the most vulnerable youth in our communities, need to be in licensed family or community-based placements where they can achieve stability. SB 191, while on its face seems to attempt to limit the use of unlicensed placements, actually seeks to legitimize and legalize unlicensed placements by allowing DHS to seek juvenile court approval of the unlicensed placement by documenting its efforts to place the child in a licensed setting by clear and convincing evidence. Juvenile courts will likely be loathe to deny state funding for a foster child's placement and the approval of unlicensed placements could become simply a rubber stamp that will perpetuate the state's unlicensed placement crisis rather than meaningfully address the root of the problem. The state's efforts should be focused on addressing the placement shortage and creating additional community placements, including therapeutic foster care and small community group homes, as well as increasing preventive and wraparound services needed to help kids remain in the community and out of crisis.

For the foregoing reasons, DRM opposes SB 191.

Thank you for the opportunity to present this information to you today. For more information, please contact Megan Berger, Esq. at 443-692-2504 or [Megan.Berger@disabilityrightsmd.org](mailto:Megan.Berger@disabilityrightsmd.org).