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## *The District of Columbia Bar*

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### MEMORANDUM

TO: Members of the Board of Governors

FROM: Lynne M. Lester *LMY*  
Manager, Divisions Office

DATE: March 25, 1986

SUBJECT: Expedited consideration of comments in opposition to the "Halfway House and Public Shelter Public Hearing Act of 1985," Bill 6-291

Pursuant to Division Guideline No. 13, Section a, the enclosed proposed public statement is being sent to you by Rights of the Elderly and Handicapped Committee, Criminal Law and Individual Rights Division

(a) (iii): "No later than 12:00 noon on the seventh (7th) day before the statement is to be submitted to the legislative or governmental body, the Division will forward (by mail or otherwise) a one-page summary of the comments (summary forms may be obtained through the Divisions Office), the full text of the comments, and the full text of the legislative or governmental proposal to the Manager for Divisions. The one-page summary will be sent to the Chairperson(s) of each Division steering committee and any other D.C. Bar committee that appear to have an interest in the subject matter of the comments. A copy of the full text and the one-page summary will be forwarded to the Executive Director of the Bar, the President and President-Elect of the Bar, the Division's Board of Governors liaison, and the chairperson of the Committee on Divisions. Copies of the full text will be provided upon request through the Divisions Office. Reproduction and postage expenses will be incurred by whomever requested the full text (i.e., Division, Bar committee or Board of Governors.

### BOARD OF GOVERNORS

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account). The Manager for Divisions shall help with the distribution, if requested, and shall forward a copy of the one-page summary to each member of the Board of Governors. In addition, the Manager for Divisions shall draw up a list of all persons receiving the comment or statement, and he/she shall ascertain that appropriate distribution has been made and will assist in collecting the views of the distributees. If no request is made to the Manager for Divisions within the seven-day period by at least three (3) members of the Board of Governors, or by majority vote of any steering committee or Committee of the Bar, that the proposed amendment be placed on the agenda of the Board of Governors, the Division may submit its comments to the appropriate federal or state legislative or governmental body at the end of the seven-day period."

a(vi): The Board of Governors may request that the proposed comments be placed on the agenda of the Board of Governors for the following two reasons only:

(a) The matter is so closely and directly related to the administration of justice that a special meeting of the Bar's membership pursuant to Rule VI, Section 2, or a special referendum pursuant to Rule VII, Section 1, should be called, or (b) the matter does not relate closely and directly to the administration of justice, involves matters which are primarily political, or as to which evaluation by lawyers would not have particular relevance.

a(v): Another Division or Committee of the Bar may request that the proposed set of comments by a Division be placed on the Board's agenda only if such Division or Committee believes that it has greater or coextensive expertise in or jurisdiction over the subject matter, and only if (a) a short explanation of the basis for this belief and (b) an outline of proposed alternate comments of the Division or Committee are filed with both the Manager for Divisions and the commenting Division's Chairperson(s). The short explanation and outline of proposed alternate comments will be forwarded by the Manager for Divisions to the Board of Governors.

a(vi): Notice of the request that the statement be placed on the Board's agenda lodged with the Manager for Divisions by any Board member may initially be telephoned to the Manager for Divisions (who will then inform the commenting Division), but must be supplemented by a written objection lodged within seven days of the oral objection.

Please call me by 5:00 p.m., Thursday, March 27, 1986  
if you wish to have this matter placed on the Board of Governors'  
agenda for Tuesday, April 8, 1986

Enclosures

COMMENTS CONCERNING THE  
"HALFWAY HOUSE AND PUBLIC  
SHELTER PUBLIC HEARING  
ACT OF 1985", BILL 6-291

DIVISION V OF THE D.C. BAR, AND  
ITS COMMITTEE ON THE RIGHTS  
OF THE ELDERLY AND HANDICAPPED

DIVISION V  
STEERING COMMITTEE MEMBERS

Randy I. Bellows  
Barbara Bergman  
Stephen G. Milliken  
Stephanie Duncan-Peters

Mary Lou Soller  
Barton F. Stichman  
Kim Taylor

MEMBERS OF THE COMMITTEE ON THE  
RIGHTS OF THE ELDERLY AND HANDICAPPED

Michael Schuster  
Bruce Vignery  
Burton Fretz  
Charles Sabatino  
Barbara Mishkin

Da Costa R. Mason  
Ron Landsman  
Maureen Thompson  
Martha E. Ford

THE VIEWS EXPRESSED HEREIN REPRESENT ONLY THOSE OF DIVISION V,  
CRIMINAL LAW AND INDIVIDUAL RIGHTS OF THE DISTRICT OF COLUMBIA  
BAR, AND NOT THOSE OF THE D.C. BAR OR OF ITS BOARD OF GOVERNORS.

March , 1986

The Committee on Rights of the Elderly & Disabled of Division V (Criminal Law & Individual Rights) of the District of Columbia Bar and the Division V Steering Committee have had the opportunity to review the "Halfway House and Public Shelter Public Hearing Act of 1985," Bill 6-291. Our greatest concern about the bill is that it overlaps with many other, more focused and detailed, District of Columbia laws and regulations.

We have the following comments on the proposed legislation:

1. The definitions of "halfway house" and "public shelter" are much too vague and general. They do not provide adequate explanation of what types of living arrangements are covered by the bill. For example, a foster parent for one child would seemingly fall within the coverage of a "halfway house." We could provide numerous other examples of residences which may, or may not, be within the intended scope of this bill. As written, neither the city administrators charged with implementation, nor the operators or residents of the myriad of non-single family residences which now exist, would know what types of residences were covered by the bill.

2. This bill seems concerned with matters already covered by the zoning laws of the District of Columbia. We note that the bill is concerned with permitted uses in areas zoned residential. However, a public hearing is already required before the Board of Zoning Adjustment for uses not permitted as a matter of right in R-1 and R-2. Certain types of residences, which seem to be within the definitions of the bill, are matter of right uses in

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R-1 and R-2, see 11 DCMR §201.1 (1984), and we fail to understand why an additional public hearing is required for them.

Conversely, certain uses which also seem to be within the coverage of this bill, always require a hearing before the Board of Zoning Adjustment. Therefore, in our view the public hearing requirements are duplicative of other public hearing requirements. Furthermore, the public hearing under this bill has no consequences, unlike a zoning hearing. This bill imposes an additional, and, ultimately, meaningless hearing requirement.

3. In addition to hearings before the Board of Zoning Adjustment, notice and the opportunity for public hearing are also mandated by the Self-Government Act, which requires that timely notice be provided to each ANC when significant changes to the neighborhood are contemplated, and that "great weight" be afforded to the ANC's recommendation regarding the proposed change. See D.C. Code Ann. §§1-251, 261 (1981). We know that the Mental Retardation and Developmental Disabilities Administration as a matter of policy provides notice to ANCs prior to introduction of group homes for mentally retarded and developmentally disabled persons. The additional notice and hearing requirements of this bill duplicate and, to some extent, undermine the ANC's role, since the executive branch has responsibility for conducting and running the hearing required.

4. Under the D.C. Health Planning and Development Agency (SHPDA) regulations, SHPDA on its own initiative, or at the request of any affected person, will hold a public hearing on an application for establishing "a new institutional health service, "including facilities for hospice care, alcoholism-chemical dependency services and skilled nursing services. See 22 DCMR §§ 4100.2, 4302-4303 (February 1984). The term "affected persons" includes "members of the public who reside in . . . the geographic area served or to be served by the applicant." 22 DCMR §4201.2.

Moreover, "notification of any public hearing to be held shall be made by the SHPDA in a newspaper of general circulation in the District and by mail to those persons on the SHPDA certificate of need mailing list." 22 DCMR §4302.5. Notice of reviews of applications (with or without a public hearing) must be made by "publication of a notice in a newspaper of general circulation in the District." 22 DCMR §4201.3.

As the foregoing amply shows, the public notice and hearing procedures under the SHPDA regulations far exceed those in the bill. Indeed, under these regulations, a member of the public

has more procedural rights than under other District laws, for example, the zoning regulations (11 DCMR § 201.1c 1984), or the Self-Government Act (D.C. Code Ann. §§ 1-251, 261 (1981)).

5. As a general proposition we do not believe that a public hearing is an appropriate forum for education and information sharing about a proposed residence. We assume that the bill is concerned with information and education since there is no remedy or avenue to resolve a disputed opening of a residence after the public hearing. Smaller, more intimate, gatherings of neighbors are more effective mechanisms for useful education and information.

To conclude, our Committee regards Bill 6-291 as a not very useful mechanism for achieving its not very well-stated purpose. It's definitions are vague and suspect; it duplicates other better articulated mechanisms for notice, public hearings and comments; and it is counterproductive as an education and information device.

MS:lg