



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

John McNeal  
SCPD Director

## MEMORANDUM

DATE: May 5, 2021

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

FROM: Terri Hancharick – Chairperson *TH*  
State Council for Persons with Disabilities

RE: HB 115 (An Act to Amend Title 10 of the Delaware Code Relating to  
Juvenile Prosecution)

The State Council for Persons with Disabilities (SCPD) has reviewed H.B. 115, which seeks to amend Chapter 9, Title 10 of the Delaware Code relating to Juvenile Prosecution by amending §§ 921, 1002, 1004A, and 1010 to set a minimum age at which a child may be prosecuted (except for the most extreme offenses) and bars the transfer of juvenile prosecution to the Superior Court unless the child is at least 16 years of age. SCPD has the following observations.

Specifically, HB 115:

1. prohibits the prosecution of children under the age of twelve (12), except for the most extreme offenses<sup>1;2</sup>

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<sup>1</sup> Extreme offenses include first degree murder, second degree murder, first degree rape, second degree rape, and using, displaying, or discharging a firearm during the commission of a Title 11 or a Title 31 violent felony as set forth in 11 Del. C. § 4201 (c).

<sup>2</sup> A child under the age of twelve (12) accused of committing an extreme offense *may* be prosecuted if found competent by the Family Court.

2. bars the transfer of juvenile prosecution to the Superior Court unless the child is at least sixteen (16) years of age, except for the most extreme offenses<sup>3</sup>; and
3. allows for the prosecution of children under the age of 12 for Title 11 violent felonies and misdemeanor crimes of violence until January 1, 2022, when prosecution of such children will expire and thereafter such children will be referred to the Juvenile Offender Civil Citation Program under 10 Del. C. § 1004A.

Consistent with the bill’s synopsis, over the course of the late 20<sup>th</sup> century, there has been a push to rethink how we, as a country, have considered and dealt with juvenile delinquency. The bill’s authors note this by referencing the 2012 U.S. Supreme Court case *Miller v. Alabama*<sup>4</sup> which was a landmark U.S. Supreme Court case dealing with juvenile justice, in which the Court recognized that young people are inherently different than adults. The Court in *Miller* held that young people cannot be sentenced to life without the possibility of parole (“LWOP”) for homicide crimes where LWOP is the only option for sentencing. Further, mitigating factors must be considered before a young person can be sentenced to juvenile LWOP (“JLWOP”), such as their age, age-related characteristics, background, and mental and emotional development. *Miller* was the third in a line of landmark U.S. Supreme Court cases in which the Court recognized the age-related characteristics of young people.

The first case was *Roper v. Simmons*, where the U.S. Supreme Court held that sentencing a young person to death for a crime committed when they were under the age of eighteen (18) was unconstitutional.<sup>5</sup> Considering the social and neuroscience literature at the time, the Court recognized three general characteristics that separated young people from adults: (1) lack of maturity and possession of an underdeveloped sense of responsibility, which result in impetuous and ill-considered actions and decisions; (2) more vulnerable and susceptible to negative influences and outside pressures; and (3) early stages of character development. In 2010, the Court expanded upon its *Roper* analysis when it decided *Graham v. Florida*, holding that it was unconstitutional for a young person

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<sup>3</sup> Extreme offenses include first degree murder, second degree murder, first degree rape, second degree rape, and using, displaying, or discharging a firearm during the commission of a Title 11 or a Title 31 violent felony as set forth in 11 Del. C. § 4201 (c).

<sup>4</sup> 567 U.S. 460 (2012).

<sup>5</sup> 543 U.S. 551 (2005).

to be sentenced to JLWOP for a crime not involving homicide.<sup>6</sup>

These, and other similar cases, stand on scientific literature differentiating a child's developing brain from an adult's developed brain.

Some of the members of the House Judiciary Committee expressed concern over whether the bill is tailored to Delaware-specific issues and not just a move to follow national trends. In consideration of this concern, it should be noted that this bill follows a slew of other bills in Delaware signed into law in 2017 which were aimed at diverting young people from the juvenile and criminal justice systems.<sup>7</sup>

HB 115 seems to be an expansion of this and aligns with the recommendations of Delaware's Juvenile Justice Advisory Group ("JJAG"), a specialized committee with knowledge and expertise in juvenile justice. In March of 2019, JJAG released its annual report and recommendations to the Governor and the Delaware State Legislature.<sup>8</sup> JJAG puts forth nine (9) policy recommendations including, but not limited to, investing in prevention-based services for young people, potentially establishing a mentoring program, and allocating state and local resources to fund programs aimed at strengthening family units. Furthermore, JJAG intends to support: all legislation aimed at increasing identity security of youth that have not been adjudicated delinquent of a crime; establishes a minimum age for prosecution; extends the post-disposition jurisdiction of DSCYF for youth found delinquent of a crime; establishes that the age of offense and not the age of arrest determines the jurisdiction for a person facing charges; and making underage possession/ consumption of alcohol or marijuana a civil violation.<sup>9</sup>

Although children with disabilities are not specifically mentioned in the bill, data shows that such children will likely be impacted by its passage (or failure). According to a 2015 white paper, 65-70 percent of justice-involved youth have a disability.<sup>10</sup> The number is likely similar in Delaware.

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<sup>6</sup> 560 U.S. 48 (2010).

<sup>7</sup> <https://whyy.org/articles/delaware-juvenile-justice-reforms-signed-law/>

<sup>8</sup> <https://cjc.delaware.gov/wp-content/uploads/sites/61/2019/06/Delaware-2018-JJAG-ReportvPRINTER.pdf>

<sup>9</sup> *Id.*

<sup>10</sup> The Arc's National Center on Criminal Justice and Disability. "Justice Involved Youth with Intellectual and Developmental Disabilities: A Call to Action for the Juvenile Justice Community." (2015). [https://thearc.org/wp-content/uploads/forchapters/15-037-Juvenile-Justice-White-Paper\\_2016.pdf](https://thearc.org/wp-content/uploads/forchapters/15-037-Juvenile-Justice-White-Paper_2016.pdf).

SCPD endorses the proposed legislation since it will continue Delaware’s trend toward recognizing young people, including those with disabilities, as separate and distinct from adults. However, SCPD recommends that the age of prosecution be raised from the proposed twelve (12) years of age to fourteen (14), which would comport with the standard set forth by the United Nations Convention on the Rights of the Child.<sup>11</sup>

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

cc: Ms. Laura Waterland, Esq.  
Governor’s Advisory Council for Exceptional Citizens  
Developmental Disabilities Council

HB 115 Amend DE Code re juvenile prosecution 5-5-21

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<sup>11</sup><https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqlkirKQZLK2M58RF%2f5F0vEnG3QGKUxFivhToQfjGxYjV05tUAlgpOwHQJsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2bf0RPR9UMtGkA4>