



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

John McNeal, Director
SCPD

MEMORANDUM

DATE: April 24, 2023

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

FROM: Mr. Benjamin Shrader, Chairperson 
State Council for Persons with Disabilities

RE: HB 112 (An Act To Amend Title 10 Of The Delaware Code Relating
To Juveniles)

The State Council for Persons with Disabilities (SCPD) has reviewed HB 112¹ that seeks to amend Chapter 9, Title 10 of the Delaware Code relating to Family Court proceedings in the interest of a child, specifically delinquency and criminal proceedings. The bill clarifies that children under twelve may not be arrested or held in a detention facility pending adjudication, except where the alleged crime is one of the enumerated exceptions ((1) murder in the first or second degree, (2) rape in the first or second degree, or (3) using, displaying, or discharging a firearm during the commission of a violent felony). SCPD has the following observations and recommendations.

The current meeting notice does not include any specific bills to be discussed. HB 112 does the following:

- 1) Amends § 1002 to clarify that a child shall not be arrested or detained in a secure detention facility (as defined in § 1258 of Title 11) for conduct

¹ <https://legis.delaware.gov/BillDetail?LegislationId=130170>.

occurring when the child was under the age of twelve (except where the alleged crime is one of the enumerated exceptions noted above);

- 2) Amends § 1007 to add subsection (l) clarifying that no child under the age of twelve may be placed in a detention facility (as defined by § 1258 of Title 11) except as allowed by § 1002 (where the alleged crime is one of the enumerated exceptions noted above).

In March 2023, there was an analysis provided on HB 79, An Act To Amend Title 10 Of The Delaware Code Relating To Delinquency And Criminal Proceedings Involving Children.² HB 112 serves as a de-facto substitute to HB 79, which was tabled in the House Judiciary Committee on March 15, 2023.³ During the March 15 Committee meeting, Rep. Chukwuocha indicated he was working on a substitute to the bill to clarify what was meant by the word “detained.” Community members provided public comment to express concern that the broadness of the term “detained” meant that police officers would not be able to hold or otherwise transport youth under the age of twelve in their vehicles, even if the young person needed to be transported to a psychiatric facility or otherwise. **One community member expressed concern about the language in HB 79 which would amend § 1010 of Title 11 to align with limitations on transfer of youth from the jurisdiction of Family Court to Superior Court to those youth between the ages of sixteen and eighteen.**

In this de facto substitute bill, the language was changed to refer to the prohibition on placing a youth under the age of twelve (absent one of the enumerated exceptions) in a detention facility pending adjudication rather than merely prohibiting the youth from being detained. In addition, HB 112 removed the change to the limitations on transfer of youth, which currently allows a youth to be transferred to the jurisdiction of Superior Court at the age of fourteen.

As written, HB 112 aligns with Delaware’s continued trend toward recognizing young people, including those with disabilities, as separate and distinct from adults.

SCPD endorses this legislation, but the SCPD encourage the bill’s sponsors to re-include the language limiting transfer to youth aged sixteen and above (rather than fourteen) and revisit the issue of mandatory minimum sentences, which are still in existence for young people in Delaware. This latter

² <https://legis.delaware.gov/BillDetail?LegislationId=130061>

³ <https://sg001-harmony.sliq.net/00329/Harmony/en/PowerBrowser/PowerBrowserV2/20230412/3/2754>.

recommendation was also included in the March 2023 DLP analysis of HB 79 and is re-included here for ease of review.

“HB 307 sought to repeal and remove all mandatory minimum sentencing scheme for juveniles adjudicated delinquent in Family Court. Recognizing that young people are inherently different than adults, HB 307’s sponsors put forth a bill which would allow Family Court judges and commissioners to fashion sentences which are appropriate for each individual youth. This reasoning is in line with several U.S. Supreme Court decisions from the last several decades, including *Miller v. Alabama*⁴ (holding that mandatory life without parole for a youth was unconstitutional), *Roper v. Simmons*⁵ (holding that a death sentence for a crime committed when the individual was under the age of eighteen (18) was unconstitutional), and *Graham v. Florida* (holding that it was unconstitutional for a young person to be sentenced to JLWOP for a crime not involving homicide).⁶

These, and other similar cases, stand on scientific literature differentiating a child’s developing brain from an adult’s developed brain. So, the original text of HB 307 made sense when considering the line of U.S. Supreme Court cases and available science around the development and growth of a youth’s brain. The House Judiciary Committee agreed on March 28, 2018 with six (6) Favorable⁷ votes and three (3) votes On Its Merits⁸. However, on April 19, 2018, Rep. J. Johnson, HB 307’s primary sponsor, introduced HA 1, which was placed with the bill immediately prior to a vote by the House. HA 1 retained the mandatory minimum sentences for Robbery First Degree and Possession of a Firearm During the Commission of a Felony.

Retaining the above two (2) mandatory minimum sentences flies in the face of the available literature and U.S. Supreme Court precedent. Although not unconstitutional, it prevents Family Court Judges and Commissioners from

⁴ 567 U.S. 460 (2012). Holding 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 sentence to juvenile LWOP (“JLWOP”), such as their age, age-related characteristics, background, and mental and emotional development.

⁵ 543 U.S. 551 (2005). Considering the social and neuroscience literature at the time, the U.S. Supreme 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.

⁶ 560 U.S. 48 (2010).

⁷ A favorable vote means the legislator recommends the full Chamber pass the legislation.

⁸ A vote On its Merits means the legislator recommends the full Chamber take action on the legislation, but the legislator does not take a position on what action should be taken.

adequately considering everything that makes a youth a youth and an individual, including those youth-specific characteristics.

Therefore, although HB 314 follows the current trend in Delaware, **The SCPD provides their support with the recommendation that the Legislature consider revisiting whether retaining the two mandatory minimum sentences for juveniles adjudicated delinquent is necessary or warranted.**”

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

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

HB 112 Amend Title 10-Juveniles 4-24-23