



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

John McNeal, Director
SCPD

MEMORANDUM

DATE: March 27, 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 79 (An Act To Amend Title 10 Of The Delaware Code Relating To
Delinquency And Criminal Proceedings Involving Children)

The State Council for Persons with Disabilities (SCPD) has reviewed HB 79 which 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.

HB 79 does the following:

1. Amends § 1002 to clarify that a child shall not be arrested or detained for conduct occurring when the child was under the age of twelve (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).
2. Amends § 1007 to add subsection (l) clarifying that no child under the age of twelve may be placed in secure detention except as allowed by § 1002 (where the alleged crime is one of the enumerated exceptions noted above);

3. Amends § 1010 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.

SCPD would like to make the following observation in regard to this bill:

In 2022, an analysis was done on HB 314 of the 151st General Assembly,¹ a clarification to House Amendment 1 (“HA 1”) to HB 307 (“HB 307”) from the 149th General Assembly,² which added language to 10 Del.C. § 1009(k)(1) to provide that the mandatory commitment applies only where the youth was over the age of sixteen when they committed the offense of Robbery First Degree or Possession of a Firearm During the Commission of a Felony. In its analysis, the DLP provided the following information about HB 307, its original intent, and a snapshot of the relevant case law, specifically and found:

- 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*³ (holding that mandatory life without parole for a youth was unconstitutional), *Roper v. Simmons*⁴ (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.⁵
- 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

¹ <https://legis.delaware.gov/BillDetail?LegislationId=79162>

² <https://legis.delaware.gov/BillDetail?LegislationId=26279>

³ 567 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 sentenced to juvenile LWOP (“JLWOP”), such as their age, age-related characteristics, background, and mental and emotional development.

⁴ 543 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.

⁵ 560 U.S. 48 (2010).

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) Favorable⁶ votes and three (3) votes On Its Merits⁷. 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.

SCPD strongly endorses this bill but encourages the sponsors to consider revisiting the two required mandatory minimum sentences for youth that still remain in Delaware code.

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 79 Delinquency and Criminal Proceedings Involving Children 3-27-23

⁶ A favorable vote means the legislator recommends the full Chamber pass the legislation.

⁷ 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.