

LAWS OF DELAWARE
VOLUME 83
CHAPTER 507
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 314

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO MANDATORY SENTENCES FOR JUVENILES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 9, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1009. Adjudication; disposition following adjudication; commitment to custody of Department of Services for Children, Youth and Their Families; effect.

(a) Where the evidence supports such holding, the Court may declare a child to be dependent, neglected, abused, as those terms are defined by § 902 of Title 16, or delinquent. In declaring a child to be dependent, neglected or abused pursuant to this section, the Court shall give priority to ensuring the well-being and safety of the child.

(b) Following an adjudication by the Court in which it declares a child to be dependent or neglected, the Court may:

(k) (1) Subject to the provisions governing amenability pursuant to § 1010 of this title, the Court shall commit a delinquent child 16 years of age or older to the custody of the Department of Services for Children, Youth and Their Families if the child who has been adjudicated delinquent by this Court of 1 or more offenses which were committed after the child's 16th birthday, which would constitute either possession of a firearm during the commission of a felony or robbery first degree (where such offense involves the display of what appears to be a deadly weapon or involves the representation by word or conduct that the person was in possession or control of a deadly weapon or involves the infliction of serious physical injury upon any person who was not a participant in the crime) were the child charged as an adult under the laws of this State. Upon adjudication, such child is declared a child in need of mandated institutional treatment, and this Court shall commit the child so designated to the Department of Services for Children, Youth and Their Families for a minimum sentence of 6 months of Level V incarceration or institutional confinement for a first offense, and 1 year of Level V incarceration or institutional confinement for a second and each subsequent offense, which shall not be subject to suspension.

(2) A child committed to the custody of the Department of Services for Children, Youth and Their Families pursuant to this subsection shall not be released from institutional confinement on pass, on extended leave or to aftercare during the first 6 months of said commitment unless the Director of Youth Rehabilitation Services, in the Director's discretion, determines that it is in the best interest of the child's treatment to participate in programs which may require the child to leave the institution; thereafter, a child committed to the Department of Services for Children, Youth and Their Families pursuant to this subsection shall not be released from institutional confinement on pass, on extended leave or to aftercare, unless the Judge of the Family Court who originally sentenced the child or a Judge of the Family Court designated by the Chief Judge, upon a petition filed by the Department of Services for Children, Youth and Their Families, the child, the parent or parents or guardian of said child, or by the Court's own initiative, with notice to the Attorney General, determines by a preponderance of the evidence presented at a hearing that the child has progressed in a course of mandated institutional treatment that release would serve both the welfare of the public and the interest of the child or be in the best interest of the child's treatment to participate in programs which may require the child to leave the institution as determined by the Director of Youth Rehabilitation Services;

(3) Whenever a child appears before the Court on charges subject to the minimum commitment provisions of this subsection or § 1448 of Title 11, said child and the parent, guardian or custodian of said child who is present shall be specifically advised of the operation of this subsection;

(4) Nothing provided herein shall be construed as prohibiting the Court, upon petition and recommendation of the Department of Services for Children, Youth and Their Families, from securing for any child otherwise subject to the minimum commitment provisions of this subsection or § 1448 of Title 11, such care and treatment as it deems necessary for diagnosed mental disorders or incapacities, or intellectual disabilities, provided that the provisions for such treatment shall not deter the Court from imposing such minimum term of commitment as is applicable.

Approved October 26, 2022