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Paradee, Sokola, Townsend

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 10

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUVENILE PROSECUTION.

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

1 Section 1. Amend § 921, Chapter 9 of Title 10 of the Delaware Code by making deletions as shown by strike
2 through and insertions as shown by underline as follows:

3 § 921 Exclusive original civil jurisdiction.

4 The Court shall have exclusive original civil jurisdiction in all proceedings in this State concerning:

5 (1) Any child found in the State who is alleged to be dependent, neglected, abused or delinquent except as
6 otherwise provided in this chapter;

7 (2)a. Any child charged in this State with delinquency by having committed any act or violation of any laws
8 of this State or any subdivision thereof, except, for a child aged 16 or older accused of murder in the first degree, ~~or~~
9 murder in the second degree, rape in the first degree, rape in the second degree, unlawful sexual intercourse in the first
10 degree, assault in the first degree, robbery in the first degree, (where such offense involves the display of what appears
11 to be a deadly weapon or involves the representation by word or conduct that the person was in possession or control of
12 a deadly weapon or involves the infliction of serious physical injury upon any person who was not a participant in the
13 crime, and where the child has previously been adjudicated delinquent of 1 or more offenses which would constitute a
14 felony were the child charged under the laws of this State), kidnapping in the first degree, or any attempt to commit
15 said crimes; any child 16 years of age or older charged with violation of Title 21, except as provided in paragraph (16)
16 of this section or § 927 of this title; or any other crime over which the General Assembly has granted or may grant
17 jurisdiction to another court.

18 Section 2. Amend § 1002, Chapter 9 of Title 10 of the Delaware Code by making deletions as shown by strike
19 through and insertions as shown by underline as follows:

20 § 1002. Delinquent child not criminal; prosecution limited.

(a) Except as provided in § 1010 of this title, no child shall be deemed a criminal by virtue of an allegation or adjudication of delinquency, nor shall a child be charged with or prosecuted for a crime in any other court. In this Court the nature of the hearing and all other proceedings shall be in the interest of rather than against the child. Except as otherwise provided, there shall be no proceedings other than appellate proceedings in any court other than this Court in the interest of a child alleged to be dependent, neglected, or delinquent.

(b)(1) Notwithstanding any other provision of law to the contrary, no child shall be prosecuted for a crime or act of delinquency arising from conduct that occurred when the child was under the age of 12, except for a child younger than 12 accused of murder in the first degree, murder in the second degree, rape in the first degree, or rape in the second degree. ~~10 unless the delinquency petition includes a motion to determine competency pursuant § 1007A of this title. If the Court finds the child competent, prosecution of the case may resume at the discretion of the State. If the Court finds the child not competent the Court shall, contemporaneous with the entry of such finding, enter a dismissal of the charge or charges, and the State shall petition the Court to expunge the instant record of arrest as set forth in § 1018(f) of this title.~~

(2) A child under the age of ~~10~~12 may be referred to and required to participate in any pre ~~or post~~ arrest diversionary program administered by the Division of Youth Rehabilitative Services, and such child may be referred to the Division of Prevention and Behavioral Health, the Division of Family Services, or any other state agency if the child is believed to be abused, neglected, dependent or otherwise in need of services. Notwithstanding any provisions to the contrary, referrals under this subsection shall not preclude subsequent participation in any pre or post arrest diversionary programs for which the child is eligible upon reaching age 12.

Section 3. Amend § 1010, Chapter 9 of Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1010. Proceeding against child as an adult; amenability proceeding; referral to another court.

(a) A child, aged 16 or older, shall be proceeded against as an adult where:

(1) The acts alleged to have been committed constitute first- or second-degree murder, rape in the first degree or rape in the second degree, assault in the first degree, robbery in the 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 and where the child has previously been adjudicated delinquent of 1 or more offenses which would constitute a felony were the child charged under the laws of this State) or kidnapping in the first degree, or any attempt to commit said crimes;

(2) The child is not amenable to the rehabilitative processes available to the Court;

51 (3) The child has previously been adjudicated delinquent of 1 or more offenses which would constitute a
52 felony were he or she charged as an adult under the laws of this State, and has reached his or her sixteenth birthday
53 and the acts which form the basis of the current allegations constitute 1 or more of the following offenses:
54 conspiracy first degree, rape in the third degree, arson first degree, burglary first degree, home invasion, §§ 4752
55 and 4753 of Title 16 or any attempt to commit any of the offenses set forth in this paragraph;

56 (4) The General Assembly has heretofore or shall hereafter so provide;

57 (5) Notwithstanding any in this Code to the contrary, a child over the age of 12 and under the age of 16 may be
58 proceeded against as an adult only when they are alleged to have committed murder in the first degree, murder in the
59 second degree, rape in the first degree, or rape in the second degree.

SYNOPSIS

United States Supreme Court case law and scientific research has changed how we think about juvenile delinquency. We know now that an adolescent's brain is not fully developed until the mid-twenties which makes juveniles especially prone to poor decision-making. In the landmark case of Miller v. Alabama, in which the United States Supreme Court prohibited mandatory life sentences without parole for juveniles on the rationale that children are inherently different than adults, the Court relied not only scientific research but on common sense and what any parent knows: kids will be kids.

Children in Delaware have minimum ages set for many things: getting a driver's license, enlisting in the military, applying for a loan or opening a credit card, using a tanning bed, drinking alcohol, and buying tickets to an R-rated movie.

This legislation sets a minimum age at which a child may be prosecuted, except for the most extreme offenses. This Bill prohibits the prosecution of children under the age of 12. It also bars the transfer of juvenile prosecution to the Superior Court unless the child is aged 16 or older. The exception to the prohibition on prosecuting children under 12 and transfer to Superior Court for children under sixteen, is only for the most serious of charges: murder in the first degree, murder in the second degree, rape in the first and rape in the second degree.