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Rep. Dorsey Walker & Rep. Cooke & Rep. Heffernan &  
Sen. Lockman  
Reps. Briggs King, Jaques, Kowalko, Lynn; Sens. Brown,  
Paradee, Sokola, Townsend

HOUSE OF REPRESENTATIVES  
150th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1  
FOR  
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.

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

26 (b)(1) Notwithstanding any other provision of law to the contrary, no child shall be prosecuted for a crime or act  
27 of delinquency arising from conduct that occurred when the child was under the age of ~~10~~ 12, except for a child under the  
28 age of 12 accused of murder in the first degree, murder in the second degree, rape in the first degree, or rape in the second  
29 degree.

30 a. A child younger than 12 accused of murder in the first degree, murder in the second degree, rape in the  
31 first degree, or rape in the second degree, may not be prosecuted unless the delinquency petition includes a motion  
32 to determine competency pursuant § 1007A of this title. If the Court finds the child competent, prosecution of the  
33 case may resume at the discretion of the State. If the Court finds the child not competent the Court shall,  
34 contemporaneous with the entry of such finding, enter a dismissal of the charge or charges, and the State shall  
35 petition the Court to expunge the instant record of arrest as set forth in § 1018(f) of this title.

36 b. Notwithstanding subsection (b)(1) of this section, a child younger than 12 may be prosecuted if such  
37 child is accused of a title 11 violent felony or misdemeanor crime of violence and the delinquency petition  
38 includes a motion to determine competency pursuant § 1007A of this title. If the Court finds the child competent,  
39 prosecution of the case may resume at the discretion of the State. If the Court finds the child not competent the  
40 Court shall, contemporaneous with the entry of such finding, enter a dismissal of the charge or charges, and the  
41 State shall petition the Court to expunge the instant record of arrest as set forth in § 1018(f) of this title.

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

48 (3) A child under the age of 12, who could otherwise be charged with a Title 11 violent felony or a  
49 misdemeanor crime of violence if the child were 12 or older, shall be referred to the Juvenile Civil Citation Program

under this title. Such child shall be assessed for appropriate programs and services available through the Department of Services for Children, Youth and Their Families. Referrals and participation in the Juvenile Civil Citation Program, shall not preclude subsequent participation in any pre or post arrest diversionary programs for which the child is otherwise eligible upon reaching the age of 12.

Section 3. Amend § 1004A, Chapter 9 of Title 10 of the Delaware Code by making deletions as shown by strike through, insertions as shown by underline and redesignating as follows:

§ 1004A Juvenile Offender Civil Citation Program [Effective July 1, 2019]

(a) There is hereby established a juvenile offender civil citation option to provide a civil alternative to arrest and criminal prosecution for eligible youth who have committed ~~minor misdemeanor~~ acts of delinquency as set forth herein. The Juvenile Offender Civil Citation Program shall be coordinated by a statewide Civil Citation Coordinator within the Division of Youth Rehabilitative Services and shall include assessment and intervention services that a juvenile voluntarily agrees to complete in lieu of formal arrest and prosecution.

(b)(1) Referral to the Juvenile Offender Civil Citation Program shall be initiated by a peace officer through the issuance of a civil citation. Any peace officer having reasonable grounds to believe that a juvenile has committed or attempted to commit ~~a misdemeanor~~ an act of delinquency described hereunder may issue the juvenile a civil citation. The issuance of a civil citation shall be at the discretion of the peace officer and limited to qualified juvenile offenders. Participation in the Juvenile Offender Civil Citation Program is voluntary on the part of the juvenile offender and requires parental consent. Other than referrals under § 1002, referral ~~Referral~~ to the Juvenile Offender Civil Citation Program shall be made with the consent of the victim if one exists.

(2) An act of delinquency classified as a misdemeanor is eligible for disposition pursuant to a civil citation, except any Title 21 misdemeanor, unlawful sexual contact in violation of § 767 of Title 11, and unlawful imprisonment second degree in violation of § 781 of Title 11. Juveniles under the age of 12 shall also be eligible for disposition pursuant to a civil citation based on referrals under § 1002 of this title.

(3) For purposes of this section, a "qualified juvenile offender" means a juvenile who meets both of the following:

a. No prior adjudication of delinquency.

b. No prior referral to the Juvenile Offender Civil Citation or any other diversion program unless more than 1 year has elapsed since the first referral and the prior referral was for a different offense.

(c) A civil citation shall be initiated by entering all required information into the Law Enforcement Investigative Support System (LEISS) to include a description of the ~~misdemeanor~~ offense believed to have been committed; contact

information for the designated civil citation community providers; notification that the juvenile must contact the identified civil citation community provider within 7 business days to schedule their intake and initial assessment; and a warning that failure to contact the identified civil citation community provider may result in the juvenile's arrest and the commencement of delinquency proceedings as otherwise provided in this subchapter.

(d) At the time of issuance of a civil citation by the peace officer, the peace officer shall advise the juvenile that the juvenile has the option to refuse the civil citation and instead be taken into custody and subject to arrest and prosecution as otherwise provided in this subchapter. Upon issuance of a civil citation, the peace officer shall submit the civil citation through LEISS to the Civil Citation Coordinator.

(e) A juvenile issued a civil citation shall contact the identified civil citation community provider within 7 business days or as otherwise directed in the civil citation and thereafter report to the identified provider to which the juvenile is referred.

(f)(1) Providers shall assess referred juveniles using an approved risk assessment tool and may recommend the juvenile to participate in counseling, treatment, community service or other interventions appropriate to the needs of the juvenile as identified by the assessment.

(2) For purposes of Chapter 86 of Title 11, a civil citation community provider is all of the following:

- a. Engaged in the rehabilitation of accused persons in the administration of criminal justice.
- b. An authorized user, if qualified under the minimum requirements established under § 8608 of Title 11.
- c. An authorized agency, if qualified under §§ 8610 and 8611 of Title 11.

(g) Upon completion of all terms and conditions of the Juvenile Offender Civil Citation Program, the juvenile shall be discharged successfully without arrest.

(h) If the juvenile fails to comply with any requirements of the Juvenile Offender Civil Citation Program, including any assessments or required services, or otherwise violates any terms or conditions imposed by the identified provider, the juvenile shall be unsuccessfully discharged from the Juvenile Offender Civil Citation Program. The Civil Citation Coordinator shall advise the referring peace officer of a juvenile's unsuccessful termination from the program. A peace officer, upon receiving notice that a juvenile to whom they have issued a civil citation has been unsuccessfully discharged from the Juvenile Offender Civil Citation Program, shall be authorized to arrest the juvenile and proceed as otherwise provided in this subchapter.

(i) Participation in the Juvenile Offender Civil Citation Program shall not, with respect to a subsequent arrest, serve to disqualify or otherwise preclude a juvenile from participating in any diversion program at the discretion of the Attorney General.

(j) Notwithstanding anything in this section to the contrary, those juveniles referred to the Juvenile Offender Civil Citation Program under § 1002 of this title shall be referred to the Program and may not be arrested for refusal to participate in the Program or violating terms and conditions of the Program.

Section 4. 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;

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

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

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

Section 5. Sections 1, Sections 1002 (b)(1), (b)(1)a. and (b)(2) of Section 2, and Section 4 of this Act shall be effective July 1, 2019. Section 1002 (b)(3) of Section 2 and Section 3 of this Act shall be effective January 1, 2021. Section 1002 (b)(1)b. of Section 2 expires January 1, 2021.

#### 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 16, 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. However, the bill allows for the prosecution of children under 12 for title 11 violent felonies and misdemeanor crimes of violence until January 1, 2021, when prosecution of such children will expire and thereafter children under the age of 12 who are suspected of committing a Title 11 violent felony or misdemeanor violent felony will be referred to the Juvenile Offender Civil Citation Program.