



SPONSOR: Sen. Gay & Rep. Griffith & Rep. Dorsey Walker
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DELAWARE STATE SENATE
151st GENERAL ASSEMBLY

SENATE BILL NO. 154

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO PROCEDURE IN THE FAMILY COURT IN THE STATE OF DELAWARE.

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.

(j) ~~(1) For the purpose of this subsection, the following definitions shall apply:~~

a. ~~“Adjudication” or “adjudicated” — for the purposes of this subsection (j), “adjudication” or “adjudicated” shall mean any type of adjudication of delinquency contained within the definition of “conviction” or “convicted” pursuant to Chapter 9 of Title 16, and shall include a probation before adjudication plea or admission, and a mental health deferred plea regardless of whether the plea or charge was subsequently discharged or dismissed under such programs.~~

b. ~~“Facility” means any residential shelter, group home, foster home, treatment center, individualized residential treatment home (“IRT”), institution or any other place designated as a temporary or permanent residential placement for children located in the State, excluding accredited or licensed hospitals.~~

c. ~~“Felony level offense” means any delinquent act constituting a felony under the laws of this State, any other state or the United States.~~

d. ~~“Mixing” means placement by the Department of Services for Children, Youth and Their Families of any child charged with or adjudicated of a felony level juvenile offense, or adjudicated of any serious misdemeanor level juvenile offense, in the same facility with dependent or neglected children who have not committed or been charged with any delinquent act.~~

e. ~~“Repeat offender” means any child adjudicated delinquent of 3 or more serious misdemeanor level juvenile offenses occurring within 24 months of the request for mixing.~~

22 f. ~~“Serious misdemeanor level juvenile offense” means any delinquent act constituting the following~~
23 ~~misdemeanors or any court adjudicated violation of probation or juvenile aftercare or parole in which the~~
24 ~~underlying adjudication is any of the following misdemeanors, whether under the laws of this State, any similar~~
25 ~~laws in other states, or the United States:~~

26 Section 501 of Title 11 (Criminal Solicitation in the Third Degree)

27 Section 601 of Title 11 (Offensive Touching)

28 Section 602 of Title 11 (Menacing)

29 Section 611 of Title 11 (Assault in the Third Degree)

30 Section 621 of Title 11 (Terroristic Threatening)

31 Section 625 of Title 11 (Unlawfully Administering Drugs)

32 Section 628A of Title 11 (Vehicular Assault in the Second Degree)

33 Section 763 of Title 11 (Sexual Harassment)

34 Sections 764-765 of Title 11 (Indecent Exposure in the First or Second Degree)

35 Section 766 of Title 11 (Incest)

36 Section 767 of Title 11 (Unlawful Sexual Contact in the Third Degree)

37 Section 781 of Title 11 (Unlawful Imprisonment in the Second Degree)

38 Section 804 of Title 11 (Reckless Burning or Exploding)

39 Section 1102 of Title 11 (Endangering the Welfare of a Child)

40 Section 1251 of Title 11 (Escape in the Third Degree)

41 Section 1257 of Title 11 (Resisting Arrest With Force or Violence)

42 Section 1311 of Title 11 (Harassment)

43 Section 1341 of Title 11 (Lewdness)

44 Section 1443 of Title 11 (Carrying a Concealed Dangerous Instrument).

45 (2) No dependent or neglected child shall be placed in a secure or nonsecure detention or correctional facility
46 unless charged with or found to have committed a delinquent act. Except for youth placed, detained, or sentenced pursuant
47 to § 2103A [repealed] or § 4204A of Title 11 and except for youth otherwise properly proceeded against as adults in
48 Superior Court, no child shall be placed in an adult detention or adult correctional facility.

49 (3) ~~There shall be no mixing unless the following requirements are met:~~

50 a. ~~When a child is charged with or found to have committed a felony level juvenile offense or is a repeat~~
51 ~~offender, the Department of Services for Children, Youth and Their Families must obtain a court order authorizing~~

52 such placement, after the Secretary or a Division Director of the Department of Services for Children, Youth and
53 Their Families or their designee shall recommend such placement in writing. Before authorizing mixing, the
54 Family Court must specifically find that the proposed placement of the child offender is not expected to present an
55 unreasonable and unmanageable physical risk to other children in the facility and that the placement is not contrary
56 to the best interests of the other children in the facility.

57 b. When a child who is not a repeat offender is found to have committed a serious misdemeanor level
58 juvenile offense, no mixing shall occur unless the Secretary or a Division Director of the Department of Services
59 for Children, Youth and Their Families, or their designee, after review of the case, certifies in writing that the
60 proposed placement of the child offender is not expected to present an unreasonable and unmanageable physical
61 risk to other children in the facility and that the placement is not contrary to the best interests of the other children
62 in the facility.

63 (4) a. A court order approving mixing may be requested via a motion in a dependency/neglect proceeding or in the
64 delinquency proceeding concerning the child who needs to be mixed. The court may decide such motion without a hearing,
65 and such motions may be requested, heard and decided via oral motion to the court during any hearing or trial concerning
66 the child.

67 b. Where the date of placement could not have been reasonably determined in advance of placement, facilities and
68 agencies which are subject to this subsection (j) may provisionally place a child in such facility, pending a later
69 determination by the Family Court or the Secretary or Division Director of the Department of Services for Children, Youth
70 and Their Families or their designee, whichever may be applicable. Where such provisional placement has been made, a
71 request for mixing approval that requires a Family Court order under paragraph (j)(3)a. of this section shall be filed with the
72 Family Court no later than the second business day after such placement is made. In all other provisional placements, the
73 Secretary or Division Director or their designee shall make the written certifications required by this subsection (j) no later
74 than the second business day after such placement is made.

75 (5) All placements which result in mixing shall be reviewed within 5 working days by the Department of Services
76 for Children, Youth and Their Families. The purpose of the review shall be to determine whether, under the placement, the
77 child offender continues to not present an unreasonable and unmanageable physical risk to other children in the facility, and
78 that such placement is not contrary to the best interests of the other children in the facility.

SYNOPSIS

This Act repeals the outdated requirement for the Department of Services for Children, Youth & Their Families (DSCYF) to seek approval before “mixing” youth who have been adjudicated delinquent with youth who do not have a delinquency history in the same facility. The mixing statute was codified in 1987, and since then, DSCYF has developed rigorous safety protocols and uses evidence-based assessments to determine appropriate placements for children in the care

of the department. The current practices of DSCYF have eliminated the need for mixing approval, which in some cases require DSCYF to seek a court order. In addition, the Family Court conducts regular review hearings for youth in DSCYF custody, allowing opportunities for the department, the child's attorney, the child (if age appropriate), and the judicial officer to monitor many factors relating to the child's placement, including safety.

This Act retains the prohibition on dependent or neglected children being placed in a detention facility unless charged with or found to have committed a delinquent act.

Author: Senator Gay