SPONSOR: Rep. J. Johnson & Rep. Longhurst & Rep. Heffernan & Rep. Lynn & Rep. Potter & Sen. McDowell & Sen. Henry & Sen. Townsend
Reps. Baumbach, Brady, Kowalko, Paradee

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 307
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 10 AND 11 OF THE DELAWARE CODE RELATING TO JUVENILES.

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

Section 1. Amend § 1009, Title 10 of the Delaware Code by making deletions as shown by strike through and redesignating the remaining subsections accordingly:

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

~~(e) Subject to the provisions governing amenability pursuant to § 1010 of this title, the Court shall commit a delinquent child to the custody of the Department of Services for Children, Youth and Their Families under such circumstances and for such periods of time as hereinafter provided:~~

~~(1) Any child who has been adjudicated delinquent by this Court of 1 or more offenses which would constitute a felony were the child charged as an adult under the laws of this State, and who shall thereafter within 12 months commit 1 or more offenses occurring subsequent to the said adjudication which offense or offenses would constitute a felony were the child charged as an adult under the laws of this State, and thereafter be adjudged delinquent of said offense or offenses, 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 at least a 6-month period of institutional confinement;~~

~~(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 executed the commitment order or a Judge of the Family Court designated by the Chief Judge shall, upon a petition filed by the Department of Services for Children, Youth and~~

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~~Their Families (or its duly authorized representative), the child, the parent(s) or guardian of said child, or by the Court's own initiative, with notice to the Attorney General, determine by a preponderance of the evidence presented at a hearing that the child has so progressed in a course of mandated institutional treatment that release would best serve both the welfare of the public and the interest of the child or 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;~~

~~(3) Where a child has been declared in need of mandated institutional treatment in accordance with paragraphs (e)(1) and (2) of this section, and the child is subsequently charged with having committed 1 or more offenses which offense or offenses occurred subsequent to the child having been declared a child in need of mandated institutional treatment, the Court shall conduct a hearing to determine whether the child is amenable to the rehabilitative processes of the Court pursuant to § 1010(c) of this title. "Offense" in this paragraph shall mean all offenses which would constitute a felony were the child charged as an adult under the laws of this State, with the exception of a charge of escape pursuant to subpart E of subchapter VI of Chapter 5 of Title 11;~~

~~(4) Whenever a child appears before the Court on charges which would constitute a felony were the child charged as an adult under the laws of this State, said child and any parent, guardian or custodian of said child who is present shall be specifically advised of the operation of this subsection;~~

~~(5) Nothing hereinbefore provided 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 mandatory commitment provisions of this subsection 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 mandatory term of commitment as is applicable under this subsection unless the same shall be sooner suspended in accordance with paragraph (e)(6) of this section;~~

~~(6) As used in this subsection, "child" shall mean any juvenile who is charged with an act or course of conduct occurring on or after the child's 14th birthday which causes this subsection to be applicable;~~

~~(7) A copy of each and every order or disposition of the Court respecting a child committed pursuant to this subsection shall be made available to the victim or victims of the delinquent acts giving rise to the commitment upon written request to the Court therefor. [~~

(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 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, ~~S~~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 ~~at least a 12-month period of institutional confinement~~ 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(s) 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.

Section 2. Amend § 1448, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(f)(1) Upon conviction, any person who is a prohibited person as described in paragraph (a)(5) of this section and who is ~~14~~ 15 years of age or older is declared a child in need of mandated institutional treatment and shall, for a first offense, receive a minimum sentence of 6 months of Level V incarceration or institutional confinement, and shall receive a minimum sentence of 1 year of Level V incarceration or institutional confinement for a second and each subsequent offense, which shall not be subject to suspension. Any sentence imposed pursuant to this subsection shall not be subject to §§ 4205(b) and 4215 of this title.

(2) The penalties prescribed by this subsection and subsection (g) of this section shall be imposed regardless of whether or not the juvenile is determined to be amenable to the rehabilitative process of the Family Court pursuant to § 1010(c) of Title 10 or any successor statute.