



Governor's Advisory Council for Exceptional Citizens (GACEC)
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MEMORANDUM

DATE: April 26, 2021

TO: The Honorable Members of the Delaware General Assembly

FROM: Ann C. Fisher, Chairperson
GACEC

RE: House Bill No. 115 Prohibition on Juvenile Prosecution

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed House Bill No. 115, which sets a minimum age at which a child may be prosecuted (except for the most extreme offenses) and bars the transfer of juvenile prosecution to the Superior Court unless the child is at least 16 years of age. Council supports the proposed legislation and would like to share the following observations.

Specifically, House Bill No. 115:

1. prohibits the prosecution of children under the age of twelve (12), except for the most extreme offenses^{1;2}
2. bars the transfer of juvenile prosecution to the Superior Court unless the child is at least sixteen (16) years of age, except for the most extreme offenses³; and
3. allows for the prosecution of children under the age of 12 for Title 11 violent felonies and misdemeanor crimes of violence until January 1, 2022, when prosecution of such children will expire and thereafter such children will be referred to the Juvenile Offender Civil Citation Program under 10 Del. C. § 1004A.

¹ Extreme offenses include first degree murder, second degree murder, first degree rape, second degree rape, and using, displaying, or discharging a firearm during the commission of a Title 11 or a Title 31 violent felony as set forth in 11 Del. C. § 4201 (c).

² A child under the age of twelve (12) accused of committing an extreme offense *may* be prosecuted if found competent by the Family Court.

³ Extreme offenses include first degree murder, second degree murder, first degree rape, second degree rape, and using, displaying, or discharging a firearm during the commission of a Title 11 or a Title 31 violent felony as set forth in 11 Del. C. § 4201 (c).

Over the course of the late 20th century, there has been a push to rethink how we, as a country, have considered and dealt with juvenile delinquency. The bill's authors note this by referencing the 2012 U.S. Supreme Court case *Miller v. Alabama*⁴ that was a landmark U.S. Supreme Court case dealing with juvenile justice, in which the Court recognized that young people are inherently different from adults. The Court in *Miller* held that young people cannot be sentenced to life without the possibility of parole (LWOP) for homicide crimes where LWOP is the only option for sentencing. Further, mitigating factors must be considered before a young person can be sentenced to juvenile LWOP (JLWOP), such as their age, age-related characteristics, background, and mental and emotional development. *Miller* was the third in a line of landmark U.S. Supreme Court cases in which the Court recognized the age-related characteristics of young people.

The first case was *Roper v. Simmons*, where the U.S. Supreme Court held that sentencing a young person to death for a crime committed when they were under the age of eighteen (18) was unconstitutional.⁵ Considering the social and neuroscience literature at the time, the Court recognized three general characteristics that separated young people from adults: (1) lack of maturity and possession of an underdeveloped sense of responsibility, which result in impetuous and ill-considered actions and decisions; (2) more vulnerable and susceptible to negative influences and outside pressures; and (3) early stages of character development. In 2010, the Court expanded upon its *Roper* analysis when it decided *Graham v. Florida*, holding that it was unconstitutional for a young person to be sentenced to JLWOP for a crime not involving homicide.⁶

These, and other similar cases, stand on scientific literature differentiating a child's developing brain from an adult's developed brain.

It should be noted that this bill follows a slew of other bills in Delaware signed into law in 2017, which were aimed at diverting young people from the juvenile and criminal justice systems.⁷ It is not just an effort to follow national trends but aligns with efforts already begun in Delaware. House Bill No. 115 seems to be an expansion of this effort. It also aligns with the recommendations of the Delaware Juvenile Justice Advisory Group (JJAG), a specialized committee with knowledge and expertise in juvenile justice. In March of 2019, the JJAG released its annual report and recommendations to the Governor and the Delaware State Legislature.⁸ JJAG puts forth nine policy recommendations including, but not limited to, investing in prevention-based services for young people, potentially establishing a mentoring program, and allocating state and local resources to fund programs aimed at strengthening family units. Furthermore, JJAG intends to support:

all legislation aimed at increasing identity security of youth that have not been adjudicated delinquent of a crime; establishes a minimum age for prosecution; extends the post-disposition jurisdiction of DSCYF for youth found delinquent of a crime; establishes that the age of offense and not the age of arrest determines the jurisdiction for a person facing charges; and making underage possession/consumption of alcohol or marijuana a civil violation.⁹

⁴ 567 U.S. 460 (2012).

⁵ 543 U.S. 551 (2005).

⁶ 560 U.S. 48 (2010).

⁷ <https://why.org/articles/delaware-juvenile-justice-reforms-signed-law/>

⁸ <https://cjc.delaware.gov/wp-content/uploads/sites/61/2019/06/Delaware-2018-JJAG-ReportvPRINTER.pdf>

⁹ *Id.*

Although children with disabilities are not specifically mentioned in the bill, data shows that such children will likely be impacted by its passage (or failure). According to a 2015 white paper, 65-70 percent of justice-involved youth have a disability.¹⁰ The number is likely similar in Delaware.

As written, House Bill No. 115 will continue the trend in Delaware toward recognizing young people, including those with disabilities, as separate and distinct from adults; therefore Council supports the proposed legislation. Council would however, like to note that raising the age of prosecution from the proposed 12 years of age to 14 would align with the standard set forth by the United Nations Convention on the Rights of the Child.¹¹ The sponsors of the proposed legislation may wish to consider this moving forward.

Thank you for your time and consideration of our support of this proposed legislation. Please feel free to contact me or Wendy Strauss at the GACEC office should you have any questions.

¹⁰ The Arc's National Center on Criminal Justice and Disability. "Justice Involved Youth with Intellectual and Developmental Disabilities: A Call to Action for the Juvenile Justice Community." (2015). https://thearc.org/wp-content/uploads/forchapters/15-037-Juvenile-Justice-White-Paper_2016.pdf.

¹¹<https://docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsqIkirKQZLK2M58RF%2f5F0vEnG3QGKUxFivhToQfjGxYjV05tUAIgpOwHQJsFPdJXCiixFSrDRwow8HeKLLh8cgOw1SN6vJ%2bf0RPR9UMtGkA4>