



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

**DATE:** March 21, 2022

**TO:** The Honorable Members of the Delaware General Assembly

**FROM:** Terri Hancharick, Vice Chairperson  
GACEC

**RE:** **House Bill No. 314 Mandatory Sentences for Juveniles Amendment**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed **House Bill No. 314**. The amendment will clarify that a 6- or 12-month mandatory commitment to Level 5 incarceration or institutional confinement for a juvenile only applies to adjudications of delinquency for the charge of Robbery First Degree or Possession of a Firearm During the Commission of a Felony if the offense was committed *after the child's 16th birthday*. Council **supports** the proposed legislation. However, we would also like to recommend that the Legislature consider revisiting whether retaining the two mandatory minimum sentences for juveniles adjudicated delinquent is necessary or warranted.

As background, this bill is a clarification to House Amendment 1 to HB 307 (HA 1 to HB 307) from the 49th General Assembly, and adds language to 10 Del.C. §1009(k)(1) providing that the mandatory commitment applies only where the youth was over the age of 16 when they committed the offense of Robbery First Degree or Possession of a Firearm During the Commission of a Felony. This clarification will help to ensure that youth who commit either of these offenses while under the age of 16 do not receive a mandatory sentence 6- or 12-month incarceration or confinement.

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. The number is likely similar in Delaware. Furthermore, in its Juvenile Justice Guide Book for Legislators focused on reentry and aftercare, the National Conference of State Legislatures reports that "[a]bout 70 percent of juveniles in the system are affected with at least one mental illness."

As written, the clarification aligns with Delaware's trend toward recognizing young people, including those with disabilities, as separate and distinct from adults. Therefore, Councils may wish to support the bill as written. However, Council would also like to recommend that the Legislature review whether Delaware law should even include mandatory minimums for youth adjudicated delinquent, as was the original intent of House Bill (HB) 307.

HB 307 "sought to repeal and remove *all* mandatory minimum sentencing schemes for juveniles adjudicated delinquent in Family Court...". Recognizing that young people are inherently different from adults, the sponsors of HB 307 put forth a bill, which would allow Family Court judges and commissioners to fashion sentences that are appropriate for each individual youth. This reasoning is in line with several U.S. Supreme Court decisions from the last several decades, including *Miller v. Alabama* (holding that mandatory life without parole for a youth was unconstitutional), *Roper v. Simmons* (holding that a death sentence for a crime committed when the individual was under the age of eighteen (18) was unconstitutional), and *Graham v. Florida* (holding that it was unconstitutional for a young person to be sentenced to juvenile life without parole (JLWOP) for a crime not involving homicide.

These, and other similar cases, stand on scientific literature differentiating a child's developing brain from an adult's developed brain. So, the original text of HB 307 made *sense* when considering the line of U.S. Supreme Court cases and available science around the development and growth of a youth's brain. However, on April 19, 2018, Rep. J. Johnson, the primary sponsor of HB 307, introduced House Amendment (HA) 1, which was placed with the bill immediately prior to a vote by the House. HA1 retained the mandatory minimum sentences for Robbery First Degree and Possession of a Firearm during the Commission of a Felony.

Retaining the above two mandatory minimum sentences flies in the face of the available literature and U.S. Supreme Court precedent. Although not unconstitutional, it prevents Family Court Judges and Commissioners from adequately considering everything that makes a youth a youth and an individual, including those youth-specific characteristics.

Therefore, although HB 314 follows the current trend in Delaware, Council recommends that the Legislature consider revisiting whether retaining the two mandatory minimum sentences for juveniles adjudicated delinquent is necessary or warranted as mentioned earlier.

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