



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

DATE: April 28, 2023

TO: **The Honorable Representative Nnamdi Chukwuocha and Senator Bryan Townsend, Sponsors**
The Honorable Senators Brown, S. McBride, Paradee, Sokola and Representatives Baumbach, Bolden, Cooke, Dorsey Walker, Griffith, Heffernan, K. Johnson, Lambert, Longhurst, Lynn, Morrison, Wilson-Anton, Co-Sponsors

FROM: **Ann C. Fisher, Chairperson**
GACEC

RE: **House Bill No. 112 Juvenile Arrest Clarification**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed House Bill No. 112, which seeks to amend Chapter 9, Title 10 of the Delaware Code relating to Family Court proceedings in the interest of a child, specifically delinquency and criminal proceedings. The bill clarifies that children under the age of twelve may not be arrested or held in a detention facility pending adjudication, except where the alleged crime is one of the enumerated exceptions. Those exceptions are (1) murder in the first or second degree, (2) rape in the first or second degree, or (3) using, displaying, or discharging a firearm during the commission of a violent felony. Council **supports** the proposed legislation; however we would like to recommend that the sponsors of the bill consider the following: (1) re-including the language in HB 79 which limited the transfer of youth from Family Court to young people at least sixteen years old and (2) query whether the two required mandatory minimum sentences for youth that still remain in Delaware code should be revisited.

As written, HB 112 aligns with the continued trend in Delaware toward recognizing young people, including those with disabilities, as separate and distinct from adults. However, we would like to take this opportunity to encourage the sponsors of the legislation to re-include the language limiting transfer to youth aged sixteen and above (rather than fourteen) and revisit the issue of mandatory minimum sentences, which are still in existence for young people in Delaware.

In 2022, the Disabilities Law Program (DLP) provided analysis on HB 314 of the 151st General Assembly to the GACEC. HB 314 was a clarification to House Amendment 1 (HA 1) to HB 307 (HB 307) from the 149th General Assembly, which added language to 10 Del.C. §1009(k)(1) to provide that the mandatory commitment applies only where the youth was over the age of sixteen when they committed the offense of Robbery First Degree or Possession of a Firearm During the Commission of a Felony. In its analysis, the DLP provided the following information about HB 307, its original intent, and a snapshot of the relevant case law, specifically

HB 307 sought to repeal and remove all mandatory minimum sentencing scheme for juveniles adjudicated delinquent in Family Court. Recognizing that young people are inherently different than adults, HB 307's sponsors put forth a bill which would allow Family Court judges and commissioners to fashion sentences which 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 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. The House Judiciary Committee agreed on March 28, 2018 with six (6) Favorable votes and three (3) votes On Its Merits. However, on April 19, 2018, Rep. J. Johnson, HB 307's primary sponsor, introduced HA 1, which was placed with the bill immediately prior to a vote by the House. HA 1 retained the mandatory minimum sentences for Robbery First Degree and Possession of a Firearm During the Commission of a Felony.

Retaining the above two (2) 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 would recommend that the Legislature consider revisiting whether retaining the two mandatory minimum sentences for juveniles adjudicated delinquent is necessary or warranted.

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