

Summaries - JUVENILE

March 13, 2019

<u>Bill Number</u>	<u>Sponsor</u>	<u>Title</u>
1. HB 10	Chukwuocha Griffith Lockman	AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUVENILE PROSECUTION. United States Supreme Court case law and scientific research has changed how we think about juvenile delinquency. We know now that an adolescent's brain is not fully developed until the mid-twenties which makes juveniles especially prone to poor decision-making. In the landmark case of Miller v. Alabama, in which the United States Supreme Court prohibited mandatory life sentences without parole for juveniles on the rationale that children are inherently different than adults, the Court relied not only scientific research but on common sense and what any parent knows: kids will be kids. Children in Delaware have minimum ages set for many things: getting a driver's license, enlisting in the military, applying for a loan or opening a credit card, using a tanning bed, drinking alcohol, and buying tickets to an R-rated movie. This legislation sets a minimum age at which a child may be prosecuted, except in the most extreme circumstances. This bill prohibits the prosecution of children under the age of 12. It also bars the transfer of juvenile prosecution to the Superior Court unless the child is aged 16 or older. There are exceptions to this prohibition for the most serious charges: Murder in the first and second degrees and Rape in first and second degrees.
2. HB XX	Lynn Cooke	AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUVENILE RECORDS. Recognizing that a criminal charge can have lasting collateral consequences for a juvenile on employment and education opportunities, this bill raises the age in which a juvenile's information, such as their name and mug shot, may be released by the state. The bill also seeks to address issues related to the release of such information on publicly-maintained social media pages. This bill seeks to balance both the rights of juveniles and the public's right to know by saying that the names and photos of juveniles who have been charged and/or found delinquent of Class A misdemeanors, and Title 11 felonies, may only be released when the offending juvenile is 16 or older. This legislation also adds clarifying language to prevent the inadvertent release of sensitive information online that could have lasting impacts on a juvenile long after they have been charged, and in some cases, acquitted, of a crime.
3. HB 75	Bolden Lockman	AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO THE YOUTH SERVICES COMMISSION OF DELAWARE. This Bill mandates that any child under 18 years old who is adjudicated in Superior Court will serve the initial portion of their incarceration until age 18 in the custody of the Department of Services for Children, Youth and Their Families.
4. SB 41	Brown Brady	AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUVENILE DELINQUENCY. This Act establishes that the age of offense, not the age of arrest, determines jurisdiction for a young person facing charges. Currently, if a young person commits a delinquent act prior to the age of 18 but is not arrested until after age 18, the offense is automatically heard before the adult court of jurisdiction. This Act reverses this procedure so that if the offense occurs prior to the age of 18 and the arrest is after a young person's 18th birthday but before their 21st birthday, the jurisdiction will always be in the Family Court. This bill makes it clear that this section does not preclude the prosecution of a juvenile as an adult as permitted in Title 10.

<u>Bill Number</u>	<u>Sponsor</u>	<u>Title</u>
5. HB 76	Heffernan Townsend	AN ACT TO AMEND TITLES 10 AND 11 OF THE DELAWARE CODE RELATING TO JUVENILE PROSECUTION. This Bill requires the Department of Services for Children, Youth and Their Families ("DSCYF") to have exclusive jurisdiction over all aspects of a child's care, custody and control when a child is convicted of a Superior Court offense. The Act establishes that from a date certain, no more juveniles would be transferred to the custody of the Department of Correction upon their adjudication and Level V sentence in Superior Court.
6. SB 44	Sturgeon Minor-Brown Schwartzkopf	AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO UNDERAGE POSSESSION OR CONSUMPTION OF ALCOHOL. This Act makes clear that the possession or consumption of alcohol by an individual under 21 years of age is a civil offense. This Act also prohibits including information concerning a civil violation of the underage possession or consumption law on an individual's certified criminal record.
7. SB 45	Paradee Cooke Osienski Schwartzkopf	AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO MARIJUANA. Under current law, the possession, use, or consumption of a personal use quantity of marijuana remains a crime for those under the age of 21 despite being a civil violation for adults. This Act makes the possession, use, or consumption of a personal use quantity of marijuana a civil violation for juveniles. This Act also makes conforming amendments to subsection (i), regarding expungement of a single criminal offense under subsection (c), as, after the effective date of this Act, subsection (c) will no longer contain a criminal offense.



SPONSOR: Rep. Chukwuocha & Rep. Griffith & Rep. Longhurst &
Rep. Dorsey Walker & Sen. Lockman
Reps. Heffernan, Kowalko, Lynn

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL 10

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUVENILE PROSECUTION.

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

1 Section 1. Amend § 921, Chapter 9 of Title 10 of the Delaware Code by making deletions as shown by strike
2 through and insertions as shown by underline as follows:

3 § 921 Exclusive original civil jurisdiction.

4 The Court shall have exclusive original civil jurisdiction in all proceedings in this State concerning:

5 (1) Any child found in the State who is alleged to be dependent, neglected, abused or delinquent except as
6 otherwise provided in this chapter;

7 (2)a. Any child charged in this State with delinquency by having committed any act or violation of any laws
8 of this State or any subdivision thereof, except, for a child aged 16 or older accused of murder in the first degree, or
9 murder in the second degree, rape in the first degree, rape in the second degree, unlawful sexual intercourse in the first
10 degree, assault in the first degree, robbery in the first degree, (where such offense involves the display of what appears
11 to be a deadly weapon or involves the representation by word or conduct that the person was in possession or control of
12 a deadly weapon or involves the infliction of serious physical injury upon any person who was not a participant in the
13 crime, and where the child has previously been adjudicated delinquent of 1 or more offenses which would constitute a
14 felony were the child charged under the laws of this State), kidnapping in the first degree, or any attempt to commit
15 said crimes; any child 16 years of age or older charged with violation of Title 21, except as provided in paragraph (16)
16 of this section or § 927 of this title; or any other crime over which the General Assembly has granted or may grant
17 jurisdiction to another court.

18 Section 2. Amend § 1002, Chapter 9 of Title 10 of the Delaware Code by making deletions as shown by strike
19 through and insertions as shown by underline as follows:

20 § 1002. Delinquent child not criminal; prosecution limited.

21 (a) Except as provided in § 1010 of this title, no child shall be deemed a criminal by virtue of an allegation or
22 adjudication of delinquency, nor shall a child be charged with or prosecuted for a crime in any other court. In this Court the

nature of the hearing and all other proceedings shall be in the interest of rather than against the child. Except as otherwise provided, there shall be no proceedings other than appellate proceedings in any court other than this Court in the interest of a child alleged to be dependent, neglected, or delinquent.

(b)(1) Notwithstanding any other provision of law to the contrary, no child shall be prosecuted for a crime or act of delinquency arising from conduct that occurred when the child was under the age of 12, except for a child younger than 12 accused of murder in the first degree, murder in the second degree, rape in the first degree, or rape in the second degree. ~~10 unless the delinquency petition includes a motion to determine competency pursuant § 1007A of this title. If the Court finds the child competent, prosecution of the case may resume at the discretion of the State. If the Court finds the child not competent the Court shall, contemporaneous with the entry of such finding, enter a dismissal of the charge or charges, and the State shall petition the Court to expunge the instant record of arrest as set forth in § 1018(f) of this title.~~

(2) A child under the age of ~~10~~12 may be referred to and required to participate in any pre ~~or~~ post arrest diversionary program administered by the Division of Youth Rehabilitative Services, and such child may be referred to the Division of Prevention and Behavioral Health, the Division of Family Services, or any other state agency if the child is believed to be abused, neglected, dependent or otherwise in need of services. Notwithstanding any provisions to the contrary, referrals under this subsection shall not preclude subsequent participation in any pre or post arrest diversionary programs for which the child is eligible upon reaching age 12.

Section 3. Amend § 1010, Chapter 9 of Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1010. Proceeding against child as an adult; amenability proceeding; referral to another court.

(a) A child, aged 16 or older, shall be proceeded against as an adult where:

(1) The acts alleged to have been committed constitute first- or second-degree murder, rape in the first degree or rape in the second degree, assault in the first degree, robbery in the 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 and where the child has previously been adjudicated delinquent of 1 or more offenses which would constitute a felony were the child charged under the laws of this State) or kidnapping in the first degree, or any attempt to commit said crimes;

(2) The child is not amenable to the rehabilitative processes available to the Court;

(3) The child has previously been adjudicated delinquent of 1 or more offenses which would constitute a felony were he or she charged as an adult under the laws of this State, and has reached his or her sixteenth birthday

53 and the acts which form the basis of the current allegations constitute 1 or more of the following offenses:
54 conspiracy first degree, rape in the third degree, arson first degree, burglary first degree, home invasion, §§ 4752
55 and 4753 of Title 16 or any attempt to commit any of the offenses set forth in this paragraph;

56 (4) The General Assembly has heretofore or shall hereafter so provide;

57 (5) Notwithstanding any in this Code to the contrary, a child over the age of 12 and under the age of 16 may be
58 proceeded against as an adult only when they are alleged to have committed murder in the first degree, murder in the
59 second degree, rape in the first degree, or rape in the second degree.

SYNOPSIS

United States Supreme Court case law and scientific research has changed how we think about juvenile delinquency. We know now that an adolescent's brain is not fully developed until the mid-twenties which makes juveniles especially prone to poor decision-making. In the landmark case of Miller v. Alabama, in which the United States Supreme Court prohibited mandatory life sentences without parole for juveniles on the rationale that children are inherently different than adults, the Court relied not only scientific research but on common sense and what any parent knows: kids will be kids.

Children in Delaware have minimum ages set for many things: getting a driver's license, enlisting in the military, applying for a loan or opening a credit card, using a tanning bed, drinking alcohol, and buying tickets to an R-rated movie.

This legislation sets a minimum age at which a child may be prosecuted, except for the most extreme offenses. This Bill prohibits the prosecution of children under the age of 12. It also bars the transfer of juvenile prosecution to the Superior Court unless the child is aged 16 or older. The exception to the prohibition on prosecuting children under 12 and transfer to Superior Court for children under sixteen, is only for the most serious of charges: murder in the first degree, murder in the second degree, rape in the first and rape in the second degree.



SPONSOR: Rep. Bolden
Sen. Lockman

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL 75

AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO THE YOUTH SERVICES
COMMISSION OF DELAWARE.

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

1 Section 1. Amend § 5108, of Title 31 of the Delaware Code by making deletions as shown by strikethrough and
2 insertions as shown by underline as follows:

3 § 5108 Power to discharge or release.

4 (a) Except as to a delinquent child committed for a mandatory period pursuant to § 1009(e) [repealed] of Title 10,
5 the Department may at its discretion discharge finally any juvenile committed to its custody if the Department shall
6 determine:

7 (1) Such discharge is in the best interests of the juvenile; and

8 (2) That the juvenile does not pose a probable threat to property or person; provided, that a certificate of
9 discharge, setting forth grounds establishing compliance with these conditions of release, shall be provided 10 calendar
10 days prior to the date of release to the Judge of Family Court who originally signed the commitment order, or, in such
11 judge's absence, to the Chief Judge of said Court.

12 (b) No person shall be retained in the legal custody of the Department beyond that person's 18th birthday;
13 provided, however, that any delinquent child who is 17 years of age or older but less than 18 years of age who has been
14 committed to the custody of the Department may remain in said custody for 1 full year; ~~provided further, that any~~
15 ~~delinquent child who is committed to the custody of the Department for a mandatory period pursuant to § 1009(e)~~
16 ~~[repealed] of Title 10 shall be transferred into or retained in the custody of a facility established pursuant to § 6526 of Title~~
17 ~~11 for youthful offenders upon reaching the age of 18 where the youthful offender shall remain until the completion of the~~
18 ~~mandatory period of custody;~~ provided further, that any child who is charged with an act of delinquency prior to reaching
19 18 years but becomes 18 years of age prior to disposition on the charge may be committed to the custody of the Department
20 until the child's nineteenth birthday.

21 (c) ~~No child committed to the custody of the Department under § 1009(e) [repealed] of Title 10 shall be released~~
22 ~~on pass or on extended leave for any purpose except in accordance with the procedure set forth in subsection (a) of this~~

23 ~~section. Upon receipt of notification that the Department intends to extend such privileges to a child so committed, the~~
24 ~~Court may deny, or may impose such reasonable terms and conditions as it deems necessary, upon said temporary release.~~

25 (c) A person who has been convicted and sentenced in Superior Court to a period of incarceration beyond their
26 18th birthday shall remain in the legal custody of the department until their 18th birthday, upon which time they shall be
27 transferred to the legal custody of the Department of Corrections for the remainder of the sentence; however, the
28 Department may provide services for non-incarcerated individuals when jurisdiction has been retained by the Family Court.

SYNOPSIS

This bill requires the Department of Services for Children, Youth and Their Families ("DSCYF") to have exclusive jurisdiction over all aspects of a child's care, custody, and control when a child is adjudicated of a Superior Court Offense until the child is the age of 18.



SPONSOR: Sen. Brown & Rep. Brady & Rep. Longhurst
Reps. Heffernan, Kowalko, Lynn

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL 41

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUVENILE DELINQUENCY.

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

1 Section 1. Amend Subchapter II, Chapter 9, Title 10 of the Delaware Code by making deletions as shown by strike
2 through and insertions as shown by underline as follows:

3 § 928A. Extended jurisdiction — Juvenile delinquency, when offense committed before age 18 but arrest occurs
4 after age 18.

5 (a) If a person commits an offense before age 18 and is arrested after reaching age 18, but before reaching age 21,
6 the Family Court retains jurisdiction in the same manner as if the person had not reached age 18, and all provisions and
7 rights applicable to a person who is under 18 apply to the person.

8 (b) Nothing in this section precludes prosecuting a person to whom this section applies as an adult under § 921 and
9 § 1010 of this title.

SYNOPSIS

This Act establishes that the age of offense and not the age of arrest determines jurisdiction for a person facing charges. Currently, if a person commits a delinquent act before age 18 but is arrested after age 18, the offense is automatically heard before the adult court of jurisdiction. See *Howard v. State*, 612 A.2d 158 (Del. 1992) (Table).

This Act reverses this procedure so that if the offense occurs before the age of 18 and the arrest is after a person's 18th birthday, but before their 21st birthday, the Family Court will have jurisdiction. However, this Act makes clear that this Act does not preclude prosecuting a person to whom the Act applies as an adult, as permitted in Title 10.

Author: Senator Brown



SPONSOR: Sen. Sturgeon & Rep. Minor-Brown &
Rep. Schwartzkopf
Reps. Heffernan, Kowalko, Longhurst, Lynn

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL 44

AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO UNDERAGE POSSESSION OR CONSUMPTION OF ALCOHOL.

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

- 1 Section 1. Amend § 904, Title 4 of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:
- 3 § 904. Offenses concerning certain persons.
- 4 (f) Whoever, being under the age of 21 years, has alcoholic liquor in his or her possession at any time, or
5 consumes or is found to have consumed alcoholic liquor, shall have their Delaware driver's license revoked for a period of
6 30 days for the 1st offense and not less than 90 days nor more than 180 days for each subsequent offense. If the underage
7 person does not have a Delaware driver's license, the person shall be fined \$100 for the 1st offense and not less than \$200
8 nor more than \$500 for each subsequent offense. A violation of this subsection is a civil offense. Information concerning
9 this civil offense may not appear on an individual's certified criminal record. This section shall not apply to the possession
10 or consumption of alcoholic liquor in connection with any religious service or by members of the same family within the
11 private home of any of said members.

SYNOPSIS

This Act makes clear that the possession or consumption of alcohol by an individual under 21 years of age is a civil offense. This Act also prohibits including information concerning a civil violation of the underage possession or consumption law on an individual's certified criminal record.

Author: Senator Sturgeon



SPONSOR: Sen. Paradee & Rep. Cooke & Rep. Osinski &
Rep. Schwartzkopf & Rep. Kowalko
Reps. Heffernan, Longhurst, Lynn, Matthews

DELAWARE STATE SENATE
150th GENERAL ASSEMBLY

SENATE BILL 45

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO MARIJUANA.

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

Section 1. Amend § 4764, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4764. Possession of marijuana; class B misdemeanor, unclassified misdemeanor, or civil violation [For application of this section, see 80 Del. Laws, c. 38, § 6]

(a) ~~Any person under the age of 18 who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor.~~ Any person 18 years of age or older who knowingly or intentionally uses, consumes, or possesses other than a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor.

(b) ~~Any person under the age of 18 who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$100.~~ Any person 18 years of age or older who knowingly or intentionally uses, consumes, or possesses other than a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$575, imprisoned not more than 3 months, or both.

(c) Any person ~~21 years of age or older~~ who knowingly or intentionally possesses a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be assessed a civil penalty of \$100 in addition to such routine assessments necessary for the administration of civil violations and the marijuana shall be forfeited. Private use or consumption by a person ~~21 years of age or older~~ of a personal use quantity of a controlled substance or a counterfeit controlled substance classified in §

4714(d)(19) of this title shall likewise be punishable by a civil penalty under this subsection. ~~Any person 18 years of age or older, but under 21 years of age, who commits any of the acts described in this subsection shall be assessed a civil penalty of \$100 for the first offense and shall be guilty of an unclassified misdemeanor and fined \$100 for a second or subsequent offense.~~ Unpaid fines shall double if not paid within 90 days of final adjudication of the violation.

(d) Any person ~~18 years of age or older~~ who knowingly or intentionally uses or consumes up to a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title in an area accessible to the public or in a moving vehicle, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$200, imprisoned not more than 5 days, or both. For purposes of this section "area accessible to the public" means any of the following:

(1) Sidewalks, streets, alleys, parking lots, parks, playgrounds, stores, restaurants, and any other areas to which the general public is invited.

(2) Any outdoor location within a distance of 10 feet from a sidewalk, street, alley, parking lot, park, playground, store, restaurant, or any other area to which the general public is invited.

(3) Any outdoor location within a distance of 10 feet from the entrances, exits, windows that open, or ventilation intakes of any public or private building.

(e) Information concerning a civil offense classified in subsection (c) of this section shall not appear on a person's certified criminal record.

(f) Nothing contained herein shall be construed to repeal or modify any law concerning the medical use of marijuana or tetrahydrocannabinol in any other form, such as Marinol, or the possession of more than 1 ounce of marijuana, or selling, manufacturing, or trafficking in marijuana.

(g) Nothing contained herein shall be construed to repeal or modify existing laws, ordinances or bylaws, regulations, personnel practices, or policies concerning the operation of motor vehicles or other actions taken while under the influence of marijuana.

(h) Nothing contained herein shall be construed to repeal or modify any law or procedure regarding search and seizure.

(i) Any person who was convicted of a single criminal offense under subsection (c) of this ~~section~~ section, as it is in effect on or before [the effective date of this Act], and who was under the age of 21 at the time of the offense may, upon reaching the age of 21, apply for an expungement of the record of the conviction and any indicia of arrest to the court in which the person was convicted. For violations of a criminal offense under subsection (c) of this section, as it is in effect on or before [the effective date of this Act], an order granting such expungement shall issue upon proof that the

53 person has reached the age of 21, unless the person has failed to comply with the sentencing order or the person has another
54 charge under this section which remains outstanding. Upon issuance of the order of expungement, the records of the
55 conviction and any indicia of arrest shall be dealt with in accordance with the procedures specified in §§ 4373(c), 4374 and
56 4375 of Title 11. Nothing in this section shall prohibit the Family Court from expunging a record of conviction as otherwise
57 provided by law. The application for or granting of a pardon pursuant to §§ 4361 through 4363 of Title 11 shall not prohibit
58 an expungement under this section. All sentencing orders for violations of a criminal offense under subsection (c) of this
59 section, as it is in effect on or before [the effective date of this Act], by persons under the age of 21 at the time of
60 the offense shall state that the record of the conviction may be expunged upon reaching the age of 21 and thereafter. The
61 civil filing fee shall apply to applications for expungement plus a \$100 fee payable to the State Bureau of Identification for
62 administrative costs.

63 (j) Notwithstanding any provision of law to the contrary, any person who prior to December 18, 2015, was
64 convicted of a single offense arising from an original charge under this section or any predecessor statute, law or ordinance
65 prohibiting the possession, use or consumption of marijuana or any controlled substance or counterfeit controlled substance
66 classified in § 4714(d)(19) of this title shall be eligible for mandatory expungement of the records of the conviction and all
67 indicia of arrest pursuant to the provisions of § 4373 of Title 11, provided the applicant is otherwise eligible for mandatory
68 expungement as specified therein. Upon issuance of the order of expungement, the records of the conviction and any indicia
69 of arrest shall be dealt with in accordance with the procedures specified in §§ 4373, 4376, and 4377 of Title 11.

SYNOPSIS

Under current law, the possession, use, or consumption of a personal use quantity of marijuana remains a crime for those under the age of 21 despite being a civil violation for adults. This Act makes the possession, use, or consumption of a personal use quantity of marijuana a civil violation for juveniles.

This Act also makes conforming amendments to subsection (i), regarding expungement of a single criminal offense under subsection (c), as, after the effective date of this Act, subsection (c) will no longer contain a criminal offense.

Author: Senator Paradee