

STATE OF NEW YORK

8163

IN SENATE

April 13, 2020

Introduced by Sen. MONTGOMERY -- read twice and ordered printed, and
when printed to be committed to the Committee on Children and Families

AN ACT to amend the family court act and the social services law, in
relation to raising the lower age of juvenile delinquency jurisdiction
from age seven to age twelve

The People of the State of New York, represented in Senate and Assem-
bly, do enact as follows:

1 Section 1. Subdivision 1 of section 301.2 of the family court act, as
2 amended by section 56 of part WWW of chapter 59 of the laws of 2017, is
3 amended to read as follows:

4 1. "Juvenile delinquent" means a person [~~over seven and less than~~
5 ~~sixteen years of age, or commencing on October first, two thousand eigh-~~
6 ~~teen a person over seven and less than seventeen years of age, and~~
7 ~~commencing October first, two thousand nineteen a person over seven~~] at
8 least twelve and less than eighteen years of age, who, having committed
9 an act that would constitute a crime, or a violation, where such
10 violation is alleged to have occurred in the same transaction or occur-
11 rence of the alleged criminal act, if committed by an adult, (a) is not
12 criminally responsible for such conduct by reason of infancy, or (b) is
13 the defendant in an action ordered removed from a criminal court to the
14 family court pursuant to article seven hundred twenty-five of the crimi-
15 nal procedure law.

16 § 2. Subdivision 8 of section 301.2 of the family court act, as
17 amended by section 57 of part WWW of chapter 59 of the laws of 2017, is
18 amended to read as follows:

19 8. "Designated felony act" means an act which, if done by an adult,
20 would be a crime: (i) defined in sections 125.27 (murder in the first
21 degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the
22 first degree); or 150.20 (arson in the first degree) of the penal law
23 committed by a person thirteen, fourteen, fifteen, [~~ex~~] sixteen, or
24 [~~commencing October first, two thousand nineteen,~~] seventeen years of
25 age; or such conduct committed as a sexually motivated felony, where
26 authorized pursuant to section 130.91 of the penal law; (ii) defined in
27 sections 120.10 (assault in the first degree); 125.20 (manslaughter in

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

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the first degree); 130.35 (rape in the first degree); 130.50 (criminal sexual act in the first degree); 130.70 (aggravated sexual abuse in the first degree); 135.20 (kidnapping in the second degree) but only where the abduction involved the use or threat of use of deadly physical force; 150.15 (arson in the second degree) or 160.15 (robbery in the first degree) of the penal law committed by a person thirteen, fourteen, fifteen, ~~[or] sixteen, or[, commencing October first, two thousand nine-~~
~~teen,]~~ seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iii) defined in the penal law as an attempt to commit murder in the first or second degree or kidnapping in the first degree committed by a person thirteen, fourteen, fifteen, ~~[or] sixteen, or [commenc-~~
~~ing October first, two thousand nineteen,]~~ seventeen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (iv) defined in section 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); subdivision two of section 160.10 (robbery in the second degree) of the penal law; or section 265.03 of the penal law, where such machine gun or such firearm is possessed on school grounds, as that phrase is defined in subdivision fourteen of section 220.00 of the penal law committed by a person fourteen or fifteen years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (v) defined in section 120.05 (assault in the second degree) or 160.10 (robbery in the second degree) of the penal law committed by a person fourteen, fifteen, ~~[or] sixteen or[, commencing October first, two thou-~~
~~sand nineteen,]~~ seventeen years of age but only where there has been a prior finding by a court that such person has previously committed an act which, if committed by an adult, would be the crime of assault in the second degree, robbery in the second degree or any designated felony act specified in paragraph (i), (ii), or (iii) of this subdivision regardless of the age of such person at the time of the commission of the prior act; (vi) other than a misdemeanor committed by a person at least ~~[seven but less than seventeen years of age, and commencing Octo-~~
~~ber first, two thousand nineteen, a person at least seven]~~ twelve but less than eighteen years of age, but only where there ~~[has]~~ have been two prior findings by the court that such person has committed a prior felony.

§ 3. Subdivision 3 of Section 304.1 of the family court act, as amended by section 59 of part WWW of chapter 59 of the laws of 2017, is amended to read as follows:

3. The detention of a child under ~~[ten]~~ thirteen years of age in a secure detention facility shall not be directed under any of the provisions of this article.

§ 4. Section 305.1 of the family court act, as added by chapter 920 of the laws of 1982, subdivision 1 as amended by section 61 of part WWW of chapter 59 of the laws of 2017 and subdivision 3 as amended by chapter 398 of the laws of 1983, is amended to read as follows:

§ 305.1. Custody by a private person. 1. A private person may take a child at least twelve years of age and who may be subject to the provisions of this article for committing an act that would be a crime if committed by an adult into custody in cases in which such private person may arrest an adult for a crime under section 140.30 of the criminal procedure law.

2. Before taking such child at least twelve years of age and under the age of ~~[sixteen]~~ eighteen into custody, a private person must inform the

1 child of the cause thereof and require him to submit, except when he is
2 taken into custody on pursuit immediately after the commission of a
3 crime.

4 3. After taking such child at least twelve years of age into custody,
5 a private person must take the child, without unnecessary delay, to the
6 child's home, to a family court, or to a police officer or peace offi-
7 cer.

8 § 5. Subdivision 3 of section 305.2 of the family court act, as
9 added by chapter 920 of the laws of 1982, is amended to read as follows:

10 3. If an officer takes such child into custody or if a child at least
11 twelve years of age is delivered to him under section 305.1, he shall
12 immediately notify the parent or other person legally responsible for
13 the child's care, or if such legally responsible person is unavailable
14 the person with whom the child resides, that the child has been taken
15 into custody.

16 § 6. Paragraph (a) of subdivision 1 of section 306.1 of the family
17 court act, as amended by chapter 645 of the laws of 1996, is amended to
18 read as follows:

19 (a) the child is [~~eleven~~ at least twelve years of age [~~or older~~] and
20 the crime which is the subject of the arrest or which is charged in the
21 petition constitutes a class A or B felony; or

22 § 7. Subdivision 12 of section 308.1 of the family court act, as
23 added by chapter 920 of the laws of 1982, is amended to read as follows:

24 12. The probation service shall certify to the division of criminal
25 justice services and to the appropriate police department or law
26 enforcement agency whenever it adjusts a case in which the potential
27 respondent's fingerprints were taken pursuant to section 306.1 in any
28 manner other than the filing of a petition for juvenile delinquency for
29 an act which, if committed by an adult, would constitute a felony,
30 provided, however, in the case of a child [~~eleven or~~] twelve years of
31 age, such certification shall be made only if the act would constitute a
32 class A or B felony.

33 § 8. Paragraph (f) of subdivision 2 of section 353.2 of the family
34 court act, as amended by chapter 124 of the laws of 1993, is amended to
35 read as follows:

36 (f) make restitution or perform services for the public good pursuant
37 to section 353.6[~~, provided the respondent is over ten years of age~~];

38 § 9. The opening paragraph of subdivision 1 of section 353.6 of the
39 family court act, as amended by chapter 877 of the laws of 1983, is
40 amended to read as follows:

41 At the conclusion of the dispositional hearing [~~in cases involving~~
42 ~~respondents over ten years of age~~] the court may:

43 § 10. Subdivisions 1, 2, 6 and 7 of section 354.1 of the family court
44 act, subdivision 1 as added by chapter 920 of the laws of 1982 and
45 subdivisions 2, 6 and 7 as amended by chapter 645 of the laws of 1996,
46 are amended to read as follows:

47 1. If a person whose fingerprints, palmprints or photographs were
48 taken pursuant to section 306.1 or was initially fingerprinted as a
49 juvenile offender and the action is subsequently removed to a family
50 court pursuant to article seven hundred twenty-five of the criminal
51 procedure law is adjudicated to be a juvenile delinquent for a felony,
52 the family court shall forward or cause to be forwarded to the division
53 of criminal justice services notification of such adjudication and such
54 related information as may be required by such division, provided,
55 however, in the case of a person [~~eleven or~~] twelve years of age such

1 notification shall be provided only if the act upon which the adjudication is based would constitute a class A or B felony.

2 2. If a person whose fingerprints, palmprints or photographs were
3 taken pursuant to section 306.1 or was initially fingerprinted as a
4 juvenile offender and the action is subsequently removed to family court
5 pursuant to article seven hundred twenty-five of the criminal procedure
6 law has had all petitions disposed of by the family court in any manner
7 other than an adjudication of juvenile delinquency for a felony, but in
8 the case of acts committed when such person was [~~eleven-or~~] twelve years
9 of age which would constitute a class A or B felony only, all such fingerprints, palmprints, photographs, and copies thereof, and all information relating to such allegations obtained by the division of criminal justice services pursuant to section 306.1 shall be destroyed forthwith. The clerk of the court shall notify the commissioner of the division of criminal justice services and the heads of all police departments and law enforcement agencies having copies of such records, who shall destroy such records without unnecessary delay.

10 6. If a person fingerprinted pursuant to section 306.1 and subsequently adjudicated a juvenile delinquent for a felony, but in the case of acts committed when such a person was [~~eleven-or~~] twelve years of age which would constitute a class A or B felony only, is subsequently convicted of a crime, all fingerprints and related information obtained by the division of criminal justice services pursuant to such section and not destroyed pursuant to subdivisions two, five and seven or subdivision twelve of section 308.1 shall become part of such division's permanent adult criminal record for that person, notwithstanding section 381.2 or 381.3.

11 7. When a person fingerprinted pursuant to section 306.1 and subsequently adjudicated a juvenile delinquent for a felony, but in the case of acts committed when such person was [~~eleven-or~~] twelve years of age which would constitute a class A or B felony only, reaches the age of twenty-one, or has been discharged from placement under this act for at least three years, whichever occurs later, and has no criminal convictions or pending criminal actions which ultimately terminate in a criminal conviction, all fingerprints, palmprints, photographs, and related information and copies thereof obtained pursuant to section 306.1 in the possession of the division of criminal justice services, any police department, law enforcement agency or any other agency shall be destroyed forthwith. The division of criminal justice services shall notify the agency or agencies which forwarded fingerprints to such division pursuant to section 306.1 of their obligation to destroy those records in their possession. In the case of a pending criminal action which does not terminate in a criminal conviction, such records shall be destroyed forthwith upon such determination.

12 § 11. Paragraph (a) of subdivision 1 of section 34-a of the social services law, as amended by section 17 of part E of chapter 57 of the laws of 2005, is amended to read as follows:

13 (a) Each social services district shall prepare a multi-year consolidated services plan encompassing adult services and family and children's services, which shall include diversion services provided pursuant to section seven hundred thirty-five of the family court act, and shall also include services for children under twelve years of age whose behavior but for their age would bring them within the jurisdiction of the family court pursuant to article three of the family court act provided pursuant to section four hundred fifty-eight-o of this chapter.

1 § 12. Article 6 of the social services law is amended by adding a new
2 title 12-A to read as follows:

3 TITLE 12-A

4 SERVICES FOR CHILDREN UNDER TWELVE

5 Section 458-o. Services for children under twelve.

6 § 458-o. Services for children under twelve. 1. In order to ensure the
7 safety and well-being of children under twelve years of age whose behav-
8 ior but for their age would bring them within the jurisdiction of the
9 family court pursuant to article three of the family court act, it is
10 the intent of the legislature that local social services districts
11 pursue appropriate measures to serve and protect children only as need-
12 ed, avoiding any intervention whenever possible, and using the least
13 restrictive school-, health-, and community-based services available,
14 including, but not limited to, those available through family support
15 services programs set forth in section four hundred fifty-eight-m of
16 this article, the department of health, the office of children and fami-
17 ly services, the office of mental health, the office for people with
18 developmental disabilities, the office of addiction services and
19 supports, and the department of education. It is the intent of the
20 legislature that counties use existing funding for behavioral health,
21 mental health, or other available existing funding sources to provide
22 the services required by this section.

23 2. The local social services commissioner may work with local law
24 enforcement officials to ensure that law enforcement officials who are
25 likely to encounter children under twelve years of age whose behavior
26 but for their age would bring them within the jurisdiction of the family
27 court pursuant to article three of the family court act in the course of
28 their law enforcement duties are trained about the provisions of this
29 section and how to refer such children and their families to appropriate
30 services. Local social services districts may work cooperatively to
31 provide such training and such training may be provided on a regional
32 basis.

33 § 13. This act shall take effect immediately.