

# STATE OF NEW YORK

8739

## IN ASSEMBLY

January 11, 2022

Introduced by M. of A. HEVESI -- read once and referred to the Committee on Children and Families

AN ACT to amend the family court act, the social services law, and the executive law, in relation to raising the lower age of juvenile delinquency jurisdiction from age seven to age twelve and to establish differential response programs for children under the age of twelve

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

1 Section 1. The opening paragraph of subdivision (b) of section 117 of  
2 the family court act, as amended by chapter 7 of the laws of 2007, is  
3 amended to read as follows:  
4 For every juvenile delinquency proceeding under article three involv-  
5 ing an allegation of an act committed by a person which, if done by an  
6 adult, would be a crime (i) defined in sections 125.27 (murder in the  
7 first degree); 125.25 (murder in the second degree); 135.25 (kidnapping  
8 in the first degree); or 150.20 (arson in the first degree) of the penal  
9 law committed by a person thirteen, fourteen ~~[or]~~, fifteen, sixteen, or  
10 seventeen years of age; or such conduct committed as a sexually moti-  
11 vated felony, where authorized pursuant to section 130.91 of the penal  
12 law; (ii) defined in sections 120.10 (assault in the first degree);  
13 125.20 (manslaughter in the first degree); 130.35 (rape in the first  
14 degree); 130.50 (criminal sexual act in the first degree); 130.70  
15 (aggravated sexual abuse in the first degree); 135.20 (kidnapping in the  
16 second degree), but only where the abduction involved the use or threat  
17 of use of deadly physical force; 150.15 (arson in the second degree); or  
18 160.15 (robbery in the first degree) of the penal law committed by a  
19 person thirteen, fourteen ~~[or]~~, fifteen, sixteen, or seventeen years of  
20 age; or such conduct committed as a sexually motivated felony, where  
21 authorized pursuant to section 130.91 of the penal law; (iii) defined in  
22 the penal law as an attempt to commit murder in the first or second  
23 degree or kidnapping in the first degree committed by a person thirteen,  
24 fourteen ~~[or]~~, fifteen, sixteen, or seventeen years of age; or such  
25 conduct committed as a sexually motivated felony, where authorized  
26 pursuant to section 130.91 of the penal law; (iv) defined in section  
27 140.30 (burglary in the first degree); subdivision one of section 140.25  
28 (burglary in the second degree); subdivision two of section 160.10  
29 (robbery in the second degree) of the penal law; or section 265.03 of

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

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1 the penal law, where such machine gun or such firearm is possessed on  
2 school grounds, as that phrase is defined in subdivision fourteen of  
3 section 220.00 of the penal law committed by a person fourteen [~~or~~],  
4 fifteen, sixteen, or seventeen years of age; or such conduct committed  
5 as a sexually motivated felony, where authorized pursuant to section  
6 130.91 of the penal law; (v) defined in section 120.05 (assault in the  
7 second degree) or 160.10 (robbery in the second degree) of the penal law  
8 committed by a person fourteen [~~or~~], fifteen, sixteen, or seventeen  
9 years of age but only where there has been a prior finding by a court  
10 that such person has previously committed an act which, if committed by  
11 an adult, would be the crime of assault in the second degree, robbery in  
12 the second degree or any designated felony act specified in clause (i),  
13 (ii) or (iii) of this subdivision regardless of the age of such person  
14 at the time of the commission of the prior act; or (vi) other than a  
15 misdemeanor, committed by a person at least [~~seven~~] twelve but less than  
16 [~~sixteen~~] eighteen years of age, but only where there [~~has~~] have been  
17 two prior findings by the court that such person has committed a prior  
18 act which, if committed by an adult, would be a felony:

19 § 2. Subdivision 1 of section 301.2 of the family court act, as  
20 amended by a chapter of the laws of 2021 amending the family court act,  
21 the social services law and the executive law relating to raising the  
22 lower age of juvenile delinquency jurisdiction from age seven to age  
23 twelve and establishing differential response programs for children  
24 under the age of twelve, as proposed in legislative bills numbers S.  
25 4051-A and A. 4982-A, is amended to read as follows:

26 1. [~~(i)~~] "Juvenile delinquent" means a person [~~at least twelve~~] over  
27 seven and less than sixteen years of age, or commencing on October  
28 first, two thousand eighteen a person over seven and less than seventeen  
29 years of age, and commencing October first, two thousand nineteen a  
30 person over seven and less than eighteen years of age, who, having  
31 committed an act that would constitute a crime, or a violation, where  
32 such violation is alleged to have occurred in the same transaction or  
33 occurrence of the alleged criminal act, if committed by an adult, (a) is  
34 not criminally responsible for such conduct by reason of infancy, or (b)  
35 is the defendant in an action ordered removed from a criminal court to  
36 the family court pursuant to article seven hundred twenty-five of the  
37 criminal procedure law.

38 [~~(ii) Provided, however, if a person over the age of seven and less~~  
39 ~~than twelve years of age committed one of the following acts that would~~  
40 ~~constitute a crime if committed by an adult, such person shall still be~~  
41 ~~considered a juvenile delinquent for purposes of this article: (A)~~  
42 ~~aggravated criminally negligent homicide as defined in section 125.11 of~~  
43 ~~the penal law; (B) vehicular manslaughter in the second degree as~~  
44 ~~defined in section 125.12 of the penal law; (C) vehicular manslaughter~~  
45 ~~in the first degree as defined in section 125.13 of the penal law; (D)~~  
46 ~~aggravated vehicular homicide as defined in section 125.14 of the penal~~  
47 ~~law; (E) manslaughter in the second degree as defined in section 125.15~~  
48 ~~of the penal law; (F) manslaughter in the first degree as defined in~~  
49 ~~section 125.20 of the penal law; (G) aggravated manslaughter in the~~  
50 ~~second degree as defined in section 125.21 of the penal law; (H) aggra-~~  
51 ~~vated manslaughter in the first degree as defined in section 125.22 of~~  
52 ~~the penal law; (I) murder in the second degree as defined in section~~  
53 ~~125.25 of the penal law; (J) aggravated murder as defined in section~~  
54 ~~125.26 of the penal law; and (K) murder in the first degree as defined~~  
55 ~~in section 125.27 of the penal law.]~~

1 § 3. Subdivision 1 of section 301.2 of the family court act, as sepa-  
 2 rately amended by section two of this act and a chapter of the laws of  
 3 2021 amending the family court act and the criminal procedure law  
 4 relating to juvenile delinquency charges of violations in the family  
 5 court, as proposed in legislative bills numbers S. 7171 and A. 7706,  
 6 is amended to read as follows:

7 1. "Juvenile delinquent" means:

8 ~~(a)(i) a person [over seven] at least twelve~~ and less than ~~[seventeen~~  
 9 ~~years of age, and commencing October first, two thousand nineteen, a~~  
 10 ~~person over seven and less than]~~ eighteen years of age, ~~[who,~~ having  
 11 committed an act that would constitute a crime if committed by an  
 12 adult~~[,]; or [(with respect to]~~

13 ~~(ii) a person over sixteen and less than seventeen years of age or, a~~  
 14 ~~person over sixteen and less than eighteen years of age commencing Octo-~~  
 15 ~~ber first, two thousand nineteen[),~~ having committed an act that would  
 16 constitute a violation as defined by subdivision three of section 10.00  
 17 of the penal law if committed by an adult, where such violation is  
 18 alleged to have occurred in the same transaction or occurrence of the  
 19 alleged criminal act~~[, and where such person: (a)]; or~~

20 (iii) a person over the age of seven and less than twelve years of age  
 21 having committed an act that would constitute one of the following  
 22 crimes, if committed by an adult: (A) aggravated criminally negligent  
 23 homicide as defined in section 125.11 of the penal law; (B) vehicular  
 24 manslaughter in the second degree as defined in section 125.12 of the  
 25 penal law; (C) vehicular manslaughter in the first degree as defined in  
 26 section 125.13 of the penal law; (D) aggravated vehicular homicide as  
 27 defined in section 125.14 of the penal law; (E) manslaughter in the  
 28 second degree as defined in section 125.15 of the penal law; (F)  
 29 manslaughter in the first degree as defined in section 125.20 of the  
 30 penal law; (G) aggravated manslaughter in the second degree as defined  
 31 in section 125.21 of the penal law; (H) aggravated manslaughter in the  
 32 first degree as defined in section 125.22 of the penal law; (I) murder  
 33 in the second degree as defined in section 125.25 of the penal law; (J)  
 34 aggravated murder as defined in section 125.26 of the penal law; and (K)  
 35 murder in the first degree as defined in section 125.27 of the penal  
 36 law; and

37 (b) who is:

38 (i) not criminally responsible for such conduct by reason of infan-  
 39 cy[,]; or

40 ~~[(b) is]~~ (ii) the defendant in an action ordered removed from a crimi-  
 41 nal court to the family court pursuant to article seven hundred twenty-  
 42 five of the criminal procedure law.

43 § 4. Subdivision 8 of section 301.2 of the family court act, as  
 44 amended by a chapter of the laws of 2021 amending the family court act,  
 45 the social services law and the executive law relating to raising the  
 46 lower age of juvenile delinquency jurisdiction from age seven to age  
 47 twelve and establishing differential response programs for children  
 48 under the age of twelve, as proposed in legislative bills numbers S.  
 49 4051-A and A. 4982-A, is amended to read as follows:

50 8. "Designated felony act" means an act which, if done by an adult,  
 51 would be a crime: (i) defined in sections 125.27 (murder in the first  
 52 degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the  
 53 first degree); or 150.20 (arson in the first degree) of the penal law  
 54 committed by a person thirteen, fourteen, fifteen, sixteen, or seventeen  
 55 years of age; or such conduct committed as a sexually motivated felony,  
 56 where authorized pursuant to section 130.91 of the penal law; (ii)

1 defined in sections 120.10 (assault in the first degree); 125.20  
2 (manslaughter in the first degree); 130.35 (rape in the first degree);  
3 130.50 (criminal sexual act in the first degree); 130.70 (aggravated  
4 sexual abuse in the first degree); 135.20 (kidnapping in the second  
5 degree) but only where the abduction involved the use or threat of use  
6 of deadly physical force; 150.15 (arson in the second degree) or 160.15  
7 (robbery in the first degree) of the penal law committed by a person  
8 thirteen, fourteen, fifteen, sixteen, or seventeen years of age; or such  
9 conduct committed as a sexually motivated felony, where authorized  
10 pursuant to section 130.91 of the penal law; (iii) defined in the penal  
11 law as an attempt to commit murder in the first or second degree or  
12 kidnapping in the first degree committed by a person thirteen, fourteen,  
13 fifteen, sixteen, or seventeen years of age; or such conduct committed  
14 as a sexually motivated felony, where authorized pursuant to section  
15 130.91 of the penal law; (iv) defined in section 140.30 (burglary in the  
16 first degree); subdivision one of section 140.25 (burglary in the second  
17 degree); subdivision two of section 160.10 (robbery in the second  
18 degree) of the penal law; or section 265.03 of the penal law, where such  
19 machine gun or such firearm is possessed on school grounds, as that  
20 phrase is defined in subdivision fourteen of section 220.00 of the penal  
21 law committed by a person fourteen ~~[or]~~, fifteen, sixteen, or seventeen  
22 years of age; or such conduct committed as a sexually motivated felony,  
23 where authorized pursuant to section 130.91 of the penal law; (v)  
24 defined in section 120.05 (assault in the second degree) or 160.10  
25 (robbery in the second degree) of the penal law committed by a person  
26 fourteen, fifteen, sixteen or seventeen years of age but only where  
27 there has been a prior finding by a court that such person has previous-  
28 ly committed an act which, if committed by an adult, would be the crime  
29 of assault in the second degree, robbery in the second degree or any  
30 designated felony act specified in paragraph (i), (ii), or (iii) of this  
31 subdivision regardless of the age of such person at the time of the  
32 commission of the prior act; (vi) other than a misdemeanor committed by  
33 a person at least twelve but less than eighteen years of age, but only  
34 where there have been two prior findings by the court that such person  
35 has committed a prior act which, if committed by an adult, would be a  
36 felony.

37 § 5. Subdivision 3 of section 304.1 of the family court act, as  
38 amended by a chapter of the laws of 2021 amending the family court act,  
39 the social services law and the executive law relating to raising the  
40 lower age of juvenile delinquency jurisdiction from age seven to age  
41 twelve and establishing differential response programs for children  
42 under the age of twelve, as proposed in legislative bills numbers S.  
43 4051-A and A. 4982-A, is amended to read as follows:

44 3. The detention of a child under [~~thirteen~~] ten years of age in a  
45 secure detention facility shall not be directed under any of the  
46 provisions of this article[~~, unless such child is at least ten years old~~  
47 ~~and is considered a juvenile delinquent pursuant to paragraph (ii) of~~  
48 ~~subdivision one of section 301.2 of this article~~].

49 § 6. Subdivision 3 of section 304.1 of the family court act, as sepa-  
50 rately amended by section five of this act and a chapter of the laws of  
51 2021 amending the family court act, the social services law and the  
52 executive law amending the family court act and the criminal procedure  
53 law relating to juvenile delinquency charges of violations in the family  
54 court, as proposed in legislative bills numbers S. 7171 and A. 7706,  
55 is amended to read as follows:

1 3. The detention of a child under [~~ten~~ thirteen] years of age in a  
2 secure detention facility shall not be directed, unless such child is at  
3 least ten years old and is considered a juvenile delinquent pursuant to  
4 subparagraph (iii) of paragraph (a) of subdivision one of section 301.2  
5 of this article, nor shall the detention of a child adjudicated solely  
6 for an act that would constitute a violation as defined in subdivision  
7 three of section 10.00 of the penal law, be directed under any of the  
8 provisions of this article.

9 § 7. Paragraph (a) of subdivision 1 of section 409-a of the social  
10 services law, as amended by a chapter of the laws of 2021 amending the  
11 family court act, the social services law and the executive law relating  
12 to raising the lower age of juvenile delinquency jurisdiction from age  
13 seven to age twelve and establishing differential response programs for  
14 children under the age of twelve, as proposed in legislative bills  
15 numbers S. 4051-A and A. 4982-A, is amended to read as follows:

16 (a) A social services official shall provide preventive services to a  
17 child and his or her family, in accordance with the family's service  
18 plan as required by section four hundred nine-e of this chapter and the  
19 social services district's child welfare services plan submitted and  
20 approved pursuant to section four hundred nine-d of this chapter, upon a  
21 finding by such official that (i) the child will be placed, returned to  
22 or continued in foster care unless such services are provided and that  
23 it is reasonable to believe that by providing such services the child  
24 will be able to remain with or be returned to his or her family, and for  
25 a former foster care youth under the age of twenty-one who was previous-  
26 ly placed in the care and custody or custody and guardianship of the  
27 local commissioner of social services or other officer, board or depart-  
28 ment authorized to receive children as public charges where it is  
29 reasonable to believe that by providing such services the former foster  
30 care youth will avoid a return to foster care or (ii) the child is the  
31 subject of a petition under article seven of the family court act or by  
32 the probation service, to be at risk of being the subject of such a  
33 petition, and the social services official determines that the child is  
34 at risk of placement into foster care or (iii) the child is under the  
35 age of twelve, the child does not fall under the definition of a juve-  
36 nile delinquent pursuant to [~~paragraph (ii)~~] subparagraph (iii) of para-  
37 graph (a) of subdivision one of section 301.2 of the family court act  
38 and but for their age, their behavior would bring them within the juris-  
39 diction of the family court pursuant to article three of the family  
40 court act, and the social services official determines that the child is  
41 at risk of placement into foster care. Such finding shall be entered in  
42 the child's uniform case record established and maintained pursuant to  
43 section four hundred nine-f of this article. The commissioner shall  
44 promulgate regulations to assist social services officials in making  
45 determinations of eligibility for mandated preventive services pursuant  
46 to this subparagraph.

47 § 8. Subdivision 1 of section 458-m of the social services law, as  
48 amended by a chapter of the laws of 2021 amending the family court act,  
49 the social services law and the executive law relating to raising the  
50 lower age of juvenile delinquency jurisdiction from age seven to age  
51 twelve and establishing differential response programs for children  
52 under the age of twelve, as proposed in legislative bills numbers S.  
53 4051-A and A. 4982-A, is amended to read as follows:

54 1. As used in this title, the term "family support services programs"  
55 shall mean a program established pursuant to this title to provide  
56 community-based supportive services to children and families with the



1 goal of (i) preventing a child from being adjudicated a person in need  
2 of supervision and help prevent the out of home placements of such youth  
3 or (ii) preventing a petition from being filed under article seven of  
4 the family court act, or (iii) ~~[to help reduce]~~ reducing future inter-  
5 action with the juvenile justice ~~[and/or]~~ or child welfare ~~[system]~~  
6 systems for children under twelve years of age<sup>7</sup> who do not fall under  
7 the definition of juvenile delinquent pursuant to ~~[paragraph (ii)]~~  
8 subparagraph (iii) of paragraph (a) of subdivision one of section 301.2  
9 of the family court act and whose behavior, but for their age would  
10 bring them within the jurisdiction of the family court pursuant to arti-  
11 cle three of the family court act.

12 § 9. Subdivision 1 of section 458-o of the social services law, as  
13 added by a chapter of the laws of 2021 amending the family court act,  
14 the social services law and the executive law relating to raising the  
15 lower age of juvenile delinquency jurisdiction from age seven to age  
16 twelve and establishing differential response programs for children  
17 under the age of twelve, as proposed in legislative bills numbers S.  
18 4051-A and A. 4982-A, is amended to read as follows:

19 1. Each local social services district, upon the approval of the  
20 office of children and family services, shall establish a program that  
21 implements differential responses to provide services to children under  
22 twelve years of age, who do not fall under the definition of juvenile  
23 delinquent pursuant to ~~[paragraph (ii)]~~ subparagraph (iii) of paragraph  
24 (a) of subdivision one of section 301.2 of the family court act and  
25 whose behavior, but for their age, would bring them within the jurisdic-  
26 tion of the family court pursuant to article three of the family court  
27 act. Such programs shall establish and utilize appropriate assessments  
28 and services for youth, in order to help reduce future interaction with  
29 the juvenile justice and/or child welfare systems. Such assessments  
30 shall be used to determine what, if any, services are needed, and such  
31 services shall utilize the least restrictive intervention protocols  
32 available. Notwithstanding any other provision of law to the contrary,  
33 the provisions of this section shall apply only to those cases involving  
34 children under twelve years of age, who do not fall under the definition  
35 of juvenile delinquent pursuant to ~~[paragraph (ii)]~~ subparagraph (iii)  
36 of paragraph (a) of subdivision one of section 301.2 of the family court  
37 act and whose behavior, but for their age, would bring them within the  
38 jurisdiction of the family court pursuant to article three of the family  
39 court act.

40 § 10. Subdivision 4 of section 502 of the executive law, as amended by  
41 a chapter of the laws of 2021 amending the family court act, the social  
42 services law and the executive law relating to raising the lower age of  
43 juvenile delinquency jurisdiction from age seven to age twelve and  
44 establishing differential response programs for children under the age  
45 of twelve, as proposed in legislative bills numbers S. 4051-A and A.  
46 4982-A, is amended to read as follows:

47 4. For purposes of this article, the term "youth" shall mean a person  
48 not less than twelve years of age and not more than twenty-two years of  
49 age, unless such youth is over the age of seven and less than twelve  
50 years and ~~[is considered]~~ is alleged to be or adjudicated a juvenile  
51 delinquent, as applicable, pursuant to ~~[paragraph (ii)]~~ subparagraph  
52 (iii) of paragraph (a) of subdivision one of section 301.2 of the family  
53 court act.

54 § 11. Paragraph (a) of subdivision 2 of section 507-a of the executive  
55 law, as amended by a chapter of the laws of 2021 amending the family  
56 court act, the social services law and the executive law relating to

1 raising the lower age of juvenile delinquency jurisdiction from age  
2 seven to age twelve and establishing differential response programs for  
3 children under the age of twelve, as proposed in legislative bills  
4 numbers S. 4051-A and A. 4982-A, is amended to read as follows:

5 (a) Consistent with other provisions of law, only those youth who have  
6 reached the age of twelve but who have not reached the age of twenty-  
7 one, unless such youth is over the age of seven and less than twelve  
8 years of age and [~~is considered~~] has been adjudicated a juvenile delin-  
9 quent pursuant to [~~paragraph (ii)]~~ subparagraph (iii) of paragraph (a)  
10 of subdivision one of section 301.2 of the family court act, may be  
11 placed in the custody of the office of children and family services.  
12 Except as provided for in paragraph (a-1) of this subdivision, no youth  
13 who has reached the age of twenty-one may remain in custody of the  
14 office of children and family services.

15 § 12. Paragraph (j) of subdivision 1 of section 840 of the executive  
16 law, as amended by a chapter of the laws of 2021 amending the family  
17 court act, the social services law and the executive law relating to  
18 raising the lower age of juvenile delinquency jurisdiction from age  
19 seven to age twelve and establishing differential response programs for  
20 children under the age of twelve, as proposed in legislative bills  
21 numbers S. 4051-A and A. 4982-A, is amended to read as follows:

22 (j) (1) Development, maintenance and dissemination of written policies  
23 and procedures pursuant to title six of article six of the social  
24 services law and applicable provisions of article ten of the family  
25 court act, regarding the mandatory reporting of child abuse or neglect,  
26 reporting procedures and obligations of persons required to report,  
27 provisions for taking a child into protective custody, mandatory report-  
28 ing of deaths, immunity from liability, penalties for failure to report  
29 and obligations for the provision of services and procedures necessary  
30 to safeguard the life or health of the child; (2) establishment and  
31 implementation on an ongoing basis, of a training program for all  
32 current and new police officers regarding the policies and procedures  
33 established pursuant to this paragraph; and (3) establishment of a  
34 training program for police officers whose main responsibilities are  
35 juveniles and the laws pertaining thereto, including children under  
36 twelve years of age who do not fall under the definition of juvenile  
37 delinquent pursuant to [~~paragraph (ii)]~~ subparagraph (iii) of paragraph  
38 (a) of subdivision one of section 301.2 of the family court act and  
39 whose behavior, but for their age would bring them within the jurisdic-  
40 tion of the family court pursuant to article three of the family court  
41 act, which training program shall be successfully completed before such  
42 officers are accredited pursuant to section eight hundred forty-six-h of  
43 this chapter.

44 § 13. This act shall take effect on the same date and in the same  
45 manner as a chapter of the laws of 2021 amending the family court act,  
46 the social services law and the executive law relating to raising the  
47 lower age of juvenile delinquency jurisdiction from age seven to age  
48 twelve and establishing differential response programs for children  
49 under the age of twelve, as proposed in legislative bills numbers S.  
50 4051-A and A. 4982-A, takes effect; provided, however, that the amend-  
51 ments to subparagraph (ii) of paragraph (a) of subdivision 1 of section  
52 409-a of the social services law made by section seven of this act shall  
53 not affect the expiration of such subparagraph and shall be deemed to  
54 expire therewith.