

STATE OF NEW YORK

4051--A

2021-2022 Regular Sessions

IN SENATE

February 2, 2021

Introduced by Sens. BAILEY, BRISPORT, BROUK, COONEY, GIANARIS, HOYLMAN, JACKSON, KRUEGER, MYRIE, RAMOS, RIVERA, SALAZAR, SEPULVEDA, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

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

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

(ii) Provided, however, if a person over the age of seven and less than twelve years of age committed one of the following acts that would constitute a crime if committed by an adult, such person shall still be

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

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1 considered a juvenile delinquent for purposes of this article: (A)
2 aggravated criminally negligent homicide as defined in section 125.11 of
3 the penal law; (B) vehicular manslaughter in the second degree as
4 defined in section 125.12 of the penal law; (C) vehicular manslaughter
5 in the first degree as defined in section 125.13 of the penal law; (D)
6 aggravated vehicular homicide as defined in section 125.14 of the penal
7 law; (E) manslaughter in the second degree as defined in section 125.15
8 of the penal law; (F) manslaughter in the first degree as defined in
9 section 125.20 of the penal law; (G) aggravated manslaughter in the
10 second degree as defined in section 125.21 of the penal law; (H) aggra-
11 vated manslaughter in the first degree as defined in section 125.22 of
12 the penal law; (I) murder in the second degree as defined in section
13 125.25 of the penal law; (J) aggravated murder as defined in section
14 125.26 of the penal law; and (K) murder in the first degree as defined
15 in section 125.27 of the penal 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
28 the first degree); 130.35 (rape in the first degree); 130.50 (criminal
29 sexual act in the first degree); 130.70 (aggravated sexual abuse in the
30 first degree); 135.20 (kidnapping in the second degree) but only where
31 the abduction involved the use or threat of use of deadly physical
32 force; 150.15 (arson in the second degree) or 160.15 (robbery in the
33 first degree) of the penal law committed by a person thirteen, fourteen,
34 fifteen, ~~[ex]~~ sixteen, or~~[, commencing October first, two thousand nine-~~
35 ~~teen,~~ seventeen years of age; or such conduct committed as a sexually
36 motivated felony, where authorized pursuant to section 130.91 of the
37 penal law; (iii) defined in the penal law as an attempt to commit murder
38 in the first or second degree or kidnapping in the first degree commit-
39 ted by a person thirteen, fourteen, fifteen, ~~[ex]~~ sixteen, or ~~[commen-~~
40 ~~ing October first, two thousand nineteen,~~ seventeen years of age; or
41 such conduct committed as a sexually motivated felony, where authorized
42 pursuant to section 130.91 of the penal law; (iv) defined in section
43 140.30 (burglary in the first degree); subdivision one of section 140.25
44 (burglary in the second degree); subdivision two of section 160.10
45 (robbery in the second degree) of the penal law; or section 265.03 of
46 the penal law, where such machine gun or such firearm is possessed on
47 school grounds, as that phrase is defined in subdivision fourteen of
48 section 220.00 of the penal law committed by a person fourteen or
49 fifteen years of age; or such conduct committed as a sexually motivated
50 felony, where authorized pursuant to section 130.91 of the penal law;
51 (v) defined in section 120.05 (assault in the second degree) or 160.10
52 (robbery in the second degree) of the penal law committed by a person
53 fourteen, fifteen, ~~[ex]~~ sixteen or~~[, commencing October first, two thou-~~
54 ~~sand nineteen,~~ seventeen years of age but only where there has been a
55 prior finding by a court that such person has previously committed an
56 act which, if committed by an adult, would be the crime of assault in

1 the second degree, robbery in the second degree or any designated felony
2 act specified in paragraph (i), (ii), or (iii) of this subdivision
3 regardless of the age of such person at the time of the commission of
4 the prior act; (vi) other than a misdemeanor committed by a person at
5 least [~~seven but less than seventeen years of age, and commencing Octo-~~
6 ~~ber first, two thousand nineteen, a person at least seven~~] twelve but
7 less than eighteen years of age, but only where there [~~has~~] have been
8 two prior findings by the court that such person has committed a prior
9 felony.

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

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

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

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

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

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

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

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

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

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

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

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

1 however, in the case of a person [~~eleven or~~] twelve years of age such
2 notification shall be provided only if the act upon which the adjudi-
3 cation is based would constitute a class A or B felony.

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

19 6. If a person fingerprinted pursuant to section 306.1 and subsequent-
20 ly adjudicated a juvenile delinquent for a felony, but in the case of
21 acts committed when such a person was [~~eleven or~~] twelve years of age
22 which would constitute a class A or B felony only, is subsequently
23 convicted of a crime, all fingerprints and related information obtained
24 by the division of criminal justice services pursuant to such section
25 and not destroyed pursuant to subdivisions two, five and seven or subdivi-
26 sion twelve of section 308.1 shall become part of such division's
27 permanent adult criminal record for that person, notwithstanding section
28 381.2 or 381.3.

29 7. When a person fingerprinted pursuant to section 306.1 and subse-
30 quently adjudicated a juvenile delinquent for a felony, but in the case
31 of acts committed when such person was [~~eleven or~~] twelve years of age
32 which would constitute a class A or B felony only, reaches the age of
33 twenty-one, or has been discharged from placement under this act for at
34 least three years, whichever occurs later, and has no criminal
35 convictions or pending criminal actions which ultimately terminate in a
36 criminal conviction, all fingerprints, palmprints, photographs, and
37 related information and copies thereof obtained pursuant to section
38 306.1 in the possession of the division of criminal justice services,
39 any police department, law enforcement agency or any other agency shall
40 be destroyed forthwith. The division of criminal justice services shall
41 notify the agency or agencies which forwarded fingerprints to such divi-
42 sion pursuant to section 306.1 of their obligation to destroy those
43 records in their possession. In the case of a pending criminal action
44 which does not terminate in a criminal conviction, such records shall be
45 destroyed forthwith upon such determination.

46 § 9. Paragraph (a) of subdivision 1 of section 409-a of the social
47 services law, as amended by chapter 87 of the laws of 1993, subparagraph
48 (i) as amended by chapter 342 of the laws of 2010, and subparagraph (ii)
49 as amended by section 22 of part C of chapter 83 of the laws of 2002, is
50 amended to read as follows:

51 (a) A social services official shall provide preventive services to a
52 child and his or her family, in accordance with the family's service
53 plan as required by section four hundred nine-e of this chapter and the
54 social services district's child welfare services plan submitted and
55 approved pursuant to section four hundred nine-d of this chapter, upon a
56 finding by such official that (i) the child will be placed, returned to

1 or continued in foster care unless such services are provided and that
2 it is reasonable to believe that by providing such services the child
3 will be able to remain with or be returned to his or her family, and for
4 a former foster care youth under the age of twenty-one who was previous-
5 ly placed in the care and custody or custody and guardianship of the
6 local commissioner of social services or other officer, board or depart-
7 ment authorized to receive children as public charges where it is
8 reasonable to believe that by providing such services the former foster
9 care youth will avoid a return to foster care or (ii) the child is the
10 subject of a petition under article seven of the family court act~~[, or~~
11 ~~has been determined by the assessment service established pursuant to~~
12 ~~section two hundred forty three a of the executive law,]~~ or by the
13 probation service ~~[where no such assessment service has been desig-~~
14 ~~nated]~~, to be at risk of being the subject of such a petition, and the
15 social services official determines that the child is at risk of place-
16 ment into foster care or (iii) the child is under the age of twelve, the
17 child does not fall under the definition of a juvenile delinquent pursu-
18 ant to paragraph (ii) of subdivision one of section 301.2 of the family
19 court act and but for their age, their behavior would bring them within
20 the jurisdiction of the family court pursuant to article three of the
21 family court act, and the social services official determines that the
22 child is at risk of placement into foster care. Such finding shall be
23 entered in the child's uniform case record established and maintained
24 pursuant to section four hundred nine-f of this ~~chapter~~ article. The
25 commissioner shall promulgate regulations to assist social services
26 officials in making determinations of eligibility for mandated preven-
27 tive services pursuant to this subparagraph.

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

30 TITLE 12-A

31 DIFFERENTIAL RESPONSE PROGRAMS FOR CHILDREN UNDER TWELVE

32 Section 458-o. Differential response programs for children under twelve.

33 § 458-o. Differential response programs for children under twelve. 1.
34 Each local social services district, upon the approval of the office of
35 children and family services, shall establish a program that implements
36 differential responses to provide services to children under twelve
37 years of age, who do not fall under the definition of juvenile delin-
38 quent pursuant to paragraph (ii) of subdivision one of section 301.2 of
39 the family court act and whose behavior, but for their age, would bring
40 them within the jurisdiction of the family court pursuant to article
41 three of the family court act. Such programs shall establish and utilize
42 appropriate assessments and services for youth, in order to help reduce
43 future interaction with the juvenile justice and/or child welfare
44 systems. Such assessments shall be used to determine what, if any,
45 services are needed, and such services shall utilize the least restric-
46 tive intervention protocols available. Notwithstanding any other
47 provision of law to the contrary, the provisions of this section shall
48 apply only to those cases involving children under twelve years of age,
49 who do not fall under the definition of juvenile delinquent pursuant to
50 paragraph (ii) of subdivision one of section 301.2 of the family court
51 act and whose behavior, but for their age, would bring them within the
52 jurisdiction of the family court pursuant to article three of the family
53 court act.

54 2. To establish a differential response program, each local social
55 services district, as part of their district-wide child welfare services
56 plan, as defined in section four hundred nine-d of this article, shall

1 include a plan to serve the youth described in subdivision one of this
2 section while utilizing certain criteria to be promulgated in regulation
3 by the office of children and family services including but not limited
4 to the following:

5 (a) the types of assessment to determine whether services are neces-
6 sary, services and interventions to be provided to children and families
7 included in the differential response program for such children and a
8 description of how the services will be offered. Such services shall
9 include, but not be limited to, those services set forth in section four
10 hundred nine-a of this article and section four hundred fifty-eight-m of
11 this article;

12 (b) a description of the process to be followed for planning and moni-
13 toring the services provided under the differential responses;

14 (c) a description of how the differential response program will
15 enhance the ability of the district to reduce future interactions with
16 the juvenile justice and child welfare systems, ensure the safety and
17 well-being of such children, and ways to ensure such program addresses
18 adverse impacts on minority communities;

19 (d) a description of the training that will be provided to district
20 and any non-district staff to be used in the differential response
21 program including, but not limited to, a description of the training set
22 forth in section eight hundred forty of the executive law for police
23 officers whose main responsibilities are juveniles and the laws pertain-
24 ing thereto; and

25 (e) a description of any additional funding that may be utilized to
26 enhance the differential response program.

27 3. (a) All records created as part of the differential response
28 program for children described in subdivision one of this section shall
29 include, but not be limited to, the initial and any subsequent reasons
30 why a differential response is recommended for a child, documentation of
31 all services offered and accepted by such child and their family, the
32 plan for supportive services for the child and their family, and all
33 evaluations and assessments of the child's progress.

34 (b) Records created under the differential response program for the
35 children described in subdivision one of this section shall be main-
36 tained for five years after a child is referred to a local social
37 services district for intervention as described in this section or until
38 the child reaches the age of twelve, whichever is sooner.

39 (c) All reports assigned to, and records created under, the differen-
40 tial response program, including but not limited to reports made or
41 written as well as any other information obtained or photographs taken
42 concerning such reports or records shall be confidential, shall be made
43 available only to an entity listed below which has been involved in the
44 particular youth's service delivery, and shall not be redisclosed,
45 except as authorized pursuant to subparagraph (vi) of this paragraph,
46 utilizing non-identifying aggregated information. Such entities shall
47 include:

48 (i) staff of the office of children and family services and persons
49 designated by the office of children and family services;

50 (ii) the social services district responsible for the differential
51 response program for children described in subdivision one of this
52 section;

53 (iii) a community-based agency that has a contract with the social
54 services district to carry out activities for the district under the
55 differential response program;

56 (iv) a provider of services under the differential response program;

1 (v) the child, or to their parent or legal guardian, and the attorney
2 for the child; and

3 (vi) the office of children and family services and social services
4 districts for the sole purpose of preparing the report required pursuant
5 to subdivision five of this section.

6 4. Expenditures by a social services district pursuant to this section
7 shall be reimbursable from the annual appropriations available for
8 social services district expenditures for child welfare services which
9 shall include, but not be limited to, preventive services provided
10 pursuant to section four hundred nine-a of this article, funding for
11 family support services programs as set forth in section four hundred
12 fifty-eight-n of this article and supervision and treatment services for
13 juveniles program as set forth in section five hundred twenty-nine-b of
14 the executive law. Nothing shall preclude a social services district
15 from seeking private funds for support of their differential response
16 programs.

17 5. The office of children and family services shall report on the
18 differential response programs established pursuant to this section,
19 including the local social services district's efforts to reduce future
20 interactions with the juvenile justice and child welfare systems, how
21 the local social services districts are ensuring the safety and well-be-
22 ing of such children, and how the program is addressing adverse impacts
23 on minority communities, on an annual basis beginning one year from the
24 start of every local social services district's differential response
25 program.

26 § 11. Subdivision 1 of section 458-m of the social services law, as
27 added by section 18-b of part K of chapter 56 of the laws of 2019, is
28 amended to read as follows:

29 1. As used in this title, the term "family support services programs"
30 shall mean a program established pursuant to this title to provide
31 community-based supportive services to children and families with the
32 goal of (i) preventing a child from being adjudicated a person in need
33 of supervision and help prevent the out of home placements of such youth
34 or (ii) preventing a petition from being filed under article seven of
35 the family court act, or (iii) to help reduce future interaction with
36 the juvenile justice and/or child welfare system for children under
37 twelve years of age, who do not fall under the definition of juvenile
38 delinquent pursuant to paragraph (ii) of subdivision one of section
39 301.2 of the family court act and whose behavior, but for their age
40 would bring them within the jurisdiction of the family court pursuant to
41 article three of the family court act.

42 § 12. Paragraph (j) of subdivision 1 of section 840 of the executive
43 law, as amended by chapter 617 of the laws of 1990, is amended to read
44 as follows:

45 (j) (1) Development, maintenance and dissemination of written policies
46 and procedures pursuant to title six of article six of the social
47 services law and applicable provisions of article ten of the family
48 court act, regarding the mandatory reporting of child abuse or neglect,
49 reporting procedures and obligations of persons required to report,
50 provisions for taking a child into protective custody, mandatory report-
51 ing of deaths, immunity from liability, penalties for failure to report
52 and obligations for the provision of services and procedures necessary
53 to safeguard the life or health of the child; (2) establishment and
54 implementation on an ongoing basis, of a training program for all
55 current and new police officers regarding the policies and procedures
56 established pursuant to this paragraph; and (3) establishment of a

1 training program for police officers whose main responsibilities are
2 juveniles and the laws pertaining thereto, including children under
3 twelve years of age who do not fall under the definition of juvenile
4 delinquent pursuant to paragraph (ii) of subdivision one of section
5 301.2 of the family court act and whose behavior, but for their age
6 would bring them within the jurisdiction of the family court pursuant to
7 article three of the family court act, which training program shall be
8 successfully completed before such officers are accredited pursuant to
9 section eight hundred forty-six-h of this chapter.

10 § 13. Subdivision 4 of section 502 of the executive law, as amended by
11 section 79 of part WWW of chapter 59 of the laws of 2017, is amended to
12 read as follows:

13 4. For purposes of this article, the term "youth" shall mean a person
14 not less than [~~seven~~] twelve years of age and not more than [~~twenty or~~
15 ~~commencing October first, two thousand nineteen, not more than~~] twenty-
16 two years of age, unless such youth is over the age of seven and less
17 than twelve years and is considered a juvenile delinquent pursuant to
18 paragraph (ii) of subdivision one of section 301.2 of the family court
19 act.

20 § 14. Paragraph (a) of subdivision 2 of section 507-a of the executive
21 law, as amended by section 80 of part WWW of chapter 59 of the laws of
22 2017, is amended to read as follows:

23 (a) Consistent with other provisions of law, only those youth who have
24 reached the age of [~~seven~~] twelve but who have not reached the age of
25 twenty-one, unless such youth is over the age of seven and less than
26 twelve years of age and is considered a juvenile delinquent pursuant to
27 paragraph (ii) of subdivision one of section 301.2 of the family court
28 act, may be placed in the custody of the office of children and family
29 services. Except as provided for in paragraph (a-1) of this subdivision,
30 no youth who has reached the age of twenty-one may remain in custody of
31 the office of children and family services.

32 § 15. This act shall take effect one year after it shall have become a
33 law; provided, however, that the amendments to subparagraph (ii) of
34 paragraph (a) of subdivision 1 of section 409-a of the social services
35 law made by section nine of this act shall not affect the expiration of
36 such subparagraph and shall be deemed to expire therewith.