STATE OF NEW YORK

7789

IN SENATE

January 11, 2022

Introduced by Sen. BAILEY -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

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. The opening paragraph of subdivision (b) of section 117 of the family court act, as amended by chapter 7 of the laws of 2007, is amended to read as follows:

For every juvenile delinquency proceeding under article three involving an allegation of an act committed by a person which, if done by an adult, would be a crime (i) defined in sections 125.27 (murder in the first degree); 125.25 (murder in the second degree); 135.25 (kidnapping in the first degree); or 150.20 (arson in the first degree) of the penal law committed by a person thirteen, fourteen [~~or~~], fifteen**, sixteen, or seventeen** years of age; or such conduct committed as a sexually motivated felony, where authorized pursuant to section 130.91 of the penal law; (ii) defined in sections 120.10 (assault in the first degree); 125.20 (manslaughter in 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 [~~or~~], fifteen**, sixteen, or 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 [~~or~~], fifteen**, sixteen, or 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

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

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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, sixteen, or seventeen 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 [~~or~~], fifteen, sixteen, or 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 clause (i), (ii) or (iii) of this subdivision regardless of the age of such person at the time of the commission of the prior act; or (vi) other than a misdemeanor, committed by a person at least [~~seven~~] twelve but less than [~~sixteen~~] eighteen years of age, but only where there [~~has~~] have been two prior findings by the court that such person has committed a prior act which, if committed by an adult, would be a felony:

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

1. [~~(i)~~] "Juvenile delinquent" means a person [~~at least twelve~~] 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 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 considered a juvenile delinquent for purposes of this article: (A) aggravated criminally negligent homicide as defined in section 125.11 of the penal law; (B) vehicular manslaughter in the second degree as defined in section 125.12 of the penal law; (C) vehicular manslaughter in the first degree as defined in section 125.13 of the penal law; (D) aggravated vehicular homicide as defined in section 125.14 of the penal law; (E) manslaughter in the second degree as defined in section 125.15 of the penal law; (F) manslaughter in the first degree as defined in section 125.20 of the penal law; (G) aggravated manslaughter in the second degree as defined in section 125.21 of the penal law; (H) aggravated manslaughter in the first degree as defined in section 125.22 of the penal law; (I) murder in the second degree as defined in section 125.25 of the penal law; (J) aggravated murder as defined in section 125.26 of the penal law; and (K) murder in the first degree as defined in section 125.27 of the penal law.~~]

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

1. "Juvenile delinquent" means**:**

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

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

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

(b) who is:

(i) not criminally responsible for such conduct by reason of infancy[~~,~~]**;** or

[~~(b) is~~] **(ii)** 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.

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

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

defined in sections 120.10 (assault in the first degree); 125.20 (manslaughter in 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, sixteen, or 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, sixteen, or 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, sixteen, or seventeen 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, sixteen or 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 twelve but less than eighteen years of age, but only where there have been two prior findings by the court that such person has committed a prior act which, if committed by an adult, would be a felony.

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

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

§ 6. Subdivision 3 of section 304.1 of the family court act, as separately amended by section five of this act and a chapter of the laws of 2021 amending the family court act, the social services law and the executive law amending the family court act and the criminal procedure law relating to juvenile delinquency charges of violations in the family court, as proposed in legislative bills numbers S. 7171 and A. 7706, 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, **unless such child is at least ten years old and is considered a juvenile delinquent pursuant to subparagraph (iii) of paragraph (a) of subdivision one of section 301.2 of this article,** nor shall the detention of a child adjudicated solely for an act that would constitute a violation as defined in subdivision three of section 10.00 of the penal law, be directed under any of the provisions of this article.

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

(a) A social services official shall provide preventive services to a child and his or her family, in accordance with the family's service plan as required by section four hundred nine-e of this chapter and the social services district's child welfare services plan submitted and approved pursuant to section four hundred nine-d of this chapter, upon a finding by such official that (i) the child will be placed, returned to or continued in foster care unless such services are provided and that it is reasonable to believe that by providing such services the child will be able to remain with or be returned to his or her family, and for a former foster care youth under the age of twenty-one who was previously placed in the care and custody or custody and guardianship of the local commissioner of social services or other officer, board or department authorized to receive children as public charges where it is reasonable to believe that by providing such services the former foster care youth will avoid a return to foster care or (ii) the child is the subject of a petition under article seven of the family court act or by the probation service, to be at risk of being the subject of such a petition, and the social services official determines that the child is at risk of placement into foster care or (iii) the child is under the age of twelve, the child does not fall under the definition of a juvenile delinquent pursuant to [~~paragraph (ii)~~] **subparagraph (iii) of paragraph (a)** of subdivision one of section 301.2 of the family court act and but for their age, their behavior would bring them within the jurisdiction of the family court pursuant to article three of the family court act, and the social services official determines that the child is at risk of placement into foster care. Such finding shall be entered in the child's uniform case record established and maintained pursuant to section four hundred nine-f of this article. The commissioner shall promulgate regulations to assist social services officials in making determinations of eligibility for mandated preventive services pursuant to this subparagraph.

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

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

goal of (i) preventing a child from being adjudicated a person in need of supervision and help prevent the out of home placements of such youth or (ii) preventing a petition from being filed under article seven of the family court act, or (iii) [~~to help reduce~~] reducing future interaction with the juvenile justice [~~and/or~~] or child welfare [~~system~~] systems for children under twelve years of age[~~,~~] who do not fall under the definition of juvenile delinquent pursuant to [~~paragraph (ii)~~] subparagraph (iii) of paragraph (a) of subdivision one of section 301.2 of the family court act and 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.

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

1. Each local social services district, upon the approval of the office of children and family services, shall establish a program that implements differential responses to provide services to children under twelve years of age, who do not fall under the definition of juvenile delinquent pursuant to [~~paragraph (ii)~~] subparagraph (iii) of paragraph (a) of subdivision one of section 301.2 of the family court act and 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. Such programs shall establish and utilize appropriate assessments and services for youth, in order to help reduce future interaction with the juvenile justice and/or child welfare systems. Such assessments shall be used to determine what, if any, services are needed, and such services shall utilize the least restrictive intervention protocols available. Notwithstanding any other provision of law to the contrary, the provisions of this section shall apply only to those cases involving children under twelve years of age, who do not fall under the definition of juvenile delinquent pursuant to [~~paragraph (ii)~~] subparagraph (iii) of paragraph (a) of subdivision one of section 301.2 of the family court act and 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.

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

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

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

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

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

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

(j) (1) Development, maintenance and dissemination of written policies and procedures pursuant to title six of article six of the social services law and applicable provisions of article ten of the family court act, regarding the mandatory reporting of child abuse or neglect, reporting procedures and obligations of persons required to report, provisions for taking a child into protective custody, mandatory reporting of deaths, immunity from liability, penalties for failure to report and obligations for the provision of services and procedures necessary to safeguard the life or health of the child; (2) establishment and implementation on an ongoing basis, of a training program for all current and new police officers regarding the policies and procedures established pursuant to this paragraph; and (3) establishment of a training program for police officers whose main responsibilities are juveniles and the laws pertaining thereto, including children under twelve years of age who do not fall under the definition of juvenile delinquent pursuant to [~~paragraph (ii)~~] **subparagraph (iii) of paragraph (a)** of subdivision one of section 301.2 of the family court act and 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, which training program shall be successfully completed before such officers are accredited pursuant to section eight hundred forty-six-h of this chapter.

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