STATE OF NEW YORK

4051

2021-2022 Regular Sessions

IN SENATE

February 2, 2021

Introduced by Sen. BAILEY -- 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, 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. "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.

§ 2. Subdivision 8 of section 301.2 of the family court act, as amended by section 57 of part WWW of chapter 59 of the laws of 2017, 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, [~~or~~] sixteen, or

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

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[~~commencing 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; (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, [~~or~~] sixteen, or[~~, commencing 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; (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 [~~commencing 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 thousand 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 October 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. Paragraph (a) of subdivision 1 of section 306.1 of the family court act, as amended by chapter 645 of the laws of 1996, is amended to read as follows:

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

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

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

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

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

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

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

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

1. If a person whose fingerprints, palmprints or photographs were taken pursuant to section 306.1 or was initially fingerprinted as a juvenile offender and the action is subsequently removed to a family court pursuant to article seven hundred twenty-five of the criminal procedure law is adjudicated to be a juvenile delinquent for a felony, the family court shall forward or cause to be forwarded to the division of criminal justice services notification of such adjudication and such related information as may be required by such division, provided, however, in the case of a person [~~eleven or~~] twelve years of age such notification shall be provided only if the act upon which the adjudication is based would constitute a class A or B felony.

2. If a person whose fingerprints, palmprints or photographs were taken pursuant to section 306.1 or was initially fingerprinted as a juvenile offender and the action is subsequently removed to family court pursuant to article seven hundred twenty-five of the criminal procedure law has had all petitions disposed of by the family court in any manner other than an adjudication of juvenile delinquency 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, 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.

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 subdi-

vision 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.

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.

§ 9. Paragraph (a) of subdivision 1 of section 409-a of the social services law, as amended by chapter 87 of the laws of 1993, subparagraph (i) as amended by chapter 342 of the laws of 2010, and subparagraph (ii) as amended by section 22 of part C of chapter 83 of the laws of 2002, 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 has been determined by the assessment service established pursuant to section two hundred forty-three-a of the executive law,~~] or by the probation service [~~where no such assessment service has been designated~~], 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, and their behavior but for their age 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 [~~chapter~~] **article**. The commissioner shall promulgate regulations to assist social services officials in making determinations of eligibility for mandated preventive services pursuant to this subparagraph.

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

TITLE 12-A

DIFFERENTIAL RESPONSE PROGRAMS FOR CHILDREN UNDER TWELVE

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

§ 458-o. Differential response programs for children under twelve. 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 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 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.

2. To establish a differential response program, each local social services district, as part of their district-wide child welfare services plan, as defined in section four hundred nine-d of this article, shall include a plan to serve the youth described in subdivision one of this section while utilizing certain criteria to be promulgated in regulation by the office of children and family services including but not limited to the following:

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

(b) a description of the process to be followed for planning and monitoring the services provided under the differential responses;

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

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

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

3. (a) All records created as part of the differential response program for children described in subdivision one of this section shall include, but not be limited to, the initial and any subsequent reasons why a differential response is recommended for a child, documentation of all services offered and accepted by such child and their family, the

plan for supportive services for the child and their family, and all evaluations and assessments of the child's progress.

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

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

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

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

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

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

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

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

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

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

§ 11. Subdivision 1 of section 458-m of the social services law, as added by section 18-b of part K of chapter 56 of the laws of 2019, 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 future interaction with the juvenile justice and/or child welfare system 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**.

§ 12. Paragraph (j) of subdivision 1 of section 840 of the executive law, as amended by chapter 617 of the laws of 1990, 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 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 one year after it shall have become a law; 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 nine of this act shall not affect the expiration of such subparagraph and shall be deemed to expire therewith.