



SEAN M. LYNN
STATE REPRESENTATIVE
31st District

HOUSE OF REPRESENTATIVES
STATE OF DELAWARE
411 LEGISLATIVE AVENUE
DOVER, DELAWARE 19901

COMMITTEES
Judiciary, Chair
Education
Agriculture

**House Judiciary Committee Meeting
6.19.19**

Chair Lynn called the meeting to order at 12:08 p.m. Members present include Reps. Cooke, Bush, Dorsey Walker, Brady, Gray, Spiegelman, and Vanderwende, Smyk.

Chair Lynn introduced **HB 76, AN ACT TO AMEND TITLES 10 AND 11 OF THE DELAWARE CODE RELATING TO JUVENILE PROSECUTION.**

Rep. Heffernan, the prime sponsor, explained that the bill would provide the Department of Services for Children, Youth, and Their Families (DSCYF) exclusive jurisdiction and custody of a child when convicted of a Superior Court offense. She added that no further juveniles would be transferred to the custody of the Department of Correction upon their adjudication and Level V sentence in Superior Court.

Rep. Heffernan exclaimed that the bill extends HB 339 from the 149th General Assembly that was sponsored by former Rep. J. Johnson. She noted her promise to Rep. J. Johnson to end juvenile placement in adult incarceration facilities. She added that juveniles who are housed with adults are 34 times more likely to reoffend than their counterparts in juvenile facilities due to more strenuous and violent conditions in adult facilities.

Chair Lynn opened the floor to public comment.

Professor Aaron Kupchik from the Department of Sociology at the University of Delaware supported the bill. He explained that extensive research across various parts of the country support Rep. Heffernan's notion that juveniles that are incarcerated with adults have a significantly higher rate of reoffending, mental illness, post-traumatic stress disorder, and worse rehabilitative outcomes.

Deputy Chief John Sebastian from Administrative Services at the Department of Corrections (DOC) opposed the bill. He explained that the Youthful Criminal Offender Program includes youth with serious violent histories and believed it was in the best interest of the youth to remain in their current placements. He added that DOC provides robust educational and life-enhancement programs at YCOP.

Case Manager Jazzmyn Molson from the YMCA of Delaware and Wilmington Community Advisory Council supported the bill. She explained that the YMCA offers the "Back on Track" program that serves roughly 980 teens that engage in community service activities. She added that the YMCA offers a plethora of programs that benefit teenagers. She noted that trouble teens who have attended their programs were rehabilitated which demonstrates the need for juveniles to participate in rehabilitative programs.

Co-Chair Henry Smith from the Wilmington Community Advisory Council supported the bill. A full statement is attached to the minutes.

Meghan Crist, Juvenile Justice Policy Specialist and Allana Farber, Expungement Post-Disposition Coordinator from the Office of Defense Services (ODS) supported the bill. Ms. Crist explained that they have been meeting incarcerated children at YCOP and conducting interviews since October of 2017. She noted that conditions of confinement have improved, however, several issues remain.



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Ms. Farber added that their interviews consistently demonstrate a lack of a formalized educational setting. In contrast, she noted that DYRS has more individualized instruction based on grade levels and abilities. She noted that DYRS has a strict adherence to individual education plan (IEP). She added that clients at YCOP report that group-instruction is rare and they simply work in workbooks alone.

Ms. Farber explained that YCOP clients noted harsh sanctions like removal of phone privileges whereas DYRS better understands the importance of familial relations.

Rep. Heffernan asked if IEPs are being adhered to at YCOP.

Ms. Farber noted that her source of information is the clients at YCOP so she believed herself to be unqualified to answer the question.

Chair Lynn asked what the clients report.

Ms. Farber believed it to be a case-by-case basis adherence but that she could not speak to the specifics.

Ms. Crist observed significant difference in client interviews and what DOC reports. She noted that there were two juveniles recently released from YCOP who have reoffended. She believed DYRS have more dynamic programming that could prevent recidivism more effectively than DOC.

Chair Lynn asked if those who are released from YCOP have transition plans, particularly ones with mental health issues.

Advocacy Director Kate Parker from the Delaware Center for Justice supported the bill and thanked Rep. Heffernan. She noted that children's brains are not fully developed and incarceration, particularly in adult facilities, greatly stuns their growth and ability to acclimate to society. She added that racial disparities exist in custodial settings, which further demonstrates the needs to mitigate negative impacts of institutional settings.

Lisa Minutola, Chief of Legal Services at the Office of Defense Services strongly supported the bill and believed it to be an appropriate extension of HB 339 from the previous General Assembly. She noted that research demonstrates better outcomes for juveniles who are housed in juvenile facilities versus adult facilities.

Secretary Josette Manning from the Department of Services for Children Youth and Their Families (Children's Department) made clear that youth at YCOP are not housed in adult facilities and have no access to adults.

Secretary Manning shared that a judicial officer in a court hearing conducts a full hearing to determine if a youth is amenable or not. If the determination is made that they are non-amenable and transferred to Superior Court, and subsequently, to YCOP. She noted that this determination takes into account a totality of the circumstances view. She made clear that if the bill were to pass, juveniles deemed non-amenable would be transferred to the Children's Department for services that they are not amenable to.

Secretary Manning shared concern about what will occur to the amenable population if mixed with the non-amenable. She added that the YCOP population was part of her jurisdiction roughly 20 years ago and it was found that the youth populations should be separated.



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Secretary Manning agreed with Rep. Heffernan that YCOP population are more likely to recidivate, but believed it was due to their existing propensity to crimes, not due to their stay in YCOP.

Chair Lynn asked where juveniles housed in YCOP receive their meals, medical treatments, and other services.

Warden May from YCOP made clear that juveniles are not sharing a facility with adults at any time.

Rep. Cooke believed that better education should be provided to the YCOP population and that they should be housed with fellow juveniles, regardless of their amenability.

Rep. Spiegelman asked if there is individualized review for youth cases and if this bill would remove judicial discretion for housing decisions.

Secretary Manning affirmed.

Rep. Spiegelman asked if non-amenable population integration would cause issues to the existing structures at the Children's Department and Ferris School.

Secretary Manning affirmed.

Rep. Cooke asked if it was possible to oversee the eight YCOP juveniles at the Children's Department.

Secretary Manning believed that there are risks to lower-level populations considering there are not separate buildings to house all juveniles in at the Ferris School.

Rep. Heffernan noted that the bill would not be enacted until January 2021 and that should provide enough time for the aforementioned issues to be addressed.

Rep. Smyk believed that all parts of the corrections systems are underfunded and weakened. He noted that YCOP was running smoothly despite lack of support.

Rep. Spiegelman believed there should be more fluidity in the definition of non-amenable and processes to be labeled amenable after demonstrating progress.

Warden Robert May believed that information provided by the Office of Defense Services was merely anecdotal and that they provided no verified data. He offered for anybody to tour the YCOP facility.

Tasha Moore from the Wilmington Community Advisory Council supported the bill and believed her experience working in behavior health demonstrated the need for juveniles to received services outside of adult facilities.

Community Organizer Dubard McGriff from the American Civil Liberties Union of Delaware explained that he was once housed at YCOP and deemed non-amenable. He believed that he is proof that this title does not show the truth about a young person's character as he grew to be a commendable man.

Chair Lynn requested a motion, indicating that since a majority was not present, he would walk the bill to committee members. A motion was made by Rep. Brady and seconded by Rep. Cooke to release HB 76 from committee. HB 76 was later released from committee with a F=0, M=6, U=0 vote.



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Chair Lynn introduced **HS 1 for HB 75, AN ACT TO AMEND TITLE 31 OF THE DELAWARE CODE RELATING TO THE YOUTH SERVICES COMMISSION OF DELAWARE.**

Rep. Bolden, the prime sponsor, explained that an amendment was just added that clarifies enactment date as January 1, 2021.

Rep. Bolden believed that the bill is necessary to mitigate the negative effects on incarcerated youth. She explained that the bill would provide DSCYF jurisdiction over a juvenile through all aspects of their custody until at least their 18th birthday. She added that this jurisdiction extends to juveniles who have been guilty and sentenced to a superior court offense until the 18th birthday, which would initiate a transfer to DOC. She noted that the bill also requires DSCYF to provide services and supervision for non-incarcerated persons aged 18-21 and allows the Family Court to retain jurisdiction over individuals charged before their 18th birthday until they turn 19.

Rep. Bolden noted that the Campaign for Youth Justice found 75-93 percent of juveniles have been exposed to some degree of victimization which leads to developmental issues.

Chair Lynn opened the floor to public comment.

Lauren Vella from the Attorney General's Office supported the bill and believed the rationale is consistent with current research.

Mariann Kenville-Moore from the Delaware Coalition Against Domestic Violence supported the bill and believed treating children in the appropriate way serves their mission. She emphasized the need for community supports to continue to mitigate trauma to children.

Chair Lynn requested that if there are duplicative public comments from HB 76 about HS 1 for HB 75 that written comments be substituted in lieu of for the sake of time.

Secretary Manning thanked the legislative staff for their open communication during the bill's drafting process and supported the portion of the bill that allows DSCYF to provide services for non-incarcerated persons until age 21.

Chair Lynn requested a motion. A motion was made by Rep. Brady and seconded by Rep. Walker to release HS 1 for HB 75 from committee. Motion carried. Yes=6 (Lynn, Cooke, Brady, Walker, Gray, Spiegelman); No=0; Absent=5 (Griffith, Bush, Mitchell, Smyk, Vanderwende). HS 1 for HB 75 was released from committee with a F=0, M=6, U=0 vote.

Chair Lynn introduced **SB 44, AN ACT TO AMEND TITLE 4 OF THE DELAWARE CODE RELATING TO UNDERAGE POSSESSION OR CONSUMPTION OF ALCOHOL.**

Sen. Sturgeon, the prime sponsor, explained that the bill and accompanying amendment would make the possession or consumption of alcohol by an individual under 21 years of age a civil offense for the first and second offenses. The driver's license revocation penalty would also be removed.

Chair Lynn opened the floor to public comment.



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Rick Armitage from the City of Newark supported the bill.

Chair Lynn requested a motion. A motion was made by Rep. Brady and seconded by Rep. Lynn to release SB 44 from committee. Motion carried. Yes=7 (Lynn, Cooke, Brady, Walker, Gray Spiegelman, Vanderwende); No=0, Absent=4 (Griffith, Mitchell, Bush, Smyk). SB 44 was released with a F=0, M=7, U=0 vote.

Chair Lynn introduced **HB 232, AN ACT TO AMEND TITLE 10 AND TITLE 25 OF THE DELAWARE CODE RELATING TO JURISDICTION OF THE JUSTICE OF THE PEACE COURT AND SUMMARY POSSESSION.**

Chair Lynn explained that the bill would raise the Justice of the Peace Court threshold to \$25,000 and allow Justice of the Peace to consider claims if the jurisdictional limit is in excess if it involves a commercial tenancy and possession of the rental unit at the issue. He added that this bill is sensible due to inflation.

Chair Lynn opened the floor to public comment.

Judge Patrick Wood from the Justice of the Peace Court explained that the bill is similar to HB 187 and that a party would have the opportunity to bifurcate the jurisdictional limit.

Chair Lynn requested a motion. A motion was made Rep. Brady and seconded by Rep. Walker to release HB 232 from committee. Motion carried. Yes=8 (Lynn, Cooke, Bush, Brady, Walker, Gray, Spiegelman, Vanderwende); No=0, Absent=3 (Mitchell, Griffith, Smyk). HB 232 was released with a F=1, M=7, U=0 vote.

Chair Lynn introduced **HS 1 for HB 10, AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUVENILE PROSECUTION.**

Rep. Chukwuocha, the prime sponsor, explained that the bill would prohibit prosecution of children under the age of 12 and prohibits the transfer of a child to superior court unless 16 years of age or older. The exception to these provisions is when the crimes of murder in the first degree, murder in the second degree, rape in the first degree, and rape in the second degree.

Chair Lynn requested that if there are duplicative public comments from HB 76 and HS 1 for HB 75 for HS for HB 10 that written comments be substituted in lieu of for the sake of time.

Ms. Lisa Minutola supported the bill and explained that the bill was worked on by stakeholders from all sides to ensure processes would be put in place to treat them with the understanding that they are not done developing.

Ms. Kate Parker supported the bill.

Advocacy Chair Sandy Spence from the League of Women Voters supported the bill

Ms. Lauren Vella supported the bill and believed children under the age of 12 need rehabilitation and not punishment.

Professor Kupchik supported the bill and explained that studies across the nation are consistent in showing that juveniles who are prosecuted as adults become recidivists more often and are less likely to be rehabilitated.



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Chair Lynn requested a motion. A motion was made by Rep. Brady and seconded by Rep. Dorsey Walker to release HS 1 for HB 1 from committee. Motion carried. Yes=6 (Lynn, Cooke, Bush, Brady, Walker, Gray); No=0; Absent=5 (Griffith, Mitchell, Smyk, Spiegelman, Vanderwende). HS 1 for HB 10 was released from committee with a F=0, M=6, U=0 vote.

Chair Lynn introduced **HB 196, AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO THE DELAWARE WRONGFUL IMPRISONMENT COMPENSATION ACT.**

Chair Lynn, the prime sponsor, recalled the presentation of Elmer Daniels at previous House Judiciary Committee meeting.

Chair Lynn opened the floor to public comment.

Mr. Quirido thanked Rep. Lynn for introducing the bill. Mr. Quirido explained that wrongful convictions have plentiful collateral consequences, like finding difficulty in assimilating to freedom again. He added that Delaware is one of only 15 states that have no processes in place for wrongfully convicted individuals to receive compensation.

Mr. Quirido explained that exonerees who were wrongfully convicted occasionally win settlements but that taxpayers are impacted negatively. He noted that several states have compensation laws for those who are wrongfully convicted ranging from \$50,000 to \$200,000 for every year convicted. He noted that this bill provides straightforward processes to receive compensation and services to acclimate to public life.

Mr. Quirido recommended four ways to improve the bill: new evidence requirement, replacing clear and convincing evidence with preponderance of the evidence standard, barre on civil litigation be replaced with an offset provision, and a change in the funding source.

Dustyn Thompson from Delaware United supported the bill and believed that compensation was the minimal amount of recourse the state could provide.

Mitch Crane from the League of Women Voters supported the bill and believed that the State asks much of those who have committed crimes but the State is not held responsible for when they wrong individuals.

Elmer Daniels recounted his wrongful conviction experience over the past 39 years and emphasized the difficulties of daily life as he has missed so much in his life. Mr. Daniels asked the committee to release the bill as it will aid him in his acclimation to public life.

Executive Director Paulette Rappa from the Way Home supported the bill. A full statement is attached to the minutes.

Ms. Kate Parker supported the bill and believed the State, which includes all Delawareans, should support Mr. Daniels.

Treasurer Bruce Bilander from the Southern Delaware Alliance for Racial Justice supported the bill. A full statement is attached to the minutes.



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Chair Lynn requested a motion. A motion was made by Rep. Dorsey Walker and seconded by Rep. Brady to release HB 196 from committee. Motion carried. Yes=6 (Lynn, Cooke, Bush, Brady, Walker, Gray); No=; Absent=5 (Griffith, Mitchell, Smyk, Spiegelman, Vanderwende). HB 196 was released from committee with a F=4, M=2, U=0.

Chair Lynn concluded the meeting at 1:59 p.m.

Respectfully Submitted by:

Eric Hastings

Speaker List:

Bruce Bilander — Treasurer, Southern Delaware Alliance for Racial Justice
Patrick Wood — Judge, Justice of Peace Court
Jazzmyn Molson — Case Manager, YMCA of Delaware
Paulette Rappa — Executive Director, The Way Home
Nigel Quirido — Policy Analyst, Innocence Project
Lisa Minutola — Chief of Legal Services, Office of Defense Services
Aaron Kupchik — Professor, University of Delaware
Mitch Crane — League of Women Voters
John Sebastian — Deputy Chief, Department of Corrections
Dustyn Thompson — Delaware United
Henry Smith III — Co-Chair, Wilmington Community Advisory Council
Rick Armitage — City of Newark
Alana Farber — Expungement & Post-Disposition Coordinator, Office of Defense Services
Meghan Crist — Juvenile Justice Policy Specialist, Office of Defense Services
Kate Parker — Advocacy Director, Delaware Center for Justice
Josette Manning — Secretary, Department of Services for Children, Youth and Their Families
Lauren Vella — Department of Justice
Mariann Kenville-Moore — Delaware Coalition Against Domestic Violence
Tasha Moore — Wilmington Community Advisory Council
Elmer Daniels
Sandy Spence — Advocacy Chair, League of Women Voters
Dubard McGriff — Community Organizer, American Civil Liberties Union of Delaware
Robert May — Warden, Sussex Correctional Institution