

CHAPTER 85
FORMERLY
HOUSE BILL NO. 126
AS AMENDED BY
HOUSE AMENDMENT NO. 1 AS AMENDED BY HOUSE AMENDMENT NO. 1 TO HOUSE AMENDMENT
NO. 1

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO DELINQUENCY PROCEEDINGS IN THE FAMILY COURT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend §1002, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows.

§ 1002. Delinquent child not criminal; prosecution limited.

(a) Except as provided in § 1010 of this title, no child shall be deemed a criminal by virtue of an allegation or adjudication of delinquency, nor shall a child be charged with or prosecuted for a crime in any other court. In this Court the nature of the hearing and all other proceedings shall be in the interest of rather than against the child. Except as otherwise provided, there shall be no proceedings other than appellate proceedings in any court other than this Court in the interest of a child alleged to be dependent, neglected, or delinquent. ~~However, if a child reaches its eighteenth birthday prior to an adjudication on a charge of delinquency arising from acts which would constitute a felony were the child charged as an adult under the laws of this State, then the Family Court shall retain jurisdiction for the sole purpose of transferring the matter to the Superior Court for prosecution as an adult. Any such transfer under this section shall not be subject to § 1011 of this title.~~

(b) (1) Notwithstanding any other provision of law to the contrary, no child shall be prosecuted for a crime or act of delinquency arising from conduct that occurred when the child was under the age of 10 unless the delinquency petition includes a motion to determine competency pursuant §1007A of this Title. If the Court finds the child competent, prosecution of the case may resume at the discretion of the State. If the Court finds the child not competent the Court shall, contemporaneous with the entry of such finding, enter a dismissal of the charge or charges, and the State shall petition the Court to expunge the instant record of arrest as set forth in §1018 (e) of this Title.

(2) A child under the age of 10 may be referred to and required to participate in any pre or post arrest diversionary program administered by the Division of Youth Rehabilitative Services, and such child may be referred to the Division of Prevention and Behavioral Health, the Division of Family Services, or any other state agency if the child is believed to be abused, neglected, dependent or otherwise in need of services.

Approved July 10, 2015