

CHAPTER 24
FORMERLY
HOUSE BILL NO. 57

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO DISPOSITION OF CHILDREN PENDING ADJUDICATION AND PAYMENT FOR CARE.

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

Section 1. Amend § 1007, Title 10 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 1007. Disposition of child pending adjudication; payment for care ~~{Effective July 12, 2012}~~

(a) Pending adjudication no child alleged to be delinquent may be placed in secure detention operated by the Department of Services for Children, Youth and Their Families unless the Court determines that no means less restrictive of the child's liberty gives reasonable assurance that the child will attend the adjudicatory hearing and:

(1) The child is a fugitive from another jurisdiction on a delinquency petition; or

(2) The child is charged with an offense, which, if committed by an adult would constitute a felony, including offenses contained within this title, and Title II, and Chapter 47 of Title 16, the Uniform Controlled Substance Act; ~~or one of the following misdemeanors: Assault in the third degree, unlawful imprisonment in the second degree, vehicular assault in the first degree, indecent exposure in the first degree, unlawful sexual contact in the third degree, or carrying a concealed dangerous instrument;~~ or

~~(3) The child has wilfully failed to appear at a hearing on a delinquency petition and there is substantial probability that the child will run away or otherwise be unavailable for a subsequent court appearance; or~~

(3) The child is charged with an offense, which, if committed by an adult would constitute a Class A Misdemeanor, provided that offense involved violence, a sexual offense, unlawful imprisonment, or a weapons offense; or

~~(4) The child has demonstrated a pattern of repeated failure to comply with court ordered placement pursuant to a delinquency petition in an out-of-home residential or foster care setting.~~

(4) The child has, in the past, failed to appear at a delinquency hearing and circumstances indicate the child will likely fail to appear for further proceedings, or, absent a prior history of failure to appear, circumstances demonstrate a substantial probability that the child will fail to appear at a subsequent hearing; or

(5) The child is alleged to be intimidating 1 or more witnesses or otherwise unlawfully interfering with the administration of justice; or

(6) The child has escaped from a secure or non-secure detention facility, or has demonstrated a pattern of repeated failures to comply with court-ordered placement pursuant to a delinquency petition in an out-of-home residential or foster care setting; or

(7) The child has incurred new charges while a resident, as a result of a prior delinquency petition, of a non-secure detention facility, out-of-home residential or foster care setting and the parent, guardian, custodian or facility refuses to take custody of the child; or

(8) The child has breached a condition of release; or

(9) Having been released pending adjudication on prior charges for which the child could have been detained, the child is alleged to have committed additional charges on which the child would not normally be permissibly held in secure detention under this section.

(b) Prior to making a decision of secure detention pending adjudication the Court shall consider and, where appropriate, employ any of the following alternatives:

(1) Release on the child's own recognizance;

(2) Release to parents, guardian, ~~or~~ custodian, or other willing member of the child's family acceptable to the Court;

(3) Release on bail; with or without conditions;

(4) Release with imposition of restrictions on activities, associations, movements and residence reasonably related to securing the appearance of the child at the next hearing;

(5) Release to a ~~nonsecure~~ non-secure detention alternative developed by the Department of Services for Children, Youth and Their Families such as home detention, daily monitoring, intensive homebase services with supervision, foster placement, or a ~~nonsecure~~ non-secure residential setting.

(c) If the Court places a child in secure detention pending adjudication, the Court shall state in writing the basis for its detention determination pursuant to subsection (a) of this section and the reasons for not employing any of the secure detention alternatives under subsection (b) of this section. In the event that a Risk Assessment Instrument has been completed for the child for the pending offense, with the resulting presumptive disposition being to release the child, or hold the child in a non-secure detention facility, the Court shall further state in writing the basis for overriding that presumption.

(d) If a child has been placed in secure detention pending adjudication on a commitment from the Justice of the Peace Court, an initial hearing to determine the appropriateness of detention and to review conditions of release shall be held the next day the Family Court is in session.

~~(e) No child shall be retained in secure detention after the initial hearing unless an assessment of the current charge or charges against the child and the record of the juvenile indicate to the Court that the juvenile should not be placed in a nonsecure detention alternative developed by the Department of Services for Children, Youth and Their Families as set forth in paragraph (b)(5) of this section.~~

~~(f) (e)~~ A detention review hearing with counsel shall be held within 14 ~~court~~ days of the initial detention hearing and if detention is continued, detention review hearings shall be held thereafter at intervals not to exceed ~~24 court~~ 30 days.

~~(g) (f)~~ When a juvenile is detained pending adjudication the adjudicatory hearing shall be held no later than 30 days from the date of detention. If no adjudicatory hearing is held within 30 days, upon motion by a juvenile, the Court shall within 72 hours fix a date for the adjudicatory hearing unless it grants a continuance of the hearing for good cause shown.

~~(h) (g)~~ Pending adjudication the Court may release a child alleged to be dependent or neglected to the custodian; or, where the welfare of the child appears to require such action, place the child in the care of the Department of Services for Children, Youth and Their Families or any suitable person or agency; provided, however, that if the child is placed with someone other than a relative, the Court ~~shall~~ may require an evaluation and report from the Department of Services for Children, Youth and Their Families.

(h) In any instance in which a person responsible for the custody and care of a child refuses to take custody pending adjudication of that child, the Family Court may order the person legally liable therefore to pay for the child's care during the period of placement outside the person's own home.

~~(i) Pending adjudication the Court may order the person legally liable therefor to pay for the child's care during the period of placement outside the person's own home.~~

~~(j) (i)~~ Pending adjudication, the Court may defer proceedings pending further investigation, medical or other examination, or where the interest of a child will thereby be served.

(j) For purposes of subsections (a)–(c) of this section, the term “the Court” shall mean both the Justice of the Peace Court and the Family Court. In all other subsections, the term shall mean the Family Court only.

Section 2. This Act shall be retroactive to July 12, 2012.

Approved May 16, 2013