LAWS OF DELAWARE
VOLUME 83
CHAPTER 40
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 26
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 10 AND 11 OF THE DELAWARE CODE RELATING TO PROSECUTION OF JUVENILES.

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

Section 1. Amend Chapter 9, of Title 10 of the Delaware Code by making deletions as shown by strike through, insertions as shown by underline and redesignating accordingly:

§ 1007 Disposition of child pending adjudication ~~in Family Court or trial in Superior Court~~; payment for care.

(a) Pending adjudication no child alleged to be delinquent may be placed in secure detention operated, or contracted, 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, Title 11, and Chapter 47 of Title 16, the Uniform Controlled Substance Act; 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, 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 nonsecure detention facility, or 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; or

(7) The child has incurred new charges while a resident, as a result of a prior delinquency petition, of a nonsecure 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 changes 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, 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 detention alternative developed by the Department of Services for Children, Youth and Their Families such as home detention, daily monitoring, intensive home base services with supervision, foster placement, or a nonsecure 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 nonsecure detention facility, the Court shall further state in writing the basis for overriding that presumption.

~~(d)(1) If a child aged 16 or older has been ordered by a court to be held in secure detention pending trial in Superior Court and is found to be nonamenable to Family Court pursuant to §§ 1010 and 1011 of this title, the Department of Services for Children, Youth and Their Families may file a motion in Superior Court to place the child in a secure detention facility other than a facility operated by the Department of Services for Children, Youth and Their Families because the Department's secure detention facilities are at or beyond capacity or the child poses a security risk to self or other youth served by the Department of Services for Children, Youth and Their Families in the facilities it operates. If a motion is filed, Superior Court shall conduct an evidentiary hearing unless the parties reach an agreement to a secure detention for the child.~~

~~a. After an evidentiary hearing, the Superior Court may order the child to be placed in a secure detention facility not operated by the Department of Services for Children, Youth and Their Families if the Court finds by clear and convincing evidence that the Department of Services for Children, Youth and Their Families 's secure detention facilities are at or beyond capacity and the child's safety or health is at risk by remaining at a facility operated by the Department of Services for Children, Youth and Their Families. If the Court makes such a finding, the Department of Services for Children, Youth and Their Families shall provide the Court with a status on the capacity of the Department of Services for Children, Youth and Their Families 's secured detention facilities at least weekly and no child may be held in a secured detention facility for adults for more than 60 days.~~

~~b. After an evidentiary hearing, the Superior Court may order the child to be placed in a secure detention facility not operated by the Department of Services for Children, Youth and Their Families if the Court finds by clear and convincing evidence that the child is a danger to self or other youth served by the Department of Services for Children, Youth and Their Families in the facilities it operates and the child's needs would be better served at a facility not operated by the Department of Services for Children, Youth and Their Families.~~

~~(e)~~(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.

~~(f)~~(e) A detention review with counsel shall be heard within 14 days of the initial detention hearing and if detention is continued, detention review hearings shall be held thereafter at intervals not to exceed 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 Family 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 Family Court may require an evaluation and report from the Department of Services for Children, Youth and Their Families.

~~(i)~~(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.

~~(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.

~~(k)~~(j) For purposes of subsections (a)-(c) of this section above, 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.

§ 1011 Transfer of cases from Superior Court to Family Court.

(a) In any case in which the Superior Court has jurisdiction over a child, the Attorney General may transfer the case to the Family Court for trial and disposition if, in the Attorney General’s opinion, the interests of justice would be best served.

(b) Upon application of the defendant in any case where the Superior Court has original jurisdiction over a child, the Court may transfer the case to the Family Court for trial and disposition if, in the opinion of the Court, the interests of justice would be best served by such transfer. Before ordering any such transfer, the Superior Court shall hold a hearing at which it may consider evidence as to the following factors and such other factors which, in the judgment of the Court are deemed relevant:

(1) The nature of the present offense and the extent and nature of the defendant’s prior record, if any;

(2) The nature of past treatment and rehabilitative efforts and the nature of the defendant’s response thereto, if any; and

(3) Whether the interests of society and the defendant would be best served by trial in the Family Court or in the Superior Court.

(c)(1) The hearing described in subsection (b) of this section shall be held by the Superior Court only upon timely application of the defendant. Such application shall be deemed timely if made within ~~30~~ 60 days of arraignment. ~~No enlargement of said time period shall be permitted. Failure of the defendant to make application within the 30-day period shall constitute a waiver of his or her rights under this section.~~ The Court may enlarge said time period for good cause.

(2) The hearing shall be held by the Superior Court as soon after such application is made as is practicable. Within 90 days of the arraignment, the Superior Court shall announce its decision as to whether the case is to be transferred to the Family Court; however, the Court's failure to do so shall not be considered as providing a basis for transferring the case to the Family Court, for dismissing the charges, or for providing any other form of relief.

(d) In the event the case is transferred by the Superior Court under this section, the case shall proceed as if it had been initially brought in the Family Court, and the Family Court shall have jurisdiction of the case, anything to the contrary in this chapter notwithstanding.

(e) Notwithstanding any provision of this section or title to the contrary, the Superior Court shall retain jurisdiction over any case involving a child where the child has previously been declared to be nonamenable to the rehabilitative processes of the Family Court pursuant to § 1010 of this title, or where the child has previously been the subject of a denied application for transfer pursuant to this section, or where the child has previously been convicted as an adult of any felony as set forth in Title 11 or 16.

Section 2. Amend § 4204A, of Title 11 of the Delaware Code by making deletions as shown by strikethrough, insertions as shown by underline and redesignating accordingly:

§ 4204A ~~Confinement of youth~~ Youth convicted in Superior Court.

~~(a) When a child who has reached that child's sixteenth birthday is sentenced in Superior Court such sentence shall be served with the Department of Correction.~~

~~(b)~~(a) When a child who has not reached that child's ~~sixteenth~~ eighteenth birthday is sentenced in Superior Court to a period of incarceration, such sentence shall initially be served in a juvenile facility upon imposition of the sentence and such child shall remain in the custody of or be transferred forthwith to the Division of Youth

Rehabilitative Services until the child's ~~sixteenth~~ eighteenth birthday, at which time such child shall be transferred forthwith to the Department of Correction to serve the remaining portion of said sentence.

(1) If a child has reached the child's sixteenth birthday has been sentenced in Superior Court, the Department of Services for Children, Youth and Their Families ("The Department") may file a motion in Superior Court to place the child in a secured detention facility other than a facility operated by the Department because the Department's secured detention facilities are at or beyond capacity or the child poses a security risk to self or other youth served by the Department in the facilities it operates. If a motion is filed, Superior Court shall conduct an evidentiary hearing unless the parties reach an agreement.

(2) After an evidentiary hearing, the Superior Court may order the child to be placed in a secured detention facility not operated by the Department if the Court finds by clear and convincing evidence that the Department's secured detention facilities are at or beyond capacity and the child's safety or health is at risk by remaining at a facility operated by the Department. If the Court makes such a finding, the Department shall thereafter provide the Court with a status on the capacity of the Department's secured detention facilities at least weekly, and no child may be held in a secured detention facility for adults for more than 30 days.

(3) After an evidentiary hearing, the Superior Court may order the child to be placed in a secured detention facility not operated by the Department if the Court finds by clear and convincing evidence that the child is a danger to self or other youth served by the Department in the facilities it operates and the child's needs would be better served at a facility not operated by the Department.

~~(c) When a child (youth) has been lawfully sentenced in Superior Court or has been lawfully transferred to the Department of Correction (DOC), DOC shall be exclusively responsible for all aspects of the child's (youth's) care, custody and control, including services associated with those responsibilities. The Department of Correction, and not the Department of Services for Children, Youth and Their Families shall have authority or jurisdiction of such child (youth).~~

~~(d)~~(b)(1) Notwithstanding any provision of this title to the contrary, any offender sentenced to an aggregate term of incarceration in excess of 20 years for any offense or offenses other than murder first degree that were committed prior to the offender's eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 20 years of the originally imposed Level V sentence.

(2) Notwithstanding any provision of this title to the contrary, any offender sentenced to a term of incarceration for murder first degree when said offense was committed prior to the offender's eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 30 years of the originally imposed Level V sentence.

(3) Notwithstanding any provision of this subsection or title to the contrary, any offender who has petitioned the Superior Court for sentence modification pursuant to this subsection shall not be eligible to submit a second or subsequent petition until at least 5 years have elapsed since the date on which the Court ruled upon the offender's most recent petition. Further, the Superior Court shall have the discretion at the time of each sentence modification hearing to prohibit a subsequent sentence modification petition for a period of time in excess of 5 years if the Superior Court finds there to be no reasonable likelihood that the interests of justice will require another hearing within 5 years.

(4) Notwithstanding the provisions of § 4205 or § 4217 of this title, any court rule or any other provision of law to the contrary, a Superior Court Judge upon consideration of a petition filed pursuant to this subsection (d), may modify, reduce or suspend such petitioner's sentence, including any minimum or mandatory sentence, or a portion thereof, in the discretion of the Court. Nothing in this section, however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section.

(5) The Superior Court shall have the authority to promulgate appropriate rules to regulate the filing and litigation of sentence modification petitions pursuant to this paragraph.

Section 3. This Act shall take effect on January 1, 2022.

Became law without the Governor’s signature June 13, 2021