

LAWS OF DELAWARE
VOLUME 85
CHAPTER 141
153rd GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 129

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO APPEALS OF COURT DECISIONS ON MOTIONS TO TRANSFER.

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

Section 1. Amend § 1010, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1010. Proceeding against child as an adult; amenability proceeding; referral to another court.

(a) A child, aged 16 or older, shall be proceeded against as an adult where:

(1) The acts alleged to have been committed constitute first- or second-degree murder, rape in the first degree or rape in the second degree, assault in the first degree, robbery in the first degree (where such offense involves the display of what appears to be a deadly weapon or involves the representation by word or conduct that the person was in possession or control of a deadly weapon or involves the infliction of serious physical injury upon any person who was not a participant in the crime and where the child has previously been adjudicated delinquent of 1 or more offenses which would constitute a felony were the child charged under the laws of this State) or kidnapping in the first degree, or any attempt to commit said crimes.

(2) The child is not amenable to the rehabilitative processes available to the Court.

(3) The child has previously been adjudicated delinquent of 1 or more offenses which would constitute a felony were the child charged as an adult under the laws of this State, and has reached that child's sixteenth birthday and the acts which form the basis of the current allegations constitute 1 or more of the following offenses: conspiracy first degree, rape in the third degree, arson first degree, burglary first degree, home invasion, § § 4752 and 4753 of Title 16 or any attempt to commit any of the offenses set forth in this paragraph.

(4) The General Assembly has heretofore or shall hereafter so provide.

(5) Notwithstanding any in this Code to the contrary, a child over the age of 12 and under the age of 16 may be proceeded against as an adult only when they are alleged to have committed murder in the first degree, murder in the second degree, rape in the first degree, or rape in the second degree.

(6) The child would be eligible to be tried as an adult under this section and the crime or delinquent act was committed within the boundaries of a military installation, so long as concurrent juvenile legislative jurisdiction is established under § 108 of Title 29.

(b) In all cases specified in subsection (a) of this section the Court shall, upon application, hold a preliminary hearing and, if the facts warrant, thereafter refer the child to the Superior Court or to any other court having jurisdiction over the offense for trial as an adult.

(c) (1) In determining whether a child is amenable to the rehabilitative processes of the Court, the Court shall take into consideration, among others, the following factors which are deemed to be nonexclusive:

- a. Whether, in view of the age and other personal characteristics of the child, the people of Delaware may best be protected and the child may best be made a useful member of society by some form of correctional treatment which the Family Court lacks power to assign; or
- b. Whether it is alleged death or serious personal injury was inflicted by the child upon anyone in the course of commission of the offense or in immediate flight therefrom; or
- c. Whether the child has been convicted of any prior criminal offense; or
- d. Whether the child has previously been subjected to any form of correctional treatment by the Family Court; or
- e. Whether it is alleged a dangerous instrument was used by the child; or
- f. Whether other participants in the same offense are being tried as adult offenders.

(2) The Court shall defer further proceedings in the Family Court and shall conduct a hearing to determine whether the child is amenable to the rehabilitative process of the Court:

- a. Upon motion of the Court, whenever a ~~child~~ child, aged 16 or older, is charged with delinquency; delinquency.
- b. Upon motion of the Attorney General, whenever a child has reached that child's ~~fourteenth~~ sixteenth birthday and is thereafter charged with being ~~delinquent; or delinquent.~~
- c. ~~Whenever a child has reached that child's fourteenth birthday, and is thereafter charged in accordance with § 1009(c)(5) of this title.~~

(3) Notwithstanding any provision of this section or title to the contrary, any child who has previously been declared to be nonamenable to the rehabilitative processes of the Court pursuant to this section, or who has previously been the subject of a denied application for transfer pursuant to § 1011 of this title, and who thereafter is charged with being delinquent shall be referred to the Superior Court or to any other court having jurisdiction over the offense for trial as an adult.

If it decides that the child is amenable, it may proceed to hear the case. If it decides that the child is not amenable, it shall refer the child to the Superior Court or to any other court having jurisdiction over the offense for trial as an adult.

(d) Notwithstanding any provisions of this title to the contrary, in any case in which the Superior Court has jurisdiction over a child, the Court shall retain jurisdiction for purposes of sentencing and all other postconviction proceedings if any judge or jury shall find the child guilty of a lesser included crime following a trial or plea of guilty, guilty or nolo contendere unless the prior Family Court order has been reversed by the Supreme Court under subsection (e) of this section.

(e) In the event the Family Court finds the child is not amenable, and the child subsequently enters a plea of guilty or nolo contendere in the Superior Court, the child shall have the right, within 30 days of their sentence, to

directly appeal the finding of non-amenable and transfer to the Supreme Court. No plea may be conditioned on a child waiving the child's right of appeal under this subsection.

~~(e)~~(f) Notwithstanding any provision of this section or title to the contrary, when a child has reached the child's ~~fifteenth~~ sixteenth birthday and is thereafter charged with being delinquent by having committed any offense which would constitute a felony were the child charged as an adult under the laws of this State, said offense occurring while the child was an escapee from any Level IV or V facility operated for or by the Department of Services for Children, Youth and Their Families, upon motion of the Attorney General, or upon its own motion, the Court shall defer further proceedings in the Family Court and shall conduct a hearing to determine whether the child should be referred to the Superior Court for trial as an adult. If, at the conclusion of the hearing, the Court finds that evidence demonstrates that there is a fair likelihood that the child may be convicted of the charge or charges, it shall refer the child to the Superior Court for trial as an adult. If, at the conclusion of the hearing, the Court determines that there is no fair likelihood of conviction, the case shall remain within the jurisdiction of the Family Court, subject to all other provisions of this section and title.

Section 2. Amend § 1011, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1011. Transfer of cases from Superior Court to Family Court. Court and appeals of denials of transfers.

(e) In the event the Superior Court denies the application to transfer the case to the Family Court and the child subsequently enters a plea of guilty or nolo contendere, the child shall have the right, within 30 days of the child's sentence, to directly appeal the denial of transfer to the Supreme Court. No plea may be conditioned on a child waiving the child's right of appeal under this subsection.

~~(e)~~(f) 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~~ 16, unless the prior Superior Court order has been reversed by the Supreme Court under this section.

Approved August 20, 2025