



SPONSOR: Rep. Heffernan & Sen. Townsend & Rep. Dorsey Walker  
& Rep. Lambert & Rep. Longhurst & Rep. Minor-Brown  
& Rep. S. Moore  
Reps. Baumbach, Bentz, Brady, Cooke, Griffith,  
K. Johnson, Lynn, Morrison; Sens. Ennis, S. McBride,  
Paradee, Pinkney, Sokola

HOUSE OF REPRESENTATIVES  
151st GENERAL ASSEMBLY

HOUSE BILL NO. 26

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:

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

3 § 1007 Disposition of child pending adjudication ~~in Family Court or trial in Superior Court~~; payment for care.

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

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

9 (2) The child is charged with an offense, which, if committed by an adult would constitute a felony, including  
10 offenses contained within this title, Title 11, and Chapter 47 of Title 16, the Uniform Controlled Substance Act; or

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

13 or

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

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

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

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

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

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

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

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

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

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

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

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

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

45 ~~(d)(1) If a child aged 16 or older has been ordered by a court to be held in secure detention pending trial in~~  
46 ~~Superior Court and is found to be nonamenable to Family Court pursuant to §§ 1010 and 1011 of this title, the Department~~  
47 ~~of Services for Children, Youth and Their Families may file a motion in Superior Court to place the child in a secure~~  
48 ~~detention facility other than a facility operated by the Department of Services for Children, Youth and Their Families~~

49 because the Department's secure detention facilities are at or beyond capacity or the child poses a security risk to self or  
50 other youth served by the Department in the facilities it operates. If a motion is filed, Superior Court shall conduct an  
51 evidentiary hearing unless the parties reach an agreement to a secure detention for the child.

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

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

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

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

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

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

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

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

81            ~~(i)~~(i) For purposes of subsections (a)-(c) of this section above, the term "the Court" shall mean both the Justice of  
82 the Peace Court and the Family Court. In all other subsections the term shall mean the Family Court only.

83            § 1011 Transfer of cases from Superior Court to Family Court.

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

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

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

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

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

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

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

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

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

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

115 § 4204A ~~Confinement of youth~~ Youth convicted in Superior Court.

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

118 (b)(a) When a child who has not reached that child's ~~sixteenth~~ eighteenth birthday is sentenced in Superior Court  
119 to a period of incarceration, such sentence shall initially be served in a juvenile facility upon imposition of the sentence and  
120 such child shall remain in the custody of or be transferred forthwith to the Division of Youth Rehabilitative Services until  
121 the child's ~~sixteenth~~ eighteenth birthday, at which time such child shall be transferred forthwith to the Department of  
122 Correction to serve the remaining portion of said sentence.

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

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

135 (3) After an evidentiary hearing, the Superior Court may order the child to be placed in a secured detention  
136 facility not operated by the Department if the Court finds by clear and convincing evidence that the child is a danger to

137 self or other youth served by the Department in the facilities it operates and the child's needs would be better served at  
138 a facility not operated by the Department.

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

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

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

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

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

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

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

#### SYNOPSIS

This Act requires the Department of Services for Children, Youth and Their Families ("DSCYF") to have exclusive jurisdiction over all aspects of a child's care, custody and control when a child is convicted of a Superior Court

offense. The Act establishes that from a date certain, no more juveniles would be transferred to the custody of the Department of Correction upon their adjudication and Level V sentence in Superior Court. The Act also provides that when a juvenile's case is transferred to Superior Court, a reverse amenability hearing must be filed within 60, not 30, days of arraignment and that the time period may be enlarged by the Court for good cause.