



SPONSOR: Rep. Chukwuocha & Sen. Townsend
Reps. Baumbach, Bolden, Cooke, Dorsey Walker,
Griffith, Heffernan, K. Johnson, Lambert, Longhurst,
Lynn, Morrison, Wilson-Anton; Sens. Brown,
S. McBride, Paradee, Sokola

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 79

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO DELINQUENCY AND CRIMINAL PROCEEDINGS INVOLVING CHILDREN.

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

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

3 § 1002. Delinquent child not criminal; prosecution limited.

4 (b) (1) Notwithstanding any other provision of law to the contrary, no child shall be arrested, detained, or
5 prosecuted for a crime or act of delinquency arising from conduct that occurred when the child was under the age of 12,
6 except for a child under the age of 12 accused of murder in the first degree, murder in the second degree, rape in the first
7 degree, rape in the second degree, or accused of using, displaying, or discharging a firearm during the commission of a
8 Title 11 or a Title 31 violent felony as set forth in § 4201 (c) of Title 11.

9 Section 2. Amend § 1007, Title 10 of the Delaware Code by making deletions as shown by strike through and
10 insertions as shown by underline as follows:

11 § 1007. Disposition of child pending adjudication; payment for care.

12 (l) Except as allowed by § 1002 of this title, no child under the age of 12 may be placed in secure detention.

13 Section 3. Amend § 1010, Title 10 of the Delaware Code by making deletions as shown by strike through and
14 insertions as shown by underline as follows:

15 § 1010. Proceeding against child as an adult; amenability proceeding; referral to another court.

16 (c) (1) In determining whether a ~~child~~ child, aged 16 or older, is amenable to the rehabilitative processes of the
17 Court, the Court shall take into consideration, among others, the following factors which are deemed to be nonexclusive:

18 a. Whether, in view of the age and other personal characteristics of the child, the people of Delaware may
19 best be protected and the child may best be made a useful member of society by some form of correctional
20 treatment which the Family Court lacks power to assign; or

21 b. Whether it is alleged death or serious personal injury was inflicted by the child upon anyone in the
22 course of commission of the offense or in immediate flight therefrom; or

23 c. Whether the child has been convicted of any prior criminal offense; or

24 d. Whether the child has previously been subjected to any form of correctional treatment by the Family
25 Court; or

26 e. Whether it is alleged a dangerous instrument was used by the child; or

27 f. Whether other participants in the same offense are being tried as adult offenders.

28 (2) The Court shall defer further proceedings in the Family Court and shall conduct a hearing to determine
29 whether the ~~child~~ child, aged 16 or older, is amenable to the rehabilitative process of the Court:

30 a. Upon motion of the Court, whenever a child is charged with delinquency;

31 b. Upon motion of the Attorney General, whenever a child has reached his or her ~~fourteenth~~ sixteenth birthday
32 and is thereafter charged with being delinquent; or

33 c. Whenever a child has reached his or her ~~fourteenth~~ sixteenth birthday, and is thereafter charged in
34 accordance with § 1009(c)(5) of this title.

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

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

43 SYNOPSIS

In 2022, the General Assembly passed HB115, which prohibits the criminal prosecution of children under the age of 12 and limits proceeding against a minor as an adult to a narrow set of serious crimes alleged to have been committed by children 16 or older. This Act clarifies that children under 12 may not be arrested or detained pending adjudication, except where the alleged crime is one of the enumerated exceptions, and aligns other language in Title 10 with the limitations on transfer of children from Family to Superior Court.