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HOUSE OF REPRESENTATIVES  
150th GENERAL ASSEMBLY

HOUSE BILL NO. 76

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

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

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

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 ~~(j)~~(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           ~~(k)(j)~~ 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           Section 2. Amend § 4204A, of Title 11 of the Delaware Code by making deletions as shown by strikethrough,  
84 insertions as shown by underline and redesignate as follows:

85           § 4204A ~~Confinement of youth~~ Youth convicted in Superior Court.

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

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

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

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

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

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

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

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

118 Section 3. This Act shall take effect on January 1, 2021.

#### SYNOPSIS

This Bill 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.