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Sens. Blevins, Bushweller, Connor & Simpson,  
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DELAWARE STATE SENATE  
145th GENERAL ASSEMBLY

SENATE BILL NO. 264

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO DISPOSITION OF CHILDREN  
PENDING ADJUDICATION AND PAYMENT FOR CARE.

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

1           Section 1. Amend Section 1007 of Title 10 of the Delaware Code by deleting that subsection in its entirety and  
2     substituting in lieu thereof, the following:

3           “§1007. Disposition of child pending adjudication; payment for care.

4           (a) Pending adjudication no child alleged to be delinquent may be placed in secure detention operated by  
5           the Department of Services for Children, Youth and Their Families unless the Court determines that  
6           no means less restrictive of the child’s liberty gives reasonable assurance that the child will attend the  
7           adjudicatory hearing 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  
10                  felony, including offences contained within this Title, Title 11, and Chapter 47 of Title 16, the  
11                  Uniform Controlled Substance Act; or

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

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

19                  (5) The child is alleged to be intimidating one or more witnesses or otherwise unlawfully  
20                  interfering with the administration of justice; or

(6) The child has escaped from a secure or non-secure 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 non-secure 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 charges 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 non-secure 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 non-secure 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 non-secure detention facility, the Court shall further state in writing the basis for overriding that presumption.

(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.

(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.

(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 Court shall within 72 hours fix a date for the adjudicatory hearing unless it grants a continuance of the hearing for good cause shown.

(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 Court may require an evaluation and report from the Department of Services for Children, Youth and Their Families.

(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.

(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.

(j) For purposes of subsections (a) – (c) 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.”

#### SYNOPSIS

For nearly 8 years Delaware has been involved in a collaborative effort among juvenile justice agencies to, among other goals, reduce the unwarranted detention of juveniles and provide meaningful alternatives to such detention. While the Juvenile Justice Collaborative has made significant strides in that effort, experience has shown that the current provisions of 10 Del. C. §1007 do not adequately meet the circumstances faced by those courts dealing with juvenile detention decisions. Situations such as violent misdemeanors-especially against parents, guardians and non-secure facility staff; escape from non-secure detention; intimidation of witnesses; and breaches of conditional release involving additional alleged delinquent acts have proven difficult to handle where secure detention is not a possible option.

While this Bill would expand the list of possible acts for which a child could be detained in a secure facility, it provides significant safeguards against abuse of detention on these grounds. This Bill also requires that all other less restrictive options must be examined and considered before imposing secured detention, as is required by current law. The Bill further requires judges to put in writing any decision to use secure detention that overrides a presumptive analysis in a Risk Assessment Instrument calling for release or non-secure detention. Decisions by a Justice of the Peace to securely detain a juvenile are reviewed the next day Family Court is in session, an additional review must occur 14 days after detention and further review hearings must be held every 30 days thereafter.

This Bill is the product of the joint effort of the agencies of the Juvenile Justice Collaborative.

Author: Senator McDowell