

Reverse Amenity Hearings

Relevant Statutes and Law

10 Del. C. Section 1010

- 4 circumstances for juveniles to be prosecuted as adults
 - Charged with certain offenses
 - Court finding or stipulation that juvenile is “Not-Amenable” to rehabilitative processes of Family Court
 - Prior felony adjudication + 16 or older + charged with:

Conspiracy 1	Rape 3	Arson 1
Burglary 1	Home Invasion	16 Del. C. § 4752, 4753
 - 15 or older + new felony charge committed while on escape from Level IV or V facility

10 Del. C. Section 1010 Amenability

- Court considers, among other factors, at hearing:
 - *Whether, in view of the age & 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 Family Court lacks power to assign?*
 - *Did child inflict death or serious personal injury upon anyone during commission of crime or immediate flight therefrom?*
 - *Whether child has been convicted of any prior criminal offense?*
 - *Whether child has been previously subjected to any form of correctional treatment by Family Court*
 - *Was dangerous instrument used by juvenile?*
 - *Whether other participants in the same offense are being tried as adults?*

10 Del. C. Section 1011

- **Reverse Amenability**
 - If juvenile charged with offense that has original jurisdiction in Superior Court, case may be returned to Family Court for prosecution based on stipulation of parties or Court finding following hearing
 - Court must find that the “interests of justice would be best served” by transfer to Family Court
- **Three Exceptions to Reverse Amenability**
 - Possession of Deadly Weapon During Commission of a Felony + juvenile over 16 years old
 - Possession of Firearm During Commission of a Felony + juvenile over 15 years old
 - Riot + juvenile over 16 years old

10 Del. C. Section 1011

- **Reverse Amenability**
 - At hearing, Court considers, among other factors:
 - Nature of pending offense and extent and nature of prior record
 - Nature of past treatment and rehabilitative efforts and juvenile’s response thereto
 - Whether the interests of society and the juvenile would be best served by Family Court or Superior Court?

10 Del. C. § 1011 – Standard of Proof

- “[I]n the context of a reverse amenability hearing, the issue is whether the evidence in its totality (prosecution and defense) demonstrates, prima facie, *that the State has a substantial likelihood of convicting the accused juvenile as charged.*

Marine, 24 A.2d 1181 (1993)

10 Del. C. § 1011 – Standard of Proof

“[S]ection 1011 require[s] the Superior Court, in a proceeding similar to a "proof positive" hearing at which a defendant's right to bail is determined when charged with a capital offense, to consider whether the State can establish a *prima facie* case against the defendant. A *prima facie* case is established if the evidence demonstrates that there is a fair likelihood that the defendant may be convicted on the charge.

-Hughes v. State, 653 A.2d 241 (1994)(citing *Marine I*)

One Exception.....State v. Anderson

“We thus perceive no need for an independent judicial evaluation of the charge to determine if these defendants have been subject to overcharging. While the reverse amenability process continues to have utility in guarding against prosecutorial abuse and disparate treatment of juveniles, it is not required to sustain the jurisdiction of the Superior Court for individuals over the age of 16 years charged with violation of the felony/firearm statute.”

Motion for Reverse Amenability

- **10 Del. C. § 1011(c)(1)**
 - Must be filed within 30 days of arraignment
 - No enlargement of time period
 - Failure to make timely application == waiver
- **Superior Court Rule 19(b)**
 - May be filed within 10 days of arraignment

Preparing Your Case

Department of Services for Children, Youth & Families - DSCYF

- **Three Divisions**
 - YRS - juvenile probation
 - DFS - child welfare/family services
 - PBH - mental health/substance abuse services
- **Juvenile Sentencing**
 - Levels I – V
 - Level V – Ferris School
 - Level IV – Out of state placements, Mowlds, Grace, Snowden
 - Level I – III – community supervision
 - RTC – mental health placement

PREPARING MITIGATION

Records

- Types of Records
 - School Records
 - Counseling Records
 - Mental Health
 - Substance Abuse
 - Medical Records
 - YRS/PBH/DFS Records
 - Prior Family Court Orders (Civil/Delinquency/Criminal)
 - Any prior psychological/psychiatric/CAS evaluations
 - Records of other family members

Obtaining Records

- Client and parent/guardian must sign release of information
- Signed release sent to all agencies/offices
- For DSCYF records:
 - Send cover letter and specify Division
 - For DFS records, specify treatment notes, FACTS records, investigations, and foster care information
 - DFS records will have redactions
 - Send release to Sandra Harris

Witnesses

- State Witnesses
 - Police/Arresting Officer
 - Probation Officer
- Defense Witnesses
 - Depend on case themes/arguments
 - PFE/Mitigation Specialist
 - Expert
 - Interview family/teachers/friends/mentors that could be sources of mitigation
 - Records may unearth other mitigation witnesses

Experts

- Expert must:
 - Understand juveniles and juvenile systems
 - Educate judge
 - Write great reports
 - Testify well

- Must consider these issues when hiring and working with expert

PFE/Mitigation Specialist

- Conduct Client Interview(s)
- Gather social/psychological/medical/educational/treatment history
- Conduct Family, Professional, and Collateral Interviews
- Request Records
- Possess Knowledge of DOC systems/programs
- Possess Knowledge of Delinquency, Dependency, and Mental Health Systems
- Review and Summarize CAS, and psychological evaluations/reports

PFE/Mitigation Specialist

- Review and Summarize Records
- Draft Reports for Reverse Amenability Hearing
- Review for Competency Issues
- Assist with Review/Retention of Expert Witnesses
- Testify at Reverse Amenability Hearing

Arguments for Reverse Amenability Hearing

- State has not met burden of proof – NO PRIMA FACIE CASE
- Level of Culpability
- Psycho-Social History
- Trauma
- Mental Health/Substance Abuse
- Lack of prior rehabilitative or inadequate services in Family Court
- System Failures
- Age
- Family Court has appropriate services to rehabilitate and protect society

Arguments for Reverse Amenability Hearing

- Facts/Circumstances of offense where appropriate
- Adult Corrections does not have services or facilities necessary for juvenile
- Lack of Criminal Record or Mitigation of Criminal Record
- SENTAC factors (p. 137)
- Studies show that incarceration does not rehabilitate or cause decrease in recidivism
- Adolescent Brain Development -- Reasoning from *Roper, Graham, JDB and Miller*

Case Resolution

- Return case to Family Court for resolution
- Split Plea Resolution
 - Enter plea agreements in both Family Court & Superior Court

Reverse Amenability Checklist

1. Case Assigned
2. Check arraignment date for filing of motion
 - 30 days from arraignment/10 days from arraignment
3. File Motion in Superior Court
 - Case will be assigned Judge and hearing scheduled
4. Consult/Hire PFE/Mitigation Specialist
 - Determine records to be obtained
 - Send signed release of information to necessary agencies/offices
 - Determine expert to be hired
 - Determine needed witness interviews
5. Hire Expert
 - Hold initial conference with expert to discuss case/scope and type of evaluation/reverse amenability hearing
 - Provide statutes and any other resources expert made need to review
6. Obtain and review records
 - Determine themes/arguments from records
 - Determine records to send to expert
 - Discovery obligations for records to expert

7. Work with Expert
 - Set up call(s) for preliminary opinion of expert prior to drafting any report
 - Once receive draft report, review with PFE and set up calls with expert to review draft report
 - Discovery obligations
8. Interview potential mitigation witnesses
 - Determine witnesses needed for hearing
9. Review any reports submitted by State
10. Develop themes/arguments related to statute/evidence and determine defense evidence to be presented at hearing

Potential Experts

Dr. Robin Timme

Dr. Susan Rushing

Dr. Abraham Mensch

Dr. Laura Cooney-Koss