



STATE OF DELAWARE  
THE COURTS OF THE JUSTICES OF THE PEACE  
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NORMAN A. BARRON  
CHIEF MAGISTRATE

POLICY DIRECTIVE 81-051

TO: ALL JUSTICES OF THE PEACE  
STATE OF DELAWARE

FROM: NORMAN A. BARRON  
CHIEF MAGISTRATE

DATE: DECEMBER 8, 1981

RE: COMMENCEMENT OF CHILD DELINQUENCY ACTIONS

There has been a rather pervasive feeling among the Court personnel of the Justice of the Peace Courts that, during hours in which the Family Court is open, the issuance of warrants alleging delinquency and the initial appearance for the purpose of the setting of bond regarding alleged delinquents arrested on said warrants must be had in the Family Court. This view, while it makes good sense,<sup>1</sup> is contrary, however, to both Delaware statutory law and the Rules of the Family Court of the State of Delaware.

Section 934 of Title 10 of the Delaware Code, as amended, states as follows:

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<sup>1</sup>Because the action must eventually be heard, tried and finally determined in the Family Court, it would appear to be reasonable that such actions be commenced in that Court when said Court is in session. The transfer of Court records would, therefore, be obviated, and the time from commencement to disposition would, in general, be decreased.

"§934. Other courts; issuance of warrants;  
powers and duties.

(a) Any judge of any state or municipal court or any official designated for such purpose may issue a warrant directing a peace officer to take into custody a child alleged to be delinquent.

(b) Any judge of any court of this State, including justices of the peace and local alderman, before whom a child is brought by a peace officer:

(1) May release the child on his own recognizance, or on that of a person having his care, to appear before the court<sup>2</sup> when notified to do so;

(2) May require the child to furnish reasonable cash or property bail or other surety for his appearance before the court<sup>3</sup> when notified to do so;

(3) May order the child detained in a facility designated by the Department of Health and Social Services provided that the child, after having been given ample opportunity, shall fail to furnish the required bail; and provided that detention appears necessary for the child's or the public's protection; and provided that such detention shall continue only until the next session of the Family Court;

(4) Shall notify the person having the case of the child, if his address be known, of the child's having been taken into custody, the reason therefor, and the disposition of the matter;

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<sup>2</sup>The word "court" where found in §934(a) (1) and (2) presumably means the Family Court, notwithstanding 10 Del.C., §901(5) which reads as follows:

"(5) 'Court' means the Family Court of the State of Delaware, and 'court' refers to other courts of the State."

<sup>3</sup>See footnote 2, ibid.

(5) Shall file with this Court forth-  
with a petition in accordance with §932<sup>4</sup> on forms  
furnished by this Court."<sup>5</sup>

Note that the applicability of section 934 is not contingent upon the Family Court being adjourned: the section applies whether or not the Family Court is in session. The Rules of the Family Court further support the position taken herein. Rule 20(c) of the Rules of the Family Court states as follows:

"(c) Issuance of Warrant or Complaint.  
Any judge of a state or a municipal court or any official designated for such purpose may issue a warrant in the manner provided in Rule 40<sup>6</sup> upon a complaint directing a police officer to take into custody a person alleged to have violated any law, order or act within the jurisdiction of this Court."

As is seen from the foregoing, it is permissible for a complainant to respond to a Justice of the Peace Court in order to swear out a warrant charging a child with delinquency and to have return made on that warrant to the Justice of the Peace Court, even when the Family Court, which also has jurisdiction to issue a warrant charging a child with delinquency, is in session. By this Policy Directive,

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<sup>4</sup>Ten Del.C., §932 states as follows:

"§932. Commencement.

Any person having knowledge of a child within the State who appears to be neglected, dependent, or delinquent, may file with the Clerk of the Court a petition in writing setting forth the facts verified by affidavit."

<sup>5</sup>See also Rule 50(c) of the Family Court Rules.

<sup>6</sup>Rule 40 of the Family Court Rules sets forth the procedures regarding the issuance of warrants and summonses, their form and the execution and return thereof.

I therefore request that the Justice of the Peace Courts which handle criminal matters accept for appropriate action requests for the authorization of warrants and returns made thereunder, irrespective of whether or not the Family Court is in session.

NAB:pn

cc: The Honorable Daniel L. Herrmann  
The Honorable Robert D. Thompson  
John R. Fisher  
Arthur R. Carello  
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