

# CHAPTER 9. THE FAMILY COURT OF THE STATE OF DELAWARE

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***Subchapter I. Organization, Administration and Operation***

**§ 901. Definitions.**

For the purpose of this chapter, unless the context indicates differently:

- (1) "Adequate care" means a type and degree of personalized attention that will tend to advance a child's physical, mental, moral, emotional, and general well-being.
- (2) "Adult" means a person who has reached his 18th birthday.
- (3) "Child" means a person who has not reached his 18th birthday.
- (4) [Deleted.]
- (5) "Court" means the Family Court of the State of Delaware, and "court" refers to other courts of the State.
- (6) "Custodian" means any person who is charged by law with or who has assumed responsibility for a child's care.
- (7) "Delinquent child" means a child who commits an act which if committed by an adult would constitute a crime.
- (8) "Dependent child" means a child whose physical, mental or emotional health and well-being is threatened or impaired because of inadequate care and protection by the child's custodian, who is unable to provide adequate care for the child, whether or not caused by the child's behavior; provided, however, that for the purposes of this chapter, dependent child may include a child who has been placed in a nonrelated home on a permanent basis without the consent and approval of the Division of Child Protective Services or any agency licensed thereby to place children in a nonrelated home; or who has been placed with a licensed agency which certifies it cannot complete a suitable adoption plan.
- (9) "Family" means husband and wife; a man and woman cohabiting in a home in which there is a child of either or both; custodian and child; or any group of persons related by blood or marriage who are residing in 1 home under 1 head or where 1 is related to the other by any of the following degrees of relationship, both parties being residents of this State:
  - a. Mother;
  - b. Father;
  - c. Mother-in-law;
  - d. Father-in-law;
  - e. Brother;
  - f. Sister;
  - g. Brother-in-law;
  - h. Sister-in-law;
  - i. Son;
  - j. Daughter;
  - k. Son-in-law;
  - l. Daughter-in-law;
  - m. Grandfather;
  - n. Grandmother;
  - o. Grandson;

- p. Granddaughter;
- q. Stepfather;
- r. Stepmother.

The relationships referred to in this definition include blood relationships without regard to legitimacy and relationships by adoption.

- (10) "Law" means the common law and statutes of this State, the laws of any subdivision thereof, and regulations promulgated by a governmental agency having the force and effect of law.
- (11) "Neglected child" means a child whose physical, mental or emotional health and well-being is threatened or impaired because of inadequate care and protection by the child's custodian, who has the ability and financial means to provide for the care but does not or will not provide adequate care; or a child who has been abused or neglected as defined by § 902 of Title 16. No child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall for that reason alone be considered a neglected child for purposes of this chapter.
- (12) "Nonamenable child" means any child who is not amenable to the rehabilitative processes of the Family Court.
- (13) "Relative" means any person within the immediate family, and any grandparent, uncle, aunt or first cousin.
- (14) "Truancy" or "truant" shall refer to a pupil enrolled in grades 1 through 12 inclusive who has been absent from school without valid excuse, as defined in rules and regulations of the State Board of Education, for more than 3 days or the equivalent thereof during a given school year.

(10 Del. C. 1953, § 901; 58 Del. Laws, c. 114, § 1; 60 Del. Laws, c. 449, § 1; 61 Del. Laws, c. 334, § 1; 63 Del. Laws, c. 73, § 1; 63 Del. Laws, c. 290, § 7; 64 Del. Laws, c. 108, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 176, § 2.)

**§ 902. Purpose; construction.**

- (a) In the firm belief that compliance with the law by the individual and preservation of the family as a unit are fundamental to the maintenance of a stable, democratic society, the General Assembly intends by enactment of this chapter that 1 court shall have original statewide civil and criminal jurisdiction over family and child matters and offenses as set forth herein. The court shall endeavor to provide for each person coming under its jurisdiction such control, care, and treatment as will best serve the interests of the public, the family, and the offender, to the end that the home will, if possible, remain unbroken and the family members will recognize and discharge their legal and moral responsibilities to the public and to one another.
- (b) This chapter shall be liberally construed that these purposes may be realized.

(10 Del. C. 1953, § 902; 58 Del. Laws, c. 114, § 1.)

**§ 903. Court of record; name; subtitles.**

This Court shall be a court of record and shall be known as "the Family Court of the State of Delaware." It may be briefly cited as "the Family Court." Its offices, forms, and processes in New Castle County shall be subtitled "for New Castle County," in Kent County "for Kent County," and in Sussex County "for Sussex County."

(10 Del. C. 1953, § 903; 58 Del. Laws, c. 114, § 1.)

**§ 904. State to provide Court facilities.**

The State shall provide for the Court at the county seat in each county and in such other places as may be designated by the Chief Judge, adequate quarters properly furnished, consistent with the dignity of and suitable for the purposes of the Court.

(10 Del. C. 1953, § 904; 58 Del. Laws, c. 114, § 1.)

**§ 905. Budget; payment of salaries and expenses.**

The Court shall operate financially in accordance with its budget as enacted by the General Assembly and

within this limit the Secretary of Finance shall pay the Court's salaries and expenses upon the warrant of the Administrator or an assistant administrator countersigned by the Chief Judge, if available, or, if not, by any Judge.

(10 Del. C. 1953, § 905; 58 Del. Laws, c. 114, § 1.)

**§ 906. Judges; selection; designation; qualifications; terms; vacancies; salaries.**

- (a) The Judges of the Family Court of the State in and for New Castle County and of the Family Court for Kent and Sussex Counties shall continue to serve as Judges of this Court for the remainders of their present terms. The enactment of this chapter ratifies their respective appointments and confirmations as Judges of this Court with statewide jurisdiction. All further appointments of Judges of this Court from time to time hereafter shall be made by the Governor, by and with the consent of a majority of all the members elected to the Senate. Appointments, including appointments to fill vacancies which may occur during a term, shall be for a term of 12 years.
- (b) The Court shall be composed of 13 Judges of equal judicial authority. One Judge shall be the Chief Judge and the remainder shall be Associate Judges. No more than a majority of 1 Judge shall be members of the same political party.
- (c) Appointees shall be duly admitted to the practice of law before the Supreme Court of this State for a period not less than 5 years prior to their appointment and shall be selected because of their knowledge of the law and interest in and understanding of family and child problems. They shall not practice law during their tenure and may be reappointed.
- (d) One of the Judges shall be designated by the Governor as Chief Judge to hold office during the term of his appointment.
- (e) All of the Judges shall be residents of the State for a period of 5 years immediately prior to their appointment. The Chief Judge may reside in any county of the State. After appointment, 8 of the Associate Judges shall reside in New Castle County, 2 Associate Judges shall reside in Kent County and 2 Associate Judges shall reside in Sussex County.
- (f) Effective July 1, 1978, the Chief Judge of the Family Court shall receive annually as compensation for services \$45,500, payable by the State, and each Associate Family Court Judge shall receive annually as compensation for services \$45,000, payable by the State.

(10 Del. C. 1953, § 906; 58 Del. Laws, c. 114, § 1; 59 Del. Laws, c. 472, § 4; 60 Del. Laws, c. 47, §§ 1, 2; 61 Del. Laws, c. 541, §§ 1, 2; 62 Del. Laws, c. 12, § 4; 64 Del. Laws, c. 217, §§ 1, 2; 70 Del. Laws, c. 186, § 1.)

**§ 907. Administrative powers and duties of the Court.**

The Court shall hold meetings when and where called by the Chief Judge or, in his absence, by the senior Associate Judge on duty, but in no event less often than semiannually. By vote of a majority of its members it shall:

- (1) Adopt a seal.
- (2) Establish a uniform schedule of deposits, costs, and service fees.
- (3) Provide for the safeguarding of the Court's records.
- (4) Require employee bonds as shall seem proper.
- (5) Make and publish Court rules governing policies, processes, practices, and procedures, which shall be uniform throughout the State.
- (6) Publish annual reports of the Court's activities, findings, and recommendations.

(10 Del. C. 1953, § 907; 58 Del. Laws, c. 114, § 1.)

**§ 908. Chief Judge; powers; duties.**

The Chief Judge, or in the Chief Judge's absence the senior Associate Judge on duty, shall:

- (1) Be the Chief Executive Officer of the Court and preside at meetings thereof.
- (2) Prepare and present to the Budget Director and the General Assembly the estimated budget of the Court for the ensuing fiscal year.
- (3) Assign Judges to the several Courts.
- (4) Approve the travel and other expenses incurred by the Judges and all employees in the performance of their duties.

- (5) Establish, when necessary, a Judge's vacation schedule.
- (6) The Chief Judge shall create a Judicial Council for a term of 3 years which shall be composed of the Chief Judge and 2 Associate Judges, both of whom shall be appointed by the Chief Judge, and one of whom shall reside in Kent or Sussex County. No more than a bare majority of the Judges on the Judicial Council shall be affiliated with any one major political party. The Judicial Council shall determine the organization and structure of the Court; establish the procedure for appointment and dismissal; the classification, titles, duties, and salaries of the Administrator, the Director of Treatment Services, the respective Chief Supervisors for the Court in each of the 3 counties, and the personal secretaries of the Administrator and all Judges. All of the aforementioned individuals shall be specifically exempt from the state merit system. All other employees of the Court shall be included within the state merit system in accordance with the provisions of Chapter 59 of Title 29 of the Delaware Code.
- (7) Establish a procedure for the assignment of cases to the Judges.
- (8) Provide for payment of the Court's expenses.
- (9) Appoint and remove at the judge's pleasure peace officers who shall be selected from among the employees of the Court and who, while so appointed, shall possess all powers incident to such office including, without limitation, the power to make arrests in criminal matters, all such powers being exercisable anywhere in the county of their employment.

(10 Del. C. 1953, § 908; 58 Del. Laws, c. 114, § 1; 63 Del. Laws, c. 75; 70 Del. Laws, c. 186, § 1.)

**§ 909. Administrator; qualifications; duties.**

There shall be an Administrator who shall possess an earned bachelor's degree and who shall have 3 years of supervisory experience in either governmental or private business administration or its equivalent. Under the Chief Judge's supervision, he shall:

- (1) Be secretary to the Court in matters that pertain to the business administration of the Court.
- (2) With the Director of Treatment Services, integrate into one harmonious whole the judicial, social, legal, clerical and administrative services of the Court.
- (3) Submit to the Court a proposed budget for the ensuing fiscal year showing the total number of employees needed, classifications of employees and proposed salaries, and other anticipated expenses of the Court.
- (4) Prepare the vouchers for salaries and expenses of the Court, which shall be signed by him and countersigned by the Chief Judge, or in the Chief Judge's absence, by any Judge, and forward them to the Secretary of Finance for payment.
- (5) Prepare and keep current an inventory of the Court's capital assets.
- (6) Regularly and frequently visit the Court in each county.
- (7) Perform all duties prescribed by the Chief Judge.

(10 Del. C. 1953, § 909; 58 Del. Laws, c. 114, § 1.)

**§ 910. Director of Treatment Services; qualification; duties.**

There shall be a Director of Treatment Services who shall possess an earned postgraduate degree in either criminology, and/or corrections, sociology, psychology, social work, or social sciences; and shall have had experience in administration and counseling in a judicial or correctional agency. Under the Chief Judge's supervision, the Director shall:

- (1) Be secretary to the Court in matters that pertain to the Court's counseling services;
- (2) Direct the Court's counseling services and personnel;
- (3) With the Administrator, integrate into one harmonious whole the judicial, social, legal, clerical and administrative services of the Court;
- (4) Direct the clerical and stenographic personnel who are assigned to work with the counseling personnel;
- (5) Develop and maintain a training program for counseling of personnel;
- (6) Perform all duties prescribed by the Chief Judge.

(10 Del. C. 1953, § 910; 58 Del. Laws, c. 114, § 1; 66 Del. Laws, c. 233, § 4.)

**§ 911. Supervisors, counselors; qualifications; duties.**

There shall be a Chief Supervisor for the Court in each county who shall possess an earned graduate degree in either criminology, and/or corrections, sociology, psychology or social work, and such other supervisors as shall have an earned graduate degree in social work, and such counselors as deemed necessary who shall possess earned bachelors degrees. Other counselors may be appointed by the Chief Judge who shall possess such qualifications as the Chief Judge shall prescribe. They shall perform such duties as may be assigned to them.

(10 Del. C. 1953, § 911; 58 Del. Laws, c. 114, § 1; 64 Del. Laws, c. 108, § 19.)

**§ 912. Clerks of Court; appointment; terms of office; bonds; duties.**

- (a) There shall be a Clerk of Court appointed for the Court in each county and such Deputy Clerks as the Chief Judge deems necessary.
- (b) The Clerks and Deputy Clerks of the Court shall give bond to the State in the amount of \$200,000 for the Clerk and Deputy Clerks of New Castle County and in the amount of \$100,000 for the Clerk and Deputy Clerks of Kent and Sussex Counties to execute faithfully their duties while in office. The State shall bear the cost of the bond premiums required hereunder.
- (c) The Clerk, or, in the Clerk's absence, the Deputy Clerk, shall have care of the legal records of the Court which the Clerk or Deputy Clerk serves and shall receive all fees, fines, costs, restitution and cash bail arising out of any proceeding in said Court. The Clerk or Deputy Clerk shall administer all necessary oaths, enter the judgments, issue commitments and executions to enforce the same and make up and keep the records of the Court in all cases therein. The Clerk or Deputy Clerk shall issue all process under his hand and the seal of the Court, and shall attest the same in the names of the Judges, or any of them, signing the same by the title of office, and shall tax costs. The Clerk or Deputy Clerk may take bail from persons arrested whether or not the Court is in session, subject to revision by a Judge, and shall do all other acts which the Court shall prescribe.

(10 Del. C. 1953, § 912; 58 Del. Laws, c. 114, § 1; 63 Del. Laws, c. 141, § 4; 70 Del. Laws, c. 186, § 1.)

**§ 913. Masters; appointment; duties; review.**

- (a) The Chief Judge, after consultation with other Judges on the Court, may appoint, commission, set salaries for and discharge Masters in the Court. A Master, at the time of appointment and thereafter, shall be a suitable person who has been a resident of the State for at least 5 years immediately preceding the appointment. The salaries so set shall be a part of the annual budget of the Court and shall reflect the experience and time commitment of the person appointed to such office.
- (b) The Court as to all cases in a class or type of proceeding designated in the Court Rules, or the Chief Judge as to any individual case or proceeding, may direct that a hearing be held in the first instance by a Judge or Master; except, however, a Master shall not conduct adult bail and juvenile detention hearings or any hearings involving charges against juveniles which are classified as felonies when committed by an adult. The Department of Justice with respect to all other delinquency and adult misdemeanor charges, shall have the discretion, unless it has entered an appearance, whether to participate in delinquency and adult misdemeanor proceedings assigned by the Court to a Master, or, within a reasonable time, to transfer any delinquency or adult misdemeanor matter for consideration by a Judge.
- (c) Masters shall regulate all of the proceedings in every hearing before them. All proceedings before Masters shall be recorded. Masters shall have full authority to order the issuance of legal process to compel the attendance of necessary parties and witnesses; to administer oaths in the discharge of their official duties; to examine the parties and witnesses; to pass upon all questions of competency of witnesses and admissibility of evidence; to require the production of all books, papers, writings, vouchers and other documents applicable thereto; to grant adjournments and extensions of time; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before them, which they may deem necessary and proper, including appropriate sanctions except

incarceration, subject at all times to the revision and control of the Court.

- (d)
  - (1) At the end of any hearing or within a reasonable time thereafter, a Master shall enter the order in writing which shall announce the result and provide an explanation therefor. Every written order by a Master shall inform all parties that, as provided in this section, there is an absolute right to a review de novo by a Judge and that in the absence of a request within 15 days for de novo review, the written order of a Master shall become enforceable by any legal means. Any party may obtain a review de novo of any Master's written order by a Judge by filing with the Court a written request therefor within 15 days from the date of a Master's written order; except, however, there shall be no review by a Judge in contravention of any state or federal constitutional prohibition against double jeopardy.
  - (2) The time period for requesting a review de novo shall not begin to run until the Master has entered the order in writing and Family Court has issued said order to the parties and attorneys. If either party has requested a new trial, reargument, or an alteration or amendment of judgment, the time period for requesting a review de novo shall not begin to run until the Master has ruled on said request in writing and Family Court has issued that ruling to the parties and attorneys. If any order or ruling is sent by mail, an additional 3 days to request a review de novo shall be allowed.
- (e) Upon request for review de novo, the case shall be placed upon the calendar of the Court and treated for all purposes as if it had not been referred to a Master. Upon review de novo, unless otherwise stipulated by the parties the Court shall not admit evidence that there has been a proceeding before a Master, the nature of the Master's written order, nor any other matter concerning the conduct or outcome of the Master's proceeding; except, however, recorded sworn testimony and other evidence admitted at a Master's hearing may be used as the basis for an interim order of the Court, and generally in the same manner as sworn testimony given at a deposition in the case.
- (f) A request for a review de novo shall be the sole remedy of any party with respect to a Master's written order, except for posthearing motions before the Master. A Master's written order shall become an enforceable judgment of the Court only after the time for requesting a review de novo has expired without any such request. A judgment derived from a Master's written order shall have the same force and effect as any other judgment of the Court, except that it shall not be subject to appeal.
- (g) The Court may adopt appropriate and specific rules to effectuate the intent and purpose of these statutory provisions relating to Masters.

(10 Del. C. 1953, § 913; 58 Del. Laws, c. 114, § 1; 67 Del. Laws, c. 158, § 1; 68 Del. Laws, c. 194, §§ 1, 2.)

#### **§ 914. Designation of Foster Care Review Board.**

Pursuant to any requirement of federal law, the Court may designate the Foster Care Review Board to serve as the arm of the Court for the purpose of monitoring the progress of children in foster care.

(62 Del. Laws, c. 170, § 2.)

#### **§ 915. Commissioners; appointment; duties; review.**

- (a) The Governor shall appoint, with the consent of a majority of all members elected to the Senate, suitable persons to act as Commissioners of the Family Court, all of whom shall hold office for a term of 4 years and shall be residents of the State for at least 5 years immediately preceding their appointment. An incumbent Commissioner and/or Master of the Family Court may be appointed as a Commissioner, so long as the person is duly admitted to practice before the highest court of any State of the United States. Other appointees shall be duly admitted to practice law before the Supreme Court of this State.
  - The number of Commissioners appointed shall not be less than 5, with at least 1 Commissioner assigned to each county.
  - The salaries of such Commissioners shall be part of the annual budget of the Family Court and shall reflect the educational background and experience of the appointees.
- (b) Individuals appointed as Commissioners under this section shall take the oath of office or affirmation prescribed in Article XIV, § 1 of the Delaware Constitution before they enter upon the duties of their



office.

- (c) The Chief Judge shall assign Commissioners to the several courts and shall establish a procedure for the assignment of cases to the Commissioners. Each Commissioner serving under this chapter shall have:
- (1) All powers and duties conferred or imposed upon Commissioners by law or by the Rules of Criminal and Civil Procedure for the Family Court;
  - (2) The power to hear any civil case within the jurisdiction of the Family Court, as designated by the Chief Judge;
  - (3) The power to order the issuance of legal process to compel the attendance of necessary parties and witnesses;
  - (4) The power to administer oaths and affirmations, and take acknowledgements, affidavits and depositions;
  - (5) The power to examine the parties and witnesses; to pass upon all questions of competency of witnesses and admissibility of evidence; to require the production of all books, papers, writings, vouchers and other documents applicable thereto; to grant adjournments and extensions of time; and generally to do all other acts, and direct all other inquiries and proceedings in the matters before them, which they may deem necessary and proper, including appropriate sections;
  - (6) The power to conduct juvenile detention hearings and to commit or bind, with or without surety, as a committing magistrate, for appearance at the proper court, persons charged with having violated the law together with material witnesses. A Commissioner shall assess the seriousness of the charge(s), the record, the factors stated in § 1007 of this title and the best interest of the juvenile in order to determine whether the juvenile shall be detained in secure detention or placed in a nonsecure detention alternative or other alternative as stated in § 1007(b) of this title. If a Commissioner places a juvenile in secure detention, the Commissioner shall state on the record the reasons for said detention;
  - (7) The power to conduct adult bail hearings and to commit or bind, with or without surety, as a committing magistrate, for appearance at the proper court, persons who have failed to appear for a prior court hearing, either civil or criminal, or who are charged with having violated the law together with material witnesses and impose conditions pursuant to this chapter;
  - (8) The power to conduct all delinquency and criminal proceedings, including but not limited to, amenability hearings, arraignments, preliminary hearings, case reviews and trials;
  - (9) The power to accept pleas (including, but not limited to, pleas of guilty, not guilty and nolo contendere) to any offense within the jurisdiction of the Family Court and to appoint counsel to represent indigent defendants;
  - (10) The power to enter sentence or disposition for criminal misdemeanors, criminal violations, criminal violation of probation and criminal contempt of court, whether the person has pleaded guilty to or has been convicted of 1 or more of the above offenses or whether the person has been adjudicated delinquent as a result of acts which would constitute such offenses if committed by an adult;
  - (11) The power to enter sentence, including incarceration, for criminal felonies, whether the person has pleaded guilty to or has been convicted of such an offense or whether the person has been adjudicated delinquent as a result of acts which would constitute a felony if committed by an adult; and
  - (12) The power to impose sanctions, including incarceration, for civil contempt.
- (d) A Commissioner's order, including emergency ex parte orders, shall be an enforceable order of the Court.
- (1) Any party, except a party in default of appearance before a Commissioner, may appeal a final order of a Commissioner to a judge of the Court by filing and serving written objections to such order, as provided by rules of the Court, within 10 days from the date of a Commissioner's order. A judge of the Court shall make a de novo determination of those portions of the Commissioner's order to which objection is made. A judge of the Court may accept, reject or modify in whole or in part the order of the Commissioner. The judge may

- also receive further evidence or recommit the matter to the Commissioner with instruction.
- (2) Any party, except a party in default of appearance before a Commissioner, may appeal an interim order of a Commissioner to a judge of the Court by filing and serving written objections to such order, as provided by rules of the Court, within 10 days from the date of a Commissioner's order. A judge of the Court may reconsider any interim order of a Commissioner, where it is shown that the Commissioner's order is based upon findings of fact that are clearly erroneous, contrary to law, or an abuse of discretion.
  - (e) No appeal of a Commissioner's order shall stay execution of the order unless such stay shall be specifically ordered by a judge of the Court.
  - (f) A Commissioner may be assigned such additional duties by the Chief Judge as are not inconsistent with the Constitution and laws of this State.

(67 Del. Laws, c. 388, § 1; 68 Del. Laws, c. 356, §§ 1-7; 69 Del. Laws, c. 122, §§ 1-11; 70 Del. Laws, c. 186, § 1.)

## *Subchapter II. Jurisdiction and Powers*

### **§ 921. Exclusive original civil jurisdiction.**

The Court shall have exclusive original civil jurisdiction in all proceedings in this State concerning:

- (1) Any child found in the State who is alleged to be dependent, neglected, or delinquent except as otherwise provided in this chapter;
- (2) a. Any child charged in this State with delinquency by having committed any act or violation of any laws of this State or any subdivision thereof, except murder in the first or second degree, rape in the first degree, rape in the second degree, unlawful sexual intercourse in the first degree, kidnapping in the first degree, or any attempt to commit said crimes; any child 16 years of age or older charged with violation of Title 21, except as provided in paragraph (16) of this section or § 927 of this title; or any other crime over which the General Assembly has granted or may grant jurisdiction to another court.  
b. Any child charged in this State with delinquency by having committed, after reaching his 16th birthday, murder in the second degree, manslaughter, robbery in the first or second, attempted murder (first or second degree), burglary in the first degree or arson in the first degree; provided, however, that such child shall, after his first appearance in the Court, be given a hearing as soon as practicable to determine his amenability to the processes of the Court. The Court shall give immediate notice of such hearing in writing to the Department of Justice and to the child's custodian, near relative, attorney or other interested person, if known, and then the Court shall proceed in accordance with the provisions of § 1010 of this title. The Attorney General or one of his deputies shall be present at any such hearing.  
Superior Court shall retain jurisdiction for purposes of sentencing and all other postconviction proceedings if any judge or jury shall find the child guilty of a lesser included crime following a trial or plea of guilty in any prosecution for 1 of the crimes specifically defined in this subsection or for any crime where the child has been transferred to the Superior Court by the Family Court pursuant to § 1010 of this title.
- (3) Enforcement of any law of this State or any subdivision or any regulation promulgated by a governmental agency, or any petitions or actions, for the education, protection, control, visitation, possession, custody, care, or support of children;
- (4) Judicial consent to employment, medical care, or enlistment in the armed services of a child when such consent is required by law;
- (5) Actions to terminate compulsory school attendance by a child who has not attained his 16th birthday;
- (6) Actions and proceedings wherein:
  - a. A member of a family alleges that some other member of the family is by their conduct imperiling any family relationship and petitions the Court for appropriate relief.
  - b. The Division of Child Protective Services or a licensed youth service agency alleges that the conduct of a child, or of the parents or custodians, or members of a family, imperials any family relationship or imperils the morals, health, maintenance or care of a child and

petitions the Court for appropriate relief; provided, however, that where a parent, to ensure the safety or welfare of his child, fails to cause the child to attend school, such parent has not imperiled the family relationship, nor has imperiled the morals, health, maintenance or care of the child.

- c. In such actions and proceedings the Court may make such adjudications and dispositions as appear appropriate;
- (7) Liability of relatives to support a poor person under 13 Del.C. § 501, and 31 Del.C. §§ 2830 and 2831;
- (8) Execution of forms consenting to marriages under 13 Del.C. § 123;
- (9) Reciprocal support proceedings by or against nonresidents under Chapter 6 of Title 13;
- (10) Any child in the State under the age of 16 years charged with delinquency by having committed a violation of any provision of Title 21; and any child in the State 16 years of age or older charged with having violated any of the provisions specified in § 927 of this title:
  - a. The court having jurisdiction of violations of Title 21, not covered above, shall not proceed, except to continue the case, without the presence of a custodian, near relative, attorney or other interested person.
  - b. Any judge of a court of proper jurisdiction, if the judge determines the existence of circumstances beyond the violation of Title 21, which indicates that the child 16 or 17 years old may be dependent, neglected or delinquent, shall, in addition to hearing the violation of Title 21, cause a complaint to be filed charging dependency, neglect or delinquency.
  - c. Any sentence imposed against any child 16 or 17 years old by a court having jurisdiction of the offenses in Title 21, except those offenses within the jurisdiction of the Family Court, shall be limited to a fine and costs. No court shall detain a child 16 years of age or older in a jail or adult correctional institution or jail pending trial on any violation of Title 21. Any child pending trial shall, in the default of bail, be detained only in a juvenile correctional facility.
  - d. Any child 16 or 17 years old who fails or refuses to pay a fine imposed by a court having jurisdiction of the offenses in Title 21, except those offenses within the jurisdiction of the Family Court, and after exhaustion of all other legal remedies for collection provided by the State, shall be charged with delinquency and referred to the Family Court;
- (11) All proceedings relative to divorce and annulment under Chapter 15 of Title 13;
- (12) Actions concerning the education of the handicapped and the enforcement of rights guaranteed by Chapter 31 of Title 14;
- (13) Actions concerning appeals from administrative decisions of the Division of Child Support Enforcement, in accordance with the Delaware Administrative Procedures Act, Chapter 101 of Title 29;
- (14) Petitions by persons formerly married to each other seeking an interest in or disposition of jointly titled real property, acquired during their marriage where such property was not disposed of (i) by agreement of the parties, or (ii) by virtue of ancillary proceedings pursuant to § 1513 of Title 13. In dividing said property the Family Court shall apply equitable principles unless there is a written agreement signed by the parties regarding the disposition of said property. Unless there is a written agreement signed by the parties the Family Court shall not consider the factors enumerated in § 1513 of Title 13. This subdivision shall apply to all actions filed after July 11, 1989;
- (15) Proceedings relative to parental notice of abortion under subchapter VIII, Chapter 17 of Title 24;
- (16) Notwithstanding any provision of this title to the contrary, charges of delinquency based upon an alleged violation of any provision of Title 11, 16 or 21 of this Code which would otherwise be within the original civil jurisdiction of Family Court shall instead be within the original criminal jurisdiction of Superior Court if said charges may be joined properly with a felony pending against the same child in Superior Court, as determined pursuant to the relevant rules of the Superior Court;
- (17) Actions concerning child support liens pursuant to § 519 of Title 13.

(10 Del. C. 1953, § 921; 58 Del. Laws, c. 114, § 1; 58 Del. Laws, c. 116, § 1; 58 Del. Laws, c. 497, § 4; 60 Del. Laws, c. 297, § 14; 60 Del. Laws, c. 708, §§ 1, 2; 61 Del. Laws, c. 334, § 7; 64 Del. Laws, c. 63, §§ 5, 6; 64 Del. Laws, c. 108, § 4; 65 Del. Laws, c. 228, § 5; 66 Del. Laws, c. 269, § 12; 67 Del. Laws, c. 89, § 1; 69 Del. Laws, c. 213, § 1; 70

Del. Laws, c. 186, § 1; 70 Del. Laws, c. 238, § 2; 70 Del. Laws, c. 261, §§ 1, 2; 70 Del. Laws, c. 262, § 1; 70 Del. Laws, c. 288, § 8; 70 Del. Laws, c. 596, § 1; 71 Del. Laws, c. 285, § 24.)

**§ 922. Exclusive and concurrent original criminal jurisdiction.**

- (a) Except as provided in subsections (b), (c) and (d) of this section, the Court shall have exclusive original criminal jurisdiction in all proceedings in this State concerning the following, the enumeration of which shall not be construed to exclude jurisdiction otherwise conferred upon the Court:
- (1) Ill treatment, abuse, abandonment or contributing to the delinquency of a child, or any misdemeanor committed against a child;
  - (2) Offenses, except felonies, committed by one member of a family against another member of the family, and criminal cases, except felonies, in which one member of a family is complainant against another member of the family;
  - (3) Offenses, except felonies, in which the defendant is a member of a family and the complainant is a peace officer and the criminal act complained of was committed during a family altercation;
  - (4) Misdemeanor criminal non-support and misdemeanor aggravated criminal non-support under 11 Del.C. § 1113;
  - (5) Illegitimacy proceedings under 13 Del.C. §§ 1321-1335 [repealed];
  - (6) Children of immoral parents under 13 Del.C. § 706 [repealed];
  - (7) Aiding a child who escapes from the Department of Services for Children, Youth and Their Families under 31 Del.C. § 5311;
  - (8) Cruel treatment and wrongful disposition or employment of children under 11 Del.C. § 1102, 12 Del.C. § 3905;
  - (9) Interference with custody of a child under 11 Del.C. § 785;
  - (10) Placing a resident or bringing a nonresident dependent child into Delaware without consent of the Department of Services for Children, Youth and Their Families under 31 Del.C. §§ 307, 351, except as provided in the Interstate Compact for Juveniles;
  - (11) Sale or delivery of an alcoholic beverage to a child under 4 Del.C. § 904;
  - (12) Permitting a child to remain where alcoholic beverages are sold under 11 Del.C. § 1106;
  - (13) Permitting a child to be present where gambling activity is maintained or conducted under 11 Del.C. § 1106;
  - (14) Sale of weapons to a child under 24 Del.C. § 903;
  - (15) Sexual assault on a child under 11 Del.C. § 761;
  - (16) Intra-family offenses against the person under 11 Del.C. §§ 601, 602, 611;
  - (17) Incest under 11 Del.C. § 766;
  - (18) Reciprocal support proceedings against or on behalf of nonresidents under 13 Del.C., c. 6, where appropriate;
  - (19) Unlawful sexual contact in the third degree against a child under 11 Del.C. § 767;
  - (20) Violation of a protective order under 11 Del.C. § 1271A;
  - (21) Offenses involving the reporting of new hires under § 1156A of Title 30.
- (b) The Court shall have concurrent criminal jurisdiction with the Justice of the Peace Court in all proceedings concerning alleged curfew violations under §§ 39-14 through 39-16 of the Wilmington Code.
- (c) The Court shall have concurrent criminal jurisdiction with the Justice of the Peace Courts in all proceedings concerning alleged curfew violations pursuant to any municipal ordinance.
- (d) Notwithstanding the provisions of subsections (a)(1)-(a)(3), (a)(17) and (a)(20) of this section, if offenses or criminal cases within the exclusive original jurisdiction of Family Court otherwise may be joined properly with a felony within the jurisdiction of Superior Court, such offenses or criminal cases shall be within the jurisdiction of Superior Court.

(10 Del. C. 1953, § 922; 58 Del. Laws, c. 114, § 1; 58 Del. Laws, c. 497, § 4; 63 Del. Laws, c. 93, § 1; 64 Del. Laws, c. 108, §§ 6, 20; 66 Del. Laws, c. 189, §§ 1, 2; 66 Del. Laws, c. 269, §§ 13, 14; 68 Del. Laws, c. 66, §§ 1, 2; 69 Del. Laws, c. 160, § 3; 70 Del. Laws, c. 100, § 4; 70 Del. Laws, c. 318, § 2; 70 Del. Laws, c. 448, § 3; 71 Del. Laws, c. 29,

§§ 1, 2; 71 Del. Laws, c. 176, § 3; 71 Del. Laws, c. 216, § 158.)

**§ 923. Jurisdiction over matters begun prior to this chapter.**

The Court shall have jurisdiction to hear and decide all matters before the Family Court of the State in and for New Castle County and the Family Court for Kent and Sussex Counties which had not been disposed of prior to the effective date of this chapter.

(10 Del. C. 1953, § 923; 58 Del. Laws, c. 114, § 1.)

**§ 924. Concurrent original civil jurisdiction.**

The Court shall have concurrent jurisdiction to hear writs of habeas corpus or other proceedings brought for the purpose of gaining or retaining the custody of a child or for the purpose of determining whether a child is being unlawfully detained by any person, agency, or institution.

(10 Del. C. 1953, § 924; 58 Del. Laws, c. 114, § 1.)

**§ 925. General jurisdiction.**

The Court and each Judge shall have authority to:

- (1) Conserve the peace;
- (2) Commit or bind, with or without surety, as a committing magistrate, for appearance at the proper court, persons charged with having violated the law together with material witnesses and impose conditions as set forth in § 1021 of this title;
- (3) Determine and punish civil and criminal contempt;
- (4) Issue process for the exercise of its jurisdiction and require service thereof under pain of contempt;
- (5) Receive, hear, and make recommendations concerning matters assigned to it by any state or municipal court. Such recommendations shall be certified to the assigning court;
- (6) Transfer for good cause any proceeding from the Court in one county to the Court in any other county;
- (7) Enter, proceed on, and satisfy in the name of the State any forfeited bond, provided however, that the proceeds of any bond forfeited for a party's failure to appear in any civil or criminal child support proceeding shall be paid over to the payee of the child support order and applied to the child support account;
- (8) Sit separately or jointly with any or all other Judges;
- (9) Hear, determine, render, and enforce judgment in any proceeding before the Court;
- (10) Assess fees, costs, and fines; or remit them in proper cases;
- (11) After due notice to interested parties, review, revise, or revoke any prior order of the Court with reference to the custody, control, care, support or visitation of any person, or in any proceeding where failure to do so would result in manifest injustice;
- (12) Punish for contempt any person who, in order to evade the Court's jurisdiction, removed from the State any child concerning whose possession, custody, or alleged unlawful detention, a writ of habeas corpus or other proceeding has been filed;
- (13) Administer oaths and take acknowledgments;
- (14) Appoint guardians ad litem;
- (15) In any civil action where jurisdiction is otherwise conferred upon the Family Court, it may enter such orders against any party to the action as the principles of equity appear to require.
- (16) To appoint guardians of the person over minors under 18 years of age;
- (17) Appoint court-appointed special advocates in child abuse and neglect cases;
- (18) Determine and enter disposition for alleged violations of probation by juveniles in accordance with the procedures established at § 4334 of Title 11. The term Commissioner or any probation counsellor as used in § 4334 of Title 11 shall include the appropriate member of the Department of Services for Children, Youth and Their Families.

(10 Del. C. 1953, § 925; 58 Del. Laws, c. 114, § 1; 63 Del. Laws, c. 133, § 1; 65 Del. Laws, c. 95, § 2; 65 Del. Laws, c. 190, § 1; 66 Del. Laws, c. 300, § 1; 70 Del. Laws, c. 449, § 1.)

**§ 926. Judgment against parent of minor who steals or destroys property.**

Repealed by 66 Del. Laws, c. 234, § 2.

**§ 927. Exclusive jurisdiction over motor vehicle violations.**

- (a) The Court shall have exclusive original civil jurisdiction in all proceedings in this State involving children charged with violating any of the following motor vehicle provisions of Title 21:
- (1) Displaying or possessing fictitious registration cards, number plates or registration plates under § 2115(2);
  - (2) Operating a motor vehicle without motor vehicle insurance under § 2118;
  - (3) Possessing a fictitious insurance identification card under § 2118A(a);
  - (4) Altering or forging a certificate of title, a manufacturer's certificate of origin, a registration card, a vehicle warranty or certification sticker or a vehicle identification plate under § 2316;
  - (5) Fraud in obtaining a driver's license, or display of a fraudulently altered license under § 2751;
  - (6) Driving while license is suspended or revoked under § 2756;
  - (7) Driving during a period of ineligibility under § 2758;
  - (8) Penalties under § 2971(a);
  - (9) Obedience to police officers under § 4103;
  - (10) Walking on a highway under the influence under § 4149;
  - (11) Speed exhibitions and drag racing under § 4172;
  - (12) Malicious mischief by motor vehicle under § 4172A;
  - (13) Reckless driving under § 4175;
  - (14) Operation of vehicle while under the influence of intoxicating liquor or drug under § 4177;
  - (15) Duty of driver involved in accident resulting in injury or death to any person under § 4202;
  - (16) Duty to report accidents under § 4203;
  - (17) Introduction, sale, distribution or advertisement for sale to public of motor vehicle master keys under § 4601;
  - (18) Reporting of keys under § 4603;
  - (19) Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock-picking devices and hot wires under § 4604;
  - (20) Injuring vehicle without consent of owner under § 6701;
  - (21) Driving vehicle without consent of owner under § 6702;
  - (22) Tampering with vehicle under § 6703;
  - (23) Receiving or transferring stolen vehicle under § 6704;
  - (24) Removed, falsified or unauthorized identification number on vehicle or engine; removed or affixed license/registration plate with intent to misrepresent identity under § 6705;
  - (25) Possession of blank title, blank registration card, vehicle identification plate, warranty sticker and registration card under § 6708;
  - (26) Removal of warranty or certification stickers, vehicle identification plates, and confidential vehicle identification numbers under § 6709; and
  - (27) Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers under § 6710.
- (b) Where appropriate, the Court has the power to impose the penalties provided for under § 6707 of Title 21.

(60 Del. Laws, c. 708, § 3; 70 Del. Laws, c. 418, § 1.)

**§ 928. Extended jurisdiction.**

- (a) Prior to trial upon petition of the Attorney General, the State may seek extended jurisdiction of the Family Court over a juvenile up to age 21.
- (b) Extended jurisdiction shall mean that a juvenile subject to the jurisdiction of the Family Court, if found delinquent of the offense(s) giving rise to the petition, shall be subject to the jurisdiction of the Family Court until said juvenile reaches age 21 or is discharged from jurisdiction by the Court.

- (c) The determination whether extended jurisdiction is appropriate shall be made by the Family Court based upon the juvenile's need for rehabilitation and the public's right to safety and shall take into consideration the following:
  - (1) The seriousness of the underlying offense(s), with extended jurisdiction presumed to be appropriate where a juvenile has committed a class A or B felony or a felony sexual offense, excluding those crimes set forth in § 1010(a)(1) of this title;
  - (2) The age of the juvenile at the time of trial or disposition, with consideration being primarily based upon the time needed to effectively rehabilitate the juvenile or to protect the public and whether either or both objectives may be met by the juvenile's 18th birthday.
- (d) A determination by the Family Court that extended jurisdiction is appropriate shall only be subject to review on an abuse of discretion standard.
- (e) In any case where extended jurisdiction is determined to be appropriate, the juvenile is found delinquent of the crime(s) giving rise to extended jurisdiction and, further rehabilitation of the juvenile is ordered at a Level IV or V facility, review of the appropriateness of continued placement at Level IV or V shall be conducted by the Court at 6-month intervals after the juvenile's 18th birthday. A failure to conduct a review within 30 days of a 6-month interval shall result in the Department of Correction assuming jurisdiction for purpose of placement, with a presumption that a placement at less than Level IV or V facility will be imposed. The review period herein set forth may be extended for a period of 60 days upon good cause shown by the State in a petition filed by the State prior to the expiration of the 6-month plus 30-day period.
- (f) Juveniles placed in the extended jurisdiction program shall be considered subject to the processes of the Family Court until the termination of the Court's order. In the event that a person who has reached one's 18th birthday commits any crimes while subject to extended jurisdiction, the commission of said crime(s) shall be considered a violation of the extended jurisdiction program, subjecting said violator to any sanction the Family Court could have originally imposed upon the offense(s) giving rise to extended jurisdiction, including placement at a Level IV or V facility housing adult offenders. Trial of any person who has turned age 18 for an offense(s) committed while subject to extended jurisdiction shall be in the appropriate court as required by Delaware law. Any sentence of incarceration imposed by an adult court shall take precedent to and be in lieu of any sentence of incarceration imposed by the Family Court pursuant to extended jurisdiction for the original offense or a violation of the extended jurisdiction program.
- (g) Nothing contained herein shall affect the provisions of § 1010 of this title concerning amenability or § 1447(d) of Title 11, except that upon agreement of the State and the juvenile, a juvenile may agree to be subjected to extended jurisdiction in lieu of being proceeded against pursuant to the provisions of § 1010 of this title or § 1447(d) of Title 11.
- (h) For purposes of this section, Level IV and Level V facilities are defined as follows:
  - (1) A facility includes any treatment center, institution or any other place designated for confinement;
  - (2) A Level IV facility is a place of partial confinement such as a half-way house, residential treatment facility, or restitution facility. It may include house arrest at the juvenile's home, or at a shelter, group home, foster home or other facility. For juveniles who have reached their 18th birthday, a Level IV facility shall include any similar house or facility of the Department of Correction;
  - (3) A Level V facility is a place of confinement in a secured facility. For juveniles who have reached their 18th birthday, a Level V facility shall include any secured facility of confinement of the Department of Correction.

(69 Del. Laws, c. 96, § 1; 70 Del. Laws, c. 186, § 1.)

### *Subchapter III. Procedure*

#### **PART A. PROCEEDINGS IN THE INTEREST OF A CHILD**

**§ 930. - 935.      Records; expunging evidence of adjudication; destroying indicia of arrest; delinquent child not**

**criminal; prosecution limited; commencement; parties; duties of officer having child in custody; other courts; issuance of warrants; powers and duties; process; service; return; interim order; investigation.**

Transferred.

**§ 936. Disposition of child pending adjudication; payment for care.**

Transferred.

**§ 936A , 936B, 937-939. Disposition of child pending adjudication; payment for care; Committee on Dispositional Guidelines for Juveniles; adjudication; disposition following adjudication; commitment to custody of Department of Services for Children, Youth and Their Families; effect; proceeding against child as an adult; amenability proceeding; referral to another court; transfer of cases from Superior Court to Family Court.**

Transferred.

## **PART B. ADULT CRIMINAL PROCEEDINGS**

**§ 940. -943. Prosecution of adults; process; bail; duties of other courts; disposition.**

Transferred.

## **PART C. ADULT PROCEEDINGS**

**§ 944. Disposition.**

Transferred.

## **PART D. PROTECTION FROM ABUSE PROCEEDINGS**

**§ 945. -952. Definitions; commencement of action; procedure; ex parte orders and emergency hearings; nonemergency hearings; relief available; duration of orders, modification and termination; enforcement; sanctions for violation of order; nonpreclusion of remedies; jurisdiction.**

Transferred.

## **PART E. APPEALS**

**§ 960. - 962. Appeals generally; appeals from custody orders; appeals by the State in Family Court cases.**

Transferred.

## **PART F. MISCELLANEOUS**

**§ 970. - 974. Examination; treatment; payment; assignment of prosecutors and public defenders; proceedings; privacy; informality; merger; effect on Judges' employees; cases; records; prior offenses; obtaining personal jurisdiction.**

Transferred.

## **PART A. PROCEEDINGS IN THE INTEREST OF A CHILD**

**§ 1001. Records; expunging evidence of adjudication; destroying indicia of arrest.**

- (a) In any case wherein an adjudication has been entered upon the status of a child under 18 years of age and 3 years have elapsed since the date thereof and no subsequent adjudication has been entered against such child, the child or the parent or guardian may present a duly verified petition to the Court setting forth all the facts in the matter and praying for the relief provided for in this section; provided, however, that in any case wherein an adjudication has been entered upon the status of a child under 18 years of age and such child intends to enlist in any branch of the armed forces of the United States, the child may at any time after the date of such adjudication present a duly verified



petition to the Court setting forth all the facts in the matter including an intention to enlist documented in writing by the applicable military authority in said armed forces and praying for the relief provided in this section, and provided further that pursuant to the provisions and subject to the limitations hereinafter provided for in this section, an order directing an expunging from the records of all evidence of such adjudication upon the status of any such child and the destruction of all indicia of arrest including fingerprints and photographs may be granted.

- (b) Where a child under 18 years of age has been charged with an act of delinquency, and;
  - (1) The charges have been nolle prosequied, dismissed or dropped, or
  - (2) The charges have been disposed of through arbitration or otherwise without an adjudication of delinquency, the person so charged or a representative of such person on the person's behalf may file a petition with the Court setting forth all the relevant facts in the matter and requesting expungement of all indicia of arrest and all applicable police and court records relating to the charge. The Court, in the best interest of both the child and the State, may grant or refuse to grant the relief requested in the petition.
- (c) Upon reading and filing such petition the Court may by order fix a time not less than 10 nor more than 30 days thereafter for the hearing of the matter, a copy of which order shall be served in the usual manner upon the Attorney General within 5 days from the date of such order and at the time so appointed the Court shall hear the matter and if no material objection is made and no reason appears to the contrary, an order may be granted directing the Clerk of the Court to expunge from the records all evidence of such adjudication, excepting adjudications involving the following crimes: Second degree murder, first degree arson, and first degree burglary, and further directing that all indicia of arrest including fingerprints and photographs be destroyed. The Court may grant such relief without a hearing when it appears in writing that the petition is not opposed by the Attorney General.

(10 Del. C. 1953, § 930; 58 Del. Laws, c. 491; 64 Del. Laws, c. 326, §§ 1, 2; 66 Del. Laws, c. 243, § 1; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1.)

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

Except as provided in § 1010, no child shall be deemed a criminal by virtue of an allegation or adjudication of delinquency, nor shall a child be charged with or prosecuted for a crime in any other court. In this Court the nature of the hearing and all other proceedings shall be in the interest of rather than against the child. Except as otherwise provided, there shall be no proceedings other than appellate proceedings in any court other than this Court in the interest of a child alleged to be dependent, neglected, or delinquent. However, if a child reaches its 18th birthday prior to an adjudication on a charge of delinquency arising from acts which would constitute a felony were the child charged as an adult under the laws of this State, then the Family Court shall retain jurisdiction for the sole purpose of transferring the matter to the Superior Court for prosecution as an adult. Any such transfer under this section shall not be subject to § 1011 of this title.

(10 Del. C. 1953, § 931; 58 Del. Laws, c. 114, § 1; 69 Del. Laws, c. 205, § 1; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1.)

**§ 1003. Commencement; parties.**

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. Neither the Attorney General nor any Deputy Attorneys are required to appear in any proceeding before a Master involving a petition alleging an act of delinquency, but, at the Attorney General's sole discretion, may appear in any such proceeding.

(10 Del. C. 1953, § 932; 58 Del. Laws, c. 114, § 1; 66 Del. Laws, c. 413, § 1; 69 Del. Laws, c. 335, § 1.)

**§ 1004. Duties of officer having child in custody.**

A peace officer may take into custody a child the officer believes to be dependent, neglected or delinquent. Any peace officer having taken such a child into custody shall immediately notify the child's custodian citing the

reasons therefor. If the custodian refuses to accept the child or cannot be located or cannot provide adequate care for the child, the peace officer shall:

- (1) When the child is not charged with a delinquent act, immediately contact the Division of Child Protective Services of the Department of Services for Children, Youth and Their Families, who shall be responsible for further pursuing the whereabouts of the custodian or providing shelter and care for the child in a shelter home, foster home, group home, private agency home or other appropriate facility for children. The child shall be placed in a manner consistent with § 1009(i) of this title. After making every reasonable effort to locate the custodian, the Division of Child Protective Services of the Department of Services for Children, Youth and Their Families may release the child to the child's custodian or forthwith file with the Court a petition for custody alleging dependency or neglect.
- (2) When the child has been charged with a delinquent act, take the child directly before the Court if the Court is in session or take the child before a court or commissioner for disposition in accordance with § 1005 of this title. After taking the child into custody, the peace officer shall forthwith file with the Court a sworn complaint alleging delinquency with a report for the reason of his apprehension.

(10 Del. C. 1953, § 933; 58 Del. Laws, c. 114, § 1; 61 Del. Laws, c. 334, § 2; 64 Del. Laws, c. 108, § 7; 66 Del. Laws, c. 13, § 2; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1.)

**§ 1005. 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 aldermen, before whom a child is brought by a peace officer:
  - (1) May release the child on the child's own recognizance, or on that of a person having the child's care, to appear before the court when notified so to do;
  - (2) May require the child to furnish reasonable cash or property bail or other surety for the child's appearance before the court when notified so to do;
  - (3) May order the child detained in a facility designated by the Department of Services for Children, Youth and Their Families pursuant to § 1007(a) of this title provided that no means less restrictive of the child's liberty gives reasonable assurance that the child will attend the adjudicatory hearing; and provided, that the alternatives delineated in § 1007(b)(5) of this title have been considered; and provided, that such detention shall continue only until the next session of the Family Court;
  - (4) Shall notify the person having the care of the child, if an address be known, of the child's having been taken into custody, the reason therefor, and the disposition of the matter;
  - (5) Shall file with this Court forthwith a petition in accordance with § 1003 on forms furnished by this Court.

(10 Del. C. 1953, § 934; 58 Del. Laws, c. 114, § 1; 64 Del. Laws, c. 108, § 20; 67 Del. Laws, c. 158, § 2; 67 Del. Laws, c. 390, § 2; 67 Del. Laws, c. 392, § 1; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1.)

**§ 1006. Process; service; return; interim order; investigation.**

- (a) Following commencement of any action concerning a child, the child and his custodian shall be brought into the Court by summons or other process. If no custodian can be located, the child's guardian, or some suitable person (preferably a near relative) appointed by the Court to act in behalf of the child shall be notified to appear.
- (b) A summons or other process of the Court may be served by any probation officer, sheriff, county, town, or city constable or police officer within the officer's or constable's jurisdiction, either by reading the same to the person to be served, or by delivering a copy thereof to the person or by leaving a copy thereof at the person's usual place of abode in the presence of an adult person.
- (c) The return of such summons or other process with the indorsement of service by the serving officer in accordance herewith shall be sufficient proof thereof.
- (d) Where no custodian or interested close relative can be located, the Court may make such interim

- order as the interest of the child may require.
- (e) In delinquency proceedings after the child has been adjudged delinquent and at any time in all other proceedings concerning a child the Court may accept a study relating to the child previously made by any recognized welfare agency, or may order a study made.

(10 Del. C. 1953, § 935; 58 Del. Laws, c. 114, § 1; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1.)

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

- (a) Pending adjudication no child alleged to be delinquent may be placed in secure detention operated by the Department of Services for Children, Youth and Their Families unless the Court determines that no means less restrictive of the child's liberty gives reasonable assurance that the child will attend the adjudicatory hearing and:
  - (1) The child is a fugitive from another jurisdiction on a delinquency petition; or
  - (2) The child is charged with an offense, which, if committed by an adult would constitute a felony, including offenses contained within this title and Chapter 47 of Title 16, the Uniform Controlled Substance Act, or one of the following misdemeanors: Assault in the third degree, unlawful imprisonment in the second degree, vehicular assault in the first degree, indecent exposure in the first degree, unlawful sexual contact in the third degree, or carrying a concealed dangerous instrument; or
  - (3) The child has wilfully failed to appear at a hearing on a delinquency petition and there is substantial probability that the child will run away or otherwise be unavailable for a subsequent court appearance; or
  - (4) The child 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.
- (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 or custodian;
  - (3) Release on bail;
  - (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 nonsecure detention alternative developed by the Department of Services for Children, Youth and Their Families such as home detention, daily monitoring, intensive homebase services with supervision, foster placement, or a nonsecure 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.
- (d) If a child has been placed in secure detention pending adjudication an initial hearing to determine the appropriateness of detention and to review conditions of release shall be held the next day the Court is in session.
- (e) No child shall be retained in secure detention after the initial hearing unless an assessment of the current charge or charges against the child and the record of the juvenile indicate to the Court that the juvenile should not be placed in a nonsecure detention alternative developed by the Department of Services for Children, Youth and Their Families as set forth in paragraph (b)(5) of this section.
- (f) A detention review hearing with counsel shall be held within 14 court days of the initial detention hearing and if detention is continued, detention review hearings shall be held thereafter at intervals not to exceed 21 court days.
- (g) 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.
- (h) 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 shall require an evaluation and report from the Department of Services for Children, Youth and Their Families.

- (i) Pending adjudication the Court may order the person legally liable therefor to pay for the child's care during the period of placement outside the person's own home.
- (j) 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.

(10 Del. C. 1953, § 936; 58 Del. Laws, c. 114, § 1; 64 Del. Laws, c. 108, §§ 6, 20; 67 Del. Laws, c. 390, § 1; 67 Del. Laws, c. 391, § 1; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1.)

**§ 1008. Committee on Dispositional Guidelines for Juveniles.**

- (a) There is hereby established a Committee on Dispositional Guidelines for Juveniles.
- (b) The members of the Committee shall include the following persons or their designees:
  - (1) The Chief Judge of the Family Court;
  - (2) Family Court Judge, designated by the Chief Judge;
  - (3) Secretary, Department of Services for Children, Youth and Their Families;
  - (4) Director, Division of Youth Rehabilitative Service;
  - (5) Attorney General;
  - (6) Public Defender;
  - (7) Executive Director, Criminal Justice Council;
  - (8) Executive Director, Delaware Council on Crime and Justice;
  - (9) Executive Vice President, Child, Inc.;
  - (10) Designee of the United Way of Delaware;
  - (11) Chair, Foster Care Review Board;
  - (12) Governor's Assistant for Criminal Justice;
  - (13) Chairperson of the Senate Committee of Children, Youth and Families;
  - (14) Chairperson of the House Committee on Human Resources;
  - (15) Executive Director, Delaware Volunteer Legal Service.
- (c) The Committee is hereby directed to develop recommendations on guidelines for use in determining dispositions for juvenile offenders. The guidelines shall include clear, consistent and objective criteria for determining that the rehabilitation plan for a youth should include a period of secure incarceration. Such guidelines shall reflect the General Assembly's intent that only chronic or violent juvenile offenders require secure incarceration, and that other adjudicated youth are more appropriately and effectively served through less restrictive programs.
- (d) The Committee shall also develop guidelines for the process to be used by the Family Court and the Department of Services for Children, Youth and Their Families in reaching dispositional decisions, which shall include:
  - (1) Consideration of the instant offense(s) for which the youth has been adjudicated;
  - (2) Consideration of the youth's prior record of delinquency;
  - (3) The availability of less restrictive interventions which will protect public safety and provide the youth an opportunity for rehabilitation.
- (e) The Committee shall develop a list of services required to provide a full continuum of placement and/or treatment options for adjudicated delinquent youth. In developing this list, the Committee shall:
  - (1) Review available data from both the Family Court and the Department of Services for Children, Youth and Their Families concerning the characteristics of youth who come to the attention of these agencies;
  - (2) Review existing programs and services of the Family Court, the Department of Services for Children, Youth and Their Families, and other social service agencies within the State;
  - (3) Review relevant information describing dispositional practices and services from other states and from the professional literature; and
  - (4) Consult with experts both within and outside the State.

- (f) The Committee shall prepare a written report and recommendations and shall forward any recommendations requiring legislative action to the appropriate committee(s) of the General Assembly by January 1, 1991.

(67 Del. Laws, c. 391, § 1; 69 Del. Laws, c. 335, § 1.)

**§ 1009. Adjudication; disposition following adjudication; commitment to custody of Department of Services for Children, Youth and Their Families; effect.**

- (a) Where the evidence supports such holding, the Court may declare a child to be dependent, neglected, abused, as those terms are defined by § 902(1) of Title 16, or delinquent. In declaring a child to be dependent, neglected or abused pursuant to this section, the Court shall give priority to ensuring the well-being and safety of the child.
- (b) Following an adjudication by the Court in which it declares a child to be dependent or neglected, the Court may:
  - (1) Defer proceedings pending further investigation, medical or other examinations, or where the interests of the child will thereby be served;
  - (2) Allow a child to remain in his own home with or without Court supervision;
  - (3) Grant custody of a child to any person or agency where satisfactory arrangements can be made but, in the event the child is placed in a home other than the home of a relative, the Court shall require an evaluation and report from the Department of Services for Children, Youth and Their Families;
  - (4) Refer the child to the Department of Services for Children, Youth and Their Families for protective supervision;
  - (5) Grant custody of a child to the Department of Services for Children, Youth and Their Families for foster home placement;
  - (6) Grant the care or custody of a child to any licensed child-placing agency in this State that will accept the child, provided satisfactory arrangements can be made;
  - (7) Grant the care or custody of a child to any division of the Department of Services for Children, Youth and Their Families provided by the State for the care of children;
  - (8) Grant the care or custody of a child to any private institution within or without the State that cares for children, provided satisfactory arrangements can be made;
  - (9) Grant the care or custody of a child to any religious child-caring agency or institution, preferably of the child's religious faith or that of the parents, or either of them, within or without the State provided satisfactory arrangements can be made;
  - (10) Commit a mentally ill, retarded or disturbed child for observation or treatment to any appropriate institution within the State, or to any institution without the State provided satisfactory arrangements can be made;
  - (11) Order such other treatment, rehabilitation or care as in the opinion of the Department of Services for Children, Youth and Their Families would best serve the needs of the child and society.
- (c) Following an adjudication in which the Court declares that a child is delinquent, it may:
  - (1) Defer proceedings pending further investigation, medical or other examinations, or where the interests of the child will thereby be served, and release the child upon the child's own recognizance or upon the recognizance of a custodian or near relative, or upon bond with surety, to appear whenever and wherever notified to do so, or where the required bond is not provided, detain the child in a facility of the Department of Services for Children, Youth and Their Families;
  - (2) Allow a child to remain in the child's own home with or without Court supervision;
  - (3) Place a child on probation;
  - (4) Fine a child;
  - (5) Order a child to make monetary restitution in whole or in part as the Court determines for out-of-pocket costs, losses or damages caused by the delinquent act of the child where the amount thereof can be ascertained;
  - (6) Award a judgment in favor of any municipal corporation, county, town, school district or

agency of the State, or any person, partnership, corporation or association, or any religious organization whether incorporated or not, and against the parents or guardians of the delinquent child for the same or greater amount ordered against the delinquent child but not to exceed \$5,000, provided that the Court finds by a preponderance of the evidence presented that:

- a. The parents or guardians knew of the child's delinquent nature; and
  - b. The parents or guardians failed to take reasonable measures to control the child;
- (7) Require that any restitution ordered against the delinquent child precede the liability of the parents or guardians for the monetary damages caused by the child's delinquent act;
  - (8) Require, in the absence of objections by the victim of the delinquent act of the child, that any restitution ordered against the delinquent child may be discharged in an appropriate community service arrangement with the understanding that failure to complete the community service work in good faith shall result in the reversion of this obligation to the monetary basis originally ordered by the Court;
  - (9) Award custody of a child to the Department of Services for Children, Youth and Their Families;
  - (10) Commit a mentally ill, retarded or disturbed child for observation or treatment to any appropriate institution within the State, or to any institution without the State provided satisfactory arrangements can be made;
  - (11) Grant the care or custody of a child to any private institution within or without the State that cares for children, provided satisfactory arrangements can be made;
  - (12) Order the Motor Vehicle Division of the Department of Public Safety to:
    - a. Revoke or suspend the driving privileges or operator's license possessed by the child;
    - b. Postpone the child's eligibility to obtain driving privileges or an operator's license if the child does not possess such privilege or license; or
    - c. Enter immediately all traffic, alcohol and/or drug adjudications of any minor on a driving record created by the Division of Motor Vehicles notwithstanding the minor's drivers license status, age and/or eligibility for a driver's license in any case for a period not less than 3 months nor more than 4 years;
  - (13) Grant custody of a person who is charged with an act of delinquency prior to reaching the age of 18 years but becomes 18 years of age prior to disposition of the charge, to the Department of Services for Children, Youth and Their Families;
  - (14) Order the child to be placed under house arrest under the same requirements set forth in § 4332 and Subchapter IX of Chapter 43 of Title 11 of the Delaware Code;
  - (15) Order such other treatment, rehabilitation or care as in the opinion of the Department of Services for Children, Youth and Their Families would best serve the needs of the child and society.

The authority given the Court by paragraphs (5), (6), (7) and (8) of this subsection shall be in addition to any other existing statutory or common law remedy.

- (d) For the purposes of this section, the phrase "provided satisfactory arrangements can be made" shall mean that the Department of Services for Children, Youth and Their Families has approved payment for the placement of a child based upon a contract between an agency or institution and the Department or that such a placement can provide a child with the necessary and/or appropriate treatment and/or rehabilitation in the judgment of the Department of Services for Children, Youth and Their Families.
- (e) Subject to the provisions governing amenability pursuant to § 1010 of this title, the Court shall commit a delinquent child to the custody of the Department of Services for Children, Youth and Their Families under such circumstances and for such periods of time as hereinafter provided:
  - (1) Any child who has been adjudicated delinquent by this Court of 1 or more offenses which would constitute a felony were the child charged as an adult under the laws of this State, and who shall thereafter within 12 months commit 1 or more offenses occurring subsequent to the said adjudication which offense or offenses would constitute a felony were the child charged as an adult under the laws of this State, and thereafter be adjudged delinquent of

said offense or offenses, is declared a child in need of mandated institutional treatment, and this Court shall commit the child so designated to the Department of Services for Children, Youth and Their Families for at least a 6-month period of institutional confinement;

- (2) A child committed to the custody of the Department of Services for Children, Youth and Their Families pursuant to this subsection shall not be released from institutional confinement on pass, on extended leave or to aftercare during the first 6 months of said commitment unless the Director of Youth Rehabilitation Services, in the Director's discretion, determines that it is in the best interest of the child's treatment to participate in programs which may require the child to leave the institution; thereafter, a child committed to the Department of Services for Children, Youth and Their Families pursuant to this subsection shall not be released from institutional confinement on pass, on extended leave or to aftercare, unless the Judge of the Family Court who originally executed the commitment order or a Judge of the Family Court designated by the Chief Judge shall, upon a petition filed by the Department of Services for Children, Youth and Their Families (or its duly authorized representative), the child, the parent(s) or guardian of said child, or by the Court's own initiative, with notice to the Attorney General, determine by a preponderance of the evidence presented at a hearing that the child has so progressed in a course of mandated institutional treatment that release would best serve both the welfare of the public and the interest of the child or unless the Director of Youth Rehabilitation Services, in his discretion, determines that it is in the best interest of the child's treatment to participate in programs which may require the child to leave the institution;
  - (3) Where a child has been declared in need of mandated institutional treatment in accordance with paragraphs (1) and (2) of this subsection, and the child is subsequently charged with having committed 1 or more offenses which offense or offenses occurred subsequent to the child having been declared a child in need of mandated institutional treatment, the Court shall conduct a hearing to determine whether the child is amenable to the rehabilitative processes of the Court pursuant to § 1010(c) of this title. "Offense" in this paragraph shall mean all offenses which would constitute a felony were the child charged as an adult under the laws of this State, with the exception of a charge of escape pursuant to subpart E of subchapter VI of Chapter 5 of Title 11;
  - (4) Whenever a child appears before the Court on charges which would constitute a felony were the child charged as an adult under the laws of this State, said child and any parent, guardian or custodian of said child who is present shall be specifically advised of the operation of this subsection;
  - (5) Nothing hereinbefore provided shall be construed as prohibiting the Court, upon petition and recommendation of the Department of Services for Children, Youth and Their Families, from securing for any child otherwise subject to the mandatory commitment provisions of this subsection such care and treatment as it deems necessary for diagnosed conditions of mental illness or retardation, provided that the provisions for such treatment shall not deter the Court from imposing such mandatory term of commitment as is applicable under this subsection unless the same shall be sooner suspended in accordance with paragraph (6) of this subsection;
  - (6) As used in this subsection, "child" shall mean any juvenile who is charged with an act or course of conduct occurring on or after the child's 14th birthday which causes this subsection to be applicable;
  - (7) A copy of each and every order or disposition of the Court respecting a child committed pursuant to this subsection shall be made available to the victim or victims of the delinquent acts giving rise to the commitment upon written request to the Court therefor.
- (f) Following adjudication or election by the juvenile in lieu of trial pursuant to § 4177B of Title 21, the Court must order the Motor Vehicle Division of the Department of Public Safety after an adjudication of delinquency in violation of § 4177 of Title 21, or election by the juvenile in lieu of trial pursuant to § 4177B of Title 21 to:
- (1) Revoke or suspend the driving privileges or operator's license possessed by such child until that child reaches the age when legally allowed to consume intoxicating liquor. This

revocation or suspension shall not be subject to waiver except after a minimum period of 6 months from the date of the license is received by the Motor Vehicle Division, and then only if the child successfully completes a course of instruction similar to that required by § 4177B of Title 21 and has demonstrated a critical need for the return of restricted driving privileges.

- (2) A critical need shall include loss of a meaningful employment opportunity, or loss of a school opportunity, or any other urgent need of the child or the child's immediate family the continuation of which is critical to the best interests of the child but only if and for so long as no other member of the immediate family is realistically capable of satisfying such urgent need.
  - (3) The Division of Motor Vehicles shall promulgate such rules and regulations as are necessary to verify the existence of a critical need, to permit the return of only so much of the privileges as are necessary to reasonably satisfy such critical need.
  - (4) Any person whose driver's license has been revoked and to whom a conditional/restricted license has been issued, under this chapter, and who drives any motor vehicle upon the highways of this State contrary to the conditions placed upon such conditional/restricted license during the period of such conditional/restricted license, upon conviction thereof, shall be fined not less than \$25 or more than \$200.
  - (5) The Department, upon receiving a record of conviction of any person upon the charge of operating a motor vehicle in violation of the conditions imposed upon said conditional/restricted license during the period of such conditional/restricted license, shall forthwith direct such person to surrender said conditional/restricted license to the Department until the age when legally allowed to consume intoxicating liquor.
- (g) A child who is adjudicated delinquent on charges which would constitute a violation of § 2701 of Title 21 if the child were charged as an adult shall be prohibited from receiving a temporary instruction permit or an operator's license until the later of the child's 17th birthday or 1 year from the date of adjudication.
- (h) No adjudication upon the status of a child shall be deemed a conviction nor shall it be deemed to imply that a child is a criminal except as provided in § 1010 of this title.
- (i) Neither the adjudication nor any evidence given in any case shall be admissible against such child in any future civil or criminal proceeding in any court for any purpose other than a presentence investigation ordered by this or any other court.
- (j) (1) For the purpose of this subsection, the following definition shall apply:
- a. "Level 1 Juvenile Offense" means any delinquent act constituting a felony under the laws of this State, any other state or the United States.
  - b. "Level 2 Juvenile Offense" means any delinquent act constituting a class A or a class B misdemeanor, under the laws of this State, any other state, or the United States.
  - c. "Level 3 Juvenile Offense" means any delinquent act constituting a class C or an unclassified misdemeanor under the laws of this State, any other state or the United States.
  - d. "Mixing" means placement of any child charged with a Level 1 Juvenile Offense, or found to have committed any delinquent act, in the same facility with dependent or neglected children.
  - e. "Facility" means any shelter, group home, foster home, treatment center, institution or any other place designated as a temporary or permanent placement for children, excluding accredited hospitals.
  - f. "Repeat offender" means any child adjudicated delinquent for 3 or more separate delinquent acts, not including class C or unclassified misdemeanors, occurring within any period of 12 months.
- (2) No dependent or neglected child shall be placed in a secure detention facility or a secure correctional facility unless charged with or found to have committed a delinquent act. No child shall be placed in an adult correctional or adult detention facility.
- (3) There shall be no mixing unless the following requirements are met:



- a. When a child is charged with or found to have committed a Level 1 Juvenile Offense or is a repeat offender, the Department must obtain a court order authorizing such placement, after the Secretary or a Division Director of the Department of Services for Children, Youth and Their Families shall recommend such placement in writing. Before authorizing mixing, the Family Court must specifically find that the proposed placement of the child offender does not represent a physical risk to others, and that the placement is not contrary to the best interests of the other children in the facility.
  - b. When a child who is not a repeat offender is found to have committed a Level 2 Juvenile Offense, no mixing shall occur unless the Secretary or a Division Director of the Department of Services for Children, Youth and Their Families, after review of the case, certifies in writing that the proposed placement of the child offender does not represent a physical risk to others, and that the placement is not contrary to the best interests of the other children in the facility.
  - c. When a child who is not a repeat offender is found to have committed a Level 3 Juvenile Offense, the Department of Services for Children, Youth and Their Families may mix that child subject to its regulations, provided that such placement is not contrary to the best interests of the other children in the facility.
- (4) All placements which result in mixing of Level 1 or Level 2 child offenders shall be reviewed within 72 hours by the Department. Subsequently, such placement shall be reviewed after 2 months, and regularly thereafter. The 2-month review shall be made by the Foster Care Review Board. The purpose of the review shall be to determine whether, under the placement, the child offender continues not to represent a physical risk to others, and that such placement is not contrary to the best interests of the other children in the facility.
  - (5) The Department shall promulgate regulations in accordance with this chapter within 60 days of May 5, 1987.

(10 Del. C. 1953, § 937; 58 Del. Laws, c. 114, § 1; 59 Del. Laws, c. 307, § 1; 60 Del. Laws, c. 657, § 1; 60 Del. Laws, c. 658, §§ 1, 2; 61 Del. Laws, c. 334, § 3; 61 Del. Laws, c. 377, § 1; 62 Del. Laws, c. 331, §§ 1, 2; 63 Del. Laws, c. 87, § 1; 64 Del. Laws, c. 108, §§ 6, 8, 20, 22-24; 65 Del. Laws, c. 506, §§ 1, 2; 66 Del. Laws, c. 13, §§ 1, 3; 66 Del. Laws, c. 125, §§ 1-3; 66 Del. Laws, c. 234, § 3; 66 Del. Laws, c. 424, § 1; 67 Del. Laws, c. 410, §§ 1-5; 67 Del. Laws, c. 429, § 3; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 13, § 1; 70 Del. Laws, c. 102, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 445, § 1; 71 Del. Laws, c. 199, § 14.)

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

- (a) A child shall be proceeded against as an adult where:
  - (1) The acts alleged to have been committed constitute first or second degree murder, rape in the first degree or rape in the second degree or kidnapping in the first degree, or any attempt to commit said crimes;
  - (2) The child is not amenable to the rehabilitative processes available to the Court;
  - (3) The child has previously been adjudicated delinquent of 1 or more offenses which would constitute a felony were he or she charged as an adult under the laws of this State, and has reached his or her 16th birthday and the acts which form the basis of the current allegations constitute 1 or more of the following offenses: conspiracy first degree, rape in the third degree, assault first degree, arson first degree, burglary first degree, robbery first degree, trafficking in marijuana, cocaine, illegal drugs, methamphetamine, L.S.D. or designer drugs (where the child is alleged to have committed acts constituting a violation of either subparagraph b. or c. of paragraph (1), (2), (3), (4), (5), (6) or (7) of § 4753A(a) of Title 16, or a violation of § 4753A(a)(8)a.) or any attempt to commit any of the offenses set forth in this paragraph;
  - (4) The General Assembly has heretofore or shall hereafter so provide.
- (b) In all cases specified in (a) the Court shall, upon application, hold a preliminary hearing and, if the facts warrant, thereafter refer the child to the Superior Court or to any other court having jurisdiction

- over the offense for trial as an adult.
- (c) (1) In determining whether a child is amenable to the rehabilitative processes of the Court, the Court shall take into consideration, among others, the following factors which are deemed to be nonexclusive:
    - a. Whether, in view of the age and 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 the Family Court lacks power to assign; or
    - b. Whether it is alleged death or serious personal injury was inflicted by the child upon anyone in the course of commission of the offense or in immediate flight therefrom; or
    - c. Whether the child has been convicted of any prior criminal offense; or
    - d. Whether the child has previously been subjected to any form of correctional treatment by the Family Court; or
    - e. Whether it is alleged a dangerous instrument was used by the child; or
    - f. Whether other participants in the same offense are being tried as adult offenders.
  - (2) The Court shall defer further proceedings in the Family Court and shall conduct a hearing to determine whether the child is amenable to the rehabilitative process of the Court:
    - a. Upon motion of the Court, whenever a child is charged with delinquency;
    - b. Upon motion of the Attorney General, whenever a child has reached his or her 14th birthday and is thereafter charged with being delinquent; or
    - c. Whenever a child has reached his or her 14th birthday, and is thereafter charged in accordance with § 1009(c)(5) of this title.
  - (3) Notwithstanding any provision of this section or title to the contrary, any child who has previously been declared to be non-amenable to the rehabilitative processes of the Court pursuant to this section, or who has previously been the subject of a denied application for transfer pursuant to § 1011 of this title, and who thereafter is charged with being delinquent shall be referred to the Superior Court or to any other court having jurisdiction over the offense for trial as an adult.

If it decides that the child is amenable, it may proceed to hear the case. If it decides that the child is not amenable, it shall refer the child to the Superior Court or to any other court having jurisdiction over the offense for trial as an adult.
  - (d) Notwithstanding any provisions of this title to the contrary, in any case in which the Superior Court has jurisdiction over a child, the Court shall retain jurisdiction for purposes of sentencing and all other postconviction proceedings if any judge or jury shall find the child guilty of a lesser included crime following a trial or plea of guilty.
  - (e) Notwithstanding any provision of this section or title to the contrary, when a child has reached his or her 15th birthday and is thereafter charged with being delinquent by having committed any offense which would constitute a felony were he or she charged as an adult under the laws of this State, said offense occurring while the child was an escapee from any Level IV or V facility operated for or by the Department of Services for Children, Youth and Their Families, upon motion of the Attorney General, or upon its own motion, the Court shall defer further proceedings in the Family Court and shall conduct a hearing to determine whether the child should be referred to the Superior Court for trial as an adult. If, at the conclusion of the hearing, the Court finds that evidence demonstrates that there is a fair likelihood that the child may be convicted of the charge or charges, it shall refer the child to the Superior Court for trial as an adult. If, at the conclusion of the hearing, the Court determines that there is no fair likelihood of conviction, the case shall remain within the jurisdiction of the Family Court, subject to all other provisions of this section and title.

(10 Del. C. 1953, § 938; 58 Del. Laws, c. 114, § 1; 60 Del. Laws, c. 657, § 2; 66 Del. Laws, c. 269, § 15; 69 Del. Laws, c. 213, § 2; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 262, § 2; 70 Del. Laws, c. 263, § 1; 70 Del. Laws, c. 596, §§ 2-6; 70 Del. Laws, c. 598, §§ 1-3; 71 Del. Laws, c. 285, §§ 25, 26.)

**§ 1011. Transfer of cases from Superior Court to Family Court.**

- (a) In any case in which the Superior Court has jurisdiction over a child, the Attorney General may transfer the case to the Family Court for trial and disposition if, in the Attorney General's opinion, the interests of justice would be best served.
- (b) Upon application of the defendant in any case where the Superior Court has original jurisdiction over a child, the Court may transfer the case to the Family Court for trial and disposition if, in the opinion of the Court, the interests of justice would be best served by such transfer. Before ordering any such transfer, the Superior Court shall hold a hearing at which it may consider evidence as to the following factors and such other factors which, in the judgment of the Court are deemed relevant:
  - (1) The nature of the present offense and the extent and nature of the defendant's prior record, if any;
  - (2) The nature of past treatment and rehabilitative efforts and the nature of the defendant's response thereto, if any; and
  - (3) Whether the interests of society and the defendant would be best served by trial in the Family Court or in the Superior Court.
- (c)
  - (1) The hearing described in subsection (b) of this section shall be held by the Superior Court only upon timely application of the defendant. Such application shall be deemed timely if made within 30 days of arraignment. No enlargement of said time period shall be permitted. Failure of the defendant to make application within the 30 day period shall constitute a waiver of his or her rights under this section.
  - (2) The hearing shall be held by the Superior Court as soon after such application is made as is practicable. Within 90 days of the arraignment, the Superior Court shall announce its decision as to whether the case is to be transferred to the Family Court; however, the Court's failure to do so shall not be considered as providing a basis for transferring the case to the Family Court, for dismissing the charges, or for providing any other form of relief.
- (d) In the event the case is transferred by the Superior Court under this section, the case shall proceed as if it had been initially brought in the Family Court, and the Family Court shall have jurisdiction of the case, anything to the contrary in this chapter notwithstanding.
- (e) Notwithstanding any provision of this section or title to the contrary, the Superior Court shall retain jurisdiction over any case involving a child where the child has previously been declared to be non-amenable to the rehabilitative processes of the Family Court pursuant to § 1010 of this title, or where the child has previously been the subject of a denied application for transfer pursuant to this section, or where the child has previously been convicted as an adult of any felony as set forth in Titles 11 or 16.

(10 Del. C. 1953, § 939; 58 Del. Laws, c. 116, § 2; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 263, § 2; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 598, §§ 4, 5.)

**PART B. ADULT CRIMINAL PROCEEDINGS**

**§ 1021. Prosecution of adults; process; bail.**

- (a) Prosecution of a person subject to the jurisdiction of the Court who has reached the person's 18th birthday prior to the time of commission of the offense shall be without trial by jury and may be prosecuted either by an information or a complaint. Neither the Attorney General nor any of the Deputy Attorneys General is required to appear to prosecute any such criminal case before a Master.
- (b) A summons or other process may be employed to command the appearance of such person before the Court.
- (c) Notwithstanding any other provision in this chapter, such person may be released on the person's own recognizance; or under such bail as a Judge of the Court may require pending disposition of the case; or, in default of bail, such person may be committed to the Department of Services to Children, Youth, and Their Families or to the Department of Correction, pending disposition of the case.
- (d) In connection with either a secured release or an unsecured release, a Judge of the Court may impose one or more of the following conditions:

- (1) Require the person to return to the Court at any time upon notice, and submit to the orders and processes of the Court;
  - (2) Place the person in the custody of a designated person or organization agreeing to supervise the person;
  - (3) Place the person under the supervision of a presentence officer, probation officer or pretrial services officer;
  - (4) Place restrictions on the travel, associations, activities, consumption of alcoholic beverages, drugs or barbiturates or place of abode of the person during the period of release;
  - (5) Require the person to have no contact or restricted contact with the victim, victim's family, victim's residence, place of employment, school or location of offense;
  - (6) Require periodic reports from the person to an appropriate agency or officer of the Court, including the attorney for the accused;
  - (7) Require psychiatric or medical treatment of the person;
  - (8) Require the person to provide suitable support for the person's family under supervision of an office of the Court;
  - (9) Require a person, who has been convicted, to duly prosecute any post-conviction remedies or appeals; and if the case is affirmed, or is reversed and remanded, such person shall forthwith surrender to the Court;
  - (10) Impose any other condition deemed reasonably necessary to assure appearance as required, and to carry out the purposes of this chapter.
- (e) If the person is committed, in lieu of bail, a Judge of the Court may require such person, while in custody, to have no contact with the victim or with the victim's family.
  - (f) The accused, or the Attorney General, may apply to the Court for any modification of any determination by the Court as to the decision of the type of release, the amount and nature of the bond or surety or the conditions of release.
  - (g) Where a Judge modifies any bail amount, such Judge shall review conditions and may impose any conditions as are set forth in this section, including specific considerations for the safety of the victim and the community.
  - (h) If the accused has furnished surety, a Judge of the Court shall, at that time, review conditions and may impose conditions as are set forth in this section including specific considerations for the safety of the victim and the community.

(10 Del. C. 1953, § 940; 58 Del. Laws, c. 114, § 1; 66 Del. Laws, c. 300, § 2; 66 Del. Laws, c. 413, § 2; 67 Del. Laws, c. 158, § 3; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1.)

**§ 1022. Duties of other courts.**

- (a) When any adult shall have been arrested for any offense within the jurisdiction of this Court, the arresting officer may bring the person directly to the Court in the appropriate county if it be in session, unless a Judge of the Court directs otherwise, or, if the Court is not in session, before any other criminal court.
- (b) Such court shall inquire into the matter and shall hold the accused on the accused's own recognizance or on bail, with or without surety, and may bind material witnesses for their appearance before this Court at its next session or at such time as they may be notified by this Court to appear; and in default of bail, the accused and material witnesses shall be committed to the Department of Health and Social Services to be delivered to this Court at its next session. All recognizances and bail bonds shall be forthwith forwarded to the Court in the appropriate county.
- (c) The accused shall, upon application, be granted a preliminary hearing.

(10 Del. C. 1953, § 941; 58 Del. Laws, c. 114, § 1; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1.)

**§ 1023. Disposition.**

Where the facts warrant the Court may adjudge an adult guilty of the offense charged and may:

- (1) Impose the penalty provided by law; or
- (2) Suspend the penalty, or any part thereof, and place the person on probation under such terms and

conditions as the Court deems proper.

(10 Del. C. 1953, § 942; 58 Del. Laws, c. 114, § 1; 69 Del. Laws, c. 335, § 1.)

**§ 1024. First offenders domestic violence diversion program.**

- (a) For the purposes of this section, domestic violence shall be considered as any act or acts committed by an adult member of a family against one or more members of the person's family, as that term is defined in 10 Del.C. § 901(9), which constitute any of the following criminal offenses under Title 11: offensive touching (§ 601); menacing (§ 602); reckless endangering in the second degree (§ 603); assault in the third degree (§ 611); terroristic threatening (§ 621); vehicular assault in the second degree (§ 628); sexual harassment (§ 763); unlawful sexual contact in the third degree (§ 767); unlawful imprisonment in the second degree (§ 781); coercion (§ 791); reckless burning or exploding (§ 804); criminal mischief classified as a misdemeanor (§ 811); criminal trespass in the first, second or third degrees (§§ 821, 822, 823); harassment (§ 1311); or aggravated harassment (§ 1312).
- (b) Those acts of domestic violence for which an offender may elect to apply for first offender status under this rule shall be limited to the following criminal offenses under Title 11: offensive touching (§ 601); menacing (§ 602); sexual harassment (§ 763); criminal mischief classified as a misdemeanor (§ 811); criminal trespass in the first, second or third degrees (§§ 821, 822, 823); harassment (§ 1311); or aggravated harassment (§ 1312).
- (c) Any adult who:
  - (1) Has not been convicted of a violent felony or any domestic violence offense under Title 11 listed in subsection (a) of this section, or under any statute of the United States or of any state thereof including the District of Columbia relating to a violent felony or acts of domestic violence substantially similar to those criminal offenses listed in subsection (a) of this section;
  - (2) Has not previously been afforded first offender treatment or other diversion programs for domestic violence;
  - (3) Has been charged with a domestic violence offense listed in subsection (b) of this section; and
  - (4) Has appeared at Family Court for a bail review/domestic violence interview, may qualify for the first offense election at the time of arraignment.
- (d) At the time of arraignment any person qualifying under subsection (c) of this section as a first offender and who elects to apply under this section shall admit to the offense by entering a plea of guilty, as a first offender. The court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and shall place the offender on probation for a period of 1 year upon terms and conditions of which shall include but not be limited to:
  - (1) Enrollment with a counseling service for the purposes of evaluation and such counseling services as the evaluation counselor deems necessary;
  - (2) Satisfactory completion of the counseling program;
  - (3) Evaluation for alcohol and other drug abuse, and successful completion of a course of treatment as may be indicated by the evaluation;
  - (4) Restitution, where appropriate, to the victim;
  - (5) No unlawful contact with the victim during the period of probation; and
  - (6) Other such terms and conditions as the Court may impose.
- (e) If a term or condition of probation is violated, including failure to appear for evaluation at an assigned evaluating agency, the offender shall be brought before the Court, or if the offender fails to appear before the Court, in either case, upon a determination by the Court that the terms have been violated, the Court shall enter an adjudication of guilty and proceed as otherwise provided under Title 11.
- (f) Upon fulfillment of the terms and conditions of probation, including, but not limited to, satisfactory completion of courses of instruction and/or programs of counseling/rehabilitation, and payment of all costs and fees, the court shall discharge the person and dismiss the proceedings against the offender and shall simultaneously therewith submit to the Attorney General a report thereof which shall be retained by the Attorney General for use in future proceedings, if required.

- (g) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualification or disabilities imposed by law upon conviction of a crime, except the additional penalties imposed for second or subsequent offenses under Title 11.
- (h) Any person who elects to apply for first offender status shall by said application be deemed to have waived the right to a speedy trial and further agrees to pay the cost of prosecution as a condition. If a person elects not to apply for first offender status or if the application is not accepted, the matter shall be promptly scheduled for trial.
- (i) There may be only 1 discharge and dismissal under this section with respect to any person.

(69 Del. Laws, c. 157, § 1; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1.)

**§ 1025. Expungement; hearing by the Court.**

- (a) If an adult under the jurisdiction of this Court has been charged with the commission of a crime, and:
  - (1) Is acquitted; or
  - (2) A nolle prosequi is taken, or the charge is otherwise dismissed, the accused may file a petition setting forth the relevant facts and requesting expungement of the police records, and the Court records relating to the charge.
- (b) The petition shall be filed in the Family Court in the county where the case was terminated, disposed of or concluded.
- (c) A copy of the petition shall be served on the Attorney General, who may file an objection or answer to the petition within 30 days after it is served on him.
- (d) Unless the Court believes a hearing is necessary, petitions shall be disposed of without a hearing. If the Court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records relating to the charge. Otherwise, it shall deny the petition. The fact that the petitioner has previously been convicted of a criminal offense, other than that referred to in the petition, shall be considered by the Court as prima facie evidence that the continued existence and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the petitioner.
- (e) The State shall be made party defendant to the proceeding. Any party aggrieved by the decision of the Court may appeal, as provided by law in civil cases.
- (f) If an order expunging the records is granted by the Court, all the records specified in the order shall, within 60 days of the order, be removed from the files, and placed in the control of the Supervisor of the State Bureau of Identification who shall be designated to retain control over all expunged records, and who shall insure that the records or the information contained therein are not released for any reason except as specified in this subchapter. In response to requests from any person not specifically authorized, for information or records on the person who was arrested, the law-enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record.

(69 Del. Laws, c. 335, § 2; 70 Del. Laws, c. 186, § 1.)

**§ 1026. Expungement; records; access by law-enforcement officers.**

- (a) Except for disclosure to law-enforcement officers acting in the lawful performance of their duties in investigating criminal activity or for the purpose of an employment application as an employee of a law-enforcement agency, it shall be unlawful for any person having or acquiring access to an expunged court or police record to open or review it or to disclose to another person any information from it without an order from the Court which ordered the record expunged.
- (b) Where disclosure to law-enforcement officers in the lawful performance of their duties in investigating criminal activity is permitted by subsection (a) of this section, such disclosure shall apply for the purpose of investigating particular criminal activity in which the person, whose records have been expunged, is considered a suspect and the crime being investigated is a felony; or pursuant

- to an investigation of an employment application as an employee of a law-enforcement agency.
- (c) Nothing contained in this section shall require the destruction of photographs or fingerprints taken in connection with any felony arrest and which are utilized solely by law enforcement officers in the lawful performance of their duties in investigating criminal activity.
  - (d) Nothing herein shall require the destruction of court records or records of the Department of Justice. However, all such records, including docket books, relating to a charge which has been the subject of a destruction order shall be so handled to ensure that they are not open to public inspection or disclosure.
  - (e) An offense for which records have been expunged pursuant to this section shall not have to be disclosed by the person as an arrest for any reason.
  - (f) Upon the granting by the Court for an order for the expungement of records in accordance with this subchapter, a copy of such order shall be forwarded to the United States Department of Justice.
  - (g) Any person who violates § 1025 of this title shall be guilty of a Class B misdemeanor, and shall be punished accordingly.

(69 Del. Laws, c. 335, § 2.)

## **PART C. ADULT PROCEEDINGS**

### **§ 1031. Disposition.**

In any civil action within the jurisdiction of this Court and upon the petition of a person properly before it, the Court may:

- (1) Award the custody or possession of a child to any party to the action, establish visitation rights, and, in a proper case, order payment of support for the child;
- (2) Order a child's custodian to exercise such care and perform such acts as may be reasonably necessary to insure that the child shall obey the law and receive adequate care;
- (3) Consent to a child's employment, or to enlistment into the armed forces, or to receiving medical care as may be required by law;
- (4) Order a person under a duty to do so to pay through the Court or the Bureau of Child Support Enforcement or directly to the spouse/ex-spouse or to the custodian of the child reasonable support for the spouse and/or child. And in such cases as the Court may deem appropriate enter an order of final judgment as to any past due support which judgment shall not be subject to subsequent modification by the Court;
- (5) In an action to prevent a family member from conduct that imperils the family relationship, order the defendant to desist from the acts complained of, or order individual or family counseling with the court staff or with any appropriate counseling agency, or enter such other order as may be required;
- (6) May commit a mentally ill, retarded, or disturbed adult for observation or treatment to any appropriate institution within the State, or to any institution without the State which will consent to receive the person;
- (7) Upon petition thereto, grant grandparents reasonable visitation rights as the Court shall determine with respect to the grandchild, regardless of marital status of the parents of the child or the relationship of the grandparents to the person having custody of the child; provided however:
  - a. That when the natural or adoptive parents of the child are cohabiting as husband and wife, grandparental visitation may not be granted over both parents' objection. The trier of fact shall make the ultimate decision based upon the best interest of the child.
  - b. That wherever practicable, the Court shall provide that the maternal grandparents' visitation time shall occur when the child is placed with or has visitation with the mother and the paternal grandparents' visitation time shall occur when the child is placed with or has visitation with the father, irrespective of the place of residence of the parents and/or the grandparents, unless otherwise agreed to by all

parties involved.

(10 Del. C. 1953, § 950; 58 Del. Laws, c. 114, § 1; 60 Del. Laws, c. 279, § 1; 60 Del. Laws, c. 647, § 1; 65 Del. Laws, c. 243, § 1; 69 Del. Laws, c. 160, § 1; 69 Del. Laws, c. 173, § 1; 69 Del. Laws, c. 335, § 1; 69 Del. Laws, c. 378, § 1; 70 Del. Laws, c. 186, § 1.)

## **PART D. PROTECTION FROM ABUSE PROCEEDINGS**

### **§ 1041. Definitions.**

The following terms shall have the following meanings:

- (1) "Abuse" means conduct which constitutes the following:
  - a. Intentionally or recklessly causing or attempting to cause physical injury or a sexual offense, as defined in § 761 of Title 11;
  - b. Intentionally or recklessly placing or attempting to place another person in reasonable apprehension of physical injury or sexual offense to such person or another;
  - c. Intentionally or recklessly damaging, destroying or taking the tangible property of another person;
  - d. Engaging in a course of alarming or distressing conduct in a manner which is likely to cause fear or emotional distress or to provoke a violent or disorderly response;
  - e. Trespassing on or in property of another person, or on or in property from which the trespasser has been excluded by court order;
  - f. Child abuse, as defined in Chapter 9 of Title 16;
  - g. Unlawful imprisonment, kidnapping, interference with custody and coercion, as defined in Title 11; or
  - h. Any other conduct which a reasonable person under the circumstances would find threatening or harmful.
- (2) "Domestic violence" means abuse perpetrated by one member against another member of the following protected classes:
  - (i) Family, as that term is defined in § 901(9) of this title, regardless, however, of state of residence of the parties; or
  - (ii) Former spouses, a man and a woman co-habiting together with or without a child of either or both, or a man and a woman living separate and apart with a child in common.
- (3) "Petitioner" means:
  - (i) A person who is a member of a protected class and files a petition alleging domestic violence against such person or against such person's minor child or an infirm adult;
  - (ii) The Division of Child Protective Services acting in the interest of a minor child and files a petition alleging domestic violence; or
  - (iii) The Division of Adult Protective Services acting in the interest of an infirm adult and files a petition alleging domestic violence.
- (4) "Protective order" means an order issued by the court to a respondent restraining said respondent from committing domestic violence against the petitioner, or a person in whose interest a petition is brought, and may include such measures as are necessary in order to prevent domestic violence.
- (5) "Respondent" means the person alleged in the petition to have committed the domestic violence.

(69 Del. Laws, c. 160, § 2; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 137, § 1.)

### **§ 1042. Commencement of action; procedure.**

- (a) A request for relief from domestic violence is initiated by the filing of a verified petition by the petitioner, or by the Division of Child Protective Services or the Division of Adult Protective Services, asking the court to issue a protective order against the respondent.
- (b) The petitioner need not reveal an address, place of residence, school or employment or the address or place where the petitioner's child or children receive child care or attend school, if it is alleged that disclosure of this information would endanger the petitioner. However, the Court may require



the petitioner to reveal in confidence a current address or place of residence for the purpose of determining jurisdiction or venue.

- (c) A petition for a protective order may be filed in any county where the petitioner resides, the respondent resides, the alleged domestic violence occurred, or where the petitioner is temporarily located away from the residence to avoid domestic violence.
- (d) Forms and instructions for initiating a proceeding under this part shall be available from the Clerk of the Court. Assistance from court staff or court volunteers shall be available during business hours to assist the parties with all papers which may be filed in connection with a proceeding under this part. Any assistance or information provided by court staff or court volunteers under this part does not constitute the practice of law.
- (e) All forms and instructions developed for use by the parties to a proceeding under this part shall contain simple, understandable language.

(69 Del. Laws, c. 160, § 2; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1.)

**§ 1043. Ex parte orders and emergency hearings.**

- (a) A petitioner may request an emergency protective order by filing an affidavit or verified pleading alleging that there is an immediate and present danger of domestic violence to the petitioner or to a minor child of the petitioner or to an infirm adult.
- (b) An emergency protective order may be issued on an ex parte basis, that is, without notice to the respondent, where the petitioner certifies in writing the efforts, if any, which have been made to give notice to the respondent or the reasons supporting the claim that notice should not be required.
- (c) An emergency hearing held on an ex parte basis shall be held the same day that the petition is filed or the next day that the Court is in session. All other emergency hearings shall be scheduled for an expedited hearing within 10 calendar days after the petition is filed.
- (d) In any case in which an ex parte protective order has been issued, a full hearing shall be held within 10 days. The Court may extend an ex parte order as needed, but not to exceed 30 days, to effectuate service of the order where necessary to provide protection.
- (e) If the Court finds by a preponderance of the evidence that the alleged domestic violence has occurred, or if the respondent consents to entry of a protective order, the Court shall grant any appropriate relief, including, but not limited to, the relief set forth in § 1045 of this title.
- (f) In those cases where the respondent is not present for the hearing, or where the hearing is held ex parte, any protective order issued shall be served immediately upon the respondent, in accordance with § 1065 of this title. A certified copy of the order shall also be given to the petitioner after the hearing, before leaving the courthouse. If the order recites that the respondent appeared in person before the Court, the necessity for further service is waived and proof of service of the order is not necessary; in those cases, the respondent shall be given a copy of the order before leaving the courthouse.

(69 Del. Laws, c. 160, § 2; 69 Del. Laws, c. 335, § 1.)

**§ 1044. Nonemergency hearings.**

- (a) Upon receipt of a petition for a protective order, the Court shall order a hearing within 30 days.
- (b) If the Court finds by a preponderance of the evidence that the alleged domestic violence has occurred, or if the respondent consents to entry of a protective order, the Court shall grant any appropriate relief, including, but not limited to, the relief set forth in § 1045 of this title.
- (c) Service of the protective order, as well as provision of copies to the parties, shall take place in accordance with § 1043(f) of this title.

(69 Del. Laws, c. 160, § 2; 69 Del. Laws, c. 335, § 1.)

**§ 1045. Relief available; duration of orders, modification and termination.**

- (a) After consideration of a petition for a protective order, the Court may grant relief as follows:
  - (1) Restrain the respondent from committing acts of domestic violence, as defined in § 1041 of this title;

- (2) Restrain the respondent from contacting or attempting to contact the petitioner;
  - (3) Grant exclusive possession of the residence or household to the petitioner or other resident, regardless of in whose name the residence is titled or leased. Such relief shall not affect title to any real property;
  - (4) Order that the petitioner be given temporary possession of specified personal property solely or jointly owned by respondent or petitioner, including but not limited to, motor vehicles, checkbooks, keys and other personal effects;
  - (5) Grant temporary custody of the children of the parties to the petitioner or to another family member. Either party may request visitation at any time during the proceeding. The Court may provide for visitation by separate interim visitation order pursuant to Title 13, which order shall be binding upon and enforceable against both parties. Such interim visitation order may include third party supervision of any visitation, if necessary, in accordance with Chapters 7 and 19 of Title 13;
  - (6) Order the respondent to pay support for the petitioner and/or for the parties' children, in accordance with Chapter 5 of Title 13, including temporary housing costs;
  - (7) Order the respondent to pay to the petitioner or any other family member monetary compensation for losses suffered as a direct result of domestic violence committed by the respondent, including medical, dental and counseling expenses, loss of earnings or other support, cost of repair or replacement of real or personal property damaged or taken, moving or other travel expenses and litigation costs, including attorney's fees;
  - (8) Order the respondent to temporarily relinquish to the sheriff, constable or to a police officer the respondent's firearms and to refrain from purchasing or receiving additional firearms for the duration of the order;
  - (9) Prohibit the respondent from transferring, encumbering, concealing or in any way disposing of specified property owned or leased by parties;
  - (10) Order the respondent, petitioner and other protected class members, individually and/or as a group, to participate in treatment or counseling programs;
  - (11) Grant any other reasonable relief necessary or appropriate to prevent or reduce the likelihood of future domestic violence.
- (b) Relief granted under this section shall be effective for a fixed period of time, not to exceed 1 year, except that such order may be extended or modified by a further order of the Court as described in subsections (c) and (d) of this section.
  - (c) An order issued under this part may be extended, for up to 6 months, or terms of the order modified, upon motion of either party. Hearings on such motions shall be scheduled within 30 days after proof of service on the respondent is filed. Such motions may be heard on an emergency basis if filed in accordance with § 1043 of this title. Orders may be extended only after the Court finds by a preponderance of the evidence that domestic violence has occurred since the entry of the order, a violation of the order has occurred, if the respondent consents to the extension of the order or for good cause shown.
  - (d) Only the Court shall modify an order issued under this part and the reconciliation of the parties shall have no effect on the validity of any of the provisions of such an order. The protective order may be modified or rescinded during the term of the order upon motion, after notice to all parties affected and a hearing.
  - (e) Any subsequent support, custody or visitation order entered by the Court in any proceeding brought pursuant to Title 13 shall supersede any relevant provisions regarding those issues which are included in a protection from abuse order, without the need to modify such protective order.

(69 Del. Laws, c. 160, § 2; 69 Del. Laws, c. 335, § 1; 71 Del. Laws, c. 137, §§ 2-4.)

**§ 1046. Enforcement; sanctions for violation of order.**

- (a) The Court may direct that pleadings and orders filed or issued under this part be served upon the respondent by the Sheriff or the Sheriff's deputy or by any person authorized by statute or court rule to serve process.
- (b) A copy of a protective order granted under this part shall be entered into the Delaware Justice

Information System by the Court on or before the next business day. A copy of the protective order shall be sent immediately to the Delaware law enforcement agency in whose jurisdiction the petitioner resides and/or where the abuse occurred. Entry into the Delaware Justice Information System constitutes notice to all law enforcement agencies of the existence of the order. The order is fully enforceable in any county of the State.

- (c) It shall be the duty of any law enforcement officer to arrest with or without a warrant any person whom the officer has probable cause to believe has violated a protective order issued by the court and of which the person arrested has notice or knowledge. The person arrested shall be immediately taken before the court issuing the order. If the Court is not in session, then the arrested person shall be taken before the nearest justice of the peace until bail is fixed. If bail is to be fixed, the justice of the peace or the judge shall take into consideration in determining the amount of bail whether the defendant has previously violated an existing protective order.
- (d) All protective orders issued under this part shall state that violations may result in:
  - (1) A finding of contempt;
  - (2) Criminal prosecution; and
  - (3) Imprisonment or fine or both.
- (e) It shall be unlawful for a respondent to knowingly violate a protective order. Violations shall be punishable as a class A misdemeanor. Nothing in this subsection shall preclude the filing of a civil contempt petition by the petitioner for violations of a protective order issued under this part.

(69 Del. Laws, c. 160, § 2; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1.)

**§ 1047. Nonpreclusion of remedies.**

Nothing in this part shall preclude a petitioner or law enforcement officer from filing criminal charges when probable cause exists.

(69 Del. Laws, c. 160, § 2; 69 Del. Laws, c. 335, § 1.)

**§ 1048. Jurisdiction.**

The Family Court shall have jurisdiction of proceedings under this part.

(69 Del. Laws, c. 160, § 2; 69 Del. Laws, c. 335, § 1.)

## **PART E. APPEALS**

**§ 1051. Appeals generally.**

- (a) From any order, ruling, decision or judgment of the Court in any civil proceeding, including any delinquency proceeding, there shall be the right of appeal as provided by law to the Supreme Court.
- (b) From any order, ruling, decision or judgment of the Court in any criminal proceeding, there shall be the right of appeal in the first instance as provided by law to the Superior Court in the same county in which the case was adjudicated by the Court, with the further right of appeal as provided by law to the Supreme Court from an affirmance by the Superior Court of the order of the Court which was appealed, or from the entry of a judgment of conviction by the Superior Court upon a trial de novo on appeal to that Court.
- (c) An appeal shall be taken within 30 days from the date of the disposition, or within such time as provided by law.
- (d) No appeal shall stay the execution of any order of the Court unless such stay shall be specifically ordered by this Court in the first instance or by the appellate court.

(10 Del. C. 1953, § 960; 58 Del. Laws, c. 114, § 1; 65 Del. Laws, c. 145, § 1; 66 Del. Laws, c. 162, § 1; 67 Del. Laws, c. 149, § 1; 69 Del. Laws, c. 335, § 1.)

**§ 1052. Appeals from custody orders.**

- (a) Any order of the Court relative to the custody of any child shall be subject to review.

- (b) The child's parent, guardian, next friend or any interested person or agency, at any time within 30 days after the date of such order, may appeal to the Supreme Court.
- (c) In the case of an indigent person, the Court may, in its discretion, waive surety for costs upon affidavit by such person that the person is without funds and means of prosecuting the appeal.
- (d) The taxing of costs shall be within the discretion of the Supreme Court.

(10 Del. C. 1953, § 961; 58 Del. Laws, c. 114, § 1; 66 Del. Laws, c. 162, § 2; 66 Del. Laws, c. 162, § 2; 67 Del. Laws, c. 149, § 2; 68 Del. Laws, c. 53, § 2; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1.)

**§ 1053. Appeals by the State in Family Court cases.**

- (a) An appeal may be taken by the State from the Family Court to an appellate court in the following instances:
  - (1) *Appeal as of right.*
    - a. The State shall have an absolute right to appeal to an appellate court a final order of the Family Court where the order constitutes a dismissal of a petition or information or any count thereof or the granting of any motion vacating any verdict or judgment of delinquency or conviction where the order of the Family Court is based upon the invalidity or construction of the statute upon which the petition or information is founded or where the order is based on lack of jurisdiction of the Family Court over the person or subject matter.
    - b. Notwithstanding any section of this chapter to the contrary, the State shall have an absolute right to appeal to an appellate court from any order of the Family Court which grants an accused any of the following: a new trial or judgment of acquittal after a verdict or an adjudication of delinquency; a modification of a verdict or an adjudication of delinquency; an arrest of judgment; relief in any postconviction proceeding or in any action collaterally attacking a criminal judgment or an adjudication of delinquency; or any order or judgment declaring any act of the General Assembly, or any portion of such act, to be unconstitutional under either the Constitution of the United States or the State of Delaware, inoperative or unenforceable, except that no appeal shall lie where otherwise prohibited by the double jeopardy clause of the Constitution of the United States or of this State.
    - c. Notwithstanding any section of this chapter to the contrary, the State shall have an absolute right to appeal to an appellate court any ruling of the Family Court on a question of law or procedure adverse to the State in any case in which the accused was convicted or adjudicated delinquent and appeals from the judgment, except that the decision or result of the State's appeal shall not affect the rights of the accused unless the accused, on his or her appeal, is awarded a new trial or a new sentencing hearing. Once the State perfects its cross-appeal, the appellate court shall review and rule upon the questions presented therein regardless of the disposition of the accused's appeal.
    - d. Notwithstanding any section of this chapter to the contrary, the State shall have an absolute right to appeal any sentence on the grounds that it is unauthorized by, or contrary to, any statute or court rule, in which case the decision or result of the State's appeal shall affect the rights of the accused.
    - e. Any appeal brought by the State pursuant to subparagraph c. or d. of this subsection shall be personally authorized by either the Attorney General or the Chief Deputy Attorney General.
  - (2) *Appeal in the discretion of the appellate court.* The State may apply to an appellate court to permit an appeal to determine a substantial question of law or procedure, and the appellate court may permit the appeal in its absolute discretion. The appellate court shall have the power to adopt rules governing the allowance of such an appeal; but in no event shall the decision or result of the appeal affect the rights of the appellee and he shall not be obligated to defend the appeal, but the appellate court may require the Public Defender of

the State to defend the appeal and to argue the cause; provided, however, that if the order appealed from is an order suppressing or excluding substantial and material evidence the appellate court may permit an interlocutory appeal of any pretrial order, and if the order suppressing such evidence is reversed, the appellee may be subjected to a trial.

- (b) The State's rights of appeal in a delinquency proceeding provided under subsection (a) of this section shall be to the Supreme Court. The State's rights of appeal in a criminal proceeding provided under subsection (a) of this section shall be to the Superior Court in the first instance, with further rights of appeal to the Supreme Court as are provided under subsection (a) of this section, from an affirmance by the Superior Court of the order of the Family Court which was appealed.
- (c) The appeal or application for appeal shall be filed with the appellate court within 30 days from entry of the order appealed from, or, in any case in which the State elects to prosecute a cross appeal, notice of the cross appeal shall be filed within 30 days from the filing of a notice of appeal by the defendant.
- (d) "Order" for purposes of this section includes any judgment, order, ruling, decision, memorandum, opinion, or equivalent entry of the Court appealed from which constitutes a fixed determination by such Court.
- (e) The provisions of this section shall be liberally construed so as to afford the State the broadest possible right to appeal in a criminal case, but only to the extent permitted by the Constitution of the United States and the State of Delaware.

(10 Del. C. 1953, § 962; 58 Del. Laws, c. 114, § 1; 66 Del. Laws, c. 162, § 3; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 481, §§ 4-6.)

## **PART F. MISCELLANEOUS**

### **§ 1061. Examination; treatment; payment.**

- (a) The Court may order any person within its jurisdiction examined by a licensed practitioner in the appropriate field, and if the examiner shall certify that treatment would be in the interest of the examined person and the public, order such treatment.
- (b) The Court may, after a reasonable opportunity to be heard, order the examined person, or the person legally liable for the person's support, to repay the Court for its outlay on the person's behalf, such sum, in such manner, within the person's ability, as the Court determines.

(10 Del. C. 1953, § 970; 58 Del. Laws, c. 114, § 1; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1.)

### **§ 1062. Assignment of prosecutors and public defenders.**

Sufficient prosecutors and public defenders shall be assigned to the Court in each county as are required in the judgment of the Attorney General, the public defender and the Court.

(10 Del. C. 1953, § 971; 58 Del. Laws, c. 114, § 1; 69 Del. Laws, c. 335, § 1.)

### **§ 1063. Proceedings; privacy, informality.**

- (a) All proceedings before the Court and all records of such proceedings may be private except to the extent that the Court may consider publication in the public interest except as provided below in subsection (b); provided, however, that proceedings in a crime classified as a felony shall be open to the public. Proceedings may, within the Court's discretion, be informal, but shall be consistent with decorum and the law.
- (b) All records concerning any child shall be made available to the Superior Court and the Department of Services for Children, Youth and Their Families, and whenever a child is arrested, convicted or acquitted for a crime classified by Title 11 as a felony, or a class A misdemeanor for juveniles ages 13 through 17, the Clerk of the Family Court, or any state or local police authority, shall release the name and address of the child and the name of the child's parents upon request by a responsible representative of public information media.

(10 Del. C. 1953, § 972; 58 Del. Laws, c. 114, § 1; 59 Del. Laws, c. 77, § 1; 64 Del. Laws, c. 108, § 20; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 23, § 1.)

**§ 1064. Merger; effect on Judges; employees; cases; records; prior offenses.**

- (a) Effective September 7, 1971, the Family Court of the State in and for New Castle County and the Family Court for Kent and Sussex Counties are merged into one Family Court and shall not thereafter function as separate Courts.
- (b) All employees of the Family Courts at the time of the merger are employees of the merged court, without diminution of rank, position, authority, or compensation by reason of enactment of this chapter.
- (c) Any case within the jurisdiction of the Family Court previously adjudicated in any court active at the time of the merger was transferred to and continued in the merged court, and the records therein are the records of the merged court, which shall carry out such orders as were previously made in the case.
- (d) No offense committed and no penalty or judgment incurred under the provisions of any law existing prior to the merger shall be affected by this chapter.

(10 Del. C. 1953, § 973; 58 Del. Laws, c. 114, § 1; 69 Del. Laws, c. 335, § 1.)

**§ 1065. Obtaining personal jurisdiction.**

- (a) Jurisdiction shall be acquired over a party in any civil action by transmitting to the party a copy of the summons and the petition or complaint (the papers) by any of the following methods:
  - (1) By personal service; or
  - (2) By leaving a copy at the party's dwelling house or usual place of abode with some person of suitable age and discretion residing there; or
  - (3) By any form of mail; or
  - (4) In the manner prescribed by court rule; or
  - (5) In the manner directed by the Court, including publication, if other methods of service have failed or are deemed to have been inadequate.
- (b) If a party to whom papers have been transmitted by ordinary mail shall fail to appear in the action and there shall be no reliable proof that such party has received notice thereof, then the Court shall order that further effort be made to provide notice to that party which may include notice by certified or registered mail, or by any other method for providing notice specified in subsection (a) above.
- (c) Jurisdiction shall be acquired over a minor by any of the above methods directed to the minor and to the minor's parent, custodian or guardian.
- (d) If, for any particular action, another statute or rule adopted pursuant to statute prescribes a method or methods for acquiring jurisdiction over a party, then jurisdiction shall be acquired thereby.
- (e) It is not necessary to transmit papers or otherwise provide notice to a party who has entered an appearance in the action.

(63 Del. Laws, c. 113, § 1; 69 Del. Laws, c. 335, § 1.)

***Subchapter IV. Voluntary and Mandatory Human Immunodeficiency Virus Testing of Certain Sex Offenders***

**§ 1075. Definitions.**

For purposes of this subchapter, the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Human immunodeficiency virus test" means a test or tests of an individual for presence of human immunodeficiency virus, or for antibodies or antigens that result from human immunodeficiency virus infection, or for any other substance specifically indicating human immunodeficiency virus infection, and includes preliminary screening.

(69 Del. Laws, c. 231, § 2.)

**§ 1076. HIV testing made available.**

A person charged with an offense pursuant to Chapter 5 of Title 11, which has sexual intercourse or deviate sexual intercourse as an element, or has sexual contact as an element when the circumstances of the case demonstrate a possibility of transmission of human immunodeficiency virus, shall upon initial court appearance on the charge, be informed by the judge of the availability of human immunodeficiency virus testing under the provisions of Chapter 12 of Title 16. The judge shall also notify the victim of the offense, or parent or guardian of the victim, that the defendant has been so notified.

(69 Del. Laws, c. 231, § 2.)

**§ 1077. Order to submit to human immunodeficiency virus testing; test results; notification to Department of Services to Children, Youth and their Families; counseling; costs; notice of appeal not to stay order for HIV testing.**

- (a) When a defendant has been arrested and charged with an offense in § 1075 of this title, other provisions of law to the contrary notwithstanding, the court, at arraignment, regardless of any prior human immunodeficiency virus test on the defendant, shall order, at the request of the victim, the defendant to undergo human immunodeficiency virus testing, under the direction of the Division of Public Health.
- (b) The result of any human immunodeficiency virus test conducted pursuant to this subchapter shall not be a public record for purposes of Chapter 100 of Title 29.
- (c) The result of any human immunodeficiency virus testing conducted pursuant to this subchapter shall only be made available by the Division of Public Health to the victim, or the parent or guardian of the victim who is a minor or is mentally retarded or mentally incapacitated, the defendant, the court issuing the order for testing and any other person or agency pursuant to Chapters 12 and 12A of Title 16.
- (d) In addition, the Division of Public Health shall provide to the Department of Services to Children, Youth and Their Families the result of any human immunodeficiency virus test conducted pursuant to this subchapter which indicates that the defendant is infected with the human immunodeficiency virus. The Department of Services to Children, Youth and Their Families shall use this information solely for the purpose of providing medical treatment to the defendant while incarcerated in any institution under the Department's jurisdiction.
- (e) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Division of Public Health shall provide counseling to the victim and the defendant regarding human immunodeficiency virus disease, and referral for appropriate health care and support services.
- (f) The costs of testing under this subchapter shall be paid by the defendant tested, unless the court has determined that the defendant is an indigent person.
- (g) Filing of a notice of appeal shall not stay an order that the defendant submit to a human immunodeficiency virus test.

(69 Del. Laws, c. 231, § 2.)