



TITLE 10

Courts and Judicial Procedure

Organization, Powers, Jurisdiction and Operation of Courts

CHAPTER 9. THE FAMILY COURT OF THE STATE OF DELAWARE

Subchapter I. Organization, Administration and Operation

§ 901. Definitions.

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

(1) "Abuse" or "abused child" means that a person:

- a. Causes or inflicts sexual abuse on a child; or
- b. Has care, custody or control of a child, and causes or inflicts:
 1. Physical injury through unjustified force as defined in § 468 of Title 11;
 2. Emotional abuse;
 3. Torture;
 4. Exploitation; or
 5. Maltreatment or mistreatment.

(2) "Adult" means a person who has reached his or her 18th birthday.

(3) "Care, custody and control" or "those responsible for care custody and control" shall mean a person or persons in a position of trust, authority, supervision or control over a child. It may include:

- a. A parent, guardian, or custodian;
- b. Other members of the child's family or household, meaning persons living together permanently or temporarily without regard to whether they are related to each other and without regard to the length of time or continuity of such residence, and it may include persons who previously lived in the household such as paramours of a member of the child's household;
- c. Any person who, regardless of whether a member of the child's household, is defined as family or relatives in this section or as an adult individual defined in § 1009(b)(3)a. of this title;
- d. Persons temporarily responsible for the child's well-being or care such as a healthcare provider, aide, teacher, instructor, coach, sitter, day care or child care provider, or any other person having regular direct contact with children through affiliation with a school, church, or religious institution, health care facility, athletic or charitable organization or any other organization whether such a person is compensated or acting as a volunteer; or
- e. Any person who has assumed control of or responsibility for the child.

For the purpose of investigation of child abuse, dependency or neglect, the Department of Services for Children and Their Families (DSCYF) may investigate any allegation of child abuse, dependency or neglect committed by persons identified herein, but shall only be responsible for the investigation of intrafamilial and institutional child abuse, dependency or neglect. Where the DSCYF is not responsible for the investigation of such child abuse or neglect, it shall immediately refer such report to the appropriate police authorities or child protective services agencies within or without the State.

(4) "Child" means a person who has not reached his or her 18th birthday.

(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) "Dependency" or "dependent child" means that a person:

a. Is responsible for the care, custody, and/or control of the child; and

b. Does not have the ability and/or financial means to provide for the care of the child; and

1. Fails to provide necessary care with regard to: food, clothing, shelter, education, health care, medical care or other care necessary for the child's emotional, physical or mental health, or safety and general well-being; or

2. The child is living in a nonrelated home on an extended basis without the consent and approval of the DSCYF or any agency or court licensed or authorized to place children in a nonrelated home; or

3. The child has been placed with a licensed agency which certifies it cannot complete a suitable adoption plan.

In making a finding of dependency under this section, consideration may be given to dependency, neglect, or abuse history of any party.

(9) "DSCYF" or "Department" means the Department of Services for Children, Youth and Their Families.

(10) "Emotional abuse" means threats to inflict undue physical or emotional harm, and/or chronic or recurring incidents of ridiculing, demeaning, making derogatory remarks or cursing.

(11) "Exploitation" means taking advantage of a child for unlawful or unjustifiable personal or sexual gain.

(12) "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;
s. Stepson;
t. Stepdaughter.

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

(13) "Institutional child abuse or neglect" is child abuse or neglect which has occurred to a child in the DSCYF's custody and/or placed in a facility, center or home operated, contracted or licensed by the DSCYF.

(14) "Intrafamilial child abuse or neglect" is any child abuse or neglect committed by:

a. A parent, guardian, or custodian;

b. Other members of the child's family or household, meaning persons living together permanently or temporarily without regard to whether they are related to each other and without regard to the length of time or continuity of such residence, and it may include persons who previously lived in the household such as paramours of a member of the child's household;

c. Any person who, regardless of whether a member of the child's household, is defined as family or a relative in this section or as an adult individual as defined in § 1009(b)(3)a. of this title.

(15) "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.

(16) "Mistreatment" or "maltreatment" are behaviors that inflict unnecessary or unjustifiable pain or suffering on a child without causing physical injury. Behaviors included will consist of actions and omissions, ones that are intentional and ones that are unintentional.

(17) "Necessary care" means a type and degree of personalized attention that will tend to advance a child's physical, mental, emotional, moral and general well-being.

(18) "Neglect" or "neglected child" means that a person:

a. Is responsible for the care, custody, and/or control of the child; and

b. Has the ability and financial means to provide for the care of the child; and

1. Fails to provide necessary care with regard to: food, clothing, shelter, education, health, medical or other care necessary for the child's emotional, physical, or mental health, or safety and general well-being; or

2. Chronically and severely abuses alcohol or a controlled substance, is not active in treatment for such abuse, and the abuse threatens the child's ability to receive care necessary for that child's safety and general well-being, or

3. Fails to provide necessary supervision appropriate for a child when the child is unable to care for that child's own basic needs or safety, after considering such factors as the child's age, mental ability, physical condition, the length of the caretaker's absence, and the context of the child's environment.

In making a finding of neglect under this section, consideration may be given to dependency, neglect, or abuse history of any party.

(19) "Nonamenable child" means any child who is not amenable to the rehabilitative processes of the Family Court.

(20) "Relative" means any person within the immediate family, and any grandparent, uncle, aunt, first cousin, great-grandparent, grandaunt or granduncle, half brother or half sister.

(21) "Sexual abuse" means any act against a child that is described as a sex offense in § 761(g) of Title 11.

(22) "Truancy" or "truant" shall refer to a pupil enrolled in grades kindergarten through 12 inclusive who has been absent from school without valid excuse, as defined in rules and regulations of the district board of education of the school district in which the pupil is or should be enrolled pursuant to the provisions of Title 14, or in the case of a pupil enrolled in a charter school, by the board of directors of the charter school, with the approval of the State Board of Education, for more than 3 days or the equivalent thereof during a given school year.

§ 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.

§ 914. Designation of Child Placement Review Board.

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

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, abused 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, assault in the first degree, robbery in the first degree, (where such offense involves the display of what appears to be a deadly weapon or involves the representation by word or conduct that the person was in possession or control of a deadly weapon or involves the infliction of serious physical injury upon any person who was not a participant in the crime, and where the child has previously been adjudicated delinquent of 1 or more offenses which would constitute a felony were the child charged under the laws of this State), 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 or her 16th birthday, murder in the second degree, manslaughter, robbery in the second degree, 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 or her 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; provided however, that the Justice of the Peace Court shall have original and exclusive jurisdiction over truancy matters as set forth in Chapter 27 of Title 14, and the Family Court shall assume exclusive jurisdiction over those matters transferred or appealed from the Justice of the Peace Court in accordance with §§ 2731 and 2732 of Title 14;

(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 or her 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, imperils 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 the 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;

(18) Child Protection Registry proceedings pursuant to Chapter 9 of Title 16.

§ 922. Exclusive and concurrent original criminal jurisdiction.

(a) Except as provided in paragraphs (b), (c), (d) and (e) 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;

(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 paragraphs (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.

(e) Notwithstanding the provisions of paragraphs (a)(1)-(a)(3), (a)(17) and (a)(20) of this section, if offenses or criminal cases within the exclusive jurisdiction of the Family Court and in which the defendant is an adult otherwise may be joined properly with a criminal case or other offense that is within the jurisdiction of the Court of Common Pleas, such offenses or criminal cases shall be within the jurisdiction of the Court of Common Pleas, except that this subsection shall not apply to offenses or criminal cases involving felonies.

§ 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.

§ 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.

§ 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 attorneys and/or Court-Appointed Special Advocates to serve as guardians ad litem to represent the best interests of a child in any child welfare proceeding;

(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 counselor as used in § 4334 of Title 11 shall include the appropriate member of the Department of Services for Children, Youth and Their Families;

(19) Decide appeals from administrative hearings of substantiated cases of abuse or neglect made pursuant to 16 Del. C. § 902A(d), and to decide appeals made pursuant to 16 Del. C. § 902A(g) for orders of administrative expungement of substantiation for the purpose of no longer reporting an individual's name pursuant to 11 Del. C. § 8563(b);

(20) In a civil proceeding involving the welfare of a minor child or the safety of a party, require any party or any other resident of the party's household or other person with regular direct access to the child, to submit to a state and federal background check.

a. The background check shall consist of:

1. A report of the individual's entire criminal history record from the Delaware State Police or a statement from the Delaware State Police that the State Police Central Repository contains no such information relating to that person.

2. A report of the individual's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544. The Division of State Police shall be the intermediary for the purposes of this paragraph.

3. A certification from the Department of Services for Children, Youth and Their Families as to whether the individual is named in the Central Register as the perpetrator of a report of child abuse.

b. Costs associated with obtaining said criminal history information and child abuse registry information shall be borne by the State.

c. The court at any stage in the proceeding may take judicial notice of any report, record or certification described in this paragraph (20).

Subchapter III. Procedure

§ 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 prosequed, 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. However, the court shall grant petitions filed by the Attorney General or his or her designee pursuant to the last paragraph of this subsection.

Notwithstanding any provision to the contrary, the Attorney General or designee responsible for prosecuting a delinquency action may petition the Court to expunge the instant arrest record of a juvenile if at the time of a state motion to dismiss or entry of nolle prosequi in the case, the prosecutor has determined that the continued existence and possible dissemination of information relating to the arrest of the juvenile for the matter dismissed or for which a nolle prosequi was entered may cause circumstances which constitute a manifest injustice to the juvenile.

(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.

§ 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.

§ 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.

§ 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 necessary 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(e) 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 the child's apprehension.

§ 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 or her 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. However, if and only if the following conditions are met, the Court shall not order the Department of Services for Children Youth and Their Families ("DSCYF") to perform an evaluation and report on investigation of the child's placement:

a. When the child is placed in a home of an "adult individual" who fails to meet the definition of relative in § 901(20) of this title but the "adult individual" is by marriage, blood or adoption the child's great-grandparent, stepgrandparent, great-uncle or aunt, half brother or sister, stepbrother or sister, stepparent, stepuncle or aunt to the extent not already included in the definition of relative, or first cousin once removed;

b. When DSCYF has not currently filed for custody of the child on the basis of dependency or neglect and DSCYF does not plan to;

c. When there have been no allegations of abuse or neglect with respect to the child regarding the "adult individual" with whom the child is placed;

d. When DSCYF is not currently a party to a custody or visitation dispute regarding the child;

e. When DSCYF does not hold or seek custody of the child; and

f. When the child meets the definition of dependent child solely because the child has been placed on a permanent basis in the home of an "adult individual" as described in paragraph (b)(3)(i) of this section and has been placed with such individual without the consent and approval of DSCYF;

(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 Transportation 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.

(16) Following an adjudication in which the Court declares that a child is delinquent and sentences the child to participate in the Family Court Adjudicated Drug Court Program, the Court may impose such conditions upon the parent, guardian or custodian of the person adjudicated as the Court deems necessary to assist the person adjudicated in receiving all the treatment, rehabilitation or care ordered by the Court as best serving the needs of the child and society under this section or, in the opinion of the Court, as will enhance the ability of such parent, guardian or custodian in providing the child with adequate support, guidance and supervision necessary to meet the child's physical, mental or emotional health and well-being, provided that such parent, guardian or custodian has been previously served by summons in accordance with § 1006 of Title 10;

(17) When the Court sentences a child to participate in counseling, mental health treatment or to a Division of Child Mental Health Services consultation or assessment as required, the Court shall be authorized, in addition to any other disposition authorized by this section, to order such child's parents, guardian or custodian to participate in counseling as determined by the Court or as recommended by the Division of Child Mental Health Services. Such counseling shall be designed to assist in deterring future delinquent or unruly actions or other conduct or conditions which would be harmful to the child or society. If the child is Court-ordered into a detention facility or residential treatment facility, the Court may order the parents, guardian or custodian to participate in any treatment or counseling program recommended by the facility.

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 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;

(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 Transportation 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, any other provision of this Code, any court rule or rule of procedure or otherwise as determined by any court to be warranted in the interest of justice.

(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 except for the purpose of a presentence investigation ordered by this or any other court, or as provided for by any other provision of this Code, any court rule or rule of procedure or otherwise as determined by any court to be warranted in the interest of justice.

(j)(1) For the purpose of this subsection, the following definitions shall apply:

a. "Adjudication" or "adjudicated" -- for the purposes of this subsection (j), "adjudication" or "adjudicated" shall mean any type of adjudication of delinquency contained within the definition of "conviction" or "convicted" pursuant to Chapter 9 of Title 16, and shall include a probation before adjudication plea or admission, and a mental health or drug court deferred plea regardless of whether the plea or charge was subsequently discharged or dismissed under such programs.

b. "Facility" means any residential shelter, group home, foster home, treatment center, individualized residential treatment home ("IRT"), institution or any other place designated as a temporary or permanent residential placement for children located in the State, excluding accredited or licensed hospitals.

c. "Felony level offense" means any delinquent act constituting a felony under the laws of this State, any other state or the United States.

d. "Mixing" means placement by the Department of Services for Children, Youth and Their Families of any child charged with or adjudicated of a felony level juvenile offense, or adjudicated of any serious misdemeanor level juvenile offense, in the same facility with dependent or neglected children who have not committed or been charged with any delinquent act.

e. "Repeat offender" means any child adjudicated delinquent of 3 or more serious misdemeanor level juvenile offenses occurring within 24 months of the request for mixing.

f. "Serious misdemeanor level juvenile offense" means any delinquent act constituting the following misdemeanors or any court adjudicated violation of probation or juvenile aftercare or parole in which the underlying adjudication is any of the following misdemeanors, whether under the laws of this State, any similar laws in other states, or the United States:

Section 501 of Title 11 (Criminal Solicitation in the Third Degree)
Section 601 of Title 11 (Offensive Touching)
Section 602 of Title 11 (Menacing)
Section 611 of Title 11 (Assault in the Third Degree)
Section 621 of Title 11 (Terroristic Threatening)
Section 625 of Title 11 (Unlawfully Administering Drugs)
Section 628 of Title 11 (Vehicular Assault in the Second Degree)
Section 763 of Title 11 (Sexual Harassment)
Sections 764-765 of Title 11 (Indecent Exposure in the First or Second Degree)
Section 766 of Title 11 (Incest)

Section 767 of Title 11 (Unlawful Sexual Contact in the Third Degree)
Section 781 of Title 11 (Unlawful Imprisonment in the Second Degree)
Section 804 of Title 11 (Reckless Burning or Exploding)
Section 1102 of Title 11 (Endangering the Welfare of a Child)
Section 1251 of Title 11 (Escape in the Third Degree)
Section 1257 of Title 11 (Resisting Arrest With Force or Violence)
Section 1311 of Title 11 (Harassment)
Section 1341 of Title 11 (Lewdness)
Section 1443 of Title 11 (Carrying a Concealed Dangerous Instrument).

(2) No dependent or neglected child shall be placed in a secure or nonsecure detention or correctional facility unless charged with or found to have committed a delinquent act. Except for youth placed, detained, or sentenced pursuant to § 2103A or § 4204A of Title 11 and except for youth otherwise properly proceeded against as adults in Superior Court, no child shall be placed in an adult detention or adult correctional 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 felony level juvenile offense or is a repeat offender, the Department of Services for Children, Youth and Their Families 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 or their designee shall recommend such placement in writing. Before authorizing mixing, the Family Court must specifically find that the proposed placement of the child offender is not expected to present an unreasonable and unmanageable physical risk to other children in the facility 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 serious misdemeanor level juvenile offense, no mixing shall occur unless the Secretary or a Division Director of the Department of Services for Children, Youth and Their Families, or their designee, after review of the case, certifies in writing that the proposed placement of the child offender is not expected to present an unreasonable and unmanageable physical risk to other children in the facility and that the placement is not contrary to the best interests of the other children in the facility.

(4)a. A court order approving mixing may be requested via a motion in a dependency/neglect proceeding or in the delinquency proceeding concerning the child who needs to be mixed. The court may decide such motion without a hearing, and such motions may be requested, heard and decided via oral motion to the court during any hearing or trial concerning the child.

b. Where the date of placement could not have been reasonably determined in advance of placement, facilities and agencies which are subject to this subsection (j) may provisionally place a child in such facility, pending a later determination by the Family Court or the Secretary or Division Director of the Department of Services for Children Youth and Their Families or their designee, whichever may be applicable. Where such provisional placement has been made, a request for mixing approval that requires a Family Court order under paragraph (j)(3)a. of this section shall be filed with the Family Court no later than the second business day after such placement is made. In all other provisional placements, the Secretary or Division Director or their designee shall make the written certifications required by this subsection (j) no later than the second business day after such placement is made.

(5) All placements which result in mixing shall be reviewed within 5 working days by the Department of Services for Children, Youth and Their Families. Subsequently, such placement shall be reviewed after 2 months, and regularly thereafter. The 2-month review shall be made by the Child Placement Review Board. The purpose of the review shall be to determine whether, under the placement, the child offender continues to not present an unreasonable and unmanageable physical risk to other children in the facility, and that such placement is not contrary to the best interests of the other children in the facility.

(k) 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 if the child who has been adjudicated delinquent by this Court of 1 or more offenses which would constitute either possession of a firearm during the commission of a felony or robbery first degree (where such offense involves the display of what appears to be a deadly weapon or involves the representation by word or conduct that the person was in possession or control of a deadly weapon or involves the infliction of serious physical injury upon any person who was not a participant in the crime) were the child charged as an adult under the laws of this State. Such child 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 12-month period of institutional confinement.