Legislative Council,
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State of Delaware

Title 10

Courts and Judicial Procedures

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Part I
Organization, Powers, Jurisdiction and Operation of Courts
Chapter 1
SUPREME COURT
Subchapter I
Organization and Operation

§ 101 Place of holding Court.

The Supreme Court shall be held at Dover.

(Code 1852, § 1907; Code 1915, § 3683; Code 1935, § 4235; 10 Del. C. 1953, § 101.)

§ 102 Offices for the Justices.

The Supreme Court may obtain such office space for each of the Justices thereof as shall be necessary and appropriate to permit the Justices to properly carry out their duties. The offices of the respective Justices need not be in Dover and may be in the counties where the Justices, respectively, reside. Bills for such office rent shall be paid by the State Treasurer when approved in writing by any Justice of the Court.

(Code 1935, § 4271; 48 Del. Laws, c. 258, § 1; 10 Del. C. 1953, § 102.)

§ 103 Salaries of Justices.

The Chief Justice and each of the Justices of the Supreme Court shall receive such compensation as shall be provided by law.

(Code 1852, § 467; 26 Del. Laws, c. 58; Code 1915, § 395; 30 Del. Laws, c. 44; 37 Del. Laws, c. 41; Code 1935, § 369; 46 Del. Laws, c. 248; 47 Del. Laws, c. 200; 48 Del. Laws, c. 260; 10 Del. C. 1953, § 103; 52 Del. Laws, c. 113, § 1; 55 Del. Laws, c. 403, § 1; 57 Del. Laws, c. 675, § 1; 59 Del. Laws, c. 472, § 1; 62 Del. Laws, c. 12, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 213, § 17.)

§ 104 Purchase of supplies.

The Supreme Court from time to time may purchase for the Court such furniture, equipment, law books, stationery, and other supplies as may be requisite for the proper operation of the Court.

(Code 1935, § 4272B; 48 Del. Laws, c. 258, § 1; 10 Del. C. 1953, § 104; 50 Del. Laws, c. 67, § 1.)

§ 105 Payment of expenses.

The payment of the compensation of the Clerk and all other persons appointed or employed by the Court or any Justice thereof under the provisions of subchapter II of this chapter, and the payment for supplies, equipment and other necessary expenses of the Court, including the traveling expenses of the Justices and the officers of the Court, shall be made by the State Treasurer out of funds regularly appropriated for the Supreme Court.

(10 Del. C. 1953, § 105; 50 Del. Laws, c. 67, § 2.)

Subchapter II
Officers and Employees

§ 121 Clerk of Supreme Court; bond; duties generally.

(a) Every Clerk of the Supreme Court duly appointed, shall, after being appointed and before entering upon the duties of the office, become bound to the State with sufficient surety by a joint and several obligation in the penal sum of $3,000 the condition of which shall be as follows:

"That if the above named..... who has been duly appointed to be Clerk of the Supreme Court shall and do well and diligently execute the duties of the office of Clerk of the Supreme Court as aforesaid and duly and faithfully fulfill and perform all the trusts and duties to the said office appertaining, and truly and without delay deliver to his or her successor in office, the seal and all the books, records and papers belonging to such office, safe and undefaced, then this obligation shall be void and of no effect or else shall remain in full force and virtue."

(b) The sufficiency of the surety and the form of the bond shall be subject to the approval of a Justice of the Court.

(c) The Clerk shall be custodian of the seal, the books, the records and the papers of the Court, and shall perform such duties as the Court may direct.

(Code 1852, §§ 441-443; 14 Del. Laws, c. 42; 16 Del. Laws, c. 24; 23 Del. Laws, c. 60, § 3; Code 1915, § 379; 30 Del. Laws, c. 43; Code 1935, § 348; 10 Del. C. 1953, § 121; 50 Del. Laws, c. 67, § 3; 70 Del. Laws, c. 186, § 1.)

§ 122 Cancellation of Clerk's bond.

The bond of the Clerk of the Supreme Court provided for in § 121 of this title shall be canceled 3 years after the expiration of the Clerk's term of office and shall, after such time cease to be a lien on any property of any kind of the Clerk or the Clerk's bondspersons.

(Code 1915, § 379A; 28 Del. Laws, c. 34; Code 1935, § 349; 46 Del. Laws, c. 56, § 1; 10 Del. C. 1953, § 122; 70 Del. Laws, c. 186, § 1.)

§ 123 Court reporter; stenographic and clerical assistants.

The Supreme Court may from time to time employ a court reporter and such additional stenographic and clerical assistants as may be necessary for the proper operation of the Court. Any such persons shall receive for their services such amounts as the Supreme Court shall from time to time determine.

(Code 1935, § 4272; 48 Del. Laws, c. 258, § 1; 10 Del. C. 1953, § 123; 50 Del. Laws, c. 67, § 4.)

§ 124 Office secretaries.

Each Justice of the Supreme Court may appoint and remove at pleasure 1 competent stenographer, to be designated as office secretary, whose duties shall be to render the Justice such clerical, stenographic, typewriting and secretarial services as may be required, and who shall receive such compensation as the Justices shall from time to time determine.

(Code 1935, § 4272A; 48 Del. Laws, c. 258, § 1; 10 Del. C. 1953, § 124; 50 Del. Laws, c. 67, § 4.)

§ 125 Certification of appointments.

The Supreme Court shall certify to the State Auditor and the State Treasurer the names and addresses of the several persons appointed to the offices and positions authorized by this subchapter, the several dates of their appointments, and the monthly compensation to be paid to them.

(10 Del. C. 1953, § 125; 50 Del. Laws, c. 67, § 5.)

§§ 126 , 127. Deputy Administrator for Justices of the Peace; powers of the Deputy Administrator.

Repealed by 62 Del. Laws, c. 52, § 1, effective June 1, 1979.

§ 128 Administrative Office of the Courts.

(a) The Administrative Office of the Courts is hereby created with a State Court Administrator as head thereof.

(b) The State Court Administrator shall be appointed by and serve at the pleasure of the Chief Justice of the Supreme Court of the State. In the event the Chief Justice appoints as State Court Administrator an attorney-at-law admitted to practice before the Delaware Supreme Court, such State Court Administrator shall not practice law while serving as State Court Administrator.

(c) The salary of the State Court Administrator shall be determined by the Chief Justice, but in no event shall be greater than the salary of a Judge of the Superior Court.

(d) The function of the office shall be to assist the Chief Justice in carrying out his or her constitutional responsibilities as administrative head of all the courts in the State, and the duties of the office shall be as prescribed by the Chief Justice or by rule of the Supreme Court of the State.

(e) The State Court Administrator may, with the approval of the Chief Justice, appoint such deputies, administrative assistants, and clerical personnel as are required.

(10 Del. C. 1953, § 128; 58 Del. Laws, c. 70; 62 Del. Laws, c. 52, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 190, § 2; 76 Del. Laws, c. 213, § 18.)

§ 129 Law clerks.

Law clerks hold major, nontenured advisory positions for the Justices of the Court. The Supreme Court may appoint and remove at pleasure such judicial law clerks as shall be necessary for the proper operation of the Court.

(78 Del. Laws, c. 51, § 1.)

Subchapter III

General Jurisdiction and Powers; Time for Taking Appeals

§ 141 Advisory opinions of Justices upon request of Governor and General Assembly.

(a) The Justices of the Supreme Court, whenever the Governor of this State or a majority of the members elected to each House may by resolution require it for public information, or to enable them to discharge their duties, may give them their opinions in writing touching the proper construction of any provision in the Constitution of this State, or of the United States, or the constitutionality of any law or legislation passed by the General Assembly, or the constitutionality of any proposed constitutional amendment which shall have been first agreed to by 2/3 of all members elected to each House.

(b) The Justices of the Supreme Court may appoint 1 or more members of the Delaware Bar, duly qualified to practice before said Court, for the purpose of briefing or arguing the legal issues submitted by the Governor or General Assembly.

(c) If the Governor should request an advisory opinion from the Court, the Governor shall, within 5 days, notify the leadership of both Houses by sending them a copy of such request. If the General Assembly should request an advisory opinion from the Court, the Speaker of the House and the President Pro Tempore of the Senate shall within 5 days notify the Governor by sending a copy of such request.

(d) Upon receipt of such advisory opinion from the Supreme Court the governor or the General Assembly shall, within 5 days, notify the opposite party by sending a copy of such advisory opinion.

(Code 1852, § 482; Code 1915, § 402; Code 1935, § 374; 10 Del. C. 1953, § 141; 58 Del. Laws, c. 514; 64 Del. Laws, c. 214, § 1; 70 Del. Laws, c. 186, § 1.)

§ 142 Writs of certiorari.

Writs of certiorari, issuable out of the Supreme Court, shall be writs of right and not of grace, and shall be sued out of and be issued out of the Court without petition therefor or the allocatur of any Judge or order of the Court.

(21 Del. Laws, c. 118; Code 1915, § 3710; Code 1935, § 4263; 48 Del. Laws, c. 258, § 1; 10 Del. C. 1953, § 142.)

§ 143 Time for appeal from interlocutory order or decree.

No appeal from an interlocutory order, judgment or decree shall be received in the Supreme Court, unless such appeal is filed in the Supreme Court within 30 days after such order, judgment or decree is entered.

(Code 1852, § 2755; Code 1915, § 4686; Code 1935, § 5144; 10 Del. C. 1953, § 143; 57 Del. Laws, c. 460.)

§ 144 Failure to appeal from interlocutory order; consideration on final appeal.

A failure to appeal from an interlocutory order, judgment or decree of the Court of Chancery or Superior Court shall not bar a party from making any objection to such interlocutory order, judgment or decree on appeal from the final order, judgment or decree.

(Code 1852, § 2756; Code 1915, § 4687; Code 1935, § 5145; 10 Del. C. 1953, § 144; 57 Del. Laws, c. 459.)

§ 145 Time for appeal from final judgment of the Court of Chancery.

No appeal from a final judgment or decree of the Court of Chancery shall be received or entertained in the Supreme Court unless the praecipe or notice of appeal is duly filed in the office of the Clerk thereof within 30 days after the date of the judgment or decree.

This section shall not affect the time for cross-appeals provided in § 149 of this title.

(Code 1852, § 2757; Code 1915, § 4688; 38 Del. Laws, c. 204; Code 1935, § 5146; 10 Del. C. 1953, § 145; 51 Del. Laws, c. 346, § 1; 58 Del. Laws, c. 20, § 1.)

§ 146 Time for appeal of infants or mentally incompetent persons not represented by a guardian or trustee.

When an infant or a mentally incompetent person is a party to an action and was not represented in the action in the lower court by a guardian ad litem, general guardian or trustee, the time within which such infant or mentally incompetent person may appeal to the Supreme Court shall begin to run at the ceasing of such disability and not at the time of signing the judgment or decree.

(Code 1852, §§ 2758, 2762; Code 1915, §§ 4689, 4693; Code 1935, §§ 5147, 5151; 10 Del. C. 1953, § 146.)

§ 147 Time for appeal from Superior Court in criminal actions.

No appeal from the Superior Court in a criminal action shall be received or entertained in the Supreme Court unless the praecipe or notice of appeal is duly filed in the office of the Clerk thereof within 30 days after the date of the judgment or decree.

(10 Del. C. 1953, § 147; 51 Del. Laws, c. 346, § 2; 58 Del. Laws, c. 22, § 1.)

§ 148 Time for appeal from final judgment of the Superior Court in civil actions.

No appeal from a final judgment of the Superior Court in a civil action shall be received or entertained in the Supreme Court unless the praecipe or notice of appeal is duly filed in the office of the Clerk thereof within 30 days after the date of the judgment or decree.

This section shall not affect the time for cross-appeals provided in § 149 of this title.

(10 Del. C. 1953, § 148; 51 Del. Laws, c. 346, § 3; 58 Del. Laws, c. 21, § 1.)

§ 149 Time for cross-appeal in civil actions.

In any civil action where a timely notice of appeal to the Supreme Court is filed by a party, any other party may file a notice of appeal within 15 days of the date on which the first notice of appeal was filed or within the time otherwise prescribed by this title, whichever expires last.

(10 Del. C. 1953, § 149; 57 Del. Laws, c. 461.)

§ 150 Time for appeal from Superior Court in concealed carry permit actions.

Any applicant or licensee may, at any time within 30 days from the date of any adverse decision or action of the Superior Court made pursuant to its administration of the provisions of § 1441 of Title 11, appeal that decision or action to the Supreme Court.

(73 Del. Laws, c. 111, § 1.)

Subchapter IV

Procedure

§ 161 Rules of Court and special orders.

(a) The Supreme Court may, from time to time, adopt and promulgate general rules, or where it deems it best for the advancement of justice may make special orders, which establish terms of the Court, provide for the holding of regular and special sessions, fix the time of and otherwise regulate the return of process issued out of the Court, fix the fees which shall be paid and the costs which shall be taxed in the Court, provide for the conduct of the business of the Court, and regulate the practice and procedure governing causes and proceedings in the Court.

(b) The Rules of the Supreme Court shall, after they have taken effect, supersede all statutory provisions in conflict or inconsistent therewith.

(c) The rules shall not abridge, enlarge or modify any substantive right of any party.

(Code 1852, § 1912; 18 Del. Laws, c. 218, § 1; 21 Del. Laws, c. 116; 24 Del. Laws, c. 236; 25 Del. Laws, c. 227, § 1; 27 Del. Laws, c. 270, § 4; Code 1915, §§ 3684, 3688, 3707; Code 1935, §§ 4236, 4240, 4261; 43 Del. Laws, c. 222, §§ 1, 2; 48 Del. Laws, c. 258, § 1; 10 Del. C. 1953, § 161.)

§ 162 Judgment docket; indices.

Whenever a judgment is entered, or signed, in the Supreme Court, the Clerk of that Court shall set down on the docket thereof, the day, month and year of actually entering or signing it. The Clerk shall also keep 2 indices to his or her judgment docket, and make the entries therein, as required of the prothonotary in Chapter 23 of this title, under the penalties prescribed by Chapter 23 of this title, the provisions of which are, for this purpose, extended to the Clerk of the Supreme Court.

(Code 1852, § 683; Code 1915, § 3722; Code 1935, § 4268; 48 Del. Laws, c. 258, § 1; 10 Del. C. 1953, § 162; 70 Del. Laws, c. 186, § 1.)

§ 163 Prepayment, and bill of costs; refunds; penalty for neglect by Clerk.

The plaintiff or appellant, shall, on docketing a cause in the Supreme Court, pay the Clerk such fee as the Supreme Court shall have prescribed by its Rules. Upon the determination of the cause, the Clerk shall enter on the record a bill of the costs, and after deducting his or her own fees shall, on demand, refund any portion of the sum that may be due to the plaintiff or appellant.

If the Clerk wilfully fails or neglects to comply with this section, he or she shall be fined in such amount or imprisoned for such term, or both, as the trial court, in its discretion, may determine; and shall forfeit his or her office.

(Code 1852, § 684; Code 1915, § 3723; Code 1935, § 4269; 48 Del. Laws, c. 258, § 1; 10 Del. C. 1953, § 163; 70 Del. Laws, c. 186, § 1.)

Part I
Organization, Powers, Jurisdiction and Operation of Courts
Chapter 3
COURT OF CHANCERY
Subchapter I
Organization and Operation

§ 301 Places of holding Court.

The Court of Chancery shall be held:

(1) In New Castle County, at Wilmington;

(2) In Kent County, at Dover; and

(3) In Sussex County, at Georgetown.

(Code 1852, § 1910; 16 Del. Laws, c. 133, § 5; Code 1915, § 3683; Code 1935, § 4235; 10 Del. C. 1953, § 301.)

§ 302 Terms of Court.

The Court of Chancery in and for each county of the State shall have 1 term each year which shall coincide with the calendar year.

(Code 1852, § 1910; 17 Del. Laws, c. 216; 19 Del. Laws, c. 256; 21 Del. Laws, c. 120; 22 Del. Laws, c. 450; Code 1915, § 3684; Code 1935, § 4236; 10 Del. C. 1953, § 302.)

§ 303 Disqualification of Chancellor and Vice-Chancellor.

Neither the Chancellor nor any Vice-Chancellor shall sit in any cause in which his or her parent, grandparent, child, grandchild, brother, or sister, nephew, or niece, uncle or aunt, brother-in-law, or son-in-law, is a party.

(Code 1852, § 1950; Code 1915, § 3886; Code 1935, § 4410; 10 Del. C. 1953, § 303; 70 Del. Laws, c. 186, § 1.)

§ 304 Salaries of Chancellor and Vice-Chancellors.

The Chancellor and each Vice-Chancellor shall receive such compensation as shall be provided by law.

(Code 1852, § 467; 26 Del. Laws, c. 58; Code 1915, § 395; 30 Del. Laws, c. 44; 37 Del. Laws, c. 41; Code 1935, § 369; 46 Del. Laws, c. 248; 47 Del. Laws, c. 200; 48 Del. Laws, c. 260; 10 Del. C. 1953, § 304; 52 Del. Laws, c. 113, § 2; 55 Del. Laws, c. 403, § 2; 57 Del. Laws, c. 675, § 2; 59 Del. Laws, c. 472, § 2; 62 Del. Laws, c. 12, § 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 213, § 19.)

§ 305 Purchase of supplies.

The Chancellor may from time to time purchase for the Court such furniture, equipment, law books, stationery and other supplies as may be requisite for the proper operation of the Court.

(10 Del. C. 1953, § 305; 50 Del. Laws, c. 67, § 6.)

§ 306 Payment of expenses.

The payment of the compensation of all persons appointed or employed by the Court under the provisions of this chapter and the payment for supplies, equipment and other necessary expenses of the Court, including the traveling expenses of the Judges and the officers of the Court, shall be made by the State Treasurer out of funds regularly appropriated for the operation of the Court of Chancery.

The State Treasurer shall pay to each county out of funds regularly appropriated for operation of the Court of Chancery rent based upon the cost of servicing and maintenance and carrying charges applicable to the space occupied by the Court of Chancery, its Judges, officers, employees and facilities, in such amounts as shall be fixed annually by agreement between the State Director of the Office of Management and Budget and the Levy Court or County Executive of each county; provided that if agreement cannot be reached, final determination of such amounts shall be made by a panel of 3, 1 member to be designated by the State Director of the Office of Management and Budget, 1 member to be designated by the Levy Court or County Executive, and 1 member to be selected by the other 2 members.

(10 Del. C. 1953, § 306; 50 Del. Laws, c. 67, § 6; 57 Del. Laws, c. 228, §§ 11-1, 11-42; 75 Del. Laws, c. 88, § 21(5).)

§ 307 Additional Vice-Chancellors.

There shall be 3 Vice-Chancellors in addition to the Chancellor and Vice-Chancellor specifically required by the provisions of article IV, § 2 of the Delaware Constitution.

(10 Del. C. 1953, § 307; 53 Del. Laws, c. 5, § 1; 64 Del. Laws, c. 218, § 1; 67 Del. Laws, c. 1, § 1.)

Subchapter II
Officers and Employees

§ 321 Register in Chancery.

Repealed by 73 Del. Laws, c. 91, § 5, effective Jan. 1, 2002.

§ 322 Court reporters.

The Chancellor shall have power from time to time to appoint and remove at pleasure such number of skilled and competent stenographers, to be designated as court reporters, as shall be necessary for the proper operation of the Court, together with such additional clerical assistants as may be required. The duties of the court reporters shall be to attend all sessions of the Court of Chancery in the several counties and all hearings before the Chancellor or the Vice-Chancellor, as may be required, to report all evidence, opinions and other matters as the Chancellor or the Vice-Chancellor may require, and to perform such other duties as the Chancellor may prescribe. The court reporters and assistants shall receive such compensation as the Chancellor shall from time to time determine. The court reporters before entering upon their duties shall take and subscribe the oath of office as required by the Constitution.

(23 Del. Laws, c. 76; 24 Del. Laws, c. 119; Code 1915, § 3888; 30 Del. Laws, c. 224; 35 Del. Laws, c. 218; Code 1935, § 4412; 43 Del. Laws, c. 226, § 1; 44 Del. Laws, c. 172, § 1; 10 Del. C. 1953, § 322; 50 Del. Laws, c. 67, § 7.)

§ 323 Office secretaries.

Each of the Judges of the Court of Chancery may appoint and remove at pleasure 1 competent stenographer, to be designated as office secretary, whose duties shall be to render to such Judge such clerical, stenographic, typewriting and secretarial services as may be required, and who shall receive such compensation as the Chancellor shall from time to time determine.

(23 Del. Laws, c. 76; 24 Del. Laws, c. 119; Code 1915, § 3888; 30 Del. Laws, c. 224; 35 Del. Laws, c. 218; Code 1935, § 4412; 43 Del. Laws, c. 226, § 1; 44 Del. Laws, c. 172, § 1; 10 Del. C. 1953, § 323; 50 Del. Laws, c. 67, § 7.)

§ 324 Temporary appointments.

If for any reason any of the court reporters or office secretaries shall be unable to perform his or her duties, the Chancellor may appoint a suitable and competent substitute to serve as a temporary court reporter or office secretary for such time and for such compensation as he or she shall determine. Substitute court reporters shall take the same oath of office as is required of a court reporter, and their acts shall have the same force and effect as if done by an official court reporter. Such oath shall not be recorded, but shall be filed with the Register.

(10 Del. C. 1953, § 324; 50 Del. Laws, c. 67, § 7; 70 Del. Laws, c. 186, § 1.)

§ 325 Court reporters' charges.

The Chancellor may regulate the charges to be made by court reporters for the furnishing of transcriptions of evidence, opinions, records, arguments or hearings.

(23 Del. Laws, c. 76; 24 Del. Laws, c. 119; Code 1915, § 3888; 30 Del. Laws, c. 224; 35 Del. Laws, c. 218; Code 1935, § 4412; 43 Del. Laws, c. 226, § 1; 44 Del. Laws, c. 172, § 1; 10 Del. C. 1953, § 325; 50 Del. Laws, c. 67, § 7.)

§ 326 Bailiffs, criers and pages; compensation; duties.

The Chancellor may appoint and remove at pleasure such number of bailiffs, criers and pages as shall be necessary for the proper operation of the Court, not to exceed 1 bailiff, 1 crier and 1 page in each of the several counties. They shall receive such compensation as the Chancellor shall from time to time determine. They shall perform such duties and have such powers in connection with attendance upon the Court of Chancery as the Chancellor may from time to time prescribe.

(10 Del. C. 1953, § 326; 50 Del. Laws, c. 67, § 8; 55 Del. Laws, c. 85, §§ 35A, 35B; 57 Del. Laws, c. 228, § 11-2.)

§ 327 Certification of appointments.

The Chancellor shall certify to the State Auditor and the State Treasurer the names and addresses of the several persons appointed to the offices and positions authorized under the provisions of this chapter, the several dates of their appointments, and the monthly compensation to be paid to them.

(10 Del. C. 1953, § 327; 50 Del. Laws, c. 67, § 8; 57 Del. Laws, c. 228, § 11-3.)

§ 328 Budgetary powers of Supreme Court.

Nothing contained in this subchapter shall affect the powers of the Supreme Court conferred by § 6331 of Title 29.

(10 Del. C. 1953, § 328; 50 Del. Laws, c. 67, § 8.)

§ 329 Law clerks.

Law clerks hold major, nontenured advisory positions for the Chancellor and Vice-Chancellors of the Court. The Court of Chancery may appoint and remove at pleasure such judicial law clerks as shall be necessary for the proper operation of the Court.

(10 Del. C. 1953, § 329; 55 Del. Laws, c. 208; 57 Del. Laws, c. 228, § 11-4; 78 Del. Laws, c. 51, § 2.)

Subchapter III
General Jurisdiction and Powers

§ 341 Matters and causes in equity.

The Court of Chancery shall have jurisdiction to hear and determine all matters and causes in equity.

(Code 1852, § 1932; Code 1915, § 3844; Code 1935, § 4367; 10 Del. C. 1953, § 341.)

§ 342 Adequate remedy in other courts.

The Court of Chancery shall not have jurisdiction to determine any matter wherein sufficient remedy may be had by common law, or statute, before any other court or jurisdiction of this State.

(Code 1852, § 1933; Code 1915, § 3844; Code 1935, § 4367; 10 Del. C. 1953, § 342.)

§ 343 Injunctions staying actions at law, or to prevent waste.

The Court of Chancery may grant injunctions for staying actions at law, and to prevent waste, as there may be occasion.

(Code 1852, § 1932; Code 1915, § 3844; Code 1935, § 4367; 10 Del. C. 1953, § 343.)

§ 344 Proceedings in chambers.

All jurisdiction and powers of the Court of Chancery may be exercised in chambers.

(10 Del. C. 1953, § 344.)

§ 345 Power to invest moneys and take security.

The Court of Chancery may, in the securing or investing of a sum or sums of money under orders of the Court, cause to be taken for the same, in any case not otherwise provided for by law, a recognizance, bond or mortgage in the name of the State, with condition for the payment of the money so to be secured in such manner and subject to such provisions as the Court orders, to the end that the money may be secured for the use and benefit of the person or persons who may be entitled to or interested in the same. Upon any recognizance, bond or mortgage so to be taken, a suit may be prosecuted to judgment and execution in the name of the State, but for the use of any person or persons injured by the breach of such recognizance, bond or mortgage, pursuant to the provisions of Chapter 75 of this title.

A Judge of the Court of Chancery may by general or special rule or order direct that any or all moneys deposited with the Court of Chancery in connection with any action in such Court: (1) be deposited in 1 or more interest-bearing accounts or deposits in any bank or savings institution upon such terms as shall be determined by the Court; or (2) be invested in securities of the United States of America of such duration that such money may be available when reasonably required. Any moneys so deposited may be deposited or invested with similar moneys from other actions, provided that records are maintained by the Court to identify the origin of all such moneys so received and deposited or invested.

All income and interest earned on all such deposits and investments are declared to be public moneys and shall from time to time on order of a Judge of such Court be paid to the State Treasurer.

The Register in Chancery in the county in which such funds are deposited or invested shall be responsible for the deposit or investment thereof as provided in this section, provided that the Register shall not be liable for any loss of deposit or investment not caused by his or her own negligence or misconduct.

Nothing contained in this section shall prevent the Court from ordering that moneys deposited in connection with any action be segregated or maintained in a special account or deposit if, in the judgment of the Court, that should be done.

(13 Del. Laws, c. 459; Code 1915, § 3882; Code 1935, § 4406; 10 Del. C. 1953, § 345; 57 Del. Laws, c. 479; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 91, § 6.)

§ 346 Technology disputes.

(a) Notwithstanding any other provision in this Code, and without limiting the jurisdiction vested in any court in this State, the Court of Chancery shall have power to mediate and jurisdiction to hear and determine technology disputes as defined herein when:

(1) The parties have consented to the jurisdiction of or mediation by the Court of Chancery by agreement or by stipulation;

(2) At least 1 party is a "business entity" as defined herein;

(3) At least 1 party is a business entity formed or organized under the laws of this State or having its principal place of business in this State;

(4) No party is a "consumer", as that term is defined in § 2731 of Title 6, with respect to the technology dispute; and

(5) In the case of technology disputes involving solely a claim for monetary damages, the amount in controversy is no less than $1,000,000 or such greater amount as the Court of Chancery determines by rule.

Neither punitive damages nor a jury trial shall be available for a technology dispute heard and determined by the Court of Chancery pursuant to this section. Mediation proceedings shall be considered confidential and not of public record.

(b) A "business entity" means a corporation, statutory trust, business trust or association, a real estate investment trust, a common-law trust, or any other unincorporated business, including a partnership (whether general (including a limited liability partnership) or limited (including a limited liability limited partnership)) or a limited liability company.

(c)(1) A "technology dispute" means a dispute arising out of an agreement and relating primarily to: the purchase or lease of computer hardware; the development, use, licensing or transfer of computer software; information, biological, pharmaceutical, agricultural or other technology of a complex or scientific nature that has commercial value, or the intellectual property rights pertaining thereto; the creation

or operation of Internet web sites; rights or electronic access to electronic, digital or similar information; or support or maintenance of the above.

(2) The term "technology dispute" does not include a dispute arising out of an agreement:

a. That is primarily a financing transaction; or

b. Merely because the parties' agreement is formed by, or contemplates that communications about the transaction will be by, the transmission of electronic, digital or similar information.

(3) The Court shall interpret the term "technology dispute" liberally so as to effectuate the intent of this section to provide an expeditious and expert forum for the handling of technology disputes involving parties who have agreed to resolve their disputes in the Court of Chancery, whether the parties are seeking to have the Court of Chancery:

a. Mediate the dispute only;

b. Mediate the dispute initially, and if that fails, adjudicate the dispute; or

c. Adjudicate the dispute.

The Court shall adopt rules to facilitate the efficient processing of technology disputes, including rules to govern the filing of mediation only technology disputes, and to set filing fees and other cost schedules for the processing of technology disputes.

(74 Del. Laws, c. 36, § 1.)

§ 347 Mediation proceedings for business disputes.

(a) Without limiting the jurisdiction of any court of this State, the Court of Chancery shall have the power to mediate business disputes when:

(1) The parties have consented to the mediation by the Court of Chancery by agreement or by stipulation;

(2) At least 1 party is a business entity as defined in § 346 of this title;

(3) At least 1 party is a business entity formed or organized under the laws of this State or having its principal place of business in this State;

(4) No party is a consumer, as that term is defined in § 2731 of Title 6, with respect to the business dispute; and

(5) In the case of disputes involving solely a claim for monetary damages, the amount in controversy is no less than $1,000,000 or such greater amount as the Court of Chancery determines by rule.

A mediation pursuant to this section shall involve a request by parties to have a member of the Court of Chancery, or such other person as may be authorized under rules of the Court, act as a mediator to assist the parties in reaching a mutually satisfactory resolution of their dispute. Mediation proceedings shall be considered confidential and not of public record.

(b) By rule, the Court of Chancery may define those types of cases that are eligible for submission as a business dispute mediation. This section is intended to encourage the Court of Chancery to include complex corporate and commercial disputes, including technology disputes, within the ambit of the business dispute mediation rules. The Court of Chancery should interpret its rule-making authority broadly to effectuate that intention.

(74 Del. Laws, c. 36, § 2.)

§ 348 Disputes involving deed covenants or restrictions.

(a) Without limiting the jurisdiction of any court of this State, the Court of Chancery shall, through a Master in Chancery or such other person as may be appointed that Master in Chancery's designee, mediate disputes involving the enforcement of deed covenants or restrictions when:

(1) An action involving the enforcement of deed covenants or restrictions has been filed with the Court;

(2) At least 1 party is an association or other entity representing the homeowners or lot owners of a subdivision, if such an association or entity exists; and

(3) At least 1 party is a homeowner or lot owner in that subdivision. The mediator shall assist the parties in trying to reach a mutually satisfactory resolution of their dispute. Mediation proceedings under this section are confidential and not of public record.

(b) By rule, the Court of Chancery may further define those types of deed covenant or restriction cases which must be mediated.

(c) Upon the filing of an action involving the enforcement of deed covenants or restrictions, the Court shall schedule a mandatory mediation hearing to be held within 60 days of the filing. If the parties fail to resolve the dispute, the Court shall schedule a trial to be held within 120 days of the failed attempt to mediate the dispute, unless for good cause shown the Court in its discretion concludes that a longer period of time is warranted. A Master in Chancery shall preside over the trial.

(d) The parties to a dispute mediated pursuant to the provisions of this section are not required to be represented by an attorney during a mandatory mediation proceeding.

(e) The nonprevailing party at a trial held pursuant to the provisions of this section must pay the prevailing party's attorney fees and court costs, unless the court finds that enforcing this subsection would result in an unfair, unreasonable, or harsh outcome.

(75 Del. Laws, c. 379, § 1; 70 Del. Laws, c. 186, § 1.)

§ 349 Arbitration proceedings for business disputes.

(a) The Court of Chancery shall have the power to arbitrate business disputes when the parties request a member of the Court of Chancery, or such other person as may be authorized under rules of the Court, to arbitrate a dispute. For a dispute to be eligible for arbitration under this section, the eligibility criteria set forth in § 347(a) and (b) of this title must be satisfied, except that the parties must have consented to arbitration rather than mediation.

(b) Arbitration proceedings shall be considered confidential and not of public record until such time, if any, as the proceedings are the subject of an appeal. In the case of an appeal, the record shall be filed by the parties with the Supreme Court in accordance with its rules, and to the extent applicable, the rules of the Court of Chancery.

(c) Any application to vacate, stay, or enforce an order of the Court of Chancery issued in an arbitration proceeding under this section shall be filed with the Supreme Court of this State, which shall exercise its authority in conformity with the Federal Arbitration Act [68 P.L. 401; 68 Cong. Ch. 213, 43 Stat. 883, codified as 9 U.S.C. §§ 1-16, 201-208, and 301-307], and such general principles of law and equity as are not inconsistent with that Act.

(77 Del. Laws, c. 8, § 1.)

§ 350 Voluntary final adjudications before a Master in Chancery.

The parties in any matter may stipulate to a final adjudication of the matter by a Master of the Court of Chancery. In such a stipulation, the parties shall consent that the decision of the Master shall have the same effect as a decision of a member of the Court of Chancery. Appeals from decisions of the Master in a matter governed by such a stipulation shall be determined in all respects by the same procedural and substantive standards as are applicable to appeals from decisions of members of the Court of Chancery.

(77 Del. Laws, c. 8, § 1.)

§ 351 Voluntary waiver of appeal by parties.

The parties in any matter may stipulate that the decision of the Court of Chancery, or a Master of the Court of Chancery if they so choose, shall be final and binding and not subject to appeal.

(77 Del. Laws, c. 8, § 1.)

Subchapter IV
Procedure

§ 361 Rules of Court.

(a) The Chancellor may, from time to time, adopt and promulgate general rules for the Court of Chancery which prescribe, establish and regulate the form, issuance and return of process and writs, the form and system of pleading, and all other practice and procedure with respect to the commencement, trial, hearing, and determination of causes and proceedings in such Court.

(b) Such rules shall be for the purpose of securing the just and, so far as possible, the speedy and inexpensive determination of every such proceeding. The rules shall not abridge, enlarge or modify any substantive right of any party.

(c) The rules so adopted and promulgated, and all amendments thereof, shall, after they have taken effect, supersede all statutory provisions in conflict or inconsistent therewith.

(d) Any inconsistency or conflict between any rule of court promulgated under the authority of this section or prior law, and any of the provisions of this Code or other statute of this State, dealing with practice and procedure in the Court of Chancery, shall be resolved in favor of such rule of court. Nothing in this Code, anything therein to the contrary notwithstanding, shall in any way limit, supersede or repeal any rule heretofore promulgated governing practice or procedure in the Court of Chancery.

(Code 1852, §§ 1935, 1936; 17 Del. Laws, c. 215, §§ 1-3; 26 Del. Laws, c. 265; 27 Del. Laws, c. 270, § 4; Code 1915, §§ 3688, 3847, 3848, 3858; 34 Del. Laws, c. 216, § 1; Code 1935, §§ 4240, 4371, 4372, 4381; 10 Del. C. 1953, § 361.)

§ 362 Subpoenas, summonses and other process; orders and award of process.

The Court of Chancery may issue subpoenas, summonses, and all other process to compel defendants to answer actions in such Court, may make orders and award process, and may do all things necessary to bring causes to hearing.

(Code 1852, § 1932; Code 1915, § 3844; Code 1935, § 4367; 10 Del. C. 1953, § 362.)

§ 363 Issuance of process upon filing of complaint.

No process shall issue for the appearance of a party in the Court of Chancery until the complaint is regularly filed.

(Code 1852, § 1934; Code 1915, § 3846; Code 1935, § 4370; 10 Del. C. 1953, § 363.)

§ 364 Removal of defendant from county after service of process.

If a defendant shall remove from the county after being served with a summons, or other process, the case may proceed, and further process may be issued into any county.

(Code 1852, § 1934; Code 1915, § 3846; Code 1935, § 4370; 10 Del. C. 1953, § 364; 70 Del. Laws, c. 186, § 1.)

§ 365 Compelling appearance of defendant in absence of personal service.

If, after summons or other process issued out of the Court of Chancery, any defendant therein named does not appear in obedience to the process and according to the rules of such Court, the Court may, on affidavit that such defendant is out of the State, or cannot be found to be served with process and that there is just ground to believe that the defendant intentionally avoids such service, make an order for his or her appearance on a certain day and publish such order as the Court directs not less than once a week for 3 consecutive weeks. If the defendant does not appear, after such publication, according to the order, the Court may enter judgment by default against the nonappearing defendant, and may thereupon issue process to compel the performance either by seizure of the real and personal property of such defendant or part thereof, sufficient to satisfy the plaintiff's demand, or by causing possession of the estate, or effects, demanded by the complaint, to be delivered to the plaintiff, or otherwise, as the case requires. The Court may also order the plaintiff to be paid the demand out of any property so seized, upon plaintiff's giving approved security, in a sufficient sum, to abide any order of the Court for the restitution thereof upon the defendant's appearing to defend the action, and paying such costs as the Court shall order. If such security is not given, the property seized, or whereof possession is ordered to be delivered, shall remain under the direction of the Court in the hands of a receiver or otherwise, until the defendant's appearance, or until such order is made therein as the Court deems is just.

(Code 1852, § 1938; 17 Del. Laws, c. 215; Code 1915, § 3850; 34 Del. Laws, c. 216, § 2; 35 Del. Laws, c. 217; 36 Del. Laws, c. 268, § 1; Code 1935, § 4374; 10 Del. C. 1953, § 365; 70 Del. Laws, c. 186, § 1.)

§ 366 Compelling appearance of nonresident defendant.

(a) If it appears in any complaint filed in the Court of Chancery that the defendant or any one or more of the defendants is a nonresident of the State, the Court may make an order directing such nonresident defendant or defendants to appear by a day certain to be designated. Such order shall be served on such nonresident defendant or defendants by mail or otherwise, if practicable, and shall be published in such manner as the Court directs, not less than once a week for 3 consecutive weeks. The Court may compel the appearance of the defendant by the seizure of all or any part of his or her property, which property may be sold under the order of the Court to pay the demand of the plaintiff, if the defendant does not appear, or otherwise defaults. Any defendant whose property shall have been so seized and who shall have entered a general appearance in the cause may, upon notice to the plaintiff, petition the Court for an order releasing such property or any part thereof from the seizure. The Court shall release such property unless the plaintiff shall satisfy the Court that because of other circumstances there is a reasonable possibility that such release may render it substantially less likely that plaintiff will obtain satisfaction of any judgment secured. If such petition shall not be granted, or if no such petition shall be filed, such property shall remain subject to seizure and may be sold to satisfy any judgment entered in the cause. The Court may at any time release such property or any part thereof upon the giving of sufficient security.

(b) The Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof, the release of such property from seizure and for the sale of the property so seized, and may require the plaintiff to give approved security to abide any order of the Court respecting the property.

(c) Any transfer or assignment of the property so seized after the seizure thereof shall be void and after the sale of the property is made and confirmed, the purchaser shall be entitled to and have all the right, title and interest of the defendant in and to the property so seized and sold and such sale and confirmation shall transfer to the purchaser all the right, title and interest of the defendant in and to the property as fully as if the defendant had transferred the same to the purchaser in accordance with law.

(Code 1852, § 1938; 17 Del. Laws, c. 215; Code 1915, § 3850; 34 Del. Laws, c. 216, § 2; 35 Del. Laws, c. 217; 36 Del. Laws, c. 268, § 1; Code 1935, § 4374; 10 Del. C. 1953, § 366; 50 Del. Laws, c. 379, § 1; 70 Del. Laws, c. 186, § 1.)

§ 367 Failure of defendant to appear; service of judgment before execution.

If a defendant, brought into the Court of Chancery by service of process, does not appear therein according to the rules of such Court, the Court may proceed to hear and determine the cause as if the defendant had actually appeared.

If any such defendant is in custody, or within the county, a copy of any judgment, made in the case, shall be served upon the defendant before any process shall issue in execution, or for the performance thereof.

(Code 1852, §§ 1939, 1940; Code 1915, § 3851; Code 1935, § 4375; 10 Del. C. 1953, § 367; 70 Del. Laws, c. 186, § 1.)

§ 368 Commissions for taking answers and examining witnesses.

The Court of Chancery may award commissions for taking answers and examining witnesses, in all causes brought before it.

(Code 1852, § 1932; Code 1915, § 3844; Code 1935, § 4367; 10 Del. C. 1953, § 368.)

§ 369 Issues of fact triable by jury.

When matters of fact, proper to be tried by a jury, arise in any cause depending in Chancery, the Court of Chancery may order such facts to trial by issues at the Bar of the Superior Court.

(Code 1852, § 1933; Code 1915, § 3844; Code 1935, § 4367; 10 Del. C. 1953, § 369.)

§ 370 Enforcement of judgments.

The Court of Chancery may enforce obedience to its judgments by imprisonment of the body, or by sequestration of lands.

(Code 1852, § 1932; Code 1915, § 3844; Code 1935, § 4367; 10 Del. C. 1953, § 370.)

§ 371 Sale of land to enforce judgment.

All real estate, within this State, shall be liable to be sold, by order of the Court of Chancery, on such terms and in such manner as the Court directs, by the sheriff, or by any party to a civil action in Chancery, when such sale shall be necessary to give effect to, and carry into execution a judgment of the Court of Chancery. When any such real estate is so sold, and there is a surplus of money, arising from the sale, above, what is sufficient for the purposes of the sale, such surplus shall be paid over, or applied, as the Court orders. Such sales shall be as available in law to the vendees, as sales of land seized and sold upon judgment and execution are available by virtue of any law in this State. If any such judgment, under which any real estate is so sold, is reversed by the Supreme Court, none of the real estate, so sold, shall be restored, nor shall the sale thereof be avoided, but restitution shall be made, in such cases, of the money for which such real estate was sold. No sale shall be valid until return thereof is made to the Court of Chancery, and it is approved and confirmed by the Court.

(Code 1852, § 1946; Code 1915, § 3857; Code 1935, § 4380; 10 Del. C. 1953, § 371.)

§ 372 Power to appoint Masters.

(a) Unless expressly prohibited by a statute pursuant to which a particular cause has been initiated in the Court of Chancery, the Court of Chancery may, in any cause pending in the Court of Chancery of this State, appoint a Master in Chancery, pro hac vice.

(b) The Court may make and promulgate rules regulating the duties and compensation of Masters in Chancery appointed under subsection (a) of this section, and regulating the practice in all particulars relating to such Masters in Chancery. The compensation of such Masters in Chancery shall be paid under the rules of court by the parties to the causes in which they are appointed.

(22 Del. Laws, c. 449, §§ 1, 2; Code 1915, § 3860; Code 1935, § 4383; 10 Del. C. 1953, § 372; 73 Del. Laws, c. 201, § 1.)

§ 373 Appointment of Masters for purpose of executing certain instruments.

In all cases where the Court of Chancery orders the execution of any conveyance, assignment, release, acquittance or other instrument and the party against whom the judgment is made does not comply therewith within the time mentioned in the judgment, the Court may appoint a Master for such purpose. Such conveyance, assignment, release, acquittance or other instrument when executed by such Master and approved by the Court shall be as valid and effectual as if done by the party required by the judgment to make the same. Any such instrument shall be recorded by the Master if it is necessary.

(Code 1915, § 3860A; 33 Del. Laws, c. 229; Code 1935, § 4384; 10 Del. C. 1953, § 373.)

§ 374 Relief from forfeitures.

The Court of Chancery shall not relieve from any forfeiture incurred, by the nonperformance of any condition contained in or annexed to any gift, grant or contract to which the State is or may be a party. Such forfeiture, when insisted on and declared by the General Assembly and the cause thereof ascertained or admitted to exist, shall be absolutely final and unrelievable.

(12 Del. Laws, c. 215; Code 1915, § 3861; Code 1935, § 4385; 10 Del. C. 1953, § 374.)

§ 375 Recording of bonds and other obligations.

All bonds or obligations taken pursuant to any order or judgment of the Court of Chancery in this State, shall be recorded in such Court in such manner as the Court directs. The record of any such bond or obligation so recorded, shall, upon proof of the loss of the original, be received as evidence in all courts within this State.

(14 Del. Laws, c. 83; Code 1915, § 3887; Code 1935, § 4411; 10 Del. C. 1953, § 375.)

Part I
Organization, Powers, Jurisdiction and Operation of Courts
Chapter 5
SUPERIOR COURT
Subchapter I
Organization and Operation

§ 501 Places of holding Court.

The Superior Court shall be held:

(1) In New Castle County, at Wilmington;
(2) In Kent County, at Dover; and
(3) In Sussex County, at Georgetown.

(Code 1852, § 1907; 16 Del. Laws, c. 133, § 5; Code 1915, § 3683; Code 1935, § 4235; 10 Del. C. 1953, § 501.)

§ 502 Terms of Court.

The designation and the duration of the terms of the Superior Court in and for each county, and the nature of the proceedings to be conducted at each such term, shall be determined by the Superior Court and shall be announced by rule of court, duly adopted and promulgated pursuant to the authority vested in the Superior Court by the provisions of § 561 of this title and § 5121 of Title 11, provided that not less than 4 terms of Court a year shall be established in each county of the State.

(Code 1852, § 1911; 16 Del. Laws, c. 134, § 1; 17 Del. Laws, c. 214; 24 Del. Laws, c. 236; 25 Del. Laws, c. 227; 26 Del. Laws, c. 261; Code 1915, § 3684; Code 1935, § 4236; 48 Del. Laws, c. 223; 10 Del. C. 1953, § 502; 50 Del. Laws, c. 53, § 1.)

§ 503 Salaries of Superior Court Judges.

The President Judge and each Judge of the Superior Court shall receive such compensation as shall be provided by law.

(Code 1852, § 467; 26 Del. Laws, c. 58; Code 1915, § 395; 30 Del. Laws, c. 44; 37 Del. Laws, c. 41; Code 1935, § 369; 46 Del. Laws, c. 248; 47 Del. Laws, c. 200; 48 Del. Laws, c. 260; 10 Del. C. 1953, § 503; 52 Del. Laws, c. 113, § 3; 55 Del. Laws, c. 403, § 3; 57 Del. Laws, c. 675, § 3; 59 Del. Laws, c. 472, § 3; 62 Del. Laws, c. 12, § 3; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 213, § 20.)

§ 504 Expenses of Court.

All necessary expenses connected with the sitting of the Superior Court in any county, shall, upon approval thereof by a Judge of the Court, be paid by the State Treasurer.

The State Treasurer shall pay to each county out of funds regularly appropriated for operation of the Superior Court rent based upon the cost of servicing and maintenance and carrying charges applicable to the space occupied by the Superior Court, its Judges, officers, employees and facilities, in such amounts as shall be fixed annually by agreement between the State Director of the Office of Management and Budget and the Levy Court or County Executive of each county; provided that if agreement cannot be reached, final determination of such amounts shall be made by a panel of 3: 1 member to be designated by the State Director of the Office of Management and Budget, 1 member to be designated by the Levy Court or County Executive, and 1 member to be selected by the other 2 members.

(19 Del. Laws, c. 254; 21 Del. Laws, c. 298, § 1; Code 1915, § 3801; Code 1935, § 4313; 10 Del. C. 1953, § 504; 55 Del. Laws, c. 85, § 32C; 57 Del. Laws, c. 228, §§ 11-5, 11-43; 75 Del. Laws, c. 88, § 21(5).)

§ 505 Expenses for necessaries of jury.

Repealed by 60 Del. Laws, c. 225, § 1.

§ 506 Deposit or investment of money paid into Court.

The Superior Court may deposit, in the name of the Court in any savings bank of this State, or invest in the name of the State in the funded debt of this State or of the United States, or upon bond or mortgage, or both, any money paid into the Court when the person entitled to the same is a nonresident of this State, unknown or incompetent to receive the same, or when for any sufficient cause it is impossible or improper to pay the same to the party interested therein.

The money so deposited or invested may be called in, collected, redeposited, reinvested or paid to the parties entitled to the same, as the Court from time to time directs. Costs incurred under this section shall be payable out of the fund.

(16 Del. Laws, c. 526; Code 1915, § 2733; Code 1935, § 4283; 10 Del. C. 1953, § 506.)

§ 507 Purchase of supplies.

The Superior Court may from time to time purchase for the Court such furniture, equipment, stationery and other supplies as may be requisite for the proper operation of the courtrooms, judicial chambers and other quarters used or occupied by the Judges, court officers and employees.

(10 Del. C. 1953, § 507; 50 Del. Laws, c. 67, § 9.)

§ 508 Payment of expenses.

The payment of the compensation of all persons appointed or employed by the Court under the provisions of this chapter, and the payment for supplies, equipment and other necessary expenses of the Court, including the traveling expenses of the Judges and the court reporters, shall be made by the State Treasurer out of funds regularly appropriated for the operation of the Superior Court.

(10 Del. C. 1953, § 508; 50 Del. Laws, c. 67, § 9; 57 Del. Laws, c. 228, § 11-7.)

§ 509 Additional judges.

There shall be at least 14 judges and no more than 16 judges in addition to the President Judge and the 4 judges specifically required by article IV, § 2 of the Delaware Constitution.

(10 Del. C. 1953, § 509; 53 Del. Laws, c. 5, § 2; 55 Del. Laws, c. 309, § 1; 58 Del. Laws, c. 449; 65 Del. Laws, c. 51, § 1; 66 Del. Laws, c. 375, § 1; 69 Del. Laws, c. 117, § 1; 71 Del. Laws, c. 363, § 1; 76 Del. Laws, c. 213, §§ 21-23; 77 Del. Laws, c. 327, § 51.)

§ 510 Consideration of consolidation.

Repealed by 71 Del. Laws, c. 176, § 1, effective May 1, 1998.

§ 511 Commissioners of the Superior Court; appointment; terms of office; removal.

(a) The Governor may appoint, with the consent of a majority of all members elected to the Senate, suitable persons to act as Commissioners of the Superior Court, all of whom shall hold office for a term of 4 years. Vacancies in office shall be filled for a term of 4 years by the Governor, with the consent of a majority of all members elected to the Senate. Upon second and subsequent appointments and confirmations, a Commissioner of the Superior Court shall hold office for a term of 6 years. Appointees shall be residents of the State, shall be duly admitted to practice law before the Supreme Court of this State, and shall not engage in the practice of law nor any business, occupation, or employment inconsistent with the expeditious, proper and impartial performance of their duties as judicial officers. The number of Commissioners from 1 major political party shall not exceed the number of Commissioners from another major political party by more than 1.

(b) Individuals appointed as Commissioners under this section shall take the oath or affirmation prescribed by article XIV, § 1 of the Delaware Constitution before they enter upon the duties of their office.

(c) The salaries of Commissioners shall be part of the annual budget of the Superior Court. The salary of a Commissioner shall not be reduced during the term being served below the salary fixed at the beginning of that term.

(69 Del. Laws, c. 420, § 1; 74 Del. Laws, c. 165, § 1.)

§ 512 Jurisdiction and powers of Commissioners of the Superior Court.

(a) 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 Superior Court;

(2) The power to administer oaths and affirmations, issue orders pursuant to Chapter 21 of Title 11 concerning release or detention of persons pending trial, and take acknowledgements, affidavits and depositions;

(3) The power to accept pleas of not guilty to any offense within the jurisdiction of the Superior Court and to appoint counsel to represent indigent defendants;

(4) The power to accept a plea of guilty to a misdemeanor or violation and, with the consent of the parties, to enter a sentence thereon.

(b) Commissioners may be designated to perform the following with the approval of the President Judge or his or her designee:

(1)a. A judge may designate a Commissioner to hear and determine any pretrial matter pending before the Court, except a motion for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss for failure to state a claim upon which relief can be granted and to involuntarily dismiss an action. A judge of the Court may reconsider any pretrial matter under this paragraph (b)(1)a. where it has been shown that the Commissioner's order is based upon findings of fact that are clearly erroneous, or is contrary to law or an abuse of discretion.

b. A judge may also designate a Commissioner to conduct hearings, including evidentiary hearings, and to submit to a judge of the Court proposed findings of fact and recommendations for the disposition, by a judge of the Court, of any motion excepted in paragraph (b)(1)a. of this section or of applications for postconviction relief made by individuals convicted of criminal offenses.

c. The Commissioner shall file proposed findings and recommendations under paragraph (b)(1)b. of this section with the Court and shall mail copies forthwith to all parties.

d. Within 10 days after being served with a copy of proposed findings and recommendations under paragraph (b)(1)b. of this section any party may serve and file written objections to such proposed findings and recommendations as provided by rules of Court. A judge of the Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the Court may accept, reject or modify, in whole or in part, the findings or recommendations made by the Commissioner. The judge may also receive further evidence or recommit the matter to the Commissioner with instructions.

(2) A judge may also designate a Commissioner to serve as a special master or master pro hac vice pursuant to the applicable provisions of the Rules of Civil Procedure for the Superior Court.

(3) A Commissioner may be assigned such additional duties by the President Judge, including assignment to the Court of Common Pleas upon designation by the Chief Justice, as are not inconsistent with the Constitution and laws of the State. A Commissioner designated to sit in the Court of Common Pleas may exercise in that court the powers and duties set forth in paragraphs (a)(2), (4) and (b)(1) of this section.

(69 Del. Laws, c. 420, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter II
Officers and Employees

§ 521 Prothonotary as Clerk.

The prothonotary of each county shall be the clerk of the Superior Court in and for that county.

(10 Del. C. 1953, § 521; 70 Del. Laws, c. 186, § 1.)

§ 522 Bailiffs, criers and pages; compensation; duties.

(a) The Superior Court may appoint and remove at pleasure such number of bailiffs, criers, and pages as shall be necessary for the proper operation of the Court. They shall receive such compensation as shall from time to time be determined by the Superior Court. They shall perform such duties and have such powers in connection with attendance upon the Court as the Court may from time to time prescribe and shall receive no other fees or compensation.

(b) From its staff of bailiffs, criers, and pages, the Court may appoint by court order peace officers, who shall have, during the stated terms of such appointment, unless sooner rescinded by court order, such powers normally incident to peace officers, including, but not limited to, the power to make arrests in a criminal case provided that the exercise of such powers shall be limited to any building or real property maintained or used as a courthouse or in support of judicial functions.

(Code 1852, § 1916; 13 Del. Laws, c. 166, § 2; 22 Del. Laws, c. 290; 27 Del. Laws, c. 75; Code 1915, § 3692; 37 Del. Laws, c. 257, § 1; Code 1935, § 4244; 10 Del. C. 1953, § 522; 50 Del. Laws, c. 67, § 20; 53 Del. Laws, c. 241; 55 Del. Laws, c. 85, §§ 32D, E; 57 Del. Laws, c. 228, § 11-8; 58 Del. Laws, c. 475; 78 Del. Laws, c. 79, § 1.)

§ 523 Law clerks.

Law clerks hold major, nontenured advisory positions for the Judges of the Court. The Superior Court may appoint and remove at pleasure such judicial law clerks as shall be necessary for the proper operation of the Court.

(10 Del. C. 1953, § 523; 54 Del. Laws, c. 367; 57 Del. Laws, c. 228, § 11-9; 65 Del. Laws, c. 87, § 38; 78 Del. Laws, c. 51, § 3.)

§ 524 Crier's fees, costs and allowances; collection and payment.

(a) All fees, costs, allowances and other perquisites collected by any officer of the county or State for the use of the crier shall be paid by the officer collecting the same to the State Treasurer.

(b) All fees, costs, allowances and other perquisites, taxable as crier's fees, shall be charged and collected by the county or state officers and by such officers paid to the respective State Treasurer.

(24 Del. Laws, c. 79, §§ 1, 2; 26 Del. Laws, c. 72, §§ 1, 2; Code 1915, § 3693; 31 Del. Laws, c. 63; 37 Del. Laws, c. 258; Code 1935, § 4245; 10 Del. C. 1953, § 526; 55 Del. Laws, c. 85, § 32F; 57 Del. Laws, c. 228, § 11-10.)

§ 525 Court reporters.

The Superior Court may from time to time appoint and remove at pleasure such number of skilled and competent stenographers to be designated as court reporters, as shall be necessary for the proper operation of the Court, together with such additional clerical assistants as may be required. The duties of the court reporters shall be to attend all sessions of the Superior Court in the several counties and such hearings before any Judge or Judges thereof, as may be required, to report all evidence, opinions and other matters as the Superior Court may require and to perform such other duties as the Superior Court may prescribe. The court reporters and assistants shall receive such compensation as the Court shall from time to time determine. Every court reporter before entering upon his or her duties shall take and subscribe the oath of office as required by the Delaware Constitution.

(19 Del. Laws, c. 253, §§ 1, 2; 21 Del. Laws, c. 115, §§ 1, 2; 23 Del. Laws, c. 59; 27 Del. Laws, c. 72; Code 1915, § 3694; 29 Del. Laws, c. 243; 35 Del. Laws, c. 216; Code 1935, § 4246; 43 Del. Laws, c. 221; 10 Del. C. 1953, § 527; 50 Del. Laws, c. 67, § 12; 70 Del. Laws, c. 186, § 1.)

§ 526 Office secretaries.

Each Judge of the Superior Court may appoint and remove at pleasure 1 competent stenographer, to be designated as office secretary, whose duties shall be to render such Judge of the Superior Court such clerical, stenographic, typewriting and secretarial services as may be required, and who shall receive such compensation as the Superior Court shall from time to time determine.

(19 Del. Laws, c. 253, §§ 1, 2; 21 Del. Laws, c. 115, §§ 1, 2; 23 Del. Laws, c. 59; 27 Del. Laws, c. 72; Code 1915, § 3694; 29 Del. Laws, c. 243; 35 Del. Laws, c. 216; Code 1935, § 4246; 43 Del. Laws, c. 221; 10 Del. C. 1953, § 528; 50 Del. Laws, c. 67, § 12.)

§ 527 Temporary appointments.

If for any reason any of the court reporters or office secretaries shall be unable to perform his or her duties, the Superior Court may appoint a suitable and competent substitute to serve as a temporary court reporter or office secretary for such time and for such compensation as the Court shall determine. Substitute court reporters shall take the same oath of office as is required of a court reporter, and their acts shall have the same force and effect as if done by an official court reporter. Such oath shall not be recorded, but shall be filed with the prothonotary.

(10 Del. C. 1953, § 529; 50 Del. Laws, c. 67, § 12; 70 Del. Laws, c. 186, § 1.)

§ 528 Court reporters' charges.

The Superior Court may regulate the charges to be made by court reporters for the furnishing of transcriptions of evidence, opinions, records, arguments or hearings.

(21 Del. Laws, c. 115, §§ 1, 2; 23 Del. Laws, c. 59; 27 Del. Laws, c. 72; Code 1915, § 3694; 29 Del. Laws, c. 243; 35 Del. Laws, c. 216; Code 1935, § 4246; 43 Del. Laws, c. 221; 10 Del. C. 1953, § 530; 50 Del. Laws, c. 67, § 12.)

§ 529 Certification of appointments.

The Superior Court shall certify to the State Auditor and the State Treasurer the names and addresses of the several persons appointed to the offices and positions authorized by §§ 525, 526 and 527 of this title, the several dates of their appointments, and the monthly compensation to be paid to them.

(10 Del. C. 1953, § 531; 50 Del. Laws, c. 67, § 13.)

§ 530 Budgetary powers of Supreme Court.

Nothing contained in this subchapter shall affect the powers of the Supreme Court conferred by § 6331 of Title 29.

(10 Del. C. 1953, § 532; 50 Del. Laws, c. 67, § 13.)

Subchapter III

General Jurisdiction and Powers

§ 541 Jurisdiction generally.

The Superior Court shall have such jurisdiction as the Constitution and laws of this State confer upon it.

(Code 1852, § 1915; Code 1915, § 3725; Code 1935, § 4274; 10 Del. C. 1953, § 541.)

§ 542 Powers generally.

(a) The Superior Court shall have full power and authority to examine, correct and punish the contempts, omissions, neglects, favors, corruptions and defaults of all justices of the peace, sheriffs, coroners, clerks and other officers, within this State.

(b) The Court shall award process for levying all fines, forfeitures and amercements imposed, or recovered, in the Court.

(c) The Court shall minister justice to all persons, and exercise the jurisdictions and powers granted it, concerning the premises, according to law and equity.

(Code 1852, § 1918; Code 1915, § 3726; Code 1935, § 4275; 10 Del. C. 1953, § 542.)

§ 543 Unavailability of Resident Judge.

During the illness, absence from the county or unavailability for any reason of any Resident Judge, the powers and duties required by any statute of this State to be exercised and performed by such Judge in relation to any matter except appointments to any office or position, may be as fully and effectually exercised and performed in all respects by the President Judge, or any other Judge, as by the Resident Judge.

(20 Del. Laws, c. 118; Code 1915, § 3690; Code 1935, § 4242; 10 Del. C. 1953, § 543; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 213, §§ 24-27.)

§ 544 Power to take recognizances.

The Judges of the Superior Court may severally in or out of sessions, take all manner of recognizances and obligations to the State.

(Code 1852, § 1930; Code 1915, § 3799; 33 Del. Laws, c. 225; Code 1935, § 4311; 10 Del. C. 1953, § 544.)

§ 545 Power to receive appeals involving personnel administration of the Delaware court system.

(a) Jurisdiction is hereby conferred upon Superior Court to hear and determine appeals of nonjudicial employees and of the appointing authority of the Delaware court system from administrative decisions of such authority rendered under the "Personnel Rules for Nonjudicial Employees of the Delaware Court System."

(b) Such appeals may be taken by either the aggrieved employee or the appointing authority on the question of whether the appointing authority acted in accordance with law. The burden of proof in either case is on the party making the appeal, and all such appeals shall be undertaken by filing a notice of appeal with the court within 30 days of receipt of the written decision of the hearing officer.

(c) Review by the Superior Court shall be on the record, without a trial de novo. When factual determinations are at issue, the court shall take account of the experience and specialized competence of the hearing officer. The court review of factual issues shall be limited to a determination of whether the hearing officer's decision was supported by substantial evidence on the record.

(d) In the event that the appeal involves a nonjudicial employee of the Superior Court, the Chief Justice of the Supreme Court shall designate a member of the Court of Chancery to hear the appeal.

(69 Del. Laws, c. 424, § 1.)

§ 546 Mediation and arbitration proceedings for business disputes.

(a) Without limiting the jurisdiction of any court of this State, the Superior Court shall have the power to mediate and arbitrate business disputes when:

(1) The parties have consented by agreement or by stipulation to the mediation or arbitration by courts of this State;

(2) At least 1 party is a business entity formed or organized under the laws of this State or having its principal place of business in this State, or the business dispute is governed by Delaware law;

(3) No party is a consumer, as that term is defined in § 2731 of Title 6, with respect to the business dispute;

(4) The amount in controversy is no less than $100,000 or such other amount as the Superior Court determines by rule; and

(5) The Superior Court, without regard to this section, would have subject matter jurisdiction to adjudicate the business dispute.

(b) A mediation pursuant to this section shall involve a request by parties to have a member of the Superior Court act as a mediator to assist the parties in reaching a mutually satisfactory resolution of their business dispute. Mediation proceedings shall be considered confidential and not of public record.

(c) Arbitration proceedings shall be considered confidential and not of public record until such time, if any, as the proceedings are the subject of an appeal. In the case of an appeal, the record shall be filed by the parties with the Supreme Court in accordance with its rules, and to the extent applicable, the rules of the Superior Court.

(d) The parties in any matter may stipulate that the decision of the Superior Court, or a Commissioner of the Superior Court if they so choose, shall be final and binding and not subject to appeal.

(e) This section is intended to encourage the resolution of business disputes by means of arbitration and mediation. The Superior Court should interpret its rule-making authority broadly to effectuate that intention.

(77 Del. Laws, c. 439, § 1.)

Subchapter IV

Procedure

§ 561 Rules of Court in civil actions.

(a) The Judges of the Superior Court, or a majority of them, may, from time to time, adopt and promulgate general rules which prescribe, establish and regulate the form, issuance and return of process and writs, the form and system of pleading, and all other practice and procedure with respect to the commencement, trial, hearing and determination of civil actions in the Superior Court.

(b) Such rules shall be for the purpose of securing the just and, so far as possible, the speedy and inexpensive determination of every such action. The rules shall not abridge, enlarge or modify any substantive right of any party, and they shall preserve the right of trial by jury as at common law and as declared by the statutes and Constitution of this State.

(c) The rules so adopted and promulgated, and all amendments thereof, shall, after they have taken effect, supersede all statutory provisions in conflict or inconsistent therewith.

(d) Any inconsistency or conflict between any rule promulgated under the authority of this section or prior law, and any of the provisions of this Code or other statute of this State dealing with practice or procedure in the Superior Court, shall be resolved in favor of such rule of court. Nothing in this Code, anything therein to the contrary notwithstanding, shall in any way limit, supersede or repeal any rule heretofore promulgated governing practice or procedure in civil actions in the Superior Court.

(e) As used in this section, the phrase "civil actions in the Superior Court" includes proceedings of every kind or character within the jurisdiction of that Court except criminal proceedings.

(Code 1852, §§ 1921, 2301-2304; 27 Del. Laws, c. 270, § 4; Code 1915, §§ 3688, 3730, 4164-4166; 34 Del. Laws, c. 226; Code 1935, §§ 4240, 4280, 4643-4645; 10 Del. C. 1953, § 561.)

§ 562 Writs.

The Superior Court may frame and issue all remedial writs, including writs of habeas corpus and certiorari, or other process, necessary for bringing the actions in that Court to trial and for carrying the judgments of the Court into execution. All writs shall be granted of

course and shall be in such form and returnable at such time as may be prescribed by the rules of the Court, or otherwise as the particular case may require.

(Code 1852, §§ 1923, 1924; Code 1915, § 3735; Code 1935, § 4285; 10 Del. C. 1953, § 562.)

§ 563 Default judgments; jury trial.

A party entitled to a judgment by default shall be deemed to have waived any right to a trial by jury of his or her damages or other issue unless the party makes a written demand therefor when the default interlocutory judgment is entered. If a jury trial is demanded, the action shall thereafter be designated upon the docket of the Superior Court as a jury action and proceeded with accordingly.

(Code 1852, § 1920; Code 1915, § 3729; 34 Del. Laws, c. 212; Code 1935, § 4279; 10 Del. C. 1953, § 563; 70 Del. Laws, c. 186, § 1.)

§ 564 Mandamus.

Proceedings in mandamus shall be begun by the filing of a complaint in the Superior Court, upon which complaint a summons shall issue requiring the defendant to appear and file an answer within the time prescribed by the rules of the Court. Upon the filing of the answer either party may apply to the Court for hearing of the cause and the same may be heard by the Court at such time as may be ordered. The Court may make such orders respecting filing or hearing of interlocutory motions as shall be proper. Any questions of fact arising from the pleadings shall be heard and determined by the Court and if the Court orders that the plaintiff is entitled to the relief prayed for or any part thereof, a peremptory writ of mandamus shall issue forthwith which shall be served in the usual manner.

(19 Del. Laws, c. 775, § 3; Code 1915, § 3732; 34 Del. Laws, c. 213; Code 1935, § 4282; 10 Del. C. 1953, § 564.)

§ 565 Forfeiture of recognizance; satisfaction of judgment upon forfeited recognizance.

In case any person forfeits recognizance of the peace, behavior, or appearance, the Superior Court shall make a record of such default or forfeiture, and issue a scire facias, or other process, for the recovery of the forfeiture. The Court may also order the Attorney General to satisfy the judgment obtained upon any forfeited recognizance of the peace, behavior, or appearance, whenever it appears to the Court that the person or persons for whose keeping of the peace, behavior, or appearance the recognizance had been given, was or had been apprehended after the forfeiture of the recognizance, and the case disposed of by the public authorities having jurisdiction thereof, or whenever the Court has presented to it such facts or conditions as, in its discretion, would warrant it in ordering the satisfaction of such judgment. When such order is made, the defendant in the judgment shall pay the costs thereof.

(Code 1852, § 1930; Code 1915, § 3799; 33 Del. Laws, c. 225; Code 1935, § 4311; 10 Del. C. 1953, § 565; 70 Del. Laws, c. 186, § 1.)

§ 566 Health care malpractice litigation.

(a) All health care malpractice claims shall be brought in the Superior Court by means of filing a complaint in the Superior Court in the manner set forth in Chapter 68 of Title 18.

(b) The Judges of the Superior Court or a majority of them may, from time to time, adopt and promulgate such rules as they are permitted to promulgate in Chapter 68 of Title 18 or which they deem necessary for the regulation of the practice and procedure relating to the commencement, trial, hearing and determination of civil actions in the Superior Court and especially relating to the malpractice review panels provided for in subchapter III of Chapter 68 of Title 18 in health care malpractice litigation. Such rule-making power shall be in addition to all such rule-making powers otherwise granted to the Judges of the Superior Court in this title.

(60 Del. Laws, c. 373, § 2.)

§ 567 Power to appoint Masters.

The Superior Court may appoint Masters who shall exercise such powers of the Court as shall be designated by the Court. No Master shall conduct jury trials. Masters shall serve at the pleasure of the Court and shall receive such compensation as the Court may determine. The conduct of Masters shall be governed by Court rules.

(66 Del. Laws, c. 213, § 1.)

§ 568 Security of appeals.

(a) In all civil actions in which an appeal is taken from a lower court to the Superior Court, no bond shall be required to be posted as a condition of taking said appeal. The Superior Court may nevertheless stay execution upon the judgment appealed from and may require, by court rule or otherwise, that the appellant provide a supersedeas bond for such limited purpose.

(b) On appeal, a cash deposit may be made in lieu of a bond with security. When a cash deposit is made in lieu of a bond on appeal, the cash deposit shall be retained until the final determination of the cause, and shall be subject to the lien of the judgment appealed from and costs, interest thereon and the costs of the appeal.

(c) The bond or any other security required under this section need not be given by:

(1) The State or any political subdivision thereof, authorized to sue or be sued;

(2) Any officer or employee of the State or any political subdivision thereof, suing or being sued in his or her representative capacity as such officer or employee; or

(3) Any board or committee of the State or any of its political subdivisions suing or being sued in its official capacity.

(68 Del. Laws, c. 53, § 1; 70 Del. Laws, c. 186, § 1.)

Part I
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 eighteenth 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. [repealed] of this title;

d. Persons temporarily responsible for the child's well-being or care such as a health-care 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 eighteenth 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 the home of an "adult individual" who fails to meet the definition of "relative" in this section on an extended basis without an assessment by DSCYF, or its licensed agency; 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. [repealed] 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(h) 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.

(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; 73 Del. Laws, c. 65, § 8; 74 Del. Laws, c. 175, § 12; 76 Del. Laws, c. 136, §§ 1-5; 77 Del. Laws, c. 43, § 1; 77 Del. Laws, c. 70, § 1; 79 Del. Laws, c. 206, §§ 1, 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 17 Judges of equal judicial authority. One Judge shall be the Chief Judge. 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 or her 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, 10 of the Judges shall reside in New Castle County, 3 Judges shall reside in Kent County, and 3 Judges shall reside in Sussex County.

(f) The Chief Judge and each of the Judges of the Family Court shall receive such compensation as shall be provided by law.

(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; 72 Del. Laws, c. 238, §§ 1, 2; 75 Del. Laws, c. 89, § 50; 76 Del. Laws, c. 213, §§ 28-32.)

§ 907 Administrative powers and duties of the Court.

The Court shall hold meetings when and where called by the Chief Judge or, in the Chief Judge's absence, by the senior 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; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 213, § 33.)

§ 908 Chief Judge; powers; duties.

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

(1) Be the Chief Executive Officer of the Court and preside at meetings thereof.

(2) Prepare and present to the Director of the Office of Management and Budget 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 Judges, both of whom shall be appointed by the Chief Judge, and 1 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 1 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 have such powers normally incident to peace officers, including but not limited to, the power to make arrests in a criminal cases, provided that the exercise of such powers shall be limited to any building or real property maintained or used as a courthouse or in support of judicial functions.

(10 Del. C. 1953, § 908; 58 Del. Laws, c. 114, § 1; 63 Del. Laws, c. 75; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(5); 76 Del. Laws, c. 213, §§ 34, 35; 78 Del. Laws, c. 79, § 2.)

§ 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 or she 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 1 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 the Administrator 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; 70 Del. Laws, c. 186, § 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 1 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 bachelor's 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 or her 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 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.

(62 Del. Laws, c. 170, § 2; 72 Del. Laws, c. 338, § 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. Upon second and subsequent appointments and confirmations, a Commissioner of the Family Court shall hold office for a term of 6 years. 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 30 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 30 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; 74 Del. Laws, c. 165, § 2; 76 Del. Laws, c. 212, § 1; 76 Del. Laws, c. 266, § 1.)

§ 916 Assignment of retired Commissioners to active duty.

(a) Any retired Commissioner may be designated by the Chief Judge, with the approval of the Chief Justice of the Supreme Court, to serve temporarily in any Family Court in the State; provided, however, that the retired Commissioner:

(1) Was serving in good standing as a Commissioner at the time of retirement;

(2) Assents to such designation; and

(3) Is not involved or employed in any position which would create a conflict of interest with the position of Commissioner, including, but not limited to: the private practice of law; the holding of any state office; or employment by the State in any capacity.

(b) Any retired Commissioner accepting an active duty designation shall be compensated on a per diem basis on the formula representing 1/260 of the annual salary for a Commissioner. In no event shall the per diem pay for a retired Commissioner exceed the maximum per diem pay for retired judges as provided in § 5610(b) of Title 29, nor shall the total annual compensation of the retired Commissioner equal or exceed the current annual salary for a Commissioner. Each retired Commissioner serving shall also be reimbursed for travel necessarily incurred for the performance of such active duty as approved by the Chief Judge.

(c) Expenditures for work performed under this section shall be made from funds appropriated for this purpose, or from other Court funds approved to be expended for this purpose.

(78 Del. Laws, c. 315, § 1.)

§ 917 Law clerks.

Law clerks hold major, nontenured advisory positions for the Judges of the Court. The Family Court may appoint and remove at pleasure such judicial law clerks as shall be necessary for the proper operation of the Court.

(78 Del. Laws, c. 51, § 4; 78 Del. Laws, c. 315, § 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, 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 sixteenth birthday, murder in the second degree, manslaughter, robbery in the second degree, attempted murder (first or second degree), home invasion, burglary in the first degree or arson in the first degree; provided, however, that such child shall, after his or her first appearance in the Court, be given a hearing as soon as practicable to determine his or her 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 1 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 sixteenth 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 § 501 of Title 13, and §§ 2830 and 2831 of Title 31;

(8) Execution of forms consenting to marriages under § 123 of Title 13;

(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 paragraph 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 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.

(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; 72 Del. Laws, c. 346, § 16; 73 Del. Laws, c. 412, § 21; 74 Del. Laws, c. 106, §§ 25, 26; 75 Del. Laws, c. 195, § 1; 77 Del. Laws, c. 43, § 2; 78 Del. Laws, c. 252, § 2.)

§ 922 Exclusive and concurrent original criminal jurisdiction.

(a) Except as provided in subsections (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 1 member of a family against another member of the family, and criminal cases, except felonies, in which 1 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 nonsupport and misdemeanor aggravated criminal nonsupport under § 1113 of Title 11;

(5) Illegitimacy proceedings under 13 Del. C. §§ 1321-1335 of Title 13 [repealed];

(6) Children of immoral parents under § 706 of Title 13 [repealed];

(7) Aiding a child who escapes from the Department of Services for Children, Youth and Their Families under § 5311 of Title 31;

(8) Cruel treatment and wrongful disposition or employment of children under § 1102 of Title 11;

(9) Interference with custody of a child under § 785 of Title 11;

(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 §§ 307, 351 of Title 31, except as provided in the Interstate Compact for Juveniles;

(11) Sale or delivery of an alcoholic beverage to a child under § 904 of Title 4;

(12) Permitting a child to remain where alcoholic beverages are sold under § 1106 of Title 11;

(13) Permitting a child to be present where gambling activity is maintained or conducted under § 1106 of Title 11;

(14) Sale of weapons to a child under § 903 of Title 24;

(15) Sexual assault on a child under § 761 of Title 11;

(16) Intra-family offenses against the person under §§ 601, 602, 611 of Title 11;

(17) Incest under § 766 of Title 11;

(18) Reciprocal support proceedings against or on behalf of nonresidents under Chapter 6 of Title 13, where appropriate;

(19) Unlawful sexual contact in the third degree against a child under § 767 of Title 11;

(20) Violation of a protective order under § 1271A of Title 11;

(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 former §§ 39-14 through 39-16 of the Wilmington Code [see now §§ 36-97 and 36-98 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.

(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; 75 Del. Laws, c. 110, §§ 1, 2.)

§ 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 1 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) 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 § 902A(d) of Title 16 [repealed], and to decide appeals made pursuant to § 902A(g) of Title 16 [repealed] for orders of administrative expungement of substantiation for the purpose of no longer reporting an individual's name pursuant to § 8563(b) of Title 11;

(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).

(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; 72 Del. Laws, c. 451, § 1; 72 Del. Laws, c. 469, § 5; 77 Del. Laws, c. 122, § 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) of Title 21;

(2) Operating a motor vehicle without motor vehicle insurance under § 2118, except that the Justice of the Peace Court shall have concurrent jurisdiction for purposes of dismissing a case if proof of insurance is shown pursuant to § 2118(b) or (p) of Title 21;

(3) Possessing a fictitious insurance identification card under § 2118A(a) of Title 21;

(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 of Title 21;

(5) Fraud in obtaining a driver's license, or display of a fraudulently altered license under § 2751 of Title 21;

(6) Driving while license is suspended or revoked under § 2756 of Title 21;

(7) Driving during a period of ineligibility under § 2758 of Title 21;

(8) Penalties under § 2971(a) of Title 21;

(9) Obedience to police officers under § 4103 of Title 21;

(10) Walking on a highway under the influence under § 4149 of Title 21;

(11) Speed exhibitions and drag racing under § 4172 of Title 21;

(12) Malicious mischief by motor vehicle under § 4172A of Title 21;

(13) Reckless driving under § 4175 of Title 21;

(14) Aggressive driving under § 4175A of Title 21, whether or not the predicate offenses required under that section are within the exclusive jurisdiction of the Family Court or not;

(15) Operation of a vehicle causing death under § 4176A of Title 21;

(16) Operation of vehicle while under the influence of intoxicating liquor or drug under § 4177 of Title 21;

(17) Driving after consumption of alcohol under § 4177L of Title 21;

(18) Operating a bicycle under the influence of drugs or alcohol and under § 4198J of Title 21;

(19) Duty of driver involved in accident resulting in injury or death to any person under § 4202 of Title 21;

(20) Duty to report accidents under § 4203 of Title 21;

(21) Introduction, sale, distribution or advertisement for sale to public of motor vehicle master keys under § 4601 of Title 21;

(22) Reporting of keys under § 4603 of Title 21;

(23) Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock-picking devices and hot wires under § 4604 of Title 21;

(24) Injuring vehicle without consent of owner under § 6701 of Title 21;

(25) Driving vehicle without consent of owner under § 6702 of Title 21;

(26) Tampering with vehicle under § 6703 of Title 21;

(27) Receiving or transferring stolen vehicle under § 6704 of Title 21;

(28) Removed, falsified or unauthorized identification number on vehicle or engine; removed or affixed license/registration plate with intent to misrepresent identity under § 6705 of Title 21;

(29) Possession of blank title, blank registration card, vehicle identification plate, warranty sticker and registration card under § 6708 of Title 21;

(30) Removal of warranty or certification stickers, vehicle identification plates, and confidential vehicle identification numbers under § 6709 of Title 21; and

(31) Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers under § 6710 of Title 21.

(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; 72 Del. Laws, c. 54, § 1; 74 Del. Laws, c. 99, § 2; 76 Del. Laws, c. 38, §§ 1, 2.)

§ 928 Extended jurisdiction — Juvenile delinquency.

(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 eighteenth 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 eighteenth 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 eighteenth 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 eighteenth 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; 77 Del. Laws, c. 385, § 1.)

§ 929 Extended jurisdiction — Child abuse, dependency and neglect.

(a) Upon motion filed by DSCYF, the youth, or the youth's attorney or former guardian ad litem, the Court may enter an order to extend jurisdiction over a youth who was an abused, dependent or neglected child in DSCYF custody at the time the youth attained 18 years of age. The motion seeking extended jurisdiction shall be filed not later than 6 months prior to the youth's twenty-first birthday.

(b) The purpose of extended jurisdiction is to enable youth who are provided developmentally appropriate, comprehensive independent living services from age 14 to 21 to assist with their successful transition into adulthood under the John H. Chafee Independence Act (P.L. 106-169) or the Fostering Connections to Success and Increasing Adoptions Act of 2008 (P.L. 110-351) to have a legal mechanism for Family Court review of the appropriateness of such services. Extended jurisdiction may continue until the youth attains 21 years of age. Notwithstanding extended jurisdiction, the youth shall attain the age of majority at age 18, and DSCYF custody shall terminate at that time by operation of law.

(c) The reasonableness of the services to be offered and coordinated by the DSCYF to the youth, including financial, housing, medical, employment, training, education and other appropriate services, shall be contingent upon the limits of the appropriations made to or by the State for this purpose. If funding for a particular service has not been appropriated, or has been exhausted, there shall be no requirement that DSCYF provide the service. The DSCYF Secretary, or the Secretary's designee, shall certify to the Court by affidavit the availability of funding for the particular youth.

(d) Where the Court has extended jurisdiction over a youth, the Court may conduct reviews upon motion of any party, or sua sponte, and prior to termination of the order extending jurisdiction; however, reviews must occur at least annually. The appointment of the youth's attorney or Court Appointed Special Advocate shall also be extended, and the representation of the youth shall be client-directed. At each review, notice shall be provided by DSCYF to any contracted providers serving the youth. At each review, the Court shall, at a minimum, evaluate the youth's independent living services, and make findings, where applicable, regarding:

(1) Financial stability;

(2) Housing;

(3) Medical benefits, including access to health care and other public benefits;

(4) Employment and training;

(5) Education; and

(6) Community and individual connections to help support the youth.

(e) An order for extended jurisdiction terminates by operation of law when the youth attains 21 years of age. An order for extended jurisdiction may be terminated sooner upon a finding that:

(1) The youth no longer consents to the Court's extended jurisdiction;

(2) The youth no longer consents to the continued assistance of DSCYF;

(3) The youth has failed to cooperate with DSCYF; or

(4) For other good cause shown.

(f) Nothing herein shall be construed to require DSCYF to provide foster care board extension payments or stipends to the youth. However, where a youth meets the DSCYF requirements for a foster care board extension payment or stipend, the provisions of this section shall apply.

(77 Del. Laws, c. 385, § 2; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 185, § 1.)

Subchapter III

Procedure

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

(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; 72 Del. Laws, c. 150, §§ 1, 2; repealed by 78 Del. Laws, c. 188, § 1, eff. Jan. 1, 2012.)

§ 1002 Delinquent child not criminal; prosecution limited.

Except as provided in § 1010 of this title, 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 eighteenth 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 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.

(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; 76 Del. Laws, c. 136, § 6.)

§ 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 of this title 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 the child's 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, Title 11, and Chapter 47 of Title 16, the Uniform Controlled Substance Act; or

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

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

(5) The child is alleged to be intimidating 1 or more witnesses or otherwise unlawfully interfering with the administration of justice; or

(6) The child has escaped from a secure or nonsecure detention facility, or has demonstrated a pattern of repeated failure to comply with court-ordered placement pursuant to a delinquency petition in an out-of-home residential or foster care setting; or

(7) The child has incurred new charges while a resident, as a result of a prior delinquency petition, of a nonsecure detention facility, out-of-home residential or foster care setting and the parent, guardian, custodian or facility refuses to take custody of the child; or

(8) The child has breached a condition of release; or,

(9) Having been released pending adjudication on prior charges for which the child could have been detained, the child is alleged to have committed additional changes on which the child would not normally be permissibly held in secure detention under this section.

(b) Prior to making a decision of secure detention pending adjudication the Court shall consider and, where appropriate, employ any of the following alternatives:

(1) Release on the child's own recognizance;

(2) Release to parents, guardian, custodian or other willing member of the child's family acceptable to the Court;

(3) Release on bail, with or without conditions;

(4) Release with imposition of restrictions on activities, associations, movements and residence reasonably related to securing the appearance of the child at the next hearing;

(5) Release to a nonsecure detention alternative developed by the Department of Services for Children, Youth and Their Families such as home detention, daily monitoring, intensive home base services with supervision, foster placement, or a 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. In the event that a risk assessment instrument has been completed for the child for the pending offense, with the resulting presumptive disposition being to release the child, or hold the child in a nonsecure detention facility, the Court shall further state in writing the basis for overriding that presumption.

(d) If a child has been placed in secure detention pending adjudication on a commitment from the Justice of the Peace Court, an initial hearing to determine the appropriateness of detention and to review conditions of release shall be held the next day the Family Court is in session.

(e) A detention review with counsel shall be heard within 14 days of the initial detention hearing and if detention is continued, detention review hearings shall be held thereafter at intervals not to exceed 30 days.

(f) When a juvenile is detained pending adjudication the adjudicatory hearing shall be held no later than 30 days from the date of detention. If no adjudicatory hearing is held within 30 days, upon motion by a juvenile, the Court shall within 72 hours fix a date for the adjudicatory hearing unless it grants a continuance of the hearing for good cause shown.

(g) Pending adjudication the Court may release a child alleged to be dependent or neglected to the custodian; or, where the welfare of the child appears to require such action, place the child in the care of the Department of Services for Children, Youth and Their Families

or any suitable person or agency; provided, however, that if the child is placed with someone other than a relative, the Court may require an evaluation and report from the Department of Services for Children, Youth and Their Families.

(h) In any instance in which a person responsible for the custody and care of a child refuses to take custody pending adjudication of that child, the Family Court may order the person legally liable therefore to pay for the child's care during the period of placement outside the person's own home.

(i) Pending adjudication, the Court may defer proceedings pending further investigation, medical or other examination, or where the interest of a child will thereby be served.

(j) For purposes of subsections (a)-(c) of this section above, the term "the Court" shall mean both the Justice of the Peace Court and the Family Court. In all other subsections the term shall mean the Family Court only.

(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; 77 Del. Laws, c. 375, § 1; 79 Del. Laws, c. 24, § 1.)

§ 1007A Determination of competency of child.

(a) *Definitions.* — For the purpose of this section, the following definitions shall apply:

(1) "Competency evaluator" shall mean an expert qualified by training and experience to conduct juvenile competency evaluations, familiar with juvenile competency standards, and familiar with juvenile treatment programs and services.

(2) "Not competent" shall mean a child who is unable to understand the nature of the proceedings against the child, or to give evidence in the child's own defense or to instruct counsel on the child's own behalf.

(b) *Procedure to determine competency; competency evaluation.* —

(1) The issue of whether a child within Family Court jurisdiction, and not subject to § 1010(a) or (c)(3) of this title, is competent to proceed to trial may be raised by any party by the filing of a written motion or may be raised by the Court *sua sponte*. The motion shall state with specificity the facts that support the request for a competency evaluation. Any issues related to competency that are raised post adjudication shall be raised and decided by the Court based on applicable Family Court Rules and case law. The issue of whether a child subject to § 1010(a) or (c)(3) of this title is competent to proceed shall be determined by the Superior Court consistent with the rules and procedures of that Court and any other applicable law.

(2) If the Court determines that there are facts that support the completion of a competency evaluation, the prosecution of the case shall be stayed and the Court shall order that a competency evaluation be performed by a competency evaluator.

(3) The competency evaluation shall be performed and submitted to the Court within 30 days of the date that the competency evaluation is ordered by the Court if the child is in secure or nonsecure detention, and within 60 days if the child is not detained. Pending completion of the competency evaluation and a final determination of competency by the Court, the child's bail, placement, and conditions of bail shall continue to be determined pursuant to § 1007 of this title, and the applicable bail guidelines. The Court may order the competency evaluation to be performed on an outpatient basis or may place the child in a secure or nonsecure facility in order to facilitate the completion of the evaluation after considering less restrictive alternatives pursuant to § 1007 of this title.

(4) The competency evaluation submitted by the competency evaluator to the Court shall:

a. Specifically address the child's ability to understand the nature of the proceedings against the child, the ability of the child to give evidence in the child's own behalf, and the ability of the child to instruct counsel on the child's own behalf; and

b. Note any mental disorders or incapacities, developmental disabilities, cognitive impairments, and/or chronological immaturity or any other factor affecting competency, and recommend appropriate treatment or services; and

c. Specify any conditions that will not result in the restoration or acquisition of competency even with treatment.

Statements made by the child as part of the competency evaluation may not later be admitted as evidence at trial.

(5) Upon completion of the competency evaluation:

a. The parties may stipulate that the child is either competent or not competent and submit a stipulation to the Court for approval; or

b. Either party may retain their own competency evaluator to perform an additional evaluation; or

c. Either party may request that the Court hold a competency hearing.

(c) *Court findings.* —

(1) If the Court rules after a stipulation or competency hearing that a child is competent, the prosecution of the case shall resume. If the Court rules that the child is not competent, the Court shall then make a finding of whether competency can be timely restored or acquired. If there is a reasonable expectation that competency can be timely restored or acquired, the Court shall order appropriate treatment or services based on the findings and recommendations contained in the competency evaluation. The underlying bases for a finding that a child is not competent may include, but are not limited to, significant mental disorder or incapacity, significant developmental delay, significant cognitive impairment, and/or chronological immaturity. A child's age alone may not serve as the basis for a finding that a child is not competent. The finding must be based on the individual child's capacities for competency.

(2) While the child undergoes treatment or services, bail, conditions of bail and placement shall continue to be determined pursuant to § 1007 of this title, and applicable bail guidelines. Prior to making a bail decision, the Court shall consider less restrictive alternatives pursuant to § 1007 of this title, and if the Court places or continues to place a child in secure detention, the Court shall state in writing

the basis for its detention decision. The Court shall schedule review hearings to evaluate whether competency has been restored or acquired at least every 6 months. The Court may order further competency evaluations to assist the Court in determining whether competency has been restored or acquired. When the Court determines that competency has been restored or acquired, the prosecution of the case shall resume.

(3) If the Court finds that a child is not competent and is unable to have competency timely restored or acquired, the Court, after a hearing to consider the best interests of the child and the safety of the community, shall:

a. Dismiss nonviolent misdemeanor charges within 6 to 12 months;

b. Dismiss violent misdemeanor or nonviolent felony charges within 12 to 24 months;

c. Dismiss violent felony charges at age 18, unless the child was under age 14 at the time of arrest for violent felonies in which case the Court shall consider dismissal of violent felonies within 18 to 36 months.

The Court shall hold review hearings at least every 6 months until the case is dismissed, and may continue to order appropriate services until the case is dismissed.

(d) *Limitation on competency finding.* — Any finding by the Court regarding the competency of a child is limited to the specific delinquency proceedings at issue when competency is raised, and that finding shall not be the basis for any determination of competency in another court, competency as a witness in any proceeding, or competency to be proceeded against in another delinquency proceedings or any other proceedings in this Court.

(78 Del. Laws, c. 241, § 1; 79 Del. Laws, c. 371, § 6.)

§ 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, Child Placement 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; 72 Del. Laws, c. 338, § 3.)

§ 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 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 of an "adult individual" who fails to meet the definition of a "relative" in § 901 of this title, § 351 of Title 31 shall apply;

(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 child with a mental disorder or incapacity, or child with an intellectual disability 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 child with a mental disorder or incapacity, or child with an intellectual disability 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 driver's 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;

(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 this title;

(17) When the Court sentences a child to participate in counseling, mental health treatment or to a Division of Prevention and Behavioral 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 Prevention and Behavioral 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;

(18) Order any and all registrations or relief therefrom as required under § 4123 of Title 11 where the juvenile has been adjudicated delinquent of an offense that would otherwise render the juvenile a sex offender under § 4121(a)(4) of Title 11;

(19) Notwithstanding any provision of law or court rule to the contrary, and except for any assessment imposed pursuant to Chapter 90 of Title 11, waive or suspend payment of any fine, cost or penalty assessment, including those otherwise deemed mandatory or not subject to waiver or suspension, as part of the sentence imposed on a delinquent child.

The authority given the Court by paragraphs (c)(5), (6), (7) and (8) of this section 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 (e)(1) and (2) of this section, 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 mental disorders or incapacities, or intellectual disabilities, 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 (e)(6) of this section;

(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 628A 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.

(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; 72 Del. Laws, c. 77, § 1; 72 Del. Laws, c. 338, § 4; 73 Del. Laws, c. 408, § 3; 74 Del. Laws, c. 106, § 27; 74 Del. Laws, c. 110, §§ 2, 3, 138; 74 Del. Laws, c. 345, § 3; 75 Del. Laws, c. 369, §§ 1, 2; 75 Del. Laws, c. 390, § 1; 76 Del. Laws, c. 198, § 1; 77 Del. Laws, c. 327, § 210; 78 Del. Laws, c. 179, §§ 19-21; 79 Del. Laws, c. 123, § 1; 79 Del. Laws, c. 206, § 2; 79 Del. Laws, c. 303, § 1; 79 Del. Laws, c. 371, § 7.)

§ 1009A Probation before adjudication of delinquency.

After accepting an admission or a plea of nolo contendere to an act of delinquency, the court may, prior to entering an adjudication of delinquency, under § 1009 of this title and with the consent of the child and the State, stay the declaration of delinquency, defer further proceedings, and place the child on probation before adjudication subject to the same limitations and upon the same terms and conditions as are applied to adult criminal offenders in § 4218 of Title 11.

(75 Del. Laws, c. 364, § 1.)

§ 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, 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) 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 sixteenth 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, arson first degree, burglary first degree, home invasion, §§ 4752 and 4753 of Title 16 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 subsection (a) of this section 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 fourteenth birthday and is thereafter charged with being delinquent; or

c. Whenever a child has reached his or her fourteenth 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 nonamenable 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 fifteenth 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; 73 Del. Laws, c. 408, § 1; 74 Del. Laws, c. 106, §§ 28, 33; 75 Del. Laws, c. 195, § 2; 78 Del. Laws, c. 13, § 1; 78 Del. Laws, c. 252, § 3.)

§ 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 nonamenable 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 Title 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; 73 Del. Laws, c. 408, § 1.)

§ 1012 Family Court Adjudicated Drug Court Program.

(a) A child who has been referred to the Program by the Attorney General may qualify for the Family Court Adjudicated Drug Court Program.

(b) At the time of arraignment of any person qualifying under subsection (a) of this section for the Family Court Adjudicated Drug Court Program and who elects to apply under this section shall admit to the offense by entering a plea of delinquency. The Court shall order the child to participate in a substance abuse evaluation to be conducted by the Department of Services for Children, Youth and Their Families, and to comply with any treatment recommended by that agency, and any other sentencing conditions deemed appropriate.

(c) After the entry of a judgment of delinquency against a child participating in the Family Court Adjudicated Drug Court Program, a judge or commissioner shall vacate the judgment of delinquency and sentence pertaining thereto 6 months after the Court is satisfied that the child has completed the terms and obligations of the Family Court Adjudicated Drug Court Program and has complied with the conditions of probation imposed at the time of adjudication.

(d) Any child actively participating in the Family Court Adjudicated Drug Court Program as a result of a Family Court misdemeanor adjudication may motion the Court for permission to apply for a Level I Learner's Permit or driver's license under the following terms.

(1) That no driving privileges, prior driver's license and/or conditional driver's license have been otherwise revoked within the preceding 12 months;

(2) That at least 60 days or the length of time prior to licensure required by 23 U.S.C. § 159, whichever is longer, has elapsed since the beginning of the child's active participation in the Family Court Adjudicated Juvenile Drug Court Program and the child has completed at least 12 hours of treatment through the drug treatment provider;

(3) In the event that the Court grants the request, and if the child is otherwise qualified, the Division of Motor Vehicles shall grant the child a Level I Learner's Permit or reinstate the child's driving privileges as specified in the Court order; and

(4) Except for a Level I Learner's Permit, the Court may restrict the driving privileges granted under this section. These restrictions may include but are not limited to the right to drive to school, work or to the office of a treatment provider.

(5) Notwithstanding any provision of Title 21 or Title 4 to the contrary, the adjudication of delinquency in this Program shall not result in the revocation or suspension of a driving license or driving privileges, but the child shall be determined "not eligible" for licensing by the Court until the child obtains a Court order granting a motion submitted pursuant to this Section.

(73 Del. Laws, c. 408, § 1; 74 Del. Laws, c. 135, §§ 1, 2.)

§ 1013 Automatic expungement of juvenile record by effect of a Delaware gubernatorial pardon.

Any individual who receives a Delaware gubernatorial pardon shall, as an effect of said pardon, automatically have that individual's juvenile record, if any, expunged.

(75 Del. Laws, c. 146, § 1.)

§ 1014 Juvenile expungement; statement of policy.

The General Assembly finds that juvenile arrest records are a hindrance to a person's present and future ability to obtain employment, obtain an education, or to obtain credit. This subchapter is intended to protect children and citizens from unwarranted damage which may occur as a result of a juvenile arrest record, even if the arrest resulted in an adjudication of delinquency.

(78 Del. Laws, c. 188, § 2.)

§ 1015 Filing an expungement petition.

(a) A child, through his or her parent or guardian, or upon becoming an adult, may file a petition seeking to expunge the child's juvenile arrest record. For the purposes of §§ 1016-1019 of this title, the child or person seeking an expungement shall be deemed "the petitioner."

All such petitions shall be filed in the Family Court in the county where the most recent case was terminated, disposed of, or concluded, setting forth the relevant facts and requesting expungement of the police records and court records, including any electronic records, relating to the charge or charges.

(b) The petitioner shall attach a copy of that petitioner's criminal history as maintained by the State Bureau of Identification to any petition requesting expungement filed pursuant to this subchapter. The State Bureau of Identification may charge a reasonable fee in providing a certified copy of the petitioner's criminal history. The Court shall summarily reject any petition for expungement that does not include the petitioner's criminal history.

(c) The Family Court must consider the entire juvenile arrest record in granting or denying the petition, consistent with sections §§ 1017 and 1018 of this title. The Court shall either grant the petition, ordering the expungement of the petitioner's entire juvenile arrest record, or deny the petition. The Court may not order that only a portion of the petitioner's juvenile arrest record be expunged, unless the State, pursuant to § 1018(e) of this title in the interests of justice, petitions the Court to expunge an arrest that would otherwise not qualify for immediate and mandatory expungement under this subchapter. The Court may order expungement of charges originating in a different county.

(d) The Family Court shall establish a reasonable fee schedule for the filing of a petition of expungement pursuant to this subchapter.

(78 Del. Laws, c. 188, § 2; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 343, § 1.)

§ 1016 Definitions applicable to juvenile expungements.

For purposes of juvenile expungement, unless the context otherwise requires:

(1) "Adjudication of delinquency" means a finding of guilt or nolo contendere entered by the Court for a charge or charges following a plea or trial.

(2) "Case" means a charge or set of charges related to a complaint or incident that are or could be properly joined for prosecution.

(3) "Felony sex offense" means a delinquent act constituting any felony offense listed in § 4121(a)(4) of Title 11.

(4) "Misdemeanor sex offense" means a delinquent act constituting any misdemeanor offense listed in § 4121(a)(4) of Title 11.

(5) "Prior adjudication of delinquency" means an adjudication of delinquency entered by the Court, that occurs prior to the commission of a separate and distinct offense.

(6) "Subsequent adjudication of delinquency or adult conviction" means an adjudication of delinquency or an adult conviction resulting from the commission of a separate and distinct offense that occurs after a prior adjudication of delinquency.

(7) "Terminated in favor of the child" means:

a. The child is acquitted of all charges related to the case; or

b. A nolle prosequi is entered on all charges related to the case; or

c. The charges have been otherwise dismissed for any reason, including, but not limited to dismissals following successful completion of arbitration, probation before adjudication of delinquency, or any court-approved diversion program.

(8) "Violent felony" means a delinquent act constituting any offense listed in § 4201 of Title 11.

(9) "Violent misdemeanor" means a delinquent act constituting 1 of the misdemeanors enumerated under § 603, § 611, § 621, § 628, § 781, § 1257, or § 1325 of Title 11.

(78 Del. Laws, c. 188, § 2; 78 Del. Laws, c. 343, § 2.)

§ 1017 Mandatory expungement.

(a) The Family Court shall grant a petition for expungement if:

(1) A child is charged with the commission of 1 or more crimes designated as a misdemeanor or violation in Title 4, 7, 11, 16 or 23, or a county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any offense defined in Title 4, 7, 11, 16 or 23, and the case is terminated in favor of the child, provided the petitioner has no prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges.

(2) A child is charged with the commission of 1 or more crimes designated as a felony in Title 11 or 16, and the case is terminated in favor of the child, provided the petitioner has no prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that at least 1 year has passed following the date the case was terminated, disposed of, or concluded in Family Court.

(3) A child has no more than 1 adjudication of delinquency in a case where the crime or crimes for which the child was adjudicated delinquent are designated as felonies or misdemeanors or violations in Title 4, 7, 11, 16 or 23, or a county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any offenses enumerated in Title 4, 7, 11, 16 or 23 excepting violent felonies and misdemeanor or felony sex offenses, and provided the petitioner has no prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that at least 3 years have passed following the date the adjudication of delinquency was entered in Family Court.

(b) The petitioner is not required to provide a copy of the petition to the Attorney General, when filing an expungement petition pursuant to this section.

(c) If an order expunging the records is granted by the Court, all the police and court records, including any electronic 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 is not released for any reason except as specified in this subchapter. A court or police agency that receives a notice of expungement from the State Bureau of Identification shall provide the Bureau with written confirmation of the completion of the expungement. The State Bureau of Identification shall provide the Court that entered the order with written confirmation of the execution of the order. In response to requests from nonlaw-enforcement officers 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. No order requiring an expungement of any record shall be entered or enforced if such order is contrary to the provisions of this subchapter. The State Bureau of Identification shall promptly notify the Court if it is unable to comply with any order issued pursuant to this subchapter.

(d) An offense for which records have been expunged pursuant to this section does not have to be disclosed as an arrest by the petitioner for any reason.

(78 Del. Laws, c. 188, § 2; 78 Del. Laws, c. 343, § 3.)

§ 1018 Discretionary expungement.

(a) The Family Court may grant a petition for expungement if:

(1) A child is charged in a case with the commission of an offense designated as a felony in Title 11 or 16, and the case is terminated in favor of the child, provided the petitioner has no prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that less than 1 year has passed following the date the case was terminated, disposed of, or concluded in Family Court.

(2) A child has no more than 1 adjudication of delinquency in a case where the offense or offenses for which the child was adjudicated delinquent are misdemeanor sex offenses, provided the petitioner has no prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that at least 3 years have passed following the date the adjudication of delinquency was entered in Family Court.

(3) A child has no more than 2 adjudications of delinquency involving separate and distinct cases where the offenses for which the child was adjudicated delinquent are designated as misdemeanors or violations in Title 4, 7, 11, 16 or 23, or a county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any offenses enumerated in Title 4, 7, 11, 16 or 23, excepting violent misdemeanors, provided the petitioner has no prior adjudication of delinquency, and provided the petitioner has no other subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that at least 5 years have passed following the date the second adjudication of delinquency was entered in Family Court.

(4) A child has no more than 1 adjudication of delinquency in a case where the offense or offenses for which the child was adjudicated delinquent are designated as violent felonies or felony sex offenses excepting rape first degree (§ 773 of Title 11), rape second degree (§ 772 of Title 11), arson first degree (§ 803 of Title 11), robbery first degree (§ 832 of Title 11), burglary first degree (§ 826 of Title 11), and home invasion (§ 826A of Title 11), provided the petitioner has no other prior adjudication of delinquency, and provided that the petitioner has no subsequent adjudication of delinquency or adult conviction, and provided that the petitioner has no pending criminal charges, and provided that more than 5 years have passed following the date the adjudication of delinquency was entered in Family Court.

(b) The petitioner shall cause a copy of any petition filed under this section to be served upon the Attorney General, who may file an objection or answer to the petition within 30 days thereafter.

(c) Unless the Court believes a hearing is necessary, petitions filed pursuant to this section 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, including any electronic records relating to the charge or case. Otherwise, it shall deny the petition. Although the Court will recognize a rebuttable presumption that juvenile records cause a manifest injustice for the petitioner, the burden shall nevertheless be on the petitioner to allege specific facts in support of that petitioner's allegation of manifest injustice, and the burden shall be on the petitioner to prove such manifest injustice by a preponderance of the evidence.

(d) 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.

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

(f) If an order expunging the records is granted by the Court, all the police and court records, including any electronic 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 is not released for any reason except as specified in this subchapter. A court or police agency that receives a notice of expungement from the State Bureau of Identification shall provide the Bureau with written confirmation of the completion of the expungement. The State Bureau of Identification shall provide the Court that entered the order with written confirmation of the execution of the order. In response to requests from nonlaw-enforcement officers for information or records on the person who was arrested, 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. No order requiring an expungement of any record shall be entered or enforced if such order is contrary to the provisions of this subchapter. The State Bureau of Identification shall promptly notify the Court if it is unable to comply with any order issued pursuant to this subchapter.

(g) Notwithstanding any provision of this subchapter or any other statute or any other statute or rule to the contrary, the police records and the court records, including any electronic records, relating to any charge set forth in Title 21, or in any county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any offense enumerated in Title 21, shall not be expunged pursuant to this subchapter.

(h) An offense for which records have been expunged pursuant to this section does not have to be disclosed as an arrest by the petitioner for any reason.

(78 Del. Laws, c. 188, § 2; 78 Del. Laws, c. 252, § 4; 78 Del. Laws, c. 343, § 4.)

§ 1019 Disclosure of expunged records.

(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. In addition to such other lawful purposes as may be prescribed by statute or otherwise, criminal justice agencies shall have access to records of expunged probations before adjudication of delinquency, arbitration and past participation in the First Offenders Controlled Substance Diversion Program or a court-supervised drug diversion program for the purpose of determining whether a person is eligible for a probation before judgment, or probation before adjudication of delinquency as set forth in § 1009A of this title and § 4218 of Title 11, or for participation in the First Offenders Controlled Substance Diversion Program, as set forth in § 4767 of Title 16, or for participation in a court-supervised drug diversion program.

(b) Where disclosure to law-enforcement officers 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 an expungement order shall be handled and stored so as to ensure that they are not open to public inspection or disclosure.

(e) Any person who violates subsection (a) of this section shall be guilty of a class B misdemeanor.

(f) For a period of 3 years following the date the Court grants a petition for expungement, the State Bureau of Identification shall make available to criminal justice agencies such electronic records as will enable criminal justice agencies to determine whether a child or person who seeks to participate in arbitration, a court-supervised diversion program, or probation before adjudication of delinquency, or probation before judgment, has done so before and had their record expunged.

(78 Del. Laws, c. 188, § 2.)

§ 1020 Notification to federal government.

(78 Del. Laws, c. 188, § 2; repealed by 78 Del. Laws, c. 343, § 5, eff. July 18, 2012.)

§ 1021 Prosecution of adults; process; bail.

(a) Prosecution of a person subject to the jurisdiction of the Court who has reached the person's eighteenth 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 1 or more members of the person's family, as that term is defined in § 901(12) of this title, 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 ([former] § 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 degree (§§ 821, 822, 823); harassment (§ 1311); or aggravated harassment (former § 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 degree (§§ 821, 822, 823); harassment (§ 1311); or aggravated harassment (former § 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 of adult police and court records.

(a) If an adult person is charged with the commission of a crime or crimes and the case is terminated in favor of the accused, the person may request the expungement of the police records and the court records relating to the case pursuant to the provisions of this subchapter.

(b) For the purposes of this section, a case shall be deemed to be "terminated in favor of the accused" only if:

(1) The accused is acquitted of all charges related to the case;

(2) A nolle prosequi is entered on all charges related to the case;

(3) The accused is placed on probation before judgment, fulfills the terms and conditions of probation, and the court enters an order discharging the person from probation; or

(4) All charges related to the case are otherwise dismissed.

(c) For the purposes of this section "case" means a charge or set of charges related to a complaint or incident that are or could be properly joined for prosecution.

(d) If an adult is charged with the commission of a crime which is designated as a misdemeanor or violation in Title 4, 7, 11, 16, or 23, excepting those crimes specifically exempted in paragraph (d)(2) of this section, and the case is terminated in favor of the accused, and the person has not previously been convicted of another criminal offense, upon an appropriate request to the State Bureau of Identification

by such person the police records and court records, including any electronic records, relating to the charge or charges shall be expunged if the person has not been convicted of any crime since the date upon which the case was terminated in favor of the accused.

(1) If the State Bureau of Identification determines that expungement is mandated pursuant to the terms of this paragraph, it shall promptly so notify the courts and police agencies where records pertaining to the case are located or maintained, and any court where the case was terminated, disposed of or concluded. All records appropriately specified in the expungement request shall, within 60 days of the determination that such request is mandated pursuant to the terms of this section, 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 ensure that the records or the information contained therein is not released for any reason except as specified in this subchapter. Criminal justice agencies as defined in § 8502(5) of Title 11 shall, however, have access to records of expunged probations before judgment for the specific purpose of determining whether a person is eligible for a probation before judgment, as set forth in § 4218 of Title 11. A court or a police agency which receives a notice of expungement from the State Bureau of Identification shall provide the Bureau with written confirmation of the completion of the expungement. In response to requests from nonlaw-enforcement officers 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.

(2) Mandatory expungement pursuant to this subsection shall not be applicable to the records of any case in which the defendant was charged with one or more of the following crimes:

a. Any misdemeanor designated as a sex offense pursuant to § 761 of Title 11;

b. Any misdemeanor set forth in subpart A of subchapter II of Chapter 5 of Title 11;

c. Unlawful imprisonment pursuant to § 781 of Title 11;

d. Interference with custody pursuant to § 785 of Title 11;

e. Coercion pursuant to § 791 of Title 11;

f. Trespassing with intent to peer or peep, pursuant to § 820 of Title 11;

g. Endangering the welfare of a child, pursuant to § 1102 of Title 11;

h. Crime against a vulnerable adult, pursuant to § 1105 of Title 11;

i. Any misdemeanor set forth in subparts A, B, C or F of subchapter VI of Chapter 5 of Title 11;

j. Any misdemeanor or violation set forth in Chapter 85 of Title 11;

k. Patient abuse, pursuant to § 1136 of Title 16;

l. Operation of a vessel or boat while under the influence, pursuant to § 2302 of Title 23.

(3) At the time the application requesting expungement is filed with the State Bureau of Identification, the applicant shall pay a reasonable fee to the State Bureau of Identification. The applicant shall attach a copy of that applicant's criminal history as maintained by the State Bureau of Identification to any application requesting expungement filed pursuant to this section. The State Bureau of Identification shall summarily reject any application for expungement that does not include the applicant's criminal history without further notice to the applicant.

(4) The State Bureau of Identification shall be authorized to promulgate reasonable regulations and a reasonable fee schedule to accomplish the purposes of this subsection.

(e) Notwithstanding any provision of subsection (d) of this section to the contrary, if a person is charged with the commission of a crime and the case is terminated in favor of the accused, the person may file a petition in the Family Court in the county where the case was terminated, disposed of or concluded setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge or charges. Discretionary expungement pursuant to this section shall not be applicable to the records of any case that may be expunged pursuant to the provisions of subsection (d) of this section, provided, however, that where a person was charged with a criminal offense where discretionary expungement pursuant to this subsection applies, but also was charged, within the same case, with a criminal offense where mandatory expungement pursuant to this section applies, such person must file a petition in the Family Court pursuant to this section.

(1) After the petition requesting expungement is filed with the Family Court, the petitioner shall cause a copy of the petition to be served upon the Attorney General, who may file an objection or answer to the petition within 30 days after it is served on the Attorney General. The petitioner shall attach a copy of that petitioner's criminal history as maintained by the State Bureau of Identification to any petition requesting expungement filed pursuant to this section. The Court shall summarily reject any petition for expungement that does not include the petitioner's criminal history.

(2) 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 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 or case. Otherwise, it shall deny the petition. The burden shall be on the petitioner to allege specific facts in support of that petitioner's allegation of manifest injustice, and the burden shall be on the petitioner to prove such manifest injustice by a preponderance of the evidence. 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. A petition filed by the Attorney General or the Attorney General's designee pursuant to paragraph (e)(4) of this section shall be granted by the Court.

(3) 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.

(4) Notwithstanding any provision of this section or any other statute or rule to the contrary, the Attorney General or designee responsible for prosecuting a criminal action may petition the Court to expunge the instant arrest record of a defendant 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 defendant for the matter dismissed or for which a nolle prosequi was entered may cause circumstances which constitute a manifest injustice to the defendant.

(5) 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 ensure that the records or the information contained therein is not released for any reason except as specified in this subchapter. A police agency which receives a notice of expungement from the State Bureau of Identification shall provide the Bureau with written confirmation of the completion of the expungement. The State Bureau of Identification shall provide the Court which entered the order with written confirmation of the execution of the order. In response to requests from nonlaw-enforcement officers 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. No order requiring an expungement of any record shall be entered or enforced if such order is contrary to the provisions of this subchapter. The State Bureau of Identification shall promptly notify the Court if it is unable to comply with any order issued pursuant to this subchapter.

(6) Notwithstanding any provision of this section or any other statute or rule to the contrary, the police records and the court records relating to any charge set forth in Title 21 of shall not be expunged pursuant to this section unless the charge or charges is 1 of these specifically enumerated offenses:

a. Driving after judgment prohibited, pursuant to § 2810 of Title 21;

b. Reckless driving, pursuant to § 4175 of Title 21;

c. Operation of a motor vehicle causing death, pursuant to § 4176A of Title 21;

d. Driving under the influence, pursuant to § 4177 of Title 21;

e. Operating a commercial vehicle with a prohibited blood alcohol concentration or while impaired by drugs, pursuant to § 4177M of Title 21.

(7) The Family Court shall establish a reasonable fee schedule for the filing of a petition of expungement pursuant to this section.

(f) Notwithstanding any provision of this subchapter or any other law to the contrary, a person who was convicted of a misdemeanor or violation excepting those crimes specifically exempted in subsection (g) of this section who is thereafter unconditionally pardoned by the Governor may request a discretionary expungement pursuant to the procedures set forth in subsection (e) of this section. The burden shall be on the petitioner to allege specific facts in support of the petitioner's allegation of manifest injustice, and the burden shall be on the petitioner to prove such manifest injustice by a preponderance of the evidence. The fact that the petitioner was convicted of the criminal offense that is the subject of the petitioner's expungement application 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.

(g) Discretionary expungement following a pardon pursuant to this section shall not be applicable to the records of any case in which the defendant was charged with 1 or more of the following crimes:

(1) Any misdemeanor designated as a sex offense pursuant to § 761 of Title 11;

(2) Unlawful imprisonment pursuant to § 781 of Title 11;

(3) Interference with custody pursuant to § 785 of Title 11; or

(4) Coercion pursuant to § 791 of Title 11.

(69 Del. Laws, c. 335, § 2; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 150, §§ 3, 4; 76 Del. Laws, c. 392, § 6; 77 Del. Laws, c. 156, § 3; 77 Del. Laws, c. 348, §§ 9-15; 77 Del. Laws, c. 416, § 1; 79 Del. Laws, c. 211, § 1.)

§ 1026 Expungement of offenses resolved by probation before judgment.

Repealed by 77 Del. Laws, c. 348, § 16, effective October 10, 2010.

§ 1027 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; 76 Del. Laws, c. 392, § 7.)

§ 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 necessary 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 an adult with a mental disorder or incapacity, or intellectual disability 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) [Repealed.]

(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; 76 Del. Laws, c. 136, § 7; 77 Del. Laws, c. 43, § 3; 78 Del. Laws, c. 179, § 22; 79 Del. Laws, c. 371, § 8.)

§ 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 1 member against another member of the following protected classes:

a. Family, as that term is defined in § 901(12) of this title, regardless, however, of state of residence of the parties; or

b. Former spouses; persons cohabitating together who are holding themselves out as a couple, with or without a child in common; persons living separate and apart with a child in common; or persons in a current or former substantive dating relationship. For

purposes of this paragraph, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a substantive dating relationship. Factors to consider for a substantive dating relationship may include the length of the relationship, or the type of relationship, or the frequency of interaction between the parties.

(3) "Petitioner" means:

a. 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 adult who is impaired;

b. The Division of Child Protective Services acting in the interest of a minor child and files a petition alleging domestic violence; or

c. The Division of Adult Protective Services acting in the interest of an adult who is impaired 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; 76 Del. Laws, c. 47, § 1; 78 Del. Laws, c. 179, § 23.)

§ 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 adult who is impaired.

(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 or where necessary to continue 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; 77 Del. Laws, c. 442, § 1; 78 Del. Laws, c. 179, § 24.)

§ 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) Issue an order directing any law-enforcement agency to forthwith search for and seize firearms of the respondent upon a showing by the petitioner that the respondent has possession of a firearm, and

a. Petitioner can describe, with sufficient particularity, both the type and location of the firearm or firearms; and

b. Respondent has used or threatened to use a firearm against the petitioner, or the petitioner expresses a fear that the respondent may use a firearm against them;

(12) 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 relief granted under paragraphs (a)(1) and (a)(2) of this section may be entered for a fixed period of time not to exceed 2 years, unless a longer period of time is ordered pursuant to subsection (c) or (f) of this section.

(c) An order issued under this part may be extended, 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.

(f) Notwithstanding any provision of this section to the contrary, upon a finding that aggravating circumstances exist, the Court may grant no contact relief pursuant to paragraphs (a)(1) and (a)(2) of this section for as long as reasonably necessary to prevent further acts of abuse or domestic violence, up to and including the entry of a permanent order of the Court. An order entered pursuant to this subsection may only be modified or amended upon motion of a party for good cause shown. For purposes of this subsection, aggravating

circumstances shall mean physical injury or serious physical injury to the petitioner caused by the respondent; the use of a deadly weapon or dangerous instrument against the petitioner by the respondent; a history of repeated violations of prior protective orders by the respondent; prior convictions for crimes against the petitioner by the respondent; the exposure of any member of the petitioner's family or household to physical injury or serious physical injury by the respondent; or any other acts of abuse which the Court believes constitute an immediate and ongoing danger to the petitioner or any member of the petitioner's family or household.

(69 Del. Laws, c. 160, § 2; 69 Del. Laws, c. 335, § 1; 71 Del. Laws, c. 137, §§ 2-4; 76 Del. Laws, c. 195, § 1; 77 Del. Laws, c. 352, §§ 1, 2; 79 Del. Laws, c. 337, § 1.)

§ 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. 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) A law-enforcement officer shall arrest, with or without a warrant, any individual whom the officer has probable cause to believe has violated a protective order issued under this part or a valid foreign protection order under Part E of this subchapter and who has notice or knowledge of the protective order. Presentation of a protective order that identifies both the protected person and the respondent and, on its face, is currently in effect constitutes probable cause to believe that a protective order exists. The protective order may be either in tangible form or stored in DELJIS or other electronic medium if it is retrievable in perceivable form. Probable cause for arrest may be established by a good faith reliance on information contained in DELJIS. If a protective order is not presented, the law-enforcement officer may consider other information in determining whether there is probable cause to believe that a protective order exists.

(d) If a law-enforcement officer determines that an otherwise valid protective order cannot be enforced because the respondent has not been notified or served with the order, the officer shall inform the respondent of the order, make a reasonable effort to serve the order upon the respondent, and allow the respondent a reasonable opportunity to comply with the order before enforcing the order.

(e) The individual arrested shall be taken immediately before the Family Court. If the Family Court is not in session, the arrested person shall be taken before the nearest justice of the peace. In determining the amount of any bail, the justice of the peace or judicial officer shall take into consideration whether the defendant has previously violated a protective order.

(f) A law-enforcement officer is immune from civil and criminal liability for an act or omission arising out of the enforcement of a protective order or the detention or arrest of an alleged violator of a protective order if the act or omission was done in a good faith effort to comply with this part or in good faith reliance on information contained in DELJIS.

(g) The provisions of this section apply to the enforcement of foreign protection orders under Part E of this subchapter.

(h) 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.

(i) 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; 72 Del. Laws, c. 63, §§ 3, 4; 73 Del. Laws, c. 367, § 2.)

§ 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.)

§ 1049 Title.

This part may be cited as the "Uniform Interstate Enforcement of Domestic Violence Protection Orders Act."

(73 Del. Laws, c. 367, § 1.)

§ 1049A Definitions.

In this part:

(1) "Court" means the Family Court of the State of Delaware.

(2) "Foreign protection order" means a protection order issued by a tribunal of another state.

(3) "Issuing state" means the state whose tribunal issues a protection order.

(4) "Mutual foreign protection order" means a foreign protection order that includes provisions in favor of both protected individuals seeking enforcement of the order and the respondents.

(5) "Protected individual" means an individual protected by a protection order.

(6) "Protection order" means an injunction or other order issued by a tribunal under the domestic violence or family violence laws of the issuing state to prevent an individual from engaging in violent or threatening acts against, harassment of, contact or communication with, or physical proximity to another individual. The term includes an injunction or other order issued under the antistalking laws of the issuing state.

(7) "Respondent" means the individual against whom enforcement of a protection order is sought.

(8) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band that has jurisdiction to issue protection orders.

(9) "Tribunal" means a court, agency or other entity authorized by law to issue or modify a protection order.

(73 Del. Laws, c. 367, § 1.)

§ 1049B Judicial enforcement of order.

(a) A person authorized by the law of this State to seek enforcement of a protection order may seek enforcement of a valid foreign protection order in the Court. The Court shall enforce the terms of the order, including terms that provide relief that the Court would lack power to provide but for this section. The Court shall enforce the order whether the order was obtained by independent action or in another proceeding if it is an order issued in response to a complaint, petition or motion filed by or on behalf of an individual seeking protection. In a proceeding to enforce a foreign protection order, the Court shall follow the procedures of this State for the enforcement of protection orders.

(b) The Court may not enforce a foreign protection order issued by the tribunal of a state that does not recognize the standing of a protected individual to seek enforcement of the order.

(c) The Court shall enforce the provisions of a valid foreign protection order which govern custody and visitation if the order was issued in accordance with the jurisdictional requirements governing the issuance of custody and visitation orders in the issuing state.

(d) A foreign protection order is valid if it:

(1) Identifies the protected individual and the respondent;

(2) Is currently in effect;

(3) Was issued by a tribunal that had jurisdiction over the parties and subject matter under the law of the issuing state; and

(4) Was issued after the respondent was given reasonable notice and had an opportunity to be heard before the tribunal issued the order, or in the case of an order ex parte, the respondent was given notice and had an opportunity to be heard within a reasonable time after the order was issued, consistent with the rights of the respondent to due process.

(e) A foreign protection order valid on its face is prima facie evidence of its validity.

(f) Absence of any of the criteria for validity of a foreign protection order is an affirmative defense in an action seeking enforcement of the order.

(g) The Court may enforce provisions of a mutual foreign protection order which favor a respondent only if:

(1) The respondent filed a written pleading seeking a protection order from the tribunal of the issuing state; and

(2) The tribunal of the issuing state made specific findings in favor of the respondent.

(73 Del. Laws, c. 367, § 1.)

§ 1049C Nonjudicial enforcement of order.

Pursuant to the provisions of § 1046 of this title, a law-enforcement officer of this State, upon determining that there is probable cause to believe that a valid foreign protection order exists and that the order has been violated, shall enforce the order as if it were the order of a court of this State. Registration or filing of an order in this State is not required for the enforcement of a valid foreign protection order.

(73 Del. Laws, c. 367, § 1.)

§ 1049D Registration of order.

(a) Any individual may register a foreign protection order in this State. To register a foreign protection order an individual shall present a certified copy of the order to the Court.

(b) Upon receipt of a foreign protection order, the Court shall register the order in accordance with this section. After the order is registered, the Court shall furnish to the individual registering the order a certified copy of the registered order.

(c) The Court shall register an order upon presentation of a copy of a protection order which has been certified by the issuing State. A registered foreign protection order that is inaccurate or is not currently in effect must be corrected or removed from the registry in accordance with the law of this State.

(d) An individual registering a foreign protection order shall file an affidavit by the protected individual stating that to the best of the protected individual's knowledge, the order is currently in effect.

(e) A foreign protection order registered under this part may be entered in any existing state or federal registry of protection orders in accordance with applicable law.

(f) A fee may not be charged for the registration of a foreign protection order.

(73 Del. Laws, c. 367, § 1.)

§ 1049E Immunity.

This State or a local governmental agency or a law-enforcement officer, prosecuting attorney, clerk of court or any state or local governmental official acting in an official capacity is immune from civil and criminal liability for an act or omission arising out of the registration or enforcement of a foreign protection order or the detention or arrest of an alleged violator of a foreign protection order if the act or omission was done in good faith in an effort to comply with this part.

(73 Del. Laws, c. 367, § 1.)

§ 1049F Other remedies.

A protected individual who pursues remedies under this part is not precluded from pursuing other legal or equitable remedies against the respondent.

(73 Del. Laws, c. 367, § 1.)

§ 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; 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 paragraph (a)(1)c. or d. of this section 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 or she 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. 186, § 1; 70 Del. Laws, c. 481, §§ 4-6.)

§ 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) of this section; 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 1 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) of this section 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.)

§ 1066 Subpoenas and warrants in criminal cases and juvenile delinquency proceedings; enforcement.

The Court, in the exercise of its criminal jurisdiction or in any delinquency proceeding against a child, may issue subpoenas and other warrants into any county in the State for summoning or bringing any person to give evidence in any matter triable before it and may enforce obedience by fine or imprisonment. Such subpoenas and warrants shall be in such form as may be prescribed by the rules of the Court.

(73 Del. Laws, c. 130, § 3.)

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 § 1076 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.)

Part I
Organization, Powers, Jurisdiction and Operation of Courts
Chapter 13
THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
Subchapter I
Organization and Operation

§ 1301 Court of Common Pleas.

There is a court of record known as "The Court of Common Pleas for the State of Delaware" sometimes referred to in this chapter as "the Court."

(10 Del. C. 1953, § 1301; 59 Del. Laws, c. 133, § 1.)

§ 1302 Judges; qualifications; residence; Chief Judge.

(a) The Court shall consist of 9 Judges.

(b) The Judges must be citizens of the State and must have been actively engaged in the general practice of law in the State for at least 5 years.

(c) Five Judges shall be residents of New Castle County, 2 Judges shall be residents of Kent County, and 2 Judges shall be residents of Sussex County.

(d) The Judge appointed by the Governor as Chief Judge shall be the administrative head of the Court during the term of his or her appointment.

(10 Del. C. 1953, § 1302; 59 Del. Laws, c. 133, § 1; 60 Del. Laws, c. 559, §§ 1, 2; 71 Del. Laws, c. 91, § 1; 71 Del. Laws, c. 176, § 4; 72 Del. Laws, c. 240, §§ 1, 2.)

§ 1303 Appointment of Judges; term; vacancies; political representation; salary.

(a) The Governor, by and with the consent of a majority of all the members elected to the Senate, shall appoint the Judges of the Court. Appointments, including vacancies, shall be for a term of 12 years and until their successors qualify. The Governor shall appoint 1 judge of the Court as Chief Judge of the Court to hold office during the term of his or her appointment. Nothing in this section shall affect the ability of the Chief Judge of the Court of Common Pleas to serve in that capacity for the duration of the Chief Judge's current term of office.

(b) Each Judge shall receive a salary in accordance with the annual appropriations act.

(c) No Judge shall practice law during his or her term of office.

(d) At any time when the total number of Judges of the Court shall be an even number, not more than 1/2 of the Judges shall be of the same political party; and at any time when the total number of Judges shall be an odd number, then not more than a majority of 1 Judge shall be of the same political party.

(10 Del. C. 1953, § 1303; 59 Del. Laws, c. 133, § 1; 59 Del. Laws, c. 472, § 5; 62 Del. Laws, c. 12, § 5; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 91, § 2; 71 Del. Laws, c. 176, §§ 7, 8.)

§ 1304 Quorum.

One Judge shall constitute a quorum and may open and adjourn any session of the Court.

(10 Del. C. 1953, § 1304; 59 Del. Laws, c. 133, § 1.)

§ 1305 Places of holding Court.

Court shall be held:

(1) In New Castle County, at Wilmington;

(2) In Kent County, at Dover; and

(3) In Sussex County, at Georgetown.

(10 Del. C. 1953, § 1305; 59 Del. Laws, c. 133, § 1.)

§ 1306 Terms of Court.

The designation and the duration of the terms of the Court and the nature of the proceedings to be conducted at each such term, shall be determined by the rules adopted for the Court.

(10 Del. C. 1953, § 1306; 59 Del. Laws, c. 133, § 1.)

§ 1307 Seals; rules of Court.

The Judges of the Court, or a majority of them, shall, for and on behalf of the Court, adopt a seal, make and publish general rules regulating the practice and procedure therein and the keeping of its records, including a schedule of costs and fees and providing for such deposits as are deemed necessary.

(10 Del. C. 1953, § 1307; 59 Del. Laws, c. 133, § 1.)

§ 1308 Disposition of money.

(a) The fees, fines and costs received by the Court shall be paid to the State Treasurer, except as otherwise provided by subsection (b) of this section.

(b) All sheriff's costs and fees collected by the Court, including those specified in §§ 8702 and 2112 of this title, shall, at the conclusion of each case, be paid to the county treasurer or Department of Finance for the county of which the sheriff who has rendered the service is an officer, for distribution to the sheriff upon presentation of an itemized and verified account, in accordance with the procedures set forth in § 2112 of this title.

(10 Del. C. 1953, § 1308; 59 Del. Laws, c. 133, § 1; 61 Del. Laws, c. 268, § 1.)

Subchapter II

Officers and Employees

§ 1309 Appointment of Clerks and other officers; terms.

Transferred to § 1311 of this title.

§ 1310 Law clerks.

Law clerks hold major, nontenured advisory positions for the Judges of the Court. The Court of Common Pleas may appoint and remove at pleasure such judicial law clerks as shall be necessary for the proper operation of the Court.

(78 Del. Laws, c. 51, § 5.)

§ 1311 Appointment of Clerks and other officers; terms.

(a) The Chief Judge of the Court shall appoint a competent person to act as Chief Clerk of the entire Court who shall be responsible to the Chief Judge for the administration of all nonjudicial activity in the Court. In addition, the Chief Judge shall appoint a competent person from each county as Deputy Clerk for the Court in that county and such other officers and employees deemed necessary to perform the business of the Court.

(b) The Clerks, other officers and employees shall hold office at the pleasure of the Court.

(10 Del. C. 1953, § 1309; 59 Del. Laws, c. 133, § 1; 60 Del. Laws, c. 629, § 1; 69 Del. Laws, c. 426, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1312 Deputy Clerk; powers and duties.

The Court may appoint a suitable person in each county to be Deputy Clerk, who shall hold such office at the pleasure of the Court and who, during tenure in said office, shall have, exercise and perform the powers and duties of the Clerk when so instructed by the Court and shall perform such other duties as shall be assigned by the Court.

(10 Del. C. 1953, § 1312; 59 Del. Laws, c. 133, § 1; 69 Del. Laws, c. 426, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1313 Powers and duties of Clerks.

(a) The Clerk for the county in which the Clerk is appointed shall have care of the records and proceedings for said county, and shall receive all fees, fines, restitution and costs and pay the same over as provided in this chapter.

(b) The Clerk may administer all necessary oaths; the Clerk shall enter the judgments, issue commitments and executions to enforce the same and make and keep the records of the Court in all cases therein under the direction of the Judges. The Clerk shall issue all process under the Clerk's hand and the seal of the Court, signing such process by the title of office and shall tax costs.

(c) The Clerk shall have such other duties as may be prescribed by rule of court, or by administrative direction.

(10 Del. C. 1953, § 1311; 59 Del. Laws, c. 133, § 1; 63 Del. Laws, c. 141, § 5; 69 Del. Laws, c. 426, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1314 Bonds of Clerks and Deputy Clerks.

Each Clerk and Deputy Clerk of the Court shall, before entering upon the duties of the office, give bond to the State in the sum of $5,000 with approved surety to faithfully perform and execute all the duties of the office during continuance therein. The bond shall be approved by the Chief Judge. Should any Clerk or Deputy Clerk so appointed fail to give bond as required within 30 days from the date of appointment, the Court shall make a new appointment.

(10 Del. C. 1953, § 1310; 59 Del. Laws, c. 133, § 1; 69 Del. Laws, c. 426, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1314A Bailiffs, criers and pages; compensation; duties.

(a) The Court of Common Pleas may appoint and remove at pleasure such number of bailiffs, criers, and pages as shall be necessary for the proper operation of the Court. They shall receive such compensation as shall from time to time be approved in the budget of the Court. They shall perform such duties and have such powers in connection with attendance upon the Court as the Court may from time to time prescribe and shall receive no other fees or compensation.

(b) From its staff of bailiffs, criers, and pages, the Court may appoint by court order peace officers, who shall have, during the stated terms of such appointment, unless sooner rescinded by the court order, such powers normally incident to peace officers, including, but not limited to, the power to make arrests in a criminal case, provided that the exercise of such powers shall be limited to any building or real

property maintained or used as a courthouse or in support of judicial functions. The order appointing such peace officers shall be recorded in the office of the recorder of deeds in and for the county where they are employed in the same manner as gubernatorial commissions.

(75 Del. Laws, c. 188, § 1; 78 Del. Laws, c. 79, § 3.)

§ 1315 Commissioners of the Court of Common Pleas; appointment; terms of office; removal.

(a) The Governor may appoint, with the consent of a majority of all members elected to the Senate, suitable persons to act as Commissioners of the Court of Common Pleas, all of whom shall hold office for a term of 4 years. Vacancies in office shall be filled for a term of 4 years by the Governor, with the consent of a majority of all members elected to the Senate. Upon second and subsequent appointments and confirmations, a Commissioner of the Court of Common Pleas shall hold office for a term of 6 years. Appointees shall be residents of the State, shall be duly admitted to practice law before the Supreme Court of this State, and shall not engage in the practice of law nor any business, occupation or employment inconsistent with the expeditious, proper, and impartial performance of their duties as judicial officers. The number of Commissioners from 1 major political party shall not exceed the number of Commissioners from another major political party by more than 1.

(b) Individuals appointed as Commissioners under this section shall take the oath or affirmation prescribed by article XIV, § 1 of the Delaware Constitution before they enter upon the duties of their offices.

(c) The salaries of Commissioners shall be part of the annual budget of the Court of Common Pleas. The salary of a Commissioner shall not be reduced during the term being served below the salary fixed at the beginning of that term.

(69 Del. Laws, c. 426, § 2; 74 Del. Laws, c. 165, § 3.)

§ 1316 Jurisdiction and powers of Commissioners of the Court of Common Pleas.

(a) 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 Court of Common Pleas.

(2) The power to administer oaths and affirmations, issue orders pursuant to Chapter 21, Title 11 of the Delaware Code concerning release or detention of persons pending trial, and take acknowledgements, affidavits, and depositions.

(3) The power to accept pleas of not guilty to any offense within the jurisdiction of the Court of Common Pleas and to appoint counsel to represent indigent defendants.

(4) The power to accept a plea of guilty to a misdemeanor or violation, including any violation of probation, or violation of Title 21, or any other violation defined in the Delaware Code, and, with the consent of the parties, to enter a sentence thereon.

(b) Commissioners may be designated to perform the following with the approval of the Chief Judge or the Chief Judge's designee:

(1)a. A judge may designate a Commissioner to hear and determine any pretrial matter pending before the Court, except the following motions: for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss for failure to state a claim upon which relief can be granted and to involuntarily dismiss an action. A judge of the Court may reconsider any pretrial matter under this paragraph (b)(1)a. where it has been shown that the Commissioner's order is based upon findings of fact that are clearly erroneous, or is contrary to law, or an abuse of discretion.

b. A judge may also designate a Commissioner to conduct hearings, including evidentiary hearings, and to submit to a judge of the Court proposed findings of fact and recommendations for the disposition, by a judge of the Court, of any motion excepted in paragraph (b)(1)a. of this section or of applications for postconviction relief made by individuals convicted of criminal offenses.

c. The Commissioner shall file proposed findings and recommendations under paragraph (b)(1)b. of this section with the Court and shall mail copies forthwith to all parties.

d. Within 10 days after being served with a copy of proposed findings and recommendations under paragraph (b)(1)b. of this section any party may serve and file written objections to such proposed findings and recommendations as provided by rules of Court. A judge of the Court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the Court may accept, reject or modify, in whole or in part, the findings or recommendations made by the Commissioner. The judge may also receive further evidence or recommit the matter to the Commissioner with instructions.

(2) A judge may also designate a Commissioner to serve as a special master or master pro hac vice pursuant to the applicable provisions of the Court of Common Pleas Civil Rules of Procedure.

(3) A Commissioner may be assigned such additional duties by the Chief Judge, including assignments to other courts upon designation by the Chief Justice, as are not inconsistent with the Constitution and laws of the State. A Commissioner designated to sit in another court may exercise the powers and duties of a Commissioner appointed to said court.

(69 Del. Laws, c. 426, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1316A Assignment of retired Commissioners to active duty.

(a) Any retired Commissioner may be designated by the Chief Judge, with the approval of the Chief Justice of the Supreme Court, to serve temporarily in the Court of Common Pleas provided, however, that the retired Commissioner:

(1) Was serving in good standing as a Commissioner at the time of retirement;

(2) Assents to such designation; and

(3) Is not involved or employed in any position which would create a conflict of interest with the position of Commissioner, including, but not limited to: the private practice of law; the holding of any state office; or employment by the State in any capacity.

(b) Any retired Commissioner accepting an active duty designation shall be compensated on a per diem basis on the formula representing 1/260 of the annual salary for a Commissioner. In no event shall the per diem pay for a retired Commissioner exceed the maximum per diem pay for retired judges as provided in § 5610(b) of Title 29, nor shall the total annual compensation of the retired Commissioner equal or exceed the current annual salary for a Commissioner. Each retired Commissioner serving shall also be reimbursed for travel necessarily incurred for the performance of such active duty as approved by the Chief Judge.

(c) Expenditures for work performed under this section shall be made from funds appropriated for this purpose, or from other court funds approved to be expended for this purpose.

(78 Del. Laws, c. 315, § 2.)

Subchapter III

Jurisdiction and General Powers

§ 1317 City Solicitor; powers and duties.

(a) The City Solicitor of Wilmington or a duly authorized designee shall be ex officio the prosecuting officer in the Court of Common Pleas and the Justice of the Peace Court for all offenses committed within the City of Wilmington against any of the laws, ordinances, regulations or charter of the City. The Courts may by rule establish a regularly scheduled time and place to hear and try such matters. The Attorney General of the State may, however, prosecute in person or by his or her deputy.

(b) The City Solicitor shall appoint an Assistant City Solicitor who shall hold office at the pleasure of the City Solicitor and perform the duties required of him or her by the City Solicitor. The City Solicitor may discharge the assistant at any time, and his or her acts in this regard shall not be questioned.

(c) In addition to his or her other powers, the City Solicitor may compel the attendance of witnesses and the production of books and papers at the City Solicitor's office at any time, and may administer oaths and affirmations to witnesses at any time or in any place, for the purpose of securing information relative to the enforcement of the laws, ordinances, regulations or charter of the City. Subpoenas and attachments for the attendance of such witnesses and the production of such books and papers shall be signed by the City Solicitor and shall be served by any police officer. Any false answer or statement given in such a case shall be deemed perjury and punishable accordingly. The costs in such cases shall be paid by the Clerk of the Court of Common Pleas and the Justice of the Peace Court in the same manner as the costs of other proceedings in the Court are paid.

(71 Del. Laws, c. 176, § 9; 70 Del. Laws, c. 186, § 1.)

§§ 1318 -1320. Judgments and executions; appeal in civil actions; civil trial without jury or referees; civil actions; demand for jury trials; waivers; removal to Superior Court.

Transferred to §§ 1325 to 1328 of this title.

§ 1321 Scope of jurisdiction and process.

The jurisdiction of the Court shall extend throughout the State. Process may be issued out of each county and into each county.

(10 Del. C. 1953, § 1313; 59 Del. Laws, c. 133, § 1; 69 Del. Laws, c. 426, § 1.)

§ 1322 Civil jurisdiction; amount in controversy.

(a) The Court shall have jurisdiction over all civil actions at law where the matter or thing in controversy, exclusive of interest, does not exceed $50,000.

(b) The Court shall have unlimited jurisdiction over counterclaims, cross-claims and third-party claims as defined and provided by rule of Court, and any judgment rendered on any such counterclaim, cross-claim or third-party claim which exceeds the sum of $50,000 shall be valid in all respects.

(10 Del. C. 1953, § 1314; 59 Del. Laws, c. 133, § 1; 60 Del. Laws, c. 197, § 1; 63 Del. Laws, c. 230, § 1; 69 Del. Laws, c. 422, § 1; 69 Del. Laws, c. 426, § 1.)

§ 1323 Causes transferred from Superior Court.

The Court shall have jurisdiction to receive, hear, try and dispose of all such arguments, cases, matters and business as, by a certificate of a Judge of the Superior Court, may be assigned to it, pursuant to the rules of the Court made for that purpose, provided they come within the jurisdiction of the Court.

(10 Del. C. 1953, § 1315; 59 Del. Laws, c. 133, § 1; 69 Del. Laws, c. 426, § 1.)

§ 1324 General powers of Court.

The Court shall have all the powers of a court of record possessed by the Superior Court of the State in the endorsement of its writs, rules, processes, the attendance of witnesses, the requiring of security for costs from nonresident plaintiffs, the production of documents, books and records and the production of all other necessary evidence.

(10 Del. C. 1953, § 1316; 59 Del. Laws, c. 133, § 1; 69 Del. Laws, c. 426, § 1.)

§ 1325 Judgments and executions.

(a) All civil judgments rendered by the Court shall be entered in a judgment docket, which shall be properly indexed. The judgment shall not constitute a lien upon real estate, but a transcript thereof may be filed in the office of the Prothonotary of the Superior Court in any or all of the 3 counties of the State upon request therefor to the Clerk by the judgment creditor in the judgment, without necessity of a motion or order, and the Prothonotary shall enter in the judgment docket the names of the parties, the amount of the judgment, the name of the court in which the judgment was recovered, the time from which interest runs, and the amount of the costs, with the true date of such filing and entry. The judgment, so transferred, shall, from that date, become and be a lien on all the real estate of the debtor in the county in the same manner and as fully as judgments rendered in the Superior Court as liens, and may be executed and enforced in the same manner as judgments of the Superior Court. If any judgment is lawfully assigned to a joint debtor or surety, the assignee shall have the benefit of this section. The Prothonotary, in his or her discretion, may allow transfer of judgments as provided in this subsection to be accomplished by electronic means.

(b) Writs of execution for the seizure and sale of personal property based upon judgments obtained in the Court, shall be issued in the manner provided by law for writs issuing out of the Prothonotary's office in and for the respective counties for the seizure and sale of personal property. The Court may, by rule of the Court made for that purpose, change the method of procedure.

(c) Once a judgment has been transferred as provided in subsection (a) of this section, the Court shall retain jurisdiction for purposes of all post-judgment proceedings with the exception of execution upon the judgment and/or the sale of real estate.

(10 Del. C. 1953, § 1317; 59 Del. Laws, c. 133, § 1; 69 Del. Laws, c. 426, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 408, §§ 1-3.)

§ 1326 Appeal in civil actions.

(a) From any final order, ruling, decision or judgment of the court in a civil action there shall be the right of appeal to the Superior Court of the State in the county in which said order, ruling, decision or judgment was rendered.

(b) The appeal shall be taken within 30 days of the final order, ruling, decision or judgment.

(c) The appeal shall be reviewed on the record and shall not be tried de novo.

(d) The Superior Court shall establish appeal procedures and supersedeas bond requirements by rule.

(10 Del. C. 1953, § 1318; 59 Del. Laws, c. 133, § 1; 68 Del. Laws, c. 53, § 3; 69 Del. Laws, c. 426, § 1.)

§ 1327 Civil trial without jury or referees.

All civil cases shall be tried by the Court without a jury or referees.

(10 Del. C. 1953, § 1319; 59 Del. Laws, c. 133, § 1; 69 Del. Laws, c. 426, § 1.)

§ 1328 Civil actions; demand for jury trials; waivers; removal to Superior Court.

(a) Every person who commences a civil action in this Court shall, by virtue of such commencement, be deemed to have waived any right to trial by jury of the issues to which such person's original pleading is directed.

(b) Except as otherwise provided in this chapter any party other than the party commencing the action may demand a trial by jury of an issue triable of right by a jury by serving upon the other parties a demand therefor in writing and depositing with the Clerk of the Court the amount necessary for the commencement of an action in Superior Court. Such demand shall be served and filed and the necessary amount deposited with the Clerk, not later than 5 days after the service of the last pleading directed to such issue. The demand for jury trial may be endorsed upon a pleading of the party, provided it is typed or written on the first page of the pleading immediately following the caption of the case.

(c) The failure of a party to serve and file a demand for trial by jury or to deposit the necessary amount in accordance with the requirements of this section constitutes a waiver of trial by jury.

(d) Upon demand for trial by jury as provided in this section, the Clerk of the Court shall forthwith transmit all records in the matter and the amount necessary for commencement of an action in Superior Court to the prothonotary of the county in which the action has been commenced. Following such removal, proceedings shall continue as though the action has been commenced in Superior Court.

(10 Del. C. 1953, § 1320; 59 Del. Laws, c. 133, § 1; 69 Del. Laws, c. 426, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1329 Record.

A verbatim record shall be kept of all evidence taken in the Court.

(10 Del. C. 1953, § 1321; 59 Del. Laws, c. 133, § 1; 69 Del. Laws, c. 426, § 1.)

§ 1330 Proceedings pending at time of effective date of this chapter; books, records and papers.

(a) All suits, proceedings and matters pending, at the time this chapter becomes effective, in the Courts of Common Pleas for New Castle, Kent and Sussex Counties, as heretofore constituted, shall be proceeded within the Court hereby established and all the books, records and papers of the Courts as heretofore constituted, shall be the books, records and papers of the Court hereby established.

(b) All information, proceedings and matters of a criminal nature pending in the former Courts of Common Pleas for New Castle, Kent and Sussex Counties, respectively, at the time this chapter becomes effective, and all books, records and papers of such former Courts shall be transferred to the Court hereby established, and such information, proceedings and matters pending shall be proceeded with to final judgment and determination in the Court hereby established.

(10 Del. C. 1953, § 1322; 59 Del. Laws, c. 133, § 1; 69 Del. Laws, c. 426, § 1.)

Part I
Organization, Powers, Jurisdiction and Operation of Courts
Chapter 17
MUNICIPAL COURT FOR THE CITY OF WILMINGTON
Subchapter I
Organization and Operation

§§ 1701 -1707. Municipal Court for the City of Wilmington; judges; appointments; terms; qualifications; salary; terms and adjournment of Court; seal; place for holding Court; power of judge to take acknowledgments; Court expenses.

Repealed by 71 Del. Laws, c. 176, § 10, effective May 1, 1998.

Subchapter II
Officers and Employees

§§ 1721 -1727. Appointment of clerk; bond of Clerk; appointment of Deputy Clerk; discretionary powers of Clerk and Deputy Clerk; duties of Clerk and Deputy Clerk; City Solicitor; powers and duties; Chief of Police; duties; failure to perform duties.

Repealed by 71 Del. Laws, c. 176, § 10, effective May 1, 1998.

Part I
Organization, Powers, Jurisdiction and Operation of Courts
Chapter 18
EMERGENCY INTERIM JUDICIAL SUCCESSION

§ 1801 Short title.

This chapter shall be known and may be cited as the "Emergency Interim Judicial Succession Act."

(10 Del. C. 1953, § 1801; 53 Del. Laws, c. 149.)

§ 1802 Statement of policy.

Because of the possibility of an attack upon the United States of unprecedented size and destructiveness, and in order, in the event of such attack, to assure continuity of government through legally constituted leadership, authority and responsibility in offices of the government of the State; to provide for the effective operation of governments during an emergency; and to facilitate the early resumption of functions temporarily suspended, it is found and declared to be necessary to provide for special emergency judges who can exercise the powers and discharge the duties of judicial offices in the event regular judges are unavailable.

(10 Del. C. 1953, § 1802; 53 Del. Laws, c. 149.)

§ 1803 Definitions.

Unless otherwise clearly required by the context, as used in this chapter:

(1) "Attack" means any attack or series of attacks by an enemy of the United States causing, or which may cause, substantial damage or injury to civilian property or persons in the United States in any manner by sabotage or by the use of bombs, missiles, shellfire, or atomic, radiological, chemical, bacteriological, or biological means or other weapons or processes.

(2) "Emergency interim successor" means a person designated pursuant to this chapter, in the event the officer is unavailable, to exercise the powers and discharge the duties of an office until a successor is appointed and qualified as may be provided by the Constitution, statutes, charters and ordinances or until the lawful incumbent is able to resume the exercise of the powers and discharge the duties of the office.

(3) "Unavailable" means either that vacancy in office exists, or that the lawful incumbent of the office is absent or unable to exercise the powers and discharge the duties of the office.

(10 Del. C. 1953, § 1803; 53 Del. Laws, c. 149.)

§ 1804 Special emergency judges.

In the event that any judge of any court of record is unavailable to exercise the powers and discharge the duties of his or her office, and in the event no other judge authorized to act in the event of absence, disability or vacancy or no special judge appointed in accordance with the provisions of the Constitution or statutes is available to exercise the powers and discharge the duties of such office, the duties of the office shall be discharged and the powers exercised by the special emergency judges provided for by this section.

The Governor shall designate for each member of the Supreme Court and the Superior Court special emergency judges in the number of not less than 3 nor more than 7 for each member of the said courts, and shall specify the order of their succession.

Such special emergency judges shall, in the order specified, exercise the powers and discharge the duties of such office in case of the unavailability of the regular judge or judges or persons immediately preceding them in the designation. The designation authority shall review and revise, as necessary, designations made pursuant to this chapter to insure their current status.

Said special emergency judges shall discharge the duties and exercise the powers of such office until such time as a vacancy which may exist shall be filled in accordance with the Constitution and statutes or until the regular judge or one preceding the designee in the order of succession becomes available to exercise the powers and discharge the duties of office.

No person shall be designated or serve as a special emergency judge unless he or she may under the Constitution and laws of this State hold the office of the judge to whose powers and duties he or she is designated to succeed.

(10 Del. C. 1953, § 1804; 53 Del. Laws, c. 149; 70 Del. Laws, c. 186, § 1.)

§ 1805 Formalities of taking office.

At the time of their designation, special emergency judges shall take such oath as may be required for them to exercise the powers and discharge the duties of the office to which they may succeed. Notwithstanding any other provision of law, no person, as a prerequisite to the exercise of the powers or discharge of the duties of an office to which he or she succeeds, shall be required to comply with any other provision of law relative to taking office.

(10 Del. C. 1953, § 1805; 53 Del. Laws, c. 149; 70 Del Laws, c. 186, § 1.)

§ 1806 Period in which authority may be exercised.

Officials authorized to act as special emergency judges are empowered to exercise the powers and discharge the duties of an office as authorized in this chapter only after an attack upon the United States, as defined in § 1803 of this title, has occurred. The General Assembly by concurrent resolution, may at any time terminate the authority of said special emergency judges to exercise the powers and discharge the duties of office as provided in this chapter.

(10 Del. C. 1953, § 1806; 53 Del. Laws, c. 149.)

§ 1807 Removal of designees.

Until such time as the persons designated as special emergency judges are authorized to exercise the powers and discharge the duties of an office in accordance with this chapter including § 1806 of this title, said persons shall serve in their designated capacities at the pleasure of the designating authority and may be removed or replaced by said designating authority at any time, with or without cause.

(10 Del. C. 1953, § 1807; 53 Del. Laws, c. 149.)

Part I
Organization, Powers, Jurisdiction and Operation of Courts
Chapter 19
GENERAL PROVISIONS APPLICABLE TO COURTS AND JUDGES
Subchapter I
Courts and Judges

§ 1901 State of the judiciary message.

The Chief Justice of the Supreme Court shall, from time to time, give to the General Assembly information of affairs concerning the state of the judiciary, and recommend to its consideration such measures as the Chief Justice shall deem expedient.

(60 Del. Laws, c. 182, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1902 Removal of actions from courts lacking jurisdiction.

No civil action, suit or other proceeding brought in any court of this State shall be dismissed solely on the ground that such court is without jurisdiction of the subject matter, either in the original proceeding or on appeal. Such proceeding may be transferred to an appropriate court for hearing and determination, provided that the party otherwise adversely affected, within 60 days after the order denying the jurisdiction of the first court has become final, files in that court a written election of transfer, discharges all costs accrued in the first court, and makes the usual deposit for costs in the second court. All or part of the papers filed, or copies thereof, and a transcript of the entries, in the court where the proceeding was originally instituted shall be delivered in accordance with the rules or special orders of such court, by the prothonotary, clerk, or register of that court to the prothonotary, clerk or register of the court to which the proceeding is transferred. The latter court shall thereupon entertain such applications in the proceeding as conform to law and to the rules and practice of such court, and may by rule or special order provide for amendments in pleadings and for all other matters concerning the course of procedure for hearing and determining the cause as justice may require. For the purpose of laches or of any statute of limitations, the time of bringing the proceeding shall be deemed to be the time when it was brought in the first court. This section shall be liberally construed to permit and facilitate transfers of proceedings between the courts of this State in the interests of justice.

(Code 1935, § 4235A; 46 Del. Laws, c. 255; 10 Del. C. 1953, § 1901; 60 Del. Laws, c. 182, § 1.)

§ 1902A Removal of criminal actions from courts lacking criminal jurisdiction.

(a) "Court of competent jurisdiction" shall mean the state court where criminal jurisdiction lies under either Title 4, Title 11 or any other Delaware statute vesting criminal jurisdiction.

(b) "State court" shall mean the Justice of the Peace Courts, Family Court, or Court of Common Pleas.

(c) No criminal action, complaint, or other proceeding brought in any court of this State shall be dismissed solely on the ground that such court is without criminal jurisdiction. Upon certification by the Criminal Clerk of Court to the sitting judge of the court in which the complaint, action, or other proceeding is pending averring that the court is without criminal jurisdiction, the judge may administratively issue an Order of Transfer and transfer the criminal proceeding to the court of competent criminal jurisdiction.

(d) Likewise, at any time during the proceedings pending of a criminal action, complaint or other proceeding and the prosecution or defense counsel presents an oral or written motion to the judge indicating that the court where the proceedings are pending lacks criminal jurisdiction, the judge shall issue an Order of Transfer to the state court which has criminal jurisdiction. The case shall then be forthwith be transferred by the criminal clerk to the court of competent criminal jurisdiction.

(e) In both subsections (c) and (d) of this section, the bond and all pretrial conditions by a state court imposed upon the defendant shall remain in full force and effect and shall not be discharged pending transfer.

(f) The transfer of a pending criminal action, complaint, other proceeding under this statute shall be made only when the court lacks criminal jurisdiction.

(75 Del. Laws, c. 371, § 1.)

§ 1903 Change of location for sickness or other cause.

The Justices of the Supreme Court, the Chancellor and Vice-Chancellors and the Judges of the Superior Court, and the judge or judges of any other court, as the case may be, may, on account of the prevalence of contagious diseases or epidemics, or for other sufficient cause, appoint a different place for holding a term of their respective courts, and may make all necessary rules and orders to effect any such temporary change, and for the return of process, and the continuance of proceedings.

Such temporary change may be made, in the case of the Supreme Court, to any place within this State, and, in the case of any other court referred to in this section, to any place in the county in which the court is held.

(Code 1852, §§ 1907-1909; 16 Del. Laws, c. 133, § 5; Code 1915, § 3683; Code 1935, § 4235; 10 Del. C. 1953, § 1902; 60 Del. Laws, c. 182, § 1.)

§ 1904 Removal of records and papers in case of necessity.

In case of invasion of this State, or other necessity, any 2 of the judges of the State may remove the public records and papers to a place of safety, to be returned as soon as the safety thereof will admit. The officer having custody of such records shall accompany them; and may do the business of the office at the place to which they are removed.

As used in this section, "judges" includes the Justices of the Supreme Court, the Chancellor and Vice-Chancellors, and the President Judge and the Judges of the Superior Court.

(Code 1852, §§ 1907-1909; 16 Del. Laws, c. 133, § 5; Code 1915, § 3683; Code 1935, § 4235; 10 Del. C. 1953, § 1903; 60 Del. Laws, c. 182, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 213, § 36.)

§ 1905 Adjournments of terms of court.

Any court of this State may, from time to time, adjourn over any of the terms of such court for the purpose of hearing or trying causes, or doing other business necessary for expediting and ending actions or proceedings.

(Code 1852, § 1913; Code 1915, § 3687; Code 1935, § 4239; 10 Del. C. 1953, § 1904; 60 Del. Laws, c. 182, § 1.)

§ 1906 Admission of attorneys.

There may be a competent number of persons, of an honest disposition and learned in the law, admitted by the Supreme Court of the State to practice as attorneys in the State. Attorneys, so admitted, shall behave themselves justly and faithfully in their practice; and if they misbehave themselves therein, they shall be subject to such disciplinary measures as the Supreme Court, in its discretion, may determine. Such attorneys may commence actions, prosecute and defend suits, draw writs, process and pleadings, and practice generally in all the courts of this State without further authority.

(Code 1852, § 1922; Code 1915, § 3734; Code 1935, § 4284; 10 Del. C. 1953, § 1905; 60 Del. Laws, c. 182, § 1.)

§ 1907 Oath of attorneys-at-law.

Every attorney-at-law, upon admission to the Bar of this State, shall take and subscribe the following oath or affirmation:

"I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Delaware; that I will behave myself in the office of an attorney within the Court according to the best of my learning and ability and with all good fidelity, as well to the Court as to the client; that I will use no falsehood, nor delay any person's cause through lucre and malice."

(Code 1852, § 438; Code 1915, § 378; Code 1935, § 347; 10 Del. C. 1953, § 1906; 60 Del. Laws, c. 182, § 1; 70 Del. Laws, c. 186, § 1.)

§ 1908 Temporary assignment of Judges to statutory courts.

(a) In case of need, the Chief Justice of the Supreme Court, or in case of the Chief Justice's absence from the State or incapacity, the Senior Justice of the Supreme Court, present in the State and capable of acting, may designate one or more of the state judges, including the Justices of the Supreme Court and the Judges of the Superior Chancery and Common Pleas Court, to sit in any court of this State not created by the Constitution.

(b) The state judge designated pursuant to subsection (a) of this section shall serve as a judge of the court designated and shall hear and determine such causes in such court and for such period of time as shall be designated.

(10 Del. C. 1953, § 1907; 56 Del. Laws, c. 271; 60 Del. Laws, c. 182, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 213, § 37.)

§ 1909 Appointment of judges.

All judges of this State or any of its subdivisions shall be appointed by the Governor, by and with the consent of a majority of all members elected to the Senate, for such terms as shall be fixed by the Delaware Constitution or by state law.

(74 Del. Laws, c. 263, § 1.)

Subchapter II

Law Libraries

§ 1941 Control and supervision of law libraries.

The law library in each county maintained for the use of the judges of the courts shall be under the control and supervision respectively of the judges of the Court of Chancery and of the Superior Court residing in the county, who are empowered from time to time to purchase such law books as shall be necessary for the maintenance of the library. The judges residing in New Castle County are authorized to employ a librarian for the law library of New Castle County at such compensation as shall from time to time be fixed by the judges. The judges residing in Sussex County, if and when they shall determine that a librarian is required in the Sussex County library, are likewise authorized to employ one at such compensation as they may fix from time to time. The judges residing in Kent County, if and when they shall determine that a librarian is required in the Kent County library, are likewise authorized to employ one at such compensation as they may fix from time to time.

The payment of bills for the purchase and rebinding of law books, and other necessary expenses, including compensation of the librarian, shall, to the extent that other sources of income, if any, are insufficient, be made by the State Treasurer out of funds regularly appropriated for the operation of said law libraries.

(26 Del. Laws, c. 266, §§ 1-4; 27 Del. Laws, c. 283; Code 1915, § 3802; 28 Del. Laws, c. 235; Code 1935, § 4314; 10 Del. C. 1953, § 1942; 50 Del. Laws, c. 72, § 2; 51 Del. Laws, c. 133, § 1.)

§ 1942 Law library in Kent County as official law library for State.

The law library in Kent County is designated as the official law library of the State. Any law books, statutes, legal periodicals, or other legal material suitable for a state law library received by the State on an exchange basis or on any other basis and not specifically acquired by or for some other subdivision of the State shall be deposited in the law library in Kent County.

(10 Del. C. 1953, § 1943; 51 Del. Laws, c. 133, § 2.)

Subchapter III

Judicial Reports

§ 1961 Preparation of judicial reports.

The Committee on Publications of Opinions, appointed by the Chief Justice of the Delaware Supreme Court in accordance with a rule of that Court, shall report such opinions of the Supreme Court, the Chancery Court and the Superior Court, as in its judgment are deemed proper to be reported; and the Committee shall have such reported opinions, together with any court rules and proceedings as it may select, printed and published in bound volumes in such manner and under such terms as it shall determine. The Committee shall deposit such number of copies as are deemed needed for public use with the Secretary of State, to be distributed in accordance with law.

(Code 1852, § 50; 19 Del. Laws, c. 843; 21 Del. Laws, c. 13; Code 1915, § 3702; 32 Del. Laws, c. 205, § 1; Code 1935, § 4255; 10 Del. C. 1953, § 1961; 55 Del. Laws, c. 384, § 6; 56 Del. Laws, c. 421, § 1.)

§ 1962 Distribution of judicial reports.

(a) The Secretary of State, upon the receipt of published legal reports, shall retain 1 copy in the Secretary of State's office; shall send 1 copy to each judge of each state, county or municipal court, and to each justice of the peace; and shall distribute copies to such agencies and public officials of this State as show a need for them.

The Secretary of State shall also transmit 1 copy to each of the following: The Library of Congress, University of Delaware Library, Delaware State University Library, the Delaware Historical Society, the Wilmington Institute Free Library, Legislative Council and to each public law library within this State, 2 copies each.

(b) The copies delivered to the judges and justices of the peace and state offices shall belong to their respective offices and shall be delivered to their successors in office.

(10 Del. C. 1953, § 1962; 55 Del. Laws, c. 384, § 7; 56 Del. Laws, c. 421; 59 Del. Laws, c. 253, § 2; 69 Del. Laws, c. 67, § 2; 70 Del. Laws, c. 186, § 1.)

§ 1963 Payment for publication of judicial reports.

Upon receipt by the Director of the Office of Management and Budget of the certificate of the Secretary of State that copies of a new volume of reports published by the Committee have been deposited in the office of the Secretary of State as required by law, the Director of the Office of Management and Budget shall draw a warrant upon the State Treasurer to pay for printing and other expenses incurred in connection with the publication of such new volume, in the amounts and in favor of the payees certified by the Chief Justice. The provisions of Chapter 69 of Title 29 shall not apply to the preparation and publication of the law reports authorized by this subchapter.

(10 Del. C. 1953, § 1963; 56 Del. Laws, c. 421, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 88, § 21(5).)

Subchapter IV

Judicial Records and Indices; Kent County

§ 1966 Revision of indices.

Whenever the index or indices of any record of the office of the Register of Wills of Kent County, or of any record of the office of the Recorder of such County, or of any record of the Court of Chancery in and for such County, needs renewing, revising, altering or recopying, or any of such records not being sufficiently indexed are in need of a new or better system of ascertaining its contents, or needs renewing for purposes of preservation, the Superior Court in and for such County may order that a renewed, revised, altered, recopied or sufficient index or indices be made for any of the records of the Register of Wills or Recorder; the Court of Chancery in and for such County may order that a renewed, revised, altered, recopied or sufficient index or indices be made for any of the records of the Court of Chancery.

(10 Del. C. 1953, § 1966; 52 Del. Laws, c. 305; 66 Del. Laws, c. 185, § 4.)

§ 1967 Omission of satisfied liens from new indices.

Whenever a new index or indices are made under this subchapter for the records of judgments, mechanics' liens, foreign or domestic attachments, mortgages or recognizances, the new index or indices shall omit all such as have been fully and legally satisfied. No other change shall be made in the manner or system of keeping any index except by order of the court so doing.

(10 Del. C. 1953, § 1967; 52 Del. Laws, c. 305.)

§ 1968 Officer in charge; preparation.

Whenever an order is made under this subchapter for the making of any index or indices, the officer in charge of the records for which such index or indices are to be made shall make or cause the same to be made, pursuant to the provisions of this subchapter and such order. The officer may procure all books necessary for such purpose, the cost of which shall be paid by the Levy Court of Kent County.

(10 Del. C. 1953, § 1968; 52 Del. Laws, c. 305; 70 Del. Laws, c. 186, § 1.)

§ 1969 Appointment of commissioners to examine new indices.

Whenever it is directed that any index or indices shall be made as provided in this subchapter, the Judges of the Superior Court of the State in and for Kent County shall appoint 2 commissioners. The commissioners shall examine such index or indices, and, if they approve of the execution and exactness thereof, they shall certify the same to be a true and correct index or indices. After such certification, the index or indices shall become and be the index or indices of Kent County in lieu of those theretofore in use.

(10 Del. C. 1953, § 1969; 52 Del. Laws, c. 305.)

§ 1970 Compensation of indexer and commissioners.

After the commissioners appointed under § 1969 of this title have certified the indices, the Levy Court of Kent County shall pay to the officer by whom the indices have been made, and to the commissioners, a just and reasonable compensation for their services, to be fixed by the Levy Court upon the application of such officer and commissioners. With each application, there shall be presented to the Levy Court, a sworn itemized account of the time spent and disbursements made, if any, by the officer or commissioners, as the case may be, in and about the preparation or examination of the records or indices so made or examined by them.

(10 Del. C. 1953, § 1970; 52 Del. Laws, c. 305.)

§ 1971 Examination of judgment satisfactions by commissioners.

Repealed by 66 Del. Laws, c. 185, § 5, effective Oct. 1, 1987.

§ 1972 Examination of mortgage satisfactions by commissioner.

Repealed by 77 Del. Laws, c. 36, effective May 27, 2009.

Subchapter V

Judicial Records and Indices; New Castle County

§ 1973 Revision of indices.

Whenever the index or indices of any record of the office of the Register of Wills of New Castle County, or of any record of the office of the Recorder of such County, or of any record of the Court of Chancery in and for such County, needs renewing, revising, altering or recopying, or any of such records not being sufficiently indexed are in need of a new or better system of ascertaining its contents, or needs renewing for purposes of preservation, the Superior Court in and for such County may order that a renewed, revised, altered, recopied or sufficient index or indices be made for any of the records of the Register of Wills or Recorder; the Court of Chancery in and for such County may order that a renewed, revised, altered, recopied or sufficient index or indices be made for any of the records of the Court of Chancery.

(23 Del. Laws, c. 78, § 1; Code 1915, §§ 3695, 3699; 34 Del. Laws, c. 210; Code 1935, §§ 4247, 4252; 10 Del. C. 1953, § 1921; 66 Del. Laws, c. 185, § 6.)

§ 1974 Omission of satisfied liens from new indices.

Whenever a new index or indices are made under this subchapter for the records of judgments, mechanics' liens, foreign or domestic attachments, mortgages or recognizances, the new index or indices shall omit all such as have been fully and legally satisfied. No other change shall be made in the manner or system of keeping any index except by order of the court so ordering.

(23 Del. Laws, c. 78, § 2; Code 1915, § 3696; Code 1935, § 4248; 10 Del. C. 1953, § 1922.)

§ 1975 Officer in charge; preparation.

Whenever an order is made under this subchapter for the making of any index or indices, the officer in charge of the records for which such index or indices are to be made shall make or cause the same to be made, pursuant to the provisions of this subchapter and such order. He or she may procure all books necessary for such purpose, the cost of which shall be paid by the County Council of New Castle County.

(23 Del. Laws, c. 78, § 3; Code 1915, § 3697; Code 1935, § 4249; 10 Del. C. 1953, § 1923; 55 Del. Laws, c. 85, § 32I; 70 Del. Laws, c. 186, § 1.)

§§ 1976 -1979. Appointment of commissioners to examine new indices; compensation of indexer and commissioners.

Repealed by 70 Del. Laws, c. 526, § 1, effective July 1, 1996.

Subchapter VI

Judicial Records and Indices; Sussex County

§ 1980 Revision of indices.

Whenever the index of the office of the Register of Wills, or the office of the Recorder, or the Court of Chancery for Sussex County needs renewing, revising, altering or recopying, or any of such records are not sufficiently indexed or are in need of a new or better system of ascertaining their contents, or needs renewing for preservation purposes, the Superior Court of Sussex County may order that a renewed, revised, altered, recopied or sufficient index be made of any such records.

(10 Del. C. 1953, § 1980; 57 Del. Laws, c. 471; 66 Del. Laws, c. 185, § 8.)

§ 1981 Omission of satisfied liens from new indices.

Whenever a new index is made under this subchapter for the records of judgments, mechanics' liens, foreign or domestic attachments, mortgages or recognizances, the new index shall omit all such as have been fully and legally satisfied. No other change shall be made in the manner or system of keeping any index except by order of the court so doing.

(10 Del. C. 1953, § 1981; 57 Del. Laws, c. 471.)

§ 1982 Appointment of commissioners; preparation and examination of new indices.

Whenever an order is made under this subchapter for the alteration, revision or making of any index, a Judge of the Superior Court and the Court of Chancery of the County shall appoint 2 commissioners who shall make or cause to be made the index of such records, pursuant to the provisions of this subchapter. The commissioners may procure all books necessary for such purpose, the cost of which shall be paid by the County Council. The commissioners shall examine such index so made and shall certify the same to be true and correct. After such certification, the index shall become and be the index of Sussex County in lieu of those theretofore in use.

(10 Del. C. 1953, § 1982; 57 Del. Laws, c. 471.)

§ 1983 Compensation of commissioners.

After the commissioners appointed under § 1982 of this title have certified the indices, the County Council of Sussex County shall pay to the commissioners a just and reasonable compensation for their services, to be fixed by the County Council upon the application of such commissioners. With each application there shall be presented to the County Council a sworn itemized account of the time spent, expenses incurred and disbursements made, if any, by the commissioners in and about the preparation or examination of the records or indices so made or examined by them.

(10 Del. C. 1953, § 1983; 57 Del. Laws, c. 471.)

Subchapter VI-A

Judicial Records and Indices; Superior Court and Prothonotary

§ 1984 Revision of indices.

Where the index or indices of any record of the Superior Court or the office of the prothonotary needs renewing, revising, altering or recopying, or any of such records are not sufficiently indexed or are in need of a new or better system of ascertaining their contents or need renewing for preservation purposes, the Superior Court may order that a renewed, revised, altered, recopied or sufficient index be made of any such records.

(66 Del. Laws, c. 185, § 9.)

§ 1985 Omission of satisfied liens from new indices.

Whenever a new index is made under this subchapter for the records of judgments, mechanics' liens, foreign or domestic attachments or other records of the Superior Court or prothonotary, the new index shall omit all such as have been fully and legally satisfied. No other change shall be made in the manner or system of keeping any index except by order of the Superior Court.

(66 Del. Laws, c. 185, § 9.)

§ 1986 Officer in charge; preparation.

Whenever an order is made under this subchapter for the making of any index or indices, the prothonotary in the county in which such records are kept shall make the index or indices or cause the same to be made pursuant to this subchapter and such order. The prothonotary may procure all books necessary for such purpose, the cost of which shall be paid by the prothonotary.

(66 Del. Laws, c. 185, § 9; 70 Del. Laws, c. 186, § 1.)

§§ 1987 -1989. Appointment of commissioners to examine new indices; compensation of commissioners; examination of judgment satisfactions by commissioners.

Repealed by 67 Del. Laws, c. 65, § 1, effective July 6, 1989.

Subchapter VII

Court Commissioners

§ 1990 Definitions.

As used in this subchapter, unless a different meaning is clearly indicated by the context:

(1) "Commissioner" means a judicial officer of a particular court authorized to perform the judicial powers and duties of the court in issuing warrants in criminal cases and the fixing and approving of bail.

(2) "Court" or "courts" means such court or courts as established by the General Assembly in accordance with article IV, § 1 (Judiciary) of the Constitution of this State.

(3) "Governing body" means the town council, city council, commissioners or other legislative body charged with governing the municipality, or Levy Court Commissioners, or other legislative body charged with governing the county.

(10 Del. C. 1953, § 1976; 56 Del. Laws, c. 375; 66 Del. Laws, c. 185, § 10.)

§ 1991 Appointment of commissioner or commissioners; term, vacancies and qualifications.

(a) The Governor shall appoint a commissioner or commissioners, only when so requested by the governing body, for a term of 4 years with the consent of a majority of all of the members elected to the Senate. Upon second and subsequent appointments and confirmations, a commissioner shall hold office for a term of 6 years.

(b) Vacancies in office shall be filled for the unexpired term by the Governor with the consent of a majority of all of the members elected to the Senate.

(c) A commissioner must be a resident of the municipality or the county over which the court to which the commissioner is to be appointed has jurisdiction.

(10 Del. C. 1953, § 1977; 56 Del. Laws, c. 375; 66 Del. Laws, c. 185, § 10; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 165, § 4.)

§ 1992 Courts for which commissioners shall be appointed.

Provisions of this subchapter shall apply to all courts as established by the General Assembly in accordance with article IV, § 1 (Judiciary) of the Constitution of this State.

(10 Del. C. 1953, § 1978; 56 Del. Laws, c. 375; 66 Del. Laws, c. 185, § 10.)

§ 1993 Powers of commissioners.

The commissioner or commissioners of the courts covered by the provisions of this subchapter shall have the power to issue warrants, or, upon the request of the prosecuting officer of a particular court or upon the request of the police, issue a summons for the arrest of persons for offenses alleged to have been committed against this State, or for any violation of an ordinance or legislative act of a municipality or county. In connection with the complaint made as to the commission of a criminal offense, the commissioner or commissioners are authorized to administer the oath of the person making the criminal complaint. All warrants shall bear the teste date of the chief judge or senior judge of the particular court involved in the issuance of the warrant.

A commissioner is further authorized to fix and approve bail, except for offenses in which the penalty may be death, in accordance with the laws of this State granting, fixing and approving bail bonds and recognizances.

(10 Del. C. 1953, § 1976; 56 Del. Laws, c. 375; 66 Del. Laws, c. 185, § 10.)

§ 1994 Court rules governing commissioners.

The Chief Justice of the State shall approve and promulgate rules governing the activities of the court commissioners which shall be prepared and submitted by the chief judge or senior judge of the court to be affected by said rules.

(10 Del. C. 1953, § 1977; 56 Del. Laws, c. 375; 66 Del. Laws, c. 185, § 10; 70 Del. Laws, c. 186, § 1.)

§ 1995 Salaries.

The governing body of the municipality or county in which the court has jurisdiction within the provisions of this subchapter, shall determine the amount of, and authorize the payment of, the annual salaries of the court commissioner or commissioners, as other salaries are paid by the governing body of a particular municipality or county.

(10 Del. c. 1953, § 1978; 56 Del. Laws, c. 375; 66 Del. Laws, c. 185, § 10.)

Part I
Organization, Powers, Jurisdiction and Operation of Courts
Chapter 20
JUDICIAL EMERGENCY ACT

§ 2001 Short title.

This chapter shall be known and may be cited as the "Judicial Emergency Act."

(77 Del. Laws, c. 30, § 1.)

§ 2002 Statement of policy.

The State or areas thereof could suffer future catastrophic damage through the occurrence of emergencies and disasters resulting from terrorism, enemy attack, or other hostile action, or from disease, fire, flood, earthquake, accident, or other natural or manmade causes resulting in the destruction of or severe damage to courthouses and the ability to staff the courts. To provide for the operation of the courts during such an emergency, it is necessary to enact comprehensive emergency provisions for the Judicial Branch.

(77 Del. Laws, c. 30, § 1.)

§ 2003 Definitions.

As used in this chapter:

(1) "Affected court facility" means any court facility for which the Chief Justice has made a determination that emergency sessions shall be conducted outside the county in which it normally operates.

(2) "Chief Justice" means the Chief Justice of the Delaware Supreme Court or, in the absence of the Chief Justice, the justice who is designated in accordance with article IV, § 13 of the Delaware Constitution or, if applicable, by § 1804 of this title to function as Chief Justice.

(3) "Emergency sessions" means any court proceeding conducted by an affected court as authorized by this chapter and by order of the Chief Justice of the Delaware Supreme Court.

(4) "Host county" means the county in which the Chief Justice has ordered the affected court facility to conduct emergency sessions.

(5) "Unavailable" means either that vacancy in office exists, or that the lawful incumbent of the office is absent or unable to exercise the powers and discharge the duties of the office.

(77 Del. Laws, c. 30, § 1.)

§ 2004 Authority of Chief Justice to declare a judicial emergency; contents of order; duration of order.

(a) The Chief Justice shall, in consultation with those other members of the Supreme Court who are available, have the authority, by order, to declare a judicial emergency when the Chief Justice determines that there are emergency circumstances affecting 1 or more court facilities or the ability to staff 1 or more court facilities. This determination shall be based upon emergency circumstances, including but not limited to, terrorist events, enemy attack, sabotage, or other hostile action or from disease, fire, flood, earthquake, accident, or other natural or manmade causes resulting in the destruction of or severe damage to courthouses, the ability to access courthouses, or the ability to staff courts.

(b) The order declaring a judicial emergency shall specify:

(1) The court or courts and facilities affected by the order;

(2) The nature of the emergency necessitating the order;

(3) The time period or duration of the judicial emergency; and

(4) Any other information relevant to the suspension or restoration of court operations, such as relocation of the court to another county or extensions of deadlines.

(c) An order declaring the existence of a judicial emergency shall be limited to an initial duration of not more than 30 days; provided, however, that the order may be modified or extended for additional periods of 30 days each. Any modification or extension of the initial order shall require information regarding the same matters set forth in subsection (b) of this section for the issuance of the initial order.

(77 Del. Laws, c. 30, § 1.)

§ 2005 Emergency sessions of court.

(a) When the Chief Justice makes the determination that a court shall conduct proceedings outside its county, the Chief Justice may order emergency sessions of court in another county. In making this determination, the Chief Justice shall make a reasonable effort to consult with the chief judge and the court administrator of the affected court, the other members of the Supreme Court, the Attorney General, and the Public Defender.

(b) Nothing in this chapter shall preempt the authority of each court to make a temporary move within the county, or in the case of the Supreme Court, within the State, as provided for in § 1903 of this title.

(77 Del. Laws, c. 30, § 1.)

§ 2006 Venue for affected court facilities.

(a) If an affected court facility is ordered to conduct sessions in a different county, the host county shall be a proper venue for civil and criminal actions to the same extent as if the affected court were operating in its original county.

(b) Upon motion by the Attorney General or a designee of the Attorney General, showing that the interests of justice are served by approval of the motion, the affected court may summon jurors from the host jurisdiction.

(77 Del. Laws, c. 30, § 1.)

§ 2007 Extension of deadlines.

(a) The Chief Justice, in an order declaring a judicial emergency, or in an order modifying or extending a judicial emergency order, is authorized to suspend, toll, extend, or otherwise grant relief from deadlines or other time schedules or filing requirements otherwise imposed by applicable statutes, rules, regulations, or court orders for the duration of the emergency order, including, but not limited, to such deadlines as civil and criminal statutes of limitations, deadlines for appeals, and the expiration of temporary restraining orders or no contact orders that would otherwise expire.

(b) Except as specified in subsection (c) of this section, deadlines may be extended up to the duration of the emergency order but shall be for the shortest period of time necessary under the circumstances of the emergency.

(c) The time periods for bringing an arrested person before a magistrate pursuant to § 1909 of Title 11 and for bringing a prisoner before a judge pursuant to § 6907 of this title shall not be extended to more than 7 days. The time for taking a juvenile charged with a delinquent act before a court shall not be extended to more than 2 days.

(77 Del. Laws, c. 30, § 1.)

§ 2008 Use of audiovisual devices.

During a judicial emergency, the Chief Justice is authorized to permit, by order, the use of audiovisual devices for all civil and criminal proceedings except trial by jury, whether or not such use is currently permitted by statute or court rule. Such proceedings may be conducted in the same or another county from that in which the defendant is physically located. In the order permitting the use of audiovisual devices, the Chief Justice shall state the court locations in which such usage shall be permitted, the specific proceedings for which audiovisual devices shall be permitted, the duration for which their use shall be permitted, and, when such usage is not otherwise authorized by statute or court rule, shall provide a justification for the compelling state interest in using such devices.

(77 Del. Laws, c. 30, § 1.)

§ 2009 Other emergency powers.

The Chief Justice shall have the authority to take such other actions as the Chief Justice reasonably believes are necessary to provide for the continued operation of the courts during a judicial emergency.

(77 Del. Laws, c. 30, § 1.)

§ 2010 Preemption of conflicting provisions.

The provisions of this chapter shall preempt and supersede but not repeal any conflicting provisions of this Code or any other provision of law.

(77 Del. Laws, c. 30, § 1.)

Part II
Court Officers and Employees
Chapter 21
SHERIFF

§ 2101 Compensation.

The Sheriffs of New Castle, Kent and Sussex Counties shall only receive compensation for the performance of their official duties in the form of an annual salary as fixed by their representative county governments. The New Castle County government, the Kent County Levy Court, and the Sussex County Council shall set the annual salaries for each representative sheriff. The sheriffs shall henceforth not be allowed to keep or retain as additional compensation any fees, costs, allowances and other perquisites paid to or collected by them for any service rendered by them as county officers or rendered by them in the name of their office.

(23 Del. Laws, c. 60, § 7; Code 1915, § 1438; 40 Del. Laws, c. 139, § 1; Code 1935, § 1597; 44 Del. Laws, c. 98, § 1; 45 Del. Laws, c. 138, § 1; 46 Del. Laws, c. 298, § 1; 10 Del. C. 1953, § 2101; 49 Del. Laws, c. 282, § 1; 49 Del. Laws, c. 308; 50 Del. Laws, c. 480, § 1; 52 Del. Laws, c. 174, § 3; 53 Del. Laws, c. 222, § 5; 54 Del. Laws, c. 23, § 8; 54 Del. Laws, c. 215, § 9; 57 Del. Laws, c. 692, § 7; 61 Del. Laws, c. 506, § 6; 62 Del. Laws, c. 272, § 1; 63 Del. Laws, c. 96, § 1; 65 Del. Laws, c. 163, § 1; 65 Del. Laws, c. 216, § 3; 67 Del. Laws, c. 255, § 8; 68 Del. Laws, c. 234, § 3; 69 Del. Laws, c. 184, § 1.)

§ 2102 Deputies and clerks.

The sheriffs in the respective counties may select and employ deputies listed below:

Kent and Sussex Counties: such chief deputy, deputies and clerks as are authorized by the Levy Court or County Council of the county, at compensation fixed by such Levy Court or County Council. In Kent County, minimum qualifications may be established by the county government for each position, and said minimum qualifications and compensation and any subsequent adjustments thereto shall have the concurrence of the Sheriff.

(23 Del. Laws, c. 60, § 8; 24 Del. Laws, c. 83, § 1; 24 Del. Laws, c. 86, § 2; 27 Del. Laws, c. 73; Code 1915, § 1439; 29 Del. Laws, c. 91; 32 Del. Laws, c. 67; 34 Del. Laws, c. 98, § 1; 34 Del. Laws, c. 99, § 1; 40 Del. Laws, c. 139, § 2; Code 1935, §§ 1191, 1598; 43 Del. Laws, c. 120, § 1; 44 Del. Laws, c. 100, §§ 1, 2; 44 Del. Laws, c. 101, § 1; 45 Del. Laws, c. 109, §§ 1, 2; 45 Del. Laws, c. 140, § 1; 46 Del. Laws, c. 298, §§ 1, 2; 47 Del. Laws, c. 192; 48 Del. Laws, c. 111, § 1; 10 Del. C. 1953, § 2102; 55 Del. Laws, c. 85, § 32J; 74 Del. Laws, c. 45, § 5.)

§ 2103 Sheriffs and regular deputies.

Sheriffs and deputy sheriffs shall not have any arrest authority. However, sheriffs and deputy sheriffs may take into custody and transport a person when specifically so ordered by a judge or commissioner of Superior Court.

(23 Del. Laws, c. 60, § 13; Code 1915, § 1443; Code 1935, § 1602; 10 Del. C. 1953, § 2103; 55 Del. Laws, c. 85, § 32K; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 266, § 16.)

§ 2104 Attendance on courts; duties of Sheriff of Kent County as to Supreme Court.

(a) The sheriff of each county, in person or by a deputy, shall attend the several courts of law and equity during every term thereof in the sheriff's county. The neglect of this duty shall be deemed a contempt of court.

(b) The Sheriff of Kent County shall attend the Supreme Court during its sessions and shall be the officer for executing the process and orders of that Court.

(Code 1852, §§ 579, 580; 21 Del. Laws, c. 117, § 2; Code 1915, §§ 1331, 1332, 3709; Code 1935, §§ 1509, 1510, 4262; 47 Del. Laws, c. 190; 48 Del. Laws, c. 258, § 1; 10 Del. C. 1953, § 2104; 70 Del. Laws, c. 186, § 1.)

§ 2105 Summoning jurors and witnesses.

The sheriffs of the respective counties are required, as often as there may be occasion, to summon all inquests or jurors, which sheriffs ought to summon, and witnesses necessary for executing justice. For every neglect or default under this section, every sheriff shall be fined $50. The sheriff shall further be liable in damages to any party injured by such neglect or default. The sheriff shall collect no fees, costs or mileage fees from the office of the Attorney General for the service of subpoenas.

(Code 1935, § 1512; 10 Del. C. 1953, § 2105; 64 Del. Laws, c. 90, § 65A; 64 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1.)

§ 2106 Sale of property under execution process; records.

(a) The sheriffs of the respective counties shall procure proper books and enter therein the disposition of all moneys arising from the sale of property under execution process, when the same is applicable otherwise than to executions in their hands.

(b) The books shall be furnished by the Levy Court or County Council, and shall be kept in the prothonotary's office of each county, as other records are kept, to be taken from there only by the sheriffs when it is necessary to make entries therein. The compensation of

sheriffs, for every such entry, shall not be less than 50 cents, unless the entries shall exceed 5 in number, when it shall be 10 cents for every such entry, and such charge shall be included in the costs charged by the sheriff.

(c) When an execution is settled in whole or in part to the sheriff, the sheriff shall return such settlement, as required by § 4755 of this title. Upon the sale of real estate under execution process, the sheriff shall, upon return to such process, show to what liens the money arising from such sale has been applied and how much has been applied to each lien, as provided by § 4756 of this title.

(Code 1915, § 1330; Code 1935, § 1508; 10 Del. C. 1953, § 2106; 70 Del. Laws, c. 186, § 1.)

§ 2107 Endorsement on documents of sheriffs' fees.

The sheriff shall endorse and return upon every writ, process or copy of an order of court, directed to or executed by the sheriff, the fees prescribed by law for all services under the same, specifying particularly every item. The sheriff shall not charge thereon a fee for any service not expressly provided for by law, nor a greater fee than is so provided. The sheriff shall not endorse or return a fee for any service not performed at the time the return is in fact made. If any sheriff fails to endorse such fees, or to specify the items, or in such endorsement and return any fee for any service not performed at the time the return is made, he or she shall be deemed derelict in the performance of his or her duties; but shall, nevertheless, pay such fees to the county treasurer.

(Code 1852, §§ 587, 588; Code 1915, § 1337; Code 1935, § 1515; 10 Del. C. 1953, § 2107; 70 Del. Laws, c. 186, § 1.)

§ 2108 Entry of constable's sales.

The sheriff of each county shall, upon the receipt of an advertisement from any constable of the county, enter the time and place of such sale, the name of the defendant and constable.

(14 Del. Laws, c. 379; Code 1915, § 1339; Code 1935, § 1517; 10 Del. C. 1953, § 2108.)

§ 2109 Reception of sum due on capias ad satis faciendum.

Upon arresting a defendant on a writ of capias ad satisfaciendum, the sheriff shall receive the sum due thereon if offered.

(Code 1852, § 586; Code 1915, § 1336; Code 1935, § 1514; 10 Del. C. 1953, § 2109.)

§ 2110 Penalty for nonpayment of funds collected.

If any sheriff neglects to pay, according to the condition of the sheriffs' recognizance, any money collected by the sheriff, at the time when the same is payable, the sheriff shall pay to the party entitled to the same, in addition to the sum due, at the rate of 20 percent per annum from that time until it is paid.

(Code 1852, § 572; Code 1915, § 1325; Code 1935, § 1504; 10 Del. C. 1953, § 2110; 70 Del. Laws, c. 186, § 1.)

§ 2111 Payment of funds into court.

Where several persons claim money collected by a sheriff, or where the person entitled to receive it resides out of the sheriff's bailiwick, and has no lawful attorney within the same, the sheriff may bring the money into the court from which the process issued upon which it was collected, there to remain subject to the order of the court. The sheriff shall thereupon be excused from the operation of § 2110 of this title.

(Code 1852, § 572; Code 1915, § 1325; Code 1935, § 1504; 10 Del. C. 1953, § 2111; 70 Del. Laws, c. 186, § 1.)

§ 2112 Mileage fees.

The sheriff of each county at the end of each month shall present to the receiver of taxes and county treasurer or the Department of Finance an itemized and verifiable account of all mileage travelled in the performance of every official duty when travelled in other than a county-provided vehicle.

(23 Del. Laws, c. 60, § 13; Code 1915, § 1443; Code 1935, § 1602; 10 Del. C. 1953, § 2112; 55 Del. Laws, c. 85, § 32M; 62 Del. Laws, c. 272, § 2; 69 Del. Laws, c. 184, § 2.)

§ 2113 Administering oaths by deputies.

Deputies may administer oaths in all cases in which, by the laws of this State, an oath is authorized and required to be administered by the sheriff. In all cases in which the oath is administered by a deputy, whose appointment is recorded in the recorder's office in the county in which the sheriff and deputy reside, it shall be as effectual in law as though it had been done by the sheriff.

(12 Del. Laws, c. 201; Code 1915, § 1323; Code 1935, § 1502; 10 Del. C. 1953, § 2113; 70 Del. Laws, c. 186, § 1.)

§ 2114 Fish and Wildlife Agent.

(26 Del. Laws, c. 162, § 7; Code 1915, § 1345; Code 1935, § 1518; 10 Del. C. 1953, § 2114; 70 Del. Laws, c. 221, §§ 1, 2; repealed by 78 Del. Laws, c. 266, § 17, eff. June 19, 2012.)

Part II
Court Officers and Employees
Chapter 23
PROTHONOTARY

§ 2301 Compensation.

The salaries of the prothonotaries in each county shall be established in accordance with Chapter 33 of Title 29.

(23 Del. Laws, c. 60, § 7; Code 1915, § 1438; 40 Del. Laws, c. 139, § 1; Code 1935, § 1597; 44 Del. Laws, c. 98, § 1; 45 Del. Laws, c. 138, § 1; 46 Del. Laws, c. 298, § 1; 10 Del. C. 1953, § 2301; 49 Del. Laws, c. 282, § 2; 49 Del. Laws, c. 305; 50 Del. Laws, c. 419, § 1; 51 Del. Laws, c. 244; 52 Del. Laws, c. 174, § 4; 53 Del. Laws, c. 222, § 6; 54 Del. Laws, c. 23, § 7; 54 Del. Laws, c. 215, § 6; 56 Del. Laws, c. 204, § 3; 57 Del. Laws, c. 692, § 8; 59 Del. Laws, c. 514, § 2; 61 Del. Laws, c. 506, § 7; 65 Del. Laws, c. 163, § 2; 65 Del. Laws, c. 216, § 4; 66 Del. Laws, c. 185, § 11.)

§ 2302 Deputies and clerks.

(a) In each county the Judges of the Superior Court resident in the county shall name a chief deputy prothonotary who shall perform such duties as shall from time to time be assigned by such Judges. The compensation of each such chief deputy shall be established by the Judges of the Superior Court resident in the county.

(b) The prothonotaries of the respective counties may select and employ the deputies and clerks listed below:

New Castle County.

(1) An additional chief deputy who shall perform such duties as the prothonotary shall authorize and direct in the administration of the office, and shall perform the duties of the prothonotary in the prothonotary's absence; and

(2) Such additional personnel as the Judges of the Superior Court resident in New Castle County shall from time to time authorize.

(23 Del. Laws, c. 60, § 8; 24 Del. Laws, c. 86, § 2; 27 Del. Laws, c. 73; Code 1915, § 1439; 29 Del. Laws, c. 91; 32 Del. Laws, c. 67; 40 Del. Laws, c. 139, § 2; Code 1935, §§ 1191, 1598; 43 Del. Laws, c. 120, § 1; 44 Del. Laws, c. 100, §§ 1, 2; 44 Del. Laws, c. 101, § 1; 45 Del. Laws, c. 109, §§ 1, 2; 45 Del. Laws, c. 140, § 1; 46 Del. Laws, c. 298, §§ 1, 2; 47 Del. Laws, c. 192; 48 Del. Laws, c. 111, § 1; 10 Del. C. 1953, § 2302; 49 Del. Laws, c. 55; 49 Del. Laws, c. 88; 52 Del. Laws, c. 332, § 1; 53 Del. Laws, c. 131; 55 Del. Laws, c. 85, § 32N; 57 Del. Laws, c. 216, § 1; 59 Del. Laws, c. 170, § 1; 60 Del. Laws, c. 327, § 1; 63 Del. Laws, c. 129, §§ 1, 2; 66 Del. Laws, c. 185, § 12; 70 Del. Laws, c. 186, § 1.)

§ 2303 Entry of judgments.

(a) Whenever a judgment is entered or signed in the Superior Court (except judgments on verdict when entered before the end of the term next after that in which the verdict is given), the prothonotary shall set down on the docket the day, month, and year of actually entering or signing it. When entering the ascertained amount of a judgment given, "amount to be ascertained by the prothonotary, or other person," the prothonotary shall in like manner set down the true date of the entry.

(b) The prothonotary, on entering a judgment on bond with warrant of attorney, or in taking a judgment by confession other than by virtue of such warrant, shall set down on the docket under such judgment, the precise hour and minute of the day when the same was entered or taken, and such judgment shall operate and take effect as liens, at and from the time so noted or entered on the record.

(Code 1915, § 3764; Code 1935, § 4286; 10 Del. C. 1953, § 2303; 70 Del. Laws, c. 186, § 1.)

§ 2304 Judgment indices.

(a) The prothonotary shall keep to every docket of the prothonotary's office in which judgments are entered or signed, except the appearance docket, 2 indices of such judgments, the one of the plaintiffs' names in alphabetical order of the surnames, in connection with the names of their defendants, and the other of the defendants' names in like alphabetical order, in connection with the names of their plaintiffs. The prothonotary shall index every judgment the same day it is entered or signed, except judgments entered in the appearance docket, which shall be transferred to the continuance docket and indexed within 2 weeks from such entry.

(b) A testatum fieri facias, and judgments of any court, state or federal, or of a justice of the peace entered in the prothonotary's office to bind lands, shall be indexed as judgments. Also, when a case is continued, after verdict for the plaintiff without judgment, it shall be indexed as if judgment was given. Judgments of the Supreme Court, entered in the court below, shall be indexed as required by this section.

(Code 1852, §§ 670, 671; Code 1915, § 3765; Code 1935, § 4287; 10 Del. C. 1953, § 2304; 70 Del. Laws, c. 186, § 1.)

§ 2305 Penalties for neglect of duty.

Whoever, being a prothonotary, neglects any duty enjoined by § 2303 or 2304 of this title, shall be fined in such amount or imprisoned for such term, as the court, in its discretion, may determine. The prothonotary shall further be answerable in a civil action to any person, injured by such default, for all damages sustained thereby, and such default shall be a breach of the prothonotary's official obligation.

(Code 1852, § 672; Code 1915, § 3766; Code 1935, § 4288; 10 Del. C. 1953, § 2305; 70 Del. Laws, c. 186, § 1.)

§ 2306 Entry of judgment by confession.

(a) A judgment by confession may be entered by the prothonotary, either for money due or to become due, or to secure the obligee against a money contingent liability, or both, on the application by the obligee or assignee of a bond, note or other obligation containing a warrant for an attorney-at-law or other person to confess judgment.

(b) A judgment by confession shall not be entered as a final judgment, effective in all respects as a judgment after trial, until the prothonotary gives written notice to the defendant-obligor by certified mail, return receipt requested, of an opportunity for a judicial determination as to whether the defendant-obligor understandingly waived his or her right to notice and an opportunity to be heard prior to the entry of final judgment against him or her.

(c) In the case of a defendant-obligor who was at the time of executing the document authorizing the confession of judgment, a nonresident, the plaintiff must also file with the prothonotary an affidavit executed by the defendant-obligor stating:

(1) The sum of money for which judgment may be entered;

(2) Authorization of entry of judgment in the Superior Court of the State in and for a specific county;

(3) The contact with the State in the transaction;

(4) Defendant-obligor's mailing address and residence where he or she most likely would receive mail.

(d) The prothonotary shall send by certified mail, return receipt requested, a copy of the document authorizing the confession of judgment, the notice as aforesaid and, where applicable, a copy of the defendant-obligor's affidavit provided for in subsection (c) of this section.

(e) When service cannot be effected by certified mail, return receipt requested, service shall be accomplished by the publication of said notice once per week for 2 weeks in a newspaper of general circulation in the county in which the judgment is sought to be entered and also once per week for 2 weeks in a newspaper of general circulation in the county in which the defendant-obligor is last known to have resided.

(f) Prior to the issuance of any writ of execution sought on a confessed judgment entered prior to July 9, 1971, the prothonotary shall serve on the defendant-obligor by certified mail, return receipt requested, or in the event of failure of service in that manner, by publication as heretofore provided, the notice as provided for in subsection (b) of this section. If the defendant-obligor appears to contest the judgment, the appearance shall be noted and in the case of nonresidents, the appearance shall constitute the appointment of the prothonotary as the defendant-obligor's agent to receive service. If the prothonotary acts as the agent of the defendant-obligor to receive service, the prothonotary must immediately forward to the defendant-obligor by certified mail, return receipt requested, all such service he or she receives, pursuant to the provisions of this section or the rules of court. Thereafter, the issues shall be joined on the question of the indebtedness and the question of whether there was an understanding waiver of notice and an opportunity to be heard prior to judgment having been entered against the defendant-obligor. At the hearing on the issues, if plaintiff prevails, the lien of the plaintiff's judgment shall relate back to the date of its original entry.

(g) At the conclusion of the hearing provided for in subsection (b) of this section, if the plaintiff prevails on the issue of whether the defendant-obligor understandingly waived notice and an opportunity to be heard prior to the entry of judgment against him or her, then judgment shall be entered by the prothonotary pursuant to this section as of the date the confessed judgment was originally lodged with the prothonotary.

(h) In addition to the procedure herein set forth, the Superior Court may adopt rules for confession of judgments by defendant-obligor in open court; provided, however, the debtor is afforded a judicial determination on the question of whether he or she has understandingly waived any of his or her constitutional rights concerning the entry of judgment and the right to execution thereon.

(i) The Superior Court may adopt appropriate and specific rules to effectuate the intent and purpose of this section.

(j) Notwithstanding the opportunity for hearing provided in subsection (b) of this section above the defendant-obligor will not be deemed to have waived the right to present defenses of which he or she had no knowledge at the time he or she signed the instrument containing a warrant of attorney to confess judgment, or which arose subsequent to the signing of such instrument. A stay of execution shall be automatically given on all judgments entered hereunder until the defendant-obligor is afforded an opportunity for hearing to present those defenses not deemed to have been waived. Prior to execution the prothonotary shall serve notice to the defendant-obligor in the manner above provided for residents or nonresidents as the case may be, and such notice shall include a warning that defendant-obligor's property will be seized and sold or his or her wages attached on failure to appear.

(Code 1852, § 674; Code 1915, § 3768; Code 1935, § 4290; 10 Del. C. 1953, § 2306; 58 Del. Laws, c. 240, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2307 Attachment index in New Castle County.

The Prothonotary for New Castle County shall keep an indirect index in a docket for that purpose of all writs of foreign and domestic attachment which are issued from the court, and index the same at the time they are so issued. The index shall show the names of the defendants in such writs of attachment, in alphabetical order of the surnames in connection with the names of the plaintiffs therein, and the day of issuing the same. It shall also specify the appearance dockets and pages thereof in and on which such proceedings by attachment shall be docketed.

(16 Del. Laws, c. 19; Code 1915, § 3769; Code 1935, § 4291; 10 Del. C. 1953, § 2307.)

§ 2308 Mechanics' Lien Docket.

The prothonotary shall keep a Mechanics' Lien Docket and make all entries therein as provided by § 2724 of Title 25.

(16 Del. Laws, c. 145, § 3; Code 1915, § 3770; Code 1935, § 4292; 10 Del. C. 1953, § 2308.)

§ 2309 Partnership and Association Docket.

The prothonotary shall keep a Partnership and Association Docket, make all entries therein and perform all the duties relative to partnership and association certificates, as provided by § 3103 of Title 6.

(25 Del. Laws, c. 146, § 3; Code 1915, § 3771; Code 1935, § 4293; 10 Del. C. 1953, § 2309.)

§ 2310 Certification of scire facias on mortgage.

Repealed by 72 Del. Laws, c. 26, § 2, effective May 12, 1999.

§ 2311 Certification of sheriff's return on levari facias; fees.

Repealed by 72 Del. Laws, c. 26, § 3, effective May 12, 1999.

§ 2312 Certification of fines; penalty.

(a) The prothonotary, within 30 days after the end of every term of the Superior Court in the prothonotary's county, shall transmit to the Auditor of Accounts an abstract, certified under his or her hand and seal of office, of every case in the court in which a fine or forfeiture was imposed at the term, stating the name of the party, the name of the sheriff, and the amount of the fine or forfeiture.

(b) The prothonotary shall also, immediately after every term of the Superior Court in the county, transmit by mail to the State Treasurer, an abstract of all fines and forfeitures imposed by the Court at the term.

(c) Any prothonotary failing to perform any of the duties imposed by this section shall be fined not more than $100.

(d) The court in which the conviction is obtained shall cause a copy of the record of such conviction to be transmitted to the General Assembly.

(Code 1852, §§ 120, 122, 124-126, 675; Code 1915, §§ 1285, 3777; Code 1935, §§ 1484, 4299; 10 Del. C. 1953, § 2312; 70 Del. Laws, c. 186, § 1.)

§ 2313 Furnishing copies of sentences in criminal cases.

The prothonotary shall deliver a copy of every sentence in a criminal case to the board, warden or other authority having the control and administration of the prison to which the prisoner is sentenced.

(Code 1852, § 141; 21 Del. Laws, c. 247; 23 Del. Laws, c. 126; Code 1915, § 1292; Code 1935, § 1491; 10 Del. C. 1953, § 2313.)

§ 2314 Advance costs.

The prothonotary shall require the advance payment of costs as provided in §§ 3102 and 8705 of this title.

(Code 1915, § 3774; Code 1935, § 4296; 10 Del. C. 1953, § 2314.)

§ 2315 Affidavits.

The prothonotary may take all affidavits to be used in the Superior Court.

(Code 1915, § 3775; Code 1935, § 4297; 10 Del. C. 1953, § 2315; 11 Del. Laws, c. 225, § 5.)

§ 2316 Purchase or contract for witness fees; penalty.

The prothonotary shall not, directly or indirectly, purchase or contract for the fees of any witness attending the Superior Court. Any fees, so purchased, shall be forfeited. Any prothonotary who purchases such fees shall be fined double the amount of the fees purchased.

(Code 1852, §§ 145, 677; Code 1915, §§ 1294, 3779; Code 1935, §§ 1493, 4301; 10 Del. C. 1953, § 2316.)

§ 2317 Juries.

Repealed by 60 Del. Laws, c. 225, § 1.

§ 2318 Entry of letter "S" in judgment index upon satisfaction.

When satisfaction of a judgment is made by entry, or otherwise, the prothonotary shall write the letter "S" in the index opposite the names of the parties in such judgment.

(13 Del. Laws, c. 132, § 3; Code 1915, § 3776; Code 1935, § 4298; 10 Del. C. 1953, § 2318.)

§ 2319 Notation of satisfaction of judgments.

(a) When any judgment in the Superior Court appears, by the return of any execution thereon, to be wholly or partially satisfied, the prothonotary shall note that fact on the record of the judgment, as required by §§ 4755 and 4756 of this title.

(b) When a judgment upon which a testatum fi. fa. or transcript has been issued and recorded in another county has been satisfied, the prothonotary of the county where the original judgment is shall certify to the prothonotary where the testatum fi. fa. or transcript has been recorded the fact of the satisfaction, whereupon the latter prothonotary shall enter the fact of such satisfaction upon the record of the testatum fi. fa. or transcript, as provided by § 4757 of this title.

(Code 1852, § 678; Code 1915, § 3780; Code 1935, § 4302; 10 Del. C. 1953, § 2319.)

§ 2320 Dower record.

In suits for dower, the prothonotary shall record all the proceedings in books kept for that purpose exclusively.

(Code 1852, § 679; Code 1915, § 3781; Code 1935, § 4303; 10 Del. C. 1953, § 2320.)

§ 2321 Notification of issuing writs of certiorari in motor vehicle cases.

The prothonotary shall, upon issuing a writ of certiorari in any case involving a violation of the motor vehicle laws of this State, at once notify by mail the Motor Vehicle Commissioner of this State of the issuing of the writ.

(Code 1935, § 4304A; 45 Del. Laws, c. 290, § 1; 10 Del. C. 1953, § 2321.)

§ 2322 Appointment of fence viewers.

The prothonotary shall issue a warrant, under his or her hand and official seal, to each of the fence viewers of the prothonotary's county, and notify the public of their appointment by as many advertisements, signed by the prothonotary and posted in each hundred, as there are viewers therein.

(Code 1852, § 143; Code 1915, § 1293; Code 1935, § 1492; 10 Del. C. 1953, § 2322; 70 Del. Laws, c. 186, § 1.)

§ 2323 Seal.

The Prothonotary of New Castle County may from time to time replace the seal or seals of his or her office. When such replacement is made the old seal or seals shall be destroyed in the Prothonotary's presence.

(10 Del. C. 1953, § 2323; 51 Del. Laws, c. 345; 70 Del. Laws, c. 186, § 1.)

§ 2324 Deposits; distribution of interest.

(a) The prothonotary shall deposit any sums of money held by the Prothonotary for costs or fees in accordance with policies and guidelines established by the State Treasurer.

(b) The prothonotaries in each county shall distribute interest earned from and after October 1, 1987, on bail bond deposit accounts in the amount of 100 percent to the State Treasurer.

(10 Del. C. 1953, § 2324; 58 Del. Laws, c. 556, § 1; 61 Del. Laws, c. 328, § 1; 63 Del. Laws, c. 158, § 1; 66 Del. Laws, c. 185, § 13; 67 Del. Laws, c. 47, § 36; 70 Del. Laws, c. 186, § 1.)

Part II
Court Officers and Employees
Chapter 25
REGISTER IN CHANCERY OFFICE

§ 2501 Definitions.

As used in this chapter, the term "Register in Chancery Office" means the Register in Chancery of the Court of Chancery of the State, which shall be the Clerk's Office of that Court. When the term "Chief Register in Chancery" or "Register in Chancery" are used in connection with natural persons, they shall have the meaning set forth in § 2509 of this title.

(73 Del. Laws, c. 91, § 7.)

§ 2502 Location of offices, necessary supplies and equipment.

The State shall provide and assign office space and the necessary equipment and supplies for the Register in Chancery Office in each county of the State and whenever occasion requires, may change such space and assign different space.

(73 Del. Laws, c. 91, § 7.)

§ 2503 Records.

The Register in Chancery Office shall keep all records, books, papers and other things as the Court of Chancery requires.

(73 Del. Laws, c. 91, § 7.)

§ 2504 Register in Chancery Office; days open.

The Register in Chancery Office shall be open in each county each day except legal holidays, Saturdays and Sundays.

(73 Del. Laws, c. 91, § 7.)

§ 2505 Disposition of fees.

All the fees, costs, allowances and other perquisites which are taxable and paid to the Register in Chancery Office for any official service rendered shall be for the sole use of the State, and when received shall be paid to the State Treasurer.

(73 Del. Laws, c. 91, § 7.)

§ 2506 Duty to account for fees.

The Chief Register in Chancery shall collect all fees, costs and allowances by law taxable by or payable to the Register in Chancery Office, without any deduction, abatement or remission, except fees, costs and allowances payable by the State to such Office, and shall keep in a properly indexed record an itemized account showing the amount of each fee, item of cost and allowance by law taxable by or payable to such Office, and the service for which the same was rendered or charged, the date of payment, and the name of the person paying the same.

(73 Del. Laws, c. 91, § 7.)

§ 2507 Audit of fees.

The books, accounts, papers, records and dockets of the Register in Chancery Office shall be subject to audit, inspection and examination by the State Auditor in accordance with state law.

(73 Del. Laws, c. 91, § 7.)

§ 2508 Penalties for failure to collect and pay over fees.

If any employee of the Register of Chancery Office neglects or refuses to pay over all fees, costs, allowances and perquisites that employee receives and collects for use of the State, or fails to collect the fees required to be paid by law, or demands or receives from any person any fee or allowance greater than is provided by law, he or she may be prosecuted under any applicable provision of this Code. Such employee shall also be liable in a civil action for the amount of such fees, costs, allowances and perquisites as he or she may have thus illegally withheld, failed to collect or improperly received.

(73 Del. Laws, c. 91, § 7; 70 Del. Laws, c. 186, § 1.)

§ 2509 Chief Register in Chancery; duties and power.

(a) The Chief Register in Chancery is an employee of the Register in Chancery Office who shall be selected by the Court of Chancery to hold office at the pleasure of the Court. Subject to the supervision of the Court, the Chief Register shall serve as the Clerk of the Court of Chancery and be the administrative head of the Register of Chancery Office and its operations in each county. The Chief Register in

Chancery may also appoint other deputies, employ others, issue process, and enter judgment, and do such other things as are according to law and the practice of the Court.

(b) The Chief Register in Chancery may delegate to the Registers in Chancery in each county and other employees of the Register in Chancery Office such duties as the Chief Register deems advisable.

(c) The Chief Register in Chancery shall appoint, with the concurrence of the Court, a Register in Chancery in each county who shall be an employee of the Register in Chancery Office and who shall serve at the pleasure of the Court. The Chief Register in Chancery shall also hire and be responsible for the ultimate supervision, discipline and discharge of the Registers in Chancery and the other employees of the Register in Chancery Office, subject to the provisions of the judicial personnel rules and, in the case of the Registers in Chancery only, approval of the Court.

(d) The Chief Register in Chancery shall furnish to the Board of Assessment or the Department of Finance in each county a report of the changes of ownership of real estate as shown by the records of the Register in Chancery Office. The report shall contain a short description of the property and the names of the persons from whom title was derived and in whom title is vested, as such information appears in the transfers of title.

(10 Del. C. 1953, §§ 2501, 2504; 23 Del. Laws, c. 60, § 8; 24 Del. Laws, c. 86, § 2; 26 Del. Laws, c. 61; 27 Del. Laws, c. 73, §§ 1, 2; Code 1915, § 1439; 28 Del. Laws, c. 82, § 28; 29 Del. Laws, c. 91; 31 Del. Laws, c. 13, § 16; 32 Del. Laws, c. 67; 33 Del. Laws, c. 84, § 23; Code 1935, §§ 1420, 1453; 35 Del. Laws, c. 79, §§ 1, 2; 40 Del. Laws, c. 139, § 2; Code 1935, §§ 1191, 1598; 43 Del. Laws, c. 120, § 1; 44 Del. Laws, c. 100, §§ 1, 2; 44 Del. Laws, c. 101; 45 Del. Laws, c. 109, §§ 1, 2; 45 Del. Laws, c. 140, § 1; 46 Del. Laws, c. 298, §§ 1, 2; 47 Del. Laws, c. 192; 48 Del. Laws, c. 111, § 1; 10 Del. C. 1953, § 2503; 52 Del. Laws, c. 332, § 2; 53 Del. Laws, c. 36; 55 Del. Laws, c. 38; 55 Del. Laws, c. 85, §§ 32O, 32P; 55 Del. Laws, c. 87; 57 Del. Laws, c. 216, § 2; 57 Del. Laws, c. 762, § 31B; 60 Del. Laws, c. 217, § 1; 61 Del. Laws, c. 485, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 91, § 7.)

§ 2510 Compensation.

The compensation for the Chief Register in Chancery, the Registers in Chancery, and other employees of the Register in Chancery Office shall be as provided for in the annual Appropriations Act.

(23 Del. Laws, c. 60, § 7; Code 1915, § 1438; 40 Del. Laws, c. 139, § 1; Code 1935, § 1597; 44 Del. Laws, c. 98, § 1; 45 Del Laws, c. 138; 46 Del. Laws, c. 298, § 1; 10 Del. C. 1953, § 2502; 49 Del. Laws, c. 282, § 3; 49 Del. Laws, c. 307; 50 Del. Laws, c. 422, § 1; 52 Del. Laws, c. 52, § 3; 52 Del. Laws, c. 174, § 2; 53 Del. Laws, c. 222, § 7; 54 Del. Laws, c. 23, § 9; 54 Del. Laws, c. 215, § 7; 55 Del. Laws, c. 39; 56 Del. Laws, c. 204, § 1; 57 Del. Laws, c. 692, § 9; 59 Del. Laws, c. 514, § 1; 61 Del. Laws, c. 506, § 8; 65 Del. Laws, c. 163, § 8; 65 Del. Laws, c. 216, § 5; 67 Del. Laws, c. 255, § 6; 68 Del. Laws, c. 234, § 4; 73 Del. Laws, c. 91, § 7.)

Part II
Court Officers and Employees
Chapter 27
CONSTABLES

§ 2701 Appointment.

(a) The Board of Examiners of Constables shall appoint and commission such numbers of constables as it deems necessary, from among those persons who have made application, to preserve the peace and good order of the State.

(b) Upon expiration of a constable's term of office, the constable may request to the Board of Examiners that the commission as a constable be renewed. Approval for renewal shall be within the discretion of the Board of Examiners, and may be approved by it following such review.

(c) The Delaware Capitol Police may appoint security officers.

(d) The Delaware Capitol Police shall promulgate rules and regulations governing the qualifications and appointments of security officers with final approval of the Department of Safety and Homeland Security.

(Code 1852, §§ 618-621; 11 Del. Laws, c. 194; 11 Del. Laws, c. 215; 11 Del. Laws, c. 365; 11 Del. Laws, c. 405; 11 Del. Laws, c. 591; 12 Del. Laws, c. 29; 12 Del. Laws, c. 42; 13 Del. Laws, c. 404; 14 Del. Laws, c. 26, § 1; 15 Del. Laws, c. 25; 16 Del. Laws, c. 333; 17 Del. Laws, c. 40, § 1; 17 Del. Laws, c. 41; 18 Del. Laws, c. 478, § 1; 20 Del. Laws, c. 404, § 1; 21 Del. Laws, c. 22, § 10; 21 Del. Laws, c. 205, §§ 1, 2; 22 Del. Laws, c. 54, § 10; 22 Del. Laws, c. 295, § 1; 24 Del. Laws, c. 95, § 1; Code 1915, §§ 1397-1400, 1400A, 1400B; 29 Del. Laws, c. 83, § 1; 29 Del. Laws, c. 84, § 1; 30 Del. Laws, c. 88, § 1; 32 Del. Laws, c. 81, § 1; 33 Del. Laws, c. 89, § 1; 36 Del. Laws, c. 124, § 1; 40 Del. Laws, c. 138, § 1; Code 1935, §§ 1565-1567; 10 Del. C. 1953, §§ 2701-2705; 49 Del. Laws, c. 233; 49 Del. Laws, c. 239; 53 Del. Laws, c. 295; 54 Del. Laws, c. 15, §§ 1, 2; 54 Del. Laws, c. 36; 55 Del. Laws, c. 85, § 32Q; 64 Del. Laws, c. 72, § 1; 65 Del. Laws, c. 433, § 1; 67 Del. Laws, c. 351, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 322, § 6[5].)

§ 2702 Board of Examiners.

(a) The Board of Examiners shall consist of 5 individuals: The Superintendent of the Delaware State Police or the Superintendent's designee; the Director of Public Safety of the New Castle County Police or the Director's designee; the Attorney General or the Attorney General's designee; a representative from the Chiefs of Police Council; and a representative from the American Society of Industrial Security.

(b) The Board of Examiners shall be responsible for reviewing applications for constables, and shall satisfy itself that the applicants meet all the established requirements. The Board of Examiners shall be responsible for establishing such other general qualifications of applicants as the Board deems necessary. The Board of Examiners may conduct such further inquiry and investigation as it deems proper in order to satisfy itself of the good character, competency and integrity of the applicants.

(c) The Board of Examiners shall conduct an examination of an applicant's criminal history. A conviction for a felony in Delaware or elsewhere is an automatic grounds for disapproval of an application. The Board of Examiners shall review any misdemeanor convictions, and the Board may, in its discretion, disapprove of an application on the basis of such misdemeanor convictions.

(d) The Board of Examiners may establish a reasonable application fee.

(e) After the review process is completed, the Board of Examiners shall appoint and commission those applicants who have, as determined by the Board of Examiners, satisfied the requirements of this chapter and who are otherwise qualified to serve as constables.

(65 Del. Laws, c. 433, § 1; 67 Del. Laws, c. 351, § 2; 70 Del. Laws, c. 186, § 1.)

§ 2703 Qualification and training.

(a) A constable must be 21 years of age or older.

(b) To be approved by the Board of Examiners, a constable applicant shall meet the minimum standards established by the Board and shall participate in such other training as the Board requires.

(c) The Board of Examiners may require commissioned constables to receive such additional training or education as it deems necessary.

(d) Constables appointed before the effective date of this law shall, during the remainder of their term, meet all requirements related to firearms training, as set forth in subsection (e) of this section, and all requirements related to additional training as set forth in subsection (c) of this section. In order for such a constable to be eligible for renewal of commission, the constable must meet the requirements set forth in subsection (b) of this section.

(e) After appointment, the Board of Examiners shall determine, based on the constable's duties and employment, whether a constable shall be permitted to carry firearms while on duty as a constable. The Board of Examiners shall establish standards and requirements of firearms training and training in the use of deadly force for those constables permitted by the Board to carry firearms while on duty. Any constable not so trained is prohibited from carrying a firearm while on duty.

(f) No constable shall be appointed for the benefit of any person, firm, corporation, civic association or governmental entity except upon a showing to the Board of Examiners that the proposed appointment will be in aid and relief of public law-enforcement or police agencies and is necessary to protect life and property in circumstances where public law-enforcement or police agencies are unable to assist.

(g) No person shall be commissioned as a constable unless that person submits, to the State Bureau of Identification, their name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, address of legal residence and the provision of such other information as may be necessary to obtain a report of the person's entire criminal history record from the State Bureau of Identification and a report of the person's entire federal criminal history pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544.

(h) No sheriff or deputy sheriff shall be commissioned as a constable for the benefit of the sheriff's office or the government of a county unless a request has been made by resolution of the appropriate county council or Levy Court for such sheriff or deputy sheriff to be commissioned as a constable.

(65 Del. Laws, c. 433, § 1; 67 Del. Laws, c. 351, §§ 3, 4; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 372, § 1; 77 Del. Laws, c. 139, § 1; 78 Del. Laws, c. 266, § 23.)

§ 2704 Term of office; discharge [For application of this section, see 79 Del. Laws, c. 370, § 2]

(a) The term of office for constables shall be 2 years. Those constables appointed prior to July 13, 1990, shall have their commissions reviewed by the Board of Examiners within 1 year of July 13, 1990, and after review may be discharged by the Board for cause prior to the expiration of their term. A constable, including one appointed before July 13, 1990, may be discharged by the Board for cause prior to the expiration of the term. The Board of Examiners shall establish procedures for notification to the appropriate persons and authorities of its discharge of a constable. For the purposes of this section, "cause" shall mean:

(1) Conviction of a crime involving moral turpitude;

(2) Conviction of a felony;

(3) A finding by the Board that an individual used fraud or deceit in obtaining a constable's commission; or

(4) Gross negligence or incompetence in performing a constable's duties.

(b) It shall be the duty of the constable to notify the Board of Examiners immediately if the constable's employment with the individual, firm, corporation, civic association or governmental entity at whose instance the constable was appointed is terminated. It shall also be the duty of the individual, firm, corporation, civic association or governmental entity to notify the Board of Examiners immediately if a constable in their employ is terminated, and such individual performed duties as a constable during and as part of the employment.

(Code 1852, § 623; Code 1915, § 1408; 33 Del. Laws, c. 89, § 1; 40 Del. Laws, c. 138, § 1; Code 1935, §§ 1565, 1567, 1575; 10 Del. C. 1953, § 2710; 50 Del. Laws, c. 36, § 1; 55 Del. Laws, c. 85, § 32S; 65 Del. Laws, c. 433, § 1; 67 Del. Laws, c. 351, § 5; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 370, § 1.)

§ 2705 Powers and duties.

The constable shall:

(1) Protect life and property, and preserve peace and good order, while in the performance of the lawful duties of the employment;

(2) Exercise the same powers as peace officers and law-enforcement officers, in order to protect life and property, while in the performance of the lawful duties of the employment;

(3) Execute all lawful orders, warrants and other process directed to the constable by any court or judge of this State; however, a constable shall only have such power and duty if the Board of Examiners, upon review, determine that the constable may exercise such duty or power;

(4) As part of duty, and in the exercise of the constable's lawful authority, notify the full service police agency which has primary law-enforcement jurisdiction in every instance in which the constable makes a custodial detention, an arrest, a search of a person or place, or when the occurrence of a criminal act is reported to the constable. It shall be the responsibility of the full service police agency to undertake any necessary investigation and to comply with the reporting demands of the State Bureau of Identification.

For purposes of this paragraph, "full service police agency" shall mean a police force or other law-enforcement agency of the State, county or municipality which is responsible for the prevention and detection of crime and the enforcement of the laws of this State and its governmental units.

(Code 1852, § 630; 12 Del. Laws, c. 86; 15 Del. Laws, c. 443; Code 1915, §§ 1398, 1412; 33 Del. Laws, c. 89, § 3; Code 1935, §§ 1565, 1579; 10 Del. C. 1953, §§ 2723, 2724; 65 Del. Laws, c. 433, § 1; 67 Del. Laws, c. 351, § 6; 70 Del. Laws, c. 186, § 1.)

§ 2706 Jurisdiction.

Except as otherwise provided by law or limited by the Board of Examiners, the jurisdiction of each constable appointed pursuant to this chapter will extend throughout the State.

(Code 1852, § 630; 12 Del. Laws, c. 86; Code 1915, §§ 1398A, 1412; 33 Del. Laws, c. 89, § 3; 35 Del. Laws, c. 78, § 1; Code 1935, §§ 1565, 1579; 10 Del. C. 1953, §§ 2721, 2722; 55 Del. Laws, c. 85, § 32Q; 65 Del. Laws, c. 433, § 1.)

§ 2707 Oath.

Upon appointment, the Board of Examiners shall issue to each constable a commission and the constable so appointed shall, before acting or performing duties as a constable, take and subscribe, before any officer authorized by the laws of this State to administer oaths, the oaths or affirmation prescribed by article XIV of the Constitution of Delaware.

(65 Del. Laws, c. 433, § 1; 67 Del. Laws, c. 351, § 7.)

§ 2708 Compensation.

The compensation of every constable shall be wholly paid by the individual, firm, corporation or civic association at whose instance the constable was appointed, unless the constable is employed by a governmental entity, in which case that governmental entity will be responsible for the constable's compensation.

(65 Del. Laws, c. 433, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2709 Badges.

(a) Every person holding the office of constable shall have and display on proper demand a badge, approved by the Board of Examiners, with the word "constable" engraved thereon. A constable shall have and display such badge only while on duty and while in the performance of the lawful duties of employment. The name of the person, firm, corporation, civic association or governmental entity at whose instance the constable was appointed shall be plainly inscribed on such badge.

(b) Whoever violates this section shall be fined not more than $100. The justices of the peace of the respective counties shall have jurisdiction of offenses under this section. A constable found violating this section shall notify the Board of Examiners in writing within 10 days. The Board of Examiners shall review the violation and determine whether the constable should be discharged. A failure to notify the Board of Examiners of a violation within 20 days shall be sufficient ground to revoke constable status.

(22 Del. Laws, c. 78, §§ 1, 2; Code 1915, § 1417; Code 1935, § 1583; 10 Del. C. 1953, § 2727; 65 Del. Laws, c. 433, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2710 Exclusion from coverage.

Constables appointed pursuant to this chapter or any other chapter are not covered by the provisions of Chapter 92 of Title 11, Law-Enforcement Officers' Bill of Rights.

(65 Del. Laws, c. 433, § 1.)

Part II
Court Officers and Employees
Chapter 28
JUSTICE OF THE PEACE CONSTABLES

§ 2801 Appointment.

The Chief Magistrate of the Justice of the Peace Court system, or, if there is a vacancy in the office of Chief Magistrate, the Chief Justice of the Supreme Court, shall appoint such numbers of justice of the peace constables as shall be necessary to handle all process of the justices of the peace appointed pursuant to Chapter 92 of this title.

(10 Del. C. 1953, § 2801; 55 Del. Laws, c. 21; 64 Del. Laws, c. 271, § 1; 65 Del. Laws, c. 411, § 1.)

§ 2802 Duties; exclusive authority.

(a) The justice of the peace constables appointed pursuant to this chapter shall handle the process of the justices of the peace appointed pursuant to Chapter 92 of this title.

(b) Notwithstanding any other law, no constables appointed by any authority in this State shall be authorized to execute orders, warrants and other process directed to the constable by a justice of the peace pursuant to Chapter 92 of this title, unless the constable has been appointed pursuant to this chapter.

(c) Notwithstanding any other law, a justice of the peace constable appointed pursuant to this chapter shall have the authority to undertake the following duties:

(1) Execute all lawful orders, warrants and other process directed to the constable by a justice of the peace;

(2) Execute all writs of possession issued pursuant to § 5715 of Title 25 directed to the constable by a justice of the peace;

(3) Execute on all civil judgments directed to the constable by a justice of the peace;

(4) Serve all civil summonses directed to the constable by a justice of the peace;

(5) Serve all subpoenas directed to the constable by a justice of the peace;

(6) Transport all detentioners or convicted offenders to any Department of Correction facility pursuant to a commitment order directed to the constable by a justice of the peace;

(7) Execute on all capiases directed to the constable by a justice of the peace and issued by a justice of the peace;

(8) Conduct Justice of the Peace Court judicial levies and sales directed to the constable by a justice of the peace;

(9) Maintain the security and order in any Justice of the Peace Court and arrest all persons who shall commit any breach of the peace or contempt in said Court; and

(10) Perform any other related law-enforcement function required to maintain the dignity, integrity and security of the Justice of the Peace Court system.

(10 Del. C. 1953, § 2803; 55 Del. Laws, c. 21; 65 Del. Laws, c. 411, § 1; 70 Del. Laws, c. 232, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2803 Salary and term; mileage.

(a)(1) Justice of the peace constables appointed pursuant to this chapter shall be subject to all the rules and regulations as delineated in Chapter 59 of Title 29 dealing with merit system administration and shall be compensated in accordance with the State's uniform pay plan.

(2) All moneys collected by justice of the peace constables for fines, costs, fees or forfeitures shall be for the use of the State, except where otherwise directed by law.

(b) In addition to a salary, each justice of the peace constable shall be entitled to receive mileage at the rate of 25 cents per mile for each mile necessarily travelled in the necessary discharge of duties as constable. Each justice of the peace constable, on the last day of each month, shall present to the State Treasurer an itemized and verified account of all mileage fees incurred as aforesaid, and the State Treasurer shall pay the amount thereof to the constable. The total charge for mileage thus compiled in each case shall be charged as costs in the case and when collected shall be paid to the State Treasurer.

(10 Del. C. 1953, § 2804; 55 Del. Laws, c. 21; 55 Del. Laws, c. 285; 56 Del. Laws, c. 176; 57 Del. Laws, c. 577; 59 Del. Laws, c. 329, § 1; 64 Del. Laws, c. 334, § 63(b); 65 Del. Laws, c. 411, § 1; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 132, § 38(b).)

§ 2804 Location.

In the counties of this State there shall be at least the following number of justice of the peace constables:

New Castle . 16

Kent . 5

Sussex . 7

(10 Del. C. 1953, § 2805; 55 Del. Laws, c. 21; 65 Del. Laws, c. 411, § 1.)

§ 2805 Residence requirement.

Every justice of the peace constable appointed pursuant to this chapter shall reside within the State. If the constable removes from the State, the office shall thereupon become vacant.

(10 Del. C. 1953, § 2807; 55 Del. Laws, c. 21; 65 Del. Laws, c. 411, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 161, § 1.)

§ 2806 Training.

Every justice of the peace constable appointed pursuant to this chapter shall receive annual firearms training and training in the use of deadly force. Any justice of the peace constable not so trained is prohibited from carrying a firearm while on duty. In addition, justice of the peace constables shall receive annually such other training as is deemed appropriate by the Chief Magistrate. In all cases, however, a justice of the peace constable must meet the minimum standards established by the Council on Police Training for part-time police officers or the equivalent thereof approved by the Board.

(65 Del. Laws, c. 411, § 1.)

§ 2807 Prohibited activities and employments.

A justice of the peace constable appointed pursuant to this chapter shall not receive any other fees or emoluments for discharging judicial duties, except as may otherwise be provided by law, or engage in any occupation concerned with or growing out of the collection of any judgment rendered by a justice, or engage in the private security business or hold any state office, or be employed by the State in any other capacity.

(65 Del. Laws, c. 411, § 1; 70 Del. Laws, c. 186, § 1.)

§ 2808 Jurisdiction.

The jurisdiction of the justice of the peace constables appointed pursuant to this chapter shall extend throughout the State.

(10 Del. C. 1953, § 2808; 55 Del. Laws, c. 21; 65 Del. Laws, c. 411, § 1.)

Part II
Court Officers and Employees
Chapter 29
CODE ENFORCEMENT AND ANIMAL CONTROL CONSTABLES

§ 2901 Appointment.

The chief executive officer of any county or municipal corporation, or the Housing Director, in the case of the enforcement of the State Housing Code contained in Chapter 41 of Title 31, may appoint and employ such numbers of code enforcement and animal control constables as shall be necessary to enforce all ordinances pertaining to building, housing, sanitation, animal control or public health codes.

(65 Del. Laws, c. 364, § 1; 67 Del. Laws, c. 386, § 17; 77 Del. Laws, c. 251, §§ 2, 3.)

§ 2902 Duties; limited authority.

(a) The code enforcement and animal control constables appointed pursuant to this chapter may enforce only those codes and ordinances pertaining to building, housing, sanitation, zoning, animal control or public health.

(b) Notwithstanding any other law, a code enforcement and animal control constable appointed pursuant to this chapter shall not have jurisdiction outside the limits of the county or municipal corporation employing such constable. Provided, however, that a code enforcement constable appointed by the Housing Director shall have jurisdiction throughout the State to enforce the provisions of the State Housing Code in a county or municipality which has not adopted and/or undertaken to enforce the State Housing Code after July 12, 1988. In addition to the other powers set forth herein, such housing code enforcement constables may impose a voluntary assessment of $100 in cases involving first offenders of the State Housing Code.

(c) Code enforcement and animal control constables appointed pursuant to this chapter shall not be permitted to carry firearms while on duty as such.

(d) Notwithstanding any other law, a code enforcement or animal control constable may lawfully issue a summons to any person the constable has reasonable grounds to believe has committed an offense against any ordinance pertaining to building, housing, sanitation, animal control, zoning, or public health code of the county or municipal corporation by whom the constable is employed, directing the person to appear before a court having jurisdiction over such offense whether or not the offense was committed in the constable's presence.

(e) Any summons issued by a housing official with constable powers may, in cases involving first offenders, provide that in lieu of appearing in court, the offender may remit a voluntary assessment of $100.

(f) Any summons issued by a New Castle County code enforcement constable may provide that, in lieu of appearing in court, the offender may correct the offense and remit a voluntary assessment of up to $200 for each offense against any ordinance pertaining to building, housing, sanitation, zoning or public health code of New Castle County. The summons may provide that each day such violation continues shall constitute a separate offense.

(65 Del. Laws, c. 364, § 1; 66 Del. Laws, c. 218, §§ 1, 2; 67 Del. Laws, c. 386, §§ 18, 19; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 212, § 1; 77 Del. Laws, c. 251, §§ 4- 6.)

§ 2902A Prohibition against the issuance of a search warrant where probable cause does not exist.

Notwithstanding any state or local law, statute, ordinance or regulation to the contrary, no warrant to search any house, building, structure, place, conveyance or thing located in Sussex County shall be issued except upon probable cause supported by oath or affirmation as required by article I, § 6 of the Delaware Constitution of 1897.

(71 Del. Laws, c. 262, § 1.)

Part III
Procedure
Chapter 31
PROCESS; COMMENCEMENT OF ACTIONS

§ 3101 Date and return of writs commencing actions.

Every writ used for the commencement of an action shall bear date on the day it was issued and shall be returnable on the day fixed by the rules of the court issuing the writ, or, if there be no such rule, on the day fixed by statute.

(Code 1852, § 2237; Code 1915, § 4085; Code 1935, § 4576; 10 Del. C. 1953, § 3101.)

§ 3102 Payment of costs by nonresidents for issuance or execution of writs.

No prothonotary, Register in Chancery, clerk of any court, or justice of the peace in this State shall be compelled to issue any writ or other original process in a civil action, or any writ of execution on any judgment, in favor of any person not a resident of this State, unless the costs of the issuing of such writ are first paid or tendered to such officer; nor shall any sheriff, coroner, or constable be compelled to execute any such writ until the legal fees for such services are first paid or tendered to such officer by the plaintiff in such action, his or her attorney or agent; any law, custom or usage of this State to the contrary notwithstanding.

(12 Del. Laws, c. 266; Code 1915, § 4086; Code 1935, § 4577; 10 Del. C. 1953, § 3102; 70 Del. Laws, c. 186, § 1.)

§ 3103 Service and return of summons.

(a) A writ of summons may be served on the defendant in the manner prescribed by any rule of court, or by stating the substance of it to the defendant personally, or by leaving a copy of it at the defendant's usual place of abode, in the presence of some adult person, 6 days before the return thereof.

(b) The officer serving a summons shall state the officer's return the time and manner of service.

(c) No service of summons upon the State, or upon any administrative office, agency, department, board or commission of the state government, or upon any officer of the state government concerning any matter arising in connection with the exercise of his or her official powers or duties, shall be complete until such service is made upon the person of the Attorney General or upon the person of the State Solicitor or upon the person of the Chief Deputy Attorney General.

(Code 1852, §§ 2238, 2239; Code 1915, § 4087; Code 1935, § 4578; 10 Del. C. 1953, § 3103; 59 Del. Laws, c. 159, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3104 Personal jurisdiction by acts of nonresidents.

(a) The term "person" in this section includes any natural person, association, partnership or corporation.

(b) The following acts constitute legal presence within the State. Any person who commits any of the acts hereinafter enumerated thereby submits to the jurisdiction of the Delaware courts.

(c) As to a cause of action brought by any person arising from any of the acts enumerated in this section, a court may exercise personal jurisdiction over any nonresident, or a personal representative, who in person or through an agent:

(1) Transacts any business or performs any character of work or service in the State;

(2) Contracts to supply services or things in this State;

(3) Causes tortious injury in the State by an act or omission in this State;

(4) Causes tortious injury in the State or outside of the State by an act or omission outside the State if the person regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services, or things used or consumed in the State;

(5) Has an interest in, uses or possesses real property in the State; or

(6) Contracts to insure or act as surety for, or on, any person, property, risk, contract, obligation or agreement located, executed or to be performed within the State at the time the contract is made, unless the parties otherwise provide in writing.

(d) When the law of this State authorizes service of process outside the State, the service, when reasonably calculated to give actual notice, may be made:

(1) By personal delivery in the manner prescribed for service within this State.

(2) In the manner provided or prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction.

(3) By any form of mail addressed to the person to be served and requiring a signed receipt.

(4) As directed by a court.

(e) Proof of service outside this State may be made by affidavit of the individual who made the service or in the manner provided or prescribed by the law of this State, the order pursuant to which the service is made, or the law of the place in which the service is made

for proof of service in an action in any of its courts of general jurisdiction. When service is made by mail, proof of service shall include a receipt signed by the addressee or other evidence of personal delivery to the addressee satisfactory to the court.

(f) Service outside this State may be made by an individual permitted to make service of process under the law of this State or under the law of the place in which the service is made or who is designated by a court of this State.

(g) If service is made pursuant to paragraph (d)(3) of this section, the time in which defendant shall serve an answer shall be computed from the date of the mailing which is the subject of the return receipt or other official proof of delivery or the notation of refusal of delivery; provided, however, that the court in which the action is pending may, at any time before or after the expiration of the prescribed time for answering, order such continuances as may be necessary to afford the defendant therein reasonable opportunity to defend the action.

(h)(1) Proof of the defendant's nonresidence and of the mailing and receipt or refusal of the notice shall be made in such manner as the court, by rule or otherwise, shall direct.

(2) The return receipt or other official proof of delivery shall constitute presumptive evidence that the notice mailed was received by the defendant or the defendant's agent; and the notation of refusal shall constitute presumptive evidence that the refusal was by the defendant or the defendant's agent.

(i) Nothing herein contained limits or effects the rights to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the rights otherwise existing of service of legal process upon nonresidents.

(j) When jurisdiction over a person is based solely upon this section, only a cause of action arising from any act enumerated in this section may be asserted against the person.

(k) This section does not invalidate any other section of the Code that provides for service of summons on nonresidents. This section applies only to the extent that the other statutes that already grant personal jurisdiction over nonresidents do not cover any of the acts enumerated in this section.

(l) In any cause of action arising from any of the acts enumerated in this section, the court may provide for a stay or dismissal of action if the court finds, in the interest of justice, that the action should be heard in another forum.

(11 Del. Laws, c. 192; Code 1915, § 4088; Code 1935, § 4579; 10 Del. C. 1953, § 3104; 61 Del. Laws, c. 471, § 1; 64 Del. Laws, c. 52, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 329, § 1.)

§ 3105 Service and return of scire facias.

In every case in which a writ of scire facias may by law be issued, it shall be served and returned in the same manner as is provided in case of an original summons.

(Code 1852, § 2241(a); Code 1915, § 4090; Code 1935, § 4581; 10 Del. C. 1953, § 3105.)

§ 3106 Service of capias ad respondendum.

A writ of capias ad respondendum is served by arresting the defendant, but the defendant shall be discharged upon giving sufficient bail.

(Code 1852, § 2242; Code 1915, § 4091; Code 1935, § 4582; 10 Del. C. 1953, § 3106; 70 Del. Laws, c. 186, § 1.)

§ 3107 Arrest of nonresident on mesne process in suit by nonresident.

It shall not be lawful, at the suit of any nonresident, to arrest and hold to bail on mesne process any person who is a nonresident of this State at the time of issuing such process against such person, for any debt contracted without the limits of this State. If any such nonresident is so arrested, he or she may apply by petition in writing to any judge of this State, setting forth his or her residence and the state in which the debt was contracted, and the judge, on the production of satisfactory proof that the plaintiff was a nonresident at the time of issuing the process, and also that the petitioner is a nonresident of this State, and that the debt on which the petitioner was arrested was not contracted in this State, shall discharge the petitioner from custody. This section shall not be construed as affecting in any degree the law of attachment.

(12 Del. Laws, c. 211; Code 1915, § 4092; Code 1935, § 4583; 10 Del. C. 1953, § 3107; 70 Del. Laws, c. 186, § 1.)

§ 3108 Prerequisites for issuance of capias ad respondendum.

(a) No writ of capias ad respondendum shall be issued against any citizen of this State, in any civil action, unless the plaintiff therein, or if there be more than 1, some 1 or more of the plaintiffs, has made a written affidavit, and filed the same in the office of the prothonotary of the Superior Court of the county out of which the writ is to issue, stating that, to the best of his or her belief, the defendant has absconded, or is about to abscond from the place of the defendant's usual abode; or that the defendant is justly indebted to the plaintiff, in a sum exceeding $50, and that he or she verily believes the defendant has secreted, conveyed away, assigned, settled or disposed of, either money, goods, chattels, stock, securities for money, or other personal estate or real estate of the value of more than $100, with intent to defraud his or her creditors, and shall, moreover, in such affidavit, specify and set forth the supposed fraudulent transactions. This section shall not apply where the action is for libel, slander or injury to the person or property, accompanied by violence, if any affidavit of the cause of action is filed with the praecipe.

(b) The Superior Court, upon the petition of any person arrested and upon reasonable notice in writing to the party in whose favor the process issued, or such party's attorney or agent, shall investigate the allegations contained in any affidavit made and filed under

this section, that the defendant has absconded or is about to abscond from the place of his or her usual abode, and the allegations and specifications of fraud contained in such affidavit. If, upon such investigation, the Court or Judge considers that there was not or is not sufficient cause for the arrest, the person arrested shall be discharged, and the plaintiff shall pay the costs. The Court or Judge may make and enforce all necessary and proper orders in the premises.

(15 Del. Laws, c. 180; 16 Del. Laws, c. 530; Code 1915, § 4093; Code 1935, § 4584; 10 Del. C. 1953, § 3108; 70 Del. Laws, c. 186, § 1.)

§ 3109 Amicable actions.

Any persons willing to become parties to an amicable action may enter into an agreement in writing for that purpose, either personally or by their agents or attorneys. On filing such agreement with the prothonotary, the prothonotary shall docket the action in the Superior Court, and from the time of such entry the action shall be deemed to be depending in the same manner as if the defendant had appeared to a summons issued against him or her by the plaintiff.

(Code 1852, § 2243; Code 1915, § 4094; Code 1935, § 4585; 10 Del. C. 1953, § 3109; 70 Del. Laws, c. 186, § 1.)

§ 3110 Commencement of actions by attachment.

Actions may be begun by attachment as provided in Chapter 35 of this title.

(Code 1915, § 4097; Code 1935, § 4588; 10 Del. C. 1953, § 3110.)

§ 3111 Actions against corporations; service of process.

(a) Actions may be brought against any corporation, at law or in chancery, by summons. Process may be served on the president, or head officer, if residing in the State, and if not, on any officer, director, or manager of the corporation. When a cause of action arises in this State against any corporation incorporated outside of this State, and there is no president or head officer of such corporation or any officer, director or manager thereof resident in this State, nor any certified agent thereof, for the service of process, resident in this State, process against such corporation may be served upon any agent of such corporation then being in the State. If such corporation appears, the action shall proceed as in other cases, and if it fails to appear, the plaintiff shall have judgment by default, service of the process being first proved. In an action upon the note of a bank, payable at one of its branches, service of process upon the president or cashier of that branch shall be sufficient. Copies of any rules of court, notice, proceeding, or order, may be served in the same way as original process or upon the attorney of record.

(b) In any action against a corporation whose officers reside out of the State, process may be served by publishing the substance thereof in a newspaper of this State, and of the state where the head officer resides, 20 days before the return thereof, and such service shall be sufficient.

(c) In respect to such corporation, 10 days notice of any motion, rule, order, or other matter or proceeding is sufficient. Such notice may be served personally on the president, any director or manager, or on the attorney of the corporation, or by copy of the rule or other matter sent by mail to the president or head officer at his or her usual place of abode, or by publishing the same in a newspaper near thereto.

(d) Service upon corporations may also be made as provided by § 321 of Title 8.

(Code 1852, §§ 1246-1248; 21 Del. Laws, c. 273, § 43; 22 Del. Laws, c. 166, § 2; Code 1915, § 4098; 29 Del. Laws, c. 257; Code 1935, § 4589; 10 Del. C. 1953, § 3111; 70 Del. Laws, c. 186, § 1.)

§ 3112 Service of process on nonresident operators of motor vehicles.

Repealed by 76 Del. Laws, c. 329, § 3, effective Oct. 7, 2008.

§ 3113 Service of process on resident owner and operator of motor vehicles who depart from the State after an accident.

Section 3104 of this title shall also apply to a resident who departs from the State subsequent to the accident or collision and remains absent therefrom for 30 days continuously, whether such absence is intended to be temporary or permanent, and to any executor or administrator of such resident.

(10 Del. C. 1953, § 3113; 54 Del. Laws, c. 249; 76 Del. Laws, c. 329, § 4.)

§ 3114 Service of process on nonresident directors, trustees, members of the governing body or officers of Delaware corporations.

(a) Every nonresident of this State who after September 1, 1977, accepts election or appointment as a director, trustee or member of the governing body of a corporation organized under the laws of this State or who after June 30, 1978, serves in such capacity, and every resident of this State who so accepts election or appointment or serves in such capacity and thereafter removes residence from this State shall, by such acceptance or by such service, be deemed thereby to have consented to the appointment of the registered agent of such corporation (or, if there is none, the Secretary of State) as an agent upon whom service of process may be made in all civil actions or proceedings brought in this State, by or on behalf of, or against such corporation, in which such director, trustee or member is a necessary

or proper party, or in any action or proceeding against such director, trustee or member for violation of a duty in such capacity, whether or not the person continues to serve as such director, trustee or member at the time suit is commenced. Such acceptance or service as such director, trustee or member shall be a signification of the consent of such director, trustee or member that any process when so served shall be of the same legal force and validity as if served upon such director, trustee or member within this State and such appointment of the registered agent (or, if there is none, the Secretary of State) shall be irrevocable.

(b) Every nonresident of this State who after January 1, 2004, accepts election or appointment as an officer of a corporation organized under the laws of this State, or who after such date serves in such capacity, and every resident of this State who so accepts election or appointment or serves in such capacity and thereafter removes residence from this State shall, by such acceptance or by such service, be deemed thereby to have consented to the appointment of the registered agent of such corporation (or, if there is none, the Secretary of State) as an agent upon whom service of process may be made in all civil actions or proceedings brought in this State, by or on behalf of, or against such corporation, in which such officer is a necessary or proper party, or in any action or proceeding against such officer for violation of a duty in such capacity, whether or not the person continues to serve as such officer at the time suit is commenced. Such acceptance or service as such officer shall be a signification of the consent of such officer that any process when so served shall be of the same legal force and validity as if served upon such officer within this State and such appointment of the registered agent (or, if there is none, the Secretary of State) shall be irrevocable. As used in this section, the word "officer" means an officer of the corporation who:

(1) Is or was the president, chief executive officer, chief operating officer, chief financial officer, chief legal officer, controller, treasurer or chief accounting officer of the corporation at any time during the course of conduct alleged in the action or proceeding to be wrongful;

(2) Is or was identified in the corporation's public filings with the United States Securities and Exchange Commission because such person is or was 1 of the most highly compensated executive officers of the corporation at any time during the course of conduct alleged in the action or proceeding to be wrongful; or

(3) Has, by written agreement with the corporation, consented to be identified as an officer for purposes of this section.

(c) Service of process shall be effected by serving the registered agent (or, if there is none, the Secretary of State) with 1 copy of such process in the manner provided by law for service of writs of summons. In addition, the prothonotary or the Register in Chancery of the court in which the civil action or proceeding is pending shall, within 7 days of such service, deposit in the United States mails, by registered mail, postage prepaid, true and attested copies of the process, together with a statement that service is being made pursuant to this section, addressed to such director, trustee, member or officer:

(1) At the corporation's principal place of business; and

(2) At the residence address as the same appears on the records of the Secretary of State, or, if no such residence address appears, at the address last known to the party desiring to make such service;

provided, however, that if any such director's, trustee's, member's or officer's address as described in paragraph (c)(2) of this section shall be the same as the address described in paragraph (c)(1) of this section, then the prothonotary or Register in Chancery shall be required to make only 1 such mailing to such director, trustee, member or officer, at the address described in paragraph (c)(1) of this section.

(d) In any action in which any such director, trustee, member or officer has been served with process as hereinabove provided, the time in which a defendant shall be required to appear and file a responsive pleading shall be computed from the date of mailing by the prothonotary or the Register in Chancery as provided in subsection (c) of this section; however, the court in which such action has been commenced may order such continuance or continuances as may be necessary to afford such director, trustee, member or officer reasonable opportunity to defend the action.

(e) Nothing herein contained limits or affects the right to serve process in any other manner now or hereafter provided by law. This section is an extension of and not a limitation upon the right otherwise existing of service of legal process upon nonresidents.

(f) The Court of Chancery and the Superior Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof and such other rules which may be necessary to implement this section and are not inconsistent with this section.

(61 Del. Laws, c. 119, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 83, §§ 1-5; 77 Del. Laws, c. 24, § 1.)

Part III
Procedure
Chapter 35
ATTACHMENTS

§ 3501 Domestic attachment; when writ may be issued.

A writ of domestic attachment may be issued against an inhabitant of this State upon proof satisfactory to the court that the defendant cannot be found, or that the defendant is justly indebted to the plaintiff in a sum exceeding $50, and has absconded from the defendant's usual place of abode or is about to leave the State or has gone out of the State with intent to defraud his or her creditors or to elude process.

(Code 1852, § 2264; Code 1915, § 4118; Code 1935, § 4606; 10 Del. C. 1953, § 3501; 52 Del. Laws, c. 341; 70 Del. Laws, c. 186, § 1.)

§ 3502 Corporations subject to attachment and garnishment.

(a) All corporations doing business in this State, except as specified in subsections (b) and (c) of this section, are subject to the operations of the attachment laws of this State, as provided in the case of individuals. A corporation shall be liable to be summoned as garnishee.

(b) Banks, trust companies, savings institutions and loan associations, except only as to a wage attachment against the wages of an employee of the bank, trust company, savings institution or loan association, shall not be subject to the operations of the attachment laws of this State.

(c) Insurance companies, except as to moneys due in consequence of the happening of the risk provided for in the policy of insurance or a wage attachment against the wages of an employee of the insurance company, shall not be liable to attachment.

(14 Del. Laws, c. 90; 16 Del. Laws, c. 140; 18 Del. Laws, c. 681; Code 1915, § 4120; 30 Del. Laws, c. 226; Code 1935, § 4608; 10 Del. C. 1953, § 3502; 52 Del. Laws, c. 341; 65 Del. Laws, c. 49, § 1; 70 Del. Laws, c. 327, § 48.)

§ 3503 Public officers and employees subject to attachment and garnishment.

(a) The attachment laws of this State shall apply to employees of the State, or of any county, district or municipality with the same force and effect as they apply to other individuals. Any officer of the State, or of any county, district or municipality, whose duty it is to pay such employees compensation from funds of the State, county, district or municipality for any services rendered by such employees to the State, county, district or municipality may be summoned to appear and answer as other garnishees are required to do.

(b) The term "employee" as used in subsection (a) of this section includes any and every person performing any and every form of labor and work for the State, county, district or municipality for compensation.

(42 Del. Laws, c. 152, §§ 1, 2; 10 Del. C. 1953, § 3503; 52 Del. Laws, c. 341.)

§ 3504 Unincorporated association subject to attachment and garnishment.

(a) A writ of attachment may be issued in any action brought against any unincorporated association of persons, including a partnership, by using its common name. Service of process of such attachment may be made on any officer, director, manager, agent or employee of such unincorporated association, or on any agent authorized by law to accept service of process.

(b) Any sheriff, constable or other officer, executing any writ of attachment under the provisions of this section may attach the lands and tenements, goods and chattels, rights and credits, and moneys and effects of the defendant association and may also attach the lands and tenements, goods and chattels, rights and credits, and moneys and effects of any or all of the individuals composing such association in the same manner as if they had been made parties defendant by their individual names.

(26 Del. Laws, c. 267, §§ 1-5; Code 1915, § 4121; 30 Del. Laws, c. 227; Code 1935, § 4609; 10 Del. C. 1953, § 3504; 52 Del. Laws, c. 341; 59 Del. Laws, c. 104, § 1.)

§ 3505 Worthless checks or unpaid settlement memoranda.

A writ of attachment may be issued in any action brought against any person who has issued a worthless check against an account in which there are not sufficient funds to pay such check, or where the person has issued slips or memoranda in settlements, which have not been paid.

(27 Del. Laws, c. 281; Code 1915, § 4141; Code 1935, § 4629; 10 Del. C. 1953, § 3505; 52 Del. Laws, c. 341.)

§ 3506 Foreign attachment against individuals.

A writ of foreign attachment may issue against any individual not an inhabitant of this State on any cause of action after proof satisfactory to the court that the defendant cannot be found, that the defendant resides out of the State, and that plaintiff has a good cause of action against the defendant in a sum exceeding $50.

(Code 1852, § 2290; 16 Del. Laws, c. 533; Code 1915, § 4142; Code 1935, § 4630; 10 Del. C. 1953, § 3506; 52 Del. Laws, c. 341.)

§ 3507 Foreign attachment against foreign corporations.

A writ of foreign attachment may be issued against any corporation, aggregate or sole, not created by or existing under the laws of this State upon proof satisfactory to the court that the defendant is a corporation not created by, or existing under the laws of this State, and that the plaintiff has a good cause of action against the defendant in an amount exceeding $50.

(11 Del. Laws, c. 426; 15 Del. Laws, c. 181; 15 Del. Laws, c. 182, §§ 1-3; Code 1915, § 4143; Code 1935, § 4631; 10 Del. C. 1953, § 3507; 52 Del. Laws, c. 341.)

§ 3508 Property subject to attachment.

Goods, chattels, rights, credits, moneys, effects, lands and tenements may be attached under this chapter.

(10 Del. C. 1953, § 3508; 52 Del. Laws, c. 341.)

§ 3509 Proceedings against garnishees.

If any garnishee, duly summoned shall not appear as required, the garnishee may be compelled, by attachment, to appear and answer or plead. The plaintiff may be compelled to pay a fee to the garnishee in such amount as may be fixed from time to time by rule of the Superior Court.

An employer shall not dismiss an employee because the employer was summoned as garnishee for the employee.

(10 Del. C. 1953, § 3509; 52 Del. Laws, c. 341; 57 Del. Laws, c. 589; 70 Del. Laws, c. 186, § 1.)

§ 3510 Capias against garnishee.

If it be shown to the court that any garnishee, summoned or to be summoned thereon, is not an inhabitant of the county where the attachment is pending, or is about to leave the county, then a capias may issue against such garnishee to hold the garnishee to bail for garnishee's appearance at court to answer or plead.

(10 Del. C. 1953, § 3510; 52 Del. Laws, c. 341; 70 Del. Laws, c. 186, § 1.)

§ 3511 Effect of sales.

All sales under this chapter shall be good against the defendant or the defendant's executors, administrators and assigns. Any transfer or assignment of the property after attachment shall be void, and after the sale of the property is made and confirmed the purchaser shall be entitled to and have all the right, title and interest of the defendant in and to the property so attached and sold, and such sale and confirmation shall transfer to the purchaser all the right, title and interest of the defendant in and to the property as fully as if the defendant had transferred the same to the purchaser in accordance with law. If action is brought against any officer or other person acting under the authority of this chapter, it shall be a good defense that his or her act was done in compliance with this chapter and in accordance with the applicable rules of court.

(10 Del. C. 1953, § 3511; 52 Del. Laws, c. 341; 70 Del. Laws, c. 186, § 1.)

§ 3512 Authority of Superior Court to make rules respecting attachments.

The Superior Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof, modes of proof, manner of seizure of property, sale of perishable property, appointment and duties of auditors, the release of property from attachment and the sale of property so seized, and all other matters relating to attachment proceedings, and may require the plaintiff to give approved security to indemnify the defendant for defendant's costs, losses and damages resulting from the attachment.

(10 Del. C. 1953, § 3512; 52 Del. Laws, c. 341; 70 Del. Laws, c. 186, § 1.)

§ 3513 Superior Court Rules govern attachment by justices of the peace and other inferior courts.

Except where otherwise expressly provided, the Rules of the Superior Court shall govern the procedures in all attachments issued by justices of the peace and other inferior courts. The Superior Court, upon the motion of any defendant or tenant whose property, rights or credits may be attached under any mesne process of attachment issued by a justice of the peace or other inferior court, shall investigate the proofs required by law to be made and filed before the issuing of such process. If upon such investigation the Court considers that there was not sufficient grounds for the attachment, the property, rights and credits attached shall be discharged.

(10 Del. C. 1953, § 3513; 52 Del. Laws, c. 341.)

Part III
Procedure
Chapter 37
SURVIVAL OF ACTIONS AND CAUSES OF ACTION; WRONGFUL DEATH ACTIONS
Subchapter I
Survival of Actions and Causes of Action

§ 3701 Causes of action generally.

All causes of action, except actions for defamation, malicious prosecution, or upon penal statutes, shall survive to and against the executors or administrators of the person to, or against whom, the cause of action accrued. Accordingly, all actions, so surviving, may be instituted or prosecuted by or against the executors or administrators of the person to or against whom the cause of action accrued. This section shall not affect the survivorship among the original parties to a joint cause of action.

(Code 1852, § 2295; Code 1915, § 4154; Code 1935, § 4637; 47 Del. Laws, c. 383; 10 Del. C. 1953, § 3701.)

§ 3702 Death of party.

Upon the death of one or more of several plaintiffs or defendants in an action, wherein the cause of action survives, such action shall not abate, but may be prosecuted by or against the surviving plaintiff, or defendant.

(Code 1852, § 2294; Code 1915, § 4153; Code 1935, § 4636; 10 Del. C. 1953, § 3702.)

§ 3703 Executor's or administrator's death or removal.

An action commenced by or against an executor or administrator shall not be abated by his or her death or removal from office, but a succeeding executor or administrator may be admitted a party plaintiff or made a party defendant to such action.

(Code 1852, § 2296; Code 1915, § 4156; Code 1935, § 4639; 10 Del. C. 1953, § 3703; 70 Del. Laws, c. 186, § 1.)

§ 3704 Personal injury actions.

No action brought to recover damages for injuries to the person by negligence or default shall abate by reason of the death of the plaintiff, but the personal representatives of the deceased may be substituted as plaintiff and prosecute the suit to final judgment and satisfaction.

(13 Del. Laws, c. 31, §§ 1, 2; 22 Del. Laws, c. 210; Code 1915, § 4155; Code 1935, § 4638; 10 Del. C. 1953, § 3704; 63 Del. Laws, c. 256, § 3.)

§ 3705 Appeals and writs of error.

Appeals and writs of error are within the provisions of this chapter.

(Code 1852, § 2297; Code 1915, § 4157; Code 1935, § 4640; 10 Del. C. 1953, § 3705.)

§ 3706 Judgment for or against executor or administrator.

(a) The benefit of a judgment for or against an executor or administrator shall not be lost by executor's or administrator's death or removal from office, but proceedings may be had upon such judgment either at the suit of or against a succeeding executor or administrator.

(b) An executor or administrator may be admitted a party plaintiff to a judgment, on motion, without scire facias.

(Code 1852, §§ 2298, 2299; 12 Del. Laws, c. 477; 14 Del. Laws, c. 88; Code 1915, § 4158; Code 1935, § 4641; 10 Del. C. 1953, § 3706; 70 Del. Laws, c. 186, § 1.)

§ 3707 Statutory right of action.

A statutory right of action or remedy against any officer or person, in favor of any person, shall survive to, or against the executor or administrator of such officer or person, unless it be specially restricted in the statute.

(Code 1852, § 2300; Code 1915, § 4159; Code 1935, § 4642; 10 Del. C. 1953, § 3707.)

§ 3708 Public officer's action.

An action brought by or in the name of any public officer shall not abate by the officer's death, resignation, removal from office, or the expiration of the officer's term, but may be prosecuted by the officer's successor, if there be a successor who might have originally commenced and prosecuted the like action.

(Code 1852, § 2330; Code 1915, § 4191; Code 1935, § 4670; 10 Del. C. 1953, § 3708; 70 Del. Laws, c. 186, § 1.)

Subchapter II
Wrongful Death Actions

§ 3721 Definitions.

As used in this subchapter:

(1) "Child" includes an illegitimate child.

(2) "Parent" includes the mother and father of a deceased illegitimate child.

(3) "Person" includes an individual, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind, or any partnership, firm, association, public or private corporation, or any other entity.

(4) "Sibling" means brothers and sisters of the whole and half blood or by order of adoption.

(5) "Wrongful act" means an act, neglect or default including a felonious act which would have entitled the party injured to maintain an action and recover damages if death had not ensued.

(63 Del. Laws, c. 256, § 4; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 47, § 1.)

§ 3722 Liability notwithstanding death.

(a) An action may be maintained against a person whose wrongful act causes the death of another.

(b) If the death of a person was caused by a wrongful act, neglect or default of a vessel, an action in rem may be maintained against the vessel.

(c) If a person whose wrongful act caused the death of another dies before an action under this section is commenced, the action may be maintained against a personal representative.

(63 Del. Laws, c. 256, § 4; 70 Del. Laws, c. 186, § 1.)

§ 3723 Wrongful act occurring outside of Delaware.

Repealed by 71 Del. Laws, c. 265, § 1, effective Apr. 20, 1998.

§ 3724 Action for wrongful death.

(a) An action under this subchapter shall be for the benefit of the spouse, parent, child and siblings of the deceased person.

(b) If there are no persons who qualify under subsection (a) of this section, an action shall be for the benefit of any person related to the deceased person by blood or marriage.

(c) In an action under this subchapter, damages may be awarded to the beneficiaries proportioned to the injury resulting from the wrongful death. The amount recovered shall be divided among the beneficiaries in shares directed by the verdict.

(d) In fixing the amount of damages to be awarded under this subchapter, the court or jury shall consider all the facts and circumstances and from them fix the award at such sum as will fairly compensate for the injury resulting from the death. In determining the amount of the award the court or jury may consider the following:

(1) Deprivation of the expectation of pecuniary benefits to the beneficiary or beneficiaries that would have resulted from the continued life of the deceased;

(2) Loss of contributions for support;

(3) Loss of parental, marital and household services, including the reasonable cost of providing for the care of minor children;

(4) Reasonable funeral expenses not to exceed $7,000, or the amount designated in § 5546(a) of Title 29, whichever is greater;

(5) Mental anguish resulting from such death to the surviving spouse and next-of-kin of such deceased person. However, when mental anguish is claimed as a measure of damages under this subchapter, such claim for mental anguish will be applicable only to the surviving spouse, children and persons to whom the deceased stood in *loco parentis* at the time of the injury which caused the death of the deceased, parents and persons standing in *loco parentis* to the deceased at the time of the injury which caused the death of the deceased (if there is no surviving spouse, children or persons to whom the deceased stood in *loco parentis*), and siblings (if there is no surviving spouse, children, persons to whom the deceased stood in *loco parentis* at the time of the injury, parents or persons standing in *loco parentis* to the deceased at the time of the injury which caused the death of the deceased).

(e) Only 1 action under the subchapter lies in respect to the death of a person.

(f) For the purposes of this section, a person born to parents who have not participated in a marriage ceremony with each other is considered to be the child of the mother. The person is considered to be the child of the other parent only if the father:

(1) Has been judicially determined to be the father; or

(2) Prior to the death of the child:

a. Has acknowledged himself, in writing, to be the father; or

b. Has openly and notoriously recognized the person to be his child; or

c. Has subsequently married the mother and has acknowledged himself, orally or in writing, to be the father.

(63 Del. Laws, c. 256, § 4; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 47, §§ 2, 3; 75 Del. Laws, c. 266, § 1.)

§ 3725 Purpose.

The purpose of this subchapter is to permit the recovery of damages not limited to pecuniary losses by persons injured as the result of the death of another person.

(63 Del. Laws, c. 256, § 4.)

Part III
Procedure
Chapter 39
PLEADING AND PRACTICE

§ 3901 Affidavits of defense; judgments by default on written instruments; opening judgments.

(a) In all actions upon bills, notes, bonds or other instruments of writing for the payment of money or for the recovery of book accounts, on foreign judgments, and in all actions of scire facias on recognizances, judgments or mortgages, the plaintiff may specifically require the defendant or defendants to answer any or all allegations of the complaint by an affidavit setting forth the specific nature and character of any defense and the factual basis therefor, by the specific notation upon the face of the complaint that those allegations must be answered by affidavits.

(b) If defense is to a part only of the cause of action, the defendant, or if there be more than 1, any 1 or more of them shall, in such affidavit, specify the sum which the defendant or they admits or admit to be due, and judgment shall be entered for the plaintiff at the plaintiff's election for the sum acknowledged to be due.

(c) A defendant need not file an affidavit to answer any allegation, whether or not designated pursuant to this section, unless the plaintiff or plaintiffs files with the complaint a copy of the instrument of writing, book entries or claims, or, in case of a scire facias, a certified abstract or transcript of the judgment, mortgage or recognizance, and in case of a suit on a foreign judgment a copy of the judgment, certified to under 28 U.S.C. § 1738.

(d) If the plaintiff or plaintiffs complies with this section, and the defendant or defendants fails to respond to the designated allegations by affidavit filed with the answer or answers, the designated allegations will be deemed admitted, and default judgment may be entered thereon, in the discretion of the court and upon motion by the plaintiff.

(e) Upon any judgment under this section a stay of execution for 6 months shall be granted on security being given by the defendant for the payment of such judgment, with interest and costs, in such form as by the rules of the court are prescribed. In case of a suit by or against a corporation, the affidavit by the cashier or treasurer shall be sufficient in this section. In case of security being given as aforesaid by the defendant, the entry of such security shall have all the force and effect of a judgment, and at the expiration of the stay given, the judgment, with costs, may be collected by execution process sued out jointly or severally against the principal and surety. Any affidavit authorized under this chapter may be taken out of this State before any judge of any court of record, the mayor or chief magistrate of any city or borough, a Commissioner of Deeds for this State, or any consul or vice-consul of the United States, or before any notary public of any state or territory within the United States or of the District of Columbia. The affidavit shall be certified under the hand and official seal, or seal of the court, city or borough, as the case may be, of the person taking the same.

(f) Upon sufficient cause shown, the court may open such judgment and let the defendant into a trial, security being first given, in manner and form as provided in subsection (e) of this section, for the payment of such judgment, with interest and costs, as the plaintiff may recover in such action.

(g) In actions commenced by a capias ad respondendum, if special bail is not given at the term to which the process is returnable, the plaintiff may, at the plaintiff's election, on the last day of the term, cause a common appearance to be entered for the defendant, and move for judgment, under this section, in like manner as if special bail had been given.

(h) The amount of a judgment by virtue of this section shall be ascertained under the order of the court, and shall not exceed the sum demanded in the complaint filed by the plaintiff.

(i) The court, in its discretion, may extend the time in which the defendant or defendants has to answer or otherwise do anything authorized by its Rules of Civil Procedure.

(Code 1852, §§ 2305-2308; 14 Del. Laws, c. 556, § 2; 16 Del. Laws, c. 142; 18 Del. Laws, c. 223; Code 1915, § 4169; Code 1935, § 4648; 41 Del. Laws, c. 210; 42 Del. Laws, c. 151; 43 Del. Laws, c. 232; 10 Del. C. 1953, § 3901; 65 Del. Laws, c. 296, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3902 Assignee suing in own name.

A person to whom a contract, express or implied, has been transferred or assigned, either in accordance with a statute or with the common law, may sue thereon in his or her own name.

(Code 1915, § 4210A; 30 Del. Laws, c. 228; Code 1935, § 4684; 10 Del. C. 1953, § 3902; 70 Del. Laws, c. 186, § 1.)

§ 3903 Bail bonds, recognizances, peace bonds or appearance bonds; actions on.

Whenever any court orders and adjudges a bail bond, recognizance, or bond to keep the peace, or for the appearance of a defendant or of a witness, in any court, forfeited, then in any action on such forfeited bail bond, recognizance, or bond to keep the peace, or for the appearance of a defendant or of a witness, if a copy of such bail bond, bond, or recognizance has been filed with the complaint, the Attorney General, or any other attorney, on behalf of the State, or plaintiff, shall be at liberty to move for judgment after the defendant's

time for filing his or her answer has expired, unless the defendant or one of the defendants, if there be more than one, or some one for such defendant or defendants, has filed an affidavit of defense in the action, stating therein the nature and character of the same. The Attorney General shall sue upon and collect all such forfeited bail bonds, recognizances, or bonds.

(Code 1852, § 2311; 26 Del. Laws, c. 268; Code 1915, § 4173; Code 1935, § 4652; 10 Del. C. 1953, § 3903; 70 Del. Laws, c. 186, § 1.)

§ 3904 Suits and judgments by and against unincorporated associations.

An unincorporated association of persons, including a partnership, using a common name may sue and be sued in such common name and a judgment recovered therein shall be a lien like other judgments, and may be executed upon by levy, seizure and sale of the personal and real estate of such association, and also that of the persons composing such association in the same manner with respect to them as if they had been made parties defendant by their individual names. Satisfaction thereof may also be obtained by attachment process.

(13 Del. Laws, c. 32, § 1; Code 1915, § 4198; Code 1935, § 4676; 10 Del. C. 1953, § 3904; 59 Del. Laws, c. 104, § 2.)

§ 3905 Action for detention of goods and chattels.

When any goods or chattels are unlawfully detained from the owner or the person entitled to the possession thereof, such owner or person may have remedy to recover the same by a civil action.

(Code 1852, § 2325; Code 1915, § 4185; Code 1935, § 4664; 10 Del. C. 1953, § 3905.)

§ 3906 Action to recover goods seized by execution or attachment.

A civil action may be brought to recover goods and chattels seized by virtue of any process of execution or attachment, with damages and costs for the taking and detention thereof, against the officer seizing the same, at the suit of the owner of such goods and chattels not being the defendant in the execution or attachment, the proper pledges and security being given, as in other cases, by the plaintiff in such civil action, before delivery to him or her of the goods and chattels sought to be recovered.

(Code 1852, § 2326; Code 1915, § 4186; Code 1935, § 4665; 10 Del. C. 1953, § 3906; 70 Del. Laws, c. 186, § 1.)

§ 3907 Demand in actions to recover goods and chattels; necessity for proof.

In all actions to recover goods and chattels, no proof of demand shall be necessary, but the bringing of the action shall be considered a sufficient demand for all purposes. The failure at the trial to prove any demand shall not be a cause for dismissal, nor shall such failure inure in anywise whatsoever to the benefit or advantage of the defendant in the action.

(18 Del. Laws, c. 220; Code 1915, § 4187; Code 1935, § 4666; 10 Del. C. 1953, § 3907.)

§ 3908 Judgments by confession; warrant of attorney.

No complaint shall be necessary nor shall any cognovit be required for the confession of any judgment. Every warrant of attorney authorizing the confession of judgment, whether after complaint or otherwise, shall be taken to authorize such confessions without the filing of any such complaint; except as provided in § 2306 of this title.

(13 Del. Laws, c. 32, § 2; Code 1915, § 4199; Code 1935, § 4677; 10 Del. C. 1953, § 3908; 58 Del. Laws, c. 240, § 3.)

§ 3909 Complaint, declaration or cognovit upon judgments D.S.B. (debt without a writ—debitum sine breve)

No judgment D.S.B., entered, shall be taken to be invalid because it does not appear that any complaint or cognovit was filed prior to the entering of the same, but whenever such complaint is required by the bond on which such judgment was entered, the court before whom any question is raised about the validity of such judgment for want of such complaint shall allow such complaint to be filed, nunc pro tunc, and the filing thereof, by virtue of such allowance, shall have the same effect as if it had been filed as the authority for the entering of such judgment.

(13 Del. Laws, c. 32, § 3; Code 1915, § 4200; Code 1935, § 4678; 10 Del. C. 1953, § 3909.)

§ 3910 Disclaimer of interest by defendant; interpleader.

The defendant in any action brought in the Superior Court for the recovery of money, or of any goods, chattels, or the value thereof in damages, which shall have come lawfully to the defendant's hands or possession, may, at any time after the complaint is filed, and before the answer is filed, by a suggestion to be filed of record, disclaim all interest in the subject matter of such action, and offer to bring the same into court, or to pay or dispose thereof as the Court orders. If the defendant also alleges, under oath or affirmation, that the right thereto is claimed by or supposed to belong to some person not party to the action (naming such person), who has sued or is expected to sue for the same, or shows some probable matter to the Court to believe that such suggestion is true, the Court may, thereupon, order the plaintiff to interplead with such third person, and make such rules and orders in the cause, and issue such process for the purpose of making such third person party to the action, and for carrying such proceeding to interplead into full and complete effect, and may render such judgment or judgments thereon as shall be agreeable to the rules and practice of the law in like cases.

(17 Del. Laws, c. 218; Code 1915, § 4201; Code 1935, § 4679; 10 Del. C. 1953, § 3910; 70 Del. Laws, c. 186, § 1.)

§ 3911 Recognizance of plaintiff upon interpleader.

If the process issued upon an order under § 3910 of this title to interplead is not served, or personal notice thereof is not given to the third person referred to in such section, the court may, upon giving judgment for the plaintiff, require the plaintiff to enter into a recognizance, and if it deems necessary, with sufficient surety, to interplead with such third person if afterwards, and before the expiration of the time which would be allowed to the plaintiff to prosecute his or her claim against the defendant, such third person should appear in the court and claim the money, or the goods or chattels, or the value thereof.

(17 Del. Laws, c. 218; Code 1915, § 4202; Code 1935, § 4680; 10 Del. C. 1953, § 3911; 70 Del. Laws, c. 186, § 1.)

§ 3912 Counsel fees; recovering in actions on written instruments.

In all causes of action, suits, matters or proceedings brought for the enforcement of any note, bond, mechanics lien, mortgage, invoice or other instrument of writing, if the plaintiff or lien holder in the action, suit or proceeding recovers judgment in any sum, the plaintiff or lien holder may also recover reasonable counsel fees, which shall be entered as a part of the judgment in the action, suit or proceeding. Such counsel fees shall not in any such action, suit or proceeding, exceed 20 percent of the amount adjudged for principal and interest. Such counsel fees shall not be entered as a part of such judgment unless the note, bond, mortgage, invoice or other instrument of writing sued upon, by the terms thereof, expressly provides for the payment and allowance thereof, except in the cases of mechanic's liens in which no express agreement shall be necessary in order to entitle the lien holder to reasonable counsel fees.

(27 Del. Laws, c. 286; Code 1915, § 4204; 38 Del. Laws, c. 202, § 1; Code 1935, § 4682; 10 Del. C. 1953, § 3912; 68 Del. Laws, c. 63, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3913 Counterclaim in suits by or against executors or administrators.

If either party sue or be sued as an executor or administrator, and there are mutual debts or credits or other claims between his or her testator or intestate and the other party, 1 debt or credit may be set off against the other and a counterclaim may be asserted as in other actions.

(Code 1852, § 2328; Code 1915, § 4189; 37 Del. Laws, c. 264, § 2; Code 1935, § 4668; 10 Del. C. 1953, § 3913; 70 Del. Laws, c. 186, § 1.)

§ 3914 Proof of partnership.

In any action by or against partners, the plaintiff may require the defendant or defendants to deny the allegation of partnership by affidavit filed with the answer, by the specific notation of the need for a denial by affidavit within the paragraph alleging partnership. Any defendant so answering shall deny the existence of the partnership as alleged, and stating to the best of the defendants' knowledge and belief whether there is any partnership in relation to the subject matter of the action, and who are the partners therein. Where plaintiff has complied with this section, failure of any defendant to file an affidavit with the answer shall be deemed an admission of the partnership as alleged.

(Code 1852, § 2310; Code 1915, § 4171; Code 1935, § 4650; 10 Del. C. 1953, § 3914; 65 Del. Laws, c. 296, § 2; 70 Del. Laws, c. 186, § 1.)

§ 3915 Proof of incorporation or corporate existence.

In any action by or against any corporation, the plaintiff may specifically require the defendant or defendants to deny the allegation of the incorporation and existence of the corporation by affidavit filed with the answer, by the specific notation of the need for denial by affidavit within the paragraph alleging the corporate existence. Any defendant so answering shall deny the incorporation and existence of the corporation as alleged, and stating to the best of affiant's knowledge whether there is any corporation existing which has a relationship to the subject matter of the action. Such affidavit may be made by the president, secretary, treasurer or any director of any corporate defendant. Where plaintiff has complied with this section, failure of any defendant to file an affidavit with its answer shall be deemed an admission of existence of the corporation as alleged.

(16 Del. Laws, c. 535; Code 1915, § 4172; Code 1935, § 4651; 10 Del. C. 1953, § 3915; 65 Del. Laws, c. 296, § 3.)

§ 3916 Proof of agency in operation of motor vehicle.

In any action arising out of the operation of any vehicle, in which it is alleged that the operator of the vehicle was a servant, agent or employee of the defendant or defendants, the plaintiff may specifically require the defendant or defendants to deny the allegation that the operator of the vehicle was a servant, agent or employee of the defendant or defendants by affidavit filed with the answer, by the specific notation of the need for denial by affidavit within the paragraph alleging that the operator of the vehicle was a servant, agent or employee of defendant or defendants. Any defendant so answering shall deny that the operator of the vehicle was operating the vehicle at the time of the occurrence as a servant, agent or employee of the answering defendant, and/or deny that the operator of the vehicle was operating the vehicle in and about the course of duties as a servant, agent or employee of the answering defendant and set forth the factual basis for the denial. Where plaintiff has complied with this section, failure of a defendant to file an affidavit with the answer shall be deemed an admission that the operator of the vehicle was a servant, agent or employee of the defendant.

(Code 1935, § 4651A; 44 Del. Laws, c. 176; 10 Del. C. 1953, § 3916; 65 Del. Laws, c. 296, § 4; 70 Del. Laws, c. 186, § 1.)

§ 3917 Proof of signatures in actions or written instruments.

In any action brought upon any deed, bond, bill, note or other instrument of writing, a copy of which has been filed with the complaint, the plaintiff may specifically require the defendant or defendants to deny the allegation that the defendant's or defendants' signature appears on the instrument by affidavit filed with the answer, by the specific notation of the need for denial by affidavit within the paragraph alleging that the signature of defendant or defendants appears upon the instrument. Any defendant so answering shall specifically deny that the defendant's signature appears on the instrument. Where plaintiff has complied with this section, failure of any defendant to file an affidavit with the answer shall be deemed an admission of the signature as alleged.

(Code 1852, § 2309; Code 1915, § 4170; Code 1935, § 4649; 10 Del. C. 1953, § 3917; 65 Del. Laws, c. 296, § 5; 70 Del. Laws, c. 186, § 1.)

§ 3918 Recognizance of applicant for certiorari to justice of the peace.

(a) On the issuing of a writ of certiorari to a justice of the peace, the party applying therefor, shall enter into a recognizance to the defendant in a reasonable penalty, and with sufficient surety to be approved by the prothonotary with condition to be void if the plaintiff therein prosecutes the writ to effect and pays the condemnation money and all costs, or otherwise abide the judgment of the Superior Court in the case if he or she fails to make his or her plea good.

(b) The recognizance shall be entered by the prothonotary in the docket where the certiorari is entered, and a note of the recognizance having been taken, shall be indorsed on the writ, or the justice shall not obey it.

(c) No further surety shall be required, although other writs may be issued to complete the record; but the Court may order better security.

(Code 1852, §§ 2319-2321; Code 1915, § 4181; Code 1935, § 4660; 10 Del. C. 1953, § 3918; 70 Del. Laws, c. 186, § 1.)

§ 3919 Defense in civil libel actions.

In actions for damages for the writing or publishing of a libel, where the truth is pleaded and given in evidence, if it is found that the same was written or published properly for public information, and with no malicious or mischievous motives, the court or jury may find for the defendant.

(11 Del. Laws, c. 449, § 2; Code 1915, § 4218; Code 1935, § 4693; 10 Del. C. 1953, § 3920.)

§ 3920 Actions for price of newspapers or magazines received by mail; necessity for express order.

No action shall be brought to charge any person upon any promise or agreement for the subscription price to any newspaper, magazine, periodical, or publication whatsoever, when such promise or agreement arises from such person receiving through the mails any newspaper, magazine, periodical, or publication, unless such newspaper, magazine, periodical, or publication shall have been, previous to its being so received, expressly ordered by such person from the publisher thereof.

(22 Del. Laws, c. 454; Code 1915, § 4096; Code 1935, § 4587; 10 Del. C. 1953, § 3921.)

§ 3921 Presumption of proper administration of oath.

When it appears that an oath or affirmation has been administered by competent authority, it shall be presumed to have been properly administered, unless the contrary appear.

(Code 1852, § 2509; Code 1915, § 4428; Code 1935, § 4886; 10 Del. C. 1953, § 3922.)

§ 3922 Destruction of property by minors; recovery of damages from parents.

Any municipal corporation, county, town, school district and agency of the State or any person, partnership, corporation or association, or any religious organization whether incorporated or unincorporated, shall be entitled to recover damages in an appropriate civil action in an amount not to exceed $10,000 in a court of competent jurisdiction from the parents or guardians of any minor under the age of 18 years, living with the parents, who shall intentionally or recklessly destroy or damage property, real, personal or mixed, belonging to such municipal corporation, county, town, school district or agency of the State, or person, partnership, corporation or association or religious organization.

(10 Del. C. 1953, § 3923; 51 Del. Laws, c. 321; 59 Del. Laws, c. 112, § 1; 62 Del. Laws, c. 166, § 1; 62 Del. Laws, c. 315, § 2; 66 Del. Laws, c. 234, § 1; 77 Del. Laws, c. 40, § 1.)

§ 3923 Prosecution and defense of actions by persons of the age of 18 years or older.

(a) Any person of the age of 18 years or older who is not otherwise incompetent may bring, file, prosecute, defend, litigate, settle, dismiss or otherwise compromise any action in law or in equity in any court without the interference or appointment of a guardian, guardian ad litem, next friend or other legal representative.

(b) Any person of the age of 18 years or older who is not otherwise incompetent may be appointed by any court as guardian ad litem, next friend or other legal representative of a person who has not reached the age of 18 years.

(10 Del. C. 1953, § 3924; 58 Del. Laws, c. 440, § 2.)

§ 3924 Causes of action abolished for alienation of affections, criminal conversation, seduction, enticement and breach of contract to marry.

The rights of action to recover sums of money as damages for alienation of affections, criminal conversation, seduction, enticement, or breach of contract to marry are abolished. No act done in this State shall operate to give rise, either within or without this State, to any such right of action. No contract to marry made or entered into in this State shall operate to give rise, either within or without this State, to any cause or right of action for its breach.

(10 Del. C. 1953, § 3925; 58 Del. Laws, c. 489, § 1.)

§ 3925 Public officers and employees.

Any public officer or employee, in a criminal or civil action against the person arising from state employment, shall be entitled to petition the court for a court-appointed attorney to represent the person's interests in the matter. If the judge, after consideration of the petition, examination of the petitioner and receipt of such further evidence as the judge may require, determines that the petition has merit, the judge shall appoint an attorney to represent the interests of such public officer or employee. The court-appointed attorney shall represent such person at all stages, trial and appellate, until the final determination of the matter, unless the attorney is earlier released by such person or by the court. The court may first appoint an attorney from the Department of Justice. If the court determines that the Department is unable to represent such public officer or employee, the court may appoint an attorney from the Office of the Public Defender in criminal actions only, and in civil actions may appoint an attorney licensed in this State. This section shall also apply to all federal courts within this State.

(60 Del. Laws, c. 474, § 1; 60 Del. Laws, c. 676, § 1; 70 Del. Laws, c. 186, § 1.)

§ 3926 Production of records, jurisdiction.

(a) *Prompt production of records.* — A health care provider who receives an appropriate authorization duly signed by an existing or former patient, guardian or personal representative, shall produce a true and correct complete copy of the requested medical records, which shall be produced in a reasonably legible fashion within 45 days of receipt of the request. The health care provider's fee for copying the records shall be reasonable. If prepayment is required by the health care provider, written notice of prepayment shall be provided to the requesting party within 14 days of the receipt of the original request. Upon payment of any prepayment charge, the health care provider shall produce the requested records within the latter of 14 days of receiving payment or 45 days of receipt of the original request.

(b) A health care provider may object in writing to production of the records for good cause. Any objection must state the grounds for failure or refusal to comply with the records request and must be served on the requesting party within 30 days of the date of receipt of the request. Said objection, if found to be for good cause, shall serve to toll the time period allowable for production of records.

(c) Failure or refusal to produce medical records pursuant to this section shall result in a civil penalty not to exceed $25 per day for every business day the records are delinquent in being produced in addition to any other sanctions deemed appropriate by the Court, provided however, that motion to the Court to enforce compliance by court order must be made by the requesting party no later than 60 days from the date of the original request. If the records produced are incomplete, the requesting party shall have a reasonable time following discovery of the missing records in which to file a motion with the Court for enforcement of this section.

(d) If the requesting party is a plaintiff in a complaint pending before a court of competent jurisdiction alleging health care negligence, this statute shall not apply to any request for medical records served on a named defendant(s) in that litigation.

(e) The Superior Court shall have jurisdiction over this section and shall schedule such matters on an expedited basis.

(74 Del. Laws, c. 148, § 3.)

Part III
Procedure
Chapter 40
TORT CLAIMS ACT
Subchapter I
State Tort Claims

§ 4001 Limitation on civil liability.

Except as otherwise provided by the Constitutions or laws of the United States or of the State of Delaware, as the same may expressly require or be interpreted as requiring by a court of competent jurisdiction, no claim or cause of action shall arise, and no judgment, damages, penalties, costs or other money entitlement shall be awarded or assessed against the State or any public officer or employee, including the members of any board, commission, conservation district or agency of the State, whether elected or appointed, and whether now or previously serving as such, in any civil suit or proceeding at law or in equity, or before any administrative tribunal, where the following elements are present:

(1) The act or omission complained of arose out of and in connection with the performance of an official duty requiring a determination of policy, the interpretation or enforcement of statutes, rules or regulations, the granting or withholding of publicly created or regulated entitlement or privilege or any other official duty involving the exercise of discretion on the part of the public officer, employee or member, or anyone over whom the public officer, employee or member shall have supervisory authority;

(2) The act or omission complained of was done in good faith and in the belief that the public interest would best be served thereby; and

(3) The act or omission complained of was done without gross or wanton negligence;

provided that the immunity of judges, the Attorney General and Deputy Attorneys General, and members of the General Assembly shall, as to all civil claims or causes of action founded upon an act or omission arising out of the performance of an official duty, be absolute; provided further that in any civil action or proceeding against the State or a public officer, employee or member of the State, the plaintiff shall have the burden of proving the absence of 1 or more of the elements of immunity as set forth in this section.

(61 Del. Laws, c. 431, § 1; 66 Del. Laws, c. 348, § 1.)

§ 4002 Indemnification of public officers and employees.

In addition to the right of representation provided for in § 3925 of this title, any public officer, employee or member who, but for the application of any provision of the Constitutions or laws of the United States or the State of Delaware to the contrary, would be entitled to immunity in accordance with § 4001 of this title, shall be indemnified by the State against any expenses (including attorney's fees and disbursements), judgments, fines and costs, actually and reasonably incurred by such public officer, employee or member in defending against the action, suit or proceeding giving rise thereto.

(61 Del. Laws, c. 431, § 1.)

§ 4003 Political subdivisions; limitations on liability.

Any political subdivision of the State, including the various school districts, and their officers and employees shall be entitled to the same privileges and immunities as provided in this chapter for the State and its officers and employees; provided that the public officers and employees of any such political subdivision shall only be indemnified if the governing body of the subdivision shall expressly so provide, and then only to the extent that the subdivision shall appropriate all funds necessary therefor.

(61 Del. Laws, c. 431, § 1.)

§ 4004 Procedure for establishing right to indemnification.

The right to indemnification provided for in § 4002 of this title shall automatically obtain upon the final determination of any court or administrative tribunal of competent jurisdiction that no claim or cause of action existed, or, but for the application of the Constitutions or laws of either the United States or the State of Delaware, that no such claim or cause of action would have existed, or upon a verdict or ruling in favor of the public officer, employee or member. If a court or administrative tribunal shall determine that no right to indemnification exists because of the absence of 1 or more of the elements of immunity set forth in § 4001 of this title, said determination shall be final and binding at such time as any and all rights of appeal from the decision giving rise to such determination shall have been exhausted. If, for whatever reason, including a settlement agreed upon by the parties, the court or administrative tribunal having jurisdiction shall fail or refuse to make the determination required by this section, then the indemnification shall only be granted as to public officers, employees or members of the State upon the affirmative recommendation of the appropriate department head, or a majority of the members of the governing body of the board, commission or agency, whichever shall apply, and the concurrence of the Governor and the Attorney

General or their designees. Any political subdivision of the State which shall hereafter provide indemnification as authorized by this chapter shall establish its own procedure for determining eligibility for its officers and employees in the absence of the determination of a court of competent jurisdiction.

(61 Del. Laws, c. 431, § 1.)

§ 4005 Authorization to purchase liability insurance.

The State or any of its departments, agencies, boards, commissions or political subdivisions are hereby authorized to obtain from funds appropriated for such purpose a policy or policies of insurance sufficient to provide coverage for its public officers, employees or members which is coextensive with the standards for indemnification as provided for in this chapter. No public officer, employee or member shall be entitled to indemnification under this section for any act or omission, not otherwise protected herein, any applicable policy of insurance to the contrary notwithstanding.

(61 Del. Laws, c. 431, § 1.)

Subchapter II

County and Municipal Tort Claims

§ 4010 Definitions.

As used in this subchapter, unless the context otherwise indicates, the following words shall have the following meanings:

(1) "Employee" means a person acting on behalf of a governmental entity in any official capacity, whether temporarily or permanently, and whether with or without compensation from local, state or federal funds, including elected or appointed officials, volunteer firefighters and rescue squad members where the rescue squad receives full or partial financial support from political subdivisions or from the State, but the term "employee" shall not mean a person or other legal entity acting in the capacity of an independent contractor under contract to the governmental entity.

(2) "Governmental entity" means any municipality, town, county, administrative entity or instrumentality created pursuant to Chapter 8 of Title 22 or Title 9, any municipality created by a special act of the General Assembly, any housing authority created pursuant to Chapter 43 of Title 31, any parking authority created pursuant to Chapter 5 of Title 22, any municipal business improvement district authority created pursuant to Chapter 15 of Title 22 and all registered volunteer fire companies and volunteer rescue squads.

(62 Del. Laws, c. 124, § 2; 69 Del. Laws, c. 328, § 2.)

§ 4011 Immunity from suit.

(a) Except as otherwise expressly provided by statute, all governmental entities and their employees shall be immune from suit on any and all tort claims seeking recovery of damages. That a governmental entity has the power to sue or be sued, whether appearing in its charter or statutory enablement, shall not create or be interpreted as a waiver of the immunity granted in this subchapter.

(b) Notwithstanding § 4012 of this title, a governmental entity shall not be liable for any damage claim which results from:

(1) The undertaking or failure to undertake any legislative act, including, but not limited to, the adoption or failure to adopt any statute, charter, ordinance, order, regulation, resolution or resolve.

(2) The undertaking or failure to undertake any judicial or quasi-judicial act, including, but not limited to, granting, granting with conditions, refusal to grant or revocation of any license, permit, order or other administrative approval or denial.

(3) The performance or failure to exercise or perform a discretionary function or duty, whether or not the discretion be abused and whether or not the statute, charter, ordinance, order, resolution, regulation or resolve under which the discretionary function or duty is performed is valid or invalid.

(4) The decision not to provide communications, heat, light, water, electricity or solid or liquid waste collection, disposal or treatment services.

(5) The discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalines, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, except as provided in § 4012(3) of this title.

(6) Any defect, lack of repair or lack of sufficient railing in any highway, townway, sidewalk, parking area, causeway, bridge, airport runway or taxiway, including appurtenances necessary for the control of such ways including but not limited to street signs, traffic lights and controls, parking meters and guardrails.

Paragraphs (b)(1) to (6) of this section to which immunity applies are cited as examples and shall not be interpreted to limit the general immunity provided by this section.

(c) An employee may be personally liable for acts or omissions causing property damage, bodily injury or death in instances in which the governmental entity is immune under this section, but only for those acts which were not within the scope of employment or which were performed with wanton negligence or wilful and malicious intent.

(62 Del. Laws, c. 124, § 2; 70 Del. Laws, c. 186, § 1.)

§ 4012 Exceptions to immunity.

A governmental entity shall be exposed to liability for its negligent acts or omissions causing property damage, bodily injury or death in the following instances:

(1) In its ownership, maintenance or use of any motor vehicle, special mobile equipment, trailer, aircraft or other machinery or equipment, whether mobile or stationary.

(2) In the construction, operation or maintenance of any public building or the appurtenances thereto, except as to historic sites or buildings, structures, facilities or equipment designed for use primarily by the public in connection with public outdoor recreation.

(3) In the sudden and accidental discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalines and toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water.

(62 Del. Laws, c. 124, § 2.)

§ 4013 Limitation on damages.

(a) In any action for damages permitted by this subchapter, the claim for and award of damages, including costs, against both a political subdivision and its employees, shall not exceed $300,000 for any and all claims arising out of a single occurrence, except insofar as the political subdivision elects to purchase liability insurance in excess of $300,000 in which event the limit of recovery shall not exceed the amount of the insurance coverage.

(b) Any governmental entity may settle claims filed against it pursuant to § 4012 of this title, in accordance with procedures duly promulgated by its governing body.

(c) Any political subdivision may enact a notice requirement by ordinance, so long as said notice requirement does not bar suit if notice is given within 1 year of occurrence.

(62 Del. Laws, c. 124, § 2; 64 Del. Laws, c. 443, § 1.)

Part III
Procedure
Chapter 41
DEFECTS IN RECORD

§ 4101 Amendment of writs and record.

Writs of scire facias, of execution, and of error, may be amended. After judgment, the court before whom a record is, may order the amendment of any clerical error in any part of such record. When there is matter to amend, the court may order any amendment that will tend to the furtherance of justice.

(Code 1852, § 2510; Code 1915, § 4429; Code 1935, § 4887; 10 Del. C. 1953, § 4101.)

§ 4102 Amendments after judgment.

After judgment rendered in any civil action, any defects or imperfections, in matter of form, found in the record, or proceedings, in the action, may be rectified and amended by the court to which it is removed by appeal or writ of error, if substantial justice requires it, and if the amendment is in affirmance of the judgment.

(Code 1852, § 2512; Code 1915, § 4431; Code 1935, § 4889; 10 Del. C. 1953, § 4102.)

§ 4103 Reversal of judgments for defects in form.

No judgment shall be reversed for any defect or imperfection in matter of form which might, by law, have been amended.

(Code 1852, § 2503; Code 1915, § 4421; Code 1935, § 4879; 10 Del. C. 1953, § 4103.)

Part III
Procedure
Chapter 43
EVIDENCE AND WITNESSES
Subchapter I
General Provisions

§ 4301 Liability of witnesses for failure to appear or testify.

If any person, duly summoned by process to attend as a witness before any court, justice of the peace, or other officer, lawfully authorized to issue the same, without reasonable excuse, fails to attend, according to the direction of such process; or attending refuses to testify when required by such court, justice of the peace, or other officer, such person shall be liable to the aggrieved party for all damages occasioned by such failure or refusal, to be recovered in a civil action.

(Code 1852, § 2338; Code 1915, § 4211; Code 1935, § 4686; 10 Del. C. 1953, § 4301; 70 Del. Laws, c. 186, § 1.)

§ 4302 Competency to testify.

No child under the age of 10 years may be excluded from giving testimony for the sole reason that such child does not understand the obligation of an oath. Such child's age and degree of understanding of the obligation of an oath may be considered by the trier of fact in judging the child's credibility.

(65 Del. Laws, c. 111, § 1.)

§§ 4303 -4310. Testimony of convicted felon; testimony of husband or wife; acts of General Assembly as evidence; proof of Maryland records; proof of ordinances and resolutions of Wilmington; official records and papers as evidence; business records as competent evidence.

Repealed by 63 Del. Laws, c. 62, § 1, effective June 30, 1981.

§ 4311 Delaware Uniform Interstate Depositions and Discovery Act.

(a) *Short title.* — This section may be cited as the "Delaware Uniform Interstate Depositions and Discovery Act."

(b) *Definitions.* — In this section:

(1) "Foreign jurisdiction" means a state other than Delaware.

(2) "Foreign subpoena" means a subpoena issued under authority of a court of record of a foreign jurisdiction.

(3) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government, or governmental subdivision, agency or instrumentality, or any other legal or commercial entity.

(4) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States.

(5) "Subpoena" means a document, however denominated, issued under authority of court of record requiring a person to:

a. Attend and give testimony at a deposition;

b. Produce and permit inspection and copying of designated books, documents, records, electronically stored information, or tangible things in the possession, custody, or control of the person; or

c. Permit inspection of premises under the control of the person.

(c) *Issuance of a subpoena.* —

(1) To request issuance of a subpoena under this section, a party must submit a foreign subpoena to the prothonotary in the county in which discovery is sought to be conducted in this State. A request for the issuance of a subpoena under this act does not constitute an appearance in the courts of this State.

(2) When a party submits a foreign subpoena to a prothonotary in this State, the prothonotary, in accordance with the court's procedure, shall promptly issue a subpoena for service upon the person to which the foreign subpoena is directed.

(3) A subpoena issued under paragraph (c)(2) of this section must:

a. Incorporate the terms used in the foreign subpoena; and

b. Contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

(d) *Service of subpoena.* — A subpoena issued by a prothonotary under subsection (c) of this section must be served in compliance with this title and applicable Superior Court Rules for service of subpoena.

(e) *Deposition, production, and inspection.* — This title and applicable court rules of this State applicable to compliance with subpoenas to attend and give testimony, produce designated books, documents, records, electronically stored information, or tangible things, or permit inspection of premises apply to subpoenas issued pursuant to subsection (c) of this section.

(f) *Application to Court.* — An application to the Superior Court for a protective order or to enforce, quash, or modify a subpoena issued by the prothonotary under subsection (c) of this section must comply with the rules or statutes of this State and be submitted to the Superior Court in the county in which discovery is to be conducted.

(g) *Uniformity of application and construction.* — In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(h) *Application to pending actions.* — This section applies to requests for discovery in cases pending on the effective date of this section [July 12, 2010].

(i) *Effective date.* — This section takes effect upon enactment [July 12, 2010].

(Code 1915, § 4238A; 30 Del. Laws, c. 230; 33 Del. Laws, c. 235; Code 1935, § 4707; 46 Del. Laws, c. 256; 47 Del. Laws, c. 117; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 374, § 1.)

§§ 4312 -4316. Evidence of laws of other jurisdictions; judicial notice; judicial notice of common law and statutes of other jurisdictions; Uniform Proof of Statutes Law; federal findings or reports on death, missing in action, or captured as evidence; prohibition of examination of minister of religion.

Repealed by 63 Del. Laws, c. 62, § 1, effective June 30, 1981.

§ 4317 Admissibility of accommodation payments for personal injury; effect on statute of limitations.

No advance payment or partial payment of damages made by any person or his or her insurer as an accommodation to an injured person or on such person's behalf to others or to the estate or dependents of a deceased person, made under liability insurance as defined in § 906(a)(2) of Title 18, because of an injury or death claim or potential claim against any person or insured thereunder shall be construed as an admission of liability by the person claimed against, or of the insurer's recognition of such liability, with respect to such injured or deceased person or with respect to any other claim arising from the same accident or event. Any such payments shall, however, constitute a credit and be deductible from any final settlement made or judgment rendered with respect to such injured or deceased person which does not expressly take into account such advance payments. Any person, including any insurer, who makes such an advance or partial payment, shall at the time of the payment notify the recipient in writing of the statute of limitations applicable to such injury or death. Failure to provide such written notice shall operate to toll any applicable statute of limitations or time limitations from the time of such advance or partial payment until such written notice is actually given.

(10 Del. C. 1953, § 4318; 57 Del. Laws, c. 442; 70 Del. Laws, c. 186, § 1.)

§ 4318 Compassionate communications.

(a) For purposes of this section:

(1) "Health care provider" means any person licensed or certified by the State of Delaware to deliver health care services, including, but not limited to, any physician, coordinated care organization, hospital, health care facility, dentist, nurse, optometrist, podiatrist, physical therapist, psychologist, chiropractor or pharmacist and an officer, employee or agent of such person acting in the course and scope of employment or agency related to health care services.

(2) "Unanticipated outcome" means the result of a medical treatment or procedure that differs from an expected medical result.

(b) Any and all statements, writings, gestures, or affirmations made by a health care provider or an employee of a health care provider that express apology (other than an expression or admission of liability or fault), sympathy, compassion, condolence, or benevolence relating to the pain, suffering, or death of a person as a result of an unanticipated outcome of medical care, that is made to the person, the person's family, or a friend of the person or of the person's family, with the exception of the admission of liability or fault, are inadmissible in a civil action that is brought against a health care provider.

(75 Del. Laws, c. 413, § 1.)

§ 4319 Confidential communications involving first responders.

(a) For purposes of this section:

(1) "Critical incident" means a situation or incident which, during the course of his or her duties, causes, or may cause, a first responder to experience unusually strong negative emotional or physical stress. "Critical incident" includes, but is not limited to, any encounter which may result in the death of or serious injury to another person or the imminent potential of such death or serious bodily injury, fatal motor vehicle accidents, child abuse investigations, death investigations and large scale man-made or natural disasters.

(2) "Critical incident stress management services" means consultation, risk assessment, education, intervention, and other crisis intervention services provided by a critical incident stress management team to a first responder prior to, during or after a critical incident.

(3) "Critical incident stress management team" or "CISM team" means a team composed of members of a state, county or municipal law-enforcement, fire or emergency medical agency that is trained, in accordance with standards established by a nationally accredited

critical incident stress management organization or network and recognized by the Council on Police Training, to assist and provide support to a first responder who has been involved in a critical incident that may affect, or has affected, the person's work performance or general well-being.

(4) "Critical incident stress management team member" means an individual who is specially trained to provide critical incident stress management services and meets the requirements of a nationally accredited critical incident stress management organization or network which has been recognized by the Council on Police Training and has been approved by the Colonel or Chief of the police, fire or emergency medical services agency of which the individual is a member and has been approved to function as a CISM team member prior to and at the time the counseling takes place.

(5) "First responders" shall mean federal, state and local law-enforcement officers, fire, and emergency medical services personnel, hazardous materials response team members, 911 dispatchers, or any individual who is responsible for the protection and preservation of life, property, and evidence, and has been sent or directed to respond to a request for assistance as a result of a critical incident.

(6) "Law-enforcement officer" means a police officer as defined in § 9200 of Title 11.

(7) "Participant" means an individual who participates either in a group or individual critical incident stress management team service.

(b) Except as provided in subsection (d) of this section, all proceedings, communications and records, including, but not limited to, any information acquired by a critical incident stress management team, or critical incident management stress management team member, from a first responder who has, or is obtaining, assistance from the team, or team member, is confidential and is not subject to disclosure through compulsory legal process or otherwise discoverable or admissible in evidence in any action, including but not limited to, any legal proceeding, trial or investigation unless the confidentiality is waived by the affected first responder.

(c) Except as provided under subsection (d) of this section, a CISM team member who is conducting a critical incident stress management counseling service and informs the participant and/or first responder that the service is being conducted pursuant to the provisions in this section, shall not be compelled to disclose any communications made by the affected first responder in any action, including, but not limited to, any legal proceeding, trial or investigation, without the consent of the affected first responder.

(d) *Exceptions.* — The privileges established under subsections (b) and (c) of this section are not applicable if:

(1) The communication indicates an intent to engage in conduct likely to result in imminent death or serious physical injury to the first responder who received critical incident stress management services or another individual;

(2) The first responder who obtained critical incident stress management services expressly waives the privilege or gives consent to disclosure of the privileged communication;

(3) The first responder who obtained critical incident stress management services is deceased and the surviving spouse or the executor or administrator of the estate of the deceased first responder expressly waives the privilege or gives consent to disclosure of the privileged communications;

(4) The first responder who received critical incident stress management services sought or obtained the services to enable or aid anyone to commit or plan to commit what the first responder who received critical incident stress management services knew, or reasonably should have known, was a crime or fraud or mental or physical injury to the first responder who received critical incident stress management services or another individual.

(e) Information otherwise available from the original source shall not be immune from discovery or use in any civil or criminal action merely because the information was presented at a time the first responder obtained critical incident stress management services if the testimony sought is otherwise permissible and discoverable.

(78 Del. Laws, c. 236, § 1; 70 Del. Laws, c. 186, § 1.)

Subchapter II

Reporters' Privilege

§ 4320 Definitions.

As used in this subchapter:

(1) "Adjudicative proceeding" means any judicial or quasi-judicial proceeding in which the rights of parties are determined but does not include any proceeding of a grand jury.

(2) "Information" means any oral, written or pictorial material and includes, but is not limited to, documents, electronic impulses, expressions of opinion, films, photographs, sound records, and statistical data.

(3) "Person" means individual, corporation, statutory trust, business trust, estate, trust, partnership or association, governmental body, or any other legal entity.

(4) "Reporter" means any journalist, scholar, educator, polemicist, or other individual who either:

a. At the time he or she obtained the information that is sought was earning his or her principal livelihood by, or in each of the preceding 3 weeks or 4 of the preceding 8 weeks had spent at least 20 hours engaged in the practice of, obtaining or preparing

information for dissemination with the aid of facilities for the mass reproduction of words, sounds, or images in a form available to the general public; or

b. Obtained the information that is sought while serving in the capacity of an agent, assistant, employee, or supervisor of an individual who qualifies as a reporter under paragraph (4)a. of this section.

(5) "Source" means a person from whom a reporter obtained information by means of written or spoken communication or the transfer of physical objects, but does not include a person from whom a reporter obtained information by means of personal observation unaccompanied by any other form of communication and does not include a person from whom another person who is not a reporter obtained information, even if the information was ultimately obtained by a reporter.

(6) "Testify" means give testimony, provide tangible evidence, submit to a deposition, or answer interrogatories.

(7) "Within the scope of his or her professional activities" means any situation, including a social gathering, in which the reporter obtains information for the purpose of disseminating it to the public, but does not include any situation in which the reporter intentionally conceals from the source the fact that he or she is a reporter and does not include any situation in which the reporter is an eyewitness to or participant in an act involving physical violence or property damage.

(10 Del. C. 1953, § 4320; 59 Del. Laws, c. 163, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 329, § 51.)

§ 4321 Privilege in nonadjudicative proceedings.

A reporter is privileged in a nonadjudicative proceeding to decline to testify concerning either the source or content of information that he or she obtained within the scope of his or her professional activities.

(10 Del. C. 1953, § 4321; 59 Del. Laws, c. 163, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4322 Privilege in adjudicative proceedings.

A reporter is privileged in an adjudicative proceeding to decline to testify concerning the source or content of information that he or she obtained within the scope of his or her professional activities if the reporter states under oath that the disclosure of the information would violate an express or implied understanding with the source under which the information was originally obtained or would substantially hinder the reporter in the maintenance of existing source relationships or the development of new source relationships.

(10 Del. C. 1953, § 4322; 59 Del. Laws, c. 163, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4323 Exceptions to the privilege in adjudicative proceedings.

(a) Unless the disclosure of the content of the information would substantially increase the likelihood that the source of the information will be discovered, the privilege provided by § 4322 of this title shall not prevent a reporter from being required in an adjudicative proceeding to testify concerning the content, but not the source, of information that the reporter obtained within the scope of his or her professional activities if the judge determines that the public interest in having the reporter's testimony outweighs the public interest in keeping the information confidential. In making this determination, the judge shall take into account the importance of the issue on which the information is relevant, the efforts that have been made by the subpoenaing party to acquire evidence on the issue from alternative sources, the sufficiency of the evidence available from alternative sources, the circumstances under which the reporter obtained the information, and the likely effect that disclosure of the information will have on the future flow of information to the public.

(b) The privilege provided by § 4322 of this title shall not prevent a reporter from being required in an adjudicative proceeding to testify concerning either the source or the content of information that the reporter obtained within the scope of his or her professional activities if the party seeking to have the reporter testify proves by a preponderance of the evidence that the sworn statement submitted by the reporter as required by § 4322 of this title is untruthful.

(10 Del. C. 1953, § 4323; 59 Del. Laws, c. 163, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4324 Determination of privilege claim.

A person who invokes the privilege provided by this subchapter may not be required to testify in any proceeding except by court order. If a person invokes the privilege in any proceeding other than a court proceeding, the body or party seeking to have the person testify may apply to the Superior Court for an order requiring the claimant of the privilege to testify. If the Court determines that the claimant does not qualify for the privilege under the provisions of this subchapter, it shall order the claimant to testify.

(10 Del. C. 1953, § 4324; 59 Del. Laws, c. 163, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4325 Waiver.

If a reporter waives the privilege provided by this subchapter with respect to certain facts, he or she may be cross-examined on the testimony or other evidence he or she gives concerning those facts but not on other facts with respect to which the reporter claims the privilege. A reporter does not waive or forfeit the privilege by disclosing all or any part of the information protected by the privilege to any other person.

(10 Del. C. 1953, § 4325; 59 Del. Laws, c. 163, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4326 Short title.

This subchapter may be cited as the "Reporters' Privilege Act."

(10 Del. C. 1953, § 4326; 59 Del. Laws, c. 163, § 1.)

Subchapter III
Chain of Custody

§ 4330 Chemical test report.

For the purpose of establishing that physical evidence in a criminal or civil proceeding constitutes a particular controlled substance defined under Chapter 47 of Title 16, a report signed by the forensic toxicologist or forensic chemist who performed the test or tests as to its nature is prima facie evidence that the material delivered was properly tested under procedures approved by the Division of Forensic Science, that those procedures are legally reliable, that the material was delivered by the officer or person stated in the report and that the material was or contained the substance therein stated, without the necessity of the forensic toxicologist or forensic chemist personally appearing in court, provided the report identifies the forensic toxicologist or forensic chemist as an individual certified by the Division of Forensic Science, the Delaware State Police or any county or municipal police department employing analysts of controlled substances, as qualified under standards approved by the Division of Forensic Science to analyze those substances, states that the forensic toxicologist or forensic chemist made an analysis of the material under the procedures approved by the Division of Forensic Science and also states that the substance, in the forensic toxicologist's or forensic chemist's opinion, is or contains the particular controlled substance specified. Nothing in this section precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in or the presumption raised by the report.

(69 Del. Laws, c. 237, § 1; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 265, § 9.)

§ 4331 Chain of physical custody or control.

In the context of controlled dangerous substances:

(1) "Chain of custody" means:

a. The seizing officer;

b. The packaging officer, if the packaging officer is not also the seizing officer; and

c. The forensic toxicologist or forensic chemist or other person who actually touched the substance and not merely the outer sealed package in which the substance was placed by the law-enforcement agency before or during the analysis of the substance.

(2) "Chain of custody" does not include a person who handled the substance in any form after analysis of the substance.

(3)a. For the purpose of establishing, in a criminal or civil proceeding, the chain of physical custody or control of evidence consisting of or containing a substance tested or analyzed to determine whether it is a controlled substance defined under Chapter 47 of Title 16, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery as stated, without the necessity of a personal appearance in court by the person signing the statement.

b. The statement shall contain a sufficient description of the material or its container so as to distinguish it as the particular item in question and shall state that the material was delivered in essentially the same condition as received.

c. The statement may be placed on the same document as the report provided for in § 4330 of this title.

d. Nothing in this section precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in or the presumption raised by the statement.

(69 Del. Laws, c. 237, § 1.)

§ 4332 Presence of forensic toxicologist or forensic chemist at criminal proceeding; availability of chemical report to defense counsel.

(a) *In general.* —

(1) In a criminal proceeding, the prosecution shall, upon written demand of a defendant filed in the proceedings at least 5 days prior to the trial, require the presence of the forensic toxicologist or forensic chemist, or any person in the chain of custody as a prosecution witness.

(2) The provisions of §§ 4330 and 4331 of this title concerning prima facie evidence do not apply to the testimony of that witness.

(3) The provisions of §§ 4330 and 4331 of this title are applicable in a criminal proceeding only when a copy of the report or statement to be introduced is mailed, delivered or made available to counsel for the defendant or to the defendant personally when the defendant is not represented by counsel, at least 10 days prior to the introduction of the report or statement at trial.

(b) *Witness for defense.* — Nothing contained in this subchapter shall prevent the defendant from summoning a witness mentioned in this subchapter as a witness for the defense.

(69 Del. Laws, c. 237, § 1.)

Subchapter IV

Expert Witnesses

§ 4335 Economic expert opinion on the amount of future lost wages and/or future medical expenses.

In any case before a Delaware court where there is a dispute over the economic amount a party owes another party for future lost wages and/or future medical expenses, there shall be a rebuttable presumption that the inflation rate for future lost wages and/or future medical expenses is equal to the economic discount rate. No party shall be required to present an economic expert witness opinion to a jury or court for the purpose of having the present value of the economic amount of a party's claim for either future lost wages and/or future medical expenses introduced into evidence. However, no party is precluded from presenting admissible expert witness opinion to a jury or court for the purposes of having the present value of the economic amount of a party's claim for either future lost wages or future medical expenses introduced into evidence, or to oppose the present value of the economic amount of a party's claim for either future lost wages or future medical expenses. A Delaware court shall have the discretion in any case to order sua sponte or for good cause shown that a party shall be required to present economic expert opinion evidence on the present value of the economic amount that a party is owed by another party for future lost wages and/or future medical expenses.

(79 Del. Laws, c. 285, § 1.)

Part III
Procedure
Chapter 45
JURY SELECTION AND SERVICE

§ 4501 Declaration of policy.

It is the policy of this State that jurors serving in each county shall be selected at random from a fair cross section of the population of that county and that all qualified persons shall have an opportunity to be considered for jury service and an obligation to serve as jurors when summoned for that purpose.

(60 Del. Laws, c. 225, § 2; 66 Del. Laws, c. 5, § 1.)

§ 4502 Prohibition of discrimination.

No person shall be excluded from jury service in this State on account of race, color, religion, sex, national origin or economic status.

(60 Del. Laws, c. 225, § 2; 64 Del. Laws, c. 186, § 1; 66 Del. Laws, c. 5, § 1.)

§ 4503 Definitions.

As used in this chapter:

(1) "Clerk" means the prothonotary of each county, and includes any deputy or clerk in the office of the prothonotary;

(2) "Court" means the Superior Court of the State, and includes any Judge of the Court;

(3) "Juror qualification form" means a form approved by the Court which shall elicit information relevant to the selection of jurors in accordance with this chapter; and

(4) "Jury selection plan" means a written plan designed to carry out the policy and the provisions of this chapter;

(5) "Master list" means a list or an electronic system for the storage of the names of prospective jurors selected randomly from the source list;

(6) "Qualified jury wheel" means a device or an electronic system for the storage of the names of prospective jurors on a master list who are not disqualified from jury service.

(7) "Source list" means a list or an electronic system for the storage of the names on the voter registration list which may be supplemented with names from other sources to foster the policy of this chapter;

(8) "Voter registration list" means the current official record of persons registered to vote in a general election;

(60 Del. Laws, c. 225, § 2; 64 Del. Laws, c. 186, § 1; 66 Del. Laws, c. 5, § 1.)

§ 4504 Jury commissioners.

Repealed by 77 Del. Laws, c. 171, § 1, effective July 22, 2009.

§ 4505 Grand jury.

Grand juries in New Castle County shall consist of 15 members, and the affirmative vote of 9 members shall be necessary to find a true bill of indictment. Grand juries in Kent County and in Sussex County shall consist of 10 members, and the affirmative vote of 7 members shall be necessary to find a true bill of indictment. Grand jurors shall take an oath to perform faithfully the duties of a grand juror.

(66 Del. Laws, c. 5, § 1.)

§ 4506 Special jury.

The Court may order a special jury upon the application of any party in a complex civil case. The party applying for a special jury shall pay the expense incurred by having a special jury, which may be allowed as part of the costs of the case.

(66 Del. Laws, c. 5, § 1.)

§ 4507 Jury selection plan.

(a) The Court shall adopt a jury selection plan to carry out the policy and the provisions of this chapter. The Court may adopt separate plans and varying regulations for each county and for grand, petit and special juries, and may amend a plan at any time. The plan shall provide standards and methods for the selection and service of jurors, including but not necessarily limited to the following:

(1) The duties of clerks and the court administrator or other employees of the Court;

(2) The composition of source lists, including whether voter registration lists shall be supplemented with names from other sources;

(3) The selection of names for master lists;

(4) The content of the juror qualification form;

(5) The groups of persons or occupational classes whose members shall be excused from jury service upon request;

(6) The disqualification, excuse and exclusion of prospective jurors;

(7) The maintenance of qualified jury wheels, including the maximum time that the names of prospective jurors shall remain in a qualified jury wheel and the minimum number of names to be contained therein;

(8) The assignment of persons to grand, petit and special jury panels, or to courts other than Superior Court;

(9) The length of jury service;

(10) The compilation, disclosure and preservation of records used in the selection process.

(b) Persons having custody, possession or control of any list, record or other information required for use in the jury selection process shall supply it or make it available to the Court for inspection, reproduction and copying at all reasonable times, and persons having responsibility for devising or operating data processing systems or computer programs for the State shall certify that any such system or program complies with the jury selection plan when required by the Court. The Court may compel compliance with this subsection by appropriate process.

(66 Del. Laws, c. 5, § 1; 77 Del. Laws, c. 171, § 2.)

§ 4508 Completion of juror qualification form.

(a) Prospective jurors shall be selected randomly from the source list for placement on a master list from time to time as needed.

(b) The clerk shall mail a juror qualification form to persons whose names are on a master list with instructions to provide the information sought. The juror qualification form shall contain a declaration that the responses are true to the best of the prospective juror's knowledge, and acknowledgement that a false statement therein may be punished by a fine or imprisonment, or both. If the prospective juror is unable to fill out the form, another person may do it and shall indicate that fact and the reason therefor. If it appears that there is an omission, ambiguity or error in the information provided, the clerk shall instruct the prospective juror to make the necessary addition, clarification or correction.

(c) Any person who fails to provide information sought as instructed shall be directed to appear forthwith before the clerk to fill out the juror qualification form. Any person who fails to appear as directed may be ordered by the Court to appear and show cause for failure to do so.

(d) At the time of appearance for jury service, or at the time of any interview before the Court or clerk, any prospective juror may be required to fill out another juror qualification form in the presence of the Court or clerk, at which time the prospective juror may be questioned, but only with regard to responses to questions contained on the form and grounds for disqualification, excuse or exclusion. Any information thus acquired by the Court or clerk shall be noted on the juror qualification form.

(66 Del. Laws, c. 5, § 1.)

§ 4509 Disqualification from jury service.

(a) The Court shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror is disqualified for jury service.

(b) All persons are qualified for jury service except those who are:

(1) Not citizens of the United States;

(2) Less than 18 years of age;

(3) Not residents of the county of prospective jury service;

(4) Unable to read, speak and understand the English language;

(5) Incapable, by reason of physical or mental disability, of rendering satisfactory jury service; or

(6) Convicted felons who have not had their civil rights restored.

(c) A prospective juror may be required to submit proof as to possible disqualification, including a physician's or Christian Science Practitioner's certificate, and the physician or practitioner is subject to inquiry by the Court at its discretion.

(60 Del. Laws, c. 225, § 2; 62 Del. Laws, c. 219, § 1; 66 Del. Laws, c. 5, § 1.)

§ 4510 Selection and summoning of jury panels.

(a) Prospective jurors shall be selected randomly from the qualified jury wheel or from the master list for assignment to grand, petit and special jury panels from time to time as needed.

(b) The clerk shall cause each person selected for jury service to be served with a summons, either personally, or by mail addressed to the person's usual residence, business or post office address, requiring the person to report for jury service at a specified time and place. Any person who fails to appear as directed may be ordered by the Court to appear and show cause for failure to do so.

(c) If there is an unanticipated shortage of available jurors, the Court may require the sheriff to summon a sufficient number of jurors selected in a manner prescribed by the Court.

(60 Del. Laws, c. 225, § 2; 64 Del. Laws, c. 186, §§ 6-8; 66 Del. Laws, c. 5, § 1; 69 Del. Laws, c. 428, § 1.)

§ 4511 Excuse or exclusion from jury service.

(a) The Court shall determine on the basis of information provided on the juror qualification form or interview with the prospective juror or other competent evidence whether the prospective juror shall be excused or excluded from jury service.

(b) A person who is not disqualified may be excused from jury service by the Court only upon a showing of undue hardship, extreme inconvenience or public necessity, for a period the Court deems necessary, at the conclusion of which the person shall reappear for jury service in accordance with the Court's direction. The Court may determine that membership in specified groups of persons or occupational classes constitutes a showing of undue hardship, extreme inconvenience or public necessity.

(c) A person who is not disqualified may be excluded from jury service by the Court only upon a finding that such person would be unable to render impartial jury service or would be likely to disrupt or otherwise adversely affect the proceedings.

(66 Del. Laws, c. 5, § 1.)

§ 4512 Challenging compliance with selection procedures.

(a) Within 7 days after the moving party discovers, or by the exercise of diligence could have discovered, the grounds therefor, and in any event before the jury is sworn to try the case, a party may move to stay the proceedings, and in a criminal case to dismiss the indictment, or for other appropriate relief, on the ground of substantial failure to comply with this chapter in selecting the grand, petit or special jury.

(b) Upon motion filed under subsection (a) of this section containing a sworn statement of facts which, if true, would constitute a substantial failure to comply with this chapter, the moving party is entitled to present in support of the motion the testimony of the clerk, any relevant records and papers not public or otherwise available used by the clerk, and any other relevant evidence. If the Court determines that in selecting a grand, petit or special jury there has been a substantial failure to comply with this chapter, the Court may stay the proceedings pending the selection of the jury in conformity with this chapter, dismiss an indictment or grant other appropriate relief.

(c) The procedures prescribed by this section are the exclusive means by which a jury may be challenged on the ground that the jury was not selected in conformity with this chapter.

(60 Del. Laws, c. 225, § 2; 66 Del. Laws, c. 5, § 1; 77 Del. Laws, c. 171, §§ 3, 4.)

§ 4513 Disclosure and preservation of records.

(a) The names of persons summoned for jury service shall be disclosed to the public and the contents of jury qualification forms completed by them shall be made available to the parties unless the Court determines that any or all of this information should be kept confidential or its use limited in whole or in part in any case or cases.

(b) Records used in the selection process shall not be disclosed, except in accordance with the jury selection plan or as necessary in the preparation or presentation of a motion challenging compliance with this chapter.

(c) Records used in the selection process shall be preserved for at least 4 years.

(60 Del. Laws, c. 225, § 2; 66 Del. Laws, c. 5, § 1.)

§ 4514 Compensation and reimbursement.

(a) Jurors shall be paid a per diem rate of $20 which shall serve as a daily allowance for reimbursement for travel, parking and other out-of-pocket expenses. An employer shall not consider the reimbursement described in this subsection as pay. Jurors whose term of service is 1 day or 1 trial shall not receive reimbursement for the first day of service. The State shall pay for food, lodging and other necessary expense during the sequestration of a jury.

(b) The Court shall keep a record of attendance and travel or other expense and shall certify the amount due for payment by the State Treasurer.

(60 Del. Laws, c. 225, § 2; 66 Del. Laws, c. 5, § 1; 67 Del. Laws, c. 47, § 35; 69 Del. Laws, c. 331, § 1; 72 Del. Laws, c. 38, §§ 1, 2; 77 Del. Laws, c. 171, § 5.)

§ 4515 Protection of jurors' employment.

(a) An employer shall not deprive an employee of employment, or threaten or otherwise coerce the employee with respect thereto, because the employee receives a summons, responds thereto, serves as a juror or attends Court for prospective jury service.

(b) Any employer who violates subsection (a) of this section is guilty of criminal contempt and upon conviction may be fined not more than $500 or imprisoned not more than 6 months, or both.

(c) If an employer discharges an employee in violation of subsection (a) of this section, the employee may file a civil action in Superior Court within 90 days for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. An employee who prevails shall be allowed a reasonable attorney's fee fixed by the Court.

(66 Del. Laws, c. 5, § 1.)

§ 4516 Failure to perform jury service.

A person who fails to appear and show cause as ordered by the Court for failure to comply with the clerk's direction to appear for the purpose of completing a juror qualification form or for failure to comply with a summons to appear for jury service or to complete jury service is guilty of criminal contempt and upon conviction may be fined not more than $100 or imprisoned not more than 3 days, or both.

(66 Del. Laws, c. 5, § 1.)

§ 4517 Jurisdiction.

The Superior Court shall have original and exclusive jurisdiction over any violation of this chapter.

(60 Del. Laws, c. 225, § 2; 66 Del. Laws, c. 5, § 1.)

§§ 4518 -4543. [Reserved.]

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Part III
Procedure
Chapter 47
JUDGMENTS
Subchapter I
Lien of Judgments

§ 4701 Definitions.

As used in this subchapter:

"Terre tenant" means the grantee of real estate to whom the same has been conveyed, as appears by the last conveyance of the same of record.

(23 Del. Laws, c. 200, § 8; Code 1915, § 4300; Code 1935, § 4772; 10 Del. C. 1953, § 4701.)

§ 4702 Time of binding lands.

A judgment shall bind lands only from the time of actually entering or signing it, and not by relation from the first day of the term in or of which it is entered.

(Code 1852, § 2396; Code 1915, § 4282; Code 1935, § 4754; 10 Del. C. 1953, § 4702.)

§ 4703 Time entry of judgment upon verdict is effective.

A judgment upon a verdict, if entered before the end of the term next after that in which it is given, shall be deemed to be entered at the same time as the verdict, and shall bind accordingly.

(Code 1852, § 2397; Code 1915, § 4283; Code 1935, § 4755; 10 Del. C. 1953, § 4703.)

§ 4704 Ascertaining amount of judgment; time of entry.

A judgment given, amount to be ascertained by the prothonotary or other person, shall bind from the time of its entry, if the amount is ascertained and entered upon the docket before the first day of the term next after that in which the judgment is given; but otherwise only from the time of entering upon the docket the ascertained amount.

(Code 1852, § 2398; Code 1915, § 4284; Code 1935, § 4756; 10 Del. C. 1953, § 4704.)

§ 4705 Priority of judgments entered same day.

If several judgments are entered against the same person, on the same day, the first entered has priority. If where there are several judgments against the same person, it does not appear, by the entries, which was first entered, they shall, when given in actions previously commenced, have priority according to the priority of the dates of the actions in which they are respectively given.

(Code 1852, § 2399; Code 1915, § 4285; Code 1935, § 4757; 10 Del. C. 1953, § 4705.)

§ 4706 Entry during term; docket date.

A judgment entered during a term, if the day of entering it does not appear by the docket, shall be postponed to a judgment entered during the period of the same term, the day of entering which does appear by the docket. None of the foregoing regulations shall contravene the provisions of § 4703 of this title, respecting judgment upon a verdict.

(Code 1852, § 2400; Code 1915, § 4286; Code 1935, § 4758; 10 Del. C. 1953, § 4706.)

§ 4707 Justice of the peace and Court of Common Pleas judgments.

Sections 4702-4706 of this title do not extend to judgments before a justice of the peace or to judgments of the Court of Common Pleas.

(Code 1852, § 2401; Code 1915, § 4287; Code 1935, § 4759; 10 Del. C. 1953, § 4707.)

§ 4708 Supreme Court judgments.

A final judgment of the Supreme Court, given upon the reversal of a judgment of the Superior Court, shall bind real estate in the county wherein were the proceedings in the Court below, from the date of entering it in the Supreme Court, if, the record being remanded, the judgment is entered upon the docket of the Court below within 20 days after such date. If the judgment is not so entered within such time, it shall be a lien only from the time of entering it upon the docket of the Court below.

(Code 1852, § 2402; Code 1915, § 4288; Code 1935, § 4760; 10 Del. C. 1953, § 4708.)

§ 4709 Prothonotary to enter Supreme Court judgment.

The prothonotary of the Court below to whom a record remanded with a duly certified copy of the proceedings and judgment of the Supreme Court is delivered, shall without delay file it, and enter upon the docket of the Court below, in connection with the entries of the proceedings in the cause in the Court, the proceedings and judgment of the Supreme Court, with the date of making such entry.

(Code 1852, § 2403; Code 1915, § 4289; Code 1935, § 4761; 10 Del. C. 1953, § 4709.)

§ 4710 Effect of Supreme Court judgment.

(a) The entry, made under § 4709 of this title, shall be a record, and the judgment, so entered, shall have the same force and effect as a judgment of the Court below, and shall be executed by the process of that Court in like manner as judgments of such Court. The lien thereof may be extended to lands and tenements in another county by means of a testatum fieri facias entered of record in the office of the prothonotary of the county.

(b) The lien of a judgment shall not be extended by affirmance to real estate not bound by the original judgment.

(c) A judgment of the Supreme Court shall not bind real estate otherwise than as prescribed by this section.

(Code 1852, §§ 2404-2406; Code 1915, §§ 4290-4292; Code 1935, §§ 4762-4764; 10 Del. C. 1953, § 4710.)

§ 4711 Time limitation of judgment lien; extension of time.

No judgment for the recovery of money entered or recorded in the Superior Court, whether rendered by that Court or transferred thereto from the Supreme Court, or from the dockets of a justice of the peace or the Court of Common Pleas, or operative by virtue of any writ of testatum fieri facias, or otherwise, howsoever recorded in the Court, shall continue a lien upon real estate for a longer term than 10 years next following the day of entry or recording of such judgment, or, in case the whole or any part of the money for which the judgment is recovered or rendered shall not be due and payable at or before the time of its entry or recording, the day on which such money shall have become wholly due and payable, unless, within the term of 10 years, the lien of such judgment is renewed and continued by a written agreement, signed by the plaintiff, or if there is more than 1, 1 or more of the plaintiffs therein, or the assignee or assignees thereof, or the person or persons to whose use such judgment shall have been marked, such person's or persons' executors or administrators, and by the defendant or defendants therein, such defendant's or defendants' executors or administrators, and, in order to bind lands conveyed by the defendant or defendants by deeds of record subsequent to such judgment, the terre tenant or terre tenants of the real estate bound by such lien, or, in case of a judgment upon a mechanic's lien, the terre tenant or terre tenants of such real estate, or by the attorneys of record of the respective parties to such judgment, or of the persons interested therein, in substantially the following form, after stating the title of the cause: "It is agreed that the lien of this judgment shall be extended for the term of 10 years," filed in the office of the prothonotary and by the prothonotary minuted and certified upon the record of the judgment, or of the testatum fieri facias, as the case may be, or by scire facias, in manner set forth in this section. If a writ of scire facias is sued out of the Court before the expiration of the term of 10 years, and the term expires during the pendency of the proceedings upon the scire facias, the lien of the judgment shall continue until final determination by the Court of the rights of the respective parties thereto, or until the discontinuance or dismissal of such scire facias. If final judgment in such scire facias is rendered against the plaintiff or plaintiffs therein, and an appeal or a writ of error is taken, and the Supreme Court renders final judgment thereon in favor of the plaintiff, plaintiff in error, or appellant, the lien of such original judgment shall be restored and continued. Such restoration or continuance of the lien by such final judgment of the Supreme Court shall not in any manner affect or be operative as against any bona fide purchaser, mortgagee or judgment creditor, who becomes such after the entry of such final judgment by the Superior Court upon such scire facias and before the noting upon the record of such final judgment in such scire facias of the taking of the appeal or writ of error.

No judgment which is a general lien, including judgments for costs and judgments in favor of the State or any political subdivision thereof, shall remain a lien for more than the 10-year period hereinabove provided, unless renewed for a further 10-year term in accordance with the provisions of this section.

This section shall not apply to those judgments entered of record pursuant to court-ordered restitution awards as provided in § 4101(b) of Title 11.

(19 Del. Laws, c. 778, § 1; 22 Del. Laws, c. 457, § 1; 23 Del. Laws, c. 200, § 1; Code 1915, § 4293; Code 1935, § 4765; 10 Del. C. 1953, § 4711; 50 Del. Laws, c. 319, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 27, § 9.)

§ 4712 Effect of extension; subsequent renewals.

Immediately from and after the minuting and certifying upon the record of the original judgment, or of the testatum fieri facias, as the case may be, of the agreement for the extension of the lien thereof, or the entry of final judgment in the Superior Court in favor of the plaintiff or plaintiffs in the writ of scire facias, or the entry of final judgment in the Supreme Court restoring and continuing such lien, such lien shall continue for the further term of 10 years next thereafter unless sooner lost by final judgment of the Supreme Court. In like manner and with like effect such liens so renewed or restored and continued may, by a like agreement filed, minuted and certified upon the record of such original judgment, or of such testatum fieri facias, as the case may be, before the expiration of the extended term or by final judgment in scire facias, be again renewed or restored and continued for the further term of 10 years, and so from time to time as often as is found necessary.

(19 Del. Laws, c. 778, § 2; 22 Del. Laws, c. 457, § 2; 23 Del. Laws, c. 200, § 2; Code 1915, § 4294; Code 1935, § 4766; 10 Del. C. 1953, § 4712.)

§ 4713 Seizure of real estate by execution after losing lien.

No real estate shall be seized or taken by virtue of execution process upon any judgment, for the recovery of money, entered or recorded in the Superior Court, after the expiration of the term of 10 years next following the day of entry or recording of such judgment, or, in case the whole or any part of the money for which such judgment was recovered or rendered was not due or payable at or before the time

of its entry or recording, the day on which such money became or becomes wholly due and payable. At the expiration of the term of 10 years the lien of such judgment upon real estate shall be lost, unless within the term of 10 years such judgment is renewed and continued by agreement filed or by scire facias sued out in the manner provided in §§ 4711 and 4712 of this title. All the provisions of such sections, not inconsistent with this section, shall be applicable for the renewal or restoration and continuance and preservation of the lien of the judgments mentioned in this section, and as to the force and effect and the loss of such lien.

(19 Del. Laws, c. 778, § 3; 22 Del. Laws, c. 457, § 3; 23 Del. Laws, c. 200, § 3; Code 1915, § 4295; Code 1935, § 4767; 10 Del. C. 1953, § 4713.)

§ 4714 Revived judgment as lien on real estate.

In case the lien upon real estate of any judgment for the recovery of money entered or recorded in the Superior Court of this State is lost or interrupted under the provisions of this chapter, and the judgment is thereafter revived by scire facias, the same, when so revived, shall be a lien upon the real estate of the defendant or defendants in the original judgment, or in case of judgment upon a mechanic's lien, upon the real estate originally bound by such mechanic's lien, from the time of such revival, but such lien shall not relate back, nor shall it in any manner affect any prior bona fide purchaser or mortgagee from or judgment creditor of such defendant or defendants or terre tenant or terre tenants.

(19 Del. Laws, c. 778, § 4; 22 Del. Laws, c. 457, § 4; 23 Del. Laws, c. 200, § 4; Code 1915, § 4296; Code 1935, § 4768; 10 Del. C. 1953, § 4714.)

§ 4715 Scire facias for extension of lien.

(a) In all cases where no agreement for the renewal and extension of the lien of judgments, as provided for in this subchapter, has been minuted and certified, the plaintiff or plaintiffs in such judgments or the assignee or assignees thereof or the person or persons to whose use such judgment has been or shall be marked, or his, her, or their executors or administrators, may cause a writ of scire facias to be issued against the defendant or defendants in such judgment and the terre tenant or terre tenants of the real estate bound by such lien or, in case of a judgment on a mechanic's lien, the terre tenant or terre tenants, directed to the sheriff of the county in which such writ issues, commanding the sheriff to make known to the defendant or defendants therein that the defendant or defendants appear before the court and show cause, if any there be, why the lien of such judgment should not be renewed and continued and execution should not issue on such judgment. In all respects the practice, pleadings and procedure upon such scire facias shall conform as nearly as may be to the practice, pleadings and procedure on other writs of scire facias sued out of the courts upon judgments under existing law.

(b) If final judgment is rendered for the plaintiff or plaintiffs in such writ, it shall be that the lien of such original judgments stands renewed and continued for the term of 10 years next following the day of the entry of such judgment in the action of scire facias, and that the plaintiff or plaintiffs therein have execution thereon as in other cases during the term of 10 years.

(19 Del. Laws, c. 778, § 5; 22 Del. Laws, c. 457, § 5; 23 Del. Laws, c. 200, § 5; Code 1915, § 4297; Code 1935, § 4769; 10 Del. C. 1953, § 4715; 70 Del. Laws, c. 186, § 1.)

§ 4716 Cases in which the 10 year limitation shall not apply.

(a) This subchapter shall not operate to defeat the due enforcement of any writ of execution under any judgment for the recovery of money entered or recorded in the Superior Court, by virtue of which real estate is seized or taken, if such writ of execution is issued before the expiration of the said term of 10 years. They shall not apply to any judgment upon a mortgage or mechanic's lien.

(b) No general lien which would have remained in force for more than 10 years under this section as it existed prior to June 23, 1955, shall be lost by virtue of § 4711 of this title or subsection (a) of this section, if within 1 year from June 23, 1955, such lien shall be extended in accordance with this subchapter.

(19 Del. Laws, c. 778, § 6; 22 Del. Laws, c. 457, § 6; 23 Del. Laws, c. 200, § 6; Code 1915, § 4298; Code 1935, § 4770; 10 Del. C. 1953, § 4716; 50 Del. Laws, c. 319, §§ 2, 3.)

§ 4717 Judgments by confession.

A judgment, entered by the prothonotary of the Superior Court upon an obligation, without complaint filed, according to § 2306 of this title, shall have the same force and effect as if a complaint had been filed and judgment confessed by an attorney, or judgment obtained in open court.

(Code 1852, § 2408; Code 1915, § 4303; Code 1935, § 4775; 10 Del. C. 1953, § 4717.)

§ 4718 Judgment on bond other than for payment of money.

No judgment entered by virtue of a warrant of attorney in the Superior Court, upon any bond or obligation with condition other than for the payment of money, shall be or operate as a lien upon real estate until the bond or obligation and warrant of attorney, or a copy thereof, certified under the hand of the prothonotary and the seal of the Court, is filed in the office of such prothonotary. The prothonotary, at all times thereafter, shall safely keep such bond or obligation and warrant of attorney, or certified copy thereof, in his or her office. The provisions of this section shall not apply to any official bond or obligation given by a public officer.

(19 Del. Laws, c. 778, § 7; 22 Del. Laws, c. 457, § 7; 23 Del. Laws, c. 200, § 7; Code 1915, § 4299; Code 1935, § 4771; 10 Del. C. 1953, § 4718; 70 Del. Laws, c. 186, § 1.)

Subchapter II
Entry of Judgments

§ 4731 Dating and indexing.

The true date of entering or signing every judgment, shall be entered on the docket thereof, as also the date of ascertaining the amount of a judgment given, the amount to be ascertained by the prothonotary, or other person.

All judgments shall be indexed according to § 2304 of this title.

(Code 1852, § 2407; Code 1915, § 4302; Code 1935, § 4774; 10 Del. C. 1953, § 4731.)

§ 4732 Attorney confessing judgment upon warrant of attorney.

When judgment is confessed by virtue of a warrant of attorney for a penalty, the attorney confessing the judgment shall, in a written direction to the officer entering the judgment, set down the real debt, and the time from which interest is to be calculated; which shall be entered by the officer upon the docket of the judgment.

(Code 1852, § 2409; Code 1915, § 4304; Code 1935, § 4776; 10 Del. C. 1953, § 4732.)

§ 4733 Judgments entered at special directions of state judge.

(a) Any state judge may have recorded, docketed, indexed and/or filed, in any appropriate city, county or state office in this State, where legal documents are usually received for recording, docketing, indexing and/or filing, any interlocutory, or final judgment or order or part thereof, entered in any cause pending in any of the state courts. The state judge shall, in the judgment or order proposed to be recorded, docketed, indexed and/or filed, direct the manner in which it shall be recorded, docketed, indexed and/or filed.

(b) From the time any judgment or order referred to in subsection (a) of this section is received in any office designated in the judgment, it shall constitute notice to all persons who are charged with notice of matters filed in such office.

(c) When a judgment or order is received by any city, county or state officer pursuant to subsection (a) of this section, the person in charge of the office shall receive the judgment or order and record, docket, index and/or file the same in accordance with the directions set forth in the judgment or order.

(d) As used in this section, "state judge" includes the Chancellor, and any Vice-Chancellor.

(48 Del. Laws, c. 129, §§ 1, 2; 10 Del. C. 1953, § 4733.)

§ 4734 Court of Chancery judgments for payment of money.

The prothonotary of each county shall, upon the receipt of any judgment or order from the Court of Chancery, calling for the payment of a sum of money, enter the same in accordance with the directions of the Court as provided in the judgment or order. The judgment or order, or part thereof, shall be entered in the same manner and form and in the same books and indexes as judgments and orders entered in the Superior Court. After the entry thereof the judgments or orders or parts thereof calling for the payment of money shall have the same force and effect as though the judgment had been entered in the Superior Court.

(48 Del. Laws, c. 129, § 3; 10 Del. C. 1953, § 4734.)

§ 4735 Supplementary character of §§ 4733 and 4734.

Sections 4733 and 4734 of this title provide for a grant of additional powers to state judges and are not intended to limit or detract from any other powers of the courts of this State or the present or future effect of any judgment or order of the courts of this State, save and except as therein specifically set forth.

(48 Del. Laws, c. 129, § 4; 10 Del. C. 1953, § 4735.)

§ 4736 Federal court judgments.

(a) Transcripts of judgments rendered in the United States District Court or in any other federal court of competent jurisdiction within this State shall be filed and docketed in the office of the prothonotary of each county of this State other than the county in which such judgment was rendered and when so filed and docketed, and only when so filed and docketed, such judgments, shall have the same force and effect as a lien as judgments rendered and docketed in the Superior Court of this State in any county of the State.

(b) When transcripts of any judgments of any federal court in this State have been filed and docketed as provided in subsection (a) of this section then said judgments shall be liens on the real estate of the judgment debtor within the county in which such judgment has been filed and docketed in the same manner and to the same extent and under the same conditions as if such judgments had been rendered in the Superior Court of any county of this State.

(c) The prothonotary of each county upon being presented with a transcript of a judgment rendered in any federal court within this State, and upon receiving a fee of $1.00, shall immediately file such transcript, and docket and index the judgment in the same manner as prescribed by law for the docketing and indexing of judgments rendered in the Superior Court of this State.

(Code 1935, § 4773A; 47 Del. Laws, c. 366; 10 Del. C. 1953, § 4736.)

§ 4737 Fees of prothonotary.

The fees of the prothonotary for services under this subchapter shall, unless otherwise provided, be regulated by the Superior Court in the several counties.

(19 Del. Laws, c. 778, § 8; 22 Del. Laws, c. 457, § 8; 23 Del. Laws, c. 200, § 9; Code 1915, § 4301; Code 1935, § 4773; 10 Del. C. 1953, § 4737.)

Subchapter III
Satisfaction of Judgments

§ 4751 Time for entry; penalty for failure to satisfy; jurisdiction.

(a) Every person to whom a sum is due by judgment, who receives satisfaction of the same, shall forthwith cause such satisfaction to be entered upon the record of the judgment.

(b) Whoever being the holder of a judgment wilfully fails to satisfy a judgment upon the record as required by subsection (a) of this section, shall be fined not more than $500 for each such failure.

(c) The Superior Court shall have jurisdiction of offenses under this section.

(Code 1852, § 2410; Code 1915, § 4305; Code 1935, § 4777; 10 Del. C. 1953, § 4751; 55 Del. Laws, c. 341, § 1.)

§ 4752 Exceptions to § 4751.

Section 4751 of this title does not extend to cases where a sum due by judgment is received from the sheriff or other officer on execution. It does not extend to a judgment of a justice of the peace or the Court of Common Pleas unless a transcript thereof is entered in the Superior Court, in which case satisfaction shall be there entered.

(Code 1852, § 2411; Code 1915, § 4306; Code 1935, § 4778; 10 Del. C. 1953, § 4752.)

§ 4753 Persons making and signing entry.

Satisfaction shall be entered by the legal holder of the judgment of such satisfaction upon the record of the judgment. Such entry shall be signed by the holder of such judgment or the holder's attorney of record, or the holder's attorney duly constituted, or, when a corporation is the holder, by any officer or the cashier or assistant cashier of the corporation or the attorney thereof duly constituted and attested by the prothonotary.

(Code 1852, § 2412; Code 1915, § 4307; 37 Del. Laws, c. 267; Code 1935, § 4779; 10 Del. C. 1953, § 4753; 55 Del. Laws, c. 341, § 2; 70 Del. Laws, c. 186, § 1.)

§ 4754 Penalty for failure to enter within time limit.

Any person who commits a default under § 4751 of this title, and such person's executors or administrators, in addition to other penalties, shall be liable to the defendant in the judgment, or the executors or administrators of such defendant, in damages, to be recovered in a civil action. The damages shall be not less than $10, nor more than $500, except when special damages to a larger amount are alleged in the complaint and proved.

(Code 1852, § 2413; Code 1915, § 4308; Code 1935, § 4780; 10 Del. C. 1953, § 4754; 55 Del. Laws, c. 341, § 3; 70 Del. Laws, c. 186, § 1.)

§ 4755 Officer holding execution; return of payments or settlement.

(a) When the sheriff or other officer, to whom an execution is directed, levies or receives the sum due thereon, or any part thereof, or obtains a settlement of the execution, such officer shall make return of such receipt or settlement, under his or her hand, endorsed upon the execution, with the sum and date of each payment, if the execution is not fully satisfied. If the receipt or settlement is after the execution is returned, it shall be certified, within 30 days thereafter, to the prothonotary in whose office the execution is. In such latter case, the prothonotary shall annex the certificate to the execution. The prothonotary shall enter every return of payment or settlement upon the docket of the execution. If the judgment is thus satisfied, the prothonotary shall also note it on the record of such judgment.

(b) This section does not extend to an execution issued by a justice of the peace or the Court of Common Pleas.

(Code 1852, § 2414; Code 1915, § 4309; Code 1935, § 4781; 10 Del. C. 1953, § 4755; 70 Del. Laws, c. 186, § 1.)

§ 4756 Real estate sold on execution; return of officer; duty of prothonotary.

The sheriff or other officer having sold real estate by virtue of execution process, in such officer's return to such process, shall show expressly to what lien or liens the money arising from the sale thereof has been applied and how much has been applied to each lien. If for any cause the sheriff or other officer shall not be able to make a proper return by the return day fixed, the Court shall, upon application made by the officer, give further time for making such return, and when the return has been made, the prothonotary shall cause satisfaction to be entered upon the record of such judgment or judgments as have been paid by such proceeds of sale, and where the sum applicable to any lien is not sufficient to pay the same, in that case to note as a credit, on the record thereof, the amount applied thereto by such return.

(14 Del. Laws, c. 559, § 1; Code 1915, § 4310; Code 1935, § 4782; 10 Del. C. 1953, § 4756; 70 Del. Laws, c. 186, § 1.)

§ 4757 Testatum fi. fa. or transcript of judgment in another county; duties of prothonotary.

(a) Whenever there is any judgment in any county of this State, against any person, upon which a testatum fi. fa. has been issued and recorded in another county, or a transcript of the same has been so made and recorded, and the judgment upon which the testatum fi. fa. has been issued, or that of which a transcript has been made and recorded as heretofore prescribed, has been satisfied, the prothonotary for the county where such original judgment is or shall be, within 30 days after such satisfaction, shall certify the fact of such satisfaction to the prothonotary of the county where the testatum fi. fa. or transcript, has been recorded. Upon the receipt of such certificate the prothonotary of the county where the testatum fi. fa. or transcript has been recorded shall write the fact of such satisfaction, within 2 days thereafter, upon the record where the testatum fi. fa. or the transcript, is or shall be recorded.

(b) If any prothonotary refuses or neglects to perform any of the duties enjoined upon the prothonotary by this section, the prothonotary shall be liable in damages to any person injured by such default in a civil action. Such damages shall not be less than $10 nor more than $50, except when special damages to a larger amount are alleged in the complaint and proved.

(14 Del. Laws, c. 559, § 2; Code 1915, § 4311; Code 1935, § 4783; 10 Del. C. 1953, § 4757; 70 Del. Laws, c. 186, § 1.)

§ 4758 Penalties for violations or neglect of duty by officers.

If any prothonotary or sheriff refuses or neglects to perform any of the duties enjoined upon such officer by §§ 4755-4757 of this title, he or she shall be liable in damages to any person, injured by such default, in a civil action. Such default shall also be a breach of such officer's official obligation or recognizance, as the case may be.

(Code 1852, § 2415; Code 1915, § 4312; Code 1935, § 4784; 10 Del. C. 1953, § 4758; 70 Del. Laws, c. 186, § 1.)

§ 4759 Compelling entry on record.

Where judgments are liens upon real estate and the same have been paid, and the obligee or plaintiff or his or her executors, administrators or assigns refuses or neglects to enter satisfaction of such judgment on the record thereof in the office where the same is entered, such satisfaction of such judgment may be compelled or be ordered to be entered on the record according to the provisions of § 2115 of Title 25.

(22 Del. Laws, c. 211, § 1; Code 1915, § 4313; Code 1935, § 4785; 10 Del. C. 1953, § 4759; 70 Del. Laws, c. 186, § 1.)

§ 4760 Entry by nonresident.

(a) Any nonresident person to whom a sum is due by judgment, shall appear at the office where such judgment is recorded, within 30 days after a notice has been given to the person to whom the sum is due, by the person owing such sum by judgment, to receive satisfaction, and at the same time enter satisfaction on the record of such judgment. If the nonresident neglects or refuses to appear in person or by power of attorney within the time specified, then the person owing the sum by such judgment may deposit the amount due upon such judgment, in any state or national bank having its principal place of business in the State, subject to the order of such nonresident. The cashier of the bank shall give to the depositor a certificate stating the amount deposited in the name of the nonresident and upon the presentation of this certificate, at the office where such judgment is recorded, the officer in charge of such office shall enter full satisfaction upon the record, and shall write upon the record the manner in which the judgment is satisfied, and shall retain the certificate or a duplicate of the same in the office.

(b) A notice, by mail or by person, to a nonresident creditor shall be deemed and taken as sufficient notice. This section, however, shall not bar any nonresident from correcting any errors or omissions in any payments due to such nonresident by suit or otherwise.

(15 Del. Laws, c. 475; Code 1915, § 4314; Code 1935, § 4786; 10 Del. C. 1953, § 4760; 63 Del. Laws, c. 142, § 27; 70 Del. Laws, c. 186, § 1.)

Subchapter IV

Judgments Against Executors and Administrators

§ 4771 Report of referees; conclusiveness as to assets.

Judgment against an executor or administrator, upon the report of referees, shall not be conclusive that he or she has assets, unless it is expressly found by the report that he or she has assets.

(Code 1852, § 2416; Code 1915, § 4315; Code 1935, § 4787; 10 Del. C. 1953, § 4771; 70 Del. Laws, c. 186, § 1.)

§ 4772 Decedent's real estate as bound.

The real estate of a deceased person shall not be liable to be taken in execution upon, and shall not be bound by a judgment against deceased's executor or administrator, unless such judgment is rendered upon a verdict, or an inquisition, or upon the report of referees on a rule of reference entered, upon application of the parties, by the Superior Court, referring all matters in controversy to 3 judicious and impartial freeholders (or more if the parties so request) to be appointed by the Court. Judgment shall be rendered on their report or the report of a majority of them.

(Code 1852, § 2417; Code 1915, § 4316; Code 1935, § 4788; 10 Del. C. 1953, § 4772; 70 Del. Laws, c. 186, § 1.)

§ 4773 Application by plaintiff for rule of reference.

If a defendant, being summoned, fails to appear, or appearing, neglects or refuses so to plead as to put the cause at issue in order for trial by a jury, a rule of reference under § 4772 of this title may be made by the court upon the application of the plaintiff only.

(Code 1852, § 2418; Code 1915, § 4317; Code 1935, § 4789; 10 Del. C. 1953, § 4773.)

§ 4774 Notice of meeting of referees.

When a rule of reference is entered by the court upon the application of the plaintiff only, at least 10 days' notice of the meeting of the referees shall be required.

(Code 1852, § 2419; Code 1915, § 4318; Code 1935, § 4790; 10 Del. C. 1953, § 4774.)

§ 4775 Rule of reference after judgment by default or upon motion.

A rule of reference may be entered after a judgment by default or after a judgment for plaintiff upon a motion, as well as before judgment. Although it be entered after judgment, nevertheless judgment shall be rendered on the report made pursuant thereto, and such judgment on the report shall be regular, notwithstanding the previous judgment.

(Code 1852, § 2420; Code 1915, § 4319; Code 1935, § 4791; 10 Del. C. 1953, § 4775.)

Subchapter V

Enforcement of Foreign Judgments

§ 4781 "Foreign judgment" defined.

In this subchapter, the words "foreign judgment" shall mean any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this State.

(65 Del. Laws, c. 333, § 1.)

§ 4782 Filing and status of foreign judgments.

A copy of any foreign judgment authenticated in accordance with an act of Congress, or the statutes of this State, may be filed in the office of any prothonotary of this State. The prothonotary shall treat the foreign judgment in the same manner as a judgment of the Superior Court of this State. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying, as a judgment of the Superior Court of this State and may be enforced or satisfied in like manner.

(65 Del. Laws, c. 333, § 1.)

§ 4783 Notice of filing.

(a) At the time of the filing of the foreign judgment, the judgment creditor or the creditor's attorney shall make and file with the prothonotary an affidavit setting forth the name and last-known post office address of the judgment debtor and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the prothonotary shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given, and shall make a note of such mailing in the docket. The notice shall include the name and post office address of the judgment creditor and the judgment creditor's attorney, if any, in this State. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor, and may file proof of such mailing with the prothonotary. Lack of a mailing of the notice of filing by the prothonotary shall not affect the enforcement proceedings, if proof of mailing by the judgment creditor has been filed.

(c) No execution, or other process for enforcement of a foreign judgment filed hereunder, shall issue until 20 days after the judgment is filed.

(65 Del. Laws, c. 333, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4784 Stay.

(a) If the judgment debtor shows the Court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the Court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires, or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished security for the satisfaction of the judgment as required by the state in which it was rendered.

(b) If the judgment debtor shows the Court any ground upon which enforcement of a judgment of the Superior Court of this State would be stayed, the Court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this State.

(65 Del. Laws, c. 333, § 1.)

§ 4785 Fees.

Any person filing a foreign judgment shall pay to the prothonotary the same amount as is required for the filing of a civil action in the Superior Court of this State. Fees for docketing, transcription or other enforcement proceedings shall be as provided for judgments obtained in the Superior Court of this State.

(65 Del. Laws, c. 333, § 1.)

§ 4786 Right to enforce judgment unimpaired.

The right of a judgment creditor to bring an action to enforce a judgment, instead of proceeding under this subchapter, remains unimpaired.

(65 Del. Laws, c. 333, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4787 Short title.

This subchapter may be cited as the "Uniform Enforcement of Foreign Judgments Act."

(65 Del. Laws, c. 333, § 1.)

Part III
Procedure
Chapter 48
UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

§ 4801 Definitions.

In this chapter:

(1) "Foreign country" means a government other than:

a. The United States;

b. A state, district, commonwealth, territory, or insular possession of the United States; or

c. Any other government with regard to which the decision in this State as to whether to recognize a judgment of that government's courts is initially subject to determination under the full faith and credit clause of the United States Constitution [U.S. Const. art. IV, § 1].

(2) "Foreign-country judgment" means a judgment of a court of a foreign country.

(71 Del. Laws, c. 145, § 1; 78 Del. Laws, c. 65, § 2.)

§ 4802 Applicability.

(a) Except as otherwise provided in subsection (b) of this section, this chapter applies to a foreign-country judgment to the extent that the judgment:

(1) Grants or denies recovery of a sum of money; and

(2) Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(b) This chapter does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

(1) A judgment for taxes;

(2) A fine or other penalty; or

(3) A judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.

(c) A party seeking recognition of a foreign-country judgment has the burden of establishing that this chapter applies to the foreign-country judgment.

(71 Del. Laws, c. 145, § 1; 78 Del. Laws, c. 65, § 2.)

§ 4803 Standards for recognition of foreign-country judgment.

(a) Except as otherwise provided in subsections (b) and (c) of this section, a court of this State shall recognize a foreign-country judgment to which this chapter applies.

(b) A court of this State may not recognize a foreign-country judgment if:

(1) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;

(2) The foreign court did not have personal jurisdiction over the defendant; or

(3) The foreign court did not have jurisdiction over the subject matter.

(c) A court of this State need not recognize a foreign-country judgment if:

(1) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;

(2) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;

(3) The judgment or the cause of action on which the judgment is based is repugnant to the public policy of this State or of the United States;

(4) The judgment conflicts with another final and conclusive judgment;

(5) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;

(6) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;

(7) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or

(8) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(d) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (b) or (c) of this section exists.

(71 Del. Laws, c. 145, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 65, § 2.)

§ 4804 Grounds for nonrecognition.

(71 Del. Laws, c. 145, § 1; 70 Del. Laws, c. 186, § 1; repealed by 78 Del. Laws, c. 65, § 3, eff. June 28, 2011.)

§ 4805 Personal jurisdiction.

(a) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

(1) The defendant was served with process personally in the foreign country;

(2) The defendant voluntarily appeared in the proceedings other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over the defendant;

(3) The defendant, prior to the commencement of the proceedings, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(4) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

(5) The defendant had a business office in the foreign country and the proceedings in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or

(6) The defendant operated a motor vehicle or airplane in the foreign country and the proceedings involved a cause of action arising out of such operation.

(b) The list of bases for personal jurisdiction in subsection (a) of this section is not exclusive. The courts of this State may recognize bases of personal jurisdiction other than those listed in subsection (a) of this section as sufficient to support a foreign-country judgment.

(71 Del. Laws, c. 145, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 65, §§ 4-9.)

§ 4806 Stay of proceedings pending appeal of foreign-country judgment.

If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so.

(71 Del. Laws, c. 145, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 65, § 10.)

§ 4807 Savings clause.

This chapter does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this chapter.

(71 Del. Laws, c. 145, § 1; 78 Del. Laws, c. 65, § 11.)

§ 4808 Uniformity of interpretation.

In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(71 Del. Laws, c. 145, § 1; 78 Del. Laws, c. 65, § 12.)

§ 4809 Procedure for recognition of foreign-country judgment.

(a) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(b) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense.

(78 Del. Laws, c. 65, § 13.)

§ 4810 Effect of recognition of foreign-country judgment.

If the court in a proceeding under § 4809 of this title finds that the foreign-country judgment is entitled to recognition under this chapter then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this State would be conclusive; and

(2) Enforceable in the same manner and to the same extent as a judgment rendered in this State.

(78 Del. Laws, c. 65, § 13; 70 Del. Laws, c. 186, § 1.)

§ 4811 Statute of limitations.

An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the foreign country or 15 years from the date that the foreign-country judgment became effective in the foreign country.

(78 Del. Laws, c. 65, § 13.)

§ 4812 Effective date.

(a) This chapter takes effect on June 28, 2011.

(b) This chapter applies to all actions commenced on or after June 28, 2011, in which the issue of recognition of a foreign-country judgment is raised.

(78 Del. Laws, c. 65, § 13.)

Part III
Procedure
Chapter 49
EXECUTIONS
Subchapter I
Subjects of Execution; Exemptions

§ 4901 Real estate.

Lands, tenements and hereditaments and all right of dower and curtesy therein when no sufficient personal estate can be found may be seized and sold upon judgment and execution obtained.

(Code 1852, § 2421; Code 1915, § 4320; 36 Del. Laws, c. 269, § 1; Code 1935, § 4792; 10 Del. C. 1953, § 4901.)

§ 4902 Exempt property.

(a) Every person residing within this State shall have exempt from execution or attachment process, or distress for rent, the following articles of personal property: The family Bible, school books and family library, family pictures, a seat or pew in any church or place of public worship, a lot in any burial ground, all the wearing apparel of the debtor and the debtor's family.

(b) In addition to the articles specifically named in subsection (a) of this section, each person residing in this State shall have exempt the tools, implements and fixtures necessary for carrying on his or her trade or business, not exceeding in value $75 in New Castle and Sussex Counties, and $50 in Kent County.

(c) All sewing machines owned and used by seamstresses or private families, shall be exempt from levy and sale on execution or attachment process and also from distress and sale for rent. This provision shall not apply to persons who keep sewing machines for sale or hire.

(d) All pianos, piano playing attachments and organs leased or hired by any person residing in this State, shall be exempt from levy and sale on execution or from distress for rent due by such person so leasing or hiring any such piano, piano playing attachment, or organ in addition to other goods and chattels exempt by law. The owner of any such piano, piano playing attachment or organ or such owner's agent, or the person so leasing or hiring the same shall give notice to the landlord or the landlord's agent that the instrument is hired or leased.

(14 Del. Laws, c. 562, § 1; 16 Del. Laws, c. 146; 16 Del. Laws, c. 538; 22 Del. Laws, c. 459; 23 Del. Laws, c. 201; Code 1915, § 4321; Code 1935, § 4793; 10 Del. C. 1953, § 4902; 70 Del. Laws, c. 186, § 1.)

§ 4903 Head of family exemption.

Every person residing in this State, and being the head of a family, shall have exempt from execution or attachment process, in addition to the exemptions in § 4902 of this title, other personal property not exceeding $500, the articles to be selected by the debtor. The exemptions in this section shall not apply to goods or chattels of a merchantable character bought to be sold and trafficked in by the person in the prosecution of the person's regular business or occupation. No person shall have exempt from execution or attachment process any personal property, excepting that which is expressly exempted by § 4902 of this title when such exemption would prevent the collection according to law of any debt or claim that may be due or growing due for labor or services (other than professional services) rendered by any clerk, mechanic, laborer, or other employee of any person or persons against whom such execution or attachment process may be issued.

(14 Del. Laws, c. 562, § 2; 16 Del. Laws, c. 146, §§ 2, 3; 19 Del. Laws, c. 779; Code 1915, § 4322; Code 1935, § 4794; 10 Del. C. 1953, § 4903; 65 Del. Laws, c. 35, §§ 1, 2; 70 Del. Laws, c. 186, § 1.)

§ 4904 Claim of exemption by spouses.

All exemptions of property from judgment lien, execution or forced sale allowed by law to the head of the family may be claimed by both spouses jointly, or by either with the written consent of the other, or half of the exemptions may be claimed by each spouse; but in no case shall both spouses be entitled each to all exemptions allowed by law to the head of a family.

(33 Del. Laws, c. 238, § 1; Code 1935, § 4795; 10 Del. C. 1953, § 4904; 70 Del. Laws, c. 186, § 1.)

§ 4905 Evaluation of exempt property; selection of freeholders.

(a) The property exempt and required to be valued by the provisions of §§ 4902 and 4903 of this title shall be valued by 3 judicious and impartial freeholders. One of the freeholders shall be chosen by the creditor having the oldest execution in the hands of the officer holding the writ, 1 other of the freeholders shall be chosen by the debtor, and the other of the freeholders shall be chosen by the officer.

(b) In case the creditor and debtor, or either of them, neglects or refuses to name a freeholder, the officer shall choose for the person neglecting or refusing, and shall give notice to the freeholders thus chosen, in writing, under his or her hand, fixing the time and place in the notice they will be required to meet.

(14 Del. Laws, c. 562, § 3; Code 1915, § 4323; Code 1935, § 4796; 10 Del. C. 1953, § 4905; 70 Del. Laws, c. 186, § 1.)

§ 4906 Procedure of freeholders.

The freeholders shall, upon the receipt of the notice and the tender of the fee named in this subchapter for services in making the valuation, to meet at the time and place mentioned in the notice, and before proceeding to make the valuation of property exempt under §§ 4902 and 4903 of this title and requiring a valuation thereof, shall take the following oath or affirmation, to wit:

"I do solemnly swear, or affirm, as the case may be, that I will appraise the property of A. B., exempt from execution or attachment process under and by virtue of the laws of this State, at its true value in money, and that I will true schedule make to the best of my knowledge and understanding."

They shall then proceed to value the property designated and set apart by the debtor, and to make 2 schedules, distinctly stating the respective articles and their value thereof, with a certificate certifying that the articles mentioned in the schedule have been appraised at their true value in money, and were designated and set apart by the debtor and claimed by the debtor as exempt from execution or attachment process. Such certificate shall be signed by the freeholders or a majority of them. The articles mentioned by name in § 4902 of this title shall not be valued or included in the schedule.

(14 Del. Laws, c. 562, § 4; Code 1915, § 4324; Code 1935, § 4797; 10 Del. C. 1953, § 4906; 70 Del. Laws, c. 186, § 1.)

§ 4907 Fees.

The fees for the service of the freeholders, in making the valuation required by this chapter, shall be the same as are allowed by law to referees before justices of the peace, and the fees to the officer serving the notices shall be the same as are allowed by law for summoning referees before justices of the peace, and shall form a part of the costs of the case upon which the officer is proceeding to make the sale.

(14 Del. Laws, c. 562, § 6; Code 1915, § 4326; Code 1935, § 4799; 10 Del. C. 1953, § 4907.)

§ 4908 Authority to administer oaths.

The officer making the sale, and serving the notices required, shall administer the oath required by this subchapter.

(14 Del. Laws, c. 562, § 7; Code 1915, § 4327; Code 1935, § 4800; 10 Del. C. 1953, § 4908.)

§ 4909 Neglect of duty by freeholders; penalty.

Whoever, being a freeholder, neglects or refuses to perform the duties required by this subchapter, shall be fined not more than $5.00.

(14 Del. Laws, c. 562, § 5; Code 1915, § 4325; Code 1935, § 4798; 10 Del. C. 1953, § 4909.)

§ 4910 Taxation or sale for taxes.

Nothing contained in this subchapter shall be construed as exempting any personal property from taxation, or sale for taxes, under the laws of this State.

(14 Del. Laws, c. 562, § 8; Code 1915, § 4328; Code 1935, § 4801; 10 Del. C. 1953, § 4910.)

§ 4911 Prohibition against levying upon goods in storage warehouse; violation and penalty.

(a) No constable in the State shall levy upon or sell or offer to sell or to remove, by virtue of any writ or upon any claim or demand whatsoever, any goods and chattels when such goods and chattels have been placed in, and continue to be in, any storage warehouse. No such goods and chattels, so placed, shall hereafter be seized upon or sold, except by the sheriff of the county in which such goods and chattels are located, after such appraisement and advertisement and under like conditions as are required by law in the case of goods and chattels seized and sold by the sheriff under execution process.

(b) For purposes of this section, a "storage warehouse" is defined as any facility designed for the commercial storage of goods or a self-service storage facility consisting of real property designed and used for the purposes of renting and leasing individual storage space to occupants who are to have access to such for the purpose of storing and removing personal property.

(38 Del. Laws, c. 79, §§ 1, 2; Code 1935, § 4802; 10 Del. C. 1953, § 4911; 79 Del. Laws, c. 281, § 1.)

§ 4912 Waiver of exemptions.

Any husband and wife jointly may make any waiver of any of the provisions of §§ 4902-4911 of this title.

(14 Del. Laws, c. 562, § 9; Code 1915, § 4330; Code 1935, § 4803; 10 Del. C. 1953, § 4912; 70 Del. Laws, c. 186, § 1.)

§ 4913 Exemption and attachment of wages.

(a) Eighty-five percent of the amount of the wages for labor or service of any person residing within the State shall be exempt from mesne attachment process and execution attachment process under the laws of this State; but such limitation shall be inapplicable to process issued for the collection of a fine or costs or taxes due and owing the State.

(b) On any amount of wages due, only 1 attachment may be made. Any creditor causing such attachment to be made shall have the benefit of priority until the judgment with costs for which the attachment was made has been paid in full.

(c) Wages shall include salaries, commissions and every other form of remuneration paid to an employee by an employer for labor or services, but shall not include payment made for services rendered by a person who is self-employed.

(Code 1915, § 4331A; 40 Del. Laws, c. 244; Code 1935, § 4804; 41 Del. Laws, c. 211; 48 Del. Laws, c. 263, § 1; 10 Del. C. 1953, § 4913; 49 Del. Laws, c. 237; 54 Del. Laws, c. 226; 57 Del. Laws, c. 508, § 3; 59 Del. Laws, c. 352, § 1; 60 Del. Laws, c. 618, § 1; 70 Del. Laws, c. 186, § 1.)

§ 4914 Exemptions in bankruptcy and insolvency.

(a) In accordance with § 522(b) of the Bankruptcy Reform Act of 1978 (11 U.S.C. § 522(b)), in any bankruptcy proceeding, an individual debtor domiciled in Delaware is not authorized or entitled to elect the federal exemptions as set forth in § 522(d) of the Bankruptcy Reform Act of 1978 (11 U.S.C. § 522(d)) and may exempt only that property from the estate as set forth in subsection (b) of this section.

(b) In any federal bankruptcy or state insolvency proceeding, an individual debtor domiciled in Delaware shall be authorized to exempt from the bankruptcy or insolvency estate, in addition to the exemptions made in this subsection and in § 4915 of this title, personal property and/or equity in real property, other than the debtor's principal residence having an aggregate fair market value of not more than $25,000.

(c) In any federal bankruptcy or state insolvency proceeding, an individual debtor and/or such individual's spouse domiciled in Delaware shall be authorized to exempt from the bankruptcy or insolvency estate, in addition to the exemptions made in subsection (b) of this section and in § 4915 of this title, the following:

(1) Equity in real property or equity in a manufactured home (as defined in Chapter 70 of Title 25) which constitutes a debtor's principal residence in an aggregate amount not to exceed $75,000 in 2010, $100,000 in 2011, and $125,000 in 2012, except that the exemption for persons totally disabled from working or married persons where at least 1 of the spouses is 65 years old or older shall be $125,000 effective immediately; and

(2) A vehicle and/or tools of the trade necessary for purposes of employment in an amount not to exceed $15,000 each.

(d) This section shall apply separately with respect to each debtor in a joint case but not to exceed $25,000 each in value in personal property and/or equity in real property, other than the debtor's principal residence, a total not to exceed $125,000 in value in a principal residence in an individual or a joint case, and $15,000 each in subsection (c) of this section vehicle and $15,000 each in subsection (c) of this section tools of the trade.

(e) A debtor may not exempt any amount of an interest in property described in paragraph (c)(1) of this section, if the Bankruptcy Court determines, after notice and hearing, that the debtor owes a debt arising from:

(1) Any violation of the federal securities laws (as defined in § 3(a)(47) of the Securities and Exchange Act of 1934 [15 U.S.C. § 78c(a)(47)]), any state securities law, or any regulation or order issued under federal or state securities laws,

(2) Fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under § 12 or § 15(d) of the Securities Exchange Act of 1934 [15 U.S.C. § 78l or § 78o(d)] or under § 6 of the Securities Act of 1933 [15 U.S.C. § 77f], or

(3) Any criminal act, intentional tort, or wilful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

(63 Del. Laws, c. 81, § 1; 71 Del. Laws, c. 37, § 1; 75 Del. Laws, c. 131, §§ 1, 2; 76 Del. Laws, c. 342, §§ 1, 2; 77 Del. Laws, c. 262, §§ 1-3.)

§ 4915 Exemption of retirement plans.

(a) In addition to the exemptions provided in §§ 4902 and 4903 of this title, there shall be exempt from execution or attachment process assets held or amounts payable under any retirement plan, life insurance contract or annuity contract.

(b) Any amount qualifying as an "eligible rollover distribution" under § 402 of the Internal Revenue Code of 1986 [26 U.S.C. § 402], as amended, or as a "rollover contribution" under § 408 of the Internal Revenue Code of 1986 [26 U.S.C. § 408], as amended, is treated as an exempt amount under subsection (a) of this section for 60 days after the distribution of such amount. Such amount remains exempt from execution or attachment process if contributed to a retirement plan within 60 days of being distributed from a retirement plan.

(c) Any retirement plan described in subsection (a) of this section shall not be exempt from any claims for relief granted pursuant to Chapter 5 and/or Chapter 15 of Title 13.

(d) Any retirement plan described in subsection (a) of this section shall not be exempt from the claims of an alternate payee under a qualified domestic relations order. However, the interest of any and all alternate payees under a qualified domestic relations order shall be exempt from any and all claims of any creditor of the alternate payee. As used in this subsection, the terms "alternate payee" and "qualified domestic relations order" have the meaning ascribed to them in § 414(p) of the Internal Revenue Code of 1986 [26 U.S.C. § 414(p)], as amended.

(e) A participant or beneficiary of a retirement plan is not prohibited from granting a valid and enforceable security interest in the participant's or beneficiary's interest under the retirement plan to secure a loan to the participant or beneficiary from the plan, and the right to assets held in or to receive payments from the plan is subject to execution and attachment for the satisfaction of the security interest or lien granted by the participant or beneficiary to secure the loan.

(f) "Retirement plan" means any retirement or profit sharing plan that is qualified under § 401, § 403, § 408, § 408A, § 409, § 414 or § 457 of the Internal Revenue Code of 1986 [26 U.S.C. § 401, § 403, § 408, § 408A, § 409, § 414 or § 457], as amended. The terms "life insurance contract" and "annuity contract" shall have the same meanings as under § 1035(b) of the Internal Revenue Code of 1986 (26 U.S.C. § 1035(b)), as amended.

(g) This section shall not exempt from execution or attachment any judgment obtained under § 554 of Title 30.

(h) If this section is held invalid or preempted by federal law, in whole or in part, it shall remain in effect to the maximum extent permitted by law.

(71 Del. Laws, c. 37, § 2; 71 Del. Laws, c. 276, § 1; 78 Del. Laws, c. 117, § 1.)

§ 4916 Exemption of Delaware College Investment Plan Accounts.

(a) In addition to the exemptions provided in §§ 4902 and 4903 of this title, there shall be exempt from execution or attachment process assets held in and proceeds payable under Chapter 5 of Title 13 or from any account established under the Delaware College Investment Plan pursuant to subchapter XII of Chapter 34 of Title 14 (a "Plan Account"). This exemption shall only apply to such amount as does not exceed the total contributions permitted under § 529(b)(7) of the Internal Revenue Code with respect to any Plan Account.

(b) This section shall not exempt from execution or attachment assets contributed by a debtor to any Plan Account within 365 days to the extent that such assets contributed within said 365 days exceed the greater of:

(1) $5,000; or

(2) The average annual contribution made by such debtor to such Plan Account for the 2 calendar years preceding the date of the filing of such execution or attachment or the filing of such petition.

(c) This section shall not exempt from execution or attachment any judgment obtained under § 554 of Title 30. If any portion of this section is held invalid or is preempted by federal law, in whole or in part, the remaining portions shall remain in effect to the maximum extent permitted by law.

(d) In the case of a Plan Account owned by a trust, nothing in this section may be construed to limit the protections afforded to trusts by § 3536 of Title 12.

(73 Del. Laws, c. 169, § 1; 76 Del. Laws, c. 149, § 8.)

Subchapter II

Preferences

§ 4931 Wages in New Castle County; limitation; notice of claim; other liens.

(a) In New Castle County all debts or claims that may become due or growing due for labor or services rendered by any mechanic, laborer, clerk or other employee of any person or persons, chartered company or association employing laborers, clerks or mechanics in any manner whatsoever, shall be a first lien on all the real and personal property of such employer or employers, and shall be the first to be satisfied out of the proceeds of the sale of such property, whether made by an officer or an assignee of such employer or employers or otherwise. The debt or claim, so secured to the mechanic, laborer, clerk or other employee, shall not exceed a sum equal to the wages of such mechanic, laborer, clerk, or other employee for 1 month. In no event shall such debt or claim exceed the sum of $50, though the wages for 1 month may be a greater sum. Notice of such claim or debt shall be given to the coroner, sheriff, constable, assignee, or other person who shall make or conduct the sale of property subject to the lien or preference hereby provided for.

(b) No lien of a judgment, recognizance, or mortgage shall operate to impair or postpone the lien or preference given and secured to debts or claims mentioned in subsection (a) of this section.

(16 Del. Laws, c. 147, §§ 1, 3; Code 1915, §§ 4332, 4334; Code 1935, §§ 4805, 4807; 10 Del. C. 1953, § 4931.)

§ 4932 Wage claims as lien on real estate.

No claim or debt for work, labor, or clerk hire as prescribed in § 4931(a) of this title, shall be a lien upon any real estate unless a copy of such claim or debt is filed in the prothonotary's office of the county in which such real estate is situated, within 1 month after it has become due and owing, or is growing due and owing. Any person presenting a copy of such claim or debt to be filed in the prothonotary's office shall accompany it with an affidavit stating that such debt or claim is just and true. The fee to the prothonotary for such service shall be 50 cents.

(16 Del. Laws, c. 147, § 2; Code 1915, § 4333; Code 1935, § 4806; 10 Del. C. 1953, § 4932.)

§ 4933 False wage claim; penalty.

Whoever makes an affidavit to any debt or claim mentioned in § 4931(a) of this title which is untrue, shall be fined $50.

(16 Del. Laws, c. 147, § 5; Code 1915, § 4336; Code 1935, § 4809; 10 Del. C. 1953, § 4933.)

§ 4934 Wage claims by minors.

The parent, guardian, or next friend of any minors, who render such service as is mentioned in § 4931(a) of this title, may proceed under this chapter to secure the debt or claim arising from the service or labor rendered by such minor.

(16 Del. Laws, c. 147, § 6; Code 1915, § 4337; Code 1935, § 4810; 10 Del. C. 1953, § 4934.)

§ 4935 Employees of insolvent corporation.

Employees of insolvent corporations shall have a lien for, and a preference in the payment of, wages due them from such corporation, not exceeding wages for 2 months, as provided in § 300 of Title 8.

(Code 1915, § 4338; Code 1935, § 4811; 10 Del. C. 1953, § 4935.)

§ 4936 Medical and funeral expenses.

Whenever any sheriff or constable, by virtue of any execution process, supersedes an executor or administrator, and sells the goods and chattels of any deceased person, on whose estate there have been letters testamentary or of administration granted, he or she shall, out of the proceeds of the sale, and before applying any part thereof towards satisfying any execution, pay, first, funeral expenses of the deceased; second, the reasonable bills for medicine and medical attendance during last sickness of the deceased, and for nursing and necessaries for the last sickness of the deceased.

(15 Del. Laws, c. 186, § 1; Code 1915, § 4339; Code 1935, § 4812; 10 Del. C. 1953, § 4936; 70 Del. Laws, c. 186, § 1.)

§ 4937 Payment of medical and funeral expenses by sheriff.

In case there has been no administration or letters testamentary granted on the estate of the deceased, any sheriff or constable selling the deceased person's goods by virtue of any execution process, shall, before applying any proceeds of the sale towards satisfying any execution, pay in the order in which they stand, the bills mentioned in § 4936 of this title.

(15 Del. Laws, c. 186, § 2; Code 1915, § 4340; Code 1935, § 4813; 10 Del. C. 1953, § 4937.)

Subchapter III

Venditioni Exponas

§ 4951 Issuance.

A writ of venditioni exponas for the sale of any goods and chattels, lands and tenements, taken in execution by virtue of a writ of fieri facias, may be issued and directed either to the sheriff in office, or the sheriff's immediate predecessor (he or she having seized and taken in execution such goods and chattels, lands and tenements) at the election of the plaintiff in the execution; and all proceedings had, by virtue thereof, shall be valid in law.

(Code 1852, § 2440; Code 1915, § 4356; Code 1935, § 4814; 10 Del. C. 1953, § 4951; 70 Del. Laws, c. 186, § 1.)

§ 4952 Failure or neglect in execution; penalty.

The person to whom such writ of venditioni exponas may be directed, shall, for neglect, or failure, in the execution thereof, or in making return thereon, be subject to all such rules of court, suits, fines, and other process and proceedings, as any sheriff is, or can be liable to in like cases.

(Code 1852, § 2441; Code 1915, § 4357; Code 1935, § 4815; 10 Del. C. 1953, § 4952.)

Subchapter IV

Levari Facias

§ 4961 Procedure for public sale.

By a writ of levari facias, the sheriff, or other officer, to whom the same is directed to be executed, may seize and sell, at public sale, unimproved lands, and lands yielding no yearly profit, with, or without a writ of venditioni exponas; subject to the same provisions respecting notice of sale, application of the proceeds thereof, the execution of a deed to the purchaser, the issuing of a liberari facias for the delivery of lands which cannot be sold, and the title under such sale, or delivery, as are contained in this chapter for the sale of lands under execution process in other cases.

(Code 1852, § 2442; Code 1915, § 4358; Code 1935, § 4816; 10 Del. C. 1953, § 4961.)

Subchapter V

Sale Under Execution

§ 4971 Time of sale of goods and chattels.

Goods and chattels, taken in execution by a sheriff, or coroner, shall not be sold until the expiration of 30 days after the levy thereon and notice thereof to the defendant, unless the court, issuing the execution, shall, upon application of the plaintiff, or of the officer holding the execution, and on its being shown that the goods and chattels are of a perishable nature, or will create a charge by keeping, order the same to be sold sooner. Such order shall direct reasonable notice of the sale, according to the circumstances.

(Code 1852, § 2443; Code 1915, § 4359; Code 1935, § 4817; 10 Del. C. 1953, § 4971.)

§ 4972 Notice of public sale of goods and chattels.

Public notice of the sale of goods and chattels by a sheriff, or coroner, under execution process, and of the day, hour, and place thereof, shall be given by advertisements posted, at least 10 days before the day of sale, in 5, or more, public and suitable places in the county, 2 of which, at least, shall be in the hundred of the defendant's residence, if the defendant resides in the county. One such advertisement shall, 10 days at least before the day of sale, be delivered to the defendant, and 1 to each plaintiff in the execution, and also to each plaintiff in any other execution, or executions, at the time in the hands of the sheriff, or coroner, or shall be left at the usual place of abode of

such defendant and plaintiffs respectively, if there be such place of abode within the county. If any plaintiff in any such execution resides out of the county, such advertisement shall be delivered to the attorney of such plaintiff, if there is an attorney of record, and 1 such advertisement shall be transmitted to such plaintiff by mail, being enclosed and addressed to the plaintiff at the post office nearest the plaintiff's place of abode. Advertisement shall also, at least 10 days before the day of sale, be delivered to the defendant's landlord, or the landlord's agent, if there is such residing in the county. This section and § 4971 of this title do not apply to execution process issued by justices of the peace or the Court of Common Pleas.

(Code 1852, § 2444; Code 1915, § 4360; Code 1935, § 4818; 10 Del. C. 1953, § 4972; 70 Del. Laws, c. 186, § 1.)

§ 4973 Notice of public sale of real estate.

(a) Public notice of the sale of lands and tenements under execution process, shall be given by advertisements posted, at least 10 days before the day of sale, in 10 of the most public places of the county where the premises are situated, setting forth the day, hour and place of sale, and what lands and tenements are to be sold, and where they lie. One of the advertisements shall be posted in the hundred in which the premises are located, and 1, at least, in each of the hundreds which immediately adjoin the hundred. A like advertisement shall be delivered at least 10 days before the day of sale to the defendant, or left at the defendant's usual place of abode, if the defendant has a known place of abode in the county; if the defendant does not reside in the county, notice shall be served on the tenant, or if there is no tenant, shall be left at the mansion house or other public place on the premises. Section 4972 of this title respecting the delivery of an advertisement of the sale of goods and chattels under execution process, to each plaintiff in the execution, and also to each plaintiff in any other execution or executions, at the time in the hands of the sheriff or coroner, shall be in all respects applicable to the case of the sale of lands and tenements under execution process. Notice of such sale shall also be advertised for 2 weeks previous to the time of the sale in:

(1) A newspaper of general circulation published in the county wherein the property is situated; and

(2) A newspaper of general or limited circulation published nearest to the place where the property is situated.

Both newspapers are to be selected by the sheriff. Not more than 3 insertions per week shall be made in any 1 newspaper. If there is only 1 newspaper published in the county at the time, the sheriff may select a newspaper in 1 of the other counties, and if there is no newspaper in the county the sheriff may select 2 in the other counties. The publishers of the newspapers shall not be paid for such advertising a higher rate than their ordinary charges for transient advertisements.

(b) In advertisements of notice of sale of real estate in newspapers, by the sheriff of any county in this State, under execution process, it shall be sufficient if the property to be sold is described therein in such manner that it may be readily identified. It shall not be necessary to describe the property by metes and bounds, or courses and distances. Nor shall it be necessary in any case to follow the description of the property in the writ of execution under which it is sold.

(Code 1852, §§ 2445-2447; 15 Del. Laws, c. 478; 16 Del. Laws, c. 143; 18 Del. Laws, c. 680; Code 1915, § 4361; Code 1935, § 4819; 10 Del. C. 1953, § 4973; 57 Del. Laws, c. 142; 70 Del. Laws, c. 186, § 1.)

§ 4974 Place for public sale of real estate.

All sales of real estate, made by a sheriff by virtue of execution process, shall be made on the premises to be sold, or at the courthouse for the county in which the premises are situated or in Sussex County, at the Sussex County Sheriff's Office or at any public building in the county seat where the premises are situated. In Kent County, sales may also be conducted in any building in which the Sheriff's Office is located.

(Code 1852, § 2448; 16 Del. Laws, c. 540; 17 Del. Laws, c. 622; Code 1915, § 4362; Code 1935, § 4820; 10 Del. C. 1953, § 4974; 58 Del. Laws, c. 11; 72 Del. Laws, c. 194, § 1; 73 Del. Laws, c. 437, § 1; 78 Del. Laws, c. 71, § 1.)

§ 4975 Officer conducting sale as barred from purchasing.

A sheriff, constable, or other person making sale of goods and chattels by virtue of any process, or order, shall not either directly, or by the agency of another, purchase any of such goods or chattels. Any person offending against this section, shall forfeit and pay double the value of the goods, or chattels, so purchased, to be recovered as debts of like amount are recoverable, one half for the use of the State, and the other half for the use of the person suing.

(Code 1852, § 2449; Code 1915, § 4363; Code 1935, § 4821; 10 Del. C. 1953, § 4975.)

§ 4976 Deed of sheriff's sale.

Upon confirmation by the court of any sale of lands and tenements, made by virtue of execution process, the sheriff, or officer making the sale, shall execute, acknowledge and deliver to the purchaser a good and sufficient deed for the premises so sold.

(Code 1852, § 2450; Code 1915, § 4364; Code 1935, § 4822; 10 Del. C. 1953, § 4976.)

§ 4977 Grantee's title.

The grantee in any deed, executed under § 4976 of this title, shall hold the premises therein conveyed, with all their appurtenances, as fully and amply, and for such estate and estates, and under such rents and services, as the person or persons, for whose debt, or duty, the property is sold, might, or could, do at or before the taking thereof in execution.

(Code 1852, § 2451; Code 1915, § 4365; Code 1935, § 4823; 10 Del. C. 1953, § 4977; 70 Del. Laws, c. 186, § 1.)

§ 4978 Rent; time of entitlement; apportionment; proceedings.

(a) In any case of sale, the purchaser shall be entitled to rent for the premises sold from the day of sale. If such premises are in possession of a tenant under rent, such rent shall be apportioned, according to the time; the proportion for the time the rent has been growing due to the day of sale, being payable to the lessor or the lessor's assigns, and the residue to the purchaser. Each party shall have remedy by distress, or action, for such party's just proportion.

(b) A purchaser may recover his or her proportion of rent, although such rent is reserved by deed (as well as rent from the day of sale, in case no rent has been reserved) by a civil action for use and occupation.

(c) In any action, or proceeding, for such rent, any fair defense, which would have availed against the person as whose property the premises were sold, shall avail against the purchaser. If a rent reserved is not a fair rent for the premises, and the lease, or contract, is posterior to the order, or to the date of the judgment, in execution, or by virtue whereof the sale is made, the purchaser shall not be limited by the rent reserved, but may demand and recover a fair rent. If the crop is sold separately from the soil, the demand of the purchaser shall proportionally abate.

(Code 1852, §§ 2452-2454; Code 1915, § 4366; Code 1935, § 4824; 10 Del. C. 1953, § 4978; 70 Del. Laws, c. 186, § 1.)

§ 4979 Petition for deed.

If a sale is made of lands and tenements by order of the Court of Chancery, or by virtue of an execution, and the officer making such sale, or the purchaser, is dead, or if such officer is out of office, and the purchase money is paid, without a deed being made pursuant to such sale, the purchaser, or other person having right under the purchaser by descent, devise, assignment, or otherwise, may prefer to the Superior Court, or Court of Chancery, at any term of such courts respectively, in the county wherein the premises are situate, a petition representing the facts, and praying for an order authorizing and requiring the sheriff, or if there is legal exception to the sheriff, the coroner of the county for the time being, to execute and acknowledge a deed conveying to the petitioner the premises so sold, or a just proportion thereof. Thereupon the Court may make an order touching the conveyance of the premises according to justice and equity.

(Code 1852, § 2455; Code 1915, § 4367; Code 1935, § 4825; 10 Del. C. 1953, § 4979; 70 Del. Laws, c. 186, § 1.)

§ 4980 Deed executed after petition; effect on title.

A deed, executed pursuant to an order made under § 4979 of this title, shall pass to the grantee therein all the title and estate to and in the premises therein conveyed, which, in pursuance of the sale, and of the execution, or order by virtue whereof such sale was made, can, or ought to be passed. If the person, to whom such deed is executed, is not entitled to the same, according to justice and equity, or if a greater estate is conveyed to the grantee than the grantee is justly entitled to, such deed, or order, shall not prejudice any person having right; but such deed may be decreed to be upon trust, or any person, having right, may be otherwise relieved according to equity and good conscience.

(Code 1852, § 2456; Code 1915, § 4368; Code 1935, § 4826; 10 Del. C. 1953, § 4980; 70 Del. Laws, c. 186, § 1.)

§ 4981 Recordation of petition and order; evidentiary value.

An order made upon a petition, being duly certified, the petition and order shall be recorded in the office of the recorder of deeds for the county wherein the premises are situate; and such record, or a certified copy thereof, shall be competent evidence of such petition and order.

(Code 1852, § 2457; Code 1915, § 4369; Code 1935, § 4827; 10 Del. C. 1953, § 4981.)

§ 4982 Deed after execution by sheriff's predecessor.

A deed for lands and tenements, sold by virtue of a writ of venditioni exponas, directed to the predecessor of the sheriff at the time in office, such predecessor having seized and taken in execution such lands and tenements, shall be valid in law, without petition to, or order of, any court for making such deed.

(Code 1852, § 2458; Code 1915, § 4370; Code 1935, § 4828; 10 Del. C. 1953, § 4982.)

§ 4983 Deed by sheriff after expiration of term.

Whenever an execution for sale of lands and tenements shall be directed and delivered to a sheriff in office, whose term expires before the confirmation of the sale made under and by virtue of the execution, or whose term expires after confirmation of the sale, but before the execution and acknowledgment of the deed to be made in pursuance thereof, then and in either case the sheriff making the sale may as late sheriff make, execute and acknowledge a deed for the lands and tenements so sold to the purchaser thereof in pursuance of the confirmation, and the deed so made, executed and acknowledged by the sheriff as late sheriff shall be good and valid in law. Such deed shall be made, executed and acknowledged by the sheriff within 2 years from the date of the confirmation of the sale.

(17 Del. Laws, c. 617, § 1; 19 Del. Laws, c. 247, § 1; Code 1915, § 4371; Code 1935, § 4829; 10 Del. C. 1953, § 4983; 70 Del. Laws, c. 186, § 1.)

§ 4984 Deed by sheriff appointed to fill vacancy.

Whenever an execution for sale of lands and tenements is directed and delivered to a sheriff in office who dies before the confirmation of the sale made under and by virtue of the execution, or who dies after confirmation of the sale but before the execution and acknowledgment

of the deed to be made in pursuance thereof, then and in either case the sheriff appointed to fill the vacancy may make, execute and acknowledge a deed for the lands and tenements so sold to the purchaser thereof in pursuance of the confirmation, and the deed so made, executed and acknowledged by that sheriff shall be good and valid in law.

(17 Del. Laws, c. 617, § 1; 19 Del. Laws, c. 247, § 1; 19 Del. Laws, c. 771, § 1; Code 1915, § 4372; Code 1935, § 4830; 10 Del. C. 1953, § 4984; 70 Del. Laws, c. 186, § 1.)

§ 4985 Discharge of liens upon execution sale; exceptions.

Real estate sold by virtue of execution process shall be discharged from all liens thereon against the defendant, or against one or more of the defendants, if there is more than one, whose property such real estate is, except such liens as have been created by mortgage or mortgages prior to any general liens; and with respect to such, the sale shall be a discharge to the extent to which the proceeds thereof may be legally applicable to a judgment or judgments obtained for the debt, to secure the payment of which the mortgage or mortgages respectively, if there is more than one, appear to have been given, and the real estate shall also be discharged from all right of dower and curtesy therein of any defendant in the execution.

(14 Del. Laws, c. 94, § 1; Code 1915, § 4373; 36 Del. Laws, c. 269, § 2; Code 1935, § 4831; 10 Del. C. 1953, § 4985.)

§ 4986 Payment into court of unclaimed proceeds from execution sale; disposition by court.

Whenever the sheriff or any other officer cannot pay over the proceeds from sale under execution process because the person or persons entitled to the same or any part thereof is or are absent from the State, unknown or incompetent to receive the same or where there is any lien by mortgage, judgment or recognizance (not being the first) against the defendant, or some one or more of them, if there is more than 1, in the process referred to in § 4985 of this title, with condition other than for the payment of money, or for the payment of money as or in the nature of an annuity, or for the payment of interest to 1 or more persons during their lifetime and the principal at their death to some other person or persons, or otherwise, such proceeds from sale under execution process that cannot be paid over because the person or persons entitled to some or any part thereof is or are absent from the State, unknown or incompetent to receive the same, and such part of the proceeds of sale as shall be legally applicable to any such lien as set out above shall be paid into the court, out of which the process issued, and shall be invested by the court, or otherwise disposed of for the benefit of the parties interested, as shall be just and proper under the circumstances. Such payment into court shall discharge the officer selling the property from all liability for the money so paid.

(14 Del. Laws, c. 94, § 2; 19 Del. Laws, c. 780; Code 1915, § 4374; Code 1935, § 4832; 10 Del. C. 1953, § 4986; 50 Del. Laws, c. 263, § 1.)

§ 4987 Sheriff's record of sale proceeds.

The sheriff shall, in proper books, keep a record of the disposition of all moneys arising from the sale of property under execution process, when the same is applicable otherwise than to executions in the sheriff's hands, as provided in § 2106 of this title.

(16 Del. Laws, c. 144; Code 1915, § 4375; Code 1935, § 4833; 10 Del. C. 1953, § 4987; 70 Del. Laws, c. 186, § 1.)

Subchapter VI

Liberari Facias

§ 5001 Awarding of writ.

If lands and tenements, exposed to sale by virtue of execution process, cannot be sold for want of buyers, the sheriff, or officer, shall make return upon the writ accordingly. Such return shall not make the officer liable for the debt or damages contained in the writ; but a writ of liberari facias shall be awarded and directed to the proper officer, commanding that officer to deliver to the plaintiff such part, or parts, of the premises as shall satisfy the plaintiff's debt, or damages, with interest and costs, according to the valuation of 12 individuals, to hold to the plaintiff as the plaintiff's free tenement, in satisfaction of the plaintiff's debt, damages and costs, or so much thereof as the premises, by the valuation of 12 individuals will amount to.

(Code 1852, § 2459; Code 1915, § 4376; Code 1935, § 4834; 10 Del. C. 1953, § 5001; 70 Del. Laws, c. 186, § 1.)

§ 5002 Execution for residue of debt.

If lands delivered upon a liberari facias under § 5001 of this title fall short, according to the valuation, of satisfying the whole debt, damages and costs for which they are delivered, the plaintiff may have execution for the residue as in other cases.

(Code 1852, § 2460; Code 1915, § 4377; Code 1935, § 4835; 10 Del. C. 1953, § 5002.)

§ 5003 Title under execution and return of writ.

The execution and return of a writ of liberari facias shall, without deed, or other act, pass to the party to whom the lands are delivered, the same title and estate therein which is taken by a purchaser of lands sold under execution process, and conveyed by deed from the sheriff, or officer selling the same.

(Code 1852, § 2461; Code 1915, § 4378; Code 1935, § 4836; 10 Del. C. 1953, § 5003.)

Subchapter VII
Writ of Possession

§ 5011 Awarding of writ.

(a) If lands and tenements are sold by order of the Court of Chancery, or by virtue of execution process, and the defendant, or 1 or more defendants, or any person holding as tenant under such defendant, or defendants, by lease, or contract, posterior to such order, or to the date of the judgment whereon such execution was issued, is in possession of the premises sold; or if such defendant, or defendants, have died in possession of the premises sold within 1 year next preceding the day of sale, and the person in possession either has come into possession after such defendant, or defendants, and by means of his or her or their possession, or holds under, or through a person so coming into possession, the purchaser may have a writ of possession awarded, pursuant to such sale.

(b) In the event of a judicial sale at law or equity under and by virtue of the foreclosure of any mortgage, or execution upon a mechanic's lien, the purchaser at the judicial sale may have a writ of possession awarded against any person in possession of the real estate so sold, provided the rights of such person in possession arose posterior to the date of the mortgage, or the effective date of the mechanic's lien.

(Code 1852, § 2462; 12 Del. Laws, c. 324, § 1; 13 Del. Laws, c. 463; Code 1915, § 4379; Code 1935, § 4837; 42 Del. Laws, c. 153; 10 Del. C. 1953, § 5011; 70 Del. Laws, c. 186, § 1.)

§ 5012 Rule to show cause; requirement.

The Court of Chancery, if the sale is by its order, or the court out of which the execution issued, if the sale is by virtue of an execution, upon application of the purchaser, and oath or affirmation by the purchaser, or some credible person for the purchaser, in writing, stating a proper case for the awarding of such writ, shall grant a rule upon the defendant, or defendants, owner or owners of the premises sold, and also upon the person in possession of the premises, if any person other than the defendant is in possession, to show cause, on a day in the rule specified, why a writ of possession shall not be awarded for putting the purchaser in possession of the premises. A writ of possession shall not be issued without such rule made absolute.

(Code 1852, § 2463; 12 Del. Laws, c. 324, § 2; 13 Del. Laws, c. 463; Code 1915, § 4380; Code 1935, § 4838; 10 Del. C. 1953, § 5012; 70 Del. Laws, c. 186, § 1.)

§ 5013 Time of applying for writ.

A rule for a writ of possession may be granted in the Superior Court at the term of the return of the sale or at any one of the next 3 succeeding terms thereafter, and in the Court of Chancery within 1 year from the return of the sale.

(Code 1852, § 2464; Code 1915, § 4381; 33 Del. Laws, c. 239; Code 1935, § 4839; 10 Del. C. 1953, § 5013.)

§ 5014 Service of rule.

The rule referred to in § 5013 of this title shall be served at least 2 days before the expiration thereof. If the sheriff or other person who is attempting to serve the rule is unable to serve the rule upon the defendant personally, service may be made in such manner as the court by order may direct or in such manner as may be prescribed by a rule of court.

(Code 1852, § 2465; Code 1915, § 4382; Code 1935, § 4840; 10 Del. C. 1953, § 5014.)

§ 5015 Defendant as bona fide tenant.

If the defendant is in possession bona fide as tenant under, or by possession of another, a writ of possession shall not be awarded.

(Code 1852, § 2466; Code 1915, § 4383; Code 1935, § 4841; 10 Del. C. 1953, § 5015.)

§ 5016 Defendant as joint owner.

If the defendant is owner of an undivided share, the writ of possession shall be restricted to such share; and any holder of another share, or such holder's tenant, shall not be removed, or further disturbed than by putting the purchaser into peaceable possession of the undivided share of the defendant.

(Code 1852, § 2467; Code 1915, § 4384; Code 1935, § 4842; 10 Del. C. 1953, § 5016; 70 Del. Laws, c. 186, § 1.)

§ 5017 Stay of execution of writ.

On making the rule for a writ of possession absolute, the court may direct a reasonable stay of execution. If the person in possession is a tenant, execution shall be stayed until the usual expiration of the year of tenants, according to the custom of letting in the place, or neighborhood, wherein the premises are situate.

(Code 1852, § 2468; Code 1915, § 4385; Code 1935 § 4843; 10 Del. C. 1953, § 5017.)

§ 5018 Form of writ.

(a) A writ of possession may be according to the following form:

"..... County, ss. The State of Delaware, To the Sheriff of said County, greeting:

* * * * We command you, that without delay you cause

* * to have peaceable possession of
* L. S. * (here insert description of the premises) which were
* * lately sold by virtue of a writ of execution issued
* * * *

out of our (here insert the style of the court) in the said County, returnable to..... term, 20....., at the suit of..... plaintiff vs..... defendant; and have this writ, with your doings thereon certified, at our said Court to be held at....., on..... day of..... next.

Witness..... at..... the..... day of..... in the year of our Lord two thousand and.....

Prothonotary."

(b) If there is legal exception to the sheriff, the writ may be directed to the coroner.

(c) If the sale is by order of the Court of Chancery, omit from the word "execution" to the word "defendant," both inclusive, and instead thereof insert, "an order of our Court of Chancery, at..... in a certain cause between..... plaintiff and..... defendant." The writ may be adapted to the case by any necessary variation in the form.

(Code 1852, §§ 2469, 2470; Code 1915, § 4386; Code 1935, § 4844; 10 Del. C. 1953, § 5018.)

§ 5019 Effect of writ on title and on other remedies.

Nothing contained in this subchapter shall deprive a purchaser of his or her remedy by a civil action in the nature of an action of ejectment, nor debar from such remedy a person removed from possession; and any proceedings under this subchapter, shall not be conclusive as to the title of either party.

(Code 1852, § 2471; Code 1915, § 4387; Code 1935, § 4845; 10 Del. C. 1953, § 5019; 70 Del. Laws, c. 186, § 1.)

Subchapter VIII

Attachment

§ 5031 Execution attachment.

The plaintiff in any judgment in a court of record, or any person for such plaintiff lawfully authorized, may cause an attachment, as well as any other execution, to be issued thereon, containing an order for the summoning of garnishees, to be proceeded upon and returned as in cases of foreign attachment. The attachment, condemnation, or judgment thereon, shall be pleadable in bar by the garnishee in any action against the garnishee at the suit of the defendant in the attachment. Goods which are perishable, or will create a charge by keeping, may be sold on the order of a judge as in cases of foreign attachment.

(Code 1852, § 2472; Code 1915, § 4388; Code 1935, § 4846; 10 Del. C. 1953, § 5031; 70 Del. Laws, c. 186, § 1.)

§ 5032 Answer by garnishee.

The answer of a garnishee in any execution attachment, at the option of the plaintiff therein, may be taken by affidavit before any person legally authorized to administer oaths. When so taken and filed with the writ of attachment it shall be docketed in the same manner and have the same effect as if taken in open court. The garnishee's mileage, in such cases, shall be counted from the garnishee's residence to the office of the person taking the garnishee's affidavit, and endorsed thereon.

(16 Del. Laws, c. 539; Code 1915, § 4389; Code 1935, § 4847; 10 Del. C. 1953, § 5032; 70 Del. Laws, c. 186, § 1.)

Subchapter IX

Return of Execution

§ 5041 Fieri facias; time of return.

Every fieri facias shall be actually returned by the sheriff to whom it was delivered before the rising of the court, to which it is returnable, on the second day after the return day mentioned in the writ, with the sheriff's certificate of what the sheriff has done thereon in usual and legal form.

(Code 1852, § 2473; Code 1915, § 4390; Code 1935, § 4848; 10 Del. C. 1953, § 5041; 70 Del. Laws, c. 186, § 1.)

§ 5042 Inventory and appraisement of unsold goods and chattels.

Where the levy, or seizure, by virtue of a fieri facias has been of goods and chattels unsold at the return day, the sheriff shall annex to the writ an inventory of each article of such goods and chattels, with an appraisement of the same, duly made and certified, so that their value may be judged.

(Code 1852, § 2474; Code 1915, § 4391; Code 1935, § 4849; 10 Del. C. 1953, § 5042.)

§ 5043 Specification of lands seized or levied upon.

If there has been a levy, or seizure, of lands, the sheriff's return shall specify the principal improvements thereon; if any, as well as the known, or computed, quantity and situation thereof.

(Code 1852, § 2475; Code 1915, § 4392; Code 1935, § 4850; 10 Del. C. 1953, § 5043.)

§ 5044 Specification of prior executions.

(a) Where the levy, or seizure, is returned as made subject to prior execution, the sheriff or other officer shall, in the officer's endorsed, or annexed return, set forth as well the names of the plaintiffs in such prior executions as have come to the officer's hands, as the sums thereby to be levied.

(b) When the sheriff or other officer, to whom an execution is directed, levies or receives the sum due thereon, or any part thereof, or obtains a settlement of the execution, such officer shall make return thereof, as provided by § 4755 of this title.

(c) When such sheriff or other officer has sold real estate by virtue of execution process, such officer shall, in his or her return to such process, expressly show to what lien or liens the money arising from the sale has been applied, and how much has been applied to each lien, as provided by § 4756 of this title.

(Code 1852, § 2476; Code 1915, § 4393; Code 1935, § 4851; 10 Del. C. 1953, § 5044; 70 Del. Laws, c. 186, § 1.)

§ 5045 Sheriff's neglect in making return.

If any sheriff neglects to make a return of any writ of fieri facias to him or her directed, in due form and within the time limited in this subchapter, such sheriff shall answer for the debt, damages and costs in the fieri facias mentioned, in the same manner as if he or she had returned thereon, levied to the value of the sum or sums of money therein mentioned, and may be proceeded against accordingly.

(Code 1852, § 2477; Code 1915, § 4394; Code 1935, § 4852; 10 Del. C. 1953, § 5045; 70 Del. Laws, c. 186, § 1.)

Subchapter X
Capias Ad Satisfaciendum

§ 5051 Issuance of writ.

(a) No writ of capias ad satisfaciendum shall be issued upon any judgment in a civil action against any person in this State, until a writ of fieri facias on the judgment has issued, and it appears from the return of such fieri facias, that the defendant therein has not either real, or personal property within the county sufficient to satisfy the debt, or damages in the fieri facias expressed; or until the plaintiff in such judgment, or some credible person for the plaintiff, makes a written affidavit, to be filed in the prothonotary's office before the issuing of the writ, stating that he or she verily believes that the defendant has not either real, or personal, estate sufficient to satisfy the debt, interest and costs contained in such judgment.

(b) Any writ of capias ad satisfaciendum issued, contrary to the provision in subsection (a) of this section shall be void, and the plaintiff obtaining such writ shall be liable to all the costs of the same.

(Code 1852, §§ 2478, 2479; 12 Del. Laws, c. 30; Code 1915, § 4395; Code 1935, § 4853; 10 Del. C. 1953, § 5051; 70 Del. Laws, c. 186, § 1.)

§ 5052 Plaintiff's affidavit of fraud; exceptions from requirement.

(a) No writ of capias ad satisfaciendum shall be issued out of any court of this State upon a judgment in a civil action, against any person in this State, nor shall any such person be imprisoned for the nonperformance of a judgment rendered in any court for the payment of money, until the plaintiff in such judgment, or the party in whose favor the judgment rendered shall be, or some credible person for the plaintiff, shall, in addition to the requirement of § 5051 of this title make a written affidavit, to be filed in the office of the prothonotary or the Register in Chancery, as the case may be, before the issuing of the process, stating that the defendant in such judgment is justly indebted to the plaintiff in a sum exceeding $50, and that he or she verily believes the defendant has secreted, conveyed away, assigned, settled, or disposed of either money, goods, chattels, stocks, securities for money, or other real, or personal estate, of the value of more than $50, with intent to defraud his or her creditors; and shall moreover, in such affidavit, specify and set forth the supposed fraudulent transactions.

(b) Any writ of capias ad satisfaciendum, issued contrary to the provision of subsection (a) of this section, shall be void, and the plaintiff obtaining such writ shall be liable to all the costs of the same.

(c) The provisions of this section shall not apply to any person imprisoned by authority of the United States, nor to any other than execution, or final process, or commitment, for debt, or damages, or costs, of a civil action, or nonperformance of a judgment rendered for the payment of money.

(Code 1852, §§ 2480, 2481, 2483; 11 Del. Laws, c. 225, § 3; 11 Del. Laws, c. 606; 12 Del. Laws, c. 30; Code 1915, §§ 4396, 4398; Code 1935, §§ 4854, 4856; 10 Del. C. 1953, § 5052; 70 Del. Laws, c. 186, § 1.)

§ 5053 Motion denying fraud; disposition.

The court in which the affidavit referred to in § 5052 of this title is filed shall, upon motion of the person arrested, and reasonable notice in writing to the party in whose favor the process issued, or such party's attorney, investigate the specifications of fraud in an affidavit made under § 5052 of this title; and, upon such investigation, may discharge the movant from imprisonment, or the movant for trial not later than the next term of the court of the county wherein the process issued, upon a denial, in the motion, of the specifications of fraud, or may make such order in the premises as the court deems just and proper.

In the Superior Court, the trial referred to in this section shall be by the Court unless a trial by jury is demanded by the movant.

(Code 1852, § 2482; 11 Del. Laws, c. 505; Code 1915, § 4397; Code 1935, § 4855; 10 Del. C. 1953, § 5053; 70 Del. Laws, c. 186, § 1.)

Subchapter XI
Scire Facias on Mortgage

§ 5061 Occasion for suing out writ; parties and notice.

(a) Subject to the provisions of §§ 5062A, 5062B, 5062C and 5062D of this title, upon breach of the condition of a mortgage of real estate by nonpayment of the mortgage money or nonperformance of the condition stipulated in such mortgage at the time and in the manner therein provided the mortgagee, the mortgagee's heirs, executors, administrators, successors or assigns may, at any time after the last day whereon the mortgage money ought to have been paid or other conditions performed, sue out of the Superior Court of the county wherein the mortgage premises are situated a writ of scire facias upon such mortgage directed to the sheriff of the county commanding the sheriff to make known to the mortgagor, and those persons described in subsection (b) of this section and such mortgagor's heirs, executors, administrators or successors that the mortgagor or they appear before the Court to show cause, if there is any, why the mortgaged premises ought not to be seized and taken in execution for payment of the mortgage money with interest or to satisfy the damages which the plaintiff in such scire facias shall, upon the record, suggest for the nonperformance of the conditions.

(b) In addition to the mortgagor, and such mortgagor's heirs, executors, administrators or successors, the following persons shall be necessary parties in every mortgage foreclosure action:

(1) Record owners acquiring title subject to the mortgage (terre tenants) which is being foreclosed upon; and

(2) Persons having an equitable or legal interest of record, including an interest pursuant to a judicial sale or a statutory sale pursuant to § 8771 et seq. of Title 9.

(c) The following persons whose real or equitable interests in the real estate may be adversely affected by plaintiff's cause of action shall not be deemed to be necessary parties and shall not be required to be joined as a defendant in mortgage foreclosure actions:

(1) Lien holders; and

(1) Tenants seised of an estate for years or at will.

Notice in writing, however, shall be given to the above classes of persons in the manner prescribed from time to time by the civil rules of the Superior Court of the State. It is the intent of this subsection that written notice be deemed sufficient in lieu of joinder to protect the property interests of the above classes of persons in the mortgaged real estate since those property interests are created and defined by the legal operations of existing statutes and law.

(d) The Superior Court may make all necessary rules respecting the form of process, the manner of issuance and return thereof, modes of proof and the manner of notice to persons having an interest in the real estate which relate to mortgage foreclosure proceedings.

(e) Those persons identified in subsection (b) of this section need not be joined as necessary parties in a mortgage foreclosure action when their interest arises subsequent to the filing of the mortgage foreclosure action. Any person acquiring an interest defined in subsection (b) of this section subsequent to the filing of the foreclosure action and at least 30 days prior to the sheriff's sale scheduled in the cause shall be given written notice in accordance with the rules of the Superior Court. Any person acquiring a property interest in real estate within 30 days prior to the sheriff's sale scheduled in the cause shall not be entitled to receive written notice of the sale, the public records of the foreclosure being sufficient notice.

(Code 1852, § 2484; Code 1915, § 4399; Code 1935, § 4857; 10 Del. C. 1953, § 5061; 65 Del. Laws, c. 314, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 200, § 3.)

§ 5062 Land divided by county line; venue of action.

Whenever the dividing line between any 2 counties of this State runs through a tract of land conveyed in mortgage, a writ of scire facias may be sued out in either county in which any part of such tract is situated, directed to the sheriff of the county in which such writ is sued out. The sheriff may make service of the writ, notwithstanding any person or persons liable to such service in and residing in this State may live outside the sheriff's bailiwick. The Superior Court of the county wherein such action is brought may give definitive judgment upon such scire facias with the same effect as if the lands lay wholly within such county.

(18 Del. Laws, c. 221; Code 1915, § 4400; Code 1935, § 4858; 10 Del. C. 1953, § 5062; 70 Del. Laws, c. 186, § 1.)

§ 5062A Loss mitigation affidavit required.

(a) In connection with any mortgage foreclosure action brought under § 5061 of this title with respect to an owner-occupied 1- to 4-family primary residential property, unless the mortgage is held by the seller of the subject property who does not hold more than 5 such mortgages, the defendant must have an opportunity to apply for relief under a federal loss mitigation program for which the defendant may be eligible including, but not limited to, the Home Affordable Modification Program, the Second Lien Modification Program, the Home Affordable Unemployment Program, and the Home Affordable Foreclosure Alternatives Program, together with any proprietary loss mitigation programs offered by the plaintiff for which defendant may be eligible. A plaintiff in a mortgage foreclosure action may establish that it provided a defendant with the opportunity to apply for relief contemplated by this paragraph if, for example, the plaintiff provides the defendant with a list of the applicable loss mitigation programs in which the plaintiff participates and instructions for how to initiate an application for each such program, which list and instructions may be included in the notice of intent to foreclose required by § 5062B of this title.

(b) No judgment may be entered in any mortgage foreclosure action brought under § 5061 of this title with respect to an owner-occupied 1- to 4-family primary residential property, and no owner-occupied 1- to 4-family primary residential property that is the subject of a judgment of foreclosure that has not gone to sheriff's sale as of January 19, 2012, may be sold at sheriff's sale, unless the plaintiff has filed a fully executed affidavit asserting:

(1) That the defendant has been provided with the opportunity to apply for relief under any loss mitigation program for which the defendant may be eligible, as described in subsection (a) of this section, and

(2) That the loan secured by the mortgage for which plaintiff seeks foreclosure is:

a. Not subject to a loss mitigation program; or

b. Is ineligible for any applicable loss mitigation program due to the defendant's failure to apply, or failure to provide required information, or failure to complete the requirements of the program; or

c. Is determined by the plaintiff to be otherwise ineligible for any applicable loss mitigation program.

(c) If an affidavit required by subsection (b) of this section is false with respect to the accuracy of any statement required by paragraphs (b)(1) and (b)(2) of this section, the foreclosure action shall be dismissed by the court without prejudice and a complaint may be refiled by the plaintiff, but no fees or other costs shall be charged to the defendant in connection with the dismissed action.

(78 Del. Laws, c. 199, § 1.)

§ 5062B Required notices.

(a)(1) Except as provided in paragraph (a)(2) of this section, with respect to an owner-occupied 1- to 4-family primary residential property, a mortgage foreclosure action may not be filed until 45 days after a notice of intent to foreclose is sent in the form and manner required by paragraph (a)(3) of this section, which notice may not be sent until the obligor on the loan secured by the mortgage has defaulted on the obligation set forth in the terms of the loan.

(2) The notice of intent to foreclose required under paragraph (a)(1) of this section shall not be required if the property subject to the mortgage has been abandoned, if the mortgage is held by the seller of the subject property who does not hold more than 5 such mortgages, if the obligor on the loan secured by the mortgage has voluntarily surrendered the property to the obligee, or if the default has continued after the automatic stay has been lifted or terminated in a bankruptcy proceeding, or if the default has continued after the bankruptcy proceeding has been dismissed.

(3)a. The notice of intent to foreclose required under paragraph (a)(1) of this section shall be sent:

1. To the borrower(s) by certified mail, postage prepaid, return receipt requested, bearing postmark from the United States Postal Service; and

2. To the borrower(s) by first class mail.

b. The notice of intent to foreclose shall:

1. Contain the following heading, in English and in Spanish, in at least 30-point boldface type, at the beginning of the notice:

"NOTICE REQUIRED BY DELAWARE LAW: TAKE ACTION TO SAVE YOUR HOME FROM FORECLOSURE"

2. Contain the following statement, in English and in Spanish, in at least 14-point boldface type, immediately following the heading:

EMERGENCY FINANCIAL HELP MAY BE AVAILABLE

3. Contain, in English and in Spanish, in at least 14-point boldface type, the phrase

and the telephone number of a contact person or department the homeowner may call to obtain specific instructions on how to reinstate the mortgage loan;

4. Contain a statement, as of the date of the notice, of the nature of the default, the amount required to cure the default and reinstate the loan, including all past due payments, penalties, and fees, and any other actions the homeowner must take to cure the default;

5. Contain a list of approved DEMAP housing counseling agencies and the contact information for each listed agency; and

6. Any other information that the Superior Court shall require.

(4) If the borrower(s) may be eligible to apply for assistance through any proprietary loss mitigation program offered by the plaintiff or under any federal loss mitigation program in which the plaintiff participates, including, but not limited to, the Home Affordable Modification Program, the Second Lien Modification Program, the Home Affordable Unemployment Program, and the Home Affordable Foreclosure Alternatives Program, the potential plaintiff shall include a list of the potentially applicable loss mitigation programs, instructions for how to initiate a completed application for each such program, and a telephone number to call to confirm receipt of an application.

(5) The potential plaintiff (or the servicer sending notice on their behalf) shall include with the notice of intent to foreclose an accounting of the mortgage obligation covering the 12-month period prior to the date of the alleged default. The accounting shall include, at a minimum, a history of all payments made during the 12-month period prior to the date of the alleged default and the potential plaintiff's allocation of those payments to principal, interest, attorneys' fees, other applicable fees, and the allocation of such payments to the payment installments required by the mortgage. The accounting shall also include:

a. The due date for the mortgage;

b. Any other information as the potential plaintiff may be relying upon as the basis for the claim of default; and

c. A certification by the potential plaintiff (or the servicer sending notice on their behalf) that the information contained in the accounting is true and accurate to the best of its knowledge as of the date provided and that the information provided has been relied upon as the basis for the claim of default. Where a servicer provides the certification instead of the potential plaintiff, the servicer shall also identify itself as such and recite in such certification its authority to act on behalf of the potential plaintiff.

(b) As necessary to reflect changes in law, procedure, or loss mitigation options, the Superior Court may prescribe additional or alternate requirements for the form of a notice of intent to foreclose as described under paragraph (a)(3)b. of this section.

(c) The Delaware State Housing Authority shall make available upon request the list of approved DEMAP housing counseling agencies and the contact information for each listed agency required under paragraph (a)(3)b.5. of this section.

(78 Del. Laws, c. 199, § 2; 79 Del. Laws, c. 27, §§ 1-3.)

§ 5062C Residential Mortgage Foreclosure Mediation Program.

(a) An Automatic Residential Mortgage Foreclosure Mediation Program is established.

(b) This section shall apply to mortgage foreclosure actions under § 5061 of this title with respect to owner-occupied 1- to 4-family primary residential properties, unless the mortgage is held by the seller of the subject property who does not hold more than 5 such mortgages.

(c)(1) As required pursuant to § 5062D(b)(3) of this title, a notice of foreclosure mediation shall accompany the complaint filed in a mortgage foreclosure action subject to this section, which notice shall notify the defendant of the Automatic Residential Mortgage Foreclosure Mediation Program. A copy of such notice shall also accompany the posted and mailed Notice to Lienholders and Tenants required by the Superior Court Civil Rules.

(2) The notice of foreclosure mediation shall:

a. Contain the following heading, in English and in Spanish, in at least 30-point boldface type, at the beginning of the notice:

"NOTICE REQUIRED BY DELAWARE LAW

YOUR LENDER HAS FILED A FORECLOSURE ACTION AGAINST YOUR PROPERTY. YOU ARE ELIGIBLE TO PARTICIPATE IN MEDIATION. CALL THE DELAWARE ATTORNEY GENERAL'S FORECLOSURE HOTLINE AT 1-800-220-5424 NOW OR FIND A HOUSING COUNSELOR ON THE INCLUDED LIST TO START THE MEDIATION PROCESS.";

b. Contain the following statement, in English and in Spanish, in at least 14-point boldface type, immediately following the heading:

"Your lender has filed a foreclosure action against your property. You are eligible for mediation with your lender. A mediation conference will be scheduled for you. Please look out for this mediation scheduling notice in the mail. Your lender will not be able to seek judgment against your property until the day after the date for which your mediation conference is scheduled.

In order to effectively participate in mediation, you must meet with a HUD-approved housing counselor and certify to the court your intent to participate in mediation within 30 days of today. You are encouraged to do this immediately; your chances of saving your home may be better the sooner you meet with a HUD-approved housing counselor. Please call the Delaware Attorney General's Foreclosure Hotline at 1-800-320-5424 or contact a HUD-approved housing counselor. A list of HUD-approved housing counseling agencies is also provided in this notice. A housing counselor may be able to assist you with the mediation process and with applying for loss mitigation programs and emergency assistance programs. You also must work with your HUD-approved housing counselor to prepare a proposal for your lender in advance of your mediation conference. A Certificate of Participation form is attached to this notice. If you do not certify your intent to participate in mediation, you may still attend your scheduled mediation conference and meet with a representative of your lender. However, your mediation is less likely to be successful and your lender may choose to seek judgment against your property immediately after mediation.

You must appear in person at your mediation conference. If you are unable to attend the mediation conference on the scheduled date, you may request that your mediation conference be rescheduled for good cause. You must make this request promptly or your request may be denied.";

c. Contain a list of housing counseling agencies approved by the United States Department of Housing and Urban Development who may be available to provide assistance with the mediation process, along with the contact information for each listed agency;

d. Be accompanied by a Certificate of Participation form, which shall include the following information:

1. The address of the subject property;
2. The following language:
3. A certification substantially in the following form:
4. The name and address of the HUD-approved housing counselor;

5. Such other information as the Superior Court shall prescribe.

e. If a date for mediation has already been scheduled pursuant to paragraph (d)(2) of this section, notify the defendant that the mediation conference is scheduled for that date and attach the mediation scheduling notice; in such event, the form of notice required by this paragraph (c)(2) shall be adjusted to reflect that a mediation conference has already been scheduled.

(3) The Superior Court may also require that the notice of foreclosure mediation be accompanied by such other flyers, forms, and checklists as it deems appropriate.

(4) The Delaware State Housing Authority shall make available upon request the list of approved housing counseling agencies and the contact information for each listed agency required under paragraph (c)(2)c. of this section.

(d)(1) The Superior Court or its delegatee shall schedule a mediation conference and issue a mediation scheduling notice to the plaintiff, the defendant, and all other necessary parties to the action as set forth in § 5061 of this title. The mediation conference must be scheduled for a date that is not less than 45 days from the date the notice of foreclosure mediation was served on the defendant and not more than 75 days from such date. The mediation scheduling notice may be in such form as the Superior Court or its delegatee shall provide. The mediation scheduling notice must inform the parties of the date, time, and place of the mediation conference, the contact information for the mediator if 1 has been assigned, and that all necessary parties, other than the plaintiff and the defendant, must file an appearance in order to be provided with further mediation notices.

(2) [Repealed.]

(3) The Superior Court or its delegatee may, in its discretion and either on its own initiative or in response to a request from a party or the mediator, for good cause shown, reschedule a mediation conference, except that no initial mediation conference may be scheduled sooner than 45 days from the date the notice of foreclosure mediation was served on the defendant without the written consent of the defendant and no initial mediation conference may be scheduled later than 75 days from the date the notice of foreclosure mediation was served on the defendant without the written consent of both the plaintiff and the defendant. If the Superior Court or its delegatee reschedules a mediation conference, the previously scheduled conference shall be canceled and the Superior Court or its delegatee will issue a new mediation scheduling notice to the plaintiff, defendant and all appearing parties. The new mediation scheduling notice shall state that the previously scheduled conference was canceled and shall inform the parties of the date, time, and place of the rescheduled mediation conference and the contact information for the mediator if one has been assigned to act as the mediator at the rescheduled mediation conference.

(4) After a Certificate of Participation has been filed identifying the borrower's HUD-approved housing counselor, the housing counselor shall be provided with copies of all subsequent mediation scheduling notices and other communications to be provided to the borrower as part of the mediation process.

(e)(1) A defendant shall meet with a HUD-approved housing counselor and file a Certificate of Participation no more than 30 days from the date the notice of foreclosure mediation was served on the defendant. The Certificate of Participation shall be filed with the Superior Court or its delegatee and the defendant shall send copies to the mediator and to the plaintiff or, if the plaintiff is represented by counsel, to the mediator and to the plaintiff's counsel, who will promptly forward the Certificate of Participation on to the plaintiff. If a defendant has checked "NO" with respect to any of the statements required to be included in the Certificate of Participation under paragraph (c)(2)d.2. of this section, above, the mediation conference will be canceled, but this shall not prevent the defendant from requesting that the mediation conference be reinstated at a later date prior to the entry of judgment.

(2) The failure of a defendant to file a Certificate of Participation will not excuse the plaintiff from attending the mediation conference and engaging in mediation in good faith, but the mediator may take the defendant's failure into consideration when making recommendations.

(3) Upon receipt of a duly completed Certificate of Participation from the defendant, the plaintiff shall owe a mediation fee to the Superior Court or its delegatee in the amount set by the Superior Court pursuant to subsection (q) of this section. Notwithstanding the preceding sentence, if the mediation conference has been cancelled as a result of the defendant checking "NO" on the Certificate of Participation under paragraph (e)(1) of this section above, no mediation fee will be required. The mediation fee required, whether under this section or paragraph (i)(8) of this section below, shall be due and must be paid by plaintiff within 30 days after the eFiling of a completed Certificate of Participation, and shall be in addition to any other filing fees required by law. The Superior Court or its delegatee may in its discretion reschedule any scheduled mediation conference where the mediation fee is overdue pursuant to this paragraph until such time as the mediation fee has been paid .

(f) At least 14 days prior to the date of the mediation conference, the defendant shall provide a completed financial proposal worksheet to the plaintiff, to the mediator, and to such other entities as the Court may require. The Superior Court or its delegatee may prescribe the form of such financial proposal worksheet and any accompanying materials that must be provided by the defendant. The failure of a defendant to provide a complete financial proposal worksheet to the plaintiff will not excuse the plaintiff from attending the mediation conference and engaging in mediation in good faith, but the mediator may take such failure into consideration when making recommendations and may inform the defendant that the failure to provide a complete financial proposal worksheet and accompanying materials, if required, may affect the plaintiff's ability to enter into a loss mitigation agreement or other resolution of the foreclosure.

(g) At least 7 days prior to the date of the mediation conference or such other date as agreed to by the mediator, the plaintiff shall provide the defendant and its housing counselor, if known, a checklist of documents that the plaintiff requires that the defendant bring

to the mediation conference, including whether updated versions of existing documents need to be provided. Each party shall also make itself available at least 3 days prior to the date of the mediation conference to discuss the list of documents. The Superior Court or its delegatee may prescribe a form of checklist to be used under this paragraph. If the plaintiff requests at the mediation conference additional documents from the defendant that were not included on the checklist, the mediator may take any failure of the plaintiff to provide a complete checklist into consideration when making recommendations. If the defendant fails to bring the documents required by the plaintiff to the mediation conference and such documents were requested timely under this subsection, the mediator may take into consideration the defendant's failure to provide the documents when making recommendations and may inform the defendant that such failure may affect the plaintiff's ability to enter into a loss mitigation agreement or other resolution of the foreclosure.

(h) The Superior Court or its delegatee may set forth procedures for the provision of information and statements by the parties in mediation, including the use of preliminary position statements. However, the failure of a party to provide a preliminary position statement will not excuse any party from attending the mediation conference and engaging in mediation in good faith, but such failure may be taken into consideration by the mediator in assessing whether the party failing to provide the position statement is engaging in mediation in good faith.

(i) A mediation conference will be held on the day stated in the mediation scheduling notice, and shall be conducted in accordance with the following:

(1) A mediator will oversee the mediation conference and provide guidance as appropriate. However, if multiple mediation conferences are occurring in the same location simultaneously, the mediator may determine that his or her presence is not required for the entirety of the mediation session. In this event, the mediator will inform the parties that they may engage in party-led mediation and that they should seek out the mediator when questions arise and when the mediation conference is complete. The mediation shall be held in a location where fax machines and internet access is available, in order to facilitate the transmission of documents between parties and their counsel.

(2) The plaintiff and the defendant shall appear in person at each mediation conference and must have authority to agree to a proposed settlement, except that if the plaintiff is represented by counsel, the plaintiff's counsel may appear in lieu of the plaintiff to represent the plaintiff's interests at the mediation conference, provided plaintiff's counsel has the authority to agree to a proposed settlement and a representative of the plaintiff who has decision making and settlement authority is available during the mediation conference by telephone. The defendant may be accompanied by a housing counselor and may have legal representation.

(3) At the mediation conference, the parties shall address, among other things, loss mitigation programs offered by the plaintiff for which the defendant could be eligible, along with other potential resolutions that may allow the defendant to continue to own the property or otherwise avoid a foreclosure judgment or sheriff's sale, including without limitation the following options where applicable: bringing the mortgage loan current; paying off the mortgage; a repayment plan to bring the loan current over time; agreeing to vacate in the near future in exchange for not contesting the matter and a monetary payment; offering the lender a deed in lieu of foreclosure; filing bankruptcy proceedings; paying the mortgage default over 60 months; and requesting a loan modification.

(4) The individual appearing at the mediation conference on behalf of the plaintiff will be responsible for receipt of all information requested from defendant and will be responsible for communicating that information to the plaintiff.

(5) The individual appearing at each mediation conference on behalf of the plaintiff shall bring to the mediation conference an updated itemization of all fees and costs, including any other charges and attorneys' fees requested, that must be paid as of the date of the mediation in order to reinstate the loan secured by the property subject to the foreclosure action and an current itemization of all overdue amounts causing that loan to be in default.

(6) At a minimum, the mediator will advise the defendant that:

a. The mediation does not suspend the defendant's obligation to respond to the foreclosure complaint; and

b. Entry of judgment in the foreclosure action may cause the defendant to lose the residential mortgage property.

(7) Absent mutual agreement of the parties, the mediator will have no authority to bind the parties to a resolution, except that the mediator may recommend to the Superior Court that the foreclosure action be dismissed due to the plaintiff's failure to appear for 2 successive mediation conferences. In no event shall any determination issued by a mediator under this program form the basis of an appeal of any foreclosure judgment.

(8) The parties to a foreclosure action may agree in a mediation conference to schedule an additional mediation conference, which fact shall be recorded in the mediation record at the end of the present mediation conference. If the plaintiff has not yet been required to pay a mediation fee under paragraph (e)(3) of this section because the defendant did not file a completed Certificate of Participation in a timely manner, upon the scheduling of the first additional mediation conference after the initial mediation conference, the plaintiff shall be required to pay a mediation fee to the Superior Court or its delegatee in the amount set by the Superior Court pursuant to paragraph (q) of this section. The mediation fee required under this paragraph must be paid by the plaintiff within 30 days of the eFiling of a completed Certificate of Participation, and shall be in addition to any other filing fees required by law. The mediation fee required under this paragraph must be paid by the plaintiff before the date for which the first additional mediation conference has been scheduled. The Superior Court or its delegatee may in its discretion reschedule any subsequently scheduled mediation conference where the mediation fee is overdue until such time as the mediation fee has been paid.

(9) At the conclusion of a mediation conference, the mediator shall sign a mediation record that shall also be cosigned by all parties present at the mediation conference and filed with the Superior Court. The mediation record shall be on such form as the Superior Court or its delegatee shall provide, shall allow the mediator to make recommendations, and shall state:

a. That the mediation process is complete due to the defendant's failure to appear and that the foreclosure action may continue; or

b. That the defendant has failed to appear and an additional mediation conference is being scheduled for the next available mediation day at the plaintiff's request and that no judgment may be entered in the foreclosure action until the day after such date; or

c. That an additional mediation conference is being scheduled for the next available mediation day due to the plaintiff's failure to appear and that no judgment may be entered in the foreclosure action until the day after such date; or

d. That the mediation process was unsuccessful because the parties failed to come to agreement and that the foreclosure action may continue; or

e. That the parties have agreed to an additional mediation conference scheduled for a date specified and that no judgment may be entered in the foreclosure action until the day after such date; or

f. That the parties have reached a mutually agreeable resolution, that the plaintiff agrees that no entry of default judgment will be sought pending the execution of documents memorializing the agreement of the parties, and that the plaintiff will seek to dismiss the foreclosure action upon such execution (or, in the case of a trial mortgage modification, upon the conversion of the trial mortgage modification to a permanent mortgage modification) or take such other actions as may be authorized by the Superior Court; or

g. That the case is not suitable for mediation because:

1. There was improper service of the complaint or of the notices required under this section or under § 5062B of this title, and a new mediation conference will be scheduled after proper service has been made, and no judgment may be entered in the foreclosure action until the day after such date of such new mediation conference; or

2. A bankruptcy petition has been filed, mediation is not permitted to continue in accordance with paragraph (i)(12) of this section, and upon termination of the automatic stay, plaintiff shall request that a mediation conference be scheduled and no judgment may be entered in the foreclosure action until the day after such date of such new mediation conference; or

3. The subject property is not an owner-occupied 1- to 4-family primary residence and that the foreclosure action may continue; or

4. Such other reasons as the mediator shall state; or

h. That the mediator is recommending that the foreclosure action be dismissed due to the plaintiff's failure to appear for 2 successive mediation conferences; or

i. Such other resolutions as may be agreed to by the parties.

(10) If no mediation record is signed by all parties present at the mediation conference, the mediator shall file a mediation record with the Superior Court stating that the mediation process was unsuccessful or such other recommendations as the mediator deems appropriate.

(11) The Superior Court or its delegatee may arrange a program to allow for volunteer attorneys to provide legal representation to homeowners at mediation conferences.

(12) Where a bankruptcy petition has been filed, mediation shall not be permitted to continue unless either:

a. The automatic stay has been lifted or modified with respect to the defendant's mortgage obligation to the plaintiff; or

b. Mediation is permitted to proceed pursuant to an order or directive of a bankruptcy court. Where the mediation process has previously been cancelled as the result of the filing of a bankruptcy petition but is subsequently permitted to proceed under this subparagraph, plaintiff shall request that a mediation conference be scheduled and no judgment may be entered in the foreclosure action until the day after such date of such new mediation conference.

(j) If a mediation conference has been scheduled, the parties may cancel the conference by mutual agreement by filing with the Superior Court or its delegatee a mediation cancellation record signed by each party and the mediator. The mediator shall be permitted to sign a mediation cancellation record on behalf of a party if the mediator discusses the terms of the mediation cancellation record with such party and receives authority from such party to sign on its behalf. Such authority may be granted verbally or in writing. The mediation cancellation record shall be on such form as the Superior Court or its delegatee shall provide, shall allow the mediator to make recommendations, shall state that the parties have agreed that the scheduled mediation conference is not necessary, and shall state any other resolutions as may be agreed to by the parties.

(k) A plaintiff shall not be entitled to attorneys' fees for time spent in a mediation conference if the Court finds that the plaintiff has failed to comply with subsection (i) of this section, or if the plaintiff has requested that the mediation conference be rescheduled due to plaintiff's lack of preparation, or if the plaintiff has requested additional documents that were not included on the checklist provided pursuant to subsection (g) of this section, unless in each case the Court finds reasonable cause for such failure. The mediator shall note any such fact in his or her recommendations on the mediation record.

(l) The mediator may be an employee of the Superior Court, an employee of the Consumer Protection Unit of the Department of Justice, an employee of a nonprofit legal services entity organized in Delaware, or an independent mediator who may be compensated through the

funds collected through the Automatic Residential Mortgage Foreclosure Mediation Program. The Superior Court or its delegatee shall determine the qualifications and training required of mediators and shall keep a list of mediators available to participate in the Automatic Residential Mortgage Foreclosure Mediation Program. Mediators will be assigned at the discretion of the Superior Court or its delegatee.

(m)(1) If the parties have reached a mutually agreeable resolution through the mediation process, the terms of the agreement will be memorialized in writing at the conclusion of the mediation conference or, in the case of a canceled mediation conference, promptly upon signing the mediation cancellation record. Promptly thereafter, the parties shall deliver to each other fully executed documents.

(2) Promptly upon receipt of documents executed by the defendant that reflect the agreement of the parties or, in the case of a trial mortgage modification, promptly upon the conversion of the trial mortgage modification to a permanent mortgage modification:

a. If no answer or motion for summary judgment has been filed by the defendant in the foreclosure action, plaintiff shall file a notice of dismissal with the Superior Court; or

b. If the defendant has filed an answer or motion for summary judgment in the foreclosure, plaintiff shall seek to obtain a stipulation of dismissal signed by all parties and file the stipulation with the Superior Court and, if such stipulation cannot be obtained, move for an order of the Superior Court dismissing the foreclosure action.

(3) If the documents fail to reflect a party's understanding of the agreement reached between the parties or if a party fails to execute the documents or if the terms of a trial modification are not satisfied, either party may request that an additional mediation conference be scheduled.

(4) With respect to foreclosure actions subject to this section that have reached a mutually agreeable resolution through the mediation process or otherwise and recorded such fact in the mediation record at the conclusion of a mediation conference or in a mediation cancellation record, notwithstanding any provisions of the Delaware Code to the contrary, no judgment may be entered unless an additional mediation conference has been scheduled pursuant to paragraph (m)(3) of this section, and the date for such additional mediation conference has passed.

(n) Notwithstanding any provisions of the Delaware Code to the contrary, no judgment may be entered in any action subject to this section for which a mediation conference has been scheduled until the day after the date for which such mediation conference has been scheduled.

(o) If seeking a default judgment in an action subject to this section, the plaintiff or plaintiff's counsel must have provided proper service of the notices required under subsection (c) of this section and under § 5062B(a)(3)a. of this title.

(p) None of the plaintiff's or defendant's rights in the foreclosure action shall be waived by participation in the Automatic Residential Mortgage Foreclosure Mediation Program.

(q) The Automatic Residential Mortgage Foreclosure Mediation Program shall be funded with the mediation fees collected pursuant to paragraphs (e)(3) and (i)(8) of this section. The Superior Court shall set the amount of the mediation fee in an amount to approximate and reasonably reflect the costs necessary to defray the expenses in whole or in part of the Automatic Residential Mortgage Foreclosure Mediation Program. The Superior Court or its delegatee shall collect the mediation fees and disburse funds from the collection of such fees to pay mediators, administrative expenses and other operating costs of the program. Any funds remaining from the collection of mediation fees in excess of the Automatic Residential Mortgage Foreclosure Mediation Program's direct operating costs in the immediately preceding quarter may be distributed to reimburse any Delaware-based HUD-approved housing counseling agencies or nonprofit legal services entity organized in Delaware that have provided assistance in the Automatic Residential Mortgage Foreclosure Mediation Program for a portion of their costs of participating in the program.

(r) The Superior Court may, by rule, administrative directive, or otherwise, make all necessary rules respecting the Automatic Residential Mortgage Foreclosure Mediation Program. For example, the Superior Court may allow for the use of Delaware nonprofit legal service providers in addition to the use of HUD-approved housing counselors wherever the use of HUD-approved housing counselors is required or permitted under this section. Nothing in this legislation shall impair the authority of the Superior Court to institute procedures to manage its caseload.

(s) As necessary to remain consistent with the purpose of the Automatic Residential Mortgage Foreclosure Mediation Program and related state and federal foreclosure prevention programs, the Superior Court may by rule adjust the mechanics of the Automatic Residential Mortgage Foreclosure Mediation Program set forth in this section.

(t) The Superior Court or its delegatee shall collect and compile statistics on the effectiveness of the Automatic Residential Mortgage Foreclosure Mediation Program, which shall be made available to the public on a periodic basis. The entity responsible for the compilation of statistics shall be provided with copies of all Certificates of Participation, all mediation records, and all mediation cancellation records. Parties shall provide the entity responsible for the compilation of statistics with such nonprivileged information as may be necessary to evaluate or report on the effectiveness of the Automatic Residential Mortgage Foreclosure Mediation Program.

(78 Del. Laws, c. 200, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 295, § 1; 79 Del. Laws, c. 27, §§ 4-8.)

§ 5062D Complaints and answers.

(a) A complaint to foreclose a mortgage in an action subject to this chapter shall contain a statement as to whether the mortgage foreclosure action is subject to the Automatic Residential Mortgage Foreclosure Mediation Program and, where it is not subject to the Automatic Residential Mortgage Foreclosure Mediation Program, a statement of the reason why it is not subject to that program.

(b) In an action subject to the Automatic Residential Mortgage Foreclosure Mediation Program, in addition to any other requirements set forth in the Delaware Code or by the Superior Court, a complaint to foreclose the mortgage shall be accompanied by:

(1) If applicable, an affidavit stating that the notice of intent to foreclose was sent to the borrower(s) in accordance with § 5062B(a)(3) of this title and the date of said notice;

(2) A statement of the debt remaining due and payable supported by an affidavit of the plaintiff or the mortgage holder or the agent or attorney of the plaintiff or mortgage holder; and

(3) The notice of foreclosure mediation described under § 5062C(c)(2) of this title, which notice shall be attached to the front of the copy of the complaint served on the defendant.

(c) Notwithstanding any provisions of the Delaware Code to the contrary, no answer to a complaint in a mortgage foreclosure action subject to the Automatic Residential Mortgage Foreclosure Mediation Program shall be deemed untimely if it is filed on or before the date of any scheduled mediation conference.

(78 Del. Laws, c. 200, § 2; 79 Del. Laws, c. 27, § 9.)

§ 5063 Judgment upon default.

If the defendant fails to appear at the return day of the scire facias, definitive judgment therein, as well as all other judgments to be given upon such scire facias, shall be entered that the plaintiff have execution by levari facias directed to the proper officer.

(Code 1852, § 2486; Code 1915, § 4402; Code 1935, § 4860; 10 Del. C. 1953, § 5063.)

§ 5064 Award of levari facias when county line divides land.

The writ of levari facias awarded upon any judgment for the sale of any such tract, as mentioned in § 5062 of this title, shall be directed to the sheriff of the county wherein the judgment was given. The sheriff shall proceed in the same manner as is prescribed in other cases of the sale of lands upon such execution process, and may on the writ sell the tract of land in the whole, and altogether at one and the same time, and make return thereof to the court out of which the writ is issued. Upon confirmation of such sale by the court the sheriff shall make a deed to the purchaser conveying the whole as fully as if the same had been wholly situated in his or her bailiwick. Any deed so made shall be recorded in each of the counties in which the land is situated. Notice of any such sale shall be set up in at least 5 of the most public places in each of the hundreds in which the land or any part thereof is located.

(18 Del. Laws, c. 221; Code 1915, § 4403; Code 1935, § 4861; 10 Del. C. 1953, § 5064; 70 Del. Laws, c. 186, § 1.)

§ 5065 Procedure after award of levari facias.

Under a levari facias, awarded as described in this subchapter, the mortgaged premises shall be taken in execution, and after notice given in the same manner as in other cases of the sale of lands upon execution process, shall be exposed to public sale, and upon such sale and confirmation thereof, shall be conveyed by deed to the purchaser; or if there be no sale for want of bidders, return shall be made accordingly, and thereupon a liberari facias may issue and be executed in the same manner, and with like effect, as provided in other cases of the sale of lands upon execution process.

(Code 1852, § 2487; Code 1915, § 4404; Code 1935, § 4862; 10 Del. C. 1953, § 5065.)

§ 5066 Title of purchaser.

The person to whom any lands and tenements shall be sold, or delivered, under § 5065 of this title, and such person's heirs and assigns, shall hold the same, with their appurtenances, for such estate, or estates, as they were sold, or delivered for, discharged from all equity or redemption, and all other incumbrances made and suffered by the mortgagor, the mortgagor's heirs, or assigns; and such sale shall be available in law. Such sale, or delivery, shall not create any further term, or estate, to the vendees, mortgagees, or creditors, than the lands and tenements were mortgaged for.

(Code 1852, § 2488; Code 1915, § 4405; Code 1935, § 4863; 10 Del. C. 1953, § 5066; 70 Del. Laws, c. 186, § 1.)

§ 5067 Disposition of surplus from sale proceeds.

Any surplus of the proceeds of sale of mortgaged premises, after satisfying the principal debt in the mortgage, with interest and costs, shall be rendered to the owner of the premises at the time of sale. Until the surplus is so rendered, the officer making the sale shall not be discharged upon the record of the court to which the sale is returnable.

(Code 1852, § 2489; Code 1915, § 4406; Code 1935, § 4864; 10 Del. C. 1953, § 5067.)

Subchapter XII

Scire Facias on Judgments

§ 5071 Issuance for execution on judgments and recognizances; parties.

A writ of scire facias may be sued upon a judgment in a personal, or mixed action, as well as upon a judgment in a real action, as also upon all recognizances, to obtain execution of such judgment, or recognizances. Such writ may be sued by and against the parties to the

judgment, or recognizance, and also by and against any other persons entitled, or liable, to the execution thereof, whether as executors, administrators, heirs, terre tenants, or otherwise.

(Code 1852, § 2490; Code 1915, § 4407; Code 1935, § 4865; 10 Del. C. 1953, § 5071.)

§ 5072 Execution on judgments in civil actions.

(a) An execution may be issued upon a judgment in a civil action at any time within 5 years from the time when such judgment was entered or rendered, or from the time when such judgment became due; or to collect any instalment of a judgment within 5 years from the time when such instalment fell due.

This section shall only apply to cases when no execution has been previously issued to collect such judgment or instalment, and to cases where 1 or more have been issued for such purpose, and it appears by the return of the officer that such judgment or instalment, as the case may be, has not been paid or satisfied. As to all other cases the law shall remain unaffected.

(b) No judgment shall be deemed to be paid or satisfied, in whole or in part, by a levy on execution process, unless it appears otherwise than by the fact of such levy that such payment or satisfaction has been made.

(11 Del. Laws, c. 451; Code 1915, § 4408; Code 1935, § 4866; 10 Del. C. 1953, § 5072.)

§ 5073 Execution on judgments of the Court of Common Pleas or justices of the peace.

An execution may be issued upon a judgment recovered before the Court of Common Pleas or a justice of the peace, and of which a transcript has been filed and entered in the Superior Court, or on a judgment upon an appeal from the Court of Common Pleas or a justice of the peace, at any time within 5 years from entering the transcript, or giving the judgment on appeal, without scire facias, unless it is necessary to make a party defendant. A party plaintiff may be made by suggesting the facts and stating the proper party on the record, without scire facias, and the proceeding shall be in the name of the proper party so stated.

(Code 1852, § 2491; Code 1915, § 4409; Code 1935, § 4867; 10 Del. C. 1953, § 5073.)

Subchapter XIII

Lien of Execution

§ 5081 Time of binding of goods and chattels by execution; duration of lien.

An execution shall not bind goods and chattels until it is delivered to the sheriff or other proper officer to be executed. An execution shall, from the time it is so delivered, bind all the goods and chattels of the defendant within the bailiwick, which shall be actually levied upon within 60 days thereafter. No levy upon goods and chattels, made by virtue of execution process, shall be of any force or effect as against a subsequent execution levied upon the same goods and chattels for a longer period than 3 years from the making of such first mentioned levy.

(Code 1852, §§ 2492, 2493; 12 Del. Laws, c. 207; Code 1915, § 4410; Code 1935, § 4868; 10 Del. C. 1953, § 5081.)

§ 5082 Priority of liens.

If several executions against the same defendant are delivered on the same day, the first delivered shall have priority. If several executions against the same defendant are delivered together, they shall have priority according to their respective numbers.

(Code 1852, § 2494; Code 1915, § 4411; Code 1935, § 4869; 10 Del. C. 1953, § 5082.)

§ 5083 Endorsing of date on writ.

The prothonotary, issuing an execution, shall endorse thereon the date of its issue.

(Code 1852, § 2495; Code 1915, § 4412; Code 1935, § 4870; 10 Del. C. 1953, § 5083.)

§ 5084 Duty of sheriff upon receipt of execution.

The sheriff, or other officer, receiving an execution, shall, in a docket, set down the date of receiving it; and when several executions are delivered on the same day, the docket shall show the order in which they are received. Such officer shall also endorse upon an execution, immediately on receiving it, the precise time of its delivery to him or her.

(Code 1852, § 2496; Code 1915, § 4413; Code 1935, § 4871; 10 Del. C. 1953, § 5084; 70 Del. Laws, c. 186, § 1.)

§ 5085 Applicability to executions by the Court of Common Pleas or justices of the peace.

The provisions of this subchapter shall not apply to executions issued by the Court of Common Pleas or justices of the peace.

(Code 1852, § 2497; Code 1915, § 4414; Code 1935, § 4872; 10 Del. C. 1953, § 5085.)

Subchapter XIV

Miscellaneous Provisions

§ 5091 Execution on judgment for penalty.

When an execution is issued upon a judgment for a penalty, the officer issuing it shall endorse thereon the real debt and the time from which interest is to be calculated.

(Code 1852, § 2498; Code 1915, § 4415; Code 1935, § 4873; 10 Del. C. 1953, § 5091.)

§ 5092 Death or escape of party arrested or imprisoned.

If a person arrested, or imprisoned, by virtue of an execution, dies in execution, or escape, in either case the arrest, or imprisonment, shall be no satisfaction of the judgment, on which the execution is issued; and the execution shall be held to be in no part executed by such arrest, or imprisonment.

(Code 1852, § 2499; Code 1915, § 4416; Code 1935, § 4874; 10 Del. C. 1953, § 5092.)

§ 5093 Liability of officer for escape; action against officer.

If a person arrested, or imprisoned, by virtue of an execution, be suffered to escape, the sheriff, constable, or other officer having the custody of such person at the time of the person's escape, shall be answerable for the full amount payable according to the execution. The person at whose suit the execution was issued, or for whose use it is endorsed, or such person's executors, or administrators, shall have a civil action therefor, against such sheriff, constable, or other officer, or such officer's executors, or administrators. The nonpayment of the amount shall be a breach of the condition of the official recognizance, or obligation, of such sheriff, constable, or officer.

(Code 1852, § 2500; Code 1915, § 4417; Code 1935, § 4875; 10 Del. C. 1953, § 5093; 70 Del. Laws, c. 186, § 1.)

§ 5094 Restitution on reversal of judgment after sale of real estate.

If, after the sale of real estate upon execution process, the judgment upon which such writ is awarded shall be reversed for error, the real estate, so sold, shall not be restored, nor any part thereof, nor shall the sale thereof be avoided; but in such case, restitution only of the money for which such lands may be sold, shall be made.

(Code 1852, § 2501; Code 1915, § 4418; Code 1935, § 4876; 10 Del. C. 1953, § 5094.)

§ 5095 Mistaken identity of judgment debtor.

Where a judgment is entered upon the wrong person by any court by reason of mistaken identity, that person shall at any time after the entry be permitted to petition the court that entered the judgment to challenge the validity of the judgment entered against him or her. If the court determines that a judgment against such person was erroneously entered, the court shall issue an order correcting the error in whatever manner it deems appropriate to correct the mistake, including the release of any liens against real estate and personal property.

(72 Del. Laws, c. 78, § 1; 70 Del. Laws, c. 186, § 1.)

Part III
Procedure
Chapter 51
COSTS

§ 5101 Defendant or prevailing party in law actions.

In a court of law, whether of original jurisdiction or of error, upon a voluntary or involuntary discontinuance or dismissal of the action, there shall be judgment for costs for the defendant. Generally a party for whom final judgment in any civil action, or on a writ of error upon a judgment is given in such action, shall recover, against the adverse party, costs of suit, to be awarded by the court.

(Code 1852, § 2525; Code 1915, § 4444; Code 1935, § 4902; 10 Del. C. 1953, § 5101.)

§ 5102 Civil actions where defendant resides in another county.

Wherever suit is brought in any civil action, excepting action where the venue is by law local, against any citizen of this State, in any other county than that wherein such citizens resides at the time of the inception thereof, the plaintiff shall not recover costs and such costs shall not be payable by the defendant nor collectible by execution process.

(17 Del. Laws, c. 623, § 1; Code 1915, § 4445; Code 1935, § 4903; 10 Del. C. 1953, § 5102; 64 Del. Laws, c. 274, § 1; 65 Del. Laws, c. 42, § 2; 70 Del. Laws, c. 186, § 1; 79 Del. Laws, c. 17, § 1.)

§ 5103 Writs of prohibition or mandamus.

In all cases of writs of prohibition or of writs of mandamus, the costs of each case shall be taxed by the court having jurisdiction of the cause, as it deems equitable and just.

(21 Del. Laws, c. 306; Code 1915, § 4446; Code 1935, § 4904; 10 Del. C. 1953, § 5103.)

§ 5104 Actions in name of State.

If final judgment is given for the defendant in a civil action, which is in the name of the State for the use of any person or corporation, judgment for costs shall be given against such person or corporation.

(Code 1852, § 2526; Code 1915, § 4447; Code 1935, § 4905; 10 Del. C. 1953, § 5104.)

§ 5105 Cases not specially provided for.

Concerning costs on petitions, motions, rules and interlocutory matters not specially provided for, the court shall make such order in each case as it deems proper.

(Code 1852, § 2527; Code 1915, § 4448; Code 1935, § 4906; 10 Del. C. 1953, § 5105.)

§ 5106 Actions in Court of Chancery.

The Court of Chancery shall make such order concerning costs in every case as is agreeable to equity.

(Code 1852, § 2528; Code 1915, § 4449; Code 1935, § 4907; 10 Del. C. 1953, § 5106.)

§ 5107 Affirmance of judgment by Supreme Court.

Upon affirmance of a judgment in the Supreme Court, the costs of the defendant in error or appellee shall be added, by way of increase, to his or her costs in the first judgment, and be a part of the judgment. The amount may be stated accordingly in the process and pleadings.

(Code 1852, § 2529; Code 1915, § 4450; Code 1935, § 4908; 10 Del. C. 1953, § 5107; 70 Del. Laws, c. 186, § 1.)

§ 5108 Proceedings out of court.

In any proceeding before a judge, the Chancellor, or Vice-Chancellor, out of court, there may be allowed for the service of process or the attendance of witnesses a reasonable fee, not exceeding what is allowable for like service or attendance in proceedings before a justice of the peace. The judge, Chancellor, or Vice-Chancellor may make such order for the payment thereof as he or she considers just, and enforce obedience by attachment.

(Code 1852, § 2530; Code 1915, § 4451; Code 1935, § 4909; 10 Del. C. 1953, § 5108; 70 Del. Laws, c. 186, § 1.)

§ 5109 Cases within jurisdiction of justice of the peace brought in Superior Court.

If any person brings a suit in the Superior Court upon a cause of action cognizable before a justice of the peace under § 9301 of this title and recovers not more than $50, besides costs, such person shall not recover costs; unless he or she or some credible person has previously filed in the office of the prothonotary a written affidavit to the effect that the plaintiff has a just cause of action against the defendant exceeding in amount $50.

(Code 1852, § 2531; Code 1915, § 4452; Code 1935, § 4910; 10 Del. C. 1953, § 5109; 70 Del. Laws, c. 186, § 1.)

§ 5110 Appeals from justice of the peace.

(a) Upon an appeal from a justice of the peace, the party recovering judgment on the appeal, shall, as a part of the judgment, recover such party's costs, as well as those before the justice as those upon the appeal, subject to the provisions of subsections (b) and (c) of this section.

(b) If a party appealing from a justice of the peace on the special ground of the party's demand or a part thereof being disallowed, shall not establish a demand exceeding what was allowed to the party before the justice by at least the smallest sum for the disallowance whereof the party had the right of appeal, the party shall not recover his or her costs on the appeal, and shall pay the appellee's costs on the appeal.

(c) If a party appealing on the ground referred to in subsection (b) of this section establishes a demand exceeding what was allowed to such party before the justice by such smallest sum, then the appellee, although there may be still a sum due to him or her, shall recover no costs on the appeal.

(Code 1852, §§ 2532-2534; Code 1915, §§ 4453-4455; Code 1935, §§ 4911-4913; 10 Del. C. 1953, § 5110; 70 Del. Laws, c. 186, § 1.)

§ 5111 Certiorari to justice of the peace.

If upon a certiorari, a judgment, given by a justice, is reversed, the plaintiff in the certiorari shall recover his or her costs. If such judgment is affirmed, costs shall be awarded to the defendant in the certiorari, except where the only exception being to the execution below, such exception is allowed; in which case, the plaintiff in the certiorari shall recover costs.

(Code 1852, § 2535; Code 1915, § 4456; Code 1935, § 4914; 10 Del. C. 1953, § 5111; 70 Del. Laws, c. 186, § 1.)

§ 5112 Bill of costs, time for entry upon docket.

Within 20 days after the rendering of judgment or other determination of any cause or action in the Supreme Court, Superior Court, or Court of Chancery, the clerk, prothonotary, or register of the court shall enter upon the docket of such cause, action, or prosecution, or in a separate fee book kept for that purpose, a full bill of the costs therein, setting forth distinctly each item of the fees of every officer and person, so far as the same are known to him or her or he or she has in his or her office the means of ascertaining the same.

(Code 1852, § 2536; Code 1915, § 4457; Code 1935, § 4915; 10 Del. C. 1953, § 5112; 70 Del. Laws, c. 186, § 1.)

§ 5113 Endorsement on execution process.

Upon every execution, order, or process in the nature of an execution, whereby costs are to be levied and made, the clerk, prothonotary, or register, issuing the same, shall indorse all costs up to the time of the issue, showing distinctly each item of the sheriff's fees, the amount of the fees of every other officer and person, and the names of the officers and persons respectively to whom such fees are due. The fees of the jury and bailiff, and of referees, may be endorsed in the aggregate under those heads.

(Code 1852, § 2537; Code 1915, § 4458; Code 1935, § 4916; 10 Del. C. 1953, § 5113.)

§ 5114 Neglect of duties by officers; penalties.

If any clerk, prothonotary, or register refuses or neglects to perform any of the duties enjoined upon him or her respectively by §§ 5112, 5113 of this title, he or she shall be fined $30.

(Code 1852, § 2539; Code 1915, § 4460; Code 1935, § 4918; 10 Del. C. 1953, § 5115; 70 Del. Laws, c. 186, § 1.)

§ 5115 Judicial revision.

Each court shall, upon application of a party interested, and reasonable notice to the adverse party, revise any bill of costs entered upon the docket of such court; and also any return or endorsement of fees upon any order or process of the court; and also any bills of fees demanded for services in such court, or for the execution of the order or process thereof; and shall correct any errors appearing upon such revision.

(Code 1852, § 2540; Code 1915, § 4461; Code 1935, § 4919; 10 Del. C. 1953, § 5116.)

§ 5116 Adoption proceedings.

The costs in adoption proceedings shall be taxed by the court on the persons making the application.

(Code 1915, § 4464; Code 1935, § 4920; 10 Del. C. 1953, § 5117.)

§ 5117 Parentage proceedings.

The costs of proceedings in parentage cases shall be paid by the father, if the paternity is established; otherwise by the county.

(Code 1852, § 1489; Code 1915, § 4466; Code 1935, § 4921; 10 Del. C. 1953, § 5118; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 50, § 1.)

§ 5118 Dower actions.

In respect to the costs in actions for dower, the court shall exercise equitable powers.

(Code 1852, § 1754; Code 1915, § 4468; Code 1935, § 4922; 10 Del. C. 1953, § 5119.)

§ 5119 Perpetuating testimony of boundaries.

Upon proceedings for perpetuating testimony of boundaries, each party shall bear the costs of the attendance and examination of witnesses produced by the party. All the other costs shall be paid by the petitioner.

(Code 1852, § 991; Code 1915, § 4470; Code 1935, § 4923; 10 Del. C. 1953, § 5120; 70 Del. Laws, c. 186, § 1.)

§ 5120 Fence viewers' services.

Costs for services of fence viewers shall be paid by the party requiring the service, unless they award the same, or some part thereof, to be paid by some other party concerned.

(Code 1852, § 1004; Code 1915, § 4471; Code 1935, § 4924; 10 Del. C. 1953, § 5121.)

§ 5121 Investment of moneys paid into Superior Court.

Costs incurred in the payment of money into the Superior Court or in its investment shall be payable out of the fund.

(16 Del. Laws, c. 526; Code 1915, § 4472; Code 1935, § 4925; 10 Del. C. 1953, § 5122.)

§ 5122 Attachment for rent.

Upon attachments for rent, the court or justice of the peace may exercise equitable powers as to costs. If the court or justice considers that there was not sufficient ground for the attachment, the landlord shall pay costs.

(11 Del. Laws, c. 621, § 56; Code 1915, § 4474; Code 1935, § 4926; 10 Del. C. 1953, § 5123.)

§ 5123 Change of name proceedings.

In proceedings for changing names, the costs shall be paid by the petitioner.

(27 Del. Laws, c. 264, § 5; Code 1915, § 4475; Code 1935, § 4927; 10 Del. C. 1953, § 5124.)

§ 9801 Justice of the Peace Court costs.

All costs in the Justice of the Peace Court shall be established by court rule, subject to approval by the Chief Justice and the Delaware Supreme Court.

(10 Del. C. 1953, § 9801; 55 Del. Laws, c. 20, § 31; 59 Del. Laws, c. 513, § 1; 59 Del. Laws, c. 538, § 1; 60 Del. Laws, c. 298, § 1; 60 Del. Laws, c. 475, § 1; 61 Del. Laws, c. 367, § 4; 62 Del. Laws, c. 278, §§ 1, 2; 66 Del. Laws, c. 81, § 1; 68 Del. Laws, c. 288, § 1; 69 Del. Laws, c. 63, §§ 1, 2; 73 Del. Laws, c. 93, §§ 1, 2; 76 Del. Laws, c. 85, § 2; 76 Del. Laws, c. 240, § 1; 77 Del. Laws, c. 56, § 1.)

§ 9802 Duties with respect to costs; limitations on fees.

All costs collected shall be for the use of the State unless otherwise specifically provided by statute or rules of the Court. The justice shall tax the costs for each service specified by the rules of the Justice of the Peace Court. No other fee or cost shall be allowed and no mileage shall be allowed unless it is expressly given by statute. In no case shall costs be charged for a service not performed; and every office or person receiving a fee shall, upon demand, give a receipt specifying the item of service represented by said fee.

(10 Del. C. 1953, § 9802; 55 Del. Laws, c. 20, § 31; 77 Del. Laws, c. 56, § 2.)

§ 9803 Violations and penalty.

(a) Whoever knowingly receives any greater or less fee or cost than is allowed for the services specified, or who refuses to give a receipt or adds any item not specified by the rules of the Justice of the Peace Court, shall be fined not more than $500.

(b) The Superior Court shall have jurisdiction of offenses under this section.

(10 Del. C. 1953, § 9803; 55 Del. Laws, c. 20, § 31; 77 Del. Laws, c. 56, § 3.)

Part III
Procedure
Chapter 52
DELAWARE UNIFORM FOREIGN-MONEY CLAIMS ACT

§ 5201 Definitions.

In this chapter:

(1) "Action" means a judicial proceeding or arbitration in which a payment in money may be awarded or enforced with respect to a foreign-money claim.

(2) "Bank-offered spot rate" means the spot rate of exchange at which a bank will sell foreign money at a spot rate.

(3) "Conversion date" means the banking day next preceding the date on which money, in accordance with this chapter, is:

a. Paid to a claimant in an action or distribution proceeding;

b. Paid to the official designated by law to enforce a judgment or award on behalf of a claimant; or

c. Used to recoup, set off or counterclaim in different moneys in an action or distribution proceeding.

(4) "Distribution proceeding" means a judicial or nonjudicial proceeding for the distribution of a fund in which 1 or more foreign-money claims is asserted and includes an accounting, an assignment for the benefit of creditors, a foreclosure, the liquidation or rehabilitation of a corporation or other entity and the distribution of an estate, trust or other fund.

(5) "Foreign money" means money other than money of the United States of America.

(6) "Foreign-money claim" means a claim upon an obligation to pay or a claim for recovery of a loss expressed in or measured by a foreign money.

(7) "Money" means a medium of exchange for the payment of obligations or a store of value authorized or adopted by a government or by inter-governmental agreement.

(8) "Money of the claim" means the money determined as proper pursuant to § 5204 of this title.

(9) "Person" means an individual, a corporation, government or governmental subdivision or agency, statutory trust, business trust, estate, trust, joint venture, partnership, limited liability company, association, 2 or more persons having a joint or common interest or any other legal or commercial entity.

(10) "Rate of exchange" means the rate at which money of 1 country may be converted into money of another country in a free financial market convenient to or reasonably usable by a person obligated to pay or to state a rate of conversion. If separate rates of exchange apply to different kinds of transactions, the term means the rate applicable to the particular transaction giving rise to the foreign-money claim.

(11) "Spot rate" means the rate of exchange at which foreign money is sold by a bank or other dealer in foreign exchange for immediate or next-day availability or for settlement by immediate payment in cash or equivalent, by charge to an account or by an agreed delayed settlement not exceeding 2 days.

(12) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico or a territory or insular possession subject to the jurisdiction of the United States.

(71 Del. Laws, c. 148, § 1; 73 Del. Laws, c. 329, § 52.)

§ 5202 Scope.

(a) This chapter applies only to a foreign-money claim in an action or distribution proceeding. The provisions of this chapter are applicable to such foreign-money claims notwithstanding any contrary provisions of law.

(b) This chapter applies to foreign-money issues even if other law under the conflict of laws rules of this State applies to other issues in the action or distribution proceeding.

(71 Del. Laws, c. 148, § 1.)

§ 5203 Variation by agreement.

(a) The effect of this chapter may be varied by agreement of the parties made before or after commencement of an action or distribution proceeding or the entry of judgment.

(b) Parties to a transaction may agree upon the money to be used in a transaction giving rise to a foreign-money claim and may agree to use different moneys for different aspects of the transaction. Stating the price in a foreign money for 1 aspect of a transaction does not alone require the use of that money for other aspects of the transaction.

(71 Del. Laws, c. 148, § 1.)

§ 5204 Determining money of the claim.

(a) The money in which the parties to a transaction have agreed that payment is to be made is the proper money of the claim for payment.

(b) If the parties to a transaction have not otherwise agreed, the proper money of the claim, as in each case may be appropriate, is the money:

(1) Regularly used between the parties as a matter of usage or course of dealing;

(2) Used at the time of a transaction in international trade, by trade usage or common practice, for valuing or settling transactions in the particular commodity or service involved; or

(3) In which the loss was ultimately felt or will be incurred by the party claimant.

(71 Del. Laws, c. 148, § 1.)

§ 5205 Determining amount contracted for in certain contract claims.

(a) If an amount contracted to be paid in a foreign money is measured by a specified amount of a different money, the amount to be paid is determined on the conversion date.

(b) If an amount contracted to be paid in a foreign money is to be measured by a different money at the rate of exchange prevailing on a date before default, that rate of exchange applies only to payments made within a reasonable time after default, not exceeding 30 days. Thereafter, conversion is made at the bank-offered spot rate on the conversion date.

(c) A monetary claim is neither usurious nor unconscionable because the agreement on which it is based provides that the amount of the debtor's obligation to be paid in the debtor's money, when received by the creditor, must equal a specified amount of the foreign money of the country of the creditor. If, because of unexcused delay in payment of a judgment or award, the amount received by the creditor does not equal the amount of the foreign money specified in the agreement, the court or arbitrator shall amend the judgment or award accordingly.

(71 Del. Laws, c. 148, § 1.)

§ 5206 Asserting and defending foreign-money claim.

(a) A person may assert a claim in a specified foreign money. If a foreign-money claim is not asserted, the claimant makes the claim in United States dollars.

(b) An opposing party may allege and prove that a claim, in whole or in part, is in a different money than that asserted by the claimant.

(c) A person may assert a defense, set-off, recoupment or counterclaim in any money without regard to the money of other claims.

(d) The determination of the proper money of the claim is a question of law.

(71 Del. Laws, c. 148, § 1.)

§ 5207 Judgments and awards on foreign-money claims; times of money conversion; form of judgment.

(a) Except as provided in subsection (c) of this section, a judgment or award on a foreign-money claim must be stated in an amount of the money of the claim. Such a judgment or award on a foreign-money claim shall be considered a judgment or claim for an ascertained amount.

(b) A judgment or award on a foreign-money claim is payable in that foreign money or, at the option of the debtor, in the amount of United States dollars which will purchase that foreign money on the conversion date at a bank-offered spot rate.

(c) Assessed costs must be entered in United States dollars.

(d) Each payment in United States dollars must be accepted and credited on a judgment or award on a foreign-money claim in the amount of the foreign money that could be purchased by the dollars at a bank-offered spot rate of exchange at or near the close of business on the conversion date for that payment.

(e) A judgment or award made in an action or distribution proceeding on both:

(1) A defense, set-off, recoupment or counterclaim; and

(2) The adverse party's claim

must be netted by converting the money of the smaller into the money of the larger, and by subtracting the smaller from the larger and specifying the rates of exchange used.

(f) A judgment substantially in the following form complies with subsection (a) of this section:

IT IS ADJUDGED AND ORDERED, that Defendant (insert name)pay to Plaintiff (insert name)the sum of (insert amount in the foreign money)plus interest on that sum at the rate of (insert rate)percent a year or, at the option of the judgment debtor, the number of United States dollars which will purchase the (insert name of foreign money)with interest due, at a bank-offered spot rate at or near the close of business on the banking day next before the day of payment, together with assessed costs of (insert amount)United States dollars.

(g) If a contract claim is of the type covered by § 5205(a) or (b) of this title, the judgment or award must be entered for the amount of money stated to measure the obligation to be paid in the money specified for payment or, at the option of the debtor, the number of United States dollars which will purchase the computed amount of the money of payment on the conversion date at a bank-offered spot rate.

(h) A judgment must be entered and indexed in foreign money in the same manner and has the same effect as a lien as other judgments. It may be discharged by payment.

(71 Del. Laws, c. 148, § 1.)

§ 5208 Conversions of foreign money in distribution proceeding.

The rate of exchange prevailing at or near the close of business on the day the distribution proceeding is initiated governs all exchanges of foreign money in a distribution proceeding. A foreign-money claimant in a distribution proceeding shall assert its claim in the named foreign money and show the amount of United States dollars resulting from a conversion as of the date the proceeding was initiated.

(71 Del. Laws, c. 148, § 1.)

§ 5209 Pre-judgment and judgment interest.

(a) With respect to a foreign-money claim, recovery of pre-judgment or pre-award interest and the rate of interest to be applied in the action or distribution proceeding, except as provided in subsection (b) of this section, are matters of the substantive law governing the right to recovery under the conflict-of-laws rules of this State.

(b) The court or arbitrator shall increase or decrease the amount of pre-judgment or pre-award interest otherwise payable in a judgment or award in foreign-money to the extent required by the law of this State governing a failure to make or accept an offer of settlement or offer of judgment or conduct by a party or its attorney causing undue delay or expense.

(c) A judgment or award on a foreign-money claim bears interest at the rate applicable to judgments of this State.

(71 Del. Laws, c. 148, § 1.)

§ 5210 Enforcement of foreign judgments.

(a) If an action is brought to enforce a judgment of another jurisdiction expressed in a foreign money and the judgment is recognized in this State as enforceable, the enforcing judgment must be entered as provided in § 5207 of this title, whether or not the foreign judgment confers an option to pay in an equivalent amount of United States dollars.

(b) A foreign judgment may be entered and indexed in accordance with any rule or statute of this State providing a procedure for its recognition and enforcement.

(c) A satisfaction or partial payment made upon the foreign judgment, on proof thereof, must be credited against the amount of foreign money specified in the judgment, notwithstanding the entry of judgment in this State.

(d) A judgment entered on a foreign-money claim only in United States dollars in another state must be enforced in this State in United States dollars only.

(71 Del. Laws, c. 148, § 1.)

§ 5211 Determining United States dollar value of foreign-money claims for limited purposes.

(a) Computations under this section are for the limited purposes of the section and do not affect computation of the United States dollar equivalent of the money of the judgment for the purpose of payment.

(b) For the limited purpose of facilitating the enforcement of provisional remedies in an action, the value in United States dollars of assets to be seized or restrained pursuant to a writ of attachment, garnishment, execution or other legal process, the amount of United States dollars at issue for assessing costs or the amount of United States dollars involved for a surety bond or other court-required undertaking must be ascertained as provided in subsections (c) and (d) of this section.

(c) A party seeking process, costs, bond or other undertaking under subsection (b) of this section shall compute in United States dollars the amount of the foreign money claimed from a bank-offered spot rate prevailing at or near the close of business on the banking day next preceding the filing of a request or application for the issuance of process or for the determination of costs or an application for a bond or other court-required undertaking.

(d) A party seeking the process, costs, bond or other undertaking under subsection (b) of this section shall file with each request or application an affidavit or certificate executed in good faith by its counsel or a bank officer, stating the market quotation used and how it was obtained and setting forth the calculation. Affected court officials incur no liability, after a filing of the affidavit or certificate, for acting as if the judgment were in the amount of United States dollars stated in the affidavit or certificate.

(71 Del. Laws, c. 148, § 1.)

§ 5212 Effect of currency revalorization.

(a) If, after an obligation is expressed or a loss is incurred in a foreign money, the country issuing or adopting that money substitutes a new money in place of that money, the obligation or the loss is treated as if expressed or incurred in the new money at the rate of conversion the issuing country establishes for the payment of like obligations or losses denominated in the former money.

(b) If substitution under subsection (a) of this section occurs after a judgment or award is entered on a foreign-money claim, the court or arbitrator shall amend the judgment or award by a like conversion of the former money.

(71 Del. Laws, c. 148, § 1.)

§ 5213 Supplementary general principles of law.

Unless displaced by particular provisions of this chapter, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy or other validating or invalidating causes supplement its provisions.

(71 Del. Laws, c. 148, § 1.)

§ 5214 Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

(71 Del. Laws, c. 148, § 1.)

§ 5215 Short title.

This chapter may be cited as the "Uniform Foreign-Money Claims Act."

(71 Del. Laws, c. 148, § 1.)

Part III
Procedure
Chapter 53
OATHS
Subchapter I
Authority to Administer Oaths

§ 5301 Generally.

Any judge of any court in this State, any justice of the peace, or notary public, may, in any case in which an oath or affirmation is necessary or proper, administer such oath or affirmation.

(Code 1852, § 2353; Code 1915, § 4239; Code 1935, § 4709; 10 Del. C. 1953, § 5301.)

§ 5302 Deputy sheriffs.

The sheriffs of the several counties may appoint deputies, who may administer oaths in all cases in which, by the laws of this State, an oath is authorized and required to be administered by the sheriff. In all cases in which the oath is administered by a deputy, whose appointment is recorded in the recorder's office in and for the county in which the sheriff and deputy reside, the oath so administered shall be as effectual in law as though it had been done by the sheriff.

(12 Del. Laws, c. 201; Code 1915, § 4240; Code 1935, § 4710; 10 Del. C. 1953, § 5302; 70 Del. Laws, c. 186, § 1.)

§ 5303 Clerk of United States District Court.

The Clerk of the United States District Court for the District of Delaware may administer oaths and affirmations and take acknowledgment of the execution of instruments of writing in this State which are to be used in the District Court, or in any district or appellate court of the United States.

(13 Del. Laws, c. 14; Code 1915, § 4241; Code 1935, § 4711; 10 Del. C. 1953, § 5303.)

§ 5304 Court appointees and surveyors.

(a) The persons appointed or authorized, by any decree, order, rule, or commission, made in or issued out of the Supreme Court, the Court of Chancery or the Superior Court to perform any duty, or for any purpose, may severally administer to each other and to any surveyor, or person, by them employed, and to any witness produced before them, any oath or affirmation required or proper to be taken in the case.

(b) Every surveyor may administer the proper oath or affirmation to chain carriers acting under the surveyor.

(c) The form of the oath or affirmation required to be taken by persons so appointed or authorized, with directions for administering the same, shall accompany every commission, rule, or order issued out of any court.

(Code 1852, §§ 2356-2358; Code 1915, § 4244; Code 1935, § 4714; 10 Del. C. 1953, § 5304; 70 Del. Laws, c. 186, § 1.)

§ 5305 Nonresidents in legal proceedings.

In all legal proceedings in this State, wherein an oath or affidavit is required to be made by any person not residing in this State, such oath or affidavit may be administered and certified in the same manner and by the same persons as the laws of this State prescribe for taking the acknowledgment of deeds or the probate of accounts against a deceased person's estate, where the acknowledgment or probate is made out of this State.

(13 Del. Laws, c. 462; Code 1915, § 4250; Code 1935, § 4720; 10 Del. C. 1953, § 5305.)

Subchapter II
Procedure and Form of Oaths

§ 5321 Method of administering.

The usual oath in this State shall be by swearing upon the Holy Evangels of Almighty God. The person to whom an oath is administered shall lay his or her right hand upon the book.

(Code 1852, § 2359; Code 1915, § 4245; Code 1935, § 4715; 10 Del. C. 1953, § 5321; 70 Del. Laws, c. 186, § 1.)

§ 5322 Uplifted hand.

A person may be permitted to swear with the uplifted hand; that is to say, a person shall lift up his or her right hand and swear by the ever living God, the searcher of all hearts, that etc., and at the end of the oath shall say, "as I shall answer to God at the Great Day."

(Code 1852, § 2360; Code 1915, § 4247; Code 1935, § 4717; 10 Del. C. 1953, § 5322; 70 Del. Laws, c. 186, § 1.)

§ 5323 Affirmation.

A person conscientiously scrupulous of taking an oath may be permitted, instead of swearing, solemnly, sincerely and truly to declare and affirm to the truth of the matters to be testified.

(Code 1852, § 2361; Code 1915, § 4248; Code 1935, § 4718; 10 Del. C. 1953, § 5323.)

§ 5324 Non-Christians.

A person believing in any other than the Christian religion, may be sworn according to the peculiar ceremonies of such person's religion, if there be any such.

(Code 1852, § 2362; Code 1915, § 4249; Code 1935, § 4719; 10 Del. C. 1953, § 5324; 70 Del. Laws, c. 186, § 1.)

Part III
Procedure
Chapter 53A
DELAWARE UNIFORM UNSWORN FOREIGN DECLARATIONS ACT

§ 5351 Short title.

This chapter may be cited as the "Delaware Uniform Unsworn Foreign Declarations Act."

(77 Del. Laws, c. 332, § 1.)

§ 5352 Definitions.

In this chapter:

(1) "Boundaries of the United States" means the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

(2) "Law" includes the federal or a state constitution, a federal or state statute, a judicial decision or order, a rule of court, an executive order, and an administrative rule, regulation, or order.

(3) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(4) "Sign" means, with present intent to authenticate or adopt a record:

a. To execute or adopt a tangible symbol; or

b. To attach to or logically associate with the record an electronic symbol, sound, or process.

(5) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(6) "Sworn declaration" means a declaration in a signed record given under oath. The term includes a sworn statement, verification, certificate, and affidavit.

(7) "Unsworn declaration" means a declaration in a signed record that is not given under oath, but is given under penalty of perjury.

(77 Del. Laws, c. 332, § 1.)

§ 5353 Applicability.

This chapter applies to an unsworn declaration by a declarant who at the time of making the declaration is physically located outside the boundaries of the United States whether or not the location is subject to the jurisdiction of the United States. This chapter does not apply to a declaration by a declarant who is physically located on property that is within the boundaries of the United States and subject to the jurisdiction of another country or a federally recognized Indian tribe.

(77 Del. Laws, c. 332, § 1.)

§ 5354 Validity of unsworn declaration.

(a) Except as otherwise provided in subsection (b) of this section, if a law of this State requires or permits use of a sworn declaration, an unsworn declaration meeting the requirements of this chapter has the same effect as a sworn declaration.

(b) This chapter does not apply to:

(1) A deposition;

(2) An oath of office;

(3) An oath required to be given before a specified official other than a notary public;

(4) A declaration to be recorded pursuant to Title 25; or

(5) An acknowledgement or affidavit required by § 1305 of Title 12.

(77 Del. Laws, c. 332, § 1.)

§ 5355 Required medium.

If a law of this State requires that a sworn declaration be presented in a particular medium, an unsworn declaration must be presented in that medium.

(77 Del. Laws, c. 332, § 1.)

§ 5356 Form of unsworn declaration.

An unsworn declaration under this chapter must be in substantially the following form:

I declare under penalty of perjury under the law of Delaware that the foregoing is true and correct, and that I am physically located outside the geographic boundaries of the United States, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Executed on the _____ day of _____ (month), _____ (year), at _____ (city or other location, and state), _____ (country).

_____ (printed name)

_____ (signature)

(77 Del. Laws, c. 332, § 1.)

§ 5357 Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

(77 Del. Laws, c. 332, § 1.)

§ 5358 Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 et seq., but does not modify, limit, or supersede § 101(c) of that Act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in § 103(b) of that Act, 15 U.S.C. § 7003(b).

(77 Del. Laws, c. 332, § 1.)

§ 5359 Effective date.

This chapter takes effect upon enactment [July 2, 2010].

(77 Del. Laws, c. 332, § 1.)

Part III
Procedure
Chapter 54

COURT INTERPRETATION AND CONSTRUCTION OF DELAWARE LAWS [SEE EVANS V. STATE, 872 A.2D 539 (DEL. 2005) CONCERNING UNCONSTITUTIONALITY OF THIS CHAPTER.]

§ 5401 Findings of the General Assembly [See Evans v. State, 872 A.2d 539 (Del. 2005) concerning unconstitutionality of this section.]

The members of the 143rd General Assembly find that:

(1) On November 23, 2004, the Delaware Supreme Court sitting en banc decided the case of *Ward T. Evans v. State of Delaware*, 2004 WL 2743546 (Del. Supr.); and

(2) The Court held that Evans's life sentence with possibility of parole (the penalty imposed after a September 29, 1982, jury conviction of first degree rape) had to be calculated as a 45-year term, for purposes of determining his conditional release date pursuant to § 4348 of Title 11; and

(3) In 1997, the Court held that § 4348 of Title 11 could not be applied to inmates sentenced to life imprisonment with possibility of parole (*Jackson v. Multi-Purpose Criminal Justice Facility*, 700 A.2d 1203 (Del. 1997)), but in 2003 the Court reversed that decision (*Crosby v. State*, 824 A.2d 894 (Del. 2003)); and

(4) As a result of the Court's 2004 holding, the *Evans* case was reversed and remanded to the Superior Court for a determination of whether Evans had earned any good time or merit credits, and for an appropriate adjustment of his maximum release date; and

(5) Following the *Evans* decision, the State, through the Office of the Attorney General, filed a motion to reargue, which the Court denied; and

(6) Section 4346 of Title 11, which addresses eligibility for parole, states that "[f]or all purposes of this section, a person sentenced to imprisonment for life shall be considered as having been sentenced to a fixed term of 45 years" (emphasis added); and

(7) The 45-year fixed term was intended to apply and applies only to § 4346 of Title 11 for determining parole, a discretionary proceeding, and does not apply to § 4348 of Title 11, a mandatory proceeding which determines conditional release upon merit and good behavior credits; and

(8) When the General Assembly wrote the phrase, "shall, upon release, be deemed as released on parole" (emphasis added) in § 4348 of Title 11, it was establishing a legal fiction in order to use the provisions of the parole subchapter for supervision and other post-release requirements for both parolees and those conditionally released under § 4348 of Title 11; and

(9) The special requirement of a super-majority vote to parole a person convicted of rape in the first degree and other heinous crimes is further proof that §§ 4346 and 4348 of Title 11 are 2 separate and distinct procedures, the former being discretionary and the latter, mandatory; and

(10) Because applying the 45-year fixed term definition to § 4348 of Title 11 results in the potential release from prison of a person convicted of rape in the first degree after the person's serving as few as 26 years, and, further, will result in nearly 200 Delaware prisoners who have committed serious and heinous crimes prior to June 30, 1990, being released from prison;

the Supreme Court erred by reading a clearly written statute, being § 4346 of Title 11, and by applying it to another statute, despite the clear language that limits the definition of a life sentence with possibility of parole to only § 4346 of Title 11. In addition, the General Assembly had never intended that good time or merit credits were to apply to serious, violent offenders.

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

§ 5402 Evans v. State [See Evans v. State, 872 A.2d 539 (Del. 2005) concerning unconstitutionality of this section.].

Based on the findings set forth in § 5401 of this title and in recognition that the Delaware Constitution vests authority and sole responsibility for lawmaking in the General Assembly, the General Assembly asserts its right and prerogative to be the ultimate arbiter of the intent, meaning, and construction of its laws and to vigorously defend them; therefore, the members of the General Assembly declare that the decision of the Delaware Supreme Court in the case of *Evans v. State*, 2004 WL 2743546 (Del. Supr.), is null and void. Because the Court's order in *Evans v. State* has not yet been put into effect, the sentence of any prisoner who may have been affected by the order, had it gone into effect, is deemed to be uninterrupted and is not subject to an ex post facto attack.

(75 Del. Laws, c. 1, § 1.)

§ 5403 Construction and interpretation of laws [See Evans v. State, 872 A.2d 539 (Del. 2005) concerning unconstitutionality of this section.]

(a) Delaware judicial officers may not create or amend statutes, nor second-guess the soundness of public policy or wisdom of the General Assembly in passing statutes, nor may they interpret or construe statutes and other Delaware law when the text is clear and unambiguous.

(b) Notwithstanding § 203 of Title 11, Delaware judicial officers shall strictly interpret or construe legislative intent.

(c) Delaware judicial officers shall use the utmost restraint when interpreting or construing the laws of this State.

(75 Del. Laws, c. 1, § 1.)

Part IV
Special Proceedings
Chapter 57
UNIFORM ARBITRATION ACT

§ 5701 Effect of arbitration agreement.

A written agreement to submit to arbitration any controversy existing at or arising after the effective date of the agreement is valid, enforceable and irrevocable, save upon such grounds as exist at law or in equity for the revocation of any contract, without regard to the justiciable character of the controversy, and confers jurisdiction on the Chancery Court of the State to enforce it and to enter judgment on an award. In determining any matter arising under this chapter, the Court shall not consider whether the claim with respect to which arbitration is sought is tenable, or otherwise pass upon the merits of the dispute. This chapter also applies to arbitration agreements between employers and employees or between their respective representatives, except as otherwise provided in § 5725 of this title.

(10 Del. C. 1953, § 5701; 58 Del. Laws, c. 382, § 2.)

§ 5702 Jurisdiction; applications; venue; statutes of limitations.

(a) *Jurisdiction of the Court; applications to the Court* — The term "Court" means the Court of Chancery of this State, except where otherwise specifically provided. The making of an agreement described in § 5701 of this title specifically referencing the Delaware Uniform Arbitration Act [§ 5701 et seq. of this title] and the parties' desire to have it apply to their agreement confers jurisdiction on the Court to enforce the agreement under this chapter and to enter judgment on an award thereunder, except as provided in § 5718 of this title. Action shall be commenced by an initial complaint and shall be heard in the manner and upon the notice provided by law or rule of court on any civil action. Notice of an initial complaint shall be served in the manner provided by law for the service of summons in an action.

(b) *Venue* — An initial complaint shall be made to the Court with the Register in Chancery in and for the county in which the agreement provides the arbitration hearing shall be held or, if the hearing has been held, in the county in which it was held. Otherwise the complaint shall be filed with the Register in Chancery in the county where the adverse party resides or has a place of business or, if the adverse party has no residence or place of business in this State, to the Register in and for any county. All subsequent pleadings or applications for an order made under this chapter shall be filed in the Court hearing the initial complaint unless the Court otherwise directs.

(c) *Court of Chancery jurisdiction over arbitration-related disputes in cases not governed by the Delaware Uniform Arbitration Act.* — Unless an arbitration agreement complies with the standard set forth in subsection (a) of this section for the applicability of the Delaware Uniform Arbitration Act, any application to the Court of Chancery to enjoin or stay an arbitration, obtain an order requiring arbitration, or to vacate or enforce an arbitrator's award shall be decided by the Court of Chancery in conformity with the Federal Arbitration Act [9 U.S.C. § 1 et seq.], and such general principles of law and equity as are not inconsistent with that Act. In such cases, the other provisions of this Delaware Uniform Arbitration Act are without standing and cases shall be adjudicated in accordance with the Court of Chancery's Rules of Procedure.

(d) *Jurisdiction of the Court of Common Pleas.* — Notwithstanding anything to the contrary in this Chapter 57 of this title, the term "Court" in this chapter shall refer to the Court of Common Pleas with respect to all actions arising from an arbitration agreement in or relating to a contract to provide consumer credit, and the making of such an agreement to arbitrate issues arising from the extension of consumer credit shall confer jurisdiction on the Court of Common Pleas, and not the Court of Chancery, to enforce the agreement and to enter judgment on an award. Any action brought under this Chapter 57 of this title relating to an agreement to arbitrate issues arising from the extension of consumer credit filed in the Court of Chancery shall not therefore be dismissed, but shall be transferred to the Court of Common Pleas for resolution there as though filed originally in that Court.

(10 Del. C. 1953, § 5702; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 34, § 1; 77 Del. Laws, c. 8, §§ 2, 3.)

§ 5703 Proceedings to compel or enjoin arbitration; notice of intention to arbitrate.

(a) *Proceeding to compel arbitration* — A party aggrieved by the failure of another to arbitrate may file a complaint for an order compelling arbitration. Where there is no substantial question whether a valid agreement to arbitrate in this State was made or complied with the Court shall order the parties to proceed with arbitration. Where any such question is raised it shall be tried forthwith in said Court. If an issue referable to arbitration under the alleged agreement is involved in an action or proceeding pending in the Court of Chancery in the State the application shall be made therein. If the application is granted, the order shall operate to stay the pending or any subsequent action, or so much of it as is referable to arbitration. Any action or proceeding in any other court of the State, involving an issue subject to arbitration, shall be stayed if an order for arbitration or a complaint or an application therefor has been made in the Court of Chancery under this chapter or, if the issue is severable, the stay may be with respect thereto only.

(b) *Application to enjoin arbitration* — Subject to subsection (c) of this section, a party who has not participated in the arbitration and who has not been made or served with an application to compel arbitration may file its complaint with the Court seeking to enjoin arbitration on the ground that a valid agreement was not made or has not been complied with.

(c) *Notice of intention to arbitrate* — A party must serve upon another party a notice of intention to arbitrate, specifying the agreement pursuant to which arbitration is sought and the name and address of the party serving the notice, or of an officer or agent thereof if such party is an association or corporation, and stating that unless the party served applies to enjoin the arbitration within 20 days after such service such party shall thereafter be precluded from objecting that a valid agreement was not made or has not been complied with. Such notice shall be served in the same manner as a summons or by registered or certified mail, return receipt requested. A complaint seeking to enjoin arbitration must be made by the party served within 20 days after service of the notice or the party shall be so precluded. Notice of the filing of such complaint shall be served in the same manner as a summons or by registered or certified mail, return receipt requested.

(10 Del. C. 1953, § 5703; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 8, §§ 4-6.)

§ 5704 Appointment of arbitrators by Court.

If the arbitration agreement provides a method of appointment of arbitrators, this method shall be followed. In the absence thereof, or if the agreed method fails or for any reason cannot be followed, or when an arbitrator appointed fails or is unable to act and the arbitrator's successor has not been duly appointed, the Court on complaint or on application in an existing case of a party shall appoint 1 or more arbitrators. An arbitrator so appointed has all the powers of one specifically named in the agreement.

(10 Del. C. 1953, § 5704; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5705 Majority action by arbitrators.

The powers of the arbitrators shall be exercised by a majority unless otherwise provided by the agreement.

(10 Del. C. 1953, § 5705; 58 Del. Laws, c. 382, § 2.)

§ 5706 Hearing.

Unless otherwise provided by the agreement:

(1) The arbitrators shall appoint a time and place for the hearing and cause notification to the parties to be served personally or by registered or certified mail, return receipt requested, not less than 5 days before the hearing. Appearance at the hearing waives such notice. The arbitrators may adjourn the hearing from time to time as necessary and, on request of a party and for good cause, or upon their own motion may postpone the hearing to a time not later than the date fixed by the agreement for making the award unless the parties consent to a later date. The arbitrators may hear and determine the controversy upon the evidence produced notwithstanding the failure of a party duly notified to appear. The Court, on complaint or on application in an existing action, may direct the arbitrators to proceed promptly with the hearing and determination of the controversy.

(2) The parties are entitled to be heard, to present evidence material to the controversy and to cross-examine witnesses appearing at the hearing.

(3) The hearing shall be conducted by all the arbitrators but a majority may determine any question and render a final award. If, during the course of the hearing, an arbitrator for any reason ceases to act, the remaining arbitrator or arbitrators appointed to act as neutrals may continue with the hearing and determination of the controversy.

(10 Del. C. 1953, § 5706; 58 Del. Laws, c. 382, § 2.)

§ 5707 Representation by attorney.

A party has the right to be represented by an attorney, and may claim such right at any time at any proceeding or hearing under this chapter. A waiver thereof prior to the proceeding or hearing is ineffective. If a party is represented by an attorney, papers to be served on the party shall be served upon the party's attorney.

(10 Del. C. 1953, § 5707; 58 Del. Laws, c. 382, § 2 ; 70 Del. Laws, c. 186, § 1.)

§ 5708 Witnesses; subpoenas; depositions.

(a) The arbitrators may compel the attendance of witnesses and the production of books, records, contracts, papers, accounts, and all other documents and evidence, and shall have the power to administer oaths. An arbitrator and any attorney of record in any arbitration proceeding shall have the power to issue subpoenas in his or her own name. Subpoenas so issued shall be served by any sheriff, deputy sheriff, constable or other person, in the manner provided by law for the service and enforcement of subpoenas in a civil action and in accordance with the provisions of Chapter 21 of this title.

(b) On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpoenaed or is unable to attend the hearing.

(c) All provisions of law compelling a person under subpoena to testify are applicable.

(d) Fees for attendance as a witness shall be in accordance with § 8903 of this title.

(10 Del. C. 1953, § 5708; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5709 Award generally.

(a) The award shall be in writing and signed by the arbitrators joining in the award. The arbitrators shall deliver a copy to each party personally or by registered or certified mail, return receipt requested, or as provided in the agreement.

(b) An award shall be made within the time fixed therefor by the agreement or, if not so fixed, within such time as the Court orders on complaint or application of a party in an existing case. The parties may extend the time in writing either before or after the expiration thereof. A party waives the objection that an award was not made within the time required unless the party notifies the arbitrators of such objection prior to the delivery of the award. The arbitrators shall deliver a copy of the award to each party in the manner provided in the agreement, or if no provision is so made, personally or by registered or certified mail, return receipt requested.

(10 Del. C. 1953, § 5709; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5710 Award by confession.

(a) *When available* — An award by confession may be made for money due or to become due at any time before an award is otherwise made. The award shall be based upon a statement, verified by each party, containing an authorization to make the award, the sum of the award or the method of ascertaining it, and the facts constituting the liability.

(b) *Time of award* — The award shall be made at any time within 3 months after the statement is verified and has been served upon the arbitrators or the agency or person or persons named by the parties to designate the arbitrators. Such service shall be made personally or by registered or certified mail, return receipt requested.

(c) *Persons or agency making award* — The award may be made and entered on the judgment roll by the arbitrators or by the agency or person or persons named by the parties to designate the arbitrators.

(10 Del. C. 1953, § 5710; 58 Del. Laws, c. 382, § 2.)

§ 5711 Modification of award by arbitrators.

On written application of a party to the arbitrators within 20 days after delivery of the award to the applicant, or, if an application to the Court is pending under § 5713, 5714 or 5715 of this title, on submission to the arbitrators by the Court under such conditions as the Court may order, the arbitrators may modify or correct the award upon the grounds stated in § 5715(a)(1) and (3) of this title, or for the purpose of clarifying the award. Written notice of such application to the arbitrators shall be given forthwith to the opposing party, delivered personally or by registered or certified mail, return receipt requested, stating that the party must serve his or her objections thereto, if any, within 10 days from the date of the notice. The arbitrators shall dispose of any application made under this section in writing, signed and acknowledged by them, within 30 days after either written objection to modification has been served on them or the time for serving such objection has expired, whichever is earlier. The parties may in writing extend the time for such disposition either before or after its expiration. The award so modified or corrected by the arbitrators is subject to the provisions of §§ 5713, 5714 and 5715 of this title.

(10 Del. C. 1953, § 5711; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5712 Fees and expenses of arbitration.

Unless otherwise provided in the agreement to arbitrate, the arbitrators' expenses and fees, together with other expenses, not including counsel fees, incurred in the conduct of the arbitration, shall be paid as provided in the award. The Court, on complaint or on application in an existing case, may reduce or disallow any fee or expense which it finds excessive, or may allocate it as justice requires.

(10 Del. C. 1953, § 5712; 58 Del. Laws, c. 382, § 2.)

§ 5713 Confirmation of an award.

The Court shall confirm an award upon complaint or application of a party in an existing case made within 1 year after its delivery to the party, unless within the time limits hereinafter imposed grounds are urged for vacating or modifying or correcting the award, in which case the Court shall proceed as provided in §§ 5714 and 5715 of this title.

(10 Del. C. 1953, § 5713; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5714 Vacating an award.

(a) Upon complaint or application of a party in an existing case, the Court shall vacate an award where:

(1) The award was procured by corruption, fraud or other undue means;

(2) There was evident partiality by an arbitrator appointed as a neutral except where the award was by confession, or corruption in any of the arbitrators or misconduct prejudicing the rights of any party;

(3) The arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made;

(4) The arbitrators refused to postpone the hearing upon sufficient cause being shown therefor, or refused to hear evidence material to the controversy, or otherwise so conducted the hearing, contrary to the provisions of § 5706 of this title, or failed to follow the procedures set forth in this chapter, so as to prejudice substantially the rights of a party, unless the party applying to vacate the award continued with the arbitration with notice of the defect and without objection; or

(5) There was no valid arbitration agreement, or the agreement to arbitrate had not been complied with, or the arbitrated claim was barred by limitation and the party applying to vacate the award did not participate in the arbitration hearing without raising the objection;

but the fact that the relief was such that it could not or would not be granted by a court of law or equity is not ground for vacating or refusing to confirm the award.

(b) An application under this section shall be made within 90 days after delivery of a copy of the award to the applicant, except that, if predicated upon corruption, fraud or other undue means, it shall be made within 90 days after such grounds are known or should have been known.

(c) In vacating the award on grounds other than stated in paragraph (a)(5) of this section, the Court may order a rehearing and determination of all or any of the issues, before new arbitrators chosen as provided in the agreement, or in the absence thereof, by the Court in accordance with § 5704 of this title, or, if the award is vacated on grounds set forth in paragraphs (a)(3) and (4) of this section, the Court may order a rehearing before the arbitrators who made the award or their successors appointed in accordance with § 5704 of this title. The time within which the agreement requires the award to be made is applicable to the rehearing and commences from the date of the order.

(d) If the application to vacate is denied and no motion to modify or correct the award is pending, the Court shall confirm the award.

(10 Del. C. 1953, § 5714; 58 Del. Laws, c. 382, § 2; 77 Del. Laws, c. 8, § 7.)

§ 5715 Modification or correction of award by Court.

(a) Upon complaint or on application in an existing case made within 90 days after delivery of a copy of the award to the applicant, the Court shall modify or correct the award where:

(1) There was an evident miscalculation of figures or an evident mistake in the description of any person, thing or property referred to in the award;

(2) The arbitrators have awarded upon a matter not submitted to them and the award may be corrected without affecting the merits of the decision upon the issues submitted; or,

(3) The award is imperfect in a matter of form, not affecting the merits of the controversy.

(b) If the application is granted, the Court shall modify and correct the award so as to effect its intent and shall confirm the award as so modified and corrected. Otherwise, the Court shall confirm the award as made.

(c) An application to modify or correct an award may be joined in the alternative with an application to vacate the award.

(10 Del. C. 1953, § 5715; 58 Del. Laws, c. 382, § 2.)

§ 5716 Judgment or decree on award.

Upon the granting of an order confirming, modifying or correcting an award, except in cases where the award is for money damages, a final judgment or decree shall be entered in conformity therewith and be enforced as any other judgment or decree. Costs of the application and of the proceedings subsequent thereto, and disbursements may be awarded by the Court.

(10 Del. C. 1953, § 5716; 58 Del. Laws, c. 382, § 2.)

§ 5717 Judgment roll; docketing with Register in Chancery.

(a) On entry of judgment or decree in cases other than an award for money damages, the Register shall prepare the judgment roll consisting, to the extent filed, of the following:

(1) The agreement and each written extension of the time within which to make the award;

(2) The award;

(3) A copy of the order confirming, modifying or correcting the award; and

(4) A copy of the final judgment or decree.

(b) The judgment or decree may be docketed as if rendered in an action.

(10 Del. C. 1953, § 5717; 58 Del. Laws, c. 382, § 2.)

§ 5718 Transfer of money damage award to Superior Court; lien on real estate.

(a) Upon the granting of an order confirming, modifying or correcting an award for money damages, a duly certified copy of the award and of the order confirming, modifying or correcting the award shall be filed with the prothonotary of the Superior Court in the county where the arbitration was conducted and the award made. The prothonotary shall enter in his or her judgment docket the names of the parties, the amount of the award, the time from which interest, if any, runs, and the amount of the costs, with the true date of such filing and entry. A confirmed award, so entered, shall constitute a judgment or decree on the docket with the same force and effect as if rendered in an action at law.

(b) Any confirmed award so transferred as authorized by subsection (a) of this section, shall, from that date, become and be a lien on all the real estate of the debtor in the county, in the same manner and as fully as judgments rendered in the Superior Court are liens, and may be executed and enforced in the same way as judgments of that Court.

(10 Del. C. 1953, § 5718; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5719 Appeals.

(a) Appeals may be taken from:

(1) A final order denying a complaint seeking to compel arbitration made under § 5703(a) of this title;
(2) An order granting an application to enjoin arbitration made under § 5703(b) of this title;
(3) A final order confirming or denying confirmation of an award;
(4) A final order modifying or correcting an award;
(5) A final order vacating an award without directing a rehearing; or
(6) A final judgment or decree entered pursuant to the provisions of this chapter.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

(10 Del. C. 1953, § 5719; 58 Del. Laws, c. 382, § 2.)

§ 5720 Uniformity of interpretation.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

(10 Del. C. 1953, § 5720; 58 Del. Laws, c. 382, § 2.)

§ 5721 Short title.

This chapter may be cited as the "Delaware Uniform Arbitration Act."

(10 Del. C. 1953, § 5721; 58 Del. Laws, c. 382, § 2; 77 Del. Laws, c. 8, § 8.)

§ 5722 Death or incompetency of a party.

Where a party dies after making a written agreement to submit a controversy to arbitration, the proceedings may be begun or continued upon the application of, or upon notice to, the party's executor or administrator, or, where it relates to real property, the party's distributee or devisee who has succeeded to the party's interest in the real property. Where a committee of the property or of the person of a party to such an agreement is appointed, the proceedings may be continued upon the application of, or notice to, the committee. Upon the death or incompetency of a party, the Court may extend the time within which an application to confirm, vacate or modify the award or to stay arbitration must be made. Where a party has died since an award was delivered, the proceedings thereupon are the same as where a party dies after a judgment or decree has been rendered.

(10 Del. C. 1953, § 5722; 58 Del. Laws, c. 382, § 2; 70 Del. Laws, c. 186, § 1.)

§ 5723 Arbitration of contracts of State and municipalities.

It shall be lawful to include in any contract hereinafter executed by or on behalf of the State, or any department or agency thereof or by or on behalf of any county, municipal corporation, or other division of the State, a provision that any matter in dispute arising under the said contract shall be submitted to arbitration in accordance with this chapter or such sections thereof as may be set forth in such contract, except as provided in § 5725 of this title.

(10 Del. C. 1953, § 5723; 58 Del. Laws, c. 382, § 2.)

§ 5724 Application of chapter to state and municipal contracts.

This chapter applies to any written contract to which the State or any agency or subdivision thereof, or any municipal corporation or political division of the State shall be a party, except as provided in § 5725 of this title.

(10 Del. C. 1953, § 5724; 58 Del. Laws, c. 382, § 2.)

§ 5725 Exclusion of collective bargaining labor contracts with public and private employers.

Notwithstanding anything contained in this chapter by word or inference to the contrary, this chapter shall not apply to labor contracts with either public or private employers where such contracts have been negotiated by, or the employees covered thereby are represented by, any labor organization or collective bargaining agent or representative.

(10 Del. C. 1953, § 5725; 58 Del. Laws, c. 382, § 2.)

Part IV
Special Proceedings
Chapter 59
CHANGE OF NAME

§ 5901 Petition for change of name.

(a) Any person who desires to change his or her name, shall present a petition, duly verified, to the Court of Common Pleas sitting in the county in which the person resides. The petition shall set forth such person's name and the name he or she desires to assume.

(b) Family Court shall have jurisdiction over a change of name as part of divorce proceedings or as part of the establishment of paternity under the Uniform Parentage Act [Chapter 8 of Title 13].

(c) The common law right of any person to change his or her name is hereby abrogated as to individuals subject to the supervision of the State of Delaware Department of Correction. Such individuals may only effect a name change by petitioning the Court of Common Pleas as follows:

(1) Individuals subject to the supervision of the Department of Correction shall be prohibited from adopting any names other than their legal names or otherwise effecting name changes, except as provided in this subsection.

(2) When, based upon testimony or sworn affidavits, the court finds that a petition for a name change of an individual subject to the supervision of the Department of Correction is motivated by a sincerely held religious belief, the court may grant such petition. In any case in which an individual subject to the supervision of the Department of Correction petitions the Court of Common Pleas for a change of name, the Court shall provide notice and opportunity to oppose the name change to the Department of Correction and shall permit it to submit any appropriate documentation in support of its opposition.

(3) If an individual is granted a name change pursuant to paragraph (c)(2) of this section, he or she must provide all names previously held or adopted, as well as his or her legal name when signing any legal document or providing information to a law-enforcement officer.

(4) The granting of any name changes pursuant to this subsection shall not restrict the Department of Correction from maintaining institutional files or otherwise referring to individuals by the names under which they became subject to the Department's supervision.

(27 Del. Laws, c. 264, § 1; Code 1915, § 4657; Code 1935, § 5115; 10 Del. C. 1953, § 5901; 59 Del. Laws, c. 512, § 1; 67 Del. Laws, c. 103, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 479, § 1.)

§ 5902 Requirements for minor's petition.

If the name sought to be changed under this chapter is that of a minor, the petition shall be signed by at least 1 of the minor's parents, if there is a parent living, or if both parents are dead, by the legal guardian of such minor. When the minor is over the age of 14, the petition shall also be signed by the minor.

(27 Del. Laws, c. 264, § 2; Code 1915, § 4658; Code 1935, § 5116; 10 Del. C. 1953, § 5902.)

§ 5903 Publication of petition prior to filing.

No petition for change of name under this chapter shall be granted unless it affirmatively appears that the petition or a notice thereof has been published in a newspaper published in the county in which the proceeding is had, at least once a week for 3 weeks before the petition is filed.

(27 Del. Laws, c. 264, § 3; Code 1915, § 4659; Code 1935, § 5117; 10 Del. C. 1953, § 5903; 75 Del. Laws, c. 209, § 1.)

§ 5904 Determination by Court.

Upon presentation of a petition for change of name under this chapter, and it appearing that the requirements of this chapter have been fully complied with, and there appearing no reason for not granting the petition, the prayer of the petition may be granted.

(27 Del. Laws, c. 264, § 4; Code 1915, § 4660; Code 1935, § 5118; 10 Del. C. 1953, § 5904.)

§ 5905 Costs.

The costs of any proceeding under this chapter shall be paid by the petitioner.

(27 Del. Laws, c. 264, § 5; Code 1915, § 4661; Code 1935, § 5119; 10 Del. C. 1953, § 5905.)

Part IV
Special Proceedings
Chapter 61
CONDEMNATION

§ 6101 Application of chapter.

This chapter shall govern the procedure for all condemnations of real and personal property within this State under the power of eminent domain exercised by any authority whatsoever, governmental or otherwise.

(48 Del. Laws, c. 271, § 1; 10 Del. C. 1953, § 6101.)

§ 6102 Jurisdiction of Superior Court; filing of complaint.

All condemnation proceedings within the State shall be commenced by filing a complaint as provided in this chapter in the Superior Court in and for the county where the property is located, or if part of such property is situated in 1 county and part in another, then in either county. The Superior Court shall have exclusive jurisdiction of all condemnation proceedings.

(48 Del. Laws, c. 271, § 2; 10 Del. C. 1953, § 6102.)

§ 6103 Applicability of Superior Court Rules.

The Rules of the Superior Court shall govern, insofar as applicable, all condemnation proceedings of real and personal property under the power of eminent domain, except as otherwise provided in this chapter.

(48 Del. Laws, c. 271, § 3; 10 Del. C. 1953, § 6103.)

§ 6104 Joinder of properties.

The plaintiff may join in the same action, under this chapter, 1 or more separate pieces of property, whether in the same or different ownership and whether or not sought for the same use.

(48 Del. Laws, c. 271, § 4; 10 Del. C. 1953, § 6104.)

§ 6105 Complaint; parties.

(a) A complaint under this chapter shall contain a caption as provided in Rule 10(a) of the Rules of the Superior Court, except that the plaintiff shall name as defendants the property, designated generally by kind, quantity, and location, and at least one of the owners of some part of or interest in the property.

(b) The complaint shall contain a short and plain statement of the authority for the taking, the use for which the property is to be taken consistent with § 9501A of Title 29, the compliance with § 9505(15) of Title 29, a description of the property sufficient for its identification, the interest to be acquired, and, as to each separate piece of property, a designation of the defendants who have been joined as owners thereof or of some interest therein.

(c) Upon the commencement of the action, the plaintiff need join as defendants only the persons having or claiming an interest in the property whose names are then known, but prior to any hearing involving the determination of compensation to be paid, the plaintiff shall add as defendants all persons having or claiming an interest in the property whose names can be ascertained by a search of the records to the extent commonly made by competent searchers of title in the vicinity in the light of the character and value of the property involved and the interest to be acquired, and also those whose names have otherwise been learned. All others may be made defendants under the designation "Unknown Owners."

(d) Process shall be served as provided in § 6106 of this title upon all defendants, whether named as defendants at the time of the commencement of the action or subsequently added, and a defendant may answer as provided in § 6107 of this title.

(e) In the event that § 9501A(d) of Title 29 applies, then the Court shall schedule a hearing for the agency to meet its burden to establish a public use as defined in 9501A of Title 29.

(48 Del. Laws, c. 271, § 5; 10 Del. C. 1953, § 6105; 77 Del. Laws, c. 12, §§ 3, 4.)

§ 6106 Process; notice of publication.

(a) Upon the filing of a complaint under this chapter, the prothonotary shall issue summons, in appropriate form, directed to all of the defendants designated or named in the complaint, which summons shall be personally served in like manner as other writs of summons in the Court in accordance with Rule 4(d) and (f)(1)(I), (III), (IV) of the Rules of the Superior Court.

(b) If it appears by affidavit of the plaintiff or the plaintiff's attorney that any defendant cannot be personally served with summons, because he or she is outside of this State, or because after diligent inquiry his or her place of residence cannot be ascertained by the plaintiff, or if any defendant is an infant or incompetent person or under some other legal disability, the Court may make an order directing that service shall be made upon any such defendant by publishing a notice, substantially in the form prescribed in subsection (c) of this section, in a newspaper of general circulation in the county in which the proceeding is pending, at least once a week for 2 successive weeks. Such

service by publication shall be supplemented by service by registered mail, where practicable, as the Court in its order may direct. Notice to unknown owners shall be given by publication in like manner by notice addressed to "unknown owners," coupled, if practicable, with an appropriate identification of the alleged source of their interest in the property, as the Court may direct. Proof of publication and of mailing, if required, shall be made by affidavit of the plaintiff or the plaintiff's attorney on or before such time as the Court may fix.

(c) The notice referred to in subsection (b) of this section shall set forth the name of the Court, the title of the action, the name or names of the defendant or defendants to whom it is directed, a statement that the action is one for the condemnation of property, a brief description of such property reasonably sufficient for its identification, the extent of the interest to be taken, the authority for the taking, and the use or uses for which the property is to be taken. The notice shall also state that any defendant shall serve and file, in accordance with the rules of court, an answer within 20 days after the date of the first publication of the notice, in default of which no objection or defense to the taking of the property will be heard. The notice shall also specify the name and address of the plaintiff's attorney therein.

(48 Del. Laws, c. 271, § 6; 10 Del. C. 1953, § 6106; 70 Del. Laws, c. 186, § 1.)

§ 6107 Objections or defenses to taking.

Any objection or defense to the taking of the property, or any interest therein, by any defendant, shall be made by answer. Any such answer setting forth any such objection or defense shall identify the property in which the answering defendant claims to have an interest, shall state the nature and extent of the interest claimed, and shall state specifically any such objections or defenses to the taking of the property. All objections and defenses not so presented shall be deemed waived. After the disposition of all such objections and defenses the cause shall proceed to the trial of the issue of just compensation.

(48 Del. Laws, c. 271, § 7; 10 Del. C. 1953, § 6107.)

§ 6108 Trial; choice of commissioners; viewing property.

(a) After the time has expired for answering a complaint under this chapter, and all preliminary questions of law disposed of, the cause shall be placed upon the regular trial calendar of the Superior Court for trial.

(b) Prior to the trial date the Court shall submit to the appearing parties a list of 11 proposed commissioners, who are impartial, disinterested and judicious citizens of the county where the real property is situated or the personal property is found, showing their full names and addresses. Thereafter, at a place and time designated by the Court, the plaintiff or plaintiffs shall (jointly, if more than 1), strike out 1 of the names, and then the defendant or defendants shall (jointly, if more than 1) strike out another, and so on until 8 names have been stricken out. If the plaintiff or plaintiffs or the defendant or defendants refuse to strike or do not attend the striking or cannot agree among themselves, then the Court or the prothonotary or the prothonotary's deputy, if designated by the Court, shall strike, for the party or parties refusing to strike, to attend, or who cannot agree among themselves. After the opposing parties have stricken 8 names, the remaining 3 shall be the commissioners for the cause and the prothonotary shall thereupon deliver to the sheriff a certified list of the names of the 3 commissioners, with their addresses annexed to a writ commanding the sheriff to summon the 3 named persons as commissioners to attend the Superior Court for trial at a time fixed by the Court. The sheriff shall, thereupon, summon them according to the command of the writ and shall return the list with the writ.

(c) At the trial of the cause and before entering upon their duties, the 3 commissioners shall be sworn or affirmed faithfully and impartially to perform the duties assigned to them.

(d) The Court, in its discretion, may determine whether or not the commissioners shall view the premises and if a view is ordered shall designate the time therefor. The view, if ordered, shall be conducted under the supervision of the Court by the court bailiffs and the view shall not be considered as evidence but only for the purpose of better understanding the evidence presented at the trial, nor shall any testimony be taken at the view. This restraint shall not prevent the parties from designating and identifying the property during the view.

(e) At the trial any party may present competent and relevant evidence upon the issue of just compensation and all such evidence shall be given in the presence of the Court and the commissioners. The Court shall, during the course of the trial, determine all questions of law and the admissibility of all evidence. A religious corporation or religious body of this State as a party to a condemnation proceeding may present as competent or relevant testimony upon the issue of just compensation the reasonable costs as of the date of the taking of the church property, of erecting a new structure of substantially the same size and of comparable character and quality of construction as the acquired church structure, at some other suitable and comparable location to be provided by such religious corporation or body. The admissibility of such evidence is conditioned upon the religious corporation or religious body being a duly constituted legal corporation or body and using the acquired site as a church or place of religious worship; and upon the further condition that the new structure or building to be erected for religious worship shall be located within the county of this State in which the acquired site is located at the time of the taking of possession of said acquired site.

(f) If 1 of the 3 commissioners becomes incapacitated during the course of the trial, the remaining 2 shall have power to make the factual determination of just compensation.

(g) After all evidence is presented and the commissioners have been charged by the Court with the applicable law, they shall retire and in secret arrive at a determination of the amount to be awarded as just compensation for the respective parties in interest, and thereafter announce their awards in open court. Such awards shall be confirmed by the Court unless the commissioners have been guilty of misconduct in their proceedings, or unless they have made an improper award to any party in interest, whether based upon an error

of fact or law, in which events the Court may, upon its own motion, or motion of any party filed and served within 5 days of the award, set aside the erroneous award in whole or in part, or modify it to conform to the facts as presented by the evidence, or to conform it with the law as announced by the Court. In the event the award is set aside in whole or in part, the Court may, in its discretion, recommit it to the commissioners with instructions.

(h) The final award, as confirmed or modified, may be reviewed by the Supreme Court as provided in this chapter.

(i) The prothonotary shall record the final award in a special docket to be maintained for that purpose.

(48 Del. Laws, c. 271, § 8; 10 Del. C. 1953, § 6108; 52 Del. Laws, c. 340; 56 Del. Laws, c. 406; 70 Del. Laws, c. 186, § 1.)

§ 6109 Dismissal of action.

(a) In a condemnation proceeding under this chapter, if no hearing has begun to determine the compensation to be paid for a piece of property and the plaintiff has not acquired the title or a lesser interest in or taken possession thereof, the plaintiff may dismiss the action as to that property, without an order of the Court, by filing a notice of dismissal setting forth a brief description of the property as to which the action is dismissed.

(b) Before the entry of any award or possession of property is taken by the plaintiff, the action may be dismissed, in whole or in part, without an order of the Court, as to any property by filing a stipulation of dismissal by the plaintiff and the defendant affected thereby, and, if the parties so stipulate, the Court may vacate any award that has been entered.

(c) At any time before compensation for a piece of property has been determined and paid and, after motion and hearing, the Court may dismiss the action as to that party, except that it shall not dismiss the action as to any part of the property of which the plaintiff has taken possession, or in which the plaintiff has taken title or a lesser interest, but shall award just compensation for the possession, title or lesser interest so taken. The Court at any time may drop a defendant unnecessarily or improperly joined.

(d) Except as otherwise provided in the notice or stipulation of dismissal, or order of the Court, any dismissal is without prejudice.

(48 Del. Laws, c. 271, § 9; 10 Del. C. 1953, § 6109.)

§ 6110 Entry into possession; requirements.

(a) At any time after the filing of any condemnation proceeding under this chapter, the plaintiff, upon the filing of a notice of intention to take possession of the property sought to be condemned, or any part thereof, on a day therein specified, and upon deposit in Court of the sum of money estimated by plaintiff to be just compensation for the property or the part thereof taken, has the right to enter into possession, occupy or take the property from and after such day, upon entry of an appropriate order by the Court, which order may be made ex parte and without notice.

(b) Upon application of any party in interest, the Court may order the money so deposited in Court, or any part thereof, be paid forthwith for or on account of just compensation to be awarded in the proceeding and such payment shall not jeopardize any party's right to prove just compensation in a greater or less amount. If the compensation finally awarded to any defendant exceeds the amount paid to the defendant on distribution of the deposit, the Court shall credit the payment to the final award and if the compensation finally awarded to any defendant is less than the amount which has been paid to the defendant, the Court shall enter judgment against the defendant in favor of the plaintiff for such overpayment.

(c) In any case where possession has been so taken the obligation of the plaintiff to pay the amount ultimately determined as just compensation in the cause shall be absolute. Title shall vest in plaintiff on the date of payment of the final award.

(48 Del. Laws, c. 271, § 10; 10 Del. C. 1953, § 6110; 70 Del. Laws, c. 186, § 1.)

§ 6111 Costs.

The costs of any condemnation proceeding provided for in this chapter, including a reasonable fee for the commissioners but in no case to exceed $20 per day for each commissioner, and including the cost of giving notice by publication and by registered mail as provided in § 6106 of this title, shall be borne and paid for by the plaintiff or plaintiffs in the proportions determined by the Court. Fees of counsel or of experts retained by any party may not be taxed as costs under any circumstances upon any of the parties or considered in determining the issue of just compensation, except as follows:

(1) At any time prior to the day before the compensation trial of a condemnation proceeding begins, the plaintiff shall serve upon the defendant(s) an offer to allow judgment to be taken against the plaintiff, in accordance with the terms of the offer, exclusive of court costs and interest. If the defendant(s) accept the offer by serving a written notice of acceptance upon the plaintiff, either party may then file the offer and notice of acceptance with the Court, together with proof of service thereof, and thereupon the prothonotary shall enter the notice of acceptance as if it were the final award pursuant to § 6108 of this title. An offer not accepted prior to the swearing of the commissioners pursuant to § 6108(c) of this title shall be deemed withdrawn, and evidence thereof is not admissible except in a later proceeding to determine costs pursuant to this section. The fact that an offer is made but not accepted shall not preclude a subsequent offer.

(2) If the award of just compensation, exclusive of interest, is closer to the highest valuation evidence provided at trial on the defendant's behalf than the plaintiff's offer made under paragraph (1) of this section, the defendant may apply for an order for the

plaintiff to pay the defendant's reasonable litigation expenses, including reasonable attorney, appraisal, engineering or other expert witness fees actually incurred because of the compensation trial, by serving on the plaintiff and filing with the prothonotary a verified application therefor within 15 days after the final confirmed condemnation award. The application shall show cause why the defendant is entitled to an award pursuant to this paragraph; state the amount sought; and include an itemized statement under oath from an attorney or expert witness representing or appearing at trial on behalf of the defendant stating the fee charged, the basis therefor, the actual time expended and all actual expenses for which the recovery is sought. If requested by any party, or upon its own motion, the Court may hear the parties with respect to the matters raised by the application and determine the amount of litigation expenses to be awarded. Any order of the Court awarding expenses pursuant to this paragraph shall be filed with the prothonotary and, unless appealed within 30 days, shall be a final order. Any expenses awarded by the Court pursuant to this paragraph shall be paid within 30 days of the Court's final order. The Court, in its discretion, may reduce the amount to be awarded pursuant to this paragraph, or deny such award, to the extent that the defendant, during the course of the proceeding, engaged in conduct which unduly and unreasonably protracted the final resolution of the action, or to the extent the Court finds that the position of the plaintiff was substantially justified, or that special circumstances make an award of expenses unjust. In no event shall the amount of the expenses awarded pursuant to this paragraph exceed the amount awarded as just compensation.

(3) If the award of just compensation, exclusive of interest, is lower than the plaintiff's offer made under paragraph (1) of this section, the plaintiff may apply for an order for the defendant to pay the plaintiff's reasonable litigation expenses incurred after the service of the offer, excluding attorney fees but including reasonable appraisal, engineering or other expert witness fees actually incurred because of the condemnation trial, by serving on the defendant and filing with the prothonotary a verified application therefor within 15 days after the final confirmed condemnation award. The application shall show cause why the plaintiff is entitled to an award pursuant to this paragraph; state the amount sought; and include an itemized statement under oath from an attorney or expert witness representing or appearing at trial on behalf of the plaintiff stating the fee charged, the basis therefor, the actual time expended, and all actual expenses for which the recovery is sought. If requested by any party, or upon its own motion, the Court may hear the parties with respect to the matters raised by the application and determine the amount of litigation expenses to be awarded. Any order of the Court awarding expenses pursuant to this paragraph shall be filed with the prothonotary and, unless appealed within 30 days, shall be a final order. Any expenses awarded by the Court pursuant to this paragraph may be deducted from the award of just compensation, unless payment of the expenses awarded is otherwise made within 30 days of the Court's final order. The Court, in its discretion, may reduce the amount to be awarded pursuant to this paragraph, or deny such award, to the extent that the plaintiff, during the course of the proceeding, engaged in conduct which unduly and unreasonably protracted the final resolution of the action, or to the extent the Court finds that the position of the defendant was substantially justified, or that special circumstances make an award of expenses unjust. In no event shall the amount of the expenses awarded pursuant to this paragraph exceed the amount awarded as just compensation.

(48 Del. Laws, c. 271, § 11; 10 Del. C. 1953, § 6111; 69 Del. Laws, c. 308, § 1.)

§ 6112 Review.

There shall be a right of review in every condemnation cause from the final confirmed award of the Superior Court to the Supreme Court as in the manner provided for review of any other final civil judgment of the Superior Court. Any such review must be instituted within 1 month from the time of entry of the final confirmed award of the Superior Court.

(48 Del. Laws, c. 271, § 12; 10 Del. C. 1953, § 6112.)

§ 6113 Time for payment of award; interest.

In the event no review of a condemnation cause is taken, the plaintiff or plaintiffs may pay or tender the amount of the award within 2 months after the entry of the confirmed award of the Superior Court, and in the event a review to the Supreme Court is taken, plaintiff or plaintiffs may pay or tender the amount thereof within 1 month of the entry of any final award entered pursuant to the mandate of the Supreme Court. Interest shall accrue on the award from the date of taking possession or from the date of the award, whichever first occurs.

(48 Del. Laws, c. 271, § 13; 10 Del. C. 1953, § 6113.)

§ 6114 Deposit of award.

In any condemnation case in which any final award is made to any party in interest who is unknown, is a minor, or is mentally incompetent, or is under any other legal disability, cannot be found, or resides outside of this State, or refuses to accept such award, the Court may direct that the amount of such award be deposited by the plaintiff to the credit of such party in any state or national bank having a branch or office in the county wherein the condemnation proceedings are instituted, within the periods providing for payment as set forth in § 6113 of this title, or the Court may make such other order as is appropriate and just.

(48 Del. Laws, c. 271, § 14; 10 Del. C. 1953, § 6114; 63 Del. Laws, c. 142, § 28.)

§ 6115 Recording of certified abstract of condemnation proceedings; failure to record.

(a) Whenever lands or any interest therein are condemned by any person, corporation or political subdivision under any statute of this State, and the amount of damages ascertained shall have been paid or deposited as provided in the statute, the record thereof shall be filed in the office of the prothonotary for the county, in which the land lies and the person, corporation or political subdivision for whose

benefit such land is condemned, shall secure from the prothonotary a certified abstract of the record of such condemnation proceedings. The certified abstract shall include a description of the land condemned, a statement of the title or interest so acquired, the name of the former owner or owners of such interest, the name of the person, corporation or political subdivision, acquiring the interest through the proceedings and a memorandum showing the amount of damages paid or deposited. The abstract shall, within 30 days after the memorandum showing the amount of damages paid or deposited shall have been filed in the prothonotary's office, be recorded in the office of the recorder of deeds for the county wherein the land lies, in the deed records of the county and shall be indexed by the recorder in the name of the condemning person, corporation or political subdivision, as the grantee, and in the name of the former owner or owners of the land, as the grantor or grantors.

(b) If such abstract is not recorded as provided in subsection (a) of this section, the condemnation proceedings shall not avail against a subsequent fair creditor, mortgagee or purchaser, for a valuable consideration, unless it shall appear that such creditor when giving the credit, or such mortgagee or purchaser, when advancing the consideration, had notice of such condemnation proceedings.

(Code 1915, § 3238A; 33 Del. Laws, c. 210; 34 Del. Laws, c. 197; Code 1935, § 3702; 10 Del. C. 1953, § 6115.)

Part IV
Special Proceedings
Chapter 62
VACATING THE DEDICATION OF OPEN SPACE AND PARKLAND

§ 6201 Jurisdiction of Superior Court.

(a) The Superior Court shall have exclusive jurisdiction to vacate any dedication of open space or parkland accepted by any county or municipality whether or not title has been accepted. The Court shall, in its final order, decide all questions raised concerning the vacation, including the award of damages.

(b) The several counties and municipalities are prohibited from vacating any dedication of open space or parkland except in accordance with the procedures established in this chapter.

(c) This chapter shall not preclude any county or municipality from seeking equitable relief in the Court of Chancery for this State on any issue, including, but not limited to, injunctive relief, actions to acquire or quiet title, declaratory judgment or any other matter in the nature of an equitable remedy.

(66 Del. Laws, c. 423, § 1.)

§ 6202 Application of chapter.

(a) This chapter establishes and shall exclusively govern procedures by which a dedication accepted by a county or municipality may be vacated. This chapter shall not apply, however, to the vacation of streets, roads or highways dedicated for the use of the general public or to easements or rights-of-way for drainage or utilities related to said streets, roads or highways.

(b) Neither through the procedures established in this chapter, nor through any other procedure in law or in equity shall the dedication of any parcel of land be vacated, which parcel is part of a public park or recreation area which:

(1) Is 5 acres or more in size; and

(2) Has been operated or maintained as a public park or recreation area for 1 year or longer.

(66 Del. Laws, c. 423, § 1.)

§ 6203 Petition for vacation; notice requirements.

(a) In any action commenced in Superior Court, the person who holds legal title to the dedicated open space or parkland, the owner of the property abutting said dedicated property or the county or municipality in which said dedicated property is located, may apply to the Superior Court of such county or municipality for the vacation thereof, by first giving notice to the county or municipality if it is not the applicant, to the person holding the legal title to said dedicated property, to all persons owning property abutting or contiguous to said dedicated property and to all persons owning property within a subdivision in which said dedicated property is located, by mailing to the county and to such persons or their legal representatives, if known, at their last known address, written notice of their intent to file such petition with the Court at least 10 days prior to filing.

(b) Upon filing any petition in Superior Court to vacate a dedication, formal notice shall be provided by the petitioner to the chief executive officer(s) of the county or municipality in which the dedicated property is located, by service of process as provided by law. Written notice by registered mail, return receipt requested, to such party or legal representative at their last known post office address at the time of the filing of the application shall also be made upon the person holding legal title to said property, upon all persons owning property abutting or contiguous to said dedicated property, upon all persons owning property within a subdivision in which said dedicated property is located and upon any persons owning property not in the subdivision but within 200 yards of said dedicated property and by posting signs along the lot lines of the dedicated property proposed to be vacated clearly indicating the intent to vacate said property, at least 20 days prior to the hearing date set by the Court on such petitions and also by publishing notice at least once a week for 2 consecutive weeks to all such parties in interest in a newspaper of general circulation in the county or municipality in which said dedicated property is located, clearly providing the place, time and hearing date on the petition set by the Court, at least 20 days prior thereto.

(66 Del. Laws, c. 423, § 1.)

§ 6204 "Vacation" defined.

"Vacation" shall mean the abandonment of the dedication covenant to any county or municipality in any dedicated property accepted by a county or municipality when said county or municipality, legal title holder or abutting landowner has clearly shown an intent to abandon through lack of use, care or maintenance thereof any dedicated property originally created solely for public use.

(66 Del. Laws, c. 423, § 1.)

§ 6205 Vacation hearing.

(a) In all proceedings in Superior Court, after all interested parties have received notice in accordance with this chapter, a hearing shall be held in Superior Court, at which time each party before the Court, including the county or municipality in which the dedicated property

is located, the legal title holder, all abutting landowners, all residents of the subdivision or all interested parties, any present relevant evidence regarding the necessity or advisability of the continued use of the dedicated property for the benefit of the general public or interested parties. Upon conclusion of the hearing, Superior Court shall order whether the said dedicated property shall be vacated.

(b) The Court shall also decide such other collateral issues which are raised at the hearing, including, but not limited to, whether the county or municipality holds title to the dedicated property by deed transfer or some other means, whether the county or municipality or the general public has an interest in such property by virtue of the dedication, whether such parties have a compensable interest and to whom the land shall revert in the event of vacation, including the abutting landowners.

(c) There is a rebuttable presumption, as to any dedicated property, that it shall continue as dedicated property.

(d) In determining whether any dedicated property should be vacated, the Court shall make a determination as to whether the county or municipality or the general public has a use or need for the continued existence for such dedicated property and the judgment of the county or municipality to keep it open shall be paramount. In making a determination in this regard, the Court shall consider such items as may be pertinent, including, but not limited to, fitness for use as a public property, service and maintenance of the respective property, the financial impact upon any interested party, the effect of the proposed vacation upon adjacent streets, roads or highways and other matters which the Court may deem pertinent.

(e) Any county- or municipality-maintained property shall not be vacated without the consent of the county or municipality in which it is located.

(66 Del. Laws, c. 423, § 1.)

§ 6206 Open space jurors; appointment and direction as to return.

(a) If the Superior Court orders that the dedication shall be vacated, it shall then appoint 5 judicious and impartial open space jurors of the county or municipality to view said property and make return on a date fixed by the Court. The Court shall authorize the open space jurors, so appointed, to employ, if necessary, a surveyor.

(b) The open space jurors named in the commission shall first be sworn or affirmed as shall be directed in the commission.

(c) The return of the jurors shall be made to the Superior Court or to a judge thereof, who shall file the same in the office of the prothonotary.

(d) In all cases such open space jurors shall assess the damages which the county or municipality, legal title holder or other parties in interest will sustain by reason of such property vacation, including, but not limited to, loss or use, impact upon improvements previously made thereto, loss of benefit or aesthetic value to the public, and, considering all circumstances of benefit or injury which may accrue to any such party in interest therefrom, shall make a recommendation to the Court, in the return, as to apportionment thereof.

(66 Del. Laws, c. 423, § 1.)

§ 6207 Damages; hearing.

(a) On a day fixed by the Court, a hearing shall then be had on the issue of damages as presented in the return. At such hearing all interested parties may present evidence and argument regarding the question of damages, their amount and apportionment, as are permitted under this section or at the discretion of the Court. At the close of said hearing, the Court shall enter an order affixing damages in such manner as it determines the evidence warrants.

(b) All damage questions shall be decided as provided in this chapter and shall include, but not be limited to, the right of the legal title holder to recover the actual value of the real property, the right of the county or municipality to recover reasonable expenses for its loss of use of said vacated land, whether jurisdiction has been acquired by title, dedication, easement or other means, and any reasonable costs and expenses incurred, as a result of said vacation resulting from an impact to other lands within the jurisdiction of the county or municipality.

(c) Payment of damages shall be in such amounts and under such terms and conditions as the Superior Court, by order, shall direct. Any order of the Superior Court to vacate a dedication of property shall not become final until all damages have been paid in accordance with the Court's order.

(d) Whenever any interested party neglects or omits to pay or tender the amount of ascertained damages to the parties or persons entitled to the same, said interested party shall be subject to the contempt power of the Court upon proper application by any party or person to whom damages are payable pursuant to the terms of the Court's order regarding same.

(e) Any other provision of this chapter notwithstanding, the Court in making determination as to what damages shall be paid by the county or municipality shall consider only 2 factors:

(1) Only persons owning real property abutting the property or part thereof to be vacated shall be entitled to recover damages; and

(2) Any damages which may be otherwise recoverable by such persons or organizations from the county must be offset by a monetary estimate of the benefit to be derived by said persons or organizations.

(66 Del. Laws, c. 423, § 1.)

§ 6208 Property equivalence.

(a) Any other provision of this chapter notwithstanding, the Chancery Court shall not order that a dedication be vacated unless the legal title holder to the dedicated property, or some other party to the proceeding provides by restrictive covenant, that an amount of open

space, at least equivalent in size and comparable or superior to the parcel to be vacated in its utility for recreational purposes, shall be provided for the benefit of the public. For land to be considered "comparable in its utility for recreational purposes" the Court need not determine that the land is suitable for specific identical recreational activities as provided on the parcel to be vacated, but the Court must find that the land to be provided is of the same general character and quality as the land to be vacated.

(b) The provisions of subsection (a) of this section may be satisfied with respect to the vacation of any land not located within the boundaries of an incorporated municipality of this State, by:

(1) Dedicating as public open space, a parcel of land meeting the criteria set forth above, within or immediately adjacent to the subdivision in which the dedicated land was vacated;

(2) Restricting the same parcel or a parcel of land meeting the criteria set forth above, within or immediately adjacent to the subdivision in which the dedicated land was vacated; or

(3) Dedicating as public open space, a parcel of land meeting the criteria set forth above, in any area approved by the county government and by the owners of 3/4 of the lots or parcels within the subdivision in which the dedicated land was vacated.

(c) The provisions of subsection (a) of this section may be satisfied with respect to the vacation of any land which is located within the boundaries of an incorporated municipality of this State, by:

(1) Dedicating as public open space, a parcel of land meeting the criteria set forth above, within a radius of one-quarter mile from any point on the lot or parcel boundary line of the land which is to be vacated;

(2) Restricting the same parcel or a parcel of land meeting the criteria set forth above, within a radius of one-quarter mile from any point on the lot or parcel boundary line of the land which is to be vacated; or

(3) Dedicating as public open space, a parcel of land meeting the criteria set forth above, in any area approved by the municipal government and by the owners of 2/3 of the lots or parcels within a radius of one-quarter mile from any point on the lot or parcel boundary line of the land which is to be vacated.

(d) The dedication or restrictions required by this section may be provided by submission of a plot plan approved by the county or municipal planning department or equivalent agency, or by submission of restrictive covenants.

(e) Any restrictive covenant supplied in accordance with this section must:

(1) Restrict the use of the open space to active or passive recreational purposes;

(2) Provide that the said covenants shall be covenants running with the land, binding upon the declarant, the declarant's heirs, administrators, successors and assigns;

(3) Provide, in the case of private open space, that the said covenants are imposed for the benefit of the owners of lots within the subdivision in which, or adjacent to which, the open space is located; and

(4) Provide, in the case of public open space, that the said covenants are imposed for the benefit of the county or municipality in which the open space is located.

(66 Del. Laws, c. 423, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6209 Appeal.

Any interested party before the Superior Court may appeal the Court's decision to the Supreme Court, within 30 days of the final order thereon, regarding the question of whether the dedicated property shall be vacated or the question of the amount of damages and their apportionment or any other matter raised at the Superior Court hearing.

(66 Del. Laws, c. 423, § 1.)

§ 6210 Compensation and expenses of jurors and employees.

(a) The jurors shall be allowed $25 a day for their services and shall be entitled to mileage at the rate of 15 cents a mile going and returning.

(b) The Court shall fix the compensation of all persons properly employed as surveyors, chain carriers, axepersons and target bearers, and all other persons necessary to the economical execution of any order for vacating a dedication of property, including the board and accommodation of persons properly employed in and about the execution of the work.

(66 Del. Laws, c. 423, § 1; 70 Del. Laws, c. 186, § 1.)

§ 6211 Costs of proceedings.

The costs of proceedings for vacating the dedication of property shall be paid by the petitioners, unless such petition is granted in which case such costs shall be paid by the party or persons authorized by the return to enclose it, and in the pro rata share fixed by the return.

(66 Del. Laws, c. 423, § 1.)

Part IV
Special Proceedings
Chapter 63
UNIFORM CONTRIBUTION AMONG TORTFEASORS LAW

§ 6301 Definition.

For the purposes of this chapter, "joint tortfeasors" means 2 or more persons jointly or severally liable in tort for the same injury to person or property, whether or not judgment has been recovered against all or some of them.

(47 Del. Laws, c. 151, § 1; 10 Del. C. 1953, § 6301.)

§ 6302 Right of contribution; accrual; pro rata share.

(a) The right of contribution exists among joint tortfeasors.

(b) A joint tortfeasor is not entitled to a money judgment for contribution until he or she has by payment discharged the common liability or has paid more than his or her pro rata share thereof.

(c) A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.

(d) When there is such a disproportion of fault among joint tortfeasors as to render inequitable an equal distribution among them of the common liability by contribution, the relative degrees of fault of the joint tortfeasors shall be considered in determining their pro rata shares.

(47 Del. Laws, c. 151, § 2; 48 Del. Laws, c. 301, § 1; 10 Del. C. 1953, § 6302; 70 Del. Laws, c. 186, § 1.)

§ 6303 Judgment against 1 tortfeasor.

The recovery of a judgment by the injured person against 1 joint tortfeasor does not discharge the other joint tortfeasors.

(47 Del. Laws, c. 151, § 3; 10 Del. C. 1953, § 6303.)

§ 6304 Release of 1 joint tortfeasor.

(a) A release by the injured person of 1 joint tortfeasor, whether before or after judgment, does not discharge the other tortfeasor unless the release so provides; but reduces the claim against the other tortfeasors in the amount of the consideration paid for the release, or in any amount or proportion by which the release provides that the total claim shall be reduced, if greater than the consideration paid.

(b) A release by the injured person of 1 joint tortfeasor does not relieve the 1 joint tortfeasor from liability to make contribution to another joint tortfeasor unless the release is given before the right of the other tortfeasor to secure a money judgment for contribution has accrued, and provides for a reduction, to the extent of the pro rata share of the released tortfeasor, of the injured person's damages recoverable against all the other tortfeasors.

(47 Del. Laws, c. 151, §§ 4, 5; 10 Del. C. 1953, § 6304; 70 Del. Laws, c. 186, § 1.)

§ 6305 Indemnity.

This chapter does not impair any right of indemnity under existing law.

(47 Del. Laws, c. 151, § 6; 10 Del. C. 1953, § 6305.)

§ 6306 Third-party practice.

(a) Third-party practice under this chapter shall be as provided by rule of court except as provided in this section.

(b) A pleader may either:

(1) State as a cross-claim against a coparty any claim that the coparty is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-claimant; or

(2) Move for judgment for contribution against any other joint judgment debtor, where in a single action a judgment has been entered against joint tortfeasors 1 of whom has discharged the judgment by payment or has paid more than his or her pro rata share thereof.

If relief can be obtained as provided in this subsection no independent action shall be maintained to enforce the claim for contribution.

(c) The court may render such judgments, 1 or more in number, as may be suitable under the provisions of this chapter.

(d) As among joint tortfeasors against whom a judgment has been entered in a single action, § 6302(d) of this title applies only if the issue of proportionate fault is litigated between them by cross-complaint in that action.

(47 Del. Laws, c. 151, § 7; 10 Del. C. 1953, § 6306; 70 Del. Laws, c. 186, § 1.)

§ 6307 Uniformity of interpretation.

This chapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it.

(47 Del. Laws, c. 151, § 9; 10 Del. C. 1953, § 6307.)

§ 6308 Short title.

This chapter may be cited as the "Uniform Contribution Among Tortfeasors Law."

(47 Del. Laws, c. 151, § 10; 10 Del. C. 1953, § 6308.)

Part IV
Special Proceedings
Chapter 65
DECLARATORY JUDGMENTS

§ 6501 Power of courts; form and effect of declaration.

Except where the Constitution of this State provides otherwise, courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect, and such declaration shall have the force and effect of a final judgment or decree.

(Code 1935, § 4685A; 46 Del. Laws, c. 269, § 1; 10 Del. C. 1953, § 6501; 63 Del. Laws, c. 63, § 1.)

§ 6502 Power to construe.

Any person interested under a deed, will, written contract or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

(63 Del. Laws, c. 63, § 1.)

§ 6503 Construction of contract before or after breach.

A contract may be construed either before or after there has been a breach thereof.

(63 Del. Laws, c. 63, § 1.)

§ 6504 Persons entitled to declaration of rights or legal relations in respect to trust or estate of decedent.

Any person interested as or through an executor, administrator, trustee, guardian or fiduciary, creditor, devisee, legatee, heir, next-of-kin or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, a person with a mental condition, may have a declaration of rights or legal relations in respect thereto:

(1) To ascertain any class of creditors, devisees, legatees, heirs, next-of-kin or others; or

(2) To direct the executors, administrators or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

(63 Del. Laws, c. 63, § 1; 78 Del. Laws, c. 179, § 25.)

§ 6505 Enumeration not exclusive.

The enumeration in §§ 6502, 6503 and 6504 of this title does not limit nor restrict the exercise of the general powers conferred in § 6501 of this title, in any proceeding where declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty.

(63 Del. Laws, c. 63, § 1.)

§ 6506 Discretionary relief.

The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, will not terminate the uncertainty or controversy giving rise to the proceeding.

(63 Del. Laws, c. 63, § 1.)

§ 6507 Review.

All orders, judgments and decrees under this chapter may be reviewed as other orders, judgments and decrees.

(Code 1935, § 4685A; 46 Del. Laws, c. 269, § 1; 10 Del. C. 1953, § 6501; 63 Del. Laws, c. 63, § 1.)

§ 6508 Supplementary relief.

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

(Code 1935, § 4685A; 46 Del. Laws, c. 269, § 1; 10 Del. C. 1953, § 6502; 63 Del. Laws, c. 63, § 1.)

§ 6509 Determination of issues of fact.

When a proceeding under this chapter involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

(Code 1935, § 4685A; 46 Del. Laws, c. 269, § 1; 10 Del. C. 1953, § 6503; 63 Del. Laws, c. 63, § 1.)

§ 6510 Costs.

In any proceeding under this chapter the court may make such award of costs as may seem equitable and just.

(63 Del. Laws, c. 63, § 1.)

§ 6511 Parties.

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged unconstitutional, the Attorney General of the State shall also be served with a copy of the proceeding and be entitled to be heard.

(63 Del. Laws, c. 63, § 1.)

§ 6512 Purpose and construction of chapter.

This chapter is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.

(63 Del. Laws, c. 63, § 1.)

§ 6513 "Person" construed.

The word "person", wherever used in this chapter, shall be construed to mean any person, partnership, joint stock company, unincorporated association or society, or municipal or other corporation of any character whatsoever.

(63 Del. Laws, c. 63, § 1.)

Part IV
Special Proceedings
Chapter 66
STRUCTURED SETTLEMENTS

§ 6601 Conditions to transfers of structured settlement payment rights.

No direct or indirect transfer of structured settlement payment rights shall be effective and no structured settlement obligor or annuity issuer shall be required to make any payment directly or indirectly to any transferee of structured settlement payment rights unless the transfer has been authorized in advance in a final order of a court of competent jurisdiction or responsible administrative authority, based on express findings by such court or responsible administrative authority that:

(1) The transfer complies with the requirements of this chapter and will not contravene other applicable law;

(2) Not less than 10 days prior to the date on which the payee first incurred any obligation with respect to the transfer, the transferee has provided to the payee a disclosure statement in bold type, no smaller than 14 points, setting forth:

a. The amounts and due dates of the structured settlement payments to be transferred;

b. The aggregate amount of such payments;

c. The discounted present value of such payments, together with the discount rate used in determining such discounted present value;

d. The gross amount payable to the payee in exchange for such payments;

e. An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, legal fees, notary fees and other commissions, fees, costs, expenses and charges payable by the payee or deductible from the gross amount otherwise payable to the payee;

f. The net amount payable to the payee after deduction of all commissions, fees, costs, expenses and charges described in paragraph (2)e. of this section;

g. The quotient (expressed as a percentage) obtained by dividing the net payment amount by the discounted present value of the payments; and

h. The amount of any penalty and the aggregate amount of any liquidated damages (inclusive of penalties) payable by the payee in the event of any breach of the transfer agreement by the payee;

(3) The transfer is fair and reasonable and in the best interests of the payee and the payee's dependents;

(4) The payee has received independent professional advice regarding the legal, tax and financial implications of the transfer;

(5) If the transfer would contravene the terms of the structured settlement:

a. The transfer has been expressly approved in writing by:

1. Each interested party; provided, however, that the approval of the annuity issuer and the structured settlement obligor shall not be required if all other interested parties approve the transfer and waive any and all rights to require that the transferred payments be made to the payee in accordance with the terms of the structured settlement; and

2. Any court or government authority, other than the court or responsible administrative authority from which authorization of the transfer is sought under this chapter, which previously approved the structured settlement; and

b. Signed originals of all approvals required under paragraph (5)a. of this section have been filed with the court or responsible administrative authority from which authorization of the transfer is sought under this chapter, and originals or copies have been furnished to all interested parties; and

(6) The transferee has given written notice of the transferee's name, address and taxpayer identification number to the annuity issuer and the structured settlement obligor and has filed a copy of such notice with the court or responsible administrative authority.

(72 Del. Laws, c. 303, § 1.)

§ 6602 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them, except where the context clearly indicates a different meaning:

(1) "Annuity issuer" shall mean an insurer that has issued an insurance contract used to fund periodic payments under a structured settlement;

(2) "Applicable law" shall mean:

a. The federal laws of the United States;

b. The laws of this State, including principles of equity applied in the courts of this State; and

c. The laws of any other jurisdiction:

1. Which is the domicile of the payee or any other interested party;
2. Under whose laws a structured settlement agreement was approved by a court; or
3. In whose courts a settled claim was pending when the parties entered into a structured settlement agreement;

(3) "Dependents" shall include a payee's spouse and minor children and all other family members and other persons for whom the payee is legally obligated to provide support, including alimony;

(4) "Discounted present value" shall mean the fair present value of future payments, as determined by discounting such payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service;

(5) "Favorable tax determination" shall mean, with respect to a proposed transfer of structured settlement payment rights, any of the following authorities that definitively establishes that the federal income tax treatment of the structured settlement for the parties to the structured settlement agreement and any qualified assignment agreement, other than the payee, will not be affected by such transfer:

a. A provision of the United States Internal Revenue Code, United States Code Title 26 [26 U.S.C. § 130], as amended from time to time, or a United States Treasury regulation adopted pursuant thereto;

b. A revenue ruling or revenue procedure issued by the United States Internal Revenue Service;

c. A private letter ruling by the United States Internal Revenue Service with respect to such transfer;

d. A decision of the United States Supreme Court or a decision of a lower federal court in which the United States Internal Revenue Service has acquiesced;

(6) "Federal hardship standard" shall mean a federal standard applicable to transfers of structured settlement payment rights based on findings of a court or responsible administrative authority regarding the payees' needs, as contained in the United States Internal Revenue Code, United States Code Title 26, as amended from time to time, or in a United States Treasury regulation adopted pursuant thereto;

(7) "Independent professional advice" shall mean the advice of an attorney, certified public accountant, actuary or other licensed professional adviser:

a. Who is engaged by a payee to render advice concerning the legal, tax and financial implications of a transfer of structured settlement payment rights;

b. Who is not in any manner affiliated with or compensated by the transferee of such transfer; and

c. Whose compensation for rendering such advice is not affected by whether a transfer occurs or does not occur.

(8) "Interested parties" shall mean, with respect to any structured settlement, the payee, any beneficiary designated under the annuity contract to receive payments following the payee's death, the annuity issuer, the structured settlement obligor, and any other party that has continuing rights or obligations under such structured settlement;

(9) "Payee" shall mean an individual who is receiving tax-free damage payments under a structured settlement and proposes to make a transfer of payment rights thereunder;

(10) "Qualified assignment agreement" shall mean an agreement providing for a qualified assignment within the meaning of § 130 of the United States Internal Revenue Code, United States Code Title 26 (26 U.S.C. § 130), as amended from time to time;

(11) "Responsible administrative authority" shall mean, with respect to a structured settlement, any government authority vested by law with exclusive jurisdiction over the settled claim resolved by such structured settlement;

(12) "Settled claim" shall mean the original tort claim or workers' compensation claim resolved by a structured settlement;

(13) "Structured settlement" shall mean an arrangement for periodic payment of damages for personal injuries established by settlement or judgment in resolution of a tort claim or for periodic payments in settlement of a workers' compensation claim;

(14) "Structured settlement agreement" shall mean the agreement, judgment, stipulation or release embodying the terms of a structured settlement, including the rights of the payee to receive periodic payments;

(15) "Structured settlement obligor" shall mean, with respect to any structured settlement, the party that has the continuing periodic payment obligation to the payee under a structured settlement agreement or a qualified assignment agreement;

(16) "Structured settlement payment rights" shall mean rights to receive periodic payments (including lump sum payments) under a structured settlement, whether from the settlement obligor or the annuity issuer, where:

a. The payee, the settlement obligor, the annuity issuer, or any other interested party is domiciled in this State;

b. The structured settlement agreement was approved by a court or responsible administrative authority in this State; or

c. The settled claim was pending before the courts of this State when the parties entered into the structured settlement agreement;

(17) "Terms of the structured settlement" shall include, with respect to any structured settlement, the terms of the structured settlement agreement, the annuity contract, any qualified assignment agreement and any order or approval of any court or responsible administrative authority or other government authority authorizing or approving such structured settlement;

(18) "Transfer" shall mean any sale, assignment, pledge, hypothecation or other form of alienation or encumbrance made by a payee for consideration;

(19) "Transfer agreement" shall mean the agreement providing for transfer of structured settlement payment rights from a payee to a transferee; and

(20) "Transferee" or "payor" shall mean the person, firm or entity purchasing or receiving the assignment, pledge, hypothecation or other form of alienation or encumbrance made by a payee for consideration under a structured settlement agreement.

(72 Del. Laws, c. 303, § 1; 75 Del. Laws, c. 148, § 1.)

§ 6603 Jurisdiction; procedure for approval of transfers.

(a) The Superior Court shall have nonexclusive jurisdiction over any application for authorization, under § 6601 of this title, of a transfer of structured settlement payment rights, except that if the structured settlement payment rights are held by a trustee, the Court of Chancery shall have exclusive jurisdiction over any application for authorization of a transfer of such rights.

(b) Not less than 20 days prior to the scheduled hearing on any application for authorization of a transfer of structured settlement payment rights under § 6601(2) of this title, the transferee shall file with the Court and serve on any other government authority which previously approved the structured settlement and on all interested parties a notice of the proposed transfer and application of its authorization, including in such notice:

(1) A copy of the transferee's application;

(2) A copy of the transfer agreement;

(3) A copy of the disclosure statement required under § 6601(2) of this title;

(4) Notification that any interested party is entitled to support, oppose or otherwise respond to the transferee's application, either in person or by counsel, by submitting written comments to the Court or responsible administrative authority or by participating in the hearing; and

(5) Notification of the time and place of the hearing and notification of the manner in which and the time by which written responses to the application must be filed (which shall be not less than 15 days after service of the transferee's notice) in order to be considered by the Court or responsible administrative authority.

(c) Those parties, persons and officials named in § 6603(b) of this title shall have standing to raise, appear and be heard on any matter relating to an application for authorization of a transfer of structured settlement payment rights under this chapter.

(d) In cases where the payee shall not be represented by counsel, or where the payee and the transferee shall be represented by the same counsel, and the Court, in the exercise of its reasonable discretion, finds that the payee does not adequately comprehend the substance of the transaction, the Court may appoint an attorney ad litem who shall advise the Court if, in their opinion, the requirements of § 6601 of this title have been met. The costs and fees incurred by such attorney ad litem shall be borne by the payor or transferee and shall not be passed on to the payee or deducted from the payee's structured settlement agreement proceeds, provided that such costs do not exceed $500.

(72 Del. Laws, c. 303, § 1; 75 Del. Laws, c. 148, §§ 2, 3; 75 Del. Laws, c. 301, § 4.)

§ 6604 No waiver; no penalties.

(a) The provisions of this chapter shall not be waived.

(b) No payee who proposes to make a transfer of structured settlement payment rights shall inure any penalty, forfeit any application fee or other payment, or otherwise incur any liability to the proposed transferee based on any failure of such transfer to satisfy the conditions of § 6601 of this title.

(72 Del. Laws, c. 303, § 1.)

Part IV
Special Proceedings
Chapter 67
EJECTMENT

§ 6701 Procedure.

(a) The legal title to lands or to any tenements whereon entry can be made may be tried in a civil action, based upon a cause of action in ejectment. The action shall be begun by filing in the office of the prothonotary of the county in which the lands or tenements lie a complaint setting forth the cause or causes of action of the plaintiff, a sufficient description of the lands and tenements claimed and such other facts as may be pertinent. If the premises for which the action is brought are actually occupied by any person such actual occupant shall be named defendant in the action, and all other persons claiming title or interest to or in the same may be joined as defendants. If the premises are not occupied the action shall be brought against some person exercising acts of ownership on the premises claimed or claiming title thereto or some interest therein at the commencement of the action. Upon the filing of such complaint a summons shall issue to the defendants named in the complaint and the same shall be served by the sheriff, together with a copy of the complaint, upon the defendant or defendants in the usual manner. The summons shall require the defendant therein to appear in the cause and to file an answer within 20 days after the service of the summons and complaint. The sheriff shall make return of his or her service as soon as the same can be done, irrespective of any term or terms of court.

(b) The answer or answers of the defendant or defendants shall set forth all of the defenses in law or fact and any defenses in law may be heard by the court at such time or in such manner as may be appropriate.

(Code 1852, §§ 2601, 2602; Code 1915, §§ 4529, 4530; Code 1935, § 4984; 44 Del. Laws, c. 178, § 1; 10 Del. C. 1953, § 6702; 70 Del. Laws, c. 186, § 1.)

Part IV
Special Proceedings
Chapter 69
HABEAS CORPUS

§ 6901 Jurisdiction to grant writs.

The writ of habeas corpus shall be awarded and issued by the Superior Court except in cases involving child support enforcement in which case the writ shall be awarded and issued by the Family Court. The writ may also be awarded and issued by the Family Court in other cases which are otherwise within its jurisdiction. A petition for the issuance of a writ of habeas corpus may be reviewed and decided by the judge issuing the order incarcerating the petitioner in the first instance.

(Code 1852, § 2545; Code 1915, § 4477; Code 1935, § 4929; 10 Del. C. 1953, § 6901; 70 Del. Laws, c. 354, § 1.)

§ 6902 Persons entitled to writs; exceptions.

Every person imprisoned or restrained of liberty by any officer or person, for any cause or under any color or pretense, shall have remedy by the writ of habeas corpus, and may obtain relief, except:

(1) Persons committed or detained on a charge of treason or felony, the species whereof is plainly and fully set forth in the commitment;

(2) Persons convicted of, or charged with, treason, felony, or any offense in another state, who ought, by the Constitution of the United States, to be delivered to the executive of such state, subject to the provisions of § 2510 of Title 11; and

(3) Persons imprisoned by the authority of the United States.

(Code 1852, §§ 2541-2544; Code 1915, § 4476; Code 1935, § 4928; 10 Del. C. 1953, § 6902; 49 Del. Laws, c. 220, § 7; 70 Del. Laws, c. 186, § 1.)

§ 6903 Person committed for contempt; notice of hearing.

(a) A person committed by any judge of this State, a justice of the peace, or by the mayor or any alderperson of any city or town, for a contempt, except a contempt issued by the Family Court in a case involving a child support order, shall be entitled to the writ of habeas corpus in the Superior Court. A person committed by the Family Court in a case involving a child support order shall be entitled to the writ of habeas corpus in the Family Court.

(b) Notice shall be given to the committing magistrate of the time and place of hearing. The prisoner may deny the alleged contempt, under oath. The court or judge may remand or discharge the party.

(Code 1852, §§ 2562, 2563; Code 1915, § 4493; Code 1935, § 4945; 10 Del. C. 1953, § 6903; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 354, § 2.)

§ 6904 Custody of minor child.

A writ of habeas corpus may be procured by 1 spouse living apart from the other, without being divorced, to determine the proper custody or charge of a minor child of the marriage, and orders may be made thereon, as provided by § 705 of Title 13 [repealed].

(16 Del. Laws, c. 477, § 1; Code 1915, § 4495; Code 1935, § 4947; 10 Del. C. 1953, § 6904; 70 Del. Laws, c. 186, § 1.)

§ 6905 Application.

Application for a writ of habeas corpus may be made by the party complaining, or anyone for such party, setting forth upon oath, where and by whom, and for what cause, to the best of his or her knowledge, such party is imprisoned or restrained of liberty, and exhibiting a copy of the commitment, if there be any, or showing why such copy could not be procured.

(Code 1852, § 2546; Code 1915, § 4478; Code 1935, § 4930; 10 Del. C. 1953, § 6905; 70 Del. Laws, c. 186, § 1.)

§ 6906 Award and service of writ.

(a) The court or judge, to whom an application under this chapter is made, shall, without delay, under penalty of $1,000 to the party aggrieved, award and issue a writ of habeas corpus under seal of the court, directed to the officer or person in whose custody the prisoner is detained, returnable forthwith before such court or judge.

(b) The writ may be served by anyone who will do the service.

(Code 1852, § 2547; Code 1915, § 4479; Code 1935, § 4931; 10 Del. C. 1953, § 6906.)

§ 6907 Method of service; return.

(a) When the writ of habeas corpus is served on the person to whom it is directed, either personally or by being left with any deputy or agent of the person at the place where the prisoner is detained, such person shall, without delay and within 3 days thereafter, produce

the body of the prisoner as therein commanded; and shall fully certify in writing and under oath, the true cause or causes of the prisoner's detainer, and a copy of all process under which the prisoner is detained.

(b) The return may be contradicted, and may also be amended.

(Code 1852, § 2548; Code 1915, § 4480; Code 1935, § 4932; 10 Del. C. 1953, § 6907; 70 Del. Laws, c. 186, § 1.)

§ 6908 Examination by court.

The court or judge shall, upon the return of a writ of habeas corpus, without delay, proceed to examine the causes of imprisonment or restraint, giving notice to any party interested, and to the Attorney General or the Attorney General's deputy in cases of felony. The examination may be adjourned if necessary and the prisoner detained.

(Code 1852, § 2549; Code 1915, § 4481; Code 1935, § 4933; 10 Del. C. 1953, § 6908; 70 Del. Laws, c. 186, § 1.)

§ 6909 Discharge generally; defects in commitment.

(a) If no legal cause be shown for the imprisonment or restraint, the court or judge shall discharge the party therefrom. Any order entered upon a petition for a writ of habeas corpus discharging the prisoner from custody or otherwise granting relief to the prisoner may be appealed by the State to the Delaware Supreme Court.

(b) No person shall be discharged for a mere defect in the commitment, if the evidence before the court or judge is sufficient to require that he or she should be committed, or bound for his or her appearance. In such case the committing magistrate shall be summoned, proper witnesses examined, and the accused committed properly.

(Code 1852, §§ 2550, 2557, 2558; Code 1915, §§ 4482, 4489; Code 1935, §§ 4934, 4941; 10 Del. C. 1953, § 6909; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 231, § 1.)

§ 6910 Bail or discharge for delay of trial.

Repealed by 67 Del. Laws, c. 217, § 1, effective May 21, 1990.

§ 6911 Discharge on bail.

If the party is detained for any cause or offense for which the party is bailable, the party shall be discharged on becoming bound by recognizance, in a proper sum and with sufficient surety, for appearance at the court having cognizance of the matter. If the party does not give such security, the party shall be remanded with an order therefor expressing the sum in which the party is held to bail, and the court at which the party is required to appear. Any justice of the peace, court or other officer authorized by law to take bail, may, at any time before the sitting of the court, bail the party pursuant to such orders.

(Code 1852, § 2551; Code 1915, § 4483; Code 1935, § 4935; 10 Del. C. 1953, § 6911; 70 Del. Laws, c. 186, § 1.)

§ 6912 Reduction of excessive bail.

If the party is committed on mesne process in a civil action for want of bail, and it appears that the sum required is excessive, the court or judge shall decide what bail is reasonable, and shall order that, on giving such bail, the party shall be discharged.

(Code 1852, § 2552; Code 1915, § 4484; Code 1935, § 4936; 10 Del. C. 1953, § 6912.)

§ 6913 Remand.

If the party is lawfully imprisoned or restrained and is not entitled to be discharged on giving bail, the party shall be remanded or otherwise properly committed.

(Code 1852, § 2553; Code 1915, § 4485; Code 1935, § 4937; 10 Del. C. 1953, § 6913; 70 Del. Laws, c. 186, § 1.)

§ 6914 Delivering copy of warrant or process; penalty.

Any officer or such officer's deputy, neglecting for 6 hours after demand, to deliver a true copy of any warrant or process by which the officer detains a prisoner to any person who demands such copy and tenders a reasonable sum for copying the same, shall forfeit and pay to such prisoner $200.

(Code 1852, § 2554; Code 1915, § 4486; Code 1935, § 4938; 10 Del. C. 1953, § 6914; 70 Del. Laws, c. 186, § 1.)

§ 6915 Returning writ and producing body; violations and penalties; compelling production.

(a) If any officer or person to whom the writ of habeas corpus is directed, or any deputy of such officer, or agent of such person, neglects to return the writ and produce the body as required by § 6907 of this title, it shall be a contempt of the court under whose seal the writ issued and a forfeiture of office. Such officer, person, deputy, or agent shall forfeit and pay to the prisoner $500.

(b) Where the writ of habeas corpus is made returnable before the Superior Court, such contempt shall be punishable by the Court by both fine and imprisonment, or either, in its discretion; and the Court may, by attachment for contempt, compel the production before it, of the body of the person imprisoned or restrained of liberty.

(Code 1852, § 2555; 17 Del. Laws, c. 222; Code 1915, § 4487; Code 1935, § 4939; 10 Del. C. 1953, § 6915; 70 Del. Laws, c. 186, § 1.)

§ 6916 Evasion of writ; penalty.

Whoever, having in his or her custody or under his or her power, any person entitled to a writ of habeas corpus, whether any writ has been issued or not, with intent to elude the service of such writ, or to avoid the effect thereof, transfers the prisoner to the custody, or places the prisoner under the power or control of any other person, or conceals the prisoner, or changes the place of the prisoner's confinement, shall forfeit and pay to the party aggrieved $3,600.

(Code 1852, § 2560; Code 1915, § 4491; Code 1935, § 4943; 10 Del. C. 1953, § 6916; 70 Del. Laws, c. 186, § 1.)

§ 6917 Rearrest of discharged person for same offense; exceptions.

No person who has been discharged on a habeas corpus shall be again imprisoned or restrained for the same cause, unless the person is indicted therefor, or convicted thereof, or committed for want of bail by some court having jurisdiction of the cause; or unless, after a discharge for defect of proof, or for some material defect in the commitment in a criminal case, the person is again arrested on sufficient proof, and committed by legal process for the same offense.

(Code 1852, § 2556; Code 1915, § 4488; Code 1935, § 4940; 10 Del. C. 1953, § 6917; 70 Del. Laws, c. 186, § 1.)

§ 6918 Costs and fees.

The costs in any proceeding under this chapter may be ordered to be paid by the county or otherwise. If the commitment is insufficient, the justice or officer who made it shall have no compensation for attendance.

(Code 1852, § 2559; Code 1915, § 4490; Code 1935, § 4942; 10 Del. C. 1953, § 6918.)

Part IV
Special Proceedings
Chapter 71
CRIMINAL NUISANCE ABATEMENT

§ 7101 Short title.

This chapter shall be known as and may be cited as the "Criminal Nuisance Abatement Act".

(72 Del. Laws, c. 484, § 1; 78 Del. Laws, c. 161, § 2.)

§ 7102 Purpose; construction.

(a) This chapter shall be liberally construed and applied so as to promote its underlying purposes, which are:

(1) To authorize temporary and permanent abatement relief and other remedies to abate any criminal nuisance as defined herein;

(2) To eliminate locations that otherwise attract criminals, violence and the threat of violence associated with either illegal drug trade or any of the other nuisances defined herein;

(3) To abate drug nuisances and illegal drug activity as well as the other nuisances defined herein that otherwise reduce property values, injure legitimate businesses and commerce and erode the quality of life for law-abiding persons working or residing in or near these locations;

(4) To ensure that the civil actions and remedies authorized by this chapter be heard by the courts on a priority basis to expeditiously identify and abate all nuisances, particularly those involving illegal drug trade or activity; and

(5) To encourage owners, landlords, operators and managers of buildings, places or premises (hereinafter referred to as "premise") to take the affirmative steps necessary to prevent violations on their properties involving any of the above nuisances, particularly those involving illegal drug trade or activity.

(b) Any action brought pursuant to this chapter, regardless of the remedy or remedies sought or ordered, is intended to be by the General Assembly and shall be deemed to be an action for abatement of a criminal nuisance.

(c) Any action brought on the basis of a criminal nuisance defined at § 7103(5)b. of this title is intended to abate the criminal nuisance existing on those properties where illegal firearms exist and those who use illegal firearms congregate. It is not intended to interfere with the right to lawful possession or use of firearms by law abiding citizens.

(72 Del. Laws, c. 484, § 1; 78 Del. Laws, c. 161, §§ 3-7.)

§ 7103 Definitions.

As used in this chapter, unless the context indicates differently:

(1) "Adverse impact" means the presence of 1 or more of the following conditions:

a. Diminished real property value related to nuisances associated with drug activity, illegal firearms, criminal gangs, violent felonies, prostitution, and other public nuisances in or near the property;

b. Increased fear of residents to walk through or in public areas, including sidewalks, streets, and parks, due to the presence of nuisances associated with drug activity, illegal firearms, criminal gangs, violent felonies, prostitution, and other public nuisances;

c. Increased volume of vehicular and pedestrian traffic to and from the property that is related to nuisances associated with drug activity, illegal firearms, criminal gangs, violent felonies, prostitution, and other public nuisances;

d. An increase in the number of police calls to the property that are related to nuisances associated with drug activity, illegal firearms, criminal gangs, violent felonies, prostitution, and other public nuisances;

e. Bothersome solicitations or approaches by persons wishing to engage in prostitution or to sell controlled substances or drug paraphernalia on or near the property;

f. The presence, use, or display or discharge of illegal firearms at or near the property;

g. Investigative purchases of controlled substances or drug paraphernalia, or investigative actions relating to prostitution by undercover law-enforcement officers at or near the property;

h. Arrests of persons on or near the property for criminal conduct relating to nuisances associated with drug activity, illegal firearms, criminal gangs, violent felonies, prostitution, and other public nuisances;

i. Search warrants served or executed at the property relating to nuisances associated with drug activity, illegal firearms, criminal gangs, violent felonies, prostitution, and other public nuisances;

j. A substantial number of complaints made to law-enforcement and other government officials regarding nuisances associated with drug activity, illegal firearms, criminal gangs, violent felonies, prostitution, and other public nuisances;

k. Increased number of housing or health code violations relating to nuisances associated with drug activity, illegal firearms, criminal gangs, violent felonies, prostitution, and other public nuisances;

l. Any other impact the Court deems to be relevant and consistent with safeguarding the public health, safety, and welfare of the community.

(2) "Controlled substance," "manufacture," "distribution," "sale," "trafficking," and "possession with intent to sell or distribute" shall have the same meaning as those terms are used in Chapter 47 of Title 16.

(3) "Court" means the Superior Court of the State of Delaware.

(4) "Criminal gangs" means any criminal street gangs or youth gangs as defined in §§ 616-617 of Title 11. "Pattern of criminal gang activity" shall have the same meaning as defined in § 616(a)(2) of Title 11.

(5) "Criminal nuisance" means any real property at which:

a. An illegal drug event has occurred within the period of 1 year prior to the commencement of the civil action under this chapter; or

b. The illegal use, manufacture, causing to be manufactured, importation, possession, possession for sale, sale, furnishing, storing or delivery of ammunition or firearms has occurred, or any act or acts which constitute any felony set forth in subpart E of subchapter VII of Chapter 5 of Title 11 or an unlawful attempt or conspiracy to commit such an act; or

c. Prostitution is promoted, facilitated or permitted in violation of §§ 1342-1344 and 1351-1356 of Title 11; or

d. Criminal gangs are engaging in a pattern of criminal gang activity; or

e. An act that would constitute a violent felony, as defined by § 4201(c) of Title 11, has occurred within the period of 1 year prior to the commencement of the civil action under this chapter; or

f. A material annoyance, inconvenience, discomfort, or a tangible injury occurs to neighboring properties or persons, and which a court considers objectionable under the circumstances, or any other public nuisance defined by state or municipal codes or Delaware law.

(6) "Firearm" shall have the same meaning as that term is used in § 222 of Title 11. "Ammunition" shall have the same meaning as that term is used in § 1448(c) of Title 11.

(7) "Illegal drug events" means the unlawful manufacture, distribution, trafficking, sale or possession with intent to distribute, sell or deliver a controlled substance, or any act or acts which constitute any felony set forth in Chapter 47 of Title 16, or an unlawful attempt or conspiracy to commit such an act.

(8) "Landlord" shall have the same meaning as that term is defined in § 5141 of Title 25.

(9) "Owner" means any person in whom is vested the ownership and title of property, and who is the owner of record. "Owner" shall include any local, city, county, state or federal governmental entity.

(10) "Person" means a human being who has been born and is alive, and, where appropriate, a public or private corporation, a trust, a firm, a joint stock company, a union, an unincorporated association, a partnership, a government or a governmental instrumentality.

(11) "Place," "site" or "premises" includes any building, structure, erection, or any separate part or portion thereof, whether used as a residence, for commercial purposes or a house of worship, or the ground itself.

(30 Del. Laws, c. 234, § 1; Code 1935, § 5272; 10 Del. C. 1953, § 7101; 53 Del. Laws, c. 360; 69 Del. Laws, c. 248, §§ 1, 2; 72 Del. Laws, c. 31, §§ 1, 2; 72 Del. Laws, c. 484, § 1; 76 Del. Laws, c. 158, §§ 1-7; 78 Del. Laws, c. 161, § 8.)

§ 7104 Maintaining a criminal nuisance.

Any person, including but not limited to any owner, agent, employee or lessee, who uses occupies, establishes, promotes, permits, facilitates, or conducts a criminal nuisance, or aids or abets therein, shall be liable for maintaining a criminal nuisance and shall be enjoined as provided in this chapter.

(30 Del. Laws, c. 234, § 2; Code 1935, § 5273; 10 Del. C. 1953, § 7102; 72 Del. Laws, c. 484, § 1; 76 Del. Laws, c. 158, § 8; 78 Del. Laws, c. 161, § 9.)

§ 7105 Action to abate criminal nuisance.

(a) Whenever a criminal nuisance exists and it adversely impacts the community, the Attorney General may bring an action to abate a criminal nuisance under this title to obtain temporary and permanent abatement relief under §§ 7111 and 7113 of this title and to seek civil penalties provided under § 7126 of this title.

(b) Any other person, as defined in § 7103 of this title, may bring an action to abate a criminal nuisance under this title on behalf of the Attorney General in the name of the State, provided the person serves the State Solicitor with a copy of the complaint within 5 days of filing. The Attorney General may elect to intervene and proceed with the action after it receives a copy of the complaint. If the Attorney General reviews the complaint and determines that there is insufficient evidence to support the claim, the Attorney General may dismiss the complaint.

(30 Del. Laws, c. 234, § 3; Code 1935, § 5274; 10 Del. C. 1953, § 7103; 72 Del. Laws, c. 484, § 1; 78 Del. Laws, c. 161, § 10.)

§ 7106 Jurisdiction; complaint; notice of lis pendens.

(a) Any action under this chapter shall be brought in the Superior Court of the county in which the property is located.

(b) At or before the commencement of the action a verified complaint alleging the facts constituting the criminal nuisance shall be filed in the office of the prothonotary of Superior Court, together with a notice of the pendency of the action, containing the names of the parties, the object of the action, and a brief description of the property affected thereby. Such notice of lis pendens shall be immediately recorded by the prothonotary.

(c) The Court shall have in rem jurisdiction over the premises alleged to be a criminal nuisance, and the complaint initiating the civil action pursuant to this chapter shall name as a defendant the premises involved, describing it by block, lot number and street address, or by such means as are appropriate in the circumstances.

(30 Del. Laws, c. 234, § 4; Code 1935, § 5275; 10 Del. C. 1953, § 7104; 72 Del. Laws, c. 484, § 1; 78 Del. Laws, c. 161, §§ 11, 12.)

§ 7107 Affirmative defenses.

It shall be an affirmative defense for the owner or landlord to establish, by a preponderance of the evidence, that said owner or landlord attempted to abate the alleged criminal nuisance prior to receiving notice in writing of the State's intent to bring a criminal nuisance abatement action regarding the premises. Examples of actions that are indicia of attempts to abate alleged criminal nuisances include but are not limited to:

(1) Sending or delivering a notice pursuant to § 5513 of Title 25 that the conduct of the tenant, or their guests or invitees, breaches a rule or covenant that is material to the rental agreement;

(2) Sending or delivering a termination notice pursuant to § 5513(a) or (b) of Title 25;

(3) Filing an action for summary possession of the rental unit;

(4) Seeking police intervention to have those responsible for the action prosecuted and actively assisting the police in efforts to prosecute those responsible for the actions or activities being complained of by the complainants.

(72 Del. Laws, c. 484, § 1; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 158, § 9; 78 Del. Laws, c. 161, § 13.)

§ 7108 Notice to interested parties.

(a) A complaint initiating an action pursuant to this chapter shall be personally served and notice to all in personam defendants shall be provided in the same manner as serving complaints in civil actions. Where the in personam defendant is an owner or landlord, notice shall also be served by leaving a copy of the complaint at the landlord's address as set forth in the lease or as otherwise provided by landlord with an adult person residing therein, or with an agent or other person in the employ of the owner or landlord whose responsibility it is to accept such notice. If the owner or landlord is an artificial entity pursuant to Supreme Court Rule 57, service of the notice or process may be made by leaving a copy thereof at its office or place of business as set forth in the lease with an agent authorized by appointment or by law to receive service of process. Where the in personam defendant is a tenant, notice shall also be served by leaving a copy of the complaint at the person's rental unit or usual place of abode with an adult person residing therein. After filing an affidavit that personal service cannot be had after due diligence on 1 or more in personam defendants, within 20 days after the filing of the complaint, the plaintiff may serve a copy of the complaint by registered or certified mail or first class mail as evidenced by a certificate of mailing postage-prepaid, addressed to the owner or landlord at the owner or landlord's business address as set forth in the lease or as otherwise provided by the owner or landlord, or if the owner or landlord is an artificial entity, pursuant to Supreme Court Rule 57, at its office or place of business, or if the defendant is a tenant, to said tenant at the leased premises. The return receipt of the notice, whether signed, refused or unclaimed, sent by registered or certified mail, or the certificate of mailing if sent by first class mail, shall be held and considered to be prima facie evidence of the service of the notice or process. The plaintiff shall also cause a copy of the complaint to be affixed conspicuously to the premises alleged to be the site of a nuisance. Service shall be deemed completed 5 days after filing with the court proof of such mailing and an affidavit that a copy of the complaint has been affixed to the premises.

(b) All tenants or residents of any premises which is used in whole or in part as a business, home, residence or dwelling, other than transient guests of a guest house, hotel, or motel, who may be affected by any order issued pursuant to this chapter shall be provided such reasonable notice as shall be ordered by the court and shall be afforded opportunity to be heard at all hearings.

(72 Del. Laws, c. 484, § 1.)

§ 7109 Substitution of plaintiff.

(72 Del. Laws, c. 484, § 1; repealed by 78 Del. Laws, c. 161, § 14, eff. Aug. 3, 2011.)

§ 7110 Delay and dismissal of actions.

(a) All actions brought pursuant to this chapter shall be heard by the Court on an expedited and priority basis. The Court shall not grant a continuance except for compelling and extraordinary reasons, or upon the application of the Attorney General for good cause shown.

(b) The Court shall not stay the civil proceedings pending the disposition of any related criminal proceeding except for compelling and extraordinary reasons or except upon the application of the Attorney General for good cause shown.

(c) The Court shall not dismiss an action brought pursuant to this chapter for want of prosecution unless the Court is clearly convinced that the interests of justice require such dismissal. In that event and upon such a finding, the dismissal shall be without prejudice to the right of the plaintiff to re-institute the action.

(72 Del. Laws, c. 484, § 1; 78 Del. Laws, c. 161, § 15.)

§ 7111 Temporary abatement hearing; order; procedure.

(a) To bring a civil action for abatement relief pursuant to this chapter, the Office of the Attorney General, or any other person authorized, may file a complaint seeking temporary relief by alleging that the premises constitute a criminal nuisance which adversely impacts the community. Upon receipt of the complaint, the Court, on application of the plaintiff, may issue an ex parte temporary abatement order prohibiting the defendants and all other persons from committing or permitting any act or acts of waste to the premises, or to the personal property and contents thereof, and from knowingly tampering with any evidence likely to be used by any party in any judicial proceeding until the decision of the Court granting or refusing the temporary abatement order thereon. Absent such ex parte relief by the Court, the Court shall order a preliminary hearing which shall be held no later than 10 days from the date upon which service upon all parties was completed, unless otherwise agreed to by the parties. In the event that service cannot be completed in time to give the owners or tenants the minimum notice required by this subsection, the Court may set a new hearing date.

(b) A copy of the complaint together with a notice of the time and place of the hearing of the application for a temporary abatement order shall be served upon the defendants at least 5 days before the hearing. If the hearing be then continued at the instance of any defendant, the temporary writ as prayed shall be granted as a matter of course.

(c) Each defendant so notified shall serve upon the complainant, or the complainant's attorney, a verified answer on or before the date fixed in the notice for the hearing and such answer shall be filed with the prothonotary's office wherein the cause is triable, but the Court may allow additional time for so answering, providing such extension of the time shall not prevent the issuing of the temporary writ as prayed for. The allegations of the answer shall be deemed to be denied without further pleading.

(d) If the Court finds:

(1) That the premises constitute a criminal nuisance that adversely impacts the community,

(2) That at least 10 days prior to the filing of the complaint seeking temporary abatement relief, the owner or the owner's agent (or tenant, where such is an in personam defendant) had been notified by certified letter of the criminal nuisance, and

(3) That the public health, safety or welfare immediately requires a temporary closing order and unless the owner or the owner's agent shows to the satisfaction of the Court that the criminal nuisance complained of has been sufficiently abated, or that such person proceeded forthwith to enforce his or her rights under this chapter as more fully set forth herein,

the Court shall issue a temporary abatement order to close the premises involved, the portions appropriate in the circumstances, or any other temporary abatement remedy requested by the Attorney General's Office. The order shall direct actions necessary to physically secure the premises, or appropriate portions thereof, against use for any purpose. The temporary abatement order may also prohibit the defendant and all persons from removing or in any manner interfering with the furniture, fixtures and movable or personal property located on or within the premises constituting the criminal nuisance. Where a tenant is a defendant, the Court may issue a closing order prohibiting him or her from residing at or having contact with the premises.

(e) To determine whether the health, safety, or welfare of the community immediately requires a temporary abatement order, the Court shall consider any relevant evidence presented concerning any attendant circumstances, including but not limited to:

(1) The extent and duration of the criminal nuisance and severity of the impact on the community;

(2) The proximity of the property to other residential structures;

(3) The number of times the owner or tenant has been notified of criminal nuisance related problems at the property;

(4) The prior efforts, or lack of efforts, by the defendant to abate the criminal nuisance;

(5) The involvement of the owner or tenant in the criminal nuisance;

(6) The costs incurred by the jurisdiction or community based organizations in investigating or attempting to correct the criminal nuisance;

(7) Whether the criminal nuisance is continuous or recurring;

(8) Whether the criminal nuisance involves the use or threat of violence; or

(9) Any other factor the Court deems relevant and in the interests of the public health, safety, or welfare of the community.

(f) If the Court finds that the premises constitute a criminal nuisance but that immediate closing of the premises is not required pursuant to subsection (d) of this section, the Court may abate the criminal nuisance by issuing an order prohibiting the defendants and all other persons from conducting, maintaining, aiding, abetting or permitting events constituting the criminal nuisance, or from otherwise having contact with the premises. Additionally, the Court may issue an order appointing a temporary receiver to manage or operate the premises or order that any defendant take immediate actions including, but not limited to, the remedies listed in § 7113(c)(7) of this title. A temporary receiver shall have such powers and duties specifically authorized pursuant to § 7113 of this title.

(g) Notwithstanding the Delaware Rules of Evidence, any police report concerning the premises, and any witness statements contained therein, may be admitted into evidence in determining the existence of a criminal nuisance or whether any form of temporary abatement relief is appropriate.

(h) The abatement order shall be served pursuant to the procedures set forth in § 7108 of this title, and by both such delivery and posting. The officer serving such abatement order shall forthwith make and return into Court an inventory of the personal property and contents situated in and used in conducting or maintaining the criminal nuisance. The parties may enter into a consent order in relation

to or with respect to temporary abatement relief or permanent abatement relief. Any such order must be approved by the Court. Any violation of such abatement order shall be a contempt of court, and where such order is so posted, mutilation or removal thereof, while the same remains in force, shall be a contempt of court, provided such posted order contains thereon or therein a notice to that effect.

(i) The temporary abatement order shall remain in place until a permanent abatement hearing. Any violation of the Court's temporary abatement order shall be contempt of court, to be punished as provided in this chapter.

(j) The owner or owners of any real or personal property so closed or prohibited, or to be closed or prohibited, may petition the Court for an expedited schedule for the permanent abatement hearing.

(k) The release of any real or personal property under this section shall not release it from any judgment, lien, penalty, or liability to which it may be subjected by law.

(30 Del. Laws, c. 234, § 4; Code 1935, § 5275; 10 Del. C. 1953, § 7105; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 484, § 1; 76 Del. Laws, c. 158, §§ 10-15; 78 Del. Laws, c. 13, § 2; 78 Del. Laws, c. 161, § 16.)

§ 7112 Enforcing ex parte and temporary abatement orders.

(a) Upon order of the Court, ex parte closing orders and temporary abatement orders shall be enforced by the appropriate police agency having jurisdiction over the area where the premises are located.

(b) The officers serving an ex parte closing order or a temporary abatement order shall file with the Court an inventory of the personal property situated in or on the premises closed and shall be allowed to enter the premises to make the inventory. The inventory shall provide an accurate representation of the personal property subject to such inventory including, but not limited to, photographing of furniture, fixtures and other personal or movable property.

(c) The officers serving an ex parte closing order shall, upon service of the order, demand all persons present in the premises closed, to vacate such premises or portion thereof forthwith unless the Court orders otherwise. The premises or portion thereof shall be securely locked and all keys shall be held by the agency closing the premises.

(d) Upon service of an ex parte closing order or a temporary abatement order, the officer shall post a copy thereof in a conspicuous place or upon 1 or more of the principal doors at entrances of the premises. In addition, where an ex parte closing order has been granted, the officers shall affix, in a conspicuous place or upon 1 or more of the principal entrances of such premises, a printed notice that the entire premises or portion thereof have been closed by court order, which notice shall contain a legend "Closed by Court Order" in block lettering of sufficient size to be observed by anyone intending or likely to enter the premises. The printed notice shall also include the date of the order, the Court which issued the order and the name of the office or agency posting the notice. In addition, where a temporary abatement order has been granted, the officer shall affix, in the same manner, a notice similar to the notice provided for in relation to an ex parte closing order except that the notice shall state that certain activity is prohibited by court order and that removal of furniture, fixtures or other personal or movable property is prohibited by court order.

(e) Any person who knowingly or purposely violates any ex parte closing order or temporary abatement order issued pursuant to this chapter shall be subject to civil contempt as well as punishment for criminal contempt pursuant to §§ 1271-1272 of Title 11 and § 7129 of this title.

(72 Del. Laws, c. 484, § 1.)

§ 7113 Permanent abatement for all criminal nuisance actions; hearing; admissible evidence.

(a) An action, when brought under this chapter, shall be noticed for trial at a time to be fixed by the Superior Court.

(b) In the action evidence of the general reputation of the place, or an admission, or finding of guilt of any person under the criminal laws at any such place, shall be admissible for the purpose of proving the existence of the criminal nuisance, and shall be prima facie evidence of such criminal nuisance and of knowledge of and of acquiescence and participation therein on the part of the person charged with maintaining the criminal nuisance as defined in this chapter.

(c) If the existence of the criminal nuisance is established upon the trial, the Court shall grant permanent abatement relief which perpetually prohibits the defendants and any other person from further maintaining the criminal nuisance at the place complained of, and the defendants from maintaining such criminal nuisance elsewhere within the State and shall issue such other orders as are necessary to abate the criminal nuisance and to prevent to the extent reasonably possible the recurrence of the criminal nuisance. The Court's order may include, but need not be limited to all of the following:

(1) Directing the sheriff or other appropriate agency to seize and remove from the premises all material, equipment and instrumentalities used in the creation and maintenance of the criminal nuisance, and directing the sheriff to sell the property in the manner provided for the sale of property under execution in accordance with the general rules of civil procedure. The net proceeds of any such sale, after the deduction of all lawful expenses involved, shall be paid pursuant to § 7114 of this title.

(2) Authorizing the plaintiffs, subsequent to an order granting plaintiffs the right to seize the property in question, to make repairs, renovations and construction and structural alterations or to take such other actions necessary to bring the premises into compliance with all applicable housing, fire, zoning, health and safety codes, ordinances, rules, regulations or statutes. Such repairs, renovations or construction shall only be undertaken after the appropriate regulatory agency has first inspected the property in question, determined

that code, ordinance or statutory violations exist and has reported same to the Court. If no order of seizure is granted and the owner or owners of the property remain in possession, the Court may order said owner or owners to make the appropriate repairs as set forth herein following the inspection and determination of violations by the appropriate regulatory agency. Expenditures by the plaintiffs pursuant to this paragraph may be filed as a lien against the property.

(3) Directing the closing of the premises, or appropriate portion thereof, to the extent necessary to abate the criminal nuisance, and directing the officer or agency enforcing the closure order to post a copy of the judgment and a printed notice of such closing order conforming to the requirements of § 7111 of this title. The closing directed by the judgment shall be for such a period of time as the Court may direct but, subject to the provisions of § 7121 of this title, shall not be for a period of more than 1 year from the posting of the judgment provided for in this subsection.

(4) Suspending or revoking any business, operational, rental or liquor license.

(5) Suspending or revoking any lease.

(6) Ordering the suspension of any state, city or local governmental subsidies payable to the owners of the property, such as tenant assistance payments to landlords, until the criminal nuisance is satisfactorily abated.

(7) Appointing a temporary receiver to manage or operate the premises for such a time as the Court deems necessary to abate the nuisance. A receiver appointed pursuant to this section shall have such powers and duties as the Court shall direct, including but not limited to:

a. Collecting, holding and dispersing the proceeds of all rents from all tenants;

b. Leasing or renting portions of the premises involved;

c. Making or authorizing other persons to make necessary repairs or to maintain the property;

d. Hiring security or other personnel necessary for the safe and proper operation of the premises;

e. Retaining counsel to prosecute or defend suits arising from his or her management of the premises;

f. Bringing actions for summary possession of any premises; and

g. Expending funds from the collected rents in furtherance of the foregoing powers.

(8) A receiver appointed by the Court pursuant to this section or § 7111 of this title shall upon entering upon his or her duties be sworn and shall affirm faithfully and fairly to discharge the trust committed to him or her. In addition, the receiver may be required to post a bond in an amount to be fixed by the Court making the appointment, to ensure that such receiver will faithfully discharge his or her duties.

(9) If the existence of a criminal nuisance as defined in this chapter is admitted or established in an action under this chapter, the Court may, in addition to the aforementioned remedies or sanctions, order the removal from the place of the criminal nuisance all personal property and contents used in conducting the criminal nuisance and not already released under authority of the Court as provided in § 7111 of this title, and shall further direct the sale of such thereof as belong to the defendants notified or appearing, in the manner provided for the sale of chattels under execution.

(d) Owners of unsold personal property and contents so seized must appear and claim same within 10 days after such order of abatement is made. The burden shall be on the owner to show, to the satisfaction of the Court, lack of any knowledge of the use thereof, and that with reasonable care and diligence they could not have known thereof. Every defendant in the action shall be presumed to have had knowledge of the general reputation of the place. If such innocence be so established, such unsold personal property and contents shall be delivered to the owner; otherwise it shall be sold as provided in this chapter.

(e) If any person breaks and enters, or uses a place so directed to be closed, that person shall be punished as for contempt as provided in this chapter.

(f) For removing and selling the personal property and contents, the officer shall be entitled to charge and receive the same fees as that officer would for levying upon and selling like property on execution, and for closing the place and keeping it closed, a reasonable sum shall be allowed by the Court.

(g) The Court may impose any or all of the foregoing remedies in combination with each other.

(30 Del. Laws, c. 234, § 5; Code 1935, § 5276; 10 Del. C. 1953, § 7106; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 484, § 1; 78 Del. Laws, c. 161, § 17.)

§ 7114 Duty of Attorney General; proceeds of sale in all criminal nuisance actions.

(a) In case the existence of facts, circumstances and/or conditions that would constitute any criminal nuisance is established in a criminal proceeding in any court of competent jurisdiction, the Attorney General shall proceed promptly to enforce the provisions and penalties of this chapter, and the finding of the defendant guilty in such criminal proceedings, unless reversed or set aside, shall be conclusive as against such defendant as to the existence of the criminal nuisance.

(b) All moneys collected under this chapter, including but not limited to proceeds of the sale of personal property, as provided in § 7113 of this title, shall first be applied in payment of the costs of the action and abatement and then in payment of reasonable attorney fees. In the event the action is brought by the Attorney General, all moneys collected in excess of costs and reasonable attorney fees

shall be paid to the Special Law Enforcement Assistance Fund, as established in §§ 4110-4116 of Title 11. In actions brought under this chapter by a county or municipality, all moneys collected in excess of costs and reasonable counsel fees shall be paid to said county or municipality. In all actions brought under this chapter by a person or persons other than noted above, all moneys collected in excess of costs, reasonable attorney fees and damage awards shall be paid to the Special Law Enforcement Assistance Fund.

(30 Del. Laws, c. 234, § 7; Code 1935, § 5278; 10 Del. C. 1953, § 7108; 72 Del. Laws, c. 484, § 1; 78 Del. Laws, c. 161, § 18.)

§ 7115 Lease void if building used for criminal nuisance.

Notwithstanding any law, rule or regulation to the contrary, if a tenant or occupant of a building or tenement, under a lawful title, is found after a hearing at which the tenant or occupant has appeared to have used such place for a criminal nuisance-related purpose, such use makes void the lease or other title under which the tenant or occupant holds, at the option of the owner, and, without any act of the owner, causes the right of possession to revert to vest in such owner.

(59 Del. Laws, c. 257, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 484, § 1; 78 Del. Laws, c. 161, §§ 19, 20.)

§ 7116 Civil penalty.

(59 Del. Laws, c. 257, § 1; 72 Del. Laws, c. 484, § 1; repealed by 78 Del. Laws, c. 161, § 21, eff. Aug. 3, 2011.)

§ 7117 Immunity.

(59 Del. Laws, c. 257, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 484, § 1; repealed by 78 Del. Laws, c. 161, § 22, eff. Aug. 3, 2011.)

§ 7118 Notification and provision of treatment resources.

(a) The officers serving a closing order involving a criminal nuisance as defined in § 7103(5)(a) of this title shall provide outreach information and referral materials to all residents present on how to obtain alcohol and other drug treatment.

(b) In any case in which the Court orders the removal of any person from any dwelling pursuant to this chapter, the Court shall cause notice to be provided to the local alcohol and drug agency, the Division of Family Services, and other appropriate social services agencies.

(c) A 1-page summary of such information and materials shall be posted next to any ex parte closing order or temporary abatement order posted in accordance with § 7112 of this title.

(d) The State Division of Substance Abuse and Mental Health or its designee shall prepare all materials described in subsections (a) and (b) of this section, and shall disseminate them to all which are empowered to enforce closing orders under this chapter.

(72 Del. Laws, c. 484, § 1; 73 Del. Laws, c. 41, § 1; 78 Del. Laws, c. 161, § 23.)

§ 7119 Premises involving multiple residences or businesses.

(a) Where the premises constituting the criminal nuisance includes multiple residences, dwellings or business establishments, a temporary or permanent closing order issued pursuant to any provision of this chapter shall, so far as is practicable, be limited to that portion of the entire premises necessary to abate the criminal nuisance and prevent its recurrence.

(b) In addition to any other relief expressly authorized by this chapter, the Court may order a defendant who actually knew or, based on information provided to said defendant, had reason to know of, the criminal nuisance, to provide relocation assistance to any tenant ordered to vacate a premises pursuant to this chapter, provided that the Court determines that such tenant was not involved in the criminal nuisance or any criminal nuisance constituting the criminal nuisance and did not knowingly aid in the commission of any such criminal nuisance. Relocation assistance shall be in the amount necessary to cover moving costs, security deposits for utilities and comparable housing, any lost rent, and any other reasonable expenses the Court may deem fair and reasonable as a result of the Court's order to close a premises or any portion thereof pursuant to this chapter.

(72 Del. Laws, c. 484, § 1; 78 Del. Laws, c. 161, §§ 24-26.)

§ 7120 Defense application to vacate or modify closing order prior to trial.

(72 Del. Laws, c. 484, § 1; 70 Del. Laws, c. 186, § 1; repealed by 78 Del. Laws, c. 161, § 27, eff. Aug. 3, 2011.)

§ 7121 Presumption against closure; vacating closure after abatement of nuisance and proof nuisance is not likely to occur.

(a) Where the Court after trial determines that a premises or appropriate portion or portions thereof pursuant to § 7111 of this title constitutes a nuisance, the Court shall order the closure of the premises. No such closure shall be granted unless, in the totality of the circumstances, no less onerous penalty is likely to provide for the abatement of the nuisance. Further, no order of closure shall occur if the Court is clearly convinced that any vacancy resulting from the closure would exacerbate rather than abate the nuisance or would otherwise be extraordinarily harmful to the community or the public interest. In determining whether closure is the least onerous penalty, the Court shall consider:

(1) Whether any previously agreed upon abatement plan, consent order, or other steps taken by a defendant have abated the nuisance;

(2) The duration that any nuisance has existed on the premises and whether any court has previously found the existence of a nuisance on the premises;

(3) The severity of the nuisance;

(4) Whether the defendant has the ability to control the conduct on the premises or the ability to abate the nuisance;

(5) The impact of the continuation of the nuisance upon any neighborhood or community organization; and

(6) The position of any community or civic association which represents the communities in which the premises are located.

(b) The Court at any time after trial may vacate the provisions of the judgment that direct the closing of the premises or any portion thereof provided that the defendant submits clear and convincing proof to the Court that the nuisance has been satisfactorily abated and is not likely to recur. In determining whether the nuisance has been satisfactorily abated and is not likely to recur, the Court shall consider the nature, severity and duration of the nuisance and all other relevant factors, including but not limited to those factors set forth in § 7113 of this title.

(72 Del. Laws, c. 484, § 1; 76 Del. Laws, c. 158, § 17.)

§ 7122 Standard of proof.

Except as may otherwise be expressly provided, the civil causes of action established in this chapter shall be proved by a preponderance of the evidence.

(72 Del. Laws, c. 484, § 1.)

§ 7123 Admissibility of evidence to prove criminal nuisance.

(a) In any action involving any criminal nuisance, evidence of the general reputation of the place or an admission or finding of guilty of any person under the criminal laws at any such place is admissible for the purpose of proving the existence of said criminal nuisance and is prima facie evidence of such criminal nuisance and of knowledge of and of acquiescence and participation therein on the part of the person charged with maintaining said criminal nuisance.

(b) In any action brought pursuant to this chapter, any evidence of any prior efforts or lack of efforts by the defendant to abate the criminal nuisance shall be admissible, and shall be considered by the court in its decision as to what, if any, remedies or penalties shall be imposed.

(c) Where a criminal prosecution or juvenile delinquency proceeding results in a criminal conviction or adjudication of delinquency, such conviction or adjudication shall create a rebuttable presumption that the criminal nuisance occurred. Any evidence or testimony admitted in the criminal or juvenile proceedings, including transcripts or a court reporter's notes of the transcripts of the adult or juvenile criminal proceedings, whether or not they have been transcribed, may be admitted in the civil action brought pursuant to this chapter.

(d) In the event that the evidence or records of a criminal proceeding which did not result in a conviction or adjudication of delinquency have been sealed in accordance with § 10002(l) of Title 29, § 4322(a) of Title 11, and §§ [former] 1001 [now repealed], 1002 and 1063 of this title, the Court, in a civil action brought pursuant to this chapter may, notwithstanding any other provision of this chapter, order such evidence or records to be unsealed if the Court finds that such evidence or records would be relevant to the fair disposition of the civil action.

(e) If proof of the existence of the criminal nuisance depends, in whole or in part, upon the affidavits or testimony of witnesses who are not peace officers, the Court may upon a showing of prior threats of violence or acts of violence by any defendant or any other person, issue orders to protect those witnesses including, but not limited to, the nondisclosure of the name, address or any other information which may identify those witnesses.

(f) A law-enforcement agency may make available to any person or entity seeking to secure compliance with this chapter any police report, or edited portion thereof, or forensic laboratory report, or edited portion thereof, concerning the alleged criminal nuisance on or within the premises involved. A law-enforcement agency may also make any officer or officers available to testify as a fact or expert witness in a civil action brought pursuant to this chapter. The agency shall not disclose such information where, in the agency's opinion, such disclosure would jeopardize an investigation, prosecution or other proceeding, or where such disclosure would violate any federal or state statute.

(72 Del. Laws, c. 484, § 1; 76 Del. Laws, c. 158, § 19; 78 Del. Laws, c. 161, §§ 28-32; 78 Del. Laws, c. 382, § 1.)

§ 7124 Relationship to criminal proceedings.

A civil action may be brought and maintained pursuant to this chapter, and the Court may find the existence of a criminal nuisance, notwithstanding that an event or events used to establish the existence of the criminal nuisance have not resulted in an arrest, prosecution, conviction or adjudication of delinquency.

(72 Del. Laws, c. 484, § 1; 78 Del. Laws, c. 161, § 33.)

§ 7125 Release of premises upon inspection or repair.

(a) Unless the Court expressly orders otherwise, no premises or portion thereof ordered to be closed pursuant to any provision of this chapter shall be released or opened unless it has been inspected by the appropriate license and inspection authority or agency and found

to be in compliance with applicable local or state housing, building, fire, zoning, health and safety codes, ordinances, rules, regulations or statutes. Where the inspection reveals violations of any such code, ordinance, rule, regulation or statute, the Court shall issue such orders or grant such relief as may be necessary to bring the premises or portion thereof into compliance. In that event, the Court may order the premises or portion thereof to remain closed pending such necessary repairs or modification, notwithstanding that the order of closure may exceed the 1-year time limit prescribed in § 7113 of this title.

(b) The Court may authorize any person or government official to enter a premises or portion thereof closed pursuant to this chapter for the purpose of conducting an inspection or making any repairs or modifications necessary to abate the criminal nuisance or to bring the premises or portion thereof into compliance with any applicable housing, building, fire, zoning, health or safety code, ordinance, rule, regulation or statute.

(72 Del. Laws, c. 484, § 1; 78 Del. Laws, c. 161, §§ 34, 35.)

§ 7126 Penalties.

(a) Where the Court after trial finds that a premises is a criminal nuisance, the Court in addition to granting appropriate abatement relief shall impose a civil penalty against a defendant who knowingly conducted, maintained, aided, abetted or permitted the criminal nuisance. The Court shall order civil penalties in the amount of $25,000 or the Court, at its discretion, may order a civil penalty up to $1,000 for each day the criminal nuisance exists, whichever is greater, unless imposition of such penalty would constitute a miscarriage of justice under the totality of the circumstances. In such case, it may lower the penalty amount to the extent necessary to avoid such miscarriage of justice.

(b) For the purpose of imposing a civil penalty pursuant to this section, the following shall be prima facie evidence that the defendant knowingly permitted the criminal nuisance:

(1) The defendant failed to initiate an eviction action pursuant to the provisions of this chapter or a summary possession action pursuant to Chapter 57 of Title 25 or against a tenant after being notified by certified or registered mail of the facts pertaining to the tenant's alleged illegal activities constituting a criminal nuisance committed on the leased premises which would in turn cause a reasonable person to believe the allegations are likely to be true; or

(2) A closure order was vacated under § 7121 of this title within 2 years before the occurrence of the instant criminal nuisance; or

(3) The defendant furthered, conspired as to, or participated in the commission of a crime on the premises.

(c) The Court at any time shall waive, suspend or revoke any unpaid civil penalty imposed pursuant to this section where it is satisfied that:

(1) The defendant against whom the penalty has been imposed has not violated any order issued pursuant to any provision of this chapter; and

(2) The defendant has transferred title to the plaintiff, a government agency or any other neighborhood or community organization approved by the Court, provided that the recipient is a nonprofit incorporated organization or association which is exempt from taxation under 26 U.S.C. § 501(c) and which is authorized by its corporate charter or bylaws to rehabilitate, restore, maintain, manage or operate any commercial or residential premises. Unless otherwise agreed to by the recipient organization, the defendant shall personally retain all state and local tax liability and the obligation shall attach to any other real property in the county owned by the defendant.

(72 Del. Laws, c. 484, § 1; 76 Del. Laws, c. 158, §§ 20, 21; 78 Del. Laws, c. 161, §§ 36-39.)

§ 7127 Settlements.

(a) Nothing in this chapter shall be construed in any way to prevent the parties to the action at any time before or after trial from negotiating and agreeing to a fair settlement of the dispute, subject to the approval of the Court. Any such settlement, once approved by the Court, shall be entered as an order of the Court. Any violation of such an order by the defendant shall be punishable as contempt as provided in this chapter.

(b) The Court, on application of a plaintiff may vacate a closing order issued pursuant to this chapter where the defendant has transferred title to the premises to the plaintiff, a government agency or any other neighborhood or community organization approved by the Court, provided that the recipient is a nonprofit incorporated organization or association which is exempt from taxation under 26 U.S.C. § 501(c) and which is authorized by its corporate charter or bylaws to rehabilitate, restore, maintain, manage or operate by commercial or residential premises. In that event, the requirements for prerelease inspection set forth in § 7125 of this title shall not apply.

(72 Del. Laws, c. 484, § 1; 76 Del. Laws, c. 158, § 22.)

§ 7128 Recovery of costs.

(a) Whenever an action for abatement relief or penalties brought pursuant to this chapter terminates in a settlement or judgment favorable to the plaintiff, the plaintiff and any other governmental entity shall be entitled to recover the actual cost of the suit, including but not limited to reasonable attorney fees and expenses and disbursements by the plaintiff or any governmental entity in investigating, bringing, maintaining and enforcing the action and any court orders issued pursuant thereto. All defendants shall be jointly and severally liable for the payment of taxed costs imposed pursuant to this section.

(b) A judgment awarding a permanent abatement pursuant to this chapter shall be a lien upon the premises declared to be a criminal nuisance unless title thereto has been transferred pursuant to §§ 7126 and 7127 of this title. In addition, a judgment against an in personam

defendant imposing a civil penalty or bill of taxed costs pursuant to this chapter shall be a lien upon the real estate owned by the defendant at the time of such rendition, and also upon all real estate the defendant may subsequently acquire, for a period of 10 years from the date of the judgment, subject to renewal of the judgment pursuant to § 4711 of this title.

(72 Del. Laws, c. 484, § 1; 78 Del. Laws, c. 161, § 40.)

§ 7129 Contempt.

(a) Any person who knowingly violated any order issued pursuant to this chapter shall be subject to civil contempt as well as punishment for criminal contempt under §§ 1271 and 1272 of Title 11. Nothing in this chapter shall be construed in any way to preclude or preempt a criminal prosecution for violation of a controlled substance offense or any other criminal offense.

(b) In case of the violation of any abatement or closing order granted under this chapter, or the commission of any contempt of court in proceedings under this chapter, the Court may summarily try and punish the offender.

(c) The proceeding shall be commenced by filing in the pending action with the prothonotary's office a motion for a rule to show cause pursuant to Superior Court Civil Rule 64.1, accompanied by an affidavit showing service on the defendant and setting forth the facts constituting the violation. The Court shall thereupon cause a subpoena to issue under which the defendant shall be required to appear and defend the allegations. The hearing shall be oral before the Court, unless otherwise ordered by the Court and either party may demand the production and oral examination of the witnesses.

(d) A party found guilty of contempt under this chapter shall be fined not less than $500 nor than $10,000, or imprisoned not less than 3 months nor more than 1 year, or both. In addition, the court may impose an order of restitution or other conditions as the Court deems appropriate.

(30 Del. Laws, c. 234, § 8; Code 1935, § 5279; 10 Del. C. 1953, § 7109; 72 Del. Laws, c. 484, § 1.)

§ 7130 Cumulative remedies.

The causes of action and remedies authorized by this chapter shall be cumulative with each other and shall be in addition to, not in lieu of, any other causes of action or remedies which may be available at law or equity. Further, nothing herein shall be construed as to limit the power or authority of the Court in the enforcement of this chapter. However, in every case initiated under this chapter, the Court shall impose the least onerous remedy possible.

(72 Del. Laws, c. 484, § 1.)

§ 7131 Liability for damage to closed properties.

(a) A court-ordered closing of a premises or portion thereof pursuant to this chapter shall not constitute an act of possession, ownership or control by the Court, the plaintiff or any government official or entity responsible for enforcing the court order.

(b) Any person or entity bringing, maintaining or enforcing any civil action or order issued in accordance with the provisions of this chapter shall have immunity from any civil liability that might otherwise be incurred for any theft of, or loss, damage or injury to any premises constituting the criminal nuisance, or to any fixture, furniture, personal or movable property located in or on any such premises.

(72 Del. Laws, c. 484, § 1; 78 Del. Laws, c. 161, § 41.)

§ 7132 Civil immunity.

Any person or entity who, in good faith, institutes, participates in, testifies in, or encourages any person or entity to institute, participate in or testify in a civil action brought pursuant to this chapter or who in good faith provides any information relied upon by any person or entity in instituting or participating in a civil action pursuant to this chapter, including but not limited to those persons defined or otherwise identified in §§ 7103 and 7107 of this title, shall have immunity from any civil liability that might otherwise be incurred or imposed.

(72 Del. Laws, c. 484, § 1.)

§ 7133 Civil action for damages resulting from criminal nuisance.

(a) Notwithstanding the provisions of § 7105 of this title, any person damaged in his or her business or property by reason of a criminal nuisance may bring a separate civil action for actual damages in the Superior Court against any person who knowingly conducted, maintained, aided, abetted or permitted criminal nuisance as defined in this chapter.

(b) In a civil action for damages pursuant to this section, the failure of an owner or landlord to initiate an eviction action against a tenant in accordance with the provisions of Chapter 57 of Title 25, if the owner or landlord has been notified by certified or registered mail of the tenant's involvement in a criminal nuisance on the leased premises, shall be prima facie evidence that the owner knowingly gave permission to engage in conduct constituting the criminal nuisance.

(c) In a civil action for damages pursuant to this section, expert testimony may be used to determine the amount of any actual damage or loss incurred by reason of the criminal nuisance as defined in this chapter.

(d) Whenever an action for damages brought pursuant to this section terminated in a settlement or judgment favorable to the plaintiff, the plaintiff shall be entitled to recover the actual cost of the suit, including but not limited to reasonable attorney fees and all expenses and

disbursements by the plaintiff in investigating, bringing and maintaining the action. All defendants shall be jointly and severally liable for the payments of taxed costs imposed pursuant to this section.

(e) In any civil action for damages brought pursuant to this section, any evidence admitted or admissible in a civil action for abatement relief or penalty pursuant to this chapter shall be admissible.

(72 Del. Laws, c. 484, § 1; 78 Del. Laws, c. 161, §§ 42-47.)

§ 7134 Presumptions.

(a) The person in whose name the premises involved is recorded in the recorder of deeds office shall be presumed to be the owner thereof.

(b) Whenever there is evidence that a person was the manager, operator, supervisor or was in any other way in charge of the premises involved at the time of any conduct constituting the criminal nuisance is alleged to have been committed, such evidence shall be rebuttably presumptive that such person was an agent or employee of the owner, landlord or lessee of the premises.

(78 Del. Laws, c. 161, § 48.)

Part IV
Special Proceedings
Chapter 72
OBSCENITY AND LEWDNESS

§§ 7201 -7210. Definitions; nuisance; abatement of nuisance; injunction authorized; procedure in injunction action; precedence of action; evidence; costs; content of judgment and order; court shall punish offender for violation of injunction or order; lease void if building used for lewd purposes; civil penalty; immunity.

Repealed by 72 Del. Laws, c. 484, § 1, effective Aug. 4, 2000. For present law, see Chapter 71 of this title.

Part IV
Special Proceedings
Chapter 73
INSOLVENCY
Subchapter I
Proceedings for Discharge

§ 7301 Right of discharge from imprisonment for debt; conditions.

Whoever is imprisoned for debt, damages, or costs, by virtue of any process or commitment, in a civil action (except process or commitment of the Court of Chancery), having resided in this State for 1 year next preceding such imprisonment, may obtain discharge from such imprisonment upon petition to the Superior Court of the county wherein he or she is imprisoned, and compliance with the provisions of this subchapter.

(Code 1852, § 2679; Code 1915, § 4612; Code 1935, § 5070; 10 Del. C. 1953, § 7301; 70 Del. Laws, c. 186, § 1.)

§ 7302 Contents of petition.

The petition for discharge shall set forth the imprisonment and the cause thereof, the insolvency of the petitioner, a full and true account of all the petitioner's real and personal estate, debts, credits, rights, money, and effects whatsoever, with the sums and dates of all the petitioner's bonds, notes, or other securities, and a true list, according to the best of the petitioner's knowledge and belief, of all the petitioner's creditors, with the sums due to them respectively. If the petitioner at any time has given, conveyed, assigned, settled, or disposed of money, stock, or property of any kind, upon trust, it shall be mentioned.

(Code 1852, § 2680; Code 1915, § 4613; Code 1935, § 5071; 10 Del. C. 1953, § 7302; 70 Del. Laws, c. 186, § 1.)

§ 7303 Summons to creditors; service.

The petition being preferred, the court shall award process for summoning the creditors of the petitioner to appear in the court, on some certain day, and show cause, if any they have, why the petitioner should not be discharged from imprisonment upon assigning his or her property for the benefit of his or her creditors. Service of such summons upon the agent or attorney of a creditor not residing in the State shall be a valid service as to such creditor. Service of a summons upon 1 of several parties, joint plaintiffs, or joint creditors, shall be sufficient so far as concerns a partnership, or joint debt.

(Code 1852, § 2681; Code 1915, § 4614; Code 1935, § 5072; 10 Del. C. 1953, § 7303; 70 Del. Laws, c. 186, § 1.)

§ 7304 Proof of service; appearance as waiver.

Proof of the service of a summons under § 7303 of this title shall be by the affidavit of the person serving the same written upon the summons.

An appearance entered, either personally or by attorney, shall be as effectual as proof of the service of the summons.

(Code 1852, §§ 2682, 2683; Code 1915, § 4615; Code 1935, § 5073; 10 Del. C. 1953, § 7304.)

§ 7305 Creditor's affidavit of fraud; jury trial.

Any creditor in any sum not less than $50, the amount of which shall be proved by affidavit, may file an allegation of fraud against the petitioner, specifying the supposed fraudulent transactions, to which allegation the petitioner may plead. Thereupon the same shall be tried by a jury at the same term to which the petition is preferred.

(Code 1852, § 2684; Code 1915, § 4616; Code 1935, § 5074; 10 Del. C. 1953, § 7305.)

§ 7306 Hearing by court in absence of allegation of fraud.

If an allegation of fraud is not filed, or being filed is withdrawn, the court shall hear what is alleged and proved for or against granting the prayer of the petition.

(Code 1852, § 2685; Code 1915, § 4617; Code 1935, § 5075; 10 Del. C. 1953, § 7306.)

§ 7307 Interrogatories to petitioner.

Interrogatories may be proposed by any creditor to the petitioner, touching the causes of the petitioner's insolvency, the ownership, disposal and state of any property, the time of contracting any debt, or of executing any security, deed, or other instrument, and the consideration thereof, and any other matter which the court deems a proper subject of such inquiry. The petitioner shall, upon the requirement of any creditor, fully and distinctly answer the interrogatories upon oath or affirmation. The petitioner's answers, being reduced to writing, shall be signed by the petitioner.

(Code 1852, § 2686; Code 1915, § 4618; Code 1935, § 5076; 10 Del. C. 1953, § 7307; 70 Del. Laws, c. 186, § 1.)

§ 7308 Order to surrender property.

Upon sufficient cause shown, the court may order the petitioner to produce any money in the petitioner's possession or control, or any deeds, bonds, notes, books of account, or other writings relating to his or her estate, and remand the petitioner until such order is complied with.

(Code 1852, § 2687; Code 1915, § 4619; Code 1935, § 5077; 10 Del. C. 1953, § 7308; 70 Del. Laws, c. 186, § 1.)

§ 7309 Penalties for fraud of petitioner.

If it appears to the court that the petitioner has fraudulently secreted, transferred, disposed of, or removed any goods, chattels, rights, credits, money, or other property, or has been guilty of deception or fraud in contracting any debt, or has not fully and truly answered the interrogatories proposed, or has committed any fraud by which the petitioner's creditors may be injured, the petition shall be dismissed and the petitioner remanded.

(Code 1852, § 2688; Code 1915, § 4620; Code 1935, § 5078; 10 Del. C. 1953, § 7309; 70 Del. Laws, c. 186, § 1.)

§ 7310 Discharge of petitioner.

If it appears to the court that there is no sufficient cause for remanding the petitioner, it shall order that the petitioner be discharged from imprisonment after first fulfilling the requirements of §§ 7311 and 7312 of this title.

(Code 1852, § 2697; Code 1915, § 4621; Code 1935, § 5079; 10 Del. C. 1953, § 7310; 70 Del. Laws, c. 186, § 1.)

§ 7311 Oath of insolvency upon discharge.

Before an order for a petitioner's discharge, the petitioner shall take an oath or affirmation according to the following form, the same being first distinctly read to him or her:

"I..... do solemnly swear (or affirm) that the account set forth in my petition to be discharged from imprisonment, is a full and true account of all my real and personal estate, legal and equitable, in possession, reversion and remainder, and of every nature and description, including all my debts, credits, rights, money and effects whatsoever; and that I have not at any time, given, conveyed, assigned, settled, disposed of, or delivered any lands, goods, money, stock, securities, or other real or personal estate, so as to expect any benefit or advantage therefrom, or upon any trust otherwise than as mentioned in said petition; that I have not contracted any debt, nor executed any bonds, or security, nor done any other act or thing to defraud my creditors; and that I have not intentionally or knowingly omitted from the list set forth in my petition any one of my creditors, nor misstated any debt due from me; so help me God. (Or so I do solemnly affirm.)"

(Code 1852, § 2698; Code 1915, § 4622; Code 1935, § 5080; 10 Del. C. 1953, § 7311; 70 Del. Laws, c. 186, § 1.)

§ 7312 Petitioner's assignment in trust for creditors on discharge.

The petitioner shall also, before an order for his or her discharge, execute a deed of assignment, to a trustee, or trustees, appointed by the Court. Such deed shall be endorsed upon, or annexed to the petition, and shall be according to the following form:

"I..... do grant and assign to their heirs and

assigns, as joint tenants, upon trust for all my creditors, all my lands, tenements, hereditaments, goods, chattels, rights, credits, and real and personal estate, of every nature and description, wheresoever situate or being.

Witness my hand and seal the..... day of..... A.D. 20.....

Signed, sealed, and delivered, ... LS."

in open court, before

If 1 trustee only be appointed, the deed may be adapted to the case.

(Code 1852, § 2699; Code 1915, § 4623; Code 1935, § 5081; 10 Del. C. 1953, § 7312; 70 Del. Laws, c. 186, § 1.)

§ 7313 Petition in Chancery for discharge.

Whoever is imprisoned for the nonperformance of any order or judgment for the payment of money, or costs, by virtue of attachment, or other process, issued out of the Court of Chancery, having resided within the State for 1 year next before his or her imprisonment, may prefer to the Court of Chancery, held in the county wherein he or she is imprisoned, a petition of the same purport prescribed in § 7302 of this title. Thereupon the Court of Chancery shall have and exercise jurisdiction over the subject of such petition, in the same manner and by like proceedings, as is provided in this subchapter in the case of a petition to the Superior Court, except as it regards the directing of an issue.

(Code 1852, § 2700; Code 1915, § 4624; Code 1935, § 5082; 10 Del. C. 1953, § 7313; 70 Del. Laws, c. 186, § 1.)

§ 7314 Records of proceedings.

Every petition, and all proceedings, orders and adjudications in cases of insolvency, shall be recorded by the prothonotary, or Register in Chancery, in suitable books kept for the purpose. A correct alphabetical index shall be kept for each book.

(Code 1852, § 2701; Code 1915, § 4625; Code 1935, § 5083; 10 Del. C. 1953, § 7314.)

Subchapter II

Proceedings Under Assignment

§ 7321 Deed of assignment as court record; copy as evidence.

A deed of assignment, executed pursuant to § 7312 of this title, shall be deemed to be a record of the court in which it is executed. A certified copy thereof shall be competent evidence.

(Code 1852, § 2702; Code 1915, § 4626; Code 1935, § 5084; 10 Del. C. 1953, § 7321.)

§ 7322 Vesting of title under assignment.

The assignment shall vest in the trustee or trustees therein named, all the property and estate of the petitioner at the time of executing the same, real and personal, legal and equitable, and of every nature and description, as well as rights, whether real or personal, credits and things in action, as property in possession.

(Code 1852, § 2703; Code 1915, § 4627; Code 1935, § 5085; 10 Del. C. 1953, § 7322.)

§ 7323 Possession of property by trustees; exemption and valuation.

The trustee or trustees shall take possession of all property and estate, except wearing apparel and the necessary bedding of the petitioner and the petitioner's family, and the tools, or implements, of the petitioner's trade or calling, not exceeding in value in the whole $50; which articles, and the value thereof, shall be ascertained by 2 judicious and impartial citizens of the county wherein the petitioner resides, to be appointed, and sworn or affirmed to the faithful performance of their duty, by a justice of the peace of the county. The articles so ascertained shall be exempt from any execution or legal process against the petitioner, except execution in a criminal case.

(Code 1852, § 2704; Code 1915, § 4628; Code 1935, § 5086; 10 Del. C. 1953, § 7323; 70 Del. Laws, c. 186, § 1.)

§ 7324 Rental liability of property assigned; payment before removal.

If the petitioner is a tenant holding any lands or tenements under rent, the petitioner's goods and chattels that are on the demised premises at the time of executing the assignment, shall be liable for the rent of such premises for the current or preceding year, if such rent be not paid, but for 1 year only. The landlord may require that such rent be paid before the removal of the goods or chattels from the demised premises.

(Code 1852, § 2705; Code 1915, § 4629; Code 1935, § 5087; 10 Del. C. 1953, § 7324; 70 Del. Laws, c. 186, § 1.)

§ 7325 Duties and powers of trustees.

The trustee or trustees, or the survivors or survivor of them, or the executors or administrators of such trustee or survivor, shall collect, recover and reduce into possession all the rights, whether real or personal, credits and things in action of the petitioner; and for that purpose may, in his or her or their own name or names institute and prosecute to judgment and execution any actions real, personal, or mixed; and shall also convert into money all the property and estate assigned, and for that purpose may sell, dispose of and convey the same, in parcels or otherwise, as may be deemed expedient.

(Code 1852, § 2706; Code 1915, § 4630; Code 1935, § 5088; 10 Del. C. 1953, § 7325; 70 Del. Laws, c. 186, § 1.)

§ 7326 Abatement of actions pending at assignment.

No action or proceeding of the petitioner at law, or in equity, shall be abated by the assignment, but such action or proceeding may be continued and execution may be issued on any judgment recovered by the petitioner, as if no such deed of assignment had been executed. Such action, proceeding, or execution shall be for the use or benefit of the trustee or trustees, or the survivors or survivor of them, or the executors or administrators of such trustee or survivor.

(Code 1852, § 2707; Code 1915, § 4631; Code 1935, § 5089; 10 Del. C. 1953, § 7326.)

§ 7327 Release after assignment.

No release, acquittance, or receipt, made by the petitioner after executing the deed of assignment, of any debt, demand, right, action, or cause of action, existing at or before the time of executing the deed, shall be of any force or effect.

(Code 1852, § 2708; Code 1915, § 4632; Code 1935, § 5090; 10 Del. C. 1953, § 7327.)

§ 7328 Disposition of proceeds from petitioner's estate.

The net proceeds of the petitioner's estate, after deducting just expenses of executing the trust and a reasonable commission to the trustees, shall be applied towards payment of such demands against the petitioner as are exhibited to the trustees within 1 year after the date of the assignment, and no others. If the proceeds are insufficient to pay the whole amount of the demands, they shall be apportioned pro rata. Any overplus shall be returned to the petitioner, the petitioner's heirs, executors, or administrators.

(Code 1852, § 2709; Code 1915, § 4633; Code 1935, § 5091; 10 Del. C. 1953, § 7328; 70 Del. Laws, c. 186, § 1.)

§ 7329 Admission of demands payable in future.

A demand existing at the time of executing the deed of assignment, but payable at a future day (subject to the proper discount if payable without interest) shall be admitted in the distribution of the petitioner's estate.

(Code 1852, § 2710; Code 1915, § 4634; Code 1935, § 5092; 10 Del. C. 1953, § 7329.)

§ 7330 Determination of controversies respecting demands or claims.

Controversies arising in the course of the execution of the trust, respecting any disputed demands or claims, may be referred, compromised, or settled, as may be deemed expedient.

(Code 1852, § 2711; Code 1915, § 4635; Code 1935, § 5093; 10 Del. C. 1953, § 7330.)

§ 7331 Court's powers with respect to trustees.

The court may, in its discretion, require the trustee or trustees to give bond with security to the State for the faithful execution of the trust. It may, in its discretion, remove the trustee or trustees and compel an assignment of the trust estate to others appointed in their stead. It may order an inventory and appraisement of the trust estate and effects to be made and returned to the court, and may require accounts, touching the execution of the trust, to be rendered, and shall adjust and settle such accounts.

Any order by the court in the premises may be enforced by attachment and imprisonment.

(Code 1852, §§ 2712, 2713; Code 1915, § 4636; Code 1935, § 5094; 10 Del. C. 1953, § 7331.)

Subchapter III

Effect of Discharge Under Subchapters I and II

§ 7341 Freedom from arrest; after-acquired property.

A person discharged from imprisonment, pursuant to subchapters I and II of this chapter, shall not be afterwards arrested or imprisoned for any debt or demand contracted or existing before such discharge, except debts and demands of the United States, and also of persons who shall not have been summoned, nor appeared. Such discharge shall have no further effect. If any debt or demand, due or existing, at the time of such discharge, against the petitioner, shall not be fully satisfied out of the estate and property assigned, because of the insufficiency thereof, such debt, or any balance thereof remaining after a proper application of the estate and property assigned, may be recovered and levied out of any property or estate, which the petitioner may acquire or become entitled to, after the date of the assignment, excepting that exempted from execution under this chapter.

(Code 1852, § 2714; Code 1915, § 4637; Code 1935, § 5095; 10 Del. C. 1953, § 7341.)

Subchapter IV

Proceedings Regarding Maintenance of Imprisoned Debtors

§ 7351 Petition for maintenance.

Whoever is imprisoned for debt, damages, or costs of a civil action, or for nonperformance of an order or judgment for the payment of money, by virtue of original execution, other process, or commitment, may prefer to the Superior Court of the county wherein such person is imprisoned, a petition stating the imprisonment and the cause thereof, and the inability of the petitioner to maintain himself, herself or his or her family, and praying for relief.

(Code 1852, § 2717; Code 1915, § 4638; Code 1935, § 5096; 10 Del. C. 1953, § 7351; 70 Del. Laws, c. 186, § 1.)

§ 7352 Hearing on petition; order for recognizance of.

(a) If, upon the hearing of a petition filed under § 7351 of this title and reasonable notice in writing of the time and place thereof to the party at whose suit the petitioner is imprisoned, or the party's attorney or agent, if there be such party, attorney or agent within the county, it shall appear that there is ground to apprehend that the petitioner or the petitioner's family, in consequence of the petitioner's imprisonment, will be chargeable to the county, the court shall order that the person at whose suit the petitioner is imprisoned, shall with sufficient surety enter into a recognizance to the State in the penal sum of $250, with condition to be void if the recognizor, the recognizor's heirs, executors, or administrators, shall keep the county harmless and indemnified of and from all damages and charges in consequence of the imprisonment of the petitioner, either for the maintenance, or through the sickness, of the petitioner or the petitioner's family. The order with the petition shall be filed in the office of the prothonotary in the county wherein the petitioner is imprisoned.

(b) If notice of such hearing cannot be given, by reason of the fact that the party, at whose suit the petitioner is imprisoned, resides out of the county, and has no attorney or agent therein, the same proceedings shall be had as if notice had been duly served.

(Code 1852, §§ 2718, 2719; Code 1915, § 4639; Code 1935, § 5097; 10 Del. C. 1953, § 7352; 70 Del. Laws, c. 186, § 1.)

§ 7353 Recognizance.

The prothonotary may approve the surety and take the recognizance directed by the order issued under § 7352 of this title. The recognizance shall be joint and several.

(Code 1852, § 2720; Code 1915, § 4640; Code 1935, § 5098; 10 Del. C. 1953, § 7353.)

§ 7354 Discharge upon failure to give recognizance.

If the order issued under § 7352 of this title is not complied with by the person on whom it is made (or by some 1 of them if there be several) within 10 days after the same is made, the prothonotary shall certify the order and the failure to comply therewith to the sheriff, or jailer, of the county. Thereupon the petitioner shall be discharged from imprisonment.

(Code 1852, § 2721; Code 1915, § 4641; Code 1935, § 5099; 10 Del. C. 1953, § 7354; 70 Del. Laws, c. 186, § 1.)

§ 7355 Discharge upon creditor's action to discontinue liability.

(a) The principal in any recognizance entered into under the provisions of this subchapter may, at any time, cause an entry to be made upon the recognizance, or the record thereof, and signed by the principal, to the effect that the principal is unwilling to continue liable touching any further imprisonment of the person upon whose petition the order was made.

(b) The prothonotary shall forthwith certify the substance of such order, recognizance and entry to the sheriff, or jailer, of the county. The petitioner shall thereupon be discharged from imprisonment at the suit of the party causing such entry to be made.

(c) Such entry shall in no manner impair the recognizance or have any other effect than to discharge the petitioner from further imprisonment at the suit of the party causing it to be made.

(Code 1852, §§ 2722-2724; Code 1915, § 4642; Code 1935, § 5100; 10 Del. C. 1953, § 7355; 70 Del. Laws, c. 186, § 1.)

§ 7356 Petition by prisoner to give security for debt.

Whoever is imprisoned for the reasons stated in § 7351 of this title may prefer a petition to the Superior Court setting forth that such person is willing and able to give to the creditor good and sufficient security for the payment of the debt, damages or costs within a reasonable time. If, upon the hearing of the petition, and reasonable notice in writing of the time and place thereof to the party at whose suit the petitioner is imprisoned, or the party's attorney or agent, if there be such party, attorney or agent within the county, it appears that the petitioner is able to give such security, the Court shall proceed to order security to be given and taken in such form, and for the payment of such debt, damages and costs, in such time and manner as to the Court seems meet and proper in the case, and on such security being given and approved by the Court, an order shall be made for the immediate discharge of the petitioner from imprisonment.

(11 Del. Laws, c. 653; Code 1915, § 4643; Code 1935, § 5101; 10 Del. C. 1953, § 7356; 70 Del. Laws, c. 186, § 1.)

§ 7357 Arrest upon same process; continuation of obligations.

A person discharged from imprisonment pursuant to § 7354, § 7355 or § 7356 of this title shall not be again arrested upon the same process, but such imprisonment and discharge shall have no other effect. No judgment, debt, or demand shall be thereby extinguished or invalidated.

(Code 1852, § 2725; Code 1915, § 4644; Code 1935, § 5102; 10 Del. C. 1953, § 7357.)

§ 7358 Special proceedings; affidavit of fraud.

(a) The provisions of this subchapter for the discharge of a person imprisoned on civil process, upon failure of the party at whose suit such person is imprisoned to indemnify the county, shall not apply to the case of a prisoner remanded by the court upon the trial of allegations of fraud; nor to the case of a citizen of this State imprisoned by virtue of a capias ad satisfaciendum, or for the nonperformance of an order or judgment for the payment of money, upon an affidavit of fraud; nor to the case of any person whatsoever imprisoned by virtue of civil process, whether original, or final, or whether issuing out of a court of law or equity, if the plaintiff in such process, within 5 days after the imprisonment of such person, files in the office of the prothonotary, or Register in Chancery, issuing the process, an affidavit of fraud against the person so imprisoned, in the same form as by law is required to be filed before the issuing of a capias ad satisfaciendum against a citizen of this State.

(b) A person so imprisoned, against whom such affidavit of fraud is filed within 5 days after such person's imprisonment, as provided in this section, shall have the same benefit of a hearing of the specifications of fraud in such affidavit set forth before the court, and upon like proceedings, as in the case of an affidavit of fraud filed before the issuing of a capias ad satisfaciendum.

(Code 1852, §§ 2728, 2729; Code 1915, § 4647; Code 1935, § 5105; 10 Del. C. 1953, § 7358; 70 Del. Laws, c. 186, § 1.)

Subchapter V

Miscellaneous Provisions Relating to Subchapters I-IV

§ 7371 Appearance in actions.

The appearance of any person who is discharged from imprisonment according to subchapters I-IV of this chapter may be entered in any action, from process in which such person is so discharged. Such action may be proceeded in on the ground of such appearance.

(Code 1852, § 2726; Code 1915, § 4645; Code 1935, § 5103; 10 Del. C. 1953, § 7371.)

§ 7372 Imprisonment by United States or for other cause.

No proceeding or order under subchapters I-IV of this chapter shall discharge any person imprisoned by the authority of the United States from such imprisonment, nor shall any such proceeding or order discharge any person from imprisonment for any other cause

than that to which it relates. Such person, notwithstanding such proceeding or order, shall be detained for such other cause, according to the nature and effect thereof.

(Code 1852, § 2727; Code 1915, § 4646; Code 1935, § 5104; 10 Del. C. 1953, § 7372.)

§ 7373 Preservation of liens and liability of sureties and others.

No proceeding under subchapters I-IV of this chapter shall in any way impair the lien of any mortgage, judgment, recognizance, execution, or any other lien, or the liability of one who, as surety, joint debtor, or otherwise, is liable for a debt or demand existing against the person to whom such proceeding relates.

(Code 1852, § 2730; Code 1915, § 4648; Code 1935, § 5106; 10 Del. C. 1953, § 7373.)

§ 7374 Penalties for false swearing.

Whoever, to whom an oath or affirmation is administered under subchapters I-IV of this chapter, wilfully and falsely swears or affirms, in any matter, shall be guilty of wilful and corrupt perjury, and shall forfeit all benefit under such subchapters, and shall not be permitted to plead, or insist upon the same, or to avail himself or herself thereof in any manner whatever.

The penalties prescribed by this section shall be in addition to the penalties prescribed by law for the crime of wilful and corrupt perjury.

(Code 1852, § 2731; Code 1915, § 4649; Code 1935, § 5107; 10 Del. C. 1953, § 7374; 70 Del Laws, c. 186, § 1.)

Subchapter VI

Voluntary Assignments

§ 7381 Filing inventory of property assigned.

In every case in which any person makes a voluntary assignment of his or her estate, real or personal, or of any part thereof to any other person in trust for his or her creditors or some of them, the assignee, within 30 days after the execution thereof, shall file in the office of the Register in Chancery of the county in which the real and personal estate of the assignor is situate, an inventory or schedule of the estate or effects so assigned, accompanied with an affidavit by such assignee, that the same is a full and complete inventory of all such estate and effects, so far as the same has come to his or her knowledge.

(15 Del. Laws, c. 187, § 1; Code 1915, § 4651; Code 1935, § 5109; 10 Del. C. 1953, § 7381; 70 Del. Laws, c. 186, § 1.)

§ 7382 Appointment and duties of appraisers.

Upon the filing of the inventory and affidavit required by § 7381 of this title, the Court of Chancery shall appoint 2 disinterested and competent persons to appraise the estate assigned, who shall, after being duly sworn or affirmed by some person having authority to administer oaths, to perform their duties with fidelity, forthwith proceed to make an appraisement of the estates and effects assigned, according to the best of their judgment, and having completed the same, shall return the inventory and appraisement to the office of the Register in Chancery of the county in which the inventory of the assignee and the affidavit accompanying the same were filed. The appraisers shall receive the same compensation as is now allowed by law to appraisers of the estate of a decedent.

(15 Del. Laws, c. 187, § 2; Code 1915, § 4652; Code 1935, § 5110; 10 Del. C. 1953, § 7382.)

§ 7383 Assignee's bond.

(a) The assignee shall, as soon as the inventory and appraisement required by § 7382 of this title have been filed, give bond with sufficient surety, to be approved by the Court of Chancery in an amount fixed by the Court, being not less than the total amount of inventory and appraisement of the estate so assigned. The bond shall be taken in the name of the State, and the condition thereof shall be as follows:

> "The condition of this obligation is such, that if the above bounden..... assignee of..... shall in all things comply with the provisions of this chapter, and shall faithfully execute the trust confided to him or her, then the above obligation to be void, otherwise to remain in full force and virtue."

(b) To the bond there shall be subjoined a warrant of attorney to confess judgment thereon, and the bond and warrant shall be joint and several, and such bond shall be filed in the office of the Register in Chancery of the county in which the inventory and appraisement were filed, and shall inure to the use of all persons interested in the property assigned.

(15 Del. Laws, c. 187, § 3; Code 1915, § 4653; Code 1935, § 5111; 48 Del. Laws, c. 88, § 1; 10 Del. C. 1953, § 7383; 70 Del. Laws, c. 186, § 1.)

§ 7384 Proceedings on bond.

Upon the application of any person interested, the Court of Chancery may direct the bond provided under § 7383 of this title to be proceeded on if it deems it necessary and proper for the protection of such interested party.

(15 Del. Laws, c. 187, § 4; Code 1915, § 4654; Code 1935, § 5112; 10 Del. C. 1953, § 7384.)

§ 7385 Assignees' accounts and exceptions.

(a) The assignee shall render an account of the assignee's trusteeship every year from the date of the assignee's bond, required under § 7383 of this title, before the Register in Chancery of the proper county, until the trusteeship is closed and a final account rendered and

approved. If the assignee fails to perform this duty, the Register in Chancery may issue a citation to such assignee, requiring the assignee to appear and exhibit under oath or affirmation the accounts of the trusts, within a certain time to be named in such citation.

(b) Upon the filing of any such account, notice thereof shall be given to all persons in interest as directed by an appropriate order of the Court of Chancery. Such order and notice shall set forth the time within which any person in interest may take and file with the Register in Chancery, in and for the proper county, exceptions to the account in question. The time within which exceptions to any such account may be filed by any person in interest shall be determined by the Court in the exercise of its discretion, and may be extended from time to time for good cause shown. Any exceptions so filed in respect of any such account shall be heard, determined and the particular account adjusted before the Court, as it may order or direct.

(15 Del. Laws, c. 187, § 5; Code 1915, § 4655; Code 1935, § 5113; 48 Del. Laws, c. 80, § 1; 10 Del. C. 1953, § 7385; 70 Del. Laws, c. 186, § 1.)

§ 7386 Removal of assignees.

The Court of Chancery, upon cause being shown, may remove the assignee or trustee referred to in this chapter, and compel an assignment of the trust estate to others appointed in their stead. Any order of the Court in the premises may be enforced by attachment and imprisonment.

(15 Del. Laws, c. 187, § 6; Code 1915, § 4656; Code 1935, § 5114; 10 Del. C. 1953, § 7386.)

§ 7387 Void preferences of creditors.

Whenever any person, in contemplation of insolvency or in contemplation of taking the benefit of any of the insolvent laws of this State, makes an assignment of his or her estate or effects for the benefit of creditors, and by such assignment, either under its provisions or otherwise, prefers any creditor to others, or in or by such assignment, secures or pays to any creditor a greater proportion of his or her debt or demand than shall be secured or paid to all his or her creditors, every such assignment so giving a preference shall be deemed fraudulent and absolutely void, and the estate or effects contained therein shall be liable to be taken in execution, or attached, for the payment of such assignor's debts, as fully as if no such assignment had been made; and whoever makes such fraudulent assignment shall forever be deprived of the benefit of any insolvent law of this State.

(Code 1852, § 2915; Code 1915, § 4795; Code 1935, § 5282; 10 Del. C. 1953, § 7387; 70 Del. Laws, c. 186, § 1.)

Part IV
Special Proceedings
Chapter 75
RECOGNIZANCES AND BONDS

§ 7501 Benefit of State and injured person.

Every recognizance and bond, acknowledged or executed, pursuant to any law, or by the direction of the Governor, or of any court, by an executor, administrator, sheriff, or other officer, or person, to the State, with condition for the payment of money, or the execution, or performance, of any office, trust, or duties, shall be not only for the benefit of the State, but also upon trust for every person that may be injured by the breach of such condition. 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.

(Code 1852, § 2571; Code 1915, § 4502; Code 1935, § 4954; 10 Del. C. 1953, § 7501; 70 Del. Laws, c. 449, § 2.)

§ 7502 Right of action by injured person; title of action.

Every person injured by the breach of the condition of any public recognizance or bond may, in the name of the State, but for such person's own use, institute an action upon such recognizance or bond, and prosecute the same to judgment and execution. Such person may employ an attorney of the court wherein the action is brought, who may, in the complaint and other pleadings, use his or her own name, instead of the name of the Attorney General.

(Code 1852, § 2572; Code 1915, § 4503; Code 1935, § 4955; 10 Del. C. 1953, § 7502; 70 Del. Laws, c. 186, § 1.)

§ 7503 Judgment for less than penalty; security for further damages.

A recognizance, bond, or penal sum, shall not be extinguished by a judgment in an action thereon, if for a sum as debt less than the penalty, but shall remain as a security for any damages sustained, or to be sustained on occasion of other breaches. For the recovery of such damages, actions may be instituted from time to time upon such recognizance, bond, or penal sum.

(Code 1852, § 2579; Code 1915, § 4510; Code 1935, § 4962; 10 Del. C. 1953, § 7503.)

§ 7504 Limitation of liability.

Nothing contained in this chapter shall make a recognizor, obligor, or other party liable for damages beyond the penalty of his or her recognizance, bond, or specialty; or in any manner extend, abridge, or alter the legal operation of any recognizance or other instrument.

(Code 1852, § 2580; Code 1915, § 4511; Code 1935, § 4963; 10 Del. C. 1953, § 7504; 70 Del. Laws, c. 186, § 1.)

§ 7505 Inadequate penalty; priority of claims.

If the penalty of a recognizance or bond, acknowledged or executed as mentioned in § 7501 of this title, is not adequate to cover all the damages sustained on occasion of the breaches of the condition thereof, and such damages are sustained by several persons, such persons shall stand in priority according to the respective dates of commencing the actions for their uses respectively. A failure to use due diligence in prosecuting any action, shall deprive it of such priority, and postpone it to all the actions pending at the time of such failure, such failure to be determined and certified by the court.

(Code 1852, § 2581; Code 1915, § 4512; Code 1935, § 4964; 10 Del. C. 1953, § 7505.)

§ 7506 Installment payments, recovery of.

Sections 7501-7505 of this title shall extend to an action upon a bond or specialty in a penal sum with condition for the payment of money or interest of money by installments or on different days, unless such action is commenced after all the sums, whether for principal or interest, which according to such condition can become payable, have become payable. If the action is commenced after all the sums which, according to such condition, can become payable whether for principal or interest, have become payable, or if the action be upon a bond or specialty in a penal sum with condition for the payment of money in a gross sum, judgment for the plaintiff shall be for the penalty and costs of suit, to be discharged upon the payment of the sum justly due, with interest and costs. The sum justly due shall be found by a jury, or by the court if a jury is waived, or otherwise shall be ascertained as may be agreed by the parties, or ordered by the court.

(Code 1852, § 2584; Code 1915, § 4514; Code 1935, § 4965; 10 Del. C. 1953, § 7506.)

§ 7507 Proceedings to compel entry of satisfaction.

(a) In all cases where recognizances are liens on real estate in this State, and the same have been paid, and the recognizees, or their executors, administrators or assigns, refuse or neglect to enter satisfaction of such recognizance, on the record thereof in the office where the same is recorded or entered, within 60 days after the payment thereof, the recognizors, or their heirs or assigns, may, upon sworn complaint filed in the Court of Chancery of the county in which the recognizance is recorded or entered, setting forth the facts, obtain from the Court a rule upon the recognizees, or their executors, administrators or assigns, returnable at such time as the Court may direct,

requiring such recognizees, or their executors, administrators or assigns, to appear on the day fixed by the Court and show cause, if any they have, why such recognizance shall not be marked satisfied on the record thereof.

(b) The rule shall be served in such manner as directed by the Court. In case the recognizees, or their executors, administrators or assigns, reside out of the State, and cannot be served, the rule shall be continued, a copy thereof shall be published by the sheriff in a newspaper of the county, once each week for 4 successive weeks, and upon proof of such advertisement by affidavit of the sheriff, made at the time to which such rule was continued shall be deemed and considered sufficient service of such rule.

(c) Upon the return of the rule, if the Court is satisfied from the evidence produced that such recognizance, together with all interest and costs due thereon, has been satisfied and paid, the rule shall be made absolute and the Court shall order and adjudge that the recognizance shall be satisfied, and shall order and direct the Register in Chancery, in whose office such recognizance is entered, to enter on the record thereof full and complete satisfaction of the recognizance.

(29 Del. Laws, c. 259; Code 1935, § 4966; 10 Del. C. 1953, § 7507.)

§ 7508 Applicability of §§ 7501-7507 to judgments on warrant of attorney.

None of the provisions of §§ 7501-7507 of this title shall extend to a warrant of attorney to confess judgment, nor to any action or judgment entered or confessed in pursuance of such warrant of attorney.

(Code 1852, § 2585; Code 1915, § 4515; Code 1935, § 4967; 10 Del. C. 1953, § 7508.)

§ 7509 Lien on lands of public officer as obligor.

Every recognizance or obligation acknowledged for a penal sum, with condition for the performance, by an officer, of the duties of the officer's office, or of any public trust, shall, from the caption of such recognizance, or from the time of the acknowledging and approving of such obligation, be a lien upon all the lands and tenements of the officer, being the principal obligor therein, within the county wherein such recognizance or obligation is taken or acknowledged. The recognizance or obligation shall not be a lien upon the lands and tenements of the sureties therein.

(Code 1852, § 2586; Code 1915, § 4516; Code 1935, § 4968; 10 Del. C. 1953, § 7509; 70 Del. Laws, c. 186, § 1.)

§ 7510 Entry of satisfaction.

Every person to whom a sum is due by a recognizance taken in the Court of Chancery, receiving satisfaction of the same, shall, within 60 days thereafter, cause such satisfaction to be entered upon the record of such recognizance. Such satisfaction shall be entered by the Register in Chancery upon application of the party or the party's attorney, who must sign the entry.

(Code 1852, § 2587; Code 1915, § 4517; Code 1935, § 4969; 10 Del. C. 1953, § 7510; 70 Del. Laws, c. 186, § 1.)

§ 7511 Default in satisfaction; amount of damages.

Every person committing a default under § 7510 of this title shall be liable to the recognizor in such recognizance, or the executors or administrators of such recognizor, in damages to be recovered by a civil action. The damages shall not be less than $10, nor more than $50, except when special damages to a larger amount are alleged in the complaint, and proved.

(Code 1852, § 2588; Code 1915, § 4518; Code 1935, § 4970; 10 Del. C. 1953, § 7511.)

§ 7512 Copy as evidence; production of original.

(a) If any recognizance or bond, mentioned in § 7501 of this title, shall according to law be recorded or deposited in any public office, a copy of such recognizance or bond, or of the record thereof, duly certified, shall be competent evidence.

(b) Any court, for sufficient cause, may require the production of the original recognizance, bond, or record. The officer having custody thereof shall produce it as required.

(Code 1852, §§ 2589, 2590; Code 1915, § 4519; Code 1935, § 4971; 10 Del. C. 1953, § 7512.)

§ 7513 Written obligation without penalty.

An obligation in writing, executed under the hand and seal of the obligor, by which the obligor binds himself or herself to pay a certain sum of money at a designated time, with interest, costs and counsel fees, as provided by law, shall be construed to be a bond, although no penal sum is named therein, and actions and proceedings may be brought thereon and judgments entered for the amount due, including debt, interest, costs and counsel fees, in accordance with the warrant of attorney contained therein.

This section shall not be deemed to invalidate or raise a question concerning the validity of any bond, or obligation in writing, under the hand and seal of the obligor, made prior to April 5, 1923, executed and delivered and not containing the recital of a penal sum.

(33 Del. Laws, c. 240, §§ 1, 2; Code 1935, § 4972; 10 Del. C. 1953, § 7513; 70 Del. Laws, c. 186, § 1.)

§ 7514 Location of realty of persons signing bonds or recognizances.

Where the signature of an owner of realty is required upon any bond or recognizance in any court of this State or before any justice of the peace of this State, it shall not be required that the owner own realty in the county where the court or justice of the peace is located but it shall be regarded as sufficient security if the owner owns realty located anywhere in this State.

(10 Del. C. 1953, § 7514; 50 Del. Laws, c. 335, § 1.)

Part IV
Special Proceedings
Chapter 76
CIVIL SEXUAL ABUSE LIABILITY REPORT

§ 7601 Civil Sexual Abuse Liability Report — Purpose.

The purpose of this chapter is to ensure that the public is informed about persons found liable of sexual abuse in this State.

(76 Del. Laws, c. 414, § 1.)

§ 7602 Civil Sexual Abuse Report.

Civil Sexual Abuse Liability Report ("the Report") shall mean a report that each court shall post in a public place in the court house and on the court's web site. The Report shall list all persons found liable for sexual abuse in that court. The Report shall be entitled "Civil Sexual Abuse Report". The list shall include the name and address of defendant and the offense or cause for which the defendant was found liable and shall be updated within 1 week when a defendant is found eligible or when a defendant has been relieved from eligibility pursuant to §§ 7603 and 7604, respectively, of this title. A defendant found eligible must keep the court apprised of that defendant's current address.

(76 Del. Laws, c. 414, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7603 Petition and eligibility.

If a civil complaint is filed alleging sexual abuse and if a verdict of liability is returned by a jury or judge, then the plaintiff or victim of the sexual abuse or that plaintiff's or victim's representative may petition the court to place the defendant on the Civil Sexual Abuse Report. To establish eligibility, the court must determine whether the civil offense for which a verdict of liability was rendered has similar elements to an offense that would require registration pursuant to subchapter III of Chapter 41 of Title 11.

(76 Del. Laws, c. 414, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7604 Relief.

A defendant may petition the court for relief, to be removed from the Report, after 5 years. Such relief may be granted upon a showing of good cause. Such petition shall be notice to all parties of the original suit.

(76 Del. Laws, c. 414, § 1.)

Part V
Limitation of Actions
Chapter 79
REAL ACTIONS

§ 7901 Right of entry.

No person shall make an entry into any lands, tenements, or hereditaments, but within 20 years next after the person's right or title to the same first descended or accrued.

(Code 1852, § 2733; Code 1915, § 4662; Code 1935, § 5120; 10 Del. C. 1953, § 7901; 70 Del. Laws, c. 186, § 1.)

§ 7902 Seisin or possession.

No person shall have, or maintain any writ of right, or action, real, personal, or mixed, for, or make any prescription, or claim, to, or in, any lands, tenements, or hereditaments, of the seisin, or possession of the person, the person's ancestor, or predecessor, and declare, or allege, in any manner whatever, any further seisin of the person, the person's ancestor, or predecessor, but only an actual seisin of the person, the person's ancestor, or predecessor, of the premises sued for, or claimed, within 20 years next before such writ, or action.

(Code 1852, § 2734; Code 1915, § 4663; Code 1935, § 5121; 10 Del. C. 1953, § 7902; 70 Del. Laws, c. 186, § 1.)

§ 7903 Extension of rights of infants and other persons under disability.

If at any time when a right of entry upon, or action for any lands or tenements first accrues, the person entitled to such entry, or action, is an infant, or mentally ill, or imprisoned, such person, or anyone claiming from, by, or under such person, may make the entry, or bring the action, at any time within 10 years after such disability is removed, notwithstanding the 20 years specified in §§ 7901 and 7902 of this title as limited in that behalf has expired.

(Code 1852, § 2735; Code 1915, § 4664; Code 1935, § 5122; 10 Del. C. 1953, § 7903; 49 Del. Laws, c. 57, § 1; 70 Del. Laws, c. 186, § 1.)

§ 7904 Successors in title to persons under disability.

If the person entitled to an entry or action dies under any of the disabilities specified in this chapter, any other person claiming from, by, or under such person, shall have the same benefit which the person first entitled would have had, by living until the removal of the disability.

(Code 1852, § 2736; Code 1915, § 4665; Code 1935, § 5123; 10 Del. C. 1953, § 7904; 70 Del. Laws, c. 186, § 1.)

Part V
Limitation of Actions
Chapter 81
PERSONAL ACTIONS

§ 8101 Sheriff's recognizance or administration bond.

No action shall be brought upon the official recognizance of any sheriff, or upon any administration bond, or upon any testamentary bond, against either the principal or sureties, after the expiration of 6 years from the date of such recognizance or bond. The bond of any executor or administrator cum testamento annexo, who, during his or her life, is entitled under the will of any deceased testator to the personal estate of such deceased testator, shall continue in force for the period of 3 years after the death of such executor or administrator.

(Code 1852, § 2737; 20 Del. Laws, c. 583, § 4; Code 1915, § 4666; Code 1935, § 5124; 10 Del. C. 1953, § 8101; 70 Del. Laws, c. 186, § 1.)

§ 8102 Guardian bond.

No action shall be brought upon any guardian bond, against either the principal or sureties, after the expiration of 3 years from the determination or ceasing of the guardianship.

(Code 1852, § 2738; Code 1915, § 4667; Code 1935, § 5125; 10 Del. C. 1953, § 8102.)

§ 8103 Recognizance in Chancery Court.

No action shall be brought upon any recognizance taken in the Chancery Court, with condition for the payment of the appraised value or purchase money of lands or tenements, against any surety in such recognizance, or the heirs, terre-tenants, executors, or administrators, of such surety, after the expiration of 3 years from the time when the value, or money, mentioned in the condition, or the last installment thereof (when it is payable by installments), is due.

(Code 1852, § 2739; Code 1915, § 4668; Code 1935, § 5126; 10 Del. C. 1953, § 8103.)

§ 8104 Official bond.

No action shall be brought upon the official obligation of any State Treasurer, Secretary of State, county treasurer, register of wills, recorder of deeds, Prothonotary, Clerk of the Peace, Register in Chancery, collector, or constable, against either the principal or sureties, after the expiration of 3 years from the accruing of the cause of such action.

(Code 1852, § 2740; 19 Del. Laws, c. 265; Code 1915, § 4669; Code 1935, § 5127; 10 Del. C. 1953, § 8104.)

§ 8105 Escheator's bond.

No action shall be brought upon the official obligation of an escheator, against either the principal or sureties, after 7 years from the expiration of the escheator's term of office.

(Code 1852, § 2741; Code 1915, § 4670; Code 1935, § 5128; 10 Del. C. 1953, § 8105; 70 Del. Laws, c. 186, § 1.)

§ 8106 Actions subject to 3-year limitation.

(a) No action to recover damages for trespass, no action to regain possession of personal chattels, no action to recover damages for the detention of personal chattels, no action to recover a debt not evidenced by a record or by an instrument under seal, no action based on a detailed statement of the mutual demands in the nature of debit and credit between parties arising out of contractual or fiduciary relations, no action based on a promise, no action based on a statute, and no action to recover damages caused by an injury unaccompanied with force or resulting indirectly from the act of the defendant shall be brought after the expiration of 3 years from the accruing of the cause of such action; subject, however, to the provisions of §§ 8108-8110, 8119 and 8127 of this title.

(b) *Contractual limitations.* — Notwithstanding any other provision of this section, a property insurance contract subject to subchapter III of Chapter 41 of Title 18:

(1) May not require that an action for a claim made under the contract be filed less than 1 year from the date of the denial of the claim by the insurer; and

(2) May permit an action for a claim made under the contract to be filed more than 1 year from the date of the denial of the claim by the insurer.

(c) Notwithstanding anything to the contrary in this chapter (other than subsection (b) of this section) or in § 2-725 of Title 6, an action based on a written contract, agreement or undertaking involving at least $100,000 may be brought within a period specified in such written contract, agreement or undertaking provided it is brought prior to the expiration of 20 years from the accruing of the cause of such action.

(Code 1852, § 2742; Code 1915, § 4671; Code 1935, § 5129; 46 Del. Laws, c. 115, § 1; 10 Del. C. 1953, § 8106; 57 Del. Laws, c. 568, § 2; 76 Del. Laws, c. 223, § 2; 79 Del. Laws, c. 353, § 1.)

§ 8107 Actions subject to 2-year limitation.

No action to recover damages for wrongful death or for injury to personal property shall be brought after the expiration of 2 years from the accruing of the cause of such action.

(10 Del. C. 1953, § 8106A; 52 Del. Laws, c. 339, § 1.)

§ 8108 Mutual running accounts.

In the case of a mutual and running account between parties, the limitation, specified in § 8106 of this title, shall not begin to run while such account continues open and current.

(Code 1852, § 2743; Code 1915, § 4672; Code 1935, § 5130; 10 Del. C. 1953, § 8107.)

§ 8109 Bills and notes.

When a cause of action arises from a promissory note, bill of exchange, or an acknowledgment under the hand of the party of a subsisting demand, the action may be commenced at any time within 6 years from the accruing of such cause of action.

(Code 1852, § 2744; Code 1915, § 4673; Code 1935, § 5131; 10 Del. C. 1953, § 8108.)

§ 8110 Mesne profits after ejectment.

When, after a recovery in ejectment, an action is brought for mesne profits, if such action is commenced within 6 months after the ejectment, or, if there is an appeal or a writ of error, within 6 months after the affirmance of the judgment, or other determination of the proceeding in error, the action shall, so far as to avoid the intermediate operation of § 8106 of this title, be deemed a continuation of the proceeding in ejectment. The plaintiff shall not be debarred from recovering mesne profits for 3 years next preceding the commencement of the ejectment.

(Code 1852, § 2745; Code 1915, § 4674; Code 1935, § 5132; 10 Del. C. 1953, § 8109.)

§ 8111 Work, labor or personal services.

No action for recovery upon a claim for wages, salary, or overtime for work, labor or personal services performed, or for damages (actual, compensatory or punitive, liquidated or otherwise), or for interest or penalties resulting from the failure to pay any such claim, or for any other benefits arising from such work, labor or personal services performed or in connection with any such action, shall be brought after the expiration of 1 year from the accruing of the cause of action on which such action is based.

(20 Del. Laws, c. 594; Code 1915, § 4675; Code 1935, § 5133; 46 Del. Laws, c. 114; 10 Del. C. 1953, § 8110.)

§ 8112 Waste.

No action to recover damages for waste shall be brought after the expiration of 3 years from the committing of the waste.

(Code 1852, § 2746; Code 1915, § 4676; Code 1935, § 5134; 46 Del. Laws, c. 115, § 2; 10 Del. C. 1953, § 8111.)

§ 8113 Actions against decedent's estate.

In all actions or claims against an executor or administrator of a decedent's estate, if the time within which the action could have been brought had not expired in the lifetime of the decedent, then the period of limitations provided for in this chapter shall be extended for a period of 6 months from the date of the decedent's death. If the claim was filed within the proper time with the executor or administrator the defense of the statute of limitations shall not avail to such executor or administrator if he or she subsequently rejects the claim and action is commenced thereon within 3 months after the executor or administrator has notified the claimant of such rejection as provided by § 2102 of Title 12.

(Code 1935, § 5143-A; 45 Del. Laws, c. 256; 10 Del. C. 1953, § 8112; 66 Del. Laws, c. 374, § 3; 70 Del. Laws, c. 186, § 1.)

§ 8114 Corporate officers' bonds.

No action shall be brought upon any bond given to the president, directors and company of any bank, or to any corporation, by any officer of such bank or corporation, with condition for the officer's good behavior, or for the faithful discharge of the duties of the officer's station, or touching the execution of the officer's office, against either the principal or sureties, after the expiration of 2 years from the accruing of the cause of such action. No action shall be brought, and no proceedings shall be had upon any such bond, or upon any judgment thereon, against either the principal or sureties, for any cause of action accruing after the expiration of 6 years from the date of such bond.

(Code 1852, §§ 2747, 2748; Code 1915, § 4677; Code 1935, § 5135; 10 Del. C. 1953, § 8113; 70 Del. Laws, c. 186, § 1.)

§ 8115 Forfeiture under penal statute.

No civil action for a forfeiture upon a penal statute, whether at the suit of the party aggrieved, or of a common informer, or of the State, or otherwise, shall be brought after the expiration of 1 year from the accruing of the cause of such action.

(Code 1852, § 2749; Code 1915, § 4678; Code 1935, § 5136; 10 Del. C. 1953, § 8114.)

§ 8116 Savings for infants or persons under disability.

If a person entitled to any action comprehended within §§ 8101-8115 of this title, shall have been, at the time of the accruing of the cause of such action, under disability of infancy or incompetency of mind, this chapter shall not be a bar to such action during the continuance of such disability, nor until the expiration of 3 years from the removal thereof.

(Code 1852, § 2750; Code 1915, § 4679; Code 1935, § 5137; 10 Del. C. 1953, § 8115.)

§ 8117 Defendant's absence from State.

If at the time when a cause of action accrues against any person, such person is out of the State, the action may be commenced, within the time limited therefor in this chapter, after such person comes into the State in such manner that by reasonable diligence, such person may be served with process. If, after a cause of action shall have accrued against any person, such person departs from and resides or remains out of the State, the time of such person's absence until such person shall have returned into the State in the manner provided in this section, shall not be taken as any part of the time limited for the commencement of the action.

(Code 1852, § 2751; 20 Del. Laws, c. 594; 25 Del. Laws, c. 234; Code 1915, § 4680; Code 1935, § 5138; 10 Del. C. 1953, § 8116; 70 Del. Laws, c. 186, § 1.)

§ 8118 Other savings.

(a) If in any action duly commenced within the time limited therefor in this chapter, the writ fails of a sufficient service or return by any unavoidable accident, or by any default or neglect of the officer to whom it is committed; or if the writ is abated, or the action otherwise avoided or defeated by the death of any party thereto, or for any matter of form; or if after a verdict for the plaintiff, the judgment shall not be given for the plaintiff because of some error appearing on the face of the record which vitiates the proceedings; or if a judgment for the plaintiff is reversed on appeal or a writ of error; a new action may be commenced, for the same cause of action, at any time within 1 year after the abatement or other determination of the original action, or after the reversal of the judgment therein.

(b) If in the original action, the benefit of this chapter is pleaded, and a verdict upon such defense is found for the plaintiff, such verdict shall be conclusive evidence that the original action was commenced within the time limited therefor.

(Code 1852, §§ 2752, 2753; Code 1915, § 4681; Code 1935, § 5139; 10 Del. C. 1953, § 8117.)

§ 8119 Personal injuries.

No action for the recovery of damages upon a claim for alleged personal injuries shall be brought after the expiration of 2 years from the date upon which it is claimed that such alleged injuries were sustained; subject, however, to the provisions of § 8127 of this title.

(20 Del. Laws, c. 594, § 1; Code 1915, § 4675; Code 1935, § 5133; 10 Del. C. 1953, § 8118; 52 Del. Laws, c. 339, § 2; 57 Del. Laws, c. 568, § 3.)

§ 8120 Setoff.

This chapter shall apply to any debt alleged by way of setoff or counterclaim on the part of a defendant. The time of limitation of such debt shall be computed in like manner as if an action therefor had been commenced at the time when the plaintiff's action commenced.

(Code 1852, § 2754; Code 1915, § 4682; Code 1935, § 5140; 10 Del. C. 1953, § 8119.)

§ 8121 Cause of action arising outside State.

Where a cause of action arises outside of this State, an action cannot be brought in a court of this State to enforce such cause of action after the expiration of whichever is shorter, the time limited by the law of this State, or the time limited by the law of the state or country where the cause of action arose, for bringing an action upon such cause of action. Where the cause of action originally accrued in favor of a person who at the time of such accrual was a resident of this State, the time limited by the law of this State shall apply.

(46 Del. Laws, c. 254, § 1; 10 Del. C. 1953, § 8120.)

§ 8122 Marking and bounding lands.

The return of commissions to mark and bound lands, if no action is brought to controvert the same within 7 years, shall be conclusive evidence of the original location of such land, and of the lines and boundaries thereof, saving to infants, persons insane, imprisoned or beyond sea, and those claiming under them, the right to bring such action within 5 years from the removal of such disability. The term of 7 years shall not begin to run against any person while such person is in possession of the land in controversy.

(Code 1852, § 996; Code 1915, § 4683; Code 1935, § 5141; 10 Del. C. 1953, § 8121; 70 Del. Laws, c. 186, § 1.)

§ 8123 Forcible entry and detainer.

No writs shall be issued, by a justice of the peace or the Court of Common Pleas, upon a complaint of forcible entry, after 1 year from the time of such entry; or upon a complaint of forcible detainer merely, after the tenant has been in continued possession of the premises for 2 years. These limitations need not be pleaded, but they shall defeat any such suit whenever it appears that they apply to it.

(Code 1852, § 2208; Code 1915, § 4685; Code 1935, § 5143; 10 Del. C. 1953, § 8122.)

§ 8124 Notice of claim against City of Wilmington.

No action, suit or proceeding shall be brought or maintained against the Mayor and Council of Wilmington for damages on account of physical injuries, death or injury to property by reason of the negligence of the Mayor and Council of Wilmington or any of its departments, officers, agents or employees thereof, unless the person by or on behalf of whom such claim or demand is asserted shall, within 1 year from the happening of such injury, notify the Mayor in writing of the time, place, cause and character of the injuries sustained.

(34 Del. Laws, c. 119; Code 1935, § 2470; 10 Del. C. 1953, § 8123; 53 Del. Laws, c. 164.)

§ 8125 Valuation and assessment of property.

Actions for anything done in pursuance of Chapter 83 of Title 9, relating to valuation and assessment of property, shall be brought within 6 months. If judgment is given for defendant, defendant shall recover treble costs.

(Code 1852, § 175; Code 1915, § 1136; Code 1935, §§ 1282, 1313, 1335; 10 Del. C. 1953, § 8124; 70 Del. Laws, c. 186, § 1.)

§ 8126 County and municipality zoning and planning actions.

(a) No action, suit or proceeding in any court, whether in law or equity or otherwise, in which the legality of any ordinance, code, regulation or map, relating to zoning, or any amendment thereto, or any regulation or ordinance relating to subdivision and land development, or any amendment thereto, enacted by the governing body of a county or municipality, is challenged, whether by direct or collateral attack or otherwise, shall be brought after the expiration of 60 days from the date of publication in a newspaper of general circulation in the county or municipality in which such adoption occurred, of notice of the adoption of such ordinance, code, regulation, map or amendment.

(b) No action, suit or proceeding in any court, whether in law or equity or otherwise, in which the legality of any action of the appropriate county or municipal body finally granting or denying approval of a final or record plan submitted under the subdivision and land development regulations of such county or municipality is challenged, whether directly or by collateral attack or otherwise, shall be brought after the expiration of 60 days from the date of publication in a newspaper of general circulation in the county or municipality in which such action occurred, of notice of such final approval or denial of such final or record plan.

(10 Del. C. 1953, § 8125; 56 Del. Laws, c. 467.)

§ 8127 Alleged deficiencies in the construction of improvements to real property.

(a) As used in this section:

(1) "Action" shall include actions at law or in equity, or otherwise, instituted and/or prosecuted by or on behalf of this State, any of its agencies, commissions, departments or political subdivisions, and by or on behalf of any other governmental subdivision, agency, department or body, as well as by or on behalf of private individuals, persons, parties, corporations, partnerships, associations and other entities.

(2) "Construction" shall include construction, erection, building, alteration, reconstruction and destruction of improvements to real property.

(3) "Contract" shall mean the prime or general contract between the general contractor, on the one hand, and the owner or agent of the owner of the real property upon which or to which the construction is to be performed or the owner or agent of the owner of the improvement to be constructed, on the other hand.

(4) "Deficiency" shall include acts and actions performed and failures to act and omissions.

(5) "Improvement" shall include buildings, highways, roads, streets, bridges, entrances and walkways of any type constructed thereon, and other structures affixed to and on land, as well as the land itself, except that such term shall not include buildings, entrances, walkways and structures used or intended to be used at the time of such construction primarily for residential purposes and uses.

(6) "Person" shall include individuals, corporations, partnerships, firms, individual proprietorships and associations of persons.

(b) No action, whether in or based upon a contract (oral or written, sealed or unsealed), in tort, or otherwise, to recover damages or for indemnification or contribution for damages, resulting:

(1) From any alleged deficiency in the construction or manner of construction of an improvement to real property and/or in the designing, planning, supervision and/or observation of any such construction or manner of construction; or

(2) From any alleged injury to property, real, personal or mixed, arising out of any such alleged deficiency; or

(3) From any alleged personal injuries arising out of any such alleged deficiency; or

(4) From any alleged wrongful death arising out of any such alleged deficiency; or

(5) From any alleged trespass arising out of any such alleged deficiency; or

(6) From any alleged injury unaccompanied with force or resulting indirectly from any such alleged deficiency;

shall be brought against any person performing or furnishing, or causing the performance or furnishing of, any such construction of such an improvement or against any person performing or furnishing, or causing the performing or furnishing of, any such designing, planning, supervision, and/or observation of any such construction or manner of construction of such an improvement, after the expiration of 6 years from whichever of the following dates shall be earliest:

a. The date of purported completion of all the work called for by the contract as provided by the contract if such date has been agreed to in the contract itself;

b. The date when the statute of limitations commences to run in relation to the particular phase or segment of work performed pursuant to the contract in which the alleged deficiency occurred, where such date for such phase or segment of work has been specifically provided for in the contract itself;

c. The date when the statute of limitations commences to run in relation to the contract itself where such date has been specifically provided for in the contract itself;

d. The date when payment in full has been received by the person against whom the action is brought for the particular phase of such construction or for the particular phase of such designing, planning, supervision, and/or observation of such construction or manner of such construction, as the case may be, in which such alleged deficiency occurred;

e. The date the person against whom the action is brought has received final payment in full, under the contract for the construction or for the designing, planning, supervision, and/or observation of construction, as the case may be, called for by contract;

f. The date when the construction of such an improvement as called for by the contract has been substantially completed;

g. The date when an improvement has been accepted, as provided in the contract, by the owner or occupant thereof following the commencement of such construction;

h. For alleged personal injuries also, the date upon which it is claimed that such alleged injuries were sustained; or after the period of limitations provided in the contract, if the contract provides such a period and if such period expires prior to the expiration of 2 years from whichever of the foregoing dates is earliest.

(c) Nothing in this section shall extend or lengthen, nor shall anything in this section be construed or interpreted as extending or lengthening, the period otherwise prescribed by the laws of this State for the bringing of any action covered by this section.

(d) The limitations prescribed by this section shall not be available by way of a defense to any person in actual possession or actual control, as owner, tenant or otherwise, of such an improvement at the time when the alleged deficiency in such an improvement constitutes the proximate cause of the injury or death for which it is proposed to bring an action.

(10 Del. C. 1953, § 8126; 57 Del. Laws, c. 568, § 1.)

§ 8128 Health care malpractice action limitations.

No action for the recovery of damages upon a claim based upon alleged health care malpractice, whether in the nature of a tort action or breach of contract action, shall be brought after the expiration of the time period for bringing such action set forth in § 6856 of Title 18.

(60 Del. Laws, c. 373, § 3.)

§ 8129 Inheritance and estate taxes.

No action shall be brought by the State for the collection of inheritance taxes and estate taxes upon the estate of any decedent after the expiration of 20 years from the decedent's date of death.

(61 Del. Laws, c. 439, § 1.)

§ 8130 Exemption from liability for donation of prepared food.

(a) Any person, business or institution who makes a good faith donation of prepared or left-over perishable food which appears to be fit for human consumption at the time it is donated to a charitable organization serving free meals to the needy public shall not be liable for damages in any civil action or subject to criminal prosecution for any illness, injury or death due to the condition of such food.

(b) A charitable organization which receives, prepares and serves to the needy public free food which appears to be fit for human consumption at the time it is served shall not be liable for damages in any civil action or subject to criminal prosecution for any illness, injury or death due to the condition of such food unless the condition is a direct result of the gross negligence, recklessness or intentional misconduct of employees of the organization.

(63 Del. Laws, c. 216, § 1.)

§ 8131 Limitation for Indochina herbicide exposure.

(a) Notwithstanding any other provision to the contrary, the time limitation for an action to recover damages for wrongful death or for personal injuries suffered by a member or former member of the armed forces of the United States, who served as a member of the armed forces of the United States in Indochina between January 1, 1962, and May 7, 1975, inclusive, due to exposure to phenoxy herbicides, including but not limited to exposure to substances known as Agent Orange, Agent Blue, Agent White and chemical components known as 2, 4-D; 2, 4, 5-T; TCDD; Picloran and cacodylic acid, shall not expire until 2 years has elapsed from the date that said person has been told by a licensed physician (whether in Delaware or otherwise) that the injuries or death may be related, in whole or in part, to exposure to phenoxy herbicides.

(b) If the foregoing 2-year period has expired as of May 10, 1983, then said person shall have from 6 months from May 10, 1983, to file an action to recover damages for phenoxy herbicide exposure in Indochina.

(64 Del. Laws, c. 25, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8132 Comparative negligence.

In all actions brought to recover damages for negligence which results in death or injury to person or property, the fact that the plaintiff may have been contributorily negligent shall not bar a recovery by the plaintiff or the plaintiff's legal representative where such negligence was not greater than the negligence of the defendant or the combined negligence of all defendants against whom recovery is sought, but any damages awarded shall be diminished in proportion to the amount of negligence attributed to the plaintiff.

(64 Del. Laws, c. 384, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8133 Limitation from civil liability for certain nonprofit organization volunteers.

(a) For purposes of this section, the following terms shall have the meanings ascribed herein:

(1) "Activity" is any decision, act or event undertaken by an organization in furtherance of the purpose or purposes for which such organization was organized and exempted from federal income tax, and in the case of a governmental entity described in paragraph (a)(4)b. of this section, in furtherance of the exercise of any governmental function. By way of example, and not limitation, the planning for, sponsorship and conduct of a fundraising event for the benefit of 1 or more organizations is an "activity."

(2) "Compensation" is any remuneration, whether by way of salary, fee or otherwise, for services rendered, exclusive of any gift perquisite in the form of access to services of the organization at no or a reduced cost or reimbursement for costs actually incurred. Compensation shall not include any remuneration which an ex officio trustee receives by way of salary for a position which requires among other duties serving as an ex officio trustee.

(3) "Employee" is any person who receives compensation from an organization or a third party for services rendered in connection with an activity of such organization.

(4) "Organization" shall include:

a. Any not-for-profit organization exempt from federal income tax under § 501(c) of the Internal Revenue Code (26 U.S.C. § 501(c)), as amended, or other act of Congress, and engaged in any activity within the State in furtherance of a purpose for which it was organized; and

b. Any governmental entity, including the United States, the State and any board, commission, division, office, task force or other agency of the State or the United States, exempt from federal income tax under § 115 of the Internal Revenue Code (26 U.S.C. § 115), as amended, or other acts of Congress, and engaged in any activity within the State in furtherance of the exercise of any governmental function.

(5) "Volunteer" is any trustee, ex officio trustee, director, officer, agent or worker who is engaged in an activity without compensation.

(b) No volunteer of an organization shall be subject to suit directly, derivatively or by way of contribution for any civil damages under the laws of Delaware resulting from any negligent act or omission performed during or in connection with an activity of such organization.

(c) Notwithstanding subsection (b) of this section, a plaintiff may sue and recover civil damages from a volunteer based upon a negligent act or omission involving the operation of a motor vehicle during an activity; provided, that the amount recovered from such volunteer shall not exceed the limits of applicable insurance coverage maintained by or on behalf of such volunteer with respect to the negligent operation of a motor vehicle in such circumstances.

(d) The immunity granted in subsection (b) of this section shall not extend to any act or omission constituting wilful and wanton or grossly negligent conduct.

(e) In any suit against an organization for civil damages based upon the negligent act or omission of a volunteer, proof of such act or omission shall be sufficient to establish the liability of the organization therefor under the doctrine of respondeat superior, notwithstanding the immunity granted to the volunteer with respect to such negligent act or omission under subsection (b) of this section.

(65 Del. Laws, c. 510, § 1; 66 Del. Laws, c. 170, §§ 1, 2; 68 Del. Laws, c. 196, §§ 1, 2.)

§ 8134 Limitation on liability of third parties rendering assistance in oil or hazardous material discharge cleanup.

(a) The provisions of any law, rule or regulation to the contrary notwithstanding, the liability of any person rendering care, assistance or advice to prevent, minimize or mitigate oil or hazardous material discharge for any removal costs and damage caused by, or related to, such care, assistance or advice shall be limited to acts or omissions of such person which can be shown to have been the result of gross negligence, or reckless, wilful, wanton and/or intentional acts of misconduct on the part of such person.

(b) The limit of liability as set forth in subsection (a) of this section shall not apply to the actions of any person responsible for the initial discharge.

(c) Any person responsible for the initial discharge is liable for any removal costs and damages that another person is relieved of under subsection (a) of this section.

(d) This section shall not be construed to limit any liability of any person for personal injuries or wrongful death as a result of the acts or omissions of such person.

(68 Del. Laws, c. 5, § 1.)

§ 8135 Limitation from civil liability for certain volunteers.

(a) For purposes of this section, the following terms shall have the meanings ascribed herein:

(1) "Activity" is any decision, act or event relating to medical or dental treatment of a person undertaken by the medical or dental clinic in furtherance of the person's medical or dental treatment.

(2) "Compensation" is any remuneration, whether by way of salary, fee or otherwise, for services rendered, exclusive of any gift perquisite in form of access to services of the medical or dental clinic at no or a reduced cost or reimbursement for costs actually incurred or the providing of lunch or other meals.

(3) "Employee" is any person who receives compensation from the medical or dental clinic for services rendered in connection with an activity of the medical or dental clinic.

(4) "Medical or dental clinic" is any facility other than a hospital or doctor's or dentist's office which offers medical or dental services, which is run by a nonprofit entity under § 501(c)(3) of the Internal Revenue Code [26 U.S.C. § 501(c)(3)], and which is staffed entirely or in part by licensed physicians or nurses or licensed dentists or dental hygienists who serve without compensation.

(5) "Volunteer" is any licensed physician or nurse or licensed dentist or dental hygienist engaged in an activity for a medical or dental clinic without compensation.

(b) No volunteer or the medical or dental clinic with which the volunteer is affiliated shall be subject to suit directly, derivatively or by way of contribution or indemnification for any civil damages under the laws of Delaware resulting from any negligent act or omission performed during or in connection with an activity of the volunteer while serving the medical or dental clinic, unless said volunteer has insurance coverage for such acts or omissions in which case the amount recovered shall not exceed the limits of such applicable insurance coverage.

(c) Notwithstanding those provisions of subsection (b) of this section, a plaintiff may sue and recover civil damages from a volunteer based upon a negligent act or omission involving the operation of a motor vehicle during an activity; provided, that the amount recovered from such volunteer shall not exceed the limits of applicable insurance coverage maintained by or on behalf of such volunteer with respect to the negligent operation of a motor vehicle in such circumstances.

(d) The immunity granted in subsection (b) of this section shall not extend to any act or omission constituting wilful and wanton or grossly negligent conduct.

(67 Del. Laws, c. 211, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 395, §§ 1-4.)

§ 8136 Actions involving public petition and participation.

(a) For purposes of this section, the following terms shall have the meaning ascribed herein:

(1) An "action involving public petition and participation" is an action, claim, cross-claim or counterclaim for damages that is brought by a public applicant or permittee, and is materially related to any efforts of the defendant to report on, rule on, challenge or oppose such application or permission.

(2) "Communication" shall mean any statement, claim or allegation in a proceeding, decision, protest, writing, argument, contention or other expression.

(3) "Government body" shall mean the State and any county, city, town, village or any other political subdivision of the State; any public improvement or special district, public authority, commission, agency or public benefit corporation; any other separate corporate instrumentality or unit of State or local government; or the federal government.

(4) "Public applicant or permittee" shall mean any person who has applied for or obtained a permit, zoning change, lease, license, certificate or other entitlement for use or permission to act from any government body, or any person with an interest, connection or affiliation with such person that is materially related to such application or permission.

(b) In an action involving public petition and participation, damages may only be recovered if the plaintiff, in addition to all other necessary elements, shall have established by clear and convincing evidence that any communication which gives rise to the action was made with knowledge of its falsity or with reckless disregard of whether it was false, where the truth or falsity of such communication is material to the cause of action at issue.

(c) Nothing in this section shall be construed to limit any constitutional, statutory or common-law protection of defendants to actions involving public petition and participation.

(68 Del. Laws, c. 391, § 1.)

§ 8137 Standards for motion to dismiss and summary judgment in certain cases involving public petition and participation.

(a) A motion to dismiss in which the moving party has demonstrated that the action, claim, cross-claim or counterclaim subject to the motion is an action involving public petition and participation as defined in § 8136 of this title shall be granted unless the party responding to the motion demonstrates that the cause of action has a substantial basis in law or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant preference in the hearing of such motion.

(b) A motion for summary judgment in which the moving party has demonstrated that the action, claim, cross-claim or counterclaim subject to the action is an action involving public petition and participation as defined in § 8136 of this title shall be granted unless the party responding to the motion demonstrates that the cause of action has a substantial basis in fact and law or is supported by a substantial argument for an extension, modification or reversal of existing law. The court shall grant preference in the hearing of such motion.

(68 Del. Laws, c. 391, § 1.)

§ 8138 Recovery of damages in actions involving public petition and participation.

(a) A defendant in an action involving public petition and participation, as defined in § 8136 of this title, may maintain an action, claim, cross-claim or counter-claim to recover damages, including costs and attorney's fees, from any person who commenced or continued such action; provided that:

(1) Costs, attorney's fees and other compensatory damages may be recovered upon a demonstration that the action involving public petition and participation was commenced or continued without a substantial basis in fact and law and could not be supported by a substantial argument for the extension, modification or reversal of existing law; and

(2) Punitive damages may only be recovered upon an additional demonstration that the action involving public petition and participation was commenced or continued for the purpose of harassing, intimidating, punishing or otherwise maliciously inhibiting the free exercise of speech, petition or association rights.

(b) The right to bring an action under this section can be waived only if it is waived specifically.

(c) Nothing in this section shall affect or preclude the right of any party to any recovery otherwise authorized by law.

(68 Del. Laws, c. 391, § 1.)

§ 8139 Limitation on civil actions by criminal defendants.

(a) No civil action for the recovery of damages for a cause of action, as specified in subsection (b) of this section, shall be brought by or on behalf of any person who has:

(1) Been convicted for any felony class A, B, C, D or E except §§ 503, 876, 932 through 936, 1109, 1223, 1352, 1361, 1442, 1448, 1455, 1457 and 1503 of Title 11;

(2) Been convicted of § 629, § 630, § 768, § 769, § 782, § 801, § 824, § 1252, § 1302, or § 1312A of Title 11; or

(3) Not been convicted for any predicate felony listed in paragraph (a)(1) or (2) of this section, but has displayed conduct that but for the person's death or incapacity he or she would have been convicted of such a felony.

(b) "Cause of action," as used in subsection (a) of this section, shall mean any claim for alleged personal injuries where the alleged injury has been sustained by that person while committing, during the course of or in the immediate flight from the crime or alleged crime referenced in subsection (a) of this section, or while that person was attempting to escape or prevent a police officer from effecting an arrest for that crime or alleged crime.

(c) Nothing contained in this section shall be construed as barring a cause of action against a public entity or a public official for violating the civil rights of such person where those rights are specifically granted or protected by the Constitution or statutes of the United States or the Constitution or statutes of the State of Delaware.

(71 Del. Laws, c. 113, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8140 Liability of persons involved in equine activities.

(a) For purposes of this section, the following terms shall have the meaning ascribed herein:

(1)a. "Engages in an equine activity" means riding, training, assisting in medical treatment of, driving, or being a passenger upon an equine, whether mounted or unmounted or any person assisting a participant or show management.

b. "Engages in an equine activity" does not include being a spectator at an equine activity, except in cases where the spectator places such spectator's person in an unauthorized area and in immediate proximity to the equine activity;

(2) "Equine" means a horse, pony, mule, donkey or hinny;

(3) "Equine activity" means:

a. Equine shows, fairs, competitions, performances or parades that involve any or all breeds of equines and any of the equine disciplines, including, but not limited to, dressage, hunter and jumper horse shows, grand prix jumping, 3-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, English and western performance riding, endurance trail riding and western games, and hunting;

b. Equine training or teaching activities, or both;

c. Boarding equines;

d. Riding, inspecting or evaluating an equine belonging to another, whether or not the owner has received some monetary consideration or other thing of value for the use of the equine or is permitting a prospective purchaser of the equine to ride, inspect or evaluate the equine;

e. Rides, trips, hunts or other equine activities of any type, however informal or impromptu, that are sponsored by an equine activity sponsor; and

f. Placing or replacing horseshoes on an equine;

(4) "Equine activity sponsor" means an individual, group, club, partnership or corporation, whether or not the sponsor is operating for profit or nonprofit, which sponsors, organizes or provides the facilities for an equine activity, including, but not limited to, pony clubs, 4-H clubs, hunt clubs, riding clubs, school and college-sponsored classes, programs and activities, therapeutic riding programs, and operators, instructors and promoters of equine facilities, including, but not limited to, stables, clubhouses, ponyride strings, fairs and arenas at which the activity is held;

(5) "Equine professional" means a person engaged for compensation:

a. In instructing a participant or renting to a participant an equine for the purpose of riding, driving or being a passenger upon the equine; or

b. In renting equipment or tack to a participant;

(6) "Inherent risks of equine activities" means those dangers or conditions which are an integral part of equine activities, including, but not limited to:

a. The propensity of an equine to behave in ways that may result in injury, harm or death to persons on or around them;

b. The unpredictability of an equine's reaction to such things as sounds, sudden movements, and unfamiliar objects, persons or other animals;

c. Certain hazards such as surface and subsurface conditions;

d. Collisions with other equines or objects; and

e. The potential of a participant to act in a negligent manner that may contribute to injury to the participant or others, such as failing to maintain control over the animal or not acting within the participant's ability;

(7) "Participant" means any person, whether amateur or professional, who engages in an equine activity, whether or not a fee is paid to participate in the equine activity.

(b) Except as provided in subsection (c) of this section, an equine activity sponsor, an equine professional or any other person, which shall include a corporation or partnership, shall not be liable for an injury to or the death of a participant resulting from the inherent risks of equine activities. Except as provided in subsection (c) of this section, no participant or participant's representative shall make any claim against, maintain an action against or recover from an equine activity sponsor, an equine professional or any other person for injury, loss, damage or death of the participant resulting from any of the inherent risks of equine activities.

(c)(1) This section shall not apply to the horse racing industry as regulated in Title 3.

(2) Nothing in subsection (b) of this section shall prevent or limit the liability of an equine activity sponsor, an equine professional, or any other person if the equine activity sponsor, equine professional or person:

a.1. Provided the equipment or tack, and knew or should have known that the equipment or tack was faulty, and such equipment or tack was faulty to the extent that it did cause the injury; or

2. Provided the equine and failed to make reasonable and prudent efforts to determine the ability of the participant to engage safely in the equine activity and determine the ability of the participant to safely manage the particular equine based on the participant's representations of the participant's ability;

b. Owns, leases, rents or otherwise is in lawful possession and control of the land or facilities upon which the participant sustained injuries because of a dangerous latent condition which was known or should have been known to the equine activity sponsor, equine professional or person and for which warning signs have not been conspicuously posted;

c. Commits an act or omission that constitutes wilful or wanton disregard for the safety of the participant, and that act or omission caused the injury; or

d. Intentionally injures the participant.

(3) Nothing in subsection (b) of this section shall prevent or limit the liability of an equine activity sponsor or an equine professional under either product liability or trespass claims.

(d)(1) Every equine professional shall post and maintain signs which contain the warning notice specified in paragraph (d)(2) of this section. Such signs shall be placed in clearly visible locations on or near stables, corrals or arenas where the equine professional conducts equine activities if such stables, corrals or arenas are owned, managed or controlled by the equine professional. The warning notice specified in paragraph (d)(2) of this section shall appear on the sign in red and white, with each letter to be a minimum of 1 inch in height. Every written contract entered into by an equine professional for the providing of professional services, instruction or the rental of equipment or tack or an equine to a participant, whether or not the contract involves equine activities on or off the location or site of the equine professional's business, shall contain in clearly readable print the warning notice specified in paragraph (d)(2) of this section.

(2) The signs and contracts described in paragraph (d)(1) of this section shall contain the following warning notice:

WARNING

Under Delaware law, an equine professional is not liable for an injury to or the death of a participant in equine activities resulting from the inherent risks of equine activities, pursuant to 10 Delaware Code § 8140.

(70 Del. Laws, c. 212, § 1.)

§ 8141 Limitation on agricultural operations nuisance suits.

(a) For the purposes of this section, agricultural operations and its appurtenances means an operation for the purpose of:

(1) Cultivation of land;

(2) Production of agricultural crops;

(3) Raising of poultry;

(4) Production of eggs;

(5) Production of milk and milk products, including but not limited to ice cream, cheese and butter;

(6) Production of fruit or other horticultural crops including but not limited to Christmas trees and forestry;

(7) Production of livestock, including pasturage;

(8) Production of bees and their products;

(9) Production and raising of horses of all types and descriptions or other equine activity for the purpose of profit;

(10) The operation of a roadside farmer's stand, or a farmer's cart in which not less than 50% of the products sold at the stand or cart are directly from the agricultural operation;

(11) Grain elevators, bins, feed mills, silos, and seed cleaners; and

(12) Transportation of an agricultural product to or from a market storage area, or to or from any agricultural-related infrastructure as identified in paragraph (a)(11) of this section.

(b) This section does not apply to:

(1) An agricultural operation that does not conform to federal, state or local health or zoning requirements;

(2) A federal, state or local agency when enforcing air, water quality or other environmental standards under federal, state or local law; or

(3) An agricultural operation that is conducted in a negligent or improper manner.

(c) No agricultural operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality thereof after the same has been in operation for more than 1 year if the operation or the change did not constitute a nuisance from the date the agricultural operation began or the date the change in the operation began.

(d) Subsection (c) of this section shall not affect or defeat the right of any person, firm or corporation to recover damages for any injury or damages sustained by them on account of any pollution of, or change in condition of, the waters of any stream or on account of any overflow onto lands of any such person, firm or corporation.

(e) Any and all ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such agricultural operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstances set forth in this section and shall be null and void; however, this section shall not apply whenever a nuisance results from the failure to conduct the operation in a manner consistent with good agricultural practice as defined in § 1401 of Title 3 or when there has been a significant change in the operation itself.

(71 Del. Laws, c. 462, § 1; 77 Del. Laws, c. 376, §§ 2, 3.)

§ 8142 Limitations on shooting range and hunting operations nuisance suits.

(a) For the purposes of this section, the terms "shooting range" and "hunting operations" and "its appurtenances" mean an operation including any of the following:

(1) Lands, including the buildings and improvements thereon, which are used or which are intended for use for the shooting of targets for training, education, practice, recreation or competition;

(2) Lands, including the buildings and improvements thereon, which are used or which are intended for use as a hunting club, hunting preserve, shooting preserve or a restricted experimental, propagating and shooting preserve as provided for in subchapter V of Chapter 5 of Title 7;

(3) Lands, including the buildings and improvements thereon, which are used or which are intended for use as a kennel, training facility or field trial facility for the breeding, showing, raising and/or training of hunting and sporting dogs; and

(4) Clubs, associations, partnerships, sole proprietorships, corporations and other business and social entities whose activities or holdings include the land and uses described in paragraphs (a)(1)-(3) of this section.

(b) This section does not apply to:

(1) Shooting ranges or hunting operations which do not conform to federal, state or local health or zoning requirements except as may otherwise be provided elsewhere herein; or

(2) Shooting ranges or hunting operations which are conducted in a negligent or unlawful manner.

(c) No shooting range or hunting operation or any of its appurtenances shall be or become a nuisance, private or public, by any changed conditions in or about the locality thereof after the same has been in operation for more than 1 year if the operation or the change did not constitute a nuisance from the date the shooting range or hunting operation began or the date the change in the operation began. Likewise, a shooting range or hunting operation which fully complied with local zoning requirements when operations first began shall not be deemed to be noncompliant based upon zoning requirements which have subsequently changed since the initial commencement of operations.

(d) Subject to the limitations of subsection (c) of this section, any and all state laws and ordinances of any unit of local government now in effect or hereafter adopted that would make the operation of any such shooting range or hunting operation or its appurtenances a nuisance or providing for abatement thereof as a nuisance in the circumstances set forth in this section shall be null and void as applied to shooting ranges and hunting operations and their respective appurtenances; however, this section shall not apply whenever nuisance results from the negligent or improper operation of any such shooting range or hunting operation or any of its appurtenances or when there has been a significant and fundamental change in the operation itself.

(74 Del. Laws, c. 379, § 1.)

§ 8143 Limitations on civil actions for recovery for shoplifting.

(a)(1) Before a civil action may be commenced, the merchants may send a notice to the defendant's last known address requesting that the defendant or the parent/guardian of a minor if the defendant is a minor make payment of the sums listed in paragraph (a)(2) of this section within 20 days of the date of the letter. It is not a condition precedent to maintaining an action under this section that the defendant has been convicted of shoplifting or theft or that a police report has been filed.

(2) No civil action under this section may be maintained if the defendant has paid the merchant a penalty equal to the retail value of the merchandise where the merchandise was not recovered in its original condition, plus a penalty in the amount of the retail value of the merchandise or $150, whichever is greater, within 20 days of the date of the initial demand letter. If the merchandise is recovered in merchantable condition, no civil action under this section may be maintained if the defendant has paid the merchant a penalty equal to the retail value of the merchandise attempted to be taken or $150, whichever is greater, within 20 days of the date of the initial demand letter. Should the defendant fail to respond in a timely manner as described above, the merchant may request reasonable attorneys' fees in addition to the amounts described above and shall be entitled to recover costs of suit and reasonable attorneys' fees upon filing of an action.

(b) If the person to whom a written demand is made complies with such demand within 20 days of the date of the demand, that person shall be given a written release from further civil liability with respect to the specific act of shoplifting or theft.

(c) Parents or legal guardians of an unemancipated minor who triggers the liability portion of this section shall be jointly and severally liable civilly to the merchant. For purposes of this subsection, liability shall not be imposed upon any governmental entity or foster parents assigned responsibility for the minor child pursuant to a court order or action of any governmental agency.

(75 Del. Laws, c. 159, § 1.)

§ 8144 [Reserved.]

§ 8145 Civil suits for damages based upon sexual abuse of a minor by an adult.

(a) A cause of action based upon the sexual abuse of a minor by an adult may be filed in the Superior Court of this State at any time following the commission of the act or acts that constituted the sexual abuse. A civil cause of action for sexual abuse of a minor shall be based upon sexual acts that would constitute a criminal offense under the Delaware Code.

(b) For a period of 2 years following July 9, 2007, victims of child sexual abuse that occurred in this State who have been barred from filing suit against their abusers by virtue of the expiration of the former civil statute of limitations, shall be permitted to file those claims in the Superior Court of this State. If the person committing the act of sexual abuse against a minor was employed by an institution, agency, firm, business, corporation, or other public or private legal entity that owned a duty of care to the victim, or the accused and the minor were engaged in some activity over which the legal entity had some degree of responsibility or control, damages against the legal entity shall be awarded under this subsection only if there is a finding of gross negligence on the part of the legal entity.

(c) A person against whom a suit is filed may recover attorneys' fees where the Court determines that a false accusation was made with no basis in fact and with malicious intent. A verdict in favor of the accused shall not be the sole basis for a determination that an accusation was false. The Court must make an independent finding of an improper motive to award attorneys' fees under this section.

(76 Del. Laws, c. 102, § 1; 76 Del. Laws, c. 80, §§ 72, 76; 77 Del. Laws, c. 88, § 1.)

Part VI
Fees and Costs
Chapter 85
GENERAL PROVISIONS

§ 8501 Definitions.

As used in this part, unless otherwise specifically provided:

"Line," when used as a measure of computation, means 10 words.

(Code 1852, § 2833; Code 1915, § 4886; Code 1935, § 5374; 10 Del. C. 1953, § 8501.)

§ 8502 Construction of fee provisions; time for payment of fees.

This part shall be construed strictly and no fee shall be allowed for any service, except where otherwise expressly provided, until it has been actually performed.

(Code 1852, § 2836; Code 1915, § 4889; Code 1935, § 5377; 10 Del. C. 1953, § 8502.)

§ 8503 Posting of fee lists.

Every officer referred to in this part, who keeps a public office, shall always post in some convenient and conspicuous place a printed or written list of the fees prescribed in this part, as they relate to such officer's office.

(Code 1852, § 2834; Code 1915, § 4887; Code 1935, § 5375; 10 Del. C. 1953, § 8503; 70 Del. Laws, c. 186, § 1.)

§ 8504 Fees allowed by court.

A court may, in its discretion, make a reasonable allowance for any service not expressly provided for in this part.

(Code 1852, § 2835; Code 1915, § 4888; Code 1935, § 5376; 10 Del. C. 1953, § 8504.)

§ 8505 Court security assessment.

(a) All state courts shall assess as part of court costs a supplemental court security assessment not to exceed $10 on each initial civil filing and on each criminal, traffic or delinquency charge for which there is a conviction or finding of delinquency or responsibility, or voluntary assessment paid.

(b) Court security assessment funding shall be deposited in a Court Security Fund and maintained separately from the General Fund of the State. This fund shall provide supplemental funding for personnel, equipment and/or training expenses related to judicial branch security.

(c) The Chief Justice shall submit a court security needs plan each fiscal year which shall be approved by the Office of Management and Budget and Controller General.

(d) The funds shall be distributed each fiscal year and shall be based upon the court security needs plan as approved by the Office of Management and Budget and the Controller General. If the plan includes additional funding for Capitol Police, the Capitol Police shall use that funding solely for the uses specified in the court security plan.

(e) There shall be no fee increases to the court security assessment pursuant to this section unless authorized by a further act of the General Assembly.

(f) The court security fund shall be supplemental to existing court security funding and nothing in this section shall diminish current ongoing budgetary and personnel allocations for judicial branch security services.

(76 Del. Laws, c. 85, § 1.)

Part VI
Fees and Costs
Chapter 86
RECOUPMENT OF DEFENSE COSTS

§ 8601 Recoupment of costs.

(a) A court may require a convicted defendant who has utilized court-appointed attorneys or the Public Defender's Office to pay the costs of defense in that court.

(b) Costs shall be limited to expenses specially incurred by the State in defending the convicted person. Such costs shall not include expenses inherent in providing a constitutionally guaranteed jury trial, or expenditures in connection with the maintenance and operation of government agencies if such expenditures must be made by the public irrespective of specific violations of law.

(c) The court shall not require a defendant to pay the costs of defense unless the defendant is, or will be, able to pay them. In determining the amount and method of payment of such costs, the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose.

(d) A defendant who has been required to pay the costs of defense and who is not in contumacious default in the payment thereof may at any time petition the court for remission of the payment of such costs, or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or immediate family, the court may remit all or part of the amount due in costs, or modify the method of payment.

(61 Del. Laws, c. 160, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8602 Conditions of payment.

(a) When the court determines that a defendant must pay the costs of defense, the court may grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is granted, the full amount shall be payable forthwith.

(b) When the court determines that a defendant must pay the costs of defense and the defendant is also placed on probation, or the imposition or execution of a sentence is suspended, the court may make payment of such costs a condition of probation or suspension of sentence.

(61 Del. Laws, c. 160, § 1; 70 Del. Laws, c. 186, § 1.)

§ 8603 Nonpayment of costs.

(a) When a defendant who is required to pay the costs of defense defaults in the payment thereof or of any installment, the court on motion of the Attorney General or upon its own motion may require the defendant to show cause why the default should not be treated as contempt of court, and may issue a rule or order to show cause why such default should not be treated as contempt of court, and may take such further actions as the court determines to produce the defendant before the court.

(b) If there has been no former citation for contempt, the term of imprisonment for contempt for the nonpayment of defense costs shall be set forth in the commitment order, and shall not exceed 1 day for each $25 of the full amount. In no event shall imprisonment exceed 30 days if the fine was imposed upon conviction of a violation or misdemeanor. In all other cases, the court may impose a term of imprisonment not to exceed 1 year. A person committed for nonpayment shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.

(c) Upon a second or subsequent citation for contempt and unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on the defendant's part to make good faith effort to make the payment, the court may find that such default constitutes contempt and may order the defendant committed until the payment, or a specified part thereof, is paid.

(d) If it appears to the satisfaction of the court that the default in the payment of defense costs is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment, or revoking such payment or the unpaid portion thereof in whole or in part.

(e) A default in the payment of defense costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of such payment shall not discharge a defendant committed for imprisonment for contempt until the full amount of the fine has actually been collected. The court shall have the power to pursue civil enforcement to obtain the money due on behalf of the State, and to also pursue criminal remedies when civil means are not effective.

(61 Del. Laws, c. 160, § 1; 70 Del. Laws, c. 186, § 1.)

Part VI
Fees and Costs
Chapter 87
COURT, COUNTY AND OTHER PUBLIC OFFICES

§ 8701 Attorney General.

The fees of the Attorney General, for the services specified, shall be as listed below:

For the whole prosecution in a capital case . $ 10.00

Drawing indictment in capital case, not found . 2.40

Drawing indictment in case not capital, if found . 2.40

Same, if not found . 1.20

Attachment, upon the Attorney General's motion, in the Superior Court

For obtaining judgments in suits brought in favor of the State upon forfeited bonds and recognizances, for appearances in the Superior Court, the Court of Common Pleas, the Family Court for the State and in the Superior Court upon appeals from any of such courts, $10, and 5 percent on the sum collected on the judgments. Whenever the 5 percent on the amount collected in any case exceeds $10, the last aforesaid fee shall not be paid.

For collecting bonds and recognizances without suit, 5 percent on the amount collected.

(Code 1852, § 2764; 13 Del. Laws, c. 165; Code 1915, § 4849; Code 1935, § 5344; 10 Del. C. 1953, § 8701; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 176, § 11.)

§ 8702 Sheriff.

(a) The fees of the Sheriff of Kent County shall be established by ordinance of the governing body of Kent County.

(b) This section shall not apply to the Sheriff of New Castle County.

(c) The fees of the Sheriff of New Castle County shall be established by ordinance of the governing body of New Castle County.

(d) This section shall not apply to the Sheriff of Sussex County.

(e) The fees of the Sheriff of Sussex County shall be established by ordinance of the governing body of Sussex County.

(Code 1812, §§ 2769-2772, 2774; 16 Del. Laws, c. 144, §§ 1, 2; 24 Del. Laws, c. 245, § 1; Code 1915, § 4852; 30 Del. Laws, c. 240; Code 1935, § 5346; 46 Del. Laws, c. 302, §§ 1, 2; 10 Del. C. 1953, § 8702; 50 Del. Laws, c. 150, § 1; 55 Del. Laws, c. 378; 59 Del. Laws, c. 539, § 1; 62 Del. Laws, c. 20, § 1; 64 Del. Laws, c. 149, § 1; 65 Del. Laws, c. 401, § 3.)

§ 8703 Sheriff's neglect or refusal to give statement of payments and costs; penalty.

Whoever, being a sheriff, neglects or refuses, upon payment to such sheriff of an execution and upon request, to subscribe and deliver to the person paying or settling the same, or to each of them if more than one, a bill of particulars, showing distinctly the debt or damages and interest demanded upon such execution, every item of the costs indorsed thereon, and every item of his or her own fees upon the same, and also a receipt, shall be fined $50, and shall also forfeit 3 times the amount of his or her fees, to be recovered by the person paying the same as debts of like amount are recoverable.

(Code 1852, §§ 2838, 2839; Code 1915, §§ 4894, 4895; Code 1935, §§ 5382, 5383; 10 Del. C. 1953, § 8703; 70 Del. Laws, c. 186, § 1.)

§ 8704 Clerk of the Supreme Court.

The fees charged by the Clerk of the Supreme Court shall be as prescribed in the Rules of that Court.

(Code 1852, § 2777; Code 1915, § 4854; Code 1935, § 5348; 10 Del. C. 1953, § 8704.)

§ 8705 Prothonotary; civil proceedings.

The fees of the prothonotary for services provided in civil proceedings shall be established by rule of the Superior Court and shall be uniform among the 3 counties.

(Code 1852, §§ 2778-2786, 2789, 2791; 24 Del. Laws, c. 245, § 2; Code 1915, §§ 4855, 4856; Code 1935, §§ 5349, 5350; 48 Del. Laws, c. 164, §§ 1-3; 10 Del. C. 1953, § 8705; 53 Del. Laws, c. 157, § 1; 54 Del. Laws, c. 244; 55 Del. Laws, c. 96; 56 Del. Laws, c. 124; 60 Del. Laws, c. 481, § 1; 62 Del. Laws, c. 22, § 1; 64 Del. Laws, c. 149, § 2; 64 Del. Laws, c. 455, § 1; 66 Del. Laws, c. 185, § 15.)

§ 8706 Prothonotary; criminal proceedings.

The fees of the prothonotary for services provided in criminal proceedings shall be established by rule of the Superior Court and shall be uniform among the 3 counties.

(Code 1852, §§ 2787, 2788, 2791; Code 1915, § 4856; Code 1935, § 5350; 10 Del. C. 1953, § 8706; 53 Del. Laws, c. 157, § 2; 57 Del. Laws, c. 483; 62 Del. Laws, c. 21, § 1; 64 Del. Laws, c. 149, § 3; 64 Del. Laws, c. 455, § 2; 66 Del. Laws, c. 185, § 16.)

§ 8707 Register in Chancery.

The fees of the Register in Chancery Office for services provided shall be established by the Rules of the Court of Chancery and shall be uniform among the 3 counties.

(Code 1852, §§ 2794, 2795, 2798; 24 Del. Laws, c. 246, § 1; Code 1915, §§ 4857, 4857(a); 36 Del. Laws, c. 274; 40 Del. Laws, c. 249; Code 1935, § 5351; 10 Del. C. 1953, § 8707; 64 Del. Laws, c. 149, § 4; 65 Del. Laws, c. 401, § 2; 73 Del. Laws, c. 91, § 8.)

§ 8708 Register in Chancery.

Repealed by 73 Del. Laws, c. 91, § 9, effective Jan. 1, 2002.

§ 8709 Neglect or refusal to pay fees; penalty.

Whoever neglects or refuses to pay the fees provided for in §§ 8707 and 8708 of this title, for any service performed within 10 days after written demand from the officer to whom such fees are due, shall be fined $10 besides costs of suit.

(24 Del. Laws, c. 246, § 6; 24 Del. Laws, c. 247, § 4; Code 1915, § 4890; Code 1935, § 5378; 10 Del. C. 1953, § 8709.)

§ 8710 Attorney-at-law.

The fees of an attorney-at-law, for the services specified, shall be as listed below:

For every writ drawn by the attorney . $ .40

Appearance for either plaintiff or defendant in an action or suit at law, or on appeal from a justice of the peace or Court of Common Pleas, or upon a certiorari . 2.67

Appearance for either plaintiffs or defendants in an action or cause in Chancery . 13.33

Every appeal bond for prosecuting an appeal in the Supreme Court

Drawing warrant of attorney . .13

Complaint, declaration, motion, plea, etc., by warrant of attorney

All pleadings in a cause subsequent to the complaint, to be paid by the party pleading, and for inquisition, prohibition, etc., 1 cent a line.

(Code 1852, § 2802; Code 1915, § 4863; Code 1935, § 5358; 10 Del. C. 1953, § 8710.)

§ 8711 Constable.

The fees of a constable, for the services specified, shall be as listed below:

For attendance upon the Superior Court, each day, to be paid by the county treasurer upon certificate of attendance under the hand of the Prothonotary, the sum of $2.00, and 3 cents per mile going and returning. A constable shall not be allowed for attendance upon 2 courts sitting at the same time.

For attendance on behalf of the county government, each day, to be paid by the county, $2.00, and 3 cents per mile, going and returning.

For attendance as bailiff on petit or special jury during trial, until verdict, 50 cents; provided, that all constables appointed outside of the City of Wilmington and south of the Chesapeake and Delaware Canal shall be paid mileage at the rate of 5 cents per mile both going and returning in all cases where constables now receive mileage.

(Code 1852, § 2806; 13 Del. Laws, c. 166, § 1; Code 1915, § 4865; 28 Del. Laws, c. 248; Code 1935, § 5360; 10 Del. C. 1953, § 8712.)

§ 8712 Referees.

The fees of a referee, for the services specified, shall be as listed below:

For attendance under a rule of court, (the referees being duly sworn or affirmed, and report duly made) . $ 1.00

Also, 3 cents per mile going and returning; mileage not to be allowed for more than 2 days attendance.

(Code 1852, § 2813; Code 1915, § 4870; Code 1935, § 5366; 10 Del. C. 1953, § 8713.)

§ 8713 Commissioners in Court of Chancery.

The fees of a commissioner in the Court of Chancery, for the services specified, shall be as listed below:

For attendance under an order of court to make partition, assign dower, estimate annual value of ward's lands, etc., if regular return is made, each day . $ 2.00

(Code 1852, § 2815; 12 Del. Laws, c. 536; Code 1915, § 4872; Code 1935, § 5368; 10 Del. C. 1953, § 8714.)

§ 8714 Surveyor, chain-carrier, axe-person, target-bearer.

For services on surveys and partitions in the Court of Chancery, ejectment in the Superior Court, marking and bounding of disputed lines, laying out of public roads, etc., surveyors, chain-carriers, axe-persons, target-bearers, witnesses, and all other persons necessary to

the economical execution of any order of any of the courts in such cases, and the person having in charge the procurement of the execution of any such order, for his or her services in the premises, including the board and accommodations of persons properly employed in and about the execution of the work, the several courts concerned shall fix a just and fair compensation or allowance. All such charges and the expenses so incurred in and about the premises shall be a joint charge upon all the parties interested in such work, in proportion to their respective interests therein.

(12 Del. Laws, c. 463; Code 1915, § 4873; Code 1935, § 5369; 10 Del. C. 1953, § 8715; 70 Del. Laws, c. 186, § 1.)

§ 8715 Distress proceedings.

The fees in distress proceedings, for the services specified, shall be as listed below:

For making distress and giving notice . $ .50

Summoning and qualifying freeholders, including cases where freeholders both value rent and appraise goods . .50

All services by a freeholder . .20

Advertising . .40

And 2 percent upon the proceeds of sale, applied to rent.

Giving notice to landlord of sale of tenant's goods . .20

And 2 cents a mile going and returning from the premises to the landlord's residence; this fee to be charged to the tenant, and first paid out of the sale of the tenant's goods.

For giving such notice the officer shall have but 1 fee, whatever be the number of writs in the officer's hands against the tenant. If there be executions or attachments, in the hands of several constables at the time of giving such notice, only the officer who made the first levy shall receive the fee under this provision.

(Code 1852, § 2831; Code 1915, § 4884; Code 1935, § 5372; 10 Del. C. 1953, § 8716; 70 Del. Laws, c. 186, § 1.)

Part VI
Fees and Costs
Chapter 88
PROCEEDINGS IN FORMA PAUPERIS

§ 8801 Definitions.

When used in this chapter:

(1) "Complaint" shall mean any civil action or miscellaneous action or any application for an extraordinary writ.

(2) "Conditions of confinement" shall mean any aspect of a prisoner's complaint that does not address the fact or duration of a prisoner's confinement.

(3) "Court" or "courts" shall mean all constitutional or statutory courts of this State.

(4) "Factually frivolous" shall mean a claim where the factual allegations of which are baseless, of little or no weight, value or importance, not worthy of serious attention or trivial.

(5) "Federal court" shall mean any federal court of competent jurisdiction over actions brought by prisoners as that term is defined in paragraph (9) of this section.

(6) "Inmate account" shall mean an account maintained by the Department of Correction in which money is held for prisoners of this State.

(7) "Legally frivolous" shall mean a claim based on an indisputably meritless legal theory.

(8) "Malicious" shall mean a claim designed to vex, injure or harass, or one which is otherwise abusive of the judicial process or which realleges pending or previously litigated claims.

(9) "Prisoner" shall mean any individual subject to the supervision of the Department of Correction, including, but not limited to, those individuals housed in correctional facilities outside of the State.

(70 Del. Laws, c. 411, § 1; 71 Del. Laws, c. 325, § 1; 73 Del. Laws, c. 276, §§ 1, 2.)

§ 8802 In forma pauperis.

(a) Notwithstanding any Delaware law to the contrary, the courts shall promulgate rules under which an individual who is unable to pre-pay all court costs and fees may proceed in forma pauperis.

(b) Before an individual shall be permitted to proceed in forma pauperis for the purposes of this chapter, the individual must submit a sworn affidavit sufficient to allow the court to determine the ability of the affiant to pay all or any portion of the court costs and fees associated with the filing of an action in that court. Such affidavit shall contain a statement that the affiant is unable to pay the costs and fees, and shall provide complete information as to the affiant's identity, the nature, source and amount of all of the affiant's income, the affiant's spouse's income, all real and personal property owned either individually or jointly, all cash or bank accounts held either individually or jointly, any dependents of the affiant and all debts and monthly expenses. The affiant shall further swear or affirm that the information in the affidavit is true and correct and made under penalty of perjury.

(c) Intentionally omitting or falsifying information on the affidavit shall cause the court to recalculate the filing fee due. The amount that would have been due shall be trebled and the action shall be abated until the total amount is paid in full. Nothing in this section shall limit any court's authority to take further action against the affiant in the court's discretion.

(d) Nothing in this chapter shall be interpreted to preclude an individual from filing an action in forma pauperis if determined to be appropriate by the court, subject to the limitations set forth in § 8804(f) of this title.

(70 Del. Laws, c. 411, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 276, § 3.)

§ 8803 Court review.

(a) In all cases in which a court has granted an individual leave to proceed in forma pauperis, the court shall issue an order authorizing the filing of the complaint and establishing the amount of court costs and filing fees to be paid. The court may, in its discretion, establish a schedule for the payment of the costs and fees.

(b) Upon establishing the amount of fees and costs to be paid, the court shall review the complaint. Upon such review, the complaint shall be dismissed if the court finds the action is factually frivolous, malicious or, upon a court's finding that the action is legally frivolous and that even a pro se litigant, acting with due diligence, should have found well settled law disposing of the issue(s) raised. Any order of dismissal shall specifically identify whether the complaint was factually frivolous, legally frivolous and/or malicious. Service of process shall not issue unless and until the court grants leave following its review.

(c) If a court does not dismiss a complaint pursuant to subsection (b) of this section, but the record subsequently reveals the action is factually frivolous, malicious or the action is legally frivolous and that even a pro se litigant, acting with due diligence, should have found well settled law disposing of issue(s) raised, the court may upon its own motion or the motion of a party, enter judgment against

plaintiff and dismiss the complaint. Any such order of dismissal shall specifically identify whether the complaint was factually frivolous, legally frivolous and/or malicious.

(d) If, at any time, the court dismisses an action or otherwise enters judgment against a litigant proceeding in forma pauperis, the jurisdiction of the court over the litigant continues until all costs and fees associated with the action are paid.

(e) When a court finds that a litigant has abused the judicial process by filing frivolous or malicious litigation, the court may enjoin that litigant from filing future claims without leave of court. When so enjoined, any future requests to file claims must be accompanied by an affidavit certifying that:

(1) The claims sought to be litigated have never been raised or disposed of before in any court;

(2) The facts alleged are true and correct;

(3) The affiant has made a diligent and good faith effort to determine what relevant case law controls the legal issues raised;

(4) The affiant has no reason to believe the claims are foreclosed by controlled law; and

(5) The affiant understands that the affidavit is made under penalty of perjury.

(70 Del. Laws, c. 411, § 1.)

§ 8804 Prisoners.

(a) When the individual seeking permission to proceed in forma pauperis is a prisoner, the prisoner shall file a certified summary of the prisoner's inmate account, together with the affidavit required pursuant to § 8802 of this title. The summary shall contain all account activity for the 6-month period immediately preceding the filing of the complaint, or for the entire time the prisoner has been incarcerated, whichever time is less.

(b) If a court determines that a prisoner may proceed in forma pauperis, the court shall issue an order directing that the complaint be filed setting forth the total amount to be paid and establishing a schedule for payment. The schedule shall be established as follows:

(1) The prisoner shall pay 20% of the average daily balance of the prisoner's inmate account over the previous 6-month period or the entire time that prisoner has been incarcerated, whichever time is less.

(2) In each successive month, until the established court costs and filing fees are paid in full, the prisoner shall pay 10% of the average daily balance of the prisoner's inmate account for the preceding month.

(c) Nothing in this section shall limit the court's ability to demand a greater amount than would result from this calculation based upon the information provided in the affidavit.

(d) Nothing in this section shall prohibit a prisoner from paying more than the minimum due under the court's calculation.

(e) To the extent that a prisoner refuses to pay fees and costs as ordered by the court, pursuant to this section, the court may order the Department to debit the prisoner's inmate account in accordance with § 8903(13) of Title 29.

(f) In no event shall a prisoner file a complaint or appeal of a judgment arising from a complaint brought in forma pauperis if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or an appeal in a federal court or constitutional or statutory court of the State that was dismissed on the grounds that it was frivolous, malicious or failed to state a claim upon which relief may be granted unless the prisoner is under imminent danger of serious physical injury at the time that the complaint is filed. Complaints or appeals therefrom dismissed prior to the enactment of this section shall be counted for purposes of determining the number of previously dismissed proceedings. No petition for a writ of habeas corpus or any appeal from the denial of any such petition shall be dismissed under this subsection.

(g) A prisoner may not bring or file a complaint relating to a condition of confinement, whether proceeding in forma pauperis or otherwise, unless the prisoner has fully exhausted all administrative remedies available through the institutional grievance procedure. The fact that monetary damages or any other form of legal or equitable relief may not be available through the grievance procedure shall not excuse the inmate from exhausting the institutional grievance procedure prior to filing a complaint.

(70 Del. Laws, c. 411, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 276, §§ 4, 5.)

§ 8805 Good time.

(a) Upon a court's finding pursuant to § 8803(b) or (c) of this title that a prisoner has filed a factually frivolous or malicious action, or upon a court's finding that the action is legally frivolous and that even a pro se litigant, acting with due diligence, should have found well settled law disposing of issue(s) raised, the court may order the Department of Correction to forfeit the portion of the litigant's behavior good time credits accumulated from the date the action was received by the court up to and including every month until the action was disposed of by the court. Upon the court's forwarding of such an order to the Department of Correction setting forth such a finding, the Department shall forfeit the prisoner's accumulated good time as ordered by the court. To the extent the Department does not have jurisdiction to forfeit accumulated good time for a particular prisoner, the court shall forward the order to the appropriate agency who shall forfeit the prisoners accumulated good time as ordered by the court.

(b) Upon the finding of a federal court that a prisoner has filed a factually frivolous or malicious action as defined by this chapter, or upon a finding that the action is legally frivolous as defined by this chapter and that even a pro se litigant, acting with due diligence, should

have found well-settled law disposing of issue(s) raised, the federal court may order the Department of Correction to forfeit the portion of the litigant's behavior good time credits accumulated from the date the action was received by the federal court up to and including every month until the action was disposed of by the federal court. Upon the federal court's forwarding of such an order to the Department of Correction setting forth such a finding, the Department shall forfeit the prisoner's accumulated good time as ordered by the federal court. To the extent the Department does not have jurisdiction to forfeit accumulated good time for a particular prisoner, the federal court shall forward the order to the appropriate agency who shall forfeit the prisoners accumulated good time as ordered by the federal court.

(70 Del. Laws, c. 411, § 1.)

Part VI
Fees and Costs
Chapter 89
JURORS, WITNESSES AND INTERPRETERS

§ 8901 Jurors.

Repealed by 60 Del. Laws, c. 225, § 1.

§ 8902 Jurors of inquest.

The fees of jurors on an inquest, for the services specified, shall be as listed below:

For joining in an inquisition upon writ or commission of inquiry, each . $ .33

Joining in inquisition of death taken by the officer in view of the body. 3.00

And 7 cents per mile going and returning.

Attendance upon summons and joining in inquisition in case of landlord vs. tenant, or forcible entry and detainer . 3.00

In case of adjournment, each juror attending shall, upon such adjournment, be entitled to the same fee as upon joining in the inquisition, or verdict.

Attendance as witness of the execution of sentence of death, to be paid as fees of jurors attending courts . 3.00

(Code 1852, § 2812; 26 Del. Laws, c. 70, § 2; Code 1915, § 4869; Code 1935, § 5365; 46 Del. Laws, c. 78, § 2; 10 Del. C. 1953, § 8902; 50 Del. Laws, c. 385, §§ 1, 2.)

§ 8903 Witnesses.

(a) The fees of witnesses, for the services specified, shall be as listed below:

For attendance in any court, or before referees under a rule of court, or before a justice in case of forcible entry, or landlord vs. tenant, or before a county governing body, or before a Commissioner, Register in Chancery, or prothonotary, executing a commission or rule for taking depositions, or before either House of the General Assembly, or a committee appointed by either House, each day $2.00, and 3 cents per mile going and returning.

Attendance before a justice of the peace, or before 2 justices, in all cases except as before provided for, 50 cents, and 2 cents per mile going and returning.

A person who has been committed in default of a recognizance to appear as a witness in a criminal case, shall, for the time the person is detained, receive such compensation as the court allows.

(b) The State Treasurer or Department of Finance shall, upon the production of a certificate of attendance under the hand of the prothonotary, pay the fees of witnesses on behalf of the State, or on behalf of a person tried and acquitted, upon a criminal charge in the Superior Court of his or her county.

(c) The prothonotary shall pay to the State Treasurer all fees of witnesses collected under this section as costs to reimburse the State Treasurer for such fees as have been paid in advance to such witnesses by the State Treasurer after the effective date of this subsection.

(d) No government employee shall be entitled to witness fees or mileage if that employee is serving in an official capacity.

(Code 1852, §§ 2808-2810; 12 Del. Laws, c. 536; 26 Del. Laws, c. 70, § 2; Code 1915, § 4867; 30 Del. Laws, c. 244; Code 1935, § 5362; 46 Del. Laws, c. 78, § 1; 10 Del. C. 1953, § 8903; 50 Del. Laws, c. 385, § 3; 55 Del. Laws, c. 85, §§ 32V, 32W; 57 Del. Laws, c. 452, §§ 1, 2; 65 Del. Laws, c. 87, § 41; 70 Del. Laws, c. 186, § 1.)

§ 8904 Witnesses; Court of Common Pleas for Kent County.

The fees of witnesses in the Court of Common Pleas for Kent County, for the services specified, shall be as listed below:

For each day's attendance . $ 1.00

Three cents per mile going and returning.

(37 Del. Laws, c. 262, § 9; Code 1935, § 5363; 10 Del. C. 1953, § 8904.)

§ 8905 Unclaimed witness fees in New Castle County.

Where witness fees in any civil action instituted in New Castle County have been taxed and paid as part of the costs, and remain unclaimed for a period of 6 months from the date of payment thereof, the prothonotary shall notify the witness at the witness's last known address by registered mail, return receipt requested, of the fact that the witness fee is being held for the witness, and must be claimed within a period of 6 months from the date of such notice. When any of the witness fees have remained unclaimed for a period of 1 year from the date of payment, the prothonotary shall pay the unclaimed witness fees to the State Treasurer to be deposited to the credit of the general funds of the State. The prothonotary's office may retain 15 percent of such unclaimed witness fees to defray the costs incident to carrying out the provisions of this section.

(Code 1935, § 5362A; 48 Del. Laws, c. 227, § 1; 10 Del. C. 1953, § 8905; 57 Del. Laws, c. 228, § 11-34; 70 Del. Laws, c. 186, § 1.)

§ 8906 Expert witnesses.

The fees for witnesses testifying as experts or in the capacity of professionals in cases in the Superior Court, the Court of Common Pleas and the Court of Chancery, within this State, shall be fixed by the Court in its discretion, and such fees so fixed shall be taxed as part of the costs in each case and shall be collected and paid as other witness fees are now collected and paid.

(26 Del. Laws, c. 260; Code 1915, § 4231; Code 1935, § 4706; 10 Del. C. 1953, § 8906; 71 Del. Laws, c. 345, § 1.)

§ 8907 Interpreters for persons who are deaf in legal proceedings; fees.

A person who is deaf who is a party to, or a witness in, any legal proceeding shall have a right to a qualified interpreter of deaf sign-language and the court shall appoint such an interpreter to interpret the proceedings to, and the testimony of, a person who is deaf. The fee for an interpreter shall be fixed by the court in its discretion. In criminal actions, fees shall be paid out of funds provided by law or by the government as the court may direct. In civil actions, fees shall be paid out of funds provided by law or by 1 or more of the parties as the court may direct and may be taxed ultimately as costs, in the discretion of the court.

(60 Del. Laws, c. 541, § 2; 78 Del. Laws, c. 179, § 26.)

Part VII
Justices of the Peace
Chapter 92
ORGANIZATION AND OPERATION

§ 9201 Definitions.

As used in this chapter:

(1) "Court" shall mean the Justice of the Peace Court.

(2) "Rules" means rules of the Justice of the Peace Court promulgated under article IV, § 13, of the Delaware Constitution.

(10 Del. C. 1953, § 9201; 55 Del. Laws, c. 20, § 3; 62 Del. Laws, c. 52, § 3; 73 Del. Laws, c. 335, § 1.)

§ 9202 Administration and supervision of the Court; Chief Magistrate.

(a) The Justice of the Peace Court shall, unless otherwise provided in this chapter, be administered and supervised in all respects pursuant to the provisions of article IV, § 13, of the Delaware Constitution and such rules of the Court as shall be promulgated thereunder. Such rules may prescribe and regulate the form and manner of process, pleading, practice and procedure governing civil and criminal proceedings in the Justice of the Peace Court from inception to termination. As provided in article IV, § 13(1), of the Delaware Constitution, the authority of the Court to promulgate such rules shall be subject to the review of the Supreme Court.

(b) Such rules shall not abridge, enlarge or modify the substantive rights of any person.

(c) Nothing in this title, anything therein to the contrary notwithstanding, shall in any way limit, supersede or repeal any such rules heretofore prescribed under authority of law.

(d) The Justice of the Peace Court shall have and exercise such jurisdiction, both criminal and civil, as shall be conferred upon it by law.

(e) In addition to the number of justices of the peace specified by § 9203 of this title, the Governor, by and with the consent of a majority of all the members elected to the Senate, shall appoint a justice of the peace who shall serve as Chief Magistrate and administrative head of the Justice of the Peace Court.

(10 Del. C. 1953, § 9202; 55 Del. Laws, c. 20, § 3; 62 Del. Laws, c. 52, § 4; 71 Del. Laws, c. 173, § 1; 73 Del. Laws, c. 335, § 1.)

§ 9203 Number of justices of the peace in each county.

In the counties of this State there shall be no more than the following number of justices of the peace:

New Castle . 29

Kent . 12

Sussex . 19

(10 Del. C. 1953, § 9203; 55 Del. Laws, c. 20, § 3; 55 Del. Laws, c. 433, § 1; 71 Del. Laws, c. 176, § 12; 72 Del. Laws, c. 239, § 1; 73 Del. Laws, c. 335, § 1; 74 Del. Laws, c. 310, § 1.)

§ 9204 Place of holding courts.

The Justice of the Peace Court shall hold court in at least 1 place in Wilmington, 5 places in the remainder of New Castle County, 3 places in Kent County, and 5 places in Sussex County, and in such other places as from time to time shall be designated in the rules.

(10 Del. C. 1953, § 9204; 55 Del. Laws, c. 20, § 3; 73 Del. Laws, c. 335, § 1.)

§ 9205 Court hours.

Each of the places where Court is held shall be open at such times as shall be provided by the rules; provided, however, that in each county there shall be at least 1 court available at all times. The Court may hear and determine any case within its jurisdiction during the time the Court is open.

(10 Del. C. 1953, § 9205; 55 Del. Laws, c. 20, § 3; 64 Del. Laws, c. 35, § 1; 73 Del. Laws, c. 335, § 1; 75 Del. Laws, c. 278, § 1.)

§ 9206 Statewide jurisdiction of the justices of the peace.

Each justice of the peace shall serve in the county in which the justice of the peace resides. The justice of the peace may be assigned from time to time, for such hours and length of time as may be established by the rules or administrative policy. A justice of the peace may, with consent, be assigned to hold court in any part of the State and for that purpose, the jurisdiction of the justice of the peace shall be considered as statewide.

(10 Del. C. 1953, § 9206; 55 Del. Laws, c. 20, § 3; 62 Del. Laws, c. 52, § 5; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 335, § 1.)

§§ 9207 , 9208. [Reserved.]

§ 9209 Salaries of the justices of the peace and the Chief Magistrate.

(a) The Chief Magistrate and the justices of the peace shall receive such compensation from the State as shall be provided by law.

(b) A justice of the peace shall not receive any other fees or emoluments for discharging the duties of the office except as may otherwise be provided by law or by the rules, or engage in any occupation concerned with or growing out of the collection of any judgment rendered by a justice of the peace, or engage in the private practice of law, or hold any state office, or be employed by the State in any other capacity except as otherwise provided by law, by court rules, or by the Judicial Code of Conduct.

(10 Del. C. 1953, § 9209; 55 Del. Laws, c. 20, § 3; 57 Del. Laws, c. 635; 60 Del. Laws, c. 143, § 1; 62 Del. Laws, c. 52, § 6; 62 Del. Laws, c. 74, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 103, §§ 1, 2; 73 Del. Laws, c. 335, § 1.)

§ 9210 Offices; supplies; basic legal education and continuing legal education requirements for justices of the peace.

(a) The State shall provide each justice of the peace with such space, supplies and equipment as shall be necessary and appropriate to enable the justice to properly carry out the duties of office at the locations designated for the justice to hold court.

(b) There shall be basic and continuing legal education requirements for justices of the peace which shall be as prescribed by court rule.

(10 Del. C. 1953, § 9210; 55 Del. Laws, c. 20, § 3; 60 Del. Laws, c. 627, § 1; 70 Del. Laws, c. 22, § 1; 70 Del. Laws, c. 186, § 1; 73 Del. Laws, c. 335, § 1.)

§ 9211 Assignment of retired justices of the peace to active duty.

(a) Any retired justice of the peace may be designated by the Chief Magistrate, with the approval of the Chief Justice of the Supreme Court, to serve temporarily in any Justice of the Peace Court in the State; provided, however, that the retired justice of the peace:

(1) Was serving in good standing as a justice of the peace at the time of retirement;

(2) Had been appointed and confirmed for a second term prior to retirement;

(3) Assents to such designation; and

(4) Is not involved or employed in any position which would create a conflict of interest with the position of justice of the peace, including, but not limited to, any position concerned with or growing out of the collection of any judgment rendered by a justice of the peace, the private practice of law, the holding of any state office, or employment by the State in any capacity.

(b) Any retired justice of the peace accepting an active duty designation shall be compensated on a per diem basis on the formula representing 1/260 of the annual salary for a justice of the peace serving a second term. In no event shall the total annual compensation of the retired justice equal the current annual salary for a justice of the peace serving a second term. Each retired justice of the peace serving shall also be reimbursed for travel necessarily incurred for the performance of such active duty as approved by the Chief Magistrate.

(c) Expenditures for work performed under this section shall be made from funds appropriated for this purpose, from surplus personnel funds contained within the Justice of the Peace Court's appropriation, with the approval of the Administrative Office of the Courts and the Office of Management and Budget, and/or from other appropriate funds.

(73 Del. Laws, c. 79, § 1; 73 Del. Laws, c. 335, § 1; 75 Del. Laws, c. 88, § 21(5).)

§§ 9212 -9222. [Reserved.]

§ 9223 Security personnel.

All security personnel of the Court shall have the full powers of a Justice of the Peace Court constable, including the power of arrest, while performing Court-related functions throughout the State.

(69 Del. Laws, c. 300, § 1; 73 Del. Laws, c. 335, § 1.)

§ 9224 Drug testing required.

(a) The Justice of the Peace Court is authorized and required to conduct drug testing as set forth in this section of any employee or prospective employee accepting a uniformed services position, which includes those positions where qualification to carry an employer-issued firearm is a condition of employment. The following drug testing shall be authorized or required:

(1) *Preemployment testing.* — The Justice of the Peace Court shall not hire or employ any person without first obtaining the results of such person's mandatory drug screening as specified in subsection (b) of this section.

(2) *Random testing.* — All uniformed services employees shall be subject to random testing for illegal use of the drugs specified in subsection (b) of this section.

(3) *Reasonable-suspicion testing.* — The Justice of the Peace Court, acting through its supervisory personnel, may also conduct a drug test based on a reasonable suspicion that a uniformed services employee is impaired by an illegal drug.

(b) Any person offered employment with the Justice of the Peace Court as a uniformed services employee shall be required to submit to mandatory drug screening pursuant to this section and the regulations promulgated by the Justice of the Peace Court. Such regulations shall require drug testing for the following controlled substances:

(1) Marijuana/cannabis;

(2) Cocaine;

(3) Opiates;

(4) Phencyclidine ("PCP");

(5) Amphetamines;

(6) Any other controlled prescription drugs specified by the Justice of the Peace Court in the regulations promulgated pursuant to this section.

(c) *Conditional offer*. — Notwithstanding the provisions of this section, the Justice of the Peace Court may make a conditional offer of employment to an applicant who has submitted to the required drug screening. No person made a conditional offer of employment shall receive an official starting date until the results of their preemployment drug screen have been received. Any applicant made a conditional offer of employment shall be informed that the results of that applicant's drug screen have been requested.

(d) The Justice of the Peace Court shall adopt policies and procedures for imposing sanctions, which may include referral to the State's Employee Assistance Program, suspension or termination, upon any uniformed services employee who wilfully refuses to submit to random or reasonable suspicion testing or whose drug screen indicates that such person has illegally used or consumed a drug or drugs. No employee shall be sanctioned when such person has used or consumed the drug or drugs detected according to the directions and terms of a lawfully obtained prescription for such drug or drugs.

(79 Del. Laws, c. 317, § 1.)

§§ 9230 , 9231. Deputy Administrator; duties of Deputy Administrator.

Repealed by 62 Del. Laws, c. 52, § 7, effective June 1, 1979.

Part VII
Justices of the Peace
Chapter 93
JURISDICTION AND VENUE

§ 9301 Civil jurisdiction; amount in controversy.

Unless otherwise specified by law, the Justice of the Peace Court shall have civil jurisdiction over the following:

(1) Common-law actions in contract, express or implied, and common-law actions in tort for damage, destruction or taking of personal property (including replevin), for injury to real property, and for trespass on the land. Jurisdiction over such actions shall be limited to actions in which the matter in demand, damage claimed, or the value of the property whose return is sought does not exceed $15,000. A penalty in any contract exceeding that sum shall not exclude it from this jurisdiction if the sum actually due thereon is within it. The interest also due on any cause of action within this jurisdiction may be added, although the judgment, with interest so added, exceeds $15,000.

(2) Actions for any penalty or forfeiture incurred under the provisions of any statute, bylaw or ordinance authorized by statute when the matter in demand does not exceed $15,000. The interest also due on any such cause of action may be added, although the judgment, with interest so added, exceeds $15,000.

(3) Summary possession actions as provided in Chapter 57 of Title 25.

(4) Distress for rent actions as provided in Chapter 63 of Title 25.

(5) Truancy actions as provided in Chapter 27 of Title 14. Except as otherwise provided in Chapter 27 of Title 14, the Justice of the Peace Court shall have original exclusive jurisdiction of such actions.

(6) Any other civil jurisdiction provided by law.

(Code 1852, §§ 2063, 2193, 2206; 18 Del. Laws, c. 678, § 1; Code 1915, §§ 4004, 4004A, 4062, 4065A, 4069; 29 Del. Laws, c. 255; 29 Del. Laws, c. 256, § 2; 34 Del. Laws, c. 221, § 1; 34 Del. Laws, c. 224, §§ 1, 3; 41 Del. Laws, c. 209; Code 1935, §§ 4490, 4543, 4547, 4560; 10 Del. c. 1953, §§ 9301, 9303, 9304, 9305; 55 Del. Laws, c. 20, §§ 4, 6, 7; 55 Del. Laws, c. 297, §§ 1, 3, 4; 57 Del. Laws, c. 192, §§ 1, 2, 3, 4; 58 Del. Laws, c. 194, § 11; 59 Del. Laws, c. 540, § 1; 64 Del. Laws, c. 270, §§ 1, 2, 3, 5, 6; 67 Del. Laws, c. 426, §§ 1, 2, 3; 69 Del. Laws, c. 425, §§ 1, 2, 3; 72 Del. Laws, c. 346, § 15; 73 Del. Laws, c. 334, § 1.)

§ 9302 Venue of the Justice of the Peace Court.

The jurisdiction of the Court shall extend throughout the State. Process may be issued out of each county and into each county.

(10 Del. C. 1953, § 9302; 55 Del. Laws, c. 20, § 5; 56 Del. Laws, c. 223, § 2; 59 Del. Laws, c. 540, § 1; 73 Del. Laws, c. 334, § 1.)

§§ 9303 -9306. [Reserved.]

Part VII
Justices of the Peace
Chapter 95
PROCEDURE
Subchapter I
General Provisions

§ 9501 Writs, warrants and process.

(a) A Justice of the Peace Court may issue all writs, warrants and process proper to carry into effect the powers granted to the justice of the peace.

(b) When no form of writ, warrant or process is prescribed by statute, the court shall frame one in conformity with the law, in substance; and, when substantially right, such process shall not be invalid for any defect in form.

(c) All sheriffs, deputy sheriffs, coroners, constables and persons specially authorized by the Chief Magistrate or the Chief Magistrate's designee shall duly serve all legal writs, warrants and process to them directed by any Justice of the Peace Court.

(Code 1852, § 2004; Code 1915, § 3951; Code 1935, § 4451; 10 Del. C. 1953, § 9501; 69 Del. Laws, c. 429, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 232, § 2.)

§ 9502 Summons for witnesses.

A Justice of the Peace Court may issue summons for witnesses in all cases pending before the Court, and in all civil cases pending before any magistrates, referees, arbitrators, or other persons authorized to examine witnesses.

(Code 1852, § 2007; Code 1915, § 3953; Code 1935, § 4453; 10 Del. C. 1953, § 9502; 69 Del. Laws, c. 429, § 2.)

§ 9503 Power to administer oaths.

A justice of the peace may administer oaths in all cases where an oath is required by law.

(Code 1852, § 2008; Code 1915, § 3954; Code 1935, § 4454; 10 Del. C. 1953, § 9503.)

§ 9504 Adjournments.

A justice of the peace may adjourn cases on trial before him or her, taking security for the appearance of the party complained against.

(Code 1852, § 2006; Code 1915, § 3952; Code 1935, § 4452; 10 Del. C. 1953, § 9504; 70 Del. Laws, c. 186, § 1.)

§ 9505 Advice to litigants on right of appeal.

After entering judgment in all civil and criminal cases, the Justice of the Peace Courts shall immediately advise the party litigants in civil cases and defendants in criminal cases of their right to take an appeal from the decision of the justice of the peace and shall inform all party litigants and defendants of the time and manner in which the appeal shall be taken. The records of the justice of the peace shall contain an entry indicating the information given by the justice of the peace.

(41 Del. Laws, c. 208; 10 Del. C. 1953, § 9505; 69 Del. Laws, c. 429, § 3.)

§ 9506 Civil contempt; penalty.

A justice of the peace shall have the power to punish by fine not exceeding $100, or by imprisonment not exceeding 170 days, any disobedience or resistance to his or her lawful writ, process, order or rule.

Any disobedience or resistance to the lawful writ, process, order or rule of a justice of the peace shall be punished as a civil contempt only, and any person imprisoned for such disobedience or resistance shall be discharged from such imprisonment upon satisfying the justice that he or she has obeyed the writ, process, order or rule, or is prepared to do so.

(10 Del. C. 1953, § 9506; 57 Del. Laws, c. 511; 70 Del. Laws, c. 186, § 1.)

Subchapter II
Civil Actions for Debt

§ 9521 Mode of proceeding.

The proceeding in any civil action for debt, as described in § 9301 of this title, shall be by summons, or attachment.

(Code 1852, §§ 2064, 2065; 21 Del. Laws, c. 302; 24 Del. Laws, c. 241; 27 Del. Laws, c. 278; Code 1915, § 4006; Code 1935, § 4492; 10 Del. C. 1953, § 9521.)

§ 9522 Issuance and requirements of summons.

The writ of summons in an action under this subchapter shall be issued under the seal of the Justice of the Peace Court, dated on the day it is issued, stating the sum demanded, and the date for the defendant's appearance, which shall be made by the filing of any written motion or pleading purporting to be responsive to, or affecting, the complaint, no later than 15 days from the date received.

(Code 1852, §§ 2064, 2065; 21 Del. Laws, c. 302; 24 Del. Laws, c. 241; 27 Del. Laws, c. 278; Code 1915, § 4006; Code 1935, § 4492; 10 Del. C. 1953, § 9522; 59 Del. Laws, c. 540, § 2; 69 Del. Laws, c. 429, § 4.)

§ 9523 Form of summons.

The summons in an action under this subchapter shall be of the following form:

"_____ County, ss. The State of Delaware.

"TO ANY CONSTABLE OF SAID COUNTY OR OTHER DULY APPOINTED PROCESS SERVER:

"We command you to summon _____, the defendant(s), and serve upon said defendant(s) a copy of this summons and complaint.

"TO THE DEFENDANT(S):

"Within 15 days after you receive this summons, excluding the day you receive it, you must complete and return to the Justice of the Peace Court, all or part of the money claimed as a debt against you by the plaintiff in the complaint.

"Failure to file an answer, or other written document related to this claim, with the Justice of the Peace Court may result in a default judgment being entered against you and action may be taken by the plaintiff, such as the attachment of your wages or the attachment and sale of your property, to satisfy the judgment.

"DATED: _____ _____

"Justice of the Peace/Clerk"

(Code 1852, §§ 2064, 2065; 21 Del. Laws, c. 302; 24 Del. Laws, c. 241; 27 Del. Laws, c. 278; Code 1915, § 4006; Code 1935, § 4492; 10 Del. C. 1953, § 9523; 69 Del. Laws, c. 429, § 5.)

§ 9524 Service of summons; verification for default judgment.

(a) Service of a summons in an action under this subchapter upon an individual other than an infant or an incompetent person, shall be made by delivering a copy of the summons, with accompanying papers, if any, to the individual personally or by leaving a copy thereof together with the accompanying papers, if any, at the individual's dwelling house or usual place of abode in the presence of some person of suitable age and discretion residing therein, or by sending a copy of the summons with accompanying papers, if any, to the individual by certified mail, return receipt requested, or by delivering copies thereof to an agent authorized by his or her appointment or by law, to receive service of process, at least 4 days before the day of appearance, unless it be returnable "forthwith," but service, by leaving a copy, shall not be made of any warrant returnable forthwith, nor in respect to any defendant who has not at the time a fixed place of abode in the county.

(b) The service and the manner of service shall be stated in the return thus, "served personally" by the justice of the peace constable or duly authorized special process server or "served by leaving a copy at the defendant's dwelling house or usual place of abode in the presence of A.B., a person of suitable age and discretion residing therein," with the date of such service, or "served by certified mail, return receipt requested," and a judgment by default shall not be rendered until the service shall be verified by:

(1) The constable's verification in writing in a form acceptable to the Court;

(2) The special process server's affidavit in writing; or

(3) The certified mail return receipt signed by the defendant, or by some person of suitable age and discretion, as agent for the defendant; or

(4) If the certified mail return receipt is returned marked "unclaimed", or "refused", or with some other indication of failed service, the court shall send a copy of the complaint and summons to the defendant by first class mail to the address provided by the plaintiff. In addition, at the discretion of the presiding judge, the court constable may attempt to confirm that the address provided is that of the defendant and, if confirmed, will attempt personal service. In the event the constable is directed to confirm the address and does so, but is unable to effect personal service, the constable will affix the complaint and summons to the entrance of the dwelling, and note such method of service on the return. In the event of an application for a default judgment after such service, the Court may proceed pursuant to § 9537 of this title whether personal service is completed or not.

(Code 1852, §§ 2066, 2067; Code 1915, § 4008; Code 1935, § 4494; 10 Del. C. 1953, § 9524; 56 Del. Laws, c. 223, § 1; 59 Del. Laws, c. 540, § 3; 66 Del. Laws, c. 415, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 232, § 3; 76 Del. Laws, c. 27, § 1; 76 Del. Laws, c. 238, §§ 1, 2.)

§ 9525 Deposit for cost; representation of an artificial entity.

(a) No civil action shall be brought before any justice of the peace, in this State, unless the person bringing such action first makes a deposit of $5.00 with the justice of the peace before whom the person brought the action, to be applied to the costs of such action. The sum deposited shall be returned to the person depositing the same, if the money sued for is recovered.

(b) Where the person bringing the action under this subchapter is a corporation, the action may be prosecuted by an officer or employee of the corporation who need not be a duly licensed attorney-at-law provided, however, that officer or employee is duly qualified under Delaware Supreme Court Rule 57.

(27 Del. Laws, c. 279; Code 1915, § 4007; Code 1935, § 4493; 10 Del. C. 1953, § 9525; 55 Del. Laws, c. 20, § 9; 57 Del. Laws, c. 224, §§ 1, 2; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 27, §§ 2, 3.)

§ 9526 Time for hearing.

In an action under this subchapter, the time appointed in the summons for the defendant's appearance shall be the day for hearing the cause.

(Code 1852, § 2069; Code 1915, § 4009; 34 Del. Laws, c. 221, § 2; Code 1935, § 4495; 10 Del. C. 1953, § 9526.)

§ 9527 Adjournments.

(a) A hearing in an action under this subchapter may be adjourned to some day other than the date referred to in § 9526 of this title, but the adjournment shall not be for more than 15 days. Such adjournments may be made as are necessary for a fair trial.

(b) The justice of the peace shall fix the time of adjournment so as to bring the cause to as speedy a trial as the circumstances will admit.

(c) The justice shall, except as provided in § 9528 of this title, grant 1 adjournment to the defendant, of course, and other adjournments to either party, if it shall appear to the justice's satisfaction, by the oath, or affirmation, of the party applying for it, or otherwise, that such party is not prepared for trial, and that the party's want of preparation is not owing to design, or to not using due diligence.

(d) After a second adjournment, the party applying for a further adjournment, shall pay the costs accruing on the day of such application, unless the justice makes a special order that the costs, or any part of them, shall abide the result of the cause.

(Code 1852, §§ 2070, 2071; Code 1915, § 4009; 34 Del. Laws, c. 221, § 2; Code 1935, § 4495; 10 Del. C. 1953, § 9527; 70 Del. Laws, c. 186, § 1.)

§ 9528 Requirement of special bail for certain adjournments.

In an action under this subchapter, if the summons is made returnable "forthwith," the justice may refuse to grant any adjournment on the defendant's application, unless the defendant gives special bail as follows:

"A. B. becomes special bail for C. D., the defendant in this action.

(Signed) A. B."

(Code 1852, § 2069; Code 1915, § 4009; 34 Del. Laws, c. 221, § 2; Code 1935, § 4495; 10 Del. C. 1953, § 9528.)

§ 9529 Discharge of special bail.

Special bail shall be discharged if the defendant appears, or is surrendered before the justice, on the day to which the cause is adjourned, and pays and satisfies any judgment rendered against him or her in such proceedings.

(Code 1852, § 2073; 19 Del. Laws, c. 776, § 1; Code 1915, § 4009; 34 Del. Laws, c. 221, § 2; Code 1935, § 4495; 10 Del. C. 1953, § 9529; 70 Del. Laws, c. 186, § 1.)

§ 9530 Proceedings against special bail; scire facias.

(a) If special bail is not discharged as provided by § 9529 of this title, and it appears, by the return upon any execution, that goods sufficient to satisfy the judgment cannot be found, proceedings by scire facias, in the form prescribed by § 9577 of this title, may be had against the bail.

(b) The scire facias shall be served on the bail, as provided in respect to service of a summons, at least 4 days before its return. If so served, or if it appears by the return to 2 successive writs of scire facias, that service cannot be made, the justice may proceed to give judgment against the defendant by default, unless the defendant appears; the returns to the writ, or writs, of scire facias, being first verified by affidavit.

(c) The affidavit shall state, in substance, that the constable has made diligent search for the defendant in the scire facias, and cannot find the defendant, nor hear that the defendant has any place of abode in the county.

(d) If the defendant appears, the cause shall proceed as in other cases; but a judgment against the defendant may be for the full amount of the original judgment against the defendant's principal, inclusive of interests and costs, though that should exceed $500.

(Code 1852, §§ 2074-2080; 18 Del. Laws, c. 678, § 1; 19 Del. Laws, c. 776, § 2; Code 1915, § 4009; 34 Del. Laws, c. 221, § 2; Code 1935, § 4495; 10 Del. C. 1953, § 9530; 70 Del. Laws, c. 186, § 1.)

§ 9531 Depositions of nonresidents.

(a) In an action under this subchapter, if it appears, by affidavit, that there is a material witness residing out of the county, whose attendance it is not practicable to procure, the justice may make a rule that such witness's deposition be taken before a justice of the peace sitting in the county in which the witness resides.

(b) Unless it is otherwise agreed, the party applying for a rule that a deposition be taken shall file in writing all the questions to be put to the witness, giving at least 4 days' notice to the other party, who may file other questions.

(c) The justice shall forward a copy of the rule and the questions to the justice of the peace selected with a copy of this section.

(d) The deposition shall be taken in writing, signed by the witness, certified by the justice of the peace selected, and sent, sealed up, to the justice.

(e) The witness shall first be sworn, or affirmed, by the justice of the peace selected, to answer the questions truly. Neither party shall be present at the taking the deposition, and no questions shall be put but those sent by the justice.

(Code 1852, § 2180; Code 1915, § 4052; Code 1935, § 4539; 10 Del. C. 1953, § 9531; 55 Del. Laws, c. 20, § 10; 70 Del. Laws, c. 186, § 1.)

§ 9532 Form of subpoena.

(a) A subpoena for attendance of witnesses in actions under this subchapter shall be in this form:

"..... County, ss. The State of Delaware,

To any constable, greeting:

Summon A. B. and C. D., to appear before..... one of our justices of the peace, at said justice's office in..... on..... the..... day of..... at..... o'clock in the....., to give evidence in a cause between A. B., plaintiff and C. D. defendant, depending before our said justice; and this they may not omit at their peril.

* * * *

* * Witness the hand and seal of the said Justice the

* L. S. * _____ day of _____ A.D. 20_____"

* *

* * * *

(b) The summons for referees may be in the same form, substituting the words "to try," for the words "to give evidence in."

(Code 1852, §§ 2177, 2178; Code 1915, § 4051; Code 1935, § 4538; 10 Del. C. 1953, § 9532; 55 Del. Laws, c. 20, § 11; 70 Del. Laws, c. 186, § 1.)

§ 9533 Failure to appear; penalty.

If a witness, duly summoned, neglects to appear and testify before a justice, or before referees, the witness may, on proof that the witness has been duly summoned, be held in contempt of court under the provisions of § 9506 of this title and, in addition, be required to pay any additional court cost created by the witness' nonappearance.

(Code 1852, § 2177; Code 1915, § 4051; Code 1935, § 4538; 10 Del. C. 1953, § 9533; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 27, § 4.)

§ 9534 Form of attachment for contempt.

The form of an attachment under § 9533 of this title for contempt against a witness, shall be as follows:

"..... County, ss. The State of Delaware,

To any constable, greeting:

Bring A. B. before....., one of our justices of the peace, at a Justice of the Peace Court in the county in which the action was commenced forthwith to show cause why he/she should not be punished under civil contempt as provided by § 9506 of Title 10 of the Delaware Code.

* * * *

* * Witness the hand and seal of the said Justice the

* L. S. * _____ day of _____ A.D. 20_____"

* *

* * * *

(Code 1852, § 2179; Code 1915, § 4051; Code 1935, § 4538; 10 Del. C. 1953, § 9534; 55 Del. Laws, c. 20, § 12; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 27, § 5.)

§ 9535 Form of distress warrant.

The distress warrant to be used for levy on a referee's goods and chattels shall be in the following form:

"..... County, ss. The State of Delaware,

To any constable, greeting:

Whereas, C. D. of..... has been adjudged by E. F., one of our justices of the peace, to be guilty of a contempt in making default, after due summons as a referee, in a case pending before said justice, and has been ordered to pay a fine of five dollars in pursuance of the Act of Assembly in such case provided; and whereas, the said C. D. has neglected to pay the said sum:

We therefore command you to levy the said sum of five dollars, with..... costs and your costs hereon, by distress and sale of the goods and chattels of the said C. D., upon due notice given, as upon other execution process.

* * * *

* * Witness the hand and seal of the said Justice the

* L. S. * _____ day of _____ A.D. 20_____"

* *

* * * *

(Code 1852, § 2087; Code 1915, § 4013; Code 1935, § 4499; 10 Del. C. 1953, § 9539; 55 Del. Laws, c. 20, § 13.)

§ 9536 Setoff or counterclaim.

(a) In every action before a justice of the peace, within the justice's jurisdiction, the defendant, if he or she has against the plaintiff any account, demand, or cause of action, cognizable before a justice of the peace, shall bring it forward and plead it as a setoff; and the justice shall enter on the docket the nature and amount of such counterclaim. Any defendant, neglecting to do so, shall, if the action against him or her be prosecuted to judgment, lose such account, demand, or cause of action, and be forever barred from recovering it.

(b) If the defendant has any account, demand or cause of action, against the plaintiff, exceeding $15,000, the defendant may bring it forward and plead it as a setoff as specified in subsection (a) of this section, or not, at the defendant's pleasure, and shall not, by neglecting so to plead it, lose such cause of action.

(c) If the defendant pleads a setoff exceeding $15,000, and it is found on the trial, that there is any sum due the defendant from the plaintiff, judgment shall be given against the plaintiff, in the defendant's favor, for such sum, provided it does not exceed $15,000. If it exceeds $15,000, that fact shall be stated on the record, and judgment shall be given for costs for the defendant, who shall be at liberty to prosecute such cause of action in court; or such defendant may remit the excess above $15,000, and take judgment for that sum.

(Code 1852, §§ 2089-2091; 18 Del. Laws, c. 678, § 1; Code 1915, § 4014; 34 Del. Laws, c. 221, § 3; Code 1935, § 4500; 10 Del. C. 1953, § 9540; 55 Del. Laws, c. 297, § 5; 57 Del. Laws, c. 192, § 5; 65 Del. Laws, c. 30, § 1; 67 Del. Laws, c. 426, § 4; 69 Del. Laws, c. 425, § 4; 70 Del. Laws, c. 186, § 1.)

§ 9537 Failure of defendant to appear; adjournment or judgment by default.

(a) After verification of the return of service, if a defendant, being duly summoned, fails to appear by written motion or pleading at or before the date provided for in the summons or at any time to which the cause is regularly adjourned judgment by default may be entered. The amount of damages awarded shall be the amount proven to be properly due. Such proof may be by affidavit or, when judgment is entered by the Court, by such other information as may be required by the Court. A default judgment may be entered as follows:

(1) *By the clerk.* — When the plaintiff's claim is (i) based upon a written instrument from which the defendant's agreement to pay the amount claimed can be determined from the face of the instrument or from calculations therefrom or (ii) for a civil penalty payable to the State or any subdivision thereof, a mandatory dollar amount of which is specified by statute, the clerk, upon written application of the plaintiff and upon affidavit of the amount due, giving credit for any payments and showing the amounts and dates thereof and a computation of any applicable interest to the date of judgment, may enter judgment for that amount and costs against the defendant.

(2) *By the Court.* — When entry of judgment may not be made by the clerk pursuant to paragraph (a)(1) of this section or when the Court, in its discretion, determines that entry of the default judgment should be made by the Court, the Court may enter the judgment. When entered by the Court, the Court may make investigation into and determine the amount of damages properly due. If in order to enable the Court to enter judgment, carry it into effect, or determine the amount of damages, it is necessary to establish the truth of any averment by evidence or to make an investigation of any matter, the Court may conduct such hearings or order such references as it deems necessary and proper.

(b) No judgment shall be given against an executor, or administrator, as such, by default, until the plaintiff produces the obligation, note, or contract of the deceased, or a book of accounts regularly and fairly kept, and verified by oath or affirmation, or other sufficient proof, and a probate regularly made; and a book of accounts shall not be received for cash entries, or items not properly chargeable in account.

(Code 1852, § 2081; Code 1915, § 4011; Code 1935, § 4497; 10 Del. C. 1953, § 9541; 69 Del. Laws, c. 429, § 6; 73 Del. Laws, c. 337, § 1.)

§ 9538 Application to vacate default judgment.

(a) A defendant may, within 15 days after the day of giving a judgment by default, apply to the court to vacate the judgment, and let the parties into a trial, provided however that a defendant may, within 30 days after a judgment by default, apply to have the judgment vacated, if service was made by certified mail, return receipt requested, and the certified mail was returned unclaimed.

(b) The plaintiff, or the plaintiff's agent, if in the county, shall have notice of the defendant's application, and of the time set for hearing it.

(c) If, upon the hearing, the justice is satisfied that there ought to be a trial, and that the defendant was not guilty of wilful negligence in letting judgment go against the defendant by default, the application shall be granted, and a day appointed for the trial, whereof the plaintiff, or the plaintiff's agent, shall have notice.

(d) The notice may in either case, be given and proved by the constable.

(Code 1852, § 2082; Code 1915, § 4011; Code 1935, § 4497; 10 Del. C. 1953, § 9542; 66 Del. Laws, c. 415, § 2; 69 Del. Laws, c. 429, § 7; 70 Del. Laws, c. 186, § 1.)

§ 9539 Failure of plaintiff to appear; adjournment or dismissal.

If a plaintiff litigating a civil suit fails to appear at any proceeding scheduled by the Court, the Court shall either: enter a nonsuit judgment, which may be taken off in like manner as a judgment by default; dismiss the action according to court rule; or adjourn the matter for further proceedings, as the circumstances direct.

(Code 1852, § 2083; Code 1915, § 4011; Code 1935, § 4497; 10 Del. C. 1953, § 9543; 76 Del. Laws, c. 27, § 6.)

§ 9540 Entry of judgment; endorsement on cause of action.

Every justice of the peace, upon entering judgment upon any cause of action arising from any promissory note, bank check or due bill, or other evidences of indebtedness under the hand of the debtor, shall endorse on such cause of action the year, month and day of entering such judgment, with a reference to the docket, showing the page of such docket, and the number of such judgment, and shall file such cause of action in his or her office, which cause of action shall be a part of the record.

(18 Del. Laws, c. 677, § 1; Code 1915, § 4010; Code 1935, § 4496; 10 Del. C. 1953, § 9544; 70 Del. Laws, c. 186, § 1.)

§ 9541 Costs.

(a) Whichever party recovers judgment shall recover that party's costs of suit, to be allowed and collected by force of the judgment, as a part thereof.

(b) If plaintiff, upon claiming a new trial, recovers no more than $5.00, exclusive of costs, the defendant shall be allowed his or her costs in the new trial.

(c) If the plaintiff is nonsuited, or discontinues or withdraws his or her action, judgment shall be given for the defendant for costs.

(Code 1852, §§ 2092, 2093; Code 1915, § 4015; Code 1935, § 4501; 10 Del. C. 1953, § 9545; 58 Del. Laws, c. 194, § 8; 70 Del. Laws, c. 186, § 1.)

§ 9542 Judgments against executor or administrator.

(a) Every judgment against an executor, or administrator, as such, shall be a judgment of assets, and shall not charge the executor or administrator absolutely, but only in case the executor or administrator, at the time the judgment is rendered, or before, or afterward, has assets which, according to law, ought to be applied to the cause of action.

(b) If an execution on a judgment against an executor or administrator is returned unsatisfied for want of assets, the creditor may sue out a scire facias, upon a suggestion of waste, against the executor or administrator; and if the defendant does not appear and show sufficient cause to the contrary, the defendant shall be deemed guilty of waste and shall be personally liable for the amount of the original judgment, with interest and costs, and judgment and execution shall be awarded accordingly, as for the defendant's own debt. No such scire facias shall be issued until after the lapse of 1 year from the grant of letters of administration to the defendant.

(c) In all cases in which a question of assets shall be determined, that question shall be tried by the justice, and not by referees.

(Code 1852, §§ 2094-2096; Code 1915, § 4016; Code 1935, § 4502; 10 Del. C. 1953, § 9546; 69 Del. Laws, c. 429, § 8; 70 Del. Laws, c. 186, § 1.)

§ 9543 Setting aside judgment on warrant of attorney.

(a) If any defendant in a judgment on warrant of attorney, or attorney's executors, or administrators, by affidavit filed with the justice, denies the obligation, or sets forth any just defense, a trial shall be granted, which shall be conducted as in other cases.

(b) The judgment shall not be vacated, nor any execution, or levy thereon, set aside, until after a trial and determination against such obligation, or warrant.

(c) A levy shall be a security for what may be found due to the plaintiff, the proceedings thereupon being stayed, unless the defendant gives sufficient security to pay the plaintiff the sum justly due.

(d) The security shall be entered as follows:

"On the..... day of..... A.D. 20....., A. B. (and C. D., if two) became surety for the defendant (or defendants) for the payment of whatever is justly due to the plaintiff (or plaintiffs) in this action."

(e) Upon the entry of security being made and signed, the judgment and execution shall be set aside.

(Code 1852, § 2102; Code 1915, § 4020; Code 1935, § 4506; 10 Del. C. 1953, § 9549; 70 Del. Laws, c. 186, § 1.)

§ 9544 Six months stay of execution.

(a) Upon every judgment given by the Court against a freeholder of the county, for a sum exceeding $5.00, besides costs, there shall, upon the application of the defendant within 5 days thereafter, be a stay of execution for 6 months, unless a creditor in the judgment, or other credible person, makes and files an affidavit before the justice "that he or she has good ground to apprehend and does verily believe that if the stay of execution be allowed, the sum due by the judgment will be lost"; upon which execution may forthwith issue.

(b) If any of several defendants in such judgment is a freeholder of the county, the provisions of subsection (a) of this section shall apply.

(Code 1852, § 2103; 12 Del. Laws, c. 22; Code 1915, § 4021; Code 1935, § 4507; 10 Del. C. 1953, § 9551; 69 Del. Laws, c. 429, § 9; 70 Del. Laws, c. 186, § 1.)

§ 9545 Nine months stay of execution; security.

(a) If any defendant against whom a judgment is given for more than $5.00, besides costs, or any freeholder in relation to whom affidavit is made as in § 9544 of this title, gives, within 5 days after giving such judgment, or filing such affidavit, sufficient security to pay the judgment, there shall be a stay of execution thereon for 9 months from that time.

(b) The security shall be entered on the docket in the following form:

"On the..... day of....., A. D. 20....., A. B., (or A. B. and C. D., if two) becomes surety that this judgment shall be fully satisfied";

and the entry shall be signed by the surety or sureties.

(c) The entry of security, and the entry prescribed in § 9546 of this title, shall be an obligation of record, and shall oblige the sureties, or their executors or administrators, jointly, or severally, to pay the judgment to which such entry refers, and after the expiration of the stay of execution the judgment may be executed and enforced against the sureties, their executors or administrators, without an action of debt, or a scire facias being first maintained or issued thereupon.

(d) If any defendant, in a judgment against several, is not a freeholder of the county, the foregoing provisions for 9 months' stay on giving security shall apply, although there may be other defendants who are freeholders.

(e) If, in any case, execution has issued before the security is given, the same shall, on giving the security within the 5 days, be superseded and the proceedings thereon quashed.

(Code 1852, §§ 2104-2107; Code 1915, § 4022; 34 Del. Laws, c. 222; Code 1935, § 4508; 10 Del. C. 1953, § 9552.)

§ 9546 Transfer of judgment to Superior Court docket after stay of execution.

(a) Whenever a defendant in any judgment described under § 9544 or § 9545 of this title has obtained a stay of execution under the provisions of either of such sections, the plaintiff or plaintiffs in such judgment, may file a duly certified transcript of the docket entries of the judgment, with the prothonotary of the Superior Court, in the county where such judgment was given, and the prothonotary shall enter in the prothonotary's judgment docket, the names of the parties, the amount of the judgment, and by what Justice of the Peace Court rendered, the time from which interest runs and the amount of the costs, with the true date of such filing and entry.

(b) A judgment transferred under the provisions of this section shall from that date become and be a lien on all the real estate of the defendants, as well as of the sureties, in the county, in the same manner and as fully as judgments rendered in the Superior Court are liens, and may, after the expiration of the stay of execution, be executed and enforced in the same way as judgments of the Court. If any such judgment is lawfully assigned to a joint debtor or surety, the assignee shall have the benefit of this section.

(Code 1852, § 2103; 12 Del. Laws, c. 22; Code 1915, §§ 4021, 4022; 34 Del. Laws, c. 222; Code 1935, §§ 4507, 4508; 10 Del. C. 1953, § 9553; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 232, § 4.)

§ 9547 Execution process.

(a) Process of execution may be issued by the Justice of the Peace Court rendering a judgment, or by any other Justice of the Peace Court, with which the docket containing such judgment is deposited, or a duly certified transcript of the record of such judgment is filed.

(b) The process of execution shall bear date of the day it is issued, and shall be made returnable on a day certain, not more than 60, nor less than 30, days, thereafter; but a return of "no goods" may be made after 2 days from its date.

(c) Process of execution shall be directed to a constable.

(Code 1852, §§ 2108, 2109, 2117; 14 Del. Laws, c. 93; Code 1915, § 4023; 40 Del. Laws, c. 237, § 1; Code 1935, § 4509; 43 Del. Laws, c. 230; 10 Del. C. 1953, § 9554; 55 Del. Laws, c. 20, § 14; 70 Del. Laws, c. 232, § 5; 75 Del. Laws, c. 282, § 2.)

§ 9548 Form of execution process.

The form of execution process will be as prescribed by the Court and shall be issued in the manner provided by law.

(Code 1852, §§ 2110-2112, 2116; Code 1915, § 4023; 40 Del. Laws, c. 237, § 1; Code 1935, § 4509; 43 Del. Laws, c. 230, § 1; 10 Del. C. 1953, § 9555; 55 Del. Laws, c. 20, § 15; 70 Del. Laws, c. 232, § 6.)

§ 9549 Garnishees; time for appearance; pleadings.

(a) The day fixed for the garnishees' appearance shall not be less than 5 days from the date, nor shall it be after the return day of the execution.

(b) The garnishee summoned on any execution, or other attachment, shall be bound to plead, or answer, concerning any credits, money or rights arising from any agreement, or contract, for personal labor, hire or services of the defendant for which the garnishee is accountable to the defendant, after the garnishee is so summoned to answer and until the judgment with costs has been paid.

(Code 1852, §§ 2113, 2114; Code 1915, § 4023; 40 Del. Laws, c. 237, § 1; Code 1935, § 4509; 43 Del. Laws, c. 230, § 1; 10 Del. C. 1953, § 9556; 60 Del. Laws, c. 619, § 1; 70 Del. Laws, c. 186, § 1.)

§ 9550 Proceeding by garnishee charging collusion.

(a) Any person summoned to answer under an execution attachment as a garnishee of another, to whom such person is indebted in a sum exceeding the amount cognizable before a justice of the peace, or any creditor of such garnishee, may, with the answer or plea admitting or denying such indebtedness, require the justice of the peace to enter upon his or her docket a plea that such attachment process has been taken against such garnishee by collusion between the plaintiff and the defendant in the judgment upon which such execution attachment is or shall be issued, and for a claim not actually due from such defendant, or confessed, contracted, incurred, or made for

the occasion, or upon a judgment upon a claim, or for a debt made by dividing or splitting up a claim or debt not primarily cognizable by reason of its amount before a justice of the peace, for the purpose of bringing the same under or within the jurisdiction of a justice or justices of the peace.

(b) Upon such plea, as well as upon any plea of "nulla bona" entered in the cause, the justice shall enter an issue or issues, which shall be tried and determined as other cases cognizable before the justice.

(c) If either of the issues is found for the defendant, the garnishee judgment shall be entered against the attaching creditor for the costs, otherwise, it shall be entered as in other cases.

(d) Nothing in this section shall prevent the giving of a credit upon a claim, so as to reduce it to a sum within the jurisdiction of a justice of the peace.

(14 Del. Laws, c. 92, §§ 1, 4; Code 1915, § 4024; Code 1935, § 4510; 10 Del. C. 1953, § 9557; 70 Del. Laws, c. 186, § 1.)

§ 9551 Appeal from proceeding by garnishee.

(a) In any proceeding under § 9550 of this title, either party may have an appeal, as in other cases.

(b) Any creditor of the garnishee, in case of judgment against the latter, may cause an appeal to be entered and carried on in the name of the garnishee upon special application to the justice in that behalf, upon becoming bound with surety to the satisfaction of the justice for the prosecution of the appeal, etc., as in other cases; in which case the garnishee shall be indemnified for all costs arising upon the appeal.

(c) Any creditor who makes a defense in the original proceedings before the justice shall likewise, before being admitted to defend, give security to the satisfaction of the justice for any legal costs which may be incurred in making such defense in case it proves unsuccessful.

(d) In the prosecution of the appeal in the Court of Common Pleas, any defense which might be made before the justice may be made before the Court.

(14 Del. Laws, c. 92, §§ 2, 3; Code 1915, § 4024; Code 1935, § 4510; 10 Del. C. 1953, § 9558; 69 Del. Laws, c. 423, § 6; 70 Del. Laws, c. 186, § 1.)

§ 9552 Time of binding of goods and chattels by execution; duration of lien.

An execution shall not bind goods and chattels until it is delivered to the constable or other officer to be executed. An execution shall, from the time it is so delivered, bind all the goods and chattels of the defendant, within the bailiwick of such constable or other officer which are actually levied upon within 30 days thereafter. No levy upon goods and chattels, made by virtue of execution process, shall be of any force or effect as against a subsequent execution levied upon the same goods and chattels for a longer period than 3 years from the making of such first mentioned levy.

(Code 1852, § 2122; 13 Del. Laws, c. 161, §§ 1, 2; Code 1915, § 4027; Code 1935, §§ 4511, 4513; 10 Del. C. 1953, § 9559; 70 Del. Laws, c. 232, § 7; 77 Del. Laws, c. 295, § 1.)

§ 9553 Levy; inventory; appraisement.

(a) The goods and chattels seized by virtue of an execution issued by a Justice of the Peace Court shall be inventoried and appraised by the officer levying the same.

(b) The property which any debtor is entitled to have set apart under any exemption law of the State shall be set apart and delivered to the debtor at the time when the levy and appraisement is made, in the manner provided by law if requested by the debtor pursuant to Chapter 49 of this title.

(Code 1852, § 2122; 13 Del. Laws, c. 161, § 1; 14 Del. Laws, c. 555; Code 1915, § 4027; Code 1935, § 4511; 10 Del. C. 1953, § 9560; 70 Del. Laws, c. 232, § 8.)

§ 9554 Sale of goods levied upon; advertisement.

(a) The goods and chattels taken on execution issued by a Justice of the Peace Court shall not be sold until 10 days after the appraisement, nor until they are advertised for at least 10 days, in at least 5 of the most public places in the neighborhood, by advertisements setting forth the goods to be sold, and the day, hour and place of sale.

(b) One advertisement shall be delivered to every person whose goods are to be sold, and to the defendant's landlord, or to the landlord's agent if there is one residing within the county.

(c) One advertisement shall be delivered to the sheriff of the county.

(d) One such advertisement shall be delivered to each plaintiff in the execution, and also to each plaintiff in any other execution or executions at the time in the hands of the constable, or sheriff, or shall be left at the usual place of abode of such plaintiff, respectively, if there is such place of abode within the county.

(e) If any plaintiff in any such execution resides out of the county, the advertisement shall be transmitted to such plaintiff by mail, being enclosed and addressed to such plaintiff at the post office nearest such plaintiff's place of abode at least 10 days before the day of sale.

(Code 1852, § 2122; 13 Del. Laws, c. 161, § 1; Code 1915, § 4027; Code 1935, § 4511; 10 Del. C. 1953, § 9561; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 232, § 9.)

§ 9555 Priority of liens.

If several executions against the same defendant are delivered on the same day, the first delivered shall have priority. If several executions against the same defendant are delivered together, they shall have priority according to their respective numbers.

(70 Del. Laws, c. 232, § 10.)

§ 9556 Duty of constable or sheriff upon receipt of execution; return of execution.

(a) A constable, or other officer, receiving an execution, shall, in a docket, set down the date of receiving it; and when several executions are delivered on the same day, the docket shall show the order in which they are received. The constable or other officer shall also endorse upon an execution, immediately on receiving it, the precise time the officer received delivery of the execution.

(b) The officer to whom an execution issued by a Justice of the Peace Court is delivered shall duly return it with a certificate of all the officer's proceedings, and a statement of the officer's fees, giving the items.

(c) If no levy is made, the reason shall be given.

(d) If the levy has been made, an inventory and appraisement shall be returned, and shall state as whose property the goods and chattels were seized in execution.

(e) In case of a sale the list of the goods and chattels sold, with the amount thereof, shall be returned.

(Code 1852, § 2128; 14 Del. Laws, c. 85; Code 1915, § 4029; Code 1935, § 4515; 10 Del. C. 1953, § 9563; 70 Del. Laws, c. 232, § 11.)

§ 9557 Venditioni exponas; issuance; requirements; effect.

(a) If there has been a levy made, but no sale, then an execution of venditioni exponas shall be issued at the request of any party entitled to the judgment.

(b) A copy of the inventory and appraisement shall accompany the writ of venditioni exponas.

(c) The writ may be directed to the sheriff if the original execution was so directed.

(d) The issuing of a venditioni exponas shall not discharge the officer to whom the former execution was delivered, from any liability incurred by neglect, or default, in respect to it.

(e) After 1 execution of venditioni exponas has been issued, the defendant shall not be charged with any fees upon any further execution of venditioni exponas, and such fees shall be paid by the plaintiff.

(f) If the officer to whom the first writ for the sale of the goods is delivered, does not use due diligence and all proper means to effect a sale, the officer shall be charged with the amount of such execution as if the officer had returned a sale sufficient to satisfy the same.

(g) In effecting a sale of goods, the officer shall conduct the sale in a commercially reasonable manner, which may include, but is not limited to, personally auctioning the goods according to procedures established by the Justice of the Peace Court; offering the goods through a commercial auction house; or by providing for other auction services. In the event that the officer does not personally conduct the sale, all costs of the sale, except those provided for in Justice of the Peace Court rules, shall be deducted from the proceeds of the sale, or otherwise borne by the party requesting the sale.

(Code 1852, §§ 2129-2131; Code 1915, § 4029; Code 1935, § 4515; 10 Del. C. 1953, § 9564; 70 Del. Laws, c. 186, § 1; 76 Del. Laws, c. 239, § 1; 77 Del. Laws, c. 240, § 1.)

§ 9558 Form of venditioni exponas.

The venditioni exponas shall be in the following form:

"..... County, ss. The State of Delaware.

To any constable, greeting:

We command you that after giving due notice, you sell, at public vendue, the goods and chattels specified in the schedule hereto annexed, for the purpose of satisfying a judgment recovered on the..... day of..... 20...., before A. B., one of our justices of the peace, by C. D. against E. F. for the sum of..... on interest from the..... and the further sum of..... costs of suit, and..... fees on the former execution, and your fees on this process, or so much of said goods and chattels as shall be sufficient for said purposes, after discharging prior liens, if any, which goods and chattels have been levied on by virtue of an execution issued on the said judgment and dated the..... day of..... 20...., and that you return this execution, and your doings hereon plainly set forth to....., one of our justices of the peace aforesaid, on the..... day of.....

* * * *

* * Witness the hand and seal of the justice last named,

* L. S. * the _____ day of . A.D. 20_____"

* *

* * * *

(Code 1852, § 2129; Code 1915, § 4029; Code 1935, § 4515; 10 Del. C. 1953, § 9565; 55 Del. Laws, c. 20, § 16.)

§ 9559 Failure to return and defective return of execution.

If any sheriff, or constable, to whom an execution is duly delivered, neglects to return the same according to the command thereof, or to return his or her doing thereon plainly set forth, as required by §§ 9556-9558 of this title, or to annex an inventory and appraisement as required by § 9557 of this title, he or she shall be liable for the amount of the execution as if he or she had levied and received the same. Liability may be enforced by action on the official obligation of the sheriff, or constable, or proceedings may be had against such constable before a justice of the peace, according to § 9561 of this title.

(Code 1852, § 2132; Code 1915, § 4030; Code 1935, § 4516; 10 Del. C. 1953, § 9566; 70 Del. Laws, c. 186, § 1.)

§ 9560 Failure to pay over proceeds from execution.

If any sheriff, or constable, levies or receives any sum of money by virtue of an execution issued by a justice of the peace, and does not pay such proceeds on demand to the person entitled to receive them, he or she shall pay to such person at the rate of 20 percent per annum from the time of such demand, to be added to the sum so levied, or received, in any suit brought for its recovery.

(Code 1852, § 2133; Code 1915, § 4031; Code 1935, § 4517; 10 Del. C. 1953, § 9567; 70 Del. Laws, c. 186, § 1.)

§ 9561 Failure on return to produce receipt of proceeds.

(a) If any constable, to whom an execution is delivered, does not, at or before the time it is returnable, produce the receipt of the party entitled to the benefit thereof, for the amount levied thereon, or makes an insufficient or a false return thereto, the justice shall, on request, issue a summons to a constable, or any other person, or to the sheriff, requiring the defaulting constable to appear before him or her at a time fixed, within 10 days thereafter, to show cause why an execution should not issue against him or her for the amount of the debt he or she was required by such execution to levy. The summons shall be served in the same way as an original summons.

(b) If the constable neglects to appear as required, or does not show sufficient cause why the execution should not issue against him or her, the justice shall, on proof of service of the summons, enter judgment against the constable for the amount of the debt he or she was required by such execution to levy, together with costs. There shall be no stay of execution on the judgment, and the justice shall, on request, issue an execution as in other cases.

(c) The remedy of this section is cumulative, and shall, in no manner, affect the responsibility of the constable or the constable's sureties on his or her official bond.

(Code 1852, §§ 2134-2136; Code 1915, § 4032; Code 1935, § 4518; 10 Del. C. 1953, § 9568; 70 Del. Laws, c. 186, § 1.)

§ 9562 Necessity of judgment and execution docket.

There shall be a judgment and execution docket for each Justice of the Peace Court, the size, type and mode of said dockets to be as prescribed by the Chief Magistrate.

(12 Del. Laws, c. 91; Code 1915, § 4028; Code 1935, § 4514; 10 Del. C. 1953, § 9569; 55 Del. Laws, c. 20, § 17; 55 Del. Laws, c. 85, § 32Y; 65 Del. Laws, c. 173, § 1.)

§ 9563 Judgment docket.

Every justice of the peace shall make a fair entry, in a judgment docket, of every action commenced before him or her, therein setting down the names of the parties, the cause of action, the sum demanded, the day of issuing process and when it is returnable, the return, and in case of a "forthwith" summons the day of the return, every adjournment and the day to which the trial is adjourned, any setoff pleaded and the amount thereof, the names of the referees if any are appointed, the sum of the referees' report and for which party, the amount of the judgment and for which party, the costs regularly taxed, entries of bail, or of security, and the issuing of any execution, and the date thereof.

(Code 1852, § 2124; Code 1915, § 4028; Code 1935, § 4514; 10 Del. C. 1953, § 9570; 70 Del. Laws, c. 186, § 1.)

§ 9564 Execution docket.

Every justice of the peace shall make a fair entry of every execution issued by such justice of the peace, setting down the names of the parties, the day of issuing, and the day when it is returnable, the debt and the costs, how directed, and to whom delivered, and when returned, a copy of the return, and the amount of any appraisement, and a note of any further proceedings.

(Code 1852, § 2125; Code 1915, § 4028; Code 1935, § 4514; 10 Del. C. 1953, § 9571; 65 Del. Laws, c. 173, § 2; 70 Del. Laws, c. 186, § 1.)

§ 9565 Indexing of dockets.

The indexing of the judgment and execution dockets shall be as prescribed by the Chief Magistrate.

(Code 1852, § 2126; Code 1915, § 4028; Code 1935, § 4514; 10 Del. C. 1953, § 9572; 65 Del. Laws, c. 173, § 3.)

§ 9566 Entry of judgment satisfaction by justice.

Whenever it appears by the return to, or the proceedings upon, any execution, that a judgment is satisfied, the justice, who has the judgment docket, shall make an entry of the satisfaction thereon, if such return or proceedings are before him or her.

(Code 1852, § 2127; Code 1915, § 4028; Code 1935, § 4514; 10 Del. C. 1953, § 9573; 70 Del. Laws, c. 186, § 1.)

§ 9567 Entry of judgment satisfaction by creditor or execution officer.

(a) The creditor in any judgment before a justice of the peace, receiving satisfaction thereof in any manner other than from an officer in pursuance of an execution, shall cause satisfaction of such judgment to be entered on the docket thereof within 90 days after receiving the same. Any officer receiving the amount of a judgment after the execution returned, so that the receipt does not appear by the return, shall, within 90 days after the receipt, cause the same to be entered upon the docket of the judgment, and of the execution.

(b) Whoever neglects the duty imposed by this section shall forfeit and pay to the debtor in the judgment, or the debtor's executors, or administrators, any sum not exceeding one-half the judgment determined in the case.

(Code 1852, § 2176; Code 1915, § 4050; Code 1935, § 4537; 10 Del. C. 1953, § 9574.)

§ 9568 Filing of abstract of execution.

Repealed by 70 Del. Laws, c. 232, § 12, effective July 14, 1995.

§ 9569 Transfer of judgment to Superior Court; lien on real estate.

(a) Judgments entered into the judgment docket in the Justice of the Peace Courts shall not constitute a lien upon real estate, but the judgment creditor may file a duly certified transcript of the docket entries of the judgment in the office of the prothonotary of the Superior Court in any or all of the 3 counties of the State and the prothonotary shall enter in his or her judgment docket the names of the parties, the amount of the judgment, the name of the court in which the judgment was recovered, the time from which interest runs and the amount of the costs, with the true date of filing and entry. The prothonotary, in his or her discretion, may allow transfer of judgments as provided in this subsection to be accomplished by electronic means.

(b) A judgment, transferred, as authorized by subsection (a) of this section, shall, from that date, become and be a lien on all the real estate of the debtor in the county, in the same manner and as fully as judgments rendered in the Superior Court are liens, and may be executed and enforced in the same way as judgments of that Court.

(c) If any judgment is lawfully assigned to a joint debtor, or surety, the assignee shall have the benefit of this section.

(d) Once a judgment has been transferred as provided in subsection (a) of this section, the Justice of the Peace Courts shall retain jurisdiction for purposes of all post-judgment proceedings with the exception of execution upon the judgment and/or the sale of real estate.

(Code 1852, § 2137; Code 1915, § 4033; Code 1935, § 4520; 10 Del. C. 1953, § 9576; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 35, §§ 1, 2.)

§ 9570 Right to appeal.

(a) A party against whom a judgment is given by a justice of the peace may appeal to the Court of Common Pleas if the judgment is given without a referee trial, and the amount exceeds $5.00, exclusive of costs.

(b) A plaintiff or defendant, as the case may be, may appeal to the Court of Common Pleas on a judgment given by a justice of the peace if the judgment is given without a referee trial, and any part of the plaintiff's demand, or the defendant's counterclaim or setoff, exceeding $5.00 is disallowed or defalked.

(Code 1852, § 2138; 11 Del. Laws, c. 225, § 2; Code 1915, § 4034; Code 1935, § 4521; 10 Del. C. 1953, § 9577; 58 Del. Laws, c. 194, § 7; 69 Del. Laws, c. 423, § 7.)

§ 9571 Appeal in civil actions.

(a) From any final order, ruling, decision or judgment of the Court in a civil action there shall be the right of appeal to the Court of Common Pleas of the State in the county in which said order, ruling, decision or judgment was rendered.

(b) The appeal shall be taken within 15 days of the final order, ruling, decision or judgment.

(c) The appeal shall be a trial de novo.

(d) The Court of Common Pleas shall establish appeal procedures and supersedeas bond requirements by rule.

(Code 1852, §§ 2139, 2141; Code 1915, § 4035; 34 Del. Laws, c. 223, § 1; Code 1935, § 4522; 10 Del. C. 1953, § 9578; 54 Del. Laws, c. 242; 65 Del. Laws, c. 40, § 1; 65 Del. Laws, c. 308, § 1; 68 Del. Laws, c. 53, § 4; 69 Del. Laws, c. 423, § 8.)

§ 9572 Proceedings on appeal.

(a) The appellant shall have the appellant's appeal entered in the Court of Common Pleas of the county where the judgment was given within the time and in the manner provided by the rules of that Court, and the Clerk of Court shall docket the action and issue process in accordance with the rules of the Court. When the appeal is entered, the Court of Common Pleas shall have jurisdiction and take cognizance thereof, and the pleadings and proceedings thereafter shall be as in other civil actions commenced in the Court, except as otherwise provided in this section.

(b) In the appeal each party may make demands against the other, and the Court or jury by its or their verdict may find a sum either for plaintiff, or defendant, but not for an amount exceeding $15,000, exclusive of interest and costs, unless such party has claimed more than that sum before the justice. Judgment shall be rendered accordingly.

(c) If a judgment is rendered against an appellant, or the appellant's executors or administrators, the Clerk of Court shall enter judgment against the sureties or their executors or administrators for the amount entered against the appellant, or the appellant's executors or administrators, and as a part of the same judgment. A judgment so entered shall from that date become a lien on all of the real estate of the surety in the county, in the same manner and as fully as other judgments rendered in the Court of Common Pleas are liens, and may be executed and enforced in the same way as other judgments in that Court.

(d) A surety or the surety's executors or administrators shall be entitled to the remedies provided in subchapter II of Chapter 77 of Title 18.

(Code 1852, §§ 2142, 2143; 11 Del. Laws, c. 225, § 2; 18 Del. Laws, c. 678, § 1; Code 1915, § 4036; 35 Del. Laws, c. 222; Code 1935, § 4523; 10 Del. C. 1953, § 9580; 55 Del. Laws, c. 297, § 7; 57 Del. Laws, c. 192, § 7; 65 Del. Laws, c. 30, § 2; 67 Del. Laws, c. 426, § 5; 68 Del. Laws, c. 53, § 5; 69 Del. Laws, c. 423, §§ 9, 10; 69 Del. Laws, c. 425, § 5; 70 Del. Laws, c. 186, § 1.)

§ 9573 Execution upon striking of appeal.

(a) Whenever an appeal is struck off, the justice shall, upon application of the creditor, issue execution upon the judgment with the costs on the appeal added, against both defendant and sureties, as is provided in §§ 9547 and 9548 of this title, respecting other sureties of record.

(b) If it appears by the return to such execution that no goods can be found sufficient to satisfy the same or any balance thereof exceeding $5.00, besides interest and costs, the appellee, or the appellee's executors or administrators may file a duly certified transcript of the docket entries of the judgment and execution with the prothonotary of the Superior Court in the county where such judgment was given. The prothonotary shall enter in the judgment docket the name of the party and sureties, the amount of the judgment, and by what justice rendered, the time from which interest runs, and the amount of the costs, with the true date of such filing and entry, and such judgment so transferred shall from that date become and be a lien on all the real estate of the debtor and the surety in the county, in the same manner and as fully as judgments rendered in the Superior Court are liens, and may be executed and enforced in the same way as judgments of the Court.

(c) Any joint debtor or surety shall be entitled to the remedies provided by subchapter II of Chapter 77 of Title 18.

(Code 1852, § 2145; 11 Del. Laws, c. 225, § 2; Code 1915, § 4037; 34 Del. Laws, c. 223, § 3; Code 1935, § 4524; 10 Del. C. 1953, § 9581; 68 Del. Laws, c. 53, § 5; 70 Del. Laws, c. 186, § 1.)

§ 9574 Abatement and dismissal.

(a) If an appellant does not duly enter the appellant's appeal in the Court of Common Pleas, it shall be abated; and on production of the prothonotary's certificate, under seal, made after the next term of the Court following the appeal, showing that it has not been regularly entered, the justice of the peace shall strike off the appeal.

(b) If after entering an appeal, the appellant neglects to prosecute it, or fails to comply with any rule, or makes other default, so that in a like case, in any other suit in Court, a nonsuit, non pros., or judgment by default would be entered, the Court shall dismiss the appeal, and remit the record to the justice, and give judgment for the respondent for costs; whereupon the justice shall strike off the appeal.

(Code 1852, § 2144; 11 Del. Laws, c. 225, § 2; Code 1915, § 4037; 34 Del. Laws, c. 223, § 3; Code 1935, § 4524; 10 Del. C. 1953, § 9582; 68 Del. Laws, c. 53, § 5; 69 Del. Laws, c. 423, § 11; 70 Del. Laws, c. 186, § 1.)

§ 9575 Abatement and dismissal.

Transferred to § 9574 of this title.

§ 9576 Remedy against deceased surety; assignment of creditor's remedies to surety.

(a) If a surety liable to execution dies before execution is issued, the creditor may proceed by scire facias upon such judgment and suretyship against the executors and administrators of such surety, and have judgment and execution as if the judgment had been a several judgment against such surety.

(b) A surety paying a judgment, or the surety's executors, or administrators, shall in every case be entitled to an assignment thereof, and to all remedies thereon, so far as to reimburse the surety, which the creditor could use against the principal, or any joint surety, or their executors or administrators.

(Code 1852, § 2146; Code 1915, § 4038; Code 1935, § 4525; 10 Del. C. 1953, § 9583; 70 Del. Laws, c. 186, § 1.)

§ 9577 Forms.

The form of a scire facias shall be as follows:

AGAINST EXECUTORS OR ADMINISTRATORS

"..... County, ss. The State of Delaware,

To any constable, greeting:

We command you that you make known to A. B., administrator (or executor) of C. D., deceased, to appear before E. F., one of our justices of the peace, at said justice's office in....., on..... the..... day of..... at..... o'clock in the..... to show, if there be any cause, why execution should not be had against the said A. B., administrator (or executor) as aforesaid, of a judgment

recovered by..... against the said C. D., deceased, before one of our justices of the peace, on the..... day of....., 20....., for the sum of....., with costs; and have you then there this warrant.

* * * *

* * Witness the hand and seal of the first named justice,

* L. S. * the _____ day of _____ A.D. 20_____"

* *

* * * *

AGAINST BAIL

AGAINST BAIL

"..... County, ss. The State of Delaware,

To any constable, greeting:

We command you that you make known to A. B., bail of C. D., to appear before E. F., one of our justices of the peace, at said justice's office in..... on..... the..... day of....., at..... o'clock in the....., to show if there be any cause, why execution should not be had against C.D. as such bail, of a judgment recovered by G. H., against the aforesaid C. D., before....., one of our justices of the peace, on the..... day of....., 20....., for the sum of..... with costs.

* * * *

* * Witness the hand and seal of the first named justice,

* L. S. * the..... day of , A.D. 20....."

* *

* * * *

AGAINST THE REPRESENTATIVES OF BAIL

AGAINST THE REPRESENTATIVES OF BAIL

"..... County, ss. The State of Delaware,

To any constable, greeting:

We command you that you make known to A. B., administrator (or executor) of C. D., deceased, who was bail for....., to appear before....., one of our justices of the peace, at said justice's office in....., on..... the..... day of..... at..... o'clock in the....., to show if there be any cause why execution should not be had against the said A. B., administrator (or executor) as aforesaid of the said C. D., who was bail as aforesaid, of a judgment recovered by....., against the aforesaid..... before..... one of our justices of the peace, on the..... day of..... 20. ., for the sum of....., with costs, and have you then there this warrant.

* * * *

* * Witness the hand and seal of the first named justice,

* L. S. * the..... day of , A.D. 20....."

* *

* * * *

AGAINST THE REPRESENTATIVES OF A SURETY

AGAINST THE REPRESENTATIVES OF A SURETY

Observe the form for use against the representatives of bail in all respects, except that where the word "bail" occurs, use the word "surety."

(Code 1852, §§ 2147-2150; Code 1915, § 4039; Code 1935, § 4526; 10 Del. C. 1953, § 9584; 55 Del. Laws, c. 20, § 19; 70 Del. Laws, c. 186, § 1.)

§ 9578 Survival of actions; parties.

(a) The death of a party shall not abate any action pending before a justice, or any appeal, or right of appeal, or any certiorari. If there are several plaintiffs, or defendants, and one dies, the action, or proceeding, may be prosecuted for, or against the survivor; and if the sole, or only remaining plaintiff, or defendant, dies, the executor, or administrator, of the deceased party, may become, or be made, a party to prosecute or defend.

(b) To make an executor, or administrator, of a defendant a party before the justice, a plaintiff must issue a summons in the usual form, adding after the words "is demanded," the words "for which cause of action suit was commenced against the said....., deceased, in his or her lifetime, and was pending at his or her death; to which the said..... executor (or administrator) is required to become a party."

(c) The summons shall be returnable as other original summons; and on service made, the executor, or administrator, shall be made a party, and the same proceedings had as in other cases.

(Code 1852, §§ 2151, 2152; Code 1915, § 4040; Code 1935, § 4527; 10 Del. C. 1953, § 9585; 70 Del. Laws, c. 186, § 1.)

§ 9579 Issuance, service and return of writ; proceedings.

A scire facias may be issued by the justice rendering a judgment, or by any other justice, who has the record of such judgment, or a transcript thereof before such justice. It shall be issued, served and returned in the same way as an original summons, and similar proceedings may be had to judgment, execution and appeal, as in other cases; but there shall be no stay of execution on a judgment on scire facias, nor shall any proceedings against bail be affected hereby.

(Code 1852, § 2153; Code 1915, § 4041; Code 1935, § 4528; 10 Del. C. 1953, § 9586; 55 Del. Laws, c. 20, § 20; 70 Del. Laws, c. 186, § 1.)

§ 9580 Endorsement and docketing; assignment of judgment.

(a) The justice of the peace shall endorse on the scire facias the name of the party who has it issued, and his or her representative character, if he or she so sues, and the name of the person he or she represents, whether as executor, administrator, or assignee.

(b) The justice shall also enter in his or her docket the names of the parties, and their representative character, if either party sues or is sued as such, or as bail; the judgment, by whom rendered, when, and for how much; the names of the original parties; and a minute of the proceedings as in other cases.

(c) No assignment of a judgment shall authorize the assignee to proceed therein in his or her own name, except in the case of sureties or joint debtors, as provided in this subchapter.

(Code 1852, § 2153; Code 1915, § 4041; Code 1935, § 4528; 10 Del. C. 1953, § 9587; 70 Del. Laws, c. 186, § 1.)

§ 9581 Revival of judgments.

(a) No execution shall be issued on a judgment after the defendant's death; nor, except in the regular continuance of such process, after the lapse of 5 years from the time execution might first have issued; until the judgment is revived by scire facias. The writ of scire facias may be according to the form prescribed in this subchapter, with necessary variations. A judgment may be revived against the original defendant without service of the scire facias, as is provided in respect to bail, when no service can be made.

(b) No scire facias is necessary to make the representative, or assignee, of the plaintiff a party to such judgment; but the death, or assignment, being suggested on the record, the representative, or assignee, also named, shall become a party.

(Code 1852, §§ 2154, 2155; Code 1915, § 4042; Code 1935, § 4529; 10 Del. C. 1953, § 9588; 75 Del. Laws, c. 282, § 1.)

§ 9582 Proceeding by attachment.

In lieu of proceeding by summons in any civil action for debt brought before a justice of the peace, the proceeding may be by attachment, as provided by §§ 9583 and 9584 of this title and in the manner provided in such sections.

(Code 1852, § 2156; Code 1915, § 4043; 34 Del. Laws, c. 221, § 6; Code 1935, § 4530; 10 Del. C. 1953, § 9589.)

§ 9583 Issuance of writ; affidavit.

On an affidavit made and filed by the plaintiff, or any credible person for the plaintiff, that the defendant is justly indebted to the plaintiff in a stated sum not exceeding $15,000 and has absconded, or is as that person believes, about to remove the defendant's person, or the defendant's effects out of the State, with intent to defraud the defendant's creditors, or intentionally conceals the defendant's person, so that process of summons cannot be served on the defendant, or is a nonresident of the State, as the case may be, the justice shall issue a writ of attachment; provided, however, that no such writ of attachment shall issue unless the affidavit provides specific facts demonstrating the validity of the debt and for believing that the debtor has absconded or is about to remove the defendant's person or the defendant's effects out of the State, with intent to defraud the defendant's creditors, or intentionally concealed the defendant's person so that process of summons cannot be served on the defendant, or is a nonresident of the State; provided further, that the plaintiff provide, at the time of filing, a cash bond in the amount of $100 conditioned that if the suit shall not be prosecuted with effect, or if the judgment rendered therein shall be in favor of a defendant, the plaintiff will pay any and all costs which may be awarded to a defendant, together with any and all damages, not exceeding the amount of the bond, which a defendant in the suit may have sustained by reason of such attachment, the remainder, if any, to be returned to the plaintiff when judgment is rendered.

(Code 1852, § 2156; 18 Del. Laws, c. 678, § 1; Code 1915, § 4043; 34 Del. Laws, c. 221, § 6; Code 1935, § 4530; 10 Del. C. 1953, § 9590; 55 Del. Laws, c. 297, § 8; 57 Del. Laws, c. 192, § 8; 65 Del. Laws, c. 30, § 3; 66 Del. Laws, c. 393, § 1; 67 Del. Laws, c. 426, § 6; 69 Del. Laws, c. 425, § 6; 70 Del. Laws, c. 186, § 1.)

§ 9584 Form of writ; form of Garnishee's Notice of Service.

(a) The form of a writ of attachment shall be as follows:

"..... County, ss. The State of Delaware,

To any constable, greetings:

We command you to attach the goods and chattels, rights and credits of....., the debtor, in order to make good to....., the plaintiff, a cause of action wherein the sum of $..... is demanded, and that you serve any garnishee of the said debtor found in your bailiwick with 2 copies of this writ, 2 copies of the Affidavit for Attachment filed by the plaintiff and a Garnishee Notice of Service form; and you have then there this warrant, with your doings hereon duly certified.

TO GARNISHEE: You are hereby ordered under penalty of contempt to hand deliver forthwith to....., the debtor, a copy of this writ and a copy of the Affidavit for Attachment; and to return a completed copy of the Garnishee Notice of Service form to the Court as soon as service upon the said debtor is effectuated; and to withhold 15% of the said debtor's net earnings from the debtor's next regularly scheduled paycheck only and to hold same until released by order of the Court.

TO DEBTOR: 15% of your net wages from your next scheduled paycheck have been attached for the reasons set forth in the Affidavit for Attachment. The withholding of your wages shall be released by the Court if you: (1) Appear at the Court at any time, Monday through Friday, from 8 a.m. to 4 p.m. before final judgment and enter your appearance acknowledging that you will answer the plaintiff's demand and satisfy any judgment rendered against you in such suit; or (2) appear at the Court at any time, Monday through Friday, from 8 a.m. to 4 p.m., and contest the attachment, in which event the Court will conduct an immediate ex parte post-deprivation hearing on the seizure of your wages and shall dissolve the attachment if the Court determines that there no longer exists a factual basis demonstrating the need for the writ; or (3) appear for trial which is scheduled for the..... day of....., 20....., at..... a.m./p.m. at Court No....., located at..... You are further advised that failure to appear for trial will result in a default judgment being entered against you.

Witness my hand and seal this..... day of....., 20.....

.....

Justice of the Peace"

(b) The form of the Garnishee's Notice of Service shall be as follows:

"Garnishee's Notice of Service

To: Clerk of the Court, Justice of the Peace

Court No.....

Please be advised that I....., garnishee in Civil Action No....., wherein..... is plaintiff and..... is the debtor, do hereby certify that a copy of the Writ of Attachment and a copy of the Affidavit for Attachment were served upon the debtor at..... a.m./p.m. on the..... day of....., 20..... I further certify that 15% of the debtor's next scheduled paycheck will be attached and held by the garnishee until released by the Court.

....

For Garnishee"

Complete below only if applicable

Please be advised that I....., garnishee in Civil Action No....., wherein..... is the plaintiff and..... is the debtor, do hereby certify this..... day of....., 20....., that the said debtor is not an employee of the garnishee and that, therefore, garnishee requests that the garnishee be released from obligations under the Writ of Attachment and is willing to appear to deny that there is anything of the debtor's in my hands or possession if summoned by the Court for this or other purpose.

....

For Garnishee"

(Code 1852, § 2157; Code 1915, § 4043; 34 Del. Laws, c. 221, § 6; Code 1935, § 4530; 10 Del. C. 1953, § 9591; 55 Del. Laws, c. 20, § 21; 66 Del. Laws, c. 393, § 2; 70 Del. Laws, c. 186, § 1.)

§ 9585 Goods and chattels subject to attachment; notice; judgment; creditors.

(a) If any goods, or chattels, are taken on any attachment issued under this subchapter, the constable shall make an inventory, and cause them to be appraised by 2 judicious persons, under oath, or affirmation, and annex the inventory to the attachment.

(b) The constable shall be responsible for the safe keeping of the goods to be levied on in execution of the plaintiff's judgment when obtained. If the goods are of a perishable nature, they may be sold on the justice's order, and on due notice. The proceeds shall be held by the constable to be so applied, or restored, as is right. The constable's official bond shall embrace both these duties.

(c) When either goods are attached, or garnishee summoned, public notice to the following effect shall be given for 1 month by advertisements posted in the justice's office, at the courthouse door of the justice's county, and in 3 public places of the defendant's hundred, or, if within 2 years the defendant had no residence in the county, then in the justice's hundred. On proof of such notice, and of the plaintiff's demand before the justice, if under $5.00, and before referees, if above that sum, judgment may be rendered. The notices shall be prepared by the justice and shall state the parties, the sum demanded, the time and cause of issuing the attachment, as stated in the affidavit, and the return.

(d) Any other creditor of the defendant may, on application, be permitted to defend such claims in the defendant's name, or to open and controvert the judgment, or appeal from the same as in other cases.

(e) Nothing in this section shall apply to execution attachments.

(Code 1852, §§ 2158-2162; Code 1915, § 4044; Code 1935, § 4531; 10 Del. C. 1953, § 9592; 70 Del. Laws, c. 186, § 1.)

§ 9586 Service on garnishee; compelling attendance.

(a) The service of an attachment on a garnishee may be made in the same way as service of an original summons.

(b) If a garnishee summoned on either original, or execution attachment, neglects to appear, as required, the justice may compel the garnishee's appearance by process, and may commit the garnishee if he or she refuses to answer or plead as required.

(c) The day for the garnishee's answer, or plea, may be adjourned by the justice, if necessary.

(d) If the justice has not received from the garnishee a copy of the Garnishee's Notice of Service form within 10 days after receipt thereof by the garnishee, the justice shall issue process to compel the appearance of the said garnishee.

(Code 1852, §§ 2163, 2165; Code 1915, § 4045; Code 1935, § 4532; 10 Del. C. 1953, § 9593; 66 Del. Laws, c. 393, § 3; 70 Del. Laws, c. 186, § 1.)

§ 9587 Process to compel appearance of garnishee.

The form of process to be used for compelling the appearance of a garnishee shall be as follows:

"..... County, ss. The State of Delaware,

To any constable, greeting:

We command you to bring A. B. forthwith before C. D., one of our justices of the peace, at said justice's office in..... to answer to E. F. as garnishee of G. H., and have you there this warrant.

* * * *

* * Witness the hand and seal of the said justice, the

* L. S. * _____ day of _____ A.D. 20_____"

* *

* * * *

(Code 1852, § 2164; Code 1915, § 4045; Code 1935, § 4532; 10 Del. C. 1953, § 9594; 55 Del. Laws, c. 20, § 22; 70 Del. Laws, c. 186, § 1.)

§ 9588 Garnishment proceedings.

(a) The plaintiff, in his or her election, may require a garnishee to answer on oath, or affirmation, or to plead. The plaintiff shall make the election at or before the appearance, or the answer is taken, and the justice may compel the answer, or plea, by attachment of contempt.

(b) If the garnishee admits in his or her answer, or plea, that at the service of the attachment, or at any time since, there was in his or her hands, or possession, any attachable goods, or chattels, rights, credits, money, or effects of the defendant, judgment shall be given against the garnishee accordingly. The garnishee may, at the time the attachment is served, or returned, or on such other day as is fixed by the justice, deliver specific goods, so in his or her hands, to the constable, who shall make an inventory, and cause them to be appraised by 2 judicious persons under oath, or affirmation, and shall annex such inventory, to the attachment.

(c) A garnishee swearing, or affirming, falsely, is guilty of perjury and may be punished accordingly.

(d) If a garnishee pleads, he or she may deny that there is anything of the defendant's in his or her hands, or possession, or he or she may admit any thing or sum, and deny any thing more. The plea shall be entered and the trial shall proceed to judgment, execution, new trial, or appeal, in all respects as an original action commenced by summons. In order to determine the plaintiff's right to appeal, he or she may have entered on the record the amount of his or her demand against the garnishee. But if, on trial, there is not found against the garnishee more than is admitted by the garnishee's plea, the garnishee shall recover his or her costs against the plaintiff.

(e) There shall be a stay of execution on judgments against garnishees, as in other cases. If by the answer, plea, or trial, it appears that the garnishee owes a sum payable at a future day, there shall be a stay of execution until that time without security.

(f) In no case shall judgment be rendered against a garnishee, until judgment is given against the original debtor, nor for a greater sum; and a garnishee shall, upon request, be admitted to defend the suit against such debtor.

(g) If more is due from a garnishee than is embraced in the judgment against him or her, the garnishee may be required to answer in other cases. If there are several garnishees, the plaintiff may elect against which he or she will take judgment, and the others shall be discharged, but may be required to answer in other cases.

(Code 1852, §§ 2166-2171; Code 1915, § 4047; Code 1935, § 4534; 10 Del. C. 1953, § 9596; 70 Del. Laws, c. 186, § 1.)

§ 9589 Dissolution of attachment.

(a) If the original debtor appears at the Court at any time, Monday through Friday, from 8 a.m. to 4 p.m., before final judgment and enters an appearance acknowledging that debtor will answer the plaintiff's demand and satisfy any judgment rendered against debtor in such suit, the attachment shall be dissolved, and the cause proceed as in other cases.

(b) If the original debtor appears at the Court at any time, Monday through Friday, from 8 a.m. to 4 p.m., before final judgment and contests the attachment, the justice shall immediately conduct an ex parte post-deprivation hearing on the seizure of the debtor's wages if the justice then determines that there no longer exists a factual basis demonstrating the need for the writ, the attachment shall be dissolved, and the cause proceed as in other cases.

(c) If the original debtor appears for trial, the attachment shall be dissolved, and the cause proceed as in other cases.

(d) In cases not falling within subsection (a), (b) or (c) of this section, the attachment shall, in any event, be dissolved, and the cause proceed as in other cases, 30 days from the date on which the writ of attachment issued.

(Code 1852, §§ 2172, 2173; Code 1915, § 4048; Code 1935, § 4535; 10 Del. C. 1953, § 9597; 66 Del. Laws, c. 393, § 4; 70 Del. Laws, c. 186, § 1.)

§ 9590 Delivery of goods to constable; defense of garnishee; liability of constable.

(a) A garnishee summoned on any attachment shall be allowed, as against any claim by the defendant, for any property delivered by the garnishee to the constable, or for the amount of any judgment rendered against the garnishee, exclusive of costs, in the same way as if the garnishee, at the time the attachment was laid, had delivered the property, or paid the money to the defendant in the attachment.

(b) The constable, to whom any goods or effects are, upon any attachment, delivered, and the constable's sureties, shall be liable, on his or her official bond, for the safe keeping of such goods or effects. The constable shall make certain that the goods or effects are taken in execution upon judgment being rendered against the defendant, or are restored to the owner, if no such judgment is rendered. The constable shall account for all money arising from the sale of any such goods or effects, and shall pay the same to the persons entitled.

(Code 1852, §§ 2174, 2175; Code 1915, § 4049; Code 1935, § 4536; 10 Del. C. 1953, § 9598; 70 Del. Laws, c. 186, § 1.)

Subchapter III

Trespass Actions

§ 9611 Statement of injury; affidavit denying agency; counterclaims, cross-claims and third-party actions.

(a) In trespass actions under § 9301 of this title, before the summons is issued, the plaintiff shall file a written statement under hand describing the injury of which the plaintiff complains. Service of a summons in an action under this subchapter shall be the same as with service of a summons in an action under subchapter II of this chapter.

(b) When the statement of injury alleges the operation of a vehicle by a servant, agent or employee of defendant, it shall not be necessary for the plaintiff at the trial to prove that the person operating the vehicle was a servant, agent or employee of the defendant or that the servant, agent or employee of the defendant was at the time of the occurrence for which the action is brought operating the vehicle in and about the course of his or her duties as a servant, agent or employee of defendant. These facts shall be taken to be admitted as alleged in the statement of injury unless the defendant, or when there is more than 1 defendant, some one of the defendants, shall have filed, at the latest upon the second day before the time fixed for trial, an affidavit denying that the operator of the vehicle was operating it as a servant, agent or employee of defendant, or that the operator of the vehicle was operating it in and about the course of his or her duties as a servant, agent or employee of defendant.

(c) Counterclaims, cross-claims and third-party actions shall be permitted in all civil actions in accordance with the Civil Rules of the Justice of the Peace Courts.

(Code 1852, § 2196; Code 1915, § 4064; Code 1935, §§ 4545, 4545A; 44 Del. Laws, c. 174; 10 Del. C. 1953, § 9611; 58 Del. Laws, c. 211; 65 Del. Laws, c. 31, § 1; 70 Del. Laws, c. 186, § 1.)

§ 9612 Form of summons.

The summons under this subchapter shall be in the form provided by the Justice of the Peace Court for summons in civil cases.

(Code 1852, § 2197; Code 1915, § 4064; Code 1935, § 4545; 10 Del. C. 1953, § 9612; 55 Del. Laws, c. 20, § 23; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 55, § 1.)

§ 9613 Reversal for lack of jurisdiction.

Repealed by 77 Del. Laws, c. 55, § 2, effective June 26, 2009.

§ 9614 Right to appeal.

In all cases of trespass, there shall be the same right of appeal to the Court of Common Pleas as in other civil actions.

(Code 1915, § 4004A; 29 Del. Laws, c. 255; Code 1935, § 4543; 41 Del. Laws, c. 209; 10 Del. C. 1953, § 9615; 69 Del. Laws, c. 423, § 12; 77 Del. Laws, c. 55, § 3.)

§ 9615 Certification of record to Superior Court.

Repealed by 77 Del. Laws, c. 55, § 4, effective June 26, 2009.

Subchapter IV

Replevin and Detinue

§ 9631 Mode of proceeding.

The proceeding before justices of the peace in actions of replevin and detinue shall be by writ as provided in this subchapter.

(Code 1915, § 4065B; 29 Del. Laws, c. 256, § 2; Code 1935, § 4548; 10 Del. C. 1953, § 9631.)

§ 9632 Statement of claims.

In replevin actions, the plaintiff shall file a written statement setting forth all the necessary averments which the plaintiff claims to constitute the right of action. Such statement of claim shall be filed before the summons is issued.

(10 Del. C. 1953, § 9632; 59 Del. Laws, c. 74, § 1.)

§ 9633 Procedure.

(a) In a proceeding under this subchapter, the service of a summons shall be as in all other civil actions. If service is unable to be perfected, the Court may forward a certified letter, return receipt requested, to the defendant enclosing the statement of claim and informing the defendant that a hearing will be held 15 days from the date of the certified letter based upon the claim outlined in the statement of claim.

(b) The summons and the certified letter shall both contain a provision instructing the defendant not to intentionally destroy, damage, sell or secrete the item in question with the further proviso that the violation thereof could result in a civil contempt violation in accordance with § 9506 of this title.

(c) The trial of the issue shall be as in all other civil actions.

(d) Should judgment be entered in favor of the plaintiff, the Court shall issue a writ of replevin in the form outlined in § 9634 of this title.

(e) Upon the execution of the writ of replevin, there shall be a stay of 15 days from the date of the judgment during which the plaintiff shall not sell, damage, destroy or secrete the items. A violation of this section could result in a civil contempt violation in accordance with § 9506 of this title. The purpose of the stay is to permit the defendant to appeal or otherwise act.

(f) Any statute inconsistent with the contents of this section is repealed.

(10 Del. C. 1953, § 9633; 59 Del. Laws, c. 74, § 1.)

§ 9634 Form of writ.

The writ shall be of the following form:

"..... County, ss. The State of Delaware.

To any constable of.... County.

WE COMMAND YOU to replevy and deliver to the said..... the following described goods and chattels forthwith to wit:..... of the value of..... dollars..... lawful money of the United States of America, the goods and chattels of the said....., and

WE FURTHER COMMAND YOU that you act forthwith and make a return forthwith. WITNESS the hand and seal of the said justice, this.....day of....., A. D., 20....."

(10 Del. C. 1953, § 9634; 59 Del. Laws, c. 74, § 1.)

§ 9635 Referee trials.

Repealed by 77 Del. Laws, c. 55, § 5, effective June 26, 2009.

§ 9636 Compelling attendance of referees.

Repealed by 77 Del. Laws, c. 55, § 6, effective June 26, 2009.

§ 9637 Judgments.

(a) In a proceeding under this subchapter, if the defendant being duly summoned does not appear, or if upon trial it is proved to the satisfaction of the justice that the plaintiff is entitled to the possession of the property, replevied and delivered, plaintiff shall have judgment for the possession thereof and for the costs.

(b) If it appears that the plaintiff is entitled to the possession of a portion of the property, replevied and delivered, plaintiff shall have judgment for the possession of that portion of the property and the defendant shall have judgment for the value of the other portion of the property, and each party shall pay its own costs.

(c) If it appears that the plaintiff is entitled to the possession of all or a portion of the property and that the property replevied was left in the possession of the defendant by reason of a bond having been given, as provided for in this subchapter the plaintiff shall have judgment for the value of the property to which he or she is entitled to the possession, and for the costs; otherwise judgment shall be for the defendant for the value of the property replevied and for the costs.

(d) In all judgments execution may be had to levy the amount thereof.

(Code 1915, § 4065E; 29 Del. Laws, c. 256, § 2; Code 1935, § 4551; 10 Del. C. 1953, § 9638; 70 Del. Laws, c. 186, § 1.)

§ 9638 Lien of judgment on real estate.

Any judgment entered under this subchapter may be made a lien on real estate in the same manner as is provided by § 9569 of this title.

(Code 1915, § 4065J; 29 Del. Laws, c. 256, § 2; Code 1935, § 4556; 10 Del. C. 1953, § 9639.)

§ 9639 Fees.

In proceedings under this subchapter, witnesses shall have the same fees as for attendance before justices of the peace in other actions.

(Code 1915, § 4065H; 29 Del. Laws, c. 256, § 2; Code 1935, § 4554; 10 Del. C. 1953, § 9640; 55 Del. Laws, c. 20, § 27.)

§ 9640 Appeals.

Appeals shall be allowed from judgments given by justices of the peace under this subchapter, to the Court of Common Pleas. Such appeals shall be taken, docketed and dismissed in the same manner as is provided by law for the taking, docketing and dismissing of appeals from justices of the peace in civil cases for debt.

(Code 1915, § 4065I; 29 Del. Laws, c. 256, § 2; Code 1935, § 4555; 10 Del. C. 1953, § 9641; 69 Del. Laws, c. 423, § 14.)

Part VII
Justices of the Peace
Chapter 97
FEES

§ 9701 Sheriffs and New Castle County Constables.

The fees of sheriffs and of New Castle County Constables, for the services specified, in cases before a justice of the peace shall be as follows:

For serving and returning a summons, or a scire facias, on one or more defendants, including all services in a cause before judgment, except mileage and summoning witnesses and referees, when residing in New Castle County, north of the Christiana River and in Kent and Sussex Counties . $ .50

When residing in New Castle County south of the Christiana River

Mileage in serving and returning a summons or scire facias at the rate of 10 cents for each mile necessarily traveled.

If no service be made, there shall be no fee or allowance of mileage, except in case of a scire facias when judgment shall be rendered thereon.

Giving notice of an application for, or time of a new trial . .50

For summoning referees (only 1 fee to be allowed unless there be a new trial and then only 2), when residing in New Castle County north of Christiana River and in Kent and Sussex Counties . .50

When residing in New Castle County south of Christiana River . 1.00

Mileage in summoning referees the same as in the case of witness.

For summoning witness, each when residing in New Castle County north of Christiana River and in Kent and Sussex Counties . .25

When residing in New Castle County south of Christiana River . .50

And 10 cents for each mile necessarily traveled, to be counted as if all the witnesses for the same party were named in the same writ and summoned at the same time.

For summoning garnishees on execution, or other attachment, for each garnishee (and mileage as in the case of witnesses) . .50

For posting advertisements of attachment (all) with mileage at the rate of 10 cents per mile, going to and returning from the courthouse, where one of said advertisements must by law be posted . .50

For serving attachment to bring body . .50

And mileage as in the case of a summons duly served, but if the attachment is issued through the fault of an officer, the officer shall pay for this and the justice's fee.

For taking goods on attachment (other than execution attachment) returning inventory and appraisement, if the goods do not exceed $15 in value

If they exceed that sum . $1.00

And mileage as in the case of witnesses.

But if the goods be sold on execution, no fee shall be charged for taking on that execution.

ON EXECUTIONS

ON EXECUTIONS

For giving notice to plaintiff on each execution in his or her hands of date of sale of goods . $ .50

For taking goods in execution . .50

Making inventory, appraisement and return . .50

Advertising, selling goods . 1.00

Collecting on execution, without sale (if the writ shall have been in his or her hands 15 days before the money is paid) . .80

On all sums collected when the execution exceeds $50 there shall also be allowed 5 percent, in addition to the above fees.

For a return of "no goods" . .25

Mileage on execution, the same as in case of summoning witnesses.

For conveying a person to jail, when residing in New Castle County north of Christiana River and in Kent and Sussex Counties . 1.50

When residing in New Castle County south of Christiana River . 3.00

And 10 cents per mile from the place of arrest to the jail, and back to the justice's office.

For serving a warrant in a criminal case, when residing in New Castle County north of Christiana River and in Kent and Sussex Counties . .50

When residing in New Castle County south of Christiana River . 1.00

Conveying defendant from 1 county to another, 10 cents per mile going and returning.

(24 Del. Laws, c. 248; Code 1915, § 4059; 32 Del. Laws, c. 212; Code 1935, § 4540; 47 Del. Laws, c. 272, § 1; 10 Del. C. 1953, § 9704; 70 Del. Laws, c. 186, § 1.)

§ 9702 Kent County constables.

The fees of Kent County constables, for the services specified, in cases before a Justice of the Peace shall be as follows:

For serving and returning a summons, or scire facias on one or more defendants, including all services in a cause before judgment . $ 1.00

For serving and returning a subpoena, $1.00 for the first 2 persons and 50¢ for each additional person.

Mileage in serving and returning a summons subpoena or scire facias at the rate of 10 cents for each mile necessarily traveled to be counted as if all persons summoned were summoned at the same time.

If no service is made, there shall be no fee except in case of a scire facias when judgment shall be rendered thereon, but mileage shall be allowed.

Giving notice of an application for, or time of a new trial . 1.00

For summoning referees (only 1 fee to be allowed unless there is a new trial and then only 2) . 1.50

Mileage in summoning referees' notice of new trial the same as in the case of witness.

For summoning witness . .50

And 10 cents for each mile necessarily traveled, to be counted as if all witnesses summoned were summoned at the same time.

For summoning garnishees on execution, or other attachment for each garnishee (and mileage as in the case of witnesses) . 1.00

For posting advertisements of attachment (all) with mileage at the rate of 10 cents per mile, going to and returning from the courthouse, where one of the advertisements must by law be posted . 1.00

For taking goods on attachment (other than execution attachment) returning inventory and appraisement if the goods do not exceed $100 in value

(1) If they exceed that sum . 3.50

(2) And mileage as in the case of witnesses.

(3) But if the goods be sold on execution, no fee shall be charged for taking on that execution.

ON EXECUTIONS

For taking goods in execution . $ 1.50

Making inventory, appraisement and return . 1.00

Advertising, selling goods . 2.00

Together with 5 percent of all the moneys collected.

Collecting on execution, without sale . 2.00

Notice to plaintiff in each case . .50

For a return of "no goods" . .75

IN WRITS OF REPLEVIN

For taking goods under writ . $ 2.50

Mileage on execution, the same as in case of summoning witnesses

For conveying a person to jail . 2.00

Mileage the same as in case of summoning witnesses.

For serving a warrant in a criminal case, or for a parentage proceeding . 2.00

In cases of a search warrant, upon which a search is made of the premises, the above fee to be allowed.

Mileage in all cases the same as in service of summons.

Conveying defendant from 1 county to another (5 cents per mile going and returning) . 2.00

Summoning witnesses and conveying a person to jail and for levying execution in a parentage proceeding, the same fees as for like services on civil process.

Serving attachment to bring body (and mileage at 5 cents per mile)

Attendance of Magistrate's Court during hearing . 1.00

In case of Constable being deputized to assist another regular county Constable the deputized officer shall be entitled to mileage at 5 cents per mile.

(24 Del. Laws, c. 248; Code 1915, § 4059; 38 Del. Laws, c. 80; Code 1935, § 4540; 47 Del. Laws, c. 272, § 2; 10 Del. C. 1953, § 9705; 73 Del. Laws, c. 50, §§ 2, 3.)

§ 9703 Sussex County constables.

The fees of Sussex County constables, for the services specified, in cases before a justice of the peace shall be as follows:

For serving and returning a summons, or scire facias on one or more defendants, including all services in a cause before judgment . $ 1.00

For serving and returning a subpoena $1.00 for the first 2 persons and 50¢ for each additional person.

Mileage in serving and returning a summons subpoena or scire facias at the rate of 10 cents for each mile necessarily traveled to be counted as if all persons summoned were summoned at the same time.

If no service is made, there shall be no fee except in case of a scire facias when judgment shall be rendered thereon, but mileage shall be allowed.

Giving notice of an application for or time of a new trial . 1.00

For summoning referees (only 1 fee to be allowed unless there is a new trial and then only 2) . 1.50

Mileage in summoning referees' notice of new trial the same as in the case of witness.

For summoning witness . .50

And 10 cents for each mile necessarily traveled, to be counted as if all witnesses summoned were summoned at the same time.

For summoning garnishees on execution, or other attachment, for each garnishee (and mileage as in the case of witnesses) . 1.00

For posting advertisements of attachment (all) with mileage at the rate of 10 cents per mile, going to and returning from the courthouse, where one of the advertisements must by law be posted . 1.00

For taking goods on attachment (other than execution attachment), returning inventory and appraisement if the goods do not exceed $100 in value

If they exceed that sum . 3.50

And mileage as in the case of witnesses.

But if the goods be sold on execution, no fee shall be charged for taking on that execution.

ON EXECUTIONS

For taking goods in execution . $ 1.50

Making inventory, appraisement and return . 1.00

Advertising, selling goods . 2.00

Together with 5 percent of all the moneys collected.

Collecting on execution, without sale . 2.00

Notice to plaintiff in each case . .50

For a return of "no goods" . .75

IN WRITS OF REPLEVIN

For taking goods under writ . $ 2.50

Mileage on execution, the same as in case of summoning witnesses.

For conveying a person to jail . 2.00

Mileage the same as in case of summoning witnesses.

For serving a warrant in a criminal case, or for a parentage proceeding . 2.00

In cases of a search warrant, upon which a search is made of the premises, the above fee to be allowed.

Mileage in all cases the same as in service of summons.

Conveying defendant from 1 county to another (5 cents per mile going and returning) . 2.00

Summoning witnesses and conveying a person to jail and for levying execution in a parentage proceeding, the same fees as for like services on civil process.

Serving attachment to bring body (and mileage at 5 cents per mile)

Attendance at Magistrate's Court during hearing . 1.00

In case of Constable being deputized to assist another regular county Constable the deputized officer shall be entitled to mileage at 5 cents per mile.

The above fees, mileage, etc., shall apply not only to the regular Constables authorized by law for Sussex County, but to all special Constables of said County appointed therein, and all special Constables of said County are hereby vested with the same powers and duties as heretofore have been vested in regular Constables.

For other services not enumerated in this subtitle, Constables of Sussex County shall be allowed fees and mileage allowed to Constables under the provisions of this chapter.

ATTACHMENT FOR RENT

For attaching goods and making inventory and returning the same, $1.00, when the demand for rent shall not exceed $200, and $2.00 when the demand shall exceed that sum, and mileage as in case of summoning witnesses.

For advertising goods on order of a justice . $ .50

For selling goods, 2 percent on the amount of sales applied to rent.

For summoning garnishees, referees, and witnesses, the same fees as are allowed in other civil cases.

(24 Del. Laws, c. 248; Code 1915, § 4059; 38 Del. Laws, c. 80; Code 1935, § 4540; 47 Del. Laws, c. 272, § 2; 10 Del. C. 1953, § 9706; 73 Del. Laws, c. 50, §§ 2, 3.)

§ 9704 Witnesses.

The fees of witnesses in cases before a justice of the peace shall be as follows:

For each day's attendance . $ .50

And 3 cents per mile from the witness' house to the place of trial and back.

For the referees who actually try the cause, each, and mileage the same as jurors . .50

(24 Del. Laws, c. 248; Code 1915, § 4059; Code 1935, § 4540; 10 Del. C. 1953, § 9707.)

§ 9705 Parties.

The fees of parties in cases before a justice of the peace shall be as follows:

For each deposition taken . $ .50

But more than $1.00 shall not be allowed by either party for depositions in a case before the justice, nor more than $5.00 on appeal.

(24 Del. Laws, c. 248; Code 1915, § 4059; Code 1935, § 4540; 10 Del. C. 1953, § 9708.)

§ 9706 Certification of acknowledgments.

The fees of a justice of the peace, for the services specified, shall be as follows:

Taking and certifying acknowledgment of a deed, whether one or more parties, each justice . $ .50

Same of a release, acquittance or receipt, each justice . .30

(12 Del. Laws, c. 571, § 1; Code 1915, § 4060; Code 1935, § 4541; 10 Del. C. 1953, § 9709.)

§ 9707 Depositions in appeals.

For each deposition taken in an appeal from a justice . $ .50

But not more than $5.00 shall be allowed for depositions in 1 appeal.

(Code 1852, § 2814; Code 1915, § 4871; Code 1935, § 5367; 10 Del. C. 1953, § 9710.)

§ 9708 Duties with respect to fees; limitations on fees.

The justice shall tax the fee for every service specified in this chapter. No other fee shall be allowed and no mileage shall be allowed unless it is expressly given. In no case shall a fee be charged for a service not performed; and every officer or person receiving a fee, shall, upon demand give a receipt specifying the items.

(24 Del. Laws, c. 248; Code 1915, § 4059; Code 1935, § 4540; 10 Del. C. 1953, § 9711.)

§ 9709 Violations and penalty.

Whoever knowingly receives any greater or more or less fees than are allowed in this chapter for the services specified, or refuses to give a receipt or adds any item not specified in this chapter, shall be fined not more than $60.

(24 Del. Laws, c. 248; Code 1915, § 4059; Code 1935, § 4540; 10 Del. C. 1953, § 9712.)

Part VII
Justices of the Peace
Chapter 99
APPEALS BY THE STATE IN CRIMINAL CASES

§ 9901 Definitions.

As used in this chapter:

(1) "Appellate court" means a court of this State having direct appellate jurisdiction over a lower court.

(2) "Lower court" means any court of this State over which an appellate court of this State has direct appellate jurisdiction. The Superior Court is a lower court for the purposes of an appeal to the Supreme Court, whether the action of the Superior Court which is subject to review by the Supreme Court is action resulting from the original jurisdiction of that Court in a trial de novo in a proceeding initiated there or initiated in a lower court, or action resulting from a review of action of a lower court under this chapter or any other provision permitting appellate review in the Superior Court.

(3) "Order" includes any judgment, order, ruling, decision, memorandum, opinion, or equivalent entry of the lower court which constitutes a fixed determination by the lower court.

(10 Del. C. 1953, § 9901; 57 Del. Laws, c. 133.)

§ 9902 Appeal as of right.

(a) The State shall have an absolute right to appeal to an appellate court a final order of a lower court where the order constitutes a dismissal of an indictment or information or any count thereof, or the granting of any motion vacating any verdict or judgment of conviction where the order of the lower court is based upon the invalidity or construction of the statute upon which the indictment or information is founded or the lack of jurisdiction of the lower court over the person or subject matter.

(b) When any order is entered before trial in any court suppressing or excluding substantial and material evidence, the court, upon certification by the Attorney General that the evidence is essential to the prosecution of the case, shall dismiss the complaint, indictment or information or any count thereof to the proof of which the evidence suppressed or excluded is essential. Upon ordering the complaint, indictment or information or any count thereof dismissed pursuant to the Attorney General's certification, the reasons of the dismissal shall be set forth in the order entered upon the record.

(c) The State shall have an absolute right of appeal to an appellate court from an order entered pursuant to subsection (b) of this section and if the appellate court upon review of the order suppressing evidence shall reverse the dismissal, the defendant may be subjected to trial.

(d) The State shall have an absolute right to appeal to an appellate court from any order entered in a lower court which grants an accused any of the following: a new trial or judgment of acquittal after a verdict; a modification of a verdict; an arrest of judgment; relief in any postconviction proceeding or in any action collateral attacking a criminal judgment; a new punishment hearing in a capital case after the court has imposed a sentence of death; or any order or judgment declaring any act of the General Assembly, or any portion of any 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 Constitutions of the United States or of this State.

(e) The State shall have an absolute right to appeal to an appellate court any ruling of a lower court on a question of law or procedure adverse to the State in any case in which the accused was convicted 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 defendant's appeal.

(f) 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.

(g) Any appeal brought by the State pursuant to subsection (e) or (f) of this section shall be personally authorized by either the Attorney General or the Chief Deputy Attorney General.

(10 Del. C. 1953, § 9902; 57 Del. Laws, c. 133; 58 Del. Laws, c. 412, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 481, § 1.)

§ 9903 Appeal in the discretion of the appellate court.

The State may apply to the 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 the appeal; but, in no event of such appeals shall the decision or result of the appeal affect the rights of the defendant and he or she shall not be obligated to defend the appeal, but the court may require the Public Defender of this State to defend the appeal and to argue the cause.

(10 Del. C. 1953, § 9903; 57 Del. Laws, c. 133; 58 Del. Laws, c. 412, § 2; 70 Del. Laws, c. 186, § 1.)

§ 9904 Time for filing appeal.

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.

(10 Del. C. 1953, § 9904; 57 Del. Laws, c. 133; 58 Del. Laws, c. 35; 70 Del. Laws, c. 481, § 2.)

§ 9905 Principles of construction.

The provisions of this chapter 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 Constitutions of the United States and the State.

(70 Del. Laws, c. 481, § 3.)