

DOMESTIC VIOLENCE STATUTES LEGISLATION, DELAWARE CODE

(State of Delaware, 2002)

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DOMESTIC VIOLENCE STATUTES

APPEALS

Title 10, 1051, 1052, 1053

§ 1051. Appeals generally.

(a) From any order, ruling, decision or judgment of the Court in any civil proceeding, including any delinquency proceeding, there shall be the right of appeal as provided by law to the Supreme Court.

(b) From any order, ruling, decision or judgment of the Court in any criminal proceeding, there shall be the right of appeal in the first instance as provided by law to the Superior Court in the same county in which the case was adjudicated by the Court, with the further right of appeal as provided by law to the Supreme Court from an affirmance by the Superior Court of the order of the Court which was appealed, or from the entry of a judgment of conviction by the Superior Court upon a trial de novo on appeal to that Court.

(c) An appeal shall be taken within 30 days from the date of the disposition, or within such time as provided by law.

(d) No appeal shall stay the execution of any order of the Court unless such stay shall be specifically ordered by this Court in the first instance or by the appellate court.

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

§ 1052. Appeals from custody orders.

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

(b) The child's parent, guardian, next friend or any interested person or agency, at any time within 30 days after the date of such order, may appeal to the Supreme Court.

(c) In the case of an indigent person, the Court may, in its discretion, waive surety for costs upon affidavit by such person that the person is without funds and means of prosecuting the appeal.

(d) The taxing of costs shall be within the discretion of the Supreme Court.
(10 Del. C. 1953, § 961; 58 Del. Laws, c. 114, § 1; 66 Del. Laws, c. 162, § 2; 66

Del. Laws, c. 162, § 2; 67 Del. Laws, c. 149, § 2; 68 Del. Laws, c. 53, § 2; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1.)

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

(a) An appeal may be taken by the State from the Family Court to an appellate court in the following instances:

(1) Appeal as of right.

a. The State shall have an absolute right to appeal to an appellate court a final order of the Family Court where the order constitutes a dismissal of a petition or information or any count thereof or the granting of any motion vacating any verdict or judgment of delinquency or conviction where the order of the Family Court is based upon the invalidity or construction of the statute upon which the petition or information is founded or where the order is based on lack of jurisdiction of the Family Court over the person or subject matter.

b. Notwithstanding any section of this chapter to the contrary, the State shall have an absolute right to appeal to an appellate court from any order of the Family Court which grants an accused any of the following: a new trial or judgment of acquittal after a verdict or an adjudication of delinquency; a modification of a verdict or an adjudication of delinquency; an arrest of judgment; relief in any post conviction 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 unauthor-

ized by, or contrary to, any statute or court rule, in which case the decision or result of the State's appeal shall affect the rights of the accused.

e. Any appeal brought by the State pursuant to subparagraph c. or d. of this subsection shall be personally authorized by either the Attorney General or the Chief Deputy Attorney General.

(2) Appeal in the discretion of the appellate court. The State may apply to an appellate court to permit an appeal to determine a substantial question of law or procedure, and the appellate court may permit the appeal in its absolute discretion. The appellate court shall have the power to adopt rules governing the allowance of such an appeal; but in no event shall the decision or result of the appeal affect the rights of the appellee and he shall not be obligated to defend the appeal, but the appellate court may require the Public Defender of the State to defend the appeal and to argue the cause; provided, however, that if the order appealed from is an order suppressing or excluding substantial and material evidence the appellate court may permit an interlocutory appeal of any pretrial order, and if the order suppressing such evidence is reversed, the appellee may be subjected to a trial.

(b) The State's rights of appeal in a delinquency proceeding provided under subsection (a) of this section shall be to the Supreme Court. The State's rights of appeal in a criminal proceeding provided under subsection (a) of this section shall be to the Superior Court in the first instance, with further rights of appeal to the Supreme Court as are provided under subsection (a) of this section, from an affirmation 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.

Arrest Without A Warrant
Title 11, Part II, Chapter 19, Subchapter I

§ 1904. Arrest without warrant.

(a) An arrest by a peace officer without a warrant for a misdemeanor is lawful whenever the officer has reasonable ground to believe that the person to be arrested has committed a misdemeanor:

- (1) In the officer's presence;
- (2) Out of the officer's presence and without the State, and if law-enforcement officers of the state where the misdemeanor was committed request an arrest and the accused will not be apprehended unless immediately arrested;
- (3) Out of the officer's presence and within the State for the crime of shoplifting and the arrest is based upon personal investigation at the scene of arrest and where a store employee is present who has observed the activity of the person to be arrested and that person is still present;
- (4) Out of the officer's presence and within the State for any misdemeanor involving physical injury or the threat thereof or any misdemeanor involving illegal sexual contact or attempted sexual contact;
- (5) Out of the officer's presence and within the State for a violation of a protective order issued by Family Court or a court of any state, territory, or Indian nation in the United States; or
- (6) Out of the officer's presence and within the State for any misdemeanor occurring on school property.

(b) An arrest by a peace officer without a warrant for a felony, whether committed within or without the State, is lawful whenever:

- (1) The officer has reasonable ground to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed; or
- (2) A felony has been committed by the person to be arrested although before making the arrest the officer had no reasonable ground to believe the person committed it.

(c) Notwithstanding any other provision of law to the contrary, an arrest by a peace officer without a warrant for violation of probation is lawful whenever the peace officer has a reasonable ground to believe that the person to be arrested has committed a new offense within or without the State during a period of probation and has thereby violated a condition of said probation imposed upon the person by a court of this State. A reasonable ground to believe that a person has committed a new offense may be based upon, but is not limited to, a finding of probable cause to issue a warrant for the new offense made by a neutral magistrate, an indictment returned by a grand jury for the new offense or an information

for the new offense filed in any court.

Any person arrested pursuant to the provisions of this subsection shall be processed in accordance with the provisions of § 1909 of this title, at which time bail shall be set on both the new offense and the violation of probation.

CHILD PROTECTION FROM DOMESTIC VIOLENCE ACT, Title 13, 701A

§ 701A. Title.

This chapter shall be known as and may be cited as the "Child Protection From Domestic Violence Act".

(69 Del. Laws, c. 309, § 4.)

§ 702A. Purpose.

The purpose of this chapter is to protect children from domestic violence and the harm caused by experiencing domestic violence in their homes.

(69 Del. Laws, c. 309, § 4.)

§ 703A. Definitions.

(a) "Domestic violence" includes but is not limited to physical or sexual abuse or threats of physical or sexual abuse and any other offense against the person committed by 1 parent against the other parent, against any child living in either parent's home, or against any other adult living in the child's home. "Domestic violence" does not include reasonable acts of self-defense by 1 parent for self-protection or in order to protect the child from abuse or threats of abuse by the other parent or other adult living in the child's home.

(b) "Perpetrator of domestic violence" means any individual who has been convicted of committing any of the following criminal offenses in the State, or any comparable offense in another jurisdiction, against the child at issue in a custody or visitation proceeding, against the other parent of the child, or against any other adult or minor child living in the home:

- (1) Any felony level offense;
- (2) Assault in the third degree;
- (3) Reckless endangering in the second degree;
- (4) Reckless burning or exploding;
- (5) Unlawful imprisonment in the second degree;
- (6) Unlawful sexual contact in the third degree; or
- (7) Criminal contempt of Family Court protective order based on an assault or other physical abuse, threat of assault or other physical abuse or any other actions placing the petitioner in immediate risk or fear of bodily harm.

(69 Del. Laws, c. 309, § 4; 70 Del. Laws, c. 186, § 1.)

§ 704A. Fleeing from domestic violence.

For purposes of this title, it shall not be considered evidence of abandonment in any child custody or visitation proceeding if a parent flees from domestic violence and temporarily leaves the child behind, as long as that child is not left in immediate danger of serious physical injury.

(69 Del. Laws, c. 309, § 4; 70 Del. Laws, c. 186, § 1.)

§ 705A. Rebuttable presumption against custody or residence of minor child to perpetrator of domestic violence.

(a) Notwithstanding other provisions of this title, there shall be a rebuttable presumption that no perpetrator of domestic violence shall be awarded sole or joint custody of any child.

(b) Notwithstanding other provisions of this title, there shall be a rebuttable presumption that no child shall primarily reside with a perpetrator of domestic violence.

(c) The above presumptions shall be overcome if there have been no further acts of domestic violence and the perpetrator of domestic violence has: (1) successfully completed a program of evaluation and counseling designed specifically for perpetrators of family violence and conducted by a public or private agency or a certified mental health professional; and (2) successfully completed a program of alcohol or drug abuse counseling if the Court determines that such counseling is appropriate; and (3) demonstrated that giving custodial or residential responsibilities to the perpetrator of domestic violence is in the best interests of the child. The presumption may otherwise be overcome only if a judicial officer finds extraordinary circumstances that warrant the rejection of the presumption, such as evidence demonstrating that there exists no significant risk of future violence against any adult or minor child living in the home or any other family member, including any ex-spouse.

(d) In those cases in which both parents are perpetrators of domestic violence, the case shall be referred to the Division of Family Services of the Department of Services for Children, Youth and their Families for investigation and presentation of findings. Upon consideration of such presentation, and all other relevant evidence, including but not limited to, evidence about the history of abuse between the parents and evidence regarding whether 1 parent has been the primary aggressor in the household, the Court shall decide custody and residence pursuant to the best interests of the child.

(69 Del. Laws, c. 309, § 4.)

DEFINITIONS, Title 10, 1041, 1042

Definition of Abuse

Title 10, §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.

Definition of Domestic Violence

(2) "Domestic violence" means abuse perpetrated by one member against another member of the following protected classes:

- a. Family, as that term is defined in § 901(9) of this title, regardless, however, of state of residence of the parties; or
- b. Former spouses, a man and a woman cohabitating together with or without a child of either or both, or a man and a woman living separate and apart with a child in common.

Definition of Petitioner

(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 infirm adult;

- 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 infirm adult and files a petition alleging domestic violence.

Definition of Protective Order

(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.)

Endangering the Welfare of Children Statute Title 11, Part I, Chapter 5, Subchapter V, 1102

§ 1102. Endangering the welfare of a child; class E or G felony.

(a) A person is guilty of endangering the welfare of a child when:

(1) Being a parent, guardian or other person legally charged with the care or custody of a child less than 18 years old the person:

a. Knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of the child; or

b. Intentionally does or fails to do any act, with the result that the child becomes a neglected child; or

(2) The person knowingly contributes to the delinquency of any child less than 18 years old by doing or failing to do any act with the result, alone or in conjunction with other acts or circumstances, that the child becomes a delinquent child; or

(3) The person knowingly encourages, aids, abets or conspires with the child to run away from the home of the child's parents, guardian or custodian; or the person knowingly and illegally harbors a child who has run away from home; or

(4) The person commits any violent felony, or reckless endangering second degree, assault third degree, terroristic threatening, or unlawful imprisonment second degree against a victim, knowing that such felony or misdemeanor was witnessed by a child less than 18 years of age who is a member of the person's family or the victim's family.

(5) The person commits the offense of Driving Under the Influence as set forth in § 4177 of Title 21, or the offense of Operating a Vessel or Boat Under the Influence as set forth in § 2302 of Title 23, and during the commission of the offense

knowingly permits a child less than 18 years of age to be a passenger in or on such vehicle, vessel or boat.

(6) The person commits any offense set forth in Chapter 47 of Title 16 in any dwelling, knowing that any child less than 18 years of age is present in the dwelling at the time.

(b) Endangering the welfare of a child shall be punished as follows:

(1) When the death of a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class E felony;

(2) When serious physical injury to a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class G felony;

(3) In all other cases, endangering the welfare of a child is a class A misdemeanor.

(c) For the purpose of imposing the penalties prescribed in paragraph (b)(1) or (b) (2) of this section, it is not necessary to prove the person's state of mind or liability for causation with regard to the resulting death or serious physical injury of the child, notwithstanding the provisions of §§ 251, 252, 261, 262, 263 or 264 of this title, or any other statutes to the contrary.

(11 Del. C. 1953, § 1102; 58 Del. Laws, c. 497, § 1; 61 Del. Laws, c. 334, § 6; 67 Del. Laws, c. 130, § 8; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 451, §§ 1, 2; 71 Del. Laws, c. 424, § 3.)

Enforcement; Sanctions for Violation of Order Title 10, Part I, Section 9, Subchapter 3

§ 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) It shall be the duty of any law-enforcement officer to arrest with or without a warrant any person whom the officer has probable cause to believe has violated a protective order issued by the Family Court or a court of any state, territory or Indian nation in the United States, and of which the person arrested has notice or

knowledge. Probable cause for arrest may be established by a good faith reliance on information contained in DELJIS or on the existence of a foreign protective order. If an officer acts in good faith upon information contained in DELJIS or on reasonable belief in the existence of a domestic or foreign protective order, the officer shall be immune from suit. The person arrested shall be immediately taken 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 until bail is fixed. If bail is fixed the justice of the peace or judge shall take into consideration in determining the amount of bail whether the defendant has previously violated an existing protective order.

(d) All protective orders issued under this part shall state that violations may result in:

(1) A finding of contempt;

(2) Criminal prosecution; and

(3) Imprisonment or fine or both.

(e) It shall be unlawful for a respondent to knowingly violate a protective order. Violations shall be punishable as a class A misdemeanor. Nothing in this subsection shall preclude the filing of a civil contempt petition by the petitioner for violations of a protective order issued under this part.

(69 Del. Laws, c. 160, § 2; 69 Del. Laws, c. 335, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 63, §§ 3, 4.)

Evidence of Domestic Violence

Title 10, 706A

§ 706A. Evidence of domestic violence.

(a) Any evidence of a past or present act of domestic violence, whether or not committed in the presence of the child, is a relevant factor that must be considered by the Court in determining the legal custody and residential arrangements in accordance with the best interests of the child.

(b) If sole or joint custody is awarded to, or if primary residence of a child is placed with, a party notwithstanding evidence that the party has committed acts of domestic violence against the other parent, against the child or against any other person living in the child's household, the Court shall make specific written findings in support of the decision to award custody or primary residence to that party.

(69 Del. Laws, c. 309, § 4.)

EX PARTE ORDERS, Title 10, Part I, Chapter 9, Subchapter III

§ 1043. Ex parte orders and emergency hearings.

(a) A petitioner may request an emergency protective order by filing an affidavit or verified pleading alleging that there is an immediate and present danger of domestic violence to the petitioner or to a minor child of the petitioner or to an infirm adult.

(b) An emergency protective order may be issued on an ex parte basis, that is, without notice to the respondent, where the petitioner certifies in writing the efforts, if any, which have been made to give notice to the respondent or the reasons supporting the claim that notice should not be required.

(c) An emergency hearing held on an ex parte basis shall be held the same day that the petition is filed or the next day that the Court is in session. All other emergency hearings shall be scheduled for an expedited hearing within 10 calendar days after the petition is filed.

(d) In any case in which an ex parte protective order has been issued, a full hearing shall be held within 10 days. The Court may extend an ex parte order as needed, but not to exceed 30 days, to effectuate service of the order where necessary to provide protection.

(e) If the Court finds by a preponderance of the evidence that the alleged domestic violence has occurred, or if the respondent consents to entry of a protective order, the Court shall grant any appropriate relief, including, but not limited to, the relief set forth in § 1045 of this title.

(f) In those cases where the respondent is not present for the hearing, or where the hearing is held ex parte, any protective order issued shall be served immediately upon the respondent, in accordance with § 1065 of this title. A certified copy of the order shall also be given to the petitioner after the hearing, before leaving the courthouse. If the order recites that the respondent appeared in person before the Court, the necessity for further service is waived and proof of service of the order is not necessary; in those cases, the respondent shall be given a copy of the order before leaving the courthouse.

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

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

(a) After consideration of a petition for a protective order, the Court may grant relief as follows:

(1) Restrain the respondent from committing acts of domestic violence, as defined in § 1041 of this title;

(2) Restrain the respondent from contacting or attempting to contact the petitioner;

(3) Grant exclusive possession of the residence or household to the petitioner or other resident, regardless of in whose name the residence is titled or leased. Such relief shall not affect title to any real property;

(4) Order that the petitioner be given temporary possession of specified personal

property solely or jointly owned by respondent or petitioner, including but not limited to, motor vehicles, checkbooks, keys and other personal effects;

(5) Grant temporary custody of the children of the parties to the petitioner or to another family member. Either party may request visitation at any time during the proceeding. The Court may provide for visitation by separate interim visitation order pursuant to Title 13, which order shall be binding upon and enforceable against both parties. Such interim visitation order may include third party supervision of any visitation, if necessary, in accordance with Chapters 7 and 19 of Title 13;

(6) Order the respondent to pay support for the petitioner and/or for the parties' children, in accordance with Chapter 5 of Title 13, including temporary housing costs;

(7) Order the respondent to pay to the petitioner or any other family member monetary compensation for losses suffered as a direct result of domestic violence committed by the respondent, including medical, dental and counseling expenses, loss of earnings or other support, cost of repair or replacement of real or personal property damaged or taken, moving or other travel expenses and litigation costs, including attorney's fees;

(8) Order the respondent to temporarily relinquish to the sheriff, constable or to a police officer the respondent's firearms and to refrain from purchasing or receiving additional firearms for the duration of the order;

(9) Prohibit the respondent from transferring, encumbering, concealing or in any way disposing of specified property owned or leased by parties;

(10) Order the respondent, petitioner and other protected class members, individually and/or as a group, to participate in treatment or counseling programs;

(11) Grant any other reasonable relief necessary or appropriate to prevent or reduce the likelihood of future domestic violence.

(b) Relief granted under this section shall be effective for a fixed period of time, not to exceed 1 year, except that such order may be extended or modified by a further order of the Court as described in subsections (c) and (d) of this section.

(c) An order issued under this part may be extended, for up to 6 months, or terms of the order modified, upon motion of either party. Hearings on such motions shall be scheduled within 30 days after proof of service on the respondent is filed.

Such motions may be heard on an emergency basis if filed in accordance with § 1043 of this title. Orders may be extended only after the Court finds by a preponderance of the evidence that domestic violence has occurred since the entry of the order, a violation of the order has occurred, if the respondent consents to the extension of the order or for good cause shown.

(d) Only the Court shall modify an order issued under this part and the reconciliation of the parties shall have no effect on the validity of any of the provisions of such an order. The protective order may be modified or rescinded during the term of the order upon motion, after notice to all parties affected and a hearing.

(e) Any subsequent support, custody or visitation order entered by the Court in any proceeding brought pursuant to Title 13 shall supersede any relevant provisions regarding those issues which are included in a protection from abuse order,

without the need to modify such protective order.
(69 Del. Laws, c. 160, § 2; 69 Del. Laws, c. 335, § 1; 71 Del. Laws, c. 137, §§ 2-4.)

**First Offenders Domestic Violence Diversion Program
Title 10, Chapter 9, Subchapter III, 1024**

§ 1024. First offenders domestic violence diversion program.

(a) For the purposes of this section, domestic violence shall be considered as any act or acts committed by an adult member of a family against one or more members of the person's family, as that term is defined in 10 Del.C. § 901(9), which constitute any of the following criminal offenses under Title 11: offensive touching (§ 601); menacing (§ 602); reckless endangering in the second degree (§ 603); assault in the third degree (§ 611); terroristic threatening (§ 621); vehicular assault in the second degree (§ 628); sexual harassment (§ 763); unlawful sexual contact in the third degree (§ 767); unlawful imprisonment in the second degree (§ 781); coercion (§ 791); reckless burning or exploding (§ 804); criminal mischief classified as a misdemeanor (§ 811); criminal trespass in the first, second or third degrees (§§ 821, 822, 823); harassment (§ 1311); or aggravated harassment (§ 1312).

(b) Those acts of domestic violence for which an offender may elect to apply for first offender status under this rule shall be limited to the following criminal offenses under Title 11: offensive touching (§ 601); menacing (§ 602); sexual harassment (§ 763); criminal mischief classified as a misdemeanor (§ 811); criminal trespass in the first, second or third degrees (§§ 821, 822, 823); harassment (§ 1311); or aggravated harassment (§ 1312).

(c) Any adult who:

(1) Has not been convicted of a violent felony or any domestic violence offense under Title 11 listed in subsection (a) of this section, or under any statute of the United States or of any state thereof including the District of Columbia relating to a violent felony or acts of domestic violence substantially similar to those criminal offenses listed in subsection (a) of this section;

(2) Has not previously been afforded first offender treatment or other diversion programs for domestic violence;

(3) Has been charged with a domestic violence offense listed in subsection (b) of this section; and

(4) Has appeared at Family Court for a bail review/domestic violence interview, may qualify for the first offense election at the time of arraignment.

(d) At the time of arraignment any person qualifying under subsection (c) of this section as a first offender and who elects to apply under this section shall admit to the offense by entering a plea of guilty, as a first offender. The court, without

entering a judgment of guilt and with the consent of the accused, may defer further proceedings and shall place the offender on probation for a period of 1 year upon terms and conditions of which shall include but not be limited to:

- (1) Enrollment with a counseling service for the purposes of evaluation and such counseling services as the evaluation counselor deems necessary;
- (2) Satisfactory completion of the counseling program;
- (3) Evaluation for alcohol and other drug abuse, and successful completion of a course of treatment as may be indicated by the evaluation;
- (4) Restitution, where appropriate, to the victim;
- (5) No unlawful contact with the victim during the period of probation; and
- (6) Other such terms and conditions as the Court may impose.

(e) If a term or condition of probation is violated, including failure to appear for evaluation at an assigned evaluating agency, the offender shall be brought before the Court, or if the offender fails to appear before the Court, in either case, upon a determination by the Court that the terms have been violated, the Court shall enter an adjudication of guilty and proceed as otherwise provided under Title 11.

(f) Upon fulfillment of the terms and conditions of probation, including, but not limited to, satisfactory completion of courses of instruction and/or programs of counseling/rehabilitation, and payment of all costs and fees, the court shall discharge the person and dismiss the proceedings against the offender and shall simultaneously therewith submit to the Attorney General a report thereof which shall be retained by the Attorney General for use in future proceedings, if required.

(g) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualification or disabilities imposed by law upon conviction of a crime, except the additional penalties imposed for second or subsequent offenses under Title 11.

(h) Any person who elects to apply for first offender status shall by said application be deemed to have waived the right to a speedy trial and further agrees to pay the cost of prosecution as a condition. If a person elects not to apply for first offender status or if the application is not accepted, the matter shall be promptly scheduled for trial.

(i) There may be only 1 discharge and dismissal under this section with respect to any person.

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

Full Faith and Credit Statute Title 10, 1046

(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) It shall be the duty of any law-enforcement officer to arrest with or without a warrant any person whom the officer has probable cause to believe has violated a protective order issued by the Family Court or a court of any state, territory or Indian nation in the United States, and of which the person arrested has notice or knowledge. Probable cause for arrest may be established by a good faith reliance on information contained in DELJIS or on the existence of a foreign protective order. If an officer acts in good faith upon information contained in DELJIS or on reasonable belief in the existence of a domestic or foreign protective order, the officer shall be immune from suit. The person arrested shall be immediately taken 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 until bail is fixed. If bail is fixed the justice of the peace or judge shall take into consideration in determining the amount of bail whether the defendant has previously violated an existing protective order. (d) All protective orders issued under this part shall state that violations may result in: (1) A finding of contempt.; (2) Criminal prosecution; and (3) Imprisonment or fine or both. (e) It shall be unlawful for a respondent to knowingly violate a protective order. Violations shall be punishable as a class A misdemeanor. Nothing in this subsection shall preclude the filing of a civil contempt petition by the petitioner for violations of a protective order issued under this part.

Visitation, Title 13, Chapter 7A,

§ 708A. Visitation.

Notwithstanding the other provisions of this title, in all cases in which the Court finds by a preponderance of the evidence that 1 of the child's parents has committed an act of domestic violence against the child, against the other parent or against any other person living in the child's household the Court shall determine a schedule, location and conditions for visitation that best protects the child and the victim of domestic violence from further violence.

(69 Del. Laws, c. 309, § 4.)

Violation of a Protection From Abuse Order Title 11, 1271A

§ 1271A. Criminal contempt of a domestic violence protective order; class A misdemeanor.

(a) A person is guilty of criminal contempt of a domestic violence protective order when the person knowingly violates or fails to obey any provision of a protective order issued by the Family Court or a court of any state, territory or Indian nation in the United States, as long as such violation or failure to obey occurred in Delaware.

(b) Criminal contempt of a domestic violence protective order is a class A misde-

meanor.

(c) A person found guilty of criminal contempt of a domestic violence protective order shall receive a minimum sentence of 15 days incarceration if:

(1) Such contempt resulted in physical injury; or

(2) Such contempt involved the use or threatened use of a deadly weapon; or

(3) The defendant was convicted of criminal contempt of a domestic violence protective order under this section on 2 or more occasions prior to this violation.

(d) The minimum sentence shall not be subject to suspension and no person subject to the minimum sentence shall be eligible for probation, parole, furlough or suspended custody during said sentence.

(69 Del. Laws, c. 160, § 4; 70 Del. Laws, c. 186, § 1; 71 Del. Laws, c. 179, § 1; 72 Del. Laws, c. 63, § 1.)

SEXUAL ASSAULT STATUES

Rape - Sufficiency of evidence; proceedings in camera Title 13, Part II, Chapter 35, Subchapter I, 3508

(a) In any prosecution for the crime of any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact; an attempt to commit any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, if such attempt conforms to § 531 of this title; solicitation for the crime of any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, if such offense conforms to § 502 of this title; or conspiracy to commit any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, if such offense conforms to § 512 of this title, if evidence of the sexual conduct of the complaining witness is offered to attack the credibility of the complaining witness the following procedure shall be followed:

(1) The defendant shall make a written motion to the court and prosecutor stating that the defense has an offer of proof concerning the relevancy of evidence of the sexual conduct of the complaining witness which the defendant proposes to present, and the relevancy of such evidence in attacking the credibility of the complaining witness.

(2) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated.

(3) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at such hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant.

(4) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant, and is not inadmissible, the court may issue an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(b) As used in this section, "complaining witness" shall mean the alleged victim of any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, any degree of attempted rape, attempted unlawful sexual intercourse, attempted unlawful sexual penetration or attempted unlawful sexual contact, conspiracy or assault.

Rape in the first degree; class A felony.
Title 11, Part I, Chapter 5, Subchapter II, 773

(a) A person is guilty of rape in the first degree when the person intentionally engages in sexual intercourse with another person and any of the following circumstances exist:

(1) The sexual intercourse occurs without the victim's consent and during the commission of the crime, or during the immediate flight following the commission of the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim; or

(2) The sexual intercourse occurs without the victim's consent and it was facilitated by or occurred during the course of the commission or attempted commission of:

a. Any felony; or

b. Any of the following misdemeanors: reckless endangering in the second degree; assault in the third degree; terroristic threatening; unlawfully administering drugs; unlawful imprisonment in the second degree; coercion; or criminal trespass in the first, second or third degree; or

(3) In the course of the commission of rape in the second, third or fourth degree, or while in the immediate flight therefrom, the defendant displayed what appeared to be a deadly weapon or dangerous instrument; or

(4) The sexual intercourse occurs without the victim's consent, and a principal-accomplice relationship within the meaning set forth in § 271 of this title existed between the defendant and another person or persons with respect to the commission of the crime; or

(5) The victim has not yet reached his or her twelfth birthday, and the defendant has reached his or her eighteenth birthday; or

(6) The victim has not yet reached his or her sixteenth birthday and the defendant stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(b) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(c) Notwithstanding any law to the contrary, a person convicted of rape in the first degree shall be sentenced to life imprisonment without benefit of probation, pa-

role or any other reduction if:

- (1) The victim had not yet reached his or her 16th birthday at the time of the offense and the person inflicts serious physical injury on the victim; or
- (2) The person intentionally causes serious and prolonged disfigurement to the victim permanently, or intentionally destroys, amputates or permanently disables a member or organ of the victim's body; or
- (3) The person is convicted of rape against 3 or more separate victims; or
- (4) The person has previously been convicted of unlawful sexual intercourse in the first degree, rape in the second degree or rape in the first degree, or any equivalent offense under the laws of this State, any other state or the United States.

Rape in the first degree is a class A felony.

**Rape in the second degree; class B felony.
Title 11, Part I, Chapter 5, Subchapter II, 772**

(a) A person is guilty of rape in the second degree when the person:

(1) Intentionally engages in sexual intercourse with another person, and the intercourse occurs without the victim's consent; or

(2) Intentionally engages in sexual penetration with another person under any of the following circumstances:

a. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight following the commission of the crime, or during an attempt to prevent the reporting of the crime, the person causes serious physical injury to the victim; or

b. The sexual penetration occurs without the victim's consent, and was facilitated by or occurred during the course of the commission or attempted commission of:

1. Any felony; or

2. Any of the following misdemeanors: reckless endangering in the second degree; assault in the third degree; terroristic threatening; unlawfully administering drugs; unlawful imprisonment in the second degree; coercion or criminal trespass in the first, second or third degree; or

c. The victim has not yet reached his or her sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes serious physi-

cal injury to the victim; or

d. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person displays what appears to be a deadly weapon or dangerous instrument; or

e. The victim has not yet reached his or her sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person displays what appears to be a deadly weapon or a dangerous instrument; or

f. The sexual penetration occurs without the victim's consent, and a principal-accomplice relationship within the meaning set forth in § 271 of this title existed between the defendant and another person or persons with respect to the commission of the crime; or

g. The victim has not yet reached his or her twelfth birthday, and the defendant has reached his or her eighteenth birthday; or

h. The victim has not yet reached his or her sixteenth birthday and the defendant stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(b) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(c) Notwithstanding any provision of this title to the contrary, the minimum sentence for a person convicted of rape in the second degree in violation of this section shall be 10 years at Level V.

Rape in the second degree is a class B felony.

Rape in the third degree; class B felony.
Title 11, Part I, Chapter 5, Subchapter II, 771

(a) A person is guilty of rape in the third degree when the person:

(1) Intentionally engages in sexual intercourse with another person, and the victim has not reached his or her sixteenth birthday and the person is at least 10 years older than the victim, or the victim has not yet reached his or her fourteenth birthday and the person has reached his or her nineteenth birthday and is not otherwise subject to prosecution pursuant to § 772 or § 773 of this title; or

(2) Intentionally engages in sexual penetration with another person under any of the following circumstances:

a. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim; or

b. The victim has not reached his or her sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim.

(b) Subsection (a)(2) of this section does not apply to a licensed medical doctor or nurse who places 1 or more fingers or an object inside a vagina or anus for the purpose of diagnosis or treatment, or to a law enforcement officer who is engaged in the lawful performance of his or her duties.

(c) Notwithstanding any law to the contrary, in any case in which a violation of subsection (a) of this section has resulted in the birth of a child who is in the custody and care of the victim or the victim's legal guardian(s), the court shall order that the defendant, as a condition of any probation imposed pursuant to a conviction under this section, timely pay any child support ordered by the Family Court for such child.

(d) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code. Rape in the third degree is a class B felony.

**Rape in the fourth degree; class C felony.
Title 11, Part I, Chapter 5, Subchapter II, 770**

(a) A person is guilty of rape in the fourth degree when the person:

(1) Intentionally engages in sexual intercourse with another person, and the victim has not yet reached his or her sixteenth birthday; or

(2) Intentionally engages in sexual intercourse with another person, and the victim has not yet reached his or her eighteenth birthday, and the person is 30 years of age or older, except that such intercourse shall not be unlawful if the victim and person are married at the time of such intercourse; or

(3) Intentionally engages in sexual penetration with another person under any of the following circumstances:

- a. The sexual penetration occurs without the victim's consent; or
- b. The victim has not reached his or her sixteenth birthday; or

(4) Intentionally engages in sexual intercourse or sexual penetration with another person, and the victim has reached his or her sixteenth birthday but has not yet reached his or her eighteenth birthday and the defendant stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(b) Subsections (a)(3) and (a)(4) of this section do not apply to a licensed medical doctor or nurse who places 1 or more fingers or an object inside a vagina or anus for the purpose of diagnosis or treatment or to a law enforcement officer who is engaged in the lawful performance of his or her duties.

Rape in the fourth degree is a class C felony.

Sexual Abuse of a Child, Title 13, Chapter 7A
§ 710A. Sexual abuse.

If the Court finds by a preponderance of the evidence that a parent has sexually abused a child, the Court shall prohibit all visitation and contact between the abusive parent and the child until such time as the Court finds, after a hearing, that supervised visitation would not harm, endanger or impair the child's physical, psychological or emotional well-being. In determining whether such visitation may be appropriate, the Court should consider all relevant factors, including:

- (1) Whether the abusive parent has successfully completed a treatment program of evaluation and counseling that is specifically designed for sexual abusers and is conducted by a public or private agency or a certified mental health professional;
- (2) Whether the abusive parent has successfully completed a program of alcohol or drug abuse counseling;
- (3) Any testimony by a mental health professional who is the therapist for the abused child;
- (4) Any testimony by a mental health professional who is the therapist for the abusive parent; and
- (5) Whether supervised visitation is in the child's best interests. Nothing in this section shall preclude the Court from denying visitation under other appropriate circumstances, including denying such visitation under an ex parte or other emergency order.

(69 Del. Laws, c. 309, § 4; 70 Del. Laws, c. 186, § 1.)