

CHAPTER 5: THE JUDICIARY<http://courts.delaware.gov>

Article IV of the Constitution of Delaware provides for a Supreme Court, a Court of Chancery, a Superior Court, a Family Court, the Court of Common Pleas, the Justice of the Peace Courts, and such other courts as may be established by the General Assembly.

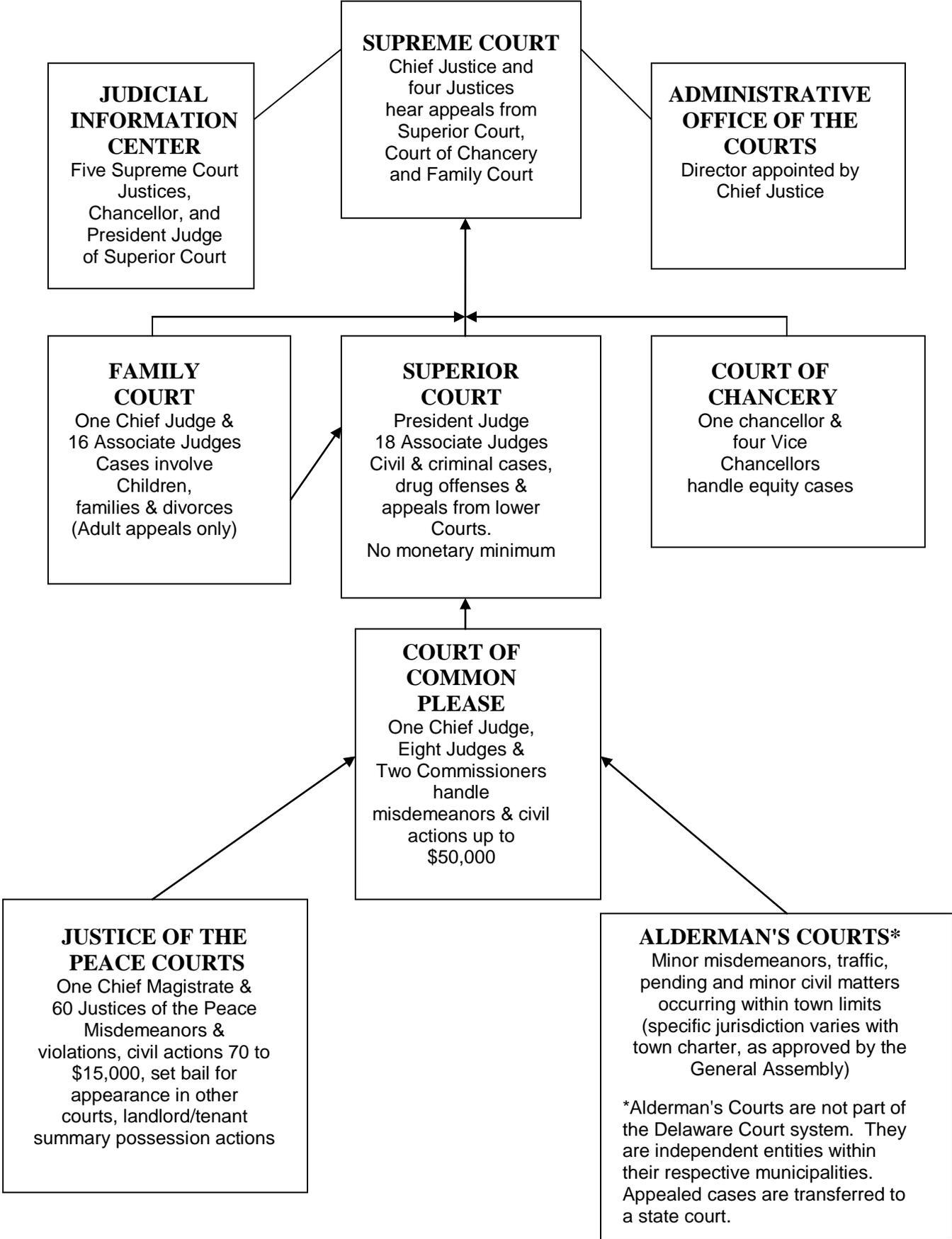
Until 2005 courts established by statute included the Court of Common Pleas, the Family Court, and the Municipal Court of the City of Wilmington. With a constitutional amendment enacted in 2005, the Court of Common Pleas and the Family Court became constitutional courts.

The Constitution provides for an even political balance among the judges but not for Justices of the Peace. When there is an even number of judges, no more than half may be of the same political party. When the number of judges is uneven, no more than a majority of one may be of the same political party.

It is required that judges of the Family Court and the Court of Common Pleas be admitted to the practice of law in Delaware for at least 5 years. Judges for the Supreme Court, Court of Chancery, and Superior Court, must be members of the bar, but without a time requirement. All judges are appointed by the Governor and must be confirmed by the Senate, and all terms are for 12 years. Salaries are set by statute by the General Assembly. If a vacancy occurs, the replacement appointment is for a full 12-year term.

Justices of the Peace are also appointed by the Governor with the advice and consent of the Senate, and their salaries are set by the General Assembly. The initial term of office for a Justice of the Peace is four years and reappointment is for six years.

ORGANIZATION OF THE DELAWARE COURTS



Supreme Court

<http://courts.delaware.gov/Supreme>

The Supreme Court is the highest court and is primarily an appeals court. Appeals are received from the Superior Court in criminal cases in which the penalty exceeds certain minimums and in civil cases concerning final judgments. Appeals are heard on the record. The Supreme Court has jurisdiction to issue writs of prohibition, *quo warranto* (by warrant), *certiorari* (writ to call up records of an inferior court) and *mandamus* (writ commanding the performance of a specified official act or duty), and for certain other orders of the Court of Chancery, the Superior Court, and the Family Court. At the request of the governor, the court also may render advisory opinions regarding the constitutionality of existing laws or proposed legislation.

The Supreme Court consists of a Chief Justice and four Associate Justices who are appointed by the governor with consent of the Senate. The justices are appointed for 12-year terms. The Chief Justice is responsible for the administration of all courts in the state and appoints a Director of the Administrative Office of the Courts to manage the non-judicial aspects of court administration. The Supreme Court is staffed by a Clerk and Chief Deputy Clerk, staff attorneys, law clerks and secretaries.

Court of Chancery

<http://courts.delaware.gov/Chancery>

The Court of Chancery is an equity court, its purpose being to provide such relief as justice and good conscience may require. The concept of the Court of Chancery is found in the early court system of England when a court was created to provide fairness or equity that was not then available in other courts of England. The Court of Chancery does not have jurisdiction over a case when sufficient remedy is available in other courts. Persons who wish to force someone to act or refrain from acting may take their case to the Court of Chancery. Cases involving dispute of ownership or of rightful title may come to the Court of Chancery. Most litigation consists of corporate matters, trusts, estates, guardianships, and other fiduciary matters, disputes involving the purchase and sale of land, and the clearing of clouds on title, as well as commercial and contractual matters in general.

One Chancellor and four Vice-Chancellors currently sit on the Court of Chancery. They are nominated by the governor and confirmed by the Senate for 12-year terms. The Chancellor has the duty to appoint the Public Guardian. The Public Guardian serves as guardian of the person and/or property of the aged, the mentally infirm and the physically incapacitated.

The appointed Register in Chancery serves as the Court Administrator and oversees the Court's clerical functions. The Register of Wills acts as a Clerk of the Court for probate matters. A Register of Wills is elected in each county and the Chancellor appoints a Chief Deputy Register of Wills for each county.

Superior Court

<http://courts.delaware.gov/Superior>

Superior Court has jurisdiction over criminal and civil cases, except equity cases over which the Court of Chancery has exclusive jurisdiction and domestic relations matters which are within the jurisdiction of the Family Court.

The court's authority to award damages is not subject to a monetary maximum. The court hears cases involving personal injury, libel and slander and contract claims. The court also tries cases

including medical malpractice, legal malpractice, property cases involving mortgage foreclosures, mechanical liens and condemnations. It has exclusive jurisdiction over felonies and drug offenses (except those involving minors and possession of marijuana cases). The court has jurisdiction over involuntary commitments of the mentally ill to the Delaware State Hospital. It also serves as an intermediate Appellate Court, hearing appeals on record from the Court of Common Pleas, the Family Court (adult criminals), and more than 50 administrative agencies including the Industrial Zoning and Adjustment Board. Appeals from Superior Court before the Supreme Court are argued on the record.

Arbitration is compulsory for civil cases when a trial is available, monetary damages sought do not exceed \$100,000, and non-monetary damages are nominal. Arbitrators are appointed by the Resident Judge or his designee. The arbitrator's decision is in the form of a written order that becomes a judgment unless a trial *de novo* (new) is requested before Superior Court within twenty days of the order.

Currently nineteen judges are appointed to Superior Court, one of whom is appointed President Judge with responsibility for the court. Three are appointed Resident Judges and must reside in the county in which they are appointed.

An appointed prothonotary for each county serves as chief clerk for that county. The prothonotary is the record keeper for the Superior Court and is directly involved with the daily operations of the court. This office handles the jury list and is custodian of costs and fees for Superior Court and the attorney general.

Elected sheriffs, one per county, also serve Superior Court. They are primarily process servers and handle sheriff's sales of property.

Family Court

Family Court is found in the menu on the left side of the Delaware Courts Official Web Site, <http://courts.delaware.gov>



Family Court Building - Dover

Family Court has broad civil and criminal jurisdiction over domestic relations matters and over juveniles under 18 years of age who are dependent, neglected or delinquent. Domestic relations jurisdiction includes divorce, annulment, adoption, termination of parental rights,

property settlements, alimony, visitation, custody, guardianship, support and actions involving domestic violence/family discord. Matters heard in the interest of a child include neglect, abuse, abandonment, termination of parental rights, adoption and juvenile delinquency. Family Court does not have jurisdiction over adults charged with felonies nor juveniles charged with first or second degree murder or rape, first degree assault or kidnapping, and certain robbery first cases that are transferred to Superior Court after a preliminary hearing in Family Court. Juveniles found by Family Court to be non-amenable to the Family Court process are also tried in Superior Court. Juvenile cases are appealed to the Supreme Court and adult criminal cases are appealed to the Superior Court.

Family Court has instituted both arbitration and mediation procedures. Arbitration is an informal proceeding in which a specially trained officer attempts to resolve juvenile delinquency cases involving minor charges and adult criminal cases involving selected misdemeanors. The officer determines if the case should be dismissed, sent to formal hearing or kept open if certain conditions must be met. The review is done by a Deputy Attorney General who either upholds the decision or decides the matter should have a formal hearing. Mediation is a pre-adjudicatory proceeding where a trained mediator attempts to assist the parties in reaching an agreement in disputes involving child custody, support, visitation, guardianships, and imperiling family relations. If the parties are unable to reach an agreement, the matter is scheduled for a hearing before a commissioner or a judge.

As of January 1, 2006 Family Court has 17 judges, one of whom is appointed by the governor as Chief Judge to serve as the chief administrator and executive officer. Ten judges must reside in New Castle County, three in Kent County and three in Sussex County. Family Court judges must have practiced law for no less than five years prior to their appointment and are selected because of their knowledge of the law and interest in and understanding of family and child problems.

Family Court uses commissioners to hear specific types of cases, such as child support, divorce, juvenile misdemeanors, protection from abuse and bail hearings. Commissioners are appointed initially to a four-year term by the governor with the consent of the Senate with subsequent appointments for six years.



Court of Common Pleas

The Court of Common Pleas is found in the menu on the left side of the Delaware Courts Official Web Site, <http://courts.delaware.gov>.

The Court of Common Pleas has jurisdiction, including concurrent jurisdiction with Superior Court, in civil actions where the amount involved, exclusive of interest, does not exceed \$50,000. There is no limitation in amount on counter-claim and cross claims. All civil cases are tried without a jury.

The Court has criminal jurisdiction over all misdemeanors occurring in Delaware including motor vehicle offenses and certain drug-related offenses (marijuana, drug paraphernalia, needle and syringe). It is responsible for all preliminary hearings. Jury trials are available to all defendants for misdemeanor and traffic offenses.

The Court has jurisdiction over appeals from Justice of Peace and Alderman's Courts in both criminal and civil cases. It also has jurisdiction over administrative appeals from the Department of Motor Vehicles, and the Animal Control Board.

There are nine judges of the Court of Common Pleas statewide, each nominated by the governor and confirmed by the Senate for terms of twelve years. Five judges are residents of New Castle County, two are residents of Kent County and two are residents of Sussex County. They must have been actively engaged in the practice of law for at least five years and must be citizens of Delaware. A majority of not more than one judge may be from the same political party. The Chief Judge, one of the nine, is appointed by the governor in the same manner. The Court of Common Pleas also has two Commissioners. One is assigned to New Castle County and the second is shared by Kent and Sussex Counties. The Commissioners have power to accept pleas, conduct violation of probation hearings, preliminary hearings, and other matters. Commissioners are appointed for a term of four years for the first term and six years for the second and subsequent terms.

Justice Of The Peace Courts

The Court of Common Pleas is found in the menu on the left side of the Delaware Courts Official Web Site, <http://courts.delaware.gov>.

More citizens come in contact with the Justice of the Peace Courts than any other. Although these courts are established by the state constitution, their jurisdiction is determined by statute, and they have only that authority expressly granted by the legislature.

The Justice of the Peace Courts (JP) have jurisdiction over civil cases in which the amount in controversy does not exceed \$15,000. JP Courts are authorized to hear violations, minor misdemeanors and motor vehicle cases (excluding felonies) and may act as committing magistrates for all crimes. Because Justice of the Peace Courts are not courts of record, appeals may be taken *de novo* (again) to Common Pleas Court. The subject matter jurisdiction of the Justice of the Peace Courts is shared with the Court of Common Pleas with the exception of landlord-tenant cases over which Justice of Peace Court has exclusive jurisdiction. Appeals in landlord-tenant cases are headed by a panel of three Justices of the Peace.

The Delaware Code authorizes a Chief Magistrate and sixty Justices of the Peace, all of whom are appointed by the Governor with approval of the Senate. Original terms are for four years and reappointments are for six years. A Justice of the Peace must be 21 years old and a resident of Delaware.

There are nineteen Justice of the Peace Courts, seven in New Castle County, five in Kent County and seven in Sussex County. Five of these courts handle only civil matters; one handles both criminal and civil charges and the remainder only criminal and traffic charges.

Alderman's Court

The jurisdiction of an Alderman's Court is limited to misdemeanors, traffic offenses, parking

violations and minor civil matters. The specific jurisdiction of each court varies with the town charter, which is approved by the state legislature. Appeals are taken *de novo* (anew) to the Court of Common Pleas within 15 days of trial. There are seven Alderman's Courts located in Bethany Beach, Dewey Beach, Laurel, Newark, Newport, Ocean View, and Rehoboth Beach. The selection, number, tenure and qualifications of aldermen are determined by the towns themselves. Some require lawyers while others choose private citizens.

Juries

<http://courts.delaware.gov/superior/Jury/>

The jury's function is to find the facts and the judge's function is to state the law. Then the jury applies the law to the facts to reach a verdict. Jurors are chosen from two files – voter registration files and licensed driver files. By Delaware law, jurors' names must be randomly selected from the Motor/Voter lists and jurors must be representative of the community in which they live.

There are two classes of cases – criminal and civil. In criminal cases, individuals or corporations are charged with violating criminal law. These cases are tried by the attorney general. In civil cases an individual or corporation sues another individual or corporation seeking monetary compensation.

The Grand Jury determines if there is sufficient evidence to hold an individual for trial in Superior Court. Each county has its own Grand Jury.

The Petit Jury sits on criminal cases heard in Superior Court and Court of Common Pleas and determines liability and amount of damages to be awarded. The Petit Jury sits on civil cases in Superior Court only and determines liability and amount of damages. A person is entitled to a jury trial on any charge for which the sentence may exceed 90 days. In criminal actions, the jury determines the innocence or guilt of the defendant by unanimous decision. If the decision is not unanimous, the case may be retried. The Petit Jury may consist of six persons, except in cases involving capital punishment, when there must be twelve members. A defendant may also choose to have his or her case heard without a jury.

As each case comes to trial, the prothonotary chooses from the box enough names until the proper number for the jury has been chosen. Each side may have six challenges without showing cause. In criminal cases involving the death penalty, the defense may have as many as 20 challenges, the prosecution 12. There is no limit to challenge for cause. In these cases, each juror is asked if he or she has any scruples against voting for the death penalty if the evidence should convince him of guilt or if he has already formed an opinion in the case. If the answer to either question is yes, the juror is excused from that particular case.

In New Castle County jurors are called for one day or one trial. There is no remuneration for the first day. Thereafter, if the trial continues, jurors receive \$20 per day. In Kent and Sussex Counties jurors are called for two weeks and receive compensation of \$20 for each day including the first day.

Court on the Judiciary

This court was created in 1969 by an amendment to the Constitution and consists of the Chief Justice and Associate Justices of the Supreme Court, the Chancellor of the Court of Chancery and the President Judge of Superior Court. Any judicial officer may be censured, removed or retired for willful misconduct, willful failure to perform, offenses involving moral turpitude, permanent mental or physical disabilities interfering with proper performance of duties or other misconduct in violation of the Canons of Judicial Ethics.

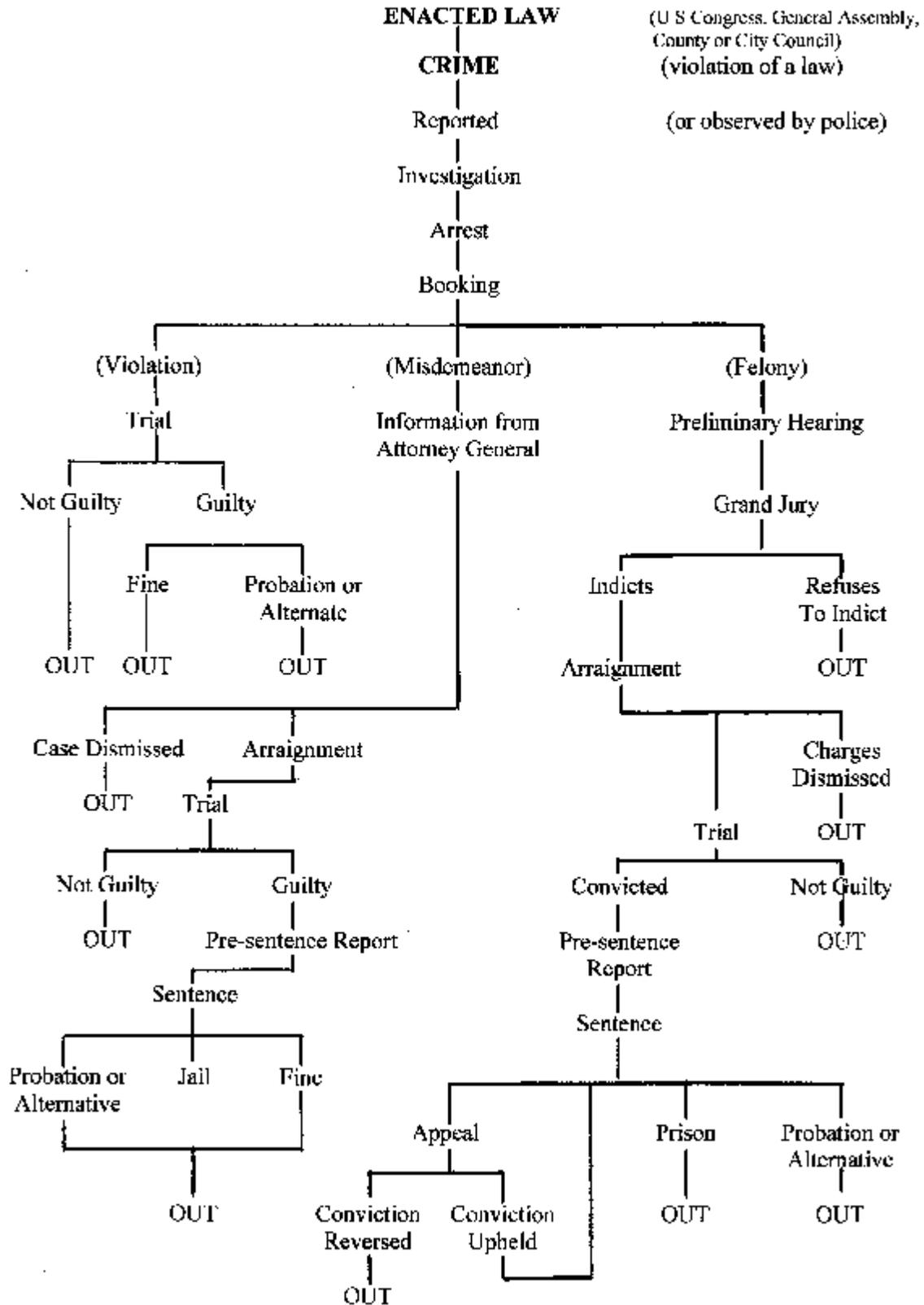
The Judiciary Process

The legislature writes the laws. Arrest for violation of a law is the responsibility of the police under the executive branch. The judicial branch provides a court trial. The Department of

Correction, again under the executive branch, carries out the sentence imposed by the court. The Department of Justice, with an elected attorney general, is responsible for prosecution of alleged violators, and defense for those unable to afford a lawyer is provided by a public defender appointed by the governor.

The following diagram indicates the many paths an individual might take through the various government departments and agencies from the moment of arrest to his subsequent release.

THE JUDICIARY PROCESS



DEFINITION OF TERMS

Committing Magistrate: The person setting bail for an appearance in a court of proper jurisdiction (e.g. A Justice of the Peace does not have authority to try a rape case). When the defendant is brought before the committing magistrate, he is told which court must hear the charge and how much and what type of bond must be posted to guarantee his later appearance.

Concurrent: Those actions which may be originated in more than one court.

Criminal Code: That portion of the law dealing with criminal offenses. This was revised effective July 1, 1973 and is Title 11 of the Delaware Code. It divides crimes into categories of violations; relatively minor offenses such as offensive touching or trespassing; misdemeanors such as theft under \$1,000; and felonies.

Exclusive: Those actions which must be brought only in a specific court.

Jurisdiction: Power of the court to act; extent and range of judicial authority - the types of cases it may try and the amount of money involved.

Original: Those actions which may be first brought or started in a specific court.

Judicial Branch Agencies

<http://courts.delaware.gov/agencies>

The following are some of the offices and boards that are independent of the court system yet their functions are closely related to the courts' actions:

Child Death, Near Death and Still Birth Commission's mission is "to safeguard the health and safety of all Delaware's children as set forth in 31 Del.C. c3 subch.11." This non-judicial agency became housed within the Judicial Branch as of July 1, 2004.

Office of the Public Guardian's mission is "to provide protective guardianship services to adult citizens who are mentally or physically disabled, who are unable to manage their personal and financial affairs, who are at risk for neglect, abuse and victimization and who have no one else able or willing to serve as guardian." Currently, the agency works closely with the Court of Chancery that has jurisdiction over issues of adult guardianship.

<http://courts.delaware.gov/publicguardian>

Victim's Compensation Assistance Program's mission is to aid victims and their families who have been physically or emotionally injured by a crime in Delaware; victims of domestic violence; victims of criminal offenses including murder, assault, kidnapping, arson, burglary, sexual assault, or sexual abuse. VCAP helps victims navigate the process and the road to recovery. VCAP receives and reviews applications for assistance, and will help victims to complete the needed forms. The agency manages the program's funds, and makes determinations regarding the awarding of compensation.

The General Assembly created the Victim's Compensation Fund in 1974 to help innocent victims of certain crimes meet additional hardships imposed upon them due to those crimes, by covering them for some of their losses. Funding for Delaware's Fund is generated by a surcharge on fines and penalties imposed by the Courts.

<http://attorneygeneral.delaware.gov/VCAP>

Child Placement Review Board's (formerly the Foster Care Review Board) mission is "to provide and administer a volunteer-based board that acts as an independent monitoring system charged with identification and periodic review of all children in out-of-home placements. The

purpose of these reviews is to ensure that every child in care has effective plans for permanency, receives adequate care for both physical and emotional needs and participates at an appropriate age in educational programs to increase independent living skills.”

<http://courts.delaware.gov/cprb/index.htm>

Educational Surrogate Parent Program’s mission is “to provide well-trained volunteers to advocate for special education children in state custody who do not have parents to advocate for them as defined under Parts B and C of the Individuals with Disabilities Education Act (IDEA).” Predominantly, this program recruits and trains volunteers to provide advocacy on behalf of children with disabilities as it relates to their special education needs/requirements with schools and the Department of Education.

<http://courts.delaware.gov/childadvocate/index.stm>

Office of the Child Advocate’s mission is “to safeguard the welfare of Delaware’s children through education advocacy, system reform, public awareness, training and legal representation of children as set forth in 29 Del. C, c 90A. (statute outlining agency authority, powers and responsibilities).” This office works with the many various agencies, commissions, and task forces, dealing with children and their welfare as well as acting as guardian *ad litem* for children and recruiting and training other attorneys to act as guardian *ad litem* on a *pro bono* basis. <http://courts.delaware.gov/childadvocate/index.shtm>

Court Appointed Special Advocate Program (CASA)

CASA provides trained volunteers to represent the best interests of abused, neglected and dependent children who are the subject of court proceedings. Volunteers are given a five-day training program by Family Court staff and then monitor cases until the child has a safe, permanent home. CASAs are assisted by program attorneys.

<http://courts.delaware.gov/Family/CASA/index.stm> (1-302-255-0071)