

CHAPTER 224  
FORMERLY  
HOUSE BILL NO. 250

AN ACT TO AMEND TITLES 10 AND 14 OF THE DELAWARE CODE RELATING TO TRUANCY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 9, Subchapter II of Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 9. THE FAMILY COURT OF THE STATE OF DELAWARE

Subchapter II. Jurisdiction and Powers

§ 922A Truancy jurisdiction.

The Court shall have jurisdiction over truancy matters as set forth in Chapter 27, Subchapter II of Title 14.

Section 2. Amend § 9301(5), Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9301 Civil jurisdiction; amount in controversy.

(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.~~

Section 3. Amend Chapter 27, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter II. Truancy.

§ 2721 Definitions.

In this Chapter:

(1) "Court" ~~means a Justice of the Peace Court~~ means either the Justice of the Peace Court or Family Court.

§ 2725 Absences without excuse; truancy conferences.

(a) If a student has been absent from school without a valid excuse 1 or more days, the principal of the school may take such action as the principal considers appropriate.

(b) If a student is truant, the principal ~~may~~ shall schedule a truancy conference with the student, the student's parent and the principal pursuant to § 2726 of this title. The conference may be attended by other persons as the principal may include.

(c) Following a truancy conference the school shall decide whether or not to file a charge against the parent for a violation of § 2702 of this title; provided however, that the principal shall refer the case for prosecution following the twentieth day of unexcused absence by a student during the school year, in compliance with § 2702(d) of this title, and may refer the case before the twentieth day of unexcused absence if the principal determines it is appropriate to do so.

(d) The fact that a student or student's parent ~~may attend or has attended~~ attended or failed to attend a truancy conference does not bar the principal from filing a complaint with ~~a court. The principal's failure to hold a truancy~~

~~conference does not bar the filing of a complaint with a court and adjudication by a court~~ the Justice of the Peace Court.

§ 2731 Enforcement of ~~court~~ Court order.

(a) The ~~court~~ Court with jurisdiction over the matter shall retain jurisdiction ~~of the matter~~ until all terms of the ~~court's~~ Court's order have been complied with regardless of any change in the student's age, marital status or choice of educational source or location.

(b) Notwithstanding any provision of this Code to the contrary, if ~~the court determines it is alleged that~~ a student has not complied with the terms of the ~~court's~~ Court's order, ~~it may charge~~ the noncompliant student may be charged with criminal contempt pursuant to § 1271 of Title 11, ~~and fully adjudicate the matter in the Justice of the Peace Court which shall, in the first instance, be brought in the Family Court.~~

(c) A juvenile against whom criminal contempt proceedings pursuant to this section and § 1271 of Title 11 have been initiated shall have the right to counsel at all stages.

~~(d) If a juvenile is not represented by counsel at his or her initial Justice of the Peace Court appearance, the Court shall order the Chief Defender to assign counsel to represent the juvenile.~~

~~(e) Prohibitions on the waiver of the right to counsel shall be as set forth in § 1007C of Title 10.~~

~~(f) Unless prohibited, the right to counsel may be waived in accordance with the Rules of the Justice of the Peace Court.~~

§ 2732 Appeals.

(a) A parent convicted within the Justice of the Peace Court of a violation of § 2702 of this title may appeal to the Court of Common Pleas in the county in which the judgment was given. The appeal shall be filed within 15 days from the date of conviction. On appeal the Court of Common Pleas shall make a de novo determination.

~~(b) No stay shall be granted pending an appeal pursuant to subsection (a) of this section unless the person appealing shall, at the time the appeal is taken, gives bond in any amount with surety to be fixed by the Court.~~  
[Reserved.]

(c) A student who has been adjudicated truant within the Justice of the Peace Court pursuant to § 2730 of this title, ~~or has been adjudicated in contempt pursuant to § 2731 of this title,~~ may appeal to the Family Court in the county in which the adjudication occurred. The appeal shall be filed within 15 days of the date of the adjudication. On appeal the Family Court shall make a de novo determination based on the record below.

(d) No appeal of the adjudication of truancy or truancy-related contempt pursuant to subsection (c) of this section shall stay execution of the remedial disposition unless a judge of the Family Court orders a stay.

§ 2733 Jurisdiction; venue.

~~(a) The Justice of the Peace Court shall have exclusive original jurisdiction of complaints filed pursuant to this title.~~ The Justice of the Peace Court and the Family Court shall have concurrent jurisdiction of complaints filed pursuant to this subchapter.

(b) All complaints under this ~~title~~ subchapter shall be filed in a Justice of the Peace Court in the county where the school the child is required to attend is located or in the county in which the office of the school district which contains the child's school is located.

(c) The matter shall proceed within the Justice of the Peace Court unless that Court determines, upon the complaint's filing, that the matter shall be transferred to the Family Court due to the existence of any of the following conditions:

(1) Pending delinquency proceedings involving the child;

(2) Pending civil proceedings involving a determination of the child's best interests pursuant to § 722 of Title 13;

(3) Pending proceedings with involvement by the Department of Services for Children, Youth and Their Families with the child's family; or

(4) Any other condition exists related to the child that reasonably warrants transfer to Family Court.

~~(d)~~ (d) In the event that a student withdraws from school for any reason other than age and does not re-enroll in another public school, the ~~court~~ Family Court or Justice of the Peace Court, in its discretion, may retain jurisdiction for the purpose of ensuring that the student's alternative educational environment was not an attempt to avoid the compulsory attendance requirements of § 2702 of this title.

§ 2735 Special procedure for expungement of truancy records.

(a) At the time that a case is closed because there has been compliance with all ~~court~~ Family Court or Justice of the Peace Court orders issued pursuant to this subchapter, the following shall be automatically expunged:

(1) Any records of charges against or the conviction of a parent or guardian for failure to send; or

(2) Any records of the charges or adjudication of truancy against a student.

(b) In any case which was closed because there was compliance with all ~~court~~ Family Court or Justice of the Peace Court orders and the automatic expungement required by subsection (a) of this section did not occur either due to error or omission on the part of the Court or the prosecuting agency or because such expungement was not authorized at the time the case was closed, the ~~Justice of the Peace~~ Court that issued the order shall grant such expungement upon motion of a parent, guardian or student. There shall be no filing fee for such applications.

(c) Following the closing of a case for any reason other than compliance with all ~~court~~ Family Court or Justice of the Peace Court orders, the records listed in subsection (a) of this section may only be expunged upon application to the ~~Justice of the Peace~~ Court that issued the order. ~~The Justice of the Peace~~ That Court may, in its discretion, grant or deny the request or make the granting of such request subject to such reasonable terms and conditions as may be appropriate. The civil filing fee shall apply to such applications.

Section 4. This Act takes effect the second Monday of August following the year of this Act's enactment into law.

Section 5. This Act does not affect any complaint filed prior to this Act's effective date.

Approved February 10, 2020