

## **Table of Contents:**

**Tab 1:** Criminal Justice Code Improvement Project  
(summary)

**Tab 2:** Criminal Justice Improvement Committee Code  
Improvement Project Talking Points (revised)

**Tab 3:** Table of Edits to the Improved Code

**Tab 4:** One sheet: Edits in Response to Concerns by Victims'  
Advocates

**Tab 5:** One sheet: Edits in Response to Concerns by Law  
Enforcement

**Tab 6:** One sheet: Edits in Response to Concerns by Attorney  
General

**Tab 7:** Improved Code (redline changes since 3/31/17)

**Tab 8:** Summary Grading Table (redline changes since  
3/31/17)

# Tab 1

## **CRIMINAL JUSTICE CODE IMPROVEMENT PROJECT**

### **WHAT DOES THIS BILL DO?**

Delaware's existing criminal code is full of redundancies, inconsistencies and disproportionality. These issues have evolved over the two generations since Delaware first adopted a criminal code based on best practices. The General Assembly established the Criminal Justice Improvement Committee and charged it with restoring the Code to a clear, readable and proportional code. This bill repeals Title 11 of the current criminal code and replaces it with an improved code that is fairer, simpler and easier to read for both the public and those who work in the criminal justice system.

### **HOW WILL IT WORK?**

In 2014, the General Assembly adopted epilogue in the FY 2015 Budget Act (and reiterated in all subsequent Budget Acts) establishing the Criminal Justice Improvement Committee (CJIC), which was tasked with reviewing opportunities for efficiencies including a review of statutes in the criminal code, "identifying disproportionate, redundant, outdated duplicative, or inefficient statutes" and "crimes that should or should not constitute potential jail time." The Improved Code reduces redundancies, improves fairness and proportionality, eliminates inconsistencies and ambiguity and restores the Code to what it was originally intended to be: a clear, consistent, fair, and easy to understand guide as to what violates the law and the way that criminal cases are decided.

Specifically, the Improved Code seeks to:

- Adopt the values and judgments expressed in current Delaware criminal law, and to incorporate them into a modern, readable criminal code format to produce a criminal code that is comprehensive, rational, and non-duplicative.
- Make the code simpler, more readable, and easily accessible to law enforcement and the public so that those who must obey the code, and those who are required to enforce it, can understand the code without resorting to lawyers and judges.
- Ensure that criminal offenses, legal rules and crime grades are cohesive and relate to one another in a consistent and rational manner.
- Reduce the word count of the code to approximately ¼ of the words in the current code.
- Bring the nearly 100 felonies and over 100 misdemeanors scattered throughout the entire Delaware Code into one Criminal Code.
- Consciously groups offenses of relative seriousness together for sentencing purposes, unlike the current ad hoc approach to grading offenses.
- Place the highest priority on deterring violent crimes, sex crimes, and gun crimes and propose a principled system that imposes minimum mandatory sentences on serious offenses focused on weapons offenses, sexual crimes and violent crimes.

### **WHY DO WE NEED THIS BILL?**

Delaware's existing criminal code, based on the Model Penal Code, was adopted in 1973 and was a short, clean and comprehensive 95 pages. Since that time the code has ballooned to over 407 pages and crosses several different titles. The hundreds of statutes added since 1973 were generally adopted without consideration to the general effects of the change on the criminal code's overall structure, its terminology or its application, creating numerous inconsistencies,

redundancies, ambiguities and contradictions. The Improved Criminal Code is the first time in more than 40 years that an overall review and revision of the entire criminal code to restore consistency, structure and logic to the code has been undertaken. The revision is needed to fix the many problems that have arisen and to restore simplicity, transparency and fairness to this foundational document of the criminal justice system.

# Tab 2

**Criminal Justice Improvement Committee**  
**Code Improvement Project**

**The History of the Current Code**

- The current Delaware Criminal Code was developed beginning in 1967, in direct response to the American Law Institute publishing its landmark Model Penal Code in 1962.
- The Criminal Code of 1973 was short, clean, and comprehensive—a dramatic improvement over the law it replaced. In the years since 1973, hundreds of new crimes have been added and the code has been expanded from less than 95 pages as originally enacted, to over 407 pages today with little attention to the general effects of the change on the criminal code’s overall structure, its terminology, or its application. As a result, the current criminal code has numerous inconsistencies, redundancies, ambiguities, and contradictions. But the expansion has not improved public safety.
- The current Delaware Criminal Code has not been reviewed in a rational, systemic way since its adoption over 40 years ago.

**History of the Code Improvement Project (legislative charge):**

- In 2014, the General Assembly in the FY 2015 Budget Act (SB 255) adopted epilogue establishing the Criminal Justice Improvement Committee (CJIC). The adopted epilogue language set out the CJIC’s agenda as follows:
  - “The Committee shall review opportunities for efficiencies in the criminal justice system, including but not limited to the following areas:
    - Statutes in the criminal code, identifying disproportionate, redundant, outdated, duplicative or inefficient statutes;
    - Crimes that should or should not constitute potential jail time; . . .”
- Similar epilogue language setting forth the CJIC’s mandate was included in the FY 2016 Budget Act (HB 225) and again in the FY 2017 Budget Act (SB 285) and the FY 2018 Budget Act (HS 1 for HB 275).

- After the Epilogue was reauthorized in 2015, this Code Improvement Project was initiated under the CJIC as a comprehensive response to its mandate.

### **Code Review Process**

- Consistent with longstanding Delaware tradition, the General Assembly named criminal justice stakeholders from all three branches of government to the CJIC. The CJIC stakeholders agreed to support the General Assembly and the Executive Branch in accomplishing the objectives set by the epilogue language—rationalize and improve the fairness, reduce inconsistencies and redundancies in, and increase the understandability of Delaware’s Criminal Code. The review process has been a transparent and inclusive multi-year legislatively mandated process involving numerous opportunities for lengthy and comprehensive review and discussion.

#### **2015 - 2016**

- At the November 17, 2015 kick-off meeting for the CJIC, the committee members discussed the CJIC’s agenda as specified in the budget epilogue and working with Professor Paul Robinson (a leading criminal justice scholar from the University of Pennsylvania School of Law) they began to develop an approach to support the Committee’s mandate regarding code review. Professor Robinson has national and international experience reviewing criminal codes for inconsistencies and redundancies. The Committee agreed to review a sampling of Professor Robinson’s work in early 2016.
- A small drafting group was convened to assist Professor Robinson with the code review.
- On January 21, 2016, Professor Robinson presented his work to the members of the CJIC and answered questions about this approach and the process. The CJIC agreed that Professor

Robinson should continue his work and provide updates of his progress to the Committee.

- At the request of the Chair of the CJIC, Professor Robinson provided an update about the project to the Joint Finance Committee on June 8, 2016.
- Professor Robinson and others in the drafting group met with representatives from victims' rights advocacy organizations on Aug. 30, 2016 to discuss the project and address any concerns.
- The project was discussed with members of the Access to Justice Fairness Committee in the summer of 2016

## 2017

- Throughout the summer and fall of 2016 and into 2017, the drafting group continued to meet and work on a Preliminary Report, including the Proposed Code Text and commentary. Early drafts were widely circulated for comment and changes were made to address these concerns. Members of the group met multiple times to discuss the draft with interested groups, such as victims' advocacy groups, law enforcement, members of the public, and others.
  - On January 10, 2017, Judge Wharton presented to the Council of Police Chiefs to discuss the improved code.
  - On March 8, 2017, the drafting group met again with Victims' Advocates to discuss the draft of the code. In response to their comments, the code text was amended in several significant ways.
  - On March 16, 2017, the CJIC held a meeting to review the project. On March 21, 2017 the drafting group completed its initial work and provided a Preliminary Report containing the Proposed Code Text to the CJIC and the public for discussion. The Committee then posted the Preliminary Report on the CJIC website <https://legis.delaware.gov/Committee/JointFinance/CJIC-Report> for all to review. The purpose of the Preliminary Report was to surface issues for public discussion and to solicit comment to ensure the process was as transparent as possible.



In response to feedback from the public, the drafting group revised the Preliminary Report three times during this period. Each revised version of the report was posted online.

- Next, public hearings were held to solicit additional comments and feedback. The first public hearing took place in Newark on April 3, 2017 at the University of Delaware, the second on April 10, 2017 at Delaware State University and the third on April 13 at the University of Delaware's Virden Retreat Center in Lewes. Written comments were also accepted online from those who could not attend the hearings or wanted to supplement their remarks at the hearings.
- The written comments from the public hearings were collected and shared with the full CJIC and the drafting group.
- In late spring 2017 and following the public hearings, the Attorney General agreed to review the draft Preliminary Report and provide written feedback. In addition, a number of follow-up meetings were held with the Attorney General and his staff to discuss the Proposed Code Text and additional changes were made to the Preliminary Report as a result. Discussions also took place about how to incorporate a proposal by the Attorney General to simplify and reform Delaware's criminal drug laws into the Proposed Code Text.
- In late spring 2017 the Attorney General produced a preliminary response to the Proposed Code Text with a number of comments. The drafting group carefully considered his comments and made a number of changes to the Code as a result. The Attorney General then submitted his final comments on the Proposed Code in mid-November 2017. As was done before, the drafting group carefully considered those comments and made changes as appropriate.
- Several members of the drafting group met again during summer of 2017 with police chiefs, Union heads and their attorneys for the police to discuss the Improved Code. The Improved Code was amended in accordance with their concerns.
- A follow-up meeting with Victims' Advocates was held November 17, 2017. The changes previously made to the Code

text in response to the Victims' Advocates concerns were reviewed, and additional comments were received for review by the Working Group. More amendments to the Code were made in response to the advocates' concerns.

## 2018

- When the CJIC submits the improved Delaware Criminal Code as legislation, it will go through the regular legislative process—including committee hearings and requiring approval of the House and Senate and finally the signature of the Governor.
- The CJIC includes all three branches of government, and representation from various criminal justice agencies.
- Information about the Improved Code is online for the public and any others who are interested, including:
  - **Introduction:** Outlines the history of the project and outlines the process that produced the Improved Delaware Criminal Code;
  - **Draft of the Improved Delaware Criminal Code;**
  - **Summary Grading Table:** Groups all offenses covered by the Improved Delaware Criminal Code;
  - **Conversion Tables:** Cross references the current law and the Improved Delaware Criminal Code; and
  - **Commentary:** Details how each section of the Improved Delaware Criminal Code works and identifies any suggested changes and the reasons behind the change.

## What does the Improved Code accomplish?

- Focus is on improving the Code by reducing redundancies, improving fairness and proportionality, eliminating inconsistencies and ambiguity, and restoring the Code to what it was originally intended to be: a clear, consistent, fair, and easy to understand guide to what violates the law and the way that criminal cases are decided.
- Specifically, the Improved Code seeks to:

- Adopt the values and judgments expressed in current Delaware criminal law, and to incorporate them into a modern, readable criminal code format to produce a criminal code that is comprehensive, rational, and non-duplicative.
- Make the code simpler, more readable; and easily accessible to law enforcement and the public so that those who must obey the code, and those who are required to enforce it, can understand the code without resorting to paying for legal advice.
- Ensure that criminal offenses and legal rules are cohesive and relate to one another in a consistent and rational manner.
- Reduce the word count of the code to approximately  $\frac{1}{4}$  of the words in the current code.
- Bring the nearly 100 felonies and over 100 misdemeanors scattered throughout the various Titles of the Delaware Code into one Criminal Code.
- Consciously group offenses of relative seriousness together for sentencing purposes, unlike the current ad hoc approach to grading offenses.

### **Mandatory Minimums**

- Under the current code, the mandatory minimum sentencing provisions are inconsistent and unpredictable, having no clear rules about which grades of offenses or culpable states of mind merit a mandatory minimum.
- The Improved Code puts the highest priority on deterring violent crimes, sex crimes, and gun crimes and proposes a principled system that imposes minimum sentences on serious offenses focused on weapons offenses, sexual crimes and violent crimes.

# Tab 3

**Table of Edits to the Improved Code in Response to Concerns of the Attorney General, Law Enforcement and Victims' Advocates**

From the beginning of the legislatively mandated criminal code review and drafting process, the drafters have sought comments and concerns from all of the stakeholders, including the Attorney General's Office, the criminal defense bar, Law Enforcement, Victims' Advocates and the general public. The draft Code has been publicly available since March 21, 2017 and the drafters have continued to meet with stakeholders and make edits to the Code. The result of this process is a living and breathing document that continues to be revised. This table reflects edits made to the draft Code as of December 15, 2017.

Improved Code provision	Section Title	Stated Concern	Amendment to Improved Code in response to AG's comment
§ 1103 & § 802	Manslaughter & Authorized Terms of Imprisonment	<p><b>Attorney General (AG) comment:</b> Manslaughter currently has a 2 year min\man sentence where draft Improved Code (IC) does not so provide.</p>	<p>§§ 1103 and 802 were amended to provide for a minimum mandatory sentence of 2 years for Manslaughter in keeping with current law.</p>
§ 1205	Operating a Vehicle While Under the Influence of Drugs or Alcohol	<p><b>AG comment:</b> The draft IC classifies all DUIs as misdemeanor punishable by no more than 6 months in prison while current law punishes recidivist behavior with</p>	<p>Amendments were made to § 1205 providing that:</p> <ul style="list-style-type: none"> <li>• 3<sup>rd</sup> DUI regraded as Class A misdemeanor punishable by up to 1 year in jail;</li> <li>• DUI 4<sup>th</sup> regraded as a Class 8 felony punishable up to 2 years in prison; and</li> <li>• DUI 5<sup>th</sup> Class 6 felony punishable up to 8 years in prison.</li> </ul>

<p>§ 5104</p>	<p>Possessing or Purchasing a Deadly Weapon by Persons Prohibited</p>	<p>felony treatment and escalating prison terms.</p>	<p>Amendments were made to § 5104 providing that:</p> <ul style="list-style-type: none"> <li>• Regraded PDWBPP from Class 5 to Class 4 felony with 2 year min\man if possessed weapon is destructive weapon or firearm &amp; an element of the felony for which person was previously convicted includes causing physical Injury, sexual conduct or use of a deadly weapon.</li> </ul>
<p>§ 1202</p>	<p>Assault with Deadly weapon</p>	<p><b>AG comment:</b> § 5104 is graded too low and fails to have a min\man sentence for someone illegally in possession of a firearm due to a prior felony conviction.</p> <p><b>AG comment:</b> Assault with a deadly weapon resulting in physical injury or serious physical injury graded too low.</p>	<p>Amendments were made to § 1202 providing that:</p> <ul style="list-style-type: none"> <li>• Assault with a deadly weapon causing physical injury now a Class 6 felony with max punishment of 8 years; and</li> <li>• Assault with deadly weapon causing serious physical injury regarded to a Class 4 felony with 2-25 years in prison.</li> </ul>
<p>Chapter 5200</p>	<p>Drug and Related Offenses</p>	<p>In 149<sup>th</sup> Sessions of General Assembly <b>AG</b> introduced drug bill SB 34.</p>	<p>Working Group revised Ch. 5200 of the IC to reflect positive aspects of the AG's drub bill:</p> <ul style="list-style-type: none"> <li>• Reduction of the number of drug "Tiers" from 5 to 3;</li> <li>• Removal of all aggravating factors besides school zones;</li> <li>• Reduction of number of offenses to which the school zone aggravator applies; and</li> <li>• Shifting the location and quantity of prescription drugs among the "Tiers," for greater equity.</li> </ul>

<p>§ 304</p>	<p>Law Enforcement Authority Use of Force</p>	<p><b>Attorneys for Police Unions comment:</b> concern that IC imposed strict liability on Law Enforcement if while using force in commission of duties, when an innocent person injured.</p>	<p>§ 302(c) amended to make clear LEO has immunity from criminal prosecution so long as he acts without criminal negligence or recklessness. The Commentary was also amended to reflect there is no intent to impose stricter liability on LEO than is currently policy.</p>
<p>§ 205(b)(4)</p>	<p>Culpability Requirements\Negligently</p>	<p><b>Attorneys for Police Unions comment:</b> the code refers to acts committed “Negligently” but defines it as “gross deviation” from standard of care which comports with Criminal or Gross Negligence.”</p>	<p>The Improved Code was amended to insert “Criminal Negligence” in place of “Negligence.”</p>

§ 1301(f)	Rape and Sexual Assault, No Defense for Mistake as to Age Under 14	<p><b>Victim Groups comment:</b> mistake to lower age of victim eligible for this defense from 14 to 16.</p>	<p>Amendments were made to the statute restoring strict liability for victims aged 16 and under, not 14.</p>
§ 1202	Assault	<p><b>VRG comment:</b> mistake not to provide for Strangulation as its own offense distinct from Assault.</p>	<p>Amendments to § 1202 were made providing that:</p> <ul style="list-style-type: none"> <li>• Strangulation was broken out as a special form of enhanced Assault, punished as a Class 7 felony instead as a Class A misdemeanor as for simple assault; and</li> <li>• Strangulation later broken out as its own offense definition rather than integrating it within assault grades.</li> </ul>
§ 4103	Stalking\Harassment	<p><b>VRG comment:</b> stalking should not be treated as a type of harassment as it is distinct offense with different mens rea.</p>	<p>Amendments were made providing that:</p> <ul style="list-style-type: none"> <li>• § 4103 (a)(2) was added to capture unique mens rea of Stalking; and</li> <li>• Stalking was given its own offense definition within the section rather than couching it in the grade provisions.</li> </ul>
§ 1307	Rape and Sexual Assault	<p><b>VRG comment:</b> Rape as sexual intercourse graded more severely than sexual penetration; FBI definition of rape includes any penetration by object or any body part.</p>	<p>The Working Group considered this comment but decided against making the change since the current law\policy treats the two as distinct and punishes unlawful intercourse more harshly than unlawful sexual penetration.</p>



DRAFT 12/15/17

# Tab 4

## Edits to the Improved Code in Response to Concerns Raised by Victims' Advocates

From the beginning of the legislatively mandated criminal code review and drafting process, the drafters have sought comments and listened to the concerns of all stakeholders, including the Attorney General's Office, the criminal defense bar, Law Enforcement, Victims' Advocates and the general public. The draft Improved Code (I.C.) has been publicly available since March 21, 2017 and the drafters have continued to make edits to the draft Code based on stakeholder feedback. The drafting group is in the process of reflecting on the comments made recently by the Department of Justice and expects to finalize its recommendations in early January.

Below are the changes made in response to concerns raised by Victims' Advocates as of December 15, 2017:

- I.C. § 1301(f) (Rape and Sexual Assault, No Defense for Mistake as to Age Under 14): this section was amended to restore strict liability for victims aged 16 and under in keeping with current law.
- I.C. § 1202 (Assault): this section was amended to restore Strangulation as it is its own offense, distinct from Assault, so that:
  - Strangulation was broken out as a special form of enhanced Assault, punished as a Class 7 felony instead as a Class A misdemeanor as for simple assault.
  - Strangulation later broken out as its own offense definition rather than integrating it within assault grades.
- I.C. § 4103 (Stalking/Harassment): this section was amended to reflect concerns that stalking is a distinct offense with its own mens rea:
  - § 4103 (a)(2) was added to capture unique mens rea of Stalking.
  - Stalking was given its own offense definition within the section rather than couching it in the grade provisions.
- I.C. § 1307 (Rape and Sexual Assault): The Working Group considered the Victims' Advocate request that Delaware adopt the FBI's definition of rape, which deems any unlawful penetration by an object or a body part as rape. The current Code draws a distinction between unlawful sexual intercourse and unlawful sexual penetration, and grades unlawful sexual intercourse more severely than unlawful sexual penetration. The Working Group determined that the request was a policy change, outside of its purview.

# Tab 5

## **Edits to the Improved Code in Response to Concerns Raised by Law Enforcement**

From the beginning of the legislatively mandated criminal code review and drafting process, the drafters have sought comments and listened to the concerns of all stakeholders, including the Attorney General's Office, the criminal defense bar, Law Enforcement, Victims' Advocates and the general public. The draft Improved Code (I.C.) has been publicly available since March 21, 2017 and the drafters have continued to make edits to the draft Code based on stakeholder feedback. The drafting group is in the process of reflecting on the comments made recently by the Department of Justice and expects to finalize its recommendations in early January.

Below are the changes made in response to concerns raised by the law enforcement community as of December 15, 2017:

- I.C. § 304 (Law Enforcement Authority Use of Force): this section was amended to clarify that a law enforcement officer has immunity from criminal prosecution so long as he acts without criminal negligence or recklessness. The Commentary was also amended to reflect there is no intent to impose stricter liability on law enforcement officer than is currently policy.
- I.C. § 205(b)(4) (Culpability Requirements/Negligently): this section was amended to insert "Criminal Negligence" in place of "Negligence" in keeping with current law.

# Tab 6

## **Edits to the Improved Code in Response to Concerns Raised by the Attorney General**

From the beginning of the legislatively mandated criminal code review and drafting process, the drafters have sought comments and listened to the concerns of all stakeholders, including the Attorney General's Office, the criminal defense bar, Law Enforcement, Victims' Advocates and the general public. The draft Improved Code (I.C.) has been publicly available since March 21, 2017 and the drafters have continued to make edits to the draft Code based on stakeholder feedback. The drafting group is in the process of reflecting on the comments made recently by the Department of Justice and expects to finalize its recommendations in early January. Below are the changes made in response to concerns raised by the Attorney General as of December 15, 2017:

- I.C. §§ 1103 (Manslaughter) and 802 (Authorized Terms of Imprisonment): these sections were amended to provide for a minimum mandatory sentence of 2 years for Manslaughter in keeping with current law.
- I.C. § 1205 (Operating a Vehicle While Under the Influence of Drugs or Alcohol): this section was amended in keeping with current law that escalates the penalty for recidivist behaviors so that:
  - 3<sup>rd</sup> DUI was regraded as Class A misdemeanor punishable by up to 1 year in jail.
  - DUI 4<sup>th</sup> was regraded as a Class 8 felony punishable up to 2 years in prison.
  - DUI 5<sup>th</sup> Class 6 felony would be punishable up to 8 years in prison.
- I.C. § 5104 (Possessing or Purchasing a Deadly Weapon by Persons Prohibited): this section was amended to address the concern that it is graded too low and fails to have a minimum/mandatory sentence for someone illegally in possession of a firearm due to a prior felony conviction:
  - Regraded PDWBPP from Class 5 to Class 4 felony with 2 year min\man if possessed weapon is destructive weapon or firearm & an element of the felony for which person was previously convicted includes causing physical injury, sexual conduct or use of a deadly weapon.
- I.C. § 1202 (Assault with a Deadly Weapon): this section was amended to address the concern that it was graded too low:
  - Assault with a deadly weapon causing physical injury now a Class 6 felony with max punishment of 8 years.
  - Assault with deadly weapon causing serious physical injury regarded to a Class 4 felony with 2-25 years in prison.
- I.C. Chapter 5200 (Drug and Related Offenses): the Working Group revised this Chapter to incorporate all the positive aspects of the Attorney General's drug bill, SB 34, introduced in the 149th General Assembly (2017):
  - Reduction of the number of drug "Tiers" from 5 to 3.
  - Removal of all aggravating factors besides school zones.
  - Reduction of number of offenses to which the school zone aggravator applies.

- Shifting the location and quantity of prescription drugs among the “Tiers,” for greater equity.