



SPONSOR: Rep. Bennett & Sen. Delcollo  
Reps. Paradee, Ramone, B. Short, Viola; Sens. Hocker,  
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HOUSE OF REPRESENTATIVES  
149th GENERAL ASSEMBLY

HOUSE BILL NO. 285

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO POSSESSION OF DEADLY WEAPONS BY PERSONS PROHIBITED AND TITLE 16 OF THE DELAWARE CODE RELATING TO HEALTH AND SAFETY.

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

1 Section 1. Amend § 1448, Title 11 of the Delaware Code by making insertions as shown by underlining and  
2 deletions as shown by strike through as follows:

3 § 1448. Possession and purchase of deadly weapons by persons prohibited; penalties.

4 (a) Except as otherwise provided herein, the following persons are prohibited from purchasing, owning, possessing  
5 or controlling a deadly weapon or ammunition for a firearm within the State:

6 (1) Any person having been convicted in this State or elsewhere of a felony or a crime of violence involving  
7 physical injury to another, whether or not armed with or having in possession any weapon during the commission of  
8 such felony or crime of violence;

9 (2) Any person who:

10 (i) ~~has ever has ever been committed for a mental disorder to any hospital; or mental institution or~~  
11 ~~sanitarium~~, unless such person can demonstrate that he or she is no longer prohibited from possessing a firearm  
12 pursuant to § 1448A of this title; or

13 (ii) has been found not guilty by reason of insanity, or guilty but mentally ill, including any juvenile who  
14 has been found not delinquent by reason of insanity or delinquent but mentally ill, of a crime of violence unless  
15 such person can demonstrate that he or she is no longer prohibited from possessing a firearm pursuant to § 1448A  
16 of this title; or

17 (iii) has been found mentally incompetent to stand trial for a crime of violence, including any juvenile  
18 who has been found mentally incompetent to stand trial, unless there has been a subsequent finding that the person  
19 has become competent, or unless such person can demonstrate that he or she is no longer prohibited from  
20 possessing a firearm pursuant to § 1448A of this title; or

21                   (iv) is the subject of an order of relinquishment issued by the Superior Court pursuant to Section 1448C  
22                   of this Title, but only for so long as that Order remains in effect or is not terminated or otherwise vacated.

23                   (3) Any person who has been convicted for the unlawful use, possession or sale of a narcotic, dangerous drug  
24                   or central nervous system depressant or stimulant as those terms were defined prior to the effective date of the Uniform  
25                   Controlled Substances Act in June 1973 or of a narcotic drug or controlled substance as defined in Chapter 47 of Title  
26                   16;

27                   (4) Any person who, as a juvenile, has been adjudicated as delinquent for conduct which, if committed by an  
28                   adult, would constitute a felony, unless and until that person has reached their twenty-fifth birthday;

29                   (5) Any juvenile, if said deadly weapon is a handgun, unless said juvenile possesses said handgun for the  
30                   purpose of engaging in lawful hunting, instruction, sporting or recreational activity while under the direct or indirect  
31                   supervision of an adult. For the purpose of this subsection, a handgun shall be defined as any pistol, revolver or other  
32                   firearm designed to be readily capable of being fired when held in 1 hand;

33                   (6) Any person who is subject to a Family Court protection from abuse order (other than an ex parte order),  
34                   but only for so long as that order remains in effect or is not vacated or otherwise terminated, except that this paragraph  
35                   shall not apply to a contested order issued solely upon § 1041(1)d., e., or h. of Title 10, or any combination thereof;

36                   (7) Any person who has been convicted in any court of any misdemeanor crime of domestic violence. For  
37                   purposes of this paragraph, the term "misdemeanor crime of domestic violence" means any misdemeanor offense that:

38                   a. Was committed by a member of the victim's family, as "family" is defined in § 901 of Title 10  
39                   (regardless, however, of the state of residence of the parties); by a former spouse of the victim; by a person who  
40                   co-habitated with the victim at the time of or within 3 years prior to the offense; a child in common with the  
41                   victim; or by a person with whom the victim had a substantive dating relationship as defined in §1041 of Title 10,  
42                   at the time of or within 3 years prior to the offense; and

43                   b. Is an offense as defined under § 601, § 602, § 603, § 611, § 614, § 621, § 625, § 628A, § 763, § 765, §  
44                   766, § 767, § 781, § 785 or § 791 of this title, or any similar offense when committed or prosecuted in another  
45                   jurisdiction; or

46                   (8) Any person who, knowing that he or she is the defendant or co-defendant in any criminal case in which  
47                   that person is alleged to have committed any felony under the laws of this State, the United States or any other state or  
48                   territory of the United States, becomes a fugitive from justice by failing to appear for any scheduled court proceeding  
49                   pertaining to such felony for which proper notice was provided or attempted. It is no defense to a prosecution under  
50                   this paragraph that the person did not receive notice of the scheduled court proceeding.

51 (9) Any person, if the deadly weapon is a semi-automatic or automatic firearm, or a handgun, who, at the  
52 same time, possesses a controlled substance in violation of § 4763, or § 4764 of Title 16.

53 (10) Except for "antique firearms", any validly seized deadly weapons or ammunition from a person  
54 prohibited as a result of a felony conviction under Delaware law, federal law or the laws of any other state, or as  
55 otherwise prohibited under this subsection (a) of this section may be disposed of by the law enforcement agency  
56 holding the weapon or ammunition, pursuant to § 2311 of this title.

57 a. "Antique firearm" means any firearm not designed or redesigned for using rim fire or conventional  
58 center fire ignition with fixed ammunition and manufactured in or before 1898 and also any firearm using fixed  
59 ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States  
60 and is not readily restored to a firing condition.

61 b. A person prohibited under this section has the burden of proving that the subject firearm is an antique  
62 firearm as defined in paragraph (a)(10)a. of this section subject to an exemption under this section and § 2311 of  
63 this title.

64 (b) Any prohibited person as set forth in subsection (a) of this section who knowingly possesses, purchases, owns  
65 or controls a deadly weapon or ammunition for a firearm while so prohibited shall be guilty of possession of a deadly  
66 weapon or ammunition for a firearm by a person prohibited.

67 (c) Possession of a deadly weapon by a person prohibited is a class F felony, unless said deadly weapon is a  
68 firearm or ammunition for a firearm, and the violation is 1 of paragraphs (a)(1) - (8) of this section, in which case it is a  
69 class D felony or unless the person is eligible for sentencing pursuant to subsection € of this section, in which case it is a  
70 class C felony. As used herein, the word "ammunition" shall mean 1 or more rounds of fixed ammunition designed for use  
71 in and capable of being fired from a pistol, revolver, shotgun or rifle but shall not mean inert rounds or expended shells,  
72 hulls or casings.

73 (d) Any person who is a prohibited person solely as the result of a conviction for an offense which is not a felony  
74 shall not be prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm if  
75 5 years have elapsed from the date of conviction.

76 (e)(1) Notwithstanding any provision of this section or Code to the contrary, any person who is a prohibited person  
77 as described in this section and who knowingly possesses, purchases, owns or controls a firearm or destructive weapon  
78 while so prohibited shall receive a minimum sentence of:

79 a. Three years at Level V, if the person has previously been convicted of a violent felony;

80                   b. Five years at Level V, if the person does so within 10 years of the date of conviction for any  
81 violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to  
82 said conviction, whichever is the later date; or

83                   c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any  
84 violent felony.

85                   (2) Any person who is a prohibited person as described in this section because of a conviction for a  
86 violent felony and who, while in possession or control of a firearm in violation of this section, negligently causes  
87 serious physical injury to or the death of another person through the use of such firearm, shall be guilty of a class  
88 B felony and shall receive a minimum sentence of:

89                   a. Four years at Level V; or

90                   b. Six years at Level V, if the person causes such injury or death within 10 years of the date of  
91 conviction for any violent felony or the date of termination of all periods of incarceration or confinement  
92 imposed pursuant to said conviction, whichever is the later date; or

93                   c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any  
94 violent felony.

95                   d. Nothing in this paragraph shall be deemed to be a related or included offense of any other  
96 provision of this Code. Nothing in this paragraph shall be deemed to preclude prosecution or sentencing under  
97 any other provision of this Code nor shall this paragraph be deemed to repeal any other provision of this Code.

98                   (3) Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of  
99 this title. For the purposes of this subsection, "violent felony" means any felony so designated by § 4201(c) of this  
100 title, or any offense set forth under the laws of the United States, any other state or any territory of the United  
101 States which is the same as or equivalent to any of the offenses designated as a violent felony by § 4201(c) of this  
102 title.

103                   (4) Any sentence imposed for a violation of this subsection shall not be subject to suspension and no  
104 person convicted for a violation of this subsection shall be eligible for good time, parole or probation during the  
105 period of the sentence imposed.

106                   (f)(1) Upon conviction, any person who is a prohibited person as described in paragraph (a)(5) of this section and  
107 who is 14 years of age or older shall, for a first offense, receive a minimum sentence of 6 months of Level V incarceration,  
108 and shall receive a minimum sentence of 1 year of Level V incarceration for a second and subsequent offense, which shall

109 not be subject to suspension. Any sentence imposed pursuant to this subsection shall not be subject to §§ 4205(b) and 4215  
110 of this title.

111 (2) The penalties prescribed by this subsection and subsection (g) of this section shall be imposed regardless  
112 of whether or not the juvenile is determined to be amenable to the rehabilitative process of the Family Court pursuant  
113 to § 1010(c) of Title 10 or any successor statute.

114 (g) In addition to the penalties set forth in subsection (f) of this section herein, a person who is a prohibited person  
115 as described in paragraph (a)(5) of this section and who is 14 years of age or older shall, upon conviction of a first offense,  
116 be required to view a film and/or slide presentation depicting the damage and destruction inflicted upon the human body by  
117 a projectile fired from a gun, and shall be required to meet with, separately or as part of a group, a victim of a violent crime,  
118 or with the family of a deceased victim of a violent crime. The Division of Youth Rehabilitative Service, with the  
119 cooperation of the Office of the Chief Medical Examiner and the Violent Crimes Compensation Board, shall be responsible  
120 for the implementation of this subsection.

121 (h) Any person prohibited by this section may also be subject to firearm and ammunition relinquishment as  
122 provided by § 1448C of this Title.

123 Section 2. Amend Title 11§1448A of the Delaware Code making insertions as shown by underlining and deletions  
124 as shown by strikethrough as follows:

125 § 1448A Criminal history record checks for sales of firearms.

126 (a) No licensed importer, licensed manufacturer or licensed dealer shall sell, transfer or deliver from inventory any  
127 firearm, as defined in § 222 of this title, to any other person, other than a licensed importer, licensed manufacturer, licensed  
128 dealer, or licensed collector, without conducting a criminal history background check in accordance with regulations  
129 promulgated by the United States Department of Justice pursuant to the National Instant Criminal Background Check  
130 System ("NICS"), 28 C.F.R. §§ 25.1-25.11, as the same may be amended from time to time, to determine whether the  
131 transfer of a firearm to any person who is not licensed under 18 U.S.C. § 923 would be in violation of federal or state law.

132 (b) No licensed importer, licensed manufacturer or licensed dealer shall sell, transfer or deliver from inventory any  
133 firearm, as defined in § 222 of this title, to any other person, other than a licensed importer, licensed manufacturer, licensed  
134 dealer, or licensed collector, unless and until being informed that it may "proceed" with the sale, transfer or delivery from  
135 inventory of a firearm by the Federal Bureau of Investigation (FBI), NICS Section pursuant to the request for a criminal  
136 history record check required by subsection (a) of this section or 25 days have elapsed from the date of the request for a  
137 background check and a denial has not occurred.

138 (c) Any person who is denied the right to receive or purchase a firearm in connection with subsection (a) of this  
139 section or § 1448B(a) of this title may request from the Federal Bureau of Investigation a written explanation for such  
140 denial; an appeal of the denial based on the accuracy of the record upon which the denial is based; and/or that erroneous  
141 information on the NICS system be corrected and that the person's rights to possess a firearm be restored. All requests  
142 pursuant to this subsection (c) shall be made in accordance with applicable federal laws and regulations, including without  
143 limitation 28 C.F.R. § 25.10. In connection herewith, at the request of a denied person, the Federal Firearms Licensed  
144 (FFL) dealer and SBI shall provide to the denied person such information as may be required by federal law or regulation in  
145 order for such person to appeal or seek additional information hereunder.

146 (d) Compliance with the provisions of this section shall be a complete defense to any claim or cause of action  
147 under the laws of this State for liability for damages arising from the importation or manufacture of any firearm which has  
148 been shipped or transported in interstate or foreign commerce. In addition, compliance with the provisions of this section or  
149 § 1448B of this title, as the case may be, shall be a complete defense to any claim or cause of action under the laws of this  
150 State for liability for damages allegedly arising from the actions of the transferee subsequent to the date of said compliance  
151 wherein the claim for damages is factually connected to said compliant transfer.

152 (e) The provisions of this section shall not apply to:

153 (1) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition  
154 system) manufactured in or before 1898;

155 (2) Any replica of any firearm described in paragraph (e)(1) of this section if such replica:

156 a. Is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition; or

157 b. Uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the  
158 United States and which is not readily available in the ordinary channels of commercial trade;

159 (3) Any shotgun, which is defined as a firearm designed or intended to be fired from the shoulder and  
160 designed or made to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of  
161 the trigger;

162 (4) The return, by a licensed pawnbroker, of a firearm to the person from whom it was received;

163 (5) Transactions in which the potential buyer or transferee holds a valid concealed deadly weapons license  
164 pursuant to §§ 1441, 1441A and 1441B of this title; and

165 (6) Transactions involving a "law-enforcement officer" as defined by § 222 of this title.

166 (f) Any licensed dealer, licensed manufacturer, licensed importer or employee thereof who wilfully and  
167 intentionally requests a criminal history record check from the Federal Bureau of Investigation, NICS for any purpose other

168 than compliance with subsection (a) of this section or § 1448B(a) of this title, or wilfully and intentionally disseminates any  
169 criminal history record information to any person other than the subject of such information or discloses to any person the  
170 unique identification number shall be guilty of a class A misdemeanor. The Superior Court shall have exclusive jurisdiction  
171 for all offenses under this subsection.

172 (g) Any person who, in connection with the purchase, transfer, or attempted purchase or transfer of a firearm  
173 pursuant to subsection (a) of this section or § 1448B(a) of this title, wilfully and intentionally makes any materially false  
174 oral or written statement or wilfully and intentionally furnishes or exhibits any false identification intended or likely to  
175 deceive the licensee shall be guilty of a class G felony.

176 (h) Any licensed dealer, licensed manufacturer, licensed importer or employee thereof who wilfully and  
177 intentionally sells or delivers a firearm in violation of this section shall be guilty of a class A misdemeanor. Second or  
178 subsequent offenses by an individual shall be a class G felony.

179 ~~(i) The SBI shall provide to the judiciary committees of the Senate and House of Representatives an annual report~~  
180 ~~including the number of inquiries made pursuant to this section and § 1448B of this title for the prior calendar year. Such~~  
181 ~~report shall include, but not be limited to, the number of inquiries received from licensees, the number of inquiries resulting~~  
182 ~~in a determination that the potential buyer or transferee was prohibited from receipt or possession of a firearm pursuant to~~  
183 ~~§§ 1448 and 1448B of this title or federal law.~~

184 ~~(j)(i)~~ Notwithstanding Chapter 89 of this title, Chapter 10 of Title 29, and other Delaware laws, the SBI is  
185 authorized and directed to release records and data required by this section and by § 1448B of this title. The SBI shall not  
186 release or disclose criminal records or data except as specified in this section and in § 1448B of this title.

187 ~~(k)(j)~~ No records, data, information or reports containing the name, address, date of birth or other identifying data  
188 of either the transferor or transferee or which contain the make, model, caliber, serial number or other identifying data of  
189 any firearm which are required, authorized or maintained pursuant to this section, § 1448B of this title or by Chapter 9 of  
190 Title 24, shall be subject to disclosure or release pursuant to the Freedom of Information Act, Chapter 100 of Title 29.

191 ~~(l)(k)~~ Relief from Disabilities Program. — A person who is subject to the disabilities of 18 U.S.C. § 922(d)(4) and  
192 (g)(4) or of § 1448(a)(2) of this title because of an adjudication, order of relinquishment entered pursuant to §1448C, or  
193 commitment under the laws of this State may petition for relief from a firearms prohibition from the Relief from  
194 Disabilities Board. The Relief from Disabilities Board shall be comprised of 3 members, with the chairperson appointed by  
195 ~~and serving at the pleasure of the Secretary of Safety and Homeland Security~~ the Governor for a term of four years, and 2  
196 members each to serve for a term of three years, to be appointed by and serving at the pleasure of the one each by the

197 Secretary of the Department of Health and Social Services and the Secretary of Safety and Homeland Security, 1 of whom  
198 shall be a licensed psychiatrist with all such appointments to be with the advice and consent of the Senate.

199 (1) The Board shall consider the petition for relief in accordance with the following:

200 a. The Board shall give the petitioner the opportunity to present evidence to the Board in a closed and  
201 confidential hearing on the record; and

202 b. A record of the hearing shall be maintained by the Board for purposes of appellate review.

203 (2) In determining whether to grant relief, the Board shall consider evidence regarding the following:

204 a. The circumstances regarding the firearms disabilities pursuant to § 1448(a)(2) of this title and 18  
205 U.S.C. § 922(d)(4) and (g)(4);

206 b. The petitioner's record, which must include, at a minimum, the petitioner's mental health record,  
207 including a certificate of a medical doctor or psychiatrist licensed in this State that the person is no longer  
208 suffering from a mental disorder which interferes or handicaps the person from handling deadly weapons;

209 c. Criminal history records; and

210 d. The petitioner's reputation as evidenced through character witness statements, testimony, or other  
211 character evidence.

212 (3) The Board shall have the authority to require that the petitioner undergo a clinical evaluation and risk  
213 assessment, which it may also consider as evidence in determining whether to approve or deny the petition for relief.

214 (4) After a hearing on the record, the Board shall grant relief if it finds, by a ~~preponderance of the~~ substantial  
215 evidence, that:

216 a. The petitioner will not be likely to act in a manner dangerous to public safety; and

217 b. Granting the relief will not be contrary to the public interest.

218 (5) The Board shall issue its decision in writing including findings of facts and conclusions of law explaining  
219 in detail the reasons for a denial or grant of relief.

220 (6) Any person whose petition for relief has been denied by the Relief from Disabilities Board shall have a  
221 right to a de novo judicial review in the Superior Court. The Superior Court shall consider the record of the Board  
222 hearing on the petition for relief, the decision of the Board, and, at the Court's discretion, any additional evidence it  
223 deems necessary to conduct its review.

224 (7) Upon notice that a petition for relief has been granted, the Department of Safety and Homeland Security  
225 shall, as soon as practicable:



226 a. Cause the petitioner's record to be updated, corrected, modified, or removed from any database  
227 maintained and made available to NICS to reflect that the petitioner is no longer subject to a firearms prohibition  
228 as it relates to § 1448(a)(2) of this title and 18 U.S.C. § 922(d)(4) and (g)(4); and

229 b. Notify the Attorney General of the United States that the petitioner is no longer subject to a firearms  
230 prohibition pursuant to § 1448(a)(2) of this title and 18 U.S.C. § 922(d)(4) and (g)(4).

231 (m) An unsuccessful petitioner for relief shall have the right to appeal a decision of the Board to the Superior  
232 Court within 90 days of receipt of the written decision of the Board.

233 (n) The Department of Safety and Homeland Security shall adopt regulations relating to compliance with NICS,  
234 including without limitation issues relating to the transmission of data, the transfer of existing data in the existing state  
235 criminal background check database and the relief from disabilities process set forth in subsection (k) of this section. In  
236 preparing such regulations, the Department shall consult with the Department of Health and Social Services, the courts, the  
237 Department of Children, Youth and Their Families, the Department of State and such other entities as may be necessary or  
238 advisable. Such regulations shall include provisions to ensure the identity, confidentiality and security of all records and  
239 data provided pursuant to this section and shall be subject to approval by the Delaware General Assembly.

240 (o) Provisions of this section to the contrary notwithstanding, a person seeking relief from disabilities may,  
241 alternatively elect to seek equitable relief from said disability in the Court of Chancery or through an action for Declaratory  
242 Judgment in Superior Court.

243 Section 3. Amend Title 11 of the Delaware Code by adding a new §1448C as shown by underlining as follows:

244 § 1448C. Civil Procedure for Temporary Relinquishment of Firearms or Ammunition

245 (a) Any person who from the date of enactment of this section is reported to a law enforcement agency by a  
246 licensed mental health professional, hospital, institution, or agency pursuant to §5402 of Title 16 as suffering from a mental  
247 illness or disorder to the extent that the person allegedly is dangerous to self or dangerous to others, as defined in §5001 of  
248 Title 16, shall be:

249 (1) investigated by the appropriate law enforcement agency to determine if the person is in possession of  
250 firearms, as defined in §222 of this Title, and related ammunition, as defined in §1448(c) of this Title.

251 (2) If such agency determines that firearms or ammunition are in possession of a person reported pursuant to  
252 §5402 of Title 16, the law enforcement agency may determine that they should be relinquished and may remove the  
253 firearms or ammunition, but shall refer its final report to the Department of Justice.

254 (3) The Department of Justice shall make an initial determination based upon its own independent review of  
255 the facts. If the Department finds clear and convincing evidence exists showing that the person is dangerous to self or

256 dangerous to others and may petition the Superior Court for an Order prohibiting the purchase, ownership and  
257 possession of a firearm or ammunition.

258 (b) The Department shall have the burden of proving by clear and convincing evidence that the respondent suffers  
259 from a mental illness resulting in the person being currently dangerous to others or dangerous to self as defined in Section  
260 5001 of Title 16. The respondent shall have the right to adequate notice and to be present, represented by counsel, present  
261 evidence, cross examine adverse witnesses and be fully heard in any such proceedings. In the event that the Court makes a  
262 finding that the respondent is suffering from a mental illness and is currently dangerous to self or dangerous to others, the  
263 Court shall issue an Order to relinquish respondent's firearms or ammunition under this section, which shall be reported to  
264 the Delaware State Bureau of Investigation for purposes of establishing that such person is a person prohibited from the  
265 possession or purchase of deadly weapons pursuant to § 1448 of Title 11.

266 (c) The Court may include in any order that such person shall relinquish to a law enforcement officer any firearms  
267 or ammunition owned, possessed, or controlled by such person. Alternatively, the Court may, in its discretion, allow such  
268 person to voluntarily relinquish to a law enforcement officer any firearms or ammunition owned, possessed, or controlled  
269 by such person. The Court may also order that the person relinquish such items to a responsible, non-governmental person  
270 or entity whom the Court is satisfied will adequately safeguard same, keeping those items out of the possession of the  
271 person throughout the life of the Order. The Court may also, upon an affirmative showing by the Department under oath  
272 that the Petitioner currently owns, controls or possesses a firearm or ammunition, issue a search warrant directing the  
273 appropriate law enforcement forthwith to search for and seize firearms and ammunition when the Court, in its discretion,  
274 finds that such warrant is required for public safety. An Order of relinquishment entered pursuant to this Section shall  
275 expire after 60 days unless further extended by the Court upon application by the Department and a full due process hearing  
276 on the matter.

277 (d) Any person subject to an order of the Court pursuant to this Subchapter and who is not a prohibited person  
278 within the meaning of §1448 of this Title may petition the Court for an order to return firearms or ammunition by  
279 procedures established by § 1448A of this Title. Likewise, persons not subject to an Order of relinquishment and whose  
280 firearms and/or ammunition were seized or relinquished by operation of this Section may petition the Court for an Order to  
281 effect the return of their property.

282 (e) If the basis for relinquishment in 1448C(b) is removed by the Court, all firearms and ammunition taken from  
283 the person shall be restored in a timely fashion in the same condition in which initially relinquished without the requirement  
284 of § 1448A(j).

285 (f) Any party in interest aggrieved by a decision of the Courts under this Subchapter may appeal such decision to  
286 the Delaware Supreme Court.

287 (g) The Delaware State Police and the Department of Justice shall work in concert with local law enforcement  
288 agencies and the Department of Health and Social Services and its Division of Substance Abuse and Mental Health to  
289 develop appropriate internal policies and regulations to ensure that personnel who process such procedures under this  
290 section are trained on appropriate mental health risk assessment procedures and also are trained to look for histories of  
291 violence.

292 (h) The procedures set forth herein may also be used when persons who required to relinquish firearms and  
293 ammunition as the result of becoming a prohibited person by operation of §1448 of this Title.

294 (i) As used in this section, the term “mental health professional” means any duly licensed professional qualified to  
295 render a psychiatric diagnosis including a duly licensed psychiatrist as defined in Section 5001(15) of Title 16, a licensed  
296 clinical social worker as defined in Chapter 39 of Title 24, an advanced practice registered nurse as defined in Section  
297 1902(c) of Title 24 specializing as a psychiatric nurse, or a licensed psychologist as defined in Chapter 35 of Title 24.

298 Section 4. Amend § 8509 of Title 11 of the Delaware Code by making deletions as shown by strike through and  
299 insertions as shown by underline as follows:

300 § 8509 Information to be supplied by heads of institutions.

301 Every person in responsible charge of an institution to which there are committed individuals convicted of crime,  
302 or persons declared to be not guilty by reason of ~~mental illness~~ insanity or guilty but mentally ill pursuant to § 401 of this  
303 Title, or declared incompetent to stand trial for criminal offenses or involuntarily committed for mental illness pursuant to  
304 an Order entered under Chapter 50 § 5011 of Title 16, shall:

305 (1) Transmit to the Bureau the names, dates of birth and Social Security numbers of all adults so committed  
306 and shall report any subsequent change in release status. Every person in responsible charge of such institutions shall  
307 also forward to the Bureau the names and photographs of all individuals who are to be discharged from such  
308 institutions, after having been confined in such institutions. Such photographs shall be taken immediately before  
309 release of such individuals, and the individual shall be attired in civilian clothes.

310 (2) Pursuant to § 1448A of this title, cause to be transmitted to the Federal Bureau of Investigation, National  
311 Instant Criminal Background Check System, such information as may be required to comply with federal laws and  
312 regulations relating to background checks for the purchase or transfer of firearms.

313 Section 5. Amend § 5001 of Title 16 of the Delaware Code by making deletions as shown by strike through and  
314 insertions as shown by underline as follows:

315 § 5001 Definitions.

316 Except where the context indicates otherwise, as used in this chapter:

317 (1) "Credentialed mental health screener" means an individual who is:

318 a. A psychiatrist; or

319 b. A licensed mental health professional who is credentialed by the Department to provide emergency  
320 screening services and evaluation of the need for involuntary observation and treatment for a mental condition; or

321 c. An unlicensed mental health professional who works under the direct supervision of a psychiatrist and  
322 who is credentialed by the Department to provide emergency screening services and evaluation of the need for  
323 involuntary observation and treatment for a mental condition;

324 d. A physician with a valid State of Delaware license to practice medicine and who is credentialed by the  
325 Department to provide emergency screening services and evaluation of the need for involuntary observation and  
326 treatment for a mental condition; or

327 e. A physician with a valid license to practice medicine who works in a United States Department of  
328 Veterans Affairs medical center, located in the State, and who is credentialed by the Department to provide, for  
329 patients seen in the physician's employment by the United States Department of Veterans Affairs medical center,  
330 emergency screening services and evaluation of the need for involuntary observation and treatment for a mental  
331 condition.

332 (2) "Court" means the Superior Court or the Family Court of the State, both of which courts shall have  
333 jurisdiction and responsibility for the implementation of this chapter.

334 (3) "Dangerous to others" means that by reason of mental condition there is a substantial likelihood that the  
335 person will inflict serious bodily harm upon another person within the immediate future. This determination shall take  
336 into account a person's history, recent behavior and any recent act or threat.

337 (4) "Dangerous to self" means that by reason of mental condition there is a substantial likelihood that the  
338 person will imminently sustain serious bodily harm to oneself. This determination shall take into account a person's  
339 history, recent behavior, and any recent act or threat.

340 (5) "Department" means the State of Delaware Department of Health and Social Services. "Department" shall  
341 also mean the Department of Services to Children, Youth, and their Families for individuals under the age of 18 or  
342 otherwise are in custody of the Department of Services to Children, Youth, and their Families or receiving financial  
343 assistance from the Department of Services to Children, Youth, and their Families.

344 (6) "Designated psychiatric treatment facilities" means all facilities designated by the Secretary to provide  
345 psychiatric emergency care for individuals believed to have a mental condition and whose behavior is believed to be  
346 dangerous to self or dangerous to others; such facilities include psychiatric hospitals operated by the State of Delaware,  
347 privately operated psychiatric hospitals, any psychiatric emergency receiving facilities that provide mental health  
348 screenings, evaluations, treatment, and referral services, or other facilities as may be designated by the Department by  
349 regulation.

350 (7) "Designated transport personnel" means such personnel as designated by the Secretary to transport persons  
351 with mental conditions to and from needed health-care services provided in hospitals and designated psychiatric  
352 treatment facilities, pursuant to this chapter; these personnel include peace officers, private ambulance staff, state  
353 employees and contracted transportation staff as approved by the Department. Any peace officer involved may  
354 mandate the manner and method of transportation of persons who require such transport when required to ensure  
355 public safety.

356 (8) "Emergency detention" and "emergently detained" means the process whereby an adult who appears to  
357 have a mental condition, and whose mental condition causes the person to be dangerous to self or dangerous to others,  
358 and who is unwilling to be admitted to a facility voluntarily for assessment or care, is involuntarily detained for such  
359 evaluation and treatment for 24 48 hours in a designated psychiatric facility because other less restrictive, more  
360 community integrated services are not appropriate or available to meet the person's current mental health-care needs.  
361 Emergency detention shall also mean the process whereby a minor who appears to have a mental condition, and whose  
362 mental condition causes the person to be dangerous to self or dangerous to others, and who is unwilling to be admitted  
363 to a facility voluntarily for assessment or care, is involuntarily detained for such evaluation and treatment for 24 48  
364 hours unless the parent or legal guardian is unavailable to the Department during that 24 48-hour period; in such  
365 instances the time period may be extended to 72 hours. An individual who is "emergently detained" within the  
366 meaning of this definition shall be accorded the same treatment as a person who has been subjected to a "provisional  
367 admission" as described in §5005 of this title and shall not be considered "involuntarily committed" for any legal  
368 purpose.

369 (9) "Hospital" means the Delaware Psychiatric Center and any hospital in this State which is certified by the  
370 Secretary of the Department of Health and Social Services as being an appropriate facility for the diagnosis, care and  
371 treatment of persons with mental conditions 18 years of age or older. "Hospital" shall also mean any hospital in this  
372 State which is certified by the Secretary of the Department of Services for Children, Youth and Their Families as being  
373 an appropriate facility for the diagnosis, care and treatment of persons with mental conditions under 18 years of age.

374 (10) "Involuntary patient" means a person admitted pursuant to emergency detention, provisional admission, a  
375 complaint for involuntary civil commitment, a probable cause hearing or an involuntary inpatient commitment hearing  
376 to the custody of a designated psychiatric treatment facility or hospital for observation, diagnosis, care and treatment.

377 (11) "Juvenile mental health screener" means a person authorized by the Department of Services for Children,  
378 Youth and Their Families to assess individuals under the age of 18 for emergency detention. Juvenile mental health  
379 screeners shall have the same duties, authority, rights, and protections, including the immunity provisions of this  
380 chapter, as "credentialed mental health screeners" when the term "credentialed mental health screeners" is utilized  
381 throughout this chapter. The Department of Services for Children, Youth and Their Families is authorized to establish  
382 regulations concerning the credentialing process and criteria for juvenile mental health screeners.

383 (12) "Licensed independent practitioner" means employees of designated psychiatric treatment facilities, in  
384 addition to psychiatrists, who hold credentials and privileges to admit persons into care and write orders to treat said  
385 persons in that facility. Licensed independent practitioners can include but are not limited to staff that hold licenses as  
386 psychologists, advanced practices nurses, and physician assistants or such other health-care providers as may be  
387 designated to work independently pursuant to the regulations of the Department.

388 (13) "Mental condition" means a current, substantial disturbance of thought, mood, perception or orientation  
389 which significantly impairs judgment, capacity to control behavior, or capacity to recognize reality. Unless it results in  
390 the severity of impairment described herein, "mental condition" does not mean simple alcohol intoxication, transitory  
391 reaction to drug ingestion, dementia due to various nontraumatic etiologies or other general medical conditions,  
392 Alzheimer's disease, or intellectual disability. The term "mental condition" is not limited to "psychosis" or "active  
393 psychosis," but shall include all conditions that result in the severity of impairment described herein.

394 (14) "Peace officer" means any public officer authorized by law to make arrests in a criminal case.

395 (15) "Psychiatrist" means an individual who possesses a valid State of Delaware license to practice medicine  
396 and has completed an accredited residency training program in psychiatry.

397 (16) "Secretary" means the Secretary of the State of Delaware Department of Health and Social Services.  
398 "Secretary" shall also mean the Secretary of the Department of Services to Children, Youth, and their Families for  
399 individuals under the age of 18 or otherwise are in custody of the Department of Services to Children, Youth, and their  
400 Families or receiving financial assistance from the Department of Services to Children, Youth, and their Families.

401 (17) "Serious bodily harm" means physical injury which creates a substantial risk of death, significant and  
402 prolonged disfigurement, significant impairment of health, or significant impairment of the function of any bodily  
403 organ.

404 (18) "Voluntary patient" means a person who voluntarily seeks treatment at, and is admitted to, a designated  
405 psychiatric treatment facility or hospital for inpatient treatment of a mental condition.

406 (19) "Working day" means any day other than a Saturday, Sunday and legal holiday; and "day" means a  
407 calendar day.

408 Section 6. Amend §5003 of Title 16 of the Delaware Code by making deletions as shown by strike through and  
409 insertions as shown by underline as follows:

410 § 5003 Voluntary admission procedure.

411 (a) The Department may establish, under the direction and supervision of the Delaware Psychiatric Center, criteria  
412 for voluntary admissions to designated psychiatric treatment facilities and hospitals that differ from the criteria for  
413 involuntary admissions to designated psychiatric treatment facilities and hospitals.

414 (b) A psychiatrist or licensed independent practitioner who is credentialed and authorized by the Division of  
415 Substance Abuse and Mental Health may admit to a designated psychiatric treatment facility or hospital for observation,  
416 diagnosis, care and treatment any individual who is a person with an apparent mental condition or who has symptoms of a  
417 mental condition and who requests admission subject to the payment of charges for care, maintenance and support as  
418 provided in § 5020 of this title.

419 (c) Prior to admitting a person on a voluntary basis, the designated psychiatric treatment facility or hospital must  
420 notify the person verbally and in writing of the legal consequences of voluntary admission in language that is  
421 understandable to the person, and reasonably believe that the person comprehends such consequences, including but not  
422 limited to:

423 (1) The person will not to be allowed to leave the hospital grounds without permission of the treating  
424 psychiatrist;

425 (2) If the person seeks discharge prior to the discharge recommended by the person's treatment team, the  
426 person's treating psychiatrist may initiate the involuntary inpatient commitment process if the psychiatrist believes the  
427 individual presents a danger to self or danger to others; and

428 (3) Unless the involuntary commitment process is initiated, the person will not have the hospitalization  
429 reviewed by the court.

430 (d) The attending psychiatrist shall discharge a voluntary patient when in-patient treatment is no longer clinically  
431 indicated.

432 (e) A voluntary patient may make a written request to the attending psychiatrist to be discharged at any time. Upon  
433 the receipt of such request, the attending psychiatrist shall discharge the person within 72 hours from the receipt of the

434 request, except if a psychiatrist or licensed independent practitioner certifies that the voluntary patient is currently  
435 demonstrating behaviors believed to be dangerous to self or dangerous to others and these behaviors are documented in the  
436 medical record, an emergency detention may be initiated for the person. No person may be involuntarily hospitalized unless  
437 in compliance with the emergency detention procedures set forth in § 5004 of this title.

438 (f) If any applicant is under the age of 18 years old, the following provisions shall apply:

439 (1) In the case of voluntary admission to a designated psychiatric treatment facility or hospital, consent to  
440 treatment shall be given only by a parent or legal guardian. The request for admission to the designated psychiatric  
441 treatment facility or hospital shall be signed by either the applicant's parent or legal guardian.

442 (2) A voluntary patient or the voluntary patient's parent or legal guardian may make a written request to the  
443 attending psychiatrist to be discharged at any time.

444 a. The provisions of subsection (e) of this section shall apply in such instances, except that the voluntary  
445 patient's discharge may be conditioned upon the consent of the voluntary patient's parent or legal guardian.

446 b. If the parent or legal guardian of a voluntary patient requests the patient's discharge from a treatment  
447 facility against the advice of the treatment team and administrator of the facility, the facility may initiate  
448 involuntary treatment procedures as provided for under this chapter. The provisions of this paragraph shall apply  
449 as if the patient had made the request.

450 (3) Voluntary outpatient treatment. — A person between 14 and 18 years of age, who is in need of mental  
451 health treatment, may request voluntary outpatient treatment from a licensed treatment facility or community provider.  
452 If the individual in need of treatment is a minor under 14 years of age, a parent, legal custodian, or legal guardian shall  
453 make the request for voluntary outpatient mental health treatment and give written consent for treatment.

454 a. If a minor is 14 years of age or over, then either the minor, or a parent, legal custodian, or legal  
455 guardian may give written consent to a treatment facility or community provider for voluntary, outpatient  
456 treatment.

457 b. Consent so given by a minor 14 years of age or over shall, notwithstanding the minor's minority, be  
458 valid and fully effective for all purposes and shall be binding upon such minor, the minor's parents, custodian, and  
459 legal guardian as effectively as if the minor were of full legal age at the time of giving such written consent. The  
460 consent of no other person or court shall be necessary for the treatment rendered such minor.

461 c. A minor's consent is not necessary when a parent, legal custodian, or legal guardian of an individual  
462 less than 18 years of age provides consent to voluntary outpatient mental health treatment on behalf of the minor.



463 d. A minor, including those age 14 and older, may not abrogate consent provided by a parent, legal  
464 custodian, or legal guardian on the minor's behalf. Nor may a parent, legal custodian, or legal guardian abrogate  
465 consent given by a minor age 14 and older on his or her own behalf.

466 e. This section does not authorize a minor to receive psychotropic drugs without the consent of the  
467 minor's parent, legal custodian, or legal guardian. Only a parent, legal guardian, or legal custodian may provide  
468 consent for the administration of such medication.

469 (4) A psychiatrist designated by the Secretary of the Department of Services for Children, Youth and Their  
470 Families may conduct an independent review to determine whether an applicant who receives financial assistance from  
471 such Department or who is in the custody of such Department is appropriate for voluntary hospitalization.

472 (g) Notwithstanding any other section of the Delaware Code, the Medical Director of the Department's Division of  
473 Substance Abuse and Mental Health shall have the independent authority to discharge persons at the Delaware Psychiatric  
474 Center.

475 (h) The Department will pay for a voluntary admission of a patient to a designated psychiatric treatment facility or  
476 hospital pursuant to the same Departmental criteria as an involuntary admission or community placement.

477 (i) All voluntary patients shall within 24 hours of their admission be informed both orally and in writing of their  
478 rights and options as voluntary patients, including but not limited to their right to submit a written request for discharge  
479 pursuant to subsection (e) of this section.

480 Section 7. Amend § 5004 of Title 16 of the Delaware Code by making deletions as shown by strike through and  
481 insertions as shown by underline as follows:

482 § 5004 Emergency detention of a person with a mental condition; justification; procedure.

483 (a) Any person who believes that another person's behavior is both the product of a mental condition and is  
484 dangerous to self or dangerous to others may notify a peace officer or a credentialed mental health screener or juvenile  
485 mental health screener and request assistance for said person. Upon the observation by a peace officer or a credentialed  
486 mental health screener or juvenile mental health screener that such individual with an apparent mental condition likely  
487 constitutes a danger to self or danger to others, such person with an apparent mental condition shall be promptly taken into  
488 custody for the purpose of an emergency detention by any peace officer in the State without the necessity of a warrant. Any  
489 such observation shall be described in writing and shall include a description of the behavior and symptoms which led the  
490 peace officer or credentialed mental health screener or juvenile mental health screener to such conclusion. The  
491 documentation required herein shall set forth any known relationship between the person making the complaint and any  
492 other connection to the person with an apparent mental condition and, if known, the name of the nearest known relative.

493 (b) An emergency detention may only be initiated by a credentialed mental health screener or, if the individual is  
494 under the age of 18, by a juvenile mental health screener. An individual may be held on an emergency detention if it  
495 reasonably appears to a credentialed mental health screener or juvenile mental health screener that the person is acting in a  
496 manner that appears to be dangerous to self or dangerous to others. The credentialed mental health screener or juvenile  
497 mental health screener shall verify this finding in writing and complete the Department-approved emergency detention  
498 form; this documentation shall include the credentialed mental health screener or juvenile mental health screener's rationale  
499 for the detention, including specific information regarding the alleged mental condition and dangerous behaviors observed.  
500 Once the emergency detention form is completed, designated transportation personnel shall be directed by the Department  
501 to transport the person to a designated psychiatric treatment facility to for an evaluation. The emergency detention does not  
502 start until the person is presented to a designated psychiatric treatment facility.

503 (c) An emergency detention will result in admission to a designated psychiatric treatment facility for psychiatric  
504 observation, assessment, acute treatment, and any recommendations for referral for other services. Any referral for an  
505 emergency detention shall include a review of any advance health-care directive as set forth in this title or any other similar  
506 agreement relating to the person's wishes regarding potential hospitalization, care, treatment, and notifications to others if  
507 known to the credentialed mental health screener and available for review at the time of such referral.

508 (d) Individuals under the age of 18 may be emergently detained when the minor's parent or legal guardian is  
509 unwilling to consent to the individual being admitted to a facility voluntarily for assessment or care, or whose parent or  
510 legal guardian cannot be identified and located. A psychiatrist designated by the Secretary of the Department of Services  
511 for Children, Youth and Their Families may conduct an independent review of a determination that a person under 18 years  
512 of age admitted to a designated psychiatric treatment facility or hospital pursuant to an emergency detention is dangerous to  
513 self or dangerous to others.

514 (e) Once an individual is emergently detained in a designated psychiatric treatment facility pursuant to subsection  
515 (c) of this section, a psychiatrist shall review all documentation, conduct an examination of the individual, and document  
516 the findings of examination within the emergency detention time period both in the person's medical record and the  
517 emergency detention findings form. If the examining psychiatrist finds that the individual with an apparent mental  
518 condition is not dangerous to self and is not dangerous to others the psychiatrist shall certify these specific findings in  
519 writing and the individual who has been emergently detained shall be discharged from custody forthwith. All  
520 documentation required by this section will be recorded and retained in the medical record of that individual and reported to  
521 the Delaware Division of Substance Abuse and Mental Health, or if the individual is a minor to the Division of Prevention  
522 and Behavioral Health Services, upon the discharge of the individual.

523 (f) If, at any time, an individual who is emergently detained agrees to go to a designated psychiatric treatment  
524 facility for further observation, a voluntary admission will be sought to fulfill the needed evaluation and the emergency  
525 detention order will become void and shall be expunged from the legal record. If a physician affiliated with an emergency  
526 department has completed an emergency medicine health assessment, as determined solely by such physician, and refers  
527 the patient to a credentialed mental health screener or juvenile mental health screener, with or without consultation with a  
528 psychiatrist, such a referral constitutes an appropriate discharge plan and after such discharge the physician affiliated with  
529 an emergency department will have no further responsibility for the evaluation and disposition of the patient.

530 (g) In the event that the psychiatrist at a designated psychiatric treatment facility determines that the person who  
531 has been emergently detained meets the criteria for further care and treatment and that such required care cannot be  
532 provided in an available, less restrictive, more community-integrated setting, such psychiatrist shall immediately initiate the  
533 provisional admission process as set forth in § 5005 of this title. Any such determination must be based upon observed and  
534 evaluated behavior and, if available, reliable information provided by other sources regarding the person's mental condition.  
535 Any involuntary commitment of said person shall be only to a hospital designated by the Secretary to provide such care and  
536 treatment.

537 (h) A designated psychiatric treatment facility that receives a minor on an emergency detention shall promptly  
538 make a reasonable and good-faith effort to contact that person's parent or legal guardian.

539 (i) All professional personnel employed by the State or private providers are mandated to disclose any potential or  
540 apparent conflicts of interest regarding their participation in the emergency detention of any individual with an apparent  
541 mental condition to any psychiatric facility. Such conflicts of interest shall be disclosed on the emergency detention form  
542 and may include, but are not limited to, employment by a privately operated psychiatric facility, a personal relationship  
543 with the individual being detained or committed involuntarily, a relationship with family or significant others of the  
544 individual being detained or committed involuntarily, or being the victim of a crime by the person being detained or  
545 committed involuntarily.

546 (j) No person will be detained or otherwise involuntarily committed to a designated psychiatric treatment facility  
547 unless a credentialed mental health screener or juvenile mental health screener determines that such detention or  
548 commitment is the least restrictive and most community-integrated means to adequately treat the person that is immediately  
549 available.

550 (k) The Department is authorized to establish regulations consistent with this chapter. These regulations shall  
551 include rules regarding the disclosure by credentialed mental health screeners and juvenile mental health screeners of  
552 potential conflicts of interest.

553 Section 8. Amend § 5009 of Title 16 of the Delaware Code by making deletions as shown by strike through and  
554 insertions as shown by underline as follows:

555 § 5009 Probable cause hearing.

556 Upon the filing of the probable cause complaint the court shall forthwith:

557 (1) Schedule a probable cause hearing to determine whether probable cause exists for the involuntary patient's  
558 confinement, and, where necessary, appoint counsel to represent the involuntary patient. Such probable cause hearing  
559 shall be held as soon as practicable, but no later than 8 working days from the filing of the complaint. Hearings may be  
560 conducted using electronic means, such as video conferencing.

561 (2) Direct that notice of the probable cause hearing and copies of the pleadings be supplied to the involuntary  
562 patient, the patient's counsel and to the involuntary patient's spouse, other relative, close personal friend of the patient  
563 or any other person identified by the patient, provided that the patient is given the opportunity to agree, prohibit, or  
564 restrict the disclosure.

565 (3) Enter such other orders as may be appropriate, including an order authorizing the continued provisional  
566 confinement of the involuntary patient until further order of the court.

567 (4) If, pursuant to the probable cause hearing, the court determines that probable cause does not exist for  
568 involuntary inpatient commitment, the involuntary patient shall be immediately discharged. If the court determines that  
569 probable cause does exist for involuntary inpatient commitment, it shall schedule an involuntary inpatient commitment  
570 hearing, pursuant to § 5011 of this title, for the earliest practicable date, and no later than 8 working days after the  
571 probable cause hearing; and where necessary, it shall appoint an independent psychiatrist or other qualified medical  
572 expert to examine the involuntary patient and act as an expert witness on the involuntary patient's behalf. Notice of the  
573 hearing shall be given to the involuntary patient and the patient's counsel.

574 (5) If the court determines that probable cause does not exist for involuntary inpatient commitment, but finds  
575 that an individual meets the criteria for outpatient treatment over objection, the court may order that an individual be  
576 placed on outpatient treatment over objection, pursuant to § 5013 of this title, and the next hearing shall be scheduled  
577 for 3 months after the probable cause hearing. The court may only place an individual on outpatient treatment over  
578 objection at a probable cause hearing if the issue has been appropriately noticed.

579 (6) For good cause shown, the court may order that judicial proceedings under this chapter take place in the  
580 court in and for a county other than the county in which the action was initiated.

581 (7) For purposes of this chapter and for any other legal purpose, no person shall be considered "involuntarily  
582 committed" until the court so orders following a probable cause hearing held pursuant to the requirements of this  
583 chapter.

584 Section 9. Amend § 5402 of Title 16 of the Delaware Code by making deletions as shown by strike through and  
585 insertions as shown by underline as follows:

586 § 5402 Duty of mental health services providers to take precautions against threatened patient violence; duty to  
587 warn.

588 (a) ~~Except as provided in subsection (d) of this section, no~~ No cause of action shall lie against a mental health  
589 services provider, institution, agency or hospital, nor shall legal liability be imposed, for inability to prevent harm to person  
590 or property caused by a patient unless:

591 (1) The patient has communicated to the mental health services provider an explicit and imminent threat to  
592 kill or seriously injure a clearly identified victim or victims, or to commit a specific violent act or to destroy property  
593 under circumstances which could easily lead to serious personal injury or death, and the patient has an apparent intent  
594 and ability to carry out the threat; and

595 (2) The mental health services provider fails to take the precautions specified in subsection (b) of this section  
596 in an attempt to prevent the threatened harm.

597 (b) Any duty owed by a mental health services provider, institution, agency or hospital, to take reasonable  
598 precautions to prevent harm threatened by a patient is discharged, as a matter of law, if the mental health services provider,  
599 in a timely manner:

600 (1) Notifies a law enforcement agency near where the potential victim resides, or notifies a law enforcement  
601 agency near where the patient resides, and communicates the threat of death or serious bodily injury to the clearly  
602 identified victim or victims; or

603 (2) Arranges for the patient's immediate voluntary or involuntary hospitalization in an inpatient or outpatient  
604 program.

605 (c) Whenever a patient has explicitly threatened to cause serious harm to a person or property, or a mental health  
606 services provider otherwise concludes that the patient is likely to do so or is dangerous to others or dangerous to self, as  
607 defined in § 5001 of this Title and the mental health services provider, for the purpose of reducing the risk of harm,  
608 discloses any confidential communication made by or relating to the patient, no cause of action, either criminal or civil,  
609 shall lie against the mental health services provider for making such disclosure.

610 (d) Whenever a patient within the custodial responsibility of a hospital or other facility has made or makes threats  
611 of the kind dealt with in subsection (a) of this section, the mental health services provider and institution, agency or hospital  
612 shall, prior to such patient's discharge, consider and evaluate previously made threats made by such patient. Under such  
613 circumstances, the mental health services provider may consider it prudent to inform appropriate law enforcement agencies  
614 or the previously threatened party as a measure of precaution. Subsections (a) and (c) of this section shall also apply to the  
615 hospital or facility.

#### SYNOPSIS

This Act is designed to create procedures in Delaware for making sure firearms are not in the hands of dangerous people while protecting due process and not creating a barrier to care for those suffering from mental illness. This Act intends to put Delaware at the forefront of this important issue by not simply looking narrowly for mental illness. Statistically, mental illness has little to do with homicide perpetration but conversely increases the chance of being a victim of violence. This bill looks instead for propensities of violence, a much more reliable and evidence-based metric. This metric will also ensure that we can provide care to those more likely to commit violent acts and help destigmatize mental illness here in Delaware. Specific components of this Act are set forth below.

This Act applies when a person who has been committed to a hospital for treatment of a mental condition by a judge shall be deemed a person prohibited. The current law appears to apply to “any person who has ever been committed for a mental disorder,” but in reality this only applies to persons who have been involuntarily committed and subject to adjudication such as a hearing. It also clarifies that perpetrators of violent crimes who have been found Not Guilty By Reason of Insanity, Guilty But Mentally Ill, or Mentally Incompetent to Stand Trial are persons prohibited, including juveniles who fall into those categories. The provisions of § 1448B will not retroactively apply to any persons adjudicated in the past, which would create undue burden.

This Act expands the definition of “persons prohibited” to include those persons who are prohibited from possessing firearms pursuant to a court order under the procedures set forth in § 1448B of Title 11. Newly created § 1448B sets forth a procedure whereby law enforcement, upon receiving a report of a violent person and who is demonstrating behaviors that the provider believes are dangerous can refer the matter to the Department of Justice to petition the Superior Court for an order requiring such person to relinquish the person’s firearms or ammunition.

This Act revises and clarifies an existing statute, 11 Del C. § 5402, which currently solidifies the need for mental health professionals to report those with mental illness who may be a threat to others. Currently, the section contains a limited duty of a treating hospital to warn law enforcement of a specific threat, but this clarifies the original intent of the section and requires that to avoid liability that all treating mental health professionals must report dangerous persons to law enforcement. The appropriate law enforcement agency must then determine whether a civil action should be initiated under newly created § 1448C of this Title, to relinquish the person’s firearms or ammunition and to take appropriate investigative action.

Pursuant to § 1448C, the Court may order dangerous persons to relinquish to a law enforcement officer, voluntarily or otherwise, any firearms or ammunition owned, possessed, or controlled by such person. The Court may also, in its discretion, issue an order directing any law enforcement agency to forthwith search for and seize firearms and ammunition of any such person prohibited upon a showing of good cause by the petitioner. The court order to relinquish firearms would issue upon a finding that the person was prohibited, without further showing. The order authorizing police to search for and seize weapons would require a further showing, akin to an affidavit in support of a warrant, of “good cause” that the prohibited weapons would be found in a particular place or in the possession of the person prohibited.

Any person subject to an order of the Court pursuant to § 1448C may petition the Court for an order to return firearms or ammunition by establishing to a preponderance of evidence that he or she is not a danger to self or others.

In addition, as is the case under the current law, any person who is adjudicated to be a person prohibited pursuant to this Act has the opportunity to demonstrate, pursuant to § 1448A of Title 11, that he or she is no longer prohibited from possessing a firearm and therefore is no longer a person prohibited.