



SPONSOR: Sen. McDowell

DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE BILL NO. 40

AN ACT TO AMEND TITLES 2, 3, 4, 6, 7, 9, 11, 12, 13, 14, 15, 16, 18, 20, 21, 23, 24, 26, 29, 30 AND 31 OF THE DELAWARE CODE RELATING TO CRIMES AND CRIMINAL PENALTIES.

1 WHEREAS, the General Assembly established the Criminal Justice Improvement Committee in 2014 to review  
2 opportunities for efficiencies, including a review of statutes in the Delaware code to identify “disproportionate, redundant,  
3 outdated, duplicative, or inefficient statutes” and “crimes that should or should not constitute potential jail time”; and

4 WHEREAS, the Criminal Justice Improvement Committee Working Group was created to accomplished the  
5 Criminal Justice Improvement Committee’s stated goals and has worked diligently since, in concert with other criminal  
6 justice stakeholders, to restore the criminal code to a clear, readable, and proportional code; and

7 WHEREAS, the Criminal Justice Improvement Committee has adopted the recommendations of the Working  
8 Group to repeal and replace Title 11, Part I, Chapters 1 through 15 of the Delaware Criminal Code and make such  
9 additional changes as are needed throughout the code to effectuate this change; and

10 WHEREAS, this Act reflect the changes made to other parts of the Code as a result of the changes made by the  
11 repeal of Title 11, Part I, Chapters 1 through 15;

12 NOW, THEREFORE:

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all  
14 members elected to each house thereof concurring therein):

15 Section 1. Amend § 309, Title 2 of the Delaware Code by making deletions as shown by strike through and  
16 insertions as shown by underline as follows:

17 § 309 Dangerous flying; penalty.

18 Whoever, being an airperson or passenger, while in flight over a thickly inhabited area or over a public gathering  
19 within this State, engages in trick or acrobatic flying, or in any acrobatic feat, or, except while in landing or taking off, flies  
20 at such a low level as to endanger the persons on the surface beneath, or drops any object except loose water or loose sand  
21 ballast, shall be ~~fined not more than \$500 or imprisoned not more than 1 year, or both~~ subject to criminal penalties under  
22 Subchapter II of Chapter 10 of Title 11.

Section 2. Amend Part I, Title 2 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 11. Unmanned aircraft.

§ 1101 Unlawful use of an unmanned aircraft system; unclassified misdemeanor; class B misdemeanor; penalties.

(a) Definitions. — The following terms shall have the following meanings as used in this section.

(1) “Critical infrastructure” means petroleum refineries, petroleum storage facilities, chemical storage facilities, chemical manufacturing facilities, fuel storage facilities, electric substations, power plants, electric generation facilities, military facilities, commercial port and harbor facilities, rail yard facilities, drinking water treatment or storage facilities, correctional facilities, government buildings, and public safety buildings or facilities.

(2) “First responder” means federal, state, and local law-enforcement officers, fire, and emergency medical services personnel, hazardous materials response team members, 9-1-1 dispatchers, or any individual who is responsible for the protection and preservation of life and is directed to respond to an incident that could result in death or serious injury.

(3) “Unmanned aircraft system” means a powered, aerial vehicle that:

a. Does not carry a human operator;

b. Uses aerodynamic forces to provide vehicle lift;

c. Can fly autonomously or be piloted remotely; and

d. Can be expendable or recoverable.

(b) Prohibited acts. — Except as provided in this section, no person shall knowingly operate, direct, or program an unmanned aircraft system to fly:

(1) Over any sporting event, concert, automobile race, festival, or other event at which more than 1500 people are in attendance; or

(2) Over any critical infrastructure; or

(3) Over any incident where first responders are actively engaged in response or air, water, vehicular, ground or specialized transport; or

(4) So as to subject another person, who is on private property, to harassment in violation of § 1303 of Title 11; or

(5) So as to invade the privacy of another person, who is on private property, in violation of §§ 1341 or 1342 of Title 11; or

(6) So as to violate or fail to obey any provision of a protective order issued by any of the following:

53                    a. The Family Court.

54                    b. A court of any state, territory, or Indian nation in the United States, as long as such violation or failure  
55                    to obey occurs in Delaware.

56                    c. A court of Canada, as long as such violation or failure to obey occurs in Delaware.

57                    (c) Exemptions. — The prohibitions set forth in subsection (b) of this section shall not apply to:

58                    (1) An unmanned aircraft system used for law-enforcement purposes; or

59                    (2) An unmanned aircraft system flying over property where written permission has been granted by the  
60                    property owner or occupier; or

61                    (3) An unmanned aircraft system operated by an institution of higher education for educational purposes in  
62                    compliance with Federal Aviation Administration regulations; or

63                    (4) An unmanned aircraft system that is being used for a commercial or other purpose if the operator is  
64                    authorized by the Federal Aviation Administration.

65                    (d) Penalties. — Unlawful use of an unmanned aircraft system is an unclassified misdemeanor for a first offense  
66                    and a class B misdemeanor for a second or subsequent offense. Any physical injury to a person or damage to property that  
67                    occurs as a result of a violation of this section shall be subject to criminal penalties under §§ 1022, 1023, or 1144 of Title  
68                    11.

69                    (e) Preemption. — Only the State may enact a law or take any other action to prohibit, restrict, or regulate the  
70                    testing or operation of an unmanned aircraft systems in the State. This section preempts the authority of a county or  
71                    municipality to prohibit, restrict, or regulate the testing or operating of unmanned aircraft systems and supersedes any  
72                    existing law or ordinance of a county or municipality that prohibits, restricts, or regulates the testing or operating of  
73                    unmanned aircraft systems.

74                    Section 3. Amend § 1041, Title 3 of the Delaware Code by making deletions as shown by strike through and  
75                    insertions as shown by underline as follows:

76                    § 1041 Wilfully or maliciously starting fires.

77                    (a) Whoever wilfully or maliciously sets fire to any woodlot, forest, wild land, property, material or vegetation  
78                    being or growing upon the lands of another shall be ~~fin~~~~ed not less than \$200, nor more than \$5,000, or imprisoned not more~~  
79                    ~~than 2 years, or both~~ subject to criminal penalties under § 1144 of Title 11.

80                    Section 4. Amend § 1045, Title 3 of the Delaware Code by making deletions as shown by strike through and  
81                    insertions as shown by underline as follows:

82                    § 1045 Trees and shrubs of state forests; penalty.

(a) Notwithstanding any other provision of this title, whoever without the consent of the Department of Agriculture wilfully, negligently or maliciously cuts bark from or cuts down, injures, destroys or removes trees or shrubs or any part thereof growing in a state forest or wilfully, negligently or maliciously does or causes to be done any other act to the damage of such forest shall be ~~fined not more than \$1,000 or imprisoned not more than 3 months, or both~~ subject to criminal penalties under § 1144 of Title 11.

Section 5. Amend § 10050, Title 3 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 10050 Fraudulent certificate of registration or eligibility documents; ~~class G felony.~~

Notwithstanding the provisions of § 10049 of this chapter, whoever makes a false written statement which he/she knows to be false or does not know to be true in a certificate of registration issued by the United States Trotting Association, in any application for such a certificate of registration or in any eligibility documents issued by the United States Trotting Association shall be ~~guilty of a class G felony as defined in Title 11~~ subject to criminal penalties under § 1223 of Title 11.

Section 6. Amend Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Title 4. Alcoholic liquors and tobacco products.

Section 7. Amend § 401, Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 401 Division of Alcohol and Tobacco Enforcement.

The Division of Alcohol and Tobacco Enforcement of the Department of Safety and Homeland Security is established as follows for the administrative, ministerial, budgetary and clerical functions for the enforcement of the alcohol laws of this Code and youth access to tobacco laws in ~~§§ 1115 through 1127 of Title 11~~ §§ 801-811 and §§ 813-814 of this title.

Section 8. Amend Chapter 4, Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 405 Registration of out-of-state liquor agents; violation.

(a) In order to promote and protect the public safety and the peace of the community, by reason of the presence of many persons engaged in the enforcement of the laws of other states, any agent, employee, or representative of another state shall register with the Delaware Division of Alcohol and Tobacco Enforcement not less than 30 days in advance of each entry into a county for the purpose of observing any alcoholic beverage sales.

(b) At the time of registration the person shall provide the following information:

(1) A written statement setting forth the identity of the out-of-state official;

(2) The purpose of the intended entry into the county;

(3) The make, model and license number of each and every vehicle to be used in the conduct of any surveillance activity;

(4) The specific establishments at which surveillance will be conducted; and

(5) The specific times for surveillance of each establishment.

(c) Any person who registers shall be issued a certificate of registration which must be retained in the possession of the person during all investigative or surveillance activities.

(d) Any person who fails to register as required by this section, or who having registered violates any provision of this section, shall lose the right to register or the person's registration, as the case may be, for a period of 6 months.

(e) Any person who, during the period imposed by subsection (d) of this section, violates this section is guilty of a violation.

(f) Upon written request, the Delaware Division of Alcohol and Tobacco Enforcement shall release the information regarding agencies and officers who have registered under this section.

Section 9. Amend Title 4 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 8. Tobacco products.

§ 801 Definitions.

When used in this Chapter:

(1) "Coupon" means any card, paper, note, form, statement, ticket or other issue distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive any tobacco product without charge or at a discounted price.

(2) "Distribute" means give, deliver or sell, offer to give, deliver or sell, or cause or hire any person to give, deliver or sell, or offer to give, deliver or sell.

(3) "Health warning" means any tobacco product or tobacco substitute label mandated by federal law and intended to alert all users of such tobacco product or tobacco substitute to the health risks associated with tobacco use, including, but not limited to, warning labels imposed under the Federal Cigarette Labeling and Advertising Act (15 U.S.C. § 1331 et seq.) and the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. § 4401 et seq.).

(4) "Proof of age" means a driver's license or other identification with a photograph of the individual affixed thereon that indicates that the individual is 18 years old or older.

(5) "Public place" means any area to which the general public is invited or permitted, including, but not limited to, parks, streets, sidewalks or pedestrian concourses, sports arenas, pavilions, gymnasiums, public malls and property owned, occupied or operated by the State or by any agency thereof.

(6) "Sample" means a tobacco product or tobacco substitute distributed to members of the general public at no cost for the purpose of promoting the product.

(7) "Sampling" means the distribution of samples or coupons for redemption of tobacco products or tobacco substitutes to members of the general public in a public place.

(8) "Tax stamp" means any required state or federal stamp imposed for the purpose of collecting excise tax revenue.

(9) "Tobacco product" means any product that contains tobacco, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff or smokeless tobacco and is intended for human consumption or use.

(10) "Tobacco store" means any retail establishment where 60% of the retail establishment's gross revenue comes from the retail sale of tobacco products and smoking paraphernalia.

(11) "Tobacco substitute" means any device employing a mechanical heating element, battery, or circuit, regardless of shape or size, that can be used to deliver nicotine into the body through inhalation and that has not been approved by the United States Food and Drug Administration for tobacco cessation or other medical purposes, or any noncombustible product containing nicotine intended for use in such a device that has not been approved by the United States Food and Drug Administration for tobacco cessation or other medical purposes.

(12) "Vending machine" means any mechanical, electronic or other similar device which automatically dispenses tobacco products or tobacco substitutes, usually upon the insertion of a coin, token or slug.

§ 802 Sale or distribution of tobacco products or tobacco substitutes to minors.

(a) It shall be unlawful for any person to sell or distribute any tobacco product or tobacco substitute to another person who has not attained the age of 18 years or to purchase any tobacco product or tobacco substitute on behalf of another such person, except that this section shall not apply to the parent or guardian of another such person.

(b) A person engaged in the sale or distribution of tobacco products or tobacco substitutes shall have the right to demand proof of age from a prospective purchaser or recipient of such products.

(c) A person engaged in the sale or distribution of tobacco products or tobacco substitutes shall demand proof of age from a prospective purchaser or recipient of such products who is under 27 years of age.

173           § 803 Notice.

174           A person engaged in the sale or distribution of tobacco products or tobacco substitutes shall post conspicuously at  
175 each point of purchase and each tobacco vending machine a notice stating that selling tobacco products or tobacco  
176 substitutes to anyone under 18 years of age is illegal, that the purchase of tobacco products or tobacco substitutes by anyone  
177 under 18 years of age is illegal and that a violator is subject to fines. The notice shall also state that all persons selling  
178 tobacco products or tobacco substitutes are required, under law, to check the proof of age of any purchaser of tobacco  
179 products or tobacco substitutes under the age of 27 years. The notice shall include a toll-free telephone number to the  
180 Department of Safety and Homeland Security for persons to report unlawful sales of tobacco products or tobacco  
181 substitutes. The owners of an establishment who fail to post a notice in compliance with this section shall be subject to a  
182 fine of \$100.

183           § 804 Distribution of samples to minors.

184           (a) It shall be unlawful for any person to distribute tobacco product or tobacco substitute samples or coupons for  
185 subsequent receipt of free or discounted tobacco products or tobacco substitutes to another person who has not attained the  
186 age of 18 years.

187           (b) A person engaged in sampling shall have the right to demand proof of age from a prospective recipient of  
188 samples or of coupons for the redemption of tobacco products or tobacco substitutes.

189           § 805 Distribution of cigarettes or tobacco substitutes through vending machines.

190           (a) It shall be unlawful for any person to distribute or permit the distribution of tobacco products or tobacco  
191 substitutes through the operation of a vending machine in a public place, except as provided in subsection (b) of this  
192 section.

193           (b) Pursuant to subsection (a) of this section, a person may distribute or permit the distribution of tobacco products  
194 or tobacco substitutes through the operation of a vending machine in a taproom, tavern, tobacco shop or in premises in  
195 which a person who has not attained the age of 18 years is prohibited by law from entering. A tobacco vending machine  
196 must be operated a minimum of 25 feet from any entrance to the premises and must be directly visible to the owner or  
197 supervisor of the premises.

198           (c) It shall be unlawful for any person who owns, operates or manages a business establishment where tobacco  
199 products or tobacco substitutes are offered for sale over the counter at retail to maintain such products in any display  
200 accessible to customers that is not under the control of a cashier or other employee. This prohibition shall not apply to  
201 business establishments to which persons under the age of 18 are not admitted unless accompanied by an adult, tobacco  
202 vending machines as permitted under subsection (b) of this section, or tobacco stores. As used in this subsection, “under the

control” means customers cannot readily access the tobacco products or tobacco substitutes without the assistance of a cashier or other employee. A display that holds tobacco products or tobacco substitutes behind locked doors shall be constructed as under the control of a cashier or other employee.

§ 806 Distribution of tobacco products.

(a) No person shall distribute a tobacco product for commercial purposes unless the product is in a sealed package provided by the manufacturer with the required health warning and tax stamp.

(b) No person shall distribute any pack of cigarettes containing fewer than 20 cigarettes.

§ 807 Penalties.

Notwithstanding any other provision of Delaware law, a person who violates § 802, § 804, § 805 or § 806 of this title shall be guilty of a violation and shall be fined \$250 for the first offense, \$500 for the second offense and \$1,000 for the third and all subsequent offenses. Additionally, and notwithstanding any other provision of Delaware law, in imposing a penalty for a second, third or other subsequent offense under this chapter, the court may order the Department of Finance to suspend the defendant’s license for sale of tobacco products, issued pursuant to § 5307 of Title 30, for a period not to exceed 6 months. Upon the suspension of such license, the court shall advise the Department of Finance of the suspension in writing. The holder of the license shall surrender the license to the Department of Finance and no refund of fees shall be paid. For purposes of this subpart, a subsequent offense is one that occurs within 12 months of a prior like offense.

§ 808 Defense.

In any prosecution for an offense under this chapter, it shall be a defense that the purchaser or recipient of tobacco products or tobacco substitutes who had not reached the age of 18 years presented to the accused proof of age which set forth information that would lead a reasonable person to believe that such individual was 18 years of age or older.

§ 809 Liability of employer.

(a) If a sale or distribution of any tobacco product or tobacco substitute or coupon is made in violation of § 802, § 804, § 805 or § 806 of this title, the owner, proprietor, franchisee, store manager or other person in charge of the establishment where the violation occurred shall be guilty of the violation and shall be subject to the fine only if the retail licensee has received written notice of the provisions of §§ 802 through 807 of this title by the Department of Safety and Homeland Security. For purposes of determining the liability of a person who owns or controls franchises or business operations in multiple locations, for a second or subsequent violation of this subpart, each individual franchise or business location shall be deemed a separate establishment.



(b) Notwithstanding any other provision of this subpart, in any prosecution for a violation of §§ 802, 804 and 806 of this title, the owner, proprietor, franchisee, store manager or other person in charge of the establishment where the alleged violation occurred shall have a defense if such person or entity can establish that prior to the date of the violation:

(1) Had adopted and enforced a written policy against selling tobacco products or tobacco substitutes to persons under 18 years of age;

(2) Had informed its employees of the applicable laws regarding the sale of tobacco products or tobacco substitutes to persons under 18 years of age;

(3) Required employees to sign a form indicating that they have been informed of and understand the written policy required herein;

(4) Required employees to verify the age of tobacco product or tobacco substitute customers by means of photographic identification; and

(5) Had established and enforced disciplinary sanctions for noncompliance.

(c) The defense established in subsection (b) of this section may be used by an owner, proprietor, franchisee, store manager or other person in charge of the establishment no more than twice at each location within any 12-month period.

§ 810 Purchase or receipt of tobacco products or tobacco substitutes by minors.

(a) It shall be unlawful for any person who has not attained the age of 18 years to purchase a tobacco product or tobacco substitute, to accept receipt of a sample, to exchange a coupon for a tobacco product or tobacco substitute, or to present or offer to another person a purported proof of age which is false, fraudulent or not actually that person's own proof of age, for the purpose of purchasing or receiving any tobacco product or tobacco substitute or redeeming a coupon for a tobacco product or tobacco substitute.

(b) A person who violates subsection (a) of this section shall be adjudged delinquent and shall for a first adjudication be fined \$50 or ordered to perform 25 hours of community service work, and for a second adjudication and for all subsequent adjudications be fined \$50 and ordered to perform 50 hours of community service work. A subsequent adjudication of delinquency is one that occurs within 12 months of a prior like offense.

§ 811 Unannounced inspections; reporting; enforcement.

(a) The Department of Safety and Homeland Security or its delegates shall be responsible for conducting annual, random, unannounced inspections at locations where tobacco products or tobacco substitutes are sold or distributed to test and ensure compliance with and enforcement of §§ 802-806 and 810 of this title.

(b) Persons under the age of 18 may be enlisted by the Department of Safety and Homeland Security or its delegates to test compliance with and enforcement of §§ 802-806 and 810 of this title, provided however, that such persons

may be used only under the direct supervision of the Department of Safety and Homeland Security, its employees or delegates and only where written parental consent has been provided.

(c) Participation in the inspection and enforcement activities of this section by a person under 18 years of age shall not constitute a violation of this chapter for the person under 18 years of age, and the person under 18 years of age is immune from prosecution thereunder, or under any other provision of law prohibiting the purchase of these products by a person under 18 years of age.

(d) The Department of Safety and Homeland Security shall adopt and publish guidelines for the use of persons under 18 years of age in inspections conducted pursuant to this section.

(e) The Department of Safety and Homeland Security may enter into an agreement with any local law-enforcement agency for delegation of the inspection and enforcement activities of this section within the local law-enforcement agency's jurisdiction. The contract shall require the inspection and enforcement activities of the local law-enforcement agency to comply with this subpart and with all applicable laws.

(f) In cases where inspection and enforcement activities have been delegated to a local law-enforcement agency pursuant to this section, any inspection or enforcement by the Department of Safety and Homeland Security in the jurisdiction of the local law-enforcement agency shall be coordinated with the local law enforcement agency.

(g) The Delaware Department of Health and Social Services shall annually submit to the Secretary of the United States Department of Health and Human Services the report required by § 1926 of the federal Public Health Service Act (42 U.S.C. § 300x-26). A copy of this report shall be available to the Governor and the General Assembly.

#### § 812 Smoking on trolleys and buses.

Whoever in any trackless trolley coach, or gasoline or diesel-engine-propelled bus being used as a public conveyance for carrying passengers within this State, smokes or carries a lighted cigarette, cigar or pipe shall be fined not less than \$5.00 nor more than \$25.

#### § 813 Jurisdiction.

The Justices of the Peace Court shall have jurisdiction over violations of this chapter, except in the instance of violations by a person who has not attained the age of 18, in which case the Family Court shall have jurisdiction.

#### § 814 Preemption.

The provisions of this chapter shall preempt and supersede any provisions of any municipal or county ordinance or regulation on the subject of this subpart enacted after June 30, 1996.

Section 10. Amend Chapter 22, Subtitle II, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2206 Identity theft passport; application; issuance.

(a) The Office of the Attorney General, in cooperation with any law-enforcement agency, may issue an identity theft passport to a person who is a victim of identity theft in this State and who has filed a police report citing that such person is a victim of a violation of § 1129(a)(1) of Title 11. A person who has filed with a law-enforcement agency a police report alleging identity theft may apply for an identity theft passport through any law-enforcement agency. The agency shall send a copy of the application and the supporting police report to the Office of the Attorney General. After processing the application and police report, the Office of the Attorney General may issue to the victim an identity theft passport in the form of a card or certificate which may include photo identification.

(b) A victim of identity theft may present that victim's identity theft passport issued under subsection (a) of this section to the following:

(1) A law-enforcement agency to help prevent the victim's arrest or detention for an offense committed by someone other than the victim who is using the victim's identity.

(2) Any of the victim's creditors to aid in a creditor's investigation and establishment of whether fraudulent charges were made against accounts in the victim's name or whether accounts were opened using the victim's identity.

(3) A consumer reporting agency, as defined in § 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), which must accept the passport as an official notice of a dispute and must include notice of the dispute in all future reports that contain disputed information caused by the identity theft.

(c) Acceptance or rejection of an identity theft passport presented by the victim to a law-enforcement agency or creditor pursuant to paragraph (b)(1) or (2) of this section is at the discretion of the law-enforcement agency or creditor. In making a decision for acceptance or rejection, a law-enforcement agency or creditor may consider the surrounding circumstances and available information regarding the offense of identity theft pertaining to the victim.

(d) An application made with the Office of the Attorney General pursuant to subsection (a) of this section, including any supporting documentation, is confidential criminal justice information, is not a public record, and is specifically exempted from public disclosure under the Freedom of Information Act, Chapter 100 of Title 29. However, the Office of the Attorney General may provide access to applications and supporting documentation filed pursuant to this section to other criminal justice agencies in this or another State.

(e) The Office of the Attorney General shall adopt regulations to implement this section. The regulations must include a procedure by which the Office of the Attorney General is reasonably assured that an identity theft passport applicant has an identity theft claim that is legitimate and adequately substantiated.

Section 11. Amend Chapter 25, Subtitle II, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2509A Undetectable knives; commercial manufacture, import for commercial sale, or offers for commercial sale; or possession.

Notwithstanding any other provision of law, all knives or other instruments with or without a handguard that are capable of ready use as a stabbing weapon that may inflict serious physical injury or death that are commercially manufactured in this state that utilize materials that are not detectable by a metal detector or magnetometer, shall be manufactured to include permanently installed materials that will ensure they are detectable by a metal detector or magnetometer, either handheld or otherwise, that is set at standard calibration.

Section 12. Amend § 5128, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5128 Furnace and stove oil.

(a) Whoever sells or delivers fuel oil or propane in quantities of 20 gallons or more for heating or cooking purposes shall issue a delivery ticket which shall consist of an original and at least 1 carbon copy. Said ticket shall be serially numbered for the purpose of identification and shall have the date of delivery as well as the names and addresses of the vendor and the purchaser legibly recorded on the ticket prior to delivery of the fuel oil or propane. A statement of the quantity of fuel oil or propane delivered, in terms of gallons and fractions thereof, if any, the price per gallon, the grade of fuel and the identity of the person making such delivery shall also appear on the ticket. One copy of said ticket shall be delivered to the purchaser or the purchaser's agent at the time of delivery of such fuel oil or propane, unless the purchaser initiates a request in writing that the vendor deliver such ticket to another person, to another location or at another time. Another copy of said ticket shall be retained by the vendor for a period of 1 year. The number printed on the delivery ticket that is presented to the purchaser of the fuel oil or propane shall be listed on the records kept by the individual or company that sells or delivers the fuel oil or propane.

(f) Any person who, by himself or herself, or by his or her employee or agent or as the employee or agent of another person, alters or substitutes a delivery ticket in violation of this section, or for otherwise fraudulent or deceptive purposes, shall be ~~punished by a fine of not more than \$1,000 or by imprisonment of not more than 1 year, or both~~ subject to criminal penalties under § 1122 of Title 11.

Section 13. Amend § 5132, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5132 Hindering or obstructing officer; penalties.

Any person who shall hinder or obstruct in any way the Secretary of Agriculture, or any 1 of the inspectors, in the performance of official duties, ~~shall, upon conviction thereof, be punished by a fine of not less than \$100 or more than \$500, or by imprisonment for not more than 3 months, or by both such fine and imprisonment~~ shall be subject to criminal penalties under § 1243 of Title 11.

Section 14. Amend § 5133, Title 6 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5133 Impersonation of officer; penalties.

Any person who shall impersonate in any way the Secretary of Agriculture or any one of the inspectors by the use of the Secretary's seal or a counterfeit of the Secretary's seal, or in any other manner, upon conviction thereof, ~~shall be punished by a fine of not less than \$100 or more than \$500, or by imprisonment for not more than 6 months, or by both such fine and imprisonment~~ subject to criminal penalties under § 1224 of Title 11.

Section 15. Amend § 706, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 706 Damaging nest, den or lair of protected wildlife or trees, stumps or logs on another's property.

~~No person shall needlessly destroy, break or interfere with any nest, den or lair of any bird or animal protected by the laws of this State, or set fire to, burn, bark or in any way mutilate any tree, living or dead, stump or log, on lands of another, without the express consent of the owner or person in charge.~~

(a) Any person who needlessly destroys, breaks or interferes with any nest, den or lair of any bird or animal protected by the laws of this State shall be guilty of a class C environmental misdemeanor.

(b) Any person who sets fire to, burns, barks or in any way mutilates any tree, living or dead, stump or log, on lands of another, without the express consent of the owner or person in charge shall be subject to criminal penalties under § 1144 of Title 11.

Section 16. Amend § 714, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 714 Trespassing; penalty.

Whoever enters upon the lands or waters of another within this State, without first obtaining permission to do so from the owner or lessee, for the purpose of hunting, trapping or fishing, ~~shall be guilty of a class C environmental violation~~ subject to criminal penalties under § 1162 of Title 11.

Section 17. Amend § 724, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 724 Wilful obstruction or impeding of lawful hunting, fishing or trapping activities.

(a) No person shall wilfully obstruct or impede the participation of any individual in:

(1) The lawful taking of fish, crabs, oysters, clams or frogs; or

(2) The lawful hunting of any game birds or animals; or

(3) The lawful trapping of any game animals.

~~(e) This section shall not apply to law enforcement personnel acting in the lawful performance of their duties.~~

[Deleted.]

Section 18. Amend § 931, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 931 Theft and attempted theft of fishing equipment or finfish from fishing equipment.

(f) Theft of finfish, or attempted theft of finfish, from another person's fishing equipment shall be ~~a class A misdemeanor, unless the value of the finfish is \$300 or more, in which case it shall be a class E felony. Whoever violates this section shall be fined and/or imprisoned in accordance with the fines and/or terms of imprisonment specified in Chapter 42 of Title 11 for a class A misdemeanor and a class E felony~~ subject to criminal penalties under Subchapter I of Chapter 11 of Title 11.

Section 19. Amend § 5407, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5407 Prohibited acts.

~~No person, unless acting pursuant to Chapter 47 of Title 29, shall:~~

~~(1) Knowingly acquire any human skeletal remains removed from unmarked burials in Delaware, except in accordance with this subchapter.~~

~~(2) Knowingly sell any human skeletal remains acquired from unmarked burials in Delaware.~~

~~(3) Knowingly exhibit human skeletal remains.~~ [Deleted.]

Section 20. Amend § 5408, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5408 Exceptions.

(a) Human skeletal remains acquired from commercial biological supply houses or through medical means are not subject to this subchapter and § 1326 of Title 11.

(b) Human skeletal remains determined to be within the jurisdiction of the Medical Examiner are not subject to the prohibitions contained in this subchapter and § 1326 of Title 11.

(c) Human skeletal remains acquired through archaeological excavations under the supervision of a professional archaeologist are not subject to the prohibitions as provided in ~~§ 5407(1) of this title~~ § 1326 of Title 11.

Section 21. Amend § 5409, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5409 Criminal penalties.

~~Any person who violates § 5407 of this title shall upon conviction be sentenced to pay a fine of not less than \$1,000 nor more than \$10,000 or be imprisoned not more than 2 years or both. The Superior Court shall have jurisdiction of offenses under this chapter. [Deleted.]~~

Section 22. Amend § 6013, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6013 Criminal penalties.

(a) Any person who wilfully or ~~negligently~~ with criminal negligence:

(1) Violates § 6003 of this title, or violates any condition or limitation included in a permit issued pursuant to § 6003 of this title, or any variance condition or limitation, or any rule or regulation, or any order of the Secretary; or

(2) Violates any requirements of a statute or regulation respecting monitoring, recording and reporting of a pollutant or air contaminant discharge; or

(3) Violates a pretreatment standard or toxic effluent standard with respect to introductions of pollutants into publicly owned treatment works

shall be punished by a fine of not less than \$2,500 nor more than \$25,000 for each day of such violation, and may be subject to criminal penalties under § 1146 of Title 11.

(b) Any person ~~who intentionally, knowingly, or recklessly:~~ who:

(1) Makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter, or under any permit, rule, regulation or order issued under this chapter; or

(2) Who falsifies, tampers with or renders inaccurate any monitoring device or method required to be maintained under this chapter,

~~shall upon conviction be punished by a fine of not less than \$500 nor more than \$10,000 or by imprisonment for not more than 6 months, or both~~ be subject to criminal penalties under Subchapter II or Subchapter III of Chapter 12 of Title 11.

(c) ~~Any person who intentionally or knowingly:~~

~~(1) Violates § 6003 of this title, or violates any condition or limitation included in a permit issued pursuant to § 6003 of this title, or any variance condition or limitation, or any rule or regulation, or any order of the Secretary; or~~

~~(2) Violates any requirements of a statute or regulation respecting monitoring, recording and reporting of a pollutant or air contaminant discharge; or~~

~~(3) Violates a pretreatment standard or toxic effluent standard with respect to introductions of pollutants into publicly owned treatment works,~~

~~and who causes serious physical injury to another person or serious harm to the environment as one result of such conduct, shall be guilty of a class D felony and shall, upon conviction, be sentenced in compliance with the sentencing guidelines established for class D felonies in § 4205 of Title 11. [Deleted.]~~

~~(d) Any person:~~

~~(1) Who intentionally or knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained under this chapter, or under any permit, rule, regulation or order issued under this chapter; or~~

~~(2) Who falsifies, tampers with or intentionally or knowingly causes to be rendered inaccurate any monitoring device or method required to be maintained under this chapter,~~

~~and who causes serious physical injury to another person or serious harm to the environment as 1 result of such conduct, shall be guilty of a class D felony and shall, upon conviction, be sentenced in compliance with the sentencing guidelines established for class D felonies in § 4205 of Title 11. [Deleted.]~~

~~(e) Any officer of any corporation, manager of any limited liability company, or general partner of any limited partnership conducting business in the State who intentionally or knowingly authorizes or directs said business entity or its employees or agents to:~~

~~(1) Falsify or conceal any material fact required to be disclosed to the Department;~~

~~(2) Destroy, conceal or alter any records that the corporation is required by this title, the Department's regulations, or an order of the Department to maintain; or~~

~~(3) Commit any act in violation of this title or rules promulgated by the Department;~~

~~shall upon conviction be punished by a fine of not less than \$500 nor more than \$10,000 or by imprisonment for not more than 6 months, or both. If an act described in this subsection causes serious physical injury to another person or serious harm to the environment as one result of such an act, the officer, manager or general partner committing the act shall be guilty of a class D felony and shall, upon conviction be sentenced in compliance with the sentencing guidelines~~



established for class D felonies in § 4205 of Title 11. Nothing in this subsection shall be read to establish any additional elements for conviction of the criminal offenses described in subsections (a) through (d) of this section.

shall be subject to criminal penalties under Chapter 4, Chapter 11 and Chapter 12 of Title 11. An act described in this subsection may also be subject to criminal penalties under § 1146 of Title 11.

(g) The Superior Court shall have exclusive jurisdiction over prosecutions brought pursuant to ~~subsections (a)-(e)~~ subsections (a), (b), or (e) of this section. Prosecutions pursuant to subsection (h) of this section may be brought in the jurisdiction of the Courts of the Justices of the Peace.

(i) Any person prosecuted pursuant to subsection (h) of this section shall not be prosecuted for the same offense under ~~subsections (a)-(e)~~ subsections (a), (b) and (e) of this section.

(j) The terms “intentionally,” “knowingly,” “recklessly,” ~~“negligently,”~~ “criminal negligence,” and “serious physical injury,” as used in this section, shall have the meanings assigned to them by ~~Chapter 2 of Title 11 §§ 103 and 205~~ of Title 11.

~~(l) It is an affirmative defense to a prosecution that the specific conduct charged was freely and knowingly consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of:~~

~~(1) An occupation, a business or a profession; or~~

~~(2) Medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.~~

~~The defendant may establish an affirmative defense under this subsection by a preponderance of the evidence. The provisions of this subsection are subject to the restrictions enumerated at § 453 of Title 11. [Deleted.]~~

(m) All general ~~defenses~~ affirmative defenses, defenses, and bars to prosecution that may apply with respect to other criminal offenses may apply under this section.

Section 23. Amend § 6074, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6074 Penalties.

(a) Whoever ~~negligently~~ recklessly or knowingly violates § 6073 of this title shall be ~~fin~~ed not less than \$2,500 nor more than \$25,000 per day of violation, or be imprisoned for not more than 1 year, or both. If a conviction of a person is for a violation committed after a prior conviction of such person under this section, punishment shall be by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment of not more than 2 years, or both subject to criminal penalties under § 1146 of Title 11.

(b) ~~Whoever knowingly violates § 6073 of this title shall be fined not less than \$5,000 nor more than \$50,000 per day of violation, or be imprisoned for no more than 3 years, or both. If a conviction of a person is for a violation committed after a prior conviction of such person under this section, punishment shall be by a fine of not less than \$10,000 nor more than \$100,000 per day of violation, or by imprisonment of not more than 6 years, or both. [Deleted.]~~

(c) ~~The Superior Court shall have jurisdiction over violations of § 6073 of this title. [Deleted.]~~

(d) ~~There shall be no suspension of any fines required under the provisions of this section. [Deleted.]~~

Section 24. Amend § 6308, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6308 Imminent hazards.

Notwithstanding any other provision of this chapter, the Secretary, upon receipt of information that the storage, transportation, treatment or disposal of any hazardous waste may present an imminent and substantial hazard to the health of persons or to the environment, may take such action as he or she determines to be necessary to protect the health of such persons or the environment. The action the Secretary may take includes, but is not limited to:

(3) Enforcement action pursuant to § 6309 of this title and § 1146(c) of Title 11;

Section 25. Amend § 6309, Title 7 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6309 Enforcement.

(f) Any person who, with criminal negligence with respect to the following: violates any provision of or fails to perform any duty imposed by this chapter, or who violates any provisions of or fails to perform any duty imposed by a rule, regulation, order or any facility permit adopted or issued under this chapter, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$10,000, or imprisonment not exceeding 6 months, or both. The Superior Court shall have jurisdiction of offenses under this subsection.

(h) Any person who knowingly ~~commits~~ engages in any of the following ~~offenses is guilty of a felony and on conviction is subject to a fine not exceeding \$50,000, or imprisonment not exceeding 2 years, or both~~ conduct shall be subject to criminal penalties under Chapter 4, Chapter 5, and § 1146(b) of Title 11:

(1) Dumping, discharging, abandoning or disposing into the environment, a hazardous waste in any place other than an authorized hazardous waste facility for which a current facility permit is in effect;

(2) Transporting for treatment, storage or disposal a hazardous waste to any place other than an authorized hazardous waste facility for which a current facility permit is in effect; or

(3) Authorizing, directing or participating in any offense listed in this subsection.

(i) Any person who knowingly with respect to the following: transports, treats, stores, exports or otherwise disposes of a hazardous waste in a manner that would constitute a violation under subsection (h) of this section and who knows at that time that the violation places another person in imminent danger of death or serious bodily injury ~~is guilty of a felony and on conviction is subject to a fine not exceeding \$100,000, or imprisonment not exceeding 5 years, or both shall~~ be subject to criminal penalties under Chapter 4, Chapter 5, and § 1146(b) of Title 11. For purposes of this subsection, in determination whether a person's state of mind is knowing and whether a person knew that the violation or conduct placed another person in imminent danger of death or serious bodily injury, the criteria provided under § 3008(f) of the Resource Conservation and Recovery Act (42 U.S.C. § 6928(f) as amended in P.L. 99-499) shall apply.

(j) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan, manifest, label or other document filed or required to be maintained under this chapter, or under any transfer facility approval or permit, regulation or order issued under this chapter, or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, ~~shall upon conviction be punished by a fine of not less than \$500 nor more than \$25,000, or by imprisonment for not more than 1 year, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than \$50,000 per day of violation, or by imprisonment for not more than 2 years, or by both. The Superior Court shall have jurisdiction of offenses under this subsection~~ be subject to criminal penalties under Chapter 4, Chapter 11, and Chapter 12 of Title 11.

Section 26. Amend § 1397, Title 9 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1397 Subpoena power.

(e) No person shall, with intent to avoid, evade, prevent or obstruct compliance in whole or in part by any person with any duly served investigative demand of the County Attorney under this section, knowingly remove to any place, conceal, withhold, destroy, mutilate, alter or by any other means falsify any documentary material or materials that are the subject of the demand. ~~A violation of this subsection is a class E felony.~~ Any suspected violations of this section shall be referred to the Office of the Attorney General and shall be subject to criminal penalties under § 1241 of Title 11.

Section 27. Amend § 2402, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2402 Interception of communications generally; divulging contents of communications, violations of chapter.

(a) *Prohibited acts.* — Except as specifically provided in this chapter or elsewhere in this Code no person shall:

(1) Intentionally intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept any wire, oral or electronic communication;

(2) Intentionally disclose or endeavor to disclose to any other person the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this chapter; or

(3) Intentionally use or endeavor to use the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this chapter.

(b) *Penalties for violation of subsection (a) of this section.* — Any person who violates subsection (a) of this section shall be ~~guilty of a class E felony and be fined not more than \$10,000~~ subject to criminal penalties under Subchapter III of Chapter 13 of Title 11.

(d) *Divulging contents of communications.* — Except as provided in this subsection or in Subchapter III of Chapter 13 of this title, a person or entity providing an electronic communication service to the public may not intentionally divulge the contents of any communication (other than one to the person or entity providing the service, or an agent of the person or entity) while in transmission on that service to any person or entity other than an addressee or intended recipient of the communication or an agent of the addressee or intended recipient.

(1) A person or entity providing electronic communication service to the public may divulge the contents of a communication:

a. As otherwise authorized by federal or state law;

b. To a person employed or authorized, or whose facilities are used, to forward the communication to its destination; or

c. That were inadvertently obtained by the service provider and that appear to pertain to the commission of a crime, if the divulgence is made to a law-enforcement agency.

(2) Unless the conduct is for the purpose of direct or indirect commercial advantage or private financial gain, conduct that would otherwise be an offense under this subsection is not an offense if the conduct consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted:

a. To a broadcasting station for purposes of retransmission to the general public; or

b. As an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls.

(e) *Penalties for divulging contents of communications.* — Whoever violates subsection (d) of this section ~~shall~~  
shall be subject to criminal penalties under Subchapter III of Chapter 13 of Title 11.

~~(1) Except as otherwise provided in this subsection, be guilty of a class F felony and fined not more than  
\$10,000.~~

~~(2) For any offense that is a first offense:~~

~~a. Which was not for a tortious or illegal purpose or for purposes of direct or indirect commercial  
advantage or private commercial gain; and~~

~~b. Which involved a wire or electronic communication that was a radio communication that was not  
scrambled or encrypted; and~~

~~c. Which involved a communication that was not the radio portion of a cellular telephone communication,  
a public land mobile radio service communication or a paging service communication;  
be guilty of a class A misdemeanor.~~

~~(3) For any offense that is a first offense:~~

~~a. Which was not for a tortious or illegal purpose or for purposes of direct or indirect commercial  
advantage or private commercial gain; and~~

~~b. Which involved a wire or electronic communication that was a radio communication that was not  
scrambled or encrypted; and~~

~~c. Which involved a communication that was the radio portion of a cellular telephone communication, a  
public land mobile radio service communication or a paging service communication;  
be guilty of an unclassified misdemeanor. [Deleted.]~~

(g) *Injunctive relief — Civil penalties.* — The State is entitled to appropriate injunctive relief in an action under  
this subsection if the violation is the person's first offense ~~under paragraph (e)(1) of this section~~ and the person has not been  
found liable in a prior civil action under § 2409 of this title. However, in any action under this subsection, if the violation is  
a second or subsequent offense ~~under paragraph (e)(1) of this section~~ or if the person has been found liable in a prior civil  
action under § 2409 of this title, the person is subject to a mandatory civil fine of not less than \$400. The Court may use  
any means within its authority to enforce an injunction issued under this subsection and shall impose a civil fine of not less  
than \$500 for each violation of an injunction issued under this subsection.

Section 28. Amend § 2403, Title 11 of the Delaware Code by making deletions as shown by strike through and  
insertions as shown by underline as follows:

§ 2403 Manufacture, possession or sale of intercepting device.

616 (a) *Prohibited acts.* — Except as otherwise specifically provided by this chapter, any person who manufactures,  
617 assembles, possesses or sells any electronic, mechanical or other device knowing or having reason to know that the design  
618 of the device is primarily for the purpose of the surreptitious interception of wire, oral or electronic communications, shall  
619 be ~~guilty of a Class F felony and be fined not more than \$10,000~~ subject to criminal penalties under § 508 of Title 11.

620 (b) *Lawful acts.* — It is lawful ~~under this section~~ for:

621 (1) A provider of wire or electronic communication service or an officer, agent, employee of, or person under  
622 contract with a service provider, in the normal course of the business of providing that wire or electronic  
623 communication service, to manufacture, assemble, possess or sell any electronic, mechanical or other device knowing  
624 or having reason to know that the design of the device is primarily for the purpose of the surreptitious interception of  
625 wire, oral or electronic communications.

626 Section 29. Amend § 2412, Title 11 of the Delaware Code by making deletions as shown by strike through and  
627 insertions as shown by underline as follows:

628 § 2412 Obstruction, impediment or prevention of interception.

629 (a) *Giving notice of interception.* — A person who has knowledge that an investigative or law-enforcement officer  
630 has been authorized or has applied for authorization under this chapter to intercept wire, oral or electronic communications  
631 may not give notice or attempt to give notice of an authorized interception or pending application for authorization for  
632 interception to any other person in order to obstruct, impede or prevent such interception.

633 (b) *Penalties.* — A person who violates the provisions of subsection (a) of this section shall be ~~guilty of a class F~~  
634 ~~felony and be fined not more than \$10,000~~ subject to criminal penalties under § 1241 of Title 11.

635 Section 30. Amend Subchapter II, Chapter 27, Part II, Title 11 of the Delaware Code by making deletions as  
636 shown by strike through and insertions as shown by underline as follows:

637 § 2739 Unlawful use of payment card; venue for prosecution and conviction.

638 A person may be prosecuted and convicted under § 1125 of this title in such county or counties within Delaware  
639 where the money, goods, services, or anything of value giving rise to the prosecution were solicited, were received, or were  
640 attempted to be received, or where the charges for the money, goods, services, or anything of value were billable in the  
641 normal course of business.

642 Section 31. Amend Chapter 33, Part II, Title 11 of the Delaware Code by making deletions as shown by strike  
643 through and insertions as shown by underline as follows:

644 Chapter 33. Trial Jurors; jury instructions.

645 § 3302 Method of prosecution when conduct constitutes more than 1 offense.

The court is not obligated to charge the jury with respect to an included offense unless there is a rational basis in the evidence for a verdict acquitting the defendant of the offense charged and convicting the defendant of the included offense.

§ 3303 Jury instruction for defendant on reasonable doubt.

(a) Pursuant to § 108(c)(1)a. of this title, the defendant is entitled to a jury instruction that the jury must acquit if they fail to find each element of the offense proved beyond a reasonable doubt.

(b) The defendant may produce whatever evidence the defendant has tending to negate the existence of any element of the offense, and, if the court finds that a reasonable juror might believe that evidence, the defendant is entitled to a jury instruction that the jury must consider whether the evidence raises a reasonable doubt as to the defendant's guilt.

§ 3304 Credible evidence to support justification defenses.

If the defendant satisfies his or her burden of production pursuant to § 108(b)(3) of this title as to a justification defense contained in Chapter 3 of this title, the defendant is entitled to a jury instruction that the jury must acquit the defendant if they find that the evidence raises a reasonable doubt as to the defendant's guilt.

§ 3305 Defendant's defenses; prove by preponderance of evidence.

Unless the court determines that no reasonable juror could find a defense established by a preponderance of the evidence presented by the defendant, the defendant is entitled to a jury instruction that the jury must acquit the defendant if they find the defense established by a preponderance of the evidence.

Section 32. Amend Subchapter I, Chapter 35, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3517 Rules to prescribe procedures for psychiatric examination; testimony of psychiatrist or other expert.

(a) The procedures for examination of the accused by the accused's own psychiatrist or by a psychiatrist employed by the State and the circumstances under which such an examination will be permitted may be prescribed by rules of the court having jurisdiction over the offense.

(b) A psychiatrist or other expert testifying at trial concerning the mental condition of the accused shall be permitted to make a statement as to the nature of the examination, the psychiatrist's or expert's diagnosis of the mental condition of the accused at the time of the commission of the offense charged and the psychiatrist's or expert's opinion as to the extent, if any, to which the capacity of the accused to appreciate the wrongfulness of the accused's conduct or to choose whether the accused would do the act or refrain from doing it or to have a particular state of mind which is an element of the offense charged was impaired as a result of mental illness or serious mental disorder at that time. The psychiatrist or expert shall be permitted to make any explanation reasonably serving to clarify the diagnosis and opinion

and may be cross-examined as to any matter bearing on the psychiatrist's or expert's competence or credibility or the validity of the diagnosis or opinion.

§ 3518 Possession of firearm while under the influence; testing.

A law-enforcement officer who has probable cause to believe that a person has violated § 1406 of this title may, with or without the consent of the person, take reasonable steps to conduct chemical testing to determine the person's alcohol concentration or the presence of illicit or recreational drugs. A person's refusal to submit to chemical testing shall be admissible in any trial arising from a violation of § 1406 of this title.

§ 3519 Blood testing; limitation of civil liability for aiding a police officer.

A duly licensed physician, medical technician or registered nurse requested to withdraw blood from a person by a police officer so as to prevent the loss of evidence of blood alcohol content or the presence of drugs in the blood stream, and a hospital employing such physician, technician or nurse shall not be liable for civil damages for any acts or omissions arising out of the taking of such sample, or the reporting of the results to law-enforcement officials.

Section 33. Amend § 3531, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3531 Definitions.

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) ~~"Malice" shall mean an intent to vex, annoy, harm or injure in any way another person, or to thwart or interfere in any manner with the orderly administration of justice. [Deleted.]~~

(2) "Victim" shall mean any natural person against whom any crime (as defined under the laws of this State, of any other state or of the United States) has been attempted, is being perpetrated or has been perpetrated.

(3) "Witness" shall have the same definition as is set forth in § 103 of this title. ~~mean any natural person:~~

~~a. Having knowledge of the existence or nonexistence of facts relating to any crime; or~~

~~b. Whose declaration under oath is received, or has been received, as evidence for any purpose; or~~

~~c. Who has reported any crime to any peace officer, prosecuting agency, law enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or~~

~~d. Who has been served with a subpoena issued under the authority of any court of this State, of any other state or of the United States; or~~

~~e. Who would be believed by any reasonable person to be an individual described in any paragraph of this subparagraph of this paragraph.~~



Section 34. Amend § 3532, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3532 Act of intimidation; class D felony.

~~Except as provided in § 3533 of this title, every person who knowingly and with malice prevents or dissuades (or who attempts to prevent or dissuade) any witness or victim from attending or giving testimony at any trial, proceeding or inquiry authorized by law is committing an act of intimidation and is guilty of a class D felony. A person who knowingly and with malice retaliates against any victim or witness who has attended or given testimony at any trial proceeding or inquiry authorized by law by committing any crime as defined by the laws of this State against such victim or witness is committing an act of intimidation and is guilty of a class D felony. A person who knowingly and with malice attempts to prevent another person who has been the victim of a crime, or a witness to a crime (or any person acting on behalf of a victim or witness) from:~~

~~(1) Making any report of such crime or victimization to any peace officer, law enforcement officer, prosecuting agency, probation officer, parole officer, correctional officer or judicial officer;~~

~~(2) Causing a complaint, indictment, information, probation or parole violation to be sought or prosecuted, or from assisting in the prosecution thereof; or~~

~~(3) Arresting, causing or seeking the arrest of any person in connection with such crime or victimization;~~  
~~Is guilty of a class D felony. [Deleted.]~~

Section 35. Amend § 3533, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3533 Aggravated act of intimidation; class B felony.

~~Every person doing any of the acts set forth in § 3532 of this title, knowingly and with malice under 1 or more of the following circumstances, shall be guilty of a class B felony if, in addition, such act:~~

~~(1) Is accompanied by an express or implied threat of force or violence, upon a victim, a witness or any third person (or upon the property of a victim, witness or third person);~~

~~(2) Is in furtherance of a conspiracy;~~

~~(3) Is committed by any person who has been convicted of any violation of this subchapter, any predecessor law hereto, the statute of any other state or any federal statute which would be a violation of this subchapter if committed in this State; or~~

~~(4) Committed, for pecuniary gain or for any other consideration, by any person acting upon the request of another person. [Deleted.]~~

Section 36. Amend § 3534, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3534 Attempt to intimidate.

~~Every person attempting the commission of any act described in §§ 3532 and 3533 of this title is guilty of the offense attempted, without regard to the success or failure of such attempt. The fact that no person was actually physically injured, or actually intimidated, shall be no defense against any prosecution under this subchapter. [Deleted.]~~

Section 37. Amend § 3535, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3535 Protective orders — Issuance.

Any court with jurisdiction over any criminal matter may in its discretion and upon good cause (which may include, but is not limited to, such matters as credible hearsay, the declaration of the prosecutor or the declaration of the defense attorney) find that intimidation or dissuasion of a victim or witness has occurred (or is reasonably likely to occur) and may issue orders including, but not limited to, the following:

(1) An order that a defendant not violate any provision of § 1247 of this title and this subchapter;

(2) An order that a person before the court other than a defendant (including, but not limited to, a subpoenaed witness) not violate any provision of § 1247 of this title and this subchapter;

Section 38. Amend § 3536, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3536 Protective orders — Violations.

(a) A person who violates an order made pursuant to this subchapter may be punished for any substantive offense set forth in ~~this subchapter~~ § 1247 of this title.

(b) A person who violates an order made pursuant to this subchapter may be punished as a contempt of the court making such order. No finding of contempt shall be a bar to prosecution for a substantive offense under ~~this subchapter~~, ~~but: § 1247 or § 1248 of this title~~, but any person so held in contempt shall be entitled to credit for any punishment imposed therein, against any sentence imposed upon conviction for that offense.

~~(1) Any person so held in contempt shall be entitled to credit for any punishment imposed therein, against any sentence imposed upon conviction for that offense; and~~

~~(2) Any conviction or acquittal for any substantive offense under this subchapter shall be a bar to subsequent punishment for contempt arising out of the same act. [Deleted.]~~

Section 39. Amend § 3537, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3537 Pretrial release.

(a) Any pretrial release of any defendant (whether on bail or under any other form of recognizance) shall be deemed, as a matter of law, to include a condition that the defendant neither do, nor cause to be done, nor knowingly permit to be done on the defendant's behalf, any act proscribed by § 1247 of this title and this subchapter hereof and any wilful violation of said condition is subject to sanction as prescribed in § 3536 of this title whether or not the defendant was the subject of an order under § 3535 of this title.

(b) From and after June 22, 1982, any receipt or any bail or bond given by the clerk of any court, by any surety or bondsperson and/or any other form of conditional release shall contain, in a conspicuous location, notice that such bail bond, or other release, is conditioned upon strict adherence to the requirements and prohibitions of § 1247 of this title and this subchapter.

Section 40. Amend Part II, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 37. Persons with a mental health condition.

§ 3701 Verdict of "not guilty by reason of insanity;" commitment to Delaware Psychiatric Center of persons no longer endangering the public safety; periodic review of commitments to Delaware Psychiatric Center; participation of patient in treatment program.

(a) Upon the rendition of a verdict of "not guilty by reason of insanity," the court shall, upon motion of the Attorney General, order that the person so acquitted shall forthwith be committed to the Delaware Psychiatric Center.

(b) Except as provided in subsection (c) of this section below, a person committed, confined or transferred to the Delaware Psychiatric Center in accordance with subsection (a) of this section, § 3702, § 3703, § 3704 or § 3705 of this title (referred to herein as "the patient") shall be kept there at all times in a secured building until the Superior Court of the county wherein the case would be tried or was tried is satisfied that the public safety will not be endangered by the patient's release. The Superior Court shall without special motion reconsider the necessity of continued detention of a patient thus committed after the patient has been detained for 1 year. The Court shall thereafter reconsider the patient's detention upon petition on the patient's behalf or whenever advised by the Psychiatric Center that the public safety will not be endangered by the patient's release.

(c)(1) Upon petition by a patient confined pursuant to this section, § 3702, § 3703, § 3704 or § 3705 of this title, or upon petition by the Center Director of the Delaware Psychiatric Center, the Court may permit housing in an unsecured

795 building or participation by the patient in any treatment program that is offered by the Center, which requires or provides  
796 that the patient be placed outside a secured building. Such participation shall include, but not be limited to, employment off  
797 hospital grounds, job interviews, family visits and other activities inside and outside the Center, as may be prescribed by the  
798 Medical Director in the interest of rehabilitation.

799       (2) The petition shall include an affidavit from the Medical Director which states that the patient has not  
800 exhibited dangerous behavior during the last year of confinement and that in the opinion of the Medical Director, the  
801 patient will benefit from such participation.

802       (3) The petition shall set forth any specific treatment program being sought; the specific goals and course of  
803 treatment involved; and a schedule for periodic judicial reevaluation of the patient's treatment status, all of which shall  
804 be subject to the Court's approval and modification.

805       (4) Copies of the petition shall be served on the Attorney General, the Medical Director and the patient or the  
806 patient's counsel or guardian.

807       (5) There shall be a judicial hearing on the petition, and any person or agency served with a copy of the  
808 petition, or a representative of such person or agency, shall have the right to testify, present evidence and/or cross-  
809 examine witnesses. The patient shall have the right to be represented by counsel at any proceeding held in accordance  
810 with this section. The Court shall appoint counsel for the patient if the patient cannot afford to retain counsel.

811       (6) Upon conclusion of a hearing on a petition pursuant to this section, the Court may approve, modify or  
812 disapprove any request or matter within the petition. If the patient's participation in any treatment program is approved,  
813 such approval or participation shall be effective for not longer than 6 months from the date of the judge's signature on  
814 the petition or order permitting such participation. Immediately prior to the conclusion of the 6-month period, the  
815 Center Director shall report to the Court on the patient's status, and make recommendations. Any authorization by the  
816 Court for continued participation by the patient in any authorized treatment programs may be extended, modified or  
817 discontinued at the end of the effective period with or without further hearings, as the Court may determine.

818       (d) Any treatment program approved by the Court under this section may be terminated by the Medical Director of  
819 the Delaware Psychiatric Center. When a treatment program is terminated earlier than its court-approved expiration date,  
820 the Medical Director shall immediately notify the Superior Court. The Superior Court shall, after giving appropriate notice,  
821 hear the matter and review the decision of the Medical Director. At such termination hearing, the patient shall have such  
822 rights as are provided for other hearings under this section, including the right to counsel, the right to present evidence and  
823 the right to cross-examine witnesses. Where the Medical Director's decision to terminate is based upon the patient's mental

824 or psychological condition, the patient may be examined by an independent psychiatrist or other qualified expert; provided,  
825 however, that the termination hearing shall not be held until such examination has been finally concluded.

826 § 3702 Confinement in Delaware Psychiatric Center of persons too mentally ill to stand trial; requiring State to  
827 prove prima facie case in such circumstances; adjustment of sentences.

828 (a) Whenever the court is satisfied, after hearing, that an accused person, because of mental illness or serious  
829 mental disorder, is unable to understand the nature of the proceedings against the accused, or to give evidence in the  
830 accused's own defense or to instruct counsel on the accused's own behalf, the court may order the accused person to be  
831 confined and treated in the Delaware Psychiatric Center until the accused person is capable of standing trial. However,  
832 upon motion of the defendant, the court may conduct a hearing to determine whether the State can make out a prima facie  
833 case against the defendant, and if the State fails to present sufficient evidence to constitute a prima facie case, the court  
834 shall dismiss the charge. This dismissal shall have the same effect as a judgment of acquittal.

835 (b) When the court finds that the defendant is capable of standing trial, the defendant may be tried in the ordinary  
836 way, but the court may make any adjustment in the sentence which is required in the interest of justice, including a  
837 remission of all or any part of the time spent in the Psychiatric Center.

838 § 3703 Confinement in Delaware Psychiatric Center of persons developing mental illness after conviction but  
839 before sentencing; adjustment of sentences.

840 (a) Whenever the court is satisfied that a prisoner has developed a mental illness after conviction but before  
841 sentencing so that the prisoner is unable understandingly to participate in the sentencing proceedings, and if the court is  
842 satisfied that a sentence of imprisonment may be appropriate, the court may order the prisoner to be confined and treated in  
843 the Delaware Psychiatric Center until the prisoner is capable of participating in the sentencing proceedings.

844 (b) When the court finds that the prisoner is capable of participating in the sentencing proceedings, the prisoner  
845 may be sentenced in the ordinary way, but the court may make any adjustment in the sentence which is required in the  
846 interest of justice, including a remission of all or any part of the time spent in the Psychiatric Center.

847 § 3704 Transfer of convicted persons becoming mentally disabled from prison to Delaware Psychiatric Center;  
848 appointment of physicians to conduct inquiry; expenses of transfer.

849 (a) Whenever in any case it appears to the Superior Court, upon information received from the Department of  
850 Health and Social Services, that a prisoner confined with the Department has developed a mental illness after conviction  
851 and sentence, the Court may appoint 2 reputable practicing physicians to inquire of the mental condition of the prisoner and  
852 make report of their finding to the Court within 2 days from the date of their appointment, by writing under their hands and

seals. Should the report of the physicians be that the prisoner has a mental illness, the prisoner shall at once be ordered by the Court transferred from the prison facility where the prisoner is confined to the Delaware Psychiatric Center.

(b) The expenses of the removal of such a person with a mental illness and of admission into such Psychiatric Center and maintenance therein up and until the time the person is discharged by the Court shall be borne by the State. If any such person with a mental illness has any real or personal estate, the Department of Health and Social Services shall have for the expenses and charges so incurred the same remedy as is provided in § 5019 of Title 16.

§ 3705 Verdict of “guilty, but mentally ill” — Sentence; confinement; discharge from treating facility.

(a) Where a defendant’s defense is based upon allegations which, if true, would be grounds for a verdict of “guilty, but mentally ill” or the defendant desires to enter a plea to that effect, no finding of “guilty, but mentally ill” shall be rendered until the trier of fact has examined all appropriate reports (including the presentence investigation); has held a hearing on the sole issue of the defendant’s mental illness, at which either party may present evidence; and is satisfied that the defendant did in fact have a mental illness at the time of the offense to which the plea is entered. Where the trier of fact, after such hearing, is not satisfied that the defendant had a mental illness at the time of the offense, or determines that the facts do not support a “guilty, but mentally ill” plea, the trier of fact shall strike such plea, or permit such plea to be withdrawn by the defendant. A defendant whose plea is not accepted by the trier of fact shall be entitled to a jury trial, except that if a defendant subsequently waives the right to a jury trial, the judge who presided at the hearing on mental illness shall not preside at the trial.

(b) In a trial under this section a defendant found guilty but mentally ill, or whose plea to that effect is accepted, may have any sentence imposed which may lawfully be imposed upon any defendant for the same offense. Such defendant shall be committed into the custody of the Department of Correction, and shall undergo such further evaluation and be given such immediate and temporary treatment as is psychiatrically indicated. The Commissioner shall retain exclusive jurisdiction over such person in all matters relating to security. The Commissioner shall thereupon confine such person in the Delaware Psychiatric Center, or other suitable place for the residential treatment of criminally culpable persons with a mental illness under the age of 18 who have been found nonamenable to the processes of Family Court. Although such person shall remain under the jurisdiction of the Department of Correction, decisions directly related to treatment for the mental illness for individuals placed at the Delaware Psychiatric Center, shall be the joint responsibility of the Director of the Division of Substance Abuse and Mental Health and those persons at the Delaware Psychiatric Center who are directly responsible for such treatment. The Delaware Psychiatric Center, or any other residential treatment facility to which the defendant is committed by the Commissioner, shall have the authority to discharge the defendant from the facility and return the defendant to the physical custody of the Commissioner whenever the facility believes that such a discharge is in

the best interests of the defendant. The offender may, by written statement, refuse to take any drugs which are prescribed for treatment of the offender's mental illness; except when such a refusal will endanger the life of the offender, or the lives or property of other persons with whom the offender has contact.

(c) When the Psychiatric Center or other treating facility designated by the Commissioner discharges an offender prior to the expiration of such person's sentence, the treating facility shall transmit to the Commissioner and to the Parole Board a report on the condition of the offender which contains the clinical facts; the diagnosis; the course of treatment, and prognosis for the remission of symptoms; the potential for the recidivism, and for danger to the offender's own person or the public; and recommendations for future treatment. Where an offender under this section is sentenced to the Psychiatric Center or other facility, the offender shall not be eligible for any privileges not permitted in writing by the Commissioner (including escorted or unescorted on-grounds or off-grounds privileges) until the offender has become eligible for parole. Where the court finds that the offender, before completing the sentence, no longer needs nor could benefit from treatment for the offender's mental illness, the offender shall be remanded to the Department of Correction. The offender shall have credited toward the sentence the time served at the Psychiatric Center or other facility.

(d) No individual under the age of 18 shall be placed at the Delaware Psychiatric Center. Nothing herein shall prevent either the transfer to or placement at the Delaware Psychiatric Center any person who has reached the age of 18 following any finding of guilty, but mentally ill.

§ 3706 Verdict of "guilty, but mentally ill" — Parole; probation.

(a) A person who has been adjudged "guilty, but mentally ill" and who during incarceration is discharged from treatment may be placed on prerelease or parole status under the same terms and laws applicable to any other offender. Psychological or psychiatric counseling and treatment may be required as a condition for such status. Failure to continue treatment, except by agreement of the Department of Correction, shall be a basis for terminating prerelease status or instituting parole violation hearings.

(b) If the report of the Delaware Psychiatric Center or other facility recommends parole, the paroling authority shall within 45 days or at the expiration of the offender's minimum sentence, whichever is later, meet to consider the offender's request for parole. If the report does not recommend parole, but other laws or administrative rules of the Department permit parole, the paroling authority may meet to consider a parole request. When the paroling authority considers the offender for parole, it shall consult with the State Hospital or other facility at which the offender had been treated, or from which the offender has been discharged.

(c) If an offender who has been found "guilty, but mentally ill" is placed on probation, the court, upon recommendation by the Attorney General, shall make treatment a condition of probation. Reports as specified by the trial

judge shall be filed with the probation officer, and the sentencing court. Treatment shall be provided by an agency of the State or, with the approval of the sentencing court and at individual expense, private agencies, private physicians or other mental health personnel.

Section 41. Amend § 3901, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3901 Fixing term of imprisonment; credits.

(a) When imprisonment is a part of the sentence, the term shall be fixed, and the time of its commencement and ending specified. An act to be done at the expiration of a term of imprisonment shall be done on the last day thereof, unless it be Sunday, and in that case, the day previous. Months shall be reckoned as calendar months.

(d) The court shall direct whether the sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently or consecutively with any other sentence of confinement imposed on such criminal defendant. Notwithstanding the foregoing, no sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently with any other sentence of confinement imposed on such criminal defendant for any conviction of the following crimes:

<u>Title 11, Section</u>	<u>Crime</u>
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606	Abuse of a pregnant female in the first degree
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613	Assault in the first degree
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632	Manslaughter
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635	Murder in the second degree
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636	Murder in the first degree
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772	Rape in the second degree
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773	Rape in the first degree
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777A	Sex offender unlawful sexual conduct against a child
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778(1), (2) or (3)	Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree
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783	Kidnapping in the second degree
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783A	Kidnapping in the first degree
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803	Arson in the first degree
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825	Burglary in the second degree
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826	Burglary in the first degree
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943           826A \_\_\_\_\_ Home invasion  
944           832 \_\_\_\_\_ Robbery in the first degree  
945           836 \_\_\_\_\_ Carjacking in the first degree  
946           1254 \_\_\_\_\_ Assault in a detention facility  
947           1447A \_\_\_\_\_ Possession of a firearm during the commission of a felony  
948           or for any sentence for possession of a firearm by a person prohibited where the criminal defendant was previously  
949 convicted of a Title 11 violent felony.

950           ~~(e) For purposes of this section, "Title 11 violent felony" means any Title 11 offense identified in § 4201(c) of this~~  
951 ~~title, or any offense set forth under the laws of the United States, any other state or any territory of the United States which~~  
952 ~~is the same as or equivalent to any of the offenses designated as a Title 11 offense identified in § 4201(c) of this title.~~  
953 [Deleted.]

954           Section 42. Amend Subchapter I, Chapter 41, Part II, Title 11 of the Delaware Code by making deletions as shown  
955 by strike through and insertions as shown by underline as follows:

956           § 4107 Reencoder and scanning devices; forfeiture.

957           (a) Any scanning device or reencoder described in § 103 of this title allegedly possessed or used in violation of §  
958 1129(a)(2)-(3) of this title shall be seized and upon conviction shall be forfeited.

959           (b) Any computer, computer system, computer network, or any software or data, owned by the defendant, which is  
960 used during the commission of any public offense described in this section or any computer, owned by the defendant,  
961 which is used as a repository for the storage of software or data illegally obtained in violation of this section shall be subject  
962 to forfeiture.

963           § 4108 Trademark counterfeiting; seizure, forfeiture and disposition.

964           (a) Any items bearing a counterfeit mark, and all personal property, including, but not limited to, any items,  
965 objects, tools, machines, equipment, instrumentalities or vehicles of any kind, knowingly employed or used in connection  
966 with a violation of this code may be seized by any law enforcement officer.

967           (b) All seized personal property referenced in subsection (a) of this section shall be forfeited in accordance with  
968 applicable law, unless the prosecuting attorney responsible for the charges and the intellectual property owner consent in  
969 writing to another disposition.

970           (c) Any federal or state certificate of registration of any intellectual property shall be prima facie evidence of the  
971 facts stated therein.

Section 43. Amend Chapter 41, Part II, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter IV. Racketeering.

§ 4130 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1)a. "Beneficial interest" shall include any of the following:

1. The interests of a person as a beneficiary under any trust arrangement under which a trustee holds legal or record title to personal or real property; or

2. The interests of a person, under any other form of express fiduciary arrangement, pursuant to which any other person holds legal or record title to personal or real property for the benefit of such person.

b. The term "beneficial interest" shall not include the interest of a stockholder in a corporation, or the interest of a partner in either a general partnership or a limited partnership.

(2) "Documentary materials" shall mean any book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer printout, and any data compilation from which information can be obtained or from which information can be translated into useable form, or other tangible item.

(3) "Foreign corporation" shall have the same definition as is set forth in § 371 of Title 8.

(4) "Personal property" shall include any personal property or any interest in such personal property, or any right, including bank accounts, debts, corporate stocks, patents or copyrights. An item of personal property or a beneficial interest in personal property shall be deemed to be located where the trustee is, where the personal property is or where the instrument evidencing the right is.

(5) "Real property" shall mean any real property situated in this State or any interest in such real property, including, but not limited to, any lease of or mortgage upon such real property.

(6)a. "Trustee" shall include:

1. Any person acting as trustee under a trust in which the trustee holds legal or record title to personal or real property; or

2. Any person who holds legal or record title to personal or real property, for which any other person has a beneficial interest; or

3. Any successor trustee.

b. The term “trustee” shall not include an assignee or trustee for an insolvent debtor, nor an executor, administrator, administrator with will annexed, testamentary trustee, conservator, guardian or committee appointed by, under the control of, or accountable to, a court.

§ 4131 Forfeiture authority.

Upon conviction of a person under § 1441 of this title, the Superior Court shall authorize the Attorney General to seize all property or other interests declared forfeited under § 1441 of this title upon such terms and conditions as the Court shall deem proper. The State shall dispose of all property or other interests seized under § 1441 of this title as soon as feasible, making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable for value by the State, it shall expire and shall not revert to the convicted person.

§ 4132 Civil remedies.

(a) The Superior Court of this State shall have jurisdiction to prevent and restrain violations of § 1441 of this title by issuing appropriate orders, including but not limited to: Ordering any person to divest any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in; or ordering the dissolution or reorganization of any enterprise, making due provision of the rights of innocent persons.

(b) The Attorney General may institute proceedings under § 1441 of this title and in addition for damages, civil forfeiture and a civil penalty of up to \$100,000 for each incident of activity constituting a violation of § 1441 of this title. In any action brought by the State under § 1441 of this title, the Court shall proceed as soon as practicable to hold a hearing and reach a final determination in the matter. Pending final determination thereof, the Court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of any satisfactory performance bond, as it shall deem proper.

(c) Any person directly or indirectly injured by reason of any conduct constituting a violation of § 1441 of this title may sue therefor in any appropriate court, and if successful shall recover 3 times the actual damages sustained and, when appropriate, punitive damages. Damages under this subsection are not limited to competitive or distinct injury. Plaintiffs who substantially prevail shall also recover attorneys’ fees in the trial and appellate courts, together with the costs of investigation and litigation, reasonably incurred; provided, however, no action may be had under § 1441 of this title except against a defendant who has been criminally convicted of a racketeering activity which was the source of the injury alleged, and no action may be brought under this provision except within 1 year of such conviction.

(d) Any person who is injured by reason of any violation of § 1441 of this title shall have a right or claim to property forfeited under § 1441(c) of this title, or to the proceeds derived therefrom, which right or claim shall be superior

1031 to that of the State (other than for costs) in the same property or proceeds. To enforce such right or claim, the injured person  
1032 must intervene.

1033 (e) Upon the filing of a civil proceeding or action, the plaintiff shall immediately notify the Attorney General of  
1034 the filing. The Attorney General may intervene upon certification that in the opinion of the Attorney General the action is of  
1035 general public interest.

1036 (f) Notwithstanding any other provision of law providing a shorter period of limitations, a civil proceeding or  
1037 action under this paragraph may be commenced within 5 years after the conduct made unlawful under § 1441 of this title or  
1038 when the cause of action otherwise accrues or within a longer statutory period that shall be applicable. If a criminal  
1039 proceeding or civil action or other proceeding is brought or intervened in by the Attorney General to punish, prevent or  
1040 restrain any activity made unlawful under § 1441 of this title, the running of the period of limitations prescribed by this  
1041 subsection with respect to any other cause of action of an aggrieved person based in whole or part upon any matter  
1042 complained of in any such prosecution, action or proceeding, shall be suspended during the pendency of such prosecution,  
1043 action or proceeding and for 2 years following its termination.

1044 § 4133 Forfeiture proceedings.

1045 (a) The Attorney General is authorized to institute and conduct any proceedings under § 1441 of this title for the  
1046 forfeiture of real or personal property to the State. All property of every kind used or intended for use in the course of,  
1047 derived from, or realized through a pattern of racketeering activity is subject to forfeiture to the State. Forfeiture shall be by  
1048 means of a procedure which may be known and referred to as a "R.I.C.O. forfeiture proceeding."

1049 (b) A R.I.C.O. forfeiture proceeding under this chapter may be commenced before or after seizure of the property.  
1050 If the complaint is filed before seizure, it shall state what property is sought to be forfeited; that the property is within the  
1051 jurisdiction of the Court; the grounds for forfeiture; and the name of each person known to have or claim an interest in the  
1052 property.

1053 (c) To the extent that property which has been forfeited under § 1441 of this title cannot be located; has been  
1054 transferred, sold or deposited with third parties; or has been placed beyond the jurisdiction of the State, the Attorney  
1055 General may institute and conduct any proceedings to retrieve such property as are necessary and appropriate, including  
1056 forfeiture of any other property of the defendant up to the value of the property that is unreachable.

1057 (d) No person convicted under § 1441 of this title nor any person acting in concert with or on behalf of the person  
1058 shall be eligible to purchase forfeited property from the State. The interests of an innocent party in the property shall not be  
1059 subject to forfeiture.

(e) The Court may, upon such terms and conditions as it deems appropriate, order that the property be sold by an innocent party who holds a lien on, or security interest in, the property at any time during the proceedings. Any proceeds from such sale, over and upon the amount necessary to satisfy the lien or security interest, shall be paid into the court pending final judgment in the forfeiture proceeding. No such sale shall be ordered, however, unless the obligation upon which the lien or security interest is based is in default.

(f) The proceeds of any sale or other disposition of forfeited property imposed under § 1441 of this title whether by final judgment, settlement or otherwise, shall be applied in the following order:

(1) To the fees and costs of the forfeiture and sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs;

(2) If any funds remain, then to all costs and expenses of investigation and prosecution, including costs of resources and personnel incurred in investigation and prosecution;

(3) If any funds remain, then the remainder or \$1,000, whichever is less, to the Crime Victim Compensation Fund;

(4) If any funds remain, to the Special Law Enforcement Assistance Fund, or its successor; or if no such fund is in existence, to the fund which is dedicated entirely to law enforcement.

§ 4134 Racketeering lien notice; lis pendens; construction of section.

(a) Upon the institution of any criminal or civil proceeding under § 1441 of this title or this chapter, the State, then or at any time during the pendency of the proceedings, may file in the official records of any 1 or more counties of this State, a racketeering (or "R.I.C.O.") lien notice. Such notice shall create, and be equivalent to, a lien. No filing fee or other charge shall be required as a condition for filing such lien notice, and the Prothonotary shall, upon the presentation of the lien notice, immediately record it in the official records.

(b) The racketeering (R.I.C.O.) lien notice shall be signed by the Attorney General, the Chief Deputy Attorney General or the State Prosecutor. The notice shall be in such form as the Attorney General shall prescribe and shall set forth all of the following information:

(1) The name of the person against whom the civil proceeding has been brought. The notice may, but is not required to, list any other aliases, names or fictitious titles under which the person may be known. In its discretion the State may also list any corporation, partnership or other entity which is owned or controlled by such person.

(2) If known to the Attorney General, the present residence and business address of the person named in the racketeering lien notice, and addresses for other names set forth in such lien notice.

(3) A reference to the criminal or civil proceeding, stating that a proceeding under § 1441 of this title or this chapter has been brought against the person named in the racketeering lien notice, and including the name of the county or counties where the proceeding has been initiated.

(4) A statement that the notice is being filed pursuant to this chapter.

(5) The name and address of the agency within the State Department of Justice that can answer any further questions.

(6) Such other information as the Attorney General shall deem appropriate.

(c) The Attorney General or a Deputy Attorney General may amend any lien filed under this section at any time, by filing an amended racketeering lien in the same manner as a R.I.C.O. lien. An amended racketeering lien shall identify, with reasonable certainty, the lien which is being amended.

(d) The Attorney General or a Deputy Attorney General shall, as soon as practicable after filing the racketeering lien notice, furnish to any person named in the lien a notice of the filing of such lien. The notice may be mailed by certified mail, return receipt requested. Failure to notify the person named in the lien in accordance with this subsection shall not invalidate nor otherwise affect any racketeering lien notice filed in accordance with this section.

(e) A racketeering lien is perfected against interests in personal property by filing the lien notice with the Secretary of State, except that in the case of a titled motor vehicle it shall be filed with the Division of Motor Vehicles. A racketeering lien is perfected against interests in real property by filing the lien notice with the Prothonotary in the county in which the real property is located. The State may give such additional notice of the lien as it deems appropriate.

(f) The filing of a notice of lien in accordance with this section creates a lien in favor of the State in:

(1) Any interest of the defendant in real property situated in the county in which the lien notice is filed, then maintained or thereafter acquired in the name of the defendant identified in the notice;

(2) Any interest of the defendant in personal property situated in this State, then maintained or thereafter acquired in the name of the defendant identified in the lien notice; and

(3) Any property identified in the lien notice to the extent of the defendant's interest therein.

(g) The filing of a racketeering lien notice under this section is notice to all persons dealing with the person or property identified in the lien of the State's claim. The lien created in favor of the State in accordance with this section is superior to and prior to the claims and interests of any other person, except a person possessing:

(1) A valid lien perfected prior to the filing of the racketeering lien notice;

(2) In the case of real property, an interest acquired and recorded prior to the filing of the racketeering lien notice; or

1119                   (3) In the case of personal property, an interest acquired prior to the filing of the racketeering lien notice.

1120                   (h) Where a trustee conveys title to real property against which a R.I.C.O. lien notice has been filed; and the lien

1121 notice has been filed in the county in which the property is located and names a person who, to the actual knowledge of the

1122 trustee, holds a beneficial interest in the trust, the trustee shall be liable to the State for the greater of:

1123                   (1) The amount of proceeds received directly by the person named in the R.I.C.O. lien notice, as a result of the

1124 conveyance;

1125                   (2) The amount of proceeds received by the trustee as a result of the conveyance, and distributed to any person

1126 named in the lien notice; or

1127                   (3) The fair market value of the interest of the person named in the lien notice in the real property so

1128 conveyed; provided, however, that if the trustee conveys the real property, and holds proceeds that would otherwise be

1129 paid or distributed to the beneficiary (or at the direction of the beneficiary or the beneficiary's designee), the trustee's

1130 liability shall not exceed the amount of the proceeds so held for so long as the proceeds are held by the trustee.

1131                   (i) Upon entry of judgment in favor of the State, the State may proceed to execute thereon as in the case of any

1132 other judgment, except that in order to preserve the State's lien priority, as provided in this section, the State shall (in

1133 addition to such other notice as is required by law) give at least 30 days' notice of such execution to any person, possessing

1134 at the time such notice is given, an interest recorded subsequent to the date the State's lien was perfected.

1135                   (j) Upon the entry of a final judgment in favor of the State, or an order providing for forfeiture of property to the

1136 State, the title of the State to the property:

1137                   (1) In the case of real property, or a beneficial interest in real property, relates back to the date of filing the

1138 racketeering lien notice; or if no racketeering lien notice was filed, then to the date of recording of the final judgment,

1139 or an abstract thereof, in the county where the real property is located.

1140                   (2) In the case of personal property or a beneficial interest in personal property, relates back to the date the

1141 personal property was seized by the State, or the date of filing of a racketeering lien notice in accordance with this

1142 section, whichever is earlier; but if the property was not seized, and no racketeering lien was filed, then to the date the

1143 final judgment was filed with the Secretary of State, or in the case of a titled motor vehicle, with the Division of Motor

1144 Vehicles.

1145                   (k) This section shall not limit any right of the State to obtain any order or injunction, receivership, writ,

1146 attachment, garnishment or other remedy; nor limit any right of action which is appropriate to protect the interests of the

1147 State, or which is available under other applicable law.

1148 (1) In the event the Attorney General determines that the provisions of this section are unclear or insufficient the  
1149 Attorney General may petition the Superior Court for the promulgation of rules to further clarify, or more effectively  
1150 accomplish, the intent of this chapter and of this section. Where any rule promulgated by the Court conflicts with any  
1151 provision of this section, this section shall be paramount.

1152 § 4135 Term of lien notice.

1153 (a) The term of a racketeering lien notice shall be for a period of 6 years from the date of filing, unless a renewal  
1154 lien notice has been filed; and, in such case, the term of the renewal lien notice shall be for a period of 6 years from the date  
1155 of its filing. The State shall be entitled to only 1 renewal of a specific racketeering lien notice.

1156 (b) The Attorney General may release, in whole or in part, any racketeering lien notice or may release any specific  
1157 real property or beneficial interest from a lien notice upon such terms and conditions as the Attorney General, or the Court,  
1158 may determine. Any release of a racketeering lien notice executed by the Attorney General may be filed in the official  
1159 records of any county. No charge or fee shall be imposed for the filing of any release of a racketeering lien notice.

1160 (c) If no civil proceeding has been instituted by the Attorney General, seeking a forfeiture of any property owned  
1161 by the person named in the racketeering lien notice, the acquittal in the criminal proceeding of such person named in the  
1162 lien notice or the dismissal of the criminal proceeding, shall terminate the lien notice; and, in such case, the filing of the  
1163 racketeering lien notice shall have no effect. Where a civil proceeding has been instituted, and the criminal proceeding has  
1164 been dismissed, or the person named in the racketeering lien notice has been acquitted in the criminal proceeding, the lien  
1165 notice shall continue for the duration of the civil proceeding.

1166 (d) If no civil proceeding is then pending against the person named in a R.I.C.O. lien notice, any person named in  
1167 the lien notice may institute a civil action against the State, seeking a release or extinguishment of the State's lien. Notice of  
1168 such civil action shall be filed in the county where the lien notice was filed.

1169 § 4136 Investigative powers of Attorney General.

1170 (a) Whenever the Attorney General has reasonable cause to believe that any person or enterprise may have  
1171 knowledge of, has been engaged in or is engaging in any conduct in violation of § 1441 of this title or this chapter, the  
1172 Attorney General may, in the Attorney General's discretion, conduct an investigation of such conduct. The Attorney  
1173 General is authorized before the commencement of any civil or criminal proceeding under this chapter to subpoena  
1174 witnesses. The Attorney General may issue in writing and cause to be served on any person an investigative demand to  
1175 compel the attendance of witnesses, examine witnesses under oath, require the production of evidence or documentary  
1176 materials, and require answers to written interrogatories to be furnished under oath.



1177 (b) The production of documentary material in response to an investigative demand served under this section shall  
1178 be made pursuant to a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom  
1179 the demand is directed or, if not a natural person, by an individual having knowledge of the facts and circumstances relating  
1180 to the production of materials, which certificate shall affirm that all of the documentary material required by the  
1181 investigative demand and in the possession, custody or control of the person to whom the demand is directed has been  
1182 produced and made available to the custodian.

1183 (c) The Attorney General may, in the Attorney General's discretion, require the production under this section of  
1184 documentary materials prior to the taking of any testimony of the person subpoenaed. The required documentary materials  
1185 shall be made available for inspection or copying during normal business hours at the principal place of business of the  
1186 person served, or at such other time and place as may be agreed upon between the person served and the Attorney General.

1187 (d) The examination of all persons pursuant to this section shall be conducted by the Attorney General or by a  
1188 person designated in writing to be the Attorney General's representative, before an officer chosen by the Attorney General  
1189 who is authorized to administer oaths in this State. The statements made shall be taken down stenographically, or by a  
1190 sound-recording device, and shall be transcribed.

1191 (e) No person shall, with intent to avoid, evade, prevent or obstruct compliance in whole or in part by any person  
1192 with any duly served investigative demand of the Attorney General under this section, knowingly remove to any place,  
1193 conceal, withhold, destroy, mutilate, alter or by any other means falsify any documentary material or materials that are the  
1194 subject of the demand. The Attorney General shall investigate suspected violations of this section.

1195 (f) In the event a witness subpoenaed under this section fails or refuses to appear, or to produce documentary  
1196 materials as provided herein, or to give testimony relevant or material to an investigation, the Attorney General may  
1197 petition the Superior Court in the county where the witness resides for an order requiring the witness to attend and testify,  
1198 or to produce the documentary materials. Any failure or refusal by the witness to obey an order of the Court may be  
1199 punishable by the Court as contempt.

1200 § 4137 Registration of foreign corporations.

1201 (a) Each foreign corporation desiring to acquire of record any real property shall have, prior to acquisition, and  
1202 shall continuously maintain in this State during any year thereafter in which such real property is owned by the corporation:

1203 (1) A registered office; and

1204 (2) A registered agent, which agent may be either:

1205 a. An individual resident in this State, whose business office is identical with such registered office; or

b. Another corporation authorized to transact business in this State, having a business office identical with such registered office.

A foreign corporation that, prior to acquisition of any real property in this State, complies with the requirements of § 371 of Title 8 and thereafter continuously maintains a registered agent in this State for the purposes of that section shall be deemed to have complied with the requirements of this subsection.

(b) Each foreign corporation shall file with the Secretary of State on or before June 30 of each year, a sworn report on such forms as the Secretary of State shall prescribe, setting forth:

(1) The name of such corporation;

(2) The street address and the principal office of such corporation;

(3) The name and street address of the registered agent and registered office of such corporation; and

(4) The signature of the corporate president, vice-president, secretary, assistant secretary or treasurer attesting to the accuracy of the report as of the date immediately preceding filing of the report.

A foreign corporation that complies with § 374 of Title 8 by filing the annual report as required by that section shall be deemed to have complied with this subsection.

(c) Each foreign corporation which fails to comply with subsections (a) and (b) of this section shall not be entitled to sue or to defend in the courts of the State, until such corporation has a registered agent and registered office pursuant to subsection (a) of this section (or until such corporation registers with the Secretary of State pursuant to § 371 of Title 8) and complies with subsection (b) of this section by filing a report pursuant to such subsection (or pursuant to § 374 of Title 8).

(d) The filing of a report by a corporation as required by this section shall be solely for the purposes of § 1441 of this title and this chapter and, notwithstanding any other act, shall not be used as a determination of whether the corporation is doing business in this State; provided, however, that this subsection shall not apply to a foreign corporation which satisfies the requirements of subsection (b) of this section by filing an annual report under § 374 of Title 8.

(e) This section shall not apply to any foreign financial, banking, insurance or lending organization whose lending activities are regulated by any other state or the United States of America.

(f) The Secretary of State may establish fees for any filings required by this section, which fees shall not exceed those prescribed for similar filings as stated in § 391 of Title 8.

§ 4138 Use of property and funds for law-enforcement purposes.

(a) All cash, bonds and other funds forfeited to the State in accordance with this chapter which remain after distribution pursuant to § 4133(f) of this title shall be deposited into the Special Law Enforcement Assistance Fund [§ 4110 et seq. of this title].

(b) Personalty forfeited to the State which is not cash or currency shall not be sold or otherwise converted until the Attorney General determines, in writing, that such personalty cannot be used for law-enforcement related purposes. If the Attorney General determines that there is a law-enforcement use for such personalty, the personalty shall become state property and the Department of Justice shall have the right of first refusal.

Section 44. Amend § 4201, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4201 Transition provisions.

~~(a) Felonies are classified, for the purpose of sentence, into 7 categories:~~

~~(1) Class A felonies;~~

~~(2) Class B felonies;~~

~~(3) Class C felonies;~~

~~(4) Class D felonies;~~

~~(5) Class E felonies;~~

~~(6) Class F felonies;~~

~~(7) Class G felonies.~~

~~(b) Any crime or offense which is designated as a felony but which is not specifically given a class shall be a class G felony and shall carry the sentence provided for said class felony.~~

~~(c) The following felonies shall be designated as violent felonies:~~

~~Title 11, Section Crime~~

~~513 Conspiracy First Degree~~

~~602 Aggravated Menacing~~

~~604 Reckless Endangering First Degree~~

~~605 Abuse of a Pregnant Female in the Second Degree~~

~~606 Abuse of a Pregnant Female in the First Degree~~

~~607 Strangulation~~

~~612 Assault in the Second Degree~~

~~613 Assault in the First Degree~~

~~614 Assault on a Sports Official~~

~~[Former] 615 Assault by Abuse~~

~~617 Criminal Youth Gangs~~

1266	629 Vehicular Assault in the First Degree
1267	630 Vehicular Homicide in the Second Degree
1268	630A Vehicular Homicide in the First Degree
1269	631 Criminally Negligent Homicide
1270	632 Manslaughter
1271	633 Murder by Abuse or Neglect in the Second Degree
1272	634 Murder by Abuse or Neglect in the First Degree
1273	635 Murder in the Second Degree
1274	636 Murder in the First Degree
1275	645 Promoting Suicide
1276	768 Unlawful Sexual Contact in the Second Degree
1277	769 Unlawful Sexual Contact in the First Degree
1278	770 Former Unlawful Sexual Penetration in the Third Degree or Rape in the Fourth Degree
1279	771 Former Unlawful Sexual Penetration in the Second Degree or Rape in the Third Degree
1280	772 Former Unlawful Sexual Penetration in the First Degree or Rape in the Second Degree
1281	773 Former Unlawful Sexual Intercourse in the Third Degree or Rape in the First Degree
1282	774 Sexual Extortion
1283	775 Bestiality
1284	776 Continuous Sexual Abuse of Child
1285	777 Dangerous Crime Against a Child
1286	777A Sex Offender Unlawful Sexual Conduct Against a Child
1287	778 Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the First Degree
1288	778A Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the Second Degree
1289	782 Unlawful Imprisonment in the First Degree
1290	783 Kidnapping in the Second Degree
1291	783A Kidnapping in the First Degree
1292	787 Trafficking of an Individual, Forced Labor and Sexual Servitude
1293	802 Arson in the Second Degree
1294	803 Arson in the First Degree
1295	825 Burglary in the Second Degree

1296	826 Burglary in the First Degree
1297	826A Home Invasion
1298	831 Robbery in the Second Degree
1299	832 Robbery in the First Degree
1300	835 Carjacking in the Second Degree
1301	836 Carjacking in the First Degree
1302	846 Extortion
1303	1108 Sexual Exploitation of a Child
1304	1109 Unlawfully Dealing in Child Pornography
1305	1112A Sexual Solicitation of a Child
1306	1112B Promoting Sexual Solicitation of a Child
1307	1250 Assault in the First Degree Against a Law Enforcement Animal
1308	1253 Escape After Conviction, if convicted as a Class C Felony or a Class B Felony
1309	1254 Assault in a Detention Facility
1310	1256 Promoting Prison Contraband (Deadly Weapon)
1311	1257(a) Resisting Arrest with Force or Violence
1312	1302 Riot
1313	1304 Hate Crimes
1314	1312 Stalking
1315	1338 Bombs, Incendiary Devices, Molotov Cocktails and Explosive Devices
1316	1339 Adulteration (Causing Injury or Death)
1317	1353 Promoting Prostitution in the First Degree
1318	1442 Carrying a Concealed Deadly Weapon (Firearm Offense)
1319	1444 Possessing a Destructive Weapon
1320	1445 Unlawfully Dealing With a Dangerous Weapon
1321	1447 Possessing a Deadly Weapon During the Commission of a Felony
1322	1447A Possessing a Firearm during the Commission of a Felony
1323	1448(e) Possession of a Deadly Weapon by Persons Prohibited (Firearm or Destructive Weapon Purchased,
1324	Owned, Possessed or Controlled by a Violent Felon).
1325	1455 Engaging in a Firearms Transaction on Behalf of Another (Subsequent Offense)

1326           1449 Wearing Body Armor During the Commission of a Felony

1327           1503 Racketeering

1328           3533 Aggravated Act of Intimidation

1329           Title 16, Section Crime

1330           1136 Abuse/Mistreatment/Neglect of a Patient

1331           4751 Former Manufacture/Delivery/Possession With Intent to Deliver a Controlled or Counterfeit Controlled

1332 Substance, Manufacture or Delivery Causing Death

1333           4752 Former Manufacture/Delivery/Possession With Intent to Deliver a Controlled or Counterfeit Controlled

1334 Substance

1335           4752A Former Unlawful Delivery of a Noncontrolled Substance

1336           4753A Former Trafficking in Marijuana, Cocaine, Illegal Drugs, Methamphetamine, LSD, Designer Drugs or

1337 MDMA

1338           4752 Drug Dealing — Aggravated Possession; Class B Felony

1339           4753 Drug Dealing — Aggravated Possession; Class C Felony

1340           4754(1) Drug Dealing — Aggravated Possession; Class D Felony

1341           4761 Former Distribution to Minors

1342           4761(c) and (d) Illegal Delivery of Prescription Drugs

1343           4774 Delivery of Drug Paraphernalia to a Minor

1344           Title 31, Section Crime

1345           3913 Abuse/Neglect/Exploit/Mistreat an Adult who is Impaired

1346           (d) Any attempt to commit any felony designated in subsection (c) of this section as a violent felony shall also be

1347 designated as a violent felony. [Deleted.]

1348           Section 45. Amend § 4202, Title 11 of the Delaware Code by making deletions as shown by strike through and

1349 insertions as shown by underline as follows:

1350           § 4202 Classification of misdemeanors.

1351           (a) Misdemeanors are classified for the purpose of sentence into 2 categories:

1352               (1) Class A misdemeanors;

1353               (2) Class B misdemeanors.

~~(b) Any offense defined by statute which is not specifically designated a felony, a class A misdemeanor, a class B misdemeanor or a violation shall be an unclassified misdemeanor or an environmental misdemeanor or environmental violation. [Deleted.]~~

Section 46. Amend § 4203, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4203 Violations.

~~There shall be a class of offenses denominated violations. No offense is a violation unless expressly declared to be a violation in this Criminal Code or in the statute defining the offense. [Deleted.]~~

Section 47. Amend § 4204, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4204 Authorized disposition of convicted offenders.

(a) Every person convicted of an offense shall be sentenced in accordance with ~~this Criminal Code~~ this title, with the exception of an environmental misdemeanor as defined in § 1304 of Title 7. This section applies to all judgments of conviction, whether entered after a trial or upon a plea of guilty or nolo contendere.

(b) A person convicted of a ~~class A~~ class 1 felony may be sentenced to life imprisonment in accordance with § 4205 ~~and § 602 of this title, unless the conviction is for first degree murder, in which event § 4209 of this title shall apply.~~ title. Notwithstanding any other statute, a sentence under § 4209 of this title may not be suspended or reduced by the court.

(c) When a person is convicted of any offense other than a ~~class A~~ class 1, 2, or 3 felony the court may take the following action:

(m) As a condition of any sentence, and regardless of whether such sentence includes a period of probation or suspension of sentence, the court may order the offender to engage in a specified act or acts, or to refrain from engaging in a specified act or acts, as deemed necessary by the court to ensure the public peace, the safety of the victim or the public, the rehabilitation of the offender, the satisfaction of the offender's restitution obligation to the victim or the offender's financial obligations to the State, or for any other purpose consistent with the interests of justice. The duration of any order entered pursuant to this subsection shall not exceed the maximum term of commitment provided by law for the offense or 1 year, whichever is greater; provided that in all cases where no commitment is provided by law the duration of such order shall not exceed 1 year. A violation of any order issued pursuant to this subsection shall be prosecuted pursuant to ~~§ 1271~~ § 1248 of this title. Any such prosecution pursuant to ~~§ 1271~~ § 1248 of this title shall not preclude prosecution under any other provision of this Code.

Section 48. Amend § 4204A, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4204A Confinement of youth convicted in Superior Court.

(d)(1) Notwithstanding any provision of this title to the contrary, any offender sentenced to an aggregate term of incarceration in excess of 20 years for any offense or offenses other than aggravated murder ~~first-degree according to § 1001 of this title~~ that were committed prior to the offender's eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 20 years of the originally imposed Level V sentence.

(2) Notwithstanding any provision of this title to the contrary, any offender sentenced to a term of incarceration for aggravated murder ~~first-degree according to § 1001 of this title~~ when said offense was committed prior to the offender's eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 30 years of the originally imposed Level V sentence.

(4) Notwithstanding the provisions of § 602, § 4205 or § 4217 of this title, any court rule or any other provision of law to the contrary, a Superior Court Judge upon consideration of a petition filed pursuant to this subsection (d), may modify, reduce or suspend such petitioner's sentence, including any minimum or mandatory sentence, or a portion thereof, in the discretion of the Court. Nothing in this section, however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section.

Section 49. Amend § 4205, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4205 Sentence for felonies.

(a) A sentence of incarceration for a felony shall be a definite sentence.

(b) The term of incarceration which the court may impose for a felony is fixed as follows:

(1) For a ~~class A class 1~~ felony ~~not less than 15 years up to life imprisonment to be served at Level V except for conviction of first degree murder in which event~~ § 4209 of this title shall apply.

(2) For a ~~class B class 2, 3, 4, 5, 6, 7, 8 and 9~~ felony ~~not less than 2 years up to 25 years~~ the terms provided in § 602 of this title to be served at Level V.

~~(3) For a class C felony up to 15 years to be served at Level V.~~

~~(4) For a class D felony up to 8 years to be served at Level V.~~

~~(5) For a class E felony up to 5 years to be served at Level V.~~

~~(6) For a class F felony up to 3 years to be served at Level V.~~

~~(7) For a class G felony up to 2 years to be served at Level V.~~



(c) In the case of the conviction of any felony, the court shall impose a sentence of Level V incarceration where a minimum sentence is required by ~~subsection (b) of this section~~ § 602 of this title and may impose a sentence of Level V incarceration up to the maximum stated in ~~subsection (b) of this section~~ § 602 of this title for each class of felony.

(d) Where a minimum, mandatory, mandatory minimum or minimum mandatory sentence is required by ~~subsection (b) of this section~~ § 602 of this title, such sentence shall not be subject to suspension by the court.

(e) Where no minimum sentence is required by ~~subsection (b) of this section~~ § 602 of this title, or with regard to any sentence in excess of the minimum required sentence, the court may suspend that part of the sentence for probation or any other punishment set forth in § 4204 of this title.

(k) In addition to the penalties set forth above, the court may impose such fines and penalties as it deems appropriate pursuant to § 603 of this title.

(l) In all sentences for less than 1 year the court may order that more than 5 days be served in Level V custodial setting before the Department may place the offender in Level IV custody.

Section 50. Amend § 4205A, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4205A Additional penalty for serious sex offenders or pedophile offenders.

~~(a) Notwithstanding any provision of this chapter or any other laws to the contrary, the Superior Court, upon the State's application, shall sentence a defendant convicted of any crime set forth in § 771(a)(2), § 772, § 773, § 776, § 777, § 777A, § 778(1) or (2) of this title to not less than 25 years up to life imprisonment to be served at Level V if 1 of the following apply:~~

~~(1) The defendant has previously been convicted or adjudicated delinquent of any sex offense set forth in this title and classified as a class A or B felony, or any similar offense under the laws of another state, the United States or any territory of the United States.~~

~~(2) The victim of the instant offense is a child less than 14 years of age.~~

~~(b) [Repealed.]~~

~~(c) Notwithstanding any provision of this chapter or any other laws to the contrary, the Superior Court, upon the State's application, shall sentence a defendant convicted of any crime set forth in subsection (a) of this section to an additional 5 years to be served at Level V for any sentence imposed under subsection (a) of this section if the victim of the crime set forth in subsection (a) of this section is a child less than 7 years of age.~~

(d)(1) Notwithstanding any provision of this chapter or any other laws to the contrary, the Superior Court, upon the State's application, shall sentence a defendant convicted of any crime set forth in § 769 or § 783(4) of this title to not less than 5 years to be served at Level V if the victim of the crime is a child less than 7 years of age.

(2) Notwithstanding any provision of this chapter or any other laws to the contrary, the Superior Court, upon the State's application, shall sentence a defendant convicted of a crime set forth in § 783A(4) of this title to not less than 10 years to be served at Level V if the victim of the crime is a child less than 7 years of age. [Deleted.]

Section 51. Amend § 4206, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4206 Sentence for misdemeanors.

(a) The sentence for a ~~class A~~ any class of misdemeanor may include up to ~~1 year~~ incarceration at Level V and such fine up to \$2,300, restitution or other conditions as the court deems appropriate.

(b) The sentence for a class B misdemeanor may include up to 6 months incarceration at Level V and such fine up to \$1,150, restitution or other conditions as the court deems appropriate. [Deleted.]

(c) The sentence for an unclassified misdemeanor shall be a definite sentence fixed by the court in accordance with the sentence specified in the law defining the offense. If no sentence is specified in such law, the sentence may include up to 30 days incarceration at Level V and such fine up to \$575, restitution or other conditions as the court deems appropriate. Notwithstanding the foregoing, in any municipality with a population greater than 50,000 people, any offense under the building, housing, health or sanitation code which is classified therein as a misdemeanor, the sentence for any person convicted of such a misdemeanor offense shall include the following fines and may include restitution or such other conditions as the court deems appropriate:

(1) For the first conviction: no less than \$250, nor more than \$1,000;

(2) For the second conviction for the same offense; no less than \$500, nor more than \$2,500; and

(3) For all subsequent convictions for the same offense: no less than \$1,000 nor more than \$5,000.

In any municipality with a population greater than 50,000 people, a conviction for a misdemeanor offense, which is defined as a "continuing" or "ongoing" violation, shall be considered a single conviction for the purposes of paragraphs (e)(1)-(3) of this section. For all convictions subsequent to the second, the minimum fines required herein shall not be suspended, but such amounts imposed over the minimum may be suspended or subject to such other conditions as the court deems appropriate. The provisions of this subsection relating to municipalities with a population greater than 50,000 people shall not apply to offenses or convictions involving single family residences that are occupied by an owner of the property. [Deleted.]

(d) The court may suspend any sentence imposed under ~~this section~~ § 602(10)-(13) of this title for probation or any of the other sanctions set forth in § 4204 of this title.

(e) Any term of Level V incarceration imposed under ~~this section~~ § 602(10)-(13) of this title must be served in its entirety at Level V, reduced only for earned "good time" as set forth in § 4381 of this title.

(f) No term of Level V incarceration imposed under ~~this section~~ § 602(10)-(13) of this title shall be served in other than a full custodial Level V institutional setting unless such term is suspended by the court for such other level sanction.

~~(i) Any sentence for issuing a worthless check pursuant to § 900 of this title shall require restitution to the person to whom the check was given. For the purposes of this subsection, restitution shall mean the amount for which the check was written plus a service fee of \$30 for processing a worthless check, or a fee of \$50 if more than 1 check by same person was processed. [Deleted.]~~

Section 52. Amend § 4207, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4207 Sentences for violations.

~~(a) The Court may impose a fine of up to \$345 for the first offense of any violation, up to \$690 for the second offense of that same violation and up to \$1,150 for the third offense of the same violation; provided, that only violations which occurred within 5 years of the violation for which sentence is imposed shall be considered in determining sentence. [Deleted.]~~

(b) The Court may impose a period of Level I probation up to 1 year for any violation.

Section 53. Amend § 4208, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4208 Fines for organizations.

~~A sentence to pay a fine, when imposed on an organization, shall be the amount specified in the law setting forth the offense if a penalty is specified in that law, or, if there is no specific penalty defined in the law setting forth the offense, a sentence to pay a fine when imposed on an organization shall be as follows:~~

~~(1) For a felony or a misdemeanor resulting in death or serious physical injury, such fine as the court deems reasonable and appropriate;~~

~~(2) For a felony that does not result in death or serious physical injury, not more than \$500,000;~~

~~(3) For a class A misdemeanor that results in physical injury, not more than \$250,000;~~

~~(4) For a class A misdemeanor that does not result in physical injury, not more than \$100,000;~~

(5) For a class B misdemeanor, class C or unclassified misdemeanor that results in physical injury, not more than \$75,000;

(6) For a class B misdemeanor, class C or unclassified misdemeanor that does not result in physical injury, not more than \$50,000; or

(7) For a violation, not more than \$10,000.

If the defendant derives pecuniary gain from the offense, or if the offense results in pecuniary loss or damage to a person or organization other than the defendant, the defendant may be fined an amount equal to 3 times the amount of the pecuniary gain or 3 times the value of the pecuniary loss or damage incurred in lieu of the penalties set forth in paragraphs (1)-(7) of this section. [Deleted.]

Section 54. Amend § 4210, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4210 Arrest and disposition of intoxicated persons.

(a) Any intoxicated person taken into custody for a violation of § ~~1315~~ § 1304 of this title shall immediately be taken to a detoxification center where the person shall be admitted as a patient.

(c) Should the person in custody validly consent to remain as a patient and to undergo testing procedures, the person shall be tested to determine if the person is a chronic alcoholic. A diagnosis of chronic alcoholism shall serve as ~~an~~ affirmative defense a defense to violations of § ~~1315~~ § 1304 of this title.

Section 55. Amend § 4214, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4214 Habitual criminal; life sentence.

(a) ~~Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title, or any person who has been 3 times convicted of any felony under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony is declared to be an habitual criminal. The court, upon the State's petition, shall impose the applicable minimum sentence pursuant to subsection (b), (c) or (d) of this section and may, in its discretion, impose a sentence of up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment. Under no circumstances may the sentence imposed pursuant to this section~~

1529 be less than the minimum sentence provided for by the felony prompting the person's designation as a habitual offender.

1530 [Deleted.]

1531 (b) Any person who has been 3 times convicted of a felony under the laws of this State, and/or any other state,  
1532 United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony, which is  
1533 the person's first Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title,  
1534 shall receive a minimum sentence of 1/2 of the statutory maximum penalty provided elsewhere in this title, unless the  
1535 maximum statutory penalty is life in which case the minimum sentence shall be 30 years, for the subsequent felony which  
1536 forms the basis of the States petition to have the person declared to be an habitual criminal, up to life imprisonment, unless  
1537 the felony conviction allows and results in the imposition of capital punishment. [Deleted.]

1538 (c) Any person who has been 2 times convicted of a felony under the laws of this State, and/or any other state,  
1539 United States or any territory of the United States, and 1 time convicted of a Title 11 violent felony, or attempt to commit  
1540 such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony  
1541 as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a  
1542 subsequent Title 11 violent felony, or attempt to commit such a violent felony, as defined by § 4201(c) of this title, shall  
1543 receive a minimum sentence of the statutory maximum penalty provided elsewhere in this title for the fourth or subsequent  
1544 felony which forms the basis of the State's petition to have the person declared to be an habitual criminal, up to life  
1545 imprisonment, unless the felony conviction allows and results in the imposition of capital punishment. [Deleted.]

1546 (d) Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent  
1547 felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by  
1548 another state, United States or any territory of the United States, and who shall thereafter be convicted of a third or  
1549 subsequent felony which is a Title 11 violent felony, or an attempt to commit such a violent felony, as defined in § 4201(c),  
1550 shall receive a minimum sentence of the statutory maximum statutory penalty provided elsewhere in this title for the third  
1551 or subsequent Title 11 violent felony which forms the basis of the State's petition to have the person declared to be an  
1552 habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital  
1553 punishment. [Deleted.]

1554 (e) Notwithstanding any provision of this title to the contrary, any minimum sentence adjustment required to be  
1555 imposed pursuant to subsection (b), (c), or (d) of this section § 604(a) of this title for a class 4 or 3 felony shall not be  
1556 subject to suspension by the court, and shall be served in its entirety at full custodial Level V institutional setting without  
1557 the benefit of probation or parole, except that any such sentence shall be subject to the provisions of §§ 4205(h), 4381 and

4382 of this title. For purposes of the computation of good time under § 4381 of this title, a life sentence imposed pursuant only to this section shall equate to a sentence of 45 years.

Section 56. Amend § 4215, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4215 Sentence of greater punishment because of previous conviction.

(a) If at the time of sentence, it appears to the court that the conviction of a defendant constitutes a second or other conviction making the defendant liable to a punishment greater than the maximum which may be imposed upon a person not so previously convicted, the court shall fully inform the defendant as to such previous conviction or convictions and shall call upon the defendant to admit or deny such previous conviction or convictions. If the defendant shall admit the previous conviction or convictions, the court may impose the greater punishment. If the defendant shall stand silent or if the defendant shall deny the prior conviction or convictions, the defendant shall be tried upon the issue of previous conviction; provided, however, that the foregoing procedure shall not apply in cases of ~~fourth~~ offenders liable to sentence of life imprisonment under ~~§ 4214~~ § 604(a) of this title.

(b) If, at any time after conviction and before sentence, it shall appear to the Attorney General or to the Superior Court that, by reason of such conviction and prior convictions, a defendant should be subjected to ~~§ 4214 of this title~~ § 604(a) of this title for a class 4 or 3 felony, the Attorney General shall file a motion to have the defendant ~~declared an habitual criminal under § 4214 of this title~~ subjected to § 604(a) of this title for a class 4 or 3 felony. If it shall appear to the satisfaction of the Court at a hearing on the motion that the defendant falls within ~~§ 4214 of this title~~ § 604(a) of this title for a class 4 or 3 felony, the Court shall ~~enter an order declaring the defendant an habitual criminal and~~ shall impose sentence accordingly.

Section 57. Amend § 4218, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4218 Probation before judgment.

(a) Subject to the limitations set forth in this section, for a violation or misdemeanor offense under Title 4, 7, or this title, or for any violation or misdemeanor offense under Title 21 which is designated as a motor vehicle offense subject to voluntary assessment by § 709 of Title 21, or a violation of § 2702 of Title 14, or for violations of § 4166(d) of Title 21, or for violations of § 4172 of Title 21, or for a violation of a county or municipal code, or for a misdemeanor offense under ~~§ 4764, § 4771 or § 4774 of Title 16~~ § 1422 or § 1423 of this title, or for a misdemeanor offense under § 4810(a) of Title 29, a court exercising criminal jurisdiction after accepting a guilty plea or nolo contendere plea may, with the consent of the defendant and the State, stay the entry of judgment, defer further proceedings, and place the defendant on “probation before

judgment” subject to such reasonable terms and conditions as may be appropriate. The terms and conditions of any probation before judgment shall include the following requirements: (i) the defendant shall provide the court with that defendant’s current address; (ii) the defendant shall promptly provide the court with written notice of any change of address; and (iii) the defendant shall appear if summoned at any hearing convened for the purpose of determining whether the defendant has violated or fulfilled the terms and conditions of probation before judgment. The terms and conditions may include any or all of the following:

Section 58. Amend § 4219, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4219 Continuous Remote Alcohol Monitoring Program.

(b) The Board of Parole or any Court of competent jurisdiction may request and recommend, as part of conditions of release or the sentence of any person convicted under ~~§ 4177(a) of Title 21~~ § 1025 of this title for operating a vehicle for a first offense where the first offender election is not available, or for a subsequent offense involving a blood alcohol content of .20 or higher, a period of continuous remote alcohol monitoring not to exceed 90 days for a first offense and 120 days for a second offense.

(c) Any inmate incarcerated for violations of ~~§ 4177 of Title 21~~ § 1025 of this title for operating a vehicle and selected for participation in the program shall be released on Level IV status, subject to the conditions of the program, and those conditions imposed by the sentencing judge. The remainder of the participant’s sentence of incarceration shall be suspended upon completion of the program requirements. Participants failing to satisfactorily complete the program shall be returned to the Board of Parole or the sentencing authority for resentencing

Section 59. Amend Subchapter III, Chapter 43, Part II, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4337 Conditional discharge for issuing a bad check as first offense.

(a) Whenever any person who has not previously been convicted of issuing or passing a bad check under § 1124 of this title or under any statute of the United States or of any state relating to the issuing or passing of bad checks pleads guilty to issuing or passing a bad check in violation of § 1124 of this title in an amount under \$1,500 at the time of arraignment, the court without entering a judgment of guilt and with the consent of the accused may defer further proceedings and place the accused on probation upon terms and conditions, which terms and conditions shall include payment of full restitution in the amount of the check plus any reasonable service fee in connection therewith to the victim of the offense and payment to the State of any court costs associated with the offense. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

1618 (b) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings  
1619 against the person and shall simultaneously with said discharge and dismissal submit to the State Bureau of Identification  
1620 pursuant to Chapter 85 of this title the disposition specifying the name of the person and the nature of the proceedings  
1621 which dispositional information shall be retained by the State Bureau of Identification in accordance with its standard  
1622 operating procedures.

1623 (c) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for  
1624 purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There may be only 1 discharge and  
1625 dismissal under this section with respect to any person and no person who is charged with multiple violations of § 1124 of  
1626 this title is eligible for treatment as a first offender under this section.

1627 § 4338 Possession of a firearm or deadly weapon during commission of a felony.

1628 (a) Any sentence imposed for a violation of § 1401(a) of this title shall not be subject to suspension and no person  
1629 convicted for a violation of this section shall be eligible for good time, parole or probation during the period of the sentence  
1630 imposed.

1631 (b) Any sentence imposed upon conviction for § 1401(a) of this title shall not run concurrently with any other  
1632 sentence. In any instance where a person is convicted of a felony, together with a conviction for § 1401(a) of this title  
1633 during the commission of such felony, such person shall serve the sentence for the felony itself before beginning the  
1634 sentence imposed for § 1401(a) of this title.

1635 Section 60. Amend Part II, Title 11 of the Delaware Code by making deletions as shown by strike through and  
1636 insertions as shown by underline as follows:

1637 Chapter 47. Special provisions for minors.

1638 § 4701 Theft.

1639 The sentencing judge shall consider the imposition of community service or an appropriate curfew, or both, for a  
1640 minor upon conviction under Subchapter I of Chapter 11 of this title.

1641 § 4702 Possession of a weapon in a Safe School and Recreation Zone.

1642 (a) In the event that an elementary or secondary school student possesses a firearm as defined in § 103 of this title  
1643 in a Safe School and Recreation Zone as defined in § 1408 of this title, in addition to any other penalties contained in this  
1644 section, the student shall be expelled by the local school board or charter school board of directors for a period of not less  
1645 than 180 days unless otherwise provided for in federal or state law. The local school board or charter school board of  
1646 directors may, on a case by case basis, modify the terms of the expulsion.



(b) In the event that an elementary or secondary school student possesses a deadly weapon as defined in § 103 of this title other than a firearm in a Safe School and Recreation Zone in addition or as an alternative to any other penalties contained in this section, the student may be suspended for a period of not less than 30 days unless otherwise provided for in federal or state law. The local school board or charter school board of directors may, on a case by case basis, modify the terms of the suspension.

§ 4703 Possession of a firearm or deadly weapon during commission of an offense.

(a) Every person over the age of 16 years charged under § 1401(a) of this title for possession of a firearm during the commission of an offense who, following an evidentiary hearing where the Superior Court finds proof positive or presumption great that the accused used, displayed, or discharged a firearm during the commission of a Class 1-5 felony for which an element of the offense or grade includes causing physical injury, engaging in sexual conduct or use of a deadly weapon, shall be tried as an adult, notwithstanding any contrary provisions of statutes governing the Family Court or any other state law. The provision of this section notwithstanding, the Attorney General may elect to proceed in Family Court.

(b) Every person over the age of 16 years charged under § 1401(a) of this title for possession of a deadly weapon during the commission of an offense may be tried as an adult pursuant to §§ 1010 and 1011 of Title 10, notwithstanding any contrary provision of statutes governing the Family Court or any other state law.

§ 4704 Possession and purchase of deadly weapons by persons prohibited.

A person who is a prohibited person as described in § 1404(a)(4) of this title and who is 14 years of age or older shall, upon conviction of a first offense, be required to view a film and/or slide presentation depicting the damage and destruction inflicted upon the human body by 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, or with the family of a deceased victim of a violent crime. The Division of Youth Rehabilitative Service, with the cooperation of the Division of Forensic Science and the Violent Crimes Compensation Board, shall be responsible for the implementation of this subsection.

§ 4705 Wearing body armor during commission of felony.

Every person whose sentence is eligible for adjustment under § 604(e) of this title over the age of 16 years may be tried as an adult pursuant to §§ 1010 and 1011 of Title 10, notwithstanding any contrary provision of statutes governing the Family Court or any other state law.

§ 4706 Riot.

Any other provision of this title or Title 10 notwithstanding, any person over 16 years old who violates § 1301(a) of this title may be prosecuted as an adult pursuant to §§ 1010 and 1011 of Title 10.

§ 4707 Bombs, incendiary devices, Molotov cocktails and explosive devices.

Any other provision of this title notwithstanding, any person over 16 years old who violates § 1143 of this title may be prosecuted as an adult pursuant to §§ 1010 and 1011 of Title 10.

§ 4708 Cheating at games and contests.

The sentencing judge shall consider the imposition of community service or an appropriate curfew, or both, for a minor convicted under § 1382 of this title.

Section 61. Amend § 8523, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8523 Penalties.

(a) Whoever intentionally neglects or refuses to make any report lawfully required of the person under this subchapter, or to do or perform any other act so required to be done or performed by the person, or hinders or prevents another from doing an act so required to be done by such person, ~~shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title~~ shall be subject to criminal penalties under §§ 1122 or 1344 of this title.

(b) Any person who knowingly and wrongfully destroys or falsifies by addition or deletion any computerized or manual record of the Bureau or of a criminal justice agency, which contains criminal history record information, or who knowingly permits another to do so, ~~shall be guilty of a class E felony and shall be punished according to Chapter 42 of this title~~ shall be subject to criminal penalties under Subchapter II of Chapter 12 or Subchapter III of Chapter 13 of this title.

(c) Any person who knowingly provides CHRI to another for profit ~~is guilty of a class E felony and shall be punished according to Chapter 42 of this title~~ shall be subject to criminal penalties under Subchapter II of Chapter 12 or Subchapter III of Chapter 13 of this title.

(d) Any person who knowingly provides criminal history record information to a person or agency not authorized by this subchapter to receive such information or who knowingly and wrongfully obtains or uses such information ~~shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title~~ shall be subject to criminal penalties under Subchapter II of Chapter 12 or Subchapter III of Chapter 13 of this title.

(e) Conviction ~~of~~ based on a violation of this section shall be prima facie grounds for removal from employment by the State or any political subdivision thereof, in addition to any fine or other sentence imposed.

Section 62. Amend § 8527, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8527 Criminal history background checks; state and/or federal CHRI reports; receipt by government agencies; procedures.

(a) Notwithstanding any other provision of the law to the contrary, any recipient agency seeking a criminal history background check for the purposes of employing or licensing any individual in this State pursuant to a statutory mandate or authorization shall submit to the Bureau, in the manner and form designated by the Superintendent of State Police, fingerprints and other necessary information in order to obtain the following:

(g) Any person for whom a CHRI report is being sought pursuant to this section who knowingly and intentionally provides a recipient agency or the Bureau with false, incomplete or inaccurate information ~~shall be guilty of a class F felony and shall be punished according to Chapter 42 of this title. Conviction pursuant to this subsection shall not preclude prosecution for perjury in the second degree pursuant to Chapter 5 of this title~~ shall be subject to criminal penalties under Subchapter II of Chapter 12 of this title.

Section 63. Amend Subchapter I, Chapter 94, Part VI, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9418A Remedies of aggrieved persons.

(a) Any aggrieved person who has reason to believe that any other person has been engaged, is engaged or is about to engage in an alleged violation of any provision of §§ 1106(a), 1144, 1241(a)(8), 1326, 1344(b)-(c), or 9616A of this title may bring an action against such person and may apply to the Court of Chancery for:

(1) An order temporarily or permanently restraining and enjoining the commencement or continuance of such act or acts;

(2) An order directing restitution; or

(3) An order directing the appointment of a receiver.

Subject to making due provisions for the rights of innocent persons, a receiver shall have the power to sue for, collect, receive and take into possession any property which belongs to the person who is alleged to have violated any provision of §§ 1106(a), 1144, 1241(a)(8), 1326, 1344(b)-(c), of this title and which may have been derived by, been used in or aided in any manner such alleged violation. Such property shall include goods and chattels, rights and credits, moneys and effects, books, records, documents, papers, choses in action, bills, notes and property of every description including all computer system equipment and data, and including property with which such property has been commingled if it cannot be identified in kind because of such commingling. The receiver shall also have the power to sell, convey and assign all of the foregoing and hold and dispose of the proceeds thereof under the direction of the Court. Any person who has suffered damages as a result of an alleged violation of any provision of §§ 1106(a), 1144, 1241(a)(8), 1326, 1344(b)-(c), or 9616A of this title, and submits proof to the satisfaction of the Court that the person has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent the person has sustained out-of-pocket losses. The Court shall

1736 have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be  
1737 required.

1738 (b) The Court may award the relief applied for or such other relief as it may deem appropriate in equity.

1739 (c) Independent of or in conjunction with an action under subsection (a) of this section, any person who suffers  
1740 any injury to person, business or property may bring an action for damages against a person who is alleged to have violated  
1741 any provision of §§ 1106(a), 1144, 1241(a)(8), 1326, 1344(b)-(c), or 9616A of this title. The aggrieved person shall recover  
1742 actual damages and damages for unjust enrichment not taken into account in computing damages for actual loss and treble  
1743 damages where there has been a showing of wilful and malicious conduct.

1744 (d) Proof of pecuniary loss is not required to establish actual damages in connection with an alleged violation of §  
1745 1344(b) of this title arising from misuse of private personal data.

1746 (e) In any civil action brought under this section, the Court shall award to any aggrieved person who prevails  
1747 reasonable costs and reasonable attorneys' fees.

1748 (f) The filing of a criminal action against a person is not a prerequisite to the bringing of a civil action under this  
1749 section against such person.

1750 (g) No civil action under this section may be brought but within 3 years from the date the alleged violation of §§  
1751 1106(a), 1144, 1241(a)(8), 1326, 1344(b)-(c), or 9616A of this title is discovered or should have been discovered by the  
1752 exercise of reasonable diligence.

1753 Section 64. Amend § 9619, Title 11 of the Delaware Code by making deletions as shown by strike through and  
1754 insertions as shown by underline as follows:

1755 § 9619 Penalties.

1756 (a) Any person who knowingly provides false information in regard to a material fact contained in any application  
1757 made pursuant to this subchapter shall be subject to termination from the program and shall be subject to criminal penalties  
1758 under ~~§§ 1233 Part I~~ of this title, or any other applicable provision of this Code.

1759 (b) Any person who intentionally, knowingly or recklessly attempts to gain access to or gains access to a program  
1760 participant's actual address by fraud or misrepresentation may be subject to criminal penalties under ~~§§ 873, 876, and 932~~  
1761 Part I of this title, or any other applicable provision of this Code.

1762 (c) A person who lawfully obtains a program participant's actual address and who subsequently discloses or uses  
1763 the actual address in a manner not authorized by this subchapter may be subject to criminal penalties under ~~§§ 873, 876,~~  
1764 ~~and 932~~ Part I of this title, or any other applicable provision of this Code.

1765 (d) ~~A person who violates § 9616A(a) of this title is guilty of a class A misdemeanor, except that the violation is:~~

(1) ~~A class G felony if the violation results in physical injury to the program participant or a member of the program participant's household; or~~

(2) ~~A class D felony if the violation results in serious physical injury to the program participant or a member of the program participant's household. [Deleted.]~~

(e) The remedies for aggrieved persons set forth in ~~§ 941~~ § 9418A of this title are available to program participants for violations of § 9616A of this title.

Section 65. Amend Part VII, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 98. Human trafficking; Human Trafficking Interagency Coordinating Council; remedies; minors.

§ 9801 Definitions.

For the purposes of this section, the following definitions shall apply:

(1) "Adult" has the meaning ascribed in § 302 of Title 1.

(2) "Commercial sexual activity" means any sexual activity for which anything of value is given, promised to, or received by any person.

(3) "Human trafficking" means the commission of any of the offenses listed in § 1062 of this title.

(4) "Minor" has the meaning ascribed in § 302 of Title 1.

(5) "Sexual activity" means any of the sex-related acts enumerated in § 103 of this title or in §§ 1322(a), 1323(a), (c)(3)-(4) of this title or sexually-explicit performances.

(6) "Sexually explicit performance" means a live public act or show, production of pornography, or the digital transfer of any of such, intended to arouse or satisfy the sexual desires or appeal to the prurient interest of viewers.

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by state.

(8) "Victim" means a person who is subjected to the practices set forth in §§ 1062(a)(2)-(4), (b)(3), 1322(b), 1323(c)(1)-(2) of this title or to conduct that would have constituted a violation of these sections of title 11 had they been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted.

§ 9802 Forfeiture.

(a) In any proceeding against real or personal property under §§ 1062(a)(2)-(4), (b)(3), 1322(b), or 1323(c)(1)-(2) of this title, the owner may assert a defense, and has the burden of establishing, by a preponderance of the evidence, that the forfeiture is manifestly disproportional to the seriousness of the offense.

(b) Proceeds from the public sale or auction of property forfeited under this subsection must be distributed in the manner otherwise provided for the distribution of proceeds of judicial sales.

§ 9803 Admissibility of certain evidence.

In a prosecution or civil action for damages under §§ 1062(a)(2)-(4), (b)(3), 1322(b), 1323(c)(1)-(2) of this title, evidence of a specific instance of the alleged victim's past sexual behavior, or reputation or opinion evidence of past sexual behavior of the alleged victim, is not admissible unless the evidence is:

(1) Admitted in accordance with §§ 3508 and 3509 of this title; or

(2) Offered by the prosecution in a criminal case to prove a pattern of trafficking by the defendant.

§ 9804 Special provisions regarding a minor.

(a) A minor who has engaged in commercial sexual activity is presumed to be a neglected or abused child under § 901 et seq. of Title 10. Whenever a police officer has probable cause to believe that a minor has engaged in commercial sexual activity, the police officer shall make an immediate report to the Department of Services for Children, Youth and Their Families pursuant to § 901 et seq. of Title 16.

(b) A party to a juvenile delinquency proceeding in which a minor is charged with prostitution or loitering, or an attorney guardian ad litem or court-appointed special advocate appointed in a proceeding under § 901 et seq. of Title 10, may file a motion on behalf of a minor in a juvenile delinquency proceeding seeking to stay the juvenile delinquency proceedings. Such motion may be opposed by the Attorney General. The Family Court may consider such a motion and, in its discretion, may stay the juvenile delinquency proceeding indefinitely. Upon such motion, the Department of Services for Children, Youth and Their Families and/or the Family Court may identify and order available specialized services for the minor that, in the opinion of the Department of Services for Children, Youth and Their Families or Family Court, are best suited to the needs of the juvenile. So long as the minor substantially complies with the requirement of services identified by the Department of Services for Children, Youth and Their Families and/or ordered by the Family Court, the Attorney General shall, upon motion, nolle prosequi the stayed charges no earlier than 1 year after the stay was imposed. Upon motion of the Attorney General that the minor has not substantially complied with the requirement of services identified by the Department of Services for Children, Youth and Their Families and/or ordered by the Family Court, the Family Court shall lift the stay for further proceedings in accordance with the regular course of such proceedings.

1824           § 9805 Civil action.

1825           (a) A victim may bring a civil action against a person that commits an offense under §§ 1062(a)(2)-(4), (b)(3),  
1826 1322(b), 1323(c)(1)-(2) of this title for compensatory damages, punitive damages, injunctive relief, and any other  
1827 appropriate relief.

1828           (b) In an action under this subsection, the court shall award a prevailing victim reasonable attorneys' fees and  
1829 costs, including reasonable fees for expert witnesses.

1830           (c) An action under this subsection must be commenced not later than 5 years after the later of the date on which  
1831 the victim:

1832                   (1) Was freed from the human trafficking situation; or

1833                   (2) Attained 18 years of age.

1834           (d) Damages awarded to the victim under this subsection for an item must be offset by any restitution paid to the  
1835 victim pursuant to § 1062(d)(2) of this title for the same item.

1836           (e) This subsection does not preclude any other remedy available to the victim under federal law or law of this  
1837 State other than this section.

1838           § 9806 Application for pardon and petition to expunge; motion to vacate conviction and expunge record.

1839           Notwithstanding any provision of Chapter 43 of this title or any other law to the contrary, a person convicted of  
1840 prostitution, loitering, or an obscenity or child pornography offense committed as a direct result of being a victim of human  
1841 trafficking may file an application for a pardon pursuant to article VII of the Delaware Constitution and § 4361 et seq. of  
1842 this title and may file a petition requesting expungement of such criminal record pursuant to § 4371 et seq. of this title.

1843           § 9807 Human Trafficking Interagency Coordinating Council.

1844           The Human Trafficking Coordinating Council is hereby dissolved and reestablished as the Human Trafficking  
1845 Interagency Coordinating Council to assume the functions of the Human Trafficking Coordinating Council and to  
1846 administer and implement this chapter, and to perform such other responsibilities as may be entrusted to it by law.

1847           (1) The Human Trafficking Interagency Coordinating Council shall consist of 13 members:

1848                   a. Two representatives of the Judicial Branch, as appointed by the Chief Justice;

1849                   b. A representative of the Department of Justice to be appointed by the Attorney General;

1850                   c. A representative of the Office of Defense Services to be appointed by the Chief Defender;

1851                   d. A representative of the law-enforcement community to be appointed by the Speaker of the Delaware

1852           House of Representatives;

e. A representative of the health-care community to be appointed by the President Pro Tempore of the Delaware State Senate;

f. A representative of the Department of Health and Social Services to be appointed by the Secretary of the Department of Health and Social Services;

g. A representative of the Department of Labor to be appointed by the Secretary of Labor;

h. A representative of the Department of Services for the Children, Youth and Their Families to be appointed by the Secretary of the Department of Services for the Children, Youth and Their Families;

i. Four members who are advocates or persons who work with victims of human trafficking to be appointed by the Governor for a 3-year term and shall be eligible for reappointment. Members shall include representation from all 3 counties of the State.

j. The representative appointed to the Council by the Secretary of the Department of Health and Social Services shall serve as the temporary Chair of the Council to guide the initial organization of the council by setting a date, time, and place for the initial organizational meeting, and by supervising the preparation and distribution of the notice and agenda for the initial organizational meeting of the council. Members of the Council shall elect a Chair and a Vice Chair from among the members of the Council at the initial organizational meeting. Thereafter, the Chair and Vice Chair shall be elected annually from among the members.

(2) The Council shall:

a. Develop a comprehensive plan to provide victims of human trafficking with services;

b. Effectuate coordination between agencies, departments and the courts with victims of human trafficking;

c. Collect and evaluate data on human trafficking in this State;

d. Promote public awareness about human trafficking, victim remedies and services, and trafficking prevention;

e. Create a public-awareness sign that contains the state and National Human Trafficking Resource Center hotline information;

f. Coordinate training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators; and

g. Conduct other appropriate activities.

(3) Meetings; quorum; officers; committees; procedure.

a. The Council shall meet at least 4 times per year. Seven members shall constitute a quorum.



b. The Chairperson shall have the duty to convene and preside over meetings of the Council and prepare an agenda for meetings. The Department of Health and Social Services shall provide the administrative support for the Council.

c. The Vice-Chair's duty shall be to act as Chair in the absence of the Chair.

d. The Council shall establish committees composed of Council members and other knowledgeable individuals, as it deems advisable, to assist in planning, policy, goal and priority recommendations and developing implementation plans to achieve the purposes of the Council.

e. The Council shall submit a written report of its activities and recommendations to the Governor, General Assembly and the Chief Justice of the Supreme Court at least once every year on or before September 15.  
§ 9808 Display of public awareness sign; penalty for failure to display.

(a) The Delaware Department of Transportation shall display a public-awareness sign required by this section in every transportation station, rest area, and welcome center in the State which is open to the public.

(b) A public awareness sign created under § 9807(2)e. of this chapter shall be displayed at locations designated by the Council in a place that is clearly conspicuous and visible to employees.

(c) The Delaware Department of Labor shall impose a fine of \$300 per violation on an employer that knowingly fails to comply with § 9807(2)e. of this chapter. The fine is the exclusive remedy for failure to comply.

§ 9809 Eligibility for services.

(a) A victim of human trafficking is eligible for a benefit or service, which is available through the State and identified in the plan developed under § 9807(2)a. of this chapter, including compensation under § 9009 of this title, regardless of immigration status.

(b) A minor engaged in commercial sexual activity is eligible for a benefit or service, which is available through the State and identified in the plan developed under paragraph § 9807(2)a. of this chapter, regardless of immigration status.

(c) As soon as practicable after a first encounter with an individual who reasonably appears to a police officer to be a victim or a minor engaged in commercial sexual activity, the police officer shall notify the appropriate state or local agency, as identified in the plan developed under paragraph § 9807(2)a. of this chapter, that the individual may be eligible for a benefit or service under this section.

§ 9810 Law-enforcement agency protocol.

(a) On request from an individual who a police officer or prosecutor reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. § 1101(a)(15)(T), as amended from time to time, or 8 U.S.C. § 1101(a)(15)(U), as amended

1913 from time to time, or for continued presence, under 22 U.S.C. § 7105(c)(3), as amended from time to time, the police  
1914 officer or prosecutor, as soon as practicable after receiving the request, shall request that a certifying official in his or her  
1915 law-enforcement agency complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the  
1916 United States Citizenship and Immigration Services on its Internet website, and ask a federal law-enforcement officer to  
1917 request continued presence.

1918 (b) If the law-enforcement agency having responsibility under paragraph (a) of this section determines that an  
1919 individual does not meet the requirements for such agency to comply with paragraph (a) of this section, that agency shall  
1920 inform the individual of the reason and that the individual may make another request under paragraph (a) of this section and  
1921 submit additional evidence satisfying the requirements.

1922 Section 66. Amend Part VII, Title 11 of the Delaware Code by making deletions as shown by strike through and  
1923 insertions as shown by underline as follows:

1924 Chapter 99. Deadly weapon licensing; purchase of deadly weapons; loss of a deadly weapon; civil relinquishment  
1925 procedures.

1926 § 9901 License to carry concealed deadly weapons.

1927 (a) A person of full age and good moral character desiring to be licensed to carry a concealed deadly weapon for  
1928 personal protection or the protection of the person's property may be licensed to do so when the following conditions have  
1929 been strictly complied with:

1930 (1) The person shall make application therefor in writing and file the same with the Prothonotary of the proper  
1931 county, at least 15 days before the then next term of the Superior Court, clearly stating that the person is of full age and  
1932 that the person is desirous of being licensed to carry a concealed deadly weapon for personal protection or protection of  
1933 the person's property, or both, and also stating the person's residence and occupation. The person shall submit together  
1934 with such application all information necessary to conduct a criminal history background check. The Superior Court  
1935 may conduct a criminal history background check pursuant to the procedures set forth in Chapter 85 of Title 11 for the  
1936 purposes of licensing any person pursuant to this section.

1937 (2) At the same time the person shall file, with the Prothonotary, a certificate of 5 respectable citizens of the  
1938 county in which the applicant resides at the time of filing the application. The certificate shall clearly state that the  
1939 applicant is a person of full age, sobriety and good moral character, that the applicant bears a good reputation for peace  
1940 and good order in the community in which the applicant resides, and that the carrying of a concealed deadly weapon by  
1941 the applicant is necessary for the protection of the applicant or the applicant's property, or both. The certificate shall be  
1942 signed with the proper signatures and in the proper handwriting of each such respectable citizen.

(3) Every such applicant shall file in the office of the Prothonotary of the proper county the application verified by oath or affirmation in writing taken before an officer authorized by the laws of this State to administer the same, and shall under such verification state that the applicant's certificate and recommendation were read to or by the signers thereof and that the signatures thereto are in the proper and genuine handwriting of each. Prior to the issuance of an initial license the person shall also file with the Prothonotary a notarized certificate signed by an instructor or authorized representative of a sponsoring agency, school, organization or institution certifying that the applicant: (i) has completed a firearms training course which contains at least the below-described minimum elements; and (ii) is sponsored by a federal, state, county or municipal law enforcement agency, a college, a nationally recognized organization that customarily offers firearms training, or a firearms training school with instructors certified by a nationally recognized organization that customarily offers firearms training. The firearms training course shall include the following elements:

- a. Instruction regarding knowledge and safe handling of firearms;
- b. Instruction regarding safe storage of firearms and child safety;
- c. Instruction regarding knowledge and safe handling of ammunition;
- d. Instruction regarding safe storage of ammunition and child safety;
- e. Instruction regarding safe firearms shooting fundamentals;
- f. Live fire shooting exercises conducted on a range, including the expenditure of a minimum of 100 rounds of ammunition;
- g. Identification of ways to develop and maintain firearm shooting skills;
- h. Instruction regarding federal and state laws pertaining to the lawful purchase, ownership, transportation, use and possession of firearms;
- i. Instruction regarding the laws of this State pertaining to the use of deadly force for self-defense; and
- j. Instruction regarding techniques for avoiding a criminal attack and how to manage a violent confrontation, including conflict resolution.

(4) At the time the application is filed, the applicant shall pay a fee of \$65 to the Prothonotary issuing the same.

(5) The license issued upon initial application shall be valid for 3 years. On or before the date of expiration of such initial license, the licensee, without further application, may renew the same for the further period of 5 years upon payment to the Prothonotary of a fee of \$65, and upon filing with said Prothonotary an affidavit setting forth that the carrying of a concealed deadly weapon by the licensee is necessary for personal protection or protection of the person's

property, or both, and that the person possesses all the requirements for the issuance of a license and may make like renewal every 5 years thereafter; provided, however, that the Superior Court, upon good cause presented to it, may inquire into the renewal request and deny the same for good cause shown. No requirements in addition to those specified in this paragraph may be imposed for the renewal of a license.

(b) The Prothonotary of the county in which any applicant for a license files the same shall cause notice of every such application to be published once, at least 10 days before the next term of the Superior Court. The publication shall be made in a newspaper of general circulation published in the county. In making such publication it shall be sufficient for the Prothonotary to do the same as a list in alphabetical form stating therein simply the name and residence of each applicant respectively.

(c) The Prothonotary of the county in which the application for license is made shall lay before the Superior Court, at its then next term, all applications for licenses, together with the certificate and recommendation accompanying the same, filed in the Prothonotary's office, on the first day of such application.

(d) The Court may or may not, in its discretion, approve any application, and in order to satisfy the Judges thereof fully in regard to the propriety of approving the same, may receive remonstrances and hear evidence and arguments for and against the same, and establish general rules for that purpose.

(e) If any application is approved, as provided in this section, the Court shall endorse the word "approved" thereon and sign the same with the date of approval. If not approved, the Court shall endorse the words "not approved" and sign the same. The Prothonotary, immediately after any such application has been so approved, shall notify the applicant of such approval, and following receipt of the notarized certification of satisfactory completion of the firearms training course requirement as set forth in paragraph (a)(3) of this section above shall issue a proper license, signed as other state licenses are, to the applicant for the purposes provided in this section and for a term to expire on June 1 next succeeding the date of such approval.

(f) The Secretary of State shall prepare blank forms of license to carry out the purposes of this section, and shall issue the same as required to the several Prothonotaries of the counties in this State. The Prothonotaries of all the counties shall affix to the license, before lamination, a photographic representation of the licensee.

(g) The provisions of this section do not apply to the carrying of the usual weapon by the police or other peace officers.

(h) Notwithstanding any provision to the contrary, anyone retired as a police officer, as "police officer" is defined by § 1911 of this title, who is retired after having served at least 20 years in any law-enforcement agency within this State, or who is retired and remains currently eligible for a duty-connected disability pension, may be licensed to carry a

concealed deadly weapon for the protection of that retired police officer's person or property after that retired police officer's retirement, if the following conditions are strictly complied with:

(1) If that retired police officer applies for the license within 90 days of the date of that retired police officer's retirement, the retired police officer shall pay a fee of \$65 to the Prothonotary in the county where that retired police officer resides and present to the Prothonotary both:

a. A certification from the Attorney General's office, in a form prescribed by the Attorney General's office, verifying that the retired officer is in good standing with the law-enforcement agency from which the retired police officer is retired; and

b. A letter from the chief of the retired officer's agency verifying that the retired officer is in good standing with the law-enforcement agency from which the retired police officer is retired; or

(2) If that retired police officer applies for the license more than 90 days, but within 20 years, of the date of that retired police officer's retirement, the retired police officer shall pay a fee of \$65 to the Prothonotary in the county where the retired police officer resides and present to the Prothonotary certification forms from the Attorney General's office, or in a form prescribed by the Attorney General's office, that:

a. The retired officer is in good standing with the law-enforcement agency from which that retired police officer is retired;

b. The retired officer's criminal record has been reviewed and that the retired police officer has not been convicted of any crime greater than a violation since the date of the retired police officer's retirement; and

c. The retired officer has not been committed to a psychiatric facility since the date of the retired police officer's retirement.

(i) Notwithstanding anything contained in this section to the contrary, an adult person who, as a successful petitioner seeking relief pursuant to Part D, subchapter III of Chapter 9 of Title 10, has caused a protection from abuse order containing a firearms prohibition authorized by § 1045(a)(8) of Title 10 or a firearms prohibition pursuant to § 1404(a)(5) of this title to be entered against a person for alleged acts of domestic violence as defined in § 1041 of Title 10, shall be deemed to have shown the necessity for a license to carry a deadly weapon concealed for protection of themselves pursuant to this section. In such cases, all other requirements of subsection (a) of this section must still be satisfied.

(j) Notwithstanding any other provision of this Code to the contrary, the State of Delaware shall give full faith and credit and shall otherwise honor and give full force and effect to all licenses/permits issued to the citizens of other states where those issuing states also give full faith and credit and otherwise honor the licenses issued by the State of Delaware pursuant to this section and where those licenses/permits are issued by authority pursuant to state law and which afford a

reasonably similar degree of protection as is provided by licensure in Delaware. For the purpose of this subsection “reasonably similar” does not preclude alternative or differing provisions nor a different source and process by which eligibility is determined. Notwithstanding the forgoing, if there is evidence of a pattern of issuing licenses/permits to convicted felons in another state, the Attorney General shall not include that state under the exception contained in this subsection even if the law of that state is determined to be “reasonably similar.” The Attorney General shall communicate the provisions of this section to the Attorneys General of the several states and shall determine those states whose licensing/permit systems qualify for recognition under this section. The Attorney General shall publish on January 15 of each year a list of all States which have qualified for reciprocity under this subsection. Such list shall be valid for one year and any removal of a State from the list shall not occur without 1 year’s notice of such impending removal. Such list shall be made readily available to all State and local law-enforcement agencies within the State as well as to all then-current holders of licenses issued by the State of Delaware pursuant to this section.

(k) The Attorney General shall have the discretion to issue, on a limited basis, a temporary license to carry concealed a deadly weapon to any individual who is not a resident of this State and whom the Attorney General determines has a short-term need to carry such a weapon within this State in conjunction with that individual’s employment for the protection of person or property. Said temporary license shall automatically expire 30 days from the date of issuance and shall not be subject to renewal, and must be carried at all times while within the State. However, nothing contained herein shall prohibit the issuance of a second or subsequent temporary license. The Attorney General shall have the authority to promulgate and enforce such regulations as may be necessary for the administration of such temporary licenses. No individual shall be issued more than 3 temporary licenses.

(l) All applications for a temporary license to carry a concealed deadly weapon made pursuant to subsection (k) of this section shall be in writing and shall bear a notice stating that false statements therein are punishable by law.

(m) Notwithstanding any other law or regulation to the contrary, any license issued pursuant to this section shall be void, and is automatically repealed by operation of law, if the licensee is or becomes prohibited from owning, possessing or controlling a deadly weapon as specified in § 1404 of this title.

§ 9902 State implementation of the federal Law Enforcement Officers Safety Act of 2004 (18 U.S.C. § 926B as amended in 2010 and 2013); carrying of concealed firearms by qualified law-enforcement officers.

(a) Notwithstanding any other provision of the law of any state or any political subdivision thereof, an individual who is a qualified law-enforcement officer and who is carrying the identification required by subsection (d) of this section may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b) of this section.

(b) This section shall not be construed to supersede or limit the laws of any state that:

(1) Permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) Prohibit or restrict the possession of firearms on any state or local government property, installation, building, base, or park.

(c) As used in this section, the term “qualified law-enforcement officer” means an employee of a governmental agency who:

(1) Is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under 10 U.S.C. § 807(b) (article 7(b) of the Uniform Code of Military Justice);

(2) Is authorized by the agency to carry a firearm;

(3) Is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;

(4) Meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;

(5) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(6) Is not prohibited by federal law from receiving a firearm.

(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed that identifies the employee as a police officer or law-enforcement officer of the agency.

(e) As used in this section, the term “firearm”:

(1) Except as provided in this subsection, has the same meaning as in 18 U.S.C. § 921;

(2) Includes ammunition not expressly prohibited by federal law or subject to the provisions of the National Firearms Act [26 U.S.C. § 5801 et seq.]; and

(3) Does not include:

a. Any machinegun (as defined in § 5845 of the National Firearms Act [26 U.S.C. § 5845]);

b. Any firearm silencer (as defined in 18 U.S.C. § 921); and

c. Any destructive device (as defined in 18 U.S.C. § 921).

(f) For the purposes of this section, a law-enforcement officer of the Amtrak Police Department, a law-enforcement officer of the Federal Reserve, or a law-enforcement or police officer of the executive branch of the federal

government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under 10 U.S.C. § 807(b) (article 7(b) of the Uniform Code of Military Justice).

§ 9903 State implementation of the federal Law Enforcement Officers Safety Act of 2004 (18 U.S.C. § 926C as amended in 2010 and 2013); carrying of concealed firearms by qualified retired law-enforcement officers.

(a) Notwithstanding any other provision of the law of any state or any political subdivision thereof, an individual who is a qualified retired law-enforcement officer and who is carrying the identification required by subsection (d) of this section may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b) of this section.

(b) This section shall not be construed to supersede or limit the laws of any state that:

(1) Permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) Prohibit or restrict the possession of firearms on any state or local government property, installation, building, base, or park.

(c) As used in this section, the term “qualified retired law-enforcement officer” means an individual who:

(1) Separated from service in good standing from service with a public agency as a law-enforcement officer;

(2) Before such separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest or apprehension under 10 U.S.C. § 807(b) (article 7(b) of the Uniform Code of Military Justice);

(3)a. Before such separation, served as a law-enforcement officer for an aggregate of 10 years or more; or

b. Separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) During the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law-enforcement officers, as determined by the former agency of the individual, the state in which the individual resides or, if the state has not established such standards, either a law-enforcement agency within the state in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state;

(5)a. Has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in paragraph (d)(1) of this section; or



b. Has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described in paragraph (d)(1) of this section;

(6) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) Is not prohibited by federal law from receiving a firearm.

(d) The identification required by this subsection is:

(1) A photographic identification issued by the agency from which the individual separated from service as a law-enforcement officer that identifies the person as having been employed as a police officer or law-enforcement officer and indicates that the individual has, not less recently than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm; or

(2)a. A photographic identification issued by the agency from which the individual separated from service as a law-enforcement officer that identifies the person as having been employed as a police officer or law-enforcement officer; and

b. A certification issued by the state in which the individual resides or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state that indicates that the individual has, not less than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the state or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state to have met:

1. The active duty standards for qualification in firearms training, as established by the state, to carry a firearm of the same type as the concealed firearm; or

2. If the state has not established such standards, standards set by any law-enforcement agency within that state to carry a firearm of the same type as the concealed firearm.

(e) As used in this section:

(1) The term "firearm":

a. Except as provided in this paragraph, has the same meaning as in 18 U.S.C. § 921;

b. Includes ammunition not expressly prohibited by federal law or subject to the provisions of the National Firearms Act [26 U.S.C. § 5801 et seq.]; and

c. Does not include:

2153 1. Any machinegun (as defined in § 5845 of the National Firearms Act [26 U.S.C. § 5845]);  
2154 2. Any firearm silencer (as defined in 18 U.S.C. § 921); and  
2155 3. Any destructive device (as defined in 18 U.S.C. § 921); and  
2156 (2) The term “service with a public agency as a law-enforcement officer” includes service as a law-  
2157 enforcement officer of the Amtrak Police Department, service as a law-enforcement officer of the Federal Reserve, or  
2158 service as a law-enforcement or police officer of the executive branch of the federal government.  
2159 (3) The term “a firearm of the same type” means a revolver or a semi-automatic pistol.  
2160 § 9904 Criminal history record checks for sales of firearms.  
2161 (a) No licensed importer, licensed manufacturer or licensed dealer shall sell, transfer or deliver from inventory any  
2162 firearm, as defined in § 103 of this title, to any other person, other than a licensed importer, licensed manufacturer, licensed  
2163 dealer, or licensed collector, without conducting a criminal history background check in accordance with regulations  
2164 promulgated by the United States Department of Justice pursuant to the National Instant Criminal Background Check  
2165 System (“NICS”), 28 C.F.R. §§ 25.1-25.11, as the same may be amended from time to time, to determine whether the  
2166 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.  
2167 (b) No licensed importer, licensed manufacturer or licensed dealer shall sell, transfer or deliver from inventory any  
2168 firearm, as defined in § 103 of this title, to any other person, other than a licensed importer, licensed manufacturer, licensed  
2169 dealer, or licensed collector, unless and until being informed that it may “proceed” with the sale, transfer or delivery from  
2170 inventory of a firearm by the Federal Bureau of Investigation (FBI), NICS Section pursuant to the request for a criminal  
2171 history record check required by subsection (a) of this section or 25 days have elapsed from the date of the request for a  
2172 background check and a denial has not occurred.  
2173 (c) Any person who is denied the right to receive or purchase a firearm in connection with subsection (a) of this  
2174 section or § 9905(a) of this title may request from the Federal Bureau of Investigation a written explanation for such denial;  
2175 an appeal of the denial based on the accuracy of the record upon which the denial is based; and/or that erroneous  
2176 information on the NICS system be corrected and that the person’s rights to possess a firearm be restored. All requests  
2177 pursuant to this subsection (c) shall be made in accordance with applicable federal laws and regulations, including without  
2178 limitation 28 C.F.R. § 25.10. In connection herewith, at the request of a denied person, the Federal Firearms Licensed  
2179 (FFL) dealer and SBI shall provide to the denied person such information as may be required by federal law or regulation in  
2180 order for such person to appeal or seek additional information hereunder.  
2181 (d) Compliance with the provisions of this section shall be a complete defense to any claim or cause of action  
2182 under the laws of this State for liability for damages arising from the importation or manufacture of any firearm which has

2183 been shipped or transported in interstate or foreign commerce. In addition, compliance with the provisions of this section or  
2184 § 9905 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  
2185 State for liability for damages allegedly arising from the actions of the transferee subsequent to the date of said compliance  
2186 wherein the claim for damages is factually connected to said compliant transfer.

2187 (e) The SBI shall provide to the judiciary committees of the Senate and House of Representatives an annual report  
2188 including the number of inquiries made pursuant to this section and § 9905 of this title for the prior calendar year. Such  
2189 report shall include, but not be limited to, the number of inquiries received from licensees, the number of inquiries resulting  
2190 in a determination that the potential buyer or transferee was prohibited from receipt or possession of a firearm pursuant to  
2191 §§ 1404 and 9905 of this title or federal law.

2192 (f) Notwithstanding Chapter 89 of this title, Chapter 10 of Title 29, and other Delaware laws, the SBI is authorized  
2193 and directed to release records and data required by this section and by § 9905 of this title. The SBI shall not release or  
2194 disclose criminal records or data except as specified in this section and in § 9905 of this title.

2195 (g) No records, data, information or reports containing the name, address, date of birth or other identifying data of  
2196 either the transferor or transferee or which contain the make, model, caliber, serial number or other identifying data of any  
2197 firearm which are required, authorized or maintained pursuant to this section, § 9905 of this title or by Chapter 9 of Title  
2198 24, shall be subject to disclosure or release pursuant to the Freedom of Information Act, Chapter 100 of Title 29.

2199 (h) Relief from Disabilities Program. — A person who is subject to the disabilities of 18 U.S.C. § 922(d)(4) and  
2200 (g)(4) or of § 1404(a)(2) of this title, except a person subject to an order for relinquishment under § 9907(d)(1) of this title,  
2201 because of an adjudication or commitment under the laws of this State may petition for relief from a firearms prohibition  
2202 from the Relief from Disabilities Board. The Relief from Disabilities Board shall be comprised of 3 members, with the  
2203 chairperson appointed by and serving at the pleasure of the Secretary of Safety and Homeland Security, and 2 members  
2204 appointed by and serving at the pleasure of the Secretary of the Department of Health and Social Services, 1 of whom shall  
2205 be a licensed psychiatrist.

2206 (1) The Board shall consider the petition for relief in accordance with the following:

2207 a. The Board shall give the petitioner the opportunity to present evidence to the Board in a closed and  
2208 confidential hearing on the record; and

2209 b. A record of the hearing shall be maintained by the Board for purposes of appellate review.

2210 (2) In determining whether to grant relief, the Board shall consider evidence regarding the following:

2211 a. The circumstances regarding the firearms disabilities pursuant to § 1404(a)(2) of this title and 18  
2212 U.S.C. § 922(d)(4) and (g)(4);

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

c. Criminal history records; and

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

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

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

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

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

(5) The Board shall issue its decision in writing explaining the reasons for a denial or grant of relief.

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

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

a. Cause the petitioner's record to be updated, corrected, modified, or removed from any database maintained and made available to NICS to reflect that the petitioner is no longer subject to a firearms prohibition as it relates to § 1404(a)(2) of this title and 18 U.S.C. § 922(d)(4) and (g)(4); and

b. Notify the Attorney General of the United States that the petitioner is no longer subject to a firearms prohibition pursuant to § 1404(a)(2) of this title and 18 U.S.C. § 922(d)(4) and (g)(4).

(i) The Department of Safety and Homeland Security shall adopt regulations relating to compliance with NICS, including without limitation issues relating to the transmission of data, the transfer of existing data in the existing state criminal background check database and the relief from disabilities process set forth in subsection (g) of this section. In preparing such regulations, the Department shall consult with the Department of Health and Social Services, the courts, the Department of Children, Youth and Their Families, the Department of State and such other entities as may be necessary or

advisable. Such regulations shall include provisions to ensure the identity, confidentiality and security of all records and data provided pursuant to this section.

§ 9905 Criminal history record checks for sales of firearms — Unlicensed persons.

(a) No unlicensed person shall sell or transfer any firearm, as defined in § 103 of this title, to any other unlicensed person without having conducted a criminal history background check through a licensed firearms dealer in accordance with § 9904 of this title and § 904A of Title 24, as the same may be amended from time to time, to determine whether the sale or transfer would be in violation of federal or state law, and until the licensed firearms dealer has been informed that the sale or transfer of the firearm may “proceed” by the Federal Bureau of Investigation, NICS Section or 25 days have elapsed from the date of the request for a background check and a denial has not occurred.

(b) For purposes of this section:

(1) “Licensed dealer” means any person licensed as a deadly weapons dealer pursuant to Chapter 9 of Title 24 and 18 U.S.C. § 921 et seq.

(2) “Transfer” means assigning, pledging, leasing, loaning, giving away, or otherwise disposing of, but does not include:

a. The loan of a firearm for any lawful purpose, for a period of 14 days or less, by the owner of said firearm to a person known personally to him or her;

b. A temporary transfer for any lawful purpose that occurs while in the continuous presence of the owner of the firearm, provided that such temporary transfer shall not exceed 24 hours in duration;

c. The transfer of a firearm for repair, service or modification to a licensed gunsmith or other person lawfully engaged in such activities as a regular course of trade or business; or

d. A transfer that occurs by operation of law or because of the death of a person for whom the prospective transferor is an executor or administrator of an estate or a trustee of a trust created in a will.

(3) “Unlicensed person” means any person who is not a licensed importer, licensed manufacturer or licensed dealer.

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

(1) Transactions in which the potential purchaser or transferee is a parent, mother-in-law, father-in-law, stepparent, legal guardian, grandparent, child, daughter-in-law, son-in-law, stepchild, grandchild, sibling, sister-in-law, brother-in-law, spouse, or civil union partner of the seller or transferor;

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

(3) Any replica of any firearm described in paragraph (c)(2) of this section if such replica:

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

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

(4) Any muzzle-loading firearm designed for hunting or competitive shooting not requiring a criminal background check pursuant to federal law;

(5) Transactions in which the potential purchaser or transferee is a qualified active duty law-enforcement officer or a qualified retired law-enforcement officer, as such terms are defined in § 9902 of this title;

(6) Transactions in which the potential purchaser or transferee holds a current and valid concealed carry permit issued by the Superior Court of the State of Delaware pursuant to § 9901 of this title.

(7) Transactions in which the prospective buyer or transferee is a bona fide member or adherent of an organized church or religious group, the tenets of which prohibit photographic identification; provided, however, that no unlicensed person shall sell or transfer any firearm to any such person without having conducted a criminal history background check in accordance with § 1407(a) of this title to determine whether the sale or transfer would be in violation of federal or state law;

(8) Transactions involving the sale or transfer of a curio or relic to a licensed collector, as such terms are defined in 27 C.F.R. 478.11, as the same may be amended from time to time;

(9) Transactions involving the sale or transfer of a firearm to an authorized representative of the State or any subdivision thereof as part of an authorized voluntary gun buyback program.

(d) Notwithstanding anything to the contrary herein, no fee for a criminal history background check may be charged for the return of a firearm to its owner that has been repaired, serviced or modified by a licensed gunsmith or other person lawfully engaged in such activities as a regular course of trade or business.

(e) The State Bureau of Investigation (the "Bureau") shall facilitate the sale or transfer of any firearm in which the prospective buyer is a bona fide member or adherent of an organized church or religious group, the tenets of which prohibit photographic identification, pursuant to the following procedure. For purposes of this subsection, the terms "prospective buyer" and "prospective seller" shall include prospective transferors and prospective transferees, respectively.

(1) The prospective buyer and seller shall jointly appear at the State Bureau of Investigation during regular hours of business, and shall inform the Bureau of their desire to avail themselves of the procedure set forth herein. The actual cost of the criminal history background check shall be paid by either the prospective buyer or prospective seller.

(2) The prospective buyer shall be required to submit fingerprints and other necessary information in order to obtain a report of the individual's entire criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). In addition, the prospective buyer shall submit to the Bureau a signed affidavit stating that photographic identification conflicts with the tenets of an organized church or religious group of which the prospective buyer is a bona fide member.

(3) In the event that said background check reveals that the prospective buyer is prohibited from possessing, purchasing or owning a firearm, the Bureau shall so inform both parties of that fact and the transfer shall not take place.

(4) The Bureau shall maintain a record of all background checks under this section to the same extent as is required of licensed dealers pursuant to Chapter 9 of Title 24.

(5) The Bureau is hereby authorized to promulgate such reasonable forms and regulations as may be necessary or desirable to effectuate the provisions of this subsection.

§ 9906 Report of loss, theft of firearm.

(a) Any owner of a firearm, defined in § 103 of this title, shall report the loss or theft of the firearm within 7 days after the discovery of the loss or theft to either:

(1) The law-enforcement agency having jurisdiction over the location where the loss or theft of the firearm occurred; or

(2) Any State Police troop.

(b) Whoever is convicted of a violation of this section shall:

(1) For the first offense, be guilty of a violation and be subject to a civil penalty of not less than \$75 nor more than \$100.

(2) For a second offense committed at any time after the sentencing or adjudication of a first offense, be guilty of a violation and be subject to a civil penalty of not less than \$100 nor more than \$250.

§ 9907 Civil procedures to relinquish firearms or ammunition.

(a) For the purposes of this section:

(1) "Ammunition" means 1 or more rounds of fixed ammunition designed for use in and capable of being fired from a pistol, revolver, shotgun or rifle but shall not mean inert rounds or expended shells, hulls or casings.

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

(3) “Dangerous to others or self” means as “dangerous to others” and “dangerous to self” are defined in this subsection.

(4) “Dangerous to self” means that by reason of mental condition there is a substantial likelihood that the person will sustain serious bodily harm to oneself within the reasonably foreseeable future. This determination must take into account a person’s history, recent behavior, and any recent act or threat.

(5) “Law-enforcement agency” means an agency established by this State, or by any county or municipality within this State, to enforce criminal laws or investigate suspected criminal activity.

(b) If a law-enforcement agency receives a written report about an individual under § 5402 or § 5403 of Title 16, the law-enforcement agency shall determine if there is probable cause that the individual is dangerous to others or self and in possession of firearms or ammunition.

(1)a. If the law-enforcement agency determines that there is probable cause that the individual is dangerous to others or self and in possession of firearms or ammunition, the law-enforcement agency shall do both of the following:

1. Immediately seek an order from the Justice of the Peace Court that the individual relinquish any firearms or ammunition owned, possessed, or controlled by the individual.

2. Immediately refer the report under § 5402 or § 5403 of Title 16 and its investigative findings to the Department of Justice.

b. In making the probable cause determination under paragraph (b)(1)a. of this section, a law-enforcement agency must determine if the individual is subject to involuntary commitment under §§ 5009, 5011, or 5013 of Title 16. If the individual is subject of involuntary commitment, the law-enforcement agency may not seek an order under this paragraph (b)(1).

(2) The Department of Justice may, upon review of the report and the law-enforcement agency’s investigative findings, petition the Superior Court for an order that the individual relinquish any firearms or ammunition owned, possessed, or controlled by the individual. The Department of Justice must file one of the following with the Superior Court within 30 days after the entry of the Justice of the Peace Court’s order under paragraph (d)(1) of this section:

a. A petition under this paragraph (b)(2).

b. A petition requesting additional time to file a petition under this paragraph (b)(2) for good cause shown.

1. If the Superior Court denies the Department of Justice’s request for additional time to file a petition under this paragraph (b)(2)b., the Department of Justice has either the remainder of the 30 days provided by this



paragraph (b)(2) or 7 days from the date of the Superior Court's denial, whichever is longer, to file a petition with Superior Court under this paragraph (b)(2).

2. If the Superior Court approves the Department of Justice's request for additional time to file a petition under this paragraph (b)(2)b., the Court may not grant the Department more than 15 days to file the petition from the date of the Court's approval.

(3) If the Department of Justice does not file a petition with Superior Court under paragraph (b)(2) of this section within the timeframes under paragraph (b)(2) of this section, the Justice of the Peace Court's order is void and a law-enforcement agency holding the firearms or ammunition of the individual subject to the order must return the firearms or ammunition to the individual.

(c)(1) The following procedures govern a proceeding under paragraph (b)(1)a. of this section:

a. The Justice of the Peace Court shall immediately hear a request for an order under paragraph (b)(1)a. of this section.

b. The law-enforcement agency has the burden of demonstrating that probable cause exists to believe that the individual subject to a report under § 5402 or § 5403 of Title 16 is dangerous to others or self and in possession of firearms or ammunition.

c. The individual does not have the right to be heard or to notice that the law-enforcement agency has sought an order under paragraph (b)(1)a. of this section.

(2) The following procedures govern a proceeding under paragraph (b)(2) of this section:

a. The individual has the right to be heard.

b. If a hearing is requested, it must be held within 15 days of the Department of Justice's filing of the petition under paragraph (b)(2) of this section, unless extended by the Court for good cause shown.

c. If a hearing is held, the individual has the right to notice of the hearing, to present evidence, and to cross examine adverse witnesses.

d. If a hearing is held, the hearing must be closed to the public and testimony and evidence must be kept confidential, unless the individual requests the hearing be public.

e. If a hearing is held, the hearing must be on the record to allow for appellate review.

f. The Department of Justice has the burden of proving by clear and convincing evidence that the individual is dangerous to others or self.

(3)a. The Justice of the Peace Court may adopt additional rules governing proceedings under paragraph (b)(1)a. of this section.

b. The Superior Court may adopt additional rules governing proceedings under paragraph (b)(2) of this section.

(d)(1) If the Justice of the Peace Court finds that there is probable cause to believe that an individual is dangerous to others or self, the Court shall order the individual to relinquish any firearms or ammunition owned, possessed, or controlled by the individual. The Court may do any of the following through its order:

a. Require the individual to relinquish to a law-enforcement agency receiving the Court's order any firearms or ammunition owned, possessed, or controlled by the individual.

b. Prohibit the individual from residing with another individual who owns, possesses, or controls firearms or ammunition. Nothing in this section may be construed to impair or limit the rights, under the Second Amendment to the United States Constitution or article I, § 20 of the Delaware Constitution, of an individual who is not the subject of the Court's order of relinquishment.

c. Direct a law-enforcement agency having jurisdiction where the individual resides or the firearms or ammunition are located to immediately search for and seize any firearms or ammunition owned, possessed, or controlled by the individual.

(2) If the Superior Court finds by clear and convincing evidence that an individual is dangerous to others or self, the Court shall order the individual to relinquish any firearms or ammunition owned, possessed, or controlled by the individual. The Court may do any of the following through its order:

a. Require the individual to relinquish to a law-enforcement agency receiving the Court's order any firearms or ammunition owned, possessed, or controlled by the individual.

b. Allow the individual to voluntarily relinquish to a law-enforcement agency receiving the Court's order any firearms or ammunition owned, possessed, or controlled by the individual.

c. Allow the individual to relinquish firearms or ammunition owned, possessed, or controlled by the individual to a designee of the individual. A designee of the individual must not reside with the individual and must not be a person prohibited under § 1404 of this title. The Court must find that the designee of the individual will keep firearms or ammunition owned, possessed, or controlled by the individual out of the possession of the individual.

d. Prohibit the individual from residing with another individual who owns, possesses, or controls firearms or ammunition. Nothing in this section may be construed to impair or limit the rights, under the Second Amendment to the United States Constitution or article I, § 20 of the Delaware Constitution, of an individual who is not the subject of the Court's order of relinquishment.

e. Direct a law-enforcement agency having jurisdiction where the individual resides or the firearms or ammunition are located to immediately search for and seize firearms or ammunition of the individual if the Department of Justice shows that the individual has ownership, possession, or control of a firearm or ammunition.

(e)(1) An individual subject to the Superior Court's order of relinquishment may petition the Relief from Disabilities Board for an order to return firearms or ammunition under § 9904(h) of this title.

(2) If the basis for relinquishment under this section is removed by the Relief from Disabilities Board established by § 9904(h) of this title, any firearms or ammunition taken from the individual must be restored in a timely manner without the additional requirement of petitioning under § 9904(h) of this title.

(f) Any party in interest aggrieved by a decision of the Superior Court's order of relinquishment under this section may appeal the decision to the Supreme Court.

(g)(1) The State Police and the Department of Justice shall work with county and municipal law-enforcement agencies and the Department of Health and Social Services, and its Division of Substance Abuse and Mental Health, to develop appropriate internal policies and regulations to ensure that personnel who act under this section are trained on appropriate mental health risk assessment procedures and to look for histories of violence.

(2) The Supreme Court, Superior Court, Justice of the Peace Court, Department of Justice, State Police, State Bureau of Identification, Delaware Criminal Justice Information System Board of Managers, and the Department of Health and Social Services may promulgate rules and regulations to carry out the purposes of this section, § 1404(a)(2) of this title, and §§ 5402 and 5403 of Title 16.

§ 9908 Relinquishment of a bump stock or trigger crank device.

(a) Bump stock or trigger crank devices shall be relinquished to a law-enforcement agency of this State and may be destroyed by the law-enforcement agency 30 days after relinquishment.

(b) Relinquishment to a law-enforcement agency is not a transfer or evidence of possession of a bump stock or trigger crank device.

Section 67. Amend § 210, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 210 Alteration, theft or destruction of will; ~~class E felony~~ penalties.

Whoever wilfully adds to, alters, defaces, erases, obliterates, mutilates, blots, blurs, hides, conceals, destroys, misplaces with intent to conceal or commits an act of theft of any instrument of writing purporting to be or in the nature of a last will and testament and intended to take effect upon the death of the testator, whether the person shall have been given custody or possession thereof by the testator, or shall have obtained custody or possession of the purported last will and

testament in any other manner whatsoever, shall be ~~guilty of a class E felony~~ subject to criminal penalties under § 1103 or § 1122 of Title 11.

Section 68. Amend § 728, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 728 Residence; visitation; sanctions.

(f) The Court shall not enter an order requiring visitation in a correctional facility if the person incarcerated has been adjudicated of committing murder ~~in the first or second degrees~~ under §§ 1001 or 1002 of Title 11.

Section 69. Amend § 9303, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9303 Hazing prohibited.

Any person who causes or participates in hazing ~~commits a class B misdemeanor~~ shall be subject to criminal penalties under § 1029 of Title 11.

Section 70. Amend § 5301, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5301 Bringing armed soldiers into State to interfere with elections; penalty.

Whoever, being a citizen or inhabitant of this State:

(1) Sends or causes to be sent, brings or causes to be brought into this State, or aids, abets, procures, advises, counsels or in any manner assists in sending or bringing into this State any armed soldier to be present at any voting place in this State or within 5 miles thereof, on the day of any general, special or other election held in this State; or

(2) Aids, abets, procures, advises, counsels or in any manner assists the presence or attendance of any armed soldier at any such voting place, or within 5 miles thereof, on any such election day,

~~shall be guilty of a felony, and shall be fined not less than \$1,000 nor more than \$10,000, and imprisoned not less than 1 nor more than 5 years~~ shall be subject to criminal penalties under § 1243 of Title 11, and shall forever thereafter be incapable of exercising the right of suffrage in this State.

Section 71. Amend § 5302, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5302 Abetting or counseling military interference with elections; penalty.

Whoever, being a citizen or inhabitant of this State, aids, abets, procures, advises, counsels or in any manner assists or is guilty of military interference in any manner with the freedom of any election in this State ~~shall be guilty of felony, and shall be fined not less than \$1,000 nor more than \$10,000 and imprisoned not less than 1 nor more than 5 years~~

shall be subject to criminal penalties under § 1243 of Title 11, and shall forever thereafter be incapable of exercising the right of suffrage in this State.

Section 72. Amend § 8043, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8043 Violations; penalties; jurisdiction in Superior Court.

(a) Except as set forth in § 8044 of this title, any person who knowingly violates any provision of § 8003, § 8004 or § 8005 of this title shall be ~~guilty of a class B misdemeanor~~ subject to criminal penalties under § 1201 of Title 11.

Section 73. Amend § 1132, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1132 Reporting requirements.

(a)(1) Any employee of a facility or person who provides services to a patient or resident of a facility on a regular or intermittent basis who has reasonable cause to believe that a patient or resident in a facility has been abused, mistreated, neglected, or financially exploited shall immediately report such abuse, mistreatment, neglect, or financial exploitation to the Department by oral communication. A written report shall be filed by the employee or person providing services to a patient or resident of a facility within 48 hours after the employee or person providing services to a patient or resident of a facility first gains knowledge of the abuse, mistreatment, neglect or financial exploitation.

(d) Any person who intentionally makes a false report under this subchapter is ~~guilty of a class A misdemeanor~~ shall be subject to criminal penalties under § 1223 of Title 11.

Section 74. Amend § 1136, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1136 Violations.

(a) Any person who knowingly or recklessly abuses, mistreats, or neglects a patient or resident of a facility is ~~guilty of a class A misdemeanor~~ shall be subject to criminal penalties under Chapter 10 of Title 11.

~~(1) If the abuse involves sexual contact such person is guilty of a class G felony.~~

~~(2) If the abuse, mistreatment, or neglect results in serious physical injury, sexual penetration, or sexual intercourse, such person is guilty of a class C felony.~~

~~(3) If the abuse, mistreatment, or neglect results in death, then the person is guilty of a class A felony.~~

(b) Any person who knowingly causes medication diversion of a patient or ~~resident, is guilty of the following:~~ resident shall be subject to criminal penalties under Subchapter II of Chapter 14 of Title 11.

~~(1) A class G felony.~~

2510 ~~(2) A class F felony, if committed by a health care professional.~~

2511 (c) Any person who knowingly commits financial exploitation of a patient's or resident's resources ~~is guilty of the~~

2512 ~~following:~~ shall be subject to criminal penalties under Chapter 11 of Title 11

2513 ~~(1) A class A misdemeanor if the value of the resources is less than \$1,000.~~

2514 ~~(2) A class G felony if the value of the resources is \$1,000 or more.~~

2515 (d) Any member of the board of directors or a high managerial agent who knows that patients or residents of the

2516 facility are being abused, mistreated, neglected, or financially exploited and fails to promptly take corrective action ~~is guilty~~

2517 ~~of a class A misdemeanor~~ shall be subject to criminal penalties under § 1243 of Title 11.

2518 (e) Nothing in this section shall preclude a separate charge, conviction, and sentence for any other crime set forth

2519 in this title, or in the Delaware Code.

2520 Section 75. Amend § 2223, Title 16 of the Delaware Code by making deletions as shown by strike through and

2521 insertions as shown by underline as follows:

2522 § 2223 Unwarranted confinement in a substance abuse treatment facility or denial of rights; penalties.

2523 (a) Any person that willingly causes or conspires with or assists another to cause:

2524 (1) The unwarranted involuntary confinement of any individual in a substance abuse treatment facility under

2525 this chapter; or

2526 (2) The denial to any individual of any of the rights accorded to said individual under this chapter;

2527 ~~Shall be punished by a fine not exceeding \$500 or imprisonment not exceeding 1 year, or both~~ Shall be subject to

2528 criminal penalties under § 1061 of Title 11.

2529 ~~(b) The Superior Court shall have jurisdiction of offenses under this section. [Deleted.]~~

2530 Section 76. Amend § 2513, Title 16 of the Delaware Code by making deletions as shown by strike through and

2531 insertions as shown by underline as follows:

2532 § 2513 Penalties.

2533 (b) Whoever knowingly conceals, destroys, falsifies or forges a document with intent to create the false impression

2534 that another person has directed that maintenance medical treatment be utilized for the prolongation of that person's life is

2535 ~~guilty of a class C felony~~ shall be subject to criminal penalties under Subchapter II of Chapter 11 of Title 11.

2536 (c) The Superior Court shall have jurisdiction over all offenses under this chapter.

2537 Section 77. Amend § 3050F, Title 16 of the Delaware Code by making deletions as shown by strike through and

2538 insertions as shown by underline as follows:

(a) All dogs shall be deemed personal property and may be the subject of theft pursuant to ~~Chapter 5~~ Subchapter I of Chapter 11 of Title 11. Any warrant of arrest or other process issued under or by virtue of the several laws in relation to the theft of such property may be directed to and executed by any police officer, constable, or animal welfare officer.

Section 78. Amend § 3056F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3056F Unauthorized acts against a service dog; penalties.

(d) No person shall intentionally kill a service dog owned by a private person or agency. Whoever violates this subsection shall be ~~guilty of a class D felony~~ subject to criminal penalties under § 1327 of Title 11. This subsection, however, does not apply to a law-enforcement officer as defined by ~~§ 222~~ § 103 of Title 11 who is forced to take such action pursuant to the lawful performance of the officer's duties.

(e) No person shall intentionally steal, take, or wrongfully obtain a service dog owned by a private person or agency. Whoever violates this subsection shall be ~~guilty of a class E felony~~ subject to criminal penalties under Subchapter I of Chapter 11 of Title 11.

Section 79. Amend Chapter 30F, Part II, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter VI. General Provisions.

§ 3091F Definitions.

For the purposes of this subchapter, the term "domestic dog or cat" means a dog (Canis familiaris) or cat (Felis catus or Felis domesticus) that is generally recognized in the United States as being a household pet and shall not include coyote, fox, lynx, bobcat or any other wild or commercially raised canine or feline species the fur or hair of which is recognized for use in warm clothing and outer wear by the United States Department of Agriculture and which species is not recognized as an endangered or threatened species by the United States Fish and Wild Life Service or the Delaware Department of Natural Resources and Environmental Control.

§ 3092F The unlawful trade in dog or cat by-products; class B misdemeanor; class A misdemeanor, penalties.

(a)(1) A person is guilty of the unlawful trade in dog or cat by-products in the second degree if the person knowingly or recklessly sells, barter or offers for sale or barter, the fur or hair of a domestic dog or cat or any product made in whole or in part from the fur or hair of a domestic dog or cat.

(2) This subchapter shall not apply to the sale or barter, or offering for sale or barter, of the fur or hair of a domestic dog or cat which has been cut at a commercial grooming establishment, or at a veterinary office or clinic, or for scientific research purposes.

2569                   (3) The unlawful trade in dog or cat by-products in the second degree is a class B misdemeanor.

2570                   (b)(1) A person is guilty of the unlawful trade in dog or cat by-products in the first degree if the person knowingly  
2571 or recklessly sells, barter or offers for sale or barter, the flesh of a domestic dog or cat or any product made in whole or in  
2572 part from the flesh of a domestic dog or cat.

2573                   (2) The unlawful trade in dog or cat by-products in the first degree is a class A misdemeanor.

2574                   (c) In addition to any other penalty provided by law, any person convicted of a violation of this subchapter shall  
2575 be:

2576                   (1) Prohibited from owning or possessing any domestic dog or cat for 15 years after said conviction, except  
2577 for those grown, raised or produced within the State for resale, where the person has all necessary licenses for such sale  
2578 or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale;

2579                   (2) Subject to a fine in the amount of \$2,500 in any court of competent jurisdiction; and

2580                   (3) Required to forfeit any domestic dog or cat illegally owned in accordance with the provisions of Chapter  
2581 79 of Title 3.

2582                   Section 80. Amend Part II, Title 16 of the Delaware Code by making deletions as shown by strike through and  
2583 insertions as shown by underline as follows:

2584                   Chapter 30M. Body-piercing, tattooing, branding, and tongue splitting.

2585                   § 3001M Definitions.

2586                   As used in this section:

2587                   (1) "Body-piercing" means the perforation of human tissue excluding the ear for a nonmedical purpose.

2588                   (2) "Branding" means a permanent mark made on human tissue by burning with a hot iron or other  
2589 instrument.

2590                   (3) "Minor" means an individual under 18 years of age who is not emancipated.

2591                   (4) "Tattoo" means 1 or more of the following:

2592                   a. An indelible mark made upon the body of another person by the insertion of a pigment under the skin.

2593                   b. An indelible design made upon the body of another person by production of scars other than by  
2594 branding.

2595                   (5) "Tongue-splitting" means the surgical procedure of cutting a human tongue into 2 or more parts giving it a  
2596 forked or multi-tipped appearance.

2597                   § 3002M Body-piercing, tattooing or branding; consent for minors; civil penalties.



2598           (a) A notarized prior written consent of a minor's parent over the age of 18 or legal guardian is required for the  
2599 specific act of tattooing, branding or body piercing.

2600           (b) In addition to the penalties set forth under §§ 208 and 1022 of Title 11, a person who violates subsection (a) of  
2601 this section is liable in a civil action for actual damages or \$1,000, whichever is greater, plus reasonable court costs and  
2602 attorney fees.

2603           (c) Nothing in this section shall require a person to tattoo, brand or body pierce a minor with parental consent if  
2604 the person does not regularly tattoo, brand or body pierce customers under the age of 18.

2605           § 3003M Tongue-splitting; additional civil penalties.

2606           (a) An act of tongue-splitting performed by a person who is neither a physician nor a dentist, holding a valid  
2607 license issued under the laws of the State of Delaware, and the person performs an act of tongue-splitting on any other  
2608 person in this State, constitutes both the practice of medicine without a license and the practice of dentistry without a  
2609 license. Nothing in this section shall prohibit prosecution under the provisions of either § 1134 of Title 24 relating to the  
2610 practice of dentistry without a license, or § 1766 of Title 24 relating to the practice of medicine without a license, or both.

2611           (b) In addition to the penalties set forth under subsection (a) and §§ 208 and 1022 of Title 11, any person who has  
2612 performed an act of tongue-splitting in violation of this section shall be held liable in a civil action, brought by any person  
2613 aggrieved by such act, for actual damages or \$1,000, whichever is greater; plus reasonable court costs and attorney fees.

2614           Section 81. Amend § 4740, Title 16 of the Delaware Code by making deletions as shown by strike through and  
2615 insertions as shown by underline as follows:

2616           § 4740 Sale of pseudoephedrine or ephedrine.

2617           (a) Beginning January 1, 2014, before completing a sale of an over-the-counter material, compound, mixture, or  
2618 preparation containing any detectable quantity of pseudoephedrine or ephedrine, its salts or optical isomers, or salts of  
2619 optical isomers a pharmacy or retailer shall electronically submit the information required pursuant to subsection (b) of this  
2620 section to the National Precursor Log Exchange system (NPLeX) administered by the National Association of Drug  
2621 Diversion Investigators; provided that the NPLeX is available to pharmacies or retailers in the State without a charge for  
2622 accessing the system. The pharmacy or retailer shall not complete the sale if the NPLeX system generates a stop sale alert.  
2623 The system shall contain an override function that may be used by an agent of a retail establishment who is dispensing the  
2624 drug product and who has a reasonable fear of imminent bodily harm if the transaction is not completed. The system shall  
2625 create a record of each use of the override mechanism.

2626           (g) A violation of this section is a class A misdemeanor shall be subject to criminal penalties under § 1223 of Title  
2627 11.

Section 82. Amend § 4743, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4743 Definitions.

~~The following definitions shall be applicable to this subchapter:~~

(1) ~~“Board” means the Delaware State Board of Pharmacy;~~

(2) ~~“Delaware patient” means any person residing within or outside of this State who requests an internet pharmacy deliver a prescription drug order to a location within this State;~~

(3) ~~“Electronic mail” or “e-mail” shall mean any message transmitted through the Internet including, but not limited to, messages transmitted to or from any address affiliated with an internet site;~~

(4) ~~“Internet” means collectively the international network of interconnected government, educational and commercial computer networks, including equipment and operating software;~~

(5) ~~“Internet pharmacy” means any person or entity maintaining an internet site which solicits or receives, or offers to solicit or receive, prescription drug orders to be dispensed and delivered to patients, including Delaware patients, by means of the United States Postal Service or any other delivery service. The term “internet pharmacy” does not include a pharmacy which has been issued a valid permit or license by the Board;~~

(6) ~~“Internet site” means a specific location on the internet that is determined by internet protocol numbers, domain name, or both, including, but not limited to, domain names that use the designations “.com,” “.edu,” “.gov,” “.net” and “.org.”~~

(7) ~~“Licensed Delaware pharmacist” means a pharmacist licensed by the Board to engage in the practice of pharmacy in this State;~~

(8) ~~“Link,” with respect to the Internet, means 1 or more letters, words, numbers, symbols, or graphic items that appear on a page of an internet site for the purpose of serving, when activated, as a method for executing an electronic command:~~

a. ~~To move from viewing 1 portion of a page on such site to another portion of the page; or~~

b. ~~To move from viewing 1 page on such site to another page on such site; or~~

c. ~~To move from viewing a page on 1 internet site to a page on another internet site. [Deleted.]~~

Section 83. Amend § 4744, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4744 Prohibited practices; penalties.

2657           ~~(a)(1) An internet pharmacy shall not sell, dispense, distribute or deliver or offer to sell, dispense, distribute or~~  
2658 ~~deliver or participate in the sale, distribution, dispensing or delivery of any prescription drug to a Delaware patient unless~~  
2659 ~~the practitioner issuing the prescription drug order to be filled or dispensed by the internet pharmacy is a licensed~~  
2660 ~~practitioner who has a patient-practitioner relationship with the Delaware patient; and~~

2661           ~~(2) An internet pharmacy or any owner or operator thereof who knowingly violates this subsection is guilty of~~  
2662 ~~a class D felony and shall be fined not less than \$2,500 nor more than \$25,000 for each offense; provided, however,~~  
2663 ~~that if an internet pharmacy or any owner or operator thereof knowingly violates this subsection and the substance or~~  
2664 ~~prescription drug dispensed causes death or serious physical injury to a Delaware patient, the internet pharmacy or any~~  
2665 ~~owner or operator thereof is guilty of a class B felony and shall be fined not less than \$25,000 nor more than \$100,000~~  
2666 ~~for each offense.~~

2667           ~~(b)(1) An internet pharmacy or any owner or operator thereof shall not advertise or represent by advertisement,~~  
2668 ~~sales presentation or direct communication with any person within this State, including by telephone, facsimile, electronic~~  
2669 ~~mail or otherwise, that a prescription drug may be obtained by a Delaware patient based on an internet consultation,~~  
2670 ~~questionnaire or medical history form submitted to the internet pharmacy through an internet site. This subsection shall not~~  
2671 ~~apply to any internet pharmacy or internet site which advises in a clear and visible manner on each page of its internet site,~~  
2672 ~~or by link to a separate page, that it will not deliver or ship prescription drugs to a location within this State.~~

2673           ~~(2) An internet pharmacy or any owner or operator thereof who knowingly violates this subsection is guilty of~~  
2674 ~~a class D felony and shall be fined not less than \$2,500 nor more than \$25,000 for each offense.~~

2675           ~~(c)(1) A practitioner or any person acting as a practitioner within or outside of this State shall not issue a~~  
2676 ~~prescription drug order, by e-mail or otherwise, to or on behalf of a Delaware patient through an internet pharmacy unless~~  
2677 ~~the person is a licensed practitioner who has a patient-practitioner relationship with the Delaware patient.~~

2678           ~~(2) A practitioner or any person acting as a practitioner who knowingly violates this subsection is guilty of a~~  
2679 ~~class D felony and shall be fined not less than \$2,500 nor more than \$25,000 for each offense; provided, however that~~  
2680 ~~if a practitioner or any person acting as a practitioner knowingly violates this subsection and the substance or~~  
2681 ~~prescription drug dispensed causes death or serious physical injury to a Delaware patient, then the practitioner or~~  
2682 ~~person acting as a practitioner is guilty of a class B felony and shall be fined not less than \$25,000 nor more than~~  
2683 ~~\$100,000 for each offense.~~

2684           ~~(3) The provisions of this subsection shall not apply to a licensed practitioner who inadvertently allows that~~  
2685 ~~licensed practitioner's own respective license or permit to lapse for a period of less than 60 days.~~

(d)(1) A licensed Delaware pharmacist practicing within or outside of this State shall not dispense or authorize the dispensing of a prescription drug order, by e-mail or otherwise, to or on behalf of a Delaware patient through an internet pharmacy if:

a. The licensed Delaware pharmacist knows that the prescription order was issued solely on the basis of an internet consultation or questionnaire or medical history form submitted to an internet pharmacy through an internet site; or

b. The licensed Delaware pharmacist knows that the prescription order was issued by a practitioner who is not a licensed practitioner or by a licensed practitioner who does not have a patient-practitioner relationship with the Delaware patient.

(2) Any licensed Delaware pharmacist who violates this subsection is guilty of a class F felony and shall be fined not less than \$1,000 nor more than \$10,000 for each offense.

(e)(1) No person within or outside of this State shall purchase, attempt to purchase, offer to purchase or submit an order to purchase, by e-mail or otherwise, any prescription drug from an internet pharmacy to be delivered to a location within this State unless the person has been issued a valid prescription drug order from licensed practitioner with whom the person has a patient-practitioner relationship.

(2) A person who knowingly violates this subsection shall be guilty of a class A misdemeanor and shall be fined not less than \$100 nor more than \$1,000 for each offense.

(f) The Superior Court shall have exclusive jurisdiction over any offense defined in this subchapter. In any prosecution for an offense prohibited by this subchapter, the delivery of a prescription drug to a location within this State shall constitute a result occurring within this State for purposes of establishing jurisdiction under § 204 of Title 11.

(g) In any prosecution for an offense defined in this subchapter it shall not be a defense that a Delaware patient or any recipient or intended recipient of a prescription drug order is not prosecuted, convicted or punished based upon the same act or transaction.

(h) Nothing in this section shall be construed to limit or prevent the Attorney General or applicable professional board from taking any civil or administrative action permitted by law against an internet pharmacy, practitioner, pharmacist or other person violating the provisions of this subchapter. [Deleted.]

Section 84. Amend § 4745, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4745 Seizure of unlawfully delivered prescription drugs.

(a) Any prescription drug which is ordered, sold, dispensed or delivered in violation of ~~this subchapter~~ § 1427 of Title 11 is hereby declared to be contraband and may be seized by any peace officer authorized to enforce the provisions of ~~this subchapter~~ § 1427 of Title 11.

(b) Any prescription drugs seized pursuant to ~~this subchapter~~ § 1427 of Title 11 shall be subject to forfeiture pursuant to the provisions and procedures set forth in § 4784 of this title.

Section 85. Amend § 4751A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4751A Aggravating factors related to drug offenses.

~~For the purposes of this subchapter:~~

~~(1) Each of the following shall be an “aggravating factor” within the meaning of the offenses in this subchapter:~~

~~a. The offense was committed within a protected school zone, as defined in § 4701 of this title;~~

~~b. The offense was committed within a protected park or recreation area, or church, synagogue or other place of worship, as defined in § 4701 of this title;~~

~~c. The offense occurred in a vehicle, as defined in § 4701 of this title;~~

~~d. The defendant was an adult, that is, a person who had reached his or her eighteenth birthday, and the offense involved a juvenile, that is, a person who had not reached his or her eighteenth birthday, as a co-conspirator or accomplice, or as the intended or actual recipient of the controlled substances, and the defendant was more than 4 years older than the juvenile; and~~

~~e. The defendant, during or immediately following the commission of any offense in this title:~~

~~1. Intentionally prevented or attempted to prevent a law enforcement officer, as defined in § 222(15) of Title 11, from effecting an arrest or detention of the defendant by use of force or violence towards the law enforcement officer; or~~

~~2. Intentionally fled in a vehicle from a law enforcement officer, as defined in § 222(15) of Title 11, while the law enforcement officer was effecting an arrest or detention of the defendant, thereby creating a substantial risk of physical injury to other persons.~~

~~(2) When the aggravating factors “protected school zone” and “protected park, recreation area, church, synagogue or other place of worship” of paragraphs (1)a. and (1)b. of this section are both present, both may be alleged and proven, but they shall only count as 1 aggravating factor in determining which offense the defendant committed.~~

(3) In any offense in which 1 or more aggravating factors set forth in this section are present, the factor or factors shall be alleged in the charging information or indictment, and constitute an element of the offense. When there are more aggravating factors present than are required to prove the offense, all may be alleged and proven. [Deleted.]

Section 86. Amend § 4751B, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4751B Prior qualifying Title 16 convictions.

For the purposes of this subchapter:

(1) A “prior qualifying Title 16 conviction” means any prior adult felony conviction for a Title 16 offense where the conviction was 1 of former § 4751, § 4752, or § 4753A of this title, or any other former section of this title that was, at the time of conviction, a class C or higher felony; or where the conviction was 1 of § 4752, § 4753, § 4754, § 4755, or § 4756 of this title, or any other felony conviction specified in the controlled substances law of any other state, local jurisdiction, the United States, any territory of the United States, any federal or military reservation, or the District of Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new offense occurs within 5 years of the date of conviction for the earlier offense or the date of termination of all periods of incarceration or confinement imposed pursuant to the conviction, whichever is the later date. For purposes of §§ 4761(a) and (b), 4763 and 4764 of this title, a “prior qualifying Title 16 conviction” means any prior adult conviction, including both felony and misdemeanor, under this title, if the new offense occurs within 5 years of the date of conviction for the earlier offense, or the date of termination of all periods of incarceration or confinement imposed pursuant to the conviction, whichever is the later date.

(2) “Two prior qualifying Title 16 convictions” means 1 “prior qualifying Title 16 conviction,” as defined in paragraph (1) of this section, and an additional prior adult felony conviction or a juvenile adjudication for a Title 16 offense, where the conviction or juvenile adjudication was 1 of former § 4751, § 4752, or § 4753A of this title, or any other former section of this title that was at the time of conviction or juvenile adjudication a class C or higher felony, or where the conviction or adjudication was 1 of § 4752, § 4753, § 4754, § 4755, or § 4756 of this title, or any other felony conviction or juvenile adjudication specified in the controlled substances law of any other state, local jurisdiction, the United States, any federal or military reservation, or the District of Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new offense occurs within 10 years of the date of conviction or juvenile adjudication for the additional prior adult felony conviction or juvenile adjudication or the date of termination of all periods of incarceration or confinement imposed pursuant to the earlier conviction or juvenile adjudication, whichever is the later date, and the sentence or disposition following an adjudication of delinquency for

the additional prior adult felony conviction or juvenile adjudication was imposed before the offense which is the basis for the prior qualifying Title 16 conviction was committed. For a juvenile adjudication to count as the additional prior adult felony conviction or juvenile adjudication, the juvenile must have reached his or her sixteenth birthday by the date the criminal act was committed which forms the basis for the juvenile adjudication.

(3) In any offense involving a "prior qualifying Title 16 conviction" or "2 prior qualifying Title 16 convictions," the prior qualifying Title 16 conviction or convictions, including any juvenile adjudication, shall be proved in accordance with § 4215 of Title 11.

*(4) Penalties.—*

a. In any case in which a defendant has a "prior qualifying Title 16 conviction," the defendant shall be sentenced as follows:

1. A defendant convicted of § 4753(1) of this title shall be sentenced as though the defendant was convicted of § 4752(2) of this title.

2. A defendant convicted of § 4753(4) of this title shall be sentenced as though the defendant was convicted of § 4752(5) of this title.

3. A defendant convicted of § 4754(1) of this title shall be sentenced as though the defendant was convicted of § 4753(2) of this title.

4. A defendant convicted of § 4754(2) of this title shall be sentenced as though the defendant was convicted of § 4752(4) of this title.

5. A defendant convicted of § 4754(3) of this title shall be sentenced as though the defendant was convicted of § 4753(5) of this title.

6. A defendant convicted of § 4755 of this title shall be sentenced as though the defendant was convicted of § 4753(4) of this title.

7. A defendant convicted of § 4756 of this title shall be sentenced as though the defendant was convicted of § 4754(3) of this title.

8. A defendant convicted of § 4757(c)(1) of this title shall be sentenced as though the defendant was convicted of § 4757(c)(2) of this title.

9. A defendant convicted of § 4761(a) of this title shall be sentenced as though the defendant was convicted of § 4761(b) of this title.

10. A defendant convicted of § 4761(c) of this title shall be sentenced as though the defendant was convicted of § 4761(d) of this title.

2804                   11. ~~A defendant convicted of § 4763(b) of this title shall be sentenced as though the defendant was~~  
2805                   ~~convicted of § 4763(c) of this title.~~

2806                   12. ~~A defendant convicted of § 4764(b) of this title shall be sentenced as though the defendant was~~  
2807                   ~~convicted of § 4764(a) of this title.~~

2808                   b. ~~In any case in which a defendant has “2 prior qualifying Title 16 convictions”, the defendant shall be~~  
2809                   ~~sentenced as follows:~~

2810                   1. ~~A defendant convicted of § 4754(1) of this title shall be sentenced as though the defendant was~~  
2811                   ~~convicted of § 4752 of this title.~~

2812                   2. ~~A defendant convicted of § 4755 of this title shall be sentenced as though the defendant was~~  
2813                   ~~convicted of § 4752(5) of this title.~~

2814                   3. ~~A defendant convicted of § 4756 of this title shall be sentenced as though the defendant was~~  
2815                   ~~convicted of § 4753(5) of this title. [Deleted.]~~

2816                   Section 87. Amend § 4751C, Title 16 of the Delaware Code by making deletions as shown by strike through and  
2817                   insertions as shown by underline as follows:

2818                   § 4751C Quantity tiers related to drug offenses.

2819                   ~~For the purposes of this subchapter:~~

2820                   (1) ~~“Tier 5 Controlled Substances Quantity” means:~~

2821                   a. ~~25 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this~~  
2822                   ~~title;~~

2823                   b. ~~5 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including~~  
2824                   ~~heroin, as described in § 4714 of this title, or of any mixture containing any such substance;~~

2825                   c. ~~5000 grams or more of marijuana, as described in § 4701(27) of this title;~~

2826                   d. ~~25 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any~~  
2827                   ~~mixture containing any such substance, as described in § 4716(d)(3) of this title;~~

2828                   e. ~~25 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or~~  
2829                   ~~of any mixture containing any such substance, as described in § 4716(d)(1) of this title;~~

2830                   f. ~~25 grams or more of phenylidene, or of any mixture containing any such substance, as described in §~~  
2831                   ~~4716(e)(5) of this title;~~

2832                   g. ~~500 or more doses or, in a liquid form, 50 milligrams or more of lysergic acid diethylamide (LSD), or~~  
2833                   ~~any mixture containing such substance, as described in § 4714(d)(9) of this title;~~



h. ~~62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance; or~~

i. ~~62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.~~

(2) ~~“Tier 4 Controlled Substances Quantity” means:~~

a. ~~20 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;~~

b. ~~4 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;~~

c. ~~4000 grams or more of marijuana, as described in § 4701(27) of this title;~~

d. ~~20 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;~~

e. ~~20 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;~~

f. ~~20 grams or more of phenylclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;~~

g. ~~250 or more doses or, in a liquid form, 25 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;~~

h. ~~50 or more doses or 10 or more grams or 10 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance;~~

i. ~~50 or more doses or 10 or more grams or 10 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title; or~~

j. ~~60 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 6 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.~~

(3) ~~“Tier 3 Controlled Substances Quantity” means:~~

- 2864 a. ~~15 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this~~  
2865 ~~title;~~
- 2866 b. ~~3 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including~~  
2867 ~~heroin, as described in § 4714 of this title, or of any mixture containing any such substance;~~
- 2868 c. ~~3000 grams or more of marijuana, as described in § 4701(27) of this title;~~
- 2869 d. ~~15 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any~~  
2870 ~~mixture containing any such substance, as described in § 4716(d)(3) of this title;~~
- 2871 e. ~~15 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or~~  
2872 ~~of any mixture containing any such substance, as described in § 4716(d)(1) of this title;~~
- 2873 f. ~~15 grams or more of phencyclidine, or of any mixture containing any such substance, as described in §~~  
2874 ~~4716(e)(5) of this title;~~
- 2875 g. ~~100 or more doses or, in a liquid form, 10 milligrams or more of lysergic acid diethylamide (LSD), or~~  
2876 ~~any mixture containing such substance, as described in § 4714(d)(9) of this title;~~
- 2877 h. ~~37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of any substance as described in §~~  
2878 ~~4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this~~  
2879 ~~title, or of any mixture containing any such substance; or~~
- 2880 i. ~~37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of 3,4-~~  
2881 ~~methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of~~  
2882 ~~isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.~~

2883 (4) "Tier 2 Controlled Substances Quantity" means:

- 2884 a. ~~10 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this~~  
2885 ~~title;~~
- 2886 b. ~~2 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including~~  
2887 ~~heroin, as described in § 4714 of this title, or of any mixture containing any such substance;~~
- 2888 c. ~~1500 grams or more of marijuana, as described in § 4701(27) of this title;~~
- 2889 d. ~~10 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any~~  
2890 ~~mixture containing any such substance, as described in § 4716(d)(3) of this title;~~
- 2891 e. ~~10 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or~~  
2892 ~~of any mixture containing any such substance, as described in § 4716(d)(1) of this title;~~

f. 10 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 50 or more doses or, in a liquid form, 5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 25 or more doses or 5 or more grams or 5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance;

i. 25 or more doses or 5 or more grams or 5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title; or

j. 30 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 3 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.

(5) "Tier 1 Controlled Substances Quantity" means:

a. 5 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 1 gram or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 175 grams or more of marijuana, as described in § 4701(27) of this title;

d. 5 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 5 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 5 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 25 or more doses or, in a liquid form, 2.5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance; or

i. ~~12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title. [Deleted.]~~

Section 88. Amend § 4751D, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4751D ~~Knowledge of weight or quantity not an element of the offense; proof~~ Proof of weight or quantity.

(a) ~~In any prosecution under this subchapter, in which the weight or quantity of a controlled substance is an element of the offense, the State need not prove that the defendant had any knowledge as to the weight or quantity of the substance possessed. The State need only prove that the defendant knew that the substance was possessed; and, that the substance was that which is alleged, and that the substance weighed a certain amount or was in a certain quantity. [Deleted.]~~

(b) In any prosecution under this subchapter, in which the quantity of a controlled substance is an element of the offense, and the controlled substance is alleged to be a “prescription drug” as defined in § 4701 of this title, and the alleged prescription drug consists of multiple doses that appear to be substantially identical, evidence that a chemist or other qualified witness properly tested one dose, and found the presence of a controlled substance, shall be prima facie evidence that the “substantially identical doses” each contained the controlled substance that is a prescription drug for purposes of determining whether the State has proven the number of doses constituting the Tier quantities set forth in ~~§ 4751C(2)j. or (4)j. of this title~~ §§ 1422 or 1423 of Title 11. Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting evidence offered pursuant to this subsection

Section 89. Amend § 4752, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4752 Drug dealing—Aggravated possession; class B felony.

~~Except as authorized by this chapter, any person who:~~

(1) ~~Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 4 quantity;~~

(2) ~~Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 2 quantity, and there is an aggravating factor;~~

(3) ~~Possesses a controlled substance in a Tier 5 quantity;~~

(4) ~~Possesses a controlled substance in a Tier 3 quantity, and there is an aggravating factor; or~~

(5) ~~Possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a. i., of this title. and there are 2 aggravating factors,~~

2953 shall be guilty of a class B felony. [Deleted.]

2954 Section 90. Amend § 4752B, Title 16 of the Delaware Code by making deletions as shown by strike through and  
2955 insertions as shown by underline as follows:

2956 § 4752B Drug dealing — Resulting in death; class B felony.

2957 ~~(a) A person is guilty of drug dealing resulting in death when the person delivers a Schedule I or II controlled~~  
2958 ~~substance in Tier 1 or greater quantity to another person in violation of this chapter, and said controlled substance thereafter~~  
2959 ~~causes the death of another person who uses or consumes it.~~

2960 ~~(b) It is not a defense to a prosecution under this section that the defendant did not directly deliver the controlled~~  
2961 ~~substance to the decedent.~~

2962 ~~(c) It is an affirmative defense to a prosecution under this section that the defendant made a good faith effort to~~  
2963 ~~promptly seek, provide, or obtain emergency medical or law enforcement assistance to another person who was~~  
2964 ~~experiencing a medical emergency after using a Schedule I or II controlled substance, and whose death would otherwise~~  
2965 ~~form the basis for criminal liability under this section.~~

2966 ~~(d) Any person who violates subsection (a) of this section is guilty of a class B felony. [Deleted.]~~

2967 Section 91. Amend § 4753, Title 16 of the Delaware Code by making deletions as shown by strike through and  
2968 insertions as shown by underline as follows:

2969 § 4753 Drug dealing—Aggravated possession; class C felony.

2970 Except as authorized by this chapter, any person who:

2971 ~~(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a~~  
2972 ~~Tier 2 quantity;~~

2973 ~~(2) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance, and~~  
2974 ~~there is an aggravating factor;~~

2975 ~~(3) Possesses a controlled substance in a Tier 4 quantity as defined in any of § 4751C(2)a. i. of this title;~~

2976 ~~(4) Possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a. i. of this title; and~~  
2977 ~~there is an aggravating factor; or~~

2978 ~~(5) Possesses a controlled substance in a Tier 1 quantity, and there are 2 aggravating factors,~~  
2979 ~~shall be guilty of a class C felony. [Deleted.]~~

2980 Section 92. Amend § 4754, Title 16 of the Delaware Code by making deletions as shown by strike through and  
2981 insertions as shown by underline as follows:

2982 § 4754 Drug dealing—Aggravated possession; class D felony.

2983           Except as authorized by this chapter, any person who:

2984           (1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance;

2985           (2) Possesses a controlled substance in a Tier 3 quantity; or

2986           (3) Possesses a controlled substance in a Tier 1 quantity, and there is an aggravating factor,

2987           shall be guilty of a class D felony. [Deleted.]

2988           Section 93. Amend § 4755, Title 16 of the Delaware Code by making deletions as shown by strike through and

2989           insertions as shown by underline as follows:

2990           § 4755 Aggravated possession; class E felony.

2991           ~~Except as authorized by this chapter, any person who possesses a controlled substance in a Tier 2 quantity, as~~

2992           ~~defined in any of § 4751C(4)a. i. of this title, shall be guilty of a class E felony. [Deleted.]~~

2993           Section 94. Amend § 4756, Title 16 of the Delaware Code by making deletions as shown by strike through and

2994           insertions as shown by underline as follows:

2995           § 4756 Aggravated possession; class F felony.

2996           ~~Except as authorized by this chapter, any person who possesses a controlled substance in a Tier 1 quantity shall be~~

2997           ~~guilty of a class F felony. [Deleted.]~~

2998           Section 95. Amend § 4757, Title 16 of the Delaware Code by making deletions as shown by strike through and

2999           insertions as shown by underline as follows:

3000           § 4757 Miscellaneous drug crimes; class B, C and F felony.

3001           (a) It is unlawful for any person knowingly or intentionally:

3002           (1) ~~To distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an~~

3003           ~~order form as required by § 4738 of this title;~~

3004           (2) ~~To use in the course of the manufacture, distribution, prescribing, dispensing or research of a controlled~~

3005           ~~substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is~~

3006           ~~fictitious, revoked, suspended, expired or issued to another person;~~

3007           (3) ~~To acquire or obtain or attempt to acquire or obtain, possession of a controlled substance or prescription~~

3008           ~~drug by misrepresentation, fraud, forgery, deception or subterfuge;~~

3009           (4) ~~To furnish false or fraudulent material information in or omit any material information from, any~~

3010           ~~application, report or other document required to be kept or filed under this chapter, or any record required to be kept~~

3011           ~~by this chapter;~~

(5) ~~To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance;~~

(6) ~~To acquire or attempt to or obtain possession of a controlled substance by theft; or~~

(7) ~~To prescribe, or administer to another, any anabolic steroid, as defined in § 4718(f) of this title, for the purposes of increasing human muscle weight or improving human performance in any form of exercise, sport, or game.~~

(b) ~~Any person who violates paragraphs (a)(1) through (a)(7) of this section upon conviction shall be guilty of a class F felony.~~

~~(c) Solicitation of multiple prescription drug crimes; penalties.—~~

(1) ~~Any person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30-day period to violate any provision of subsection (a) of this section shall be guilty of a class C felony.~~

(2) ~~Any person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30-day period to violate any provision of subsection (a) of this section, and there is an aggravating factor in connection with at least 1 of the times shall be guilty of a class B felony.~~

(3) ~~Paragraphs (c)(1) and (2) of this section shall constitute an offense if any of the defendant's conduct or any of the violations of subsection (a) of this section occur within Delaware, or as otherwise provided pursuant to § 204 of Title 11. [Deleted.]~~

Section 96. Amend § 4758, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4758 Unlawful dealing in a counterfeit or purported controlled substance; class E felony.

(a) ~~Any person who knowingly manufactures, delivers, attempts to manufacture or deliver, or possesses with the intent to manufacture or deliver a counterfeit or purported controlled substance shall be guilty of a class E felony.~~

(b) ~~It is no defense to prosecution under this section that the substance actually is a controlled substance or that the accused believed the substance was a controlled substance. [Deleted.]~~

Section 97. Amend § 4759, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4759 Registrant crimes.

(a) ~~It is unlawful for any person:~~

(1) ~~Who is subject to subchapter III of this chapter to distribute or dispense a controlled substance in violation of § 4739 of this title;~~

(2) ~~Who is a registrant, to manufacture a controlled substance not authorized by the person's registration or to distribute or dispense a controlled substance not authorized by the person's registration to another registrant or other authorized person;~~

~~(3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter; or~~

~~(4) To refuse an entry into any premises for any inspection authorized by this chapter.~~

~~(b) Any person who violates paragraph (a)(1), (a)(2), or (a)(4) of this section shall be guilty of a class F felony.~~

~~Any person who violates paragraph (a)(3) of this section shall be guilty of a class A misdemeanor. [Deleted.]~~

Section 98. Amend § 4760, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4760 Maintaining a drug property; class F felony.

~~Any person who is the owner, landlord, or tenant of a property, including a dwelling, a building, a store or a business, and who knowingly consents to the use of the property by another for the manufacture of, delivery of, or possession with the intent to manufacture or deliver, controlled substances, shall be guilty of a class F felony. [Deleted.]~~

Section 99. Amend § 4760A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4760A Operating or attempting to operate clandestine laboratories; cleanup; penalties.

~~(a) Any person who knowingly operates or attempts to operate a clandestine laboratory is guilty of a class C felony.~~

~~(b) Any person convicted of a violation of subsection (a) of this section shall be responsible for all reasonable costs, if any, associated with remediation of the site of the clandestine laboratory and any costs associated with the cleanup of any substances or materials or hazardous waste, and for the cleanup of any other site resulting from the operation or disposal of substances or materials from a clandestine laboratory.~~

~~(c) Definitions. — As used in this section, the following words and phrases shall have the meanings given to them in this subsection:~~

~~(1) "Clandestine laboratory" means any property, real or personal, on or in which a person assembles any chemicals or equipment or combination thereof which are intended to be used to or have been used to unlawfully manufacture a controlled substance or other substance in violation of the provisions of this chapter.~~



(2) ~~“Cleanup” means any action reasonably necessary to contain, collect, control, identify, analyze, disassembly, treat, remove, or otherwise disperse any substances or materials in or from a clandestine laboratory, including those found to be hazardous waste and any contamination caused by those substances or materials.~~

(3) ~~“Remediation” means any emergency response, act, or process to temporarily or permanently remedy and make safe.~~

(d) ~~Nothing in this section shall be construed to preclude a prosecution for the same or similar activity under this chapter. [Deleted.]~~

Section 100. Amend § 4761, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4761 ~~Illegal~~ Authorized possession and delivery of noncontrolled prescription drugs.

(a) ~~Any person who knowingly or intentionally possesses, uses or consumes any prescription drug that is not a controlled substance but for which a prescription is required shall be guilty of an unclassified misdemeanor, unless:~~

(1) ~~The possession, use or consumption of such substance was by a person who obtained the substance directly from, or pursuant to, a valid prescription or order of a licensed practitioner;~~

(2) ~~The possession or transfer of such substance was for medical or scientific use or purpose by persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:~~

a. ~~Pharmacists.~~

b. ~~Practitioners.~~

c. ~~Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.~~

d. ~~Hospitals that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.~~

e. ~~Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.~~

f. ~~Common carriers.~~

g. ~~Manufacturers, wholesalers, and distributors.~~

h. ~~Law enforcement officers for bona fide law enforcement purposes in the course of an active criminal investigation.~~

3100                   (3) ~~The possession or transfer is otherwise authorized by this chapter.~~

3101                   (b) ~~Any person who violates subsection (a) of this section, and there is an aggravating factor, shall be guilty of a~~

3102 ~~class B misdemeanor.~~

3103                   (c) ~~Any person who violates subsection (a) of this section, and delivers, or intends to deliver the prescription drug~~

3104 ~~to another, shall be guilty of a class G felony.~~

3105                   (d) ~~Any person who violates subsection (b) of this section, and delivers, or intends to deliver the prescription drug~~

3106 ~~to another, shall be guilty of a class F felony.~~

3107                   (e) *Affirmative defenses.* —

3108                   (1) ~~In any prosecution under this section, it is an affirmative defense that the prescription drug was possessed~~

3109 ~~by the person while transporting the prescription drug to a member of the person's household who possessed a valid~~

3110 ~~prescription for the drug, and the prescription was in the original container in which it was dispensed or packaged, a~~

3111 ~~pill box, or other daily pill container.~~

3112                   (2) ~~In any prosecution under this section, it is an affirmative defense that the prescription drug was possessed~~

3113 ~~or consumed within the residence of the person, that a member of the person's household possessed a valid prescription~~

3114 ~~for the drug, that the possession or consumption by the person was for the purpose of treating an illness and that the~~

3115 ~~drug in question was approved for the specific illness.~~

3116                   (f) *Proof.* — ~~In any prosecution under this section, proof that a substance is a particular prescription drug may be~~

3117 ~~inferred from its labeling and any representations on the substance. Proof by testimony from a scientist is not required.~~

3118 [Deleted.]

3119                   (a) The possession, use or consumption of a prescription drug that is not a controlled substance but for which a

3120 prescription is required is authorized for persons who obtain the substance directly from, or pursuant to, a valid prescription

3121 or order of a licensed practitioner.

3122                   (b) The possession or transfer of a prescription drug that is not a controlled substance but for which a prescription

3123 is required is authorized for medical or scientific use or purpose by persons included in any of the following classes, or the

3124 agents or employees of such persons, for use in the usual course of their business or profession or in the performance of

3125 their official duties:

3126                   (1) Pharmacists.

3127                   (2) Practitioners.

(3) Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

(4) Hospitals that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

(5) Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

(6) Common carriers.

(7) Manufacturers, wholesalers, and distributors.

(8) Law-enforcement officers for bona fide law-enforcement purposes in the course of an active criminal investigation.

(c) The possession or transfer is otherwise authorized by this chapter.

Section 101. Amend § 4762, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4762 Hypodermic syringe or needle; delivering or possessing; disposal; exceptions; ~~penalties.~~

(a) A licensed pharmacist, or pharmacist intern or pharmacy student under the supervision of a pharmacist, may provide hypodermic syringes or hypodermic needles, including pen needles for the administration of prescription medications by injection in the State of Delaware without a prescription, but only to persons who have attained the age of 18 years and who will self-administer prescription medications by injection or administer prescription medications to a minor child for whom they are the parent or legal guardian. When providing hypodermic syringes or hypodermic needles without a prescription, the above-mentioned pharmacist, pharmacist intern or pharmacy student must require proof of identification that validates the individual's age.

~~(c) Any person who delivers, disposes of or gives away any instrument commonly known as a hypodermic syringe or an instrument commonly known as a hypodermic needle or any instrument adapted for the use of narcotic drugs by parenteral injection except in the manner prescribed in this section, shall be guilty of a class G felony. [Deleted.]~~

Section 102. Amend § 4763, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4763 ~~Possession~~ Authorized possession of controlled substances or counterfeit controlled substances; ~~class A or B misdemeanor.~~

3157           ~~(a) It shall be unlawful for any person to knowingly or intentionally possess, use, or consume a controlled~~  
3158 ~~substance or a counterfeit controlled substance (except a controlled substance or counterfeit controlled substance classified~~  
3159 ~~in § 4714(d)(19) of this title) unless:~~

3160           ~~(1) The possession, use or consumption of such substance was by a person who obtained the substance~~  
3161 ~~directly from or pursuant to, a lawful prescription or order; or~~

3162           ~~(2) The possession or transfer of such substance was for medical or scientific use or purpose by persons~~  
3163 ~~included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their~~  
3164 ~~business or profession or in the performance of their official duties:~~

3165           ~~a. Pharmacists.~~

3166           ~~b. Practitioners.~~

3167           ~~c. Persons who procure controlled substances in good faith and in the course of professional practice~~  
3168 ~~only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful~~  
3169 ~~research, teaching, or testing, and not for resale.~~

3170           ~~d. Hospitals and healthcare facilities that procure controlled substances for lawful administration by~~  
3171 ~~practitioners, but only for use by or in the particular hospital.~~

3172           ~~e. Officers or employees of state, federal, or local governments acting in their official capacity only, or~~  
3173 ~~informers acting under their jurisdiction.~~

3174           ~~f. Common carriers.~~

3175           ~~g. Manufacturers, wholesalers, and distributors.~~

3176           ~~h. Law enforcement officers for bona fide law enforcement purposes in the course of an active criminal~~  
3177 ~~investigation.~~

3178           ~~(3) The possession or transfer is otherwise authorized by this chapter.~~

3179           ~~(b) Any person who violates subsection (a) of this section shall be guilty of a class B misdemeanor.~~

3180           ~~(c) Any person who violates subsection (a) of this section, and there is an aggravating factor, shall be guilty of a~~  
3181 ~~class A misdemeanor. [Deleted.]~~

3182           (a) The possession, use or consumption of a controlled substance or a counterfeit controlled substance (except a  
3183 controlled substance or counterfeit controlled substance classified in § 4714(d)(19) of this title) is authorized for a person  
3184 who obtained the substance directly from or pursuant to, a lawful prescription or order.

3185           (b) The possession or transfer of a controlled substance or a counterfeit controlled substance (except a controlled  
3186 substance or counterfeit controlled substance classified in § 4714(d)(19) of this title) is authorized for medical or scientific

use or purpose by persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:

(1) Pharmacists.

(2) Practitioners.

(3) Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

(4) Hospitals and healthcare facilities that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

(5) Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

(6) Common carriers.

(7) Manufacturers, wholesalers, and distributors.

(8) Law-enforcement officers for bona fide law-enforcement purposes in the course of an active criminal investigation.

(c) The possession or transfer is otherwise authorized by this chapter.

Section 103. Amend § 4764, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4764 Possession of marijuana; ~~class B misdemeanor, unclassified misdemeanor, or civil violation~~ [For application of this section, see 80 Del. Laws, c. 38, § 6]

(a) ~~Any person under the age of 18 who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor. Any person 18 years of age or older who knowingly or intentionally uses, consumes, or possesses other than a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor. [Deleted.]~~

(b) ~~Any person under the age of 18 who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$100. Any person 18 years of age or older who knowingly or intentionally uses, consumes, or possesses other than a personal use quantity of a controlled~~

~~substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$575, imprisoned not more than 3 months, or both. [Deleted.]~~

(c) Any person 21 years of age or older who knowingly or intentionally possesses a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be assessed a civil penalty of \$100 in addition to such routine assessments necessary for the administration of civil violations and the marijuana shall be forfeited. Private use or consumption by a person 21 years of age or older of a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title shall likewise be punishable by a civil penalty under this subsection. Any person 18 years of age or older, but under 21 years of age, who commits any of the acts described in this subsection shall be assessed a civil penalty of \$100 for the first offense and shall be guilty of an unclassified misdemeanor and fined \$100 for a second or subsequent offense. Unpaid fines shall double if not paid within 90 days of final adjudication of the violation.

Section 104. Amend § 4765, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4765 Penalties under other laws are additional.

~~Any penalty imposed for violation of this chapter is in addition to and not in lieu of any civil or administrative penalty or sanction otherwise authorized by law. [Deleted.]~~

Section 105. Amend § 4766, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4766 Conviction of lesser offense.

~~In any prosecution for any violation of the following sections of this chapter, the defendant may be convicted under any 1 of the following respective sections of this chapter in accordance with the table set forth below establishing lesser included offenses:~~

~~(1) The lesser included offenses under § 4752 are §§ 4753, 4754, 4755, 4756, 4758, 4763, and 4764 of this title.~~

~~(2) The lesser included offenses under § 4753 are §§ 4754, 4755, 4756, 4758, 4763, and 4764 of this title.~~

~~(3) The lesser included offenses under § 4754 are §§ 4755, 4756, 4758, 4763, and 4764 of this title.~~

~~(4) The lesser included offenses under § 4755 are §§ 4756, 4763, and 4764 of this title.~~

~~(5) The lesser included offenses under § 4756 are §§ 4763 and 4764 of this title. [Deleted.]~~

Section 106. Amend § 4767, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4767 First offenders controlled substances diversion program.

(a) Any person who:

(1) Has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state thereof relating to narcotic drugs, marijuana, or stimulant, depressant, hallucinogenic drug or other substance who is charged through information or indictment with possession or consumption of a controlled substance under ~~§ 4763 or § 4764 or § 4761(a) or (b) of this title~~ or §§ 1422 or 1423 of Title 11; and

(2) Has not previously been afforded first offender treatment under this section or its predecessor, may qualify for the first offense election at the time of the person's arraignment, except that no person shall qualify for such first offense election where the offense charged under ~~§ 4763 or § 4764 or § 4761(a) or (b) of this title~~ or §§ 1422 or 1423 of Title 11 arises from the same transaction, factual setting or circumstances as those contained in any indictment returned against the defendant alleging violation of any provisions contained within ~~§ 4752, § 4753, or § 4754~~ of this title or §§ 1422 or 1423 of Title 11.

Section 107. Amend § 4768, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4768 Medical and/or psychiatric examination and/or treatment.

After a conviction and prior to sentencing for violation of § 4761(a) or (b), ~~§ 4763, or § 4764~~ of this title, or §§ 1422 or 1423 of Title 11, or prior to conviction if the defendant consents, the court may order the defendant to submit to a medical and/or psychiatric examination and/or treatment. The court may order such examination by the Department of Health and Social Services or by a private physician, hospital or clinic and the court may make such order regarding the term and conditions of such examination and/or treatment and the payment therefor by the defendant as a court in its discretion shall determine. The Department of Health and Social Services or the private physician, hospital or clinic shall report to the court within such time as the court shall order, not more than 90 days from the date of such order. After such report and upon conviction of such violation, the court shall impose sentence or suspend sentence and may impose probation and/or a requirement of future medical and/or psychiatric examination and/or treatment including hospitalization or outpatient care upon such terms and conditions and for such period of time as the court shall order.

Section 108. Amend § 4769, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4769 Criminal immunity for persons who suffer or report an alcohol or drug overdose or other life threatening medical emergency.

(a) ~~For purposes of this chapter:~~

(1) ~~“Medical provider” means the person whose professional services are provided to a person experiencing an overdose or other life-threatening medical emergency by a licensed, registered or certified health-care professional who, acting within his or her lawful scope of practice, may provide diagnosis, treatment or emergency services.~~

(2) ~~“Overdose” means an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death resulting from the consumption or use of an ethyl alcohol, a controlled substance, another substance with which a controlled substance was combined, a noncontrolled prescription drug, or any combination of these, including any illicit or licit substance; provided that a person’s condition shall be deemed to be an overdose if a layperson could reasonably believe that the condition is in fact an overdose and requires medical assistance.~~

(b) ~~A person who is experiencing an overdose or other life-threatening medical emergency and anyone (including the person experiencing the emergency) seeking medical attention for that person shall not be arrested, charged or prosecuted for an offense for which they have been granted immunity pursuant to subsection (c) and/or (d) of this section, or subject to the revocation or modification of the conditions of probation, if:~~

(1) ~~The person seeking medical attention reports in good faith the emergency to law enforcement, the 9-1-1 system, a poison control center, or to a medical provider, or if the person in good faith assists someone so reporting; and~~

(2) ~~The person provides all relevant medical information as to the cause of the overdose or other life-threatening medical emergency that the person possesses at the scene of the event when a medical provider arrives, or when the person is at the facilities of the medical provider.~~

(c) ~~The immunity granted shall apply to all offenses in this chapter that are not class A, B, or C felonies, including but not limited to the following offenses:~~

(1) ~~Miscellaneous drug crimes as described in § 4757(a)(3), (6), and (7) of this title;~~

(2) ~~Illegal possession and delivery of noncontrolled prescription drugs as described in § 4761 of this title;~~

(3) ~~Possession of controlled substances or counterfeit controlled substances, as described in § 4763 of this title;~~

(4) ~~Possession of drug paraphernalia as described in §§ 4762(c) and 4771 of this title;~~

(5) ~~Possession of marijuana as described in § 4764 of this title.~~



(d) The immunity granted shall apply to offenses relating to underage drinking as described in § 904(b), (c), (e), and (f) of Title 4.

(e) Nothing in this section shall be interpreted to prohibit the prosecution of a person for an offense other than an offense for which they have been granted immunity pursuant to subsection (c) and/or (d) of this section or to limit the ability of the Attorney General or a law enforcement officer to obtain or use evidence obtained from a report, recording, or any other statement provided pursuant to subsection (b) of this section to investigate and prosecute an offense other than an offense for which they have been granted immunity pursuant to subsection (c) and/or (d) of this section.

(f) Forfeiture of any alcohol, substance, or paraphernalia referenced in this section shall be allowed pursuant to § 4784 of this title and Chapter 11 of Title 4. [Deleted.]

Section 109. Amend § 4771, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4771 Drug paraphernalia [For application of this section, see 80 Del. Laws, c. 38, § 6]

(a) It is unlawful for any person to use, or possess with intent to use, drug paraphernalia as defined in § 4701(17) of this title. Except that any Any person charged under § 4764 (a), (b), or (d) § 4764(d) of this title, or assessed a civil penalty under § 4764(c) of this title, shall not also be charged with ~~this offense~~ an offense under § 1424 of Title 11 if in possession of drug paraphernalia pertaining to the use of marijuana.

(b) It is unlawful for any person to deliver, possess with intent to deliver, convert, manufacture, convey, sell or offer for sale drug paraphernalia, as defined in § 4701(17) of this title, knowing or under circumstances where one should reasonably know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance.

(c) [Repealed.] [Deleted.]

Section 110. Amend § 4772, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4772 Consideration of factors.

~~In determining whether or not an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:~~

(1) ~~Statements by an owner or by anyone in control of the object, concerning its use;~~

(2) ~~The proximity of the object, in time and space, to a direct violation of this chapter;~~

(3) ~~The proximity of the object to controlled substances;~~

- 3334 (4) The existence of any residue of a controlled substance on the object;
- 3335 (5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver
- 3336 it to persons whom the owner knows, or should reasonably know, intend to use the object to facilitate a violation of this
- 3337 chapter. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall
- 3338 not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia;
- 3339 (6) Instructions (oral or written) provided with the object, concerning its use;
- 3340 (7) Descriptive materials accompanying the object which explain or depict its use;
- 3341 (8) National and local advertising concerning its use;
- 3342 (9) The manner in which the object is displayed for sale;
- 3343 (10) Whether or not the owner, or anyone in control of the object, is a legitimate supplier of like or related
- 3344 items to the community, such as a licensed distributor or dealer of tobacco products;
- 3345 (11) Direct or circumstantial evidence of the ratio of sales of the suspect object to the total sales of the
- 3346 business enterprise;
- 3347 (12) The existence and scope of legitimate uses for the object in the community; and
- 3348 (13) Expert testimony concerning its use. [Deleted.]

3349 Section 111. Amend § 4773, Title 16 of the Delaware Code by making deletions as shown by strike through and

3350 insertions as shown by underline as follows:

3351 § 4773 Exemptions.

3352 This subchapter will not apply to:

- 3353 (1) Any person authorized by local, state or federal law to manufacture, possess or distribute such items; or
- 3354 (2) Any item that in the normal lawful course of business is imported, exported, transported or sold and
- 3355 traditionally intended for use with tobacco products, including any pipe, paper or accessory. [Deleted.]

3356 Section 112. Amend § 4774, Title 16 of the Delaware Code by making deletions as shown by strike through and

3357 insertions as shown by underline as follows:

3358 § 4774 Penalties [For application of this section, see 80 Del. Laws, c. 38, § 6]

3359 (a) *Possession*.—Except as described in subsection (b) of this section, any person who uses or possesses with

3360 intent to use drug paraphernalia is guilty of a class B misdemeanor. [Deleted.]

3361 (b) *Possession for personal use of marijuana*. — Any person who uses or possesses drug paraphernalia for the use

3362 or possession of a personal use quantity of marijuana shall be assessed a civil penalty of not more than \$100, in addition to

3363 such routine assessments necessary for the administration of civil violations.

3364 (c) *Manufacture and sale.* — Any person who delivers, possesses with the intent to deliver, conveys, offers for  
3365 sale, converts, or manufactures with the intent to deliver drug paraphernalia is guilty of a class G felony. [Deleted.]

3366 (d) *Delivery to a minor.* — Any person 18 years of age or older who violates § 4771 of this title by delivering or  
3367 selling drug paraphernalia to a person under 18 years of age is guilty of a class E felony. [Deleted.]

3368 (e) It is unlawful for any person to place in a newspaper, magazine, handbill or other publication any  
3369 advertisement, knowing or under circumstances where one reasonably should know, that the purpose of the advertisement,  
3370 in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who  
3371 violates this section is guilty of an unclassified misdemeanor. [Deleted.]

3372 Section 113. Amend § 4775, Title 16 of the Delaware Code by making deletions as shown by strike through and  
3373 insertions as shown by underline as follows:

3374 § 4775 Consideration of factors.

3375 Transferred to § 4772 of this title by 73 Del. Laws, c. 359, § 2, effective July 8, 2002. [Deleted.]

3376 Section 114. Amend § 4795, Title 16 of the Delaware Code by making deletions as shown by strike through and  
3377 insertions as shown by underline as follows:

3378 § 4795 Jurisdiction [For application of this section, see 80 Del. Laws, c. 38, § 6]

3379 (a) The Superior Court shall have original and exclusive jurisdiction over any violation of this chapter by persons  
3380 18 years of age or older.

3381 (b) The provisions of subsection (a) of this section or any other law to the contrary notwithstanding, the Court of  
3382 Common Pleas shall have original jurisdiction over any violation of the following § 4764(d) of this title by persons 18 years  
3383 of age or older: older.

3384 (1) ~~Section 4761(a) and (b) of this title.~~

3385 (2) ~~Section 4763 of this title.~~

3386 (3) ~~Section 4764(a), (b), and (d) of this title.~~

3387 (4) ~~Section 4771 of this title, except where jurisdiction over the civil penalty resides in the Justice of the Peace~~  
3388 ~~Court pursuant to subsection (c) of this section.~~ [Deleted.]

3389 (c) The Justice of the Peace Court shall have original jurisdiction over any violation of the following by persons 18  
3390 years of age or older:

3391 (1) Section 4764(c) of this title.

3392 (2) Section 4774(b) of this title.

(d) The Family Court shall have original and exclusive jurisdiction over violations of this chapter by persons under age 18.

Section 115. Amend § 4798, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4798 The Delaware Prescription Monitoring Program.

(a) It is the intent of the General Assembly that the Delaware Prescription Monitoring Act established pursuant to this section serves as a means to promote public health and welfare and to detect the illegal use of controlled substances. The Delaware Prescription Monitoring Act shall have the dual purpose of reducing misuse and diversion of controlled substances in the State while promoting improved professional practice and patient care.

(r) A person authorized to have prescription monitoring information pursuant to this section who knowingly discloses this information in violation of this section ~~is guilty of a class G felony and, upon conviction, shall be fined not more than \$5,000 nor imprisoned more than 2 years, or both~~ shall be subject to criminal penalties under § 1344 of Title 11.

(s) A person authorized to have prescription monitoring information pursuant to this section who intentionally uses this information in the furtherance of other crimes ~~is guilty of a class E felony and, upon conviction, shall be fined not more than \$10,000 nor imprisoned more than 5 years, or both~~ shall be subject to criminal penalties under Chapter 5 of Title 11.

(t) A person not authorized to have prescription monitoring information pursuant to this section who obtains such information fraudulently ~~is guilty of a class E felony and, upon conviction, shall be fined not more than \$10,000 nor imprisoned more than 5 years, or both~~ shall be subject to criminal penalties under §§ 1346 or 1103 of Title 11.

Section 116. Amend § 4919A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4919A Requirements, prohibitions, penalties.

(b) The operating documents of a registered compassion center shall include procedures for the oversight of the registered compassion center and procedures to ensure accurate recordkeeping.

(s) Any registered qualifying patient, registered designated caregiver, compassion center agent, or safety compliance facility agent, including a principal owner, board member, employee or volunteer who has access to compassion center or safety compliance facility records, who sells marijuana to someone who is not allowed to use marijuana for medical purposes or who fails to maintain, fraudulently maintains, or fraudulently represents to the Department records required by this chapter or rules promulgated pursuant to this chapter, for the purposes of selling marijuana to someone who is not allowed to use marijuana for medical purposes under this chapter ~~is guilty of a felony~~

3422 punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000, or both, in addition to any other  
3423 penalties for the distribution of marijuana shall be subject to criminal penalties under Part I of Title 11.

3424 (v) Fraudulent representation to a law-enforcement official of any fact or circumstance relating to the medical use  
3425 of marijuana to avoid arrest or prosecution shall be a class B misdemeanor which may be punishable by up to 6 months  
3426 incarceration at Level V under § 4204 of Title 11 and a fine of up to \$1,150, as the Court deems appropriate which shall be  
3427 in addition to any other penalties that may apply for making a false statement or for the use of marijuana other than use  
3428 undertaken pursuant to this chapter and jurisdiction for prosecution shall be exclusively in Superior Court subject to  
3429 criminal penalties under § 1241 of Title 11.

3430 Section 117. Amend § 5023, Title 16 of the Delaware Code by making deletions as shown by strike through and  
3431 insertions as shown by underline as follows:

3432 § 5023 Unwarranted hospitalization in Delaware Psychiatric Center or denial of rights; penalties.

3433 (a) Any person who wilfully causes, or conspires with or assists another to cause:

3434 (1) The unwarranted hospitalization of any individual in the Delaware Psychiatric Center under this chapter;

3435 or

3436 (2) The denial to any individual of any of the rights accorded to said individual under this chapter shall be  
3437 ~~punished by a fine not exceeding \$500 or imprisonment not exceeding 1 year, or both~~ subject to criminal penalties  
3438 under § 1061 of Title 11.

3439 (b) ~~The Superior Court shall have jurisdiction of offenses under this section. [Deleted.]~~

3440 Section 118. Amend § 6647, Title 16 of the Delaware Code by making deletions as shown by strike through and  
3441 insertions as shown by underline as follows:

3442 § 6647 Membership requirements for volunteer firefighters.

3443 (d) An applicant for membership in a Delaware volunteer fire department who knowingly provides false,  
3444 incomplete, or inaccurate criminal history information, or who otherwise knowingly violates a provision of this subchapter,  
3445 is guilty of a class G felony. ~~In addition to a term of imprisonment of up to 2 years, the court shall impose a fine of no less~~  
3446 ~~than \$1,000 which may not be suspended~~ shall be subject to criminal penalties under § 1223 of Title 11.

3447 (e) The State Fire Prevention Commission shall adopt regulations to implement the provisions of this subchapter.  
3448 The regulations must include, as part of the application form for membership in a Delaware volunteer fire department, a  
3449 dated and signed statement by the applicant swearing to or affirming the following, if the following is true. If it is not true,  
3450 the applicant must explain in writing what is not true and why it is not true.

3451 "I have never been convicted of an offense that constitutes any of the crimes set forth in 16 Del. C. § 6647 or any  
3452 similar offense under any federal, state, or local law. I hereby certify that the statements contained in this application are  
3453 true and correct to the best of my knowledge and belief. I understand that if I knowingly make any false statement in this  
3454 application, I am subject to penalties prescribed by law, including denial or revocation of membership in the volunteer fire  
3455 department ~~and a mandatory fine of at least \$1,000 or a term of imprisonment of up to 2 years, or both~~ and criminal  
3456 prosecution under § 1223 of Title 11."

3457 Section 119. Amend § 7109, Title 16 of the Delaware Code by making deletions as shown by strike through and  
3458 insertions as shown by underline as follows:

3459 § 7109 Records.

3460 (a) Records required. — It shall be unlawful for any person wilfully to purchase, possess, receive, sell or distribute  
3461 explosive materials in the State without keeping records as specified in this section.

3462 (c) False entry. — It shall be unlawful under § 1223 of Title 11 for any licensee or permittee knowingly to make  
3463 any false entry in any record which the licensee or permittee is required to keep pursuant to this section or regulations  
3464 promulgated under § 7107(f) of this title.

3465 Section 120. Amend § 7113, Title 16 of the Delaware Code by making deletions as shown by strike through and  
3466 insertions as shown by underline as follows:

3467 § 7113 Penalties.

3468 Any person violating this chapter, other than § 7103 of this title, or any rules or regulations made ~~thereunder:~~  
3469 thereunder, shall be subject to criminal penalties under Part I of Title 11.

3470 ~~(1) Shall for each offense be punished by a fine of not more than \$2,000 or by imprisonment for not more than~~  
3471 ~~1 year, or by both such fine and imprisonment, and any license issued under this chapter shall be subject to revocation~~  
3472 ~~for such period as the applicable issuing authorities deem appropriate;~~

3473 ~~(2) And, if such violation was committed with the knowledge or intent that any explosive material involved~~  
3474 ~~was to be used to kill, injure or intimidate any person or unlawfully to damage any real or personal property, the person~~  
3475 ~~committing such violation shall be guilty of a felony and for each offense be fined not more than \$10,000 or~~  
3476 ~~imprisoned for not more than 10 years, or both;~~

3477 ~~(3) And if personal injury results, shall be guilty of a felony and imprisoned for not more than 20 years or~~  
3478 ~~fined not more than \$20,000 or both;~~

3479 ~~(4) And if death results, shall be guilty of a felony and subject to imprisonment for any term of years or for~~  
3480 ~~life. [Deleted.]~~

The Superior Court shall have exclusive jurisdiction of violations of this chapter.

Section 121. Amend § 9809A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9809A Criminal background checks.

(a) A person seeking certification as a paramedic shall apply to the Board using forms prescribed by the Board and shall submit to the State Office of Emergency Medical Services necessary information in order to obtain the following:

(i) A person seeking certification pursuant to this section who knowingly provides false, incomplete or inaccurate criminal history information, or who otherwise knowingly violates the provisions of this section, ~~shall be guilty of a class G felony and~~ shall be punished according to ~~Chapter 42 § 1223~~ of Title 11.

Section 122. Amend § 4354, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4354 Enforcement.

(a) No person shall act in the capacity of a bail agent, advertise or solicit bail bond business, perform any of the functions or duties of a bail agent, collect premiums, charge fees or otherwise exercise or attempt to exercise powers prescribed for bail agents, unless such person is qualified, licensed and appointed as provided in this subchapter. Any person found guilty of violating this section ~~is guilty of a class F felony~~ shall be subject to criminal penalties under §§ 1132 or 1243 of Title 11.

Section 123. Amend § 7515, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7515 Injunctions; civil remedies; cease and desist; criminal penalties.

(f) If the Commissioner has reason to believe that any person has committed a fraudulent viatical settlement act, or any other law applicable to viatical settlements for which criminal prosecution is provided, the Commissioner shall give the information relative thereto to the Attorney General. The Attorney General shall promptly review any information provided and may take any legal action deemed necessary or appropriate under the circumstances, including criminal penalties under Part I of Title 11.

~~(g)(1) Except where a victim is 62 years of age or older, or an “adult who is impaired” as defined in § 3902 of Title 31, or a “person with a disability” as defined in § 3901(a)(2) of Title 12, a fraudulent viatical settlement act is a class A misdemeanor unless (i) the value of property, services, or other benefit wrongfully obtained or attempted to obtain, or (ii) the aggregate economic loss suffered by any person as a result of the violation, whichever is greater, is \$1,500 or more, in which case it is a class G felony.~~

(2) Where a victim is 62 years of age or older, or an "adult who is impaired" as defined in § 3902 of Title 31, or a "person with a disability" as defined in § 3901(a)(2) of Title 12, a fraudulent viatical settlement act is a class G felony unless (i) the value of property, services, or other benefit wrongfully obtained or attempted to be obtained, or (ii) the aggregate economic loss suffered by any person as a result of the violation, whichever is greater, is \$1,500 or more, in which case it is a class F felony.

(3) Notwithstanding paragraphs (g)(1) and (2) of this section:

a. Where (i) the value of property, services, or other benefit wrongfully obtained or attempted to be obtained, or (ii) the aggregate economic loss suffered by any person as a result of the violation, whichever is greater, is more than \$50,000 but less than \$100,000, a fraudulent viatical settlement act is a class D felony.

b. Where (i) the value of property, services, or other benefit wrongfully obtained or attempted to obtain, or (ii) the aggregate economic loss suffered by any person as a result of the violation, whichever is greater, is \$100,000 or more, a fraudulent viatical settlement act is a class B felony. [Deleted.]

(j) In any prosecution under subsections (f) and (g) subsection (f) of this section, the value of the viatical settlement contracts within any 6-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section but when 2 or more offenses are committed by the same person in 2 or more counties, the accused may be prosecuted in any county in which 1 of the offenses was committed for all of the offenses aggregated under this section. The applicable statute of limitations may not begin to run until the insurance company or law-enforcement agency is aware of the fraud, but in no event may the prosecution be commenced later than 7 years after the act has occurred.

Section 124. Amend § 135, Title 20 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 135 Oaths and affirmations; who may administer; false swearing.

(a) General, field, commissioned and warrant officers may administer oaths and affirmations in all matters appertaining to or concerning the Delaware National Guard service, but in no case shall they charge any fee or compensation therefor.

(b) Whoever falsely swears or falsely affirms to any oath or affirmation administered pursuant to this section shall be deemed guilty of perjury in the second degree, a class E felony subject to criminal penalties under § 1221 of Title 11.

Section 125. Amend § 3128, Title 20 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3128 Destruction of property, looting or injury of persons during state of emergency; penalty; liability for conduct of another.



3541 ~~(a) During a state of emergency, whoever maliciously destroys or damages any real or personal property or~~  
3542 ~~maliciously injures another shall be guilty of a felony.~~

3543 ~~(b) Whoever violates this section shall be guilty of a Class C felony.~~

3544 ~~(c) Any person over 16 years old who violates this section shall be prosecuted as an adult.~~

3545 ~~(d) A person is guilty of an offense under this section committed by another person when:~~

3546 ~~(1) Acting with the state of mind that is sufficient for commission of the offense, such person causes an~~  
3547 ~~innocent or irresponsible person to engage in conduct constituting the offense; or~~

3548 ~~(2) Intending to promote or facilitate the commission of the offense that person:~~

3549 ~~a. Solicits, requests, commands, importunes or otherwise attempts to cause the other person to commit it;~~

3550 ~~or~~

3551 ~~b. Aids, counsels or agrees or attempts to aid the other person in planning or committing it; or~~

3552 ~~c. Having a legal duty to prevent the commission of the offense, fails to make a proper effort to do so.~~

3553 ~~(e) In any prosecution for an offense under this section in which the criminal liability of the accused is based upon~~  
3554 ~~the conduct of another person pursuant to this section, it is no defense that:~~

3555 ~~(1) The other person is not guilty of the offense in question because of irresponsibility or other legal~~  
3556 ~~incapacity or exemption or because of unawareness of the criminal nature of the conduct in question or of the~~  
3557 ~~accused's criminal purpose or because of other factors precluding the mental state required for the commission of the~~  
3558 ~~offense; or~~

3559 ~~(2) The other person has not been prosecuted for or convicted of any offense based on the conduct in question~~  
3560 ~~or has previously been acquitted thereof or has been convicted of a different offense or in a different degree or has~~  
3561 ~~legal immunity from prosecution for the conduct in question. [Deleted.]~~

3562 Section 126. Amend § 305, Title 21 of the Delaware Code by making deletions as shown by strike through and  
3563 insertions as shown by underline as follows:

3564 § 305 Privacy act governing the release of motor vehicle driving history and license records.

3565 (n) Penalties. — Any person requesting the disclosure of personal information from Department records who  
3566 misrepresents the person's identity or knowingly makes a false statement to the Department in order to obtain restricted  
3567 information or who knowingly violates any other provision of this chapter shall be guilty of a class A misdemeanor subject  
3568 to criminal penalties under Part I of Title 11.

3569 Section 127. Amend § 2315, Title 21 of the Delaware Code by making deletions as shown by strike through and  
3570 insertions as shown by underline as follows:

3571 § 2315 False statements; penalty.

3572 Whoever knowingly makes any false statement in any application or other document required by the terms of this  
3573 chapter shall be ~~guilty of an unclassified misdemeanor, and shall be fined not less than \$100 nor more than \$1,000, or~~  
3574 ~~imprisoned not less than 60 days nor more than 1 year, or both~~ subject to criminal penalties under § 1223 of Title 11.

3575 Section 128. Amend § 2316, Title 21 of the Delaware Code by making deletions as shown by strike through and  
3576 insertions as shown by underline as follows:

3577 § 2316 Altering or forging certificate of title, manufacturer's certificate of origin, registration card, vehicle  
3578 warranty or certification sticker or vehicle identification plate.

3579 Whoever:

3580 (1) Alters with fraudulent intent any certificate of title, manufacturer's certificate of origin, registration card,  
3581 vehicle warranty or certification sticker or vehicle identification plate issued by the Division; or

3582 (2) Forges or counterfeits any certificate of title, manufacturer's certificate of origin, registration card, vehicle  
3583 warranty or certification sticker or vehicle identification plate issued by the Division; or

3584 (3) Alters or falsifies with fraudulent intent or forges any assignment of a certificate of title, manufacturer's  
3585 certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plates; or

3586 (4) Holds or uses any certificate of title, manufacturer's certificate of origin, registration card, vehicle warranty or  
3587 certification sticker or vehicle identification plate or an assignment thereof, knowing the same to have been altered, forged  
3588 or falsified;

3589 ~~is guilty of a class E felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance~~  
3590 ~~therewith~~ shall be subject to criminal penalties under Subchapter II of Chapter 11 of Title 11.

3591 Section 129. Amend § 2610, Title 21 of the Delaware Code by making deletions as shown by strike through and  
3592 insertions as shown by underline as follows:

3593 § 2610 Application for commercial driver license or commercial learner permit.

3594 (g) Any person who ~~knowingly~~ intentionally falsifies information or certifications required under subsection (a) of  
3595 this section is subject to disqualification of the person's CDL or CLP for a period of at least 60 consecutive days and ~~is~~  
3596 ~~guilty of perjury and shall be fined or imprisoned~~ shall be subject to criminal penalties under § 1223 of Title 11.

3597 Section 130. Amend § 2620, Title 21 of the Delaware Code by making deletions as shown by strike through and  
3598 insertions as shown by underline as follows:

3599 § 2620 False statements; incorrect or incomplete information.

(a) Whoever makes any false affidavit or knowingly swears or affirms falsely to any matter or thing required by the terms of this chapter to be sworn to or affirmed ~~is guilty of perjury and shall be fined or imprisoned as are other persons committing perjury~~ shall be subject to criminal penalties under Subchapters II or III of Chapter 12 of Title 11.

(b) Whoever provides information that is incorrect or incomplete when applying for a commercial driver's license ~~is guilty of perjury and shall be fined or imprisoned as are other persons committing perjury~~ shall be subject to criminal penalties under Subchapters II or III of Chapter 12 of Title 11.

(c) Any driver's license or driving privileges for a person guilty of ~~this section~~ a Title 11 offense related to this section shall be forthwith suspended or canceled.

Section 131. Amend § 2751, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2751 Unlawful application for or use of license or identification card.

(a) ~~Fraud in obtaining or attempting to obtain driver's license or identification card.~~— A person shall not fraudulently obtain or attempt to obtain a driver's license or an identification card by misrepresentation. [Deleted.]

(b) ~~Fraud in application for license or identification card.~~— A person shall not in any application for a driver's license or identification card:

- (1) ~~Use a false or fictitious name;~~
- (2) ~~Make a false statement;~~
- (3) ~~Conceal a material fact; or~~
- (4) ~~Otherwise commit a fraud.~~ [Deleted.]

(c) ~~Display of canceled licenses.~~— A person shall not display, cause or permit to be displayed, any canceled license. [Deleted.]

(d) ~~Display of revoked licenses.~~— A person shall not display, cause or permit to be displayed, any revoked license. [Deleted.]

(e) ~~Display of suspended licenses.~~— A person shall not display, cause or permit to be displayed, any suspended license. [Deleted.]

(f) ~~Display of fictitious licenses or identification cards.~~— A person shall not display, cause or permit to be displayed, any fictitious license or identification card. [Deleted.]

(g) ~~Display of fraudulently altered license or identification card.~~— A person shall not display, cause or permit to be displayed, any fraudulently altered license or identification card. [Deleted.]

(h) ~~Possession of canceled license.~~— A person shall not possess any canceled license. [Deleted.]

3630 (i) *Possession of revoked license.* — A person shall not possess any revoked license. [Deleted.]

3631 (j) *Possession of suspended license.* — A person shall not possess any suspended license. [Deleted.]

3632 (k) *Possession of fictitious license or identification card.* — A person shall not possess any fictitious license or  
3633 identification card. [Deleted.]

3634 (l) *Possession of fraudulently altered license or identification card.* — A person shall not possess any fraudulently  
3635 altered license or identification card. [Deleted.]

3636 (m) *Loaning license.* — A person shall not lend that person's license to any other person or permit the use of  
3637 license by another. [Deleted.]

3638 (n) *Display or representation of license or identification card not one's own.* — A person shall not display or  
3639 represent as that person's own any license or identification card not issued to that person. [Deleted.]

3640 (o) *Failure or refusal to surrender license or identification card.* — A person shall not fail or refuse to surrender  
3641 to the Department on its lawful demand any license or identification card that has been suspended, revoked, canceled,  
3642 altered or otherwise fraudulently obtained.

3643 (p) *Permitting unlawful use of license or identification card.* — A person shall not permit any unlawful use of a  
3644 license or identification card issued to that person. [Deleted.]

3645 (q) *Prohibited acts.* — A person shall not do any act forbidden or fail to perform any act required by this title.

3646 (r) *Penalty.* — Unless otherwise specifically provided for in Chapter 31 of this title, an individual who violates this  
3647 section shall be guilty of a class B misdemeanor and §§ 1122 or 1123 of Title 11 shall have that individual's driver's  
3648 license and/or driving privileges suspended for a period to be set by the Court, not to exceed 6 months. The foregoing  
3649 sentence notwithstanding, an individual who violates subsection (d), (e), (i) and/or (j) of this section by possessing or  
3650 displaying a driver's license that has been suspended or revoked by application of the following statutes shall be guilty of a  
3651 violation only, provided that the judicial officer adjudicating the charge or charges brought under subsections (e) and (j) of  
3652 this section has made a factual finding that the defendant was reasonably unaware the driver's license that defendant  
3653 possessed or displayed had been suspended or revoked:

3654 Title 4, § 904(f)

3655 Title 11, § 2106(e)

3656 Title 11, § 4104(g)

3657 Title 14, § 2730(e)(7)

3658 Title 14, § 4130(e)(1)

3659 Section 314(b) of this title

3660           ~~Section 709(j)(1) of this title~~

3661           ~~Section 2118(n)(1) of this title~~

3662           ~~Section 2703(d)(5) of this title~~

3663           ~~Section 2710(e)(5) of this title~~

3664           ~~Section 2724(b) of this title.~~

3665           Section 132. Amend § 2752, Title 21 of the Delaware Code by making deletions as shown by strike through and  
3666   insertions as shown by underline as follows:

3667           § 2752 False statements.

3668           Whoever makes any false affidavit or knowingly swears or affirms falsely to any matter or thing required by the  
3669   terms of this chapter to be sworn to or affirmed is guilty of perjury and shall be ~~fin~~~~ed or imprisoned as are other persons~~  
3670   ~~committing perjury~~ subject to criminal penalties under § 1221 of Title 11.

3671           Section 133. Amend § 2756, Title 21 of the Delaware Code by making deletions as shown by strike through and  
3672   insertions as shown by underline as follows:

3673           § 2756 Driving vehicle while license is suspended or revoked; penalty.

3674           (c)(1) With respect to any vehicle used in connection with a violation of this section, while the permit or license of  
3675   the operator was revoked for violation of § 1025 of Title 11 for driving a vehicle, § 2742 or § 4177 of this title or pursuant  
3676   to § 2732 of this title, the court, at the time of sentencing the operator for violating this section, may, upon motion by the  
3677   State, order the said vehicle be impounded for at least 90 days for the first violation of this section, and for at least 1 year  
3678   for a subsequent violation, provided that a public or private secure storage area may be obtained by the arresting police  
3679   agency for said vehicle. The court shall permit any party with a legal or equitable interest in the vehicle an opportunity to  
3680   show cause why the impoundment of such vehicle should cease. Prior to release of said vehicle, the person to whom the  
3681   vehicle is released shall pay all reasonable towing and storage fees connected therewith. The State and the arresting police  
3682   agency shall not be liable for any expenses incurred in connection with the towing and storage of said vehicle.

3683           (2) In lieu of impoundment, the number plate or registration plate of any vehicle used in connection with a  
3684   violation of this section, while the permit or license of the operator was revoked for violation of § 1025 of Title 11 for  
3685   driving a vehicle, § 4177 or § 2742 of this title or pursuant to § 2732 of this title, shall be surrendered to the  
3686   Department for at least 90 days for the first violation of this section, and for at least 1 year for a subsequent violation.  
3687   The court shall permit any party with a legal or equitable interest in the vehicle an opportunity to show cause why the  
3688   surrender of said plate should cease.

Section 134. Amend § 2759, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2759 Liability for towing expenses.

Whenever a motor vehicle is towed in connection with the enforcement of § 1025 of Title 11 for operating a vehicle, § 4177 of this title or a criminal offense for which violation of § 1025 of Title 11 for operating a vehicle or § 4177 of this title is an element, the person to whom the vehicle is released shall be liable for the towing and storage costs, except that the police agency ordering such towing shall be liable for such costs if the driver was not actually arrested for driving in violation of § 1025 of Title 11 for operating a vehicle, § 4177 of this title or another criminal offense as a result of that incident and no other existing situation reasonably necessitated such towing.

Section 135. Amend § 2760, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2760 Duplication, reproduction, manufacture and sale, altering, or counterfeiting of driver licenses or identification cards; presenting fraudulent identification and driving authority source documents.

(a) ~~A person or company shall not duplicate, reproduce, alter or counterfeit a Delaware driver license or identification card or a driver license or identification card issued by an authorized issuing agency from another state.~~  
[Deleted.]

(b) ~~A person or company shall not sell, offer for sale, manufacture or distribute a driver license or identification card document that is similar in design, shape, size or color to any driver license or identification card issued by the Delaware Division of Motor Vehicles or by an authorized driver license and/or identification card issuing agency from another state. This includes any driver license or identification card that uses the word "Delaware" or any other state name or has the words "not issued by a government agency" or similar words.~~ [Deleted.]

(c) ~~It shall be unlawful to present fraudulent personal identification source documents, state issued driver licenses or state issued identification cards when applying for a Delaware driver license or identification card.~~ If the Division of Motor Vehicles has reason to believe the documents provided by an applicant are fraudulent after physically examining the documents and/or by using an electronic verification process, the Division shall confiscate the documents, deny the transaction, and provide the documents to a law-enforcement officer or Division investigator. The investigator may recommend prosecution, deny issuance of the document, return the confiscated documents to the applicant, or take any other action deemed appropriate. The applicant may request an administrative hearing to challenge the Division's decision to retain the confiscated documents or to continue denial of the driver license or identification card based on the presentation of the questioned documents.

(d) Identification documents produced by other State of Delaware agencies are exempt from this section.

(e)(1) Any person convicted of a violation of ~~subsection (a) or (c) of this section § 1121 of Title 11 for duplicating, reproducing, altering, or counterfeiting a state issued driver license or identification case, or presenting fraudulent personal information source documents, state issued driver licenses or identifications cards when applying for a Delaware driver license or identification card, shall be fined not less than \$500, nor more than \$1,500 or imprisoned not less than 30 days, nor more than 60 days. In addition, the person shall have that person's driver license and/or driving privileges suspended for a period of 1 year.~~

~~(2) Any person convicted of a violation of subsection (b) of this section shall be guilty of a class G felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith. [Deleted.]~~

(f) When a driver license and/or driving privileges is/are suspended pursuant to this section, the applicant shall not be eligible for a conditional license, work license or any other type of hardship license during the suspension period.

Section 136. Amend § 3107, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3107 False statements.

Whoever makes any false affidavit or knowingly swears or affirms falsely to any matter or thing required by the terms of this chapter to be sworn to or affirmed is guilty of perjury and shall be ~~fined or imprisoned as the law provides~~ subject to criminal penalties under § 1221 of Title 11.

Section 137. Amend § 3108, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3108 Penalties.

(a) Whoever violates this chapter shall for the first offense be fined not less than \$25 nor more than \$115. For each subsequent like offense, the person shall be fined not less than \$50 nor more than \$230, or imprisoned not less than 10 nor more than 30 days, or both. Justices of the peace shall have jurisdiction over violations of this chapter.

(b) This section shall not apply to violations defined as perjury under ~~§ 3107 of this title~~ § 1221 of Title 11.

Section 138. Amend § 4103, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4103 Obedience to authorized persons directing traffic.

(b) Any driver who, having received a visual or audible signal from a police officer identifiable by uniform, by motor vehicle or by a clearly discernible police signal to bring the driver's vehicle to a stop, operates the vehicle in disregard of the signal or interferes with or endangers the operation of the police vehicle or who increases speed or

extinguishes the vehicle's lights and attempts to flee or elude the police officer shall be ~~guilty of a class G felony, with a~~  
~~minimum fine of \$575 which may not be suspended~~ subject to criminal penalties under § 1242 of Title 11. Upon receiving  
notice of ~~such~~ conviction of such driver according to § 1242 of Title 11, the Secretary, at the Secretary's discretion, may  
forthwith revoke the operator's or chauffeur's license of the person so convicted for a period of 2 years. ~~For each~~  
~~subsequent like offense, the person shall be guilty of a class E felony, with a minimum fine of \$1,150 which may not be~~  
~~suspended.~~ Upon receiving a court notice of conviction for a subsequent like offense, the Secretary shall revoke the  
operator's or chauffeur's license for an additional 3-year period. It shall be ~~an affirmative defense~~ a defense for this section  
if the driver proceeds at or below the posted speed limit to a safe location or, at nighttime to a well-lit reasonable location  
and stops the vehicle at that point that the driver is not guilty of this section.

Section 139. Amend § 4105, Title 21 of the Delaware Code by making deletions as shown by strike through and  
insertions as shown by underline as follows:

§ 4105 Persons and vehicles working on highways and utilities; exceptions.

(f)(1) The driver of a vehicle who violates any of the following sections of this title shall be fined not less than  
double the enumerated amount for a first offense when the violation occurs within any highway construction or  
maintenance area indicated by traffic-control devices:

s. ~~Section 4177~~ Section 1025 of Title 11 for operating a vehicle or § 4177 of this title relating to operation  
of vehicle while under the influence of alcohol and/or drugs;

Section 140. Amend § 4134, Title 21 of the Delaware Code by making deletions as shown by strike through and  
insertions as shown by underline as follows:

§ 4134 Operation of vehicles on approach of authorized emergency vehicles.

(d) Any person violating subsection (b) of this section who hits, strikes, or in any way contacts an emergency  
responder, causing physical injury, with that person's vehicle shall be ~~guilty of a class F felony~~ subject to criminal penalties  
under § 1023 of Title 11.

Section 141. Amend § 4175, Title 21 of the Delaware Code by making deletions as shown by strike through and  
insertions as shown by underline as follows:

§ 4175 Reckless driving.

(a) No person shall drive any vehicle in wilful or wanton disregard for the safety of persons or property, and this  
offense shall be known as reckless driving.

(b) Whoever violates subsection (a) of this section shall for the first offense be fined not less than \$100 nor more  
than \$300, or be imprisoned not less than 10 nor more than 30 days, or both. For each subsequent like offense occurring



within 3 years of a former offense, the person shall be fined not less than \$300 nor more than \$1,000, or be imprisoned not less than 30 nor more than 60 days, or both. No person who violates subsection (a) of this section shall receive a suspended sentence. However, for the first offense, the period of imprisonment may be suspended. Whoever is convicted of violating subsection (a) of this section and who has had the charge reduced from the violation of ~~§ 4177(a) of this title~~ § 1025 of Title 11 for operating a vehicle shall, in addition to the above, be ordered to complete a course of instruction or program of rehabilitation established under § 4177D of this title and to pay all fees in connection therewith. In such cases, the court disposing of the case shall note in the court's record that the offense was alcohol-related or drug-related and such notation shall be carried on the violator's motor vehicle record.

Section 142. Amend § 4176A, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4176A Operation of a vehicle causing death; unclassified misdemeanor.

~~(a) A person is guilty of operation of a vehicle causing death when, in the course of driving or operating a motor vehicle or OHV in violation of any provision of this chapter other than § 4177 of this title, the person's driving or operation of the vehicle or OHV causes the death of another person.~~

~~(b) Operation of a vehicle causing death is an unclassified misdemeanor.~~

~~(c) Notwithstanding any provision of law to the contrary, a person convicted of operation of a vehicle causing death shall for the first offense be fined not more than \$1,150 and imprisoned not more than 30 months. For each subsequent conviction under this section the person shall be fined not more than \$2,300 and imprisoned not more than 60 months.~~

~~(d) The Superior Court has original and exclusive jurisdiction over a violation of this section by a person 18 years of age or older. Notwithstanding any provision of law to the contrary, an offense which is within the original and/or exclusive jurisdiction of another court and which may be joined properly with a violation of this section is deemed to be within the original and exclusive jurisdiction of the Superior Court. [Deleted.]~~

Section 143. Amend § 4176B, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4176B Cell phone use by school bus drivers; penalties.

~~(d) It is an affirmative defense~~ a defense to prosecution under this section that the driver's use of a cell telephone was necessitated by a bona fide emergency.

Section 144. Amend § 4177, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4177 Driving a vehicle while under the influence or with a prohibited alcohol or drug content; evidence; arrests; and penalties.

(a) ~~No person shall drive a vehicle:~~

~~(1) When the person is under the influence of alcohol;~~

~~(2) When the person is under the influence of any drug;~~

~~(3) When the person is under the influence of a combination of alcohol and any drug;~~

~~(4) When the person's alcohol concentration is .08 or more; or~~

~~(5) When the person's alcohol concentration is, within 4 hours after the time of driving .08 or more.~~

~~Notwithstanding any other provision of the law to the contrary, a person is guilty under this subsection, without regard to the person's alcohol concentration at the time of driving, if the person's alcohol concentration is, within 4 hours after the time of driving .08 or more and that alcohol concentration is the result of an amount of alcohol present in, or consumed by the person when that person was driving;~~

~~(6) When the person's blood contains, within 4 hours of driving, any amount of an illicit or recreational drug that is the result of the unlawful use or consumption of such illicit or recreational drug or any amount of a substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug prior to or during driving. [Deleted.]~~

(b) ~~In a prosecution for a violation of subsection (a) of this section:~~

~~(1) Except as provided in paragraph (b) (3) b. of this section, the fact that any person charged with violating this section is, or has been, legally entitled to use alcohol or a drug shall not constitute a defense.~~

~~(2)a. No person shall be guilty under paragraph (a)(5) of this section when the person has not consumed alcohol prior to or during driving but has only consumed alcohol after the person has ceased driving and only such consumption after driving caused the person to have an alcohol concentration of .08 or more within 4 hours after the time of driving.~~

~~b. No person shall be guilty under paragraph (a)(5) of this section when the person's alcohol concentration was .08 or more at the time of testing only as a result of the consumption of a sufficient quantity of alcohol that occurred after the person ceased driving and before any sampling which raised the person's alcohol concentration to .08 or more within 4 hours after the time of driving.~~

~~(3)a. No person shall be guilty under paragraph (a)(6) of this section when the person has not used or consumed an illicit or recreational drug prior to or during driving but has only used or consumed such drug after the person has ceased driving and only such use or consumption after driving caused the person's blood to contain an~~

amount of the drug or an amount of a substance or compound that is the result of the use or consumption of the drug within 4 hours after the time of driving.

b. ~~No person shall be guilty under paragraph (a)(6) of this section when the person has used or consumed the drug or drugs detected according to the directions and terms of a lawfully obtained prescription for such drug or drugs.~~

c. ~~Nothing in this subsection nor any other provision of this chapter shall be deemed to preclude prosecution under paragraph (a)(2) or (a)(3) of this section.~~

~~(4) The charging document may allege a violation of subsection (a) of this section without specifying any particular paragraph of subsection (a) of this section and the prosecution may seek conviction under any of the paragraphs of subsection (a) of this section. [Deleted.]~~

(c) For purposes of subchapter III of Chapter 27 of this title and this subchapter, the following definitions shall apply:

(7) "Illicit or recreational drug" ~~as that phrase is used in paragraph (a)(6) of this section~~ means any substance or preparation that is:

a. Any material, compound, combination, mixture, synthetic substitute or preparation which is enumerated as a Schedule I controlled substance under § 4714 of Title 16; or

~~(8) "Unlawful use or consumption" as that phrase is used in paragraph (a)(6) of this section means that the person used or consumed a drug without legal authority to do so as provided by Delaware law. This Code describes the procedure by which a person may lawfully obtain, use or consume certain drugs. In a prosecution brought under paragraph (a)(6) of this section, the State need not present evidence of a lack of such legal authority. In a prosecution brought under paragraph (a)(6) of this section, if a person claims that such person lawfully used or consumed a drug, it is that person's burden to show that person has complied with and satisfied the provisions of this Code regarding obtaining, using or consumption of the drug detected.~~

(9) "Substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug" ~~as that phrase is used in paragraph (a)(6) of this section~~ shall not include any substance or compound that is solely an inactive ingredient or inactive metabolite of such drug.

(d) ~~Whoever is convicted of a violation of subsection (a) of this section shall~~ § 1025 of Title 11 for operating a vehicle shall be subject to the following provisions:

(1) For the first offense, ~~be fined not less than \$500 nor more than \$1,500 or imprisoned not more than 12 months or both. Any~~ any period of imprisonment imposed under this paragraph § 1025 of Title 11 for operating a vehicle may be suspended.

(2) For a second offense ~~occurring at any time within 10 years of a prior offense, be fined not less than \$750 nor more than \$2,500 and imprisoned not less than 60 days nor more than 18 months. The minimum sentence for a person sentenced under this paragraph may not be suspended. The~~, the sentencing Court may suspend the minimum sentence set forth in this subsection § 1025 of Title 11 for operating a vehicle upon the condition that the offender shall successfully complete the Court of Common Pleas Driving Under the Influence Treatment Program in which the offender shall complete a minimum of 30 days of community service.

(3) For a third offense ~~occurring at any time after 2 prior offenses, be guilty of a class G felony, be fined not more than \$5,000 and be imprisoned not less than 1 year nor more than 2 years. The~~, the provisions of § 4205(b)(7) § 4205(b)(2) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to 9 months of any ~~minimum~~ sentence set forth in this paragraph provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section.

(4) For a fourth or subsequent offense, the ~~offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not more than \$7,000, and imprisoned not less than 2 years nor more than 5 years. The~~ provisions of ~~§ 4205(b)(5)~~ § 4205(b)(2) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to 18 months of any ~~minimum~~ sentence set forth in this paragraph provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section.

(5) ~~For a fifth offense occurring any time after 4 prior offenses, be guilty of a class E felony, be fined not more than \$10,000 and imprisoned not less than 3 years nor more than 5 years. [Deleted.]~~

(6) ~~For a sixth offense occurring any time after 5 prior offenses, be guilty of a class D felony, be fined not more than \$10,000 and imprisoned not less than 4 years nor more than 8 years. [Deleted.]~~

(7) For a seventh offense occurring any time after 6 prior offenses, or for any subsequent offense, be guilty of a class C felony, be fined not more than \$15,000 and imprisoned not less than 5 years nor greater than 15 years. [Deleted.]

(8) For the fifth, sixth, seventh offense or greater, the provisions of § 4205(b) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, at least 1/2 of any minimum sentence shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to 1/2 of any minimum sentence set forth in this section provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section. No conviction for a violation of this section, for which a sentence is imposed pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section, shall be considered a predicate felony for conviction or sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11. [Deleted.]

(9) Any minimum sentence suspended pursuant to paragraph (d)(3), (d)(4), or (d)(8) or (d)(4) of this section shall be upon the condition that the offender shall complete a program of supervision which shall include:

a. A drug and alcohol abstinence program requiring that the offender maintain a period of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device or through periodic breath or urine analysis. In addition to such monitoring, the offender shall participate in periodic, random breath or urine analysis during the entire period of supervision.

(10) In addition to the penalties otherwise authorized by this subsection, any person convicted of a violation of subsection (a) of this section § 1025 of Title 11 for operating a vehicle, committed while a person who has not yet reached the person's seventeenth birthday is on or within the vehicle shall:

c. Violation of this paragraph shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of subsection (a) of this section § 1025 of Title 11 for operating a vehicle. Nothing in this paragraph shall prevent conviction for a violation of both subsection (a) of this section § 1025 of Title 11 for operating a vehicle and any offense as defined elsewhere by the laws of this State.

(11) A person who has been convicted of prior or previous offenses of this section, as defined in § 4177B(e) of this title, or previously convicted of § 1025 of Title 11 for operating a vehicle, need not be charged as a subsequent offender in the complaint, information or indictment against the person in order to render the person liable for the punishment imposed by this section on a person with prior or previous offenses under this section. However, if at any

time after conviction and before sentence, it shall appear to the Attorney General or to the sentencing court that by reason of such conviction and prior or previous convictions, a person should be subjected to § 1025 of Title 11 for operating a vehicle or paragraph ~~(d)(3), (d)(4), (d)(5), (d)(6) or (d)(7)~~ (d)(3) or (d)(4) of this section, the Attorney General shall file a motion to have the defendant sentenced pursuant to those provisions. If it shall appear to the satisfaction of the court at a hearing on the motion that the defendant falls within § 1025 of Title 11 for operating a vehicle graded as a felony, or paragraph ~~(d)(3), (d)(4), (d)(5), (d)(6) or (d)(7)~~ (d)(3) or (d)(4) of this section, the court shall enter an order declaring the offense for which the defendant is being sentenced to be a felony and shall impose a sentence accordingly.

(12) The Court of Common Pleas and Justice of the Peace Courts shall not have jurisdiction over offenses which must be sentenced pursuant to § 1025 of Title 11 for operating a vehicle graded as a felony, or paragraph ~~(d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8)~~ or (d)(9) of this section.

(13) The Justice of the Peace Court shall have jurisdiction to accept pleas of guilt and to impose sentence for violations of this section that are not subject to sentencing pursuant to paragraphs ~~(d)(3) through (d)(4)~~ or (d)(9) of this section and to enter conditional adjudications of guilt requiring or permitting a person to enter a first offender election pursuant to § 4177B of this title. The Justice of the Peace Court shall not have jurisdiction to try any violations of this section. If an offense or criminal case within the exclusive jurisdiction of a justice of the peace or alderman or mayor of any incorporated city or town, except the City of Newark, is or may be joined properly with a violation of this section, such offense or criminal case shall remain joined with any violation of this section for the purpose of trial.

(14) If a person enters a guilty plea in a court of competent jurisdiction to a violation of ~~subsection (a) of this section~~ § 1025 of Title 11 for operating a vehicle, such action shall constitute a waiver of the right to an administrative hearing as provided for in § 2742 of this title and shall act to withdraw any request previously made therefor.

(15) Notwithstanding any law to the contrary, the phrase "all crimes" as used in the Truth in Sentencing Act of 1989 shall include felonies under ~~this section~~ § 1025 of Title 11 for operating a vehicle, and any amendments thereto.

(e) In addition to any penalty for a violation of ~~subsection (a) of this section~~ § 1025 of Title 11 for operating a vehicle, the court shall prohibit the person convicted from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device; the terms of installation of the device and licensing of the individual to drive shall be as set forth in § 4177C and § 4177G of this title. A person who is prohibited from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device under this title at the time of an

offense under ~~subsection (a) of this section~~ § 1025 of Title 11 for operating a vehicle shall, in addition to any other penalties provided under law, pay a fine of \$2,000 and be imprisoned for 60 days.

(f) In addition to any penalty for a violation of ~~subsection (a) of this section~~ § 1025 of Title 11 for operating a vehicle, the court shall order the person to complete an alcohol evaluation and to complete a program of education or rehabilitation pursuant to § 4177D of this title which may include inpatient treatment and be followed by such other programs as established by the treatment facility, not to exceed a total of 15 months and to pay a fee not to exceed the maximum fine; provided however, that successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program shall satisfy this requirement.

(g) For purposes of a conviction premised upon ~~subsection (a) of this section~~ § 1025 of Title 11 for operating a vehicle, or any proceeding pursuant to this Code in which an issue is whether a person was driving a vehicle while under the influence, evidence establishing the presence and concentration of alcohol or drugs in the person's blood, breath or urine shall be relevant and admissible. Such evidence may include the results from tests of samples of the person's blood, breath or urine taken within 4 hours after the time of driving or at some later time. In any proceeding, the resulting alcohol or drug concentration reported when a test, as defined in paragraph (c)(3) of this section, is performed shall be deemed to be the actual alcohol or drug concentration in the person's blood, breath or urine without regard to any margin of error or tolerance factor inherent in such tests.

(3) A jury shall be instructed by the court in accordance with the applicable provisions of this subsection in any proceeding pursuant to § 1025 of Title 11 for operating a vehicle, or any proceeding pursuant to this Code in which an issue is whether a person was driving a vehicle while under the influence of alcohol or drugs or a combination of both.

(i) In addition to any other powers of arrest, any law-enforcement officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section or § 1025 of Title 11 for operating a vehicle, regardless of whether the alleged violation was committed in the presence of such officer. This authority to arrest extends to any hospital or other medical treatment facility located beyond the territorial limits of the officer's jurisdiction provided there is probable cause to believe that the violation of this section or § 1025 of Title 11 for operating a vehicle occurred within the officer's jurisdiction. This authority to arrest also extends to any place where the person is found within 4 hours of the alleged driving of a vehicle if there is reason to believe the person has fled the scene of an accident in which that person was involved, and provided there is probable cause to believe that the violation of this section or § 1025 of Title 11 for operating a vehicle occurred within the officer's jurisdiction.

(j) Any court in which a conviction of or guilty plea to a driving under the influence offense shall include the blood alcohol concentration of the defendant (if any is on record) when forwarding notice of said conviction or guilty plea to the Division of Motor Vehicles.

Section 145. Amend § 4177A, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4177A Revocation of license for violation of § 4177 of this title.

(a) The Secretary shall forthwith revoke the driver's license and/or driving privileges of any person convicted of a violation of § 4177 of this title or § 1025 of Title 11 for operating a vehicle or any offense under the laws of any state or of the United States or local jurisdiction or the District of Columbia which prohibits driving under the influence of alcohol or drugs. Such revocation shall be for a period of:

(b) Any person sentenced under § 4177(d) of this title or § 1025 of Title 11 for operating a vehicle shall have the person's driver's license and/or driving privileges revoked by the Secretary until the person has satisfactorily completed a program established pursuant to 4177D of this title and complied with the ignition interlock device requirements set forth in §§ 4177C and 4177G of this title; provided however, that successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program shall satisfy this requirement.

Section 146. Amend § 4177B, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4177B First offenders; election in lieu of trial.

(a) Any person who:

(1) Has never had a previous or prior conviction or offense as defined in paragraph (e)(1) of this section; may qualify for the first offense election at the time of arraignment. The court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and shall place the accused on probation upon terms and conditions, including enrollment in a course of instruction or program of rehabilitation established pursuant to § 4177D of this title. If the accused elects to apply, the application shall constitute a waiver of the right to speedy trial. If the person elects not to apply, or if is not accepted, the person shall promptly be arraigned for a violation of § 4177 of this title or § 1025 of Title 11 for operating a vehicle. If a person applies for or accepts the first offense election under this section, such act shall constitute agreement to pay the costs of prosecution for the case, and the court shall assess such costs and impose them as a condition of probation. If a person accepts the first offense election under this section, such action shall constitute a waiver of the right to an administrative hearing as provided for in § 2742 of this title and shall act to withdraw



any request previously made therefor. For the purposes of this section, costs of prosecution shall be \$250 and any additional costs as established by the appropriate court schedules; and

(b) If a term or condition of probation is violated, including failure to appear for evaluation at an assigned evaluating agency, the person shall be brought before the court, or if the person fails to appear before the court, in either case, upon a determination by the court that the terms have been violated, the court shall enter an adjudication of guilt and proceed as otherwise provided under § 4177 of this title or § 1025 of Title 11 for operating a vehicle.

(e)(1) *Prior or previous conviction or offense.* — For purposes of §§ 2742 and 4177 of this title and this section, but not for purposes of § 1025 of Title 11 for operating a vehicle, the provisions of § 4215A of Title 11 shall not be applicable but instead the following shall constitute a prior or previous conviction or offense:

a. A conviction or other adjudication of guilt or delinquency pursuant to § 4175(b) or § 4177 of this title, § 1025 of Title 11 for operating a vehicle, or a similar statute of any state or local jurisdiction, any federal or military reservation or the District of Columbia;

(2) *Time limitations.* — ~~For the purpose of determining the applicability of enhanced penalties pursuant to § 4177 of this title, the time limitations on use of prior or previous convictions or offenses as defined by this subsection shall be:~~

~~a. For sentencing pursuant to § 4177(d)(2) of this title, the second offense must have occurred within 10 years of a prior offense;~~

~~b. For sentencing pursuant to § 4177(d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8) or (d)(9) of this title there shall be no time limitation and all prior or previous convictions or offenses as defined in paragraph (e)(1) of this section shall be considered for sentencing.~~

~~c. For any subsection that does not have a time limitation prescribed, all prior or previous convictions or offenses as defined in paragraph (e)(1) of this section shall be considered. [Deleted.]~~

(4) *Separate and distinct offenses.* — For the purpose of determining the applicability of enhanced penalties pursuant to § 4177 of this title, or § 1025 of Title 11 for operating a vehicle, prior or previous convictions or offenses used to determine eligibility for such enhanced penalties must be separate and distinct offenses; that is, each must be successive to the other with some period of time having elapsed between sentencing or adjudication for an earlier offense or conviction and the commission of the offense resulting in a subsequent conviction.

(5) *Challenges to use of prior offenses.* — In any proceeding under § 2742 of this title, § 4177 of this title, § 1025 of Title 11 for operating a vehicle, or this section, a person may not challenge the validity of any prior or previous conviction, unless that person first successfully challenges the prior or previous conviction in the court in which the

conviction arose and provides written notice of the specific nature of the challenge in the present proceeding to the prosecution at least 20 days before trial.

Section 147. Amend § 4177C, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4177C Ignition interlock licenses; reinstatement of license.

(b) Any person who, as a first offender is sentenced pursuant to § 1025 of Title 11 for operating a vehicle or § 4177(d) of this title, and is enrolled in a course of instruction and/or program of rehabilitation pursuant to 4177D of this title shall be eligible to apply for an IID license under the following terms:

(c) Any person who, as a second or subsequent offender is sentenced pursuant to § 1025 of Title 11 for operating a vehicle or § 4177(d) of this title, shall be eligible to apply for an IID license under the following terms:

(1)a. For a person sentenced as a second offender pursuant to § 1025 of Title 11 for operating a vehicle or § 4177(d) of this title, at least 60 days have elapsed since the effective date of the revocation;

b. For a person sentenced as a third offender pursuant to § 1025 of Title 11 for operating a vehicle or § 4177(d) of this title, at least 90 days have elapsed since the effective date of the revocation;

c. For a person sentenced as a fourth or subsequent offender pursuant to § 1025 of Title 11 for operating a vehicle or § 4177(d) of this title, at least 6 months have elapsed since the effective date of the revocation.

(d) *Reinstatement of license.* — Notwithstanding §§ 4177A and 4177B of this title, any person who has satisfactorily completed a course and/or program established pursuant to § 4177D of this title, shall be permitted to apply for reinstatement of their driver's license and/or driving privilege under the following terms:

(3) For a person sentenced for a first offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, whose blood alcohol concentration was below .15, at least 12 months have elapsed since the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(4) For a person sentenced for a first offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, whose blood alcohol concentration was .15 to .19, at least 17 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(5) For a person sentenced for a first offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 23 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(6) For a person sentenced for a second offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, at least 16 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(7) For a person sentenced for a second offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, whose blood alcohol concentration was .15 to .19, at least 22 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(8) For a person sentenced for a second offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 28 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(9) For a person sentenced for a third offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, at least 21 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(10) For a person sentenced for a third offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, whose blood alcohol concentration was .15 to .19, at least 27 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(11) For a person sentenced for a third offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 33 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(12) For a person sentenced for a fourth or further subsequent offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, at least 54 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(e) Notwithstanding any other provision to the contrary, any person whose alcohol concentration is less than .08 (1) who is convicted of a first offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, (2) who makes a first offense election pursuant to 4177B of this title, or (3) whose license is revoked for a first offense pursuant to Chapter 27 of this title, where it is not established that the person was under the influence of any other intoxicating substance, shall be granted a conditional license immediately upon application, and shall not be required to complete a course of instruction established under 4177D of this title. Nothing in this subsection shall be read to imply that an individual with an alcohol concentration of less than .08 is under the influence of alcohol.

Section 148. Amend § 4177D, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

4101 § 4177D Courses of instruction; rehabilitation programs.

4102 The Secretary of the Department of Health and Social Services, through the Division of Substance Abuse and  
4103 Mental Health, shall establish courses of instruction and programs of rehabilitation for persons whose drivers' licenses have  
4104 been revoked for driving a vehicle while under the influence of alcohol or any drug. The Secretary of the Department of  
4105 Health and Social Services shall administer such courses and programs and adopt rules and regulations for such courses and  
4106 programs. The Secretary of the Department of Health and Social Services shall establish a schedule of fees for enrollment  
4107 in such courses and programs. The schedule of fees may not exceed the maximum fine imposed for an offense under ~~§ 4177~~  
4108 ~~of this title~~ § 1025 of Title 11 for operating a vehicle. A person's successful completion of the Court of Common Pleas  
4109 Driving Under the Influence Treatment Program is equivalent to a course of instruction or program of rehabilitation  
4110 approved under this section.

4111 Section 149. Amend § 4177G, Title 21 of the Delaware Code by making deletions as shown by strike through and  
4112 insertions as shown by underline as follows:

4113 § 4177G Ignition Interlock Device Program.

4114 (a) *Participation.* — All persons convicted of an offense must participate in the Ignition Interlock Device Program  
4115 as specified herein.

4116 (b) *Definitions.* — For the purpose of this section:

4117 (3) "Offender" means a person who has accepted a first offender election pursuant to 4177B of this title or  
4118 been convicted of violating § 4177 of this title or § 1025 of Title 11 for operating a vehicle.

4119 (4) "Offense" means a first offenders election pursuant to § 4177B of this title or a conviction pursuant to §  
4120 4177 of this title or § 1025 of Title 11 for operating a vehicle.

4121 (f) *IID license.* —

4122 (1) All persons convicted of an offense shall be eligible for an IID license as set forth in § 4177C of this title if  
4123 the following conditions are met:

4124 b. The offender has had an IID installed on a minimum of 1 vehicle owned or operated, or both, by the  
4125 individual; provided, however, that a person convicted of a second, third, fourth or greater offense pursuant to §  
4126 ~~4177 of this title~~ § 1025 of Title 11 for operating a vehicle must have an IID installed on each of the motor  
4127 vehicles owned or operated, or both, by the individual;

4128 (2) An offender shall lose the privilege of having an IID license for failure to comply with any of the  
4129 following:

e. The offender shall not violate any section of this title or § 1025 of Title 11 for operating a vehicle relating to the use, possession or consumption of alcohol or intoxicating substances;

Section 150. Amend § 4177I, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4177I Applicability of conforming statutes or ordinances.

Any references to § 4177, § 4177A, § 4177B, § 4177C, § 4177D, § 4177E [repealed], ~~or § 4177L~~ of this title, or § 1025 of Title 11 for operating a vehicle shall include all conforming statutes of any other state or the District of Columbia, or local ordinances in conformity therewith.

Section 151. Amend § 4202, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4202 Duty of driver involved in collision resulting in injury or death to any person; penalty.

~~(a) The driver of any vehicle involved in an collision resulting in injury or death to any person shall immediately stop such vehicle at the scene of such collision. Said stop should be made as close to the scene of the collision as possible without obstructing traffic more than necessary. The driver shall give the driver's name, address and the registration number of the driver's vehicle and exhibit a driver's license or other documentation of driving privileges to the person struck or the driver or occupants of any vehicle collided with and shall render to any person injured in such collision reasonable assistance, including the carrying of such person to a hospital or physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person, or by contacting appropriate law enforcement or emergency personnel and awaiting their arrival.~~

(a) The driver of any vehicle involved in a collision resulting in injury or death to any person shall:

(1) Immediately stop such vehicle at the scene of such collision. Said stop should be made as close to the scene of the collision as possible without obstructing traffic more than necessary.

(2) Give the driver's name, address and the registration number of the driver's vehicle and exhibit a driver's license or other documentation of driving privileges to the person struck or the driver or occupants of any vehicle collided with.

(3) Shall render to any person injured in such collision reasonable assistance, including the carrying of such person to a hospital or physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person, or by contacting appropriate law-enforcement or emergency personnel and awaiting their arrival.

(b) Whoever violates subsection ~~(a)~~ (a)(1) of this section ~~when that person has been involved in a collision resulting in injury to any person shall be guilty of an unclassified misdemeanor, be fined not less than \$1,000 nor more than \$3,000 or imprisoned not less than 1 year nor more than 2 years~~ shall be subject to criminal penalties under § 1241 of Title 11.

~~(c) Whoever violates subsection (a) of this section when that person has been involved in a collision resulting in death to any person shall be guilty of a class E felony. The provisions of § 4206(a) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the sentence for such offense shall include a period of incarceration of not less than 1 year and the first 6 months of any sentence imposed shall not be suspended. [Deleted.]~~

(d) The Secretary shall revoke the driver's license and/or driver's privilege of every person convicted under ~~this section~~ § 1241(b)(2)-(3) of Title 11. Such revocation shall be for a period of 1 year if the person is convicted and sentenced pursuant to ~~subsection (b) of this section~~ § 1241(b)(3) of Title 11. Such revocation shall be for a period of 2 years if the person is convicted and sentenced pursuant to ~~subsection (c) of this section~~ § 1241(b)(2) of Title 11.

(e) Except as provided in § 927 of Title 10, notwithstanding any other law, rule or regulation to the contrary, the Court of Common Pleas shall have original jurisdiction to hear, try and finally determine any ~~misdemeanor violation of this section~~ prosecution under § 1241(b)(3) of Title 11, and any other violation of any offense set forth in this title or in § 1025 of Title 11 for operating a vehicle which was allegedly committed during the same incident. The jurisdiction of the justices of the peace over such matters is hereby terminated.

Section 152. Amend § 4205A, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4205A Classification of offenders sentenced to imprisonment under this title.

(b) For offenses under § 1241(b)(3) of Title 11 or this title which involve injury caused to another person by the person's driving or operation of the vehicle or a driving under the influence-related conviction or offense as defined in § 4177B(e)(1)a.-d. of this title, any term of imprisonment defined in this title shall be served at Supervision Accountability Level V as defined in § 4204(c)(5) of Title 11 or at Supervision Accountability Level IV as defined in § 4204(c)(4) of Title 11 provided that such Level IV placement must be served in a Department of Correction facility which requires full-time residence at the facility and that the person may not be outside the confines of that facility without armed supervision.

(c) For offenses under § 1241(b)(2) of Title 11 or this title which involve death caused to another person by the person's driving or operation of the vehicle any term of imprisonment defined in this title shall be served at Supervision Accountability Level V as defined in § 4204(c)(5) of Title 11.

Section 153. Amend § 4601, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4601 ~~Introduction, sale, distribution or advertisement for sale to public of motor vehicle master keys; penalties~~  
Definition.

(a) ~~Whoever knowingly introduces, manufactures for introduction or transports or distributes in this State any motor vehicle master key shall be fined not more than \$2,000, or imprisoned not more than 5 years or both. [Deleted.]~~

(b) ~~Whoever knowingly disseminates or knowingly causes to be disseminated any advertisement or sale to the public of this State motor vehicle master keys shall be fined not more than \$2,000, or imprisoned not more than 5 years or both. [Deleted.]~~

(c) As used in this section, "master key" means any key adapted to fit the ignition switch of 2 or more motor vehicles, the ignition switches of which are designed to operate by different keys.

Section 154. Amend § 4602, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4602 Exemptions.

~~Section 4601 of this title shall not apply to:~~

~~(1) The introduction, manufacture for introduction, transportation, distribution, sale or possession in this State of motor vehicle master keys for use in the ordinary course of business by any bona fide locksmith, vehicle manufacturer, lock manufacturer, common carrier, contract carrier, new or used car dealer, rental car agency, automobile club or association or any department, agency or instrumentality of:~~

~~a. This State;~~

~~b. The United States; or~~

~~c. Any political subdivisions of any such entity;~~

~~(2) The shipment, transportation or delivery for shipment in this State of motor vehicle master keys in the ordinary course of business of any common carrier or contract carrier. [Deleted.]~~

Section 155. Amend § 4603, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4603 Reporting of keys; penalties.

Any person, corporation, agency, association, club, department or carrier possessing any master key pursuant to this chapter shall, before May 30, 1969, and every 6 months thereafter, submit to the Secretary of Public Safety of this State a list describing all master keys which it possesses. Any person, corporation, agency, association, club, department or

carrier which submits a list pursuant to this section which list does not contain any master key which was described in any previous list to the Secretary of Public Safety shall, in writing, notify the Secretary of Public Safety of the reason for omission. Whoever knowingly fails to comply with this section shall be ~~fin~~~~ed not more than \$2,300, or imprisoned not more than 5 years or both~~ subject to criminal penalties under § 1223 of Title 11.

Section 156. Amend § 4604, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4604 Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires; penalty; class E felony.

~~(a) No person shall have in possession any motor vehicle master key, manipulative key or device, key-cutting device, lock pick or lock picking device or hot wire, designed to open or capable of opening the door or trunk of any motor vehicle or of starting the engine of a motor vehicle. Any person who violates this subsection shall be guilty of a class E felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith.~~

~~(b) This section shall not apply to any bona fide dealer of new or used motor vehicles, a car rental agent, a locksmith, a public utility subject to the jurisdiction of the Public Service Commission or the agents of such persons while such persons or their agents are acting within the scope of their employment. This section shall not apply to a private investigator who in the usual course of business repossesses vehicles if such investigator is licensed and bonded by the State or the employees of such private investigator while the employee is repossessing vehicles in the usual course of business and is bonded and licensed by the State. This section shall not apply to a state, county or municipal law enforcement officer who is acting within the scope of official duties. Nor shall this section apply to a bona fide business which has a key-cutting device located and used on the premises for the purpose of making replacement keys. [Deleted.]~~

Section 157. Amend § 6701, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6701 Injuring vehicle or obstructing its operation.

~~No person shall, individually or in association with 1 or more others, wilfully break, injure, tamper with or remove any part or parts of any vehicle for the purpose of injuring, defacing or destroying such vehicle, or temporarily or permanently preventing its useful operation, or for any purpose against the will or without the consent of the owner of such vehicle or shall in any other manner wilfully or maliciously interfere with or prevent the running or operation of such vehicle. [Deleted.]~~

Section 158. Amend § 6702, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:



§ 6702 Driving vehicle without consent of owner.

~~(a) No person shall drive another person's vehicle without the consent of the owner thereof, and with intent temporarily to deprive the owner of possession of such vehicle, but without intent to steal the vehicle. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person.~~

~~(b) Whoever violates this section shall be fined not less than \$115 nor more than \$575, or imprisoned not more than 90 days, or both; for each subsequent like offense the person shall be fined not less than \$230 and imprisoned for not less than 30 days nor more than 2 years. [Deleted.]~~

Section 159. Amend § 6703, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6703 Tampering with vehicle.

~~No person shall, without the consent of the owner or person in charge of a vehicle, climb into or upon such vehicle with the intent to commit any crime, malicious mischief or injury thereto or, while a vehicle is at rest and unattended, attempt to manipulate any of the levers, starting crank or other starting device, brakes or other mechanism thereof or to set the vehicle in motion.~~

~~This section shall not apply when any such act is done in an emergency in furtherance of public safety or convenience or by or under the direction of an officer in the regulation of traffic or performance of any other official duty. [Deleted.]~~

Section 160. Amend § 6704, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6704 Receiving or transferring stolen vehicle; penalty.

~~Whoever, with intent to procure or pass title to a motor vehicle or vehicle which the person knows or has reason to believe has been stolen, receives or transfers possession of the same from or to another or has in possession any motor vehicle or vehicle which the person knows or has reason to believe has been stolen and who is not an officer of the law engaged at the time in the performance of duty as such officer, is guilty of a felony and shall be fined not less than \$575 nor more than \$5,750, or imprisoned not less than 1 year nor more than 5 years or both. [Deleted.]~~

Section 161. Amend § 6705, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6705 Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity; penalty.

(a) ~~A person who wilfully removes to falsify or falsifies an identification number of a vehicle, a bicycle or an engine for a vehicle is guilty of a misdemeanor. [Deleted.]~~

(b) ~~A person who wilfully and with intent to conceal or misrepresent the identity of a vehicle, a bicycle or engine removes or falsifies an identification number of the vehicle or engine is guilty of a felony. [Deleted.]~~

(c) A person who buys, sells, receives, possesses or disposes of a vehicle, a bicycle or an engine of a vehicle, knowing that an identification number of the vehicle or engine has been removed or falsified, is guilty of a misdemeanor.

(d) ~~A person who buys, sells, receives, possesses or disposes of a vehicle, a bicycle or an engine for a vehicle, with knowledge that an identification number of the vehicle or engine has been removed or falsified and with intent to conceal or misrepresent the identity of the vehicle or engine, is guilty of a felony. [Deleted.]~~

(e) ~~A person who removes a license/registration plate from a vehicle or affixes to a vehicle a license/registration plate not authorized by law for use on it, in either case with intent to conceal or misrepresent the identity of the vehicle or its owner, is guilty of a misdemeanor. [Deleted.]~~

(f) ~~An identification number may be placed on a vehicle, a bicycle or engine by its manufacturer in the regular course of business or placed or restored on a vehicle, a bicycle or engine by authority of the Division without violating this section; an identification number so placed or restored is not falsified. [Deleted.]~~

(g) ~~No person, unless duly authorized by the Director of the Division of Motor Vehicles or an agent of the Director, shall remove or alter a license/registration plate from any motor vehicle, trailer or semitrailer, or part thereof, or have in possession any motor vehicle, trailer or semitrailer, or part thereof, where the license/registration has been removed without first obtaining permission, in writing, from the said Director. [Deleted.]~~

(h) Whoever is found guilty of a misdemeanor under this section shall be fined not less than \$57.50 nor more than \$575, or imprisoned not less than 30 days nor more than 6 months or both. ~~Whoever is found guilty of a felony under this section shall be fined not less than \$575 nor more than \$5,750, or imprisoned not less than 1 year nor more than 5 years or both. Superior Court shall have jurisdiction. In addition to any fine levied for conviction of theft under this section, the defendant shall be ordered to pay restitution to the victim of the theft.~~

Section 162. Amend § 6708, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6708 Possession of blank title; blank registration card; vehicle identification plate; warranty sticker and registration card; class E felony; penalty.

(a) No person, unless duly authorized by the Director of the Division of Motor Vehicles, shall have in possession any blank certificate of title, blank registration card, blank vehicle identification plate, warranty sticker or vehicle inspection card.

(b) No person, unless duly authorized by the Director of the Division of Motor Vehicles, shall sell or deliver any blank certificate of title, blank registration card, vehicle identification plate, warranty sticker or vehicle inspection card.

(c) Any person found guilty of the violation of this section shall be guilty of a class E felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith. [Deleted.]

Section 163. Amend § 6709, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6709 Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers; penalty; class E felony.

(a) No person, unless duly authorized by the Director of the Division of Motor Vehicles or an agent of the Director, shall remove or alter a vehicle identification plate, warranty or certification sticker or confidential vehicle identification number from any motor vehicle, trailer or semitrailer, or part thereof, or have in possession any motor vehicle, trailer or semitrailer, or part thereof, where the vehicle identification plate, warranty or certification sticker or confidential vehicle identification number has been removed without first obtaining permission, in writing, from the said Director.

(b) Any person found guilty of the violation of this section shall be guilty of a class E felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith. [Deleted.]

Section 164. Amend § 6710, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6710 Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers; penalty; class E felony.

(a) No person shall have in possession an assigned certificate of title, registration card, vehicle identification plate or warranty sticker or deliver for sale any assigned certificate of title, registration card, vehicle identification plate or warranty sticker unless such motor vehicle document is accompanied by 75% of the vehicle described on the assigned certificate of title, registration card, vehicle identification plate or warranty sticker.

(b) Any person found guilty of a violation of this section shall be guilty of a class E felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith. [Deleted.]

Section 165. Amend § 2116, Title 23 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2116 Operation of noncomplying vessels prohibited; careless operation; inattentive operation; reckless operation; ~~assault by vessel in the second degree; assault by vessel in the first degree.~~

(a) No person shall use or give permission for the use of any vessel to which this subchapter applies, unless the vessel is in compliance with the requirements of this subchapter and the applicable standards and regulations promulgated under the authority of this subchapter.

(c) ~~Notwithstanding § 2115(b) of this title, a person is guilty of assault by vessel in the second degree when:~~

~~(1) While in the course of operating a vessel, the person's criminally negligent operation of said vessel causes serious physical injury to another person; or~~

~~(2) While in the course of operating a vessel and under the influence of alcohol or drugs, as defined by § 2301 of this title, the person's negligent operation of said vessel causes physical injury to another person.~~

~~Assault by vessel in the second degree is a class B misdemeanor. [Deleted.]~~

(f) ~~Notwithstanding § 2115(b) of this title, a person is guilty of assault by vessel in the first degree when while in the course of operating a vessel and under the influence of alcohol or drugs, as defined by § 2301 of this title, the person's negligent operation of said vessel causes serious physical injury to another person.~~

~~Assault by vessel in the first degree is a class F felony. [Deleted.]~~

Section 166. Amend § 2301, Title 23 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2301 Definitions.

(d) ~~"Prior or previous offense" shall mean:~~

~~(1) A conviction pursuant to this chapter, or a similar statute of any state, local jurisdiction or the District of Columbia, within 5 years immediately preceding the date of the present offense; or~~

~~(2) A conviction, under a criminal statute encompassing death or injury caused to another person by the person's operation of a vessel, where operating a vessel under the influence or with a prohibited alcohol concentration was an element of the offense.~~

~~For the purpose of computing the periods of time set out in § 2305 of this title, the period shall run from the date of the commission of the prior or previous offense to the date of the commission of the charged offense. In any proceeding under § 2305 of this title, a person may not challenge the validity of any prior or previous conviction unless that person first~~

4364 ~~successfully challenges the prior or previous conviction in the court in which the conviction arose and provides written~~  
4365 ~~notice of the challenge in the present proceeding to the prosecution at least 20 days before trial. [Deleted.]~~

4366 Section 167. Amend § 2302, Title 23 of the Delaware Code by making deletions as shown by strike through and  
4367 insertions as shown by underline as follows:

4368 § 2302 Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs.

4369 ~~(a) No person shall motor, sail, row, operate, command or have actual physical control of any vessel or boat~~  
4370 ~~underway on Delaware waters:~~

4371 ~~(1) When the person is under the influence of alcohol;~~

4372 ~~(2) When the person is under the influence of a drug;~~

4373 ~~(3) When the person is under the influence of any combination of alcohol and any drug;~~

4374 ~~(4) When the person's alcohol concentration is 0.08 or more; or~~

4375 ~~(5) When the person's alcohol concentration is, within 4 hours after the time of vessel operation, 0.08 or more.~~

4376 ~~(b) Any person charged under subsection (a) of this section whose blood alcohol concentration is 8/100 of 1% or~~  
4377 ~~more by weight as shown by a chemical analysis of a blood, breath or urine sample taken within 4 hours of the alleged~~  
4378 ~~offense shall be guilty of violating subsection (a) of this section. This provision shall not preclude a conviction based on~~  
4379 ~~other admissible evidence.~~

4380 ~~(c) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or a~~  
4381 ~~drug shall not constitute a defense against any charge of violating this section.~~

4382 ~~(d) It shall be an affirmative defense to a prosecution premised on paragraph (a)(5) of this section if the person~~  
4383 ~~proves by a preponderance of evidence that the person consumed a sufficient quantity of alcohol after the time of actual~~  
4384 ~~vessel operation and before any sampling to cause the person's alcohol concentration to exceed 0.08. Such evidence shall~~  
4385 ~~not be admitted unless notice of this defense is given to the prosecution at least 20 days before trial.~~

4386 ~~(e) The charging document may allege a violation of subsection (a) of this section without specifying any~~  
4387 ~~particular paragraph of subsection (a) of this section and the prosecution may seek conviction under any of the paragraphs~~  
4388 ~~of subsection (a) of this section. [Deleted.]~~

4389 Section 168. Amend § 2303, Title 23 of the Delaware Code by making deletions as shown by strike through and  
4390 insertions as shown by underline as follows:

4391 § 2303 Consent to submit to chemical test.

4392 (a) Any person who motors, sails, rows, commands, operates or has actual physical control of a vessel or boat  
4393 underway on the waters of this State shall be deemed to have given consent, subject to this section and ~~§ 2302 of this title §~~

1025 of Title 11 for operating a vessel, to a chemical test or tests of the person's blood, breath and/or urine for the purpose of determining the presence of alcohol or a drug or drugs. The testing may be required of a person when an officer has probable cause to believe the person is in violation of ~~§ 2302 of this title~~ § 1025 of Title 11 for operating a vessel or a local ordinance substantially conforming thereto.

(e) *Refusal to submit as admissible evidence.* — Upon any trial of any action or proceeding arising out of the acts alleged to have been committed by any person while in violation of ~~§ 2302 of this title~~ § 1025 of Title 11 for operating a vessel, the court may admit evidence of the refusal of such person to submit to a chemical test of the person's breath, blood or urine.

(f) *Admissibility in evidence of results of chemical test* — For purposes of a conviction premised upon ~~§ 2302(a) of this title~~ § 1025 of Title 11 for operating a vessel or any proceeding pursuant to this code in which an issue is whether a person was operating a vessel while under the influence, evidence establishing the presence and concentration of alcohol or drugs in the person's blood, breath or urine shall be relevant and admissible. Such evidence may include the results from tests of samples of the person's blood, breath or urine taken within 4 hours of operating the vessel or at some later time. In any proceeding, the resulting alcohol or drug concentration reported when a test, as defined in § 2301(b) of this title, is performed shall be deemed to be the actual alcohol or drug concentration in the person's blood, breath or urine without regard to any margin of error or tolerance factor inherent in such tests.

(i) Nothing in this section shall preclude conviction of an offense defined in ~~this chapter~~ § 1025 of Title 11 for operating a vessel based solely on admissible evidence other than the results of a chemical test of a person's blood, breath or urine to determine the concentration or presence of alcohol or drugs.

(j) A jury shall be instructed by the court in accordance with the applicable provisions of this section in any proceeding pursuant to § 1025 of Title 11 for operating a vessel, or any other proceeding pursuant to this chapter in which an issue is whether a person was operating a vessel while under the influence.

(m) The informing or failure to inform the accused concerning the implied consent provision shall not affect the admissibility of such results in any prosecution for a violation of ~~§ 2302(a) of this title~~ § 1025 of Title 11 for operating a vessel.

Section 169. Amend § 2305, Title 23 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2305 Penalties; jurisdiction.

Whoever is convicted of a violation of ~~§ 2302 of this title~~ shall § 1025 of Title 11 for operating a vessel shall be subject to the following provisions:

(1) For the first offense, be fined not less than \$200 nor more than \$1,000, or imprisoned not less than 60 days nor more than 6 months, or both. [Deleted.]

(2) For a second offense occurring within 5 years from a prior offense, be fined not less than \$500 nor more than \$2,000 and imprisoned not less than 60 days nor more than 18 months. No person sentenced under this paragraph For a second offense, no person shall receive a suspended sentence.

(3) For a third offense occurring within 5 years from a prior offense, be guilty of a class G felony, be fined not less than \$1,000 nor more than \$3,000 and imprisoned not less than 1 year nor more than 2 years. The For a third offense, the provisions of § 4205(b)(7) (2) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to an early release, furlough or reduction of any kind.

~~No conviction for violation of this chapter for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this subsection is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.~~

(4) ~~For a fourth or subsequent offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not less than \$2,000 nor more than \$6,000 and imprisoned not less than 2 years nor more than 5 years. The~~ For a fourth or subsequent offense, the provisions of this title or any other statute notwithstanding, a court may consider prior offenses outside a 5-year period for sentencing pursuant to this paragraph. The provisions of § 4205(b)(5) (2) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. ~~No conviction for violation of this chapter for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.~~

(5) In addition to the penalties otherwise authorized by this section, a person convicted of a violation of § 2302(a) ~~of this title~~ § 1025 of Title 11 for operating a vessel, committed while a person who has not yet reached that person's seventeenth birthday is on or in the vessel shall:

c. Violation of this paragraph shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of ~~§ 2302(a) of this title~~ § 1025 of Title 11 for operating a vessel. Nothing in this

paragraph shall prevent conviction for a violation of both ~~§ 2302(a) of this title~~ § 1025 of Title 11 for operating a vessel and any offense as defined elsewhere by the laws of this State.

(6) A person who has been previously convicted of ~~prior or previous offenses under this chapter~~ § 1025 of Title 11 for operating a vessel need not be charged as a subsequent offender in the complaint, information or indictment against the person in order to render the person liable for the punishment imposed by § 1025 of Title 11 for operating a vessel or this chapter ~~on a person with prior or previous offenses under this chapter~~. However, if at any time after conviction and before sentence, it shall appear to the Attorney General or to the sentencing court that by reason of such conviction and prior or previous convictions, a person should be subjected to § 1025 of Title 11 for operating a vessel or paragraph (3) or (4) of this section, the Attorney General shall file a motion to have the defendant sentenced pursuant to those provisions. If it shall appear to the satisfaction of the Court at a hearing on the motion that the defendant falls within § 1025 of Title 11 for operating a vessel graded as a felony or paragraph (3) or (4) of this section, the Court shall enter an order declaring the offense for which the defendant is being sentenced to be a felony and shall impose a sentence accordingly.

(7) The Justice of the Peace Courts shall have jurisdiction for violations of this chapter, except those offenses which must be sentenced pursuant to § 1025 of Title 11 for operating a vessel graded as a felony, or paragraph (3) or (4) of this section.

Section 170. Amend § 2306, Title 23 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2306 Enforcement of chapter.

In addition to any other powers of arrest, any law-enforcement officer is hereby authorized to arrest without warrant any person who the officer has probable cause to believe has violated the provisions of this chapter, or § 1025 of Title 11 for operating a vessel regardless of whether the alleged violation was committed in the presence of such officer. This authority to arrest extends to any hospital or other medical treatment facility located beyond the territorial limits of the officer's jurisdiction provided there is probable cause to believe that the violation of this chapter or § 1025 of Title 11 for operating a vessel occurred within the officer's jurisdiction. This authority to arrest also extends to any place where the person is found within 4 hours of the alleged operation of a vessel if there is reason to believe the person has fled the scene of an accident in which the person was involved, and provided there is probable cause to believe that the violation of this chapter or § 1025 of Title 11 for operating a vessel occurred within the officer's jurisdiction.

Section 171. Amend § 2308, Title 23 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2308 Disposition of vessel and property.



(a) Where the only person on a vessel is an individual suspected of violating this chapter or § 1025 of Title 11 for operating a vessel, the following procedure shall apply:

(b) Where more than 1 person is on a vessel which has been stopped for a suspected violation of this chapter or § 1025 of Title 11 for operating a vessel, the following procedure shall apply:

(d) Where a vessel which has been stopped for a suspected violation of this chapter or § 1025 of Title 11 for operating a vessel has been damaged or has caused damage as a result of its operation in violation of the chapter, the vessel may, at the direction of the investigating agency, be removed and impounded for evidentiary purposes. The vessel shall be inventoried pursuant to paragraph (a)(2) of this section, but the vessel shall not be released until evidentiary processing is completed.

Section 172. Amend § 901, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 901 License requirement.

No person shall engage in the business of selling any pistol or revolver, or stiletto, steel or brass knuckles, or other deadly weapon made especially for the defense of one's person without first having obtained a license therefor, which license shall be known as "special license to sell deadly weapons." ~~No person licensed or unlicensed shall possess, sell or offer for sale any switchblade knife.~~

This section shall not apply to toy pistols, pocket knives or knives used for sporting purposes and in the domestic household, or surgical instruments or tools of any kind.

Section 173. Amend § 903, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 903 Sale to persons under 21 or intoxicated persons.

~~No person shall sell to a person under the age of 21 or any intoxicated person any of the articles referred to in the first paragraph of § 901 of this title. [Deleted.]~~

Section 174. Amend § 904, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 904 Records.

(b) Any person engaging in the business described in this chapter shall keep and maintain a list of current employees including their names, former names used, dates of birth, physical descriptions and social security numbers. The required employee list and all attachments thereto shall be considered confidential but shall, nevertheless, be open for inspection by any police officer of this State or of any political subdivision of this State, within their respective jurisdiction,

at any time, at the licensee's primary place of business and during the licensee's regular business hours. No person licensed under this chapter shall knowingly allow any employee who is a person prohibited from possessing a deadly weapon pursuant to ~~§ 1448 of Title 11~~ § 1404 of Title 11 to facilitate a sale of a deadly weapon. All employers licensed to do business pursuant to this chapter shall, prior to employment and at least once during each calendar year thereafter, perform a telephonic criminal history record check of each employee utilizing the procedures set forth in ~~§ 1448A~~ § 9904 of Title 11 and shall make and maintain a record thereof using the State Bureau of Identification Criminal History Record Information and Mental Health Information Consent Form (Form 544). A copy of each such form shall be attached to the above required employee list for inspection upon the valid request of a police officer of this State or of any political subdivision of this State, within their respective jurisdiction.

Section 174. Amend § 904A, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 904A Criminal history checks for sales between unlicensed persons.

(b) As a condition of its license, any dealer holding a license pursuant to this chapter shall facilitate the transfer of a firearm, as that term is defined in ~~§ 222 of Title 11~~ § 103 of Title 11, from any unlicensed person as that term is defined in ~~§ 1448B~~ § 9905 of Title 11, upon the request of said unlicensed person, pursuant to the following procedure:

(3) In the event that said record check reveals that the prospective buyer is prohibited from possessing, purchasing or owning a firearm pursuant to ~~§ 1448 of Title 11~~ § 1404 of Title 11, the dealer shall so inform both parties of that fact and the transfer shall not take place.

(c) Nothing in this section, or any other section of the Code, shall authorize or permit the State or any agency, department or instrumentality thereof to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited from receiving a firearm as set forth in ~~Chapter 5 of Title 11~~ § 1404 of Title 11. Any such system of registration is expressly prohibited.

Section 175. Amend § 905, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 905 Penalties.

~~Whoever violates this chapter shall be fined not more than \$250 or imprisoned not more than 6 months, or both.~~

[Deleted.]

Section 176. Amend § 1766, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1766 Penalties [See conflicting amendment, unable to be implemented, in 75 Del. Laws, c. 161, § 5.]

(b) ~~A person who terminates or attempts to terminate or assists in the termination of a human pregnancy otherwise than by birth, except in accordance with subchapter IX of this chapter, is guilty of a class C felony and shall be fined not more than \$5,000 and imprisoned not less than 2 nor more than 10 years. [Deleted.]~~

Section 177. Amend § 5515, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5515 Penalties.

(a) The Board shall have the power to impose a civil penalty upon any person required to be licensed under this chapter up to \$200, per day, for operating without a valid license.

(b) Anyone performing the duties of a BEA pursuant to § 5502 of this title, who is not duly licensed under this chapter shall be ~~guilty of a class F felony~~ subject to criminal penalties under § 1132 of Title 11.

Section 178. Amend Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 17. General provisions.

§ 1701 Definitions.

As used in this chapter:

(1) "Dissemination" means the act of transmitting, distributing, advising, spreading, communicating, conveying or making known.

(2) "Public utility" means a person, partnership, association or corporation owning or operating in this State equipment or facilities for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

§ 1702 Gambling; revocation of service contracts or denial of application for service; exemption from liability.

(a) The Attorney General, if the Attorney General has reasonable cause to believe that any service furnished by a public utility is being used or will be used to disseminate information in furtherance of gambling or for gambling purposes under Chapter 13 of Title 11, may give notice to the person who has contracted with or is applying to the public utility for such service that the Attorney General intends to seek a court order that the service contract be revoked or the application for service be denied.

(b) The notice permitted in subsection (a) of this section shall be served personally upon the person who has contracted with or is applying to the public utility for the service. If personal service is not reasonably possible, the notice may be posted in a conspicuous place on the premises to which the service is furnished. The notice shall specify the time and place where the hearing will be held, and the court before which it will be held.

4573 (c) A hearing shall be held in the Superior Court at the time specified in the notice. At the hearing, evidence  
4574 bearing on the use of the public utility service in question may be presented by the State and by or on behalf of the person  
4575 who has contracted for or is applying for the service.

4576 (d) If the Court, after hearing, determines that there is probable cause to believe that the service furnished by the  
4577 public utility is being used or will be used to disseminate information in furtherance of gambling or for gambling purposes,  
4578 it shall order that the contract to furnish the service be revoked or that the application for service be denied.

4579 (e) No public utility shall be held liable at law or in equity for revocation of a contract, or denying an application  
4580 for service, when ordered to do so as provided by this section.

4581 Section 179. Amend § 901, Title 29 of the Delaware Code by making deletions as shown by strike through and  
4582 insertions as shown by underline as follows:

4583 § 901 Altering, defacing, concealing, etc., bills or acts; penalties.

4584 (a) Whoever wilfully adds to, alters, defaces, erases, obliterates, mutilates, blots, blurs, steals, hides, conceals,  
4585 destroys or misplaces, with intent to conceal, any act passed by the General Assembly of this State or any bill pending  
4586 before either branch of the General Assembly or any committee thereof or any joint committee of the 2 Houses ~~is guilty of~~  
4587 ~~a felony and shall be fined not less than \$100 nor more than \$5,000 and costs of prosecution and shall also be imprisoned~~  
4588 ~~not less than 1 year nor more than 10 years~~ shall be subject to criminal penalties under § 1243 of Title 11.

4589 Section 180. Amend § 4713, Title 29 of the Delaware Code by making deletions as shown by strike through and  
4590 insertions as shown by underline as follows:

4591 § 4713 DNA analysis and data bank.

4592 (d) Any person who tampers or attempts to tamper with any biological sample or the container collected pursuant  
4593 to subsection (b) or (c) without lawful authority shall be ~~guilty of a Class D felony~~ subject to criminal penalties under  
4594 Chapter 12 of Title 11.

4595 Section 181. Amend § 5404, Title 29 of the Delaware Code by making deletions as shown by strike through and  
4596 insertions as shown by underline as follows:

4597 § 5404 Violation and penalty.

4598 ~~Any person who with intent to defraud uses on a public security or an instrument of payment:~~

4599 ~~(1) A facsimile signature, or any reproduction of it, of any authorized officer; or~~

4600 ~~(2) Any facsimile seal, or any reproduction of it, of this State or any of its departments, agencies or other~~  
4601 ~~instrumentalities or of any of its political subdivisions~~

4602 is guilty of a felony and shall suffer such criminal sanctions and penalties as are appropriate in this State for  
4603 conviction of the crime of forgery. [Deleted.]

4604 Section 182. Amend § 571, Title 30 of the Delaware Code by making deletions as shown by strike through and  
4605 insertions as shown by underline as follows:

4606 § 571 Attempt to evade or defeat tax; ~~class E felony~~.

4607 Any person who willfully attempts in any manner to evade or defeat any tax imposed by Title 4 or by this title,  
4608 other than § 3002 and Chapters 51 and 52 of this title, or the payment thereof, shall, ~~in addition to the penalties imposed by~~  
4609 ~~law, be guilty of a Class E felony as defined in~~ be subject to criminal penalties under § 1243(a) and (b)(1)c. of Title 11.

4610 Section 183. Amend § 572, Title 30 of the Delaware Code by making deletions as shown by strike through and  
4611 insertions as shown by underline as follows:

4612 § 572 Failure to collect or pay over tax; ~~class E felony~~.

4613 Any person required under this title to collect, account for and pay over any tax imposed by Title 4 or by this title,  
4614 other than § 3002 and Chapters 51 and 52 of this title, who willfully fails to collect or truthfully account for and pay over  
4615 such tax ~~shall, in addition to other penalties provided by law, be guilty of a Class E felony as defined in~~ shall be subject to  
4616 criminal penalties under § 1243(a) and (b)(1)c. of Title 11.

4617 Section 184. Amend § 574, Title 30 of the Delaware Code by making deletions as shown by strike through and  
4618 insertions as shown by underline as follows:

4619 § 574 Fraud and false statements; ~~class E felony~~.

4620 A person who commits one of the following acts shall be guilty of a Class E felony as defined in Title 11 if that  
4621 person:

4622 ~~(1) Wilfully~~ (a) A person who wilfully makes and subscribes any return, statement or other document which  
4623 contains or is verified by a written declaration that it is made under the penalties of perjury, and which the person does not  
4624 believe to be true and correct as to every material ~~matter; or~~ matter, shall be subject to criminal penalties under § 1222 of  
4625 Title 11.

4626 ~~(2) Wilfully~~ (b) A person who wilfully aids or assists in, or procures, counsels or advises the preparation or  
4627 presentation under, or in connection with any matter arising under Title 4 or this title, other than § 3002 and Chapters 51  
4628 and 52 of this title, of a return, affidavit, claim or other document, which is fraudulent or is false as to any material matter,  
4629 whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such  
4630 return, affidavit, claim or ~~document; or~~ document, shall be subject to criminal penalties under § 1223 of Title 11 and, as  
4631 applicable, § 210 of Title 11.

4632           ~~(3) Simulates~~ (c) A person who simulates or falsely or fraudulently executes or signs any bond, permit, entry or  
4633 other document required by the provisions of Title 4 or this title, other than § 3002 and Chapters 51 and 52 of this title, or  
4634 by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in  
4635 or connives at such execution ~~thereof, or thereof,~~ shall be subject to criminal penalties under § 1121(a) and, as applicable, §  
4636 210 of Title 11.

4637           ~~(4) Removes~~ (d) A person who removes, deposits or conceals, or is concerned in removing, depositing or  
4638 concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property which  
4639 is subject to attachment or garnishment for payment of taxes, with intent to evade or defeat the assessment or collection  
4640 of any tax imposed by Title 4 or by this title, other than § 3002 and Chapters 51 and 52 of this title, shall be subject to  
4641 criminal penalties under § 1242(a) and (b)(1)c. of Title 11.

4642           Section 185. Amend § 5139, Title 30 of the Delaware Code by making deletions as shown by strike through and  
4643 insertions as shown by underline as follows:

4644           § 5139 Violations and penalties; enforcement.

4645           (a) *Acts forbidden.* — It shall be unlawful for any person to:

4646           (1) Refuse or knowingly and intentionally fail to make and file any statement required by this chapter in the  
4647 manner or within the time required;

4648           (b) *Penalties and remedies.* — Any person violating subsection (a) of this section ~~is guilty of a class A~~  
4649 ~~misdemeanor; provided, however, that if the violation results in an evasion or wrongful withholding of special fuel tax~~  
4650 ~~amounting to more than \$500, then the violation shall constitute a class E felony. Any person who has once been convicted~~  
4651 ~~of any violation of subsection (a) of this section and who thereafter is convicted of any subsequent violation of subsection~~  
4652 ~~(a) of this section shall be guilty of a class E felony. The Superior Court shall have the exclusive jurisdiction over those~~  
4653 ~~violations enumerated in subsection (a) of this section~~ who refuses or fails to file shall be subject to criminal penalties under  
4654 § 1223 of Title 11. Any person violating subsection (a) of this section who knowingly and intentionally fails to make and  
4655 file any statement that results in an evasion of wrongful withholding of special fuel tax amounting to more than \$500 shall  
4656 be subject to criminal penalties under §§ 1243(a) and (b)(1)c. of Title 11.

4657           Section 186. Amend § 311, Title 31 of the Delaware Code by making deletions as shown by strike through and  
4658 insertions as shown by underline as follows:

4659           § 311 Penalties regarding background checks for child-serving entities and personal information disclosure.

4660           (c) Any person seeking employment with a child-serving entity or any person seeking a license under Chapter 12  
4661 of Title 14 who knowingly provides false, incomplete or inaccurate criminal history information, Child Protection Registry

information, or child sex abuser information or who otherwise knowingly violates § 309 of this title shall be ~~guilty of a~~  
~~class G felony and shall be punished according to Chapter 42 of Title 11. The Superior Court shall have exclusive~~  
~~jurisdiction for any offense under this subsection~~ subject to criminal penalties under § 1223 of Title 11.

Section 187. Amend § 610, Title 31 of the Delaware Code by making deletions as shown by strike through and  
insertions as shown by underline as follows:

§ 610 Unauthorized use, transfer, acquisition, alteration or possession of food stamp coupons, Authorization to  
Participate Vouchers (ATPS), or access devices; penalties; disqualification from the food stamp program; forfeiture.

(a) Whoever knowingly uses, transfers, acquires, alters or possesses food stamp coupons, authorization cards,  
ATPs or access devices in any manner not authorized by the federal Food Stamp Act (7 U.S.C. § 2011 et seq.) or  
regulations issued pursuant to the Food Stamp Act; or who presents for payment or redemption coupons that have been  
illegally received, transferred, altered or used ~~shall:~~ shall be subject to criminal penalties under Subchapter I of Chapter 11  
of Title 11.

~~(1) If such food stamp coupons, authorization cards or ATPs are of a value of \$500 or more or the item used,~~  
~~transferred, acquired, altered or possessed is an access device that has a value of \$500 or more, be guilty of a class E~~  
~~felony.~~

~~(2) If such coupons, authorization cards or ATPs are of a value of less than \$500 or if the item used,~~  
~~transferred, acquired, altered or possessed is an access device that has a value of less than \$500, be guilty of a class A~~  
~~misdemeanor.~~

~~(3) In any prosecution under this section where there is a finding that the proceeds of the trafficking involves~~  
~~firearms ammunition, explosives or controlled substances as defined under 21 U.S.C. § 802 be guilty of a class B~~  
~~felony. [Deleted.]~~

Section 188. Amend § 1003, Title 31 of the Delaware Code by making deletions as shown by strike through and  
insertions as shown by underline as follows:

§ 1003 Obtaining benefit under false representation.

~~It shall be unlawful for any provider, by means of a false statement or representation, or by concealment of, or~~  
~~failure to disclose any material fact, or by any other fraudulent scheme or device on behalf of the provider or others to~~  
~~obtain or attempt to obtain payments or any other property, under any public assistance program established by the State to~~  
~~which the provider is not entitled, in whole or in part. [Deleted.]~~

Section 189. Amend § 1004, Title 31 of the Delaware Code by making deletions as shown by strike through and  
insertions as shown by underline as follows:

4692 § 1004 Reports, statements and documents.

4693 It shall be unlawful for any provider to:

4694 ~~(1) Falsify any report, statement or document required to be filed in connection with any public assistance~~  
4695 ~~program;~~

4696 ~~(2) Include in any cost report or reports for reimbursement any amount or item which the provider knew or should~~  
4697 ~~have known was not used in providing service to the recipient for which the amount is paid or to be paid;~~

4698 ~~(3) Make or cause to be made a statement or representation for use in qualifying as a provider of goods or service~~  
4699 ~~under any public assistance program, knowing that statement or representation to be false, in whole or in part by~~  
4700 ~~commission or omission; or~~

4701 ~~(4) Make or cause to be made a false statement or representation of a material fact with respect to the conditions or~~  
4702 ~~operation of a provider or facility in order that such provider or facility may qualify or remain qualified to provide~~  
4703 ~~assistance under any public assistance program. [Deleted.]~~

4704 Section 190. Amend § 1007, Title 31 of the Delaware Code by making deletions as shown by strike through and  
4705 insertions as shown by underline as follows:

4706 § 1007 Penalties.

4707 (a) Whoever knowingly violates §§ ~~1003, 1004(2) and 1006~~ § 1006 of this title shall be guilty of a class A  
4708 misdemeanor; ~~provided, that, where the value of assistance benefits, payments or other property is \$500 or more, but less~~  
4709 ~~than \$10,000, the violator shall be guilty of a class E felony; further provided, that, where the value of assistance, benefits,~~  
4710 ~~payments or other property is \$10,000 or more, the violator shall be guilty of a class C felony.~~

4711 (b) ~~Whoever violates § 1004(1) of this title, shall be guilty of a class A misdemeanor. [Deleted.]~~

4712 (c) ~~Whoever violates §§ 1004(3) and (4) and 1005~~ § 1005 of this title, shall be guilty of a class ~~E felony~~ A  
4713 misdemeanor.

4714 (d) ~~In addition to the penalties provided herein, every provider convicted under this chapter shall make full~~  
4715 ~~restitution of the money, goods or services or the value of those goods or services unlawfully received, plus interest on that~~  
4716 ~~amount at the rate of 1.5% per month, for the period from the date upon which payment was made to the date upon which~~  
4717 ~~repayment is made to the State. [Deleted.]~~

4718 (e) Upon conviction under this chapter, or Chapter 11 of Title 11, such provider shall not be eligible for any  
4719 further participation in the Delaware Public Assistance Program; provided, however, that where the community interest  
4720 would be adversely affected, the Secretary of the Department of Health and Social Services, or the Secretary's designee,  
4721 shall, upon petition of the provider, conduct a hearing on the record, to determine the need for a comparable provider to



render the needed services to the community, and whether this provider's continued participation in the program is in the best interest of the State. Where this is established, the provider may continue in the program under such conditions as the Secretary may impose.

Section 191. Amend § 3902, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3902 Definitions.

As used in this chapter:

(6) "Elderly person" ~~has the same meaning as defined in § 222 of Title 11~~ means any person who is 62 years of age or older. Thus, the terms "elderly person" and "person who is 62 years of age or older" shall have the same meaning as used in this Code or in any action brought pursuant to this Code.

(23) "Vulnerable adult" ~~means an adult who meets the criteria set forth in § 1105(e) of Title 11~~ a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation, the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.

Section 192. Amend § 3912, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3912 Confidentiality of records.

(a) All records and information in the possession of Adult Protective Services or anyone providing service to an adult protective services client and the client's relatives shall be deemed confidential, and shall be disclosed only pursuant to an appropriate court order, or pursuant to the consent of the recipient of the services, where the recipient is legally competent to so consent. Notwithstanding the foregoing, disclosure shall not be unlawful when necessary for purposes directly connected with the administration of adult protective services, or when the identity of the recipient or recipients of such services is not revealed by the disclosure, such as in the case of disclosure of statistics or other such summary information.

~~(b) Violation of this section is an unclassified misdemeanor. The Superior Court shall have jurisdiction over violations of this section. [Deleted.]~~

Section 193. Amend § 3913, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3913 Violations.

4752 (a) Any person who knowingly or recklessly abuses, neglects, exploits or mistreats an adult who is impaired shall  
4753 be guilty of a class A misdemeanor.

4754 (b) Any person who knowingly or recklessly exploits an adult who is impaired by using the resources of an adult  
4755 who is impaired shall be guilty of a class A misdemeanor where the value of the resources is less than \$500 and a class G  
4756 felony where the value of the resources is \$500 or more but less than \$5,000. If the value of the resources is \$5,000 or more  
4757 but less than \$10,000, the person shall be guilty of a class E felony. If the value of the resources is \$10,000 or more but less  
4758 than \$50,000, the person shall be guilty of a class D felony and if the value of the resources is \$50,000 or more the person  
4759 shall be guilty of a class C felony. Any subsequent conviction under this subsection shall be treated as a class C felony  
4760 regardless of the amount of resources exploited.

4761 (c) Any person who knowingly or recklessly abuses, neglects, exploits or mistreats an adult who is impaired, and  
4762 causes bodily harm, permanent disfigurement or permanent disability shall be guilty of a class D felony. Where the abuse,  
4763 mistreatment or neglect results in death, such person shall be guilty of a class A felony.

4764 Section 194. This Act shall take effect subject to the enactment of the improved Criminal Code.

#### SYNOPSIS

Delaware's existing Criminal Code was adopted in 1973 and was based on the Model Penal Code. Since that time, the Criminal Code has quadrupled in size and expanded to other parts of the Code 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. This Act is one of two bills that seek to bring back proportionality, clarity, and consistency to the Criminal Code. Passage of this Act is contingent on the passage of the other bill that revises Title 11, Part I, and that would take effect 20 months after its passage.

Author: Senator McDowell