

CHAPTER 442
FORMERLY
HOUSE BILL NO. 346
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE COMMITMENT OF THE MENTALLY ILL.

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

Section 1. Amend Chapter 50, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 5001 Definitions.

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

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

- a. A psychiatrist; or
- b. A licensed mental health professional who is credentialed by the Department to provide emergency screening services and evaluation of the need for involuntary observation and treatment for a mental condition; or
- c. An unlicensed mental health professional who works under the direct supervision of a psychiatrist and who is credentialed by the Department to provide emergency screening services and evaluation of the need for involuntary observation and treatment for a mental condition; or
- d. A physician with a valid State of Delaware license to practice medicine and who is credentialed by the Department to provide emergency screening services and evaluation of the need for involuntary observation and treatment for a mental condition.

~~(1)(2)~~ (2) "Court" means the Superior Court or the Family Court of the State, both of which courts shall have jurisdiction and responsibility for the implementation of this chapter

(3) "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 immediate future. This determination shall take into account a person's history, recent behavior and any recent act or threat.

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

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

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

~~(2)(7)~~ (7) "Designated transport personnel" means such personnel as designated by the Secretary of the Department of Health and Social Services to transport persons with mental conditions to and from the hospital and public treatment facilities needed healthcare services provided in hospitals and designated psychiatric treatment facilities, pursuant to this Chapter; these personnel include peace officers, private ambulance staff, state employees and contracted transportation staff as approved by the Department. Any peace officer involved may mandate the manner and method of transportation of persons who require such transport when required to ensure public safety.

~~(3)~~ (3) "Him," "his" and all other terms used in the masculine gender shall also include and be equally applicable to the corresponding terms used in the feminine gender.

(8) "Emergency detention" and "emergently detained" means the process whereby an adult who appears to have a mental condition, and whose mental condition causes the person to be dangerous to self or dangerous to others, and who is unwilling to be admitted to a facility voluntarily for assessment or care, is involuntarily detained for such evaluation and treatment for 24 hours in a designated psychiatric facility because other less restrictive, more community integrated services are not appropriate or available to meet the person's current mental health care needs. Emergency detention shall also mean the process whereby a minor who appears to have a mental condition, and whose mental condition causes the person to be dangerous to self or dangerous to others, and who is unwilling to be admitted to a facility voluntarily for assessment or care, is involuntarily detained for such evaluation and treatment for 24 hours unless the parent or legal guardian is unavailable to the Department during that 24 hour period; in such instances the time period may be extended to 72 hours.

~~(4)(9) "Hospital" and "mental hospital" means the Delaware Psychiatric Center; and any hospital in this State which is certified by the Secretary of the Department of Health and Social Services as being an appropriate facility for the diagnosis, care and treatment of persons with mental conditions 18 years of age or older. "Hospital" and "mental hospital" shall also mean any hospital in this State which is certified by the Secretary of the Department of Services for Children, Youth and Their Families as being an appropriate facility for the diagnosis, care and treatment of persons with mental conditions under 18 years of age.~~

~~(5)(10) "Involuntary patient" means a person admitted involuntarily to the custody of the hospital for observation, diagnosis, care and treatment pursuant to emergency detention, provisional admission, a complaint for involuntary civil commitment, a probable cause hearing or an involuntary inpatient commitment hearing to the custody of a designated psychiatric treatment facility or hospital for observation, diagnosis, care and treatment.~~

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

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

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

~~(6)(14) "Peace officer" means any public officer authorized by law to make arrests in a criminal case.~~

~~(7) "Person with a mental condition" means a person suffering from a mental disease or condition which requires such person to be observed and treated at a mental hospital for the person's own welfare and which both (i) renders such person unable to make responsible decisions with respect to the person's hospitalization, and (ii) poses a real and present threat, based upon manifest indications, that such person is likely to commit or suffer serious harm to that person's own self or others or to property if not given immediate hospital care and treatment.~~

~~(8) "Psychiatrist" means:~~

~~a. A physician licensed to practice medicine in this State specializing in the field of psychiatry, or a physician employed by the Delaware Psychiatric Center, registered with the Medical Council of Delaware and~~

~~certified by the Delaware Psychiatric Center Medical Director to the Medical Council of Delaware as being qualified in the diagnosis and treatment of persons with mental conditions; or~~

~~b. Any physician employed by the United States government within the State in the capacity of psychiatrist and certified by the Delaware Psychiatric Center Medical Director to the Medical Council of Delaware as qualified in the diagnosis and treatment of persons with mental conditions.~~

(15) "Psychiatrist" means an individual who possesses a valid State of Delaware license to practice medicine and has completed a residency training program approved by the Accreditation Council for Graduate Medical Education in psychiatry.

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

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

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

~~(9)~~(19) "Working day" means any day other than a Saturday, Sunday and legal holidays; and "day" means a calendar day.

§ 5002 Determination of mental condition and of procedural compliance as prerequisites to involuntary hospitalization.

~~Subject to §§ 5121-5123 of this title, no~~ No person shall be involuntarily admitted to or confined as a an involuntary patient at a designated psychiatric treatment or the hospital, and no designated psychiatric treatment facility or the hospital shall not involuntarily admit or confine as an involuntary patient any person, unless such person is determined to be a person with a mental condition and found to be dangerous to self or dangerous to others in accordance with the procedures prescribed by this chapter, and unless the procedural requirements of this chapter are complied with. A person may not be admitted to or confined as an involuntary patient at a designated psychiatric treatment facility or hospital unless it is determined that such placement is the least restrictive intervention reasonably available and the person has declined voluntary treatment. No person shall be deemed "involuntarily committed" for any legal purpose until the court deems the person an "involuntarily committed" person at the conclusion of a probable cause hearing held pursuant to this chapter.

§ 5003. Voluntary admission procedure.

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

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

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

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

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

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

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

(e) A voluntary patient may make a written request to the attending psychiatrist to be discharged at any time. Upon the receipt of such request, the attending psychiatrist shall discharge the person within 72 hours from the receipt of the request, except if a psychiatrist or licensed independent practitioner certifies that the voluntary patient is currently demonstrating behaviors believed to be dangerous to self or dangerous to others and these behaviors are documented in the medical record, an emergency detention may be initiated for the person. No person may be involuntarily hospitalized unless in compliance with the emergency detention procedures set forth in § 5004.

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

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

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

(A) The provisions of § 5003(e) shall apply in such instances, except that the voluntary patient's discharge may be conditioned upon the consent of the voluntary patient's parent or legal guardian.

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

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

(A) If a minor is 14 years of age or over, then either the minor, or a parent, legal custodian, or legal guardian may give written consent to a [treatment facility or community provider] for voluntary, outpatient treatment.

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

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

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

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

(4) A psychiatrist designated by the Secretary of the Department of Services for Children, Youth and Their Families may conduct an independent review to determine whether an applicant who receives financial

assistance from such Department or who is in the custody of such Department is appropriate for voluntary hospitalization.

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

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

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

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

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

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

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

(e) Once an individual is emergently detained in a designated psychiatric treatment facility pursuant to subsection (c) of this section, a psychiatrist shall review all documentation, conduct an examination of the individual, and document the findings of examination within the emergency detention time period both in the person's medical record and the emergency detention findings form. If the examining psychiatrist finds that the individual with an apparent mental condition is not dangerous to self and is not dangerous to others the psychiatrist shall certify these specific findings in writing and the individual who has been emergently detained shall be

discharged from custody forthwith. All documentation required by this section will be recorded and retained in the medical record of that individual and reported to the Delaware Division of Substance Abuse and Mental Health, or if the individual is a minor to the Division of Prevention and Behavioral Health Services, upon the discharge of the individual.

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

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

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

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

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

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

§ 5003 5005 Provisional hospitalization by psychiatrist's certification.

(a) No person shall will be involuntarily admitted to the a hospital as a patient until the person is detained for observation pursuant to the procedure set forth in § 5004 of this chapter. At the completion of the emergency detention period, the person shall not be admitted to a hospital except pursuant to the written certification of a psychiatrist that based upon the psychiatrist's examination of such person; such person suffers from a disease or condition which requires the person to be observed and treated at a mental hospital for the person's own welfare and which either renders such person unable to make responsible decisions with respect to the person's hospitalization, or poses a present threat, based upon manifest indications, that such person is likely to commit or suffer serious harm to that person's own self or others or to property, if not given immediate hospital care and treatment.

(1) Appears to be a person with a mental condition;

(2) The person has been offered voluntary inpatient treatment and has declined such care and treatment or lacks the capacity to knowingly and voluntarily consent to such care and treatment;

(3) As a result of the person's apparent mental condition, the person poses a present threat, based upon manifest indications, of being dangerous to self or dangerous to others; and

(4) Less restrictive alternatives have been considered and determined to be clinically inappropriate at the present time.

(b) The psychiatrist's certificate shall state with particularity the behavior and symptoms upon which the psychiatrist's opinion is based, shall include (where available) the name and address of the spouse or other nearest relative or person of close relationship to the alleged person with a mental condition, and shall state that such person is not willing to accept hospital care and treatment on a voluntary basis or that the person is incapable of voluntarily consenting to such care and treatment. The certificate shall also set forth the date of the psychiatrist's determination. The hospital shall thereupon advise the involuntary patient of the patient's rights under this Chapter in language that is understandable to the individual. Upon completion of the psychiatrist's certificate, the individual shall be detained for an additional 48 hour period.

(c) If the examining psychiatrist at the hospital determines that the involuntary patient no longer meets the criteria for provisional admission, the psychiatrist shall so certify in writing and the hospital shall immediately discharge the person. Prior to such discharge, the hospital shall provide the person with a copy of the certificate stating that the person was not involuntarily committed for any legal purpose.

(d) If the person seeks voluntary care and treatment after being provisionally admitted under this subsection, the provisional admission will terminate and the person shall be voluntarily admitted to a hospital without delay.

(e) The 48 hour observation period prescribed in this section shall be referred to as "provisional admission." An individual who is provisionally admitted pursuant to this chapter shall not be considered "involuntarily committed" for any legal purpose.

~~§ 5004 Legal effect of psychiatrist's certificate.~~

~~Where the psychiatric examination occurs at a place other than the hospital, the certificate of the examining psychiatrist shall constitute legal authorization for the alleged person with a mental condition to be transported (together with the examining psychiatrist's certificate) to the hospital by a peace officer or, in the sole discretion of the examining physician, by designated transport personnel. Receipt by the hospital of the certificate of the examining psychiatrist shall authorize the hospital provisionally to admit the alleged person with a mental condition as a patient. No peace officer or medical doctor shall be subject to civil damages or criminal penalties for any harm to the person with a mental condition resulting from the performance of the officer's or doctor's own functions under this section or under § 5003 of this title unless such harm was the result of negligent, reckless, wilful, wanton and/or intentional misconduct on the officer's or doctor's own part.~~

~~§ 5005~~5006 Duties of hospital upon provisional admission.

~~Upon the provisional admission of the alleged person with a mental condition as an involuntary patient:~~
During the 48 hour period of provisional admission:

~~(1) The hospital shall cause the involuntary patient to be physically and mentally examined, and may treat the involuntary patient if the examining psychiatrist certifies that treatment is necessary pending judicial proceedings under this chapter;~~

~~(2) Where the certification of the involuntary patient as a person with a mental condition was by a psychiatrist other than an employee or agent of the hospital, the hospital shall, within 2 working days from the date of admission, independently determine whether or not the involuntary patient is a person with a mental condition. If the hospital examining psychiatrist determines that the involuntary patient is not a person with a mental condition, such psychiatrist shall so certify in writing and the hospital shall discharge the involuntary patient forthwith. If the hospital examining psychiatrist independently determines that the involuntary patient is a person with a mental condition, such psychiatrist shall so certify in writing. The certificate shall contain the information required by § 5003 of this title and shall also set forth the date of the hospital's determination. The hospital shall thereupon advise the involuntary patient of the patient's rights under this chapter;~~

(1) The hospital shall try to evaluate the involuntary patient to assess the person's psychological and physical needs, and may provide treatment to the involuntary patient as clinically appropriate and consistent with the State's Mental Health Patients' Bill of Rights pending the involuntary patient's probable cause hearing;

~~(3)~~(2) A psychiatrist designated by the Secretary of the Department of Services for Children, Youth and Their Families may, at any time prior to the commencement of judicial proceedings to determine the mental condition of a person under 18 years of age a minor or an individual over the age of 18 who is receiving financial assistance or is in the custody of the Department, conduct an independent review of a determination that such a person is a person with a mental condition. If the psychiatrist determines that such person is not a person with a mental condition, the Department may withhold financial assistance for the diagnosis, care or treatment of such person;

~~(4)~~ A psychiatrist designated by the Secretary of the Department of Health and Social Services may, at any time prior to the commencement of judicial proceedings to determine the mental condition of a person 18 years of age or older, conduct an independent review of a determination that such person is a person with a mental condition. If the psychiatrist determines that such person is not a person with a mental condition, the Department may withhold financial assistance for the diagnosis, care or treatment of such person;

~~(5)~~(3) The hospital shall investigate document in the patient's medical record whether or not the involuntary patient can afford counsel and to engage an independent psychiatrist or other qualified medical expert at patient's own expense licensed mental health professional to serve as an expert witness on the individual's behalf.

§ ~~5006~~5007 Procedural rights of involuntary patients.

~~A person whom the hospital has determined to be a person with a mental condition shall be entitled~~ When a designated treatment facility, hospital or outpatient treatment provider seeks to require an individual to be involuntarily hospitalized pursuant to a probable cause hearing or an involuntary inpatient commitment hearing, or seeks to have the individual placed on involuntary outpatient treatment over objection, or engage in a specific mode of treatment without the individual's consent, the individual shall be entitled:

(1) To notice, including a written statement, of the factual grounds upon which the proposed hospitalization, outpatient treatment over objection, or treatment without consent is predicated and the reasons for the necessity of ~~confinement~~ such course of action.

(2) To hearings before the court and to judicial determinations of ~~(i) whether the involuntary patient's confinement is based upon probable cause and (ii) whether or not the involuntary patient is a person with a mental condition~~ whether or not the individual satisfies the requirements for a probable cause hearing, involuntary inpatient commitment, outpatient treatment over objection, or treatment without consent pursuant to the criteria set out in the relevant sections of this chapter. Such hearings shall be without jury and not open to the public, shall be preceded by ~~adequate written notice to the involuntary patient~~ adequate written notice to the individual, and the ~~involuntary patient~~ individual shall be entitled to be present at all such hearings.

(3) To be represented by counsel at all judicial proceedings, such counsel to be court appointed if the ~~involuntary patient~~ individual cannot afford to retain counsel; and to be examined by an independent psychiatrist or other qualified medical expert and to have such psychiatrist or other expert testify as a witness ~~in on~~ on the ~~patient's~~ individual's behalf, such witness to be court appointed if the involuntary patient cannot afford to retain such witness.

(4) To conduct discovery, to summon and cross-examine witnesses, to present evidence on the person's own behalf and to avail the ~~person's~~ individual's own self of all other procedural rights afforded litigants in civil causes. The privilege against self-incrimination shall be applicable to all proceedings under this chapter.

(5) To have a full record made of the proceedings, including findings adequate for review. All records and pleadings shall remain confidential unless the court for good cause orders otherwise.

(6) To be notified in writing of the right to appeal a decision made by the court pursuant to § 5014 of this chapter.

§ ~~5007~~ ~~Judicial proceedings~~ 5008 Probable cause complaint.

(a) ~~Forthwith, but not more than 2 working days from the date of provisional admission~~ If an involuntary patient has not been discharged by the hospital by the end of the 48 hour provisional admission period, the hospital shall file a verified complaint for involuntary civil commitment in the Superior Court or in the Family Court if the involuntary patient would otherwise be amenable to Family Court jurisdiction under other provisions of law. The complaint shall ~~aver~~ set forth in detail facts to show that the hospital, as petitioner, reasonably and in good faith

believes that the involuntary patient (who shall be named as respondent) is a person ~~with a mental condition~~ who meets the standard for involuntary inpatient commitment set forth in § 5011 of this chapter, and who should be continued as a patient at the hospital pursuant to this chapter until the patient is determined no longer to ~~be a person with a mental condition~~ meet the criteria for involuntary inpatient hospitalization. The complaint shall also aver that the involuntary patient has been advised of the patient's rights under this chapter. Copies of ~~all certificates by examining psychiatrists~~ the Emergency Detention Certificate and the Provisional Admission Certificate shall be attached to the complaint. A notarized affidavit indicating that a hospital official has reviewed each complaint shall be filed, with the original copy sent to the court to be maintained in the patient's file.

~~(b) Nothing in this section shall preclude the involuntary patient or another person acting on the involuntary patient's behalf from filing a complaint with the court for a judicial determination of the involuntary patient's mental status, in which complaint the hospital shall be named as respondent. In such event, the hospital shall appear as respondent and shall attach to its answer copies of certificates by the examining psychiatrist, and the hospital shall be excused from compliance with subsection (a) of this section.~~

~~(c) The hospital's investigation affidavit filed with the complaint shall indicate whether the involuntary patient is able to afford counsel and an independent psychiatric witness within 4 working days of provisional admission whether the patient requested an independent psychiatric witness.~~

~~§ 5008 Appointment of counsel; determination of probable cause. § 5009 Probable cause hearing.~~

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

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

(2) Direct that notice of the probable cause hearing and copies of the pleadings be supplied to the involuntary patient, the patient's counsel and to the involuntary patient's spouse, ~~nearest relative or person of close relationship to the patient as in the court's opinion would best represent the involuntary patient's interest~~ other relative, close personal friend of the patient or any other person identified by the patient, provided that the patient is given the opportunity to agree, prohibit, or restrict the disclosure.

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

(4) If, pursuant to the probable cause hearing, the court determines that probable cause does not exist for involuntary inpatient commitment, the involuntary patient shall be immediately discharged. If the court determines that probable cause does exist for involuntary inpatient commitment, it shall schedule an involuntary inpatient commitment hearing, pursuant to § 5011, for the earliest practicable date, and no later than eight working days after the probable cause hearing ~~a hearing to determine whether or not the involuntary patient is a person with a mental condition~~; and where necessary, it shall appoint an independent psychiatrist or other qualified medical expert to examine the involuntary patient and act as an expert witness on the involuntary patient's behalf. Notice of the hearing shall be given to the involuntary patient and the patient's counsel.

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

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

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

~~§ 5009~~5010 Discharge by the hospital.

Notwithstanding the pendency of the action or any order previously entered by the court, if at any time after the complaint is filed the hospital determines that the involuntary patient ~~is no longer a person with a mental condition~~ no longer meets the criteria for provisional admission or involuntary inpatient commitment, the hospital shall so certify in writing and immediately discharge the patient forthwith, person and shall immediately advise the court of its determination and the discharge, ~~and~~ Upon receipt of such certification, the court shall ~~thereupon~~ dismiss the action. A person involuntarily hospitalized pursuant to the emergency detention, provisional admission or involuntary commitment sections of this chapter may be discharged pursuant to this subsection without further order of the court.

~~§ 5010 Hearing to determine mental condition.~~

~~As a result of the hearing to determine mental condition, the court shall make specific findings:—~~

~~(1) That the involuntary patient is not a person with a mental condition, in which case the court shall order that the involuntary patient be discharged and released forthwith; or~~

~~(2) That based upon clear and convincing evidence, the involuntary patient is a person with a mental condition in which case the court shall enter an order of disposition, which disposition shall be effective for a period not to exceed 3 months. In determining the disposition of the involuntary patient the court shall consider all available alternatives, including inpatient confinement at the hospital, and shall order such disposition as imposes the least restraint upon the involuntary patient's liberty and dignity consistent both with affording mental health treatment and care with protecting the safety of the involuntary patient and the public.~~

§5011 Involuntary inpatient commitment hearing and procedure.

(a) An individual shall be involuntarily committed for inpatient treatment only if all of the following criteria are met by clear and convincing evidence:

(1) The individual is a person with a mental condition;

(2) Based upon manifest indications, the individual is: (i) dangerous to self; or (ii) dangerous to others;

(3) All less restrictive alternatives have been considered and determined to be clinically inappropriate at the time of the hearing; and

(4) The individual has declined voluntarily inpatient treatment, or lacks the capacity to knowingly and voluntarily consent to inpatient treatment. When evaluating capacity, the court shall consider an individual's ability to understand the significant consequences, benefits, risks, and alternatives that result from the individual's decision to voluntarily request or decline inpatient treatment.

(b) The court shall set out specific findings of facts and conclusions of law which address each of the required criteria for involuntary commitment and which support its decision to involuntarily commit or discharge the individual.

(c) If the court determines that an individual meets the criteria for involuntary commitment, the court shall enter an order of disposition which shall not exceed 3 months based upon the court's individualized assessment of the facts and circumstances at the time of the hearing.

(d) Upon the expiration of the court order pursuant to § 5011(c), if the individual has not been discharged by the hospital, and the hospital believes that the individual continues to require involuntary commitment, the court shall schedule a subsequent hearing which will be held in compliance with § 5007 and this section. The individual shall be entitled to at least 14 working days' notice of any subsequent hearings. As long as an individual receives involuntary inpatient treatment, the court must convene a hearing in compliance with § 5007 and this section at least once every 3 months to review whether continued involuntary inpatient treatment is necessary.

(e) An individual, if represented by counsel, may waive, orally or in writing, any hearing under this section. The waiver must be submitted in writing to the court or be orally presented in open court.

~~§ 5012 Hospitalization.~~

~~(a) Duties of hospital upon involuntary patient's admission.— Upon the involuntary patient's admission to the hospital pursuant to court order, the hospital shall for a period not to exceed 3 months render treatment to the involuntary patient in accordance with professional standards. If by the expiration of 3 months the involuntary patient has not been discharged by the hospital, and if in the opinion of the hospital the involuntary patient is still a~~

~~person with a mental condition, the hospital shall so notify the court; and the court shall order a hearing to be held within 14 working days of such notice. If the court continues the involuntary confinement upon the expiration of an additional 6 months, and the involuntary patient has not been discharged by the hospital, and if in the opinion of the hospital the patient is still a person with a mental condition, the hospital shall so notify the court; and the court shall order a hearing to be held within 14 working days of such notice.~~

~~(b) Further hearing.— In any further hearing the procedural requirements of § 5006 of this title shall govern, and the court may make such findings and orders as are permitted by § 5010 of this title; provided, that the court may order that the involuntary patient's admission to the hospital shall be continued for an indefinite period, in which case the hospital shall report to the court at intervals not more than 6 months as to the continued need for involuntary hospitalization, and the court shall review the involuntary patient's status at such 6 month intervals and be required to hold hearings, at such intervals, until such time as the involuntary patient is discharged.~~

~~(c) Waiver of hearing.— An involuntary patient, if represented by counsel, may waive, orally or in writing, any hearing under this section. The waiver must be submitted in writing to the court or be orally presented in open court.~~

~~§ 5011-5012~~ Waiver of rights; voluntary hospitalization.

(a) An involuntary patient may waive any of the rights provided by this chapter if (i) the court determines that such waiver is voluntary and with the involuntary patient's knowing and intelligent consent, or if (ii) where the involuntary patient is incapable of knowingly and intelligently consenting, the court, upon application by counsel and after appropriate inquiry and finding of facts, approves such waiver for good cause shown. If the hearing provided for in ~~§ 5010~~ § 5011 of this title is waived, the court shall enter an order of disposition in accordance with ~~subdivision (2) of § 5010~~ § 5011(c) of this title.

(b) If prior to any hearing the court determines that the involuntary patient has knowingly and voluntarily applied for, and has been accepted for hospitalization pursuant to ~~§ 5123~~5003 of this title, the action shall be dismissed, and ~~§ 5123~~5003 shall govern.

(c) A legal guardian may not waive any right of an adult, including any right related to admission and judicial review, under this chapter.

§ 5013 Involuntary outpatient treatment over objection.

(a) A person shall be involuntarily committed by the court for outpatient treatment over objection only if all of the following criteria are satisfied by clear and convincing evidence:

(1) The person is 18 years of age or older.

(2) The person has a documented mental condition.

(3) The person is reasonably expected to become dangerous to self or dangerous to others or otherwise unlikely to survive safely in the community without treatment for the person's mental condition.

(4) The person is currently refusing to voluntarily participate in the treatment plan recommended by the person's mental health treatment provider or lacks the capacity to determine whether such treatment is necessary.

(5) The person has a documented history of lack of adherence with recommended treatment for the mental condition, or poses an extreme threat of danger to self or danger to others based upon recent actions, that has either:

(i) Resulted in a deterioration of functioning that was observed to be dangerous to the individual's personal health and safety; or

(ii) Resulted in a deterioration of functioning that was observed to be imminently dangerous to self or dangerous to others, including but not limited to suicidal ideation, violent threats, or violence towards others.

(6) All less restrictive treatment options have been considered and have either been determined to be clinically inappropriate at this time or evidence is offered to show that the person is not likely to adhere to such options.

(b) The court shall set out specific findings of facts and conclusions of law which address each of the required criteria for involuntary outpatient treatment over objection and which support its decision to involuntarily commit or discharge the individual.

(c) If the court determines that an individual meets the criteria for involuntary outpatient treatment over objection, the court shall enter an order of disposition which shall not exceed 3 months based upon the court's individualized assessment of the facts and circumstances at the time of the hearing.

(d) The Department is responsible for ensuring the provision of all necessary services and supports to fully implement the court order, or for informing the court as quickly as possible if such services are not available and providing the Court with an explanation of why such services are not available and when they are anticipated to become available.

(e) Notwithstanding an order entered by the court pursuant to this section, an individual may be discharged by the individual's treating psychiatrist at any time if the treating psychiatrist determines that the individual no longer meets the clinical criteria for involuntary outpatient commitment. Upon such determination the psychiatrist shall so certify in writing and advise the court of its determination and the discharge. Upon the receipt of such certification, the court shall dismiss the action.

(f) An individual or the individual's counsel may waive, orally or in writing, any hearing under this section. The waiver must be submitted in writing to the court or be orally presented in open court.

(g) Should an individual committed by the court to involuntary outpatient treatment over objection engage in behavior in the community that is dangerous to self or dangerous to others, an emergency detention, consistent with § 5004, may be initiated. No individual may be involuntarily hospitalized unless the individual is initially emergently detained and is given the due process protections provided for in this chapter.

§ 5013-5014 Appeal; habeas corpus; rules of procedure.

(a) Appeal of order of disposition.—Any party to the proceedings may appeal an order of disposition issued by a Commissioner to either a Superior Court Judge or Family Court Judge as appropriate within 10 days of the entry of such order. The appeal shall not operate as a stay of the order of disposition unless the Commissioner or Judge so directs. A decision by a Superior Court Judge or a Family Court Judge may be appealed. Any party to the proceedings may appeal an order of disposition to the Supreme Court within 30 days of the entry of such order. The appeal shall not operate as a stay of the order of disposition unless the ~~court~~ court or the Supreme Court so directs.

(b) Habeas corpus.—After any order of disposition becomes final, the involuntary patient shall be entitled to petition the court for a writ of habeas corpus for release on the grounds:

(1) That the proceeding which led to the patient's commitment was illegal; provided, that that issue has not been previously determined; or

(2) That although the original confinement was legal, continued confinement is not warranted.

(c) Court rules.— The Superior Court and the Family Court shall adopt such rules of procedure as may be required to implement the procedural requirements of this chapter.

§ 5014-5015 Enlargement of time.

Notwithstanding §§ 5001-5013 of this title, the ~~The court~~ court may enlarge the time for the performance of acts by the hospital or respondent's attorney pursuant to this chapter, and of scheduling hearings thereunder, for good cause shown, for a reasonable period, consistent with the rights of the respondent.

§ 5015 Costs of transportation and medical services-5016 Payment of transportation and medical costs.

(a) The State Treasurer shall pay ~~police officers, constables, sheriffs and deputy sheriffs for service as peace officers under this section at the rate of \$0.31 for each mile necessarily traveled as well as a custody fee of \$100 when transporting a person with a mental condition from 1 county to another county~~ peace officers or other transportation providers under contract with the Department of Health and Social Services for transportation services under this subchapter at an agreed upon rate, including a custody fee and mileage traveled.

(b) The State Treasurer shall pay third-party medical and dental providers at a contractually agreed upon rate for services rendered for the medically necessary treatment of persons receiving mental health treatment and services pursuant to this chapter.

§ 5017 Immunity.

(a) Initial Assessment - No peace officer, medical doctor, credentialed mental health screener, juvenile mental health screener, or facility in which a medical doctor or credentialed mental health screener or juvenile

mental health screener practices shall be subject to civil damages or criminal penalties for any harm resulting from the performance of their functions under this section unless such harm was intentional or the result of willful or wanton misconduct on their part. This immunity is limited to the mental health assessment, resulting clinical decision, and involuntary hold necessary until the person is presented to a designated psychiatric treatment facility that is able to provide such psychiatric healthcare services for the emergency detention described in paragraph § 5001(8) of this chapter.

(b) Emergency Detention - After the person presents to the designated psychiatric treatment facility and during the emergency detention period described in paragraph § 5001(8) of this chapter, no medical doctor or designated psychiatric treatment facility shall be subject to civil damages or criminal penalties for any harm to the person with a mental condition resulting from the performance of functions under § 5004(e) of this chapter unless such harm was the result of negligent, reckless, willful, wanton and/or intentional misconduct.

(c) Subsequent Care - After the person is voluntarily admitted, provisionally admitted or involuntarily committed, no peace officer or medical doctor shall be subject to civil damages or criminal penalties for any harm to the person with a mental condition resulting from the performance of the officer's or doctor's own functions of this title unless such harm was the result of negligent, reckless, willful, wanton and/or intentional misconduct on the officer's or doctor's own part.

(d) Nothing in this section is intended to waive the State's sovereign immunity or the privileges and immunities set forth at Chapter 40 of Title 10.

§ 5018 Discharge of patients from hospitals.

(a) Hospitals shall examine every involuntary patient and voluntary patient present in its facility as frequently as practicable, but not less often than every 3 months. If pursuant to such examination a person's treating psychiatrist determines that a person no longer satisfies the criteria for involuntary hospitalization pursuant to the emergency detention, provisional admission or involuntary court commitment sections of this chapter, or as established for voluntary treatment under § 5003(a), the patient shall be discharged. A person involuntarily hospitalized pursuant to the emergency detention, provisional admission or involuntary court commitment sections of this chapter may be discharged pursuant to this subsection without further order of the court.

(b) The certificate of discharge shall state the basis for the discharge. Prior to discharge, the hospital shall prepare a written continuing care plan developed in consultation with interdisciplinary staff, identified post-discharge community mental health providers and the patient, and, if the patient is a minor, with the patient's parent or legal guardian. At a minimum, community-based services staff shall be consulted prior to the discharge of patients in hospitals. The continuing care plan shall be consistent with the discharge planning requirements set out in 16 Del. C. § 5161, the Mental Health Patients' Bill of Rights. The continuing care plan shall include: a realistic assessment of the patient's post-discharge social, financial, vocational, housing and treatment needs; identification of available support services and provider linkages necessary to meet the assessed needs; and identification and a timetable of discrete, pre-discharge activities necessary to promote the patient's successful transition to the community-based services system or to another appropriate post-discharge setting.

§ 5019 Liability for maintenance of patient; collection remedies.

(a) Any adult committed to or placed in a designated psychiatric treatment facility or hospital shall be liable for the cost of care, treatment, or both to the extent authorized by § 7940 of Title 29. If a minor is committed to or placed in a designated psychiatric treatment facility or hospital, liability for costs of care, treatment, or both shall conform to § 9019 of Title 29.

(b) The Department of Health and Social Services and Department of Services for Children, Youth and Their Families shall keep an account of the cost of care, treatment, or both and credit against the account all moneys received from the patient or other persons on the patient's behalf.

(c) In the event of nonpayment, the Department of Health and Social Services and Department of Services for Children, Youth and Their Families may pursue collection remedies authorized by §§ 7940 and 9019, respectively, of Title 29.

§ 5020 Expenses of examination and removal of indigent patients.

The expenses of the examination of an indigent person alleged to be suffering from a mental condition and the transportation of such person, by a peace officer or credentialed mental health screener or juvenile mental health screener to a designated psychiatric treatment facility or hospital able to provide further evaluation or care and treatment, shall be paid by the State Treasurer.

§ 5021 Veterans Administration hospitals.

The provisions in the Delaware Code pertaining to the admission, commitment, care and discharge of persons diagnosed with a mental condition at state institutions shall apply with the same force and effect to persons entitled to the services of hospitals for people with a mental condition operated by the Veterans Administration. Persons so entitled may be transferred from state institutions to such Veterans Administration hospitals subject to the statutory provisions affording interested parties the right to have the status of the person with a mental condition determined as provided by law.

§ 5022 Return of patients; order; notice; custody.

(a) If an inpatient of a state-operated hospital escapes or is on unauthorized leave, its director may issue an order for the patient's immediate rehospitalization. The director or the director's designee may notify such patient of the existence of a rehospitalization order by any reasonable means of communication open to the director. Such an order, irrespective of the patient's actual receipt, shall authorize any peace officer to take the patient into custody for rehospitalization.

(b) If an involuntarily committed inpatient or a person detained involuntarily under this chapter from a non-state-operated hospital certified under § 5026 or § 5027 of this title escapes or is on unauthorized leave, that hospital's director shall immediately notify the Director of the Division of Substance Abuse and Mental Health or the Director's designee if the patient is 18 years of age or older or the Division of Prevention and Behavioral Health Services if the patient is under 18 years of age. Upon receipt of such notification, the Division Director or the Director's designee may issue notice and a rehospitalization order in conformity with subsection (a) of this section. Such an order, irrespective of the patient's actual receipt, shall authorize any peace officer to take the patient into custody for rehospitalization.

§ 5023 Unwarranted hospitalization in Delaware Psychiatric Center or denial of rights; penalties.

(a) Any person who willfully causes, or conspires with or assists another to cause:

(1) The unwarranted hospitalization of any individual in the Delaware Psychiatric Center under this chapter; or

(2) The denial to any individual of any of the rights accorded to said individual under this chapter shall be punished by a fine not exceeding \$500 or imprisonment not exceeding 1 year, or both.

(b) The Superior Court shall have jurisdiction of offenses under this section.

§ 5024 Examinations of persons relative to parole, pardon or commutation of sentence in case of certain crimes.

Whenever the Director of the Division of Substance Abuse and Mental Health or the Director of the Division of Developmental Disabilities Services receives a request from the Commissioner of the Department of Correction, relative to parole, pursuant to § 4353 of Title 11, or relative to pardon or commutation of sentence, pursuant to § 4362 of Title 11, for psychiatric examination and psychological clinical studies, and a report containing an opinion of the prisoner's condition and of the probability of the prisoner's again committing crimes similar to the 1 for which the prisoner was incarcerated, or other crimes, the Director shall cause such examination and studies to be made at the correctional institution or the Delaware Psychiatric Center, and copies of the report shall be delivered to each member of the Parole Board or the Board of Pardons, as the case may be; and in cases of pardons and commutations of sentence, a copy to the Governor.

§ 5025 Minors.

(a) Except as otherwise provided, the provisions of this chapter pertaining to the care and release of persons age 18 and older shall apply with the same force and effect to persons under 18 years of age admitted to a designated psychiatric treatment facility or hospital, certified by the Secretary of the Department of Services for Children, Youth and Their Families as being appropriate for the diagnosis, care, and treatment of persons with mental illness under 18 years of age.

(b) All substantive and procedural rights provided to individuals pursuant to this Chapter shall automatically transfer to the individual's parents or legal guardian if the individual is a minor, unless specifically stated otherwise in this chapter. Even when such a transfer of rights occurs, all reasonable efforts shall be made to ensure the relevant rights and procedures are explained to the minor in language understandable to the minor.

(c) A psychiatrist or Emergency Detention of Juveniles Review Board designated by the Secretary of the Department of Services for Children, Youth and Their Families may conduct an independent review of a determination that a person under 18 years of age admitted to a designated psychiatric treatment facility or hospital pursuant to an emergency detention on the basis of the appearance of a mental condition, and whose mental condition causes the individual to be dangerous to self or dangerous to others. Such review may include an examination of the determinations made by juvenile mental health screeners in individual cases or in aggregate. The Department for Children, Youth and Their Families is authorized to establish regulations concerning the process and criteria for such determinations.

§ 5026 Additional facilities for adults.

The Secretary of the Department of Health and Social Services, upon voluntary application of a private or public hospital, may certify such hospital as an appropriate facility for the detention, diagnosis, care and treatment of adults with a mental condition under this chapter. If so certified, on a case-by-case basis, any such hospital shall be authorized to serve in addition to the Delaware Psychiatric Center under this chapter.

Section 2. Amend Chapter 51, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5122 Emergency detention of a person with a mental condition; justification; procedure.

~~(a) As used in this subchapter, unless the context clearly indicates otherwise, the following words or phrases shall have the following meanings:~~

- ~~(1) "Credentialed mental health screener" is an individual who either:
 - ~~a. Possesses a valid State of Delaware license to practice as a psychiatrist; or~~
 - ~~b. Is a licensed mental health professional who is credentialed by the Department to provide emergency screening services and evaluation of the need for involuntary observation and treatment for a mental condition; or~~
 - ~~c. Is an unlicensed mental health professional who works under the direct supervision of a psychiatrist and who is credentialed by the Department to provide emergency screening services and evaluation of the need for involuntary observation and treatment for a mental condition; or~~
 - ~~d. Is a physician with a valid State of Delaware license to practice medicine and who is credentialed by the Department to provide emergency screening services and evaluation of the need for involuntary observation and treatment for a mental condition.~~~~

~~(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 immediate future. This determination shall take into account a person's history, recent behavior and any recent act or threat.~~

~~(3) "Dangerous to self" means that by reason of mental condition the person is likely to cause injury to oneself and to require immediate care, treatment, or detention.~~

~~(4) "Department" shall refer to the State of Delaware Department of Health and Social Services.~~

~~(5) "Designated psychiatric treatment facilities" includes all facilities designated by the Secretary to provide psychiatric emergency care for individuals believed to have a mental condition and whose behavior is believed to be dangerous to self or others due to that mental condition; such facilities include psychiatric hospitals operated by the State of Delaware, privately operated psychiatric hospitals, any psychiatric emergency receiving facilities that provide mental health screenings, evaluations, treatment, and referral services, or other facilities as may be designated by the Department by regulation.~~

~~(6) "Designated transport personnel" means such personnel as designated by the Secretary to transport persons who require 24 hour detention to or from needed healthcare services provided in hospitals and public treatment facilities; these personnel include police officers, peace officers and constables with arrest power as well~~

~~as private ambulance, state employees and contracted transportation staff as approved by the Department. Any peace officer involved may mandate the manner and method of transportation of persons who require 24 hour detention when required to ensure public safety.~~

~~(7) "Involuntary detention" refers to the legally sanctioned use of this subchapter that allows a qualified professional who meets criteria to be a credentialed mental health screener to determine that an individual is behaving in a manner that is dangerous to self or others due to a mental condition that requires keeping that individual in a medical facility against the individual's will for up to 24 hours for an evaluation to determine what treatment needs are required to keep the person or the public safe. Involuntary detention requires written documentation reflecting the credentialed mental health screener's clinical decision process and must be signed either by the licensed credentialed mental health screener or by the supervising psychiatrist of an unlicensed credentialed mental health screener, at the time of the determination that a 24 hour detention is warranted. The 24-hour timeframe does not start until the person is presented to a designated facility that is able to provide such psychiatric healthcare services.~~

~~(8) "Licensed independent practitioner" as set forth in this subchapter refers to employees of designated psychiatric treatment facilities, in addition to psychiatrists, who hold credentials and privileges to admit persons into care and write orders to treat said persons in that facility. Licensed independent practitioners can include but are not limited to staff that hold licenses as psychologists, nurse practitioners, and physician assistants or such other healthcare providers as may be designated to work independently pursuant to the regulations of the Department.~~

~~(9) "Mental condition" means a current, substantial disturbance of thought, mood, perception or orientation which significantly impairs judgment, capacity to control behavior or capacity to recognize reality. Unless it results in the severity of impairment described herein, "mental condition" does not mean simple alcohol intoxication, transitory reaction to drug ingestion, dementia due to various nontraumatic etiologies or other general medical conditions, Alzheimer's disease, or intellectual disability. The term "mental condition" is not limited to "psychosis" or "active psychosis," but shall include all conditions that result in the severity of impairment described herein.~~

~~(10) "Peace officer" means any public officer authorized by law to make arrests, including police officers and constables.~~

~~(11) "Secretary" shall refer to the Secretary of the State of Delaware Department of Health and Social Services.~~

~~(12) "24 hour detention" refers to the process as set forth herein whereby an adult who appears to have a mental condition, and whose mental condition causes the person to be dangerous to self or dangerous to others, and who is unwilling to be admitted to a facility voluntarily for assessment or care, is involuntarily detained for such evaluation and treatment for 24 hours in a designated psychiatric facility because other less restrictive, more community integrated services are not appropriate or available to meet the person's mental health care needs.~~

~~(b) Any person who believes that another person's behavior is both the product of a mental condition and may result in danger to that person or others, may notify a peace officer, a credentialed mental health screener, or Departmental crisis services and request assistance for said person. Upon the observation by a peace officer, a credentialed mental health screener, or Departmental crisis services that such individual with an alleged mental condition likely constitutes a danger to self or others and is in need of emergency psychiatric evaluation, such person with an alleged mental condition shall be promptly taken into custody by any peace officer, credentialed mental health screener, or Departmental crisis services in the State without the necessity of a warrant. Any such observation shall be described in writing and shall include a description of the behavior and symptoms which led the peace officer, credentialed mental health screener or Departmental crisis services to such conclusion. The documentation required herein shall set forth any known relationship between the person making the complaint and any other connection to the alleged person with a mental condition and, if known, the name of the spouse or nearest known relative.~~

~~(c) Such person with an alleged mental condition, who is demonstrating behaviors believed dangerous to self or others, shall be taken by a peace officer, a credentialed mental health screener, or Departmental crisis services with all reasonable promptness to:~~

~~(1) A designated psychiatric treatment facility for emergency screening services by a credentialed mental health screener; or~~

~~(2) A credentialed mental health screener; or~~

~~(3) Any hospital as defined by § 5101 of this title so long as any resulting order for 24 hour detention relating to said person is entered by a credentialed mental health screener.~~

~~(d) If it reasonably appears to the credentialed mental health screener that the person is acting in a manner that appears to be dangerous to self or others and this behavior is the result of a mental condition, the credentialed mental health screener shall verify this finding in writing and complete the Departmentally approved 24 hour detention form; this documentation shall include that screener's rationale for the detention including specific information regarding the alleged mental condition and dangerous behaviors observed. Once the 24 hour detention form is completed, designated transportation personnel shall be directed by the Department to transport the person under detention to a designated psychiatric treatment facility to provide such a 24 hour evaluation. If, at any time, an individual who has been determined to meet the standard in paragraph (a)(12) of this section agrees to go to a facility for further observation, a voluntary admission will be sought to fulfill the needed evaluation and the 24 hour detention order will become void. The Department will pay for voluntary admissions pursuant to the same criteria as involuntary admissions or community placement. If a hospital based physician has completed an emergency medicine health assessment, as determined solely by such physician, and refers the patient to a credentialed mental health screener, with or without consultation with a psychiatrist, such a referral constitutes an appropriate discharge plan and after such discharge the hospital based physician will have no further responsibility for the evaluation and disposition of the patient.~~

~~(e) A 24 hour detention will result in admission to a designated psychiatric treatment facility for psychiatric observation, assessment, acute treatment, and any recommendations for referral for other services within the 24 hour period of time. Any referral for a 24 hour detention shall include a review of any advance health care directive as set forth in this chapter or any other similar agreement relating to the person's wishes regarding potential hospitalization, care, treatment, and notifications to others if known to the credentialed mental health screener and available for review at the time of such referral.~~

~~(f) Once an individual is detained in a designated psychiatric treatment facility pursuant to subsection (d) of this section, a psychiatrist shall review all documentation, conduct an examination of the individual, and document the findings of examination within 24 hours both in the person's medical record and the 24 hour detention findings form. If the examining psychiatrist finds that the individual with an apparent mental condition is not dangerous to self or others or is not in need of involuntary inpatient commitment, the psychiatrist shall certify these specific findings in writing and the individual who was detained shall be discharged from custody forthwith. All documentation required by this section will be recorded and retained in the medical record of that individual and reported to the Delaware Division of Substance Abuse and Mental Health's Eligibility and Enrollment Unit upon the release of the individual.~~

~~(g) In the event that the psychiatrist at a designated psychiatric treatment facility determines that the person who has been detained under the 24 hour detention law meets the criteria for further care and treatment and that such required care cannot be provided in an available, less restrictive, more community integrated setting, such psychiatrist shall immediately implement the involuntary commitment processes as set forth in Chapter 50 of this title. Any such determination must be based upon observed and evaluated behavior which is the result of a mental condition that is reasonably believed to be dangerous to self or others. Any involuntary commitment of said person shall be only to an inpatient psychiatric facility designated by the Secretary to provide such care and treatment. If, at any time, the person at risk of being involuntarily committed voluntarily seeks care and treatment for his or her mental condition or behaviors, any pending request for involuntary commitment pursuant to Chapter 50 of this title~~

~~will terminate and the person shall be voluntarily admitted to a designated psychiatric treatment facility without delay.~~

~~(h) The 24 hour detention period referred to herein shall be 72 hours for minors admitted in conformity with § 5135 of this title. If it appears that the nearest known relative of the minor has not received prior notice of the proceedings, the facility administrator or designee shall, if reasonably possible, promptly give such notice. A psychiatrist designated by the Secretary of the Department of Services for Children, Youth and Their Families may conduct an independent review of a determination that a person under 18 years of age admitted to any mental health facility pursuant to this chapter is a person deemed to be dangerous as a result of a mental condition.~~

~~(i) The State Treasurer shall pay peace officers, including police officers and constables, for transportation services as peace officers under this subchapter at an agreed upon rate, including a custody fee and mileage traveled.~~

~~(j) (1) No peace officer, medical doctor, credentialed mental health screener, or facility in which a medical doctor or credentialed mental health screener practices shall be subject to civil damages or criminal penalties for any harm resulting from the performance of their functions under this section unless such harm was intentional or the result of wilful or wanton misconduct on their part. This immunity is limited to the mental health assessment, resulting clinical decision, and involuntary hold necessary until the person is presented to a designated psychiatric treatment facility that is able to provide such psychiatric healthcare services for the 24 hour detention described in paragraph (a)(7) of this section.~~

~~(2) After the person presents to the designated psychiatric treatment facility and during the 24 hour involuntary detention period described in paragraph (a)(12) of this section, no medical doctor or designated psychiatric treatment facility shall be subject to civil damages or criminal penalties for any harm to the person with a mental condition resulting from the performance of functions under subsection (f) of this section unless such harm was the result of negligent, reckless, wilful, wanton and/or intentional misconduct.~~

~~(3) Nothing in this section is intended to waive the State's sovereign immunity or the privileges and immunities set forth at Chapter 40 of Title 10.~~

~~(k) All professional personnel employed by the State or private providers are mandated to disclose any conflicts of interest regarding their participation in the 24 hour detention of any individual with an apparent mental condition to any psychiatric facility. Such conflicts of interest shall be disclosed on the 24 hour detention form and may include, but are not limited to, employment by a privately operated psychiatric facility, a personal relationship with the individual being detained or committed involuntarily, a relationship with family or significant others of the individual being detained or committed involuntarily, or being the victim of a crime by the person being detained or committed involuntarily.~~

~~(l) Notwithstanding any other section of the Delaware Code, no person shall be detained or otherwise involuntarily committed to a designated psychiatric treatment facility unless a psychiatrist or credentialed mental health screener determines that such detention or commitment is the least restrictive and most community integrated means to adequately treat the person that is immediately available.~~

~~(m) The Department is hereby authorized to establish regulations consistent with this subchapter. These regulations shall include rules regarding the disclosure by credentialed mental health screeners of potential conflicts of interest.~~

~~(n) The Department shall form an expert panel for the purposes of advising the Department on the content of the regulations. The expert panel shall be chaired by the Director of the Division of Substance Abuse and Mental Health or his or her designees, and shall include, but not be limited to, representatives from the following: the Director of the Division of Professional Regulations, or his or her designee; 2 representatives from the physician community, to be appointed by the Medical Society of Delaware; 2 representatives from the Delaware Chapter of the American College of Emergency Physicians, to be appointed by the chair of the expert panel; 3 representatives from general hospitals, appointed by the Delaware Healthcare Association; 3 representatives from the designated psychiatric facilities, to be appointed by the chair of the expert panel; 1 psychiatrist appointed by the Psychiatric Society of Delaware; 2 community providers, to be appointed by the chair of the expert panel; 1 representative of the Mental Health Association in Delaware, to be appointed by the chair of the expert panel; 1 representative of the~~

~~National Alliance on Mental Illness in Delaware, to be appointed by the chair of the expert panel; and 1 or more members of the public, to be appointed by the chair of the expert panel, who shall represent the interests of patients.~~

~~§ 5127 Liability for maintenance of patient; collection remedies.~~

~~(a) Any adult committed to or placed in a designated psychiatric treatment facility or mental hospital shall be liable for the cost of care, treatment, or both to the extent authorized by § 7940 of Title 29. If a child is committed to or placed in a designated psychiatric treatment facility or mental hospital, liability for costs of care, treatment, or both shall conform to § 9019 of Title 29.~~

~~(b) The Department of Health and Social Services and Department of Services for Children, Youth and Their Families shall keep an account of the cost of care, treatment, or both and credit against the account all moneys received from the patient or other persons on the patient's behalf.~~

~~(c) In the event of nonpayment, the Department of Health and Social Services and Department of Services for Children, Youth and Their Families may pursue collection remedies authorized by §§ 7940 and 9019, respectively, of Title 29.~~

~~§ 5128 Expenses of examination and removal of indigent patients.~~

~~The expenses of the examination of an indigent person alleged to be suffering from a mental condition and the transportation of such person, if found to be suffering from a mental condition, by a peace officer or credentialed mental health screener to a designated psychiatric facility able to provide further evaluation or care and treatment, shall be paid by the State Treasurer.~~

~~§ 5130 Veterans Administration hospitals.~~

~~The provisions in the Delaware Code pertaining to the admission, commitment, care and release of persons diagnosed with a mental condition at state institutions shall apply with the same force and effect to persons entitled to the services of hospitals for people with a mental condition operated by the Veterans Administration. Persons so entitled may be transferred from state institutions to such Veterans Administration hospitals subject to the statutory provisions affording interested parties the right to have the status of the person with a mental condition determined as provided by law.~~

~~§ 5131 Discharge of patients at Delaware Psychiatric Center; release on convalescent status; continued responsibility; review of convalescent status.~~

~~(a) The Hospital Director of the Delaware Psychiatric Center shall as frequently as practicable, but not less often than every 3 months, examine or cause to be examined every hospitalized patient admitted under § 5003 of this title, and whenever the Hospital Director, in consultation with a psychiatrist, determines that any patient is not a person with a mental condition, as that term is defined in § 5001 of this title, or whenever the Hospital Director, in consultation with a psychiatrist, determines that otherwise, the care, treatment and supervision of the Psychiatric Center are no longer necessary, the patient shall be discharged. The certificate of discharge shall state the basis for the discharge. Prior to discharge, the facility shall prepare a written continuing care plan developed in consultation with interdisciplinary staff, anticipated post discharge providers and the patient, and, if the patient is a minor, with the patient's parents or legal guardian. At a minimum, Departmental community based services staff shall be consulted for adult patients in Departmental facilities. The continuing care plan shall include: a realistic assessment of the patient's post discharge social, financial, vocational, housing and treatment needs; identification of available support services and provider linkages necessary to meet the assessed needs; and identification and a timetable of discrete, pre-discharge activities necessary to promote the patient's successful transition to the community based services system or to another appropriate post discharge setting.~~

~~(b) The Hospital Director of the Delaware Psychiatric Center may release an improved patient who was admitted under § 5003 of this title on convalescent status when the Hospital Director, in consultation with a psychiatrist, believes that such release is in the best interests of the patient.~~

~~(c) Release on convalescent status shall include provisions for continuing responsibility to and by the Psychiatric Center, including a plan of treatment on an outpatient or nonhospital patient basis.~~

~~(d) Prior to the end of a year on convalescent status, and not less frequently than annually thereafter, the Hospital Director shall examine the facts relating to the condition of the patient on convalescent status and whenever~~

~~the Hospital Director, in consultation with a psychiatrist, determines that the patient is not a person with a mental condition, as that term is defined in § 5001 of this title, or whenever the Hospital Director, in consultation with a psychiatrist, determines that otherwise, the care, treatment and supervision of the Psychiatric Center are no longer necessary, the patient shall be discharged. The certificate of discharge shall state the basis for the discharge.~~

~~§ 5132 Return of patients; order; notice; custody.~~

~~(a) If an inpatient of a state operated mental hospital escapes or is on unauthorized leave, its director may issue an order for the patient's immediate rehospitalization. The director or the director's designee may notify such patient of the existence of a rehospitalization order by any reasonable means of communication open to the director. Such an order, irrespective of the patient's actual receipt, shall authorize any peace officer to take the patient into custody for rehospitalization.~~

~~(b) If an involuntarily committed inpatient or a person detained involuntarily under this chapter from a non state operated hospital certified under § 5135 or § 5136 of this title escapes or is on unauthorized leave, that hospital's director shall immediately notify the Director of the Division of Substance Abuse and Mental Health or the Director's designee if the patient is 18 years of age or older or the Division of Prevention and Behavioral Health Services if the patient is under 18 years of age. Upon receipt of such notification, the Division Director or the Director's designee may issue notice and a rehospitalization order in conformity with subsection (a) of this section. Such an order, irrespective of the patient's actual receipt, shall authorize any peace officer to take the patient into custody for rehospitalization.~~

~~§ 5133 Unwarranted hospitalization in Delaware Psychiatric Center or denial of rights; penalties.~~

~~(a) Any person who wilfully causes, or conspires with or assists another to cause:~~

~~(1) The unwarranted hospitalization of any individual in the Delaware Psychiatric Center under this chapter; or~~

~~(2) The denial to any individual of any of the rights accorded to said individual under this chapter shall be punished by a fine not exceeding \$500 or imprisonment not exceeding 1 year, or both.~~

~~(b) The Superior Court shall have jurisdiction of offenses under this section.~~

~~§ 5134 Examinations of persons relative to parole, pardon or commutation of sentence in case of certain crimes.~~

~~Whenever the Director of the Division of Substance Abuse and Mental Health or the Director of the Division of Developmental Disabilities Services receives a request from the Commissioner of the Department of Correction, relative to parole, pursuant to § 4353 of Title 11, or relative to pardon or commutation of sentence, pursuant to § 4362 of Title 11, for psychiatric examination and psychological clinical studies, and a report containing an opinion of the prisoner's condition and of the probability of the prisoner's again committing crimes similar to the 1 for which the prisoner was incarcerated, or other crimes, the Director shall cause such examination and studies to be made at the correctional institution or the Delaware Psychiatric Center, and copies of the report shall be delivered to each member of the Parole Board or the Board of Pardons, as the case may be; and in cases of pardons and commutations of sentence, a copy to the Governor.~~

~~§ 5135 Minors.~~

~~(a) Any person under 18 years of age admitted pursuant to this chapter shall not be admitted to the Delaware Psychiatric Center but to a hospital certified by the Secretary of the Department of Services for Children, Youth and Their Families as being appropriate for the diagnosis, care and treatment of persons with a mental condition under 18 years of age.~~

~~(b) The provisions of this chapter pertaining to the care and release of persons with mental conditions at the Delaware Psychiatric Center shall apply with the same force and effect to persons admitted to a hospital or other location as defined in § 5101(2) of this title.~~

~~§ 5136 Additional facilities for adults.~~

~~The Secretary of the Department of Health and Social Services, upon voluntary application of a private or public hospital, may certify such hospital as an appropriate facility for the detention, diagnosis, care and treatment of adults with a mental condition under this chapter. If so certified, on a case by case basis, any such hospital shall be authorized to serve in addition to the Delaware Psychiatric Center under this chapter.~~

Approved October 14, 2014