

CHAPTER 360
FORMERLY
HOUSE SUBSTITUTE NO. 1 FOR
HOUSE BILL NO. 311
AS AMENDED BY
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE ADMISSION, MAINTENANCE AND DISCHARGE OF PATIENTS WITH MENTAL CONDITIONS.

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

Section 1. Amend Subchapter II, Chapter 51, Title 16 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5121. Voluntary admission procedure.

The Department may establish, under the direction and supervision of the Delaware Psychiatric Center, a voluntary admission procedure for the observation, study, psychiatric diagnosis and treatment of persons suffering from mental and nervous diseases.

~~§ 5122. Emergency apprehension of the dangerous mentally ill; complaint; detention and treatment in the Delaware Psychiatric Center or other hospital; discharge; fees; liability immunity.~~

~~(a) As used in this section:~~

~~(1) "Dangerous mentally ill person" means a person so mentally ill as to be likely to cause injury to oneself or others and to require immediate care, treatment or restraint.~~

~~(2) "Designated transport personnel" means such personnel as designated by the Secretary of the Department of Health and Social Services to transport mentally ill persons to and from the hospital and public treatment facilities.~~

~~(3) "Peace officer" means any public officer authorized by law to make arrests in a criminal case.~~

~~(b) Upon the signed complaint of any person stating the person has knowledge that a designated person appears to be so mentally ill as to be likely to cause injury to oneself or others and to require immediate care, treatment or restraint, setting forth a description of the behavior and symptoms which led the person to the person's conclusion, such alleged mentally ill person shall be promptly taken into custody by any peace officer of the State to whom the complaint is delivered without the necessity of a warrant. The complaint shall also set forth the address of the signer, the signer's relationship or other connection to the alleged mentally ill person and, if known, the name of the spouse or nearest known relative.~~

~~§ 5121A. Emergency detention of a person with a mental condition; justification; procedure [Effective until July 1, 2013].~~

~~(e)-(a) Until July 1, 2013, and in conjunction with § 5122 of this title, Such an alleged mentally ill person shall be taken by the peace officer, with all reasonable promptness, to a medical doctor licensed to practice medicine or surgery in the State for examination. The written complaint shall be delivered to the doctor who shall, if reasonably possible, give telephonic notice of the examination to the nearest relative as shown on the complaint, unless such person has signed the complaint. If it reasonably appears to the doctor that the alleged mentally ill person is a dangerous mentally ill person, the said doctor shall so certify in writing and the alleged mentally ill person shall be transported by the peace officer or, in the sole discretion of the examining physician, by designated transport personnel to the Delaware Psychiatric Center or other hospital as defined in § 5101(2) of this title with all reasonable promptness and delivered to the officials of the said hospital, together with the complaint and the certificate of the examining doctor. If the examining doctor finds that the alleged mentally ill person is not a dangerous mentally ill person, the said doctor shall so certify in writing, the alleged mentally ill person shall be discharged from custody forthwith and the doctor shall forward the complaint and the doctor's certificate to the Delaware Psychiatric Center. The doctor's certificate shall set forth a description of the behavior and symptoms of the alleged mentally ill person which led the doctor to the doctor's conclusion. It shall also set forth whether or not~~

the nearest known relative was notified of the examination. On and after July 1, 2013, this paragraph ceases to have effect and, pursuant to § 5122 of this title, only a psychiatrist or credentialed mental health screener may complete the steps necessary to institute the 24-hour detention for evaluation.

~~(d)~~ (b) Until July 1, 2013, and in conjunction with § 5122 of this title, Upon receiving an alleged mentally ill person at the Delaware Psychiatric Center or other hospital as defined in § 5101(2) of this title, the Superintendent shall detain, care for and treat as medically appropriate, the said patient for a period not to exceed 24 hours; provided, however, that this period shall be 72 hours for minors admitted in conformity with § 5135 of this title. If it appears that the nearest known relative has not received prior notice of the proceedings, the Superintendent shall, if reasonably possible, promptly give such notice. Unless the patient is discharged from the hospital within that period, then at the termination of the period the person shall be discharged unless the person is admitted or committed to the said hospital under some other provision of law. 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 dangerously mentally ill person. A psychiatrist designated by the Secretary of the Department of Health and Social Services may conduct an independent review of a determination that a person 18 years of age or older admitted to any mental health facility pursuant to this chapter is a dangerously mentally ill person. On and after July 1, 2013, this paragraph ceases to have effect.

(c) Until July 1, 2013, the term "dangerous mentally ill person" means that an individual meets the criteria of either "dangerous to self" or "dangerous to others" as defined in § 5122 of this title.

~~(e) 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 and a custody fee of \$100 when transporting a mentally ill person from 1 county to another county.~~

~~(f) No peace officer or medical doctor shall be subject to civil damages or criminal penalties for any harm resulting from the performance of the officer's or doctor's functions under this section unless such harm was intentional or the result of wilful or wanton misconduct on the officer's or doctor's part.~~

§ 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) "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 non-traumatic 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.

(2) "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.

(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) "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.

(5) "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.

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

(8) "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.

(9) "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.

(10) "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.

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

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

(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(2) 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 § 5122(a)(4) of this title 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 seventy-two 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) No peace officer, medical doctor, or credentialed mental health screener 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.

(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; two representatives from the physician community, to be appointed by the Medical Society of Delaware; two representatives from the Delaware Chapter of the American College of Emergency Physicians, to be appointed by the chair of the expert panel; three representatives from general hospitals, appointed by the Delaware Healthcare Association; three representatives from the designated psychiatric facilities, to be appointed by the chair of the expert panel; one psychiatrist appointed by the Psychiatric Society of Delaware; two community providers, to be appointed by the chair of the expert panel; one representative of the Mental Health Association in Delaware, to be appointed by the chair of the expert panel; one representative of the National Alliance on Mental Illness in Delaware, to be appointed by the chair of the expert panel; and one or more members of the public, to be appointed by the chair of the expert panel, who shall represent the interests of patients.

§ 5123. Voluntary hospitalization of patients at Delaware Psychiatric Center; authority to receive; procedure; discharge.

~~(a) The Superintendent of~~ A licensed psychiatrist or licensed independent practitioner who is credentialed and authorized by the Delaware Psychiatric Center may admit for observation, diagnosis, care and treatment any individual who is ~~mentally ill~~ a person with an apparent mental condition or who has symptoms of a mental condition and who ~~applies therefor~~, requests admission subject to the payment of charges for care, maintenance and support as provided in § 5127 of this title. The Delaware Psychiatric Center may establish criteria for voluntary admission that differ from the criteria for involuntary admissions.

~~(b) If the applicant is under the care and treatment of a medical doctor licensed to practice medicine or surgery in this State, the application shall be accompanied by a letter from the doctor recommending voluntary hospitalization and setting forth a description of the behavior and symptoms of the patient which led the doctor to the doctor's decision to recommend voluntary hospitalization. If the applicant is not under the care and treatment of such a medical doctor, the applicant shall not be admitted unless the Superintendent first determines that the applicant has sufficient insight and capacity to make responsible application for voluntary hospitalization.~~

~~(c)~~ (b) If any applicant is under the age of 18 years, the application request for admission to a designated psychiatric treatment facility shall also be signed by either of the applicant's parents, spouse or legal guardian.

(c) The attending psychiatrist or licensed independent practitioner who is appropriately credentialed and authorized by the Delaware Psychiatric Center shall discharge any voluntary patient who has recovered or whose hospitalization the attending psychiatrist determines is no longer clinically indicated.

~~(d) The Superintendent shall discharge any voluntary patient who has recovered or whose hospitalization the superintendent determines to be no longer advisable.~~

~~(e)~~ (d) A voluntary patient who requests the patient's own discharge or whose discharge is requested, in writing, by the patient's legal guardian, parent, spouse or adult next of kin shall be discharged within 5 days from the receipt of the request, except that (1) if the request for discharge is made by a person other than the patient, discharge may be conditioned upon the agreement thereto of the patient, and (2) if the patient is under the age of 18 years, the patient's discharge may be conditioned upon the consent of the patient's parent, spouse or guardian, and (3) if it has been observed and documented that the person currently admitted voluntarily is currently demonstrating behaviors believed to be dangerous to self or others and these behaviors are documented in the medical record, the attending psychiatrist may initiate involuntary commitment status as set forth in Chapter 50 of this title.

~~(f)~~ (e) 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 under 18 years of age who receives financial assistance from such Department or who is in the custody of such Department is appropriate for voluntary hospitalization. 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 a voluntary patient under 18 years of age who receives financial assistance from such Department or who is in the custody of such Department is appropriate for voluntary hospitalization.

~~(g)~~ (f) A psychiatrist designated by the Secretary of the Department of Health and Social Services may conduct an independent review to determine whether an applicant 18 years of age or older who receives financial assistance from the Department or who is in the custody of the Department is appropriate for voluntary hospitalization. A psychiatrist designated by the Secretary of the Department of Health and Social Services may conduct an independent review to determine whether a voluntary patient 18 years of age or older who receives financial assistance from the Department or who is in the custody of the Department is appropriate for voluntary hospitalization.

~~(h)~~ (g) Nothing contained in subsection (e) of this section shall require the discharge of a voluntary patient if within the 5-day period from receipt of the request for discharge the patient is admitted or committed to the said Psychiatric Center under some other provision of law.

(h) Notwithstanding any other section of the Delaware Code, the 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.

§§ 5124-5126 [Reserved.]

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

~~(a) Any person committed to, or placed in the Delaware Psychiatric Center shall at all times be liable for the care, maintenance and support furnished to and received by such person while an inmate of the Psychiatric Center. Nothing in this section shall relieve from liability for the support of the patient any person liable under any other law of this State.~~

~~(b) The Department shall keep an account of the cost of the care, maintenance and support furnished each patient while in the Psychiatric Center and shall credit against the account all moneys received from the patient or from any other person for or on behalf of the patient.~~

~~(c) The Department may collect from any patient or from the trustee for any patient or out of the property, moneys and effects of any patient all moneys necessary to discharge and pay all liability of the patient for the patient's care, maintenance and support.~~

~~(d) The Department may also proceed for the recovery of the moneys necessary for the care, maintenance and support in an action to be brought in any court of competent jurisdiction in the name of the Department or by petition to the Court of Chancery if the patient has been ascertained to be insane by inquisition duly held.~~

(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 or nervous disease and of the removal of such person, condition and the transportation of such person, if found to be suffering mental or nervous disease, to the Delaware Psychiatric Center 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.~~

§ 5129. ~~[Reserved.] Resident and nonresident pay patients; contracts.~~

~~(a) The Department may receive any person suffering from mental or nervous disease from any other state, if the person is able to pay for the person's maintenance and support.~~

~~(b) The Department may also receive into the Delaware Psychiatric Center any person suffering from mental or nervous disease who is a resident of this State and who may be able to pay for the person's own maintenance or support.~~

~~(c) The Department may make contracts in relation to the board and maintenance, care and custody of any patient, and may recover from the person with whom it may contract or from the patient the compensation agreed upon, or, in case no certain compensation was agreed upon, then it may recover a reasonable compensation in an action to be brought in the name of the Department, or by petition to the Court of Chancery, if the person has been ascertained to be insane by inquisition duly held.~~

§ 5130. Veterans Administration hospitals.

The provisions in the Delaware Code pertaining to the admission, commitment, care and release of ~~mentally ill~~ 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 ~~the mentally ill~~ 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 ~~mentally ill person's~~ 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 ~~Superintendent~~ Hospital Director of the Delaware Psychiatric Center shall as frequently as practicable, but not less often than every ~~6~~ 3 months, examine or cause to be examined every hospitalized patient admitted under § 5003 of this title, and whenever the ~~Superintendent~~ Hospital Director, in consultation with a psychiatrist, determines that any patient is not a ~~mentally ill~~ person with a mental condition, as that term is defined in § 5001 of this title, or whenever the ~~Superintendent~~ 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 ~~Superintendent~~ 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 ~~Superintendent~~ 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 ~~Superintendent~~ Hospital Director shall examine the facts relating to the condition of the patient on convalescent status and whenever the ~~Superintendent~~ Hospital Director, in consultation with a psychiatrist, determines that the patient is not a ~~mentally ill~~ person with a mental condition, as that term is defined in § 5001 of this title, or whenever the ~~Superintendent~~ 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 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.

§ 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 one 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 ~~mentally ill~~ persons with a mental condition under 18 years of age.

(b) The provisions of this chapter pertaining to the care and release of ~~mentally ill~~ persons with mental conditions at the Delaware Psychiatric Center shall apply with the same force and effect to persons admitted to a hospital ~~under this section~~ 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 ~~mentally ill~~ 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 July 24, 2012