

LAWS OF DELAWARE
VOLUME 84
CHAPTER 201
152nd GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 153

AN ACT TO AMEND TITLES 12, 14, 16, AND 29 OF THE DELAWARE CODE RELATING TO BEHAVIORAL HEALTH.
BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 3901(a)(3), Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3901. Appointment of guardians for persons with disabilities.

(a) The Court of Chancery shall have the power to appoint guardians for the person or property, or both, of any person with a disability pursuant to this chapter and Chapter 39A of this title. "Person with a disability" means any person who:

~~(3) By reason of § 5703(1) or (2) of Title 16 is deemed legally incapable of giving informed consent to sterilization.~~

Section 2. Amend §§ 3801-3807 of Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 3801. Declaration of purpose.~~

~~The General Assembly finds and declares that a substantial drug and alcohol trafficking and abuse problem exists in this State among school age children, in schools and on school campuses, parks and playgrounds. It is the purpose of this chapter to support increased efforts by local law enforcement agencies, working in conjunction with school districts and with state and local drug and alcohol prevention agencies, to suppress trafficking, and to prevent drug and alcohol abuse among school-age children in schools and on school campuses, through the development of innovative and model programs jointly undertaken by local law enforcement agencies and school districts. Further, it is the intent of the General Assembly to establish a program of financial and technical assistance for local law enforcement and school districts, and to formulate a joint policy of pursuing both demand reduction (through education and prevention programs), and supply reduction (through law enforcement).~~

~~§ 3802. Definitions.~~

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

~~(1) "Division" shall mean the Division of Substance Abuse and Mental Health.~~

~~(2) "Enhanced apprehension, prevention and education efforts" shall mean projects and programs which do not compete with, but which supplement and improve currently existing substance abuse prevention and education programs.~~

~~(3) "Entity" shall mean any committee, agency or group approved by the Division; any law enforcement committee, agency or group approved by the Department of Safety and Homeland Security; or any committee, agency or group composed of public school teachers and/or administrators.~~

~~§ 3803. Division of Substance Abuse and Mental Health.~~

~~(a) The Division of Substance Abuse and Mental Health shall allocate and award all funds appropriated for any purposes set forth in § 3801 and elsewhere in this chapter. Such funds shall be awarded only to programs or projects, undertaken jointly by a law enforcement entity and a local school district or other public school entity, to prevent and/or suppress substance abuse and the trafficking of prohibited or controlled substances in the public schools. All applications for such funds shall be applications made jointly by the school and law enforcement entities involved in the proposed project.~~

~~(b) In the allocation and awarding of funds to joint law enforcement and public school recipients, the Division shall obtain the comments and recommendations of the State Drug-free School Advisory Committee. All allocation and awarding of funds by the Division shall be in accordance with the Administrative Procedures Act [Chapter 101 of Title 29], and with those guidelines promulgated by the State Drug-free School Advisory Committee which do not conflict with existing state laws.~~

~~(c) Each application shall be accompanied by a fiscal note, prepared by the joint applicants, which sets forth all anticipated first-year costs and the anticipated total costs of the project or program. The Division may return any application to the applicant with a request that any or all expenses be more fully set out, together with the applicant's explanations or reasons for each projected cost or expense.~~

~~§ 3804. State Drug-free School Advisory Committee.~~

(a) All criteria for the rating of applications for funds under this chapter shall be developed by the State Drug-free School Advisory Committee. The State Drug-free School Advisory Committee shall be composed of 16 members appointed by the Governor: 1 police chief; 1 sheriff; 1 prosecutor from the State Department of Justice who specializes in drug and/or alcohol cases; 1 attorney primarily engaged in criminal defense; 1 person from each county appointed by an active parent group or community-based group concerned primarily with drug and/or alcohol problems; 1 representative of the Division of Substance Abuse and Mental Health; 1 county drug and/or alcohol program administrator; and a permanent, full-time member of a drug treatment clinic or office, public or private. In addition, membership shall include the Attorney General or the Attorney General's designee; 4 members who are professional employees of the Department of Education, 1 of whom shall be the Secretary of Education; and a drug and/or alcohol prevention professional employed by the Department of Education. The Committee shall review applications made to the Division for those funds which are awarded pursuant to this chapter, and shall recommend approval for those applications which the Committee deems appropriate, and which it deems are consistent with the guidelines and procedures established pursuant to this chapter. The Division shall not approve nor release any funds until approval under § 3805(b) of this title is first obtained.

(b) The State Drug-free School Advisory Committee shall develop specific guidelines and procedures which shall set forth the terms and conditions upon which grants of funds are made. Funds disbursed under this chapter shall not be used for the acquisition of equipment.

(c) Funds disbursed under this chapter shall not be used to pay informants for information on drug and/or alcohol offenders. Not more than 10 percent of the total amount of funds disbursed under this chapter shall be used for administrative costs.

§ 3805. Local drug-free school advisory committees.

(a) A local drug-free school advisory committee may be established and appointed by each local board of education. Such committee may be either a newly created committee, or an existing local drug and alcohol abuse committee formerly established by the county, municipality or school district. Although the committee may have additional members, its basic membership shall be composed of the following residents of the district or area affected:

- (1) One local law enforcement officer;
- (2) An administrator or teacher, employed by the local school district, who has expertise in drug and alcohol programs;
- (3) One administrator and 1 teacher from the school or school district which has direct involvement in the program;
- (4) One parent who has a son or daughter enrolled in the school;
- (5) Three high school students;
- (6) One person who is a permanent full-time employee of the state, county or municipality, and whose duties primarily involve drug education or treatment;
- (7) Any other person who is involved, by employment or as a volunteer, in any drug and/or alcohol prevention program.

(b) No project or program, financed in whole or in part with funds under this chapter, shall begin in any school until such project or program has first received the approval of the local drug-free school advisory committee.

§ 3806. Utilization of funds.

(a) Funds shall be awarded primarily for projects undertaken jointly by the school district or other public school entity, and a law enforcement entity. In participating in any joint application for the funds, the public school entity shall consult with the superintendent of each affected school. Any funds disbursed under this chapter are supplemental to and shall not supplant local funds which would, in the absence of this chapter, be otherwise available to suppress and prevent drug and alcohol abuse among school age children, or which otherwise would be used to curtail drug and alcohol trafficking in and around schools, parks and playgrounds.

(b) When applying for funds under this chapter, the local law enforcement entity and the public school entity may jointly enter into those agreements between themselves which would allow and facilitate the administrative, fiscal and operational responsibilities created by their joint project or program.

(c) Funds disbursed under the provisions of this chapter shall be utilized primarily for enhanced apprehension, prevention, and education efforts, and for obtaining material and information resources relating to drug and alcohol abuse and drug trafficking in and around schools, parks and playgrounds. Enhanced apprehension, prevention and education efforts shall include, but are not limited to:

- (1) Drug and alcohol trafficking intervention programs;

(2) School and classroom oriented programs, each of which shall utilize a tested drug and alcohol education curriculum that provides in-depth and accurate information on drugs and alcohol. Such programs may include the participation of local law-enforcement agencies and/or qualified drug and alcohol use prevention specialists. Each such program shall be designed to increase, in both teachers and students, an awareness of the dangers of drugs and alcohol;

(3) Family-oriented programs aimed at preventing drug and alcohol abuse, which programs may include the participation of any community-based organization which is experienced in the successful operation of a family-oriented program;

(4) Development and distribution of appropriate written and audio-visual aids for the training of persons not otherwise trained or experienced in the handling of drug and alcohol-related problems and offenses within the public schools;

(5) Development of prevention and intervention programs for elementary school teachers and students, including utilization of existing prevention and intervention programs, where appropriate;

(6) Development of a coordinated intervention system that identifies "at risk" students, and students with chronic drug and alcohol abuse problems.

§ 3807. State Board of Education; Department of Safety and Homeland Security.

The Department of Safety and Homeland Security and the Department of Education shall both have the power to monitor and evaluate the projects and programs under this chapter, and to make comments and suggestions to the Division.

Section 3. Amend §§ 5101-5109 of Title 16 of the Delaware Code by making deletions as shown by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5101. Definitions.

As used in this title:

(1) "Department" or "Department of Mental Health" shall mean Department of Health and Social Services unless otherwise designated.

(2) "Hospital" and "mental hospital," as used in this chapter, shall mean the Delaware Psychiatric Center or such other 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 mentally ill persons 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 mentally ill persons under 18 years of age.

(3) The "State Board of Trustees of the Delaware Psychiatric Center" or "Board of Trustees" or "State Board" or "State Board of Trustees" or "State Board of Trustees of the Hospital" or "Board of Trustees of the Hospital" or the "Board" or the "Board of Trustees of the Department of Mental Health" shall mean the Department of Health and Social Services.

(4) "Superintendent," except in this chapter, or "Commissioner" or "Commissioner of the Department of Mental Health" or "Assistant Superintendent" shall mean Secretary of the Department of Health and Social Services.

§ 5102. Authorization to receive federal fund; disposition.

The Department may apply for and receive such funds as may be made available from any agency of the federal government as grants in aid of programs for mental health or for the mentally retarded. All moneys so received shall be paid into the State Treasury and may be used only for the purposes for which they were granted.

§ 5103. Property; acquisition; holdings; disposition.

The Department shall take, receive and hold for the State all properties previously held by the Board of Trustees of the Delaware Psychiatric Center, including the property of the Delaware Psychiatric Center, the Governor Bacon Health Center at Delaware City, the Stockley Center, the Day Care Center at Dover and the Mental Hygiene Clinic at Fernhook, together with all additions, other buildings and lands at any time appurtenant thereto, as well as all funds, credits, rights, fixtures, equipment or supplies heretofore belonging to the Board of Trustees of the Delaware Psychiatric Center. Additional property may not be purchased and land, buildings or property may not be sold, except by authorization of the General Assembly.

§ 5104. Donations of property; form of a devise or gift; the use of such property.

Any person may give, grant, devise or bequeath to the State any property, real, personal or mixed, for the use of the Department or of any institution or agency operated by the Department, and the Department may receive, collect, take and hold, for the use and benefit of the named Department, institution or agency, any and all property so given, granted, devised or bequeathed, and shall manage and use the same for the benefit of the named Department or such institution or agency in accordance with such grants, devises or bequests and with the laws creating and governing the Department and its institutions and

agencies. Nothing contained in this section shall be construed as authorizing or empowering the Department to hold in its name any real estate for the use of the Department or any institution or agency thereof. The legal title to such real estate should be in the name of the State.

§ 5105. Accounting by Department.

The Department shall keep or have kept a full, true and accurate account of all moneys received by the various institutions and agencies under their supervision, for the board, care and attention of the patients, commonly known as "pay patients," and all moneys received from any other source than the annual appropriation made to the institutions and agencies by the State. All such moneys, except as excluded by § 6102(a) of Title 29, shall be considered as revenue to the General Fund of the State and shall be paid over to the State Treasurer on or before the tenth day of the month following the receipt of all such moneys together with a full statement of the same.

§ 5106. Cost of maintaining Department, institutions and agencies.

The cost of maintenance of the Department and its divisions, institutions and agencies shall be borne by the State and shall be paid for by the State Treasurer on orders or vouchers signed by the Secretary. The State Treasurer shall pay these vouchers or orders with funds appropriated annually by the General Assembly for that purpose, based on a budget request made by the Department. All accounts are to be audited according to state law.

§ 5107. Sale of products made in institutions.

The Department shall operate the various properties and shops connected with the institutions or agencies of the Department for the benefit of the patients, shall sell any products resulting from such operations which are not needed by such institutions or agencies and shall pay the net proceeds from such sales into the General Fund of the State.

§ 5108. Operation of commissaries.

The Department shall operate commissaries in the various institutions for the benefit of patients.

§ 5109. Secretary of the Department of Health and Social Services; duties; heads of institutions and agencies.

(a) The Secretary of the Department of Health and Social Services is responsible for the total adult mental health program supported by the State, including inpatient, outpatient, day care and emergency services, public education and information and the performance of such other duties as may be delegated to the Secretary.

(b) The Secretary shall organize a central office for the Department, comprising such assistants, consultants and stenographic help as may be necessary to perform adequately the duties of the Department.

(c) The Secretary shall appoint a Director for the Delaware Psychiatric Center. The Director shall be qualified in the field of mental health and have administrative experience. The Director shall be the chief administrative officer of the Center. The Director shall have all the powers, duties and functions under this chapter heretofore vested in the Superintendent.

(d) The Secretary shall appoint an Executive Director for the Stockley Center. The Executive Director shall be qualified in the field of mental retardation/developmental disabilities and have administrative experience. The Executive Director shall be the chief administrative officer of the center.

(e) The Secretary shall appoint a Superintendent of the Governor Bacon Health Center. The Superintendent shall be qualified in the field of child and adolescent psychiatry or psychology, and have administrative experience. The Superintendent shall be the chief administrative officer of the center.

(f) The Secretary shall appoint a Director of Community Mental Retardation Programs, who shall have appropriate educational training and experience in mental retardation and program administration. This Director shall be the chief administrative officer of all community mental retardation programs of the Department.

(g) The Secretary may delegate to the chief administrative officer of each institution and agency the authority to hire such personnel as may be necessary for the proper operation of the institution or agency within budgetary limits.

(h) The employment of any superintendent, director or other employee of the Department may be terminated by the Secretary at any time or in any manner, provided that such termination does not violate the legal rights of the employee in question and provided it does not conflict with any directive or procedure prescribed by the Department.

(i) An annual report shall be prepared in each institution and agency not later than 4 months after the close of the fiscal year, to be presented to the Governor, members of the General Assembly, the Legislative Council, members of the executive branch of the state government and copies shall be made available to the press and public and private agencies.

(j) In July of each year, the chief administrative officer of each institution and agency shall submit to the Secretary a budget request for the next fiscal year. The Secretary shall review the combined budgets of the Department and submit them to the Director of the Budget.

Section 4. Amend §§ 5141-5142 of Title 16 of the Delaware Code by making deletions as shown by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 5141. Establishment and composition.~~

~~The Department may maintain mental hygiene clinics which shall be composed of such professional assistants as may be recommended by the Secretary.~~

~~§ 5142. Duties and powers of clinic.~~

~~(a) The mental hygiene clinic shall examine all public or private school children within the State who are 2 or more years retarded, when so requested by the superintendent or other executive head of such school.~~

~~(b) The clinic shall likewise undertake and carry on a continuous survey and examination of all mentally retarded persons.~~

~~(c) The clinic may observe, examine, study and treat the inmates of any institution supported in whole or in part by the State, or any county thereof and may likewise observe, examine, study and treat any person charged with any offense in, or subject to the jurisdiction of, any court within the State, when requested to do so by a judge or judges thereof.~~

~~(d) The clinic may likewise, when requested, extend its psychiatric services to all social agencies of the State, general hospitals and all institutions for the mentally retarded for the purpose of the discovery and treatment of mental disorders.~~

~~(e) The clinic may, through the State Psychiatrist and Criminologist, apply for the commitment of any person to the Delaware Psychiatric Center under any laws of the State relating to such commitments.~~

Section 5. Amend §§ 5301-5307 of Title 16 of the Delaware Code by making deletions as shown by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 5301. Establishment.~~

~~(5) A state health and welfare center, to be known as "Governor Bacon Health Center," shall be maintained.~~

~~(b) The Center shall have the exclusive use of all buildings, structures, utilities and improvements erected on the tract of land on which it is located, as well as all equipment, supplies and other personal property located on or in any improvement erected thereon for the purposes of the Center as described in this chapter.~~

~~§ 5302. Mental hygiene clinic.~~

~~The Department of Health and Social Services may establish at the Center a mental hygiene clinic to be composed of such professional assistants as may be recommended by the Secretary of the Department of Health and Social Services. The Secretary shall be the directing head of the clinic.~~

~~§ 5303. Sections within Center.~~

~~(a) The Department of Health and Social Services may establish the following sections at the Center, under the direction of the Division of Substance Abuse and Mental Health:~~

~~(1) for adults who suffer from mental and physical disorders, but who are without frank psychosis and who require only nursing care.~~

~~(2) Any other section which the Department of Health and Social Services deems related to health and welfare problems of adults.~~

~~(b) The Department of Services for Children, Youth and Their Families may establish the following sections at the Center, under the direction of the Division of Prevention and Behavioral Health Services:~~

~~(1) A section for the evaluation, care and treatment of adolescents who are either seriously emotionally maladjusted or have mental conditions, who are amenable to modern cure and treatment and who appear to meet the admissions criteria for care and treatment. Evaluation may include social, psychological and psychiatric study and examination.~~

~~(2) Any other sections which the Department of Services for Children, Youth and Their Families deems related to mental health and welfare problems of children and youth.~~

~~§ 5304. Powers of Department of Health and Social Services and Department of Services for Children, Youth and Their Families; cooperation of other state agencies.~~

~~The Department of Health and Social Services and Department of Services for Children, Youth and Their Families may determine the size and accommodations required for any section established by the respective Departments pursuant to § 5303 of~~

this title; the medical treatment, training and education of patients or persons admitted to such sections; and any and all matters or programs related to the study, comfort, care and treatment of each patient or persons. The Department of Health and Social Services and Department of Services for Children, Youth and Their Families, in making any of the foregoing determinations, may call upon and receive the cooperation, advice and assistance of any other state department, institution, commission or agency performing education, health or welfare functions.

§ 5305. Cost of maintenance supplied by State.

The costs of maintenance of the Center shall be borne by the State and shall be paid by the State Treasurer on orders or vouchers signed by the Secretary of the Department of Health and Social Services. The Department shall keep and maintain separate books of account for the Center.

§ 5306. Annual appropriation.

The General Assembly shall at every biennial session thereof provide an annual sum for the use and support of the Center which sum shall be paid by the State Treasurer as prescribed in § 5305 of this title.

§ 5307. Restriction on offensive use of property within 3 miles.

(a) No person shall erect or cause to be erected any structure, or use or cause to be used any structure or premises within a radius of 3 miles of the Governor Bacon Health Center for any of the following manufacturing activities:

- (1) Pyroxylin manufacture or processing or the manufacture of explosive or highly flammable cellulose products;
- (2) Fireworks or explosives manufacture;
- (3) Animal glue or animal gelatine manufacture;
- (4) Reduction of garbage, offal, animals or fish on a commercial basis;
- (5) Operation of a tannery;
- (6) Organic fertilizer manufacture.

However, nothing in this section shall prohibit the raising of poultry or livestock and the processing of the same or the processing of farm produce or the erection of any structure or installation of any facilities or the use of any structure, facilities or premises, for a manufacturing or industrial use not specified herein.

(b) Whoever violates this section shall be guilty of maintaining a nuisance and shall be enjoined as hereinafter provided.

(c) Whenever such nuisance exists, the Attorney General of the State or any person who is a citizen of the county, or has an office therein, may bring an action in equity in the name of the State upon the relation of such Attorney General or person to abate such nuisance and to perpetually enjoin the person maintaining the same from further maintenance thereof.

Section 6. Amend §§ 5321-5327 of Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5321. Admission to Center.

No person shall be admitted to any department of the Center except as provided in § 5323 of this title or except as follows:

(1) Children between the ages of 3 and 18 years who are either seriously maladjusted or have mental conditions and who are amenable to modern care and treatment shall be admitted to the Center upon the application of the parents or the surviving parent or legal guardian of any such child or any institution or agency having the care and custody of any such child or by the commitment of any court of this State having jurisdiction over such children;

(2) Children with physical disabilities, including those with muscular disorders, cardiac disorders and those afflicted with infantile paralysis, shall be admitted to the Center upon the application of the parents or the surviving parent or legal guardian of such children and in the event that both parents of such children are deceased and no legal guardian has been appointed, upon the application of any physician, institution or agency treating or having the care or custody of such children;

(3) No child shall be admitted to the detention department of the Center unless a court having jurisdiction over dependent, neglected, delinquent or maladjusted children commits any such child for the sole purpose of social, psychological and psychiatric study and examination;

(4) A child awaiting assignment to a foster home shall only be admitted upon the application of any public or private agency having the authority or function to place such children in such homes;

(5) No person suffering from alcoholism or drug addiction but without psychosis, either acute or chronic, shall be admitted to the Center except upon the person's own application or the application of the person's parents, or the surviving parent

or legal guardian or in the event of none such, upon the application of any physician or institution treating or having the care or custody of any such person or by the commitment of any court of this State having jurisdiction over any such person;

(6) No person with epilepsy but without psychosis shall be admitted to the Center except upon the person's own application or upon the application of the person's parents or the surviving parent or legal guardian or in the event of none such, upon the application of any physician or institution treating or having the care or custody of any such person;

(7) No aged person who is bedridden and without frank psychosis and needing nursing care only shall be admitted to the Center except upon the person's own application or the application of the person or persons responsible for the person's support and maintenance or upon the application of any institution whether public or private having the care and custody of any such person;

(8) Adults with physical disabilities, including those with muscular disorders and those afflicted with infantile paralysis, shall be admitted to the Center upon their own application or upon the application of any practicing physician in good standing, for the purpose of observation, study and treatment;

(9) In all other cases, no person shall be admitted to the Center except in accordance and in compliance with the rules and regulations which are adopted by the Department of Health and Social Services or Department of Services for Children, Youth and Their Families governing the admissions to their respective sections within the Center.

§ 5322. Admission procedures; rules and regulations.

(a) Notwithstanding anything contained in this section and § 5321 of this title, no person shall be eligible for admission to the Center, except by commitment of a court having authority to commit any person to the Center, unless and until such person is determined to be eligible for admission by the Department of Health and Social Services or the Department of Services for Children, Youth and Their Families.

(b) The Department of Health and Social Services and Department of Services for Children, Youth and Their Families may make and adopt reasonable rules and regulations governing the admission of persons to their respective programs at the Center which are not inconsistent with this chapter.

(c) The Department of Health and Social Services and the Department of Services for Children, Youth and Their Families may also refuse the admission of any person to their respective programs at the Center, except such persons committed by a court having authority under law to make such commitment, when the Department to which any such person should be assigned is unable for any reason to accommodate any such person.

§ 5323. Veterans' preference.

The Department of Health and Social Services shall give veterans of World War I, World War II, the Korean Conflict and the Vietnam era who are eligible for admission to the Health Center a preference over other persons with respect to admission thereto.

§ 5324. Transfer to Center from other state institutions.

(a) Any institution of this State may transfer any person who is an inmate of any such institution to the Center if such person is eligible for transfer in accordance with this chapter. Any such transfer shall be subject to the rules and regulations governing the Center as made and adopted by the Department of Health and Social Services or Department of Services for Children, Youth and Their Families. If any such inmate has been committed to any institution by a court of this State, such institution shall apply to such court for authority to transfer any such person to the Center.

(b) No state institution shall be charged by the Center for the care or maintenance of any person who has been or may be transferred to the Center.

(c) The Center, upon application of the Superintendent of the Stockley Center, under the jurisdiction of the Department of Health and Social Services, shall also receive all persons with epilepsy and bedridden persons committed to the Stockley Center.

§ 5325. Liability for maintenance of patient; collection remedies; indigent persons.

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

(b) The Department of Health and Social Services may collect from any such patient or out of the property, moneys and effects of any such person all moneys necessary to discharge and pay all liability of such patient for the patient's care, maintenance and support.

(c) The Department of Health and Social Services may also proceed for the recovery of the moneys necessary for care, maintenance and support in an action to be brought in any court of competent jurisdiction in the name of the Department, for the use of the Governor Bacon Health Center.

(d) The expenses of the care, treatment and maintenance of any indigent person admitted to the emergency hospital facilities of the Center shall be paid by the State Treasurer.

§ 5326. Resident and nonresident pay patient; contracts.

(a) The Department of Health and Social Services may receive any person from any other state who is able to pay for the person's care, maintenance and support and who is otherwise eligible for admission to the Center under this chapter and in accordance with the rules and regulations governing admissions to the Center.

(b) The Department may also receive into the Center any person eligible for admission thereto who is a resident of this State and who is able to pay for the person's care, maintenance and support.

(c) The Department may make contracts in relation to the care, maintenance and support and may recover from the person with whom it contracts or from the person admitted 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 for the use of the Governor Bacon Health Center.

§ 5327. Release and discharge of patients.

The Department of Health and Social Services and Department of Services for Children, Youth and Their Families may make and adopt rules and regulations in respect to the release, whether temporary or permanent, of patients in their respective programs at the Center, except that any person committed to the Center by a court of this State shall not be released from the Center except upon an order from such court. When a person committed by any such court is eligible for release, the Department of Health and Social Services or the Department of Services for Children, Youth and Their Families may petition such court for the release of any such patient.

Section 7. Amend §§ 5701-5716 of Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5701. Definitions.

(a) As used in this chapter, "informed consent" is the voluntary agreement by the person to be sterilized and shall minimally include the following elements:

(1) Full disclosure of the facts necessary to make an informed decision to include:

a. The risks that a reasonable person would consider pertinent to the decision to undergo or not undergo a sterilization procedure;

b. The risks that a prudent physician would disclose to a patient relative to sterilization;

c. The comparative benefits and risks of undergoing available sterilization procedures.

(2) Knowledge and understanding of the alternatives to sterilization;

(3) Ability of the patient to understand the information and deliberate about choices;

(4) Knowledge and understanding that the patient is free to give or withhold consent without fear of repercussion;

(5) Knowledge and understanding that the patient may withdraw consent at any time prior to the procedure without fear of repercussion.

(b) As used in this chapter, "sterilization" means any surgical or medical procedure intended to render a person permanently unable to procreate.

§ 5702. Scope of chapter.

(a) Nothing in this chapter shall be construed to require compliance with the procedures herein, or prevent the medical treatment of any person by any physician duly licensed to practice medicine in this State, when such treatment may result in an inability to procreate as a secondary effect; provided that such treatment is to remedy a substantial danger to life or health and under usual circumstances for elective surgery such secondary effect is explained to the person and the person gives informed consent thereto or that a bona fide emergency prevents such explanation and consent.

(b) Nothing in this chapter shall be construed to prevent the sterilization by any licensed physician of any person 18 or more years of age who voluntarily, knowingly and personally requests such treatment and gives informed consent thereto.

(c) Nothing in this chapter shall be construed to permit the involuntary sterilization of a person confined to any correctional institution on the basis of such confinement.

(d) All other sterilizations shall be in accordance with this chapter.

§ 5703. Informed consent not presumed.

The following persons shall be presumed incapable of giving informed consent to sterilization:

(1) An individual who lives in an institution that serves persons with mental illness, mental retardation or other significant cognitive disability;

(2) A person known by the physician to be on convalescent leave or any other form of conditional discharge from any institution for the mentally ill or retarded;

(3) A person confined to any correctional institution;

(4) A person on whose behalf sterilization is requested by another person or agency;

(5) A person receiving residential services from the Department of Health and Social Services.

§ 5704. Jurisdiction and venue.

Sterilization of any person presumed incapable of giving informed consent thereto may be performed only if the Court of Chancery in the county in which the person to be sterilized resides or in which the institution in which the person resides is located:

(1) Issues a declaratory judgment that the person has given informed consent; or

(2) Orders involuntary sterilization in compliance with this chapter.

§ 5705. Filing petition.

(a) A petition for a declaratory judgment or for involuntary sterilization under this chapter may be filed in the Court of Chancery by:

(1) The chief executive officer of the institution in which the person to be sterilized resides;

(2) The head of the state agency responsible for such person if the person is not a resident of an institution;

(3) The parent or guardian of such person; or

(4) Any state agency which by virtue of the scope of its powers and jurisdiction has an interest in the sterilization of the person.

(b) A form of preliminary order setting the matter down for hearing and providing for the giving of the required notice shall be filed with the petition.

§ 5706. Petition for declaratory judgment.

(a) Any petition for a declaratory judgment that the person to be sterilized has given informed consent shall be verified and shall:

(1) Identify the petitioner and the petitioner's relationship to the person for whom sterilization is sought;

(2) Name as respondent the person for whom sterilization is sought and set forth the respondent's age, sex, residence, marital status, mental condition and identify the respondent's parents, guardian, spouse, if any, and next of kin, if other than the petitioner;

(3) Identify the physician who will perform the sterilization and the hospital or clinic where such procedure will be performed;

(4) Identify the sterilization procedure to be performed;

(5) State whether, in the opinion of the petitioner, the person for whom sterilization has been sought has given informed consent to the sterilization procedure to be performed; and

(6) Pray for a declaratory judgment that the respondent has given informed consent to sterilization.

(b) Any petition under this section shall have annexed thereto a verified report of a psychiatrist or psychologist duly authorized to practice in the State stating that the psychiatrist or psychologist has examined the respondent and that the respondent is, in the psychiatrist's or psychologist's opinion, capable of giving informed consent to the sterilization procedure to be performed.

§ 5707. Petition for involuntary sterilization.

(a) Any petition for the sterilization of any person presumed incapable of informed consent shall be verified and shall:

(1) Identify the petitioner and the petitioner's relationship to the person for whom sterilization is sought;

(2) Name as respondent the person for whom sterilization is sought and set forth the respondent's age, sex, residence, marital status, mental condition and identify the respondent's parents, guardian, spouse, if any, and next of kin, if other than the petitioner;

(3) Identify the physician who will perform the sterilization and the hospital or clinic where such procedure will be performed;

(4) Identify the sterilization procedure to be performed;

(5) State whether, in the opinion of the petitioner, the person for whom involuntary sterilization is sought is incapable of giving informed consent to the sterilization procedure to be performed; and

(6) Pray for an order authorizing the sterilization of the respondent.

(b) Any petition under this section shall have annexed thereto the affidavit of a psychiatrist or psychologist duly licensed to practice in the State, which affidavit shall set forth:

(1) The date he last examined the respondent;

(2) Whether or not the respondent is permanently incapable, or is and will in the affiant's opinion remain incapable for the foreseeable future, of giving informed consent to the sterilization procedure to be performed; and

(3) Whether, in the opinion of the affiant, it would or would not be meaningless or detrimental to the health of the respondent to serve a copy of the petition and notice of the hearing personally upon the respondent.

(c) Any petition under this section shall also have annexed thereto an affidavit or affidavits of the duly licensed physician or physicians, which affidavit or affidavits shall set forth:

(1) The date that he last examined the respondent;

(2) Whether or not the respondent, if not sterilized, is likely to procreate a child;

(3) The sterilization procedure to be performed and, if other than the least drastic means of sterilization is to be performed, why such procedure is medically or hygienically indicated;

(4) Whether, if the respondent is female, pregnancy would present a substantial danger to the life or health of the respondent;

(5) Whether, in the opinion of the affiant, the benefit to the respondent from the sterilization procedure outweighs any known medical contraindications to the procedure to be performed; and

(6) Whether, in the opinion of the affiant, it would or would not be meaningless or detrimental to the health of the respondent to serve a copy of the petition and notice of the hearing personally upon such person.

§ 5708. Service of petition and notice.

(a) Upon the filing of a petition for a declaratory judgment or for involuntary sterilization under this chapter, service of the petition shall be made and notice shall be given as hereinafter provided.

(b) Service of the petition shall be made upon the person for whom sterilization is sought at least 10 days before the hearing date. Where the affidavits required by § 5706(b) of this title or § 5707(b) and (c) of this title recite that it would be meaningless or detrimental to the health of the respondent to serve the respondent personally, the required service shall be made upon the person in charge of the institution or home where the respondent resides. If the petitioner has the custody of the respondent and the affidavits required by § 5706(b) of this title or § 5707(b) and (c) of this title recite that service would be meaningless or detrimental, the required service shall be made on the spouse, parent or guardian, if any, or the next of kin of the respondent who are 18 years of age or older and who reside in the State. As to persons so served, the notice by mail provided in subsection (c) of this section is not required.

(c) Notice by registered or certified mail, return receipt requested, of the time, place and purpose of the hearing shall be given by or on behalf of the petitioner, to the spouse, parent or guardian, if any, and to the next of kin of the respondent who are 18 years of age or older. Notice need not be given to any person if the person shall consent in writing to the granting of the prayer of the petition or shall waive such notice.

(d) Proof of service and of notice shall be filed with the Register in Chancery prior to the hearing or shall be presented at the hearing.

§ 5709. Interim action by court.

(a) Upon receipt of a petition, the Court shall appoint a guardian ad litem or attorney or both for the respondent.

(b) On the motion of the respondent or on its own motion, the Court may order an independent examination by a duly licensed physician, psychiatrist or psychologist not employed by the agency responsible for the care of the respondent. The Court may order that such examination be at State expense.

§ 5710. Procedural rights of person to be sterilized.

Any person for whom sterilization is sought shall have the following procedural rights:

- (1) The right to counsel;
- (2) The right of cross-examination;
- (3) The right to present the persons own evidence;
- (4) The right to compel the attendance of witnesses; and
- (5) All other rights of civil litigants in the Court of Chancery.

§ 5711. Hearing on petition for declaratory judgment.

(a) The hearing upon the petition for a declaratory judgment under this chapter shall be by the Court.

(b) If the attorney for the respondent and the guardian ad litem, if any, agree and the Court is satisfied that the report required by § 5706(b) of this title demonstrates clearly and convincingly that the respondent has given informed consent to sterilization and there is no objection to the petition, the Court may grant it without requiring the petitioner to present other evidence.

(c) If there is objection to the petition, the Court will receive evidence at the hearing or, for good cause, adjourn the hearing to another date for the reception of evidence.

(d) The Court may issue a declaratory judgment after hearing if satisfied by clear and convincing evidence that the respondent has given informed consent to sterilization.

§ 5712 Hearing on petition for involuntary sterilization.

(a) The hearing upon the petition for involuntary sterilization under this chapter shall be by the Court.

(b) The Court may order the involuntary sterilization of the respondent without requiring the petitioner to present other evidence:

- (1) If there is no objection to the petition;
- (2) If the attorney for the respondent and the guardian ad litem, if any, agree; and
- (3) If the Court is satisfied that the affidavits required by § 5707(b) and (c) of this title demonstrate clearly and convincingly that:

a. The respondent is presently incapable of giving informed consent to sterilization;

b. The respondent is more likely than not to remain so incapable either permanently or for the foreseeable future and that all attempts to render the respondent capable of giving informed consent have been and are likely to remain ineffectual;

c. The benefit to the respondent from the sterilization outweighs any known medical contraindications to the procedure to be performed;

d. If the respondent is not sterilized, the respondent is more likely than not to procreate and all less drastic medically advisable alternative means to prevent procreation are or have been ineffective;

e. If the respondent is female, pregnancy would present a substantial danger to the life or health of the respondent; and

f. The procedure to be performed is the least drastic medically or hygienically indicated means of sterilizing the respondent.

(c) If there is objection to the petition, the Court will receive evidence at the hearing or, for good cause, adjourn the hearing to another date for the reception of evidence.

(d) The Court may issue an order authorizing the involuntary sterilization of the respondent after the hearing, if satisfied by clear and convincing evidence that the criteria set forth in subsection (b) of this section have been met.

§ 5713. Physician's certification.

(a) In all cases where the Court issues an order authorizing involuntary sterilization or a declaratory judgment that informed consent to sterilization has been given, the physician to perform the sterilization shall, prior to performing such procedure, certify that the physician was provided with a copy of the Court's order.

(b) The physician's certificate shall be filed with the Register in Chancery within 10 days of the performance of the sterilization procedure.

§ 5714. Records.

A record shall be kept in every institution having the custody of any person operated upon under this chapter of such operation and of its effect upon the person operated upon and such records shall at all times be subject to inspection by the Department of Health and Social Services.

§ 5715. Limitation of liability.

(a) No physician who performs a sterilization in compliance with this chapter shall be held liable for the respondent's loss of procreative power.

(b) No hospital or clinic wherein a sterilization in compliance with this chapter is performed shall be held liable for the respondent's loss of procreative power.

(c) No physician, psychiatrist or psychologist who provides a report required by this chapter shall be held liable for the respondent's loss of procreative power.

(d) Nothing contained in this section shall be construed to excuse any physician, psychiatrist, psychologist, hospital or clinic from liability for malpractice.

§ 5716. Costs.

(a) Any proceeding under this chapter shall be exempt from making a deposit for costs with the Register in Chancery.

(b) The Court may order that the costs of any proceeding under this chapter be paid for from resources available to the recipient of these proceedings. If such resources are not available, the Court may order that the costs of any proceeding under this chapter be borne by the State.

(c) The board or commission having custody of any person operated upon under this chapter shall pay out of its funds for the costs of the examination and the cost of performing the operation and hospital bills and transportation in connection therewith.

Section 8. Amend § 5901 of Title 16 of the Delaware Code by making deletions as shown by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5901. Coordination of training and research activities and facilities with those of other states.

The State, through appropriate officers, shall seek in addition to the present arrangements with the University of Pennsylvania similar formal arrangements with Maryland, North Carolina and Virginia for the training of personnel in psychiatry, clinical psychology, psychiatric social work and psychiatric nursing on graduate level until adequate facilities for this purpose can be provided within the State.

The Governor Bacon Health Center is offered as a regional facility for training of child psychiatrists, clinical psychologists and psychiatric social workers.

Arrangements shall be effected with other states by which the Governor Bacon Health Center may assist other states in residential treatment of maladjusted children inasmuch as this type of facility is lacking in most of the other southern states.

Delaware will coordinate with other states engaged in similar treatment, its research in the study of cerebral palsy and other spastic diseases of children.

Delaware will coordinate with other states its research in the study of alcoholism by using its existing facilities at the Governor Bacon Health Center.

Delaware will increase the scope of its present research in schizophrenia, alcoholism, geriatrics and personality problems in children.

Section 9. Amend § 7918 of Title 29 of the Delaware Code by making deletions as shown by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7918. Drug Control Coordinator; duties; powers.

(a) The purpose of this section and of § 7919 [repealed] of this title is:

(1) To develop programs for the prevention and control of drug abuse and for the treatment and rehabilitation of drug abusers; and

(2) To coordinate programs, both public and private, to deal with the drug abuse problem.

(b) The Secretary of Health and Social Services shall appoint, with the written approval of the Governor, a Drug Control Coordinator who shall serve at the pleasure of the Governor. The Drug Control Coordinator shall have experience in administration and in the field of drug abuse and at least a master's degree or equivalent experience. The Secretary shall fix the salary of the Coordinator at not less than \$16,000 nor more than \$22,000 per year.

(c) The Drug Control Coordinator shall:

(1) Coordinate the drug control efforts of state agencies;

(2) Coordinate the efforts of this State with those of local and municipal governments within this State and with those of other states and the federal government;

(3) Assist private agencies and community organizations by providing needed coordination and information;

(4) Plan and supervise public information programs and assist with drug control programs in the public schools;

(5) Assist with the formulation and coordination of programs relating to the early diagnosis, treatment and rehabilitation of drug abusers;

(6) Assist with the coordination of enforcement efforts by state, county and local enforcement officers;

(7) Assist with the formulation and coordination of training and information programs for state employees and others;

(8) Report on the Drug Control Coordinator's activities on a regular basis to the Secretary of Health and Social Services;

(9) Coordinate the efforts of this State to obtain federal funds available for drug control problems;

(10) Coordinate the overall state efforts with respect to the treatment, prevention and control of the use of dangerous drugs and narcotics.

(d) The Drug Control Coordinator may:

(1) Employ personnel and purchase equipment and supplies as shall be necessary to carry out the purpose of this section;

(2) Require the cooperation of all other agencies in the executive branch of the state government concerned with drug control problems.

Section 10. Amend § 7921 of Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~§ 7921. Books, records; access; annual report of Governor's Council.~~

(a) ~~The Governor's Council on Health and Social Services shall have access to all books, records, reports and other documents relating to the Department of Health and Social Services, unless otherwise prohibited by law.~~

(b) ~~The various councils of the divisions of the Department of Health and Social Services shall have access to all books, records, reports and other documents relating to their respective divisions, unless otherwise prohibited by law.~~

(c) ~~The Chairperson of the Governor's Council on Health and Social Services and the chairperson of the councils of the divisions of the Department shall make an annual report of the activities of each of the councils to the Secretary of the Department, the Governor and the General Assembly and render such other reports as the Secretary, the Governor or the General Assembly may from time to time request or as may be required by law.~~

Approved September 11, 2023