

**FINAL REPORT  
TO THE  
DELAWARE GENERAL ASSEMBLY'S  
CRIMINAL JUSTICE IMPROVEMENT  
COMMITTEE**

**IMPROVED CODE TEXT**

**Volume 1**

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# DELAWARE GENERAL ASSEMBLY'S CRIMINAL JUSTICE IMPROVEMENT COMMITTEE CODE IMPROVEMENT PROJECT

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# **Summary of Contents**

## **Volume 1**

### **PREFACE**

#### **HISTORY OF CRIMINAL JUSTICE IMPROVEMENT COMMITTEE’S CODE IMPROVEMENT PROJECT**

**WHY AN IMPROVED CRIMINAL CODE?**

**EXECUTIVE SUMMARY**

**INTRODUCTION**

- 1. USE CLEAR, ACCESSIBLE LANGUAGE AND ORGANIZATION**
- 2. PROVIDE A COMPREHENSIVE STATEMENT OF RULES**
- 3. CONSOLIDATE OFFENSES**
- 4. GRADE OFFENSES RATIONALLY AND PROPORTIONALLY**
- 5. RETAIN ALL — BUT ONLY — RATIONAL, DEFENSIBLE POLICY DECISIONS EMBODIED IN CURRENT LAW**

**PREPARING FOR CHANGE**

**CONCLUSION**

### **THE IMPROVED CODE**

**PART I: THE GENERAL PART**

**PART II: DEFINITION OF SPECIFIC OFFENSES (SPECIAL PART)**

### **EXHIBIT A**

**TABLE OF CHANGES TO THE IMPROVED CODE PRE-INTRODUCTION OF SB 209 IN RESPONSE TO CONCERNS OF THE ATTORNEY GENERAL, LAW ENFORCEMENT, VICTIMS’ ADVOCATES AND STATE AGENCIES**

### **EXHIBIT B**

**TABLE OF CHANGES TO THE IMPROVED CODE POST-INTRODUCTION OF SB 209 IN RESPONSE TO CONCERNS OF THE ATTORNEY GENERAL, LAW ENFORCEMENT, VICTIMS’ ADVOCATES AND STATE AGENCIES**

### **EXHIBIT C**

**CONFORMING AMENDMENTS**

## Volume 2

### THE PROPOSED COMMENTARY

#### *TABLE OF CONTENTS*

#### *PART I: THE GENERAL PART*

#### *PART II: DEFINITION OF SPECIFIC OFFENSES (SPECIAL PART)*

### SUMMARY GRADING TABLE

### CONVERSION TABLE BY CURRENT PROVISION

# Volume 1 Contents

	<u>Page</u>
PREFACE.....	vii
HISTORY OF CRIMINAL JUSTICE IMPROVEMENT COMMITTEE’S CODE IMPROVEMENT PROJECT.....	xii
WHY AN IMPROVED CRIMINAL CODE? .....	xvii
EXECUTIVE SUMMARY .....	xvii
1. <i>Use clear, accessible language and organization</i> .....	xvii
2. <i>Provide a comprehensive statement of rules</i> .....	xviii
3. <i>Consolidate offenses</i> .....	xviii
4. <i>Grade offenses rationally and proportionally</i> .....	xix
5. <i>Retain all (but only) reasonable policy decisions embodied in current law</i> .....	xix
WHY AN IMPROVED CRIMINAL CODE? .....	xxi
INTRODUCTION.....	xxi
1. USE CLEAR, ACCESSIBLE LANGUAGE AND ORGANIZATION.....	xxi
A. Clear Language .....	xxii
B. Clear Organization .....	xxiv
2. PROVIDE A COMPREHENSIVE STATEMENT OF RULES.....	xxvi
A. General Part Rules .....	xxvii
B. Special Part Offenses .....	xxvii
3. CONSOLIDATE OFFENSES .....	xxviii
4. GRADE OFFENSES RATIONALLY AND PROPORTIONALLY .....	xxxi
A. Consistently Recognize Appropriate Distinctions .....	xxxiii
B. Avoid Irrelevant or Unclear Distinctions.....	xxxiii
C. Maintain Proportionality Between Various Offenses .....	xxxiv
5. RETAIN ALL — BUT ONLY — RATIONAL, DEFENSIBLE POLICY DECISIONS EMBODIED IN CURRENT LAW .....	xxxv
A. Reserving the Most Serious Penalties for the Most Serious Killings .....	xxxvi
B. Returning to the Classic Intent Requirement for Burglary.....	xxxviii
C. Revising the Mental Illness or Psychiatric Disorder Defense .....	xxxviii
D. Eliminating Archaic and/or Obsolete Offenses .....	xl
PREPARING FOR CHANGE .....	xl
CONCLUSION .....	xlii
<u>Part I: Delaware Criminal Code</u> .....	1

<u>Subpart A. General provisions.</u> .....	1
<u>Chapter 1. Preliminary provisions.</u> .....	1
<u>Chapter 2. Basic requirements of offense liability.</u> .....	26
<u>Chapter 3. General defenses.</u> .....	35
<u>Subchapter I. Justification defenses.</u> .....	35
<u>Subchapter II. Excuse defenses.</u> .....	42
<u>Subchapter III. Nonexculpatory defenses.</u> .....	45
<u>Chapter 4. Liability of organizations.</u> .....	50
<u>Chapter 5. Inchoate offenses.</u> .....	52
<u>Chapter 6. Offense grades and their implications.</u> .....	55
<u>Subpart B. Specific Offenses.</u> .....	61
<u>Chapter 10. Offenses against the person.</u> .....	61
<u>Subchapter I. Homicide offenses.</u> .....	61
<u>Subchapter II. Robbery; assault; endangerment; threat offenses.</u> .....	64
<u>Subchapter III. Sexual offenses.</u> .....	70
<u>Subchapter IV. Kidnapping; coercion; restraint; related offenses.</u> .....	75
<u>Chapter 11. Property offenses.</u> .....	80
<u>Subchapter I. Theft offenses.</u> .....	80
<u>Subchapter II. Forgery and fraudulent practices.</u> .....	86
<u>Subchapter III. Arson and other property damage offenses.</u> .....	92
<u>Subchapter IV. Burglary and other criminal trespass offenses.</u> .....	97
<u>Chapter 12. Offenses against public administration.</u> .....	99
<u>Subchapter I. Bribery, improper influence, and official misconduct.</u> .....	99
<u>Subchapter II. Perjury and other official falsification offenses.</u> .....	101
<u>Subchapter III. Offenses involving obstruction of governmental operations; escape.</u> .....	104
<u>Chapter 13. Offenses against public health, order, and decency.</u> .....	111
<u>Subchapter I. Offenses against public order and safety.</u> .....	111
<u>Subchapter II. Public indecency, obscenity, and cruelty to animals; offenses.</u> .....	115
<u>Subchapter III. Invasion of privacy offenses.</u> .....	122
<u>Subchapter IV. Offenses against children and the family.</u> .....	125
<u>Subchapter V. Gambling offenses.</u> .....	132
<u>Chapter 14. Crime control offenses.</u> .....	135
<u>Subchapter I. Offenses involving firearms and other deadly weapons.</u> .....	135
<u>Subchapter II. Drug and related offenses.</u> .....	142

<u>Subchapter III. Offenses involving organized crime and racketeering</u> .....	150
<u>SYNOPSIS</u> .....	154
Exhibit A.....	155
Exhibit B.....	171
Conforming Amendments.....	177

## PREFACE

In 2014, the Delaware General Assembly adopted an epilogue in its Budget Act for fiscal year 2015 that created the Criminal Justice Improvement Committee (“CJIC”). The CJIC was charged generally with seeking opportunities for efficiencies, cost savings, and pursuing other improvements in the criminal justice system. One specific area of the CJIC’s legislative mandate reads: “The Committee shall review opportunities for efficiencies in the criminal justice system, including but not limited to the following areas:

- statutes in the criminal code, identifying disproportionate, redundant, outdated, duplicative or inefficient statutes;
- crimes that should or should not constitute potential jail time;. . .”(“the Epilogue”).

After the Epilogue was reauthorized in 2015, this Code Improvement Project was initiated under the CJIC as a comprehensive response to its mandate. As a practical matter, it is impossible to determine if a criminal statute is “disproportionate, redundant, outdated, duplicative or inefficient” until it is compared to all other criminal statutes. Additionally, since the General Assembly adopted the Delaware Criminal Code of 1973, new insights have emerged regarding what a criminal code should address, and how it should do so. Moreover, the broader legal landscape has changed greatly. This Code Improvement Project was predicated on the belief that — as was the case in 1973, and may well be the case again in another forty or fifty years — it was necessary to take a step back and conduct a comprehensive review of the Delaware Criminal Code. The two volumes of this Final Report are the fruits of that review.

Under the Epilogue’s legislative mandate, the proposed Improved Criminal Code seeks to replace the current code with a clear, concise, and comprehensive set of provisions. Specifically, the Improved Code seeks to include necessary provisions not contained in the current code; to eliminate unnecessary or inconsistent provisions of the current code; to revise existing language and structure to make the law easier to understand and apply; and to ensure that criminal offenses and legal rules are cohesive and relate to one another in a consistent and rational manner. At the same time, the Improved Code aims to preserve the substantive policy judgments reflected in the original code and its later amendments. When the process of clarifying and reconciling current provisions made it necessary to make substantive choices, we have sought to explain and justify the proposed changes with commentary designed to assist the enactors, and ultimately the users, of the Improved Code.

In developing the Improved Code, we were guided by five general drafting principles. First, we have made an effort to use clear, accessible language and organization. One of the critical functions of a criminal code is to provide notice to citizens of what conduct is prohibited. Clear and accessible writing enables provision of true notice while also ensuring that no offender escapes liability because of an incomplete or ambiguous offense definition. More straightforward code provisions also promote development of clearer jury instructions, making it easier for jurors to fulfill their critical role. Even for members of the criminal justice system, who work with the criminal code every day and must be intimately familiar with its rules, plain-language expression is essential.

Second, the Improved Code endeavors to provide a comprehensive statement of rules. A criminal code must include all necessary rules governing liability. Comprehensiveness helps avoid inappropriate results. Courts, which decide individual cases and act independently of one another, cannot be as effective as a legislature in formulating coherent general doctrines that will work together as the provisions of a comprehensive code can and must. Moreover, an uncoded rule is more likely to be applied differently in similar cases than a codified rule, as the terms of the latter are fixed, explicit, and available to all officials at each stage in the process.

Third, we have aimed to consolidate offenses. Perhaps inevitably, four decades of piecemeal modification of the Criminal Code of 1973 have led to the addition of hundreds of new offenses, many of which cover the same conduct as previous offenses or appear in various other titles of the Delaware Code rather than in the criminal code. Consolidation ensures against the confusion that results when one encounters, and must make sense of, multiple provisions that overlap or contradict, and also against the mistakes that ensue when one fails to notice, or find, provisions that may apply to a given case. Consolidation also aids the task of proper grading, because it is nearly impossible to maintain consistent, proportional grading when offense definitions are based on immaterial or incomprehensible, distinctions.

Fourth, we have striven to grade offenses rationally and proportionally. One virtue of a Code Improvement Project, relative to the usual piecemeal legislative additions and alterations to the criminal code, is the opportunity it provides for a general review of the system of grading offenses, considering how all offenses relate to one another rather than considering individual offenses in a vacuum. For a system of criminal justice to be fair, liability must be assigned according to the relative seriousness of the offense(s) committed. We have sought to recognize all, and only, suitable distinctions among the relative severity of offenses and develop a scheme to grade each offense proportionally to its gravity in light of those distinctions.

Finally, the Improved Code seeks to retain all (but only) reasonable policy decisions embodied in current law. Because substantive policy decisions about the rules of the criminal law reflect value judgments properly left to the General Assembly, the Improved Code aims to follow the substance of current law wherever possible. In some places, however, current law contains multiple contradictory rules — and therefore no clear rule — on a subject. Other rules may have been sound when enacted, but no longer reflect current realities or sensibilities and require expansion, alteration, or deletion. In those situations, where the existing legal rule seems clearly at odds with the Epilogue’s mandate of producing a rational, coherent criminal code, we have had little choice but to modify the existing rule, using supporting commentary to the Improved Code to describe and justify the proposed change.

A few words are in order regarding issues that the Improved Code does not address. The Improved Code addresses substantive criminal law rules only. It excludes numerous provisions in the current code governing procedural, sentencing, and regulatory issues, retaining only the ones necessary to elaborate or explain the criminal code’s substantive prohibitions and rules. This does not mean, however, that the Improved Code would eliminate those provisions. Rather, the Improved Code was drafted with the understanding that such provisions would be retained, in Title 11 or other titles of the Delaware Code, by means of a “conforming amendments” bill to be enacted by the General Assembly contemporaneously with the new criminal code. During the time between the preliminary and final reports of the Working Group, staff of the CJIC and Working Group, with important help from Legislative Division of Research staff and staff attorneys from the Supreme Court and other courts, have worked hard to prepare the conforming amendments bill so that it is ready for introduction with the primary bill including the Improved Code.<sup>2</sup>

Like the primary bill, the conforming amendments bill will become effective, if adopted as the Working Group proposes, 20 months after enactment at the same time as the Improved Code would become effective. During this period, there will be an opportunity to identify and correct any technical errors that may have been made. This 20-month period (rather than 12 months, which was initially considered) will also help ensure smooth integration of the Improved Code into existing structures. The Department of Justice, the Executive Director of DelJIS, and representatives of the police community wished to be sure that there was time to update key technology, develop training materials and deliver that

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<sup>2</sup> We would like to thank the Code Revisors for their technical input on bill formatting issues. We would also like to acknowledge the support and hard work of the staff of the Administrative Office of the Courts.

material to key constituencies, update sentencing guidelines, and develop model jury instructions. This specific timing also takes into account advice from DelJIS as to when it would be most convenient for DelJIS to have the bill become effective.

It is our expectation that in the years ahead, subsequent reforms of Delaware's procedural and regulatory law may organize these provisions differently or transfer them to other Titles of the Delaware Code. In many instances, the Code's commentary provides recommendations that may assist these future reform efforts, by highlighting such provisions and explicitly stating that a particular current offense, procedural or sentencing rule, or civil or regulatory provision should be preserved outside the Improved Code. Yet the commentary's failure to include such a clear statement as to any particular provision — especially one that does not address an issue relating to substantive criminal law — should not be understood to indicate a recommendation that the provision in question should be eliminated. In the event that the General Assembly decides to adopt the Improved Code, we have prepared an implementing bill to make the necessary conforming amendments. It should be adopted along with the bill including the Improved Code so that there is no gap in the law.

In the Preliminary Report of the Working Group, the Working Group identified a number of important issues that warranted consideration by the CJIC, the General Assembly generally, the public, and key constituencies. These were highlighted by the inclusion of “pro-con” footnotes, which flagged the issue, and presented the basic arguments on both sides of the question.

During the CJIC process, the Chairman asked the Working Group to come to its best judgment about the resolution of these questions, using the input it received from the extensive period of public involvement this Final Report discusses. That involvement process allowed the public and key constituencies a full year to consider and comment upon the draft of the Improved Code described in the Preliminary Report. In particular, discussions about these key issues were had with constituencies such as the police and victims' rights organizations, and feedback was also given by the Department of Justice and members of the General Assembly.

This Final Report and the Improved Code recommended by the Working Group proposes a resolution to each of the issues framed by “pro-con” footnotes that were included in the Preliminary Report. As a general matter, the Working Group resolved these issues by defaulting to the current position taken by the existing Code, unless the Working Group felt strongly that the mandate of the Epilogue required a change in the Code. In resolving the pro-con issues, the Working Group also gave heavy weight to the input it received from the public, key constituencies, the Department of Justice, and members of the General Assembly about those issues. Precisely because these are important issues, the Working Group, as on other issues, was not always unanimous as to these issues, but worked hard to come to a principled resolution, recognizing their duty to adhere to the epilogue and to come up with an Improved Code that was, as an overall product, clearer, more just, and more proportionate.

In other instances, language in the Improved Code itself makes clear its intent to retain current law as to an issue. For example, the proposed provisions governing abortion (Section 1006) and driving under the influence (Section 1025) explicitly incorporate by reference the complicated regulatory schemes currently set forth in Subchapter IX of the Medical Practice Act and Section 4177 of Title 21, respectively. Similarly, many of the proposed drug offenses (Chapter 14, Subchapter II) explicitly rely upon definitions contained in the Uniform Controlled Substances Act. Incorporating those rules and definitions by reference, but preserving their regulatory content outside Title 11, avoids cluttering the Code with technical regulatory provisions. At the same time, it is necessary to overtly incorporate the relevant offenses within the Improved Code both in order to promote the comprehensiveness of the Code and to exclude them from the scope of the rule (stated in proposed Section 601) that non-Code offenses can be graded no higher than Class A misdemeanors.

The official commentary to the Improved Code describes how each section of the Improved Code works. Where the Improved Code suggests a change in current law, the commentary notes this fact and identifies the suggested change and the reasoning behind it. The official commentary also contains some tools to assist the people of Delaware and various actors within its criminal justice system to acclimate to using the Improved Code. First, the commentary contains a Summary Grading Table, which groups all offenses covered by the Improved Code according to their grade. A just and fair penal code authorizes more serious punishment for more serious offenses. Thus, using this Summary Grading Table, the grade of each offense can be compared to the grade of each other offense in the Improved Code and, all other things being equal, more serious offenses are graded more seriously than less serious offenses. Because the Improved Code attempts to be comprehensive, it contains a large number of offenses, making it a challenge to assure proportionality among all offenses. But the Summary Grading Table demonstrates this proportionality in an accessible way.<sup>3</sup> Second, the official commentary contains a Conversion Table. The Conversion Table lists each current law provision and identifies the Improved Code provision(s) that address its content. This table eases the comparison between current law and the Improved Code.

Note also that presently, the Improved Code (including its commentary, grading table and the conversion table) reflects some of the most recent additions to Delaware law. The current version of the Improved Code is based upon the Delaware criminal code as it existed in June 2018, but new criminal legislation may be introduced before passage of the Improved Code. As this code improvement project moves ahead, Delaware criminal law is likely to evolve even further. The bill implementing the Improved Code calls for a 20-month phase-in period that will allow for the preparation of model jury instructions, education for criminal justice constituents such as the police, and updated sentencing guidelines. During this period, there will be ample opportunity to make any minor legislative amendments to the Improved Code to take into account any additional legislation changes. Consistent with the purpose of the General Assembly in calling for the Criminal Justice Improvement Committee to address the problems that have arisen with a piecemeal approach to updating what started as a model code, the drafting group hopes that any amendments will take into account the principles underlying the Improved Code, and be modest and targeted.

As a final matter, it is important to note that proposed Chapter 6 is not intended to address all issues (or indeed, any issues) regarding the sentencing and disposition of offenders. Rather, Chapter 6 deals only with those basic issues necessary to make clear the meaning of the Improved Code's general scheme of liability — for example, that offense grades define a certain hierarchy; and that the Code contemplates certain broad factors that will operate to aggravate an offense's grade, and addresses those factors by imposing general aggravations rather than applying them to specific offenses. The Improved Code's silence as to other, more complex sentencing issues does not indicate a lack of awareness or concern about such issues, but an understanding that they were beyond the scope of the present project. That said, the Improved Code materially improves the state's ability to craft more reliable, more equitable, more consistent, and if the General Assembly later decides, more enforceable sentencing guidelines. Under current law, that is not reasonably possible because each felony and misdemeanor grade lack common sentencing ranges and the current Code's imposition of sentencing ranges is confusing, inconsistent, and so offense-specific that the guidelines cannot fulfill their intended role in making sentences for like offenses and involving like circumstances consistent and equitable. During the implementation period between enactment and the effective date of the Improved Code, the bill suggests that SENTAC update its guidelines, having the benefit of an Improved Code that provides a single

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<sup>3</sup> The Summary Grading Table lists all of the offenses in the Improved Code and provides a fair representation of the various sub-offenses contained within these offenses. This level of generality optimizes the reader's understanding the Improved Code's grading judgments. Importantly, the table does not contain all the possible variations of each offense, since such granularity would hinder, rather than facilitate this task.

sentencing range for each felony and misdemeanor grade, and that applies aggravating factors such as recidivism and vulnerable victim adjustments in a consistent way.

## HISTORY OF CRIMINAL JUSTICE IMPROVEMENT COMMITTEE'S CODE IMPROVEMENT PROJECT

The current Delaware Criminal Code was developed beginning in 1967, in direct response to the American Law Institute publishing its landmark Model Penal Code in 1962. In the words of then Judge, later Justice, Joseph T. Walsh, Chairman of the Governor's Committee for Revision of the Criminal Law: [t]he criminal law of Delaware consisted at that time of a large number of unconnected criminal statutes. The offenses were not codified, and the sections defining them were phrased in widely different styles of language. Penalties were inconsistent, language was archaic and worst of all, many offenses were left to be defined by the common law without any statutory assistance. General principles of criminal liability, such as definitions of the requisite states of mind for criminal guilt and defenses to criminal prosecution, were also left to common-law development.<sup>4</sup>

After eight public hearings and a four-year revision process, the current code was passed and received the Governor's approval in 1972, and was enacted in 1973.

The Criminal Code of 1973 was short, clean, and comprehensive — a dramatic improvement over the law it replaced. In the years since 1973, however, numerous amendments have greatly reduced the utility and clarity of the original criminal code. The sheer volume of the code has increased from less than 95 pages as originally enacted, to over 407 pages today. Nearly all of these amendments and additions were made on an ad hoc basis and without a comprehensive review of the code as a whole. As a result, several fundamental problems plague the code, much as they plagued Delaware criminal law before 1973. Provisions overlap with or contradict other provisions. Offenses have become obsolete or out of touch with current societal norms. Penalties are disproportionate to the harm caused or in comparison with other provisions. Numerous major criminal offenses are defined in statutes outside the criminal code. Conversely, various procedural, sentencing, and regulatory provisions that properly belong elsewhere — in the Code of Criminal Procedure, or another title related to the provision's subject matter — appear within the criminal code.

In 2014, the Delaware General Assembly passed a law creating the Criminal Justice Improvement Committee ("CJIC") (FY 15 Budget Act of the 147th General Assembly (SB 255, Sect. 111 as amended by SB 266))<sup>5</sup>. Part of the mandate of that group was to focus on reforming the Delaware Criminal Code. To that end, the epilogue language required that the CJIC:

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<sup>4</sup> Frank B. Baldwin, III, DELAWARE CRIMINAL CODE WITH COMMENTARY iii (1973) (introductory material by Judge Walsh)

<sup>5</sup> Section 111 provides as follows:

"Recognizing funding and policy challenges in the criminal justice system, the General Assembly hereby establishes the Criminal Justice Improvement Committee. The Committee shall suggest efficiencies, improvements and cost savings to the criminal justice system. The Chair and the Co-Chair of the Joint Finance Committee shall appoint a Committee Chair. The Committee shall also include the following membership:

- The Attorney General or designees;
- The Chief Public Defender or designee;
- The Commissioner of Correction or designee;
- The Governor's criminal justice policy advisor;
- A member of the Joint Finance Committee representing each caucus, as appointed by the Chair and Co-Chair of the Joint Finance Committee;
- Two representatives of the Judicial Branch, as appointed by the Chief Justice;
- A representative from the Delaware Association of Criminal Defense Lawyers;
- A representative from the Delaware Bar Association; and
- The Director of Substance Abuse and Mental Health or designee.

“review opportunities for efficiencies in the criminal justice system, including but not limited to the following areas:

- Statutes in the criminal code, identifying disproportionate, redundant, outdated, duplicative or inefficient statutes;
- Crimes that should or should not constitute potential jail time; . . .”

During the following year, discussions were had among members of the CJIC established by the epilogue as to how best to move the epilogue’s mandated mission forward. By mandate of the epilogue, the Chief Justice and his designee were required to serve on the CJIC. To aid the CJIC, the Chief Justice selected Superior Court Judge William C. Carpenter, Jr. as his designee, because Judge Carpenter is not only highly experienced as a criminal law judge and a former U.S. Attorney for the District of Delaware, but also the head of the General Assembly-mandated Delaware Sentencing Accountability Commission (SENTAC).<sup>6</sup>

In discussions with the General Assembly’s Joint Finance Committee (JFC), the Judiciary suggested that the code reform tasks in the epilogue be assigned to SENTAC, because that body was established by statute to create a coherent sentencing scheme under the existing code, was expert in the criminal law of Delaware, and contained key stakeholders such as the police, corrections officials, and prosecutors and defense attorneys. Ultimately, the General Assembly elected to continue with the mandate for code reform under the CJIC, and to continue with its existing membership.<sup>7</sup>

As it had in 2014, the General Assembly again directed the CJIC to “review opportunities for efficiencies in the criminal justice system, including but not limited to the following areas:

- statutes in the criminal code, identifying disproportionate, redundant, outdated, duplicative or inefficient statutes;
- crimes that should or should not constitute potential jail time; . . .”

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The Committee shall review opportunities for efficiencies in the criminal justice system, including but not limited to the following areas:

- Statutes in the criminal code, identifying disproportionate, redundant, outdated, duplicative or inefficient statutes;
- Crimes that should or should not constitute potential jail time;
- Judicial access to adequate information prior to sentencing;
- Court decisions and rules related to Rule 61;
- The charging and plea bargaining process, including cases where charges may overlap;
- Bail and alternatives to incarceration including new technologies; and
- Action plans related to the identified areas outlined in the Sixth Amendment Center’s report, published in February 2013.

The Committee shall work in consultation with other governmental committee and bodies which have overlapping authority in the criminal justice areas that it will be reviewing, in order to support coordination, and avoid duplication, of efforts. Those bodies include, but are not limited to, the Delaware Sentencing Accountability Commission, Delaware Justice Reinvestment Oversight Group, and the Supreme Court’s Access to Justice Commission. In recognition that many important criminal justice issues fall within overlapping jurisdictions of various commissions, task forces, and other bodies overseeing criminal justice areas, and that this overlap creates a strain on scarce staff resources, risks inefficiency and potential inconsistency in policies, the Committee shall also recommend steps to reduce the number of bodies dealing with common criminal justices issues, so that fewer, but more effective, bodies develop and help implement criminal justices policies. The Committee shall recommend appropriate funding or policy changes by May 1, 2015.”

<sup>6</sup> 11 *Del. C.* § 6580.

<sup>7</sup> FY 16 Budget Act of the 148th General Assembly, HB 225, Sect. 112. The General Assembly again voted support the Code Improvement project in FY 2017 Budget Act (SB 285) and then again in the FY 2018 Budget Act (HS 1 for HB 275).

Using that authority, the Judiciary offered funding it received in the FY 2016 Budget Act of the 148th General Assembly (HS No. 1 for HB 225, Sect. 49) to support access to justice initiatives and hired Professor Paul Robinson, an internationally renowned expert in crafting modern criminal codes, to aid the legislatively established CJIC.<sup>8</sup>

During the CJIC's November 17, 2015 initial meeting, the committee discussed working with Professor Paul Robinson to guide an independent and comprehensive review of Delaware's criminal code to meet their goals specified in budget epilogue. A group of lawyers and judges involved in the Delaware criminal justice system was formed to assist with the project, which initially included: Judge William Carpenter, SENTAC Chair; Judge Ferris Wharton; Judge Charles Butler; Judge Paul Wallace; Lisa Minutola, Chief of Legal Services for the Office of Defense Services; Robert Goff, Office of Defense Services; Steve Wood, Deputy Attorney General; and Kathleen Jennings, who was at that time Chief State Prosecutor. During the first portion of the drafting and revision process that followed, Steve Wood and Kathleen Jennings received all the materials distributed to the Working Group. But before the Working Group deliberations began, the then-Attorney General declined the invitation for his attorneys to participate in the process and eventually would not permit them to comment on the Report. As a result of this decision by that Attorney General, no one in the Department of Justice participated in the Working Group. Nonetheless, the Working Group's initial members included three former prosecutors with decades of prosecutorial experience. Additionally, Professor Robinson is a former federal prosecutor and former member of the United States Sentencing Commission appointed by President Reagan.

On January 21, 2016, Professor Robinson appeared before the CJIC to present some preliminary work and answer questions about the Project's approach and process. The CJIC agreed that the Project should continue its work. On June 8, 2016 at the request of the CJIC Chair, Professor Robinson appeared before the full Joint Finance Committee to update members of the General Assembly about the Project's progress. In the interests of transparency, Professor Robinson and the Working Group has also invited commentary and questions from other stakeholders in the criminal justice system, to be incorporated before the Report is finalized including:

- leaders of the Delaware police unions,<sup>9</sup>
- police chiefs from across the state,<sup>10</sup> and

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<sup>8</sup> Section 49 provides:

"Notwithstanding anything contained in 12 *Del. C. c. 11 Subchapter IV*, or any other rule or law to the contrary, 50 percent of the funds held pursuant to former Superior Court Rule 16.1 shall be deposited in the General Fund and the remained authorized to be used, on a one-time basis as determined by the Chief Justice, for operation needs in Fiscal Year 2016 related to the work of SENTAC, the Access to Justice Commission, and the Criminal Justice Council for the Judiciary."

<sup>9</sup> On April 22, 2016, Professor Robinson, Mr. Kussmaul, and Chief Justice Strine met with: Thomas Brackin, President of the Delaware State Troopers Association; and Fred Calhoun, President of the Delaware State Lodge of the Fraternal Order of Police.

<sup>10</sup> On July 21, 2016, Professor Robinson and Mr. Kussmaul met with the following representatives from the Delaware Police Chiefs Council: Jeff Horvath, Executive Director of the Council; Wayne Kline, Chief of Enforcement for the Delaware Department of Natural Resources and Environmental Control; Paul Bernat, Chief of the Dover Police Department; R.L. Hughes, Chief of the Georgetown Police Department; John Horsman, Chief of the Delaware Capitol Police; and Peggy Bell, Executive Director of the Delaware Criminal Justice Information System. On August 15, 2016, Professor Robinson, Mr. Kussmaul, Chief Justice Strine, and Judges Carpenter and Wharton met with: Colonel Nathaniel McQueen, Jr., Chief of the Delaware State Police; Colonel Elmer M. Setting, Chief of the New Castle County Police Department; and Fred Calhoun, President of the Delaware State Lodge of the Fraternal Order of Police.

- victims' rights advocates.<sup>11</sup>

Throughout 2017, input on the Code was actively sought from both stakeholders in the Delaware criminal justice system and the general public. On January 10, 2017, a presentation was made to the Council of Police Chiefs discussing the Improved Code. On March 8, 2017, the Working Group met again with Victims' Advocates to discuss the draft of the code. In response to their comments, the code text was amended in several significant ways.

The Working Group completed its initial work on March 21, 2017, and provided a Preliminary Report containing the Improved Code Text to the CJIC and the public for discussion. The Committee then posted the Preliminary Report on the CJIC website at <https://legis.delaware.gov/Committee/JointFinance/CJIC-Report> for all to review. The purpose of the Preliminary Report was to surface issues for public discussion and to solicit comments to ensure the process was as transparent as possible. At this point, the Working Group added key members to help conduct the public hearings and to turn the Preliminary Report into a Final Report. These new members—Adam Balick, Esq., Ipek Medford, Esq., and Elmer Setting—had substantial prosecutorial and law enforcement experience. With the existing members of the Working Group, they actively engaged in listening to the public and key constituencies and incorporating their input into the Preliminary Report.

Public hearings were held to solicit additional comments and feedback from the community. The first public hearing took place in Newark on April 3, 2017 at the University of Delaware, the second on April 10, 2017 at Delaware State University, and the third on April 13, 2017 at the University of Delaware's Virden Retreat Center in Lewes. Written comments were also accepted online from those who could not attend the hearings or wanted to supplement their remarks at the hearings. A number of the concerns of victim's rights groups and others led to amendments to the Code text.

In May 2017, the Delaware Department of Justice ("DDOJ") provided Preliminary Comments to the proposed Improved Code and Commentary. The Working Group carefully reviewed these comments and made a number of significant changes to the code text in response to the DDOJ's comments.

Several members of the drafting group met again during summer of 2017 with police chiefs, Union heads, and their attorneys for the police to discuss the Improved Code. The Improved Code was amended in accordance with their concerns.

On November 17, 2017, a follow-up meeting with victims' advocates was held. The changes previously made to the Code text in response to the victims' advocates' concerns were reviewed, and additional comments were received for review by the Working Group. More amendments to the Code were made in response to the advocates' concerns. Also on November 17, 2017, the DDOJ provided a final version of its Comments on the Preliminary report. Once again, the Working Group reviewed and deliberated about these comments and made changes whenever it was possible to do so and be consistent with the Epilogue mandate.

On December 20, 2017, the Working Group reported to the CJIC the status of the Improved Code and requested that all constituencies and the public review it and make further comments. An updated version of the Improved Code was posted on the CJIC website on January 25, 2018.

In December 2017 and January 2018, the Working Group reviewed the DDOJ's final comments on the Final Report and made additional changes to the text in response to those comments.

On February 9, 2018, members of the Working Group met with police union representatives to discuss the Improved Code. The Improved Code was amended in accordance with their concerns.

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<sup>11</sup> By way of example, on August 30, 2016, Professor Robinson, Mr. Kussmaul, Mr. Rudyak, and Judge Wharton met with representatives from various victims' rights advocacy organizations.

On February 13, 2018, members of the Working Group met with the Delaware Police Chiefs Council at their regular meeting in Dover to discuss the Improved Code. The Improved Code was amended in accordance with their concerns

On March 6, 2018, the Republican caucuses were briefed on the Improved Code.

SB 209 (the Improved Code Bill) and SB 210 (the Conforming Amendments Bill) were released in May 2018. The only differences between SB 209 and the Final Report that was delivered to the AG on March 16, 2018 were formatting changes made at the request of Legislative Counsel – no substantive changes were made. On June 5, 2018, the DDOJ released its comments on SB 209 and SB 210.

After more than two years of work, three public hearings, and countless meetings with various criminal justice constituents – creating an inclusive super-process – a difficult decision was made to put these bills on hold to allow additional time for review by those who had not previously engaged in the process. In the interest of being fully transparent, deliberative, and inclusive, Senate Bill 209 and its companion legislation Senate Bill 210 were not worked for the remainder of the 149th General Assembly.

After the bills were temporarily withdrawn in June 2018, more comments on the bills were solicited from state agencies, victims' groups and child advocates. Furthermore, the Working Group carefully reviewed the DDOJ's June 5, 2018 comments on SB 209 and 210 and amended the Improved Code in accordance with those concerns. The Working Group held discussions to address issues in the criminal code that were understood to be of particular concern to the incoming Attorney General, Kathleen Jennings. These issues included the Improved Code's treatment of offenses against children and the grading scheme for rape. As a result of these discussions, additional changes were made to the bills.

In addition, immediately upon Attorney General Jennings' election, members of the Working Group reached out to her and her advisors to discuss the Improved Code and any new feedback the AG's office might have. Multiple meetings were held between Working Group members and the AG's representatives in early 2019. These meetings were constructive, and the Working Group thanks Attorney General Jennings and her staff for their input. During those meetings, there was useful discussion with the Department of Justice, but the Department of Justice representatives did not provide specific comments on the Improved Code. In these discussions, representatives of the Working Group shared the proposed amendments the Working Group had developed to address prior input from the Department of Justice and from other constituents.

To sum up, the CJIC and the Working Group believed that it was essential for the Working Group to consider closely the input it received on its Preliminary and Final Reports and draft Improved Code from the public, key constituencies, and members of the CJIC and General Assembly in finalizing its recommendations. In particular, the Working Group held extensive meetings to address comments about the grading of sex offenses, in reaction to comments made by the Department of Justice, understanding that these concerns were important to the new Attorney General and to other constituents. Likewise, the Working Group was expanded to include the Chief Judge of the Family Court, Michael K. Newell and the Counsel to the Chief Judge, Eleanor B. Torres, so that the Working Group could better consider input received from Child Protection Accountability Commission, the Delaware Commission against Domestic Violence, and others. Over a lengthy series of meetings, informed by feedback and discussion provided by the entire Family Court, the Working Group developed amendments to be responsive to important suggestions it received.

The Working Group was grateful to receive valuable feedback from all these sources, including the police, victims' organizations, and Department of Justice, and gave this feedback important weight. As a result of this input, the Improved Code was amended in several important respects, but in a manner that adhered to the important principles set forth in the epilogue that guided the Code's preparation. A summary of the material changes from the Preliminary Report to the Final Report is attached as Exhibit A, and a summary of material changes from the date the Improved Code bill was introduced in Spring of 2018 until the present is attached as Exhibit B.

## WHY AN IMPROVED CRIMINAL CODE?

### EXECUTIVE SUMMARY

In the forty years since the General Assembly adopted the Criminal Code of 1973, thousands of individual changes to the law have led to numerous inconsistencies, redundancies, ambiguities, and contradictions in the code. As was the case in 1973, the time is ripe to take a step back and conduct a more comprehensive review of the Delaware Criminal Code.

The Improved Code seeks to replace the current code with a clear, concise, and comprehensive set of provisions. Specifically, the Improved Code seeks to include necessary provisions not contained in the current code; to eliminate unnecessary or inconsistent provisions of the current code; to revise existing language and structure to make the code easier to understand and apply; and to ensure that the offenses and rules contained in the code are cohesive and relate to one another in a consistent and rational manner.

In developing the Improved Code, we were guided by five general drafting principles, set forth below. The first three principles relate to the form of the Code; the final two principles relate to its content.

#### *1. Use clear, accessible language and organization*

One of the critical functions of a criminal code is to provide notice to citizens of what conduct is prohibited. Clear and accessible writing enables provision of true notice while also ensuring that no offender escapes liability because of an incomplete or ambiguous offense definition. More straightforward code provisions also promote development of clearer jury instructions, making it easier for jurors to fulfill their critical role. Even for members of the criminal justice system, who work with the code every day and must be intimately familiar with its rules, plain-language expression is essential. Current Delaware law, however, is often less clear than it could, and should, be.

- Various current provisions, such as “use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices,” use undefined terms whose meaning is not obvious, and frequently employ legal terms of art without explaining their meaning. In such cases, users of the criminal code (including judges, lawyers, law enforcement officials, and jury members) must guess at the General Assembly’s intended meaning.
- Current Delaware law contains numerous offenses that unnecessarily reiterate, or even undermine, General Part provisions. For example, many offenses are defined to prohibit certain conduct and “attempting” such conduct. This approach to defining offenses short-circuits the general rules for attempts set forth in the General Part, under which attempts are distinguished from completed crimes for grading purposes.
- Current law fails to properly categorize general defenses into justifications, excuses, and non-exculpatory defenses, or to consistently define who bears the burden of proving those different kinds of defenses, or by what standard. As a result, the burden is on the defendant to prove some excuse defenses by the preponderance of the evidence, such as the Mental illness or serious mental disorder defense, while setting only an evidentiary burden as to others, such as Involuntary intoxication. Yet all excuses — and especially Mental illness or serious mental disorder and Involuntary intoxication — are inherently similar, in that they prevent liability for an admitted violation of the law by a blameworthy defendant.

## 2. *Provide a comprehensive statement of rules*

A criminal code must include all necessary rules governing liability. Comprehensiveness helps avoid inappropriate results. Courts, which decide individual cases and act independently of one another, cannot be as effective as a legislature in formulating coherent general doctrines that will work together as the provisions of a comprehensive code can and must. Moreover, an uncodified rule is more likely to be applied differently in similar cases than a codified rule, as the terms of the latter are fixed, explicit, and available to all officials at each stage in the process. The following are a few examples of significant provisions current law omits:

- Current Title 11 lacks general provisions explaining the practical effects of categorizing a defense as a justification, excuse, or non-exculpatory defense. As a result, it is unclear whether bystanders would be permitted to assist in conduct that is excused, or whether an aggressor would be permitted to resist justified force used in self-defense — both undesirable outcomes.
- Current Title 11 does not include a comprehensive offense for resisting or obstructing law enforcement officers, fire fighters, and emergency personnel. Instead, it contains a few specific offenses that deal with some, but by no means all, of the situations in which interference with first responders merits punishment. As a result, many blameworthy offenders are arbitrarily saved from prosecution. Current law also does not contain a comprehensive offense for obstructing administration of law, instead taking a similarly piecemeal approach.
- Current law fails to criminalize causing or risking catastrophe, a very serious offense contained in the overwhelming majority of U.S. criminal codes. This omission leaves terrorist-like attacks to be prosecuted using offenses with unsuitably low grades, such as criminal mischief or reckless endangerment.
- Current law fails to define an offense for reckless injuring that is separate from assault. Instead, all reckless, knowing, or intentional injuries are graded the same. As a result, intentionally and knowingly causing injury, which are materially more blameworthy acts, are not punished more seriously than recklessly causing injury.

## 3. *Consolidate offenses*

The Criminal Code Improvement Project provides a valuable opportunity to consolidate multiple offenses that overlap, contradict, or narrowly focus on particular instances of a general category of improper conduct. Consolidation also aids the task of proper grading, because it is nearly impossible to maintain consistent, proportional grading when offense definitions are based on immaterial or incomprehensible, distinctions. The following are a few examples of the numerous problems that suggest enormous potential to consolidate offenses more effectively:

- The sheer verbiage of current law is one indication of its failure to consolidate similar offenses. To take just one example, the current criminal code uses 16,229 words to define its fraud offenses, while the Improved Code requires only 2,732 words to do so. Overall, the Improved Code's Special Part uses only 30 percent — roughly 1/3 — of the words in the current code's Special Part, plus other, non-criminal code statutory felonies.
- Current Delaware law defines numerous serious crimes outside the criminal code. Over one hundred misdemeanors and nearly one hundred felonies are scattered throughout the Delaware Code, and more than fifty offenses appearing outside Title 11 — many of which overlap, or simply restate, prohibitions in current Title 11 — are graded as Class E felonies or higher.

- Current law frequently includes numerous narrow offenses in addition to, or instead of, a single, more general offense. In the area of theft, for example, in addition to the current general offense, there are separate offenses for stealing from a cemetery, shoplifting retail goods, or stealing a motor vehicle, prescription pad, rented property, livestock, computer services, or firearms, to name just a few. Even more exaggerated examples of needless multiplicity of offenses exist for such offense categories as property damage, assault, and perjury. In many cases, these multiple offenses will impose varying sentencing grades without any apparent basis for the variation.

#### 4. *Grade offenses rationally and proportionally*

One virtue of a Code Improvement Project, relative to the usual piecemeal legislative additions and alterations to the criminal code, is the opportunity it provides for a general review of the system of grading offenses, considering how all offenses relate to one another rather than considering individual offenses in a vacuum. The necessarily ad hoc process that has generated current law makes consistent grading difficult, if not impossible. An overall review reveals a great variety of grading problems and inconsistencies, of which the following are merely a few examples:

- The current sexual assault provisions fail to take the offender's age into account, but the rape provisions do take it into account, in many different ways. But there is no clear reason why it would only matter for one provision, but not the other.
- Current law treats many forms of fraud as a single-grade misdemeanor, regardless of the amount of money involved in the fraud. Other forms of fraud provide a felony grade for offenses involving an amount above a certain threshold (usually \$1,500), while any amount below that threshold is a misdemeanor. As a result, for example, defrauding secured creditors in the amount of \$10 million is treated the same as defrauding them for \$100.
- Some unexplained grading anomalies reflect current law's lack of clarity and failure to consolidate similar offenses. For example, current law defines the offense of bribery as a Class E felony, but also defines a separate offense covering "unlawful gratuities" and grades that offense as a Class A misdemeanor. But, giving an unlawful gratuity is simply a specific form of bribery.
- Current law grades sexual harassment much less harshly than non-sexual harassment, despite the fact that the former can involve threatening to rape another person.
- Current law grades thefts involving more than \$100,000 the same as manslaughter and aggravated kidnapping, while grading petty thefts (for example, stealing a sandwich) the same as assault and sexual assault.
- Current law uses a single felony grade for damaging property; as a result, destroying a famous work of art valued at \$10 million would be subject to the same punishment as stealing \$1,500 or selling drug paraphernalia.

#### 5. *Retain all (but only) reasonable policy decisions embodied in current law*

Because substantive policy decisions about the rules of the criminal law reflect value judgments properly left to the General Assembly, and because there is a value to consistency with past precedent and practices, the Improved Code seeks to follow the substance of current law when it is possible to do so without increasing injustice, lack of clarity, or inefficiency. In some places, however, current law contains multiple contradictory rules — and therefore no clear rule — on a subject. Some rules may have been sound when enacted, but no longer reflect current realities or sensibilities and require expansion,

alteration, or deletion. For instance, Title 11 contains a number of outdated offenses that do not belong in a modern criminal code, such as the offenses of larceny of livestock, smoking on trolleys, and advertising marriage in another state. Maintenance of dead-letter statutes of this kind only tends to invite abuse and to undermine the authority of the criminal law as a reflection of the governed community's sensibilities.

## WHY AN IMPROVED CRIMINAL CODE?

### INTRODUCTION

It has been more than forty years since the General Assembly adopted the Criminal Code of 1973. In that time, the code has been expanded and amended in numerous ways. Those later alterations, however, have each sought to address the specific matter at hand, with little attention to the general effects of the change on the criminal code's overall structure, its terminology, or its application. Meanwhile, four decades have passed without an overarching review of the criminal code as a whole to determine what modifications should, or must, be made to reflect changing times, developing insights, and changes in the broader legal landscape. As a result, the current criminal code has numerous inconsistencies, redundancies, ambiguities, and contradictions. As was the case in 1973 — and may well be the case again in another forty or fifty years — the time is ripe to take a step back and conduct a more comprehensive review of the criminal code.

The Improved Code attempts to eliminate these problems and replace the current code with a clear, concise, and comprehensive set of provisions. Specifically, the Improved Code seeks to include necessary provisions not contained in the current code; to eliminate unnecessary or inconsistent provisions of the current code; to revise existing language and structure to make the code easier to understand and apply; and to ensure that the offenses and rules contained in the code are cohesive and relate to one another in a consistent and rational manner. At the same time, the Improved Code aims to track the substantive policy judgments reflected in the original code and its later amendments. When the process of clarifying and reconciling current provisions made such substantive choices necessary, we have sought to explain and justify the proposed changes with commentary designed to assist the enactors, and ultimately the users, of the Improved Code.

In developing the Improved Code, we were guided by five general drafting principles, set forth below. The first three principles relate to the form of the Code. Experience shows that proper form can aid, and poor form can hinder, a code's ability to achieve its substantive functions. The final two principles concern the Code's content.

#### 1. USE CLEAR, ACCESSIBLE LANGUAGE AND ORGANIZATION

One of the critical functions of a criminal code is to provide notice to citizens of what conduct is prohibited. Indeed, the fundamental principle of legality — the requirement of a clear prior written prohibition as a prerequisite to criminal liability — underlies numerous constitutional and other core criminal-law rules, such as the constitutional prohibition against ex post facto laws and the constitutional invalidation of vague offenses. Providing notice also has obvious practical value, for citizens can hardly be expected to obey the law's commands if they are unaware of them, or cannot understand them. Accordingly, clear and accessible writing enables provision of true notice and ensures that no judgment is imposed that was not clearly intended and expressed by the General Assembly, and that no offender who violates the rules will escape liability because of an incomplete or ambiguous declaration of the law's commands.

The virtues of plain-language drafting extend beyond the direct imposition of liability. The criminal code serves functions beyond notifying the general public in advance of the law's commands of them. The code is also the ultimate basis of guidance for lay juries, who must decide after the fact whether a criminal offense has been committed in a particular situation. More straightforward code provisions promote development of clearer jury instructions, making it easier for jurors to fulfill their

role. Even (perhaps especially) for members of the criminal justice system, who work with the code every day, plain-language expression is essential. Law enforcement officers, for example, are charged with implementing the code's rules fully and fairly. Yet these officers are not lawyers. No less than the general populace, their ability to perform their legal role is enhanced by clarity in the criminal law's written expression.

Further explanation of this goal follows, along with a representative, but by no means exhaustive, collection of examples of current Delaware law's shortcomings in this area.<sup>12</sup>

## A. Clear Language

Several drafting methods promote the goal of clarity. First, effective communication calls for short, commonly used words, and avoidance of legal terms of art where possible. When such legal terms are used, they should be defined, and it should be apparent that the terms' use is to be guided by the definition and not left to unguided speculation. One difficulty with current law is that numerous important terms, many of which have no commonly understood meaning or are complex legal terms, are left undefined. In such cases, users of the criminal code (including judges, lawyers, law enforcement officials, and jury members) must guess at the General Assembly's intended meaning. To avoid this problem, the Improved Code includes a definitions section at the beginning of the Title that contains all of the defined terms used in the Title, and includes a provision at the end of each Section that identifies all of the defined terms used in that Section with a citation to the place where the term is defined (whether in the Improved Code or another Title).

Current law also sometimes impedes clear understanding by using undefined terms where similar defined terms exist. For example, current 11 Del. C. § 231 clearly defines the culpability levels of intent, knowledge, recklessness, and negligence. Nevertheless, numerous current Delaware provisions employ other culpability requirements, such as “having reason to believe,”<sup>13</sup> “reasonable ground to believe,”<sup>14</sup> “would lead a reasonable person to believe,”<sup>15</sup> “having reason to know,”<sup>16</sup> “should know,”<sup>17</sup> “reasonably should know,”<sup>18</sup> “should have known,”<sup>19</sup> “wil[l]fully,”<sup>20</sup> “fraudulently,”<sup>21</sup> “purposely,”<sup>22</sup> or a combination of the foregoing and others.<sup>23</sup> The Improved Code rejects the use of such outmoded, and statutorily

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<sup>12</sup> For example, numerous other provisions use unclear language. *See, e.g.*, 11 Del. C. §§ 463, 616, 840, 850, 933, 1102, 1106, 1112A, 1112B, 1326, 1327, 1403, 1404, 4214.

<sup>13</sup> *See* 11 Del. C. § 850(a)(3)a.

<sup>14</sup> *See* 11 Del. C. §§ 802(b)(3), 811(c), 1002(2).

<sup>15</sup> *See* 11 Del. C. §§ 1114(d)(2), 1114A(d).

<sup>16</sup> *See* 11 Del. C. §§ 1339(a)(2), 1458(a)(1).

<sup>17</sup> *See* 11 Del. C. §§ 204(a)(5), 424(2), 464(d).

<sup>18</sup> *See* 11 Del. C. §§ 1303(a)(1); 16 Del. C. § 4774(e).

<sup>19</sup> *See* 11 Del. C. §§ 1326(d).

<sup>20</sup> *See* 7 Del. C. § 724(a); 11 Del. C. §§ 840(b); 850(d)(3)b., 1325; 12 Del. C. § 210; 14 Del. C. § 9302; 21 Del. C. § 6705.

<sup>21</sup> *See* 6 Del. C. § 4903A(b); 11 Del. C. § 841(b); 16 Del. C. § 4798(r); 21 Del. C. § 2751.

<sup>22</sup> *See* 11 Del. C. § 471(a).

<sup>23</sup> *See* 3 Del. C. §§ 1041 (“wilfully or maliciously”), 1045 (“wilfully, negligently or maliciously”); 7 Del. C. § 6013 (“wilfully or negligently”); 11 Del. C. §§ 903A (knowingly, wilfully, and with the intent to defraud”), 941(c) (“wilful and malicious”), 1448A (“wilfully and intentionally”); 16 Del. C. § 2209(b) (“wilful and wanton”); 21 Del. C. § 6701 (“wilfully or maliciously”).

undefined,<sup>24</sup> culpability terms in defining offenses. Rather, the Improved Code exclusively uses the culpability levels of intent, knowledge, recklessness, and negligence, which are the nearly universal norm for modern criminal codes.

As an example of the type of legalese the Improved Code seeks to avoid, current law defines the offense of “use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices” as follows:

(a) *Prohibited acts*--A person is guilty of a violation of this section if the person knowingly:

(1) Manufactures, assembles, distributes, possesses with intent to distribute, transfers, sells, promotes, offers or advertises for sale, use or distribution any unlawful telecommunication device or modifies, alters, programs or reprograms a telecommunication device:

a. For the unauthorized acquisition or theft of any telecommunication service or to receive, disrupt, transmit, decrypt, acquire or facilitate the receipt, disruption, transmission, decryption or acquisition of any telecommunication service without the express consent or express authorization of the telecommunication service provider; or

b. To conceal, or to assist another to conceal from any telecommunication service provider or from any lawful authority, the existence or place of origin or destination, or the originating and receiving telephone numbers, of any telecommunication under circumstances evincing an intent to use the same in the commission of any offense.

(2) Manufacturers, assembles, distributes, possesses with intent to distribute, transfers, sells, offers, promotes or advertises for sale, use or distribution any unlawful access device;

(3) Prepares, distributes, possesses with intent to distribute, sells, gives, transfers, offers, promotes or advertises for sale, use or distribution:

a. Plans or instructions for the manufacture or assembly of an unlawful telecommunication or access or device under circumstances evincing an intent to use or employ the unlawful telecommunication access device, or to allow the unlawful telecommunication or access device to be used, for a purpose prohibited by this section, or knowing or having reason to believe that the unlawful telecommunication or access device is intended to be so used, or that the plan or instruction is intended to be used for the manufacture of assembly of the unlawful telecommunication or access device; or

b. Material, including hardware, cables, tools, data, computer software or other information or equipment, knowing that the purchaser or a third person intends to use the material in the manufacture of an unlawful telecommunication or access device.<sup>25</sup>

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<sup>24</sup> “Wanton” conduct is only defined in case law. *See Eustic v. Rupert*, 460 A.2d 507, 509 (Del. 1983). “Fraudulently” is only defined in pattern jury instructions. *See, e.g.*, Delaware Criminal Pattern Jury Instructions 11.841(b) (current through 77 Del. Laws, June 30, 2010). Otherwise, there are no pattern jury instructions defining culpability levels other than intent, knowledge, recklessness, and criminal negligence — despite the fact that ordinary negligence is occasionally used in the current criminal code as a culpability level. *See* 11 Del. C. §§ 231(d), 628A(2), 629, 630(a)(2), 938(a), 1107, 1114(a), 1448(e)(2).

<sup>25</sup> 11 Del. C. § 850.

On one hand, this offense uses many broad, yet undefined terms — such as “transmit,” “disrupt,” “facilitate,” “prepares,” and “promotes” — inhibiting this offense’s ability to communicate its prohibitions clearly to the public, to members of the criminal justice system, or perhaps even to experienced attorneys and judges. On the other hand, this offense also relies upon numerous verbose, offense-specific definitions — such as “manufacture or assembly of any unlawful access device,” “telecommunication service provider,” and “unlawful telecommunication device” — that, rather than increasing clarity, further obscure the criminal prohibition the offense intends to communicate. The Improved Code defines a corresponding, but briefer and clearer, generalized offense to punish one who “obtains without consent services that the person knows are available only for compensation.”<sup>26</sup>

Similarly, the current destruction of computer equipment provision imposes liability on one who “without authorization, intentionally or recklessly tampers with, takes, transfers, conceals, alters, damages or destroys any equipment used in a computer system or intentionally or recklessly causes any of the foregoing to occur.”<sup>27</sup> The current provision was designed to serve as a comprehensive catchall offense, but its vague and overlapping terms, and its confusing statement of required culpability and conduct, serve only to make its scope less clear. In fact, when the destruction of computer equipment provision’s language is analyzed and considered in light of other current code provisions, it becomes clear that the provision is redundant. The Improved Code does not include a specific offense for “destruction of computer equipment,” in recognition that other general offenses (such as criminal damage or attempted criminal damage) already cover such conduct.<sup>28</sup>

In some cases, the current code’s language, though it may not represent the clearest or simplest method of expressing a rule, has been “defined” and clarified over time by judicial decisions. For this reason and for the mere sake of stability, we have sought to maintain the language of current law whenever that language would give a reader adequate notice of the provision’s intended meaning. Where modification of existing language is considered necessary, we have prepared commentary to explain the relation between the proposed language and existing statutory language, as explicated by current precedent.

## **B. Clear Organization**

A criminal code, and each of its provisions, must be effectively organized so that each component’s meaning and function are plain and all provisions are easily found. For example, it invites confusion when issues for which there are rules of general application are addressed a second time in specific offense provisions. Current Delaware law contains numerous offenses that unnecessarily reiterate, or even undermine, General Part provisions. For example, many offenses are defined to prohibit certain conduct and “attempting” such conduct.<sup>29</sup> This approach to defining offenses short-circuits the general rules for attempts set forth in current law, under which attempts are distinguished from completed crimes (though not for grading purposes).<sup>30</sup> Similarly, several current offenses are defined to include

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<sup>26</sup> Section 1106(a)(1).

<sup>27</sup> 11 Del. C. § 936.

<sup>28</sup> *See, e.g.*, Section 1144 (criminal damage).

<sup>29</sup> *See, e.g.*, 11 Del. C. §§ 617(b)(1), 763(2), 778A(3), 906(3), 1105(a), 1112A(a)(1), 1112B(a)(1), 1257(a)(1), 1257(b), 1304(a), 1458(a), 1471, 3532; 16 Del. C. §§ 4744(e)(1), 4757(a), 4758(a), 4760A(a); 18 Del. C. § 4354(a); 21 Del. C. § 4112; 24 Del. C. § 1790(a); 31 Del. C. § 1003.

<sup>30</sup> *See* 11 Del. C. § 531.

anyone who aids, solicits, or conspires with another in planning or committing the offense,<sup>31</sup> even though general rules covering accomplice liability, solicitations, and conspiracies are defined in the General Part or elsewhere in current law.<sup>32</sup> The Improved Code ensures consistency by avoiding offense definitions that revisit, or revise, rules already included in its General Part.

Finally, a criminal code's various rules should be classified sensibly, to ensure that meaningfully different rules are distinguished and similar rules are treated alike. For example, the Improved Code's organization separates justifications, excuses, and non-exculpatory defenses.<sup>33</sup> Recognizing such distinctions is important because a defense's function as a justification, an excuse, or a non-exculpatory defense has significant legal implications.<sup>34</sup> Current Delaware law, however, is not organized to accurately distinguish between these three defense types.<sup>35</sup>

The failure to properly establish such distinctions has resulted in inconsistent rules, such as the rules involving the burdens of proof for general defenses. For example, some excuse defenses are classified as "affirmative defenses"<sup>36</sup> while others are classified simply as "defenses."<sup>37</sup> The defendant bears the burden of proving affirmative defenses by a preponderance of the evidence,<sup>38</sup> but bears only an evidentiary burden as to simple defenses.<sup>39</sup> Current law requires that the defendant prove the mental illness or psychiatric disorder defense by a preponderance of the evidence, but not the involuntary

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<sup>31</sup> See, e.g., 11 Del. C. §§ 617(b)(1), 913(a)(2), 1212(3), 1244(a)(6), 1249(b), 1471(f), 1503(d); 16 Del. C. §§ 2209(a), 4757(c).

<sup>32</sup> See 11 Del. C. §§ 271–73 (complicity), 501–03 (solicitation), 511–13 (conspiracy).

<sup>33</sup> Justification defenses, such as self-defense and use of force in defense of property, immunize conduct that avoids a harm or evil that is objectively worse than the offense itself. Excuse defenses, such as insanity and immaturity, operate to exculpate persons who cannot properly be held responsible for objectively harmful conduct. Finally, non-exculpatory defenses, such as entrapment and the statute-of-limitations defense, provide exemptions for liability because — even though the actor's conduct is objectively harmful and the actor is responsible for it — some alternative societal interest is deemed to be more important than the assessment of criminal liability.

<sup>34</sup> For example, a person enjoying a self-defense justification may be assisted by others, and may not legally be interfered with. On the other hand, an aggressor is entitled to resist a person who enjoys an excuse because he mistakenly believes himself to be acting in self-defense; such a person, even if excused, is not justified. Moreover, because justifications recognize conduct that is socially acceptable, and often desirable, it is sensible to require the prosecution to prove that conduct was not justified. Excuses and non-exculpatory defenses, in contrast, operate to prevent liability for harmful conduct that would ordinarily constitute an offense. Accordingly, and because the state-of-mind or other evidence relevant to an excuse or non-exculpatory defense is frequently within the control of the defendant, it is sensible to shift the burden of proof to the defendant for those defenses, as the Improved Code does.

<sup>35</sup> By defining several justifications to protect one who "believes" himself to be justified, Title 11 improperly treats mistake as to a justification as though it were a justification. See 11 Del. C. §§ 462(b)(2), 464(a)–(c), 465(a), 466, 467, 468(2) & (4)–(7), 470(a). The Improved Code categorizes this defense as an excuse, because it relates to the actor's mental state rather than to whether the act itself is objectively justified.

Current Delaware law also does not recognize excuses or non-exculpatory defenses as distinct classes of defenses. As a result, current law treats the statute-of-limitations defense as an element of the offense that must be proven accordingly, while organizing all general defenses together in the same chapter as justification defenses. See 11 Del. C. § 232 (limitations period as an element); see generally Chapter 4 (defenses to criminal liability) of Part I of Title 11.

<sup>36</sup> See 11 Del. C. §§ 401(mental illness or psychiatric disorder), 431 (duress).

<sup>37</sup> See 11 Del. C. §§ 423 (involuntary intoxication), 441 (ignorance or mistake of fact).

<sup>38</sup> 11 Del. C. § 304.

<sup>39</sup> 11 Del. C. § 303; see also *Hamilton v. State*, 343 A.2d 594, 596 (Del. 1975) ("[T]he importance of [§ 303(c)] is that it requires only that the defense raise a reasonable doubt in the minds of the jury, not that the jury be persuaded that the defense is more probably true than not.").

intoxication defense—two defenses that are inherently similar. The evidentiary rules for these defenses differ for no obvious reason.<sup>40</sup> Because excuse defenses are all the same in terms of their underlying principles and their central issue (the defendant’s blameworthiness for an admitted violation), they should be treated similarly in terms of the burden of proof, as is done in the Improved Code.<sup>41</sup>

Similarly, current law fails to articulate whether the State or the defendant bears the burden of proving or disproving several non-exculpatory defenses, and by what standard.<sup>42</sup> This omission is plainly inconsistent with the rule shifting the burden of proof to the defendant for the mental illness excuse. If such a burden-shifting rule is appropriate for an excuse defense — under which the defendant would be considered blameless in committing the offense — it should also apply to non-exculpatory defenses, which involve no claim of blamelessness. The Improved Code employs such a rule.<sup>43</sup>

## 2. PROVIDE A COMPREHENSIVE STATEMENT OF RULES

It is critical not only that a criminal code say things clearly, but that it say everything that needs to be said. A criminal code must be comprehensive as well as comprehensible. Failure to provide all necessary provisions will inevitably lead to either or both of two results: (1) failures of justice, as the code’s omissions and “loopholes” lead to liability where none is deserved or allow an offender to avoid deserved punishment; or (2) a de facto delegation of authority to the courts (or usurpation of authority by the courts), as judicial interpretations try to fill in the gaps left by the legislature. The costs of the first result are obvious. Yet the alternative of judicial intervention, however necessary to achieve sensible or just results in individual cases, may ultimately impose costs as well. The interests of advance notice (discussed above), democracy, and legal consistency and coherence suggest that the legislature, rather than the courts, must bear the primary responsibility for creating criminal law rules.

Insisting on comprehensiveness leads to several important benefits. First, comprehensiveness helps avoid inappropriate results. Courts, which decide individual cases and act independently of one another, cannot be as effective as a legislature in formulating coherent general doctrines that will work together as the provisions of a comprehensive code can and must. Second, an uncodified rule is more likely to be applied differently in similar cases than a codified rule, as the terms of the latter are fixed, explicit, and available to all officials at each stage in the process.

Further explanation of this goal follows, along with a representative, but by no means exhaustive, collection of examples of current Delaware law’s shortcomings in this area.<sup>44</sup>

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<sup>40</sup> Current Delaware law does not make it clear who bears the burden of persuasion for statutory defenses, or by what standard they must be proven or disproven. Section 108(c) avoids ambiguity by explicitly placing the burden of persuasion on the State and the defendant as appropriate.

<sup>41</sup> Rather than defining excuse defenses as affirmative defenses or simple defenses, proposed Section 321(d) places the burden of persuasion on the defendant to prove any excuse defense by a preponderance of the evidence. More generally, the term “affirmative defense” has been dropped from the Improved Code’s language in favor of general formulas and more explicit language defining the burden of persuasion.

<sup>42</sup> See 11 Del. C. §§ 205 (defining statute of limitations as an element of the offense, and not as a defense at all), 207–10.

<sup>43</sup> Improved Code Section 341(c) provides that, as with excuses, the defendant must prove a non-exculpatory defense by a preponderance of the evidence.

<sup>44</sup> For example, in the General Part, the Improved Code introduces several other currently omitted provisions that govern important common issues and make clear the relationships between various parts of the Code. See, e.g., Sections 106 (preserving civil remedies), 103(123) (defining “property”), 201 (making clear bases of liability), 202 (categorizing and defining offense elements), 207 (mental illness or disorder negating required culpability), 103(32), (132) & (135) (defining different kinds of mistakes), 301(a) (clarifying that justification,

## A. General Part Rules

Current Title 11 contains no provisions explaining the practical effects of justification, excuse, and non-exculpatory defenses. The central distinction between the three groups of general defenses is that justified conduct—conduct technically satisfying an offense’s objective elements, but is subject to a justification defense—is socially desirable conduct that citizens are encouraged to take when necessary. Therefore, it is also desirable that other people assist a person’s justified conduct, and it is not desirable for the person against whom justified conduct is used to be allowed to resist it. For example, a person who is attacked is justified in using self-defense; other people are allowed to assist in defending the victim; and the attacker is not justified in resisting the victim’s proper use of force. On the other hand, excuse defenses prevent liability for socially undesirable acts, but in situations where the defendant is nevertheless not blameworthy. In that case, it is not desirable for other people to assist (for example) a person who commits theft under duress, and the victim of such a theft must be allowed to resist it. The same is true for conduct subject to a non-exculpatory defense, which is both socially undesirable *and* blameworthy. But, without a clear categorization of general defenses into justifications, excuses, and non-exculpatory defenses—and without provisions explaining the less-than-intuitive consequences of those categorizations—inconsistent and improper liability can result for people who assist and resist conduct subject to those defenses. Because consistency and predictability is an essential trait of a comprehensive criminal code, the Improved Code both carefully organizes general defenses and provides thorough provisions explaining their effects.<sup>45</sup>

## B. Special Part Offenses

The current code sometimes fails to criminalize conduct that merits criminal liability. For example, Title 11 does not provide a comprehensive offense for resisting or obstructing law enforcement officers, fire fighters, and emergency personnel. Instead, Title 11 contains a few overly specific offenses that prohibit resisting arrest by using force or violence,<sup>46</sup> disarming a law enforcement officer,<sup>47</sup> or obstructing a firefighter from extinguishing a fire.<sup>48</sup> As a result, a person who interferes with the discharge of a law enforcement officer’s duties unrelated to an arrest—or a firefighter’s duties unrelated to extinguishing a fire (for example, rescuing someone trapped inside a burning building)—may entirely escape liability under current law. Additionally, interference with the duties of emergency medical

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excuse, and non-exculpatory defenses bar liability), 322 (specifying an excuse defense for involuntary acts and omissions), 326-28 (codifying mistake of law excuse defenses currently established only in case law), 342 (defining statute of limitations as a non-exculpatory defense, rather than as an element of an offense), 505 (defense to certain inchoate offenses for defendants who are victims or whose conduct is inevitably incident to the offense), 508 (general inchoate offense for possessing instruments of crime).

The proposed Special Part also includes several offenses not recognized in current law. *See, e.g.*, Sections 1023 (recklessly causing injury), 1108 (unauthorized distribution of protected works), 1123 (fraudulent treatment of public records), 1145 (causing or risking catastrophe), 1242 (resisting or obstructing a law enforcement officer or other specified person), 1243 (obstructing administration of law or other government function), 1345 (unlawful dissemination of personal pornography).

<sup>45</sup> *See* Improved Code Sections 301, 321, and 341.

<sup>46</sup> 11 Del. C. § 1257.

<sup>47</sup> 11 Del. C. § 1458.

<sup>48</sup> 11 Del. C. § 1243.

personnel is not addressed at all in current law, despite its close relationship with law enforcement and fire fighters and the disastrous results of obstructing their efforts. The Improved Code fills these unjustified gaps in liability by imposing liability for obstruction or interference with any duties of first responders.<sup>49</sup>

Similarly, Title 11 does not provide a comprehensive offense for obstructing administration of law and other government functions, instead taking a piecemeal approach across multiple titles that leaves unnecessary gaps in liability.<sup>50</sup> The Improved Code joins the overwhelming majority of jurisdictions with modern criminal codes by creating a comprehensive offense that addresses any obstruction or interference with the administration of law.<sup>51</sup>

In other cases, the current code's failure to define suitable offenses means prosecution is only possible for less serious offenses, resulting in punishment that falls short of the relative gravity of the offense. For example, Title 11 fails to criminalize causing or risking a catastrophe, standard offenses adopted by many jurisdictions from the Model Penal Code.<sup>52</sup> Although these offenses overlap with assault, endangerment, and property damage offenses, their magnitude signals a different kind of harm—one to social stability and infrastructure that is more immediate in the wake of the September 11 attacks and the War on Terror than perhaps it was in 1973 when the current code was enacted. Knowingly causing a catastrophe would normally be graded the equivalent of a current Class A felony; recklessly causing a catastrophe would be a Class B felony; and recklessly creating a substantial risk of a catastrophe would be a Class E felony. Under current law, however the act of causing a catastrophe would count only as criminal mischief (at most, a Class G felony),<sup>53</sup> while risking catastrophe would not be an offense at all unless it involved a risk of physical injury.<sup>54</sup>

Similarly, and unlike most jurisdictions, current Delaware law does not provide an offense for reckless injuring that is separate from assault. The basic form of assault in Title 11 is defined as “intentionally or recklessly” causing either physical injury or serious physical injury.<sup>55</sup> By implication, that definition also includes knowingly causing injury. As a result, a person who injures another person by accident, though recklessly, commits the same offense as both the person who is aware that his conduct is likely to result in injury, and the person who subjectively desires to cause injury. But, intentionally or knowingly causing injury is materially more blameworthy than doing so recklessly, and ought to be punished more severely. The Improved Code avoids this problem by defining assault as an offense separate from, and graded more harshly than, reckless injuring.<sup>56</sup>

### 3. CONSOLIDATE OFFENSES

A third goal is consolidation of all criminal offenses. Perhaps inevitably, four decades of piecemeal modification of the 1973 Code have led to the addition of hundreds of new offenses, many of which cover the same conduct as previous offenses (but, in some cases, provide for conflicting levels of punishment) or appear in various other Titles of the Delaware Code rather than in the criminal code.

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<sup>49</sup> See Improved Code Section 1242.

<sup>50</sup> See 6 Del. C. § 5132 (hindering inspections by the Department of Agriculture); 11 Del. C. §§ 1248 (obstructing the control and suppression of rabies), 1267 (misconduct by a juror), 1273 (unlawful grand jury disclosure); 16 Del. C. § 4759 (obstructing inspection of a pharmacy under the Uniform Controlled Substances Act).

<sup>51</sup> See Improved Code Section 1243.

<sup>52</sup> See Model Penal Code Section 220.2.

<sup>53</sup> See 11 Del. C. § 811(b).

<sup>54</sup> See 11 Del. C. §§ 603–04 (defining reckless endangering).

<sup>55</sup> See 11 Del. C. §§ 611(1), 612(a)(1).

<sup>56</sup> See Improved Code Sections 1022-23.

It is not only redundant, but potentially counterproductive or self-contradictory, to add extra offenses whose prohibitions are identical to an existing offense; or to add prohibitions against narrow, specific forms of conduct in addition to (or in lieu of) a more general prohibition against all such relevant conduct; or to scatter serious crimes throughout the State's statutory code instead of ensuring that all relevant offenses appear within the criminal code, where their significance and relation to one another is clear. Consolidation ensures against the confusion that results when one encounters, and must make sense of, multiple provisions that overlap<sup>57</sup> or contradict, and also against the mistakes that ensue when one fails to notice, or find, provisions that may apply to a given case. Consolidation ensures the briefest, clearest statement of the criminal law's rules, while also exposing and eliminating inadvertent omissions, duplications, and inconsistencies in the statutory scheme. The consolidation goal has two aspects. First, all criminal offenses must be defined within the criminal code itself, and not elsewhere. Second, superfluous specific offenses must be eliminated in favor of a reduced number of offenses that are defined as broadly as is feasible.

As to the first element, a statutory scheme in which a significant number of important offenses are defined outside of the criminal code will have at least three shortcomings. First, and most obviously, the likelihood of notice to the public diminishes as the dispersion of criminal provisions in the state's laws increases. It is simply much easier for the layperson to educate herself about the state's criminal law if that law can be found in one place. A second, and subtler, "notice" problem will affect the legislature itself. If crimes are spread throughout the state statutory code, the legislature will be less likely to view the criminal law as a consistent, unified scheme. A new offense may be placed outside the code, making it less likely that the legislature will consider how that offense fits within the existing matrix of criminal offenses. Additionally, the criminal code itself may be amended without consideration of the amendment's impact on offenses outside the code. Third, the existence of criminal offenses outside the code will generate problems of statutory construction. For example, it may not be clear whether the legislature expected the criminal code's "default" culpability provision to apply to offenses in other Titles. In short, the possibility of criminal offenses appearing outside the criminal code undermines the entire project of setting aside a separate criminal code within the overall state code scheme.

Current Delaware law defines numerous serious crimes outside the criminal code. Over one hundred misdemeanors and nearly one hundred felonies are scattered throughout the Delaware Code, and more than fifty offenses appearing outside Title 11 — many of which overlap, or simply restate, prohibitions in current Title 11 — are graded as Class E felonies or higher. For example, Chapter 10 of Title 31 (Welfare) defines several offenses "instituted to regulate abuses in the payment of funds under the State's public assistance programs."<sup>58</sup> These offenses — graded as high as Class C felonies — overlap substantially with several Title 11 offenses, such as (among others) theft by deception, bribery, solicitation, and tampering with public records.<sup>59</sup> Similarly, Chapter 67 of Title 21 (Motor Vehicles) defines several vehicle theft, fraud, unauthorized use, and criminal damage offenses that are principally aimed at "chop shops" in the business of receiving stolen vehicles. Most of these offenses are graded as Class E felonies — even though all of the relevant conduct (vehicle theft, receiving stolen vehicles,

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<sup>57</sup> According to interpretive canons, such overlapping provisions must be read so that none renders any other superfluous — a task which frequently requires courts to distort the meaning of one provision in order to accommodate another.

<sup>58</sup> 31 Del. C. § 1001.

<sup>59</sup> Compare 31 Del. C. § 1003 et seq. (public assistance fraud), with, e.g., 11 Del. C. §§ 843–44 (theft by false pretense or promise); 1201–03 (bribery and receiving a bribe); 501–03 (solicitation); 873 (tampering with public records).

criminal mischief, unauthorized use of a vehicle) is covered *and graded differently* by provisions in Title 11.<sup>60</sup>

Within the criminal code itself, consolidation is no less important. Formulation of an offense in one provision, rather than many, reduces uncertainty as to the nature and scope of the banned conduct. A general prohibition avoids confusion and grading inconsistency. At the same time, it reduces the need for the legislature to enact additional prohibitions in the future, because a more general provision is more easily adapted to changing circumstances.

Current Delaware offenses often fail to realize this goal of consolidation within a single, general offense. This failure occurs in two ways. In some cases, Title 11 criminalizes specific forms of conduct in lieu of a broader prohibition against such conduct generally. For example, Title 11 contains a number of offenses prohibiting possession of instruments tailored for the commission of individual crimes, but none of them apply to more than a single target offense. Without a comprehensive general offense for possession of instruments of crime, the General Assembly must pass a new law for every situation that arises, leading to inconsistent punishment when some situations are inevitably missed.<sup>61</sup> Similarly, current Delaware law contains no general offense prohibiting the failure to make an entry in public records when such a duty is imposed by law, but instead contains various offenses prohibiting the failure to make required records in specific contexts.<sup>62</sup>

In other cases, Title 11 includes narrow, specific offenses in addition to a broader prohibition against such conduct generally. For example, although one provision in current Title 11 covers theft generally, a number of other provisions in Title 11 prohibit the same underlying conduct — theft by taking (or its attempt or conspiracy) — in the context of specific circumstances or forms of property.<sup>63</sup> The same situation exists for assault offenses<sup>64</sup> and property damage offenses.<sup>65</sup> Similarly, in addition to its general perjury offense,<sup>66</sup> current Delaware law contains numerous offenses criminalizing false statements made under oath or affirmation about particular matters, in particular documents, and in particular proceedings.<sup>67</sup>

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<sup>60</sup> Compare, e.g., 21 Del. C. §§ 6701–10 (vehicle code provisions), with 11 Del. C. §§ 841(b) (defining offense of theft by taking); 851 (defining offense of receiving stolen property).

<sup>61</sup> See, e.g., 11 Del. C. §§ 812(b) (possession of graffiti implements), 828 (possession of burglar’s tools or instruments facilitating theft), 860 (possession of shoplifter’s tools or instruments facilitating theft), 862 (possession of forgery devices).

<sup>62</sup> See, e.g., 16 Del. C. § 4740(g) (knowing failure to keep records of sales of pseudoephedrine or ephedrine); 21 Del. C. § 4603 (knowing failure to submit a record of possession of a vehicle master key).

<sup>63</sup> Compare 11 Del. C. § 841 (general theft offense), with, e.g., 813 (theft of property from a cemetery), 840 (shoplifting), 841A (theft of a motor vehicle), 841B (organized retail crime), 841C (theft of a prescription form or pad), 849 (theft of rented property), 859 (larceny of livestock), 933 (theft of computer services), 1451 (theft of a firearm).

<sup>64</sup> Compare 11 Del. C. §§ 611–13 (general assault offenses) with, e.g., 605–06 (abuse of a pregnant female), 607 (strangulation), 614 (abuse of a sports official), 628–29 (vehicular assault), 1254 (assault in a detention facility), 1339 (adulteration).

<sup>65</sup> Compare 11 Del. C. § 811 (general property damage offense), with, e.g., 3 Del. C. §§ 1041 (wilfully or maliciously starting fires), 1045 (cutting down trees in state forests); 11 Del. C. §§ 805 (cross or religious symbol burning), 812 (graffiti), 936 (destruction of computer equipment); 21 Del. C. §§ 6701 (injuring vehicle or obstructing its operation), 6703 (tampering with vehicle).

<sup>66</sup> See 11 Del. C. §§ 1221–23.

<sup>67</sup> These overlapping perjury offenses create unnecessary and undesirable confusion. For example, some offenses do not explicitly impose 11 Del. C. §§ 1222–23’s requirement that a false statement be material, but then confusingly proclaim that those who commit them are liable for “perjury.” See, e.g., 21 Del. C. § 2620(b) (false statements related to drivers’ licensing).

One useful way to get a rudimentary sense of current law’s failure to consolidate offenses is to assess its sheer verbiage. The Improved Code manages to criminalize the same substantive conduct as current law while using far fewer offense definitions to do so. For example, the Improved Code subchapter on fraud offenses (Subchapter II of Chapter 11) uses only 16.8 percent of the words making up the corresponding offenses in current law (2,732 versus 16,229 words). Similarly, the subchapter covering robbery and assault offenses (Subchapter II of Chapter 10) uses only 24 percent of the words in corresponding current law offenses (2,538 versus 10,545). Overall, the Special Part of the Improved Code uses only 30 percent — or roughly one-third — of the words in the current offenses (33,235 versus 110,637). If anything, however, this figure understates the discrepancy, as many misdemeanors outside Title 11 have not been considered, and the provisions outside Title 11 frequently use one section to impose criminal liability for any violation of an entire set of regulations.

The above examples of current Delaware law’s shortcomings in this area are representative, but by no means exhaustive.<sup>68</sup>

#### 4. GRADE OFFENSES RATIONALLY AND PROPORTIONALLY

For a system of criminal justice to be fair, liability must be assigned according to the relative seriousness of the offense(s) committed. It is critical that a criminal code’s system of grading offenses

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<sup>68</sup> Including the examples discussed in the text, there are at least 22 offenses outside Title 11 that are graded as Class A, Class B, or Class C felonies. *See* 16 Del. C. §§ 1136(a) (causing death by abuse, mistreatment, or neglect of a patient at a nursing or similar facility), 4744 (prohibited practices under the Safe Internet Pharmacy Act), 4752–53 (drug dealing—aggravated possession), 4757 (miscellaneous drug crimes), 4760A (operating or attempting to operate clandestine laboratories), 7113 (violation of any one of a group of regulations relating to explosive materials, resulting in injury or death); 31 Del. C. §§ 1007 (welfare fraud in amount of \$10,000 or more), 3913 (causing death by abuse, neglect, or mistreatment of an impaired adult).

In addition to the examples discussed in the text, the Improved Code also introduces several other offenses generally criminalizing conduct that current Delaware law criminalizes only in particular contexts. Compare proposed Section 1108 (unauthorized distribution of protected works) with, e.g., 11 Del. C. §§ 858 (unlawful operation of a recording device), 920 (transfer of recorded sounds). Compare proposed Section 1122 (fraudulent tampering with records) with, e.g., 11 Del. C. §§ 840A(a) (fraudulent creation or alteration of retail sales receipts), 871 (falsifying business records), 876 (tampering with public records in the first degree), 877 (offering a false instrument for filing), 878 (issuing a false certificate), 909 (securing execution of documents by deception); 31 Del. C. § 1004 (tampering with documents to be filed with public assistance program).

Overlapping offenses are also a recurring problem in current law. Compare 11 Del. C. § 853 (unauthorized use of a vehicle) with 21 Del. C. § 6702 (driving vehicle without consent of owner). Compare 11 Del. C. § 843–44 (theft by false pretense or false promise) with, e.g., 6 Del. C. § 4903A (automobile repair fraud); 11 Del. C. §§ 840(a)(2) (charging retail goods to a fictitious person), 908 (unlawfully concealing a will), 913 (insurance fraud), 913A (health care fraud), 916 (home improvement fraud), 917 (new home construction fraud); 12 Del. C. § 210 (alteration, theft, or destruction of a will); 31 Del. C. § 1003 (welfare fraud). Compare 11 Del. C. § 845 (theft of services) with 11 Del. C. §§ 850 (use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices), 933 (theft of computer services). Compare 11 Del. C. § 861 (forgery) with, e.g., 21 Del. C. §§ 2316 (forgery or fraudulent alteration of vehicle identification documents), 2751 and 2760 (forgery or fraudulent alteration of driver’s licenses or identification cards). Compare 11 Del. C. §§ 821–23 (criminal trespass) with, e.g., 7 Del. C. § 714 (trespass while hunting); 11 Del. C. § 820 (trespass with intent to peer or peep into another’s window). Compare 11 Del. C. §§ 1201 (bribing a public servant), 1203 (receiving a bribe as a public servant), 1209(4) (defining “public servant” to include jurors) with 11 Del. C. §§ 1264 (bribing a juror), 1265 (bribe receiving by a juror).

recognize all, and only, suitable distinctions among the relative severity of offenses and develop a scheme to grade each offense proportionally to its gravity in light of those distinctions.

In most cases, determinations of “seriousness” reflect value judgments as to which reasonable people might differ, and as to which the legislature (as the most direct political voice of the people) should have the ultimate authority. Accordingly, we have sought to defer to the grading determinations exemplified in existing Delaware law where possible. In some cases, however, broad examination of current grading determinations reveals logical inconsistencies that, it is presumed, the General Assembly would have sought to avoid had it been aware of them. Such inconsistencies may develop for several reasons. As new offenses are added to a criminal code, the General Assembly may neglect to consider how the grade of each new offense relates to the grades for other, preexisting offenses. As noted earlier, the sheer increase in the number of offenses, especially offenses outside the criminal code itself, makes it difficult to maintain consistency — assuming one even manages to locate and consider all relevant offenses. In any event, the shared experience of various jurisdictions is that over time, proportionality in the grading of offenses diminishes.

One of the virtues of a broad Code Improvement effort is the opportunity it provides to review the grading system as a whole, considering how all offenses relate to one another rather than considering individual offenses in a vacuum. Following such a review, we have altered the grades of certain offenses where doing so seems necessary to maintain any legitimate sense of proportionality. In addition, a “change” in grading in the Improved Code has sometimes been necessitated by the consolidation of offenses. Because current law often contains multiple offenses that overlap and prohibit the same conduct (as discussed in Section 3 above), but might impose different grades for that conduct, it is simply impossible to follow “current law” on the matter, and it becomes necessary to choose a single, consistent grade for the prohibited conduct.

The task of grading offenses has three goals: each offense’s grading scheme must recognize all relevant distinctions between degrees of the offense; that scheme must avoid introduction of irrelevant distinctions; and the overall grading scheme must maintain proportionality across offenses. We discuss each of these three goals in turn.

Further explanation of this goal follows, along with a representative, but by no means exhaustive, collection of examples of current Delaware law’s shortcomings in this area.<sup>69</sup>

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<sup>69</sup> To list just a few more examples, current law grades conspiracy and solicitation to commit Class B and unclassified misdemeanors more seriously than the target offense, but grades conspiracy and solicitation to commit Class A, B, C, and D felonies much less seriously than the target offense. *See* 11 Del. C. §§ 501–03 (solicitation), 511–13 (conspiracy). *Cf.* Improved Code Section 507 (grading all conspiracies and solicitations one grade lower than the target offense).

Current law grades various specific offenses for possessing instruments tailored for commission of other specific offenses as anything from an unclassified misdemeanor to a Class E felony. *See* 11 Del. C. §§ 850 (a)(1)a. & (b)(1) (possession of unlawful telecommunication devices for theft of telecommunication services, unclassified misdemeanor), 812(b) (possession of graffiti instruments, Class B misdemeanor), 1401 (possession of tickets for illegal lotteries, Class A misdemeanor), 862 (possession of forgery devices, Class G felony), 828 (possession of burglar’s tools, Class F felony); 21 Del. C. § 4604 (illegal possession of motor vehicle master keys, Class E felony). *Cf.* Improved Code Section 508 (establishing a single offense for possessing instruments of crime, graded the same in all cases).

## A. Consistently Recognize Appropriate Distinctions

The Improved Code seeks to ensure that the grading for each offense recognizes all relevant distinctions in the relative seriousness of various forms of an offense. In most cases, current law reflects such distinctions, and the proposed offenses' grading distinctions will tend to track existing distinctions. In a few cases, however, current law's grading for offenses seems too crude, failing to recognize legitimate distinctions of degree.

For example, the four degrees of rape in current law draw many useful distinctions between circumstances for grading purposes, including the relative ages of the victim and offender.<sup>70</sup> However, although the three degrees of unlawful sexual contact take the victim's age into account, the defendant's relative age is not considered.<sup>71</sup> Under this scheme, a person who sexually assaults a 12-year-old child is treated the same regardless of whether the offender is another 12-year-old, or an adult; but an adult rapist in the same situation would be treated more harshly than a child rapist — a sensible distinction.<sup>72</sup> The Improved Code refines the grading of sexual assault by adjusting the grade of the offense based on the same factors as rape.<sup>73</sup>

Likewise, current law grades many forms of fraud as a single class of misdemeanor, regardless of the amount involved in the fraud.<sup>74</sup> Other forms of fraud are graded as either a Class G felony or Class A misdemeanor, depending upon the amount involved.<sup>75</sup> Fraud is fundamentally a form of theft by deception, so it makes sense to grade frauds and thefts similarly. But, neither of these schemes reflects the more nuanced value-based grading for current theft offenses, which utilizes four different grades.<sup>76</sup> The Improved Code —in addition to raising the number of value-based grades for theft from four to eight — grades all frauds and other property-based offenses using the same scheme.<sup>77</sup>

## B. Avoid Irrelevant or Unclear Distinctions

Another goal of the Improved Code is to avoid the inconsistency that results when seemingly similar offenses are graded differently. This goal represents the other side of the offense-degree coin from the goal discussed immediately above: in addition to recognizing all relevant distinctions, the Code must refuse to recognize “distinctions” that do not or should not exist.

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<sup>70</sup> See 11 Del. C. §§ 770–73.

<sup>71</sup> Compare *id.* with 11 Del. C. §§ 767–69.

<sup>72</sup> Compare 11 Del. C. §§ 771(a)(1) (providing a higher grade of rape where the victim is less than 14 years of age, and the offender is at least 19 years of age), 773(a)(5) (providing an even higher grade of rape where victim is less than 12 years of age, and the offender is at least 18 years of age) with 11 Del. C. § 769(a)(3) (providing a higher grade of unlawful sexual assault where the victim is less than 13 years of age, regardless of the offender's age). Note also that the relevant age of the victim — less than 12 or less than 13 years of age — varies between the two sets of offenses, but it is not clear that these different distinctions are meaningful, or that the General Assembly was aware of the apparent discrepancy.

<sup>73</sup> See Improved Code Section 1041(d) (grading sexual assault at three grades lower than it would be for rape under the same circumstances).

<sup>74</sup> See 11 Del. C. §§ 853(4) (defrauding creditors secured on an automobile), 891 (defrauding secured creditors), 892 (fraud in insolvency), 893 (interference with levied-upon property), 906 (deceptive business practices), 910 (debt adjusting).

<sup>75</sup> See 11 Del. C. §§ 900 (issuing a bad check), 903 (unlawful use of payment card).

<sup>76</sup> See 11 Del. C. § 841(c).

<sup>77</sup> See Improved Code Sections 1101 (theft), 1124 (issuing a bad check), 1125 (unlawful use of a payment card), 1126 (deceptive business practices), 1127 (defrauding secured creditors), 1128 (fraud in insolvency), 1144 (criminal damage), 1382(c) (unfair wagering) and their corresponding commentaries.

For example, current law defines the offense of bribery as a Class E felony, but also defines a separate offense to cover “unlawful gratuities” and grades that offense as a Class A misdemeanor.<sup>78</sup> Although current law defines an unlawful gratuity slightly differently than a bribe, it appears to be nothing more than a particular form of bribe, and there is no clear reason to suppose that it merits a different punishment from that for other forms of bribery. This offense is an example of a situation where, as discussed above, current law is internally inconsistent, or at least ambiguous, thereby complicating any effort to track to its stated policy judgments. The Improved Code creates only one bribery offense and ordinarily grades it as the equivalent to a Class E felony.<sup>79</sup>

Similarly, current law grades harassment as a Class A misdemeanor, while grading sexual harassment as an “unclassified misdemeanor” (subject to a maximum sentence of 30 days’ imprisonment).<sup>80</sup> But, some of the conduct that constitutes sexual harassment — “threaten[ing] to engage in conduct likely to result in the commission of a sexual offense” — seems much more serious than an unclassified misdemeanor, being more similar to non-sexual harassment. The Improved Code grades harassment and the quoted portion of sexual harassment the same.<sup>81</sup>

### C. Maintain Proportionality Between Various Offenses

The two goals discussed above relate to decisions about grading specific offenses or degrees of offenses. A third objective in grading criminal offenses is to ensure that grading remains rational when the grades of different offenses are compared with one another. In other words, a criminal code must maintain proportionality of grading across offenses and make certain that the relative level of liability for different offenses parallels the relative harm or wrong they reflect.

Although the Improved Code has deferred, where possible, to the apparent legislative determinations regarding the relative harm of each offense that current grading levels reflect, in a few instances a comparison of different offenses reveals grading discrepancies contrary to any sense of proportionality. For example, consider current law’s grading of the theft offenses. The current scheme properly provides different grades depending on the amount stolen. A theft in valued from \$1,500 to \$50,000 is a Class G felony. However, a theft valued from \$50,000.01 to \$100,000 jumps up three grades to a Class D felony, and a theft valued higher than \$100,000 jumps up another two grades to a Class B felony.<sup>82</sup> As a result, taking \$100,000.01 in property is subject to the same punishment as manslaughter, assault by amputation, second degree rape, and kidnapping without releasing the victim alive and unharmed.<sup>83</sup> At the same time, theft of any amount less than \$1,500 is a Class A misdemeanor. As a result, stealing a sandwich is subject to the same punishment as unlawful sexual contact, simple assault, and highly sophisticated frauds like defrauding secured creditors and fraud in insolvency.<sup>84</sup> The

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<sup>78</sup> See 11 Del. C. §§ 1201–02, 1205–06.

<sup>79</sup> See Improved Code Section 1202 and corresponding commentary.

<sup>80</sup> See 11 Del. C. §§ 763, 1311.

<sup>81</sup> See Improved Code Sections 1045(b)(2)(A) and 1303(c)(1).

<sup>82</sup> See 11 Del. C. § 841(c). In addition to the problems described in this paragraph, note also that a single dollar difference in value generates a four-fold increase in maximum punishment at each threshold. Creating irrational distinctions between different thefts leads to disproportional punishment. See Section 4.B above.

<sup>83</sup> See 11 Del. C. §§ 613(a)(2) (assault by amputation), 632 (manslaughter), 772 (rape in the second degree), 783A (kidnapping in the first degree).

<sup>84</sup> See 11 Del. C. §§ 611 (assault in the third degree), 767 (unlawful sexual contact in the third degree), 891 (defrauding secured creditors), 892 (fraud in insolvency).

Improved Code makes theft grading more proportional compared to other offenses by creating additional grade thresholds and lowering the highest available grade of theft to the equivalent of a Class C felony.<sup>85</sup>

Similarly, the current code's general offense for property damage, criminal mischief, has only one felony grade: a Class G felony for \$5,000 or more in resulting damage.<sup>86</sup> As a result, intentionally destroying the Statue of Liberty (were it located in Delaware) would be subject to the same punishment as issuing a bad check in the amount of \$1,500, failure to await law enforcement's arrival following a motor vehicle accident, and selling drug paraphernalia.<sup>87</sup> The Improved Code makes grading property damage offenses more proportional compared to other offenses by utilizing the same nuanced grading scheme it proposes to use for theft.<sup>88</sup>

Other examples of disproportionate grading are plentiful. For example, current law assigns higher grades to criminally negligent homicide and manslaughter than intentionally causing another person to commit suicide, despite the fact that the latter offense has essentially the same conduct and culpability requirements as first-degree murder.<sup>89</sup> The Improved Code allows a defendant who causes another's suicide to be convicted of any homicide offense for which the defendant meets the proper culpability requirements.<sup>90</sup> Likewise, current law contains an offense for wearing body armor during commission of a felony that is graded the same as negligent homicide of a child by abuse or neglect, aggravated assault with a deadly weapon, and creating child pornography.<sup>91</sup> The body armor offense also creates liability in addition to the underlying felony that will, in most cases, be more severe than the underlying felony itself. The Improved Code avoids both of these problems by converting the body armor-wearing provision into a general grade adjustment that increases the grade of the underlying felony, but does not result in conviction for a second, disproportionately graded offense.<sup>92</sup>

## **5. RETAIN ALL — BUT ONLY — RATIONAL, DEFENSIBLE POLICY DECISIONS EMBODIED IN CURRENT LAW**

Substantive policy decisions about the rules of the criminal law — such as what conduct should be criminalized and what adjudicative rules should govern the imposition of criminal liability<sup>93</sup> — reflect value judgments that are properly made by the General Assembly rather than a group of drafters. For this reason, the Improved Code seeks to follow the substance of current law wherever possible.

In some places, however, current law contains multiple contradictory rules — and therefore no clear rule — on a subject. Other rules may have been sound when enacted, but no longer reflect current

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<sup>85</sup> See Improved Code Section 1101 and corresponding commentary.

<sup>86</sup> See 11 Del. C. § 811(b)(1).

<sup>87</sup> See 11 Del. C. § 900 (issuing a bad check); 16 Del. C. § 4774(c) (manufacture and sale of drug paraphernalia); 21 Del. C. § 4202(b) (failure to await law enforcement following a motor vehicle accident).

<sup>88</sup> See Improved Code Section 1144(b) and corresponding commentary.

<sup>89</sup> Compare 11 Del. C. § 645 (grading promoting suicide as a Class F felony) with 11 Del. C. §§ 631 (grading criminally negligent homicide as a Class D felony), 632 (grading manslaughter as a Class B felony), (636 (first degree murder).

<sup>90</sup> See Improved Code Section 1005(c). Note, however, that due to the problems presented by proving causation in these cases, the proposed provision also requires that the defendant cause suicide “by force, threat, or coercion.”

<sup>91</sup> Compare 11 Del. C. §§ 1449 (wearing body armor during commission of felony; class B felony) with 11 Del. C. §§ 613(a)(1) (assault with a deadly weapon or dangerous instrument), 633 (murder by abuse or neglect in the second degree), 1108 (sexual exploitation of a child).

<sup>92</sup> See Improved Code Section 604(e).

<sup>93</sup> A third substantive category, offense grading, is discussed in Section 4 above.

realities or sensibilities and require expansion, alteration, or deletion. In those situations where the existing legal rule seems clearly at odds with the goal of producing a rational, coherent criminal code, we have been forced to modify the existing rule, using supporting commentary to the Improved Code to describe and justify the proposed change.

Further explanation of this goal follows, along with a representative, but by no means exhaustive, collection of examples of current Delaware law's shortcomings in this area.<sup>94</sup>

## A. Reserving the Most Serious Penalties for the Most Serious Killings

Current Delaware law provides several alternative definitions for murder in the first degree.<sup>95</sup> The main, classic definition of first-degree murder is intentionally causing the death of another person.

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<sup>94</sup> Included here are other examples of current policies that are difficult to reconcile with the existing statutory scheme. First, current Delaware law improperly uses ordinary, tort negligence as a basis of criminal liability. Criminal negligence and recklessness differ from tort negligence and recklessness by requiring that the risk the person takes, or the person's failure to be aware of such a risk, be "a *gross deviation* from the standard of conduct that a reasonable person would observe in the situation." See 11 Del. C. § 231(a) & (e) (emphasis added). Fundamentally, this heightened "gross deviation" standard is what justifies holding a person criminally liable for the accidental effects of that person's conduct. But, in a few cases, Delaware currently makes tort negligence (which contains no heightened standard) the basis of criminal liability, including some serious felonies. See 11 Del. C. §§ 231(d) (defining "negligence" as a culpability requirement separate from criminal negligence), 628A(2) (second degree vehicular assault), 629 (first degree vehicular assault, Class F felony), 630(a)(2) (second degree vehicular homicide, Class D felony), 632(2) (manslaughter, Class B felony); 7 Del. C. § 6074(a) (negligent ocean dumping). Note that current law embraces tort negligence, but not tort recklessness, though there is no obvious reason why one should be incorporated, but not the other. The Improved Code eliminates tort negligence as a culpable state of mind that can support criminal liability. See Improved Code Section 205(b) and corresponding commentary.

Second, the current scheme of inchoate offenses contains an ambiguity that makes it possible to improperly elevate their culpability requirements relative to completed offenses. The current formulation of attempt requires the defendant to "*intentionally* engage in conduct," and conspiracy and solicitation each establish a general culpability requirement of intent. See 11 Del. C. §§ 501–03, 511–13, 531. But, none of these provisions are explicit about what the defendant's culpability must be as to the result or circumstance elements of the completed offense. Reading the explicit "intent" requirements to apply to other elements of the target offense may cause improper results or confusion. For example, 11 Del. C. § 607(a)(1) requires that the defendant "knowingly . . . impede[] the breathing" of a strangulation victim. The strangler need only know that the victim's breathing will be impeded as a result of his conduct. But, under the current inchoate offenses, the culpability requirement might be raised, and the person might need to intend that result before being subjected to inchoate liability. To avoid this problem, proposed Chapter 5 requires that for each inchoate offense, the person need act intentionally only with respect to the conduct that would bring about the underlying offense, but act with the culpability required by the underlying offense for all other elements. See Improved Code Sections 501-03 and their corresponding commentaries.

<sup>95</sup> 11 Del. C. § 636(a) reads:

A person is guilty of murder in the first degree when:

- (1) The person intentionally causes the death of another person;
- (2) While engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any felony, the person recklessly causes the death of another person.
- (3) The person intentionally causes another person to commit suicide by force or duress;
- (4) The person recklessly causes the death of a law-enforcement officer, corrections employee, fire fighter, paramedic, emergency medical technician, fire marshal or fire police officer while such officer is in the lawful performance of duties;
- (5) The person causes the death of another person by the use of or detonation of any bomb or similar destructive device;

This offense combines the most egregious harm—killing another human being—with the most culpable state of mind—subjective desire to kill. For that reason, first-degree murder is universally considered the most serious offense, and why it has been the only offense in Delaware eligible for capital punishment. However, the remaining alternative definitions of first-degree murder do not require the defendant to intentionally cause death. Instead, they require mere recklessness.<sup>96</sup> These definitions elevate killings that would otherwise be manslaughter to capital murder. This violates the general principle reflected throughout the current code that more culpable states of mind make an offender more blameworthy, and therefore deserving of greater punishment. Put simply, no matter how harmful a defendant’s conduct may be, recklessness is not blameworthy enough to merit capital punishment.

The current death penalty sentencing procedures for first-degree murder add another layer of inconsistency and disproportionality to this situation. Before a defendant can be sentenced to death, Delaware requires that a jury independently find the existence of an aggravating factor, enumerated in the procedures, unanimously and beyond a reasonable doubt.<sup>97</sup> But, if the offense is committed in one of the alternative, reckless ways, the required aggravating factor is automatically established, bypassing the jury’s usual finding.<sup>98</sup> This double counting produces an irrational result, making it more difficult to execute a person who deserves the death penalty for intentional killing, than a person who does not.

On the other hand, the kinds of reckless killings currently eligible for the death penalty are objectively more serious than ordinary manslaughter. The Improved Code recognizes this distinction, but avoids the proportionality and consistency problems described above, in two ways. First, it retains the killing of police officers and emergency personnel in the line of duty as eligible for the death penalty, by elevating the culpability level for such killings to “knowing.” This higher level of culpability, combined with the especially condemnable nature of the conduct, warrants the grading of this conduct as the most serious offense in the Improved Code, alongside intentional murder. Second, the Improved Code still preserves all the alternative definitions of first-degree murder requiring recklessness, but treats them as forms of second-degree murder instead of first-degree murder.<sup>99</sup> Thus, the death penalty is reserved for the only conduct truly blameworthy enough to deserve it—intentionally killing another human being, or knowingly killing police officers and emergency personnel in the line of duty.<sup>100</sup>

Before closing, we note that members of the Working Group have, as one would think, diverse views about whether the death penalty is an appropriate punishment and some members of the group believe it should not be an available punishment. As things now stand, Delaware has no constitutionally viable procedures of implementing the death penalty. The Working Group realizes the General Assembly will face proposals to address that situation. All members of the Working Group understand that the decision of whether the death penalty should persist is one for the General Assembly. The Improved Code, the Working Group believes, is not the vehicle for the General Assembly to deal with the current status of the procedural provisions dealing with the death penalty. For that reason, the Working Group

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(6) The person causes the death of another person in order to avoid or prevent the lawful arrest of any person, or in the course of and in furtherance of the commission or attempted commission of escape in the second degree or escape after conviction.

<sup>96</sup> 11 Del. C. § 636(2) and (4) have explicit culpability requirements of recklessness. Subsections (5) and (6) do not contain explicit culpability requirements; but, under § 251(b), recklessness is read in as the lowest level of culpability that need be proven. Subsection (3)—intentionally causing another person to commit suicide by force or duress—is not considered here because the Improved Code maintains this provision (and its eligibility for the death penalty) through a new offense for causing suicide. *See* Section 1005(c).

<sup>97</sup> *See* 11 Del. C. § 4209(c)(3)b.1.

<sup>98</sup> *See* 11 Del. C. § 4209(e)(2).

<sup>99</sup> *See* Improved Code Section 1002(a)(2)b.—(a)(3).

<sup>100</sup> *See* Improved Code Section 1001.

has not proposed altering those provisions and has left them in place with whatever effect they currently have.

## **B. Returning to the Classic Intent Requirement for Burglary**

Burglary is a compound crime composed of two different offenses: a trespass, and any other offense committed during the trespass (usually theft). Before burglary was recognized as an offense, the State could convict a defendant of both offenses based on the two separate harms involved. Burglary exists as a separate offense for only one reason: to recognize an additional harm that occurs when a defendant's trespass is motivated by the desire to commit a further offense. As a result, a defendant need not actually succeed in committing the offense motivating the trespass to commit burglary: trespassing because of a preexisting intent is sufficient.<sup>101</sup>

In 2008, the General Assembly dramatically redefined the intent requirement for burglary, amending the offense definition so that “[t]he ‘intent to commit a crime therein’ may be formed . . . concurrent with the unlawful entry or . . . after the entry while the person remains unlawfully.”<sup>102</sup> As discussed above, however, forming intent before the trespass is the only harm that burglary uniquely addresses, thereby justifying its existence. Now, any offense committed during a trespass automatically generates liability for burglary, despite the State's ability to charge and convict the defendant of both that offense and the trespass. In that case, the defendant is subject to liability for multiple offenses for causing the same harm.

This result is inconsistent with two basic principles of the current code that are also legislative mandates for this Code Improvement Project under the Epilogue: comprehensiveness and proportionality. The comprehensive definition of offenses allows each harm or injury caused by a defendant to be punished as a separate offense — but only *one* offense. Punishing one harm or injury with multiple offenses always results in disproportionate punishment. The Improved Code returns to a consistent application of these principles in burglary prosecutions by undoing the recent, novel reinterpretation of its intent requirement.<sup>103</sup> Beyond burglary, the Improved Code helps reinforce the principle of “one harm, one offense” by explicitly placing that limitation upon conviction for multiple offenses.<sup>104</sup>

## **C. Revising the Mental Illness or Psychiatric Disorder Defense**

Since the 1973 Code was adopted, the General Assembly has adopted provisions that limit the scope of the mental illness or psychiatric disorder (“insanity”) defense, largely due to a perception that the insanity defense has been subject to abuse. But, various studies strongly suggest this assumption is empirically unsound.<sup>105</sup> Meanwhile, additional policy concerns call these limitations into question.

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<sup>101</sup> See 11 Del. C. § 824 (“A person is guilty of burglary . . . when the person knowingly enters or remains unlawfully in a building with intent to commit a crime therein.”)

<sup>102</sup> See 2008 Delaware Laws Ch. 267 (H.B. 208) (amending 11 Del. C. § 829 (definitions relating to criminal trespass, burglary and home invasion)).

<sup>103</sup> See Improved Code Section 1161 and corresponding commentary.

<sup>104</sup> See Improved Code Section 209(a)(!)a.—b..

<sup>105</sup> It has been well documented that the lay public has an exaggerated sense of how often the insanity plea is used as well as how often verdicts of “not guilty by reason of insanity” (“NGRI”) are granted. For example, people generally believe, wrongly, that the insanity defense is a common issue in criminal trials. One study found that people thought that thirty-eight percent of all defendants charged with a crime pleaded NGRI. See Valerie P.

For example, current law provides for a “guilty but mentally ill” verdict (“GBMI”) as a supposed compromise between a verdict of not guilty by reason of insanity (“NGRI”) and a conviction.<sup>106</sup> Although this verdict was meant to reduce NGRI acquittals, the number of NGRI verdicts in some states where such data has been collected actually increased after the GBMI verdict was enacted.<sup>107</sup> The GBMI verdict is troublesome because it has no legal significance,<sup>108</sup> yet distracts the jury into considering the technical clinical issue of whether an offender needs psychiatric treatment, although the determination of guilt should be the jury’s sole responsibility. Nevertheless, the GBMI is an established feature in current Delaware law. Moreover, supporters of GBMI maintain that this verdict option is beneficial to the defendant. The Improved Code provides a compromise between these differing approaches on the GBMI

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Hans, *An Analysis of Public Attitudes Toward the Insanity Defense*, 24 CRIMINOLOGY 393, 406 (1986); See also Eric Silver et al., *Demythologizing Inaccurate Perceptions of the Insanity Defense*, 18 LAW & HUM. BEHAV. 63, 67-68 (1994). In reality, an insanity plea is exceedingly rare, raised in only a fraction of a percent of felony cases. See, e.g., Lisa A. Callahan et al., *The Volume and Characteristics of Insanity Defense Pleas: An Eight-State Study*, 19 BULL. AM. ACAD. PSYCHIATRY & L. 331, 334 (1991). (Note that this is less than one percent of all felony cases, although the lay subjects estimated insanity pleas for 38% of all persons charged with any crime). See also Richard A. Pasewark & Hugh McGinley, *Insanity Plea: National Survey of Frequency and Success*, 13 J. PSYCHIATRY & L. 101 (1985) (reporting median rate of one plea per 873 reported crimes). Also contrary to popular belief, more than half of the few cases where an insanity plea is introduced involve nonviolent offenses. See HENRY J. STEADMAN ET AL., BEFORE AND AFTER HINCKLEY: EVALUATING INSANITY DEFENSE REFORM 111 (1993); See also Callahan et al., *supra*, at 336.

In addition, it has been reported that even in the rare cases in which the insanity defense is sought, it is usually not granted, yet the public perceives that it is commonly granted. See, e.g., Callahan et al., *supra*, at 334 (reporting average acquittal rate of 26% on NGRI pleas); Pasewark & McGinley, *supra*, at 106 (reporting success rate of 15% of pleas); Hans, *supra*, at 406 (reporting study indicating that public believes over 36% of all NGRI claims, constituting perceived 14% of all criminal cases, result in NGRI verdict); Mary Frain, *Professor Says Insanity Defense Seldom Works*, TELEGRAM & GAZETTE (Worcester, MA), Jan. 19, 1996, at B1 (quoting chair of psychiatry at the University of Massachusetts Medical Center as saying that general public believes the insanity defense is used in 20 to 50 percent of all criminal cases).

Claims that the defense is abused and employed to manipulate juries are also belied by the fact that most NGRI pleas are not contested, and the vast majority of NGRI verdicts — 93%, in one study — are reached through negotiated pleas or rendered by judges in bench trials, rather than by juries. See Michael L. Perlin, *A Law of Healing*, 68 U. CIN. L. REV. 407, 425 (2000) (“Nearly 90% of all insanity defense cases are ‘walkthroughs’ — stipulated on the papers.”); Callahan et al., *supra*, at 334. Another refutation of the abuse concern is the fact that most NGRI acquittees have significant histories of treatment for mental illness. See, e.g., Michael R. Hawkins & Richard A. Pasewark, *Characteristics of Persons Utilizing the Insanity Plea*, 53 PSYCHOL. REP. 191, 194 (1983); Steadman et al., *supra*, at 56.

These massive misconceptions regarding the practical significance of the insanity defense fuel the general sense that the insanity defense is being abused and that something must be done to limit the abuse. See Michael L. Perlin, *“The Borderline Which Separated You From Me”: The Insanity Defense, the Authoritarian Spirit, the Fear of Faking, and the Culture of Punishment*, 82 IOWA L. REV. 1375, 1375 & nn.5-6 (1997) (citing polls suggesting that “ninety percent [of Americans] believe that the insanity plea is overused”).

<sup>106</sup> See 11 Del. C. § 401(b), 408–09.

<sup>107</sup> See Christopher Slobogin, *The Guilty But Mentally Ill Verdict: An Idea Whose Time Should Not Have Come*, 53 GEO. WASH. L. REV. 494, 506–07 (1985).

<sup>108</sup> GBMI is not a “middle position” in terms of its consequences. It has the same effect as a guilty verdict, See 11 Del. C. § 408(c), even in terms of the defendant’s receiving a psychological evaluation, which is required for all convicts. See 11 Del. C. § 408(b); cf. 11 Del. C. § 6523 (requiring the Department of Corrections to make psychological “studies and investigations” of inmates “for the purpose of rehabilitation.”).

verdict. It retains it as an alternative verdict, but specifies that this option will only be made available to the trier of fact if requested by the defendant.<sup>109</sup>

#### **D. Eliminating Archaic and/or Obsolete Offenses**

Title 11 contains a number of outdated offenses that do not belong in a modern criminal code. The Improved Code attempts to identify and eliminate these offenses. For example, the proposed Chapter covering theft offenses removes the current offense of larceny of livestock, transfer of recorded sounds, and operation of a recording device in a movie theater.<sup>110</sup> All evidence indicates that these offenses are currently unenforced, despite the fact that there is no special difficulty in identifying people who commit them. Such non-enforcement can only reflect a conscious decision that imposition of criminal liability for these offenses is improper, or at least a waste of State resources. Maintenance of dead-letter statutes of this kind only tends to invite abuse and to undermine the authority of the criminal law as a comprehensive and accurate reflection of the governed community's sense of what behavior is sufficiently improper to merit imposition of punishment.<sup>111</sup>

### **PREPARING FOR CHANGE**

Change is scary and there is a natural human tendency to cling to what is known, even if what is known is less than ideal. However unwieldy and difficult to understand the current Delaware Code is, it is the current code and there is an understandable fear on the part of some that change will be difficult.

But, the reality is that every year new prosecutors, defense lawyers, police officers, correctional officers, and others have to learn the provisions of a cumbersome code. Judicial decisions continue to be written trying to make sense of a code that has not had a comprehensive examination since its enactment. And the reality is that the current code is so disjointed that even experienced practitioners cannot pretend that it is clear and do not pretend to claim that it is. In fact, when one member of the Working Group was a leader of one of Delaware's top police forces, he referred to it as "Frankencode." Conversely, in tandem with its drafting principles, the Improved Code draws on the language of the Model Penal Code in many areas where the current code could be improved upon in accordance with the epilogue's mandate. The Model Penal Code is a leading authority that all criminal law practitioners refer to regularly, and its language provided the foundation for the current code and has been the subject of numerous judicial decisions and helpful commentary. By hewing to the Model Penal Code's approach when appropriate, the Improved Code further facilitates ease of use by Delaware prosecutors, defense attorneys, police, correctional officials, judges and the public.

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<sup>109</sup> See Improved Code Section 323 and corresponding commentary.

<sup>110</sup> See 11 Del. C. § 859.

<sup>111</sup> For other specific offenses eliminated by the Improved Code, see, for example, 11 Del. C. §§ 614 (abuse of a sports official), 627 (prohibited acts as to substances releasing vapors or fumes), 823 (portion of criminal trespass in the first degree relating to "a building used to shelter, house, milk, raise, feed, breed, study or exhibit animals."), 918 (ticket scalping), 1004 (advertising marriage in another state), 1327 (maintaining a dangerous animal), 1365 (obscene literature harmful to minors), and 1366 (outdoor motion picture theaters). Where the conduct prohibited by these offenses is genuinely harmful and blameworthy, it should fall within the more general prohibitions of another proposed provision. For example, maintaining a dangerous animal is only an offense where the animal actually causes injury or death to a person or other animal. Any of those cases could be prosecuted as a form of homicide, reckless injuring, or property damage, and one can imagine other proper offenses that could be charged due to maintaining a dangerous animal, such as reckless endangerment.

It is also bears emphasizing that the benefits of the criminal code reforms described above can only be realized if the entire code is reformed all at once. A piecemeal approach to code reform may seem like an attractive alternative to some, but it would in reality be worse than making no changes at all to current law. Making piecemeal changes to the existing code is exactly how we came to have the sprawling, confusing, and inconsistent code that we have now. Our criminal code is supposed to be cohesive and consistent—the foundational document of our criminal justice system. But when just one piece of the code is “fixed,” it creates inconsistencies and imbalance with the parts of the code that remain untouched. Here are some examples:

- The Improved Code’s goal of proportional grading. The current code uses grade aggravators for circumstances like recidivism and vulnerable/elderly victims, but applies them inconsistently to only certain offenses. If the code is genuinely to be proportionate, these factors must be given equal weight and applied uniformly. The only way to do this is through a comprehensive, whole code review of grades and aggravators—which was done to produce the Improved Code.
- The Improved Code’s goal of simplicity. The drafters of the Improved Code strove to make the language and structure of the criminal laws much easier for readers to understand. Simplifying only pieces of the existing law leaves the rest of the law hard to understand. Portions of the code would be modern, and other portions would be left antiquated. But even worse, the conflicting approaches to structure and language coexisting in that code would create new ambiguities, courting litigation to resolve the new issues and encouraging further patchwork legislation. That would make the code in greater need of reform than if nothing at all had been changed. The result would actually undermine the legislative mandate to improve the code. The only way to fulfill the General Assembly’s mandate to produce a high-quality, clear, proportionate, non-redundant, and fair code is to reform the whole code at one time.
- Approaching mandatory minimum sentences. The Improved Code does not eliminate mandatory minimum sentences. However, it does create a consistent, principled scheme for applying minimum sentences—unlike the contradictory ad hoc approach in the current code. Continuing to “reform” mandatory minimums ad hoc would just perpetuate the problem we have now. The only way to create a better approach to mandatory minimums is the approach of the Improved Code—to look at all mandatory minimums together, find their common features, and establish consistent rules. This addresses minimums in a cohesive, rational manner focusing on the very worst crimes—crimes of violence, sexual offenses, and weapons offenses.
- Future sentencing guidelines. Wholesale criminal code reform creates the necessary, but welcome, opportunity for new sentencing guidelines. The comprehensive grading table discussed above will make it possible to create consistent and credible: (1) sentencing ranges for each felony grade, and (2) approaches to aggravators like recidivism and vulnerable victims. This credibility means that the guidelines can be given real “teeth” without the concern that unjust sentences will result. The current code’s wildly inconsistent approach to mandatory minimums creates many different sentencing ranges within a single felony grade. At least ten Class B felonies in current law have sentencing ranges outside of the 2 to 25 year range provided for Class B felonies generally. For example, the sentence for possession of a deadly weapon by a person prohibited due to a prior violent felony conviction is 4 to 25 years; and the sentence for home invasion is 6 to 25 years. These same problems plague other felony classes as well. With a principled, rational approach to mandatory minimums, the sentencing ranges of felonies in the

Improved Code can likewise be principled and rational. Many felonies in current law can have their grades increased if aggravating factors, such as repeat offending or vulnerable/elderly victims, are present. But the determinations of what aggravators to apply to which felonies have been done ad hoc, resulting in widespread inconsistency and disproportionate punishment. For instance, some provisions in current law provide an upward adjustment for a third offense (for example, 11 Del. C. § 841B(c)), while others are for the second or subsequent offenses (for example, 11 Del. C. § 1455). These offense-specific provisions are unnecessarily inflexible, because they only apply to offenders who repeat the same offense. In contrast, the Improved Code provides increases the grade of an offense for repeated commission of felonies—but they can be different felonies. The Improved Code takes a unified approach to these important aggravators, making every felony eligible for increased punishment if the right circumstances are present. This makes the sentencing ranges for felonies, and their attending sentencing guidelines, much more defensible.

To manage the change process, the draft proposes that the effective date of any code be 20 months after enactment. During that time, a law enforcement officer's guide to the new Code should be produced, and intensive training for prosecutors, defense attorneys, judges, and other criminal justice constituents should and will be conducted. Precisely because the Improved Code is more rational, shorter, and clearer, it will in fact be easier for those who must use it to understand and apply it.

As important, work should be done during that time to make sure that model jury instructions and updated sentencing guidelines are ready for use that track the new Code. The clarity of the Improved Code is such that crafting reliable jury instructions, and keeping them current will be much easier.

Change is no doubt difficult, but necessary. Fear of change cannot justify adhering to a code that is impossible for any human being to understand, is fraught with inconsistencies and ambiguities, and is overly long and unduly complex. Rather, commitment to a just system of criminal justice and to helping those who labor in the trenches to make the rule of law come to life requires sensible reform, the enactment of a clear, rational, and easier-to-understand criminal code, and making sure that an educational plan is in place to help key players deal with the positive change that will be coming their way.

## **CONCLUSION**

The creation of the Delaware Criminal Code Improvement Project represents a rare and profound opportunity to eradicate the numerous inconsistencies and contradictions that currently plague Delaware criminal law. In nearly all cases, the needed corrections are significant, but should not be at all controversial, for it is usually possible to clean up the form and structure of the law without altering its fundamental goals or rules. The Improved Code both simplifies and rationalizes the statutory criminal law of Delaware. It is rooted in the values and policy judgments of the present, but its language, organization, and comprehensive scope promise to better serve those interests in the future.

SPONSOR:

DELAWARE STATE SENATE

150th GENERAL ASSEMBLY

SENATE BILL NO.

AN ACT TO AMEND TITLE 11, PART I, OF THE DELAWARE CODE RELATING TO THE DELAWARE CRIMINAL CODE.

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

Section 1. Amend Title 11 of the Delaware Code by deleting Part I, Title 11 of the Delaware Code in its entirety.

Section 2. Amend Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Part I: Delaware Criminal Code.

Subpart A. General provisions.

Chapter 1. Preliminary provisions.

§ 101. Short Title.

This part is known and may be cited as the “Delaware Criminal Code of 2019”.

§ 102. Applicability to offense committed before [effective date of this Act].

(a) This part establishes the criminal law of Delaware and governs the construction of and punishment for an offense committed after [the effective date of this Act], and the construction and application of any defense to prosecution for an offense.

(b) Prosecution for an offense committed before [the effective date of this Act] is governed by the prior law. In a case pending on or commenced after [the effective date of this Act] involving an offense committed before that date, a provision of this part that provides a defense or mitigation applies, if the defendant consents to the provision’s application.

§ 103. Definitions.

As used in this part, a word not defined in this section has its commonly accepted meaning, and may be defined as appropriate to fulfill the general purposes listed in Section 102. As used in this part:

(1) “Abortion” means terminating the pregnancy of a woman known to be pregnant, intending that the fetus not live afterwards.

(2) “Abuse” means causing physical injury to a child that is not justified under Subchapter I of Chapter 3 of this title, torture, negligent treatment, sexual abuse, exploitation, maltreatment, or mistreatment.

(3) “Acquittal” means a prosecution that resulted in a finding of not guilty by the trier of fact or in a determination that insufficient evidence existed to warrant a conviction.

(4) “Acquittal of inclusive offense” means a finding of guilt of an included offense is an acquittal of the inclusive offense, even if the conviction is later set aside.

(5) “Adulterated” means varying from the standard of composition or quality prescribed by or under any statute providing criminal penalties for such variance, or set by established commercial usage.

(6) “Agent of the organization” means a director, officer, or employee of an organization, or any other person who is authorized to act on behalf of an organization.

(7) “Anabolic steroid” means as defined in § 4718 of Title 16.

(8) “Attempt” or “attempting” means an act that satisfies the definition of an attempt in § 501 of this title.

(9) “Authorized abortion” means an abortion authorized under Subchapter IX of Chapter 17 of Title 24.

(10) “Authorized prescription” means a prescription issued by a licensed practitioner who has a patient-practitioner relationship with the intended recipient of the prescription drug.

(11) “Bump stock” means an after-market device that increases the rate of fire achievable with a semi-automatic rifle by using energy from the recoil of the weapon to generate a reciprocating action that facilitates repeated activation of the trigger.

(12) “Catastrophe” means any of the following:

a. Serious physical injury to 5 or more persons.

b. Substantial damage to 5 or more buildings or habitable structures.

c. Substantial damage to a vital public facility that seriously impairs its usefulness or operation.

(13) “Catastrophic agent” means an explosive, incendiary device, timing or detonating mechanism for an incendiary device, poison or poisonous gas, deadly biological or chemical contaminant or agent, or radioactive substance.

(14) “Chemically impaired” means, except as authorized by law, an individual is or has any of the following:

a. Less able than an individual would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care due to consumption of alcohol, a controlled substance, another intoxicating substance, or a combination of alcohol, a controlled substance, or another intoxicating substance.

b. An alcohol concentration of .08 or more, meaning any of the following:

1. An amount of alcohol in a sample of an individual’s blood equivalent to .08 or more grams of alcohol per 100 milliliters of blood.

2. An amount of alcohol in a sample of an individual’s breath equivalent to .08 grams per 210 liters of breath.

c. Blood containing any amount of the following substances, or a preparation or mixture containing 1 of them:

1. A Schedule I controlled substance under § 4714 of Title 16.

2. Cocaine, as described in § 4716 of Title 16.

3. Amphetamine, including its salts, optical isomers, and salt of its optical isomers, as described in § 4716 of Title 16.

4. Methamphetamine, including its salt, isomer or salt of an isomer thereof, as described in § 4716 of Title 16.

5. Phencyclidine, as described in § 4716 of Title 16.

6. A designer drug, as defined in § 4701 of Title 16.

(15) “Child” means a person less than 18 years old, unless a specific provision of this part provides otherwise.

(16) “Child pornography” means a visual depiction of a person less than 18 years old engaged in sexual conduct regardless of any of the following:

a. Whether the conduct is actual or simulated.

b. Whether the depiction has been created, adapted, modified, or edited to merely appear as though the person is engaged in sexual conduct.

(17) “Circumstance element” means any objective element that is not a conduct or result element.

(18) “Combat event” means any match, contest, or event that features boxing, mixed martial arts, or any other combative sport.

(19) “Commercial animal” means an animal that is all of the following:

a. Grown, raised, or produced in the State for sale or resale of a product of the animal.

b. Sold or resold by a person that has all necessary licenses for the sale or resale of a product of the animal.

c. Sold or resold by a person that receives at least 25% of the person’s annual gross income from that sale or resale of a product of the animal.

(20) “Commercial electronic mail” means any electronic mail message that is sent to a receiving address or account for the purposes of advertising, promoting, marketing, or otherwise attempting to solicit interest in any good, service, or enterprise.

(21) “Computer services” includes computer access to computer networks, data processing, and data storage.

(22) “Computer system” means a computer, its software, related equipment, or communications facilities.

(23) “Conduct element” means a part of an offense that requires a person’s act or failure to perform a legal duty.

(24) “Consequence” means a result element of an offense and the attendant circumstance elements that characterize the result.

(25) “Contents of a communication” includes any information concerning the identity of a party to the communication or the existence, substance, or meaning of that communication.

(26) “Controlled substance” means a drug, substance, or immediate precursor in Schedules I through V of Subchapter II of Chapter 47 of Title 16, and includes designer drugs.

(27) “Conviction” means a prosecution that resulted in 1 of the following:

- a. A judgment of conviction that has not been reversed or vacated.
- b. A verdict of guilty that has not been set aside and is capable of supporting a judgment.
- c. A plea of guilty or nolo contendere accepted by the court.

(28) "Correctional officer" means an individual employed to supervise and control individuals incarcerated in or in the custody of a correctional institution or the Division of Youth Rehabilitative Services.

(29) "Counterfeit mark" means any unauthorized reproduction or copy of intellectual property or intellectual property affixed to any item knowingly sold, offered for sale, manufactured, or distributed, or identifying services offered or rendered without the authority of the owner of the intellectual property.

(30) "Criminal negligence" means as defined in § 205(b)(4) of this title.

(31) "Criminal street gang" means any ongoing organization, association, or group of 3 or more persons, whether formal or informal, that has all of the following:

- a. A common name or common identifying sign or symbol.
- b. Members who individually or collectively engage in or have engaged in a pattern of criminal gang activity.
- c. As one of its primary activities, the commission of criminal offenses.

(32) "Criminally negligent mistake" means an erroneous belief that a person is criminally negligent in forming or holding.

(33) "Cruelty" means any act or omission whereby unnecessary or unjustifiable physical pain, suffering, or death is caused or permitted.

(34) "Damage", when referring to property, means impairing a property's usefulness or value by any means, and includes deleting or altering computer programs or other electronically recorded data, or impairing access to computer services.

(35) "Dangerous instrument" means any instrument, article, or substance that, under the circumstances in which it is used or threatened to be used, is readily capable of causing death or serious physical injury. "Dangerous instrument" includes disabling sprays, such as pepper spray, and electronic devices designed to incapacitate an individual, such as tasers.

(36) "Data" means information of any kind in any form.

(37) “Deadly force” means force that a person intends to cause, or knows creates a substantial risk of causing, death or serious physical injury. “Deadly force” includes intentionally firing a firearm under either of the following circumstances:

a. In the direction of another person.

b. At a vehicle in which the person believes another person to be riding.

(38) “Deadly weapon” includes any of the following:

a. A firearm, whether operable or inoperable.

b. A bomb; switchblade knife; knife, other than a folding knife, 3 inches or less in length in its closed position; billy; blackjack; bludgeon; metal knuckles; slingshot; or razor.

c. A dangerous instrument, when it is used with intent to cause death or serious physical injury.

(39) “Deadly weapon designed for the defense of one’s person” includes a pistol, revolver, stiletto, or steel or brass knuckles. “Deadly weapon designed for the defense of one’s person” does not include a toy pistol, pocketknife, knife used for sporting purposes or in domestic households, or surgical instrument.

(40) “Dealer” means a person in the business of buying, selling, or lending on the security of goods, including a pawnbroker.

(41) “Deceiving”, “deceive”, or “deception” means any of the following:

a. Creating or reinforcing a false impression as to any fact.

b. Preventing another person from acquiring information that would adversely affect the other person’s judgment of a transaction.

(42) “Defendant” means a person accused or convicted of committing a criminal offense.

(43) “Defense” means a provision in this part that explicitly uses the word “defense,” other than a general defense provision. A defense negates potential liability for an offense.

(44) “Defraud” means to obtain anything of value through deception.

(45) “Deliver” or “delivery” means the actual or constructive transfer from one person to another, regardless of whether there is an agency relationship.

(46) “Dependent child” means either of the following:

a. An individual less than 18 years old.

b. An individual more than 18 years old but less than 19 years old who is enrolled in high school.

(47) “Deprive” means to do any of the following:

a. Withhold property of another person permanently or for so extended a period as to appropriate a major portion of its economic value, or with the intent to restore it only upon payment of a reward or other compensation.

b. Dispose of property of another person so as to make it unlikely that the owner will recover it.

(48) “Destructive weapon” means any of the following:

a. A bomb or bomb shell.

b. A firearm silencer.

c. A shotgun that meets any of the following conditions:

1. Has 1 or more barrels less than 18 inches in length.

2. Is modified to have an overall length of less than 26 inches.

d. A machine gun or weapon that is adaptable for use as a machine gun.

(49) “Drug paraphernalia” means as defined in § 4701 of Title 16, but does not include items that are traditionally intended for use with tobacco products, such as pipes, paper, or accessories.

(50) “Dwelling” means a structure or vehicle in which a person usually lodges.

(51) “Electronic communication” means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of electronic, microwave, radio, cable, satellite, or other connection between the point of origin and the point of reception furnished or operated by a common carrier.

(52) “Electronic mail” means any message that is automatically passed from an originating address or account to a receiving address or account.

(53) “Enterprise” means any of the following:

a. Sole proprietorship, partnership, corporation, trust, or governmental or other legal entity.

b. Union, association, or group of persons associated in fact, even if not a legal entity.

(54) “Entry” means a person introduces a body part or a part of an instrument, by whatever means, into or upon premises.

(55) “Exception to liability” means a provision in this part stipulating a modification or refinement of a single offense or a related group of offenses, other than a defense or a general defense provision. An exception to liability negates potential liability for an offense.

(56) “Excuse defense” means a defense described in Subchapter II of Chapter 3 of this part.

(57) “Firearm” means any weapon from which a bullet, projectile, or other object may be discharged by force of combustion, explosive, gas, or mechanical means, regardless of whether the weapon is loaded or stored in multiple pieces. “Firearm” does not include a B.B. gun.

(58) “Force” means the exercise of physical power, violence, or pressure against a person or thing, and includes confinement or restraint.

(59) “Funerary object associated with interment” means any of the following:

a. An item of human manufacture or use that has been intentionally placed with human remains at the time of interment in a burial site, or later as a part of a death rite or ceremony of a culture, religion, or other group.

b. A gravestone, monument, tomb, or other structure in or directly associated with an existing burial site.

(60) “Gambling device” means a device, machine, table, paraphernalia, or equipment designed for use in the playing phases of any gambling activity. “Gambling device” does not include a lottery ticket.

(61) “Gender identity” means a gender-related identity, appearance, expression, or behavior of an individual, regardless of the individual’s assigned sex at birth.

(62) “General defense” means the provisions of Chapter 3 of this part.

(63) “Genitalia” means any of the following:

a. A vagina, labia minora, labia majora, or clitoris.

b. A penis or scrotum.

(64) “Handgun” means a pistol, revolver, or other firearm designed to be fired when held in 1 hand.

(65) “Harm to another person” means loss, disadvantage, injury, or anything so regarded by the person affected, including acts done to a third person in whose welfare the person is interested.

(66) “High managerial agent” means an officer of an organization, or any other organizational agent in a position of comparable authority as to the formulation of organizational policy or the managerial supervision of subordinate employees.

(67) “Human remains” means any part of the body of a deceased individual in any stage of decomposition.

(68) “Improperly terminated” means a prosecution that is terminated for reasons that do not include an acquittal and takes place after the first witness is sworn but before the verdict. “Improperly terminated” does not include either of the following circumstances:

a. The person consents to the termination or waives, by motion to dismiss or otherwise, the right to object to the termination.

b. The trial court declares a mistrial in accordance with law.

(69) “Incendiary device” means an item designed to ignite by hand, chemical reaction, or spontaneous combustion, and includes bombs and other explosives.

(70) “Inchoate offense” means any offense defined in Chapter 5 of this title.

(71) “Intentionally” means as defined in § 205(b)(1) of this title.

(72) “Intercept” or “interception”, when referring to a communication, means visual acquisition, aural acquisition, or the recording by any means of all or part of the contents of the communication.

(73) “Internet pharmacy” does not include a pharmacy for which the Delaware State Board of Pharmacy has issued a valid permit or license. “Internet pharmacy” means a person who meets all of the following conditions:

a. Maintains a website that solicits, receives, or offers to solicit or receive prescription drug orders.

b. Dispenses or delivers, or intends to dispense or deliver, prescription drug orders to patients in this State through the mail or other delivery service.

(74) “Intoxication” means a disturbance of mental or physical capacities resulting from the introduction of a substance into the body.

(75) “Involuntary intoxication” means intoxication that does not meet the definition of “voluntary intoxication”.

(76) “Issue a check” means a person meets all of the following conditions:

a. Is the drawer of the check or signs in a capacity as representative or agent of the principal drawer or obligor.

b. Delivers or causes the check to be delivered to a person who acquires a right against the drawer as to the check by reason of delivery.

(77) “Juror” means a person who has received notice of summons to appear for jury service.

- (78) “Justification defense” means a defense described in Subchapter I of Chapter 3 of this part.
- (79) “Knowingly” means as defined in § 205(b)(2) of this title.
- (80) “Law enforcement officer” means a public servant that a law or government agency authorizes to engage in or supervise the prevention, detection, investigation, or prosecution of offenses.
- (81) “Leaf marijuana” means the dried leaves and flowering tops of the plant cannabis sativa L.
- (82) “Loiters” means to stand or sit idly without a legitimate reason for doing so.
- (83) “Lottery ticket” means a policy, number, certificate, or device that entitles the holder to receive property upon a contingency based in chance, including number series. “Lottery ticket” does not include entry in a savings promotion raffle that conforms with the requirements of § 933 of Title 5, unless the chance to win a prize requires consideration other than deposit of a specified minimum amount of money in a savings account or other savings program.
- (84) “Mental illness or serious mental disorder” means any condition of the brain or nervous system recognized as a mental disease by a substantial part of the medical profession. “Mental illness” does not mean intoxication or an abnormality manifested only by repeated criminal or otherwise antisocial conduct.
- (85) “Mislabeled” means varying from the standard of truth or disclosure in labeling prescribed by or under any statute providing criminal penalties for such variance, or set by established commercial usage.
- (86) “Mitigation” means a provision in this part stipulating the conditions for decreasing the punishment for an offense. A mitigation establishes a partial reduction of potential liability for an offense.
- (87) “Motor vehicle” means an automobile, motorcycle, van, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle which is self-propelled, designed to be operated primarily on a roadway as defined in § 101 of Title 21, and in, upon, or by which a person or property is or may be transported. “Motor vehicle” does not include a device that is included in the definitions of “moped”, “off-highway (OHV)”, “triped”, “motorized scooter or skateboard”, “motorized wheelchair” or “electric personal assistive mobility device”, as those terms are defined in § 101 of Title 21.
- (88) “Neglect of a child” means as “neglect” or “neglected child” are defined in § 901 of Title 10.
- (89) “Night” means a period between 30 minutes after sunset and 30 minutes before sunrise.
- (90) “Nonexculpatory defense” means a defense, bar to prosecution, or bar to pleading, trial, or sentencing described in Subchapter III of Chapter 3 of this part.

(91) “Oath” includes an affirmation and every other mode authorized by law of attesting to the truth of a statement.

(92) “Obscene” means an actual or simulated material or performance that meets all of the following conditions:

a. The average person, applying contemporary adult community standards, would find that, taken as a whole, appeals to the prurient interest.

b. Depicts or describes, in a patently offensive way, any of the following:

1. An ultimate sexual act.

2. A sadomasochistic sexual act.

3. Masturbation.

4. Excretory functions.

5. Lewd exhibition of the genitals.

c. Taken as a whole, lacks serious literary, artistic, political, or scientific value.

(93) “Obtain” means either of the following:

a. In relation to property, to bring about or receive a transfer or purported transfer of any interest in property.

b. In relation to labor or services, to secure performance of the labor or services.

(94) “Oral or object penetration” means any of the following:

a. Placing any object, substance, or body part inside the anus or vagina of another individual.

b. An individual’s placing of an object inside another individual’s mouth, intending the act to be sexual in nature.

(95) “Organization” means any person, but does not include individuals.

(96) “Originating address” or “originating account” means the sequence of characters used to specify the source of any electronic mail message.

(97) “Overdose” means an acute condition including physical illness, coma, mania, hysteria, or death resulting from the consumption or use of an ethyl alcohol, a controlled substance, another substance with which a controlled substance was combined, a noncontrolled prescription drug, or any combination of these, including any licit or illicit substance.

(98) “Owner” means a person, other than the defendant, who has possession of or any other interest in the property involved, even if such interest or possession is unlawful, and without whose consent the defendant has no authority to exert control over the property.

(99) “Party officer” means a person who holds any position or office in a political party, whether by election, appointment, or otherwise.

(100) “Pass a check” means a person meets all of the following conditions:

- a. Is a payee, holder, or bearer of a check that purports to have been drawn and issued by another.
- b. Delivers the check for a purpose other than collection to a third person who acquires a right as to the check by reason of delivery.

(101) “Patient-practitioner relationship” means as defined in § 4701 of Title 16.

(102) “Pattern of criminal gang activity” means the commission of 2 or more incidents of conduct, the last of which occurred within 3 years of a prior offense, that constitute felony violations of offenses involving violence, coercion, sexual activity, controlled substances, property damage, or deadly weapons, and were committed under any of the following circumstances:

- a. On separate occasions.
- b. By 2 or more persons.

(103) “Pattern of racketeering activity” means the commission of 2 or more incidents of conduct that meet all of the following conditions:

- a. The last incident of conduct occurred within 10 years of a prior incident of conduct.
- b. Are related to the affairs of the enterprise.
- c. Are not so closely related to each other and connected in time and place that they constitute a single event.
- d. Constitute at least 1 of the following:
  1. An activity defined as “racketeering activity” under 18 U.S.C.A. § 1961(1)(A), (1)(B), (1)(C), or (1)(D).
  2. A felony under this part.

(104) “Payment card” means any instrument or device issued by an issuer for use of the cardholder in obtaining anything of value on credit, by withdrawing funds from a deposit account, or through use of value

stored on the card. "Payment card" includes the number assigned to the card, even if the physical instrument or device is not used or presented.

(105) "Peace officer" means a person who, by virtue of the person's office or public employment, is vested by law with a duty to make arrests for offenses, whether that duty extends to all offenses or is limited to specific offenses, and regardless of the person's jurisdiction.

(106) "Penal custody" means custody in a detention facility or a facility of the Department of Corrections.

(107) "Person" means any of the following:

a. A human being who has been born and is alive.

b. Where appropriate, a public or private corporation, trust, firm, joint stock company, union, unincorporated association, partnership, government, or governmental instrumentality.

(108) "Personal benefit" means any of the following:

a. A personal gain or advantage to the recipient.

b. A gain or advantage conferred on the behalf of another person in whose welfare the person is interested.

(109) "Personal identifying information" includes name, address, birth date, Social Security number, driver's license number, telephone number, financial services account number, savings account number, checking account number, payment card number, identification document or false identification document, electronic identification number, educational record, health care record, financial record, credit record, employment record, e-mail address, computer system password, mother's maiden name, or similar personal number, record or information.

(110) "Physical evidence" means any object, document, record, or other physical item that is or will be used as evidence in an official proceeding.

(111) "Physical injury" means either of the following:

a. If the injured person is a child: impairment of physical condition or pain.

b. In all other instances: impairment of physical condition or substantial pain, including physical harm that would normally cause substantial pain.

(112) “Place open to public view” means any place where it is not reasonable to expect to see the conduct without prior knowledge or consent.

(113) “Position of trust, authority, or supervision” means both of the following apply to a person:

a. Has regular direct contact with 1 or more children because of the person’s familial relationship, profession, employment, vocation, avocation, or volunteer service.

b. In the course of contact defined in section (111)a. of this definition, the person assumes responsibility, whether temporary or permanent, for the care or supervision of 1 or more children.

(114) “Practitioner” means a physician, dentist, veterinarian, scientific investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted to distribute, dispense, administer, or conduct research on a controlled or noncontrolled substance in the course of professional practice or research in this State.

(115) “Previous pattern of abuse or neglect.”

a. The term means 2 or more incidents of conduct that satisfy both of the following:

1. Constitute an act of abuse or neglect.

2. Are not so closely related to each other or connected in point of time and place that they constitute a single event.

b. A conviction for an act of abuse or neglect may be used to establish a previous pattern of abuse or neglect. However, a conviction is not required for an act of abuse or neglect to be used as evidence of a previous pattern as defined in this paragraph.

(116) “Prescription drug” means as defined in § 4701 of Title 16.

(117) “Preponderance of the evidence” means that evidence of an element of an offense or defense makes it more likely than not that the element existed at the required time.

(118) “Private communication,” whether electronic, written, or oral, means communication made with all of the following conditions:

a. An expectation that the communication is not subject to interception.

b. Under circumstances justifying an expectation that the communication is not subject to interception.

(119) “Private personal data” means data concerning an individual that a reasonable person would want to keep private and is protectable under law.

(120) “Private place” means a place where a person would reasonably expect to be safe from unauthorized intrusion or surveillance.

(121) “Private wire” means any equipment that transmits or receives electronic or telephone communications through a wired connection, but is not accessible from a public network or utility.

(122) “Proceeds” means funds acquired or derived directly or indirectly from, produced through, or realized through an act.

(123) “Property” means anything of value, including: real estate; tangible and intangible personal property; contract rights; choses-in-action and other interests in or claims to wealth; admission or transportation tickets; pet, captured, or domestic animals, including livestock; food and drink; electric or other power; personal services; telephone service; access to electronic services, programs, or data; recorded sounds or images; private personal data or information; and lottery tickets.

(124) “Property of another” means property to which a person other than a defendant holds a greater claim of right, whether such a claim is temporary, permanent, or illegal. The owner of flowers, burial mounds, mementos, or any other property left in a cemetery for the purpose of honoring the dead retains a claim of right to that property.

(125) “Protected work” means all or substantially all of a copyrighted writing, visual representation, audio recording, motion picture, video game, or other creative work that can be embodied in tangible or electronic form.

(126) “Public passage” includes ingress to or egress from public buildings, pedestrian traffic, and vehicular traffic.

(127) “Public place” means a place to which the public or a substantial group of persons has access. “Public place” includes highways; transportation facilities; schools; places of amusement; parks; playgrounds; prisons; or hallways, lobbies or other portions of apartment houses and hotels not constituting apartments or rooms designed for actual residence.

(128) “Public servant” means any of the following:

- a. An officer or employee of the State or any of its political subdivisions.
- b. A person or persons who are candidates for office or who have been elected to office but have not yet assumed office.

c. A juror, advisor, or consultant performing a governmental function, but not a witness.

(129) “Public service” includes a public water, gas, or power supply; telecommunications service; transportation service, facility, or road; service furnished by an electric company; or other public utility.

(130) “Put forward”, as to a written instrument, record, device, or object, means to issue, authenticate, transfer, publish, circulate, present, display, or otherwise give legitimacy to that item.

(131) “Real property” means land or any permanent structures attached to land, including buildings.

(132) “Reasonable mistake” means an erroneous belief that a person is less than criminally negligent in forming or holding.

(133) “Receive” means to acquire possession, control, or title, or lending on the security of the property.

(134) “Receiving address” or “receiving account” means the sequence of characters used to specify the destination of any electronic mail message.

(135) “Reckless mistake” means an erroneous belief that a person is reckless in forming or holding.

(136) “Recklessly” means as defined in § 205(b)(3) of this title.

(137) “Reencoder” means an electronic device that places encoded information from the computer chip or magnetic strip or stripe of a payment card onto the computer chip or magnetic strip or stripe of a different payment card or any electronic medium that allows an authorized transaction to occur.

(138) “Registrant” means a person who has obtained registration to engage in activities related to prescription drugs under § 4732, et seq, of Title 16.

(139) “Relative” means a parent, grandparent, brother, sister, uncle, or aunt.

(140) “Reside” means to occupy a dwelling as a person’s place of permanent or temporary abode.

(141) “Result element” means any change in the state of the world required to have been caused by the defendant’s conduct.

(142) “Scanning device” means a scanner, reader, or any other electronic device that is used to temporarily or permanently access, read, scan, obtain, memorize, or store information encoded on the computer chip, magnetic strip, or stripe of a payment card.

(143) “Schedule I” means as defined in § 4714 of Title 16.

(144) “Schedule II” means as defined in § 4716 of Title 16.

(145) “Schedule III” means as defined in § 4718 of Title 16.

(146) “Schedule IV” means as defined in § 4720 of Title 16.

(147) “Schedule V” means as defined in § 4722 of Title 16.

(148) “Security” means as defined in § 73-103 of Title 6.

(149) “Serious physical injury” means either of the following:

a. If the injured person is a child: physical injury that meets any of the following conditions:

1. Creates a risk of death.

2. Causes disfigurement, impairment of health, or loss or impairment of the function of any bodily organ.

3. Causes the unlawful termination of a pregnancy without the consent of the pregnant female.

b. In all other instances: physical injury that meets any of the following conditions:

1. Creates a substantial risk of death.

2. Causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

3. Causes the unlawful termination of a pregnancy without the consent of the pregnant female.

(150) “Services” includes labor; professional service; transportation; public service or utility; accommodation in hotels, restaurants, or elsewhere; admission to exhibitions; use of vehicles or other moveable property; use of intellectual property; and computer services, including computer access, data processing, and data storage.

(151) “Sexual conduct” means any act designed to produce sexual gratification to any person. “Sexual conduct” is not limited to sexual intercourse.

(152) “Sexual contact” means any of the following:

a. Sexual intercourse or oral or object penetration.

b. Touching or undressing that is intended to be sexual in nature and meets any of the following conditions:

1. Touching of a body part of another individual, whether clothed or unclothed, by a body part, body fluid, or object.

2. Undressing that reveals the breast, genitalia, or buttocks of another individual.

(153) “Sexual intercourse” means any of the following:

a. An act of penetration, however slight, of the genitalia or anus of one individual with the genitalia of another individual.

b. Any oral contact with genitalia between an individual and another individual.

Evidence of emission of semen is not required to prove sexual intercourse occurred.

(154) “Sexual orientation” means heterosexuality, bisexuality, or homosexuality.

(155) “Statement is material” means a statement that, regardless of its admissibility under the Delaware Uniform Rules of Evidence, could have affected the course or outcome of a proceeding or investigation.

(156) “Stolen” means property over which control has been obtained by theft.

(157) “Substantive offense” means any offense other than an inchoate offense.

(158) “Suicide” means an individual intentionally causing the individual’s own death.

(159) “Table game” means a game that is played with cards, dice, a device, or a machine, and for money, credit, or other value. “Table game” does not include video lottery machines.

(160) “Tier 1 quantity” means any of the following:

a. 5 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716 of Title 16.

b. 1 gram or more of any morphine, opium, or any salt, isomer, or salt of an isomer thereof, including heroin, as described in § 4714 of Title 16, or of any mixture containing any such substance.

c. 175 grams or more of marijuana, as described in § 4701 of Title 16.

d. 5 grams or more of methamphetamine, including its salt, isomer, or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716 of Title 16.

e. 5 grams or more of amphetamine, including its salt, optical isomers or salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716 of Title 16.

f. 5 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716 of Title 16.

g. 25 or more doses or, in a liquid form, 2.5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714 of Title 16.

h. 12.5 or more doses, 2.5 or more grams, or 2.5 milliliters or more of any substance as described in § 4714 of Title 16 that is not otherwise set forth in this definition, a designer drug as described in § 4701 of Title 16, or of any mixture containing any such substance.

i. 12.5 or more doses, 2.5 or more grams, or 2.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714 of Title 16.

j. 30 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 3 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.

(161) “Tier 2 quantity” means any of the following:

a. 10 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716 of Title 16.

b. 2 grams or more of any morphine, opium, or any salt, isomer, or salt of an isomer thereof, including heroin, as described in § 4714 of Title 16, or of any mixture containing any such substance.

c. 1500 grams or more of marijuana, as described in § 4701 of Title 16.

d. 10 grams or more of methamphetamine, including its salt, isomer, or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716 of Title 16.

e. 10 grams or more of amphetamine, including its salt, optical isomers, or salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716 of Title 16.

f. 10 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716 of Title 16.

g. 50 or more doses or, in a liquid form, 5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714 of Title 16.

h. 25 or more doses, 5 or more grams, or 5 milliliters or more of any substance as described in § 4714 of Title 16 that is not otherwise set forth in this definition, a designer drug as described in § 4701 of Title 16, or of any mixture containing any such substance.

i. 25 or more doses, 5 or more grams, or 5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714 of Title 16.

j. 60 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 6 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.

(162) “Tier 3 quantity” means any of the following:

a. 25 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716 of Title 16.

b. 5 grams or more of any morphine, opium, or any salt, isomer, or salt of an isomer thereof, including heroin, as described in § 4714 of Title 16, or of any mixture containing any such substance.

c. 5000 grams or more of marijuana, as described in § 4701 of Title 16.

d. 25 grams or more of methamphetamine, including its salt, isomer, or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716 of Title 16.

e. 25 grams or more of amphetamine, including its salt, optical isomers, or salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716 of Title 16.

f. 25 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716 of Title 16.

g. 500 or more doses or, in a liquid form, 50 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714 of Title 16.

h. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of any substance as described in § 4714 of Title 16 that is not otherwise set forth in this definition, a designer drug as described in § 4701 of Title 16, or of any mixture containing any such substance.

i. 62.5 or more doses, or 12.5 or more grams, or 12.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714 of Title 16.

(163) “Trespass on real property” means any act that satisfies the definition of a trespass in § 1162(a) of this title.

(164) “Trial or contest” means any trial or contest of skill, speed, power, or endurance, whether of humans or animals, and includes combat events and sports.

(165) “Trigger crank” means an after-market device designed and intended to be added to a semi-automatic rifle as a crank operated trigger actuator capable of triggering multiple shots with a single rotation of the crank.

(166) “Unjustified” means conduct that satisfies the objective elements of an offense and is not justified under Subchapter I of Chapter 3 of this title.

(167) “Unlawful debt” means a debt incurred or contracted in an illegal gambling activity or business, or a debt that is unenforceable under state law, in whole or in part, as to either principal or interest.

(168) “Unmarked burial” means any interment of human remains for which there exists no grave marker or any other historical documentation providing information as to the identity of the deceased.

(169) “Value” means the valuation of property as calculated under § 605 of this title.

(170) “Vessel” means any device in, upon, or by which a person may be transported upon water, except a device moved solely by human power.

(171) “Video lottery machine” means a machine in which bills, coins, tokens, or electronic credits are deposited to play a game of chance in which the machine randomly and immediately determines the results, including options to the player. A video lottery machine may use spinning reels or video displays, or both.

(172) “Voluntary act” means a bodily movement performed consciously or habitually as a result of effort or determination.

(173) “Voluntary intoxication” means intoxication that is caused by a substance that the person knowingly introduces into the person’s own body, which the person knows or ought to know tends to cause intoxication, unless the person introduces the substance under medical advice or circumstances that would afford a defense to prosecution for an offense.

(174) “Vulnerable person” means any of the following:

a. An individual who, by reason of isolation, sickness, debilitation, mental illness, or physical, mental, or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion, or exploitation.

b. An adult for whom a guardian of the individual or property has been appointed by a court of competent jurisdiction.

c. An adult who is impaired, as defined in § 3902 of Title 31.

d. A person with a disability, as defined in § 3901(a)(2) of Title 12.

(175) “Witness” means a person who meets any of the following qualifications:

a. Has knowledge of the existence or nonexistence of facts relating to any offense.

b. Has testified or been served with a subpoena to testify under oath at an official proceeding.

c. Has reported an offense.

(176) “Written instrument” means an instrument or article containing written matter, printed matter, or the equivalent, used for the purpose of reciting, embodying, conveying, or recording information or constituting a symbol or evidence of value, right, privilege, or identification.

#### § 104. Principle of construction: general purposes.

(a) Principle of construction. The provisions of this part must be interpreted according to the fair import of their terms. If the language of this part is susceptible to differing interpretations and remains ambiguous after applying general principles of statutory interpretation and available signs of legislative intent, it must be construed to further these general purposes:

(1) Prohibit conduct that unjustifiably and inexcusably causes or threatens harm to individual or public interests.

(2) Give fair warning of the nature of the conduct prohibited and sentences authorized upon conviction.

(3) Define the act or omission and accompanying culpability that constitute each offense.

(4) Prescribe penalties that are proportionate to the seriousness of the offense and the blameworthiness of the defendant.

(b) Effect of Commentary. The Commentary accompanying this Code should be used as an aid in interpreting the provisions of this Code.

(c) Effect of heading. A heading contained in this part does not exclusively govern, limit, modify, or affect the scope, meaning, or intent of a provision but headings may be used as an aid in interpreting the provisions of this part.

(d) Partial invalidation. Unless a repealing act expressly provides otherwise, the invalidation, for any reason, of a criminal offense in this part, or the invalidation of the application of any provision of this part to a person or circumstance does not affect any of the following:

- (1) The validity of the remainder of this part.
- (2) A penalty, forfeiture, or liability incurred under the invalidated provision.
- (3) A prosecution or other legal proceeding in progress under the invalidated provision.
- (4) The validity of the remainder of this part to other persons or circumstances.

§ 105. All offenses defined by statute; applicability.

- (a) Conduct does not constitute an offense unless this part or another statute of this State makes it an offense.
- (b) The provisions of Subpart A of this part are applicable to all offenses defined in this part or another statute of this State, unless this part provides otherwise.
- (c) This section does not affect a court's authority to punish for civil contempt or employ a sanction authorized by law for the enforcement of an order, civil judgment, or decree.
- (d) A court may inflict a punishment prescribed by this part or by another statute of this State only after a judgment of conviction by a court having jurisdiction over the defendant and subject matter.

§ 106. Civil remedies preserved; no merger with civil injury.

- (a) This part does not bar, suspend, or negatively affect any right or liability to damages, penalty, forfeiture, or other right to recovery in a non-criminal proceeding, and the civil injury is not merged in the offense.
- (b) Unless this part or another statute provides otherwise, a civil proceeding in a court or administrative agency does not affect criminal liability under this part for the same conduct.

§ 107. State criminal jurisdiction.

- (a) A person is subject to prosecution in this State for an offense that the person commits, while either within or outside this State, by the person's own conduct or that of another for which the person is legally accountable, if any of the following apply:
  - (1) Conduct or a result that is an element of the offense occurs within this State.
  - (2) The conduct occurs outside this State and constitutes an attempt to commit an offense within this State.

(3) The conduct occurs outside this State and constitutes a conspiracy to commit an offense within this State, and an overt act in furtherance of the conspiracy occurs in this State.

(4) The conduct violates a law of this State that expressly prohibits conduct outside this State and all of the following apply:

a. The conduct bears a reasonable relation to a legitimate interest of this State.

b. The person knows or should know that the person's conduct is likely to affect that interest.

(5) The conduct occurs within this State and constitutes aid or an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of both this State and the other jurisdiction.

(6) The conduct is an omission to perform a legal duty under a law of this State.

(7) The offense is defined as including telephone or electronic communication, digital information or recordings, and a computer or facility located within this State stored or received the communication, information, or recording.

(b) Exception to jurisdiction, result of lawful conduct outside state. Paragraph (a)(1) of this section does not apply if all of the following apply:

(1) Causing a particular result is an element of the offense.

(2) Conduct that occurred outside this State caused the result.

(3) The jurisdiction in which the conduct occurred does not prohibit the result.

(4) The person was less than reckless as to both causing the prohibited result and that result occurring within this State.

(c) Permissive inference. If the body of a homicide victim is found within this State, there is a rebuttable presumption that the death occurred within this State.

§ 108. Burdens of proof; permissive inferences.

(a) Presumption of innocence. A defendant is presumed innocent until proven guilty.

(b) Burden of production.

(1) State's burden of production, generally. The State may present an offense to the trier of fact only if the State has presented sufficient evidence to allow a rational trier of fact to find that all required elements of the offense can be proved beyond a reasonable doubt. To determine whether the State has met this burden, the court

must consider the evidence in the light most favorable to the State, and considering all reasonable inferences that may be drawn from that evidence.

(2) The State's burden of production, felony murder. In a prosecution for murder under § 1002(a)(3), the State can meet its burden of production even if the only evidence of the underlying felony is the defendant's extrajudicial statement.

(3) Defendant's burden of production. Unless this part expressly provides otherwise, the defendant may present a defense, exception to liability, or mitigation to the trier of fact, only if the defendant has presented sufficient evidence to allow a rational trier of fact to find that all requirements of an exception to liability, defense, or mitigation can be proved by a preponderance of the evidence. To determine whether the defendant has met this burden, the trier of fact must consider the evidence in the light most favorable to the defendant, and considering all reasonable inferences that may be drawn from that evidence.

(c) Burden of persuasion.

(1) State's burden of persuasion.

a. The State must prove all elements of an offense, grade provision, and the absence of an exception to liability, as applicable, beyond a reasonable doubt.

b. The State must disprove all justification defenses beyond a reasonable doubt, as provided in § 301(g), unless this part expressly provides otherwise.

c. The State must prove by a preponderance of the evidence all other facts required for liability, unless this part expressly provides otherwise.

(2) Defendant's burden of persuasion. Unless this part expressly provides otherwise, the defendant has the burden to prove all elements of a defense or mitigation by a preponderance of the evidence, including excuse defenses as provided in § 321(d) of this title, and nonexculpatory defenses as provided in § 331(c) of this title.

(d) Effects of permissive inferences. When a provision in this part establishes a permissive inference as to any fact, the permissive inference has both of the following consequences:

(1) When there is evidence of the facts that give rise to the inference, the issue of the existence of the inferred fact must be submitted to the trier of fact, unless the court is satisfied that the evidence as a whole clearly negates the inferred fact.

(2) When the issue of the existence of the inferred fact is submitted to the trier of fact, the court shall charge that while the inferred fact must, on all the evidence, be proved beyond a reasonable doubt, the law declares that the trier of fact may regard the facts giving rise to the inference as sufficient evidence of the inferred fact, if the facts giving rise to the inference have been duly proven.

§ 109. Words of gender or number.

Unless the context requires otherwise:

(a) singular and plural words may, and where necessary shall, be treated as interchangeable.

(b) Words indicating gender may, and where necessary shall, be treated as interchangeable.

Section 3. Amend Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 2. Basic requirements of offense liability.

§ 201. Basis of liability.

Subject to the provisions of this chapter, a person is liable for an offense if all of the following apply:

(1) The person's conduct satisfies all the objective and culpability elements of an offense, and does not satisfy the requirements of any exception to liability or defense, or, if an element of the offense is missing, it is imputed to the defendant under a provision of § 210, § 211, or § 212 of this part.

(2) The person's conduct does not satisfy the requirements of any general defense provided in Chapter 3 of this title.

§ 202. Offense elements defined.

(a) "Elements" of an offense means:

(1) both:

a. objective elements, meaning conduct, attendant circumstances, or the result of conduct; and

b. the culpability requirements defined in § 205 of this title.

(2) that are contained in an offense's definition or in a provision establishing an offense's grade or the severity of the punishment.

(b) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Circumstance element; Conduct element; Result element.

§ 203. Causal relationship between conduct and result.

(a) Generally. Conduct is the cause of a result if all of the following apply:

(1) The conduct is an antecedent but for which the result in question would not have occurred.

(2) The result is not too remote or accidental in its occurrence to have a just bearing on the actor's liability or the gravity of the actor's offense.

(3) The relationship between the conduct and result satisfies any additional causal requirements imposed under this part or by the law defining the offense.

(b) Concurrent sufficient causes. Where the conduct of 2 or more persons each causally contributes to a result, and each alone would have been sufficient to cause the result, the requirement under subsection (a) of this section is satisfied as to each person.

§ 204. Requirement of a voluntary act; omission liability; possession liability.

(a) Voluntary act or omission required. A person is not guilty of an offense unless liability is based upon the person's voluntary act or voluntary failure to perform an act that the person is physically capable of performing.

(b) Omission to perform legal duty as an act. Liability for the commission of an offense may be based on an omission unaccompanied by action if a legal duty to perform the omitted act is otherwise imposed by law.

(c) Possession as a voluntary act. Possession is a voluntary act, as required by subsection (a) of this section, if either of the following apply:

(1) The person knowingly procured or received the thing possessed.

(2) The person was aware of the person's control over the thing possessed for a sufficient time to have been able to terminate possession.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Voluntary act.

§ 205. Culpability requirements.

(a) To be guilty of an offense, a person must have some level of culpability, as intentionally, knowingly, recklessly, and criminal negligence are defined in subsection (b) of this section, as to every objective element of the offense, except as provided in subsection (e) of this section.

(b) Culpability requirements defined.

(1) Intentionally. A person acts intentionally or with intent:

a. As to conduct, if it is the person's conscious object to engage in the conduct or have another engage in the conduct.

b. As to circumstance, if the person hopes or believes that there is a high probably the circumstances exists.

c. As to result, if it is the person's conscious object to cause such results.

d. Requirement of intention satisfied if intention is conditional. When a particular intention is required by an offense, the requirement is satisfied even if the intention is conditional, unless the condition negates the harm or evil sought to be prevented by the law defining the offense.

(2) Knowingly. A person acts knowingly or with knowledge:

a. As to conduct, if the person is aware that the conduct is being or will be engaged in by the person or another person.

b. As to a circumstance, if the person believes there is a high probability that the circumstance exists.

c. As to a result, if the person is practically certain that the conduct will cause the result.

(3) Recklessly. A person acts recklessly or with recklessness:

a. As to conduct, if the person consciously disregards a substantial and unjustifiable risk that the person or another person is engaging in or will engage in the conduct.

b. As to a circumstance, if the person consciously disregards a substantial and unjustifiable risk that the circumstance exists.

c. As to a result, if the person consciously disregards a substantial and unjustifiable risk that the conduct will cause the result.

d. Disregard must be a gross deviation. The person's disregard of the risk must constitute a gross deviation from the standard of care that a reasonable person would exercise in the person's situation.

(4) Criminal negligence. A person acts with criminal negligence or is criminally negligent:

a. As to conduct, if the person is unaware of a substantial and unjustifiable risk that the person or another person is engaging in or will engage in the conduct.

b. As to a circumstance, if the person is unaware of a substantial and unjustifiable risk that the circumstance exists.

c. As to a result, if the person is unaware of a substantial and unjustifiable risk that the conduct will cause the result.

d. Failure to be aware must be a gross deviation. A person's failure to be aware of the risk must constitute a gross deviation from the standard of care that a reasonable person would exercise in the person's situation.

(c) Application to stated culpability requirement. When an offense contains a stated culpability requirement, the requirement applies to all later objective elements within the grammatical clause in which it appears and any later objective elements to which common usage would suggest the General Assembly intended it to apply.

(d) Absence of a stated culpability requirement. When no culpability requirement is specified as to an objective element, including an objective element contained within a grade provision or grade adjustment, a requirement of recklessness applies, except as provided in subsection (g) of this section.

(e) Strict liability. When a culpability requirement is not specified with regard to an objective element, no culpability is required as to that element if any of the following apply:

(1) The offense is a violation, unless the offense states a particular culpability requirement.

(2) The offense is in a statute outside of this Code and clearly indicates a legislative purpose to impose strict liability as to that objective element.

(f) Culpability as to criminality not required. Unless the law defining an offense expressly provides that a level of culpability is required, no level of culpability is required as to any of the following:

(1) Whether conduct constitutes an offense.

(2) The existence, meaning, or application of the law defining an offense.

(g) Proof of greater culpability satisfies stated requirement for lower culpability. When, as to an objective element, the law requires:

(1) Criminal negligence, the requirement is also satisfied by proof of intent, knowledge, or recklessness.

(2) Recklessness, the requirement is also satisfied by proof of intent or knowledge.

(3) Knowledge, the requirement is also satisfied by proof of intent.

(h) Culpability, permissive inference. The finder of fact may infer from the facts of the case that a defendant had the culpability required for commission of an offense.

§ 206. Ignorance or mistake negating required culpability.

(a) A required culpability is not satisfied if it is negated by ignorance or mistake as to a matter of fact or law.

Ignorance or mistake also provide a defense if the statute defining the offense or a related statute expressly so provides.

(b) Mistake defense negating required culpability.

(1) Any mistake as to an element of an offense, including a reckless mistake, negates the existence of intent or knowledge as to that element.

(2) A criminally negligent mistake as to an element of an offense negates the existence of intent, knowledge, or recklessness as to that element.

(3) A reasonable mistake as to an element of an offense negates intent, knowledge, recklessness, or criminal negligence as to that element.

(c) Mistaken belief consistent with a different offense. Although ignorance or mistake would otherwise provide a defense under this section, the defense is not available if the defendant would be guilty of another offense had the situation been as the defendant supposed. However, if the offense that the defendant thought he was committing is of a lower grade or degree than the offense charged, the defendant's ignorance or mistake reduces the grade and degree of the offense of which the defendant may be convicted to those of the offense of which the defendant would be guilty had the situation been as the defendant supposed.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Criminally negligent mistake; Reasonable mistake; Reckless mistake.

§ 207. Mental illness or serious mental disorder negating required culpability.

Evidence that the defendant suffered from a mental illness or serious mental disorder is admissible whenever it is relevant to prove that the defendant did or did not have a required culpability.

§ 208. Consent.

(a) In general. In any prosecution, it is a defense that the victim consented to the conduct constituting the offense if the consent negates an element of the offense.

(b) Consent to physical injury. In any prosecution for an offense causing or threatening physical injury, it is a defense that the victim consented to infliction of physical injury of the kind caused or threatened, provided that the physical injury caused or threatened by the conduct consented to is any of the following:

(1) Not serious physical injury.

(2) A reasonably foreseeable hazard of joint participation in any concerted activity, athletic contest, or sport not prohibited by law.

(c) Ineffective consent. Unless otherwise provided in this part or the law defining the offense, the victim's consent is not a defense if the consent is given under any of the following circumstances:

(1) By a person who is legally incompetent to authorize the conduct charged to constitute the offense.

(2) By a person who, because of youth, mental illness or serious mental disorder, or intoxication, is manifestly unable, or known by the defendant to be unable, to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense.

(3) By a person whose improvident consent the law defining the offense seeks to prevent.

(4) Induced by force, coercion, threats, or deception.

(5) For a surgical procedure that is performed by a person who is not licensed to perform it.

§ 209. Conviction when the defendant satisfies the requirements of more than 1 offense or grade.

(a) Limitations on conviction for multiple related offenses. The trier of fact may find a defendant guilty of any offense, or grade of an offense, for which the defendant satisfies the requirements for liability, but the court may not enter a judgment of conviction for more than 1 of any 2 offenses or grades of offenses if any of the following apply:

(1) The offenses or grades of offenses are based on the same conduct and at least 1 of the following applies:

a. The harm or evil of 1 offense or grade of offense meets at least 1 of the following conditions:

1. Is entirely accounted for by the other.

2. Is of the same kind, but lesser degree, than that of the other.

b. The offenses or grades of offenses differ in only 1 of the following ways:

1. One is defined to prohibit a designated kind of conduct generally, and the other is defined to prohibit a specific instance of such conduct.

2. One requires a lesser kind of culpability than the other.

c. The offenses or grades of offenses are defined as a continuing course of conduct and the defendant's course of conduct was uninterrupted, unless the law provides that specific periods of such conduct constitute separate offenses.

(2) One of the offenses consists only of an attempt or solicitation toward commission of at least one of the following:

a. The other offense.

b. A substantive offense that is related to the other offense in the manner described in paragraph (a)(1) of this section.

(3) Each offense is an inchoate offense toward commission of a single substantive offense.

(4) The 2 offenses or grades of offenses differ only in that 1 is based upon the defendant's own conduct, and another is based upon the defendant's accountability, under § 210 of this title, for another person's conduct.

(5) Inconsistent findings of fact are required to establish the commission of the offenses or grades.

(b) Conspiracy. A judgment of conviction may be entered for both conspiracy and the offense that is the target of the conspiracy, but the 2 offenses merge for sentencing purposes.

(c) Effect of multiple offenses contained within the same section. If a person is convicted of any 2 offenses based upon the same conduct, and those offenses are contained within the same section of this part, the court shall consider that fact as a factor weighing against entry of conviction for both offenses under paragraph (a)(1) of this section.

(d) Entry of judgment. Where subsection (a) of this section prohibits multiple judgments of conviction, the court shall enter a judgment of conviction for the most serious offense among the offenses in question, including different grades of an offense, of which the defendant has been found guilty.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Inchoate offense; Substantive offense.

§ 210. Accountability for the conduct of another.

(a) Accountability. A person is legally accountable for conduct of another person if either of the following occur:

(1) The person has the culpability required by the offense and either of the following applies:

a. The person causes the other person to perform the conduct constituting the offense.

b. The person intentionally does either of the following:

1. Aids, solicits, or conspires with the other person in the planning or commission of the offense.

2. Fails to make a proper effort to prevent the commission of the offense, having a legal duty to do so.

(2) The statute defining the offense makes the defendant accountable.

(b) Exception to accountability. Unless the statute defining the offense provides otherwise, a person is not accountable for the conduct of another, notwithstanding subsection (a) of this section, if any of the following apply:

(1) The person is a victim of the offense committed.

(2) The person's conduct is inevitably incident to commission of the offense.

(3) Before commission of the offense, the person terminates the person's efforts to promote or facilitate its commission and does 1 or more of the following:

a. Wholly deprives the person's prior efforts of their effectiveness.

b. Gives timely warning to the proper law enforcement authorities.

c. Otherwise makes proper efforts to prevent the commission of the offense.

(4) The person's conduct independently constitutes a separate offense.

(c) Exception from offense lost through complicity. A person who is legally incapable of personally committing a particular offense may be convicted of the offense based on the person's accountability for the conduct of another person who commits the offense, unless that liability would be inconsistent with the purpose of the provision establishing the person's incapacity.

(d) Unconvicted principal or confederate no defense. A person who is legally accountable for the conduct of another person may be convicted upon proof that the objective elements of the offense are satisfied, even if any of the following apply:

(1) The other person has not been prosecuted or convicted.

(2) The other person has been convicted of a different offense or degree of offense.

(3) The other person has been acquitted.

(e) Convictions for different grades of an offense. A person who is legally accountable for the conduct of another person may be convicted of the grade of an offense only if the grade is consistent with all of the following:

(1) The person's own culpability.

(2) The person's personal accountability for bringing about an aggravating fact or circumstance.

(f) Indictment as principal or accomplice irrelevant. A person indicted for committing an offense may be convicted as an accomplice to another person, and a person indicted as an accomplice to an offense committed by another person may be convicted as a principal.

(g) Complicity in uncommitted offense. A person who would have been accountable for the offense conduct of another person under subsection (a) of this section if the other person had committed the offense is guilty of an attempt to commit the offense.

(h) Attempted complicity. A person who attempts to aid, solicit, or conspire with another person in the planning or commission of an offense under subsection (a) of this section is guilty of an attempt to commit the offense, whether or not the offense is attempted or committed by the other person.

§ 211. Voluntary intoxication.

(a) Voluntary intoxication not a defense. It is not a defense that the person committed an offense while in a state of voluntary intoxication or because the person was voluntarily intoxicated.

(b) No application to involuntary intoxication. Subsection (a) of this section does not affect the availability of a defense under § 324 of this title.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Intoxication; Voluntary intoxication.

§ 212. Divergence between consequences intended or risked and actual consequences.

(a) Notwithstanding § 206(a) of this title, when:

- (1) Culpability as to a particular consequence of a person's conduct is required by an offense, and
- (2) A consequence that actually occurs is not one intended, contemplated, or within the scope of unlawful risk the person was or should have been aware of.

(b) Then the required culpability nonetheless is established if the actual consequence differs from the consequence intended, contemplated, or risked, only in that any of the following apply:

- (1) A different person or different property is injured or affected.
- (2) The consequence intended, contemplated, or risked would have had an injury or harm that is as serious or more serious than the actual consequence.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Consequence.

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

Chapter 3. General defenses.

Subchapter I. Justification defenses.

§ 301. General provisions governing justification defenses.

(a) The defenses provided in Subchapters I, II, and III of this chapter bar conviction even if all elements of the offense charged have been satisfied.

(b) Superiority of more specific justifications. The justifications provided in § 302 or § 303 of this title are not available if the factual circumstances of a claimed justification are described in 1 of the other provisions of this Subchapter.

(c) Multiple justifications. Except as provided in subsection (a) of this section, if a person's conduct satisfies the requirements of more than 1 justification defense, all of those justification defenses are available.

(d) Assistance to, resistance to, and interference with justified conduct. Except as otherwise provided by law, conduct that is justified may not lawfully be resisted or interfered with, and lawfully may be assisted.

(e) Causing justifying circumstances.

(1) Not automatic bar to a justification defense. When a person causes the justifying circumstances, the person's offense conduct may be justified if it satisfies the requirements of a justification defense.

(2) Liability for culpably causing justifying circumstances. A person's conduct in causing the justifying circumstances may be an offense if the person causes the justifying circumstances with the culpability required by the offense.

(3) Defense. A person may have a general defense to liability under paragraph (e)(2) of this section if the person satisfies the requirements of a defense for the person's conduct in causing the justifying circumstances.

(f) Risk of injury to innocent people not justified. Except as expressly provided in this Subchapter, justification under this Subchapter to use force upon another person does not extend to injury or risk of injury to innocent people created by that use of force.

(g) Burden of persuasion. Unless expressly provided otherwise by this chapter, the State carries the burden of persuasion to disprove all justification defenses beyond a reasonable doubt.

(h) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Force.

§ 302. Choice of evils.

(a) Defense defined. Conduct is justified if both of the following conditions are met:

(1) The conduct is immediately necessary to avoid a harm or evil.

(2) The harm or evil to be avoided by the person's conduct is greater than that sought to be prevented by the law defining the offense charged.

(b) The choice of evils justification is unavailable if, under the circumstances presented, it is plain that there is a legislative purpose to exclude the justification.

§ 303. Execution of public duty.

(a) Defense defined. Conduct is justified if it is required or authorized by any of the following:

(1) The law defining the duties or functions of a public servant or the assistance to be rendered to a public servant in the performance of the public servant's duties.

(2) The law governing the execution of legal process.

(3) The judgment or order of a competent court or tribunal.

(4) A law, other than that described in paragraph (a)(1) of this section, imposing a public duty.

(b) Defective jurisdiction or process no exception. The justification under paragraph (a)(2) or (a)(3) of this section is available even if, unknown to the defendant, either of the following exist:

(1) A defect in legal process.

(2) The court lacks jurisdiction.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Public servant.

§ 304. Law enforcement authority.

(a) Peace officer's use of force in making an arrest or detention.

(1) Defense defined. The conduct of a peace officer, or of a person whom the officer has summoned or directed to assist the officer, is justified if the conduct is necessary to effect a lawful arrest or detention.

(2) Limitation, use of force. Use of force is not justified under subsection (a)(1) of this section if the arrestee or detainee has not been made aware of the purpose of the arrest or detention, unless making the arrestee or detainee aware is unreasonable.

(3) Limitation, use of deadly force. In addition to the limitation in paragraph (a)(2) of this section, use of deadly force is justified under paragraph (a)(1) of this section only if all of the following conditions are met:

a. The force is necessary to prevent the arrest from being defeated by resistance or escape.

b. The force employed does not create a substantial risk of injury to innocent persons.

c. The person against whom deadly force is being used and is to be arrested has committed or attempted a felony involving actual or threatened physical injury.

d. If the person against whom deadly force is being used is not arrested without delay, any of the following apply:

1. The person will create a substantial risk of serious physical injury or death.

2. The person is not likely to ever be captured.

(4) Invalid warrant. A peace officer's conduct in making an arrest under an invalid warrant is justified if the conduct would have been justified had the warrant been valid, unless the officer knows the warrant is invalid.

(b) Use of force to prevent an escape.

(1) Escape from custody. The use of force by a peace officer or other person who has an arrested or lawfully detained person in the peace officer's or other person's custody or presence is justified if both of the following apply:

a. It is necessary to prevent the arrested or detained person's escape from custody.

b. It would be justified if performed to arrest the person.

(2) Escape from a correctional institution. The conduct of a correctional officer or peace officer, including the use of deadly force, is justified if the conduct is immediately necessary to prevent a person lawfully detained in a correctional institution from escaping the institution.

(c) Risk of injury to innocent persons. A justification under this section to use force upon another person does not extend to injury or risk of injury to innocent persons created by that use of force unless, in causing the injury or risk of injury, the defendant acts with culpability less than criminal negligence.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Correctional officer; Deadly force; Force; Peace officer; Physical injury; Serious physical injury; Vessel.

§ 305. Conduct of persons with special responsibility for care, discipline, or safety of others.

(a) The use of force upon or toward another person is justified if the defendant is any of the following:

(1) A parent, guardian, or person similarly responsible for the general care and supervision of a child, or the defendant is acting at the request of a person so responsible, and the force is necessary for at least 1 of the following reasons:

a. To safeguard or promote the welfare of the supervised person.

b. To further any of the purposes for which force may be used by any other actor specified in this subsection.

c. Use of force under (a)(1)a. or (a)(1)b. is not justified if the force used causes physical injury, mental distress, or unnecessary degradation, or create a substantial risk of serious physical injury or death.

(2) A guardian or other person similarly responsible for the general care and supervision of another person entrusted by authority of law to the custody of another person or to an institution, and the force used is necessary for at least 1 of the following reasons:

a. To safeguard or promote the welfare of the person.

b. If the person against whom the force is used is in a hospital or other institution for care and custody, to maintain reasonable discipline in the institution.

c. Use of force under (a)(2)a. or (a)(2)b. is not justified if the force used causes physical injury, mental distress, unnecessary degradation, or creates a substantial risk of serious physical injury or death.

(3) A teacher or person otherwise entrusted with the care or supervision of a child for a special purpose, and the force used meets all of the following criteria:

a. It is necessary to further that special purpose, including the maintenance of reasonable discipline in a school, class, or other group.

b. It is consistent with the individual's welfare.

c. It does not cause physical injury, mental distress, unnecessary degradation, or create a substantial risk of serious physical injury or death.

(4) A doctor or therapist, or an individual assisting at the doctor or therapist's direction, and both of the following conditions are met:

a. The force is necessary to administer a recognized form of treatment that is adapted to promoting the physical or mental health of the individual.

b. The treatment is administered under either of the following circumstances:

1. With the individual's consent or, if the individual is less than 18 years old or entrusted by authority of law to the custody of another person or to an institution, with the consent of a parent, guardian, or other person legally competent to consent on the individual's behalf.

2. In an emergency, when no one competent to consent for the individual can be consulted and a reasonable person wishing to safeguard the welfare of the individual would consent.

(5) A correctional officer, and the force used is necessary to enforce the lawful rules or procedures of the institution.

(6) A person responsible for the safety of an aircraft, train, vehicle, vessel, or other carrier, or a person acting at the responsible person's direction, and the force used is necessary to prevent either of the following:

a. Interference with the operation of the carrier.

b. Obstruction of the execution of a lawful order.

(7) A person who is authorized or required by law to maintain order or decorum in an aircraft, train, vehicle, vessel, or other carrier, or in any place where persons are assembled, and the force used meets all of the following criteria:

a. Is necessary for that purpose.

b. Does not create a substantial risk of death, physical injury, or extreme mental distress.

(b) When use of deadly force not justified. The use of deadly force is not justified under this section, but it may be justified under § 306 of this title.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Child; Correctional officer; Deadly Force; Force; Physical injury; Serious physical injury; Vessel.

§ 306. Defense of person.

(a) Use of force. The use of force against an aggressor is justified when and to the extent the force is immediately necessary to defend oneself or another person against the aggressor's use of unjustified force.

(b) Limitations.

(1) Defense of another. A person is justified in using force in defense of another individual under subsection (a) of this section only if both of the following apply:

a. The person would have been justified in using the force if the person had been the object of aggression.

b. The person would have been justified in using the force on the person's own behalf.

(2) Resisting arrest. The use of force is not justified under subsection (a) of this section to resist or assist another in resisting an arrest that is made by a peace officer, regardless of whether the arrest is lawful.

(c) Use of deadly force.

(1) Justified in limited circumstances. The use of deadly force is justified under this section only if it is necessary to protect the person or another individual against death, serious physical injury, kidnapping, or sexual intercourse compelled by force or threat of force.

(2) Retreat, surrendering possession, or complying with aggressor's demands.

a. Generally. The use of deadly force is not justified if the necessity of using deadly force can be avoided, thereby securing the complete safety of any individual in danger, by doing any of the following:

1. Retreating.

2. Surrendering possession of a thing to a person asserting a claim of right to the thing.

3. Complying with a demand that the person abstains from performing an act that the person is not legally obligated to perform.

b. Exceptions.

1. An individual is not obligated to retreat in or from the individual's dwelling or, if the individual acts to protect another individual, the other individual's dwelling.

2. An individual is not obligated to retreat in or from the individual's place of work or, if the individual acts to protect another individual, the other individual's place of work, unless the defendant was the initial aggressor.

3. The limitation in this subsection does not apply to a peace officer who is justified in using deadly force under § 304 of this title.

(d) Use of force to prevent suicide. An individual may use force upon or toward another individual when and to the extent the force is immediately necessary to prevent the other individual from committing suicide or inflicting serious physical injury upon the other individual.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Dwelling; Peace officer; Serious physical injury; Sexual intercourse; Unjustified; Vessel.

§ 307. Defense of property.

(a) The use of force against an aggressor is justified under this subsection if all of the following apply:

(1) The force is immediately necessary to prevent the aggressor's unjustified trespass upon, or other unjustified interference with, real or personal property.

(2) The individual or another individual on whose behalf the individual acts lawfully possesses the property.

(3) Before employing force, the individual first requests that the aggressor cease trespassing upon or interfering with the property, unless any of the following apply:

a. The request would be useless.

b. The request would endanger the individual or another individual.

c. Before a request can be effectively made, material harm will be done to the physical condition of the property to be protected.

(b) Justified detention by special parties. The conduct of a merchant or an operator of a lawful gambling facility, or an agent or employee of the merchant or operator, is justified if it is necessary to detain an individual who has intentionally concealed unpurchased merchandise, committed theft, or cheated in a manner described in § 1382 of this title, if all of the following conditions are met:

(1) The detainer is 18 or more years old.

(2) The detention lasts long enough only for the person to promptly summon a law enforcement officer.

(c) When use of deadly force not justified. Use of deadly force is not justified under this section, but it may nevertheless be justified under § 306 of this title.

(d) No civil liability for justified conduct. A person whose conduct is justified under this section is not, due to that conduct, civilly liable to the person against whom the force is used.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Deadly force; Force; Law enforcement officer; Property; Real property; Unjustified.

Subchapter II. Excuse defenses.

§ 321. General provisions governing excuse defenses.

(a) Conduct for which a defendant is excused is not necessarily justified.

(1) Except as otherwise provided by law, conduct for which a person is excused is not justified, and may be resisted and interfered with as justified by law.

(2) A person who assists conduct for which another person is excused, is not excused for the person's assistance solely because the other person is excused.

(b) Causing the excusing conditions not automatic bar to excuse defense.

(1) The fact that a person caused the condition giving rise to an excuse defense under this subchapter does not prevent the person from being excused for the offense.

(2) Liability for culpably causing excusing conditions. Nevertheless, a person commits an offense if, acting with the culpability required by the offense, the person causes the condition that excuses the person or another person for engaging in the offense.

(3) Defense to causing conditions. A person may have a general defense to the person's conduct that gives rise to liability under paragraph (b)(2) of this section.

(c) Mistake as to an excuse is no defense. Except as otherwise provided by law, it is not a defense that a defendant mistakenly believes that the defendant satisfies the requirements of an excuse defense.

(d) Burden of persuasion. Unless this subchapter expressly provides otherwise, the defendant carries the burden of persuasion on all excuse defenses by a preponderance of the evidence.

§ 322. Involuntary act; involuntary omission.

(a) Involuntary act. A person is excused for the person's offense if liability is based upon an act, and the act is not a product of the person's effort or determination.

(b) Involuntary omission. A person is excused for the person's offense if liability is based upon an omission, and the person is physically incapable of performing, or otherwise cannot reasonably be expected under the circumstances to perform, the omitted act.

§ 323. Mental illness or serious mental disorder.

(a) Excuse defined. A person is excused for her or his offense if, at the time of the offense, both of the following apply:

(1) The person suffers from a mental illness or serious mental disorder.

(2) As a result of the mental illness or serious mental disorder, either of the following applies:

a. The person does not perceive the physical nature or foresee the physical consequences of the person's conduct.

b. The person lacks substantial capacity to appreciate the wrongfulness of the person's conduct.

(b) Modified verdict and additional procedures. If a defendant is excused under subsection (a) of this section, the trier of fact shall return a verdict of "not guilty by reason of insanity," and the defendant is subject to the procedures under § 3701 of Title 11.

(c) Guilty, but mentally ill.

(1) No excuse. A person is not excused for the person's offense and the trier of fact may return a verdict of "guilty, but mentally ill," if, at the time of the offense, both of the following apply:

a. The defendant suffers from a mental illness or serious mental disorder.

b. As a result of the mental illness or serious mental disorder, any of the following apply:

1. The defendant's thinking, feeling, or behavior is substantially disturbed.

2. The defendant lacks sufficient willpower to choose whether to engage in or refrain from the criminal conduct.

(2) Verdict option at the request of the defendant. The jury may be given the verdict option described in this subsection only upon the request of the defendant.

(3) Additional procedures. A person who is found "guilty, but mentally ill" is subject to the procedures under §§ 3705–06 of Title 11.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Mental illness or serious mental disorder.

§ 324. Involuntary intoxication.

(a) Excuse defined. A person is excused for the person's offense if, at the time of the offense, both of the following apply:

(1) The person is involuntarily intoxicated.

(2) As a result of involuntarily intoxication, at least 1 of the following apply:

a. The person does not perceive the physical nature or foresee the physical consequences of the defendant's conduct.

b. The person lacks substantial capacity to appreciate the wrongfulness of the defendant's conduct.

c. The person lacks substantial capacity to choose whether to engage in or refrain from the conduct constituting the offense.

(b) Causing excusing conditions. This section may not be deemed to preclude liability under § 321(b)(2) of this title.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Involuntary intoxication.

§ 325. Duress.

(a) Excuse defined. A person is excused for the person's offense if, at the time of the offense, all of the following apply:

(1) The person is coerced to perform the offense conduct by means of force or threat, which a person of reasonable firmness in the person's situation would have been unable to resist.

(2) As a result, the person is not sufficiently able to resist committing the offense conduct so as to be justly held accountable for it.

(b) Defined terms. "Coerce" means any act that satisfies the definition of coercion in § 1063 of this title.

§ 326. Ignorance due to unavailable law.

A person is excused for the person's offense if all of the following apply:

(1) Before the conduct constituting the offense was committed, the law relating to the offense was not made available in a way that would give notice to a reasonable person.

(2) As a result, at the time of the offense, the person does not know that the person's conduct is criminal.

§ 327. Reliance upon official misstatement of law.

A person is excused for the person's offense if both of the following apply:

(1) The person reasonably relies upon an official misstatement of law contained in any of the following:

a. A statute or other enactment.

b. A judicial decision, opinion, or judgment.

c. An administrative order.

d. An official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the offense.

(2) As a result of the official misstatement of law, at the time of the offense, the person does not know the person's conduct is criminal.

§ 328. Reasonable mistake of law unavoidable by due diligence.

A person is excused for the person's offense if all of the following apply:

(1) The person pursues with due diligence all reasonably viable means available to ascertain the meaning and application of the offense to the person's conduct.

(2) The person honestly and in good faith concludes that the person's conduct is lawful in circumstances where a law-abiding and prudent person would also so conclude.

(3) Notwithstanding the conditions in paragraphs (1) and (2) of this section being met, at the time of the offense, the person does not know the person's conduct is criminal.

§ 329. Mistake as to a justification.

(a) A person is excused for the person's offense if both of the following apply:

(1) Under the circumstances as the person believes them to be, the person's conduct satisfies the requirements of a justification defense defined in Subchapter I of Chapter 3 of this part.

(2) The person's mistake is any of the following:

a. Reasonable.

b. Less culpable than the culpability required by any of the following:

1. The result element of the offense charged.

2. If no result element exists, the circumstance element most central to the offense charged.

(b) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Circumstance element; Reasonable mistake; Result element.

Subchapter III. Nonexculpatory defenses.

§ 341. General provisions governing nonexculpatory defenses.

(a) Assistance of, resistance to, and interference with conduct subject to a nonexculpatory defense. Except as otherwise provided by law, conduct for which a person has a nonexculpatory defense is not justified, and may be

resisted and interfered with as authorized by law. A person who assists conduct for which another has a nonexculpatory defense, does not have a defense based solely upon the nonexculpatory defense of the other person.

(b) Mistake as to a nonexculpatory defense is no defense. Except as otherwise provided by this part, it is not a defense that a person mistakenly believes the person has a nonexculpatory defense.

(c) Burden of persuasion on defendant. Unless expressly provided otherwise, the defendant has the burden of persuasion for a nonexculpatory defense and must prove the defense by a preponderance of the evidence.

(d) Determination by court. Unless expressly provided otherwise, the court shall determine the defenses in this subchapter.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Nonexculpatory defense.

§ 342. Prosecution barred if not commenced within time limitation period.

(a) Time limitations. A prosecution is barred unless commenced within the following applicable time period, which starts as provided in subsection (e) of this section:

(1) A prosecution for a Class 1 or Class 2 felony, or a sexual offense constituting a felony, may be commenced at any time.

(2) A prosecution for any other felony must be commenced within 5 years.

(3) A prosecution for a sexual offense constituting a misdemeanor must be commenced within 5 years.

(4) A prosecution for a Class A misdemeanor must be commenced within 3 years.

(5) A prosecution for any other offense must be commenced within 2 years.

(b) Extended periods. If the period prescribed in subsection (a) of this section has expired, a prosecution nevertheless may be commenced if any of the following apply:

(1) No more than 2 years have elapsed since the offense has been discovered or should reasonably have been discovered. This paragraph (b)(1) of this section does not extend the period of limitation otherwise applicable by more than 3 years.

(2) For any offense based upon misconduct of a public servant in office, no more than 2 years have elapsed since the end of the time the defendant holds office.

(3) For any offense for which the victim is less than 18 years old, no more than 2 years have elapsed since the victim turned 18 years old.

(4) For a prosecution based upon forensic DNA testing, no more than 10 years have elapsed from the time the offense is committed.

(c) Period of limitation tolled. The period of limitation does not run during any of the following periods of time:

(1) During which the defendant is fleeing or hiding from justice, so that the defendant's identity or whereabouts cannot be ascertained despite a diligent search.

(2) After the defendant has failed to appear for any scheduled court proceeding related to the prosecution, for which lawful notice was provided or properly attempted.

(3) During which a prosecution against the defendant for the same conduct is pending in this State, even if the information or indictment was defective.

(d) State's burden to prove extension or tolling. In any prosecution in which subsection (b) or (c) of this section is sought to be invoked to avoid or extend the limitation period of subsection (a) of this section, the State must prove the subsection's applicability by a preponderance of the evidence.

(e) Start of the limitation period. The period of limitation starts to run on the day after the offense is committed. An offense is committed when either of the follow apply:

(1) Every element of the offense occurs.

(2) A legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity in it is terminated.

(f) Commencement of prosecution. A prosecution is commenced when either an indictment is returned or an information is filed.

(g) Period during which prosecution is pending. A prosecution is pending from the time it is commenced through the final disposition of the case, including the final disposition of the case upon appeal.

(h) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Public servant.

§ 343. Entrapment.

(a) Defense defined. A person has a defense if all of the following apply:

(1) The person engages in an offense because the person is induced to do so by a law enforcement officer or an agent acting in knowing cooperation with a law enforcement officer.

(2) The law enforcement officer's or agent's conduct creates a substantial risk that a reasonable, law-abiding citizen would have been induced to commit the offense.

(3) The person is not predisposed to commit the offense.

(b) Defense unavailable for causing or threatening physical injury. A defense under subsection (a) of this section is unavailable when causing or threatening physical injury is an element of the offense charged.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Law enforcement officer; Physical injury.

§ 344. Prior prosecution for same offense as a bar to present prosecution.

(a) Bar to prosecution defined. When a prosecution is for a violation of the same statutory provision and is based upon the same facts as a prior prosecution, it is barred by the prior prosecution if any of the following apply:

(1) The prior prosecution resulted in an acquittal that was not later set aside.

(2) The prior prosecution was terminated, after the information was filed or the indictment was returned, by a final order or judgment in favor of the defendant, and the final order or judgment has not been set aside, reversed, or vacated, and the final order or judgement necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the present offense.

(3) The prior prosecution resulted in a conviction.

(4) The prior prosecution was improperly terminated.

(b) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Acquittal; Conviction; Improperly terminated.

§ 345. Prior prosecution for different offense as a bar to present prosecution.

(a) Bar to prosecution defined. Although a prosecution is for a violation of a different statutory provision or is based on different facts, it is barred by a prior prosecution in a court having jurisdiction over the subject matter of the present prosecution if any of the following apply:

(1) The prior prosecution resulted in either an acquittal that was not later set aside or a conviction, and the present prosecution is for either of the following:

a. An offense of which the defendant could have been convicted in the prior prosecution.

b. The same conduct, unless either of the following apply:

1. The offense for which the defendant is presently being prosecuted requires proof of a fact not required by the prior offense, and the law defining each of the offenses is intended to prevent a substantially different harm or evil.

2. The presently prosecuted offense was not consummated when the prior trial began.

(2) The prior prosecution was terminated by an acquittal or by a final order or judgment for the defendant that has not been set aside, reversed, or vacated, and the acquittal, final order, or judgment necessarily required a determination inconsistent with a fact that must be established for conviction of the present offense.

(3) The prior prosecution was improperly terminated and the present prosecution is for an offense of which the defendant could have been convicted had the prior prosecution not been improperly terminated.

(b) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Acquittal; Conviction; Improperly terminated.

§ 346. Prior prosecution by another jurisdiction as a bar to present prosecution.

(a) Bar to prosecution defined. When conduct constitutes an offense within the concurrent jurisdiction of this State and of the United States or another state, a prosecution in 1 of those jurisdictions is a bar to the present prosecution in this State if any of the following apply:

(1) The prior prosecution resulted in either an acquittal that was not later set aside or conviction, and the present prosecution is based on the same conduct, unless any of the following apply:

a. The offense for which the defendant is presently being prosecuted requires proof of a fact not required by the offense in the prior prosecution, and the law defining each of the offenses is intended to prevent a substantially different harm or evil.

b. The presently prosecuted offense was not consummated when the prior trial began.

(2) The prior prosecution was terminated, after the information was filed or the indictment returned, by an acquittal or by a final order or judgment for the defendant that has not been set aside, reversed, or vacated, and the acquittal, final order, or judgment necessarily required a determination inconsistent with a fact that must be established for conviction of the offense for which the defendant is presently being prosecuted.

(3) The prior prosecution was improperly terminated and the present prosecution is for an offense of which the defendant could have been convicted had the prior prosecution not been improperly terminated.

(b) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Acquittal; Conviction; Improperly terminated.

§ 347. Prosecution not barred where prior prosecution was before a court lacking jurisdiction, or was fraudulently procured by defendant, or resulted in conviction held invalid.

(a) A prosecution is not a bar within the meaning of § 344, § 345, or § 346 of this title if any of the following apply:

(1) The prior prosecution was before a court that lacked jurisdiction over the defendant or the offense.

(2) The defendant procured the prior prosecution without the knowledge of the appropriate prosecuting officer and with intent to avoid the sentence that might otherwise be imposed.

(3) The prior prosecution resulted in a judgment of conviction that was held invalid on appeal or in a later proceeding.

(b) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Conviction.

§ 348. Prosecutorial grant of immunity.

(a) Defense defined. A person has a defense if the Attorney General or the Attorney General's designee granted the person immunity from prosecution, or otherwise by operation of law, for any of the following:

(1) The offense being prosecuted.

(2) A different offense, if § 345 of this section would have barred the offense presently charged by prosecution for the offense for which immunity was granted.

(b) Exception: Attorney General's stipulation. At the time immunity is granted, the Attorney General or the Attorney General's designee may stipulate that immunity applies only to a specific offense, in which case paragraph (a)(2) of this section does not apply.

Section 5. Amend Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 4. Liability of organizations.

§ 401. Criminal liability of organizations.

(a) An organization may be prosecuted for the commission of an offense if the conduct constituting the offense meets any of the following conditions:

(1) Consists of an omission to discharge a specific duty of affirmative performance imposed upon the organization by law.

(2) Is engaged in, authorized, solicited, requested, commanded, or recklessly tolerated by either of the following:

a. The board of directors.

b. A high managerial agent acting within the scope of employment and on behalf of the organization.

(3) Is engaged in by an agent of the organization while acting within the scope of employment and on behalf of the organization, and any of the following apply:

a. The offense is a misdemeanor or a violation.

b. The offense is defined by a statute that clearly indicates a legislative intent to impose criminal liability on an organization.

(b) Impermissible organizational activity no defense. In a prosecution of an organization for an offense, it is not a defense that the conduct charged to constitute the offense was an activity prohibited by the organization's bylaws, policies, procedures, rules, or other standards of conduct.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Agent of the organization; High managerial agent; Organization.

§ 402. Criminal liability of an individual for organizational conduct.

(a) Membership in organization no shield from liability.

(1) An individual is legally accountable for conduct constituting an offense that the person performs or causes to be performed in the name of or on behalf of an organization to the same extent as if the conduct were performed in the person's own name or behalf.

(2) Whenever a duty to act is imposed by law upon an organization, any high managerial agent of the organization having primary responsibility for the discharge of that duty is legally accountable for an omission to perform the required act to the same extent as if the duty were imposed by law directly upon the agent, if the agent is aware of a substantial risk that the agent has primary responsibility for the discharge of that duty.

(b) Punishment for individuals applies. An individual who has been convicted of an offense by reason of the individual's legal accountability for the conduct of an organization is subject to the punishment authorized by law for an individual upon conviction of the offense, even if a lesser or different punishment is authorized for the organization.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

High managerial agent; Organization.

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

Chapter 5. Inchoate offenses.

§ 501. Criminal Attempt.

(a) Offense defined. A person is guilty of attempt to commit an offense if the person does all of the following:

(1) Acts with the culpability required for commission of the offense.

(2) Intends to engage in the conduct that would constitute the offense under the circumstances as the person believes them to be.

(3) Takes a substantial step toward commission of the offense. “Substantial step” means the person has completed or believes the person has completed any of the following:

a. The conduct constituting the offense.

b. The last act needed to cause the result element of the offense.

(b) Conduct constituting a substantial step. Conduct does not constitute a substantial step toward commission of an offense under subsection (a) of this section unless the conduct is strongly corroborative of the defendant’s intention to engage in the offense conduct.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Result element.

§ 502. Criminal solicitation.

(a) Offense defined. A person is guilty of solicitation to commit an offense if the person does all of the following:

(1) Acts with the culpability required for commission of the offense.

(2) Intends to bring about the conduct that would constitute the offense under the circumstances as the person believes them to be.

(3) Intentionally commands, encourages, or requests another person to engage in either of the following:

a. The conduct.

b. An attempt to commit the conduct.

(b) Uncommunicated solicitation. The defendant's failure to communicate with the other person the defendant solicits to commit an offense is immaterial under paragraph (a)(3) of this section if the defendant's conduct is designed to effect the communication.

§ 503. Criminal conspiracy.

(a) Offense defined. A person is guilty of conspiracy to commit an offense if all of the following apply:

(1) The person acts with the culpability required for commission of the offense.

(2) The person intends to bring about the conduct that would constitute the offense under the circumstances as the person believes them to.

(3) The person agrees with another person that 1 or more of them will engage in any of the following:

a. The conduct.

b. An attempt or solicitation to commit the conduct.

(4) Either of the following performs an overt act in support of the conspiracy:

a. The defendant.

b. A person with whom the defendant agrees to engage in the conduct.

(b) Knowledge of co-conspirator's identity not required. A person may be found to have conspired with another person even if the person is unaware of the third person's identity if all of the following apply:

(1) The person has conspired with another person to commit an offense.

(2) The person knows that the other person with whom the person has conspired with under paragraph (b)(1) of this section has conspired with another person to commit the same offense.

(c) Joinder and venue in conspiracy prosecutions.

(1) Joinder. Subject to the provisions in paragraph (c)(2) of this section, 2 or more defendants charged with conspiracy to commit an offense may be prosecuted jointly if any of the following apply:

a. The defendants are charged with conspiring with one another.

b. The conspiracies alleged, whether they involve the same or different defendants, are so related that they constitute different aspects of a scheme of organized criminal conduct.

(2) Venue, severance, and fairness. In a joint prosecution under paragraph (c)(1) of this section, all of the following apply:

a. A defendant may be charged with conspiracy only in either of the following counties:

1. The county in which the defendant entered into the conspiracy.

2. The county in which an overt act under paragraph (a)(4) of this section was performed.

b. The joinder does not enlarge the criminal liability of a defendant or the admissibility against a defendant of evidence of acts or declarations of another.

c. If the court deems it necessary or appropriate to promote the fair determination of guilt or innocence, the court may do any of the following:

1. Order a severance or take a special verdict as to any defendant who requests it.

2. Take any other proper measures to protect the fairness of the trial.

§ 504. Unconvictable confederate no defense.

It is not a defense for a defendant who solicits or conspires with another person to commit an offense if any of the following apply to the other person:

(1) Has not been prosecuted or convicted.

(2) Has been convicted of a different offense or grade of offense.

(3) Lacked the capacity to commit an offense.

(4) Has been acquitted.

§ 505. Defense for victims and conduct inevitably incident.

Unless otherwise provided by this part or the law defining the offense, it is a defense to soliciting or conspiring to commit an offense that any of the following apply:

(1) The defendant is the victim of the offense.

(2) The offense is defined in such a way that the defendant's conduct is inevitably incident to its commission.

§ 506. Defense for renunciation preventing commission of the offense.

(a) In a prosecution for attempt, solicitation, or conspiracy in which the offense contemplated was not in fact committed, it is a defense that the defendant prevented the commission of the offense under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal purpose.

(b) A renunciation is not "voluntary and complete" within the meaning of subsection (a) when it is motivated in whole or in part by either of the following:

(1) A belief that circumstances exist that:

a. Increase the probability of detection or apprehension of the person or another participant in the criminal enterprise.

b. Render accomplishment of the criminal purpose more difficult.

(2) A decision to:

a. Postpone the criminal conduct until another time.

b. Transfer the criminal effort to another victim or another but similar objective.

§ 507. Grading of criminal attempt, solicitation, and conspiracy.

Attempt, solicitation, and conspiracy are offenses of 1 grade lower than the most serious offense that is attempted or solicited, or is an object of the conspiracy.

§ 508. Possessing instruments of crime.

(a) Offense defined. A person commits an offense if all of the following conditions are met:

(1) The person possesses anything that is any of the following:

a. Specially made or specially adapted for criminal use.

b. Commonly used for criminal purposes and possessed by the person under circumstances consistent with unlawful intent.

(2) The person intends to employ the object criminally.

(b) Grading. Possessing instruments of crime is a Class A misdemeanor.

Section 7. Amend Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 6. Offense grades and their implications.

§ 601. Offense grades.

(a) Classified Offenses. Each offense in this part is classified as 1 of the following:

(1) A Class 1 felony.

(2) A Class 2 felony.

(3) A Class 3 felony.

(4) A Class 4 felony.

(5) A Class 5 felony.

(6) A Class 6 felony.

(7) A Class 7 felony.

(8) A Class 8 felony.

(9) A Class 9 felony.

(10) A Class A misdemeanor.

(11) A Class B misdemeanor.

(12) A Class C misdemeanor.

(13) A Class D misdemeanor.

(14) A violation.

(b) Unclassified offenses. An offense provided under the law of this State other than this part is classified as follows:

(1) If the offense provides a term of imprisonment, the following apply:

a. An offense providing imprisonment of more than 6 months is a Class A misdemeanor.

b. An offense providing imprisonment of 6 months or less but more than 3 months is a Class B misdemeanor.

c. An offense providing imprisonment of 3 months or less but more than 30 days is a Class C misdemeanor.

d. An offense providing imprisonment of 30 days or less is a Class D misdemeanor.

(2) If the offense does not provide a term of imprisonment but declares itself to be a felony or misdemeanor, the following apply:

a. A felony must be treated as a Class A misdemeanor.

b. A misdemeanor is a Class D misdemeanor.

(3) An offense that does not declare itself to be a felony or misdemeanor, and does not provide a sentence of imprisonment, is a Class D misdemeanor.

§ 602. Authorized terms of imprisonment.

(a) Except as otherwise provided, authorized terms of imprisonment are as follows:

(1) For a Class 1 felony:

a. for a person who is 18 years or older, life.

b. for a person who is less than 18 years old, a maximum of life but not less than 25 years.

(2) For a Class 2 felony, a maximum of life, but no less than 15 years.

(3) For a Class 3 felony, no more than 35 years, and no less than 5 years if all of the following apply:

a. An element of the offense or grade provision includes causing physical injury, engaging in sexual conduct, use of a deadly weapon, or a drug and the drug is a Schedule I or Schedule II drug.

b. The defendant knowingly commits the elements of the offense.

(4) For a Class 4 felony, no more than 30 years, and no less than 3 years if all of the following apply:

a. An element of the offense or grade provision includes causing physical injury, engaging in sexual conduct, use of a deadly weapon, or a drug and the drug is a Schedule I or Schedule II drug.

b. The defendant knowingly commits the elements of the offense.

(5) For a Class 5 felony, no more than 25 years, and no less than 2 years if any of the following apply:

a. Both of the following:

1. An element of the offense or grade provision includes causing physical injury, engaging in sexual conduct, use of deadly weapon, or a drug and the drug is a Schedule I or Schedule II drug.

2. The defendant knowingly commits the elements of the offense.

b. Elements of the offense or grade provision include recklessly causing the death of another person.

(6) For a Class 6 felony, no more than 15 years.

(7) For a Class 7 felony, no more than 8 years.

(8) For a Class 8 felony, no more than 4 years.

(9) For a Class 9 felony, no more than 2 years.

(10) For a Class A misdemeanor, no more than 1 year.

(11) For a Class B misdemeanor, no more than 6 months.

(12) For a Class C misdemeanor, no more than 3 months.

(13) For a Class D misdemeanor, no more than 30 days.

(14) For a violation, no term of imprisonment is authorized.

(b) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Deadly weapon; Physical injury; Sexual conduct.

§ 603. Authorized fines; restitution.

(a) Authorized fines. Except as otherwise provided, the authorized maximum fine is as follows:

- (1) For a Class 1 felony, \$1,000,000.
- (2) For a Class 2 felony, \$600,000.
- (3) For a Class 3 felony, \$300,000.
- (4) For a Class 4 felony, \$150,000.
- (5) For a Class 5 felony, \$115,000.
- (6) For a Class 6 felony, \$80,000.
- (7) For a Class 7 felony, \$40,000.
- (8) For a Class 8 felony, \$20,000.
- (9) For a Class 9 felony, \$10,000.
- (10) For a Class A misdemeanor, \$4,000.
- (11) For a Class B misdemeanor, \$2,000.
- (12) For a Class C or D misdemeanor, \$1,000.
- (13) For a violation, \$500.

(b) Fines for organizations. When imposed upon an organization, except as otherwise provided, the authorized maximum fine is the greatest of the following amounts:

- (1) For an offense resulting in death or serious physical injury, any amount the court deems reasonable and appropriate.
- (2) Three times the pecuniary loss or damage caused or gain derived.
- (3) For a felony, \$1,000,000.
- (4) For a Class A misdemeanor that results in physical injury, \$250,000.
- (5) For a Class A misdemeanor that does not result in physical injury, \$100,000.
- (6) For a Class B, C, or D misdemeanor that results in physical injury, \$75,000.
- (7) For a Class B, C, or D misdemeanor that does not result in physical injury, \$50,000.
- (8) For a violation, \$10,000.

(c) Restitution. If the criminal conduct constituting an offense results in monetary loss to a victim of the offense, the defendant must make payment of restitution to the victim equal to the value of the loss sustained.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Physical injury; Serious physical injury.

§ 604. General adjustments to offense grade.

(a) Repeat felon. The grade of a felony must be increased by 1 grade if either of the following are true:

(1) All of the following apply:

a. The defendant has previously been convicted of 2 felonies.

b. The defendant has served time in prison for at least 1 of the prior felonies during the past 10 years.

c. The grade of each of the prior felonies was equal to or greater than the grade of the present felony.

(2) All of the following apply:

a. The defendant has previously been convicted of a felony, and an element of both the prior felony and the present felony, or their grade provisions, includes engaging in sexual conduct.

b. The victim of the present offense is less than 16 years old.

c. The defendant is at least 18 years old.

(b) Vulnerable or elderly victim. The grade of an offense must be increased by 1 grade if the victim is any of the following:

(1) A vulnerable person.

(2) Sixty-five or more years old.

(c) Hate crime. The grade of an offense must be increased by 1 grade if the defendant did any of the following:

(1) Committed the offense with intent to interfere with the victim's free exercise or enjoyment of any right, privilege, or immunity protected by the First Amendment to the United States Constitution.

(2) Selected the victim because of the victim's race, religion, color, disability, sexual orientation, gender identity, national origin, or ancestry.

(d) Criminal street gangs. The grade of an offense must be increased by 1 grade if the defendant committed the offense under all of the following circumstances:

(1) With intent to promote, further, or assist in any criminal conduct by members of a criminal street gang.

(2) For the benefit of, at the direction of, or in association with a criminal street gang.

(e) Wearing a disguise or body armor during commission of a felony. The grade of a felony must be increased by 1 grade if, during its commission, the defendant wears any of the following:

(1) A hood, mask, or other article with intent to obscure the defendant's identifying features.

(2) Any material designed to provide bullet penetration resistance.

(f) Limitations on grade adjustments.

(1) Specific provision controls. A grade adjustment in this section does not apply if a specific provision of this part has already taken into account the facts that must be proven to establish the grade adjustment.

(2) Ceiling on grade adjustments.

a. General grade adjustments. Subsections (b) through (e) of this section do not apply if the unadjusted offense grade is a Class 1, 2, 3, 4, or 5 felony.

b. No adjustments to certain felonies. An upward grade adjustment, whether contained in this section or a specific offense provision, may not be made to a Class 1 or 2 felony.

(3) Cumulative grade adjustments. Unless a specific offense provision states otherwise, only 1 upward adjustment may be applied to the grade of an offense.

(g) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Criminal street gang; Gender identity; Sexual orientation; Vulnerable person.

§ 605. Valuation of property for the purposes of grading.

(a) Generally. Except as provided under subsection (b) of this section, if the value of property determines the grade of an offense, the value is whichever of the following applies:

(1) The market value of the property at the time and place of the offense.

(2) If the value described in paragraph (a)(1) of this section cannot be ascertained with reasonable certainty, the cost of replacing, reproducing, or recovering the property within a reasonable time after the offense.

(b) Written instruments. If the value of a written instrument determines the grade of an offense the value of the written instrument is determined as follows:

(1) If the written instrument is evidence of a debt, such as a check, draft, or promissory note, value of the instrument is the amount due or collectible on the debt, taking into account any amount already satisfied.

(2) If the written instrument creates, releases, discharges, or otherwise affects any valuable legal right, privilege or obligation, the value of the instrument is the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) Default. If the value of property cannot be satisfactorily ascertained under subsection (a) or (b) of this section, the value of the property is determined as follows:

(1) If the property is private personal data, its value is \$500.

(2) If the property is electronic or computer equipment, or computer services, its value is \$250.

(3) For any property other than under paragraphs (c)(1) and (2) of this section, its value is less than \$100.

(d) Aggregation for theft and related offenses. If theft, as defined in § 1101 of this title, or any offense contained in Subchapter II of Chapter 11 of this part is committed in a single scheme or continuous course of conduct, whether from the same or several sources, the conduct may be considered a single offense, and the value of the property or services may be aggregated for grading purposes.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Computer services; Owner; Private personal data; Written instrument.

Section 8. Amend Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subpart B. Specific Offenses.

Chapter 10. Offenses against the person.

Subchapter I. Homicide offenses.

§ 1001. Aggravated murder.

(a) Offense defined. A person commits an offense if the person does either of the following:

(1) Intentionally causes the death of another person.

(2) Knowingly causes the death of a law enforcement officer, corrections employee, fire fighter, paramedic, emergency medical technician, fire marshal, or fire police officer, and the offense is committed while the victim is engaged in the lawful performance of the victim's duties.

(b) Grading. Aggravated murder is a Class 1 felony. The death penalty may be imposed, subject to the procedures and standards of § 4209 of this title, but only if the offense was committed after the person reached 18 years of age.

§ 1002. Murder.

(a) Offense defined. A person commits an offense if the person causes the death of another person:

(1) Knowingly.

(2) Recklessly, and any of the following apply:

a. The person acts under circumstances manifesting an extreme indifference to the value of human life.

b. The victim is a law enforcement officer, corrections employee, fire fighter, paramedic, emergency medical technician, fire marshal, or fire police officer, and the offense is committed while the victim is engaged in the lawful performance of the victim's duties.

c. Death is caused by the use or detonation of a bomb or similar destructive device.

d. The offense is committed with intent to avoid or prevent the lawful arrest of any person.

(3) With criminal negligence, while committing, fleeing from, or attempting any felony, apart from the conduct causing death.

(b) Grading. Murder is a Class 2 felony.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Attempt or attempting; Law enforcement officer.

§ 1003. Manslaughter.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Recklessly causes the death of another person.

(2) Causes the death of another person under circumstances that would be an offense under § 1001 or § 1002 of this title, but both of the following mitigating circumstances exist:

a. The person is under the influence of extreme mental or emotional disturbance.

b. There is a reasonable explanation for the extreme mental or emotional disturbance, the reasonableness of which is to be determined based on the following criteria:

1. From the viewpoint of a reasonable person in the defendant's situation.

2. Under the circumstances as the defendant believed them to be.

(b) Application of mitigation under paragraph (a)(2) of this section.

(1) Burden of persuasion. The defendant carries the burden of persuasion on the mitigation provided in paragraphs (a)(2)a. and (a)(2)b. of this section, and must prove those elements by a preponderance of the evidence.

(2) Knowingly causing mitigating conditions. The mitigation under paragraph (a)(2) of this section are not available to a defendant who knowingly causes the conditions constituting the mitigation.

(c) Grading. Manslaughter is a Class 5 felony.

§ 1004. Criminally negligent homicide.

(a) Offense defined. A person commits an offense if the person causes with criminal negligence the death of another person.

(b) Grading. Criminally negligent homicide is graded as follows:

(1) A Class 4 felony if the defendant causes the death by use of a firearm that the defendant possesses in violation of § 1404 of this title (Possessing a firearm by a prohibited person).

(2) A Class 7 felony in all other cases.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:  
Firearm.

§ 1005. Aiding suicide; committing homicide by causing suicide.

(a) Offense defined. A person commits an offense if the person knowingly aids another in committing suicide.

(b) Grading. Aiding suicide is graded as follows:

(1) A Class 7 felony, if the suicide is committed.

(2) A Class 8 felony, if the suicide is attempted.

(3) A Class 9 felony, if the person attempts to aid another person in committing suicide, but the other person does not attempt suicide.

(c) Committing homicide by causing suicide. A person may be convicted of an offense under § 1001 through § 1104 of this title for causing another person to commit suicide only if the person causes the suicide by force, threat, or coercion.

(d) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Attempt; Force;  
Suicide.

(2) "Coercion" means any act that satisfies the definition of coercion in § 1063 of this title.

§ 1006. Unlawful abortion; instruments of an unlawful abortion.

(a) Unlawful abortion, defined. A person commits an offense if all of the following apply:

(1) The person performs an abortion upon a woman or has an abortion performed upon herself.

(2) The pregnancy is in fact terminated and does not result in a live birth.

(3) The abortion is not an authorized abortion.

(b) Instruments of unlawful abortion, offense defined. A person commits an offense if the person manufactures, sells, or delivers any instrument, article, medicine, drug, or substance with intent that the item be used to perform an abortion in violation of subsection (a) of this section.

(c) Grading.

(1) Unlawful abortion is graded as follows:

a. A Class A misdemeanor, if the person is a pregnant woman who has an abortion performed upon herself.

b. A Class 9 felony in all other cases.

(2) Instruments of unlawful abortion is a Class B misdemeanor.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Abortion; Authorized abortion.

Subchapter II. Robbery; assault; endangerment; threat offenses.

§ 1021. Robbery and carjacking.

(a) Offense defined. A person commits an offense if the person does all of the following:

(1) Knowingly and unlawfully takes property from another person or in the presence of another person.

(2) Takes property under paragraph (a)(1) of this section by using force or threat of force during the taking, attempted taking, or flight from the taking or attempted taking.

(b) Grading.

(1) Carjacking. If the person, in the course of committing an offense under subsection (a) of this section, takes possession of a motor vehicle, airplane, vessel or other vehicle, the offense is:

a. A Class 4 felony, if an occupant or passenger of the vehicle is 14 years old or younger.

b. A Class 6 felony, if, while in possession or control of the vehicle, the person does any of the following:

1. Commits or attempts to commit a felony that is Class 7 or greater.

2. Commits an offense under § 1025 of this title.

3. Commits an offense under Subchapter II of Chapter 14 of this title.

c. A Class 7 felony, if, while in possession or control of the vehicle, the defendant does either of the following:

1. Commits an offense under § 1024 of this title.

2. Compels a lawful occupant of the vehicle to leave the vehicle.

d. A Class 8 felony in all other cases.

(2) Aggravated robbery. The offense is a Class 4 felony if, in the course attempting, committing, or in flight from attempting or committing the offense under subsection (a), the person does any of the following:

a. Causes physical injury to any person who is not a participant in the offense.

b. Displays a deadly weapon or an object intended to appear to be a deadly weapon.

c. Represents by word or conduct that the person is in possession or control of a deadly weapon.

(3) Robbery. If paragraphs (b)(1) and (b)(2) do not apply, the offense is a Class 8 felony.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Deadly weapon; Motor vehicle; Physical injury; Property; Vessel.

§ 1022. Assault; strangulation.

(a) Assault, offense defined. A person commits an offense if the person knowingly does any of the following:

(1) Causes physical injury to another person.

(2) Makes physical contact of an offensive or alarming nature with another person.

(b) Strangulation, offense defined. A person commits an offense if the person knowingly causes the breathing or blood circulation of another person to be impeded by applying pressure on the throat or neck of the other person.

(c) Grading.

(1) Enhanced aggravated assault. The offense under paragraph (a)(1) of this section is a Class 5 felony if the person knowingly does any of the following:

a. Amputates or otherwise removes a part of the victim's body.

b. Causes serious physical injury to another person while engaged in commission of or flight from any felony.

c. Causes serious physical injury by means of a firearm or other deadly weapon.

(2) Aggravated assault. The offense under paragraph (a)(1) of this section is a Class 7 felony if any of the following apply:

a. The person causes serious physical injury.

b. The person causes physical injury to a pregnant female.

c. The offense is committed by means of a firearm or other deadly weapon.

(3) Assault. If paragraphs (c)(1) or (c)(2) do not apply, the offense is graded as follows:

a. A Class A misdemeanor, if committed under paragraph (a)(1) of this section.

b. If committed under paragraph (a)(2) of this section, as follows:

1. A Class B misdemeanor, if the person makes contact with the person using urine, feces, or vomit.

2. A Class D misdemeanor in all other cases.

(4) Strangulation is graded as follows:

a. A Class 7 felony, if the person does any of the following:

1. Displays or uses a dangerous instrument or a deadly weapon during commission of the offense.

2. Causes serious physical injury.

b. A Class 8 felony in all other cases.

(5) Special victims, grade adjustment. The grade of assault, aggravated assault, or enhanced aggravated assault is increased by 1 grade if the victim is any of the following:

a. A law enforcement officer, firefighter, emergency medical technician, paramedic, fire marshal, public transit operator, or code enforcement officer who is acting in the lawful performance of duty.

b. Rendering emergency medical care.

c. A state employee or officer discharging a duty of employment or office.

d. Under 6 years old, and the person is 18 years or older.

e. Located in a detention facility, and the person is confined in that detention facility.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Abuse of a child; Deadly weapon; Firearm; Law enforcement officer; Neglect of a child; Physical injury; Serious physical injury.

§ 1023. Reckless injuring.

(a) Offense defined. A person commits an offense if the person recklessly causes physical injury to another person.

(b) Grading. Reckless injuring is graded as follows:

(1) If the injury caused is serious physical injury, the offense is graded as follows:

a. A Class 6 felony, if the offense results in the unlawful termination of the victim's pregnancy without the victim's consent.

b. A Class 8 felony in all other cases.

(2) If the injury caused is serious physical injury, the offense is graded as follows:

a. A Class 9 felony if injury is caused by a deadly weapon or dangerous instrument.

b. The offense is a Class B misdemeanor in all other cases.

(3) Special victims, grade adjustment. The grade of reckless injuring must be increased by 1 grade if the victim is any of the following:

a. A law enforcement officer, firefighter, emergency medical technician, paramedic, fire marshal, public transit operator, or code enforcement officer who is acting in the lawful performance of duty.

b. Rendering emergency medical care.

c. A state employee or officer discharging a duty of employment or office.

d. Under 6 years old, and the person is 18 years or older.

e. Located in a detention facility, and the person is confined in that detention facility.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Abuse of a child; Dangerous instrument; Deadly weapon; Neglect of a child; Physical injury; Serious physical injury.

§ 1024. Reckless endangerment.

(a) Offense defined. A person commits an offense if the person engages in conduct by which the person creates a substantial risk of physical injury to another person.

(b) Grading. Reckless endangerment is graded as follows:

(1) A Class 9 felony, if the person creates a substantial risk of death or serious physical injury.

(2) A Class B misdemeanor in all other cases.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Physical injury; Serious physical injury.

§ 1025. Operating a vehicle while under the influence of drugs or alcohol.

(a) Offense defined. A person commits an offense if the person operates a vehicle, airplane, or vessel while chemically impaired.

(b) Grading. Operating a vehicle while under the influence of drugs or alcohol is graded as follows:

(1) A Class A misdemeanor, if paragraphs (b)(2) through (b)(4) of this section do not apply.

(2) A Class 9 felony, if the person has previously been convicted of 2 offenses under this section within the past 10 years.

(3) A Class 7 felony, if the person has previously been convicted of 3 offenses under this section within the past 10 years.

(4) A Class 6 felony, if the person has previously been convicted of 4 offenses under this section.

(c) Exception.

(1) General repeat offense grade adjustment. Section 604(a) of this title does not apply to an offense under this section.

(2) Felony murder. An offense under this section may not be an underlying felony in a prosecution under § 1002(a)(3) of this title.

(d) Additional civil and procedural provisions. A person convicted of this offense is subject to civil consequences and procedures set forth in § 4177 of Title 21 and Chapter 23 of Title 23.

(e) Prescription drug taken as directed: defense. It is a defense to prosecution under this section that the person's chemical impairment was due entirely to consumption of a drug, if the person meets both of the following conditions:

(1) Had an authorized prescription for the consumed drug.

(2) Consumed the drug according to the directions and terms of the authorized prescription.

(f) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Authorized prescription; Chemically impaired; Vessel.

§ 1026. Genital mutilation of a female minor.

(a) Offense defined. A defendant commits an offense if the defendant does any of the following:

(1) Knowingly circumcises, excises, or infibulates the whole or any part of the genitalia of a female child.

(2) Being a parent or guardian of a female child, allows the act to be performed on the child.

(b) Custom or ritual not a defense. It is not a defense to an offense under this section that the act is required or permitted as a matter of custom, ritual, or standard practice.

(c) Grading. Genital mutilation of a female minor is a Class 7 felony.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Child; Genitalia.

§ 1027. Terroristic threats; menacing.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Recklessly causes another person to experience extreme fear or distress by threatening to commit an offense under this part that is likely to result in death or serious injury to person or property.

(2) Intentionally places another person in fear of imminent physical injury.

(b) Grading. Terroristic threats and menacing is graded as follows:

(1) If committed under paragraph (a)(1) of this section, as follows:

a. A Class 9 felony, if the victim is or has ever been a public servant and the threat is made because of the victim's status as such.

b. A Class A misdemeanor in all other cases.

(2) If committed under paragraph (a)(2) of this section, as follows:

a. A Class 9 felony, if fear is created by any of the following:

1. Displaying a firearm or deadly weapon.

2. Causing the victim to believe that the victim is or has been exposed to a substance or device that could cause physical injury or death.

b. A Class B misdemeanor if fear is created by congregating with other persons in a public place while wearing masks, hoods, or other garments rendering their faces unrecognizable.

c. A Class D misdemeanor in all other cases.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Physical injury; Property; Public servant.

§ 1028. Unlawfully administering drugs.

(a) Offense defined. A person commits an offense if the person administers a drug to another person without that person's consent, thereby intentionally causing stupor, unconsciousness, or any other alteration of the other person's physical or mental condition.

(b) Grading. Unlawfully administering drugs is a Class 9 felony.

§ 1029. Reckless infliction of severe mental or emotional harm.

(a) Abuse of vulnerable people, offense defined. A person commits an offense if all of the following conditions are met:

(1) The person has a duty to provide medical or personal care or maintenance.

(2) The person recklessly does any of the following:

a. Causes severe mental or emotional harm.

b. Fails to provide the care or maintenance necessary for the safety and welfare of the victim.

(3) The victim is any of the following:

a. A vulnerable person.

b. A patient or resident of any facility that provides medical or personal care.

(b) Hazing, offense defined. A person commits an offense if the person's conduct meets all of the following:

(1) Recklessly creates a substantial risk of severe mental or emotional harm to another person.

(2) As part of a program to initiate, admit, or renew membership of the other person in any organization.

(c) Grading.

(1) Abuse of a vulnerable person is a Class A misdemeanor.

(2) Hazing is a Class B misdemeanor.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Vulnerable person.

Subchapter III. Sexual offenses.

§ 1041. Rape; sexual assault.

(a) Offense, defined. A person commits an offense if the person causes another person to submit to or engage in sexual intercourse, oral or object penetration, or sexual contact with anyone, and any of the following apply:

(1) The person uses force, coercion, deception, or any other compulsion that would cause a reasonable person to submit under the circumstances.

(2) The person knows that the victim is any of the following:

a. Unable to understand the nature of the act.

b. Unable to consent to the act.

c. Unconscious, asleep, or otherwise unaware of the act.

(3) The person substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing, without the victim's knowledge or against the victim's will, drugs, intoxicants, or other means for the purpose of preventing resistance.

(4) The victim is:

a. Less than 16 years old, and the person is more than 4 years older than the victim.

b. Less than 12 years old.

(b) Grading.

(1) Enhanced aggravated rape. The offense defined in subsection (a) of this section is a Class 3 felony if the offense conduct is sexual intercourse and:

a. During the commission or attempted commission of the offense, immediate flight from the offense, or an attempt to prevent the offense from being reported, the person does any of the following:

1. Causes serious physical injury to the victim.

2. Displays a deadly weapon or an object intended to appear to be a deadly weapon.

3. Represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument.

b. The person commits an offense defined in subsection (a)(4)b. of this section and the defendant is 18 years or older.

c. The person acts with the active participation or assistance of 1 or more other persons who are present at the time of the act of sexual intercourse or oral or object penetration.

(2) Aggravated rape. The offense defined in subsection (a) of this section is a Class 4 felony if the offense conduct is sexual intercourse and:

a. The person causes physical injury to the victim during any of the following:

1. Commission or attempted commission of the offense.

2. Flight from the offense.

3. Attempt to prevent the offense from being reported.

b. The person commits an offense defined in subsection (a)(4)a. and the victim is 14 years old or younger.

c. The person commits another felony in the course of committing or fleeing from the offense defined in section (a) of this subsection.

(3) Forcible rape. The offense defined in subsection (a) of this section is a Class 6 felony if the offense conduct is sexual intercourse caused by force or coercion.

(4) Rape. The offense defined in subsection (a) of this section is a Class 7 felony in all other cases where the offense conduct is sexual intercourse.

(c) Oral or object penetration, grading. If oral or object penetration is the offense conduct committed in the offense defined in subsection (a) of this section, the grade of the offense is 1 grade lower than that provided under subsection (b) of this section for similar circumstances.

(d) Sexual assault, grading. If the offense conduct is sexual contact, rather than sexual intercourse, the grade of the offense is 4 grades lower than that provided under subsection (b) of this section for similar circumstances.

(e) Offense committed against a child by a person in a position of trust, grade adjustment. The grade of an offense defined in subsection (a) of this section is increased by 1 grade if all of the following apply:

(1) The person occupies a position of trust, authority, or supervision over the victim.

(2) The victim is less than 16 years old.

(f) No defense for mistake as to age under 16. Where an element of the offense or grading provision under this section requires that the victim be any age less than 16 years old, it is not a defense that any of the following apply to the person:

(1) Did not know the victim's age to be less than 16 years old.

(2) Reasonably believed the victim was 16 years or older.

(g) Child support. In a conviction under this section where the offense resulted in the birth of a child, and the child is in the custody and care of the victim or the victim's legal guardian, the court shall make it a condition of any probation term imposed on the person that the person timely pay child support as the Family Court orders for that child.

(h) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Attempt or attempting; Dangerous instrument; Deadly weapon; Deceiving or deception; Force; Oral or object penetration;

Position of trust, authority, or supervision; Physical injury; Serious physical injury; Sexual contact; Sexual intercourse.

(2) “Coercion” means any act that satisfies the definition of coercion in § 1063 of this title.

§ 1042. Prohibited sexual contact by a person in a position of trust.

(a) Offense defined. A person commits an offense if the person engages in sexual contact with another person, and any of the following apply:

(1) The victim is in custody at a detention facility, and the person is an employee, volunteer, or other person working at the detention facility.

(2) The victim is a child, and the person is in a position of trust, authority, or supervision over the victim.

(3) The victim is a patient or resident of any facility where medical or personal care is provided, and the person is an employee, volunteer, or other person working at the facility.

(b) Grading. Prohibited sexual contact by a person in a position of trust is graded as follows:

(1) A Class 6 felony, if the offense conduct is sexual intercourse.

(2) A Class 7 felony, if the offense conduct is oral or object penetration.

(3) A Class 9 felony, if the offense conduct is sexual contact.

(c) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Child; Oral or object penetration; Position of trust, authority, or supervision; Sexual contact.

(2) “Facility” means as defined in § 1131 of Title 16 but does not include a detention facility.

§ 1043. Bestiality.

(a) Offense defined. A person commits an offense if the person intentionally does any of the following:

(1) Engages in sexual contact with the genitalia of an animal.

(2) Causes another person to engage in sexual contact with the genitalia of an animal with intent to gratify the defendant’s own sexual desire.

(b) Grading. Bestiality is a Class 7 felony.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Sexual contact.

§ 1044. Prohibited conduct by a person convicted of a sexual offense against a child.

(a) Offense defined. A person commits an offense if all of the following apply:

(1) The person has been previously convicted of committing any of the following offenses:

a. An offense contained in this subchapter.

b. The offense defined in any of the following sections of this title:

1. Section 1321 of this title.

2. Section 1322(b)(1) of this title.

3. Section 1323 of this title.

4. Paragraphs 1324(a)(1), (a)(2), or (b)(3)a. of this title.

5. Section 1342 of this title.

6. Section 1365 of this title.

c. The equivalent of an offense under paragraphs (a)(1)a. and (a)(1)b. of this section in another jurisdiction.

(2) The person loiters or resides on or within 500 feet of the property of any institution that has as its primary purpose the education or instruction of children less than 16 years old.

(b) Grading. Prohibited conduct by a person convicted of a sexual offense against a child is a Class 9 felony.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Dwelling; Loiters; Reside.

§ 1045. Sexual harassment.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Threatens to engage in conduct likely to result in the commission of a sexual offense against another person.

(2) Knowingly causes annoyance, offense, or alarm to another person by suggesting, soliciting, requesting, commanding, or otherwise attempting to induce another to engage in sexual contact with the person.

(b) Grading.

(1) Sexual harassment is a Class 9 felony, if both of the following apply:

a. The victim is a person less than 16 years of age, and over whom the person stands in a position of trust, authority, or supervision.

b. The person is at least 4 years older than the victim.

(2) If paragraph (b)(1) of this section does not apply, sexual harassment is graded as follows:

a. A Class A misdemeanor, if committed under paragraph (a)(1) of this section.

b. A Class D misdemeanor, if committed under paragraph (a)(2) of this section.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Position of trust, authority, or supervision; Sexual contact.

§ 1046. Culpability; exception; evidence requirement.

(a) Culpability as to age. Unless expressly provided otherwise, if an offense in this chapter requires that the victim be under a specific age, it need be proven only that the defendant was criminally negligent as to the victim being under that age.

(b) Medical treatment exception. A medical examination or procedure is not an offense under this chapter if the examination or procedure is conducted in a way that meets all of the following conditions:

(1) With intent to provide diagnosis or treatment.

(2) By a licensed medical professional, parent, or guardian.

(3) In a manner consistent with reasonable medical standards.

(c) Sexual intercourse evidence. Evidence of emission of semen is not required to prove sexual intercourse occurred.

Subchapter IV. Kidnapping; coercion; restraint; related offenses.

§ 1061. Kidnapping and unlawful restraint.

(a) Unlawful restraint, offense defined. Except as authorized by law, a person commits an offense if the person knowingly and materially interferes with another person's liberty, without the other person's consent, by doing any of the following:

(1) Moving the other person from one place to another.

(2) Confining the other person.

(b) Kidnapping, offense defined. A person commits an offense if the person commits unlawful restraint as defined in subsection (a) of this section, with the intent to do any of the following:

(1) Hold the other person for ransom or reward.

(2) Use the person as a shield or hostage.

(3) Facilitate the commission of any felony or flight thereafter.

(4) Inflict physical injury upon the other person, or violate or abuse the other person sexually.

(5) Terrorize the other person or a third person.

(6) Take or entice a child from the custody of the child's parent, guardian, or lawful custodian, if the person is not a relative of the child.

(c) Grading.

(1) Unlawful restraint is graded as follows:

a. A Class 9 felony, if the person's conduct recklessly creates a substantial risk of serious physical injury to the victim.

b. A Class A misdemeanor in all other cases.

(2) Kidnapping is graded as follows:

a. A Class 4 felony if the person does not voluntarily release the victim alive, unharmed, and in a safe place before trial.

b. A Class 6 felony in all other cases.

(d) Relationship to interference with custody. A person who does not satisfy the elements of paragraph (b)(6) of this section because the person is a relative of the other person may nevertheless be liable under § 1364 of this title.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Child; Relative.

§ 1062. Human trafficking.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Knowingly trades, barter, buys, or sells an individual.

(2) Knowingly uses force, coercion, intimidation, or deception to compel an individual to provide labor or services, including prostitution.

(3) Knowingly obtains, transports, harbors, isolates, or provides an individual, or secures continued performance of the labor or services of an individual in any of the following ways:

a. Knowing that the individual is being compelled to provide labor or services, as provided in paragraph (a)(2) of this section.

b. Knowing that the individual will have body parts removed for sale.

(4) Benefits financially from participation in a venture that the person knows has engaged in acts constituting an offense under paragraph (a)(3)b. of this section.

(b) Grading. Human trafficking is graded as follows:

(1) A Class 3 felony, if committed under paragraph (a)(3)b. or (a)(4) of this section.

(2) A Class 4 felony, if committed under paragraph (a)(2) or (a)(3)a. of this section.

(3) A Class 7 felony, in all other cases.

(4) Grade adjustments. The grade of human trafficking is increased by 1 grade if any of the following apply:

a. The victim is a child.

b. The defendant recruited, enticed, or obtained the victim from a shelter designed to serve any of the following:

1. Victims of human trafficking, domestic violence, or sexual assault.

2. Runaway youth, foster children, or individuals who are homeless.

(c) Exception, payments related to adoption. It is not a violation of paragraph (a)(1) of this section to pay, in conjunction with placement of a child for adoption under § 904(a)(2) of Title 13, any of the following:

(1) Reasonable medical expenses related to pregnancy.

(2) Reasonable room and board to providers of services.

(d) Additional penalties.

(1) Forfeiture.

a. In general. The Court shall order any person convicted of an offense under this section to forfeit any interest in property for which any of the following apply:

1. Was used or intended to be used to facilitate the commission of human trafficking.

2. Constitutes or derives from proceeds that the person obtained, directly or indirectly, as a result of human trafficking.

b. Organizational forfeiture. The Court may order an organization convicted under this section to forfeit any of the following:

1. Profits from activities in violation of this section.

2. State and local government contracts.

(2) Restitution.

a. Valuation. In ordering restitution under § 603(c) of this title for a violation of this section, the Court may order the greatest of any of the following:

1. The gross income or value to the defendant of the victim's labor or services.

2. The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of Title 19 of this code or the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

b. Victim availability.

1. The Court must order restitution for violations of this section, even if the victim is unavailable to accept payment of restitution.

2. If the victim is unavailable for 5 years from the date of the restitution order, the restitution must be paid to the Victim Compensation Fund established under § 9016 of this title.

(e) Motion to vacate sentence: expungement.

(1) Motion to vacate: procedures and presumptions.

a. A defendant convicted of prostitution, loitering, or an obscenity or child pornography offense as a direct result of being a victim of human trafficking may file a motion in the court in which the conviction was obtained to vacate the judgment of conviction.

b. Contents of motion. A motion filed under this subsection must meet all of the following:

1. Be in writing.

2. Be sent to the Delaware Department of Justice.

3. Be made 2 years after the defendant's last criminal conviction and within a reasonable period of time after the victim ceases to be a victim of human trafficking.

4. Describe the evidence and provide copies of any official documents showing that the defendant is entitled to relief under this subsection.

c. The court shall hold a hearing on any motion that satisfies the requirements of paragraph (e)(1)b. of this section, unless the motion fails to assert grounds on which relief may be granted, in which case the motion may be dismissed.

d. Presumption of direct result. Official documentation of the victim's status as a victim under this section or a similar offense in a different jurisdiction, whether from a federal, state, or local government

agency, creates a rebuttable presumption that the defendant committed the offense as a direct result of human trafficking.

e. Burden on defendant. The defendant must prove the defendant is entitled to relief under this subsection by a preponderance of the evidence.

f. Vacated sentence mandatory. If the defendant meets the burden under paragraph (e)(1)e. of this section, the court shall grant the motion, and may take any additional action that is appropriate in the circumstances or that justice requires.

(2) Expungement following vacated judgment of conviction. Notwithstanding any provision of law to the contrary all of the following apply:

a. A defendant seeking a vacated judgment of conviction under paragraph (e)(1) of this section may seek expungement of the criminal record related to that conviction either in the same motion or after the motion has been granted.

b. If the motion to vacate is granted, the motion to expunge must also be granted, subject to the provisions of 11 Del. C. §§ 4374(f), 4376, and 4377.

(f) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Child; Deception.

(2) “Coercion” means any act that satisfies the definition of coercion in § 1063 of this title.

§ 1063. Coercion.

(a) Offense defined. A person commits an offense if, with intent to cause another person to perform or to omit to perform any act, the person threatens to do any of the following:

(1) Cause physical injury to any person.

(2) Cause damage to property.

(3) Engage in other conduct constituting a crime.

(4) Accuse any person of an offense or cause criminal charges to be instituted against a person.

(5) Expose a secret or publicize an asserted fact, whether true or false, tending to subject a person to hatred, contempt, or ridicule.

(6) Testify or provide information or withhold testimony or information with respect to another person's legal claim or defense.

(7) Use or abuse the person's position as a public servant by performing an act within or related to the person's official duties, or by failing or refusing to perform an official duty so as to affect another person adversely.

(8) Perform any other act that is calculated to cause material harm to another person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.

(b) Defense. In a prosecution under paragraph (a)(4) of this section, it is a defense that both of the following apply:

(1) The person believed the threatened criminal charge to be true.

(2) The person's sole purpose was to compel or induce the other person to take reasonable action to make good the wrong that was the subject of the threatened charge.

(c) Grading. Coercion is a Class A misdemeanor.

Section 9. Amend Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 11. Property offenses.

Subchapter I. Theft offenses.

§ 1101. Consolidated grading of theft offenses.

(a) Consolidation. Conduct prohibited by § 1102 through § 1107 of this title constitutes a single offense of theft. A prosecution for theft may be supported by evidence that it was committed in any manner described in § 1102 through § 1107 of this title.

(b) Grading. Any offense defined in § 1102 through § 1107 of this title is graded as follows:

(1) A Class 6 felony, if the value of the property is \$1,000,000 or more.

(2) A Class 7 felony, if the value of the property is \$100,000 or more.

(3) A Class 8 felony, if any of the following apply:

a. The value of the property is \$25,000 or more.

b. The property is a firearm.

(4) A Class 9 felony, if any of the following apply:

a. The value of the property is \$1,500 or more.

b. The property is a motor vehicle.

c. The property is a blank prescription pad, and the defendant is not a practitioner.

(5) A Class A misdemeanor, if the value of the property is \$1,000 or more.

(6) A Class B misdemeanor, if the value of the property is \$100 or more.

(7) A Class C misdemeanor, if the value of the property is less than \$100 and the defendant has been previously convicted of an offense of a similar nature.

(8) A violation in all other cases.

(c) Extortion. Grade adjustment. The grade of the offense is increased by 1 grade when theft is committed in the manner described in § 1104 of this title.

(d) Claim of right. It is a defense to prosecution for theft that the defendant reasonably believed the defendant had a right to use or possess the property.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Firearm; Motor vehicle; Practitioner; Property; Value.

§ 1102. Theft by taking or disposition.

(a) Offense defined. A person commits theft if the person does all of the following:

(1) Knowingly takes or obtains without consent, or exercises unauthorized control over the property of another person;

(2) With the intent to deprive the other person of that property.

(b) Shoplifting: permissive inferences. If the theft is from a retail store, the trier of fact may infer any of the following:

(1) A person who intentionally conceals unpurchased merchandise of that store, inside or outside the premises of the store, does so with the intent required in paragraph (a) of this section.

(2) A person who intentionally alters, removes, or otherwise disfigures any packaging, label, price tag, or marking affixed to unpurchased merchandise of that store, inside the premises of the store, does so with the intent required in paragraph (a)(2) of this section.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Deprive; Obtain; Owner; Property; Property of another.

§ 1103. Theft by deception.

(a) Offense defined. A person commits theft if the person intentionally obtains the property of another person by deceiving the other person or a third person.

(b) Inferences.

(1) Permissive. The trier of fact may infer the deception required in paragraph (a) of this section if the defendant leased or rented personal property of another person, and the defendant did any of the following:

a. Failed to return or make arrangements acceptable to the owner to return the property to the owner or the owner's agent within 10 days after proper notice, following the expiration of the lease or rental agreement.

b. After returning the lease or rental property, failed to make payment, at the agreed rental rate, for the full period which the property was leased or rented, except when the defendant has a good faith dispute with the owner of the property as to the amount owed.

c. Presented to the owner materially false or incorrect identification as to name, address, place of employment, or other information for the purpose of entering into the lease or rental agreement.

d. Proper notice. To make proper notice under paragraph (b)(1)a. of this section, the owner may mail the notice by certified or registered mail to an address supplied by the defendant at the time of the lease or rental agreement, or the defendant's last known address if later furnished by the defendant or the defendant's agent.

(2) Failure to perform a promise.

a. Mere failure to perform promise. Deception as to a person's intention to perform a promise may not be inferred solely from the fact that the promise was not later performed.

b. Exception. Notwithstanding paragraph (b)(2)a. of this section, deception may be inferred if both of the following apply:

1. The promise related to and was made in the course of business.

2. The person was not properly licensed to engage in that business.

(c) Defense. It is a defense in a prosecution for theft by deception in which the defendant leased or rented personal property of another, if the defendant does all of the following:

(1) Accurately stated the defendant's name, address, and other material items of identification at the time of rental.

(2) Failed to receive the owner's notice due to no material fault of the defendant.

(3) Returned the personal property to the owner or the owner's agent within 48 hours of the commencement of the prosecution, together with any charges for the overdue period and the value of damage to the property, if any.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Deceiving; Property; Property of another.

§ 1104. Theft by extortion.

(a) Offense defined. A person commits theft by extortion if the person intentionally deprives another of property by means of coercion that would constitute an offense under § 1063 of this title.

(b) Defense. In a prosecution involving coercion under § 1063(a)(4) of this title, it is a defense that all of the following occurred:

(1) The defendant believed the threatened criminal charge to be true.

(2) The defendant's sole purpose was to compel or induce the victim to take reasonable action to make good the wrong that was the subject of the threatened charge.

(c) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Property.

(2) "Coercion" means any act that satisfies the definition of coercion in § 1063 of this title.

§ 1105. Theft of property lost, mislaid, or delivered by mistake.

(a) Offense defined. A person commits theft if the person does of all the following:

(1) Comes into possession of property that the person knows has been lost, mislaid, or delivered by mistake as to the nature or amount of the property or as to the recipient.

(2) Acts with the intent to deprive another of such property.

(3) Fails to take reasonable measures to return the property to its owner.

(b) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Deprive; Property.

§ 1106. Theft of services.

(a) Offense defined. A person commits theft of services if the person does all of the following:

(1) The person knowingly obtains, without consent, services that the defendant knows are available only for compensation.

(2) By any of the following:

a. Deception, threat, or false representation or statement.

b. By installing, rearranging, or tampering with any facility or equipment.

(3) With the intent to avoid payment for the services.

(b) Theft from public utilities: permissive inferences.

(1) The trier of fact may infer that the person to whom the services are being furnished created the condition violating paragraph (a)(2)b. of this section with the intent required in paragraph (a)(3) of this section if all of the following apply:

a. The services have been obtained from a public utility.

b. The public utility owns the facilities or equipment owned or used to provide its services.

(2) Exception. Paragraph (b)(1) of this section does not apply to any person to whom the services have been furnished for fewer than 31 days, or until there has been at least 1 meter reading.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Obtain; Services.

§ 1107. Receiving stolen property.

(a) Offense defined. A person commits an offense if the person:

(1) Intentionally receives, retains, or disposes of property of another,

(2) With intent to deprive the owner of the property,

(3) Knowing or believing that the property has been stolen.

(b) Permissive inference. The trier of fact may infer the knowledge or belief required under paragraph (a) of this section that the property has been stolen if any of the following apply:

(1) The person acquires the property for consideration which the person knows is substantially below its reasonable value.

(2) The person is found in possession or control of property whose affixed identification or serial number is altered, removed, defaced, or falsified.

(3) The person is a person or dealer who acquires the property for consideration, when such property consists of traffic signs, other traffic control devices, or historical markers, and the acquisition is not accompanied by a written authorization for the property's disposition from the Department of Transportation, Department of State, or other person which owns the property.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Dealer; Deprive; Property of another; Receive; Stolen.

§ 1108. Unauthorized distribution of protected works.

(a) Offense defined. A person commits an offense if:

(1) The person sells, gives, or otherwise makes available to another whose identity is known to the person,

(2) A protected work that the person knows is only available for compensation,

(3) With intent to enable the other person to avoid payment to the owner of the protected work.

(b) Exception; lawfully obtained originals. Subsection (a) of this section does not apply to original copies of protected works that the defendant obtained lawfully.

(c) Grading. Unauthorized distribution of protected works is graded as follows:

(1) A Class A misdemeanor, if distributed to 1,000 or more recipients.

(2) A Class D misdemeanor, if distributed to 100 or more recipients.

(3) A violation, if distributed to fewer than 100 recipients.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Protected work.

§ 1109. Unauthorized use of a vehicle.

(a) Offense defined. A person commits an offense if any of the following apply:

(1) The person knowingly operates another person's motor vehicle, airplane, vessel, or other vehicle, without the owner's consent to do so.

(2) The person has custody of another person's vehicle under an agreement that the person will perform for compensation a specific service for the owner involving the maintenance, repair, or use of the vehicle, and the person operates the vehicle without consent of the owner in a manner constituting a gross deviation from the agreed purpose of the person's custody.

(3) The defendant has custody of another person's vehicle under an agreement that the defendant is to return the vehicle to the owner at a specified time and the defendant intentionally retains or withholds possession without consent of the owner for so lengthy a period beyond the specified time as to be a gross deviation from the agreement.

(b) Grading. Unauthorized use of a vehicle is a Class A misdemeanor.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Motor vehicle; Vessel.

Subchapter II. Forgery and fraudulent practices.

§ 1121. Forgery and counterfeiting.

(a) Forgery, offense defined. A person commits an offense if, with intent to defraud, deceive, or injure anyone, the person does any of the following:

(1) Alters any written instrument of another person without the other person's authority.

(2) Makes, completes, executes, authenticates, issues, or transfers any written instrument so that it purports to be any of the following:

a. To be the act of another person who did not authorize that act.

b. To have been executed at a time or place, or in a numbered sequence, other than was in fact the case.

c. To be a copy of an original when no original existed.

(3) Possesses a written instrument, knowing that it was made, completed, or altered under circumstances constituting forgery.

(4) Puts forward any written instrument that the person knows to be forged in a manner specified in paragraph (a)(1) or (a)(2) of this section.

(b) Counterfeiting, offense defined. A person commits an offense if the person knowingly manufactures, uses, displays, advertises, distributes, sells, or possesses with intent to sell or distribute any item or service bearing or identified by a counterfeit mark.

(c) Grading.

(1) Forgery, grading. Forgery is graded as follows:

a. A Class 8 felony if the written instrument is or purports to be any of the following:

1. Part of an issue of money, stamps, securities, or other valuable instruments that the government issued.

2. Part of an issue of stock, bonds, or similar instruments representing interests in or claims against any property or enterprise.

b. A Class 9 felony, if the written instrument is or purports to be a deed, will, codicil, contract, release, assignment, commercial instrument, check, or similar instrument evidencing, creating, transferring, terminating, or otherwise affecting a legal right, interest, obligation, or status.

c. A Class A misdemeanor in all other cases.

(2) Counterfeiting, grading.

a. The grading for counterfeiting is determined by the value of the item or service bearing or identified by a counterfeit mark and the grade values under § 1101(b) of this title (Consolidation of theft offenses).

b. Valuation. If an item bearing a counterfeit mark is a component of a finished product, the value of the finished product must be used for grading purposes.

(d) Permissive inference. The trier of fact may infer intent to sell or distribute items bearing a counterfeit mark, if a defendant possesses or controls more than 25 items bearing a counterfeit mark.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Counterfeit mark; Defraud; Put forward; Security; Written instrument.

§ 1122. Fraudulent tampering with records.

(a) Offense defined. A person commits an offense if, with intent to defraud anyone, the person:

(1) Tampers with or fails to properly maintain public records, as would constitute an offense under § 1223(a) of this title.

(2) Issues, offers, or presents an instrument that contains false statements or false information.

(b) Grading. Fraudulent tampering with records is a Class 9 felony.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Defraud.

§ 1123. Fraudulent treatment of public records.

(a) Offense defined. A person commits an offense if, with intent to defraud anyone, the person obtains, displays, possesses, or upon proper demand fails to surrender any document that a governmental entity issued.

(b) Grading. Fraudulent treatment of public records is a Class A misdemeanor.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Defraud.

§ 1124. Issuing a bad check.

(a) Offense defined. A person commits an offense if the person issues or passes a check, knowing it will not be honored by the drawee.

(b) Grading. Issuing a bad check is graded based on the value of the check and the grade values under § 1101(b) of this title.

(c) Permissive inference. The trier of fact may infer that the issuer knew the check would not be honored, if any of the following apply:

(1) The issuer had no account with the drawee at the time the check was issued.

(2) The drawee refused payment upon presentation, on or after the date written on the check, or for lack of funds, and the issuer failed to make good within 10 days after receiving notice of the refusal.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Issues; Passes; Value.

§ 1125. Unlawful use of a payment card.

(a) Offense defined. A person commits an offense if the person uses a payment card with the intent to obtain property or services, knowing any of the following:

(1) The card is stolen, forged, or fictitious.

(2) The card has been revoked or cancelled.

(3) That, for any other reason, the use of the card is not authorized by the issuer or cardholder.

(b) Grading.

(1) Generally. Unlawful use of payment card is graded based on the value of the property or services obtained by use of the payment card and the grade values under § 1101(b) of this title.

(2) Aggregation of instances of conduct. If the defendant commits the offense in a single scheme or continuous course of conduct, whether involving 1 issuer or several issuers, the defendant's conduct may be considered a single offense, and the value of the property or services may be aggregated for grading purposes.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Payment card; Services; Stolen; Value.

§ 1126. Deceptive business practices.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Uses a weight, measure, or any other device for determining or recording the quality or quantity of a commodity to be sold and the person knows the weight, measure, or other device is false or misleading.

(2) Sells, offers or exposes for sale, or delivers what the person knows to be less than the represented quantity of any commodity or service.

(3) Takes what the person knows to be more than the represented quantity of any commodity or service.

(4) Sells, or offers or exposes for sale, commodities the person knows to be adulterated or mislabeled.

(5) Makes a statement the person knows to be false or misleading in any advertisement addressed to the public or a substantial segment of the public, with the intent to promote the sale or increase the consumption of property or services.

(6) Makes what the person knows is a false or misleading written statement to promote the sale of securities, or omits information required by law to be disclosed in written documents relating to securities.

(7) Notifies another person that the other person has won a prize, received an award or has been selected or is eligible to receive anything of value if the other person is required to respond through the use of a 900 service telephone number or similar pay-per-call service number.

(b) Exception; republication. This section does not apply to a person in a case involving false or misleading information if all of the following apply:

(1) The person publishes information that originates from another source.

(2) The person does not know of the information's deceptive character.

(c) Grading. The offense of engaging in deceptive business practices is graded based on the amount of the victim's loss and the grade values under § 1101(b) of this title.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Adulterated; Mislabeled; Services.

§ 1127. Defrauding secured creditors.

(a) Offense defined. A person commits an offense if the person destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest, with intent to hinder enforcement of the security interest.

(b) Grading. Defrauding secured creditors is graded based on the amount of the victim's loss and the grade values under § 1101(b) of this title.

§ 1128. Fraud in insolvency.

(a) Offense defined. A person commits an offense if the person, with intent to defraud any creditor and knowing that proceedings have been or are about to be instituted for the appointment of a receiver or other person entitled to administer property for the benefit of creditors has been appointed, or that any other composition or liquidation for the benefit of creditors has been or is about to be made, does any of the following:

(1) Conveys, transfers, removes, conceals, destroys, encumbers, or otherwise disposes of any part of or any interest in the debtor's estate.

(2) Obtains any substantial part of or interest in the debtor's estate.

(3) Presents to any creditor or to the receiver or administrator any written instrument or record relating to the debtor's estate, knowing that it contains a material false statement.

(4) Knowingly misrepresents or fails or refuses to disclose to the receiver or administrator the existence, amount, or location of any part of or any interest in the debtor's estate, or any other information that the person is legally required to furnish to the administrator.

(b) Grading. Fraud in insolvency is graded based on the amount of the victim's loss and the grade values under § 1101(b) of this title.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Defraud; Written instrument.

§ 1129. Identity theft.

(a) Offense defined. A person commits an offense if, with intent to defraud, the person does any of the following:

(1) Obtains, sells, gives, or transfers personal identifying information belonging or pertaining to another person without the consent of the other person.

(2) Possesses or uses a scanning device to obtain information encoded on a payment card.

(3) Possesses or uses a reencoder to place encoded information on a payment card or any electronic medium without the permission of the owner of the card.

(4) Writes down or requests to be written down the address, telephone number, account number, or any other personal identification information of the payment card holder, unless the information is necessary for any of the following:

a. The shipping, delivery or installation of consumer goods.

b. Special orders of consumer goods or services.

(b) Grading. Identity theft is graded as follows:

(1) A Class 8 felony, if paragraphs (a)(1), (a)(2), or (a)(3) of this section apply.

(2) A Class D misdemeanor, if paragraph (a)(4) of this section applies.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Personal identifying information; Reencoder; Scanning device; Services.

§ 1130. Commercial bribery.

(a) Offense defined. A person commits an offense if the person does all of the following:

(1) Acts with the intent to do any of the following:

a. Influence another in any respect to that person's acts, decisions, or duties.

b. Be influenced by another person in any respect to the person's acts, decisions, or duties.

(2) Offers, confers, agrees to confer, solicits, accepts, or agrees to accept any benefit as consideration for violating or agreeing to violate a duty of fidelity of any of the following individuals who are not authorized by law to accept that benefit:

a. A partner, agent, or employee of another.

b. A trustee, guardian, or other fiduciary.

c. A lawyer, physician, accountant, appraiser, or other professional adviser.

d. An officer, director, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association.

e. An official or participant in a sports contest.

(b) Grading. Commercial bribery is a Class A misdemeanor.

§ 1131. Fraudulent conveyance or receipt of public lands.

(a) Offense defined. A person commits an offense if, with intent to defraud, the person executes or receives any deed or other written instrument purporting to convey an interest in land, a part of which is public lands of this State if the person does not have a legal or equitable interest in the land described in the instrument.

(b) Grading. Fraudulent conveyance or receipt of public lands is a Class 9 felony.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Defraud; Written instrument.

§ 1132. Unauthorized impersonation.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) With the intent to obtain a benefit or injure or defraud another person, misrepresents that the person is any of the following:

a. Another person, real or fictitious.

b. A member or veteran of the United States Armed Forces or holds oneself out to have an unearned rank in the United States Armed Forces.

(2) Falsely represents that the person is a bail bond agent.

(3) Having been involved in a motor vehicle accident resulting in serious physical injury or death to another person, falsely represents whether the person was operating a motor vehicle involved in the accident.

(b) Grading. Unauthorized impersonation is graded as follows:

(1) A Class A misdemeanor, if under paragraph (a)(1) or (a)(2) of this section.

(2) A Class 9 felony, if under paragraph (a)(3) of this section.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Motor vehicle; Serious physical injury.

Subchapter III. Arson and other property damage offenses.

§ 1141. Arson.

(a) Offense defined. A person commits an offense if the person damages a building by intentionally starting a fire or causing an explosion.

(b) Grading.

(1) Knowingly causing damage. If the person knew the damage would result, arson is graded as follows:

a. A Class 4 felony, if the person knew another person was within the building at the time of the offense.

b. A Class 6 felony, if the person was reckless as to the presence of another person within the building at the time of the offense.

c. A Class 7 felony in all other cases.

(2) Recklessly causing damage. Arson is a Class 9 felony, if the person was reckless as to the resulting damage.

(c) Ownership exception. Except under paragraph (b)(1)a. or (b)(1)b. of this section, a person does not commit an offense under § 1141 of this section if the building belongs solely to the person.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Owner.

§ 1142. Endangering by fire or explosion.

(a) Offense defined. A person commits an offense if the person does both of the following:

(1) Intentionally starts a fire or causes an explosion, whether on the person's own property or another person's property, and

(2) Thereby recklessly creates a risk of damaging another person's building or other real or personal property.

(b) Grading. The offense of endangering by fire or explosion is a Class A misdemeanor.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Property.

§ 1143. Unlawful incendiary devices.

(a) Offense defined. A person commits an offense if the person manufactures or possesses any incendiary device with intent to cause physical injury or to unlawfully damage any property.

(b) Grading. Unlawful incendiary devices are a Class 7 felony.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Damage; Incendiary device; Physical injury; Property.

§ 1144. Criminal damage.

(a) Offense defined. A person commits criminal damage if the person does any of the following:

- (1) Damages property of another person.
- (2) Tampers with property of another person and thereby creates a risk of damage to property.
- (3) Unlawfully tampers with the tangible property of a public service.

(b) Grading.

(1) Recklessly causing damage. Where damage, loss, or risk is recklessly caused, criminal damage is graded as follows:

- a. A Class 7 felony, if the pecuniary loss is \$1,000,000 or more.
- b. A Class 8 felony, if the pecuniary loss is \$100,000 or more.
- c. A Class 9 felony, if the pecuniary loss is \$25,000 or more.
- d. A Class A misdemeanor, if any of the following apply:
  1. The pecuniary loss is \$1,500 or more.
  2. The person intentionally causes a substantial interruption or impairment of a public service.
- e. A Class B misdemeanor, if the pecuniary loss is \$1,000 or more.
- f. A Class C misdemeanor, if the pecuniary loss is \$100 or more.
- g. A Class D misdemeanor if the pecuniary loss is less than \$100 and the person has been previously convicted of an offense of a similar nature.
- h. A violation, in all other cases.

(2) Knowingly causing damage. The grade of criminal damage under paragraphs (b)(1)a. through (b)(1)g. of this section are increased by 1 grade if the defendant knowingly causes the damage, loss, or risk.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Damage; Public service; Property of another.

§ 1145. Causing or risking catastrophe.

(a) Causing catastrophe.

(1) Offense defined. A person commits an offense if the person causes a catastrophe by fire, flood, avalanche, collapse of a building, bridge, or tunnel, use of a catastrophic agent, unauthorized disposal of solid

waste, or any other means of causing potentially widespread injury or damage. As used in this section, “solid waste” means as defined in § 6302 of Title 7.

(2) Grading. Causing catastrophe is graded as follows:

a. A Class 2 felony, if the person causes the catastrophe knowingly.

b. A Class 4 felony, if the person causes the catastrophe recklessly.

(b) Risking catastrophe.

(1) Offense defined. A person commits an offense if the person recklessly creates a risk of catastrophe by any of the means described in paragraph (a)(1) of this section.

(2) Grading. Risking catastrophe is a Class 8 felony.

(c) Threatening to cause catastrophe.

(1) Offense defined. A person commits an offense if the person threatens to cause a catastrophe using any of the means described in paragraph (a)(1) of this section.

(2) Grading. Threatening to cause catastrophe is a Class 9 felony.

(d) Failure to prevent catastrophe.

(1) Offense defined. A person who recklessly fails to take reasonable measures to prevent or mitigate a catastrophe commits failure to prevent catastrophe if the person does either of the following:

a. Knows that the person is under an official, contractual, or other legal duty to take such measures.

b. Did or assented to the act causing or threatening the catastrophe.

(2) Grading. Failure to prevent catastrophe is a Class A misdemeanor.

(e) Limitation on convictions for multiple related offenses. Section 209 of this title (Conviction when the defendant satisfies the requirements of more than one offense or grade) may prohibit convictions under both this section and another offense based upon the same conduct.

(f) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Catastrophe; Catastrophic agent.

§ 1146. Dangerous violation of environmental statutes or regulations; unsafe handling of hazardous waste; improper disposal of solid waste.

(a) Dangerous violation of environmental statutes or regulations. A person commits an offense if both of the following apply:

(1) The person recklessly engages in conduct that violates a rule, regulation, or statutory prohibition under the jurisdiction of the Department of Natural Resources and Environmental Control.

(2) The person's conduct does any of the following:

a. Causes serious physical injury to another person.

b. Creates a substantial risk of serious physical injury or death to another person.

(b) Unsafe handling of hazardous waste. A person commits an offense if the person dumps, discharges, abandons, treats, stores, or disposes of hazardous waste in any place that the person knows is not an authorized hazardous waste facility.

(c) Improper disposal of solid waste. A person commits an offense if the person disposes of solid waste into the ocean waters of the State, the Delaware Bay, the inland bays, or waters of exceptional recreational or ecological significance.

(d) Grading.

(1) Dangerous violation of environmental statutes or regulations and Unsafe handling of hazardous waste are graded as follows:

a. A Class 7 felony, if serious physical injury is caused.

b. A Class 8 felony, if the person's conduct creates a substantial risk of serious physical injury or death to another person.

(2) Unsafe handling of hazardous waste, in all other cases, is graded as a Class 9 felony.

(3) Improper disposal of solid waste is graded as follows:

a. A Class 9 felony, if the person knowingly engaged in the prohibited conduct.

b. A Class A misdemeanor, if the person recklessly engaged in the prohibited conduct.

(e) Fines. For each day that the defendant's conduct of unsafe handling of hazardous waste under subsection (b) of this section, or improperly disposing of solid waste under subsection (c) of this section continues, the defendant may be subjected to a maximum fine of five times that provided for the grade of the offense under § 603(a) of this title. But imposition of a fine under this subsection is instead of, not in addition to, any other fine provided under § 603 of this title.

(f) Limitation on indictment. A person may not be indicted nor may the State file an information or petition, based upon the same conduct and victim, with both an offense under this section and an offense under Chapter 10 of this Title or another offense under Chapter 11 of this Title.

(g) Consent due to profession. It is a defense to prosecution under subsection (a) of this section that both of the following apply:

(1) The injured or endangered person consented to the specific conduct charged.

(2) The danger and conduct charged were reasonably foreseeable hazards of an occupation, business, or profession.

(h) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Death; Serious physical injury.

(2) The following terms used in this section have the meaning given in § 6072 of Title 7: Inland bays; Waters of exceptional recreational or ecological significance.

(3) The following terms used in this section have the meaning given in § 6302 of Title 7: Disposal; Hazardous waste; Solid waste; Storage; Treatment.

Subchapter IV. Burglary and other criminal trespass offenses.

§ 1161. Burglary and home invasion.

(a) Burglary, offense defined. A person commits burglary if the person does all of the following:

(1) With intent to commit an offense within.

(2) Enters or remains in a building.

(3) Knowing that the person has no license or privilege to do so.

(b) Exception. It is not an offense under this section to enter or remain upon premises which appears at the time to be open to the public, unless the person does any of the following:

(1) Defies a lawful order not to enter or remain upon such premises, and the owner of the premises or another authorized person personally communicated to the person that the lawful order exists.

(2) In a building partially open to the public, enters or remains in that part of the building which is not open to the public.

(c) Grading.

(1) Home invasion. The offense is a Class 6 felony if, in the course of committing an offense under subsection (a) of this section, all of the following apply:

a. The offense is committed in the dwelling of another.

b. The dwelling is occupied.

c. The offense intended under paragraph (a)(1) of this section is robbery, aggravated or enhanced aggravated assault, homicide, rape, or kidnapping.

d. The person attempts to complete the offense intended under paragraph (a)(1) of this section.

(2) Aggravated burglary. If, in the course of committing an offense under subsection (a) of this section, the person commits the offense in the dwelling of another, it is:

a. A Class 7 felony, if committed at night.

b. A Class 8 felony in all other cases.

(3) Burglary. In all other cases, the offense is a Class 9 felony.

(4) Grade adjustment. The grade of an offense committed under subsection (a), (b), or (c) of this section is increased by 1 grade if, during commission of or flight from the offense, any of the following apply:

a. The defendant is armed with explosives or a deadly weapon.

b. The defendant causes physical injury to another person who is not a participant in the offense.

(d) No merger with underlying offense. A defendant may be convicted of both an offense under § 1161 and of committing or attempting to commit the offense that was the purpose of the defendant's unlawful entry.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Attempt; Deadly weapon; Dwelling; Entry; Night; Physical injury.

§ 1162. Criminal trespass.

(a) Offense defined. A person commits criminal trespass if the person:

(1) Enters or remains in or upon any real property,

(2) Knowing that the person has no license or privilege to do so.

(b) Exception. It is not a criminal trespass to enter or remain upon premises which appear at the time to be open to the public, unless the person does any of the following:

(1) Defies a lawful order not to enter or remain upon such premises, and the owner of the premises or another authorized person personally communicated to the person that the lawful order exists.

(2) In a building partially open to the public, enters or remains in that part of the building which is not open to the public.

(c) Grading. Criminal trespass is graded as follows:

(1) A Class A misdemeanor, if the real property is a dwelling.

(2) A Class B misdemeanor, if the person intends to peer or peep into the window or door of an occupied dwelling.

(3) A Class D misdemeanor, if the real property is fenced or enclosed in a manner manifestly designed to exclude intruders.

(4) A violation in all other cases.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Dwelling; Real property.

Section 10. Amend Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 12. Offenses against public administration.

Subchapter I. Bribery, improper influence, and official misconduct.

§ 1201. Bribery.

(a) Bribery, offense defined. A person commits an offense if the person:

(1) Knowingly offers, confers, or agrees to confer a personal benefit,

(2) That the person believes would influence the performance of an act related to the employment or function of any of the following:

a. A public servant.

b. A party officer.

c. A witness.

(3) The other person is not authorized by law to accept that personal benefit.

(b) Accepting a bribe, offense defined. A public servant, party officer, or witness commits an offense if that person does all of the following:

(1) Knowingly solicits, accepts, or agrees to accept a personal benefit from another person as consideration for influencing or agreeing to influence the performance of an act related to the person's employment or function.

(2) The person is not authorized by law to accept the personal benefit.

(c) Grading. Bribery is graded as follows:

(1) A Class A misdemeanor, if, in a prosecution under subsection (a) of this section, the defendant's conduct was a direct response to wrongdoing by the bribe recipient.

(2) A Class 8 felony in all other cases.

(d) Forfeiture of office. A public servant of this State or any of its political subdivisions who is convicted of violating any provision of this section forfeits the public servant's office or employment, regardless of whether the conviction is later vacated or reversed on appeal.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Party officer; Personal benefit; Public servant

§ 1202. Improper influence.

(a) Offense defined. A person commits an offense if the person uses coercion with intent to influence another person's decision, opinion, vote, or other exercise of discretion as a public servant, party officer, or voter.

(b) Defect in office no defense. It is not a defense to a prosecution under this section that the individual whom the person sought to influence was not qualified to act in the desired way, whether because the individual had not yet assumed office, lacked jurisdiction, or for any other reason.

(c) Grading. Improper influence is a Class 9 felony.

(d) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Party officer; Public servant.

(2) "Coercion" means any act that satisfies the definition of coercion in § 1063 of this title.

§ 1203. Official misconduct.

(a) Official misconduct; offense defined. A person commits an offense if the person is a public servant and, intending to obtain a personal benefit or to cause harm to another person, the person does any of the following:

(1) Performs an act the person knows is in excess of the person's authority.

(2) Knowingly refrains from performing a duty that is imposed by law or is clearly inherent in the nature of the office, even if the duty is not directly related to the person's official functions as a public servant.

(3) Performs official functions in a way intended to benefit the person's own property or financial interests.

(4) Knowingly performs official functions in a way that is intended to discriminate on the basis of race, creed, color, sex, age, disability, or national origin.

(b) Profiteering, offense defined. A person commits an offense if the person is a public servant and, in contemplation of official action taken by the person or a governmental entity with which the person is associated in the person's capacity as a public servant or in reliance on information to which the person has access in the person's official capacity as a public servant and that has not been made public, the person knowingly does any of the following:

(1) Acquires a pecuniary interest in any property, transaction, or enterprise that may be affected by the official action or information.

(2) Speculates or wagers on the basis of the official action or information.

(3) Aids another person to engage in an act prohibited by paragraph (b)(1) or (b)(2) of this section, intending to thereby gain a personal benefit.

(c) Grading.

(1) Official misconduct is a Class 8 felony.

(2) Profiteering is a Class A misdemeanor.

(d) Forfeiture of office. A defendant who is convicted of violating any provision of this section forfeits the defendant's office or employment, regardless of whether the conviction is later vacated or reversed on appeal.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Enterprise; Harm to another person; Personal benefit; Property; Public servant.

Subchapter II. Perjury and other official falsification offenses.

§ 1221. Perjury.

(a) Offense defined. A person commits an offense if the person:

(1) Makes a false statement of fact or affirms a false statement of fact previously made.

(2) That the person does not believe to be true.

(3) While under oath.

(b) Grading. Perjury is graded as follows:

(1) A Class 7 felony, if the false statement is an oral, testimonial statement in an official proceeding that is material to the proceeding.

(2) A Class 8 felony, if all of the following apply:

a. The false statement is made in a written instrument that would have no legal efficacy in a court of law absent the oath.

b. The written instrument described in paragraph (b)(1) of this section is delivered to another person with intent to deceive a public servant.

c. The false statement is material to the proceeding or matter.

(3) A Class A misdemeanor in all other cases.

(c) Retracted statement, defense. It is a defense to prosecution under this section that the person retracted the false statement in the course of the same proceeding in which it was made, and the retraction was made before all of the following:

(1) The false statement materially affected the proceeding or matter.

(2) It became manifest that the statement's falsity has been or would be exposed.

(d) No defense. In a prosecution under this section, it is not a defense that any of the following conditions exist:

(1) The person was not competent under the Rules of Evidence to make the allegedly false statement.

(2) The person mistakenly believed the false statement to be immaterial.

(3) The oath was administered or taken in an irregular manner.

(4) A written statement purporting to be made under oath was not in fact made under oath.

(5) The court in which the acts constituting the offense were committed lacked jurisdiction over the person of the defendant or over the subject matter.

(e) Evidentiary rules.

(1) Proof of falsity. If contradictory statements are made under oath in the same or in different proceedings or matters all of the following apply:

a. The prosecution need not specify which statement is false.

b. The falsity of either of the statements may be established by proof of the statements' irreconcilable inconsistency.

(2) Corroboration required. In any prosecution under this section, falsity of a statement may not be established solely by the uncorroborated testimony of only 1 witness.

(f) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Oath; Statement is material.

§ 1222. Written falsification under penalty.

(a) Offense defined. A person commits an offense if the person makes a false statement that the person does not believe to be true, in a written instrument bearing a notice, authorized by law, that false statements made therein are punishable.

(b) Corroboration required. In any prosecution under this section, falsity of a statement may not be established solely by the uncorroborated testimony of only 1 witness.

(c) Grading. Written falsification under penalty is a Class A misdemeanor.

§ 1223. Tampering with public records.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Knowingly removes, mutilates, destroys, conceals, makes a false entry in, or falsely alters a record or written instrument that meets any of the following criteria:

a. Belongs to or is received or kept by a governmental entity for information or record.

b. Another person is required by law to keep for government reference.

(2) Having a legal duty to do so, knowingly fails to make an entry in a record or written instrument described in paragraph (a)(1)a. or (a)(1)b. of this section.

(b) Grading. Tampering with public records is a Class A misdemeanor.

§ 1224. Criminal impersonation.

(a) Offense defined. A person commits an offense if the person falsely represents that the person is any of the following:

(1) A public servant.

(2) A peace officer, firefighter, emergency medical technician, paramedic, or fire police officer, and the person makes the representation with intent to facilitate the commission of or flight from an offense.

(b) Grading. Criminal impersonation is graded as follows:

(1) A Class A misdemeanor, if under paragraph (a)(1) of this section.

(2) A Class 6 felony, if under paragraph (a)(2) of this section and the offense described in paragraph

(a)(2) of this section meets any of the following criteria:

a. Results in physical injury to an individual.

b. Is a Class 1, 2, 3, 4, or 5 felony.

c. Is an offense under Subchapter III of Chapter 10 of this title.

(3) A Class 8 felony in all other cases.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Peace officer; Physical injury; Public servant; Sexual intercourse.

Subchapter III. Offenses involving obstruction of governmental operations; escape.

§ 1241. Obstructing justice.

(a) Offense defined. A person commits an offense if the person acts with intent to prevent, hinder, or delay the investigation, apprehension, prosecution, or defense of any person, and does any of the following:

(1) Provides what the person knows to be a false, misleading, or incomplete oral or written statement to a law enforcement officer or agency, and the statement is material to the investigation, apprehension, prosecution, or defense of the person.

(2) Harbors or conceals the person.

(3) Warns the person of impending apprehension.

(4) Provides the person with money, transportation, a weapon, a disguise, or other means of avoiding apprehension.

(5) Prevents a third person from aiding in the apprehension of the person, or lodging a criminal charge against the person.

(6) Not being a public servant, solicits, confers, or accepts a benefit in exchange for dropping, withholding, or refraining from initiating a criminal prosecution.

(7) With regard to physical evidence, does any of the following:

a. Destroys, alters, conceals, or falsifies physical evidence.

b. Suppresses use of physical evidence by force, intimidation, or deception.

b. Produces or offers false physical evidence in a proceeding.

(8) Alters, conceals, or falsifies information about an electronic or telephone communication, including its existence, place of origin or destination, or originating or receiving telephone number, address, or account.

(9) Fails to stop and await the arrival of law enforcement or emergency personnel following an automobile collision in which the person drove an involved vehicle and the collision resulted in the physical injury or death of a person.

(b) Grading. Obstructing justice is graded as follows:

(1) A Class 9 felony, if under paragraph (a)(7) of this section.

(2) A Class 8 felony, if under paragraph (a)(9) of this section and the collision causes death.

(3) A Class 9 felony, if under paragraph (a)(9) of this section and the collision causes physical injury.

(4) If paragraphs (b)(1) through (b)(3) do not apply, grading is as follows:

a. A Class 9 felony, if the offense under investigation or prosecution is a felony.

b. A Class A misdemeanor if the offense under investigation or prosecution is a misdemeanor.

(c) Restitution or indemnification, defense. In a prosecution for soliciting, conferring, or accepting a benefit in exchange for dropping, withholding, or refraining from initiating a criminal prosecution under paragraph (a)(6) of this section, it is a defense that the benefit did not exceed the amount that the person believed to be due to the person as restitution or indemnification for harm caused by the underlying offense.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Deception; Electronic communication; Law enforcement officer; Originating address or originating account; Physical evidence; Physical injury; Receiving address or receiving account; Statement is material.

§ 1242. Resisting or obstructing a law enforcement officer or other specified person.

(a) Offense defined. A person commits an offense if the person knowingly resists, obstructs, or interferes with the performance of an act within the course and scope of employment of a person that the person knows to be a law enforcement officer, firefighter, correctional officer, or emergency medical personnel.

(b) Grading. Resisting or obstructing a law enforcement officer is graded as follows:

(1) A Class 6 felony, if the offense conduct includes disarming a law enforcement officer of the law enforcement officer's weapon.

(2) A Class 9 felony, if the defendant uses force or violence upon, or causes physical injury to, a law enforcement officer while committing, attempting to commit, or fleeing from the offense.

(3) A Class A misdemeanor in all other cases.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Correctional officer; Deadly weapon; Law enforcement officer; Physical injury.

§ 1243. Obstructing administration of law or other government function.

(a) Offense defined. A person commits an offense if the person knowingly obstructs, impairs, or perverts the administration of law or other governmental function by physical interference or obstacle, breach of official duty, or any unlawful act.

(b) Grading. Obstructing administration of law or other government function is graded as follows:

(1) A Class 8 felony, if the offense conduct is obstructing in relation to any of the following:

a. Efforts of a public health official or agency to control a viral outbreak or other public health emergency.

b. Compliance with a duly served investigative demand of the Attorney General under section § 4136 of this title, in an investigation for violation of § 1441 of this title.

c. Intentionally evading or failing to collect or account for a tax imposed under Titles 4 or 30, other than § 3002 and Chapters 51 and 52 of Title 30.

(2) A Class 9 felony, if the offense conduct is related to entry into premises for an inspection authorized under Chapter 47 of Title 16.

(3) A Class A misdemeanor, if the offense conduct is a violation of a juror's official duty of secrecy or impartiality.

(4) A Class B misdemeanor in all other cases.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Juror.

§ 1244. Refusing to aid a peace officer.

(a) Offense defined. A person commits an offense if, when commanded to do so, the person knowingly fails to provide reasonable aid to a person that the person knows to be a peace officer, while the peace officer is doing any of the following:

(1) Effecting a lawful arrest.

(2) Preventing the commission of an offense by another person.

(b) Grading. Refusing aid to a peace officer is a Class B misdemeanor.

(c) Limitation on civil liability. A person who complies with a peace officer's command to aid under subsection (a) of this section is not liable to a person for damages resulting from that aid.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Peace officer.

§ 1245. Escape.

(a) Offense defined. A person commits an offense if, knowing the person is not permitted to do so, the person departs from custody, commitment, restraint, or placement and the person is any of the following:

(1) Imprisoned in penal custody under a conviction or charge for an offense.

(2) Otherwise in lawful penal custody, or civilly committed.

(3) Restrained by a public servant pursuant to an arrest or court order.

(4) Placed in nonsecure facilities by the Division of Youth Rehabilitative Services.

(b) Grading. Escape is graded as follows:

(1) A Class 5 felony, if under paragraph (a)(1) of this section and the defendant causes physical injury to another person from the time of escape until the defendant has been returned to penal custody.

(2) A Class 6 felony, if under paragraph (a)(1) of this section and the defendant uses force or threat of force, or possesses a deadly weapon, during commission of the escape.

(3) A Class 7 felony, if under paragraph (a)(1) of this section but paragraphs (b)(1) and (b)(2) of this section do not apply.

(4) A Class 9 felony, if under paragraph (a)(2) of this section.

(5) A Class A misdemeanor, if under paragraphs (a)(3) or (a)(4) of this section.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Deadly weapon; Penal custody; Public servant.

§ 1246. Prohibited conduct related to official custody.

(a) Promoting prison contraband, offense defined. A person commits an offense if, except as authorized by law, the person does any of the following:

(1) Introduces into a detention facility what the person knows to be contraband.

(2) Possesses contraband with intent to deliver it a person confined in a detention facility.

(3) Being confined in a detention facility, the person makes, obtains, or possesses what the person knows to be contraband.

(b) Misuse of prisoner mail, offense defined. A person in penal custody or civil commitment commits an offense if the person does any of the following:

(1) Communicates by mail with a person who is not in penal custody or civil commitment in a manner the person knows is likely to cause inconvenience, annoyance, or alarm.

(2) Designates a written communication as legal mail, knowing that the communication is wholly unrelated to any legal matter.

(c) Grading.

(1) Promoting prison contraband is graded as follows:

a. A Class 8 felony, if the contraband is a deadly weapon.

b. A Class 9 felony, if the contraband is any of the following:

1. A cellular telephone or, except as specifically authorized by law, an electronic device.

2. A drug prohibited under Chapter 47 of Title 16.

3. Prescription medication.

c. A Class A misdemeanor, if the contraband is any of the following:

1. An intoxicating liquor.

2. A tobacco or nicotine product.

3. Money, without the knowledge and consent of the Department of Health and Social Services or the Department of Correction.

(2) Misuse of prisoner mail is a Class A misdemeanor.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Deadly weapon.

§ 1247. Intimidating, improperly influencing, or retaliating against a witness, juror, or victim.

(a) Offense defined. A person commits an offense if all of the following apply:

(1) The person has intent to do any of the following:

a. Influence the performance of a juror's duties.  
b. Deter a party or witness from testifying freely, fully, or truthfully in an official proceeding.  
c. Annoy, harass, intimidate, or victimize a current or former juror or witness because of the person's service as a juror or witness.

d. Prevent a victim or witness from doing any of the following:

1. Reporting a crime.

2. Assisting in the prosecution of a complaint, indictment, information, or probation or parole violation.

3. Arresting or seeking the arrest of a person in connection with a crime.

(2) The person does any of the following:

a. Causes or threatens physical injury to anyone.

b. Deceives, persuades, or commits an offense against the person or a third person.

c. Communicates, directly or indirectly, with a juror or witness, other than as authorized by law.

(b) Exception, juror deliberations. It is not an offense under this section for jurors in the same proceeding to communicate with each other with regard to matters admitted as evidence in the proceeding.

(c) Grading. Intimidating, improperly influencing, or retaliating against a witness, juror, or victim is graded as follows:

(1) A Class 6 felony, if under paragraph (a)(2)a. of this section.

(2) If under paragraph (a)(2)b. of this section, graded as follows:

a. A Class 6 felony if committed in furtherance of a conspiracy or for financial gain.

b. A Class 7 felony in all other cases.

(3) A Class A misdemeanor in all other cases.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Deceives; Juror; Physical injury; Witness.

§ 1248. Criminal contempt.

(a) Criminal contempt, offense defined. A person commits an offense if the person engages in any of the following conduct:

(1) Disorderly, contemptuous, or insolent behavior that is committed during the sitting of a court, in the court's immediate view and presence, and directly tending to interrupt the court's proceedings or impair the respect due to the court's authority.

(2) Breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceedings.

(3) Persistent refusal to do any of the following:

a. Be sworn as a witness in any court proceeding.

b. Having been sworn in, answer a proper question.

(4) Publishing what the person knows to be a false or grossly inaccurate report of a court's proceedings.

(5) Persistent refusal to serve as a juror.

(6) Intentional, unexcused failure by a juror to attend a trial for which the person has been chosen to serve as a juror.

(7) Intentional failure to appear on the required date, after having been released from custody upon condition that the person will later appear personally in connection with a criminal proceeding.

(8) Knowing disobedience or resistance to the process, injunction, order, or other mandate of a court.

(b) Grading. Criminal contempt is graded as follows:

(1) A Class B misdemeanor, if under paragraph (a)(1) of this section.

(2) A Class A misdemeanor, if under paragraph (a)(2) through (a)(7) of this section.

(3) If under paragraph (a)(8) of this section, graded as follows:

a. A Class 9 felony, if the offense conduct is a violation of or failure to obey a protective order issued by a court of any jurisdiction in the United States or Canada, and the violation or failure meets either of the following conditions:

1. Results in physical injury to any person.

2. Involves the use or threatened use of a deadly weapon.

b. A Class A misdemeanor in all other cases.

(c) Summary punishment for simple contempt. A person who commits the offense under paragraph (a)(1) of this section may be convicted and sentenced, without further criminal proceedings, during or immediately after termination of the proceeding in which the conduct constituting the offense occurs.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Deadly weapon; Juror; Physical injury.

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

Chapter 13. Offenses against public health, order, and decency.

Subchapter I. Offenses against public order and safety.

§ 1301. Riot; disorderly conduct; failure to disperse.

(a) Disorderly conduct, offense defined. A person commits an offense if, with intent to cause or create a risk of public inconvenience, annoyance, or alarm, the person does any of the following:

(1) Engages in fighting, or in violent, tumultuous, or threatening behavior.

(2) Makes unreasonable noise or offensively coarse utterance, gesture, or display, or addresses abusive language to any person present.

(3) Disturbs any lawful assembly or meeting of persons without lawful authority.

(4) Creates a hazardous or physically offensive condition that serves no legitimate purpose.

(b) Failure to disperse, offense defined. A person commits an offense if all of the following apply:

(1) The person and at least 1 other person are participating in an offense under subsection (a) of this section.

(2) A peace officer or other public servant engaged in executing or enforcing the law orders the participants and others in the immediate vicinity.

(3) The defendant refuses or knowingly fails to obey the order.

(c) Grading.

(1) Riot. The offense under subsection (a) of this section is a Class 9 felony if the person participates in the offense with 2 or more other persons and any of the following apply:

a. The person acts with intent to commit or facilitate the commission of an offense.

b. The person acts with intent to prevent or coerce official action.

c. The person knows a firearm or other deadly weapon will be used.

(2) Disrupting a funeral. The offense under subsection (a) of this section is Class A misdemeanor if, within 300 feet of a building or other location where a funeral or memorial service is being conducted, or within 1,000 feet of a funeral procession or burial, the person does any of the following:

a. Intentionally disturbs or disrupts a funeral, memorial service, or funeral procession.

b. Directs abusive epithets or makes threatening gestures, knowing that the speech or conduct is likely to provoke a violent reaction.

(3) Failure to disperse. The offense under subsection (b) of this section is a Class C misdemeanor.

(4) Disorderly conduct. In all other cases, the offense under subsection (a) of this section is a Class D misdemeanor.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Deadly weapon; Firearm.

§ 1302. False public alarm.

(a) Offense defined. A person commits an offense if, knowing that a report, warning, or call is false or baseless, the person does any of the following:

(1) Initiates or circulates a report or warning of an impending occurrence of a fire, explosion, crime, catastrophe or other emergency, in any of the following ways:

a. Under circumstances where it is likely to cause evacuation of a building, place of assembly, or facility of public transport, or cause public inconvenience or alarm.

b. To any law enforcement officer, agency, or other public safety official.

(2) Calls or summons any fire-fighting apparatus, ambulance, or rescue truck.

(b) Grading. False public alarm is a Class A misdemeanor.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Law enforcement officer.

§ 1303. Harassment; stalking.

(a) Harassment, offense defined. A person commits an offense if the person, with intent to harass, annoy, or alarm another, does any of the following:

(1) Makes communications repeatedly, anonymously, or with offensively coarse language.

(2) Engages in alarming or distressing conduct that meets all of the following:

a. Serves no legitimate purpose.

b. Is in a manner likely to provoke a violent or disorderly response, or to cause a reasonable person to suffer fear, alarm, or distress.

(b)(1) Stalking, offense defined. A person commits an offense if the person knowingly follows, monitors, or communicates with another person, or interferes with the activities or the property of another person, and all of the following apply to the person's conduct:

a. Spans 3 or more separate incidents.

b. Is directed at a specific person.

c. Would cause a reasonable person in the victim's circumstances to fear physical injury to any person or suffer substantial mental anguish or distress, regardless of whether that suffering requires medical or other professional treatment or counseling.

(2) Picketing, defense. It is a defense to stalking that the person was engaged in lawful picketing.

(c) Grading.

(1) Harassment is a Class A misdemeanor.

(2) Stalking is graded as follows:

a. A Class 8 felony if any of the following apply:

1. The defendant is 21 years or older and the victim is less than 14 years old.

2. The defendant's conduct violates a court order prohibiting contact with the victim.

b. A Class 9 felony in all other cases.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Physical injury.

§ 1304. Public intoxication.

(a) Offense defined. A person commits an offense if all of the following are met:

(1) The person appears in a public place manifestly under the influence of alcohol, narcotics, or any other drug not administered or prescribed by a physician.

(2) The influence is of a degree that the person may be in danger or endanger other persons or property, or annoy persons in the vicinity.

(b) Grading. Public intoxication is a violation.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Public place.

§ 1305. Loitering.

(a) Offense defined. A person commits an offense if a person loiters, congregates with others, or prowls, under all of the following circumstances:

(1) In a place, at a time, or in a manner not usual for law-abiding individuals.

(2) Under circumstances that warrant alarm for the safety of persons or property in the vicinity.

(b) Requirement of request to identify and explain. Unless the person's flight or other circumstances make it impracticable, a peace officer shall, before any arrest for an offense under this section, afford the person an opportunity to dispel any alarm that would otherwise be warranted, by requesting identification and an explanation of the defendant's presence and conduct.

(c) Bar to conviction. A person may not be convicted of an offense under this section if the peace officer did not comply with subsection (b) of this section, or if it appears at trial that the person's explanation was true and, if the peace officer had believed the explanation at the time, would have dispelled the alarm.

(d) Victim of human trafficking, defense. It is a defense to prosecution under this section that the person committed the offense as a direct result of being a victim of human trafficking under § 1062 of this title.

(e) Grading. Loitering is a violation.

(f) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Loiters; Peace officer.

§ 1306. Obstructing public ways.

(a) Offense defined. A person commits an offense if, except as authorized by law, the person does any of the following:

(1) Recklessly renders any public passage unreasonably inconvenient or hazardous to use.

(2) Intentionally enters upon, tampers with, or obstructs a public utility right-of-way.

(b) Picketing, defense. It is a defense to the offense under paragraph (a)(1) of this section that the person was engaged in lawful picketing.

(c) Grading. Obstructing public ways is a Class D misdemeanor.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Public passage.

§ 1307. Desecration.

(a) Desecration, offense defined. A person commits an offense if, knowing it will outrage the sensibilities of persons likely to observe or discover the actions, the person intentionally defaces, damages, pollutes, or otherwise physically mistreats any of the following:

(1) A public monument or structure.

(2) A place of worship.

(3) An object of veneration by the public or a substantial segment thereof in a public place.

(4) A burial place.

(b) Grading. Desecration is a Class A misdemeanor.

Subchapter II. Public indecency, obscenity, and cruelty to animals; offenses.

§ 1321. Public indecency.

(a) Public sexual act, offense defined. A person commits an offense if all of the following are met:

(1) The person either:

a. Is in a place that is open to public view.

b. Knows that the person is being viewed by a child less than 16 years old.

(2) The person does either of the following:

a. Performs an act of sexual intercourse or sexual conduct.

b. Exposes the person's sex organs, anus, or breast with the intent to arouse or satisfy the sexual desire of the person or another person.

(b) Non-sexual indecency, offense defined. A person commits an offense if all the following are met:

(1) The person is in a place open to public view.

(2) The person does either of the following:

a. Exposes the person's sex organs, anus, or breast.

b. Urinates or defecates.

(c) Exception. It is not an offense under this section if the person is breast-feeding a child.

(d) Grading. Public indecency is graded as follows:

(1) A Class 9 felony, if under paragraph (a)(1)b. of this section, and the defendant stands in a position of trust, authority, or supervision over the child.

(2) A Class A misdemeanor in all other cases under paragraph (a)(1)b. of this section.

(3) A Class B misdemeanor in all other cases under subsection (a) of this section.

(4) A Class D misdemeanor, if under subsection (b) of this section.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Place open to public view; Sexual conduct; Sexual intercourse; Position of trust, authority, or supervision.

§ 1322. Prostitution; patronizing a prostitute.

(a) Offense defined. A person commits an offense if the person offers or accepts a fee for performing any act of sexual contact.

(b) Grading.

(1) Patronizing a victim of human trafficking. If the person patronizes a prostitute that the person knows is a victim of the offense under § 1062, the offense is graded as follows:

a. A Class 6 felony, if the human trafficking victim of the offense under § 1062 of this part is a child.

b. A Class 7 felony in all other cases.

(2) The offense is a Class B misdemeanor in all other cases.

(c) Victims of human trafficking, defense. It is a defense to prosecution under this section that the person committed the offense as a direct result of being a victim of human trafficking under § 1062 of this title.

(d) Screening for sexually transmitted diseases. A person convicted under this section must undergo testing for sexually transmitted diseases, as designated by the Department of Health and Social Services in its rules and regulations. The results of the testing may be released only to the person, the person's spouse, and the court issuing the order for testing.

(e) Definition and defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Child; Sexual contact.

(2) For purposes of this section, an "offer" or "acceptance" may be made to or through a third person not participating in the sexual contact.

§ 1323. Promoting or permitting prostitution.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Knowingly arranges a situation in which another person may engage in prostitution.

(2) Provides premises that the person knows will be used for prostitution.

(3) Accepts or receives anything of value from another person for acquiescing in or supporting prostitution activity.

(b) Exception for prostitutes and patrons. Subsection (a) of this section does not apply to patrons and prostitutes who commit an offense under § 1322 of this title.

(c) Grading. Promoting or permitting prostitution is graded as follows:

(1) A Class 4 felony, if the prostitution involved in the offense includes prostitution of a person less than 16 years old.

(2) A Class 6 felony, if the prostitution involved in the offense includes prostitution of a person less than 18 years old.

(3) A Class 8 felony if the person manages, controls, supervises, or owns a prostitution enterprise involving 2 or more prostitutes.

(4) A Class 9 felony in all other cases.

§ 1324. Dissemination and possession of obscene material and child pornography.

(a) Offenses defined.

(1) Dissemination or creation of child pornography. A person commits an offense if the person knowingly does any of the following:

a. Sells, delivers, provides, publishes, exhibits, or otherwise makes child pornography available to another person.

b. Creates or participates in the creation of child pornography.

(2) Possession of child pornography. A person commits an offense if the person possesses child pornography.

(3) Dissemination of obscene material. A person commits an offense if the person knowingly does any of the following:

a. Sells, delivers, provides, publishes, exhibits, or otherwise makes a representation or embodiment of obscene material available to another person.

b. Presents, directs, or produces an obscene play, dance, performance, or film, or participates directly in the portion that makes it obscene.

(4) Possession of obscene material for distribution. A person commits an offense if the person possesses any obscene material with intent to sell or otherwise commercially disseminate that material.

(5) Sexting among minors.

a. A person commits an offense if all of the following apply:

1. The person disseminates a visual depiction of child pornography to the person's peers.

2. The person and the individuals to whom the person disseminated the visual depiction are all 12 to 18 years old, or 19 years old and enrolled in high school, and are no more than 3 years apart in age.

3. The person or 1 of the individuals who received the visual depiction are depicted in the visual depiction.

4. The person reasonably believed each recipient would have consented to receiving the visual depiction if asked before the dissemination.

b. The dissemination of a visual depiction other than in the circumstances established by paragraph (a)(5)a. of this section produces liability only under § 1345 of this title.

(b) Grading. Dissemination and possession of obscene material and child pornography is graded as follows:

(1) If under paragraph (a)(1) of this section, as follows:

a. A Class 4 felony, if the offense is committed for financial gain.

b. A Class 6 felony in all other cases.

(2) If under paragraph (a)(2) of this section, as follows:

a. A Class 6 felony if the defendant possesses the child pornography with intent that it be sold or otherwise commercially disseminated.

b. a Class 8 felony in all other cases.

(3) If under paragraph (a)(3) of this section, as follows:

a. A Class 8 felony, if the defendant provided obscene material to a child.

b. A Class 9 felony in all other cases.

(4) If under paragraph (a)(4) of this section, a Class 9 felony.

(5) If under paragraph (a)(5)a. of this section, sexting among minors, a Class C misdemeanor.

(c) Business closure. Upon conviction under this section for obscenity or child pornography involving live conduct, the business or establishment that exhibited the conduct shall be closed by an order of the court, for a period of 6 months.

(d) Dissemination or possession for gain, permissive inference. The trier of fact may infer that a defendant who disseminates or possesses obscene material or child pornography for financial gain knowingly disseminates or possesses the material or pornography.

(e) Defenses.

(1) Dissemination of obscene materials in special circumstances, defense. It is a defense to prosecution for an offense under paragraphs (b)(3)b. or (b)(4) of this section that any of the following apply to the dissemination:

a. It was not for financial gain, and was made to a personal associate who was 18 years or older.

b. It was to an institution or individual having scientific or other special justification for possessing the material.

(2) Victims of human trafficking, defense. It is a defense to prosecution under this section that the defendant committed the offense as a direct result of being a victim of human trafficking under § 1062 of this title.

(3) Victims of child pornography, defense. It is a defense to prosecution under paragraph (a)(1)b. of this section for participating in the creation of child pornography that the defendant is a victim of the offense.

(f) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Child; Child pornography; Obscene.

§ 1325. Unauthorized combat event.

(a) Offense defined. A person commits an offense if the person promotes, arranges, advertises, conducts, or participates as a competitor in a combat event that the person knows is not authorized by law.

(b) Grading. Unauthorized combat event is a Class A misdemeanor.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Combat event.

§ 1326. Abuse of human remains or associated funerary objects.

(a) Offense defined. A person commits an offense if, except as authorized by law, the person does any of the following:

(1) Treats human remains in a way that would outrage ordinary family sensibilities, while reckless as to the outrageousness of the treatment.

(2) Knowingly acquires, sells, or transports for profit any of the following:

a. Funerary objects associated with interment.

b. Human remains removed from marked or unmarked burials.

(b) Grading. Abuse of human remains or associated funerary objects is graded as follows:

(1) A Class A misdemeanor, if under paragraph (a)(1) of this section.

(2) A Class B misdemeanor, if under paragraph (a)(2)a. of this section.

(3) A Class 9 felony, if under paragraph (a)(2)b. of this section.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Funerary object associated with interment; Human remains; Unmarked burial.

§ 1327. Cruelty to animals.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Subjects an animal to cruelty.

(2) Subjects an animal in the person's custody to cruelty by neglect.

(3) Kills or injures an animal belonging to another person without legal privilege, justification, or consent of the other person.

(4) Knowingly facilitates or promotes animal fighting or baiting.

(b) Exceptions to liability.

(1) Paragraphs (a)(1) and (a)(2) of this section do not apply to accepted veterinary practices and activities conducted for scientific research.

(2) This section does not apply to lawful hunting or trapping of animals.

(c) Grading. Cruelty to animals is graded as follows:

(1) A Class 8 felony, if under paragraph (a)(4) of this section.

(2) A Class 9 felony, if under paragraph (a)(3) of this section and the defendant intentionally kills or causes serious physical injury to the animal.

(3) A Class A misdemeanor in all other cases.

(d) Additional consequences of conviction.

(1) Restricted possession. A person convicted under this section is prohibited from owning or possessing an animal after conviction for the following time periods:

a. 15 years, if convicted under paragraph (c)(1) of this section.

b. 15 years, if convicted under paragraph (c)(2) of this section, excluding commercial animals.

c. 5 years, if convicted under paragraph (c)(3) of this section, excluding commercial animals.

(2) Forfeiture. A person convicted under this section forfeits all of the following:

a. Animals in the person's custody that are victims under this section or owned illegally under § 3035F of Title 16.

b. Equipment, devices, and proceeds involved in any animal fighting or baiting operation.

(3) Mandatory fines. A person convicted under this section must be fined at least 1 of the following:

a. \$5,000 for offenses committed under paragraphs (c)(1) or (c)(2) of this section.

b. \$1,000 for all other offenses.

(4) Counseling. The court may require a defendant convicted under paragraph (a)(4) of this section to attend and participate in an appropriate treatment program, obtain appropriate psychiatric or psychological counseling, or both. The person may be required to bear the costs of the treatment.

(e) Rescue from unsafe motor vehicle.

(1) Justification defense. The conduct of a law enforcement officer, animal control officer, animal cruelty investigator, or firefighter is justified when and to the extent that the conduct is immediately necessary to remove an unattended animal from a standing or parked motor vehicle if all of the following apply:

a. An animal is confined in a vehicle under conditions likely to cause suffering, physical injury, or death.

b. The person uses reasonable means to contact the owner of the animal.

c. The owner cannot be reached, the person leaves written notice on the motor vehicle, containing the person's name and office, and the address of the location where the animal can be claimed.

(2) Mistake as to justification. The justification defense under paragraph (e)(1) of this section is subject to the excuse defense for a mistake as to a justification in § 329 of this title.

(3) Excluded animals. The justification defense under paragraph (e)(1) of this section does not apply to the lawful transportation of horses, cattle, swine, sheep, poultry, or other agricultural animals in motor vehicles designed to transport those animals.

(f) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Commercial animals; Cruelty; Law enforcement officer; Serious physical injury.

Subchapter III. Invasion of privacy offenses.

§ 1341. Unlawful eavesdropping or surveillance.

(a) Offense defined. A person commits an offense if the person, except as authorized by law, knowingly and without consent does any of the following:

(1) Trespasses on real property with intent to subject anyone in a private place to eavesdropping or other surveillance.

(2) Installs in a private place any device for observing, photographing, recording, amplifying, or broadcasting sounds, images, or events occurring in that place.

(3) Installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in the private place that would not ordinarily be audible or comprehensible outside that place.

(4) Installs a location tracking device in or on a motor vehicle without the consent of the registered owner, lessor, or lessee of the vehicle.

(b) Grading. Unlawful eavesdropping or surveillance is a Class A misdemeanor.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Private place; Motor vehicle; Trespass on real property.

§ 1342. Voyeurism.

(a) Offense defined. A person commits an offense if the person knowingly and without consent photographs, videotapes, or otherwise records the image of another person under any of the following circumstances:

(1) The other person is in the process of getting dressed or undressed.

(2) Under or through the other person's clothes.

(3) The other person is nude, partially nude, or engaging in sexual conduct.

(b) When child's consent not required. Subsection (a) of this section does not apply to a recording that a parent makes of the parent's child, if the parent does not make the recording with intent to provide sexual gratification to any person.

(c) Grading. Voyeurism is a Class 9 felony.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Child; Sexual conduct.

§ 1343. Interception of private information.

(a) Offense defined. A person commits an offense if the person, except as authorized by law, does any of the following without consent:

(1) Knowingly intercepts any private electronic, written, or oral communication.

(2) Divulges the contents of a communication that meets any of the following:

a. The person knows was unlawfully intercepted under paragraph (a)(1) of this section.

b. The person learned about in the course of employment with an agency or communications common carrier engaged in transmitting the communication.

(b) Exception. It is not a violation of this section to overhear messages through a regularly installed instrument on a telephone party line, an extension, or any other regularly installed instrument or equipment.

(c) Grading. Interception of private information is a Class A misdemeanor.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Contents of a communication; Electronic communication; Intercepts; Private communication.

§ 1344. Unlawful use of information.

(a) Unlawful use or disclosure of information, offense defined. A person commits an offense if the person does any of the following:

(1) Discloses or uses information or a recording that the person knows was obtained in a manner prohibited by § 1341, § 1342, or § 1343 of this title.

(2) Discloses information that is required by law to be kept confidential.

(b) Misuse of computer system information, offense defined. A person commits an offense if the person does any of the following:

(1) Knowingly makes or causes to be made an unauthorized display, use, disclosure, or copy, in any form, of data residing in, communicated by, or produced by a computer system.

(2) Knowingly, and without authorization, alters, deletes, tampers with, damages, destroys, takes, or adds to data intended for use by a computer system.

(c) Misuse of electronic mail, offense defined. A defendant commits an offense if the defendant does any of the following:

(1) Knowingly, and without authorization, distributes or causes to be distributed unsolicited bulk commercial electronic mail to a receiving address or account under the control of any authorized user of a computer system.

(2) Knowingly fails to prevent commercial electronic mail from being sent to any receiving address or account under the control of any authorized user of a computer system after being properly requested to do so.

(d) Grading. Unlawful use of information is graded as follows:

(1) A Class A misdemeanor, if under subsection (a) of this section.

(2) A Class B misdemeanor, if under subsection (b) of this section.

(3) A Class C misdemeanor, if under subsection (c) of this section.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Commercial electronic mail; Computer system; Data; Electronic mail; Originating address or originating account; Receiving address or receiving account.

§ 1345. Unlawful dissemination of personal pornography.

(a) Offense defined. A person commits an offense if the person disseminates a visual depiction of another person under all of the following circumstances:

(1) The visual depiction was not made for commercial purposes.

(2) The visual depiction does any of the following:

a. Depicts the other person engaged in sexual conduct.

b. Reveals the other person's sex organs, breast, or anus.

(3) The person disseminates the visual depiction knowing that the person does not have the consent of the other person.

(b) Grading. Unlawful dissemination of personal property is a Class A misdemeanor.

(c) Person's participation, consent to possession immaterial. In a prosecution under this section, it is immaterial that the person does any of the following:

(1) Appears in the visual depiction with the victim.

(2) Possessed the visual depiction lawfully before its dissemination.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Sexual conduct.

§ 1346. Unlawful access to information.

(a) Offense defined. A person commits an offense if, knowing the person is not authorized to do so, the person accesses, or causes to be accessed, information, electronic programs, or data.

(b) Grading. Unlawful access to information is a Class C misdemeanor.

Subchapter IV. Offenses against children and the family.

§ 1361. Murder of a child by abuse or neglect.

(a) Offense defined. A person commits murder of a child by abuse or neglect when the person causes the death of a child, and both of the following apply:

(1) At the time of the offense, either of the following applies:

a. The person had assumed responsibility, whether temporary or permanent, for the care or supervision of the child.

b. The person had access to the child by past or present invitation, permission, or acquiescence of another person who had assumed responsibility as provided in paragraph (a)(1)a. of this section.

(2) Either of the following are true:

a. Death is caused through an act of abuse or neglect.

b. The person has engaged in a previous pattern of abuse or neglect of the victim.

(b) Grading. Murder of a child by abuse or neglect is graded as follows:

(1) A Class 5 felony if death is recklessly caused.

(2) A Class 6 felony if death is caused with criminal negligence.

(c) Limitation on indictment. A person may not be indicted nor may the State file an information or petition, based upon the same conduct and victim, with both an offense under this section and an offense under Subchapter I of Chapter 10 of this Title.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Abuse; Neglect; Previous pattern of abuse or neglect.

§ 1362. Continuous sexual abuse of a child.

(a) Offense defined. A person commits continuous sexual abuse of a child if all of the following apply:

(1) Three or more times, the person intentionally engages in conduct with a child constituting an offense under the following provisions:

a. Subchapter III of this Chapter.

b. § 1324 of this title.

(2) The offenses under paragraph (a)(1) of this section occur over a period of time longer than 3 months.

(3) The person resides in the same home with the child or has recurring access to the child.

(b) Grading. Continuous sexual abuse of a child is a Class 5 felony.

(c) Limitation on indictment. A person may not be indicted nor may the State file an information or petition based upon the same conduct and victim, with both an offense under this section and an offense under Subchapter III of Chapter 10 of this Title.

(d) Jury agreement. To convict a defendant of an offense under this section, the trier of fact, if a jury, need unanimously agree only that the requisite number of acts occurred, not on which acts constitute the requisite number.

§ 1363. Child abuse.

(a) Offense defined. A person commits child abuse when the person recklessly causes physical injury to a child, and all of the following apply:

(1) At the time of the offense, either of the following applies:

a. The person had assumed responsibility, whether temporary or permanent, for the care or supervision of the child.

b. The person had access to the child by past or present invitation, permission, or acquiescence of another person who had assumed responsibility as provided under paragraph (a)(1)a. of this section.

(2) Either of the following are true:

a. Physical injury is caused through an act of abuse or neglect.

b. The person has engaged in a previous pattern of abuse or neglect of the victim.

(b) Grading. Child abuse is graded as follows:

(1) A Class 6 felony, if the injury caused is serious physical injury.

(2) A Class 9 felony, if any of the following apply:

a. The victim is less than 4 years of age.

b. The victim has an impairment in his or her intellectual or physical capacity, as evidenced by a discernible inability to function within the normal range of performance and behavior with regard to age, development, and environment.

c. Physical injury is caused by means of a deadly weapon or dangerous instrument.

(3) A Class A misdemeanor in all other cases.

(c) Limitation on indictment. A person may not be indicted nor may the State file an information or petition, based upon the same conduct and victim, with both an offense under this section and an offense under Subchapter II of Chapter 10 of this Title.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Abuse; Dangerous instrument; Deadly weapon; Neglect; Physical injury; Previous pattern of abuse or neglect; Serious physical injury.

§ 1364. Endangering the welfare of a child.

(a) Offense defined. A person commits endangering the welfare of a child if any of the following apply:

(1) Being a parent, guardian, or any other person who has assumed responsibility for the care or supervision of a child, the person does either of the following:

a. Recklessly creates a substantial risk of injury to the physical or mental welfare of the child.

b. Recklessly engages in or fails to engage in any conduct, including failing to report a missing child, with the result that the child becomes a neglected or abused child.

(2) The person knowingly encourages, aids, or conspires with the child to run away from the home of the child's parents, guardian, or custodian.

(3) The person harbors a child the person knows has run away from home.

(4) All of the following apply:

a. The person commits an offense, an element or grade provision of which includes causing, risking, or threatening physical injury, engaging in sexual conduct, or use or possession of a deadly weapon.

b. The person knows that the offense under paragraph (a)(5)a. of this section was witnessed, either by sight or sound, by a child.

c. Either of the following is a member of the child witness' family:

1. The person.

2. The victim of the offense under paragraph (a)(5)a. of this section.

(5) The person does both of the following:

a. Operates a vehicle, airplane, or vessel while chemically impaired, in violation of § 1025 of this title.

b. Knowingly permits a child to be a passenger in or on the vehicle, airplane, or vessel.

(6) The person commits an offense contained in Subchapter II of Chapter 14 of this title in a dwelling, knowing that a child is present in the dwelling at the time of the offense.

(7) The person provides or permits a child to consume or inhale any Schedule I, II, III, IV, or V substance not prescribed to the child by a physician.

(b) Grading. Endangering the welfare of a child is graded as follows:

(1) A Class 7 felony, if the child dies while a victim of the offense.

(2) A Class 9 felony, if either of the following apply:

a. The child suffers serious physical injury while a victim of the offense.

b. The child, while a victim of the offense, also becomes the victim of an offense under Subchapter III of this Chapter.

(3) A Class A misdemeanor in all other cases.

(c) Treatment of a child by prayer: defense. In a prosecution under subsection (b)(3) of this section that is based upon an alleged failure or refusal to provide proper medical care or treatment to an ill child, it is a defense that all of the following apply:

(1) The person is a member or adherent of an organized church or religious group, the tenets of which prescribe prayer as the principal treatment for illness.

(2) The person treated or caused the ill child to be treated in accordance with those tenets.

(d) Limitation on indictment. A person may not be indicted nor may the State file an information or petition, based upon the same conduct and victim, with both an offense under this section and an offense under this Chapter 10 of this Title.

(e) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Chemically impaired; Child; Physical injury; Schedule I; Schedule II; Schedule III; Schedule IV; Schedule V; Serious physical injury.

(2) “Family” has the meaning given in § 901(12).

§ 1365. Incest.

(a) Offense defined. A person commits an offense if the person engages in sexual intercourse or oral or object penetration with an individual to whom the person knows the person is related by blood, marriage, or adoption, and stands in at least 1 of the following relationships, regardless of whether the person is the elder or younger party:

(1) Parent and child.

(2) Grandparent and grandchild.

(3) Sibling.

(4) Aunt or uncle and niece or nephew.

(b) Grading. Incest is a Class A misdemeanor.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Oral or object penetration; Sexual intercourse.

§ 1366. Bigamy.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Already having a spouse, marries another person.

(2) Being previously unmarried marries another person when the person has knowledge of circumstances that render the other person guilty of an offense under paragraph (a)(1) of this section.

(b) Absent spouse, defense. It is a defense to prosecution under this section that the prior spouse under paragraph (a)(1) of this section had been living apart from the person for a period of at least 7 consecutive years, during which time the person did not know the prior spouse to be alive.

(c) Grade. Bigamy is a Class 9 felony.

§ 1367. Child abandonment.

(a) Offense defined. A person commits an offense if the person is a parent, guardian, or other person legally charged with the care or custody of a child and leaves the child in any place, intending to permanently end the person's care or custody of the child.

(b) Abandonment of newborn at hospital, defense. It is a defense to prosecution under this section that the person surrendered care or custody of a baby, no more than 14 days old, under all of the following circumstances:

(1) Inside a hospital's emergency department.

(2) Directly to a hospital staff member.

(3) The baby was alive and unharmed at the time of surrender.

(c) Grading. Child abandonment is graded as follows:

(1) A Class 9 felony, if the child abandoned is less than 14 years old.

(2) A Class A misdemeanor, if the child abandoned is 14 years or older.

§ 1368. Interference with custody.

(a) Offense defined. A person commits an offense if, knowing that the person has no legal right to do so, the person takes or entices from another person's lawful custodian any of the following:

(1) A child who is less than 16 years old, under all of the following circumstances:

a. Intending to hold the child permanently or for a prolonged period.

b. The defendant is a relative of the child.

(2) A person entrusted by authority of law to the custody of another person or an institution.

(b) Grading. Interference with custody is graded as follows:

(1) A Class 9 felony, if under paragraph (a)(1) of this section and the person removes the child from this State.

(2) A Class A misdemeanor in all other cases.

§ 1369. Contributing to the delinquency of a minor.

(a) Offense defined. A person commits an offense if either of the following are true:

(1) Both of the following apply:

a. The person acts or fails to act in any way that the person knowingly causes a child to commit an offense under this part.

b. The person is at least 4 years older than the child.

(2) The person permits an individual the person knows to be a child to enter or remain in a place where any of the following activity is maintained or conducted:

a. Offenses contained in Subchapter II of Chapter 14 of this title.

b. Sexual conduct that constitutes an offense under this title.

c. Gambling that constitutes an offense under Subchapter V of Chapter 13 of this title.

d. Service of alcoholic beverages (unless the child is accompanied by a parent or guardian), and

both of the following apply:

1. The place is a business.

2. The person is the proprietor of the place.

(b) Grading. Contributing to the delinquency of a minor is graded as follows:

(1) A Class A misdemeanor, if under paragraph (a)(1) of this section.

(2) A Class B misdemeanor, if under paragraph (a)(2) of this section.

(c) Limitation on indictment. A person may not be indicted nor may the State file an information or petition, based upon the same conduct and victim, with both an offense under this section and an offense under Chapter 10 of this Title.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Child; Sexual conduct.

§ 1370. Persistent non-support.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Fails to meet a court or administrative order of support for a period of at least 4 months.

(2) Refuses to provide food, clothing, medical care, or shelter for the person's dependent child, knowing that the dependent child is in need of such support, regardless of whether the dependent child is also receiving support from other sources.

(b) Grading. Persistent non-support is graded as follows:

(1) A Class 9 felony, if under paragraph (a)(1) of this section and any of the following apply:

a. The person has not made full and timely payment for a period of at least 8 months.

b. The person's support obligation is \$10,000 or more in arrears.

(2) A Class A misdemeanor in all other cases.

(3) A Class B misdemeanor, if under paragraph (a)(2) of this section.

(c) Fines applied to support child. Any money received in payment of a fine upon conviction under paragraph (a)(1) of this section must be applied in accordance with the support order. The court, in its discretion, may order that any money received in payment of a fine imposed upon conviction under paragraph (a)(2) of this section be paid for the support of the child entitled to it. Funds received and distributed under this subsection for either offense do not satisfy the fine owed to the court.

(d) Defenses.

(1) Full payment of obligation. In a prosecution under this section, it is a defense that the person has fully complied with the support order that formed the basis of the charged offense.

(2) Inability to pay. In a prosecution under this section, it is a defense that the person did not have the financial resources to pay or provide necessary support. But, the person's inability to pay must be the result of circumstances over which the person had no control, such as unemployment or underemployment that persist despite the person's diligent pursuit of reasonable opportunities to earn income.

(e) Evidentiary provisions.

(1) Sufficient evidence. Absent evidence to the contrary, payment records maintained by an administrative agency or court through which a support order is payable are sufficient evidence of the support paid or unpaid, and of the amount of any remaining support obligation.

(2) No spousal communication privilege. In a prosecution under this section, there is no privilege against disclosure of confidential communications between spouses, and either spouse is competent to testify against the other as to any relevant matter.

(f) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Dependent child.

Subchapter V. Gambling offenses.

§ 1381. Unlawful gambling and betting practices.

(a) Unlawful gambling or betting, offense defined. A person commits an offense if, except as authorized by law, the person does any of the following:

(1) Sells a lottery ticket, except to raise funds for a charitable purpose.

(2) Receives or records a bet upon the result of a trial or contest.

(3) Bets upon the result of a trial or contest on behalf of another person.

(4) Uses a private wire to disseminate or receive information in furtherance of gambling.

(5) Possesses, buys, sells, or manages what the person knows to be a slot machine or other gambling device that is less than 25 years old.

(6) Benefits financially from investment, participation, or acquiescence in conduct, with knowledge of circumstances that render the conduct a violation of this subsection.

(7) Wagers money or property using dice.

(b) Providing premises for gambling, offense defined. A person commits an offense if, except as authorized by law, the person provides or maintains premises that the person knows will be used for any of the following purposes:

(1) Gambling activity.

(2) To violate any other provision of this section.

(c) Exception, operations controlled by the State. It is not a violation of this section to engage in conduct concerning gambling or lottery operations that are under the State's control.

(d) Grading.

(1) Unlawful gambling or betting is graded as follows:

a. If under paragraphs (a)(1) through (a)(6) of this section, as follows:

1. A Class 9 felony, if the trial or contest involved is animal fighting or baiting.

2. A Class A misdemeanor in all other cases.

b. A violation, if under paragraph (a)(7) of this section.

(2) Providing premises for gambling is a Class D misdemeanor.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Gambling device; Lottery ticket; Private wire; Trial or contest.

§ 1382. Cheating at games and contests.

(a) Cheating, offense defined. A person commits an offense if, for a game upon which a lawful wager may be placed, the person does any of the following:

(1) Alters the element of chance, method of selection, or criterion that determines any of the following:

a. The result of a game.

b. The amount of frequency of payment in a game, including intentionally taking advantage of a malfunctioning machine.

c. The value of a wagering instrument.

d. The value of a wagering credit.

(2) Uses a device, without the written consent of the Director of the State Lottery Office, that is intended to assist a person in doing any of the following:

a. Projecting the outcome of a table game or video lottery machine.

b. Keeping track of the cards played.

c. Analyzing the probability of the occurrence of an event relating to the game.

d. Analyzing the strategy for playing or wagering to be used in the game.

(b) Contest rigging, offense defined. A person commits an offense if the person does any of the following:

(1) Offers, confers, solicits, or accepts anything of value, with intent to influence the outcome of a trial or contest, or any game or event on which a wager may be placed.

(2) Places, cancels, or increases or decreases the amount of a wager on the basis of non-public information that a contest has been rigged, as provided in paragraph (b)(1) of this section.

(c) Unfair wagering, offense defined. A person commits an offense if the person places, cancels, or increases or decreases the amount of a wager on the basis of information regarding the outcome of a table game and that information is not available to other players.

(d) Grading.

(1) Cheating is a Class A misdemeanor.

(2) Contest rigging is a Class 9 felony.

(3) Unfair wagering is graded as follows:

a. A Class 6 felony, if the amount gained or loss avoided is \$1,000,000 or more.

b. A Class 7 felony, if the amount gained or loss avoided is \$100,000 or more.

c. A Class 8 felony, if the amount gained or loss avoided is \$25,000 or more.

d. A Class 9 felony, if the amount gained or loss avoided is \$1,500 or more.

e. A Class A misdemeanor, if the amount gained or loss avoided is \$1,000 or more.

f. A Class B misdemeanor, if the amount gained or loss avoided is \$100 or more.

g. A Class C misdemeanor, if the amount gained or loss avoided is less than \$100 and the person has been convicted of a prior offense of a similar nature.

h. A violation in all other cases.

i. Aggregation. When an offense under subsection (c) of this section is committed in a single scheme or continuous course of conduct, whether by 1 or several persons, the conduct may be considered a single offense and the amounts involved may be aggregated for grading purposes.

(e) Forfeiture. A person convicted under this section forfeits to the State any of the following that apply:

(1) A device, slug, or other material used in the commission of the offense.

(2) A material intended to be used to manufacture devices for cheating.

(3) A vehicle used to store the items described in paragraphs (e)(1) and (e)(2) of this section.

(f) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Table game; Video lottery machine.

Section 12. Amend Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 14. Crime control offenses.

Subchapter I. Offenses involving firearms and other deadly weapons.

§ 1401. Possessing a firearm or deadly weapon during commission of an offense; supplying a firearm for felonious possession.

(a) Possession during a felony, offense defined. A person commits an offense if, during the commission of a felony, the person possesses any of the following:

(1) A firearm.

(2) A deadly weapon.

(b) Supplying a firearm for use during certain offenses, offense defined. A person commits an offense if the person sells, gives, or otherwise supplies a firearm to another person knowing that the other person intends, while in possession of the firearm, to commit any of the following:

(1) A felony.

(2) A Class A misdemeanor.

(3) An offense under Chapter 14, Subchapter II of Chapter 14 of this title.

(c) Grading.

(1) Possession during a felony is graded as follows:

a. A Class 4 felony, if under paragraph (a)(1) of this section.

b. A Class 5 felony, if under paragraph (a)(2) of this section.

(2) Supplying a firearm for use during certain offenses is a Class 8 felony.

(d) Conviction for underlying felony, limitation. A defendant may not be convicted of an offense under subsection (a) of this section unless the defendant is convicted of the felony during which the defendant was alleged to have possessed the firearm or deadly weapon.

(e) Use or intent not required. A defendant may be convicted of an offense under subsection (a) of this section regardless of whether the firearm or deadly weapon is used or intended to be used to further the commission of the felony.

(f) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Deadly weapon; Firearm.

§ 1402. Dealing in unlawful weapons.

(a) Trafficking a firearm with an altered serial number, offense defined. A person commits an offense if the person transports, ships, or possesses a firearm manufactured after 1972, knowing that the importer's or manufacturer's serial number has been removed or altered in a manner that disguises or conceals the identity or origin of the firearm.

(b) Dealing in unlawful weapons, offense defined. A person commits an offense if, except as authorized by law, the person sells, buys, or possesses any of the following:

(1) A destructive weapon.

(2) A knife that meets any of the following:

a. Is not detectable by a metal detector or magnetometer set at standard calibration.

b. Has a blade that is any of the following:

1. Released by a spring mechanism or gravity.

2. Supported by a knuckle ring grip handle.

(3) A sharp, metal throwing star.

(4) A weapon that, by compressed air or spring, projects a pellet, slug, or bullet larger than a B.B. shot, or their pellets, slugs, or bullets.

(5) A pellet, slug, or bullet intended to be used by a weapon described in paragraph (b)(4) of this section.

(6) A bump stock or trigger crank device.

(c) Exception, supplying weapons to special parties. This section does not apply to weapons provided to any of the following:

(1) Law enforcement or military entities.

(2) Historical societies, museums, and institutional collections that are open to the public, if the weapons are stored safely and secured from unauthorized handling.

(d) Grading.

(1) Trafficking in a firearm with an altered serial number is a Class 7 felony.

(2) Dealing in unlawful weapons is graded as follows:

a. A Class 8 felony, if under paragraph (b)(1) of this section.

b. A Class 9 felony, if under paragraph (b)(2)a. of this section.

c. A Class B misdemeanor in all other cases.

(3) Adjustment for commission in a Safe School and Recreation Zone. The grade of an offense under this section may be adjusted upward as provided in § 1408 of this title.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Bump stock; Destructive weapon; Firearm; Trigger crank device.

§ 1403. Carrying a concealed deadly weapon or dangerous instrument.

(a) Offense defined. A person commits an offense if, except as authorized by law, the person possesses a weapon or instrument that meets all of the following:

(1) Is any of the following:

a. A deadly weapon.

b. A dangerous instrument, other than a disabling chemical spray.

(2) Is concealed.

(3) Is available and accessible for the person's immediate use.

(b) Grading. Carrying a concealed deadly weapon or dangerous instrument is graded as follows:

(1) If under paragraph (a)(1)a., as follows:

a. A Class 7 felony, if the deadly weapon is a firearm.

b. A Class 9 felony in all other cases.

(2) A Class A misdemeanor, if under paragraph (a)(1)b. of this section.

(3) Adjustment for commission in a Safe School and Recreation Zone. The grade of an offense under this section may be adjusted upward as provided in § 1408 of this title.

(c) Defense. It is a defense to prosecution under paragraph (a)(1)b. of this section that the person did all of the following:

(1) Not intend to cause or threaten physical injury to another person.

(2) Carried the concealed dangerous instrument for a specific lawful purpose.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Dangerous instrument; Deadly weapon; Physical injury.

§ 1404. Possessing or purchasing deadly weapons by persons prohibited.

(a) Offense defined. A person commits an offense if the person possesses, purchases, owns, or controls what the person knows to be a deadly weapon or ammunition for a firearm and any of the following apply to the person:

(1) Was previously convicted of any of the following:

a. A felony.

b. A crime involving violence that resulted in physical injury.

c. A misdemeanor offense under subsections 1422(a) or (b) of this title.

d. A misdemeanor domestic violence offense, meaning an offense that meets all of the following:

1. Involves threats, endangerment, physical injury, sexual contact, physical contact of an offensive or alarming nature, fear of imminent physical injury, or interference with custody.

2. The person was any of the following: a member of the victim's family; the victim's former spouse; a person with whom the victim either had a substantive dating relationship or cohabited at the time of, or within 3 years prior to, the offense; or a person with whom the victim has a child in common.

(2) Any of the following, unless the person can demonstrate that the person is no longer prohibited under 9904(h) of this title:

a. Has been involuntarily committed for a mental condition under Chapter 50 of Title 16.

b. For a crime of violence, has been found not guilty by reason of insanity or guilty but mentally ill, even if the person is a juvenile.

c. For a crime of violence, has been found mentally incompetent to stand trial, even if the person is a juvenile, unless there has been a subsequent finding that the person has become competent.

(3) Was adjudicated delinquent as a juvenile for conduct that would constitute a felony if committed by an adult. This prohibition applies only until the defendant is 25 years old.

(4) Is a child, and all of the following apply:

a. The deadly weapon is a handgun.

b. The person intends to use the handgun for an activity other than lawful hunting, instruction, sporting, or recreational activity while under the supervision of an adult.

(5) Is subject to a protection from abuse order, if the order is not any of the following:

a. An ex parte order.

b. A contested order issued solely upon § 1041(1)d., § 1041(1)e., or § 1041(1)h. of Title 10.

(6) Is a fugitive from justice and knows the person is alleged to have committed a felony.

(7) Is subject to a lethal violence protection order, issued under § 7704 of Title 10.

(8) Is the subject of an order of relinquishment issued under § 9907 of this title.

(b) Limitation on length of prohibition. Any person prohibited under subsection (a) of this section solely as the result of a prior misdemeanor conviction shall only be prohibited for 5 years following the date of conviction.

(c) Grading. Possessing or purchasing deadly weapons by persons prohibited is graded as follows:

(1) A Class 5 felony, if all of the following apply:

a. The offense conduct is under paragraph (a)(1)a. of this section.

b. The defendant was previously convicted of a felony for which an element of the offense or grade provision is defined to include causing physical injury, engaging in sexual conduct, or use of a deadly weapon.

c. The unlawfully possessed item is a destructive weapon or firearm.

(2) A Class 7 felony, if under paragraphs (a)(1) through (a)(6) of this section and the unlawfully possessed item is a destructive weapon, firearm, or ammunition for a firearm.

(3) A Class 9 felony, if paragraphs (c)(1) and (c)(2) of this section do not apply.

(4) Adjustment for commission in a Safe School and Recreation Zone. The grade of an offense under this section may be adjusted upward as provided in § 1408 of this title.

(d) Seizure and disposal.

(1) Law enforcement may seize and dispose of deadly weapons or ammunition possessed in violation of subsection (a) of this section, as provided in § 2311 of this title.

(2) Exception. Paragraph (d)(1) does not apply to an antique firearm that has not been restored to a firing condition and for which ammunition is no longer manufactured in the United States. As used in this section, “antique firearm” means a firearm manufactured before 1898.

(3) Burden of proving exception. The defendant who is a prohibited person has the burden of proving a firearm is an antique firearm subject to the exception under paragraph (d)(2) of this section.

(e) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Child; Deadly weapon; Firearm; Handgun; Physical injury; Sexual contact.

(2) “Family” has the meaning given in § 901(12) of Title 10.

(3) “Substantive dating relationship” has the meaning given in § 1041(2)b. of Title 10.

§ 1405. Providing weapons to disqualified persons.

(a) Providing deadly weapons to disqualified persons, offense defined. A person commits an offense if the person sells, gives, or transfers a deadly weapon or ammunition, or buys or obtains a deadly weapon or ammunition on behalf of a person the person knows to be any of the following:

(1) A person prohibited from ownership or possession under § 1404(a) of this title.

(2) Under the lawful age to purchase, own, or possess a deadly weapon.

(3) Intoxicated.

(4) Otherwise legally disqualified from purchasing, owning, or possessing the deadly weapon in this

State.

(b) Providing weapons to children without consent, offense defined. A person commits an offense if the person transfers to or obtains on behalf of a child who is less than 16 years old a B.B., air, or spear gun, or ammunition for those weapons, without the consent of the child’s parent or guardian.

(c) Grading.

(1) Providing weapons to disqualified persons is graded as follows:

a. A Class 9 felony, if under paragraph (a)(1) of this section.

b. If under paragraph (a)(2) of this section, as follows:

1. A Class 9 felony, if the recipient is a child, the weapon is a firearm, and the firearm is transferred without the consent of the child's parent or guardian.

2. A Class B misdemeanor, if the recipient is a person less than 21 years old and the weapon is a deadly weapon designed for the defense of one's person.

c. A Class B misdemeanor, if under paragraph (a)(3) of this section.

d. If under paragraph (a)(4) of this section, as follows:

1. A Class 9 felony, if the weapon is a firearm.

2. A Class B misdemeanor in all other cases.

(2) Providing weapons to children without consent is a Class C misdemeanor.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Child; Deadly weapon; Deadly weapon designed for the defense of one's person; Firearm.

§ 1406. Possessing a firearm while under the influence of drugs or alcohol.

(a) Offense defined. A person commits an offense if the person possesses a firearm in a public place while the person is chemically impaired.

(b) Inoperable firearm, defense. It is a defense to prosecution under this section that any of the following apply:

(1) The firearm was disassembled or stored in a manner to prevent its immediate use.

(2) The person did not possess ammunition for the firearm.

(c) Grading. Possessing a firearm while under the influence of drugs or alcohol is a Class A misdemeanor.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:

Chemically impaired; Firearm; Public place.

§ 1407. Offenses related to background checks for firearm sales.

(a) Sale without conducting required check, offense defined. A person commits an offense if the person sells or transfers a firearm to another person without first performing a criminal history background check, as required by §§ 9904 and 9905 of this title, to determine whether the sale or transfer would violate state or federal law.

(b) Misuse of criminal records, offense defined. A person commits an offense if all of the following apply:

(1) The person is a licensed dealer, importer, or manufacturer of firearms.

(2) The person requests a criminal history record check from the Federal Bureau of Investigation, National Instant Criminal Background Check System with intent to use the information for a purpose other than compliance with subsection (a) of this section and §§ 9904 and 9905 of this title.

(c) Grading. Sale without conducting required check and misuse of criminal records are each a Class A misdemeanor.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:  
Firearm.

§ 1408. Grade adjustment for offenses committed in a Safe School and Recreation Zone.

(a) Adjustment defined. The grade of an offense under § 1402, § 1403, or § 1404 of this section is increased by 1 grade, unless the weapon was possessed for the purpose of engaging in any school-authorized activity, if both of the following are met:

(1) The weapon was possessed in one of the following circumstances:

a. In a motor vehicle, or in, on, or within 1,000 feet of a structure or real property, that is owned, operated, leased, or rented by a public or private school, including a vocational-technical school or a college or university.

b. In or on any structure that is utilized as a recreation center, athletic field, or sports stadium.

(2) The unadjusted grade of the offense is a Class 8 felony or lower.

(b) Private residence, defense. It is a defense to application of the grade adjustment in subsection (a) of this section that all of the following apply:

(1) The prohibited conduct took place entirely within a private residence.

(2) No child was present in the residence at any time during the commission of the offense.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title:  
Child; Motor vehicle.

Subchapter II. Drug and related offenses.

§ 1421. Definitions. Additional definitions relevant to this chapter are in § 4701 of Title 16.

§ 1422. Possession of controlled and noncontrolled substances.

(a) Possession of a controlled substance, offense defined. A person commits an offense if, except as authorized by law or as provided in subsection (b) of this section, the person knowingly possesses, uses, or consumes any of the following:

(1) A controlled substance.

(2) A counterfeit controlled substance.

(b) Possession of marijuana, offense defined. A person commits an offense if, except as authorized by law, the person knowingly possesses, uses, or consumes any of the following:

(1) If the person is 18 years or older, either more than 1 ounce of leaf marijuana or any quantity of marijuana other than leaf marijuana.

(2) If the person is less than 18 years old, any quantity of marijuana.

(c) Unlawful possession of noncontrolled prescription drugs, offense defined. A person commits an offense if the person knowingly possesses for personal use, uses, or consumes a drug that is not a controlled substance, but for which a prescription is required by law, without an authorized prescription.

(d) Grading.

(1) Possession of a controlled substance is graded as follows:

a. A Class 6 felony, if the offense involves a controlled substance in a Tier 3 quantity.

b. A Class 8 felony, if the offense involves a controlled substance in a Tier 2 quantity.

c. A Class 9 felony, if the offense involves a controlled substance in a Tier 1 quantity.

d. A Class B misdemeanor in all other cases.

(2) Possession of marijuana is graded as follows:

a. A Class C misdemeanor, if under paragraph (b)(1) of this section.

b. A Class D misdemeanor, if under paragraph (b)(2) of this section.

(3) Unlawful possession of a noncontrolled prescription drug is a Class D misdemeanor.

(4) Grade adjustment, protected school zone. The grade of the offense under paragraphs (d)(1)a. through (d)(1)c. is adjusted upward 1 grade if the offense was committed on, in, or within 300 feet of a structure or real property that is owned, operated, leased, or rented by a public or private kindergarten, elementary, secondary, or vocational-technical school. This grade adjustment does not apply to offenses committed in private places, as the term is defined in § 103 of this title.

(5) Knowledge of weight or quantity not an element. The defendant's culpability as to the precise weight or quantity of a substance is not a required element that the State must prove to determine the grade of an offense under subsection (d) of this section.

(e) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Authorized prescription; Controlled substance; Leaf marijuana; Private place; Tier 1; Tier 2; Tier 3.

(2) The following terms used in this section have the meaning given in § 4701 of Title 16: Counterfeit controlled substance; Prescription drug.

(3) "Marijuana" has the meaning given in § 4714 of Title 16.

§ 1423. Manufacture or delivery of controlled or noncontrolled substances.

(a) Manufacture or delivery of a controlled substance, offense defined. A person commits an offense if, except as authorized by law, the person manufactures, delivers, or possesses with intent to deliver to another person any of the following:

(1) A controlled substance.

(2) A counterfeit or purported controlled substance.

(b) Unlawful delivery of noncontrolled prescription drugs, offense defined. A person commits an offense if, except as authorized by law, the person knowingly delivers or possesses with intent to deliver to another person a drug that is not a controlled substance but for which a prescription is required by law.

(c) Grading.

(1) Manufacture or delivery of a controlled substance is graded as follows:

a. The manufacture or delivery of a controlled substance is 1 grade higher if the offense conduct is manufacturing or delivery than it would be for the same amount of the same substance if the offense conduct was possession with intent to deliver under paragraph (c)(1)b. of this section.

b. If the offense conduct is possession with intent to deliver, the following grading applies:

1. A Class 6 felony, if the offense involves a controlled substance in a Tier 3 quantity.

2. A Class 7 felony, if the offense involves a controlled substance in a Tier 2 quantity.

3. A Class 8 felony, if the offense involves a controlled substance in a Tier 1 quantity or less.

4. A Class 9 felony in all other cases.

(2) Unlawful delivery of a noncontrolled prescription drug is graded as follows:

a. A Class A misdemeanor, if the offense conduct was delivery.

b. A Class B misdemeanor, if the offense conduct was possession with intent to deliver to another person.

(3) Grade adjustment, protected school zone. The grade of an offense under this section is adjusted upward 1 grade if the offense was committed on, in, or within 300 feet of a structure or real property that is owned, operated, leased, or rented by a public or private kindergarten, elementary, secondary, or vocational-technical school. This grade adjustment does not apply to offenses committed in private places, as the term is defined in § 103 of this title.

(4) Knowledge of weight or quantity not an element. The person's culpability as to the precise weight or quantity of a substance is not a required element that the State must prove to determine the grade of an offense under subsection (c) of this section.

(d) Valid prescription within household, defense. It is a defense to prosecution under subsection (b) of this section that all of the following apply:

(1) The prescription drug was possessed by the person while transporting the drug to a member of the person's household who had a valid prescription for the drug.

(2) The prescription drug was in any of the following:

a. The original container in which it was dispensed or packaged.

b. A pillbox or other daily pill container.

(e) Remediation and cleanup costs. Any sentence for an offense under subsection (a) of this section for offense conduct involving manufacturing must include restitution for all reasonable costs, if any, associated with any of the following:

(1) Remediation of the site of manufacture.

(2) Cleanup of any substances, materials, or hazardous waste.

(3) Cleanup of any other site resulting from the manufacturing operation, including disposal of substances or materials.

(f) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Controlled substance; Deliver or delivery; Tier 1; Tier 2; Tier 3.

(2) The following terms used in this section have the meaning given in § 4701 of Title 16: Counterfeit controlled substance; Prescription drug; Purported controlled substance.

§ 1424. Drug paraphernalia offenses.

(a) Use of drug paraphernalia, offense defined. A person commits an offense if, except as authorized by law or provided in § 4774(b) of Title 16, the person uses or possesses with intent to use drug paraphernalia.

(b) Manufacture and sale of drug paraphernalia, offense defined. A person commits an offense if, except as authorized by law, the person does all of the following:

(1) Delivers, conveys, sells, or converts drug paraphernalia or possesses or manufactures drug paraphernalia with intent to deliver it.

(2) Is reckless as to whether it will be used as drug paraphernalia in violation of subsection (a) of this section.

(c) Advertising drug paraphernalia, offense defined. A person commits an offense if the person places an advertisement in a publication, being reckless as to whether the advertisement will promote the sale of drug paraphernalia.

(d) Paraphernalia for use of marijuana, limit on multiple charges. A person charged under § 1422(b) of this title may not also be charged under subsection (a) of this section for possession of drug paraphernalia pertaining to the use of marijuana.

(e) Grading. Offenses under this section are graded as follows:

(1) A Class B misdemeanor, if under subsection (a) of this section.

(2) A Class B misdemeanor, if under paragraph (b)(1) of this section and the offense conduct is possession or manufacturing with intent to deliver.

(3) A Class A misdemeanor, if under paragraph (b)(1) of this section and the offense conduct is delivery, conveyance, sale, or conversion.

(4) A Class D misdemeanor, if under subsection (c) of this section.

(5) Grade adjustment. The grade of an offense under subsection (b) of this section is increased by 1 grade if all of the following apply:

a. The defendant is 18 years or older.

b. The defendant sells or delivers drug paraphernalia to another person who is less than 18 years old.

(f) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Deliver or delivers; Drug paraphernalia;

(2) “Marijuana” has the meaning given in § 4714 of Title 16.

§ 1425. Prescription drug registrant offenses.

(a) Unlawfully distributing prescription drugs, offense defined. A person subject to Subchapter III of Chapter 47 of Title 16 commits an offense if, except as authorized by law, the person knowingly distributes or dispenses a controlled substance and any of the following apply:

(1) The drug is on Schedule II, III, or IV, and is distributed or dispensed without a practitioner’s written prescription.

(2) The person is refilling a prescription for a Schedule II substance.

(3) Unless renewed by the practitioner who prescribed it, the person is refilling a prescription for a Schedule III or IV substance that meets any of the following:

a. More than 6 months after the date of the prescription.

b. More than 5 times.

(4) The drug is on Schedule V, and the drug is distributed or dispensed without a legitimate medical purpose.

(5) The distribution or dispensation is not authorized by the person’s registration under § 4732, et seq., of Title 16.

(b) Administering performance enhancing steroids, offense defined. A person commits an offense if the person prescribes or administers to another person an anabolic steroid, with intent to increase human muscle weight or improve human performance in any form of exercise, sport, or game,

(c) Grading. Unlawfully distributing prescription drugs and administering performance enhancing steroid are each a Class 9 felony.

(d) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Controlled substance; Practitioner; Registrant; Schedule I; Schedule II; Schedule III; Schedule IV; Schedule V.

(2) “Anabolic steroid” has the meaning given in § 4718 of Title 16.

(3) “Prescription drug” has the meaning given in § 4701 of Title 16.

§ 1426. Unlawful possession of a prescription form.

(a) Offense defined. A person commits an offense if the person is not a practitioner but possesses a blank prescription form or pad.

(b) Grading. Unlawful possession of a prescription form is a Class 9 felony.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Practitioner.

§ 1427. Internet pharmacy offenses

(a) Distributing or prescribing drugs through an internet pharmacy, offense defined. A person commits an offense if the person is either of the following:

(1) An internet pharmacy, or its owner or operator, and without an authorized prescription:

- a. Knowingly participates in the sale, distribution, dispensing, or delivery of a prescription drug.
- b. The drug was requested by a prescription drug order.
- c. The drug is to be delivered within the State.

(2) A practitioner who:

- a. Issues a prescription drug order without an authorized prescription.
- b. Through what the practitioner knows to be an internet pharmacy.
- c. The drug is to be delivered within the State.

(b) Patronizing an internet pharmacy, offense defined. A person commits an offense if, without an authorized prescription, the person purchases a prescription drug to be delivered within this State from what the person knows to be an internet pharmacy.

(c) Advertising an internet pharmacy, offense defined. An internet pharmacy, or its owner or operator, commits an offense if it does all of the following:

(1) Advertises, makes a sales presentation, or directly communicates to anyone within the State.

(2) Communicates that a prescription drug may be obtained through a web-based consultation, questionnaire, or medical history form that is submitted to the internet pharmacy through a website.

(d) Exception, Delaware delivery clearly excluded. Subsection (c) of this section does not apply to an internet pharmacy if the internet pharmacy's advertisement or website clearly and conspicuously asserts that it will not deliver or ship prescription drugs to any location within this State.

(e) Grading. Internet pharmacy offenses are graded as follows:

(1) If under subsection (a) of this section, as follows:

- a. A Class 4 felony, if the prescription drug causes the death of its intended user.
- b. A Class 6 felony, if the prescription drug causes serious physical injury to its intended user.
- c. A Class 7 felony in all other cases.

(2) A Class A misdemeanor, if under subsection (b) of this section.

(3) A Class 7 felony, if under subsection (c) of this section.

(f) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Authorized prescription; Internet pharmacy; Practitioner; Serious physical injury.

(2) The following terms used in this section have the meaning given in § 4701 of Title 16: Patient-practitioner relationship; Prescription drug.

§ 1428. Immunity for use of inculpatory evidence obtained in life-threatening emergency.

(a) Immunity defined. If law enforcement authorities discover inculpatory evidence only because an offender calls the authorities or official medical personnel to report what the offender reasonably believes to be an overdose or other life-threatening medical emergency, that evidence may not be used against the offender in a criminal prosecution.

(b) Applicable offenses, limitation. The immunity in subsection (a) of this section applies only to evidence of offenses defined in this subchapter.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Overdose.

§ 1429. Court having jurisdiction.

(a) Generally. Except as provided in subsection (b) of this section, all of the following apply:

(1) The Superior Court has original and exclusive jurisdiction over violations of this chapter by a person who is 18 years or older.

(2) The Family Court has original and exclusive jurisdiction over violations of this chapter by a person who is less than 18 years old.

(b) Exception. The Court of Common Pleas has original jurisdiction, concurrent with the Superior Court, over violations of the following sections if the person is 18 years or older:

(1) Section 1422(b) of this title.

(2) Section 1422(c) of this title.

(3) Section 1422(d)(1)d. of this title.

(4) Section 1422(d)(3) of this title.

(5) Section 1424 of this title.

### Subchapter III. Offenses involving organized crime and racketeering.

#### § 1441. Organized crime and racketeering.

(a) Offense defined. A person commits an offense if the person knowingly does any of the following:

(1) Conducts or participates in the affairs of an enterprise through a pattern of racketeering activity or collection of unlawful debt.

(2) Acquires or maintains, directly or indirectly, any interest in or control of any enterprise or property through a pattern of racketeering activity or proceeds derived therefrom.

(3) Uses or invests, directly or indirectly, proceeds derived from a pattern of racketeering activity in the acquisition of any interest in, establishment of, or operation of any enterprise or real property.

(b) Grading. Organized crime and racketeering is a Class 4 felony.

(c) Forfeiture. A person who commits an offense under subsection (a) of this section forfeits to the State any property or other benefit used in the course of, intended for use in the course of, or derived from conduct in violation of subsection (a) of this section, including any of the following that apply:

(1) Property constituting an interest in or means of control or influence over the enterprise involved in the violation of subsection (a) of this section.

(2) Property constituting proceeds derived from conduct in violation of subsection (a) of this section.

(3) Position, office, appointment, tenure, commission, or employment contract that the person acquired or maintained through the person's violation of subsection (a) of this section.

(4) Compensation, right, or benefit derived from an item obtained by violating paragraph (c)(3) of this section.

(d) Discretionary treble fines. Any defendant convicted of an offense in violation of subsection (a) of this section may be sentenced to pay a fine equal to the sum of all of the following:

(1) Up to 3 times the value gained or loss caused by the offense, whichever is greater.

(2) Court costs and reasonably incurred costs of investigation and prosecution.

(e) Renunciation.

(1) Defense for preventing commission of the offense. A defense to prosecution under subsection (a) of this section is available for a voluntary and complete renunciation preventing commission of the offense, under the same terms as the defense in § 506 of this title.

(2) Sentencing mitigation for unsuccessful attempt to prevent commission of the offense. If the defendant does not prevent an offense under paragraph (e)(1) of this section, but the defendant made a substantial effort to prevent commission of the offense, that fact must be taken into account as a mitigating factor during sentencing.

(f) Unconvictable confederate, change in identity no defense. In any prosecution under this section where it is alleged that the defendant acted as a member of a group or informal organization, all of the following apply:

(1) Section 504 of this title applies as to the other members.

(2) It is not a defense that the defendant is not a member due to a change in number or identity of persons in the group or organization, as long as two or more of the original members remain in the group.

(g) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Enterprise; Pattern of racketeering activity; Proceeds; Unlawful debt.

§ 1442. Gang participation.

(a) Gang participation, offense defined. A person commits an offense if all of the following apply to the person:

(1) The person engages in any conduct that benefits a criminal street gang.

(2) The person knows that its members engage in or have engaged in a pattern of criminal gang activity.

(3) The person knowingly promotes, furthers, or assists in any criminal conduct by members of that gang that would constitute a felony.

(b) Recruitment of juveniles: offense defined. A person commits an offense if the person knowingly solicits, invites, recruits, encourages, or otherwise causes a child to participate in or become a member of a criminal street gang.

(c) Grading.

(1) Gang participation is a Class 8 felony.

(2) Recruitment of juveniles is a Class 9 felony.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Child; Criminal street gang; Pattern of criminal gang activity.

§ 1443. Money laundering.

(a) Money laundering, offense defined. A person commits an offense if the person knowingly does any of the following:

(1) Conceals, possesses, transfers, transports, acquires or maintains an interest in the proceeds of criminal activity.

(2) Conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity.

(3) Invests, expends, receives, or offers to invest, expend, or receive the proceeds of criminal activity.

(4) Provides, holds, or invests funds that are intended to further the commission of criminal activity.

(5) Engages in a transaction involving the proceeds of criminal activity intended, in whole or in part, to avoid a currency transaction reporting requirement under the laws of this State, any other state, or the United States.

(b) Structuring, offense defined. A person commits an offense if, with intent to evade a transaction reporting requirement of this State or of the United States, the person does any of the following:

(1) Causes a financial institution, money transmitter, check casher, or any other individual or entity that is required by law to file a report regarding currency transactions or suspicious transactions to do any of the following:

a. Fail to file a report.

b. File a report that contains a material omission or misstatement.

(2) Conducts or assists in conducting 1 or more transactions in currency, in any amount and in any manner, at 1 or more financial institutions, money transmitters, check cashers, or other entities that are required by law to file a report regarding currency transactions or suspicious transactions.

(c) Grading.

(1) Money laundering is a Class 7 felony.

(2) Structuring is a Class 9 felony.

(d) Knowledge of specific criminal activity not required. Knowledge of the specific nature of the criminal activity giving rise to the proceeds is not required to establish culpability under this section.

(e) Defense. It is a defense to prosecution under this section that a licensed attorney received the funds as bona fide legal fees and, at the time of their receipt, the attorney did not have actual knowledge that the funds were derived from criminal activity.

(f) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Proceeds.

Section 13. This Act is prospective. This Act takes effect 20 months after the date of its enactment. Prosecution for an offense committed before the effective date of this Act in which a conviction has been entered is governed by prior law. Enactment of this Act does not give rise to a cause of action or appeal or right of review of a conviction entered prior to the Act's effective date.

Section 14. Upon adoption of this Act, SENTAC shall consider updating its sentencing guidelines in accordance with the provisions of this Act. In connection with this updating, in view of the fact that the Act's grading table gives each grade of crime a specific, uniform sentencing range, SENTAC should consider whether to propose legislation to the General Assembly that will make the guidelines more binding in nature, and to provide the state or defendant with a limited ability to seek review if a sentence is not in accord with the guidelines.

## SYNOPSIS

Delaware's existing Criminal Code was adopted in 1973 and was based on the Model Penal Code. Since that time, the Criminal Code has quadrupled in size and expanded to other parts of the Code without consideration to the general effects of the change on the Criminal Code's overall structure, its terminology, or its application, creating numerous inconsistencies, redundancies, ambiguities and contradictions. In 2014, the General Assembly established the Criminal Justice Improvement Committee to review opportunities for efficiencies in the Delaware Criminal Code, including identifying: "disproportionate, redundant, outdated, duplicative, or inefficient statutes" and "crimes that should or should not constitute potential jail time". The Criminal Justice Improvement Committee Working Group was created to accomplish the Criminal Justice Improvement Committee's stated goals and has worked diligently for the last three years, in concert with other criminal justice stakeholders, to restore the criminal code to a clear, readable, and proportional code. The recommendations found in their Final Report are the basis for this Act and its companion bill.

This Act is one of two bills that seek to bring back clarity and consistency to the Criminal Code. This Act repeals and replaces Title 11, Part I, Chapters 1 through 15 of the Delaware Criminal Code and replaces it with an improved code that is easy to understand, consolidates offenses and introduces rational and proportional sentencing structures. This Act, and its companion bill, will take effect 20 months from the date it is signed, to allow for a smooth integration of the improved code into existing structures, give public and private criminal justice stakeholders an opportunity to familiarize themselves with the improved code, and provide an opportunity to develop for the first time model jury instructions and sentencing guidelines. A Commentary, which explains how the current criminal code relates to the improved code, will be publicly available during this transition period. The 20 months will also give time to introduce technical corrections bills that will make changes to the Code necessitated by the improved code (e.g., update cross references to Title 11, Part I, found in other Titles), as well as incorporate legislative decisions passed by the 148<sup>th</sup> and 149<sup>th</sup> General Assembly that were not captured by the improved code.

# EXHIBIT

## A

**Table of Changes to the Improved Code Pre-introduction of SB 209  
in Response to Concerns of the Attorney General, Law Enforcement,  
Victims’ Advocates and State Agencies**

From the beginning of the legislatively mandated criminal code review and drafting process, the drafters have sought comments and concerns from all of the stakeholders, including the Delaware Department of Justice (DDOJ), the criminal defense bar, Law Enforcement, Victims’ Advocates, state agencies, and the general public. The draft Code has been publicly available since March 21, 2017 and the drafting group has continued to consider changes to the Code, including some understood to be of interest to the DDOJ.

*The following changes were made before introduction of SB 209 in the spring of 2018.*

Improved Code provision	Section Title	Stated Concern	Action taken by Improved Code Working Group in response to constituency’s comment
<b>DDOJ &amp; Victims’ Advocate Comments</b>			
§ 103	Definitions.	The Improved Code utilizes a definition of “physical injury” that reflects current law’s definition for adult victims, but not the definition used in crimes against children. The child-specific definition requires less harm to be caused, and makes the offenses easier to prove for child victims. <i>[Raised by CPAC and DDOJ.]</i>	Change the definition of “physical injury” to incorporate current law’s approach for child victims, to ensure children receive the same level of protection under the law as they do currently.
§ 103	Definitions.	The Improved Code utilizes a definition of “serious physical injury”	Change the definition of “serious physical injury” to incorporate current law’s approach for child

Improved Code provision	Section Title	Stated Concern	Action taken by Improved Code Working Group in response to constituency's comment
		that reflects current law's definition for adult victims, but not the definition used in crimes against children. The child-specific definition requires less harm to be caused, and makes the offenses easier to prove for child victims. <i>[Raised by CPAC and DDOJ.]</i>	victims, to ensure children receive the same level of protection under the law as they do currently.
§ 107	State Criminal Jurisdiction	This section requires that a defendant act with recklessness before allowing the State to have jurisdiction over the defendant whereas current law only requires negligence. <i>[Raised by DDOJ.]</i>	The Working Group amended the section to require that the defendant act negligently, not recklessly.
§ 108	Burdens of Proof; Permissive Inferences	This section is confusing because explanation of which party bears the burden of persuasion precedes the burden of production. <i>[Raised by DDOJ.]</i>	The Working Group's response to this valid point is to reverse the order of these subsections, putting the burden of production first.

Improved Code provision	Section Title	Stated Concern	Action taken by Improved Code Working Group in response to constituency's comment
§ 108(c)	Burden of Persuasion; Burden on the State	Section 106(c) <sup>112</sup> reads as if the State bears the burden of “disproving all justification defenses beyond a reasonable doubt (Proposed Section 301(f)) after the defendant has met his or her burden of production (Proposed Section 106(c)(2)) sufficient to allow a finding of the defense by preponderance of the evidence (a burden of persuasion).” <i>[Raised by DDOJ.]</i>	The Working Group restructured Section 108 to reduce any potential for confusion.
Former § 108	Definitions; General Definitions	This section contains both a limited list of definitions and statutory principles for defining terms. <i>[Raised by DDOJ.]</i>	The Working Group agrees, and notes that these provisions have already been changed. To avoid such commingling, the principles of definitions were moved to the section before the index, and all definitions throughout the code were combined together in Section 103.
§ 201	Basis of Liability	Use of the word “defense” in subsections	The Working Group agrees and has revised

<sup>112</sup> Note that the Attorney General’s Office’s comments referred to sections of the draft code contained in the Final Report presented by the Criminal Justice Improvement Committee. These sections were re-numbered when turned into a bill. Therefore, the section numbers in the “Stated Concern” column is not the same as those in the other columns.

Improved Code provision	Section Title	Stated Concern	Action taken by Improved Code Working Group in response to constituency's comment
		(1) and (2) make the provision confusing to read. <i>[Raised by DDOJ.]</i>	subsection (2) to read “ <u>general</u> defense” instead to reduce the potential for confusion.
Former § 209	Customary License; De Minimis Infractions; Conduct Not Envisaged by General Assembly as Prohibited by the Offense	This section represents a departure from the well-established role of the judicial officer in Delaware law. <i>[Raised by DDOJ.]</i>	The Working Group deleted this section from the Improved Code.
§ 211	Voluntary Intoxication	This section could be read to make voluntary intoxication not an excuse for criminal liability, which is a departure from current policy. <i>[Raised by DDOJ.]</i>	The Working Group revised this section to conform to 11 Del. C. § 421, which makes voluntary intoxication not a defense or excuse from criminal liability.
§ 302	Choice of Evils	This section could be read to place the burden on the State to establish beyond a reasonable doubt that there is a “legislative purpose” to exclude the justification. <i>[Raised by DDOJ.]</i>	The Working Group amended this section to make clear that “legislative purpose” is not an element of the justification defense.
§ 602 & § 1003	Manslaughter & Authorized Terms of Imprisonment	Under current law Manslaughter has a 2-year mandatory minimum sentence whereas Section	The Working Group revised §§ 1003 and 602 to provide for a mandatory minimum sentence of 2

Improved Code provision	Section Title	Stated Concern	Action taken by Improved Code Working Group in response to constituency's comment
		1103 of the Improved Code governing Manslaughter does not provide for a mandatory minimum sentence. <i>[Raised by DDOJ.]</i>	years and a maximum of 25 years for Manslaughter in keeping with current law.
§ 604	General Adjustments to Offense Grade	The IC departs from current policy that makes a vulnerable person for purposes of grade enhancement anyone over 62 years of age without the need of evidence of additional impairment. <i>[Raised by DDOJ.]</i>	The Working Group revised § 604 to provide that a victim's age alone (being 65 years of age or older), without additional impairment, increases an offense's grade.
§ 1002	Murder.	The Improved Code lessens the potential and minimum punishment for reckless killings of law enforcement officers, which are currently punished as murder. <i>[Raised by DDOJ.]</i>	Initially, these killings were treated as manslaughter under an early draft of the Improved Code. Anticipating the DDOJ's concern, an additional homicide offense was created to provide a higher grade for reckless killings of law enforcement, but at a lesser grade than intentional, aggravated murder.
§ 1004	Criminally negligent homicide. (of a child)	The Improved Code consolidates the current offense of Murder by Abuse or Neglect—of a child—into a homicide	Divide the adult and child provisions into two separate offenses,

Improved Code provision	Section Title	Stated Concern	Action taken by Improved Code Working Group in response to constituency's comment
		offense designed for adult victims, potentially limiting the offense's usefulness for prosecuting child abuse resulting in death. <i>[Raised by DDOJ and CPAC.]</i>	reflecting the approach of current law.
§ 1022	Assault with deadly weapon	Assault with a deadly weapon resulting in physical injury or serious physical injury graded too low. <i>[Raised by DDOJ.]</i>	Amendments were made to § 1022 providing that: <ul style="list-style-type: none"> <li>• Assault with a deadly weapon causing physical injury now a Class 7 felony with max punishment of 8 years; and</li> <li>• Assault with deadly weapon causing serious physical injury regraded to a Class 5 felony with 2-25 years in prison.</li> </ul>
§ 1022(c)(1)	Enhanced aggravated assault (child under 14)	The Improved Code consolidates knowing abuse of a child under 14 resulting in serious physical injury into the Assault offense, which is designed for adult victims. This potentially limits the offense's usefulness for prosecuting child abuse cases. <i>[Raised by DDOJ and CPAC.]</i>	Divide the adult and child provisions into two separate offenses, reflecting the approach of current law.

Improved Code provision	Section Title	Stated Concern	Action taken by Improved Code Working Group in response to constituency's comment
§ 1023	Reckless injuring	This section should be amended to cover special victims including law enforcement and first responders etc. <i>[Raised by DDOJ.]</i>	The Working Group amended this section to include such groups with a grade enhancement.
§ 1023(b)(1)	Reckless injuring (child under 14)	The Improved Code consolidates reckless abuse of a child under 14 resulting in serious physical injury into the Reckless Injuring offense, which is designed for adult victims. This potentially limits the offense's usefulness for prosecuting child abuse cases. <i>[Raised by DDOJ and CPAC.]</i>	Divide the adult and child provisions into two separate offenses, reflecting the approach of current law.
§ 1023(b)(2)	Reckless injuring (child under 4)	The Improved Code consolidates reckless abuse of a child under 4 resulting in physical injury into the Reckless Injuring offense, which is designed for adult victims. This potentially limits the offense's usefulness for prosecuting child abuse cases. <i>[Raised by DDOJ and CPAC.]</i>	Divide the adult and child provisions into two separate offenses, reflecting the approach of current law.
§ 1023(b)(2)	Reckless injuring (child with intellectual or physical disability)	The Improved Code consolidates reckless abuse of a child under 14 with an intellectual or physical disability	Divide the adult and child provisions into two separate offenses,

Improved Code provision	Section Title	Stated Concern	Action taken by Improved Code Working Group in response to constituency's comment
		resulting in physical injury into the Reckless Injuring offense, which is designed for adult victims. This potentially limits the offense's usefulness for prosecuting child abuse cases. <i>[Raised by DDOJ and CPAC.]</i>	reflecting the approach of current law.
§ 1023(b)(2)	Reckless injuring (child, and involving deadly weapon/dangerous instrument)	The Improved Code consolidates reckless abuse of a child under 14 by means of a deadly weapon or dangerous instrument resulting in physical injury into the Reckless Injuring offense, which is designed for adult victims. This potentially limits the offense's usefulness for prosecuting child abuse cases. <i>[Raised by DDOJ and CPAC.]</i>	Divide the adult and child provisions into two separate offenses, reflecting the approach of current law.
§ 1024	Reckless endangerment	The Improved Code relies upon Reckless Endangerment offense to cover the conduct prosecuted as Endangering the Welfare of a Child (EWC) under current law. This offense is designed for adults, not children, and does not provide the same clarity or coverage as EWC.	Restore EWC as an independent offense, and not rely upon Reckless Endangerment for prosecution. As part of this change, the defense for "Treatment of a child by prayer," previously consolidated under Reckless Endangerment,

Improved Code provision	Section Title	Stated Concern	Action taken by Improved Code Working Group in response to constituency's comment
		<i>[Raised by DDOJ and CPAC.]</i>	was placed with EWC instead.
§ 1025	Operating a Vehicle While Under the Influence of Drugs or Alcohol	The draft Improved Code classifies all DUIs as misdemeanors punishable by no more than 6 months in prison, whereas current law punishes recidivist behavior as felonies and provides for escalating prison terms. <i>[Raised by DDOJ.]</i>	Amendments were made to § 1025 providing that: <ul style="list-style-type: none"> <li>• DUI 1<sup>st</sup> regraded as Class A misdemeanor punishable up to 1 year in prison;</li> <li>• DUI 3<sup>rd</sup> regraded as a Class 9 felony punishable up to 2 years in prison; and</li> <li>• DUI 4<sup>th</sup> regraded as a Class 7 felony punishable up to 8 years in prison</li> <li>• DUI 5<sup>th</sup> regraded as a Class 6 felony punishable up to 15 years.</li> </ul>
§ 1041(a)	Rape; Sexual Assault. (Offense defined)	The Improved Code removes the defined term “without consent” as used in sexual offenses under current law, and the Commentary accompanying the Improved Code does not make clear why this was done. <i>[Raised by DDOJ.]</i>	The Commentary will be revised to explain with greater clarity that this approach is intended to eliminate an irrational provision of current law that requires a victim to make a show of resistance to sexual aggression in order for the law to treat the act as “without consent.” The language of the defined term is incorporated into the

Improved Code provision	Section Title	Stated Concern	Action taken by Improved Code Working Group in response to constituency's comment
			offense definition, not abandoned altogether. Note that victim advocates have indicated their approval of this change.
§ 1401(c)(1)	Possessing a Firearm or Deadly Weapon during the Commission of a Felony	§5101 graded too low. <i>[Raised by DDOJ.]</i>	The Working Group revised the section making possessing a firearm during the commission of a felony a Class 4 felony with sentence range of 3-30 years, and possessing a deadly weapon during the commission of a felony a Class 5 felony with a sentence range of 2-25 years.
§ 1404	Possessing or Purchasing a Deadly Weapon by Persons Prohibited	§ 5104 is graded too low and fails to have a minimum sentence for someone illegally in possession of a firearm due to a prior felony conviction. <i>[Raised by DDOJ.]</i>	The Working Group revised § 1404 to regrade PDWBPP from Class 6 felony to Class 5 felony punishable with a sentence of 2-25 years if the defendant was previously convicted of a felony.
§ 1404(c)(1) and § 602	Possessing or Purchasing Deadly Weapons by Persons Prohibited. (Grading)	The Improved Code eliminates minimum mandatory sentences for persons who are illegally in possession of firearms because of past violent felony convictions, even if those persons have been convicted of illegal	The Working Group added a Class 5 felony grade of this offense for offenders with a single prior conviction for illegal possession, making a conviction under that grade eligible for a

Improved Code provision	Section Title	Stated Concern	Action taken by Improved Code Working Group in response to constituency's comment
		firearm possession on multiple previous occasions. <i>[Raised by DDOJ.]</i>	mandatory minimum sentence under § 602.
§ 1408(a)	Grade Adjustment for Offenses Committed in a Safe School and Recreation Zone	The IC does not provide for a grade enhancement if the weapons offense is committed in a school zone. <i>[Raised by DDOJ.]</i>	The Working Group increased the grade of an offense under Sections 1402, 1403, or 1404 s by one grade if the weapon was possessed in one of the following circumstances, unless the weapon was possessed for the purpose of engaging in any school-authorized activity:
Chapter 14, Subchapter II	Drug and Related Offenses	In 149 <sup>th</sup> Sessions of General Assembly <i>DDOJ</i> introduced drug bill SB 34.	Working Group revised Ch. 14, Subch. II of the IC to reflect positive aspects of the AG's drug bill: <ul style="list-style-type: none"> <li>• Reduction of the number of drug "Tiers" from 5 to 3;</li> <li>• Removal of all aggravating factors besides school zones;</li> <li>• Reduction of number of offenses to which the school zone aggravator applies; and</li> <li>• Shifting the location and</li> </ul>

Improved Code provision	Section Title	Stated Concern	Action taken by Improved Code Working Group in response to constituency's comment
			quantity of prescription drugs among the "Tiers," for greater equity.
§ 1423(c)(1)a.	Manufacture and delivery of Controlled Substances	The IC does not provide for minimum mandatory sentences for drug dealing offenses. <i>[Raised by DDOJ.]</i>	The Working Group revised the IC to provide that drug dealing in a top Tier quantity Schedule I or II drug has a sentence of 2-25 years.
<b>Attorneys for Police Unions / Law Enforcement Comments</b>			
§ 205(b)(4)	Culpability Requirements	IC §205(b)(4) establishes criminal liability for what it terms "Negligence," while defining such as a "gross deviation" from the standard of care, which is the traditional definition for "Criminal Negligence." <i>[Raised by Attorneys for Police Unions.]</i>	This section of the Improved Code was revised to substitute "Criminal Negligence" for "Negligence."
§ 304	Law Enforcement Authority Use of Force	It could be argued that this section imposes strict liability on law enforcement if while using force in commission of duties an innocent person is	The Working Group revised § 304(c) to make clear that law enforcement has immunity from criminal

		injured. <i>[Raised by Attorneys for Police Unions.]</i>	prosecution so long as they do not act with criminal negligence or recklessness. The Commentary was also changed to reflect there is no intent to impose stricter liability on law enforcement than is current policy.
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Improved Code provision	Section Title	Stated Concern	Action taken by Improved Code Working Group in response to constituency's comment
§ 1101	Consolidated Grading of Theft Offenses	The value amount of stolen property required before a theft becomes a felony is too high (\$5,000.00). <i>[Raised by Law Enforcement.]</i>	Working Group amended § 1101 to restore the felony theft amount back to \$1,500.00 in accordance with current law; and lowered the amount needed for a Class A misdemeanor theft to \$1,000.00.
<b>Victims' Advocate Groups' Comments</b>			
§ 1022	Assault	The IC does not provide for Strangulation as a stand-alone offense distinct from Assault. <i>[Raised by various Victims' Advocate Groups.]</i>	The Working Group made amendments to § 1022 providing that Strangulation was broken out as a special form of enhanced Assault, and was graded as a Class 8 felony punishable up to 4 years instead of being a Class A misdemeanor as for simple assault.
§ 1041(f)	Rape and Sexual Assault, No Defense	The IC lowers the age of victim eligible for this	The Working Group revised § 1041(f) to

Improved Code provision	Section Title	Stated Concern	Action taken by Improved Code Working Group in response to constituency's comment
	for Mistake as to Age Under 14	defense from 16 to 14. <i>[Raised by various Victims' Advocate Groups.]</i>	restore strict liability for victims aged 16 and under, not 14.
§ 1132	Unauthorized Impersonation	This section should be amended to include fraudulently impersonating a member of armed forces. <i>[Raised by various Victims' Advocate Groups.]</i>	The Working Group amended this section to include impersonating members of the armed forces.
§ 1303	Stalking\Harassment	Stalking should not be treated as a type of harassment as it is distinct offense with different mens rea. <i>[Raised by Victims' Advocate Groups.]</i>	<p>The Working Group made amendments providing that:</p> <ul style="list-style-type: none"> <li>• § 1303(a)(2) was added to capture the unique mens rea of Stalking; and</li> <li>• Stalking was given its own offense definition within the section rather than couching it in the grade provisions.</li> </ul>
<b>State Agency Comments</b>			
§ 1145	Causing or risking catastrophe; ecological catastrophe	In the Improved Code, (1) the environmental offense mentions "solid waste" but does not cover improper release of hazardous waste, toxic air emissions or polluting water sources, and (2) the	Add a new section (§1146) for serious environmental crimes that may not rise to level of "catastrophe" such as: dangerous violations of environmental statutes and regulations; unsafe

Improved Code provision	Section Title	Stated Concern	Action taken by Improved Code Working Group in response to constituency's comment
		<p>term “ecological catastrophe” sets the bar too high for what constitutes a punishable result. A new section should be added to cover environmental crimes that do not rise to that level, but are still felonies that cause significant environmental damage.  <i>[Raised by Department of Natural Resources and Environmental Control.]</i></p>	<p>handling of hazardous waste; and improper disposal of solid waste.</p>
<b>Miscellaneous</b>			
§ 602(a)(1)	Authorized Terms of Imprisonment	<p><b>Comment:</b> This section may be subject to a constitutional challenge by making life imprisonment mandatory for persons convicted of a Class 1 felony and not making an exception for person under 18 years of age. <i>See Rauf v. State</i>, 145 A.3d 430 (Del. 2016)</p>	<p>The Working Group revised § 602(a)(1) to provide that minors convicted of a Class 1 felony be subject to a sentence of 25 years to life and not mandatory life imprisonment.</p>
§ 1243(b)(1)b.	Obstructing Administration of Law or Other Government Function	<p><b>Comment:</b> This section should include failing to comply with an investigative demand of the Attorney General's office.</p>	<p>The Working Group amended the section to make it a Class 8 felony to obstruct the Attorney General investigation.</p>

# **EXHIBIT**

# **B**

**Table of Changes to the Improved Code Post Introduction SB 209 in Response to Concerns  
of the Attorney General, Victims’ Advocates and State Agencies**

From the beginning of the legislatively mandated criminal code review and drafting process, the drafters have sought comments and concerns from all of the stakeholders, including the Delaware Department of Justice (DDOJ), the criminal defense bar, Victims’ Advocates, state agencies, and the general public. The draft Code has been publicly available since March 21, 2017 and the drafting group has continued to consider changes to the Code, including some understood to be of interest to the DDOJ.

*The following changes were made since introduction of SB 209 in the spring of 2018.*

Improved Code provision	Section Title	Concern	Action taken by the Improved Code Working Group in response to constituency’s comment
<b>DDOJ &amp; Victims’ Advocate Comments</b>			
§ 103	Definitions.	Undefined term “force” creates ambiguities as used in rape statute (Section 1041).	Create a more normative definition of ‘force.’
§ 103	Definitions.	The Improved Code utilizes the definition of ‘abuse’ of a child found in Title 10 instead of Title 11. <i>[Initially raised by the Child Protection and Accountability Commission (CPAC).]</i>	Replace with definition of ‘abuse’ in 11 Del. C. § 1100(1).
§ 103	Definitions.	The definition of ‘child pornography’ only applies it to children under 16, whereas current law applies to children under 18. <i>[Initially raised by CPAC.]</i>	Change definition of ‘child pornography’ to apply to children under 18.
§ 305(a)(2)	Conduct of Persons with Special	An error during conversion of CJIC Final Report into bill text	Restore the limitation on use of

Improved Code provision	Section Title	Concern	Action taken by the Improved Code Working Group in response to constituency's comment
	Responsibility for Care, Discipline, or Safety of Others.	resulted in the removal of a limitation on the use of force by parents. <i>[Initially raised by DDOJ.]</i>	force by parents in current law.
§ 604(a)	General Adjustments to Offense Grade (Repeat felon).	The repeat felon grade adjustment in the Improved Code does not provide full coverage of 11 Del. C. § 777A. <i>[Initially raised by DDOJ and CPAC.]</i>	Add child sex offense recidivism grade adjustment, based upon a single prior.
§ 1041(b)	Rape; Sexual Assault. (Grading)	The grade of 'baseline' rape is reduced, compared to current law, which could harm the credibility of the Improved Code by creating unintended impression of not taking sexual offenses seriously. <i>[Initially raised by DDOJ and the Delaware Coalition Against Domestic Violence (DCADV).]</i>	Add 'forcible rape' category to distinguish from date rape and restore grade in current law.
§ 1044	Prohibited Conduct by a Person Convicted of a Sexual Offense Against a Child	The Improved Code does not take into account a recent change in law. <i>[Initially raised by CPAC.]</i>	Remove limitation based on age of prior victim.
§ 1248(b)(3)a.	Criminal Contempt. (Grading)	The Improved Code, for an aggravated grade of the offense, requires both physical injury and involvement of a deadly weapon, which are alternative sources of the aggravation in current law. <i>[Initially raised by victims' advocates.]</i>	Restore physical injury and weapons as independent aggravators for the increased grade of contempt.

Improved Code provision	Section Title	Concern	Action taken by the Improved Code Working Group in response to constituency's comment
§1404(a)(1)d.1.	Possessing or Purchasing Deadly Weapons by Persons Prohibited. (Offense defined)	The Improved Code, unlike current law, does not treat offensive touching (in this context) as domestic violence. <i>[Initially raised by victims' advocates.]</i>	Add language about offensive touching for inclusion in the domestic violence conduct.
§1404(a)(1)d.1.	Possessing or Purchasing Deadly Weapons by Persons Prohibited. (Offense defined)	The Improved Code, unlike current law, does not treat menacing conduct (in this context) as domestic violence. <i>[Initially raised by victims' advocates.]</i>	Add language about menacing for inclusion in the domestic violence conduct.
§1404(a)(1)d.2.	Possessing or Purchasing Deadly Weapons by Persons Prohibited. (Offense defined)	The Improved Code does not reflect a more recent change in law that amended enumerated domestic violence scenarios to include "substantive dating relationship." <i>[Initially raised by victims' advocates.]</i>	Add the "substantive dating relationship" into the enumerated domestic violence scenarios.
§1404(a)(1)d.2.	Possessing or Purchasing Deadly Weapons by Persons Prohibited. (Offense defined)	The Improved Code does not reflect a more recent change in law that amended enumerated domestic violence scenarios to include "cohabitation for last 3 years." <i>[Initially raised by victims' advocates.]</i>	Add "cohabitation for last 3 years" into the enumerated domestic violence scenarios.
n/a	Murder by abuse or neglect (current law)	The Improved Code eliminates "Murder by abuse or neglect" as an offense separate from homicide offenses in Chapter 10, Subchapter I of the Improved Code, incorporating it into those offenses instead.	Re-establish "Murder by abuse or neglect" as an independent offense against children.

Improved Code provision	Section Title	Concern	Action taken by the Improved Code Working Group in response to constituency's comment
		<i>[Initially raised by DDOJ, CPAC.]</i>	
n/a	Continuous sexual abuse of a child (current law)	The Improved Code eliminates “Continual sexual abuse of a child” as an offense separate from rape and sexual assault in Chapter 10, Subchapter III of the Improved Code. <i>[Initially raised by DDOJ, CPAC.]</i>	Re-establish “Continual sexual abuse of a child” as an independent offense against children.
n/a	Endangering the welfare of a child (current law)	The Improved Code eliminates portions of “Endangering the welfare of a child” altogether. <i>[Initially raised by DDOJ, CPAC, DCADV.]</i>	Restore the deleted portions of “Endangering the welfare of a child”
n/a	Endangering the welfare of a child (current law)	The Improved Code incorporates portions of “Endangering the welfare of a child” into other offenses such as reckless endangerment, no longer treating it as an independent offense. <i>[Initially raised by DDOJ, CPAC.]</i>	Re-establish “Endangering the welfare of a child” as an independent offense against children.
n/a	Child abuse in the third degree (current law)	The Improved Code eliminates “Child abuse in the third degree” as an offense separate from assault (§ 1022). <i>[Initially raised by DDOJ, CPAC.]</i>	Re-establish “Child abuse” as an independent offense.
n/a	Child abuse in the second degree (current law)	The Improved Code eliminates “Child abuse in the second degree” as an offense separate from assault (§ 1022). <i>[Initially raised by DDOJ, CPAC.]</i>	Re-establish “Child abuse” as an independent offense.

Improved Code provision	Section Title	Concern	Action taken by the Improved Code Working Group in response to constituency's comment
n/a	Child abuse in the first degree (current law)	The Improved Code eliminates "Child abuse in the first degree" as an offense separate from assault (§ 1022). <i>[Initially raised by DDOJ, CPAC.]</i>	Re-establish "Child abuse" as an independent offense.
<b>State Agency Comments</b>			
§ 1243(b)	Obstructing Administration of Law or Other Government Function. (Grading)	The Improved Code's relocation of criminal penalties for tax offenses to Title 11 arguably may result in reduction of some felonies to misdemeanors. <i>[Raised by Department of Revenue.]</i>	Add a felony grade to § 1243 for tax evasion/non-payment or non-collection of taxes.
n/a	n/a	The Improved Code does not provide full coverage of environmental felonies in Title 7. <i>[Raised by Department of Natural Resources and Environmental Control.]</i>	Add a new section for serious environmental crimes that would revamp the Improved Code's approach.

# **Conforming Amendments**

SPONSOR:

DELAWARE STATE SENATE  
150th GENERAL ASSEMBLY

SENATE BILL NO.

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

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

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

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

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

NOW, THEREFORE:

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

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

§ 309 Dangerous flying; penalty.

Whoever, being an airperson or passenger, while in flight over a thickly inhabited area or over a public gathering within this State, engages in trick or acrobatic flying, or in any acrobatic feat, or, except while in landing or taking off, flies at such a low level as to endanger the persons on the surface beneath, or drops any object except loose

water or loose sand ballast, shall be ~~fined not more than \$500 or imprisoned not more than 1 year, or both~~ subject to criminal penalties under Subchapter II of Chapter 10 of Title 11.

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

Chapter 11. Unmanned aircraft.

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

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

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

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

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

- a. Does not carry a human operator;
- b. Uses aerodynamic forces to provide vehicle lift;
- c. Can fly autonomously or be piloted remotely; and
- d. Can be expendable or recoverable.

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

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

(2) Over any critical infrastructure; or

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

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

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

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

a. The Family Court.

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

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

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

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

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

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

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

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

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

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

§ 1041 Wilfully or maliciously starting fires.

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

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

§ 1045 Trees and shrubs of state forests; penalty.

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

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

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

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

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

Title 4. Alcoholic liquors and tobacco products.

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

§ 401 Division of Alcohol and Tobacco Enforcement.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Chapter 8. Tobacco products.

§ 801 Definitions.

When used in this Chapter:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 803 Notice.

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

§ 804 Distribution of samples to minors.

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

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

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

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

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

(c) It shall be unlawful for any person who owns, operates or manages a business establishment where tobacco products or tobacco substitutes are offered for sale over the counter at retail to maintain such products in any display accessible to customers that is not under the control of a cashier or other employee. This prohibition shall not apply to business establishments to which persons under the age of 18 are not admitted unless accompanied by an adult, tobacco vending machines as permitted under subsection (b) of this section, or tobacco stores. As used in this subsection, "under the control" means customers cannot readily access the tobacco products or tobacco substitutes without the assistance of a cashier or other employee. A display that holds tobacco products or tobacco substitutes behind locked doors shall be constructed as under the control of a cashier or other employee.

§ 806 Distribution of tobacco products.

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

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

§ 807 Penalties.

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

§ 808 Defense.

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

§ 809 Liability of employer.

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

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

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

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

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

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

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

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

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

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

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

§ 811 Unannounced inspections; reporting; enforcement.

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

(b) Persons under the age of 18 may be enlisted by the Department of Safety and Homeland Security or its delegates to test compliance with and enforcement of §§ 802-806 and 810 of this title, provided however, that such persons may be used only under the direct supervision of the Department of Safety and Homeland Security, its employees or delegates and only where written parental consent has been provided.

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

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

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

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

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

§ 812 Smoking on trolleys and buses.

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

§ 813 Jurisdiction.

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

§ 814 Preemption.

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

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

§ 2206 Identity theft passport; application; issuance.

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

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

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

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

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

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

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

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

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

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

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

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

§ 5128 Furnace and stove oil.

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

(f) Any person who, by himself or herself, or by his or her employee or agent or as the employee or agent of another person, alters or substitutes a delivery ticket in violation of this section, or for otherwise fraudulent or

deceptive purposes, shall be ~~punished by a fine of not more than \$1,000 or by imprisonment of not more than 1 year, or both~~ subject to criminal penalties under § 1122 of Title 11.

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

§ 5132 Hindering or obstructing officer; penalties.

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

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

§ 5133 Impersonation of officer; penalties.

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

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

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

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

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

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

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

§ 714 Trespassing; penalty.

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

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

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

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

- (1) The lawful taking of fish, crabs, oysters, clams or frogs; or
- (2) The lawful hunting of any game birds or animals; or
- (3) The lawful trapping of any game animals.

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

[Deleted.]

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

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

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

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

§ 5407 Prohibited acts.

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

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

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

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

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

§ 5408 Exceptions.

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

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

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

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

§ 5409 Criminal penalties.

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

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

§ 6013 Criminal penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) ~~Any person:~~

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

~~(2) Who falsifies, tampers with or intentionally or knowingly causes to be rendered inaccurate any monitoring device or method required to be maintained under this chapter, and who causes serious physical injury to another person or serious harm to the environment as a result of such conduct, shall be guilty of a class D felony and shall, upon conviction, be sentenced in compliance with the sentencing guidelines established for class D felonies in § 4205 of Title 11. [Deleted.]~~

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

- (1) Falsify or conceal any material fact required to be disclosed to the Department;
- (2) Destroy, conceal or alter any records that the corporation is required by this title, the Department's regulations, or an order of the Department to maintain; or
- (3) Commit any act in violation of this title or rules promulgated by the Department;

~~shall upon conviction be punished by a fine of not less than \$500 nor more than \$10,000 or by imprisonment for not more than 6 months, or both. If an act described in this subsection causes serious physical injury to another person or serious harm to the environment as one result of such an act, the officer, manager or general partner committing the act shall be guilty of a class D felony and shall, upon conviction be sentenced in compliance with the sentencing guidelines established for class D felonies in § 4205 of Title 11. Nothing in this subsection shall be read to establish any additional elements for conviction of the criminal offenses described in subsections (a) through (d) of this section.~~

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

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

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

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

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

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

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

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

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

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

§ 6074 Penalties.

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

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

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

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

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

§ 6308 Imminent hazards.

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

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

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

§ 6309 Enforcement.

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

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

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

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

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

(i) Any person who knowingly with respect to the following: transports, treats, stores, exports or otherwise disposes of a hazardous waste in a manner that would constitute a violation under subsection (h) of this section and who knows at that time that the violation places another person in imminent danger of death or serious bodily injury ~~is guilty of a felony and on conviction is subject to a fine not exceeding \$100,000, or imprisonment not exceeding 5~~

~~years, or both~~ shall be subject to criminal penalties under Chapter 4, Chapter 5, and § 1146(b) of Title 11. For purposes of this subsection, in determination whether a person's state of mind is knowing and whether a person knew that the violation or conduct placed another person in imminent danger of death or serious bodily injury, the criteria provided under § 3008(f) of the Resource Conservation and Recovery Act (42 U.S.C. § 6928(f) as amended in P.L. 99-499) shall apply.

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

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

§ 1397 Subpoena power.

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

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

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

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

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

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

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

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

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

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

a. As otherwise authorized by federal or state law;

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

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

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

- a. To a broadcasting station for purposes of retransmission to the general public; or
- b. As an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls.

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

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

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

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

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

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

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

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

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

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

(g) *Injunctive relief — Civil penalties.* — The State is entitled to appropriate injunctive relief in an action under this subsection if the violation is the person's first offense ~~under paragraph (e)(1) of this section~~ and the person has not been found liable in a prior civil action under § 2409 of this title. However, in any action under this subsection, if the violation is a second or subsequent offense ~~under paragraph (e)(1) of this section~~ or if the person has been found liable in a prior civil action under § 2409 of this title, the person is subject to a mandatory civil fine of not less than

\$400. The Court may use any means within its authority to enforce an injunction issued under this subsection and shall impose a civil fine of not less than \$500 for each violation of an injunction issued under this subsection.

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

§ 2403 Manufacture, possession or sale of intercepting device.

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

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

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

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

§ 2412 Obstruction, impediment or prevention of interception.

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

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

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

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

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

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

Chapter 33. Trial Jurors; jury instructions.

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

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

§ 3303 Jury instruction for defendant on reasonable doubt.

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

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

§ 3304 Credible evidence to support justification defenses.

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

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

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

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

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

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

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

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

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

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

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

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

§ 3531 Definitions.

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

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

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

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

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

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

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

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

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

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

§ 3532 Act of intimidation; class D felony.

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

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

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

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

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

§ 3533 Aggravated act of intimidation; class B felony.

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

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

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

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

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

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

§ 3534 Attempt to intimidate.

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

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

§ 3535 Protective orders — Issuance.

Any court with jurisdiction over any criminal matter may in its discretion and upon good cause (which may include, but is not limited to, such matters as credible hearsay, the declaration of the prosecutor or the declaration of

the defense attorney) find that intimidation or dissuasion of a victim or witness has occurred (or is reasonably likely to occur) and may issue orders including, but not limited to, the following:

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

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

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

§ 3536 Protective orders — Violations.

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

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

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

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

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

§ 3537 Pretrial release.

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

(b) From and after June 22, 1982, any receipt or any bail or bond given by the clerk of any court, by any surety or bondsperson and/or any other form of conditional release shall contain, in a conspicuous location, notice that

such bail bond, or other release, is conditioned upon strict adherence to the requirements and prohibitions of § 1247 of this title and this subchapter.

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

Chapter 37. Persons with a mental health condition.

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

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

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

(c)(1) Upon petition by a patient confined pursuant to this section, § 3702, § 3703, § 3704 or § 3705 of this title, or upon petition by the Center Director of the Delaware Psychiatric Center, the Court may permit housing in an unsecured building or participation by the patient in any treatment program that is offered by the Center, which requires or provides that the patient be placed outside a secured building. Such participation shall include, but not be limited to, employment off hospital grounds, job interviews, family visits and other activities inside and outside the Center, as may be prescribed by the Medical Director in the interest of rehabilitation.

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

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

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

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

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

(d) Any treatment program approved by the Court under this section may be terminated by the Medical Director of the Delaware Psychiatric Center. When a treatment program is terminated earlier than its court-approved expiration date, the Medical Director shall immediately notify the Superior Court. The Superior Court shall, after giving appropriate notice, hear the matter and review the decision of the Medical Director. At such termination hearing, the patient shall have such rights as are provided for other hearings under this section, including the right to counsel, the right to present evidence and the right to cross-examine witnesses. Where the Medical Director's decision to terminate is based upon the patient's mental or psychological condition, the patient may be examined by an independent psychiatrist or other qualified expert; provided, however, that the termination hearing shall not be held until such examination has been finally concluded.

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

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

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

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

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

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

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

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

prisoner shall at once be ordered by the Court transferred from the prison facility where the prisoner is confined to the Delaware Psychiatric Center.

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

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

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

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

Center, or any other residential treatment facility to which the defendant is committed by the Commissioner, shall have the authority to discharge the defendant from the facility and return the defendant to the physical custody of the Commissioner whenever the facility believes that such a discharge is in the best interests of the defendant. The offender may, by written statement, refuse to take any drugs which are prescribed for treatment of the offender's mental illness; except when such a refusal will endanger the life of the offender, or the lives or property of other persons with whom the offender has contact.

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

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

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

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

(b) If the report of the Delaware Psychiatric Center or other facility recommends parole, the paroling authority shall within 45 days or at the expiration of the offender's minimum sentence, whichever is later, meet to consider the

offender's request for parole. If the report does not recommend parole, but other laws or administrative rules of the Department permit parole, the paroling authority may meet to consider a parole request. When the paroling authority considers the offender for parole, it shall consult with the State Hospital or other facility at which the offender had been treated, or from which the offender has been discharged.

(c) If an offender who has been found "guilty, but mentally ill" is placed on probation, the court, upon recommendation by the Attorney General, shall make treatment a condition of probation. Reports as specified by the trial judge shall be filed with the probation officer, and the sentencing court. Treatment shall be provided by an agency of the State or, with the approval of the sentencing court and at individual expense, private agencies, private physicians or other mental health personnel.

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

§ 3901 Fixing term of imprisonment; credits.

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

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

<u>Title 11, Section</u>	<u>Crime</u>
606	Abuse of a pregnant female in the first degree
613	Assault in the first degree
632	Manslaughter
635	Murder in the second degree
636	Murder in the first degree
772	Rape in the second degree
773	Rape in the first degree

~~777A \_\_\_\_\_ Sex offender unlawful sexual conduct against a child~~

~~778(1), (2) or (3) \_\_\_\_\_ Sexual abuse of a child by a person in a position of trust, authority or supervision  
in the first degree~~

~~783 \_\_\_\_\_ Kidnapping in the second degree~~

~~783A \_\_\_\_\_ Kidnapping in the first degree~~

~~803 \_\_\_\_\_ Arson in the first degree~~

~~825 \_\_\_\_\_ Burglary in the second degree~~

~~826 \_\_\_\_\_ Burglary in the first degree~~

~~826A \_\_\_\_\_ Home invasion~~

~~832 \_\_\_\_\_ Robbery in the first degree~~

~~836 \_\_\_\_\_ Carjacking in the first degree~~

~~1254 \_\_\_\_\_ Assault in a detention facility~~

~~1447A \_\_\_\_\_ Possession of a firearm during the commission of a felony~~

~~or for any sentence for possession of a firearm by a person prohibited where the criminal defendant was  
previously convicted of a Title 11 violent felony.~~

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

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

§ 4107 Reencoder and scanning devices; forfeiture.

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

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

§ 4108 Trademark counterfeiting; seizure, forfeiture and disposition.

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

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

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

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

Subchapter IV. Racketeering.

§ 4130 Definitions.

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

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

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

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

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

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

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

(4) “Personal property” shall include any personal property or any interest in such personal property, or any right, including bank accounts, debts, corporate stocks, patents or copyrights. An item of personal property or a

beneficial interest in personal property shall be deemed to be located where the trustee is, where the personal property is or where the instrument evidencing the right is.

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

(6)a. “Trustee” shall include:

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

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

3. Any successor trustee.

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

§ 4131 Forfeiture authority.

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

§ 4132 Civil remedies.

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

(b) The Attorney General may institute proceedings under § 1441 of this title and in addition for damages, civil forfeiture and a civil penalty of up to \$100,000 for each incident of activity constituting a violation of § 1441 of

this title. In any action brought by the State under § 1441 of this title, the Court shall proceed as soon as practicable to hold a hearing and reach a final determination in the matter. Pending final determination thereof, the Court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of any satisfactory performance bond, as it shall deem proper.

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

(d) Any person who is injured by reason of any violation of § 1441 of this title shall have a right or claim to property forfeited under § 1441(c) of this title, or to the proceeds derived therefrom, which right or claim shall be superior to that of the State (other than for costs) in the same property or proceeds. To enforce such right or claim, the injured person must intervene.

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

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

§ 4133 Forfeiture proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) Where a trustee conveys title to real property against which a R.I.C.O. lien notice has been filed; and the lien notice has been filed in the county in which the property is located and names a person who, to the actual knowledge of the trustee, holds a beneficial interest in the trust, the trustee shall be liable to the State for the greater of:

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

(2) The amount of proceeds received by the trustee as a result of the conveyance, and distributed to any person named in the lien notice; or

(3) The fair market value of the interest of the person named in the lien notice in the real property so conveyed; provided, however, that if the trustee conveys the real property, and holds proceeds that would otherwise be paid or distributed to the beneficiary (or at the direction of the beneficiary or the beneficiary's designee), the trustee's liability shall not exceed the amount of the proceeds so held for so long as the proceeds are held by the trustee.

(i) Upon entry of judgment in favor of the State, the State may proceed to execute thereon as in the case of any other judgment, except that in order to preserve the State's lien priority, as provided in this section, the State shall (in addition to such other notice as is required by law) give at least 30 days' notice of such execution to any person, possessing at the time such notice is given, an interest recorded subsequent to the date the State's lien was perfected.

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

(1) In the case of real property, or a beneficial interest in real property, relates back to the date of filing the racketeering lien notice; or if no racketeering lien notice was filed, then to the date of recording of the final judgment, or an abstract thereof, in the county where the real property is located.

(2) In the case of personal property or a beneficial interest in personal property, relates back to the date the personal property was seized by the State, or the date of filing of a racketeering lien notice in accordance with this section, whichever is earlier; but if the property was not seized, and no racketeering lien was filed, then to the date the final judgment was filed with the Secretary of State, or in the case of a titled motor vehicle, with the Division of Motor Vehicles.

(k) This section shall not limit any right of the State to obtain any order or injunction, receivership, writ, attachment, garnishment or other remedy; nor limit any right of action which is appropriate to protect the interests of the State, or which is available under other applicable law.

(l) In the event the Attorney General determines that the provisions of this section are unclear or insufficient the Attorney General may petition the Superior Court for the promulgation of rules to further clarify, or more

effectively accomplish, the intent of this chapter and of this section. Where any rule promulgated by the Court conflicts with any provision of this section, this section shall be paramount.

§ 4135 Term of lien notice.

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

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

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

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

§ 4136 Investigative powers of Attorney General.

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

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

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

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

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

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

#### § 4137 Registration of foreign corporations.

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

(1) A registered office; and

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

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

or

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

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

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

(1) The name of such corporation;

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

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

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

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

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

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

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

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

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

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

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

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

§ 4201 Transition provisions.

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

(1) Class A felonies;

(2) Class B felonies;

(3) Class C felonies;

(4) Class D felonies;

(5) Class E felonies;

(6) Class F felonies;

(7) Class G felonies.

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

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

Title 11, Section Crime

513 Conspiracy First Degree

602 Aggravated Menacing

604 Reckless Endangering First Degree

605 Abuse of a Pregnant Female in the Second Degree

606 Abuse of a Pregnant Female in the First Degree

607 Strangulation

612 Assault in the Second Degree

613 Assault in the First Degree

614 Assault on a Sports Official

[Former] 615 Assault by Abuse

617 Criminal Youth Gangs

629 Vehicular Assault in the First Degree

630 Vehicular Homicide in the Second Degree

630A Vehicular Homicide in the First Degree

631 Criminally Negligent Homicide

632 Manslaughter

633 Murder by Abuse or Neglect in the Second Degree

634 Murder by Abuse or Neglect in the First Degree

635 Murder in the Second Degree

636 Murder in the First Degree

645 Promoting Suicide

768 Unlawful Sexual Contact in the Second Degree

769 Unlawful Sexual Contact in the First Degree

770 Former Unlawful Sexual Penetration in the Third Degree or Rape in the Fourth Degree

771 Former Unlawful Sexual Penetration in the Second Degree or Rape in the Third Degree

772 Former Unlawful Sexual Penetration in the First Degree or Rape in the Second Degree

773 Former Unlawful Sexual Intercourse in the Third Degree or Rape in the First Degree

774 Sexual Extortion

775 Bestiality

776 Continuous Sexual Abuse of Child

777 Dangerous Crime Against a Child

777A Sex Offender Unlawful Sexual Conduct Against a Child

778 Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the First Degree

778A Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the Second Degree

782 Unlawful Imprisonment in the First Degree

783 Kidnapping in the Second Degree

783A Kidnapping in the First Degree

787 Trafficking of an Individual, Forced Labor and Sexual Servitude

802 Arson in the Second Degree

803 Arson in the First Degree

825 Burglary in the Second Degree

826 Burglary in the First Degree

826A Home Invasion

831 Robbery in the Second Degree

832 Robbery in the First Degree

835 Carjacking in the Second Degree

836 Carjacking in the First Degree

846 Extortion

1108 Sexual Exploitation of a Child

1109 Unlawfully Dealing in Child Pornography

1112A Sexual Solicitation of a Child

1112B Promoting Sexual Solicitation of a Child

1250 Assault in the First Degree Against a Law Enforcement Animal

1253 Escape After Conviction, if convicted as a Class C Felony or a Class B Felony

1254 Assault in a Detention Facility

1256 Promoting Prison Contraband (Deadly Weapon)

~~1257(a) Resisting Arrest with Force or Violence~~

~~1302 Riot~~

~~1304 Hate Crimes~~

~~1312 Stalking~~

~~1338 Bombs, Incendiary Devices, Molotov Cocktails and Explosive Devices~~

~~1339 Adulteration (Causing Injury or Death)~~

~~1353 Promoting Prostitution in the First Degree~~

~~1442 Carrying a Concealed Deadly Weapon (Firearm Offense)~~

~~1444 Possessing a Destructive Weapon~~

~~1445 Unlawfully Dealing With a Dangerous Weapon~~

~~1447 Possessing a Deadly Weapon During the Commission of a Felony~~

~~1447A Possessing a Firearm during the Commission of a Felony~~

~~1448(e) Possession of a Deadly Weapon by Persons Prohibited (Firearm or Destructive Weapon Purchased, Owned, Possessed or Controlled by a Violent Felon).~~

~~1455 Engaging in a Firearms Transaction on Behalf of Another (Subsequent Offense)~~

~~1449 Wearing Body Armor During the Commission of a Felony~~

~~1503 Racketeering~~

~~3533 Aggravated Act of Intimidation~~

~~Title 16, Section Crime~~

~~1136 Abuse/Mistreatment/Neglect of a Patient~~

~~4751 Former Manufacture/Delivery/Possession With Intent to Deliver a Controlled or Counterfeit Controlled Substance, Manufacture or Delivery Causing Death~~

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

~~4752A Former Unlawful Delivery of a Noncontrolled Substance~~

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

~~4752 Drug Dealing — Aggravated Possession; Class B Felony~~

~~4753 Drug Dealing—Aggravated Possession; Class C Felony~~

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

~~4761 Former Distribution to Minors~~

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

~~4774 Delivery of Drug Paraphernalia to a Minor~~

~~Title 31, Section Crime~~

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

~~(d) Any attempt to commit any felony designated in subsection (c) of this section as a violent felony shall also be designated as a violent felony. [Deleted.]~~

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

§ 4202 Classification of misdemeanors.

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

~~(1) Class A misdemeanors;~~

~~(2) Class B misdemeanors.~~

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

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

§ 4203 Violations.

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

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

§ 4204 Authorized disposition of convicted offenders.

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

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

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

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

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

§ 4204A Confinement of youth convicted in Superior Court.

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

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

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

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

§ 4205 Sentence for felonies.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(b) [Repealed.]~~

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

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

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

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

§ 4206 Sentence for misdemeanors.

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

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

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

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

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

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

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

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

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

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

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

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

§ 4207 Sentences for violations.

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

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

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

§ 4208 Fines for organizations.

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

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

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

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

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

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

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

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

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

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

§ 4210 Arrest and disposition of intoxicated persons.

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

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

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

§ 4214 Habitual criminal; life sentence.

(a) ~~Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title, or any person who has been 3 times convicted of any felony under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony is~~

~~declared to be an habitual criminal. The court, upon the State's petition, shall impose the applicable minimum sentence pursuant to subsection (b), (c) or (d) of this section and may, in its discretion, impose a sentence of up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment. Under no circumstances may the sentence imposed pursuant to this section be less than the minimum sentence provided for by the felony prompting the person's designation as a habitual offender. [Deleted.]~~

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

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

~~(d) Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(e) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a third or subsequent felony which is a Title 11 violent felony, or an attempt to commit such a violent felony, as defined in § 4201(e), shall receive a minimum sentence of the statutory maximum statutory penalty provided elsewhere in this title for the third or subsequent Title 11 violent felony which forms the basis of the State's petition to have the~~

~~person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment. [Deleted.]~~

(e) Notwithstanding any provision of this title to the contrary, any minimum sentence adjustment required to be imposed pursuant to ~~subsection (b), (c), or (d) of this section~~ § 604(a) of this title for a class 4 or 3 felony shall not be subject to suspension by the court, and shall be served in its entirety at full custodial Level V institutional setting without the benefit of probation or parole, except that any such sentence shall be subject to the provisions of §§ 4205(h), 4381 and 4382 of this title. For purposes of the computation of good time under § 4381 of this title, a life sentence imposed pursuant only to this section shall equate to a sentence of 45 years.

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

§ 4215 Sentence of greater punishment because of previous conviction.

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

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

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

§ 4218 Probation before judgment.

(a) Subject to the limitations set forth in this section, for a violation or misdemeanor offense under Title 4, 7, or this title, or for any violation or misdemeanor offense under Title 21 which is designated as a motor vehicle offense subject to voluntary assessment by § 709 of Title 21, or a violation of § 2702 of Title 14, or for violations of § 4166(d) of Title 21, or for violations of § 4172 of Title 21, or for a violation of a county or municipal code, or for a misdemeanor offense under ~~§ 4764, § 4771 or § 4774 of Title 16~~ § 1422 or § 1423 of this title, or for a misdemeanor offense under § 4810(a) of Title 29, a court exercising criminal jurisdiction after accepting a guilty plea or nolo contendere plea may, with the consent of the defendant and the State, stay the entry of judgment, defer further proceedings, and place the defendant on “probation before judgment” subject to such reasonable terms and conditions as may be appropriate. The terms and conditions of any probation before judgment shall include the following requirements: (i) the defendant shall provide the court with that defendant’s current address; (ii) the defendant shall promptly provide the court with written notice of any change of address; and (iii) the defendant shall appear if summoned at any hearing convened for the purpose of determining whether the defendant has violated or fulfilled the terms and conditions of probation before judgment. The terms and conditions may include any or all of the following:

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

§ 4219 Continuous Remote Alcohol Monitoring Program.

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

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

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

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

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

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

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

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

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

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

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

Chapter 47. Special provisions for minors.

§ 4701 Theft.

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

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

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

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

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

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

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

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

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

§ 4705 Wearing body armor during commission of felony.

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

§ 4706 Riot.

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

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

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

§ 4708 Cheating at games and contests.

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

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

§ 8523 Penalties.

(a) Whoever intentionally neglects or refuses to make any report lawfully required of the person under this subchapter, or to do or perform any other act so required to be done or performed by the person, or hinders or prevents another from doing an act so required to be done by such person, ~~shall be guilty of a class A misdemeanor and shall~~

~~be punished according to Chapter 42 of this title~~ shall be subject to criminal penalties under §§ 1122 or 1344 of this title.

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

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

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

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

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

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

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

(g) Any person for whom a CHRI report is being sought pursuant to this section who knowingly and intentionally provides a recipient agency or the Bureau with false, incomplete or inaccurate information ~~shall be guilty of a class F felony and shall be punished according to Chapter 42 of this title. Conviction pursuant to this subsection~~

shall not preclude prosecution for perjury in the second degree pursuant to Chapter 5 of this title shall be subject to criminal penalties under Subchapter II of Chapter 12 of this title.

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

§ 9418A Remedies of aggrieved persons.

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

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

(2) An order directing restitution; or

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

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

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

(c) Independent of or in conjunction with an action under subsection (a) of this section, any person who suffers any injury to person, business or property may bring an action for damages against a person who is alleged to

have violated any provision of §§ 1106(a), 1144, 1241(a)(8), 1326, 1344(b)-(c), or 9616A of this title. The aggrieved person shall recover actual damages and damages for unjust enrichment not taken into account in computing damages for actual loss and treble damages where there has been a showing of wilful and malicious conduct.

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

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

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

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

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

§ 9619 Penalties.

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

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

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

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

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

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

(e) The remedies for aggrieved persons set forth in ~~§ 944~~ § 9418A of this title are available to program participants for violations of § 9616A of this title.

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

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

§ 9801 Definitions.

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

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

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

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

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

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

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

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

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

§ 9802 Forfeiture.

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

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

§ 9803 Admissibility of certain evidence.

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

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

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

§ 9804 Special provisions regarding a minor.

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

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

services identified by the Department of Services for Children, Youth and Their Families and/or ordered by the Family Court, the Family Court shall lift the stay for further proceedings in accordance with the regular course of such proceedings.

§ 9805 Civil action.

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

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

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

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

(2) Attained 18 years of age.

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

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

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

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

§ 9807 Human Trafficking Interagency Coordinating Council.

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

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

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

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

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

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

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

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

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

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

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

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

(2) The Council shall:

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

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

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

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

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

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

g. Conduct other appropriate activities.

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

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

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

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

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

e. The Council shall submit a written report of its activities and recommendations to the Governor, General Assembly and the Chief Justice of the Supreme Court at least once every year on or before September 15.

§ 9808 Display of public awareness sign; penalty for failure to display.

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

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

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

§ 9809 Eligibility for services.

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

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

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

§ 9810 Law-enforcement agency protocol.

(a) On request from an individual who a police officer or prosecutor reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. § 1101(a)(15)(T), as amended from time to time, or 8 U.S.C. § 1101(a)(15)(U), as amended from time to time, or for continued presence, under 22 U.S.C. § 7105(c)(3), as amended from time to time, the police officer or prosecutor, as soon as practicable after receiving the request, shall request that a certifying official in his or her law-enforcement agency complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website, and ask a federal law-enforcement officer to request continued presence.

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

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

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

§ 9901 License to carry concealed deadly weapons.

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

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

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

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

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

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

(5) The license issued upon initial application shall be valid for 3 years. On or before the date of expiration of such initial license, the licensee, without further application, may renew the same for the further period of 5 years upon payment to the Prothonotary of a fee of \$65, and upon filing with said Prothonotary an affidavit setting forth that the carrying of a concealed deadly weapon by the licensee is necessary for personal protection or protection of the person's property, or both, and that the person possesses all the requirements for the issuance of a license and may make like renewal every 5 years thereafter; provided, however, that the Superior Court, upon good cause presented to it, may inquire into the renewal request and deny the same for good cause shown. No requirements in addition to those specified in this paragraph may be imposed for the renewal of a license.

(b) The Prothonotary of the county in which any applicant for a license files the same shall cause notice of every such application to be published once, at least 10 days before the next term of the Superior Court. The publication shall be made in a newspaper of general circulation published in the county. In making such publication it shall be

sufficient for the Prothonotary to do the same as a list in alphabetical form stating therein simply the name and residence of each applicant respectively.

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

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

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

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

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

(h) Notwithstanding any provision to the contrary, anyone retired as a police officer, as "police officer" is defined by § 1911 of this title, who is retired after having served at least 20 years in any law-enforcement agency within this State, or who is retired and remains currently eligible for a duty-connected disability pension, may be licensed to carry a concealed deadly weapon for the protection of that retired police officer's person or property after that retired police officer's retirement, if the following conditions are strictly complied with:

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

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

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

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

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

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

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

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

(j) Notwithstanding any other provision of this Code to the contrary, the State of Delaware shall give full faith and credit and shall otherwise honor and give full force and effect to all licenses/permits issued to the citizens of other states where those issuing states also give full faith and credit and otherwise honor the licenses issued by the State of Delaware pursuant to this section and where those licenses/permits are issued by authority pursuant to state law and which afford a reasonably similar degree of protection as is provided by licensure in Delaware. For the purpose

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

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

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

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

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

(a) Notwithstanding any other provision of the law of any state or any political subdivision thereof, an individual who is a qualified law-enforcement officer and who is carrying the identification required by subsection

(d) of this section may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b) of this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Does not include:

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

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

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

(f) For the purposes of this section, a law-enforcement officer of the Amtrak Police Department, a law-enforcement officer of the Federal Reserve, or a law-enforcement or police officer of the executive branch of the federal government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under 10 U.S.C. § 807(b) (article 7(b) of the Uniform Code of Military Justice).

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

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

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

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

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

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

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

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

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

or

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

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

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

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

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

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

(d) The identification required by this subsection is:

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

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

b. A certification issued by the state in which the individual resides or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state that

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

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

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

(e) As used in this section:

(1) The term “firearm”:

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

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

c. Does not include:

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

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

3. Any destructive device (as defined in 18 U.S.C. § 921); and

(2) The term “service with a public agency as a law-enforcement officer” includes service as a law-enforcement officer of the Amtrak Police Department, service as a law-enforcement officer of the Federal Reserve, or service as a law-enforcement or police officer of the executive branch of the federal government.

(3) The term “a firearm of the same type” means a revolver or a semi-automatic pistol.

§ 9904 Criminal history record checks for sales of firearms.

(a) No licensed importer, licensed manufacturer or licensed dealer shall sell, transfer or deliver from inventory any firearm, as defined in § 103 of this title, to any other person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, without conducting a criminal history background check in accordance with regulations promulgated by the United States Department of Justice pursuant to the National Instant Criminal Background Check System (“NICS”), 28 C.F.R. §§ 25.1-25.11, as the same may be amended from time to time, to determine whether the transfer of a firearm to any person who is not licensed under 18 U.S.C. § 923 would be in violation of federal or state law.

(b) No licensed importer, licensed manufacturer or licensed dealer shall sell, transfer or deliver from inventory any firearm, as defined in § 103 of this title, to any other person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, unless and until being informed that it may “proceed” with the sale, transfer or delivery from inventory of a firearm by the Federal Bureau of Investigation (FBI), NICS Section pursuant to the request for a criminal history record check required by subsection (a) of this section or 25 days have elapsed from the date of the request for a background check and a denial has not occurred.

(c) Any person who is denied the right to receive or purchase a firearm in connection with subsection (a) of this section or § 9905(a) of this title may request from the Federal Bureau of Investigation a written explanation for such denial; an appeal of the denial based on the accuracy of the record upon which the denial is based; and/or that erroneous information on the NICS system be corrected and that the person’s rights to possess a firearm be restored. All requests pursuant to this subsection (c) shall be made in accordance with applicable federal laws and regulations, including without limitation 28 C.F.R. § 25.10. In connection herewith, at the request of a denied person, the Federal Firearms Licensed (FFL) dealer and SBI shall provide to the denied person such information as may be required by federal law or regulation in order for such person to appeal or seek additional information hereunder.

(d) Compliance with the provisions of this section shall be a complete defense to any claim or cause of action under the laws of this State for liability for damages arising from the importation or manufacture of any firearm which has been shipped or transported in interstate or foreign commerce. In addition, compliance with the provisions of this section or § 9905 of this title, as the case may be, shall be a complete defense to any claim or cause of action under the laws of this State for liability for damages allegedly arising from the actions of the transferee subsequent to the date of said compliance wherein the claim for damages is factually connected to said compliant transfer.

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

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

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

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

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

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

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

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

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

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

c. Criminal history records; and

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

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

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

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

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

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

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

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

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

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

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

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

(a) No unlicensed person shall sell or transfer any firearm, as defined in § 103 of this title, to any other unlicensed person without having conducted a criminal history background check through a licensed firearms dealer in accordance with § 9904 of this title and § 904A of Title 24, as the same may be amended from time to time, to determine whether the sale or transfer would be in violation of federal or state law, and until the licensed firearms

dealer has been informed that the sale or transfer of the firearm may “proceed” by the Federal Bureau of Investigation, NICS Section or 25 days have elapsed from the date of the request for a background check and a denial has not occurred.

(b) For purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 9906 Report of loss, theft of firearm.

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

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

(2) Any State Police troop.

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

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

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

§ 9907 Civil procedures to relinquish firearms or ammunition.

(a) For the purposes of this section:

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

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

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

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

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

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

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

1. Immediately seek an order from the Justice of the Peace Court that the individual relinquish any firearms or ammunition owned, possessed, or controlled by the individual.
2. Immediately refer the report under § 5402 or § 5403 of Title 16 and its investigative findings to the Department of Justice.

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

(2) The Department of Justice may, upon review of the report and the law-enforcement agency’s investigative findings, petition the Superior Court for an order that the individual relinquish any firearms or ammunition owned, possessed, or controlled by the individual. The Department of Justice must file one of the

following with the Superior Court within 30 days after the entry of the Justice of the Peace Court's order under paragraph (d)(1) of this section:

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

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

1. If the Superior Court denies the Department of Justice's request for additional time to file a petition under this paragraph (b)(2)b., the Department of Justice has either the remainder of the 30 days provided by this paragraph (b)(2) or 7 days from the date of the Superior Court's denial, whichever is longer, to file a petition with Superior Court under this paragraph (b)(2).

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

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

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

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

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

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

(2) The following procedures govern a proceeding under paragraph (b)(2) of this section:

a. The individual has the right to be heard.

b. If a hearing is requested, it must be held within 15 days of the Department of Justice's filing of the petition under paragraph (b)(2) of this section, unless extended by the Court for good cause shown.

c. If a hearing is held, the individual has the right to notice of the hearing, to present evidence, and to cross examine adverse witnesses.

d. If a hearing is held, the hearing must be closed to the public and testimony and evidence must be kept confidential, unless the individual requests the hearing be public.

e. If a hearing is held, the hearing must be on the record to allow for appellate review.

f. The Department of Justice has the burden of proving by clear and convincing evidence that the individual is dangerous to others or self.

(3)a. The Justice of the Peace Court may adopt additional rules governing proceedings under paragraph (b)(1)a. of this section.

b. The Superior Court may adopt additional rules governing proceedings under paragraph (b)(2) of this section.

(d)(1) If the Justice of the Peace Court finds that there is probable cause to believe that an individual is dangerous to others or self, the Court shall order the individual to relinquish any firearms or ammunition owned, possessed, or controlled by the individual. The Court may do any of the following through its order:

a. Require the individual to relinquish to a law-enforcement agency receiving the Court's order any firearms or ammunition owned, possessed, or controlled by the individual.

b. Prohibit the individual from residing with another individual who owns, possesses, or controls firearms or ammunition. Nothing in this section may be construed to impair or limit the rights, under the Second Amendment to the United States Constitution or article I, § 20 of the Delaware Constitution, of an individual who is not the subject of the Court's order of relinquishment.

c. Direct a law-enforcement agency having jurisdiction where the individual resides or the firearms or ammunition are located to immediately search for and seize any firearms or ammunition owned, possessed, or controlled by the individual.

(2) If the Superior Court finds by clear and convincing evidence that an individual is dangerous to others or self, the Court shall order the individual to relinquish any firearms or ammunition owned, possessed, or controlled by the individual. The Court may do any of the following through its order:

a. Require the individual to relinquish to a law-enforcement agency receiving the Court's order any firearms or ammunition owned, possessed, or controlled by the individual.

b. Allow the individual to voluntarily relinquish to a law-enforcement agency receiving the Court's order any firearms or ammunition owned, possessed, or controlled by the individual.

c. Allow the individual to relinquish firearms or ammunition owned, possessed, or controlled by the individual to a designee of the individual. A designee of the individual must not reside with the individual and must not be a person prohibited under § 1404 of this title. The Court must find that the designee of the individual will keep firearms or ammunition owned, possessed, or controlled by the individual out of the possession of the individual.

d. Prohibit the individual from residing with another individual who owns, possesses, or controls firearms or ammunition. Nothing in this section may be construed to impair or limit the rights, under the Second Amendment to the United States Constitution or article I, § 20 of the Delaware Constitution, of an individual who is not the subject of the Court's order of relinquishment.

e. Direct a law-enforcement agency having jurisdiction where the individual resides or the firearms or ammunition are located to immediately search for and seize firearms or ammunition of the individual if the Department of Justice shows that the individual has ownership, possession, or control of a firearm or ammunition.

(e)(1) An individual subject to the Superior Court's order of relinquishment may petition the Relief from Disabilities Board for an order to return firearms or ammunition under § 9904(h) of this title.

(2) If the basis for relinquishment under this section is removed by the Relief from Disabilities Board established by § 9904(h) of this title, any firearms or ammunition taken from the individual must be restored in a timely manner without the additional requirement of petitioning under § 9904(h) of this title.

(f) Any party in interest aggrieved by a decision of the Superior Court's order of relinquishment under this section may appeal the decision to the Supreme Court.

(g)(1) The State Police and the Department of Justice shall work with county and municipal law-enforcement agencies and the Department of Health and Social Services, and its Division of Substance Abuse and Mental Health, to develop appropriate internal policies and regulations to ensure that personnel who act under this section are trained on appropriate mental health risk assessment procedures and to look for histories of violence.

(2) The Supreme Court, Superior Court, Justice of the Peace Court, Department of Justice, State Police, State Bureau of Identification, Delaware Criminal Justice Information System Board of Managers, and the Department of

Health and Social Services may promulgate rules and regulations to carry out the purposes of this section, § 1404(a)(2) of this title, and §§ 5402 and 5403 of Title 16.

§ 9908 Relinquishment of a bump stock or trigger crank device.

(a) Bump stock or trigger crank devices shall be relinquished to a law-enforcement agency of this State and may be destroyed by the law-enforcement agency 30 days after relinquishment.

(b) Relinquishment to a law-enforcement agency is not a transfer or evidence of possession of a bump stock or trigger crank device.

Section 67. Amend § 210, Title 12 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 210 Alteration, theft or destruction of will; ~~class E felony~~ penalties.

Whoever wilfully adds to, alters, defaces, erases, obliterates, mutilates, blots, blurs, hides, conceals, destroys, misplaces with intent to conceal or commits an act of theft of any instrument of writing purporting to be or in the nature of a last will and testament and intended to take effect upon the death of the testator, whether the person shall have been given custody or possession thereof by the testator, or shall have obtained custody or possession of the purported last will and testament in any other manner whatsoever, shall be ~~guilty of a class E felony~~ subject to criminal penalties under § 1103 or § 1122 of Title 11.

Section 68. Amend § 728, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 728 Residence; visitation; sanctions.

(f) The Court shall not enter an order requiring visitation in a correctional facility if the person incarcerated has been adjudicated of committing murder ~~in the first or second degrees~~ under §§ 1001 or 1002 of Title 11.

Section 69. Amend § 9303, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9303 Hazing prohibited.

Any person who causes or participates in hazing ~~commits a class B misdemeanor~~ shall be subject to criminal penalties under § 1029 of Title 11.

Section 70. Amend § 5301, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5301 Bringing armed soldiers into State to interfere with elections; penalty.

Whoever, being a citizen or inhabitant of this State:

(1) Sends or causes to be sent, brings or causes to be brought into this State, or aids, abets, procures, advises, counsels or in any manner assists in sending or bringing into this State any armed soldier to be present at any voting place in this State or within 5 miles thereof, on the day of any general, special or other election held in this State; or

(2) Aids, abets, procures, advises, counsels or in any manner assists the presence or attendance of any armed soldier at any such voting place, or within 5 miles thereof, on any such election day,

~~shall be guilty of a felony, and shall be fined not less than \$1,000 nor more than \$10,000, and imprisoned not less than 1 nor more than 5 years~~ shall be subject to criminal penalties under § 1243 of Title 11, and shall forever thereafter be incapable of exercising the right of suffrage in this State.

Section 71. Amend § 5302, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5302 Abetting or counseling military interference with elections; penalty.

Whoever, being a citizen or inhabitant of this State, aids, abets, procures, advises, counsels or in any manner assists or is guilty of military interference in any manner with the freedom of any election in this State ~~shall be guilty of felony, and shall be fined not less than \$1,000 nor more than \$10,000 and imprisoned not less than 1 nor more than 5 years~~ shall be subject to criminal penalties under § 1243 of Title 11, and shall forever thereafter be incapable of exercising the right of suffrage in this State.

Section 72. Amend § 8043, Title 15 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 8043 Violations; penalties; jurisdiction in Superior Court.

(a) Except as set forth in § 8044 of this title, any person who knowingly violates any provision of § 8003, § 8004 or § 8005 of this title shall be ~~guilty of a class B misdemeanor~~ subject to criminal penalties under § 1201 of Title 11.

Section 73. Amend § 1132, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1132 Reporting requirements.

(a)(1) Any employee of a facility or person who provides services to a patient or resident of a facility on a regular or intermittent basis who has reasonable cause to believe that a patient or resident in a facility has been abused, mistreated, neglected, or financially exploited shall immediately report such abuse, mistreatment, neglect, or financial exploitation to the Department by oral communication. A written report shall be filed by the employee or person providing services to a patient or resident of a facility within 48 hours after the employee or person providing services to a patient or resident of a facility first gains knowledge of the abuse, mistreatment, neglect or financial exploitation.

(d) Any person who intentionally makes a false report under this subchapter ~~is guilty of a class A misdemeanor~~ shall be subject to criminal penalties under § 1223 of Title 11.

Section 74. Amend § 1136, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1136 Violations.

(a) Any person who knowingly or recklessly abuses, mistreats, or neglects a patient or resident of a facility ~~is guilty of a class A misdemeanor~~ shall be subject to criminal penalties under Chapter 10 of Title 11.

~~(1) If the abuse involves sexual contact such person is guilty of a class G felony.~~

~~(2) If the abuse, mistreatment, or neglect results in serious physical injury, sexual penetration, or sexual intercourse, such person is guilty of a class C felony.~~

~~(3) If the abuse, mistreatment, or neglect results in death, then the person is guilty of a class A felony.~~

(b) Any person who knowingly causes medication diversion of a patient or resident, ~~is guilty of the following:~~ resident shall be subject to criminal penalties under Subchapter II of Chapter 14 of Title 11.

~~(1) A class G felony.~~

~~(2) A class F felony, if committed by a health care professional.~~

(c) Any person who knowingly commits financial exploitation of a patient's or resident's resources ~~is guilty of the following:~~ shall be subject to criminal penalties under Chapter 11 of Title 11

~~(1) A class A misdemeanor if the value of the resources is less than \$1,000.~~

~~(2) A class G felony if the value of the resources is \$1,000 or more.~~

(d) Any member of the board of directors or a high managerial agent who knows that patients or residents of the facility are being abused, mistreated, neglected, or financially exploited and fails to promptly take corrective action ~~is guilty of a class A misdemeanor~~ shall be subject to criminal penalties under § 1243 of Title 11.

(e) Nothing in this section shall preclude a separate charge, conviction, and sentence for any other crime set forth in this title, or in the Delaware Code.

Section 75. Amend § 2223, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2223 Unwarranted confinement in a substance abuse treatment facility or denial of rights; penalties.

(a) Any person that willingly causes or conspires with or assists another to cause:

(1) The unwarranted involuntary confinement of any individual in a substance abuse treatment facility 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~~ Shall be subject to criminal penalties under § 1061 of Title 11.

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

Section 76. Amend § 2513, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2513 Penalties.

(b) Whoever knowingly conceals, destroys, falsifies or forges a document with intent to create the false impression that another person has directed that maintenance medical treatment be utilized for the prolongation of that person's life ~~is guilty of a class C felony~~ shall be subject to criminal penalties under Subchapter II of Chapter 11 of Title 11.

(c) The Superior Court shall have jurisdiction over all offenses under this chapter.

Section 77. Amend § 3050F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(a) All dogs shall be deemed personal property and may be the subject of theft pursuant to ~~Chapter 5~~ Subchapter I of Chapter 11 of Title 11. Any warrant of arrest or other process issued under or by virtue of the several laws in relation to the theft of such property may be directed to and executed by any police officer, constable, or animal welfare officer.

Section 78. Amend § 3056F, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3056F Unauthorized acts against a service dog; penalties.

(d) No person shall intentionally kill a service dog owned by a private person or agency. Whoever violates this subsection shall be ~~guilty of a class D felony~~ subject to criminal penalties under § 1327 of Title 11. This subsection, however, does not apply to a law-enforcement officer as defined by ~~§ 222~~ § 103 of Title 11 who is forced to take such action pursuant to the lawful performance of the officer's duties.

(e) No person shall intentionally steal, take, or wrongfully obtain a service dog owned by a private person or agency. Whoever violates this subsection shall be ~~guilty of a class E felony~~ subject to criminal penalties under Subchapter I of Chapter 11 of Title 11.

Section 79. Amend Chapter 30F, Part II, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter VI. General Provisions.

§ 3091F Definitions.

For the purposes of this subchapter, the term "domestic dog or cat" means a dog (Canis familiaris) or cat (Felis catus or Felis domesticus) that is generally recognized in the United States as being a household pet and shall not include coyote, fox, lynx, bobcat or any other wild or commercially raised canine or feline species the fur or hair of which is recognized for use in warm clothing and outer wear by the United States Department of Agriculture and which species is not recognized as an endangered or threatened species by the United States Fish and Wild Life Service or the Delaware Department of Natural Resources and Environmental Control.

§ 3092F The unlawful trade in dog or cat by-products; class B misdemeanor; class A misdemeanor, penalties.

(a)(1) A person is guilty of the unlawful trade in dog or cat by-products in the second degree if the person knowingly or recklessly sells, barter or offers for sale or barter, the fur or hair of a domestic dog or cat or any product made in whole or in part from the fur or hair of a domestic dog or cat.

(2) This subchapter shall not apply to the sale or barter, or offering for sale or barter, of the fur or hair of a domestic dog or cat which has been cut at a commercial grooming establishment, or at a veterinary office or clinic, or for scientific research purposes.

(3) The unlawful trade in dog or cat by-products in the second degree is a class B misdemeanor.

(b)(1) A person is guilty of the unlawful trade in dog or cat by-products in the first degree if the person knowingly or recklessly sells, barter or offers for sale or barter, the flesh of a domestic dog or cat or any product made in whole or in part from the flesh of a domestic dog or cat.

(2) The unlawful trade in dog or cat by-products in the first degree is a class A misdemeanor.

(c) In addition to any other penalty provided by law, any person convicted of a violation of this subchapter shall be:

(1) Prohibited from owning or possessing any domestic dog or cat for 15 years after said conviction, except for those grown, raised or produced within the State for resale, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale;

(2) Subject to a fine in the amount of \$2,500 in any court of competent jurisdiction; and

(3) Required to forfeit any domestic dog or cat illegally owned in accordance with the provisions of Chapter 79 of Title 3.

Section 80. Amend Part II, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 30M. Body-piercing, tattooing, branding, and tongue splitting.

§ 3001M Definitions.

As used in this section:

(1) "Body-piercing" means the perforation of human tissue excluding the ear for a nonmedical purpose.

(2) "Branding" means a permanent mark made on human tissue by burning with a hot iron or other instrument.

(3) "Minor" means an individual under 18 years of age who is not emancipated.

(4) "Tattoo" means 1 or more of the following:

a. An indelible mark made upon the body of another person by the insertion of a pigment under the skin.

b. An indelible design made upon the body of another person by production of scars other than by branding.

(5) “Tongue-splitting” means the surgical procedure of cutting a human tongue into 2 or more parts giving it a forked or multi-tipped appearance.

§ 3002M Body-piercing, tattooing or branding; consent for minors; civil penalties.

(a) A notarized prior written consent of a minor’s parent over the age of 18 or legal guardian is required for the specific act of tattooing, branding or body piercing.

(b) In addition to the penalties set forth under §§ 208 and 1022 of Title 11, a person who violates subsection (a) of this section is liable in a civil action for actual damages or \$1,000, whichever is greater, plus reasonable court costs and attorney fees.

(c) Nothing in this section shall require a person to tattoo, brand or body pierce a minor with parental consent if the person does not regularly tattoo, brand or body pierce customers under the age of 18.

§ 3003M Tongue-splitting; additional civil penalties.

(a) An act of tongue-splitting performed by a person who is neither a physician nor a dentist, holding a valid license issued under the laws of the State of Delaware, and the person performs an act of tongue-splitting on any other person in this State, constitutes both the practice of medicine without a license and the practice of dentistry without a license. Nothing in this section shall prohibit prosecution under the provisions of either § 1134 of Title 24 relating to the practice of dentistry without a license, or § 1766 of Title 24 relating to the practice of medicine without a license, or both.

(b) In addition to the penalties set forth under subsection (a) and §§ 208 and 1022 of Title 11, any person who has performed an act of tongue-splitting in violation of this section shall be held liable in a civil action, brought by any person aggrieved by such act, for actual damages or \$1,000, whichever is greater; plus reasonable court costs and attorney fees.

Section 81. Amend § 4740, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4740 Sale of pseudoephedrine or ephedrine.

(a) Beginning January 1, 2014, before completing a sale of an over-the-counter material, compound, mixture, or preparation containing any detectable quantity of pseudoephedrine or ephedrine, its salts or optical isomers, or salts of optical isomers a pharmacy or retailer shall electronically submit the information required pursuant to subsection (b) of this section to the National Precursor Log Exchange system (NPLeX) administered by the National Association

of Drug Diversion Investigators; provided that the NPLeX is available to pharmacies or retailers in the State without a charge for accessing the system. The pharmacy or retailer shall not complete the sale if the NPLeX system generates a stop sale alert. The system shall contain an override function that may be used by an agent of a retail establishment who is dispensing the drug product and who has a reasonable fear of imminent bodily harm if the transaction is not completed. The system shall create a record of each use of the override mechanism.

(g) A violation of this section ~~is a class A misdemeanor~~ shall be subject to criminal penalties under § 1223 of Title 11.

Section 82. Amend § 4743, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4743 Definitions.

~~The following definitions shall be applicable to this subchapter:~~

- (1) ~~“Board” means the Delaware State Board of Pharmacy;~~
- (2) ~~“Delaware patient” means any person residing within or outside of this State who requests an internet pharmacy deliver a prescription drug order to a location within this State;~~
- (3) ~~“Electronic mail” or “e-mail” shall mean any message transmitted through the Internet including, but not limited to, messages transmitted to or from any address affiliated with an internet site;~~
- (4) ~~“Internet” means collectively the international network of interconnected government, educational and commercial computer networks, including equipment and operating software;~~
- (5) ~~“Internet pharmacy” means any person or entity maintaining an internet site which solicits or receives, or offers to solicit or receive, prescription drug orders to be dispensed and delivered to patients, including Delaware patients, by means of the United States Postal Service or any other delivery service. The term “internet pharmacy” does not include a pharmacy which has been issued a valid permit or license by the Board;~~
- (6) ~~“Internet site” means a specific location on the internet that is determined by internet protocol numbers, domain name, or both, including, but not limited to, domain names that use the designations “.com,” “.edu,” “.gov,” “.net” and “.org.”~~
- (7) ~~“Licensed Delaware pharmacist” means a pharmacist licensed by the Board to engage in the practice of pharmacy in this State;~~

~~(8) "Link," with respect to the Internet, means 1 or more letters, words, numbers, symbols, or graphic items that appear on a page of an internet site for the purpose of serving, when activated, as a method for executing an electronic command:~~

- ~~a. To move from viewing 1 portion of a page on such site to another portion of the page; or~~
- ~~b. To move from viewing 1 page on such site to another page on such site; or~~
- ~~c. To move from viewing a page on 1 internet site to a page on another internet site. [Deleted.]~~

Section 83. Amend § 4744, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4744 Prohibited practices; penalties.

~~(a)(1) An internet pharmacy shall not sell, dispense, distribute or deliver or offer to sell, dispense, distribute or deliver or participate in the sale, distribution, dispensing or delivery of any prescription drug to a Delaware patient unless the practitioner issuing the prescription drug order to be filled or dispensed by the internet pharmacy is a licensed practitioner who has a patient practitioner relationship with the Delaware patient; and~~

~~(2) An internet pharmacy or any owner or operator thereof who knowingly violates this subsection is guilty of a class D felony and shall be fined not less than \$2,500 nor more than \$25,000 for each offense; provided, however, that if an internet pharmacy or any owner or operator thereof knowingly violates this subsection and the substance or prescription drug dispensed causes death or serious physical injury to a Delaware patient, the internet pharmacy or any owner or operator thereof is guilty of a class B felony and shall be fined not less than \$25,000 nor more than \$100,000 for each offense.~~

~~(b)(1) An internet pharmacy or any owner or operator thereof shall not advertise or represent by advertisement, sales presentation or direct communication with any person within this State, including by telephone, facsimile, electronic mail or otherwise, that a prescription drug may be obtained by a Delaware patient based on an internet consultation, questionnaire or medical history form submitted to the internet pharmacy through an internet site. This subsection shall not apply to any internet pharmacy or internet site which advises in a clear and visible manner on each page of its internet site, or by link to a separate page, that it will not deliver or ship prescription drugs to a location within this State.~~

~~(2) An internet pharmacy or any owner or operator thereof who knowingly violates this subsection is guilty of a class D felony and shall be fined not less than \$2,500 nor more than \$25,000 for each offense.~~

~~(c)(1) A practitioner or any person acting as a practitioner within or outside of this State shall not issue a prescription drug order, by e-mail or otherwise, to or on behalf of a Delaware patient through an internet pharmacy unless the person is a licensed practitioner who has a patient-practitioner relationship with the Delaware patient.~~

~~(2) A practitioner or any person acting as a practitioner who knowingly violates this subsection is guilty of a class D felony and shall be fined not less than \$2,500 nor more than \$25,000 for each offense; provided, however that if a practitioner or any person acting as a practitioner knowingly violates this subsection and the substance or prescription drug dispensed causes death or serious physical injury to a Delaware patient, then the practitioner or person acting as a practitioner is guilty of a class B felony and shall be fined not less than \$25,000 nor more than \$100,000 for each offense.~~

~~(3) The provisions of this subsection shall not apply to a licensed practitioner who inadvertently allows that licensed practitioner's own respective license or permit to lapse for a period of less than 60 days.~~

~~(d)(1) A licensed Delaware pharmacist practicing within or outside of this State shall not dispense or authorize the dispensing of a prescription drug order, by e-mail or otherwise, to or on behalf of a Delaware patient through an internet pharmacy if:~~

~~a. The licensed Delaware pharmacist knows that the prescription order was issued solely on the basis of an internet consultation or questionnaire or medical history form submitted to an internet pharmacy through an internet site; or~~

~~b. The licensed Delaware pharmacist knows that the prescription order was issued by a practitioner who is not a licensed practitioner or by a licensed practitioner who does not have a patient-practitioner relationship with the Delaware patient.~~

~~(2) Any licensed Delaware pharmacist who violates this subsection is guilty of a class F felony and shall be fined not less than \$1,000 nor more than \$10,000 for each offense.~~

~~(e)(1) No person within or outside of this State shall purchase, attempt to purchase, offer to purchase or submit an order to purchase, by e-mail or otherwise, any prescription drug from an internet pharmacy to be delivered to a location within this State unless the person has been issued a valid prescription drug order from licensed practitioner with whom the person has a patient-practitioner relationship.~~

~~(2) A person who knowingly violates this subsection shall be guilty of a class A misdemeanor and shall be fined not less than \$100 nor more than \$1,000 for each offense.~~

~~(f) The Superior Court shall have exclusive jurisdiction over any offense defined in this subchapter. In any prosecution for an offense prohibited by this subchapter, the delivery of a prescription drug to a location within this State shall constitute a result occurring within this State for purposes of establishing jurisdiction under § 204 of Title 11.~~

~~(g) In any prosecution for an offense defined in this subchapter it shall not be a defense that a Delaware patient or any recipient or intended recipient of a prescription drug order is not prosecuted, convicted or punished based upon the same act or transaction.~~

~~(h) Nothing in this section shall be construed to limit or prevent the Attorney General or applicable professional board from taking any civil or administrative action permitted by law against an internet pharmacy, practitioner, pharmacist or other person violating the provisions of this subchapter. [Deleted.]~~

Section 84. Amend § 4745, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4745 Seizure of unlawfully delivered prescription drugs.

(a) Any prescription drug which is ordered, sold, dispensed or delivered in violation of ~~this subchapter~~ § 1427 of Title 11 is hereby declared to be contraband and may be seized by any peace officer authorized to enforce the provisions of ~~this subchapter~~ § 1427 of Title 11.

(b) Any prescription drugs seized pursuant to ~~this subchapter~~ § 1427 of Title 11 shall be subject to forfeiture pursuant to the provisions and procedures set forth in § 4784 of this title.

Section 85. Amend § 4751A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4751A Aggravating factors related to drug offenses.

~~For the purposes of this subchapter:~~

~~(1) Each of the following shall be an “aggravating factor” within the meaning of the offenses in this subchapter:~~

- ~~a. The offense was committed within a protected school zone, as defined in § 4701 of this title;~~
- ~~b. The offense was committed within a protected park or recreation area, or church, synagogue or other place of worship, as defined in § 4701 of this title;~~
- ~~c. The offense occurred in a vehicle, as defined in § 4701 of this title;~~

~~d. The defendant was an adult, that is, a person who had reached his or her eighteenth birthday, and the offense involved a juvenile, that is, a person who had not reached his or her eighteenth birthday, as a co-conspirator or accomplice, or as the intended or actual recipient of the controlled substances, and the defendant was more than 4 years older than the juvenile; and~~

~~e. The defendant, during or immediately following the commission of any offense in this title:~~

~~1. Intentionally prevented or attempted to prevent a law enforcement officer, as defined in § 222(15) of Title 11, from effecting an arrest or detention of the defendant by use of force or violence towards the law enforcement officer; or~~

~~2. Intentionally fled in a vehicle from a law enforcement officer, as defined in § 222(15) of Title 11, while the law enforcement officer was effecting an arrest or detention of the defendant, thereby creating a substantial risk of physical injury to other persons.~~

~~(2) When the aggravating factors “protected school zone” and “protected park, recreation area, church, synagogue or other place of worship” of paragraphs (1)a. and (1)b. of this section are both present, both may be alleged and proven, but they shall only count as 1 aggravating factor in determining which offense the defendant committed.~~

~~(3) In any offense in which 1 or more aggravating factors set forth in this section are present, the factor or factors shall be alleged in the charging information or indictment, and constitute an element of the offense. When there are more aggravating factors present than are required to prove the offense, all may be alleged and proven. [Deleted.]~~

Section 86. Amend § 4751B, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4751B Prior qualifying Title 16 convictions.

~~For the purposes of this subchapter:~~

~~(1) A “prior qualifying Title 16 conviction” means any prior adult felony conviction for a Title 16 offense where the conviction was 1 of former § 4751, § 4752, or § 4753A of this title, or any other former section of this title that was, at the time of conviction, a class C or higher felony; or where the conviction was 1 of § 4752, § 4753, § 4754, § 4755, or § 4756 of this title, or any other felony conviction specified in the controlled substances law of any other state, local jurisdiction, the United States, any territory of the United States, any federal or~~

~~military reservation, or the District of Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new offense occurs within 5 years of the date of conviction for the earlier offense or the date of termination of all periods of incarceration or confinement imposed pursuant to the conviction, whichever is the later date. For purposes of §§ 4761(a) and (b), 4763 and 4764 of this title, a “prior qualifying Title 16 conviction” means any prior adult conviction, including both felony and misdemeanor, under this title, if the new offense occurs within 5 years of the date of conviction for the earlier offense, or the date of termination of all periods of incarceration or confinement imposed pursuant to the conviction, whichever is the later date.~~

~~(2) “Two prior qualifying Title 16 convictions” means 1 “prior qualifying Title 16 conviction,” as defined in paragraph (1) of this section, and an additional prior adult felony conviction or a juvenile adjudication for a Title 16 offense, where the conviction or juvenile adjudication was 1 of former § 4751, § 4752, or § 4753A of this title, or any other former section of this title that was at the time of conviction or juvenile adjudication a class C or higher felony, or where the conviction or adjudication was 1 of § 4752, § 4753, § 4754, § 4755, or § 4756 of this title, or any other felony conviction or juvenile adjudication specified in the controlled substances law of any other state, local jurisdiction, the United States, any federal or military reservation, or the District of Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new offense occurs within 10 years of the date of conviction or juvenile adjudication for the additional prior adult felony conviction or juvenile adjudication or the date of termination of all periods of incarceration or confinement imposed pursuant to the earlier conviction or juvenile adjudication, whichever is the later date, and the sentence or disposition following an adjudication of delinquency for the additional prior adult felony conviction or juvenile adjudication was imposed before the offense which is the basis for the prior qualifying Title 16 conviction was committed. For a juvenile adjudication to count as the additional prior adult felony conviction or juvenile adjudication, the juvenile must have reached his or her sixteenth birthday by the date the criminal act was committed which forms the basis for the juvenile adjudication.~~

~~(3) In any offense involving a “prior qualifying Title 16 conviction” or “2 prior qualifying Title 16 convictions,” the prior qualifying Title 16 conviction or convictions, including any juvenile adjudication, shall be proved in accordance with § 4215 of Title 11.~~

~~(4) Penalties.—~~

a. ~~In any case in which a defendant has a “prior qualifying Title 16 conviction,” the defendant shall be sentenced as follows:~~

~~1. A defendant convicted of § 4753(1) of this title shall be sentenced as though the defendant was convicted of § 4752(2) of this title.~~

~~2. A defendant convicted of § 4753(4) of this title shall be sentenced as though the defendant was convicted of § 4752(5) of this title.~~

~~3. A defendant convicted of § 4754(1) of this title shall be sentenced as though the defendant was convicted of § 4753(2) of this title.~~

~~4. A defendant convicted of § 4754(2) of this title shall be sentenced as though the defendant was convicted of § 4752(4) of this title.~~

~~5. A defendant convicted of § 4754(3) of this title shall be sentenced as though the defendant was convicted of § 4753(5) of this title.~~

~~6. A defendant convicted of § 4755 of this title shall be sentenced as though the defendant was convicted of § 4753(4) of this title.~~

~~7. A defendant convicted of § 4756 of this title shall be sentenced as though the defendant was convicted of § 4754(3) of this title.~~

~~8. A defendant convicted of § 4757(e)(1) of this title shall be sentenced as though the defendant was convicted of § 4757(e)(2) of this title.~~

~~9. A defendant convicted of § 4761(a) of this title shall be sentenced as though the defendant was convicted of § 4761(b) of this title.~~

~~10. A defendant convicted of § 4761(c) of this title shall be sentenced as though the defendant was convicted of § 4761(d) of this title.~~

~~11. A defendant convicted of § 4763(b) of this title shall be sentenced as though the defendant was convicted of § 4763(c) of this title.~~

~~12. A defendant convicted of § 4764(b) of this title shall be sentenced as though the defendant was convicted of § 4764(a) of this title.~~

b. ~~In any case in which a defendant has “2 prior qualifying Title 16 convictions”, the defendant shall be sentenced as follows:~~

~~1. A defendant convicted of § 4754(1) of this title shall be sentenced as though the defendant was convicted of § 4752 of this title.~~

~~2. A defendant convicted of § 4755 of this title shall be sentenced as though the defendant was convicted of § 4752(5) of this title.~~

~~3. A defendant convicted of § 4756 of this title shall be sentenced as though the defendant was convicted of § 4753(5) of this title. [Deleted.]~~

Section 87. Amend § 4751C, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4751C Quantity tiers related to drug offenses.

For the purposes of this subchapter:

(1) ~~“Tier 5 Controlled Substances Quantity”~~ means:

~~a. 25 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;~~

~~b. 5 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;~~

~~c. 5000 grams or more of marijuana, as described in § 4701(27) of this title;~~

~~d. 25 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;~~

~~e. 25 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;~~

~~f. 25 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;~~

~~g. 500 or more doses or, in a liquid form, 50 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;~~

~~h. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance; or~~

~~i. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.~~

(2) “Tier 4 Controlled Substances Quantity” means:

~~a. 20 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;~~

~~b. 4 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;~~

~~c. 4000 grams or more of marijuana, as described in § 4701(27) of this title;~~

~~d. 20 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;~~

~~e. 20 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;~~

~~f. 20 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;~~

~~g. 250 or more doses or, in a liquid form, 25 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;~~

~~h. 50 or more doses or 10 or more grams or 10 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance;~~

~~i. 50 or more doses or 10 or more grams or 10 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title; or~~

~~j. 60 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 6 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.~~

(3) “Tier 3 Controlled Substances Quantity” means:

- ~~a. 15 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;~~
- ~~b. 3 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;~~
- ~~c. 3000 grams or more of marijuana, as described in § 4701(27) of this title;~~
- ~~d. 15 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;~~
- ~~e. 15 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;~~
- ~~f. 15 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;~~
- ~~g. 100 or more doses or, in a liquid form, 10 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;~~
- ~~h. 37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance; or~~
- ~~i. 37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.~~

~~(4) “Tier 2 Controlled Substances Quantity” means:~~

- ~~a. 10 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;~~
- ~~b. 2 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;~~
- ~~c. 1500 grams or more of marijuana, as described in § 4701(27) of this title;~~
- ~~d. 10 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;~~

~~e. 10 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;~~

~~f. 10 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;~~

~~g. 50 or more doses or, in a liquid form, 5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;~~

~~h. 25 or more doses or 5 or more grams or 5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance;~~

~~i. 25 or more doses or 5 or more grams or 5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title; or~~

~~j. 30 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 3 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.~~

(5) “Tier 1 Controlled Substances Quantity” means:

~~a. 5 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;~~

~~b. 1 gram or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;~~

~~c. 175 grams or more of marijuana, as described in § 4701(27) of this title;~~

~~d. 5 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;~~

~~e. 5 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;~~

~~f. 5 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;~~

~~g. 25 or more doses or, in a liquid form, 2.5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;~~

~~h. 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance; or~~

~~i. 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title. [Deleted.]~~

Section 88. Amend § 4751D, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4751D ~~Knowledge of weight or quantity not an element of the offense; proof~~ Proof of weight or quantity.

(a) ~~In any prosecution under this subchapter, in which the weight or quantity of a controlled substance is an element of the offense, the State need not prove that the defendant had any knowledge as to the weight or quantity of the substance possessed. The State need only prove that the defendant knew that the substance was possessed; and, that the substance was that which is alleged, and that the substance weighed a certain amount or was in a certain quantity. [Deleted.]~~

(b) In any prosecution under this subchapter, in which the quantity of a controlled substance is an element of the offense, and the controlled substance is alleged to be a “prescription drug” as defined in § 4701 of this title, and the alleged prescription drug consists of multiple doses that appear to be substantially identical, evidence that a chemist or other qualified witness properly tested one dose, and found the presence of a controlled substance, shall be prima facie evidence that the “substantially identical doses” each contained the controlled substance that is a prescription drug for purposes of determining whether the State has proven the number of doses constituting the Tier quantities set forth in ~~§ 4751C(2)j. or (4)j. of this title~~  §§ 1422 or 1423 of Title 11. Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting evidence offered pursuant to this subsection

Section 89. Amend § 4752, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4752 Drug dealing—Aggravated possession; class B felony.

~~Except as authorized by this chapter, any person who:~~

~~(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 4 quantity;~~

~~(2) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 2 quantity, and there is an aggravating factor;~~

~~(3) Possesses a controlled substance in a Tier 5 quantity;~~

~~(4) Possesses a controlled substance in a Tier 3 quantity, and there is an aggravating factor; or~~

~~(5) Possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a. i., of this title, and there are 2 aggravating factors,~~

~~shall be guilty of a class B felony. [Deleted.]~~

Section 90. Amend § 4752B, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4752B Drug dealing — Resulting in death; class B felony.

~~(a) A person is guilty of drug dealing resulting in death when the person delivers a Schedule I or II controlled substance in Tier 1 or greater quantity to another person in violation of this chapter, and said controlled substance thereafter causes the death of another person who uses or consumes it.~~

~~(b) It is not a defense to a prosecution under this section that the defendant did not directly deliver the controlled substance to the decedent.~~

~~(c) It is an affirmative defense to a prosecution under this section that the defendant made a good faith effort to promptly seek, provide, or obtain emergency medical or law enforcement assistance to another person who was experiencing a medical emergency after using a Schedule I or II controlled substance, and whose death would otherwise form the basis for criminal liability under this section.~~

~~(d) Any person who violates subsection (a) of this section is guilty of a class B felony. [Deleted.]~~

Section 91. Amend § 4753, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4753 Drug dealing—Aggravated possession; class C felony.

Except as authorized by this chapter, any person who:

~~(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 2 quantity;~~

~~(2) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance, and there is an aggravating factor;~~

~~(3) Possesses a controlled substance in a Tier 4 quantity as defined in any of § 4751C(2)a. i. of this title;~~

~~(4) Possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a. i. of this title; and there is an aggravating factor; or~~

~~(5) Possesses a controlled substance in a Tier 1 quantity, and there are 2 aggravating factors, shall be guilty of a class C felony. [Deleted.]~~

Section 92. Amend § 4754, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4754 Drug dealing—Aggravated possession; class D felony.

~~Except as authorized by this chapter, any person who:~~

~~(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance;~~

~~(2) Possesses a controlled substance in a Tier 3 quantity; or~~

~~(3) Possesses a controlled substance in a Tier 1 quantity, and there is an aggravating factor,~~

~~shall be guilty of a class D felony. [Deleted.]~~

Section 93. Amend § 4755, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4755 Aggravated possession; class E felony.

~~Except as authorized by this chapter, any person who possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a. i. of this title, shall be guilty of a class E felony. [Deleted.]~~

Section 94. Amend § 4756, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4756 Aggravated possession; class F felony.

~~Except as authorized by this chapter, any person who possesses a controlled substance in a Tier 1 quantity shall be guilty of a class F felony. [Deleted.]~~

Section 95. Amend § 4757, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4757 Miscellaneous drug crimes; class B, C and F felony.

~~(a) It is unlawful for any person knowingly or intentionally:~~

~~(1) To distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by § 4738 of this title;~~

~~(2) To use in the course of the manufacture, distribution, prescribing, dispensing or research of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, expired or issued to another person;~~

~~(3) To acquire or obtain or attempt to acquire or obtain, possession of a controlled substance or prescription drug by misrepresentation, fraud, forgery, deception or subterfuge;~~

~~(4) To furnish false or fraudulent material information in or omit any material information from, any application, report or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter;~~

~~(5) To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance;~~

~~(6) To acquire or attempt to or obtain possession of a controlled substance by theft; or~~

~~(7) To prescribe, or administer to another, any anabolic steroid, as defined in § 4718(f) of this title, for the purposes of increasing human muscle weight or improving human performance in any form of exercise, sport, or game.~~

~~(b) Any person who violates paragraphs (a)(1) through (a)(7) of this section upon conviction shall be guilty of a class F felony.~~

~~(c) Solicitation of multiple prescription drug crimes; penalties.—~~

~~(1) Any person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30 day period to violate any provision of subsection (a) of this section shall be guilty of a class C felony.~~

~~(2) Any person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30 day period to violate any provision of subsection (a) of this section, and there is an aggravating factor in connection with at least 1 of the times shall be guilty of a class B felony.~~

~~(3) Paragraphs (c)(1) and (2) of this section shall constitute an offense if any of the defendant's conduct or any of the violations of subsection (a) of this section occur within Delaware, or as otherwise provided pursuant to § 204 of Title 11. [Deleted.]~~

Section 96. Amend § 4758, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4758 Unlawful dealing in a counterfeit or purported controlled substance; class E felony.

~~(a) Any person who knowingly manufactures, delivers, attempts to manufacture or deliver, or possesses with the intent to manufacture or deliver a counterfeit or purported controlled substance shall be guilty of a class E felony.~~

~~(b) It is no defense to prosecution under this section that the substance actually is a controlled substance or that the accused believed the substance was a controlled substance. [Deleted.]~~

Section 97. Amend § 4759, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4759 Registrant crimes.

~~(a) It is unlawful for any person:~~

~~(1) Who is subject to subchapter III of this chapter to distribute or dispense a controlled substance in violation of § 4739 of this title;~~

~~(2) Who is a registrant, to manufacture a controlled substance not authorized by the person's registration or to distribute or dispense a controlled substance not authorized by the person's registration to another registrant or other authorized person;~~

~~(3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this chapter; or~~

~~(4) To refuse an entry into any premises for any inspection authorized by this chapter.~~

~~(b) Any person who violates paragraph (a)(1), (a)(2), or (a)(4) of this section shall be guilty of a class F felony. Any person who violates paragraph (a)(3) of this section shall be guilty of a class A misdemeanor. [Deleted.]~~

Section 98. Amend § 4760, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4760 Maintaining a drug property; class F felony.

~~Any person who is the owner, landlord, or tenant of a property, including a dwelling, a building, a store or a business, and who knowingly consents to the use of the property by another for the manufacture of, delivery of, or possession with the intent to manufacture or deliver, controlled substances, shall be guilty of a class F felony.~~

[Deleted.]

Section 99. Amend § 4760A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4760A Operating or attempting to operate clandestine laboratories; cleanup; penalties.

~~(a) Any person who knowingly operates or attempts to operate a clandestine laboratory is guilty of a class C felony.~~

~~(b) Any person convicted of a violation of subsection (a) of this section shall be responsible for all reasonable costs, if any, associated with remediation of the site of the clandestine laboratory and any costs associated with the cleanup of any substances or materials or hazardous waste, and for the cleanup of any other site resulting from the operation or disposal of substances or materials from a clandestine laboratory.~~

~~(c) *Definitions.*— As used in this section, the following words and phrases shall have the meanings given to them in this subsection:~~

~~(1) “Clandestine laboratory” means any property, real or personal, on or in which a person assembles any chemicals or equipment or combination thereof which are intended to be used to or have been used to unlawfully manufacture a controlled substance or other substance in violation of the provisions of this chapter.~~

~~(2) “Cleanup” means any action reasonably necessary to contain, collect, control, identify, analyze, disassembly, treat, remove, or otherwise disperse any substances or materials in or from a clandestine laboratory, including those found to be hazardous waste and any contamination caused by those substances or materials.~~

~~(3) “Remediation” means any emergency response, act, or process to temporarily or permanently remedy and make safe.~~

~~(d) Nothing in this section shall be construed to preclude a prosecution for the same or similar activity under this chapter. [Deleted.]~~

Section 100. Amend § 4761, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4761 ~~Illegal~~ Authorized possession and delivery of noncontrolled prescription drugs.

~~(a) Any person who knowingly or intentionally possesses, uses or consumes any prescription drug that is not a controlled substance but for which a prescription is required shall be guilty of an unclassified misdemeanor, unless:~~

~~(1) The possession, use or consumption of such substance was by a person who obtained the substance directly from, or pursuant to, a valid prescription or order of a licensed practitioner;~~

~~(2) The possession or transfer of such substance was for medical or scientific use or purpose by persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:~~

~~a. Pharmacists.~~

~~b. Practitioners.~~

~~c. Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.~~

~~d. Hospitals that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.~~

~~e. Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.~~

~~f. Common carriers.~~

~~g. Manufacturers, wholesalers, and distributors.~~

~~h. Law enforcement officers for bona fide law enforcement purposes in the course of an active criminal investigation.~~

~~(3) The possession or transfer is otherwise authorized by this chapter.~~

~~(b) Any person who violates subsection (a) of this section, and there is an aggravating factor, shall be guilty of a class B misdemeanor.~~

~~(c) Any person who violates subsection (a) of this section, and delivers, or intends to deliver the prescription drug to another, shall be guilty of a class G felony.~~

~~(d) Any person who violates subsection (b) of this section, and delivers, or intends to deliver the prescription drug to another, shall be guilty of a class F felony.~~

~~(e) Affirmative defenses. —~~

~~(1) In any prosecution under this section, it is an affirmative defense that the prescription drug was possessed by the person while transporting the prescription drug to a member of the person's household who possessed a valid prescription for the drug, and the prescription was in the original container in which it was dispensed or packaged, a pill box, or other daily pill container.~~

~~(2) In any prosecution under this section, it is an affirmative defense that the prescription drug was possessed or consumed within the residence of the person, that a member of the person's household possessed a valid prescription for the drug, that the possession or consumption by the person was for the purpose of treating an illness and that the drug in question was approved for the specific illness.~~

~~(f) *Proof.* — In any prosecution under this section, proof that a substance is a particular prescription drug may be inferred from its labeling and any representations on the substance. Proof by testimony from a scientist is not required. [Deleted.]~~

(a) The possession, use or consumption of a prescription drug that is not a controlled substance but for which a prescription is required is authorized for persons who obtain the substance directly from, or pursuant to, a valid prescription or order of a licensed practitioner.

(b) The possession or transfer of a prescription drug that is not a controlled substance but for which a prescription is required is authorized for medical or scientific use or purpose by persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:

(1) Pharmacists.

(2) Practitioners.

(3) Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

(4) Hospitals that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

(5) Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

(6) Common carriers.

(7) Manufacturers, wholesalers, and distributors.

(8) Law-enforcement officers for bona fide law-enforcement purposes in the course of an active criminal investigation.

(c) The possession or transfer is otherwise authorized by this chapter.

Section 101. Amend § 4762, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4762 Hypodermic syringe or needle; delivering or possessing; disposal; exceptions; ~~penalties.~~

(a) A licensed pharmacist, or pharmacist intern or pharmacy student under the supervision of a pharmacist, may provide hypodermic syringes or hypodermic needles, including pen needles for the administration of prescription medications by injection in the State of Delaware without a prescription, but only to persons who have attained the age of 18 years and who will self-administer prescription medications by injection or administer prescription medications to a minor child for whom they are the parent or legal guardian. When providing hypodermic syringes or hypodermic needles without a prescription, the above-mentioned pharmacist, pharmacist intern or pharmacy student must require proof of identification that validates the individual's age.

~~(c) Any person who delivers, disposes of or gives away any instrument commonly known as a hypodermic syringe or an instrument commonly known as a hypodermic needle or any instrument adapted for the use of narcotic drugs by parenteral injection except in the manner prescribed in this section, shall be guilty of a class G felony.~~

[Deleted.]

Section 102. Amend § 4763, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4763 ~~Possession~~ Authorized possession of controlled substances or counterfeit controlled substances; ~~class A or B misdemeanor.~~

~~(a) It shall be unlawful for any person to knowingly or intentionally possess, use, or consume a controlled substance or a counterfeit controlled substance (except a controlled substance or counterfeit controlled substance classified in § 4714(d)(19) of this title) unless:~~

~~(1) The possession, use or consumption of such substance was by a person who obtained the substance directly from or pursuant to, a lawful prescription or order; or~~

~~(2) The possession or transfer of such substance was for medical or scientific use or purpose by persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:~~

~~a. Pharmacists.~~

~~b. Practitioners.~~

~~c. Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.~~

~~d. Hospitals and healthcare facilities that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.~~

~~e. Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.~~

~~f. Common carriers.~~

~~g. Manufacturers, wholesalers, and distributors.~~

~~h. Law enforcement officers for bona fide law enforcement purposes in the course of an active criminal investigation.~~

~~(3) The possession or transfer is otherwise authorized by this chapter.~~

~~(b) Any person who violates subsection (a) of this section shall be guilty of a class B misdemeanor.~~

~~(c) Any person who violates subsection (a) of this section, and there is an aggravating factor, shall be guilty of a class A misdemeanor. [Deleted.]~~

(a) The possession, use or consumption of a controlled substance or a counterfeit controlled substance (except a controlled substance or counterfeit controlled substance classified in § 4714(d)(19) of this title) is authorized for a person who obtained the substance directly from or pursuant to, a lawful prescription or order.

(b) The possession or transfer of a controlled substance or a counterfeit controlled substance (except a controlled substance or counterfeit controlled substance classified in § 4714(d)(19) of this title) is authorized for medical or scientific use or purpose by persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:

(1) Pharmacists.

(2) Practitioners.

(3) Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

(4) Hospitals and healthcare facilities that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

(5) Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

(6) Common carriers.

(7) Manufacturers, wholesalers, and distributors.

(8) Law-enforcement officers for bona fide law-enforcement purposes in the course of an active criminal investigation.

(c) The possession or transfer is otherwise authorized by this chapter.

Section 103. Amend § 4764, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4764 Possession of marijuana; ~~class B misdemeanor, unclassified misdemeanor, or~~ civil violation [For application of this section, see 80 Del. Laws, c. 38, § 6]

~~(a) Any person under the age of 18 who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor. Any person 18 years of age or older who knowingly or intentionally uses, consumes, or possesses other than a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor. [Deleted.]~~

~~(b) Any person under the age of 18 who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$100. Any person 18 years of age or older who knowingly or intentionally uses, consumes, or possesses other than a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise~~

~~authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$575, imprisoned not more than 3 months, or both. [Deleted.]~~

(c) Any person 21 years of age or older who knowingly or intentionally possesses a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be assessed a civil penalty of \$100 in addition to such routine assessments necessary for the administration of civil violations and the marijuana shall be forfeited. Private use or consumption by a person 21 years of age or older of a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title shall likewise be punishable by a civil penalty under this subsection. Any person 18 years of age or older, but under 21 years of age, who commits any of the acts described in this subsection shall be assessed a civil penalty of \$100 for the first offense and shall be guilty of an unclassified misdemeanor and fined \$100 for a second or subsequent offense. Unpaid fines shall double if not paid within 90 days of final adjudication of the violation.

Section 104. Amend § 4765, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4765 Penalties under other laws are additional.

~~Any penalty imposed for violation of this chapter is in addition to and not in lieu of any civil or administrative penalty or sanction otherwise authorized by law. [Deleted.]~~

Section 105. Amend § 4766, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4766 Conviction of lesser offense.

~~In any prosecution for any violation of the following sections of this chapter, the defendant may be convicted under any 1 of the following respective sections of this chapter in accordance with the table set forth below establishing lesser included offenses:~~

~~(1) The lesser included offenses under § 4752 are §§ 4753, 4754, 4755, 4756, 4758, 4763, and 4764 of this title.~~

~~(2) The lesser included offenses under § 4753 are §§ 4754, 4755, 4756, 4758, 4763, and 4764 of this title.~~

~~(3) The lesser included offenses under § 4754 are §§ 4755, 4756, 4758, 4763, and 4764 of this title.~~

~~(4) The lesser included offenses under § 4755 are §§ 4756, 4763, and 4764 of this title.~~

~~(5) The lesser included offenses under § 4756 are §§ 4763 and 4764 of this title. [Deleted.]~~

Section 106. Amend § 4767, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4767 First offenders controlled substances diversion program.

(a) Any person who:

(1) Has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state thereof relating to narcotic drugs, marijuana, or stimulant, depressant, hallucinogenic drug or other substance who is charged through information or indictment with possession or consumption of a controlled substance under ~~§ 4763 or § 4764 or~~ § 4761(a) or (b) of this title or §§ 1422 or 1423 of Title 11; and

(2) Has not previously been afforded first offender treatment under this section or its predecessor, may qualify for the first offense election at the time of the person's arraignment, except that no person shall qualify for such first offense election where the offense charged under ~~§ 4763 or § 4764 or~~ § 4761(a) or (b) of this title or §§ 1422 or 1423 of Title 11 arises from the same transaction, factual setting or circumstances as those contained in any indictment returned against the defendant alleging violation of any provisions contained within § 4752, ~~§ 4753, or § 4754~~ of this title or §§ 1422 or 1423 of Title 11.

Section 107. Amend § 4768, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4768 Medical and/or psychiatric examination and/or treatment.

After a conviction and prior to sentencing for violation of § 4761(a) or (b), ~~§ 4763, or § 4764~~ of this title, or §§ 1422 or 1423 of Title 11, or prior to conviction if the defendant consents, the court may order the defendant to submit to a medical and/or psychiatric examination and/or treatment. The court may order such examination by the Department of Health and Social Services or by a private physician, hospital or clinic and the court may make such order regarding the term and conditions of such examination and/or treatment and the payment therefor by the defendant as a court in its discretion shall determine. The Department of Health and Social Services or the private physician, hospital or clinic shall report to the court within such time as the court shall order, not more than 90 days from the date of such order. After such report and upon conviction of such violation, the court shall impose sentence or suspend sentence and may impose probation and/or a requirement of future medical and/or psychiatric examination

and/or treatment including hospitalization or outpatient care upon such terms and conditions and for such period of time as the court shall order.

Section 108. Amend § 4769, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4769 Criminal immunity for persons who suffer or report an alcohol or drug overdose or other life threatening medical emergency.

~~(a) For purposes of this chapter:~~

~~(1) "Medical provider" means the person whose professional services are provided to a person experiencing an overdose or other life threatening medical emergency by a licensed, registered or certified health care professional who, acting within his or her lawful scope of practice, may provide diagnosis, treatment or emergency services.~~

~~(2) "Overdose" means an acute condition including, but not limited to, physical illness, coma, mania, hysteria, or death resulting from the consumption or use of an ethyl alcohol, a controlled substance, another substance with which a controlled substance was combined, a noncontrolled prescription drug, or any combination of these, including any illicit or licit substance; provided that a person's condition shall be deemed to be an overdose if a layperson could reasonably believe that the condition is in fact an overdose and requires medical assistance.~~

~~(b) A person who is experiencing an overdose or other life threatening medical emergency and anyone (including the person experiencing the emergency) seeking medical attention for that person shall not be arrested, charged or prosecuted for an offense for which they have been granted immunity pursuant to subsection (c) and/or (d) of this section, or subject to the revocation or modification of the conditions of probation, if:~~

~~(1) The person seeking medical attention reports in good faith the emergency to law enforcement, the 9-1-1 system, a poison control center, or to a medical provider, or if the person in good faith assists someone so reporting; and~~

~~(2) The person provides all relevant medical information as to the cause of the overdose or other life threatening medical emergency that the person possesses at the scene of the event when a medical provider arrives, or when the person is at the facilities of the medical provider.~~

~~(c) The immunity granted shall apply to all offenses in this chapter that are not class A, B, or C felonies, including but not limited to the following offenses:~~

~~(1) Miscellaneous drug crimes as described in § 4757(a)(3), (6), and (7) of this title;~~

~~(2) Illegal possession and delivery of noncontrolled prescription drugs as described in § 4761 of this title;~~

~~(3) Possession of controlled substances or counterfeit controlled substances, as described in § 4763 of this title;~~

~~(4) Possession of drug paraphernalia as described in §§ 4762(c) and 4771 of this title;~~

~~(5) Possession of marijuana as described in § 4764 of this title.~~

~~(d) The immunity granted shall apply to offenses relating to underage drinking as described in § 904(b), (c), (e), and (f) of Title 4.~~

~~(e) Nothing in this section shall be interpreted to prohibit the prosecution of a person for an offense other than an offense for which they have been granted immunity pursuant to subsection (c) and/or (d) of this section or to limit the ability of the Attorney General or a law enforcement officer to obtain or use evidence obtained from a report, recording, or any other statement provided pursuant to subsection (b) of this section to investigate and prosecute an offense other than an offense for which they have been granted immunity pursuant to subsection (c) and/or (d) of this section.~~

~~(f) Forfeiture of any alcohol, substance, or paraphernalia referenced in this section shall be allowed pursuant to § 4784 of this title and Chapter 11 of Title 4. [Deleted.]~~

Section 109. Amend § 4771, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4771 Drug paraphernalia [For application of this section, see 80 Del. Laws, c. 38, § 6]

~~(a) It is unlawful for any person to use, or possess with intent to use, drug paraphernalia as defined in § 4701(17) of this title. Except that any Any person charged under § 4764 (a), (b), or (d) § 4764(d) of this title, or assessed a civil penalty under § 4764(c) of this title, shall not also be charged with ~~this offense~~ an offense under § 1424 of Title 11 if in possession of drug paraphernalia pertaining to the use of marijuana.~~

~~(b) It is unlawful for any person to deliver, possess with intent to deliver, convert, manufacture, convey, sell or offer for sale drug paraphernalia, as defined in § 4701(17) of this title, knowing or under circumstances where one~~

~~should reasonably know that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance.~~

~~(e) [Repealed.] [Deleted.]~~

Section 110. Amend § 4772, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4772 Consideration of factors.

~~In determining whether or not an object is drug paraphernalia, a court or other authority shall consider, in addition to all other logically relevant factors, the following:~~

- ~~(1) Statements by an owner or by anyone in control of the object, concerning its use;~~
- ~~(2) The proximity of the object, in time and space, to a direct violation of this chapter;~~
- ~~(3) The proximity of the object to controlled substances;~~
- ~~(4) The existence of any residue of a controlled substance on the object;~~
- ~~(5) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom the owner knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter. The innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended for use, or designed for use, as drug paraphernalia;~~
- ~~(6) Instructions (oral or written) provided with the object, concerning its use;~~
- ~~(7) Descriptive materials accompanying the object which explain or depict its use;~~
- ~~(8) National and local advertising concerning its use;~~
- ~~(9) The manner in which the object is displayed for sale;~~
- ~~(10) Whether or not the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;~~
- ~~(11) Direct or circumstantial evidence of the ratio of sales of the suspect object to the total sales of the business enterprise;~~
- ~~(12) The existence and scope of legitimate uses for the object in the community; and~~
- ~~(13) Expert testimony concerning its use. [Deleted.]~~

Section 111. Amend § 4773, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4773 Exemptions.

~~This subchapter will not apply to:~~

- ~~(1) Any person authorized by local, state or federal law to manufacture, possess or distribute such items;~~  
~~or~~  
~~(2) Any item that in the normal lawful course of business is imported, exported, transported or sold and traditionally intended for use with tobacco products, including any pipe, paper or accessory. [Deleted.]~~

Section 112. Amend § 4774, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4774 Penalties [For application of this section, see 80 Del. Laws, c. 38, § 6]

(a) ~~*Possession.*— Except as described in subsection (b) of this section, any person who uses or possesses with intent to use drug paraphernalia is guilty of a class B misdemeanor. [Deleted.]~~

(b) *Possession for personal use of marijuana.* — Any person who uses or possesses drug paraphernalia for the use or possession of a personal use quantity of marijuana shall be assessed a civil penalty of not more than \$100, in addition to such routine assessments necessary for the administration of civil violations.

(c) ~~*Manufacture and sale.*— Any person who delivers, possesses with the intent to deliver, conveys, offers for sale, converts, or manufactures with the intent to deliver drug paraphernalia is guilty of a class G felony. [Deleted.]~~

(d) ~~*Delivery to a minor.*— Any person 18 years of age or older who violates § 4771 of this title by delivering or selling drug paraphernalia to a person under 18 years of age is guilty of a class E felony. [Deleted.]~~

(e) ~~It is unlawful for any person to place in a newspaper, magazine, handbill or other publication any advertisement, knowing or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this section is guilty of an unclassified misdemeanor. [Deleted.]~~

Section 113. Amend § 4775, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4775 Consideration of factors.

~~Transferred to § 4772 of this title by 73 Del. Laws, c. 359, § 2, effective July 8, 2002. [Deleted.]~~

Section 114. Amend § 4795, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4795 Jurisdiction [For application of this section, see 80 Del. Laws, c. 38, § 6]

(a) The Superior Court shall have original and exclusive jurisdiction over any violation of this chapter by persons 18 years of age or older.

(b) The provisions of subsection (a) of this section or any other law to the contrary notwithstanding, the Court of Common Pleas shall have original jurisdiction over any violation of ~~the following~~ § 4764(d) of this title by persons 18 years of age or ~~older:~~ older.

~~(1) Section 4761(a) and (b) of this title.~~

~~(2) Section 4763 of this title.~~

~~(3) Section 4764(a), (b), and (d) of this title.~~

~~(4) Section 4771 of this title, except where jurisdiction over the civil penalty resides in the Justice of the Peace Court pursuant to subsection (c) of this section. [Deleted.]~~

(c) The Justice of the Peace Court shall have original jurisdiction over any violation of the following by persons 18 years of age or older:

(1) Section 4764(c) of this title.

(2) Section 4774(b) of this title.

(d) The Family Court shall have original and exclusive jurisdiction over violations of this chapter by persons under age 18.

Section 115. Amend § 4798, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4798 The Delaware Prescription Monitoring Program.

(a) It is the intent of the General Assembly that the Delaware Prescription Monitoring Act established pursuant to this section serves as a means to promote public health and welfare and to detect the illegal use of controlled substances. The Delaware Prescription Monitoring Act shall have the dual purpose of reducing misuse and diversion of controlled substances in the State while promoting improved professional practice and patient care.

(r) A person authorized to have prescription monitoring information pursuant to this section who knowingly discloses this information in violation of this section ~~is guilty of a class G felony and, upon conviction, shall be fined~~

~~not more than \$5,000 nor imprisoned more than 2 years, or both~~ shall be subject to criminal penalties under § 1344 of Title 11.

(s) A person authorized to have prescription monitoring information pursuant to this section who intentionally uses this information in the furtherance of other crimes ~~is guilty of a class E felony and, upon conviction, shall be fined not more than \$10,000 nor imprisoned more than 5 years, or both~~ shall be subject to criminal penalties under Chapter 5 of Title 11.

(t) A person not authorized to have prescription monitoring information pursuant to this section who obtains such information fraudulently ~~is guilty of a class E felony and, upon conviction, shall be fined not more than \$10,000 nor imprisoned more than 5 years, or both~~ shall be subject to criminal penalties under §§ 1346 or 1103 of Title 11.

Section 116. Amend § 4919A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4919A Requirements, prohibitions, penalties.

(b) The operating documents of a registered compassion center shall include procedures for the oversight of the registered compassion center and procedures to ensure accurate recordkeeping.

(s) Any registered qualifying patient, registered designated caregiver, compassion center agent, or safety compliance facility agent, including a principal owner, board member, employee or volunteer who has access to compassion center or safety compliance facility records, who sells marijuana to someone who is not allowed to use marijuana for medical purposes or who fails to maintain, fraudulently maintains, or fraudulently represents to the Department records required by this chapter or rules promulgated pursuant to this chapter, for the purposes of selling marijuana to someone who is not allowed to use marijuana for medical purposes under this chapter ~~is guilty of a felony punishable by imprisonment for not more than 2 years or a fine of not more than \$2,000, or both, in addition to any other penalties for the distribution of marijuana~~ shall be subject to criminal penalties under Part I of Title 11.

(v) Fraudulent representation to a law-enforcement official of any fact or circumstance relating to the medical use of marijuana to avoid arrest or prosecution shall be ~~a class B misdemeanor which may be punishable by up to 6 months incarceration at Level V under § 4204 of Title 11 and a fine of up to \$1,150, as the Court deems appropriate which shall be in addition to any other penalties that may apply for making a false statement or for the use of marijuana other than use undertaken pursuant to this chapter and jurisdiction for prosecution shall be exclusively in Superior Court~~ subject to criminal penalties under § 1241 of Title 11.

Section 117. Amend § 5023, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

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

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

(2) The denial to any individual of any of the rights accorded to said individual under this chapter shall be ~~punished by a fine not exceeding \$500 or imprisonment not exceeding 1 year, or both~~ subject to criminal penalties under § 1061 of Title 11.

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

Section 118. Amend § 6647, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6647 Membership requirements for volunteer firefighters.

(d) An applicant for membership in a Delaware volunteer fire department who knowingly provides false, incomplete, or inaccurate criminal history information, or who otherwise knowingly violates a provision of this subchapter, ~~is guilty of a class G felony. In addition to a term of imprisonment of up to 2 years, the court shall impose a fine of no less than \$1,000 which may not be suspended~~ shall be subject to criminal penalties under § 1223 of Title 11.

(e) The State Fire Prevention Commission shall adopt regulations to implement the provisions of this subchapter. The regulations must include, as part of the application form for membership in a Delaware volunteer fire department, a dated and signed statement by the applicant swearing to or affirming the following, if the following is true. If it is not true, the applicant must explain in writing what is not true and why it is not true.

“I have never been convicted of an offense that constitutes any of the crimes set forth in 16 Del. C. § 6647 or any similar offense under any federal, state, or local law. I hereby certify that the statements contained in this application are true and correct to the best of my knowledge and belief. I understand that if I knowingly make any false statement in this application, I am subject to penalties prescribed by law, including denial or revocation of membership in the volunteer fire department ~~and a mandatory fine of at least \$1,000 or a term of imprisonment of up to 2 years, or both~~ and criminal prosecution under § 1223 of Title 11.”

Section 119. Amend § 7109, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7109 Records.

(a) *Records required.* — It shall be unlawful for any person wilfully to purchase, possess, receive, sell or distribute explosive materials in the State without keeping records as specified in this section.

(c) *False entry.* — It shall be unlawful under § 1223 of Title 11 for any licensee or permittee knowingly to make any false entry in any record which the licensee or permittee is required to keep pursuant to this section or regulations promulgated under § 7107(f) of this title.

Section 120. Amend § 7113, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7113 Penalties.

Any person violating this chapter, other than § 7103 of this title, or any rules or regulations made ~~thereunder~~; thereunder, shall be subject to criminal penalties under Part I of Title 11.

~~(1) Shall for each offense be punished by a fine of not more than \$2,000 or by imprisonment for not more than 1 year, or by both such fine and imprisonment, and any license issued under this chapter shall be subject to revocation for such period as the applicable issuing authorities deem appropriate;~~

~~(2) And, if such violation was committed with the knowledge or intent that any explosive material involved was to be used to kill, injure or intimidate any person or unlawfully to damage any real or personal property, the person committing such violation shall be guilty of a felony and for each offense be fined not more than \$10,000 or imprisoned for not more than 10 years, or both;~~

~~(3) And if personal injury results, shall be guilty of a felony and imprisoned for not more than 20 years or fined not more than \$20,000 or both;~~

~~(4) And if death results, shall be guilty of a felony and subject to imprisonment for any term of years or for life. [Deleted.]~~

The Superior Court shall have exclusive jurisdiction of violations of this chapter.

Section 121. Amend § 9809A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9809A Criminal background checks.

(a) A person seeking certification as a paramedic shall apply to the Board using forms prescribed by the Board and shall submit to the State Office of Emergency Medical Services necessary information in order to obtain the following:

(i) A person seeking certification pursuant to this section who knowingly provides false, incomplete or inaccurate criminal history information, or who otherwise knowingly violates the provisions of this section, ~~shall be guilty of a class G felony and~~ shall be punished according to ~~Chapter 42 § 1223~~ of Title 11.

Section 122. Amend § 4354, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4354 Enforcement.

(a) No person shall act in the capacity of a bail agent, advertise or solicit bail bond business, perform any of the functions or duties of a bail agent, collect premiums, charge fees or otherwise exercise or attempt to exercise powers prescribed for bail agents, unless such person is qualified, licensed and appointed as provided in this subchapter. Any person found guilty of violating this section ~~is guilty of a class F felony~~ shall be subject to criminal penalties under §§ 1132 or 1243 of Title 11.

Section 123. Amend § 7515, Title 18 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7515 Injunctions; civil remedies; cease and desist; criminal penalties.

(f) If the Commissioner has reason to believe that any person has committed a fraudulent viatical settlement act, or any other law applicable to viatical settlements for which criminal prosecution is provided, the Commissioner shall give the information relative thereto to the Attorney General. The Attorney General shall promptly review any information provided and may take any legal action deemed necessary or appropriate under the circumstances, including criminal penalties under Part I of Title 11.

(g)(1) ~~Except where a victim is 62 years of age or older, or an “adult who is impaired” as defined in § 3902 of Title 31, or a “person with a disability” as defined in § 3901(a)(2) of Title 12, a fraudulent viatical settlement act is a class A misdemeanor unless (i) the value of property, services, or other benefit wrongfully obtained or attempted to obtain, or (ii) the aggregate economic loss suffered by any person as a result of the violation, whichever is greater, is \$1,500 or more, in which case it is a class G felony.~~

~~(2) Where a victim is 62 years of age or older, or an “adult who is impaired” as defined in § 3902 of Title 31, or a “person with a disability” as defined in § 3901(a)(2) of Title 12, a fraudulent viatical settlement act is a class G felony unless (i) the value of property, services, or other benefit wrongfully obtained or attempted to be obtained, or (ii) the aggregate economic loss suffered by any person as a result of the violation, whichever is greater, is \$1,500 or more, in which case it is a class F felony.~~

~~(3) Notwithstanding paragraphs (g)(1) and (2) of this section:~~

~~a. Where (i) the value of property, services, or other benefit wrongfully obtained or attempted to be obtained, or (ii) the aggregate economic loss suffered by any person as a result of the violation, whichever is greater, is more than \$50,000 but less than \$100,000, a fraudulent viatical settlement act is a class D felony.~~

~~b. Where (i) the value of property, services, or other benefit wrongfully obtained or attempted to obtain, or (ii) the aggregate economic loss suffered by any person as a result of the violation, whichever is greater, is \$100,000 or more, a fraudulent viatical settlement act is a class B felony. [Deleted.]~~

~~(j) In any prosecution under ~~subsections (f) and (g)~~ subsection (f) of this section, the value of the viatical settlement contracts within any 6-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section but when 2 or more offenses are committed by the same person in 2 or more counties, the accused may be prosecuted in any county in which 1 of the offenses was committed for all of the offenses aggregated under this section. The applicable statute of limitations may not begin to run until the insurance company or law-enforcement agency is aware of the fraud, but in no event may the prosecution be commenced later than 7 years after the act has occurred.~~

Section 124. Amend § 135, Title 20 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 135 Oaths and affirmations; who may administer; false swearing.

(a) General, field, commissioned and warrant officers may administer oaths and affirmations in all matters appertaining to or concerning the Delaware National Guard service, but in no case shall they charge any fee or compensation therefor.

(b) Whoever falsely swears or falsely affirms to any oath or affirmation administered pursuant to this section shall be ~~deemed guilty of perjury in the second degree, a class E felony~~ subject to criminal penalties under § 1221 of Title 11.

Section 125. Amend § 3128, Title 20 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3128 Destruction of property, looting or injury of persons during state of emergency; penalty; liability for conduct of another.

~~(a) During a state of emergency, whoever maliciously destroys or damages any real or personal property or maliciously injures another shall be guilty of a felony.~~

~~(b) Whoever violates this section shall be guilty of a Class C felony.~~

~~(c) Any person over 16 years old who violates this section shall be prosecuted as an adult.~~

~~(d) A person is guilty of an offense under this section committed by another person when:~~

~~(1) Acting with the state of mind that is sufficient for commission of the offense, such person causes an innocent or irresponsible person to engage in conduct constituting the offense; or~~

~~(2) Intending to promote or facilitate the commission of the offense that person:~~

~~a. Solicits, requests, commands, importunes or otherwise attempts to cause the other person to commit it; or~~

~~b. Aids, counsels or agrees or attempts to aid the other person in planning or committing it; or~~

~~c. Having a legal duty to prevent the commission of the offense, fails to make a proper effort to do~~

~~so.~~

~~(e) In any prosecution for an offense under this section in which the criminal liability of the accused is based upon the conduct of another person pursuant to this section, it is no defense that:~~

~~(1) The other person is not guilty of the offense in question because of irresponsibility or other legal incapacity or exemption or because of unawareness of the criminal nature of the conduct in question or of the accused's criminal purpose or because of other factors precluding the mental state required for the commission of the offense; or~~

~~(2) The other person has not been prosecuted for or convicted of any offense based on the conduct in question or has previously been acquitted thereof or has been convicted of a different offense or in a different degree or has legal immunity from prosecution for the conduct in question. [Deleted.]~~

Section 126. Amend § 305, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 305 Privacy act governing the release of motor vehicle driving history and license records.

(n) *Penalties.* — Any person requesting the disclosure of personal information from Department records who misrepresents the person’s identity or knowingly makes a false statement to the Department in order to obtain restricted information or who knowingly violates any other provision of this chapter shall be ~~guilty of a class A misdemeanor~~ subject to criminal penalties under Part I of Title 11.

Section 127. Amend § 2315, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2315 False statements; penalty.

Whoever knowingly makes any false statement in any application or other document required by the terms of this chapter shall be ~~guilty of an unclassified misdemeanor, and shall be fined not less than \$100 nor more than \$1,000, or imprisoned not less than 60 days nor more than 1 year, or both~~ subject to criminal penalties under § 1223 of Title 11.

Section 128. Amend § 2316, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2316 Altering or forging certificate of title, manufacturer’s certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate.

Whoever:

(1) Alters with fraudulent intent any certificate of title, manufacturer’s certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate issued by the Division; or

(2) Forges or counterfeits any certificate of title, manufacturer’s certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate issued by the Division; or

(3) Alters or falsifies with fraudulent intent or forges any assignment of a certificate of title, manufacturer’s certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plates; or

(4) Holds or uses any certificate of title, manufacturer’s certificate of origin, registration card, vehicle warranty or certification sticker or vehicle identification plate or an assignment thereof, knowing the same to have been altered, forged or falsified;

~~is guilty of a class E felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith~~ shall be subject to criminal penalties under Subchapter II of Chapter 11 of Title 11.

Section 129. Amend § 2610, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2610 Application for commercial driver license or commercial learner permit.

(g) Any person who ~~knowingly~~ intentionally falsifies information or certifications required under subsection (a) of this section is subject to disqualification of the person's CDL or CLP for a period of at least 60 consecutive days and ~~is guilty of perjury and shall be fined or imprisoned~~ shall be subject to criminal penalties under § 1223 of Title 11.

Section 130. Amend § 2620, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2620 False statements; incorrect or incomplete information.

(a) Whoever makes any false affidavit or knowingly swears or affirms falsely to any matter or thing required by the terms of this chapter to be sworn to or affirmed ~~is guilty of perjury and shall be fined or imprisoned as are other persons committing perjury~~ shall be subject to criminal penalties under Subchapters II or III of Chapter 12 of Title 11.

(b) Whoever provides information that is incorrect or incomplete when applying for a commercial driver's license ~~is guilty of perjury and shall be fined or imprisoned as are other persons committing perjury~~ shall be subject to criminal penalties under Subchapters II or III of Chapter 12 of Title 11.

(c) Any driver's license or driving privileges for a person guilty of ~~this section~~ a Title 11 offense related to this section shall be forthwith suspended or canceled.

Section 131. Amend § 2751, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2751 Unlawful application for or use of license or identification card.

(a) ~~*Fraud in obtaining or attempting to obtain driver's license or identification card.*~~— A person shall not ~~fraudulently obtain or attempt to obtain a driver's license or an identification card by misrepresentation.~~ [Deleted.]

(b) ~~*Fraud in application for license or identification card.*~~— A person shall not ~~in any application for a driver's license or identification card:~~

- (1) ~~Use a false or fictitious name;~~
- (2) ~~Make a false statement;~~
- (3) ~~Conceal a material fact; or~~

- (4) ~~Otherwise commit a fraud. [Deleted.]~~
- (c) ~~Display of canceled licenses. — A person shall not display, cause or permit to be displayed, any canceled license. [Deleted.]~~
- (d) ~~Display of revoked licenses. — A person shall not display, cause or permit to be displayed, any revoked license. [Deleted.]~~
- (e) ~~Display of suspended licenses. — A person shall not display, cause or permit to be displayed, any suspended license. [Deleted.]~~
- (f) ~~Display of fictitious licenses or identification cards. — A person shall not display, cause or permit to be displayed, any fictitious license or identification card. [Deleted.]~~
- (g) ~~Display of fraudulently altered license or identification card. — A person shall not display, cause or permit to be displayed, any fraudulently altered license or identification card. [Deleted.]~~
- (h) ~~Possession of canceled license. — A person shall not possess any canceled license. [Deleted.]~~
- (i) ~~Possession of revoked license. — A person shall not possess any revoked license. [Deleted.]~~
- (j) ~~Possession of suspended license. — A person shall not possess any suspended license. [Deleted.]~~
- (k) ~~Possession of fictitious license or identification card. — A person shall not possess any fictitious license or identification card. [Deleted.]~~
- (l) ~~Possession of fraudulently altered license or identification card. — A person shall not possess any fraudulently altered license or identification card. [Deleted.]~~
- (m) ~~Loaning license. — A person shall not lend that person's license to any other person or permit the use of license by another. [Deleted.]~~
- (n) ~~Display or representation of license or identification card not one's own. — A person shall not display or represent as that person's own any license or identification card not issued to that person. [Deleted.]~~
- (o) *Failure or refusal to surrender license or identification card.* — A person shall not fail or refuse to surrender to the Department on its lawful demand any license or identification card that has been suspended, revoked, canceled, altered or otherwise fraudulently obtained.
- (p) ~~Permitting unlawful use of license or identification card. — A person shall not permit any unlawful use of a license or identification card issued to that person. [Deleted.]~~

(q) *Prohibited acts.* — A person shall not do any act forbidden or fail to perform any act required by this title.

(r) *Penalty.* — Unless otherwise specifically provided for in Chapter 31 of this title, an individual who violates ~~this section shall be guilty of a class B misdemeanor and §§ 1122 or 1123 of Title 11~~ shall have that individual's driver's license and/or driving privileges suspended for a period to be set by the Court, not to exceed 6 months. ~~The foregoing sentence notwithstanding, an individual who violates subsection (d), (e), (i) and/or (j) of this section by possessing or displaying a driver's license that has been suspended or revoked by application of the following statutes shall be guilty of a violation only, provided that the judicial officer adjudicating the charge or charges brought under subsections (e) and (j) of this section has made a factual finding that the defendant was reasonably unaware the driver's license that defendant possessed or displayed had been suspended or revoked:~~

~~Title 4, § 904(f)~~

~~Title 11, § 2106(e)~~

~~Title 11, § 4104(g)~~

~~Title 14, § 2730(e)(7)~~

~~Title 14, § 4130(e)(1)~~

~~Section 314(b) of this title~~

~~Section 709(j)(1) of this title~~

~~Section 2118(n)(1) of this title~~

~~Section 2703(d)(5) of this title~~

~~Section 2710(e)(5) of this title~~

~~Section 2724(b) of this title.~~

Section 132. Amend § 2752, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2752 False statements.

Whoever makes any false affidavit or knowingly swears or affirms falsely to any matter or thing required by the terms of this chapter to be sworn to or affirmed is guilty of perjury and shall be ~~fin~~ed or imprisoned as are other persons committing perjury subject to criminal penalties under § 1221 of Title 11.

Section 133. Amend § 2756, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2756 Driving vehicle while license is suspended or revoked; penalty.

(c)(1) With respect to any vehicle used in connection with a violation of this section, while the permit or license of the operator was revoked for violation of § 1025 of Title 11 for driving a vehicle, § 2742 or § 4177 of this title or pursuant to § 2732 of this title, the court, at the time of sentencing the operator for violating this section, may, upon motion by the State, order the said vehicle be impounded for at least 90 days for the first violation of this section, and for at least 1 year for a subsequent violation, provided that a public or private secure storage area may be obtained by the arresting police agency for said vehicle. The court shall permit any party with a legal or equitable interest in the vehicle an opportunity to show cause why the impoundment of such vehicle should cease. Prior to release of said vehicle, the person to whom the vehicle is released shall pay all reasonable towing and storage fees connected therewith. The State and the arresting police agency shall not be liable for any expenses incurred in connection with the towing and storage of said vehicle.

(2) In lieu of impoundment, the number plate or registration plate of any vehicle used in connection with a violation of this section, while the permit or license of the operator was revoked for violation of § 1025 of Title 11 for driving a vehicle, § 4177 or § 2742 of this title or pursuant to § 2732 of this title, shall be surrendered to the Department for at least 90 days for the first violation of this section, and for at least 1 year for a subsequent violation. The court shall permit any party with a legal or equitable interest in the vehicle an opportunity to show cause why the surrender of said plate should cease.

Section 134. Amend § 2759, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2759 Liability for towing expenses.

Whenever a motor vehicle is towed in connection with the enforcement of § 1025 of Title 11 for operating a vehicle, § 4177 of this title or a criminal offense for which violation of § 1025 of Title 11 for operating a vehicle or § 4177 of this title is an element, the person to whom the vehicle is released shall be liable for the towing and storage costs, except that the police agency ordering such towing shall be liable for such costs if the driver was not actually arrested for driving in violation of § 1025 of Title 11 for operating a vehicle, § 4177 of this title or another criminal offense as a result of that incident and no other existing situation reasonably necessitated such towing.

Section 135. Amend § 2760, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2760 Duplication, reproduction, manufacture and sale, altering, or counterfeiting of driver licenses or identification cards; presenting fraudulent identification and driving authority source documents.

(a) ~~A person or company shall not duplicate, reproduce, alter or counterfeit a Delaware driver license or identification card or a driver license or identification card issued by an authorized issuing agency from another state.~~  
[Deleted.]

(b) ~~A person or company shall not sell, offer for sale, manufacture or distribute a driver license or identification card document that is similar in design, shape, size or color to any driver license or identification card issued by the Delaware Division of Motor Vehicles or by an authorized driver license and/or identification card issuing agency from another state. This includes any driver license or identification card that uses the word "Delaware" or any other state name or has the words "not issued by a government agency" or similar words.~~  
[Deleted.]

(c) ~~It shall be unlawful to present fraudulent personal identification source documents, state issued driver licenses or state issued identification cards when applying for a Delaware driver license or identification card.~~ If the Division of Motor Vehicles has reason to believe the documents provided by an applicant are fraudulent after physically examining the documents and/or by using an electronic verification process, the Division shall confiscate the documents, deny the transaction, and provide the documents to a law-enforcement officer or Division investigator. The investigator may recommend prosecution, deny issuance of the document, return the confiscated documents to the applicant, or take any other action deemed appropriate. The applicant may request an administrative hearing to challenge the Division's decision to retain the confiscated documents or to continue denial of the driver license or identification card based on the presentation of the questioned documents.

(d) Identification documents produced by other State of Delaware agencies are exempt from this section.

(e)(1) Any person convicted of a violation of ~~subsection (a) or (c) of this section~~ § 1121 of Title 11 for duplicating, reproducing, altering, or counterfeiting a state issued driver license or identification case, or presenting fraudulent personal information source documents, state issued driver licenses or identifications cards when applying for a Delaware driver license or identification card, shall be ~~fin~~ ined not less than \$500, nor more than \$1,500 or imprisoned not less than 30 days, nor more than 60 days. In addition, the person shall have that person's driver license and/or driving privileges suspended for a period of 1 year.

~~(2) Any person convicted of a violation of subsection (b) of this section shall be guilty of a class G felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith. [Deleted.]~~

(f) When a driver license and/or driving privileges is/are suspended pursuant to this section, the applicant shall not be eligible for a conditional license, work license or any other type of hardship license during the suspension period.

Section 136. Amend § 3107, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3107 False statements.

Whoever makes any false affidavit or knowingly swears or affirms falsely to any matter or thing required by the terms of this chapter to be sworn to or affirmed is guilty of perjury and shall be ~~fin~~ed or imprisoned as the law provides subject to criminal penalties under § 1221 of Title 11.

Section 137. Amend § 3108, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3108 Penalties.

(a) Whoever violates this chapter shall for the first offense be fined not less than \$25 nor more than \$115. For each subsequent like offense, the person shall be fined not less than \$50 nor more than \$230, or imprisoned not less than 10 nor more than 30 days, or both. Justices of the peace shall have jurisdiction over violations of this chapter.

(b) This section shall not apply to violations defined as perjury under ~~§ 3107 of this title~~ § 1221 of Title 11.

Section 138. Amend § 4103, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4103 Obedience to authorized persons directing traffic.

(b) Any driver who, having received a visual or audible signal from a police officer identifiable by uniform, by motor vehicle or by a clearly discernible police signal to bring the driver's vehicle to a stop, operates the vehicle in disregard of the signal or interferes with or endangers the operation of the police vehicle or who increases speed or extinguishes the vehicle's lights and attempts to flee or elude the police officer shall be ~~guilty of a class G felony, with a minimum fine of \$575 which may not be suspended~~ subject to criminal penalties under § 1242 of Title 11. Upon receiving notice of ~~such~~ conviction of such driver according to § 1242 of Title 11, the Secretary, at the Secretary's discretion, may forthwith revoke the operator's or chauffeur's license of the person so convicted for a period of 2

years. ~~For each subsequent like offense, the person shall be guilty of a class E felony, with a minimum fine of \$1,150 which may not be suspended.~~ Upon receiving a court notice of conviction for a subsequent like offense, the Secretary shall revoke the operator's or chauffeur's license for an additional 3-year period. It shall be ~~an affirmative defense a~~ defense for this section if the driver proceeds at or below the posted speed limit to a safe location or, at nighttime to a well-lit reasonable location and stops the vehicle at that point that the driver is not guilty of this section.

Section 139. Amend § 4105, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4105 Persons and vehicles working on highways and utilities; exceptions.

(f)(1) The driver of a vehicle who violates any of the following sections of this title shall be fined not less than double the enumerated amount for a first offense when the violation occurs within any highway construction or maintenance area indicated by traffic-control devices:

s. ~~Section 4177~~ Section 1025 of Title 11 for operating a vehicle or § 4177 of this title relating to operation of vehicle while under the influence of alcohol and/or drugs;

Section 140. Amend § 4134, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4134 Operation of vehicles on approach of authorized emergency vehicles.

(d) Any person violating subsection (b) of this section who hits, strikes, or in any way contacts an emergency responder, causing physical injury, with that person's vehicle shall be ~~guilty of a class F felony~~ subject to criminal penalties under § 1023 of Title 11.

Section 141. Amend § 4175, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4175 Reckless driving.

(a) No person shall drive any vehicle in wilful or wanton disregard for the safety of persons or property, and this offense shall be known as reckless driving.

(b) Whoever violates subsection (a) of this section shall for the first offense be fined not less than \$100 nor more than \$300, or be imprisoned not less than 10 nor more than 30 days, or both. For each subsequent like offense occurring within 3 years of a former offense, the person shall be fined not less than \$300 nor more than \$1,000, or be imprisoned not less than 30 nor more than 60 days, or both. No person who violates subsection (a) of this section shall

receive a suspended sentence. However, for the first offense, the period of imprisonment may be suspended. Whoever is convicted of violating subsection (a) of this section and who has had the charge reduced from the violation of § 4177(a) of this title § 1025 of Title 11 for operating a vehicle shall, in addition to the above, be ordered to complete a course of instruction or program of rehabilitation established under § 4177D of this title and to pay all fees in connection therewith. In such cases, the court disposing of the case shall note in the court's record that the offense was alcohol-related or drug-related and such notation shall be carried on the violator's motor vehicle record.

Section 142. Amend § 4176A, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4176A Operation of a vehicle causing death; unclassified misdemeanor.

~~(a) A person is guilty of operation of a vehicle causing death when, in the course of driving or operating a motor vehicle or OHV in violation of any provision of this chapter other than § 4177 of this title, the person's driving or operation of the vehicle or OHV causes the death of another person.~~

~~(b) Operation of a vehicle causing death is an unclassified misdemeanor.~~

~~(c) Notwithstanding any provision of law to the contrary, a person convicted of operation of a vehicle causing death shall for the first offense be fined not more than \$1,150 and imprisoned not more than 30 months. For each subsequent conviction under this section the person shall be fined not more than \$2,300 and imprisoned not more than 60 months.~~

~~(d) The Superior Court has original and exclusive jurisdiction over a violation of this section by a person 18 years of age or older. Notwithstanding any provision of law to the contrary, an offense which is within the original and/or exclusive jurisdiction of another court and which may be joined properly with a violation of this section is deemed to be within the original and exclusive jurisdiction of the Superior Court. [Deleted.]~~

Section 143. Amend § 4176B, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4176B Cell phone use by school bus drivers; penalties.

(d) It is ~~an affirmative defense~~ a defense to prosecution under this section that the driver's use of a cell telephone was necessitated by a bona fide emergency.

Section 144. Amend § 4177, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4177 Driving a vehicle while under the influence or with a prohibited alcohol or drug content; evidence; arrests; and penalties.

(a) ~~No person shall drive a vehicle:~~

~~(1) When the person is under the influence of alcohol;~~

~~(2) When the person is under the influence of any drug;~~

~~(3) When the person is under the influence of a combination of alcohol and any drug;~~

~~(4) When the person's alcohol concentration is .08 or more; or~~

~~(5) When the person's alcohol concentration is, within 4 hours after the time of driving .08 or more.~~

~~Notwithstanding any other provision of the law to the contrary, a person is guilty under this subsection, without regard to the person's alcohol concentration at the time of driving, if the person's alcohol concentration is, within 4 hours after the time of driving .08 or more and that alcohol concentration is the result of an amount of alcohol present in, or consumed by the person when that person was driving;~~

~~(6) When the person's blood contains, within 4 hours of driving, any amount of an illicit or recreational drug that is the result of the unlawful use or consumption of such illicit or recreational drug or any amount of a substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug prior to or during driving. [Deleted.]~~

(b) ~~In a prosecution for a violation of subsection (a) of this section:~~

~~(1) Except as provided in paragraph (b) (3) b. of this section, the fact that any person charged with violating this section is, or has been, legally entitled to use alcohol or a drug shall not constitute a defense.~~

~~(2)a. No person shall be guilty under paragraph (a)(5) of this section when the person has not consumed alcohol prior to or during driving but has only consumed alcohol after the person has ceased driving and only such consumption after driving caused the person to have an alcohol concentration of .08 or more within 4 hours after the time of driving.~~

~~b. No person shall be guilty under paragraph (a)(5) of this section when the person's alcohol concentration was .08 or more at the time of testing only as a result of the consumption of a sufficient quantity of alcohol that occurred after the person ceased driving and before any sampling which raised the person's alcohol concentration to .08 or more within 4 hours after the time of driving.~~

~~(3)a. No person shall be guilty under paragraph (a)(6) of this section when the person has not used or consumed an illicit or recreational drug prior to or during driving but has only used or consumed such drug after the person has ceased driving and only such use or consumption after driving caused the person's blood to contain an amount of the drug or an amount of a substance or compound that is the result of the use or consumption of the drug within 4 hours after the time of driving.~~

~~b. No person shall be guilty under paragraph (a)(6) of this section when the person has used or consumed the drug or drugs detected according to the directions and terms of a lawfully obtained prescription for such drug or drugs.~~

~~e. Nothing in this subsection nor any other provision of this chapter shall be deemed to preclude prosecution under paragraph (a)(2) or (a)(3) of this section.~~

~~(4) The charging document may allege a violation of subsection (a) of this section without specifying any particular paragraph of subsection (a) of this section and the prosecution may seek conviction under any of the paragraphs of subsection (a) of this section. [Deleted.]~~

(c) For purposes of subchapter III of Chapter 27 of this title and this subchapter, the following definitions shall apply:

(7) "Illicit or recreational drug" as that phrase is used in paragraph (a)(6) of this section means any substance or preparation that is:

a. Any material, compound, combination, mixture, synthetic substitute or preparation which is enumerated as a Schedule I controlled substance under § 4714 of Title 16; or

(8) "Unlawful use or consumption" as that phrase is used in paragraph (a)(6) of this section means that the person used or consumed a drug without legal authority to do so as provided by Delaware law. This Code describes the procedure by which a person may lawfully obtain, use or consume certain drugs. ~~In a prosecution brought under paragraph (a)(6) of this section, the State need not present evidence of a lack of such legal authority. In a prosecution brought under paragraph (a)(6) of this section, if a person claims that such person lawfully used or consumed a drug, it is that person's burden to show that person has complied with and satisfied the provisions of this Code regarding obtaining, using or consumption of the drug detected.~~

(9) “Substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug” ~~as that phrase is used in paragraph (a)(6) of this section~~ shall not include any substance or compound that is solely an inactive ingredient or inactive metabolite of such drug.

(d) Whoever is convicted of a violation of ~~subsection (a) of this section~~ shall § 1025 of Title 11 for operating a vehicle shall be subject to the following provisions:

(1) For the first offense, ~~be fined not less than \$500 nor more than \$1,500 or imprisoned not more than 12 months or both. Any~~ any period of imprisonment imposed under ~~this paragraph~~ § 1025 of Title 11 for operating a vehicle may be suspended.

(2) For a second offense ~~occurring at any time within 10 years of a prior offense, be fined not less than \$750 nor more than \$2,500 and imprisoned not less than 60 days nor more than 18 months. The minimum sentence for a person sentenced under this paragraph may not be suspended. The~~, the sentencing Court may suspend the ~~minimum~~ sentence set forth in ~~this subsection~~ § 1025 of Title 11 for operating a vehicle upon the condition that the offender shall successfully complete the Court of Common Pleas Driving Under the Influence Treatment Program in which the offender shall complete a minimum of 30 days of community service.

(3) For a third offense ~~occurring at any time after 2 prior offenses, be guilty of a class G felony, be fined not more than \$5,000 and be imprisoned not less than 1 year nor more than 2 years. The~~, the provisions of ~~§ 4205(b)(7)~~ § 4205(b)(2) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to 9 months of any ~~minimum~~ sentence set forth in this paragraph provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section.

(4) For a fourth or subsequent offense, the ~~offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not more than \$7,000, and imprisoned not less than 2 years nor more than 5 years. The~~ provisions of ~~§ 4205(b)(5)~~ § 4205(b)(2) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to 18 months of any ~~minimum~~ sentence set forth in this paragraph provided, however, that any portion of a sentence suspended

pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section.

~~(5) For a fifth offense occurring any time after 4 prior offenses, be guilty of a class E felony, be fined not more than \$10,000 and imprisoned not less than 3 years nor more than 5 years. [Deleted.]~~

~~(6) For a sixth offense occurring any time after 5 prior offenses, be guilty of a class D felony, be fined not more than \$10,000 and imprisoned not less than 4 years nor more than 8 years. [Deleted.]~~

~~(7) For a seventh offense occurring any time after 6 prior offenses, or for any subsequent offense, be guilty of a class C felony, be fined not more than \$15,000 and imprisoned not less than 5 years nor greater than 15 years. [Deleted.]~~

~~(8) For the fifth, sixth, seventh offense or greater, the provisions of § 4205(b) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, at least 1/2 of any minimum sentence shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to 1/2 of any minimum sentence set forth in this section provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section. No conviction for a violation of this section, for which a sentence is imposed pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section, shall be considered a predicate felony for conviction or sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11. [Deleted.]~~

(9) Any ~~minimum~~ sentence suspended pursuant to paragraph (d)(3), ~~(d)(4), or (d)(8)~~ or (d)(4) of this section shall be upon the condition that the offender shall complete a program of supervision which shall include:

a. A drug and alcohol abstinence program requiring that the offender maintain a period of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device or through periodic breath or urine analysis. In addition to such monitoring, the offender shall participate in periodic, random breath or urine analysis during the entire period of supervision.

(10) In addition to the penalties otherwise authorized by this subsection, any person convicted of a violation of ~~subsection (a) of this section~~ § 1025 of Title 11 for operating a vehicle, committed while a person who has not yet reached the person's seventeenth birthday is on or within the vehicle shall:

c. Violation of this paragraph shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of ~~subsection (a) of this section~~ § 1025 of Title 11 for operating a vehicle. Nothing in this paragraph shall prevent conviction for a violation of both ~~subsection (a) of this section~~ § 1025 of Title 11 for operating a vehicle and any offense as defined elsewhere by the laws of this State.

(11) A person who has been convicted of prior or previous offenses of this section, as defined in § 4177B(e) of this title, or previously convicted of § 1025 of Title 11 for operating a vehicle, need not be charged as a subsequent offender in the complaint, information or indictment against the person in order to render the person liable for the punishment imposed by this section ~~on a person with prior or previous offenses under this section~~. However, if at any time after conviction and before sentence, it shall appear to the Attorney General or to the sentencing court that by reason of such conviction and prior or previous convictions, a person should be subjected to § 1025 of Title 11 for operating a vehicle or paragraph ~~(d)(3), (d)(4), (d)(5), (d)(6) or (d)(7)~~ (d)(3) or (d)(4) of this section, the Attorney General shall file a motion to have the defendant sentenced pursuant to those provisions. If it shall appear to the satisfaction of the court at a hearing on the motion that the defendant falls within § 1025 of Title 11 for operating a vehicle graded as a felony, or paragraph ~~(d)(3), (d)(4), (d)(5), (d)(6) or (d)(7)~~ (d)(3) or (d)(4) of this section, the court shall enter an order declaring the offense for which the defendant is being sentenced to be a felony and shall impose a sentence accordingly.

(12) The Court of Common Pleas and Justice of the Peace Courts shall not have jurisdiction over offenses which must be sentenced pursuant to § 1025 of Title 11 for operating a vehicle graded as a felony, or paragraph ~~(d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8)~~ or (d)(9) of this section.

(13) The Justice of the Peace Court shall have jurisdiction to accept pleas of guilt and to impose sentence for violations of this section that are not subject to sentencing pursuant to paragraphs ~~(d)(3) through (d)(4)~~ (d)(4) or (d)(9) of this section and to enter conditional adjudications of guilt requiring or permitting a person to enter a first offender election pursuant to § 4177B of this title. The Justice of the Peace Court shall not have jurisdiction to try any violations of this section. If an offense or criminal case within the exclusive jurisdiction of a justice of the

peace or alderman or mayor of any incorporated city or town, except the City of Newark, is or may be joined properly with a violation of this section, such offense or criminal case shall remain joined with any violation of this section for the purpose of trial.

(14) If a person enters a guilty plea in a court of competent jurisdiction to a violation of ~~subsection (a) of this section~~ § 1025 of Title 11 for operating a vehicle, such action shall constitute a waiver of the right to an administrative hearing as provided for in § 2742 of this title and shall act to withdraw any request previously made therefor.

(15) Notwithstanding any law to the contrary, the phrase “all crimes” as used in the Truth in Sentencing Act of 1989 shall include felonies under ~~this section~~ § 1025 of Title 11 for operating a vehicle, and any amendments thereto.

(e) In addition to any penalty for a violation of ~~subsection (a) of this section~~ § 1025 of Title 11 for operating a vehicle, the court shall prohibit the person convicted from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device; the terms of installation of the device and licensing of the individual to drive shall be as set forth in § 4177C and § 4177G of this title. A person who is prohibited from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device under this title at the time of an offense under ~~subsection (a) of this section~~ § 1025 of Title 11 for operating a vehicle shall, in addition to any other penalties provided under law, pay a fine of \$2,000 and be imprisoned for 60 days.

(f) In addition to any penalty for a violation of ~~subsection (a) of this section~~ § 1025 of Title 11 for operating a vehicle, the court shall order the person to complete an alcohol evaluation and to complete a program of education or rehabilitation pursuant to § 4177D of this title which may include inpatient treatment and be followed by such other programs as established by the treatment facility, not to exceed a total of 15 months and to pay a fee not to exceed the maximum fine; provided however, that successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program shall satisfy this requirement.

(g) For purposes of a conviction premised upon ~~subsection (a) of this section~~ § 1025 of Title 11 for operating a vehicle, or any proceeding pursuant to this Code in which an issue is whether a person was driving a vehicle while under the influence, evidence establishing the presence and concentration of alcohol or drugs in the person’s blood, breath or urine shall be relevant and admissible. Such evidence may include the results from tests of samples of the person’s blood, breath or urine taken within 4 hours after the time of driving or at some later time. In any proceeding,

the resulting alcohol or drug concentration reported when a test, as defined in paragraph (c)(3) of this section, is performed shall be deemed to be the actual alcohol or drug concentration in the person's blood, breath or urine without regard to any margin of error or tolerance factor inherent in such tests.

(3) A jury shall be instructed by the court in accordance with the applicable provisions of this subsection in any proceeding pursuant to § 1025 of Title 11 for operating a vehicle, or any proceeding pursuant to this Code in which an issue is whether a person was driving a vehicle while under the influence of alcohol or drugs or a combination of both.

(i) In addition to any other powers of arrest, any law-enforcement officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section or § 1025 of Title 11 for operating a vehicle, regardless of whether the alleged violation was committed in the presence of such officer. This authority to arrest extends to any hospital or other medical treatment facility located beyond the territorial limits of the officer's jurisdiction provided there is probable cause to believe that the violation of this section or § 1025 of Title 11 for operating a vehicle occurred within the officer's jurisdiction. This authority to arrest also extends to any place where the person is found within 4 hours of the alleged driving of a vehicle if there is reason to believe the person has fled the scene of an accident in which that person was involved, and provided there is probable cause to believe that the violation of this section or § 1025 of Title 11 for operating a vehicle occurred within the officer's jurisdiction.

(j) Any court in which a conviction of or guilty plea to a driving under the influence offense shall include the blood alcohol concentration of the defendant (if any is on record) when forwarding notice of said conviction or guilty plea to the Division of Motor Vehicles.

Section 145. Amend § 4177A, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4177A Revocation of license for violation of § 4177 of this title.

(a) The Secretary shall forthwith revoke the driver's license and/or driving privileges of any person convicted of a violation of § 4177 of this title or § 1025 of Title 11 for operating a vehicle or any offense under the laws of any state or of the United States or local jurisdiction or the District of Columbia which prohibits driving under the influence of alcohol or drugs. Such revocation shall be for a period of:

(b) Any person sentenced under § 4177(d) of this title or § 1025 of Title 11 for operating a vehicle shall have the person's driver's license and/or driving privileges revoked by the Secretary until the person has satisfactorily completed a program established pursuant to 4177D of this title and complied with the ignition interlock device requirements set forth in §§ 4177C and 4177G of this title; provided however, that successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program shall satisfy this requirement.

Section 146. Amend § 4177B, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4177B First offenders; election in lieu of trial.

(a) Any person who:

(1) Has never had a previous or prior conviction or offense as defined in paragraph (e)(1) of this section; may qualify for the first offense election at the time of arraignment. The court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and shall place the accused on probation upon terms and conditions, including enrollment in a course of instruction or program of rehabilitation established pursuant to § 4177D of this title. If the accused elects to apply, the application shall constitute a waiver of the right to speedy trial. If the person elects not to apply, or if is not accepted, the person shall promptly be arraigned for a violation of § 4177 of this title or § 1025 of Title 11 for operating a vehicle. If a person applies for or accepts the first offense election under this section, such act shall constitute agreement to pay the costs of prosecution for the case, and the court shall assess such costs and impose them as a condition of probation. If a person accepts the first offense election under this section, such action shall constitute a waiver of the right to an administrative hearing as provided for in § 2742 of this title and shall act to withdraw any request previously made therefor. For the purposes of this section, costs of prosecution shall be \$250 and any additional costs as established by the appropriate court schedules; and

(b) If a term or condition of probation is violated, including failure to appear for evaluation at an assigned evaluating agency, the person shall be brought before the court, or if the person fails to appear before the court, in either case, upon a determination by the court that the terms have been violated, the court shall enter an adjudication of guilt and proceed as otherwise provided under § 4177 of this title or § 1025 of Title 11 for operating a vehicle.

(e)(1) *Prior or previous conviction or offense.* — For purposes of §§ 2742 and 4177 of this title and this section, but not for purposes of § 1025 of Title 11 for operating a vehicle, the provisions of § 4215A of Title 11 shall not be applicable but instead the following shall constitute a prior or previous conviction or offense:

a. A conviction or other adjudication of guilt or delinquency pursuant to § 4175(b) or § 4177 of this title, § 1025 of Title 11 for operating a vehicle, or a similar statute of any state or local jurisdiction, any federal or military reservation or the District of Columbia;

~~(2) *Time limitations.* — For the purpose of determining the applicability of enhanced penalties pursuant to § 4177 of this title, the time limitations on use of prior or previous convictions or offenses as defined by this subsection shall be:~~

~~a. For sentencing pursuant to § 4177(d)(2) of this title, the second offense must have occurred within 10 years of a prior offense;~~

~~b. For sentencing pursuant to § 4177(d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8) or (d)(9) of this title there shall be no time limitation and all prior or previous convictions or offenses as defined in paragraph (e)(1) of this section shall be considered for sentencing.~~

~~c. For any subsection that does not have a time limitation prescribed, all prior or previous convictions or offenses as defined in paragraph (e)(1) of this section shall be considered. [Deleted.]~~

(4) *Separate and distinct offenses.* — For the purpose of determining the applicability of enhanced penalties pursuant to § 4177 of this title, or § 1025 of Title 11 for operating a vehicle, prior or previous convictions or offenses used to determine eligibility for such enhanced penalties must be separate and distinct offenses; that is, each must be successive to the other with some period of time having elapsed between sentencing or adjudication for an earlier offense or conviction and the commission of the offense resulting in a subsequent conviction.

(5) *Challenges to use of prior offenses.* — In any proceeding under § 2742 of this title, § 4177 of this title, § 1025 of Title 11 for operating a vehicle, or this section, a person may not challenge the validity of any prior or previous conviction, unless that person first successfully challenges the prior or previous conviction in the court in which the conviction arose and provides written notice of the specific nature of the challenge in the present proceeding to the prosecution at least 20 days before trial.

Section 147. Amend § 4177C, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4177C Ignition interlock licenses; reinstatement of license.

(b) Any person who, as a first offender is sentenced pursuant to § 1025 of Title 11 for operating a vehicle or § 4177(d) of this title, and is enrolled in a course of instruction and/or program of rehabilitation pursuant to 4177D of this title shall be eligible to apply for an IID license under the following terms:

(c) Any person who, as a second or subsequent offender is sentenced pursuant to § 1025 of Title 11 for operating a vehicle or § 4177(d) of this title, shall be eligible to apply for an IID license under the following terms:

(1)a. For a person sentenced as a second offender pursuant to § 1025 of Title 11 for operating a vehicle or § 4177(d) of this title, at least 60 days have elapsed since the effective date of the revocation;

b. For a person sentenced as a third offender pursuant to § 1025 of Title 11 for operating a vehicle or § 4177(d) of this title, at least 90 days have elapsed since the effective date of the revocation;

c. For a person sentenced as a fourth or subsequent offender pursuant to § 1025 of Title 11 for operating a vehicle or § 4177(d) of this title, at least 6 months have elapsed since the effective date of the revocation.

(d) *Reinstatement of license.* — Notwithstanding §§ 4177A and 4177B of this title, any person who has satisfactorily completed a course and/or program established pursuant to § 4177D of this title, shall be permitted to apply for reinstatement of their driver's license and/or driving privilege under the following terms:

(3) For a person sentenced for a first offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, whose blood alcohol concentration was below .15, at least 12 months have elapsed since the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(4) For a person sentenced for a first offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, whose blood alcohol concentration was .15 to .19, at least 17 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(5) For a person sentenced for a first offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 23 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(6) For a person sentenced for a second offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, at least 16 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(7) For a person sentenced for a second offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, whose blood alcohol concentration was .15 to .19, at least 22 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(8) For a person sentenced for a second offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 28 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(9) For a person sentenced for a third offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, at least 21 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(10) For a person sentenced for a third offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, whose blood alcohol concentration was .15 to .19, at least 27 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(11) For a person sentenced for a third offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 33 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(12) For a person sentenced for a fourth or further subsequent offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, at least 54 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(e) Notwithstanding any other provision to the contrary, any person whose alcohol concentration is less than .08 (1) who is convicted of a first offense pursuant to § 1025 of Title 11 for operating a vehicle or § 4177 of this title, (2) who makes a first offense election pursuant to 4177B of this title, or (3) whose license is revoked for a first offense pursuant to Chapter 27 of this title, where it is not established that the person was under the influence of any other intoxicating substance, shall be granted a conditional license immediately upon application, and shall not be required to complete a course of instruction established under 4177D of this title. Nothing in this subsection shall be read to imply that an individual with an alcohol concentration of less than .08 is under the influence of alcohol.

Section 148. Amend § 4177D, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4177D Courses of instruction; rehabilitation programs.

The Secretary of the Department of Health and Social Services, through the Division of Substance Abuse and Mental Health, shall establish courses of instruction and programs of rehabilitation for persons whose drivers' licenses have been revoked for driving a vehicle while under the influence of alcohol or any drug. The Secretary of the Department of Health and Social Services shall administer such courses and programs and adopt rules and regulations for such courses and programs. The Secretary of the Department of Health and Social Services shall establish a schedule of fees for enrollment in such courses and programs. The schedule of fees may not exceed the maximum fine imposed for an offense under ~~§ 4177 of this title~~ § 1025 of Title 11 for operating a vehicle. A person's successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program is equivalent to a course of instruction or program of rehabilitation approved under this section.

Section 149. Amend § 4177G, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4177G Ignition Interlock Device Program.

(a) *Participation.* — All persons convicted of an offense must participate in the Ignition Interlock Device Program as specified herein.

(b) *Definitions.* — For the purpose of this section:

(3) "Offender" means a person who has accepted a first offender election pursuant to 4177B of this title or been convicted of violating § 4177 of this title or § 1025 of Title 11 for operating a vehicle.

(4) "Offense" means a first offenders election pursuant to § 4177B of this title or a conviction pursuant to § 4177 of this title or § 1025 of Title 11 for operating a vehicle.

(f) *IID license.* —

(1) All persons convicted of an offense shall be eligible for an IID license as set forth in § 4177C of this title if the following conditions are met:

b. The offender has had an IID installed on a minimum of 1 vehicle owned or operated, or both, by the individual; provided, however, that a person convicted of a second, third, fourth or greater offense pursuant to ~~§ 4177 of this title~~ § 1025 of Title 11 for operating a vehicle must have an IID installed on each of the motor vehicles owned or operated, or both, by the individual;

(2) An offender shall lose the privilege of having an IID license for failure to comply with any of the following:

e. The offender shall not violate any section of this title or § 1025 of Title 11 for operating a vehicle relating to the use, possession or consumption of alcohol or intoxicating substances;

Section 150. Amend § 4177I, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4177I Applicability of conforming statutes or ordinances.

Any references to § 4177, § 4177A, § 4177B, § 4177C, § 4177D, § 4177E [repealed], ~~or~~ § 4177L of this title, or § 1025 of Title 11 for operating a vehicle shall include all conforming statutes of any other state or the District of Columbia, or local ordinances in conformity therewith.

Section 151. Amend § 4202, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4202 Duty of driver involved in collision resulting in injury or death to any person; penalty.

~~(a) The driver of any vehicle involved in an collision resulting in injury or death to any person shall immediately stop such vehicle at the scene of such collision. Said stop should be made as close to the scene of the collision as possible without obstructing traffic more than necessary. The driver shall give the driver's name, address and the registration number of the driver's vehicle and exhibit a driver's license or other documentation of driving privileges to the person struck or the driver or occupants of any vehicle collided with and shall render to any person injured in such collision reasonable assistance, including the carrying of such person to a hospital or physician or surgeon for medical or surgical treatment if it is apparent that such treatment is necessary or is requested by the injured person, or by contacting appropriate law enforcement or emergency personnel and awaiting their arrival.~~

(a) The driver of any vehicle involved in a collision resulting in injury or death to any person shall:

(1) Immediately stop such vehicle at the scene of such collision. Said stop should be made as close to the scene of the collision as possible without obstructing traffic more than necessary.

(2) Give the driver's name, address and the registration number of the driver's vehicle and exhibit a driver's license or other documentation of driving privileges to the person struck or the driver or occupants of any vehicle collided with.

(3) Shall render to any person injured in such collision reasonable assistance, including the carrying of such person to a hospital or physician or surgeon for medical or surgical treatment if it is apparent that such

treatment is necessary or is requested by the injured person, or by contacting appropriate law-enforcement or emergency personnel and awaiting their arrival.

(b) Whoever violates subsection ~~(a)~~ (a)(1) of this section ~~when that person has been involved in a collision resulting in injury to any person shall be guilty of an unclassified misdemeanor, be fined not less than \$1,000 nor more than \$3,000 or imprisoned not less than 1 year nor more than 2 years~~ shall be subject to criminal penalties under § 1241 of Title 11.

~~(c) Whoever violates subsection (a) of this section when that person has been involved in a collision resulting in death to any person shall be guilty of a class E felony. The provisions of § 4206(a) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the sentence for such offense shall include a period of incarceration of not less than 1 year and the first 6 months of any sentence imposed shall not be suspended. [Deleted.]~~

(d) The Secretary shall revoke the driver's license and/or driver's privilege of every person convicted under ~~this section~~ § 1241(b)(2)-(3) of Title 11. Such revocation shall be for a period of 1 year if the person is convicted and sentenced pursuant to ~~subsection (b) of this section~~ § 1241(b)(3) of Title 11. Such revocation shall be for a period of 2 years if the person is convicted and sentenced pursuant to ~~subsection (c) of this section~~ § 1241(b)(2) of Title 11.

(e) Except as provided in § 927 of Title 10, notwithstanding any other law, rule or regulation to the contrary, the Court of Common Pleas shall have original jurisdiction to hear, try and finally determine any ~~misdemeanor violation of this section~~ prosecution under § 1241(b)(3) of Title 11, and any other violation of any offense set forth in this title or in § 1025 of Title 11 for operating a vehicle which was allegedly committed during the same incident. The jurisdiction of the justices of the peace over such matters is hereby terminated.

Section 152. Amend § 4205A, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4205A Classification of offenders sentenced to imprisonment under this title.

(b) For offenses under § 1241(b)(3) of Title 11 or this title which involve injury caused to another person by the person's driving or operation of the vehicle or a driving under the influence-related conviction or offense as defined in § 4177B(e)(1)a.-d. of this title, any term of imprisonment defined in this title shall be served at Supervision Accountability Level V as defined in § 4204(c)(5) of Title 11 or at Supervision Accountability Level IV as defined in § 4204(c)(4) of Title 11 provided that such Level IV placement must be served in a Department of Correction facility

which requires full-time residence at the facility and that the person may not be outside the confines of that facility without armed supervision.

(c) For offenses under § 1241(b)(2) of Title 11 or this title which involve death caused to another person by the person's driving or operation of the vehicle any term of imprisonment defined in this title shall be served at Supervision Accountability Level V as defined in § 4204(c)(5) of Title 11.

Section 153. Amend § 4601, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4601 ~~Introduction, sale, distribution or advertisement for sale to public of motor vehicle master keys; penalties~~ Definition.

(a) ~~Whoever knowingly introduces, manufactures for introduction or transports or distributes in this State any motor vehicle master key shall be fined not more than \$2,000, or imprisoned not more than 5 years or both.~~ [Deleted.]

(b) ~~Whoever knowingly disseminates or knowingly causes to be disseminated any advertisement or sale to the public of this State motor vehicle master keys shall be fined not more than \$2,000, or imprisoned not more than 5 years or both.~~ [Deleted.]

(c) As used in this section, "master key" means any key adapted to fit the ignition switch of 2 or more motor vehicles, the ignition switches of which are designed to operate by different keys.

Section 154. Amend § 4602, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4602 Exemptions.

~~Section 4601 of this title shall not apply to:~~

~~(1) The introduction, manufacture for introduction, transportation, distribution, sale or possession in this State of motor vehicle master keys for use in the ordinary course of business by any bona fide locksmith, vehicle manufacturer, lock manufacturer, common carrier, contract carrier, new or used car dealer, rental car agency, automobile club or association or any department, agency or instrumentality of:~~

~~a. This State;~~

~~b. The United States; or~~

~~c. Any political subdivisions of any such entity;~~

~~(2) The shipment, transportation or delivery for shipment in this State of motor vehicle master keys in the ordinary course of business of any common carrier or contract carrier. [Deleted.]~~

Section 155. Amend § 4603, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4603 Reporting of keys; penalties.

Any person, corporation, agency, association, club, department or carrier possessing any master key pursuant to this chapter shall, before May 30, 1969, and every 6 months thereafter, submit to the Secretary of Public Safety of this State a list describing all master keys which it possesses. Any person, corporation, agency, association, club, department or carrier which submits a list pursuant to this section which list does not contain any master key which was described in any previous list to the Secretary of Public Safety shall, in writing, notify the Secretary of Public Safety of the reason for omission. Whoever knowingly fails to comply with this section shall be ~~fin~~ed not more than \$2,300, or imprisoned not more than 5 years or both subject to criminal penalties under § 1223 of Title 11.

Section 156. Amend § 4604, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4604 Possession of motor vehicle master keys, manipulative keys, key-cutting devices, lock picks or lock picking devices and hot wires; penalty; class E felony.

~~(a) No person shall have in possession any motor vehicle master key, manipulative key or device, key cutting device, lock pick or lock picking device or hot wire, designed to open or capable of opening the door or trunk of any motor vehicle or of starting the engine of a motor vehicle. Any person who violates this subsection shall be guilty of a class E felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith.~~

~~(b) This section shall not apply to any bona fide dealer of new or used motor vehicles, a car rental agent, a locksmith, a public utility subject to the jurisdiction of the Public Service Commission or the agents of such persons while such persons or their agents are acting within the scope of their employment. This section shall not apply to a private investigator who in the usual course of business repossesses vehicles if such investigator is licensed and bonded by the State or the employees of such private investigator while the employee is repossessing vehicles in the usual course of business and is bonded and licensed by the State. This section shall not apply to a state, county or municipal law enforcement officer who is acting within the scope of official duties. Nor shall this section apply to a bona fide~~

~~business which has a key cutting device located and used on the premises for the purpose of making replacement keys.~~

[Deleted.]

Section 157. Amend § 6701, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6701 Injuring vehicle or obstructing its operation.

~~No person shall, individually or in association with 1 or more others, wilfully break, injure, tamper with or remove any part or parts of any vehicle for the purpose of injuring, defacing or destroying such vehicle, or temporarily or permanently preventing its useful operation, or for any purpose against the will or without the consent of the owner of such vehicle or shall in any other manner wilfully or maliciously interfere with or prevent the running or operation of such vehicle.~~ [Deleted.]

Section 158. Amend § 6702, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6702 Driving vehicle without consent of owner.

~~(a) No person shall drive another person's vehicle without the consent of the owner thereof, and with intent temporarily to deprive the owner of possession of such vehicle, but without intent to steal the vehicle. The consent of the owner of a vehicle to its taking or driving shall not in any case be presumed or implied because of such owner's consent on a previous occasion to the taking or driving of such vehicle by the same or a different person.~~

~~(b) Whoever violates this section shall be fined not less than \$115 nor more than \$575, or imprisoned not more than 90 days, or both; for each subsequent like offense the person shall be fined not less than \$230 and imprisoned for not less than 30 days nor more than 2 years.~~ [Deleted.]

Section 159. Amend § 6703, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6703 Tampering with vehicle.

~~No person shall, without the consent of the owner or person in charge of a vehicle, climb into or upon such vehicle with the intent to commit any crime, malicious mischief or injury thereto or, while a vehicle is at rest and unattended, attempt to manipulate any of the levers, starting crank or other starting device, brakes or other mechanism thereof or to set the vehicle in motion.~~

~~This section shall not apply when any such act is done in an emergency in furtherance of public safety or convenience or by or under the direction of an officer in the regulation of traffic or performance of any other official duty. [Deleted.]~~

Section 160. Amend § 6704, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6704 Receiving or transferring stolen vehicle; penalty.

~~Whoever, with intent to procure or pass title to a motor vehicle or vehicle which the person knows or has reason to believe has been stolen, receives or transfers possession of the same from or to another or has in possession any motor vehicle or vehicle which the person knows or has reason to believe has been stolen and who is not an officer of the law engaged at the time in the performance of duty as such officer, is guilty of a felony and shall be fined not less than \$575 nor more than \$5,750, or imprisoned not less than 1 year nor more than 5 years or both. [Deleted.]~~

Section 161. Amend § 6705, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6705 Removed, falsified or unauthorized identification number on vehicle, bicycle or engine; removed or affixed license/registration plate with intent to misrepresent identity; penalty.

(a) ~~A person who wilfully removes to falsify or falsifies an identification number of a vehicle, a bicycle or an engine for a vehicle is guilty of a misdemeanor. [Deleted.]~~

(b) ~~A person who wilfully and with intent to conceal or misrepresent the identity of a vehicle, a bicycle or engine removes or falsifies an identification number of the vehicle or engine is guilty of a felony. [Deleted.]~~

(c) A person who buys, sells, receives, possesses or disposes of a vehicle, a bicycle or an engine of a vehicle, knowing that an identification number of the vehicle or engine has been removed or falsified, is guilty of a misdemeanor.

(d) ~~A person who buys, sells, receives, possesses or disposes of a vehicle, a bicycle or an engine for a vehicle, with knowledge that an identification number of the vehicle or engine has been removed or falsified and with intent to conceal or misrepresent the identity of the vehicle or engine, is guilty of a felony. [Deleted.]~~

(e) ~~A person who removes a license/registration plate from a vehicle or affixes to a vehicle a license/registration plate not authorized by law for use on it, in either case with intent to conceal or misrepresent the identity of the vehicle or its owner, is guilty of a misdemeanor. [Deleted.]~~

~~(f) An identification number may be placed on a vehicle, a bicycle or engine by its manufacturer in the regular course of business or placed or restored on a vehicle, a bicycle or engine by authority of the Division without violating this section; an identification number so placed or restored is not falsified. [Deleted.]~~

~~(g) No person, unless duly authorized by the Director of the Division of Motor Vehicles or an agent of the Director, shall remove or alter a license/registration plate from any motor vehicle, trailer or semitrailer, or part thereof, or have in possession any motor vehicle, trailer or semitrailer, or part thereof, where the license/registration has been removed without first obtaining permission, in writing, from the said Director. [Deleted.]~~

~~(h) Whoever is found guilty of a misdemeanor under this section shall be fined not less than \$57.50 nor more than \$575, or imprisoned not less than 30 days nor more than 6 months or both. Whoever is found guilty of a felony under this section shall be fined not less than \$575 nor more than \$5,750, or imprisoned not less than 1 year nor more than 5 years or both. Superior Court shall have jurisdiction. In addition to any fine levied for conviction of theft under this section, the defendant shall be ordered to pay restitution to the victim of the theft.~~

Section 162. Amend § 6708, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6708 Possession of blank title; blank registration card; vehicle identification plate; warranty sticker and registration card; class E felony; penalty.

~~(a) No person, unless duly authorized by the Director of the Division of Motor Vehicles, shall have in possession any blank certificate of title, blank registration card, blank vehicle identification plate, warranty sticker or vehicle inspection card.~~

~~(b) No person, unless duly authorized by the Director of the Division of Motor Vehicles, shall sell or deliver any blank certificate of title, blank registration card, vehicle identification plate, warranty sticker or vehicle inspection card.~~

~~(c) Any person found guilty of the violation of this section shall be guilty of a class E felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith. [Deleted.]~~

Section 163. Amend § 6709, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6709 Removal of warranty or certification stickers; vehicle identification plates; confidential vehicle identification numbers; penalty; class E felony.

~~(a) No person, unless duly authorized by the Director of the Division of Motor Vehicles or an agent of the Director, shall remove or alter a vehicle identification plate, warranty or certification sticker or confidential vehicle identification number from any motor vehicle, trailer or semitrailer, or part thereof, or have in possession any motor vehicle, trailer or semitrailer, or part thereof, where the vehicle identification plate, warranty or certification sticker or confidential vehicle identification number has been removed without first obtaining permission, in writing, from the said Director.~~

~~(b) Any person found guilty of the violation of this section shall be guilty of a class E felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith. [Deleted.]~~

Section 164. Amend § 6710, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6710 Unlawful possession of assigned titles, assigned registration cards, vehicle identification plates and warranty stickers; penalty; class E felony.

~~(a) No person shall have in possession an assigned certificate of title, registration card, vehicle identification plate or warranty sticker or deliver for sale any assigned certificate of title, registration card, vehicle identification plate or warranty sticker unless such motor vehicle document is accompanied by 75% of the vehicle described on the assigned certificate of title, registration card, vehicle identification plate or warranty sticker.~~

~~(b) Any person found guilty of a violation of this section shall be guilty of a class E felony as the same is defined in Chapter 42 of Title 11 and shall be sentenced in accordance therewith. [Deleted.]~~

Section 165. Amend § 2116, Title 23 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2116 Operation of noncomplying vessels prohibited; careless operation; inattentive operation; reckless operation; ~~assault by vessel in the second degree; assault by vessel in the first degree.~~

(a) No person shall use or give permission for the use of any vessel to which this subchapter applies, unless the vessel is in compliance with the requirements of this subchapter and the applicable standards and regulations promulgated under the authority of this subchapter.

(e) ~~Notwithstanding § 2115(b) of this title, a person is guilty of assault by vessel in the second degree when:~~

~~(1) While in the course of operating a vessel, the person's criminally negligent operation of said vessel causes serious physical injury to another person; or~~

~~(2) While in the course of operating a vessel and under the influence of alcohol or drugs, as defined by § 2301 of this title, the person's negligent operation of said vessel causes physical injury to another person.~~

~~Assault by vessel in the second degree is a class B misdemeanor. [Deleted.]~~

~~(f) Notwithstanding § 2115(b) of this title, a person is guilty of assault by vessel in the first degree when while in the course of operating a vessel and under the influence of alcohol or drugs, as defined by § 2301 of this title, the person's negligent operation of said vessel causes serious physical injury to another person.~~

~~Assault by vessel in the first degree is a class F felony. [Deleted.]~~

Section 166. Amend § 2301, Title 23 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2301 Definitions.

(d) ~~"Prior or previous offense" shall mean:~~

~~(1) A conviction pursuant to this chapter, or a similar statute of any state, local jurisdiction or the District of Columbia, within 5 years immediately preceding the date of the present offense; or~~

~~(2) A conviction, under a criminal statute encompassing death or injury caused to another person by the person's operation of a vessel, where operating a vessel under the influence or with a prohibited alcohol concentration was an element of the offense.~~

~~For the purpose of computing the periods of time set out in § 2305 of this title, the period shall run from the date of the commission of the prior or previous offense to the date of the commission of the charged offense. In any proceeding under § 2305 of this title, a person may not challenge the validity of any prior or previous conviction unless that person first successfully challenges the prior or previous conviction in the court in which the conviction arose and provides written notice of the challenge in the present proceeding to the prosecution at least 20 days before trial. [Deleted.]~~

Section 167. Amend § 2302, Title 23 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2302 Operation of a vessel or boat while under the influence of intoxicating liquor and/or drugs.

~~(a) No person shall motor, sail, row, operate, command or have actual physical control of any vessel or boat underway on Delaware waters:~~

~~(1) When the person is under the influence of alcohol;~~

- ~~(2) When the person is under the influence of a drug;~~
- ~~(3) When the person is under the influence of any combination of alcohol and any drug;~~
- ~~(4) When the person's alcohol concentration is 0.08 or more; or~~
- ~~(5) When the person's alcohol concentration is, within 4 hours after the time of vessel operation, 0.08 or~~

~~more.~~

~~(b) Any person charged under subsection (a) of this section whose blood alcohol concentration is 8/100 of 1% or more by weight as shown by a chemical analysis of a blood, breath or urine sample taken within 4 hours of the alleged offense shall be guilty of violating subsection (a) of this section. This provision shall not preclude a conviction based on other admissible evidence.~~

~~(c) The fact that any person charged with violating this section is or has been legally entitled to use alcohol or a drug shall not constitute a defense against any charge of violating this section.~~

~~(d) It shall be an affirmative defense to a prosecution premised on paragraph (a)(5) of this section if the person proves by a preponderance of evidence that the person consumed a sufficient quantity of alcohol after the time of actual vessel operation and before any sampling to cause the person's alcohol concentration to exceed 0.08. Such evidence shall not be admitted unless notice of this defense is given to the prosecution at least 20 days before trial.~~

~~(e) The charging document may allege a violation of subsection (a) of this section without specifying any particular paragraph of subsection (a) of this section and the prosecution may seek conviction under any of the paragraphs of subsection (a) of this section. [Deleted.]~~

Section 168. Amend § 2303, Title 23 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2303 Consent to submit to chemical test.

(a) Any person who motors, sails, rows, commands, operates or has actual physical control of a vessel or boat underway on the waters of this State shall be deemed to have given consent, subject to this section and ~~§ 2302 of this title~~ § 1025 of Title 11 for operating a vessel, to a chemical test or tests of the person's blood, breath and/or urine for the purpose of determining the presence of alcohol or a drug or drugs. The testing may be required of a person when an officer has probable cause to believe the person is in violation of ~~§ 2302 of this title~~ § 1025 of Title 11 for operating a vessel or a local ordinance substantially conforming thereto.

(e) *Refusal to submit as admissible evidence.* — Upon any trial of any action or proceeding arising out of the acts alleged to have been committed by any person while in violation of ~~§ 2302 of this title~~ § 1025 of Title 11 for operating a vessel, the court may admit evidence of the refusal of such person to submit to a chemical test of the person's breath, blood or urine.

(f) *Admissibility in evidence of results of chemical test* — For purposes of a conviction premised upon ~~§ 2302(a) of this title~~ § 1025 of Title 11 for operating a vessel or any proceeding pursuant to this code in which an issue is whether a person was operating a vessel while under the influence, evidence establishing the presence and concentration of alcohol or drugs in the person's blood, breath or urine shall be relevant and admissible. Such evidence may include the results from tests of samples of the person's blood, breath or urine taken within 4 hours of operating the vessel or at some later time. In any proceeding, the resulting alcohol or drug concentration reported when a test, as defined in § 2301(b) of this title, is performed shall be deemed to be the actual alcohol or drug concentration in the person's blood, breath or urine without regard to any margin of error or tolerance factor inherent in such tests.

(i) Nothing in this section shall preclude conviction of an offense defined in ~~this chapter~~ § 1025 of Title 11 for operating a vessel based solely on admissible evidence other than the results of a chemical test of a person's blood, breath or urine to determine the concentration or presence of alcohol or drugs.

(j) A jury shall be instructed by the court in accordance with the applicable provisions of this section in any proceeding pursuant to § 1025 of Title 11 for operating a vessel, or any other proceeding pursuant to this chapter in which an issue is whether a person was operating a vessel while under the influence.

(m) The informing or failure to inform the accused concerning the implied consent provision shall not affect the admissibility of such results in any prosecution for a violation of ~~§ 2302(a) of this title~~ § 1025 of Title 11 for operating a vessel.

Section 169. Amend § 2305, Title 23 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2305 Penalties; jurisdiction.

Whoever is convicted of a violation of ~~§ 2302 of this title~~ § 1025 of Title 11 for operating a vessel shall be subject to the following provisions:

(1) ~~For the first offense, be fined not less than \$200 nor more than \$1,000, or imprisoned not less than 60 days nor more than 6 months, or both. [Deleted.]~~

~~(2) For a second offense occurring within 5 years from a prior offense, be fined not less than \$500 nor more than \$2,000 and imprisoned not less than 60 days nor more than 18 months. No person sentenced under this paragraph~~  
For a second offense, no person shall receive a suspended sentence.

~~(3) For a third offense occurring within 5 years from a prior offense, be guilty of a class G felony, be fined not less than \$1,000 nor more than \$3,000 and imprisoned not less than 1 year nor more than 2 years. The~~ For a third offense, the provisions of § 4205(b)(7) (2) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to an early release, furlough or reduction of any kind.

~~No conviction for violation of this chapter for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this subsection is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.~~

~~(4) For a fourth or subsequent offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not less than \$2,000 nor more than \$6,000 and imprisoned not less than 2 years nor more than 5 years. The~~ For a fourth or subsequent offense, the provisions of this title or any other statute notwithstanding, a court may consider prior offenses outside a 5-year period for sentencing pursuant to this paragraph. The provisions of § 4205(b)(5) (2) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. No conviction for violation of this chapter for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.

(5) In addition to the penalties otherwise authorized by this section, a person convicted of a violation of ~~§ 2302(a) of this title~~ § 1025 of Title 11 for operating a vessel, committed while a person who has not yet reached that person's seventeenth birthday is on or in the vessel shall:

c. Violation of this paragraph shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of ~~§ 2302(a) of this title~~ § 1025 of Title 11 for operating a vessel. Nothing

in this paragraph shall prevent conviction for a violation of both ~~§ 2302(a) of this title~~ § 1025 of Title 11 for operating a vessel and any offense as defined elsewhere by the laws of this State.

(6) A person who has been previously convicted of ~~prior or previous offenses under this chapter~~ § 1025 of Title 11 for operating a vessel need not be charged as a subsequent offender in the complaint, information or indictment against the person in order to render the person liable for the punishment imposed by § 1025 of Title 11 for operating a vessel or this chapter ~~on a person with prior or previous offenses under this chapter~~. However, if at any time after conviction and before sentence, it shall appear to the Attorney General or to the sentencing court that by reason of such conviction and prior or previous convictions, a person should be subjected to § 1025 of Title 11 for operating a vessel or paragraph (3) or (4) of this section, the Attorney General shall file a motion to have the defendant sentenced pursuant to those provisions. If it shall appear to the satisfaction of the Court at a hearing on the motion that the defendant falls within § 1025 of Title 11 for operating a vessel graded as a felony or paragraph (3) or (4) of this section, the Court shall enter an order declaring the offense for which the defendant is being sentenced to be a felony and shall impose a sentence accordingly.

(7) The Justice of the Peace Courts shall have jurisdiction for violations of this chapter, except those offenses which must be sentenced pursuant to § 1025 of Title 11 for operating a vessel graded as a felony, or paragraph (3) or (4) of this section.

Section 170. Amend § 2306, Title 23 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2306 Enforcement of chapter.

In addition to any other powers of arrest, any law-enforcement officer is hereby authorized to arrest without warrant any person who the officer has probable cause to believe has violated the provisions of this chapter, or § 1025 of Title 11 for operating a vessel regardless of whether the alleged violation was committed in the presence of such officer. This authority to arrest extends to any hospital or other medical treatment facility located beyond the territorial limits of the officer's jurisdiction provided there is probable cause to believe that the violation of this chapter or § 1025 of Title 11 for operating a vessel occurred within the officer's jurisdiction. This authority to arrest also extends to any place where the person is found within 4 hours of the alleged operation of a vessel if there is reason to believe the person has fled the scene of an accident in which the person was involved, and provided there is probable cause to

believe that the violation of this chapter or § 1025 of Title 11 for operating a vessel occurred within the officer's jurisdiction.

Section 171. Amend § 2308, Title 23 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2308 Disposition of vessel and property.

(a) Where the only person on a vessel is an individual suspected of violating this chapter or § 1025 of Title 11 for operating a vessel, the following procedure shall apply:

(b) Where more than 1 person is on a vessel which has been stopped for a suspected violation of this chapter or § 1025 of Title 11 for operating a vessel, the following procedure shall apply:

(d) Where a vessel which has been stopped for a suspected violation of this chapter or § 1025 of Title 11 for operating a vessel has been damaged or has caused damage as a result of its operation in violation of the chapter, the vessel may, at the direction of the investigating agency, be removed and impounded for evidentiary purposes. The vessel shall be inventoried pursuant to paragraph (a)(2) of this section, but the vessel shall not be released until evidentiary processing is completed.

Section 172. Amend § 901, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 901 License requirement.

No person shall engage in the business of selling any pistol or revolver, or stiletto, steel or brass knuckles, or other deadly weapon made especially for the defense of one's person without first having obtained a license therefor, which license shall be known as "special license to sell deadly weapons." ~~No person licensed or unlicensed shall possess, sell or offer for sale any switchblade knife.~~

This section shall not apply to toy pistols, pocket knives or knives used for sporting purposes and in the domestic household, or surgical instruments or tools of any kind.

Section 173. Amend § 903, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 903 Sale to persons under 21 or intoxicated persons.

~~No person shall sell to a person under the age of 21 or any intoxicated person any of the articles referred to in the first paragraph of § 901 of this title. [Deleted.]~~

Section 174. Amend § 904, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 904 Records.

(b) Any person engaging in the business described in this chapter shall keep and maintain a list of current employees including their names, former names used, dates of birth, physical descriptions and social security numbers. The required employee list and all attachments thereto shall be considered confidential but shall, nevertheless, be open for inspection by any police officer of this State or of any political subdivision of this State, within their respective jurisdiction, at any time, at the licensee's primary place of business and during the licensee's regular business hours. No person licensed under this chapter shall knowingly allow any employee who is a person prohibited from possessing a deadly weapon pursuant to ~~§ 1448 of Title 11~~ § 1404 of Title 11 to facilitate a sale of a deadly weapon. All employers licensed to do business pursuant to this chapter shall, prior to employment and at least once during each calendar year thereafter, perform a telephonic criminal history record check of each employee utilizing the procedures set forth in ~~§ 1448A~~ § 9904 of Title 11 and shall make and maintain a record thereof using the State Bureau of Identification Criminal History Record Information and Mental Health Information Consent Form (Form 544). A copy of each such form shall be attached to the above required employee list for inspection upon the valid request of a police officer of this State or of any political subdivision of this State, within their respective jurisdiction.

Section 174. Amend § 904A, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 904A Criminal history checks for sales between unlicensed persons.

(b) As a condition of its license, any dealer holding a license pursuant to this chapter shall facilitate the transfer of a firearm, as that term is defined in ~~§ 222 of Title 11~~ § 103 of Title 11, from any unlicensed person as that term is defined in ~~§ 1448B~~ § 9905 of Title 11, upon the request of said unlicensed person, pursuant to the following procedure:

(3) In the event that said record check reveals that the prospective buyer is prohibited from possessing, purchasing or owning a firearm pursuant to ~~§ 1448 of Title 11~~ § 1404 of Title 11, the dealer shall so inform both parties of that fact and the transfer shall not take place.

(c) Nothing in this section, or any other section of the Code, shall authorize or permit the State or any agency, department or instrumentality thereof to establish any system for the registration of firearms, firearm owners, or

firearm transactions or dispositions, except with respect to persons prohibited from receiving a firearm as set forth in ~~Chapter 5 of Title 11~~ § 1404 of Title 11. Any such system of registration is expressly prohibited.

Section 175. Amend § 905, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 905 Penalties.

~~Whoever violates this chapter shall be fined not more than \$250 or imprisoned not more than 6 months, or both.~~ [Deleted.]

Section 176. Amend § 1766, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1766 Penalties [See conflicting amendment, unable to be implemented, in 75 Del. Laws, c. 161, § 5.]

(b) ~~A person who terminates or attempts to terminate or assists in the termination of a human pregnancy otherwise than by birth, except in accordance with subchapter IX of this chapter, is guilty of a class C felony and shall be fined not more than \$5,000 and imprisoned not less than 2 nor more than 10 years.~~ [Deleted.]

Section 177. Amend § 5515, Title 24 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5515 Penalties.

(a) The Board shall have the power to impose a civil penalty upon any person required to be licensed under this chapter up to \$200, per day, for operating without a valid license.

(b) Anyone performing the duties of a BEA pursuant to § 5502 of this title, who is not duly licensed under this chapter shall be ~~guilty of a class F felony~~ subject to criminal penalties under § 1132 of Title 11.

Section 178. Amend Title 26 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 17. General provisions.

§ 1701 Definitions.

As used in this chapter:

(1) “Dissemination” means the act of transmitting, distributing, advising, spreading, communicating, conveying or making known.

(2) "Public utility" means a person, partnership, association or corporation owning or operating in this State equipment or facilities for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

§ 1702 Gambling; revocation of service contracts or denial of application for service; exemption from liability.

(a) The Attorney General, if the Attorney General has reasonable cause to believe that any service furnished by a public utility is being used or will be used to disseminate information in furtherance of gambling or for gambling purposes under Chapter 13 of Title 11, may give notice to the person who has contracted with or is applying to the public utility for such service that the Attorney General intends to seek a court order that the service contract be revoked or the application for service be denied.

(b) The notice permitted in subsection (a) of this section shall be served personally upon the person who has contracted with or is applying to the public utility for the service. If personal service is not reasonably possible, the notice may be posted in a conspicuous place on the premises to which the service is furnished. The notice shall specify the time and place where the hearing will be held, and the court before which it will be held.

(c) A hearing shall be held in the Superior Court at the time specified in the notice. At the hearing, evidence bearing on the use of the public utility service in question may be presented by the State and by or on behalf of the person who has contracted for or is applying for the service.

(d) If the Court, after hearing, determines that there is probable cause to believe that the service furnished by the public utility is being used or will be used to disseminate information in furtherance of gambling or for gambling purposes, it shall order that the contract to furnish the service be revoked or that the application for service be denied.

(e) No public utility shall be held liable at law or in equity for revocation of a contract, or denying an application for service, when ordered to do so as provided by this section.

Section 179. Amend § 901, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 901 Altering, defacing, concealing, etc., bills or acts; penalties.

(a) Whoever wilfully adds to, alters, defaces, erases, obliterates, mutilates, blots, blurs, steals, hides, conceals, destroys or misplaces, with intent to conceal, any act passed by the General Assembly of this State or any bill pending before either branch of the General Assembly or any committee thereof or any joint committee of the 2 Houses is

~~guilty of a felony and shall be fined not less than \$100 nor more than \$5,000 and costs of prosecution and shall also be imprisoned not less than 1 year nor more than 10 years shall be subject to criminal penalties under § 1243 of Title 11.~~

Section 180. Amend § 4713, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4713 DNA analysis and data bank.

(d) Any person who tampers or attempts to tamper with any biological sample or the container collected pursuant to subsection (b) or (c) without lawful authority shall be ~~guilty of a Class D felony~~ subject to criminal penalties under Chapter 12 of Title 11.

Section 181. Amend § 5404, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5404 Violation and penalty.

~~Any person who with intent to defraud uses on a public security or an instrument of payment:~~

~~(1) A facsimile signature, or any reproduction of it, of any authorized officer; or~~

~~(2) Any facsimile seal, or any reproduction of it, of this State or any of its departments, agencies or other instrumentalities or of any of its political subdivisions~~

~~is guilty of a felony and shall suffer such criminal sanctions and penalties as are appropriate in this State for conviction of the crime of forgery. [Deleted.]~~

Section 182. Amend § 571, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 571 Attempt to evade or defeat tax; ~~class E felony.~~

Any person who willfully attempts in any manner to evade or defeat any tax imposed by Title 4 or by this title, other than § 3002 and Chapters 51 and 52 of this title, or the payment thereof, shall, ~~in addition to the penalties imposed by law, be guilty of a Class E felony as defined in~~ be subject to criminal penalties under § 1243(a) and (b)(1)c. of Title 11.

Section 183. Amend § 572, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 572 Failure to collect or pay over tax; ~~class E felony.~~

Any person required under this title to collect, account for and pay over any tax imposed by Title 4 or by this title, other than § 3002 and Chapters 51 and 52 of this title, who willfully fails to collect or truthfully account for and pay over such tax ~~shall, in addition to other penalties provided by law, be guilty of a Class E felony as defined in~~ shall be subject to criminal penalties under § 1243(a) and (b)(1)c. of Title 11.

Section 184. Amend § 574, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 574 Fraud and false statements; ~~class E felony.~~

~~A person who commits one of the following acts shall be guilty of a Class E felony as defined in Title 11 if that person:~~

~~(1) Wilfully~~ (a) A person who wilfully makes and subscribes any return, statement or other document which contains or is verified by a written declaration that it is made under the penalties of perjury, and which the person does not believe to be true and correct as to every material ~~matter; or matter,~~ shall be subject to criminal penalties under § 1222 of Title 11.

~~(2) Wilfully~~ (b) A person who wilfully aids or assists in, or procures, counsels or advises the preparation or presentation under, or in connection with any matter arising under Title 4 or this title, other than § 3002 and Chapters 51 and 52 of this title, of a return, affidavit, claim or other document, which is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or ~~document; or document,~~ shall be subject to criminal penalties under § 1223 of Title 11 and, as applicable, § 210 of Title 11.

~~(3) Simulates~~ (c) A person who simulates or falsely or fraudulently executes or signs any bond, permit, entry or other document required by the provisions of Title 4 or this title, other than § 3002 and Chapters 51 and 52 of this title, or by any regulation made in pursuance thereof, or procures the same to be falsely or fraudulently executed, or advises, aids in or connives at such execution ~~thereof; or thereof,~~ shall be subject to criminal penalties under § 1121(a) and, as applicable, § 210 of Title 11.

~~(4) Removes~~ (d) A person who removes, deposits or conceals, or is concerned in removing, depositing or concealing, any goods or commodities for or in respect whereof any tax is or shall be imposed, or any property which is subject to attachment or garnishment for payment of taxes, with intent to evade or defeat the assessment

or collection of any tax imposed by Title 4 or by this title, other than § 3002 and Chapters 51 and 52 of this title, shall be subject to criminal penalties under § 1242(a) and (b)(1)c. of Title 11.

Section 185. Amend § 5139, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5139 Violations and penalties; enforcement.

(a) *Acts forbidden.* — It shall be unlawful for any person to:

(1) Refuse or knowingly and intentionally fail to make and file any statement required by this chapter in the manner or within the time required;

(b) *Penalties and remedies.* — Any person violating subsection (a) of this section ~~is guilty of a class A misdemeanor; provided, however, that if the violation results in an evasion or wrongful withholding of special fuel tax amounting to more than \$500, then the violation shall constitute a class E felony. Any person who has once been convicted of any violation of subsection (a) of this section and who thereafter is convicted of any subsequent violation of subsection (a) of this section shall be guilty of a class E felony. The Superior Court shall have the exclusive jurisdiction over those violations enumerated in subsection (a) of this section~~ who refuses or fails to file shall be subject to criminal penalties under § 1223 of Title 11. Any person violating subsection (a) of this section who knowingly and intentionally fails to make and file any statement that results in an evasion of wrongful withholding of special fuel tax amounting to more than \$500 shall be subject to criminal penalties under §§ 1243(a) and (b)(1)c. of Title 11.

Section 186. Amend § 311, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 311 Penalties regarding background checks for child-serving entities and personal information disclosure.

(c) Any person seeking employment with a child-serving entity or any person seeking a license under Chapter 12 of Title 14 who knowingly provides false, incomplete or inaccurate criminal history information, Child Protection Registry information, or child sex abuser information or who otherwise knowingly violates § 309 of this title shall be ~~guilty of a class G felony and shall be punished according to Chapter 42 of Title 11. The Superior Court shall have exclusive jurisdiction for any offense under this subsection~~ subject to criminal penalties under § 1223 of Title 11.

Section 187. Amend § 610, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 610 Unauthorized use, transfer, acquisition, alteration or possession of food stamp coupons, Authorization to Participate Vouchers (ATPS), or access devices; penalties; disqualification from the food stamp program; forfeiture.

(a) Whoever knowingly uses, transfers, acquires, alters or possesses food stamp coupons, authorization cards, ATPs or access devices in any manner not authorized by the federal Food Stamp Act (7 U.S.C. § 2011 et seq.) or regulations issued pursuant to the Food Stamp Act; or who presents for payment or redemption coupons that have been illegally received, transferred, altered or used ~~shall:~~ shall be subject to criminal penalties under Subchapter I of Chapter 11 of Title 11.

~~(1) If such food stamp coupons, authorization cards or ATPs are of a value of \$500 or more or the item used, transferred, acquired, altered or possessed is an access device that has a value of \$500 or more, be guilty of a class E felony.~~

~~(2) If such coupons, authorization cards or ATPs are of a value of less than \$500 or if the item used, transferred, acquired, altered or possessed is an access device that has a value of less than \$500, be guilty of a class A misdemeanor.~~

~~(3) In any prosecution under this section where there is a finding that the proceeds of the trafficking involves firearms ammunition, explosives or controlled substances as defined under 21 U.S.C. § 802 be guilty of a class B felony. [Deleted.]~~

Section 188. Amend § 1003, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1003 Obtaining benefit under false representation.

~~It shall be unlawful for any provider, by means of a false statement or representation, or by concealment of, or failure to disclose any material fact, or by any other fraudulent scheme or device on behalf of the provider or others to obtain or attempt to obtain payments or any other property, under any public assistance program established by the State to which the provider is not entitled, in whole or in part. [Deleted.]~~

Section 189. Amend § 1004, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1004 Reports, statements and documents.

~~It shall be unlawful for any provider to:~~

~~(1) Falsify any report, statement or document required to be filed in connection with any public assistance program;~~

~~(2) Include in any cost report or reports for reimbursement any amount or item which the provider knew or should have known was not used in providing service to the recipient for which the amount is paid or to be paid;~~

~~(3) Make or cause to be made a statement or representation for use in qualifying as a provider of goods or service under any public assistance program, knowing that statement or representation to be false, in whole or in part by commission or omission; or~~

~~(4) Make or cause to be made a false statement or representation of a material fact with respect to the conditions or operation of a provider or facility in order that such provider or facility may qualify or remain qualified to provide assistance under any public assistance program. [Deleted.]~~

Section 190. Amend § 1007, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1007 Penalties.

(a) Whoever knowingly violates §§ ~~1003, 1004(2) and 1006~~ § 1006 of this title shall be guilty of a class A misdemeanor; provided, that, where the value of assistance benefits, payments or other property is \$500 or more, but less than \$10,000, the violator shall be guilty of a class E felony; further provided, that, where the value of assistance, benefits, payments or other property is \$10,000 or more, the violator shall be guilty of a class C felony.

~~(b) Whoever violates § 1004(1) of this title, shall be guilty of a class A misdemeanor. [Deleted.]~~

(c) Whoever violates §§ ~~1004(3) and (4) and 1005~~ § 1005 of this title, shall be guilty of a class ~~E felony~~ A misdemeanor.

~~(d) In addition to the penalties provided herein, every provider convicted under this chapter shall make full restitution of the money, goods or services or the value of those goods or services unlawfully received, plus interest on that amount at the rate of 1.5% per month, for the period from the date upon which payment was made to the date upon which repayment is made to the State. [Deleted.]~~

(e) Upon conviction under this chapter, or Chapter 11 of Title 11, such provider shall not be eligible for any further participation in the Delaware Public Assistance Program; provided, however, that where the community interest would be adversely affected, the Secretary of the Department of Health and Social Services, or the Secretary's designee, shall, upon petition of the provider, conduct a hearing on the record, to determine the need for a comparable

provider to render the needed services to the community, and whether this provider's continued participation in the program is in the best interest of the State. Where this is established, the provider may continue in the program under such conditions as the Secretary may impose.

Section 191. Amend § 3902, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3902 Definitions.

As used in this chapter:

(6) "Elderly person" ~~has the same meaning as defined in § 222 of Title 11~~ means any person who is 62 years of age or older. Thus, the terms "elderly person" and "person who is 62 years of age or older" shall have the same meaning as used in this Code or in any action brought pursuant to this Code.

(23) "Vulnerable adult" ~~means an adult who meets the criteria set forth in § 1105(e) of Title 11~~ a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation, the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.

Section 192. Amend § 3912, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3912 Confidentiality of records.

(a) All records and information in the possession of Adult Protective Services or anyone providing service to an adult protective services client and the client's relatives shall be deemed confidential, and shall be disclosed only pursuant to an appropriate court order, or pursuant to the consent of the recipient of the services, where the recipient is legally competent to so consent. Notwithstanding the foregoing, disclosure shall not be unlawful when necessary for purposes directly connected with the administration of adult protective services, or when the identity of the recipient or recipients of such services is not revealed by the disclosure, such as in the case of disclosure of statistics or other such summary information.

(b) ~~Violation of this section is an unclassified misdemeanor. The Superior Court shall have jurisdiction over violations of this section. [Deleted.]~~

Section 193. Amend § 3913, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3913 Violations.

~~(a) Any person who knowingly or recklessly abuses, neglects, exploits or mistreats an adult who is impaired shall be guilty of a class A misdemeanor.~~

~~(b) Any person who knowingly or recklessly exploits an adult who is impaired by using the resources of an adult who is impaired shall be guilty of a class A misdemeanor where the value of the resources is less than \$500 and a class G felony where the value of the resources is \$500 or more but less than \$5,000. If the value of the resources is \$5,000 or more but less than \$10,000, the person shall be guilty of a class E felony. If the value of the resources is \$10,000 or more but less than \$50,000, the person shall be guilty of a class D felony and if the value of the resources is \$50,000 or more the person shall be guilty of a class C felony. Any subsequent conviction under this subsection shall be treated as a class C felony regardless of the amount of resources exploited.~~

~~(c) Any person who knowingly or recklessly abuses, neglects, exploits or mistreats an adult who is impaired, and causes bodily harm, permanent disfigurement or permanent disability shall be guilty of a class D felony. Where the abuse, mistreatment or neglect results in death, such person shall be guilty of a class A felony. [Deleted.]~~

Section 194. This Act shall take effect subject to the enactment of the improved Criminal Code.

SYNOPSIS

Delaware's existing Criminal Code was adopted in 1973 and was based on the Model Penal Code. Since that time, the Criminal Code has quadrupled in size and expanded to other parts of the Code without consideration to the general effects of the change on the Criminal Code's overall structure, its terminology, or its application, creating numerous inconsistencies, redundancies, ambiguities and contradictions. This Act is one of two bills that seek to bring back proportionality, clarity, and consistency to the Criminal Code. Passage of this Act is contingent on the passage of the other bill that revises Title 11, Part I, and that would take effect 20 months after its passage.