SPONSOR: Sen. Townsend & Sen. Pettyjohn & Rep. Romer
Sens. Hansen, Lockman, Mantzavinos, Pinkney, Poore, Walsh; Reps. Griffith, Lambert, Neal, Phillips

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1
FOR
SENATE BILL NO. 17

AN ACT TO AMEND TITLE 10, TITLE 11, AND TITLE 19 OF THE DELAWARE CODE RELATING TO CRIME VICTIMS AND WITNESSES.

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

Section 1. Amend Chapter 94, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

Chapter 94. Crime Victims' Bill of Rights

Subchapter I. ~~Victims Generally~~ Crime Victims' Rights

§ 9401. Definitions.

~~As used in this chapter, unless the context otherwise requires:~~ For purposes of this chapter:

(1) ~~"Court" means the Superior Court, Family Court, Court of Common Pleas, or the Justice of the Peace Court.~~

~~(2)~~ "Crime" means any of the following:

a. An offense against the person under subchapter II of Chapter 5 of this title.

b. Under subchapter III of Chapter 5 of this title, any of the following offenses involving property:

1. A felony under Subpart A through Subpart E.

2. An offense under § 811, § 820, § 823, § 840, § 841, § 848, § 851, § 861, § 900, or § 903.

c. Under Subpart A of subchapter V of Chapter 5 of this title, an offense relating to children or a vulnerable adult.

d. Under Subpart F of subchapter VI of Chapter 5 of this title, an offense relating to judicial or similar proceedings under § 1261, § 1263, § 1263A, § 1264, § 1271, or § 1271A.

e. Under Subpart A of subchapter VII of Chapter 5 of this title, an offense against public health, order or decency under § 1311 through § 1313, or § 1339.

f. Under Chapter 21 of this title, noncompliance with conditions of release bond under § 2113.

g. Under Chapter 35 of this title, intimidation of a victim or witness under § 3532 or § 3533.

h. Under § 4176A of Title 21, operation of a vehicle causing death.

i. Any offense when any of the following apply:

1. The act was committed against an individual who is in a protected class as defined in § 1041(2) of Title 10.

2. The conduct constitutes abuse under § 1041(1) of Title 10.

3. The conduct is grounds for a sexual violence protective order under Chapter 72 of Title 10.

~~an act or omission committed by a person, whether or not competent or an adult, which, if committed by a competent adult, is punishable by incarceration and which violates 1 or more of the following sections of this title:~~

~~*OFFENSES AGAINST THE PERSON*~~

~~601. Offensive touching; unclassified misdemeanor.~~

~~602. Menacing; unclassified misdemeanor.~~

~~603. Reckless endangering in the second degree; class A misdemeanor.~~

~~604. Reckless endangering in the first degree; class E felony.~~

~~611. Assault in the third degree; class A misdemeanor.~~

~~612. Assault in the second degree; class D felony.~~

~~613. Assault in the first degree; class C felony.~~

~~621. Terroristic threatening.~~

~~628A. Vehicular assault in the second degree; class B misdemeanor.~~

~~629. Vehicular assault in the first degree; class A misdemeanor.~~

~~630. Vehicular homicide in the second degree; class F felony; minimum sentence; juvenile offenders.~~

~~631. Criminally negligent homicide; class E felony.~~

~~631A. Vehicular homicide in the first degree; class E felony; minimum sentence; juvenile offenders.~~

~~632. Manslaughter; class C felony.~~

~~635. Murder in the second degree; class B felony.~~

~~636. Murder in the first degree; class A felony.~~

~~645. Promoting suicide; class F felony.~~

~~764. Indecent exposure in the second degree; unclassified misdemeanor.~~

~~765. Indecent exposure in the first degree; class A misdemeanor.~~

~~766. Incest; class A misdemeanor.~~

~~767. Unlawful sexual contact in the third degree; class A misdemeanor.~~

~~768. Unlawful sexual contact in the second degree; class G felony.~~

~~769. Unlawful sexual contact in the first degree; class F felony.~~

~~[Former] 770. Unlawful sexual penetration in the third degree; class E felony.~~

~~[Former] 771. Unlawful sexual penetration in the second degree; class D felony.~~

~~[Former] 772. Unlawful sexual penetration in the first degree; separate charges; class C felony.~~

~~[Former] 773. Unlawful sexual intercourse in the third degree; class C felony.~~

~~[Former] 774. Unlawful sexual intercourse in the second degree; class B felony.~~

~~[Former] 775. Unlawful sexual intercourse in the first degree; class A felony.~~

~~770. Rape in the fourth degree; class C felony.~~

~~771. Rape in the third degree; class B felony.~~

~~772. Rape in the second degree; class B felony.~~

~~773. Rape in the first degree; class A felony.~~

~~781. Unlawful imprisonment in the second degree; class A misdemeanor.~~

~~782. Unlawful imprisonment in the first degree; class G felony.~~

~~783. Kidnapping in the second degree; class C felony.~~

~~783A. Kidnapping in the first degree; class B felony.~~

~~785. Interference with custody; class G felony; class A misdemeanor.~~

~~787. Trafficking of an individual, forced labor and sexual servitude.~~

~~*OFFENSES INVOLVING PROPERTY*~~

~~801. Arson in the third degree; affirmative defense; class G felony.~~

~~802. Arson in the second degree; affirmative defense; class D felony.~~

~~803. Arson in the first degree; class C felony.~~

~~811. Criminal mischief; felony.~~

~~823. Criminal trespass in the first degree; class A misdemeanor.~~

~~824. Burglary in the third degree; class F felony.~~

~~825. Burglary in the second degree; class D felony.~~

~~826. Burglary in the first degree; class C felony.~~

~~[Former] 826A. Home invasion; class B felony.~~

~~831. Robbery in the second degree; class E felony.~~

~~832. Robbery in the first degree.~~

~~[Former] 835. Carjacking in the second degree; class E felony; class D felony.~~

~~[Former] 836. Carjacking in the first degree; class C felony; class B felony.~~

~~840. Shoplifting; class G felony; class A misdemeanor.~~

~~841. Theft; class G felony; class A misdemeanor.~~

~~846. Extortion; class E felony.~~

~~848. Misapplication of property; class G felony; class A misdemeanor.~~

~~851. Receiving stolen property; class G felony; class A misdemeanor.~~

~~854. Identity theft; class E felony; class D felony.~~

~~861. Forgery; class F felony; class G felony; class A misdemeanor; restitution required.~~

~~900. Issuing a bad check; class A misdemeanor; class G felony.~~

~~903. Unlawful use of payment card; class G felony; class A misdemeanor.~~

~~*OFFENSES RELATING TO CHILDREN AND VULNERABLE ADULTS*~~

~~1101. Abandonment of child; class A misdemeanor.~~

~~1102. Endangering the welfare of a child; class A misdemeanor or higher.~~

~~1103. Child abuse in the fourth degree; class A misdemeanor.~~

~~1103A. Child abuse in the third degree; class D felony.~~

~~1103B. Child abuse in the second degree; class B felony.~~

~~1103C. Child abuse in the first degree; class A felony.~~

~~1103D. Child torture; a class B felony.~~

~~1103E. Continuous child abuse; class G or B felony.~~

~~1105. Crime against a vulnerable adult; class A misdemeanor or higher.~~

~~1108. Sexual exploitation of a child; class B felony.~~

~~1112A. Sexual solicitation of a child; class C felony; class B felony.~~

~~1112B. Promoting sexual solicitation of a child; class C felony; class B felony.~~

~~*OFFENSES RELATING TO JUDICIAL AND SIMILAR PROCEEDING*~~

~~1261. Bribing a witness; class E felony.~~

~~1263. Tampering with a witness; class E felony.~~

~~1263A. Interfering with child witness.~~

~~1264. Bribing a juror; class E felony.~~

~~1312. Aggravated harassment; class B misdemeanor.~~

~~1312A. Stalking; class F felony.~~

~~*OFFENSES AGAINST PUBLIC HEALTH*~~

~~1339. Adulteration; class G felony; class E felony; class A felony.~~

~~*RELEASE OF PERSONS ACCUSED OF CRIMES*~~

~~2113. Penalties for noncompliance with conditions of recognizance; bond or conditions.~~

~~*WITNESS AND EVIDENCE*~~

~~3532. Act of intimidation; class E felony.~~

~~3533. Aggravated act of intimidation; class D felony.~~

(2)a. "Individual with a cognitive disability" means an individual with a cognitive disability as "cognitive disability" is defined in § 761 of this title.

b. "Individual with a cognitive disability" does not include an individual with a cognitive disability accused of committing a felony, however, at the court's discretion, "individual with a cognitive disability" may include any of the following:

1. An individual with a cognitive disability when the individual's participation in a felony appears to have been induced, coerced, or unwilling.

2. An individual with a cognitive disability who participated in the felony, but who has subsequently and voluntarily agreed to testify on behalf of the State.

(3) "Law-enforcement agency" means any of the following:

a. A police department.

b. The Department of Justice.

c. The Department of Correction, including Probation and Parole.

~~(3)~~ (4) "Member of the victim's family" means ~~the~~ a spouse, ~~a child by birth or adoption, a~~ child, stepchild, ~~a~~ parent, ~~a~~ stepparent, ~~a sibling or an individual designated by the victim or by a court in which the crime is being or could be prosecuted, but~~ or sibling. "Member of the victim's family" does not include an individual who is accountable for the crime or a crime arising from the same conduct, criminal ~~episode~~ episode, or plan.

~~(4)~~ (5) "Person" means an individual, ~~corporation, statutory trust, business trust,~~ estate, ~~trust, partnership, association, joint venture,~~ business or nonprofit entity, ~~government,~~ government or governmental subdivision, ~~agency~~ agency, or ~~instrumentality~~ instrumentality, or any other legal ~~or commercial~~ entity.

~~(5) "Prosecutor" means a representative of the office of the Attorney General.~~

(6)a. "Representative of ~~the~~ a victim" means ~~a member of the victim's family or an~~ any of the following:

1. An individual designated by the victim or by a ~~court in which the crime is being or could be prosecuted.~~ court.

2.A. If the victim is deceased, a member of the victim's family, except if paragraph (6)a.2.B. of this section applies.

B. If the deceased victim is a child and a sibling of the victim is in the custody of the Department of Services for Children, Youth and their Families (DSCYF) under Chapter 25 of Title 13, DSCYF or the sibling's attorney appointed under § 9007A of Title 29.

3. The parent, guardian, or custodian of a victim who is unable to meaningfully understand or participate in the proceedings because the victim is a child or an individual with a physical, psychological, or mental impairment.

4. If the victim is a child in the custody of the DSCYF under Chapter 25 of Title 13, DSCYF or the child's attorney appointed under § 9007A of Title 29.

b. "Representative of a victim" does not include an individual who is accountable for the crime or a crime arising from the same conduct, criminal episode, or plan.

(7) "Sex offense" means all offenses under Chapter 5, subchapter II, Subpart D of this title.

(8) "Supervisor" means an employee or official of an agency who has legal authority to issue directives to subordinate employees or officials.

~~(7)~~ (9) "Victim" means the victim of a crime and includes all of the following:

a. The ~~person, organization, partnership, business, corporation, agency or governmental entity~~ person identified as the victim of a crime in a police report, a criminal complaint or warrant, an indictment or information or other charging instrument. ~~"Victim" includes a parent, guardian or custodian of a victim who is unable to meaningfully understand or participate in the legal process due to physical, psychological or mental impairment. "Victim" includes the following relations of a deceased victim if the relation is not the defendant, codefendant~~ or ~~conspirator:~~

~~a. The spouse;~~

~~b. An adult child or stepchild;~~

~~c. A parent; or~~

~~d. A sibling.~~

~~e. "Victim" includes qualifying neighborhood or homeowners associations as defined by § 9419 of this title.~~ b. The representative of a victim.

(10) "Victim advocate" means an individual who is an employee or in a formal volunteer role with a victim services agency to provide victim services to victims and includes victim services professionals.

(11) "Victim services" means any of the following, including by referral to another entity:

a. Crisis intervention services, including a crisis hotline.

b. Emergency assistance, which includes food, shelter, housing assistance, clothing, financial assistance, and legal assistance.

c. Orientation to and information about the criminal justice system, including court proceedings.

d. Information about legal rights, protections, and the criminal justice process.

e. Trauma-informed counseling.

f. Advocacy regarding legal protection provided to victims of crime, including legal assistance.

g. Assistance with understanding and completing civil court documents.

h. Assistance with an application to the Victims' Compensation Assistance Program.

i. Assistance with safety planning.

j. Support during any meeting, process, or proceeding necessary as a result of the crime.

(12) "Victim services agency" means a public or private organization that provides victim services.

(13) "Victim services professional" means an individual who is employed by a law-enforcement agency to provide victim services.

~~(8)~~ (14)a. "Witness" means ~~any person~~ an individual ~~other than a law-enforcement officer or probation officer who has~~ for whom any of the following apply:

1. Has knowledge of the existence or nonexistence of any fact related to any ~~crime, or any person who~~ crime.

2. Has reported any crime to ~~any~~ a law-enforcement officer or probation ~~officer, or any person other than a law-enforcement officer or probation officer who~~ officer.

3. Has been designated for service with a ~~subpoena issued by any court or by the Attorney General, or any person other than a law-enforcement officer or probation officer who would~~ subpoena.

4. Would be believed by any reasonable person to be an individual ~~described by this paragraph.~~ under paragraphs (14)a.1. through (14)a.3. of this section.

b. "Witness" does not include a law-enforcement officer or probation officer in the performance of their official duties.

§ 9402. Compliance with chapter.

(a) ~~This chapter shall apply to the victims of the crimes defined in § 9401(2) of this title, and to witnesses to such crimes, as specified in § 9403 of this title, and to qualifying neighborhood or homeowners associations where illegal drug activity occurs as defined in § 9419 of this title. Consistent with the duty to represent the interests of the public as a whole, the Attorney General~~ The Department of Justice shall enforce compliance with this chapter on behalf of victims, ~~witnesses~~ witnesses, and members of their families.

(1) Each law-enforcement agency shall designate a supervisor who shall receive, review, and promptly address complaints of noncompliance with this chapter.

(2) A complaint under paragraph (a)(1) of this section may be filed by the victim, witness, or by an individual on behalf of a victim or witness.

(3)a. At the conclusion of the investigation of a complaint under paragraph (a)(2) of this section, the law-enforcement agency shall send the complainant a written summary of the investigation that states whether or not the law-enforcement agency complied with this chapter.

b. If the law-enforcement agency finds that it complied with this chapter, the written summary under paragraph (a)(3)a. of this section must include information regarding how a complaint against the law-enforcement agency may be made to the Department of Justice.

(b) ~~Failure~~ (1) The failure to comply with this chapter does not create a claim for damages against a government employee, ~~official~~ official, or entity.

(2) In addition to the administrative remedy under subsection (a) of this section, the sole civil or criminal remedy available to a victim or witness for a law-enforcement agency's failure to fulfill its responsibilities under this chapter is standing to file a writ of mandamus under § 564 of Title 10 to require compliance with those requirements.

(c) ~~Failure~~ (1) The failure to provide a right, ~~privilege~~ privilege, or notice to a victim or witness under this chapter ~~shall not be grounds for the defendant to seek to have a conviction or sentence set aside.~~ does not affect the validity of an agreement between the State and the defendant or of an amendment, dismissal, plea, pretrial diversion, or other disposition of the case.

(2) A defendant or person accused or convicted of a crime against the victim does not have standing to object to any failure to comply with the requirements under this chapter.

§ 9403. ~~Nondisclosure of information about victim.~~ Rights of victims.

~~(a) Unless a victim or witness waives confidentiality in writing, neither a law-enforcement agency, the prosecutor, nor the corrections department may disclose, except among themselves or as authorized by law, the residential address, telephone number or place of employment of the victim or a member of the victim's family, or the identity, residential address, telephone number or place of employment of a witness or a member of the witness's family, except to the extent that disclosure is of the site of the crime, is required by law or the Rules of Criminal Procedure, is necessary for law-enforcement purposes, or is permitted by the court for good cause.~~

A victim of crime has all of the following rights:

(1) To maintain the confidentiality of their personal information as follows:

a. A law-enforcement agency may not disclose the residential address, telephone number, school, or place of employment of the victim or a member of the victim's family, except as allowed under paragraph (1)d. of this section:

~~(b)~~ b. A court may not compel a victim or ~~witness or~~ a member of the victim's ~~or witness's~~ family testifying in a criminal ~~justice~~ proceeding to disclose ~~a~~ their residential ~~address~~ address, school, or place of employment on the record unless ~~the court finds that disclosure of the information is necessary.~~ allowed under paragraph (1)d. of this section.

~~(c) The victim's address, place of employment and telephone number and any witness's identity, address, place of employment and telephone number, maintained by a court, prosecutor or law-enforcement agency pursuant to this chapter is exempt from disclosure~~

c. The information about a victim or a member of the victim's family under paragraphs (1)a. and (1)b. of this section is not a public record under the Freedom of Information ~~Act [Chapter 100 of Title 29].~~ Act, Chapter 100 of Title 29.

~~(d) An exception to this section is whenever a "peace officer" as defined in § 1901 of this title or an "emergency-care provider" as defined in § 2503A of Title 16 alerts a school district or charter school about the presence of a minor child or a child that has reached the age of 18 that continues to be enrolled in high school that has been identified at the scene of a traumatic event. The peace officer or emergency-care provider may only release the student's name directly to the school district or charter school and state that the student was present at the scene of a traumatic event.~~

d. A law-enforcement agency may disclose, or a court may compel testimony about, the information under paragraphs (1)a. through (1)b. of this section if any of the following apply:

1. The individual waives confidentiality in writing.

2. The individual's residential address, school, or place of employment is the site of the crime.

3.A. Disclosure of the information is required by law or the Rules of Criminal Procedure, necessary for law-enforcement purposes, or a court finds that there is good cause and the disclosure is necessary.

B. To alert a school district or charter school, under § 8502(8)e. of this title, that a minor child or a child that has reached the age of 18 that continues to be enrolled in high school has been identified at the scene of a traumatic event.

(2) To the expeditious disposition of the criminal action.

a. The court shall consider the interest of the victim in a speedy prosecution.

b. If the victim is a child, the trial must be expedited, especially if the case involves child abuse or child sexual abuse.

c. If the victim is an individual with a cognitive disability, the court and the prosecution shall take appropriate action to ensure a prompt trial in order to minimize the length of time the victim must endure the stress of the victim's involvement in the proceedings. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact the delay or continuance might have on the well-being of any victim who is an individual with a cognitive disability.

(3) To be safe.

a. A law-enforcement agency shall provide information to a victim about the procedures to follow if the victim is threatened, intimidated, or harassed.

b. The court shall provide a waiting area for a victim that is separate and secure from the defendant, defendant's relatives, and defense witnesses if available and the use of the area is practicable. If a separate and secure waiting area is not available or practicable, the court shall provide other safeguards to minimize the victim's contact with the defendant, defendant's relatives, and defense witnesses during proceedings.

c. When attending proceedings at a court, a victim has the right to express safety concerns and to request reasonable measures to ensure their safety, including modifications to standard practices, policies, and procedures.

d. A law-enforcement agency must provide a victim notice of the availability of information concerning pretrial release.

e. Post-conviction, a victim has a right to notice of the defendant's projected release date and actual date of release or release to a community-based program.

(4)a. To confer with the prosecutor.

b. If the victim is an individual with a cognitive disability, to an explanation, in language the victim understands, of all proceedings in which the victim will be involved.

(5) To review the portions of recordings derived from body-worn cameras that includes statements made by the victim.

(6) To be present at all stages of criminal proceedings for the crime under § 3512 of this title.

a. A victim must be promptly informed of the date, time, and place of each proceeding at which the victim has a right to be present or if a proceeding has been rescheduled, unless the victim requests that notice of proceedings not be provided.

b. A member of the victim's family has the right to attend proceedings with the victim.

c. A victim may designate another individual to attend proceedings if the victim chooses not to attend.

d. At the victim's request, the court shall permit the presence of an individual to provide support to the victim at a proceeding unless the court determines that the exclusion of the individual is necessary to protect the defendant's right to a fair trial.

e. If the victim is an individual with a cognitive disability, the individual who attends the proceedings under paragraph (6)d. of this section may advise the judge, when appropriate, as a friend of the court, regarding the victim's cognitive disability and the victim's ability to understand proceedings and questions.

(7) To be notified of significant developments regarding the defendant or the case, including any of the following:

a. If the Department of Justice chooses not to pursue prosecution and the legal basis for the decision.

b. Any appeal or request for post-conviction remedy, information about related hearings, and the decision from any such hearing.

c. If there is a change or a pending change in the defendant's custody status.

(8) To have a voice in the sentencing and post-sentencing process, including all of the following:

a. To confer with the Investigative Services Officer during a presentence investigation under § 4331 of this title.

b. To be present at sentencing and to make a statement. This statement may be made in addition to the statement under § 4331 of this title.

c. To address, in writing or in person, the Board of Parole under § 4347 of this title and the Board of Pardons under § 4361 of this title.

(9)a. If available, to have a victim advocate present with them during all of the following:

1. A medical exam.

2. Meetings with law-enforcement, including when reporting and during interviews.

3. Trial preparation.

4. Court appearances, including a hearing for a Protection From Abuse or Sexual Violence Protective order, a trial and ancillary discussions, or sentencing.

5. A hearing of the Board of Parole or the Board of Pardons.

b. Paragraph (9)a. of this section means that a victim advocate cannot be prohibited from attending with a victim if the victim requests that the victim advocate attend.

c. Paragraph (9)a. of this section does not require that a law-enforcement agency or victim services agency make a victim advocate available to attend an event with a victim.

(10) To the prompt return of property from a law-enforcement agency when the property is no longer needed for evidentiary purposes unless the property is illegal or subject to forfeiture.

(11)a. To information about victim services.

b. If a victim is an individual with a cognitive disability, the victim's family is also entitled to the information under paragraph (11)a. of this section and to specific information regarding coping with the emotional impact of the crime and the subsequent proceedings in which the victim will be involved.

(12)a. To notice of the rights of victims under this chapter.

b. To file a complaint against the law-enforcement agency under § 9402 of this title for non-compliance with this chapter.

§ 9403A. Rights of victims; prohibition against detaining a victim exclusively for immigration violation or to turn over to federal immigration authorities absent warrant.

(a) It is the public policy of this State to protect the public from crime and violence by encouraging all persons who are victims of crimes to cooperate with the criminal justice system and not to penalize these persons for being victims or for cooperating with the criminal justice system.

(b) If an individual is a victim of a crime, a law-enforcement officer may not detain the individual exclusively for any actual or suspected immigration violation or turn the individual over to federal immigration authorities absent a judicial warrant or a valid court order.

§ 9404. ~~Victim's interest in speedy prosecution; child victim or witness~~

~~(a) The court shall consider the interest of the victim in a speedy prosecution.~~

~~(b) Proceedings shall be expedited in cases involving a child victim or witness particularly in child abuse and sexual abuse cases.~~ [Transferred.]

§ 9405. ~~Prosecutor to confer with victim.~~

~~Consistent with the duty to represent the interests of the public as a whole, the prosecutor shall confer with a victim before amending or dismissing a charge or agreeing to a negotiated plea or pretrial diversion. Failure of the Attorney General to confer with the victim does not affect the validity of an agreement between the State and the defendant or of an amendment, dismissal, plea, pretrial diversion or other disposition of the case.~~ [Transferred.]

§ 9406. ~~Safety of victim.~~

~~(a) The court shall provide a waiting area for victims separate from the defendant, defendant's relatives and defense witnesses if such an area is available and the use of the area is practicable. If a separate waiting area is not available or practical, the court shall provide other available safeguards to minimize the victim's contact with the defendant, defendant's relatives and defense witnesses during court proceedings.~~

~~(b) At the initial contact, the victim shall be provided written information by the investigating law-enforcement agency to whom the victim can contact to ascertain if the defendant is released from custody, and the procedures that the victim may follow if threatened, intimidated or if conditions of bail or custody are not complied with.~~ [Transferred.]

§ 9407. ~~Presence at court proceedings; notice.~~

~~(a) A victim or an individual designated by the victim may be present whenever a defendant has a right to be present during a court proceeding concerning the crime charged other than a grand jury proceeding, unless good cause can be shown by the defendant to exclude the victim. If the victim is present, the court, at the victim's request, shall permit the presence of an individual to provide support to the victim, unless the court determines that exclusion of the individual is necessary to protect the defendant's right to a fair trial.~~

~~(b) The victim shall promptly be informed of the date, time and place of each court proceeding relative to the disposition of the case at which the victim has a right to be present, unless a victim requests that notice of proceedings not be provided under this chapter.~~ [Transferred.]

§ 9408. ~~Prompt return of property.~~

~~The agency holding the property shall promptly return the property to the victim when it is no longer needed for evidentiary purposes unless it is contraband or subject to forfeiture.~~ [Transferred.]

§ 9409. Limitations on employer.

(a) An employer may not discharge or discipline a victim or a representative of the victim ~~for:~~ any of the following:

(1) Participation at the prosecutor's request in preparation for a ~~criminal justice proceeding;~~ proceeding.

(2) Attendance at a ~~criminal justice~~ proceeding if the attendance is reasonably necessary to protect the interests of the ~~victim; or~~ victim.

(3) Attendance at a ~~criminal justice~~ proceeding in response to a subpoena.

(b) An employer must comply with other applicable laws protecting victims or witnesses, including all of the following:

(1) For a subpoenaed school employee under § 1318(f)(2)a. of Title 14.

(2) For a victim of domestic violence, a sexual offense, or stalking under § 711(i) of Title 19.

§ 9410. Information from a law-enforcement ~~agency.~~ agency at initial contact.

(a) At the initial contact between the victim of a reported crime and the law-enforcement agency ~~having responsibility~~ responsible for investigating that crime, ~~that~~ the law-enforcement agency shall promptly ~~give in writing to the victim:~~ provide the victim all of the following:

(1) ~~An explanation of the victim's rights under this chapter;~~ A copy of the initial incident report with the explanation of a victim's rights created under § 9414 of this title.

(2) ~~Information concerning the availability of social service and other assistance to victims;~~

~~(3) A copy of the initial incident report;~~

~~(4)~~ Notice of the availability of a victim service unit within the Department or, in the absence of a unit within that law-enforcement agency, the availability of the Statewide Victim ~~Center;~~ Center.

~~(5) Notice of~~ (3) Information about the Victims' Compensation Assistance ~~Program;~~ Program under Chapter 90 of this title.

~~(6) Notice of availability of information concerning pretrial release; and~~

~~(7) Source of information at the investigating law-enforcement agency where the victim may check the status of any arrest.~~

(4) How the victim can obtain the information about the status of any arrest or pretrial release.

(5) The procedures that the victim may follow if threatened, intimidated, or if the defendant fails to comply with conditions of bail or custody.

(6) How to file a complaint under § 9402(a) of this title.

(b) Before speaking with a victim, a victim services professional must inform a victim if the victim services professional is required to share information disclosed by the victim that is relevant to the investigation and to whom that information must be disclosed.

§ 9411. Information ~~concerning pretrial and trial matters.~~ from the Department of Justice; responsibilities.

~~(a) After a prosecution is commenced by the Attorney General in the Superior Court, the Attorney General shall promptly inform a victim of:~~

~~(1) A statement of the procedural steps in the processing of a criminal case;~~ case.

~~(2) Rights under this chapter;~~

~~(3) Procedures if the victim is threatened or harassed;~~

~~(4) Victim compensation information when appropriate;~~

~~(5) The right of the victim to confer with the prosecutor prior to trial;~~

~~(6) The right of the victim to consult with the prosecutor about the disposition of the case, including the victim's views on dismissal, plea negotiations or diversion programs;~~

~~(7) The right of the victim to be present at trial and sentencing;~~

~~(8) Notice of the scheduling of court proceedings and changes including trial date, case review and sentencing hearings;~~

~~(9) Notice of the crime or crimes of which the defendant is convicted;~~

~~(10) Notice of the specifics of any sentencing order;~~

~~(11) Notice of sentence reduction or modification order; and~~

~~(12) Notice of a reversal upon appeal of a conviction.~~

~~(b) In all other courts, the Attorney General shall give the victim:~~

~~(1) Notice of the scheduling of the court proceedings and changes, including trial date, case review and sentencing hearings;~~

~~(2) Notice of the crime or crimes of which the defendant is convicted;~~

~~(3) Notice of the specifics of any sentencing order; and~~

~~(4) Notice of sentence reduction or modification order.~~

The Department of Justice shall make a reasonable attempt to notify a victim of all of the following information, if the information is applicable to the victim:

(1) All of the victim's rights under this chapter, including how to access the website under § 9414(d) of this title.

(2) A statement of the procedural steps in the processing of a criminal case.

(3) Procedures if the victim is threatened or harassed.

(4) Victim compensation information.

(5) A decision to decline prosecution and the legal basis for the decision.

(6) The right to be present at all stages of proceedings for the crime under § 3512 of this title.

(7) The right of the victim to request the attendance of a victim advocate under § 9403(9) of this title with the victim. The Department must prioritize attendance by a victim advocate when any of the following apply:

a. The victim is a child.

b. The victim is an individual with a cognitive disability.

(8) The right of the victim to consult with the prosecutor about the disposition of the case, including the victim's views on dismissal, plea negotiations, or a diversion program.

a. In felony cases, reasonable attempts to notify a victim of the terms of any plea or resolution must be communicated in advance of the plea being offered.

b. In misdemeanor cases, victims must be provided notice that pleas may be negotiated at case review hearings.

(9) Notice of the scheduling of court proceedings and changes including trial date, case review, and sentencing hearings.

(10) Notice of the crime or crimes of which the defendant is convicted.

(11) Notice of the specifics of any sentencing order.

(12) Notice of sentence reduction or modification order.

(13) Notice of any appeal or request for post-conviction remedy, information about related hearings, and the decision from any such hearing.

§ 9412. ~~Information concerning appeal or post-conviction remedies.~~

~~If the defendant appeals or pursues a post-conviction remedy from any court, the Attorney General shall promptly inform any victim of the date, time and place of any hearing and of the decision.~~ [Transferred.]

§ 9413. Information concerning confinement.

(a) For purposes of this section, "department" means the Department of Correction or the Department of Services for Children, Youth and Their Families. ~~The Department of Correction and the Department of Services for Children, Youth and Their Families~~

(b) The department shall notify ~~in writing those victims~~ a victim of the following regarding ~~defendants in their~~ a defendant in the department's custody:

(1) Projected release ~~date;~~ date.

(2) Release or release to a community-based ~~program; and~~ program.

(3) ~~Parole Board hearing date.~~ A hearing date before the Board of Parole or the Board of Pardons.

~~(b) In the event of an escape of the defendant, the Department of Correction and the Department of Services for Children, Youth and Their Families, shall notify immediately, by telephone or in person, any victim of the escape of the defendant.~~ (4) Escape from the custody of the department. When making a notification under this paragraph (b)(4), the department shall immediately notify all victims of the defendant by telephone or in-person.

(c) ~~Notwithstanding any provision to the contrary, upon~~ Upon the request of the victim, the ~~Department of Correction and the Department of Services for Children, Youth and Their Families~~ the department shall provide the victim with ~~information concerning~~ the terms of a defendant's probation, ~~parole~~ parole, or other condition of release and the defendant's compliance or noncompliance with the sentence, probation, ~~parole~~ parole, or other ~~conditions imposed on the defendant. The Department of Correction shall have the authority to promulgate rules and regulations to implement this subsection.~~ conditions.

§ 9414. General requirements for ~~information.~~ information from law-enforcement agencies.

(a)(1) Unless the form of notice is ~~expressly set forth by this chapter,~~ specifically required, information required ~~to be furnished~~ under this chapter may be ~~furnished orally or in written form.~~ provided verbally, electronically, or as printed material.

(2) A victim is responsible for providing a law-enforcement agency with any changes to the victim's contact information.

(3) A victim may indicate and change their preferred method of contact by law-enforcement agencies, including a preference not to be contacted. A law-enforcement agency must use the victim's preferred method of contact when possible.

(4) The Delaware Criminal Justice Information System (DELJIS) shall create a mechanism that allows law-enforcement agencies to provide notice required under this chapter by e-mail.

(b) A person responsible for ~~furnishing~~ information required under this chapter must make all reasonable efforts to provide the information required under this chapter to victims, and may rely upon the most recent ~~name, address and telephone number furnished~~ information provided by the ~~victim.~~ victim.

(c)(1) The Department of Justice shall create a summary of the rights under §§ 9403 through 9403B of this title. This summary must also include all of the following:

a. The address of the website under subsection (d) of this section.

b. Notice that the rights under this chapter do not always apply to a victim.

c. A victim must provide changes in the victim's contact information to a law-enforcement agency investigating or prosecuting the crime.

(2) DELJIS must provide that the summary under paragraph (c)(1) of this section is printed on the last page of the victim's copy of the initial incident report.

(d) The Department of Justice shall maintain a website that provides information about all of the following:

(1) The rights under this chapter explained in a user-friendly manner. At a minimum, the information required under this section must be provided as follows:

a. In English and Spanish.

b. In a format that is as accessible as possible for individuals with disabilities.

(2)a. Victim Services, including contact information for victim services personnel at each law-enforcement agency, Family Resource Centers, and as provided by each victim services agency.

b. For the family of a victim with a cognitive disability about victim services, including specific information regarding coping with the emotional impact of the crime and the subsequent court proceedings in which the victim will be involved.

(3) The Victims' Compensation Assistance Program under Chapter 90 of this title.

(4) The Address Confidentiality Act under subchapter II of Chapter 96 of this title.

(5) Victim's rights under § 4347 of this title when the defendant applies for parole and under § 4361 of this title when the defendant applies for a pardon.

(6) The rights of witnesses under all of the following:

a. Subchapter II of this chapter.

b. Chapter 35 of this title.

c. School employees under § 1318 of Title 14.

d. Board of Pardons under § 4361 of this title.

(7) Information about other rights a victim may have under state law, including all of the following:

a. Chapter 35 of this title.

b. For employees who are victims of domestic violence, a sexual offense, or stalking under § 711 of Title 19.

c. For tenants who are victims of domestic violence, sexual assault, or stalking under § 5314 and § 5316 of Title 25.

§ 9415. Presentence report.

~~In preparing a presentence report, the~~ (a) An Investigative Services Officer shall make a reasonable effort to confer with the ~~victim~~. victim during a presentence investigation under § 4331 of this title.

(b) If the victim is not available or declines to confer, the Investigative Services Officer shall record that information in the report. ~~The victim shall have the right to present a victim-impact statement pursuant to § 4331 of this title.~~

§ 9416. ~~Consideration of victim-impact statement at Board of Parole hearing or Board of Pardons hearing.~~

~~(a) The Board of Parole shall inform the victim in writing of:~~

~~(1) The right of the victim to address the Parole Board in writing or in person; and~~

~~(2) The decision of the Parole Board.~~

~~(b) The Board of Pardons shall inform the victim in writing of:~~

~~(1) The right of the victim to address the Board of Pardons in writing or in person;~~

~~(2) Any commutation of sentence that is recommended by the Board; and~~

~~(3) Any pardon or commutation that is granted.~~ [Repealed.]

§ 9417. ~~Requirement of state agencies to file annual~~ Annual reports.

~~All agencies given duties by this chapter~~ (a) Each law-enforcement agency shall ~~submit~~ compile an annual report ~~with related statistics~~ outlining compliance with this ~~chapter. The annual report shall be submitted~~ chapter at the end of each calendar ~~year to the Governor and to the Criminal Justice Council. Unless prevented by the failure of a victim to cooperate by furnishing a current address and telephone number, an agency shall make all reasonable efforts to provide notification and participation rights to victims.~~ year that includes all of the following:

(1) The number of complaints received of noncompliance with this chapter.

(2) A summary of the results of investigations of complaints of noncompliance that includes all of the following:

a. The number of investigations of complaints that found that the law-enforcement agency had complied with this chapter.

b. The number of investigations of complaints that found that the law-enforcement agency failed to comply with this chapter.

(3) Steps taken to increase compliance with this chapter, including steps taken in response to complaints listed under paragraph (a)(2)b. of this section. ~~If the requirements stated in this chapter cannot be achieved by an agency for any reason, the agency shall so state in the annual report and shall explain in detail the nature of the obstacles to comply with this chapter or other causes for the inability to achieve the objectives.~~

(4) If a law-enforcement agency cannot comply with a requirement under this chapter, the specific requirement that cannot be met and a detailed explanation of the reasons for noncompliance. ~~The Governor shall advise state agencies of any statutory changes that require an amendment to this chapter.~~

(b) Beginning February 1, 2026, a law-enforcement agency shall submit the report required under subsection (a) of this section to the Criminal Justice Council (CJC) for the CJC's annual report.

(c) Beginning April 30, 2026, the CJC shall compile an annual report that provides all of the following:

(1) The total number of complaints provided in the law-enforcement reports under paragraphs (a)(1) and (a)(2) of this section.

(2) A list of steps taken by law-enforcement agencies to improve compliance with this chapter under paragraph (a)(3) of this section.

(3) A list of requirements that cannot be met, as identified by law-enforcement agencies under paragraph (a)(4) of this section, and which law-enforcement agencies were unable to meet each requirement.

(4) Any recommendations to strengthen the rights of victims or witnesses under this chapter or to improve law-enforcement compliance with this chapter.

(5) An appendix with the reports submitted by law-enforcement agencies under subsection (b) of this section.

(d) The CJC's report under subsection (c) of this section shall be posted on the CJC's website and submitted to the Governor, President Pro Tempore of the Senate and the Speaker of the House of Representatives, the Chief Clerk of the House and the Secretary of the Senate for distribution to all members of the General Assembly, the Director and the Librarian of the Division of Legislative Services, and the Delaware Public Archives.

§ 9419. ~~Rights of qualifying neighborhood or homeowners' associations.~~

~~(a) Residents of neighborhoods where illegal drug activity occurs shall collectively be entitled to all of the rights, privileges and notice requirements otherwise provided to victims under this chapter, provided that~~

~~(1) There exists within the residents' neighborhood a neighborhood or homeowners' association, which shall serve as the residents' designated agent for all purposes under this chapter;~~

~~(2) The neighborhood or homeowners' association has been legally incorporated in accordance with Delaware's General Corporation Law;~~

~~(3) The neighborhood or homeowners' association has been recognized by its local government jurisdiction, through actual practice or by specific designation, as duly representative of the residents of its surrounding neighborhood; and~~

~~(4) The neighborhood or homeowners' association has given prior written notice to all state and local police authorities whose jurisdiction encompasses all or any portion of the geographical area represented by the association, specifying its election to prevail itself of the rights, privileges and notice requirements provided under this chapter and the name, address and telephone number of the representative of the neighborhood or homeowners' association to whom all notices or other communications required under this chapter shall be given. Any police authority so notified shall thereafter identify the neighborhood or homeowners' association as a victim for purposes of this chapter in any police report, criminal complaint, warrant, indictment, information or other charging document in which any person is subsequently charged with violating any provision of subchapter IV of Chapter 47 of Title 16 or any successor law within the geographical area represented by the association.~~

~~(b) For purposes of this section, "illegal drug activity" means the unlawful selling, serving, storing, giving away~~ or manufacturing of ~~(which includes production, preparation, compounding, conversion, processing, packaging or repackaging) of any drug, which includes all narcotic or psychoactive drugs, cannabis, cocaine and all controlled substances as defined in the Delaware Uniform Controlled Substances Act [Chapter 47 of Title 16].~~ [Repealed.]

§ 9420. Polygraph testing of a victim.

(a) A law-enforcement officer, ~~prosecuting officer~~ prosecutor, or other government official ~~shall~~ may not ask or require ~~an adult, youth or child~~ a victim of an alleged sex offense ~~as defined in Chapter 5, subchapter II, subpart D of this title,~~ to submit to a polygraph examination or truth telling device as a condition for proceeding with the investigation.

(b) ~~In any event,~~ If a law-enforcement officer, prosecutor, or other government official violates subsection (a) of this section, the refusal of a victim to submit to a polygraph examination or other truth telling device ~~shall~~ does not prevent the investigation, ~~charging~~ charging, or prosecution of an alleged sex ~~offense, defined in Chapter 5, subchapter II, subpart D of this title, against the victim.~~ offense.

Subchapter II. ~~Victims and~~ Rights of Witnesses ~~with Cognitive Disabilities~~ to Crime

§ 9421. ~~Legislative intent.~~

~~The General Assembly finds that it is necessary to provide every victim and witness with a cognitive disability, particularly those whose disability renders them the emotional or mental equivalent of a child, with additional consideration and different treatment than that usually required for adult victims and witnesses who are not cognitively disabled. It is therefore the intent of the General Assembly to provide each victim and witness with a cognitive disability who is involved in a criminal proceeding with certain fundamental rights and protections.~~ [Repealed.]

§ 9422. ~~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) "Cognitive disability" means a developmental disability that substantially impairs an individual's cognitive abilities including, but not limited to, delirium, dementia and other organic brain disorders for which there is an identifiable pathologic condition, as well as nonorganic brain disorders commonly called functional disorders. "Cognitive disability" also includes conditions of mental retardation, severe cerebral palsy, and any other condition found to be closely related to mental retardation because such condition results in the impairment of general intellectual functioning or adaptive behavior similar to that of persons who have been diagnosed with mental retardation, or such condition requires treatment and services similar to those required for persons who have been diagnosed with mental retardation.~~

~~(2) "Victim" or "witness" shall not include any person with a cognitive disability accused of committing a felony; provided however, that the word "victim" or "witness" may, in the court's discretion, include:~~

~~a. A person with a cognitive disability where such person's participation in a felony appears to have been induced, coerced or unwilling; or~~

~~b. A person with a cognitive disability who has participated in the felony, but who has subsequently and voluntarily agreed to testify on behalf of the State.~~ [Transferred.]

§ 9423. ~~Expedited proceedings.~~ Rights of witnesses to crime.

~~In all criminal proceedings involving a victim or~~

A witness to a crime has all of the following rights:

(1) To maintain the confidentiality of their personal information as follows:

a. A law-enforcement agency may not disclose the identity, residential address, telephone number, school, or place of employment of a witness or a member of the witness' family, except as allowed under paragraph (1)d. of this section.

b. A court may not compel a witness or a member of the witness's family testifying in a criminal proceeding to disclose their residential address, school, or place of employment on the record unless allowed under paragraph (1)d. of this section.

c. The information about a witness or a member of the witness's family under paragraphs (1)a. and (1)b. of this section is not a public record under the Freedom of Information Act, Chapter 100 of Title 29.

d. A law-enforcement agency may disclose, or a court may compel testimony about, the information under paragraphs (1)a. and (1)b. of this section if any of the following apply:

1. The individual waives confidentiality in writing.

2. The individual's residential address, school, or place of employment is the site of the crime.

3.A. Disclosure of the information is required by law or the Rules of Criminal Procedure, necessary for law-enforcement purposes, or a court finds that there is good cause and the disclosure is necessary.

B. To alert a school district or charter school, under § 8502(8)e. of this title, that a minor child or a child that has reached the age of 18 that continues to be enrolled in high school has been identified at the scene of a traumatic event.

(2) If the witness is a child, to an expedited trial, especially if the case involves child abuse or child sexual abuse.

(3) If the witness is an individual with a cognitive disability, all of the following apply:

a. The witness has a right to an explanation, in language the witness understands, of all legal proceedings in which the witness will be involved.

b. The witness, and the witness's family, to information about appropriate social services and programs to assist witnesses, specifically information regarding coping with the emotional impact of the crime and the subsequent court proceedings in which the witness will be involved.

c. ~~the~~ The court and the prosecution shall take appropriate action to ensure a prompt trial in order to minimize the length of time the ~~victim or~~ witness must endure the stress of the ~~victim's or~~ witness's involvement in the proceedings. In ruling on any motion or other request for a delay or continuance of proceedings, the court shall consider and give weight to any adverse impact such delay or continuance might have on the well-being of ~~any victim or~~ a witness with a cognitive disability.

d. The court shall provide a waiting area for a witness that is separate and secure from the defendant, defendant's relatives, and defense witnesses if available and the use of the area is practicable. If a separate and secure waiting area is not available or practicable, the court shall provide other safeguards to minimize the witness's contact with the defendant, defendant's relatives, and defense witnesses during court proceedings.

e. When attending proceedings at a court, a witness has the right to express safety concerns and to request reasonable measures to ensure their safety, including modifications to standard practices, policies, and procedures.

f. At the witness's request, the court shall permit the presence of an individual to provide support to the witness at a proceeding unless the court determines that the exclusion of the individual is necessary to protect the defendant's right to a fair trial.

g. If the witness is an individual with a cognitive disability, the individual who attends the proceedings under paragraph (3)f. of this section may advise the judge, when appropriate, as a friend of the court, regarding the witness's cognitive disability and the witness's ability to understand proceedings and questions.

(4) To the prompt return of property from a law-enforcement agency when the property is no longer needed to evidentiary purposes unless the property is illegal or subject to forfeiture.

§ 9424. ~~Additional rights and services.~~

~~(a) A victim or witness with a cognitive disability is entitled to an explanation, in language the victim or witness understands, of all legal proceedings in which the victim or witness is to be involved.~~

~~(b) A victim or witness with a cognitive disability is entitled to be accompanied, in all proceedings, by a "friend" or other person in whom the victim or witness trusts, which person shall be permitted to advise the judge, when appropriate and as a friend of the court, regarding the person with a cognitive disability and that person's ability to understand proceedings and questions.~~

~~(c) A victim or witness with a cognitive disability is entitled to information about, and referrals to, appropriate social services and programs to assist the victim or witness, and in the victim's or witness's family, coping with the emotional impact of the crime, and the subsequent court proceedings in which the victim or witness is to become involved.~~ [Transferred.]

§ 9425. Prohibition against detaining a witness exclusively for immigration violation or to turn over to federal immigration authorities absent warrant.

(a) It is the public policy of this State to protect the public from crime and violence by encouraging all persons who are witnesses to crimes, or who otherwise can give evidence in a criminal investigation, to cooperate with the criminal justice system and not to penalize these persons for cooperating with the criminal justice system.

(b) If an individual is a witness to a crime or can otherwise give evidence in a criminal investigation, a law-enforcement officer may not detain the individual exclusively for any actual or suspected immigration violation or turn the individual over to federal immigration authorities absent a judicial warrant or a valid court order.

§ 9426. Requirements for information from law-enforcement agencies.

(a) The Department of Justice shall create a summary of the rights under §§ 9423 and 9425 of this title.

(b) The summary under subsection (a) of this section must include the address of the website under § 9414(d) of this title and at a minimum, must be in English and Spanish and in a format that is as accessible as possible for individuals with disabilities.

(c) A law-enforcement agency must provide the information under this section to a witness.

Section 2. Amend § 9002, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9002. Definitions.

For purposes of this chapter:

(10) "Pecuniary loss" means any expenses actually and necessarily incurred as a result of personal injury or death resulting from a crime, but ~~it~~ does not include property damage. "Pecuniary loss" includes the following, except that for secondary victims, "pecuniary loss" means what is in paragraphs (10)d. and (10)o. of this section, and for claimants in homicide cases, "pecuniary loss" means what is in paragraphs (10)b., (10)c., (10)d., (10) f., (10)h., (10)o., (10)s., ~~(10)t.,~~ and (10)u. of this section:

s. Funeral expenses and burial expenses not to exceed ~~$5,000.~~ $7,500.

t. ~~Burial expenses not to exceed $2,500.~~ [Transferred.]

Section 3. Amend § 9003, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9003. Advisory Council.

(a) ~~This hereby establishes within the Department of Justice, the~~ The Victims' Compensation Assistance Program Advisory ~~Council, hereafter "the Council," consisting of 11 members with at-large members appointed by the Governor. Membership of the Council is as follows:~~ Council ("Council") is comprised of the following members, or a designee selected by the member serving by virtue of position:

(1) The Attorney ~~General or the Attorney General's designee.~~ General.

(2) The Chairperson of the Victim's Rights Task ~~Force or the Chairperson's designee.~~ Force.

(3) The Chairperson of the Domestic Violence Task ~~Force or the Chairperson's designee.~~ Force.

(4) ~~[Repealed.]~~ The Child Advocate.

(5) ~~Seven~~ Eight at-large members ~~with 1~~ appointed by the Governor as follows:

a. One member from the medical ~~profession, 1 member~~ profession.

b. Two members from the mental health ~~profession, 1~~ profession.

c. One member who is ~~a law-enforcement police-based advocate, and 1 member~~ employed by a police agency as a victim services professional as defined in § 9401 of this title.

d. Four members of the ~~public each~~ public, 1 member from ~~the~~ each of the following:

1. City of ~~Wilmington, New~~ Wilmington.

2. New Castle County, outside of the city limits of Wilmington.

3. Kent ~~County, and~~ County.

4. Sussex County.

(6) The Executive Director of the Delaware Alliance Against Sexual ~~Violence or the Executive Director's designee.~~ Violence.

(b)(1) The term of Council members appointed ~~by the Governor~~ under paragraph (a)(5) of this section is 3 ~~years and terminates on the Governor's appointment of a new member to the Council. A~~ years.

(2) Notwithstanding paragraph (b)(1) of this section, the term of an appointed member ~~shall continue to serve~~ continues until that member's successor is duly ~~appointed but a holdover under this provision does not affect the expiration date of a succeeding term.~~ appointed.

(c) In case of a vacancy on the Council before the expiration of a member's ~~term,~~ term under subsection (b) of this section, the Governor must appoint a successor ~~must be appointed by the Governor~~ within 30 days of the ~~vacancy~~ vacancy. A member appointed under this subsection serves for the remainder of the unexpired term.

(d) ~~The Council shall elect 1 of its members as Chairperson to serve for a 1-year term and may be eligible for reelection.~~ The Attorney General or the Attorney General's designee serves as chair.

(e)(1) A quorum of the Council is a majority of its members.

(2) Official action by the Council, including making findings and recommendations, requires the approval of a quorum of the Council.

(3) The Council may adopt rules necessary for its operation.

(4) The chair of the Council may invite individuals with relevant expertise to participate in Council discussions.

(5) A member of the Council with the ability to designate another individual to attend a Council meeting must provide the designation in writing to the chair. An individual attending a meeting for a member as a designee has the same duties and rights as the member.

(6) The Council shall meet at the call of the ~~Chair~~ chair but no ~~fewer~~ less than 4 times a year.

(f) The Department of Justice is responsible for providing reasonable and necessary support staff and materials for the Council.

Section 4. Amend § 9016, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9016. Penalty assessment.

(b) ~~Upon collection of the penalty assessment, the~~ The penalty assessment under subsection (a) of this section must be paid ~~over~~ to the prothonotary or clerk of court, as ~~the case may be, who shall collect the penalty assessment~~ applicable, and ~~transmit it~~ transmitted to the State Treasury to be deposited in a separate account for the administration of this chapter, ~~which account must be~~ designated the "Victims' Compensation ~~Fund," which is hereby created. Beginning with the fiscal year ending June 30, 2002, the unencumbered balances on June 30 of each fiscal year in excess of $6,000,000 must be deposited in the General Fund.~~ Fund".

Section 5. Amend § 3512, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3512. Presence of victims.

~~Any~~ A victim or a member of the victim's ~~immediate family shall have~~ family, as defined in § 9401 of this title, has the right to be present during all stages of a criminal proceeding even if called upon to testify therein, ~~unless~~ except as follows:

(1) A grand jury proceeding.

(2) If the defendant shows good cause ~~can be shown by the defendant~~ to exclude them.

Section 6. Amend § 4331, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 4331. Presentence investigation; ~~victim impact~~ victim-impact statement.

(d)(1) Except for those offenses where no victim can be ascertained, a ~~victim impact~~ victim-impact statement ~~shall~~ must be presented to the court prior to the sentencing of a convicted person, ~~where such~~ if that person has been convicted ~~of:~~ of any of the following:

~~(1)~~ a. A ~~felony;~~ felony.

~~(2)~~ b. An offense under subchapter V, Chapter 5 of this title or subpart D, subchapter II, Chapter 5 of this ~~title;~~ ~~or~~ title.

~~(3)~~ c. A misdemeanor which resulted in physical injury or death. ~~The victim impact~~

(2) Notwithstanding paragraph (d)(1) of this section, the victim-impact statement ~~shall~~ is not ~~be~~ required where an immediate sentence is rendered, except in cases of conviction by ~~plea or where the defendant has been convicted under § 4209A of this title [repealed].~~ plea.

(e) A ~~victim impact~~ victim-impact statement ~~shall:~~ must include all of the following:

(1) Identify, to such extent as can be reasonably ascertained, those ~~victims (except~~ victims, except persons involved in the commission of the ~~offense)~~ offense, who received physical, ~~psychological~~ psychological, or economic injury as a result of the ~~offense;~~ offense.

(2) Describe, to the extent possible, such physical, ~~psychological~~ psychological, or economic ~~injury;~~ injury.

(3) Identify any physical injury suffered by the victim, together with a description of the seriousness and permanence of ~~such injury;~~ that injury.

(4) Contain a description of any change in the victim's personal welfare or familial relationships which can reasonably be attributed to the ~~offense;~~ offense.

(5) Identify any request for psychological services or counselling services initiated by any person identified under paragraph (e)(1) of this section, if such request or need for such services can reasonably be determined to have resulted from the ~~offense;~~ offense.

(6) Determine any fees or costs for psychological or counselling ~~services; and~~ services.

(7) Any other information relating to the impact of the offense upon the victim or other person.

(g)(1)a. The provisions of this section relating to ~~victim impact~~ victim-impact statements ~~shall~~ apply only to those victims who have cooperated with the court and with Investigative Services officers.

b. A victim's cooperation relating to a victim-impact statement under this section does not affect the victim's right to make a statement under § 9403(8) of this title.

(2)a. The provisions of this section relating to ~~victim impact~~ victim-impact statements ~~shall~~ apply to all courts having original jurisdiction to hear, ~~try~~ try, and finally determine criminal ~~offenses; provided, however, that such provisions shall~~

b. Notwithstanding paragraph (g)(2)a. of this section, the provisions of this section relating to victim-impact statements do not apply to Justices of the Peace Courts.

Section 7. Amend § 4347, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 4347. Parole authority and procedure.

(k) *Notification of parole eligibility.* — (1)a. At least 30 days ~~prior to~~ before a scheduled parole hearing for an inmate convicted of a felony offense, the Board shall notify the victim or member of the ~~immediate~~ victim's family ~~of the victim~~ of the date, ~~time~~ time, and place of the scheduled hearing. A copy of any rules developed ~~pursuant to~~ under § 4350(a) of this title ~~shall~~ must be included with the notice. ~~However, at any time,~~

b. Notwithstanding paragraph (k)(1)a. of this section, the victim or member of the victim's ~~immediate~~ family can request ~~that no notification be sent.~~ not to receive notification under § 9414(a)(3) of this title

~~(l)~~(*l*) *Notification of parole decision.* — (1) At the same time as the Board sends notice of its decision to the inmate, the Board shall send notice of its decision to ~~those who received notice~~ individuals notified under paragraphs (k)(1) ~~and/or (2)~~ or (k)(2) of this section.

(m) ~~Prior to~~ Before a parole hearing, a party to whom the Board failed to notify as required in paragraphs (k)(1) or (2) of this section may request that the Board postpone the scheduled hearing in order to provide a reasonable opportunity for the party to attend the ~~hearing, and/or~~ hearing or submit a written ~~statement.~~ statement, or do both. However, in no event ~~shall~~ may the hearing be postponed more than 45 days from the original scheduled date.

(n) ~~Any~~ A notice ~~required to be provided~~ under this section must be provided to the victim or to a member of the victim's ~~immediate~~ family ~~shall be mailed to the last known address of the victim or family member. It is the responsibility of the victim or the victim's immediate family to provide the Board with a current mailing address.~~ under § 9414(a) of this title.

Section 8. Amend § 4361, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 4361. Board of Pardons; attendance of victims and witnesses.

(d)(1) Upon the application ~~of any convicted felon~~ for a pardon, the Board shall notify the Superior Court and the ~~Attorney General~~ Department of Justice of ~~such~~ the application.

(2) The ~~Attorney General~~ Department of Justice, in cooperation with the Superior ~~Court~~ Court, shall send notice of ~~such~~ the application for a pardon to each person who was a victim or witness of the offense ~~for which the felon was convicted, that the felon has applied for a pardon. Such~~ that is the basis for the application for the pardon. For purposes of this section:

a. "Offense" means a crime as defined in § 9401 of this title.

b. "Representative of the victim" and "victim" mean as defined in § 9401 of this title.

c. "Witness" means an individual who testified for the prosecution at the trial which is the basis for the application for the pardon. "Witness" does not include a law enforcement officer, an individual who testified merely as an expert witness, or any person who was merely a custodian of the evidence, with no knowledge of the circumstances of the offense.

(3) The notice ~~shall~~ under paragraph (d)(2) of this section must contain the time, ~~date~~ date, and place where the matter ~~shall~~ will be heard by the Board. ~~Where~~

a. If a victim or witness is known to be deceased, ~~a good faith effort shall be made to send notice to a member of the immediate family of such person. Where the victim or witness is known to be under 18 years of age or is incompetent,~~ a child, or an individual who is unable to meaningfully understand or participate in the proceeding because of a physical, psychological, or mental impairment, a good faith effort ~~shall~~ must be made to send the notice ~~to~~ required under paragraph (d)(2) of this section as follows:

1. To the representative of the victim.

2. To the parent, ~~guardian~~ guardian, or custodian of ~~such person.~~ the witness. ~~Notification for the purpose of this section shall be by certified mail (return receipt requested) to the last known address of such victim or witness.~~

b. Notice required under this section must be provided under § 9414(a) of this title.

(4) Each ~~such~~ victim or witness ~~shall~~ under paragraph (d)(2) of this section must be permitted to testify at the pardons hearing. A victim or witness may, in lieu of appearing before the Board, submit a written statement to the Board at any time ~~prior to~~ before the hearing. ~~For purposes of this subsection, the word "witness" shall mean a person who testified for the prosecution at the trial in which the felon was convicted of the crime from which the felon seeks to be pardoned; provided, however, that the word "witness" shall not include any law enforcement officer, any person who testified merely as an expert witness, nor any person who was merely a custodian of the evidence, with no knowledge of the circumstances of the offense.~~

Section 9. Amend § 1018, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1018. Discretionary expungement.

(c) Upon receipt of any petition for discretionary expungement that involves a violent felony for a victim as defined in § 9401 of Title 11 that was not terminated in favor of the child, the Attorney General's office shall contact ~~the victim(s) of the violent felony at the victim's last known address or telephone number~~ each victim under § 9414(a) of Title 11 to ascertain the victim's position on the petition for expungement. The victim's position, if known, shall be stated in the Attorney General's answer to the petition.

Section 10. Amend § 4374, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4374. Discretionary expungement; application to court.

(e) After the petition requesting expungement is filed with the Superior or Family Court, the petitioner shall cause a copy of the petition to be served upon the Attorney General, who may file an objection or answer to the petition within

120 days after it is served on the Attorney General. The petitioner shall attach a copy of that petitioner's criminal history as maintained by the State Bureau of Identification to any petition requesting expungement filed under this section. The Court shall summarily reject any petition for expungement that does not include the petitioner's criminal history. Upon receipt of any petition, the Attorney General shall contact a victim of the crime ~~at the victim's last known address or telephone number~~ under § 9414(a) of Title 11 to ascertain the victim's position on the petition. The Attorney General shall provide the victim's position, if known, in the Attorney General's answer to the petition. The Attorney General shall promptly orally inform the victim of the court's decision. The Attorney General may not provide the victim with a copy of the expungement order. For purposes of this subsection, "victim" means as defined in § 9401 of this title.

Section 11. Amend § 8404, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 8404. Powers and duties.

(c) The Commission, in collaboration with government, police union, and community stakeholders, shall periodically review and propose updates as needed to regulations and standards addressing the use and activation of body-worn cameras, ~~as well as~~ including all of the following:

(1) The electronic storage ~~and dissemination~~ of recordings derived from body-worn cameras.

(2) The dissemination of recordings derived from body-worn cameras.

(3) A victim's right to review the portion of body-worn camera footage that includes statements made by the victim, under § 9403(5) of this title.

Section 12. Amend § 711, Title 19 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 711. Unlawful employment practices; employer practices.

(i) It shall be an unlawful employment practice for an employer ~~to:~~ to do any of the following:

(1)a. Fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to compensation, terms, conditions, or privileges of employment because the individual was the victim of domestic violence, a sexual offense, or ~~stalking; or~~ stalking.

~~(2)~~ b. Fail or refuse to make reasonable accommodations to the limitations known to the employer and related to domestic violence, a sexual offense, or stalking, unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such employer.

c. For purposes of ~~this subsection,~~ paragraph (i)(1) of this section, "reasonable accommodations" means making reasonable changes in the workplace, ~~including, but not limited to,~~ including reasonable changes in the

schedules or duties of the job in question that would accommodate the person who was the victim of domestic violence, a sexual offense, or stalking, enabling such person to satisfactorily perform the essential duties of the job in question. Reasonable accommodations include allowing the individual to use accrued leave to address the domestic abuse, sexual offense, or stalking.

(2) Discharge or discipline an individual who is a victim of a crime or a representative of a victim because the individual participated in the preparation for or attended proceedings under § 9409(a) of Title 11.

Section 13. Section 9414(c) and (d) and § 9426 of Title 11 are effective immediately and must be implemented no later than 90 days after enactment into law.

Section 14. (1) Section 9414(a)(4) of Title 11 takes effect 10 days following the date of publication in the Register of Regulations of a notice by the Executive Director of the Delaware Criminal Justice Information System that funds have been appropriated to implement the provisions under § 9414(a)(4) of Title 11.

(2) Section 9414(a)(4) of Title 11 must be implemented no later than 18 months following the date of publication of the notice under paragraph (1) of this section.

Ssynopsis

Senate Concurrent Resolution No. 99 (152nd General Assembly) created the Victims' Bill of Rights Committee (VBR Committee) to perform a comprehensive review of the Victims' Bill of Rights (VBR) and make recommendations to clarify the VBR, strengthen protections for victims, and ensure that state agencies have the necessary mechanisms, administration, and funding to successfully implement the VBR. To facilitate in-depth review and discussion, the VBR formed the following 4 subgroups: The Victim Safety Subgroup, The Rights of Special Victims Subgroup, The Victims' Rights to Information and Notification Procedures Subgroup, and the Victims' Compensation and Administration Subgroup.

Like Senate Bill No. 17, Senate Substitute No. 1 for Senate Bill No. 17 revises the Victims' Bill of Rights and the Victims' Compensation Assistance Program based on the recommendations in the February 27, 2024, Victims' Bill of Rights Committee Final Report.

Senate Substitute No. 1 to SB 17 differs from SB 17 as follows:

1. Revises the definition of "individual with a cognitive disability" to reference the definition of "cognitive disability" in the Criminal Code, consistent with the standards of the Delaware Legislative Drafting Manual.
2. Requires that the summary of the victims' rights be printed on the last page of the victim's copy of the initial incident report instead of on the back.
3. Revises the language regarding the rights of victims and witnesses in regard to immigration status.
4. Requires that the notice published in the Register of Regulations under Section 14, that funds have been appropriated to implement the provisions under § 9414(a)(4) of Title 11, be provided by the Executive Director of the Delaware Criminal Justice Information System.

Section 1 revises Chapter 94 of Title 11 ("this chapter"), the Victims' Bill of Rights, by making technical changes for clarity and by adding substantive policy provisions that either codify existing practices or create new rights and responsibilities as follows:

Substantive changes that establish the following new rights or responsibilities:

1. To extend these rights to more victims, adds additional offenses to the definition of "crime" for this chapter and includes any offense that is the basis for abuse, domestic violence, or a sexual violence protective order.
2. Adds a complaint process that a victim or witness can use if a law-enforcement agency fails to comply with this chapter.
3. Adds the victim's or witness's school to the personal information that must be kept confidential.
4. Provides victims the right to have a victim advocate present, if available, at all proceedings related to the crime.

5. Requires that victim services professionals inform a victim if the victim services professional is required to share information disclosed by the victim that is relevant to the investigation and to whom that information must be disclosed.

6. Provides a right to review portions of recordings derived from body-worn cameras that includes statements made by the victim.

7. Provides a right to make a statement that is separate from the victim-impact statement under the pre-sentence report process.

8. Updates the manner in which victims receive notifications under this chapter by allowing law-enforcement agencies to send notifications electronically and requiring DELJIS to create the mechanism by which law-enforcement agencies can send these notifications by email. Victims will be able to indicate and change their preferred method of contact by law-enforcement agencies, including a preference not to be contacted, and law-enforcement agencies must use the victim's preferred method of contact when possible.

9. Requires that the Department of Justice create a website where the rights of victims and witnesses under this chapter are explained in a user-friendly manner, in English and in Spanish, and in a format that is as accessible as possible for individuals with disabilities. This website must include information about rights victims or witnesses have under other sections of the Code.

10. Strengthens the annual report requirements for law-enforcement agencies regarding compliance with this chapter by adding specific information that must be included in each report. The individual law-enforcement agency reports must be compiled by the Criminal Justice Council (CJC) into 1 final report and posted on the CJC webpage.

11. Extends to witnesses the current requirement that the court to provide a waiting area for victims that is separate and secure from the defendant, the defendant's relatives, and defense witnesses.

12. Provides witnesses with the same right to the prompt return of property from law-enforcement that currently exists for victims.

13. Consistent with the notice requirements to victims of an application for parole, requires that notice to be provided to victims of crimes under this chapter when an application is filed for a pardon, including for an adjudication not terminated in favor of the child, or when an application for discretionary expungement of an adjudication not terminated in favor of the child is filed.

Substantive changes that codify existing practices:

1. Updates the definition of "law-enforcement agencies" to include police, the Department of Justice, and the Department of Correction, including probation and parole.

2. Expands the definition of "representative of the victim" to include members of the victim's family if the victim is deceased and the parent, guardian, or custodian of a victim who is unable to meaningfully participate in proceedings. It also clarifies the representative of the victim if the victim or the deceased victim's sibling is in the custody of the Department of 'Services for Children, Youth, and their Families.

3. Revises and expands the definition of victim services to include the broad array of assistance that is available to victims of crime.

4. States that the remedy for a victim or witness if a law-enforcement agency fails to comply with this chapter is to file a writ of mandamus under § 564 of Title 10.

5. Provides victims and witnesses the right to express safety concerns while attending proceedings at court and to request reasonable measures to ensure their safety, including modifications to standard practices, policies, and procedures.

6. Provides the right for immigrant victims and witnesses not to be detained by law enforcement or turned over to federal immigration authorities unless there is a judicial warrant.

7. Requires that the Delaware Criminal Justice Information System (DELJIS) provide a summary of a crime victim's rights and information about victim services that is printed on the last page of the victim's copy of the initial incident report.

8. Repeals the applicability of this chapter to qualifying neighborhood or homeowners' associations.

9. Requires the Board of Pardons to provide notice of all applications for a pardon to the Superior Court and the Department of Justice.

Technical changes:

1. Reorganizes existing provisions so that rights of all victims are in subchapter I. by transferring the rights of victims with cognitive disabilities from subchapter II.

2. Reorganizes existing provisions so that rights of all witnesses are in subchapter II. by transferring the rights of witnesses from subchapter I and correspondingly redesignates subchapter II as the Rights of Witnesses to Crime. The rights provided to victims and witnesses with cognitive disabilities are incorporated in the applicable subchapter.

3. When possible, instead of listing each specific offense included in the definition of "crime", offenses are included in this definition by subchapter or subpart.

4. Transfers rights applicable to all crime victims under § 9404 through § 9408 of Title 11 to § 9403 of Title 11.

5. Repeals unnecessary definitions and language that repeats rights provided in another section of this chapter or elsewhere in the Code.

Sections 2 through 4 revise Chapter 90 of Title 11, the Victims' Compensation Assistance Program, as follows:

• Section 2 revises § 9002 of Title 11 to combine funeral and burial expenses into 1 category of pecuniary loss to simplify approval of payments for these expenses.

• Section 3 makes corresponding changes to the job title of the victim services personnel who are members of the Victims' Compensation Assistance Program Advisory Council under § 9003 of Title 11 and adds standard language regarding the conduct of meetings by public bodies, including requirements for quorum and when a member designates another individual to attend a meeting.

• Section 4 repeals the requirement that unencumbered balances in excess of $6,000,000 in the Victims' Compensation Fund at the end of each fiscal year be deposited in the General Fund.

Section 5 through Section 12 make the following corresponding technical changes to other Code sections to align with Chapter 94 of Title 11:

• Section 5 revises § 3512 of Title 11 to contain the exceptions in current § 9407 of Title 11 and reference the definition of "member of the victim's family" in § 9401 of Title 11.

• Section 6 revises § 4331 of Title 11 so it is consistent with the victim's right to make a statement under § 9406(8)b. of Title 11. Section 6 also repeals the reference to § 4209A of Title 11 that the Revisors have noted in the Code as "[repealed]" because the version of § 4209A that was in the Code when this sentence was enacted in 1991 was repealed in 1989 but this corresponding reference was not repealed.

• Sections 7 and 8 revise § 4347 and § 4361 of Title 11 so that the Board of Parole and the Board of Pardons must send notice to victims and witnesses in the manner and under the procedures established in § 9414 of Title 11.

• Sections 9 and 10 revise § 1018 of Title 10 and § 4374 of Title 11 so that victims are contacted about petitions for discretionary expungement under the procedures established in § 9414 of Title 11.

• Section 11 requires that the regulations adopted by the Police Offer Standards and Training Commission under § 8404 of Title 11 include the victim's right to review portions of recordings derived from body-worn cameras that include statements made by the victim.

• Section 12 increases notice to employers about the current law prohibiting an employer from discharging or disciplining a victim or representative of a victim because the individual participated in the preparation for or attended proceedings by adding a reference to § 9409(a) of Title 11 to § 711(i) of Title 19, which lists unlawful employment practices.

Section 13 provides a delayed implementation date to provide the Department of Justice time to create the informational websites for victims and witnesses required under § 9414(c) and (d) of Title 11.

Section 14 makes the requirement under § 9414(a)(4) of Title 11 that DELJIS create the mechanism by which law-enforcement agencies can send notifications by email contingent upon an appropriation of the funds necessary to fulfill this requirement and then provides 18 months to implement this requirement.

In addition to the recommendations in the Victims' Bill of Rights Committee Final Report, this Act also revises the membership of the Victims' Compensation Assistance Program Advisory Council, based on suggestions that arose after the conclusion of the VBR Committee's work, by adding the Child Advocate and an additional member from the mental health profession.

This Act also makes additional technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

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