



SPONSOR: Sen. Blevins & Rep. Hudson

DELAWARE STATE SENATE
144th GENERAL ASSEMBLY

SENATE BILL NO. 313

AN ACT TO AMEND TITLES 11 AND 16 OF THE DELAWARE CODE RELATING TO THE CRIMINALLY MENTALLY ILL.

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

1 Section 1. Amend section 408(b) of Title 11 of the Delaware Code by inserting the phrase “, or other suitable
2 place for the residential treatment of criminally mentally ill individuals under the age of 18 who have been found non-
3 amenable to the processes of Family Court. ” immediately following the word “Center” in the fourth sentence thereof.

4 Section 2. Amend section 408(b) of Title 11 of the Delaware Code by inserting “for individuals placed at the
5 Delaware Psychiatric Center,” immediately between the words “illness” and “shall” in the fifth sentence thereof.

6 Section 3. Amend section 408 of Title 11 of the Delaware Code by creating a new section “(d)” and including the
7 following language therein:

8 “No individual under the age of 18 shall be placed at the Delaware Psychiatric Center. Nothing herein shall
9 prevent either the transfer to or placement at the Delaware Psychiatric Center any person who has reached the age of 18
10 following any finding of guilty, but mentally ill.”

11 Section 4. Amend section 6525(b) of Title 11 of the Delaware Code by striking the words “psychotic or” and
12 “defective” as they appear in the first sentence thereof.

13 Section 5. Amend section 6525(b) of Title 11 of the Delaware Code by inserting the word “ill” immediately
14 following the word “mentally” as it appears in the first sentence thereof.

15 Section 6. Amend section 6525(b) of Title 11 of the Delaware Code by inserting the following sentences
16 immediately after the second sentence thereof:

17 “Such transfers shall occur only as set forth at 16 Del. C. § 5153. Inmates to be transferred as contemplated herein
18 who have not reached the age of 18 years and have been found non-amenable to the processes of Family Court shall not be
19 transferred to the Delaware Psychiatric Center. Non-amenable inmates under the age of 18 years shall be transferred to
20 appropriate residential treatment facilities within the State of Delaware or in other states.”

21 Section 7. Amend section 5151 of Title 16 of the Delaware Code by striking the phrase “, and criminally inclined
22 juveniles,” from the first sentence therein.

Section 8. Amend section 5151 of Title 16 of the Delaware Code by inserting the following immediately after the first sentence thereof:

“The term criminally mentally ill as used herein shall be defined as any incarcerated individual, charged with or convicted of any criminal offense under this Code who also meets the definition set forth at 16 Del. C. § 5001(6).”

Section 9. Amend section 5152(a) of Title 16 of the Delaware Code by inserting “for evaluation and/or treatment” between the words “Center” and “when” in the first sentence thereof.

Section 10. Amend section 5152(a) of Title 16 of the Delaware Code by striking the word “insane” and substituting “mentally ill” in lieu thereof.

Section 11. Amend section 5152(b) of Title 16 of the Delaware Code by inserting the words: “amenable to the processes of Family Court” between the word “juveniles” and “shall” as they appear in the first sentence therein.

Section 12. Amend section 5152 of Title 16 of the Delaware Code by inserting a new subsection (c) to contain the following language:

“Jurisdiction to order and review commitments under this subchapter is conferred upon any court:

(1) which presides over any active matter in which the criminally mentally individual is a defendant or respondent, or

(2) which entered the most recent sentencing order regarding the criminally mentally ill individual.

Section 13. Amend section 5153 of Title 16 of the Delaware Code by striking it in its entirety and inserting the following language in lieu thereof:

“The governing authorities of any institution of this State, including but not limited to those facilities maintained by the Department of Correction , to which an adult or juvenile who is non-amenable to the processes of Family Court who classifies for admission under the terms of this subchapter already has been committed may request an order to temporarily remove an inmate of the institution to the department for criminally mentally ill at the Delaware Psychiatric Center or other authorized institutions for suitable for non-amenable juveniles as follows:

(a) by petition to any court of competent jurisdiction in the State; or

(b) in the case of any individual within the custody of the Department of Correction, by certification of the Commissioner of Correction, Bureau Chief of Prisons, Bureau Chief of Community Correction, or Director of Healthcare Services, that: (1) the inmate or offender is currently suffering from a mental disease or condition which requires such person to be observed and treated at a mental hospital for the person's own welfare and which both (i) renders such person unable to make responsible decisions with respect to the person's health, and (ii) poses a real and present threat, based upon manifest indications, that such person is likely to commit or suffer serious harm to that person's own self or others or to

property if not given immediate hospital care and treatment; (2) the inmate or offender is currently recommended by correctional medical staff for immediate or emergent psychiatric care or stabilization; (3) that the Department of Correction cannot provide the level of care required to treat the inmate or offender; and (4) the inmate or offender has received all of the process due to the inmate or offender under the Department of Correction policies and/or procedures.

(c) Upon receipt of any inmate or offender into the Department for the Criminally Mentally Ill by the process stated herein, the inmate or offender shall be treated as a provisional admittee and may only be housed at the location designated for the housing of the criminally mentally ill. The Department of Health and Social Services shall proceed under Chapter 50 of this title with respect to any decision to commit offenders transferred from the Department of Correction on an emergency basis.”

SYNOPSIS

This bill reforms the method by which criminally mentally ill adults and criminally mentally ill non-amenable juveniles are treated, rehabilitated, and punished. The bill specifies that the Department of Correction shall place those non-amenable individuals under the age of 18 years who have been adjudged “guilty, but mentally ill” in a facility other than the Delaware Psychiatric Center. Additionally, this bill reforms the manner in which adult inmates housed within the Department of Correction are transferred between penological custody and custody for the evaluation and treatment of mental illness at the Delaware Psychiatric Center. The bill is designed to bring these statutes up to date and ensure that inmates receive adequate and effective Due Process regarding each aspect of the transfer process. Further, this bill aligns the authority of the Department of Correction to transfer inmates to forensic psychiatric facilities such as the Jane E. Mitchell Building at the Delaware Psychiatric Center with the processes set forth in Title 16 relating to the transfer of inmates to such facilities. Finally, this bill specifies that inmates under 18 years of age within the custody of the Department of Correction shall not be transferred to Delaware Psychiatric Center and may be transferred to other appropriate facilities. The bill also provides that non-amenable juveniles may be transferred and placed into the Delaware Psychiatric Center only upon reaching 18 years of age.

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