SPONSOR: Sen. Marshall & Sen. Hall-Long & Rep. Mitchell & Rep. Barbieri
Sens. Blevins, Bushweller, Henry, Lavelle, McBride, Pettyjohn, Simpson, Townsend; Reps. Baumbach, Blakey, Bolden, Brady, Briggs King, Carson, Dukes, Gray, Hudson, Jaques, Q. Johnson, Keeley, Kenton, Longhurst, Miro, Mulrooney, Osienski, Outten, Paradee, Peterman, Potter, Ramone, Schwartzkopf, Scott, B. Short, D. Short, Smyk, Spiegelman, Viola, Walker, D.E. Williams, Wilson

DELAWARE STATE SENATE
147th GENERAL ASSEMBLY

SENATE BILL NO. 241

AN ACT TO AMEND TITLES 10, 11, 13, 16, 21, 23, AND 29 OF THE DELAWARE CODE RELATING TO THE OFFICE OF THE CHIEF MEDICAL EXAMINER AND THE DIVISION OF FORENSIC SCIENCE.

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

Section 1. Amend Chapter 47, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

CHAPTER 47. ~~MEDICAL EXAMINERS~~ FORENSIC SCIENCE

§ 4701 ~~Compensation of Chief Medical Examiner.~~ Division of Forensic Science established; Purpose.

The purpose of this chapter is to establish a Division of Forensic Science to provide leadership and coordination in the exercise of forensic sciences. In furtherance of that purpose, there is created the Division of Forensic Science under the supervision and control of the Director of the Division of Forensic Science. The Division of Forensic Science is established and operational within the Department of Safety and Homeland Security. The Division of Forensic Science shall have all the powers, duties, and functions heretofore vested in the Office of the Chief Medical Examiner, its personnel, and the Forensic Science Laboratory. The Office of the Chief Medical Examiner is hereby abolished. ~~The Chief Medical Examiner shall be compensated at a rate to be determined by the Secretary of the Department of Health and Social Services. The Chief Medical Examiner shall also be reimbursed for any necessary travel expenses.~~

§ 4702 Rules and regulations.

The Department of Safety and Homeland Security ~~Health and Social Services~~ may adopt and promulgate rules and regulations to carry into effect this chapter.

§ 4703 Appointment of professional and other personnel.

(a) The Director of the Division of Forensic Science shall appoint, with the approval of the Secretary of the Department of Safety and Homeland Security, a Chief Medical Examiner, who shall be a board certified pathologist, with preference given to applicants with training and experience in the field of forensic pathology. The Chief Medical Examiner

shall serve at the pleasure of the Director of the Division of Forensic Science and shall be subject to removal with or without cause by the Director of the Division of Forensic Science or the Secretary of the Department of Safety and Homeland Security.

(b) The ~~Chief Medical Examiner~~ Director of the Division of Forensic Science may appoint, with the approval of the Department of Safety and Homeland Security ~~Health and Social Services, 2~~ Assistant Medical Examiners who shall be physicians with 2 years or more of training or experience in pathology, necessary numbers of Deputy Medical Examiners who shall be practicing physicians and a Toxicologist who shall have a Ph.D. degree in toxicology or pharmacology or a master's degree in toxicology or pharmacology with a minimum of 3 years of experience in analytical toxicology, at such compensation as shall be determined by the Department of Safety and Homeland Security ~~Health and Social Services~~. The Director of the Division of Forensic Science ~~Chief Medical Examiner~~ may also appoint, in accordance with the state merit system regulations, technical, clerical and other personnel, as may be necessary for proper administration of the ~~office~~ Division.

(~~b~~ c) The ~~Chief Medical Examiner~~ Director of the Division of Forensic Science may employ, with the approval of the Department of Safety and Homeland Security ~~Health and Social Services~~, physicians on a contract basis for part-time services, as may be required. Except as otherwise provided, all ~~All~~ professional, technical and clerical personnel appointed ~~by the Chief Medical Examiner~~ in accordance with this section are directly responsible to the Director of the Division of Forensic Science ~~Chief Medical Examiner~~ and are subject to removal by the Director of the Division of Forensic Science or the Secretary of the Department of Safety and Homeland Security~~. Chief Medical Examiner~~ for cause, in accordance with any ~~the~~ state merit system regulations applicable to the position.

(d) The Director of the Division of Forensic Science or his or her designee may conduct pre-employment drug testing of any contractor or prospective employee accepting a position with the Division, random drug testing of employees, and testing upon reasonable suspicion that an employee is impaired by an illegal drug. The timing, procedures, and specific controlled substances of any drug testing shall be conducted in accordance with policies or regulations adopted by the Division. The Division is further authorized to conduct pre-employment criminal background checks of any contractor or prospective employee accepting a position with the Division, and such persons are subject to criminal background checks from time to time while working in or for the Division.

(e) The Director of the Division of Forensic Science and Chief Medical Examiner shall be subject to the same Department of Safety and Homeland Security policies and procedures with respect to overtime, vacation and leave time, and compensatory time as other Department of Safety and Homeland Security division directors. No employee of the Division of Forensic Science shall be permitted to maintain or engage in employment, or to work as an independent

contractor, outside of the Division of Forensic Science without prior written approval of the Secretary. Such prior written approval must be issued for each employer or contract for private outside employment.

§ 4704 Duties of Medical Examiners.

(a) The Chief Medical Examiner, the Assistant Medical Examiners and the Deputy Medical Examiners shall perform all the medical and other functions ~~now~~ formerly devolving upon the coroners, deputy coroners and coroners' physicians in the counties of this State and in the City of Wilmington and duties imposed upon them by this chapter.

(b) The Chief Medical Examiner shall comply with the orders and directions of the Department of Safety and Homeland Security ~~Health and Social Services~~.

§ 4705 Office and equipment.

The ~~office of the Chief Medical Examiner~~ Division of Forensic Science shall be maintained in a suitable place or places which shall be designated by the Secretary of the Department of Safety and Homeland Security ~~Health and Social Services~~. The Department of Safety and Homeland Security Health and Social Services shall provide or arrange for proper and necessary equipment for use of the staff of the Division of Forensic Science ~~Medical Examiners~~.

§ 4706 Investigation of deaths.

(a) When any person shall die in this State, as a result of violence, by suicide or by casualty if such occurred not longer than 1 year and 1 day prior to death, while under anesthesia, by abortion or suspected abortion, by poison or suspicion of poison or suddenly when in apparent health or when unattended by a physician or in any prison or penal institution or when in police custody or from a disease resulting from employment including disease related to injury or from an undiagnosed cause which may be related to a disease constituting a threat to public health or in any suspicious or unusual manner or if there is any unclaimed body or if any body is to be cremated, it shall be the duty of the person having knowledge of such death or of the person issuing a permit for cremation under § 3162 of Title 16 immediately to notify the Chief Medical Examiner, an Assistant Medical Examiner or a Deputy Medical Examiner, as the case may be, who in turn shall notify the Attorney General of the known facts concerning the time, place, manner and circumstances of such death. Any person who shall willfully neglect or refuse to report such death or who shall refuse to make available prior medical or other information pertinent to the death investigation or who, without an order from the ~~office of the Chief Medical Examiner~~ Division of Forensic Science, shall willfully touch, remove or disturb the clothing or any article upon or near the body shall upon conviction be subject to imprisonment for not more than 1 year or pay a fine of not more than $1,000, or both.

(b) Immediately upon receipt of such notification, the Medical Examiner shall take charge of the dead body if either the Medical Examiner or the Attorney General shall deem it necessary. The ~~office of the Chief Medical Examiner~~

Division of Forensic Science shall promptly notify a relative or close acquaintance of the deceased, if known, of such action.

(c) The Medical Examiner shall fully investigate the essential facts concerning the medical causes of death and may take the names and addresses of as many witnesses as may be practicable to obtain and shall reduce such facts as the Medical Examiner may deem necessary to writing and file the same in the ~~office of the Chief Medical Examiner~~ Division of Forensic Science.

(d) The Medical Examiner or a duly authorized investigator, in the absence of the next of kin, shall take possession of the personal property found on the deceased and make an exact inventory thereof on the Medical Examiner's report. If necessary an attending police officer may take temporary possession of such property in behalf of the Medical Examiner or an authorized investigator.

(e) The Medical Examiner shall take possession of any object or articles which, in the Medical Examiner's opinion, may be useful in establishing the identity of the deceased person or the cause of death and deliver them to the Attorney General. The balance of the personal property of the deceased remaining in the possession of the Medical Examiner shall be released to the next of kin of the deceased or the personal representative of the deceased.

§ 4707 Postmortem examination; autopsy reports.

(a) When the cause of death shall have been established within reasonable medical certainty by a Medical Examiner, the Medical Examiner shall prepare a written report and file it in the ~~office of the Chief Medical Examiner~~ Division of Forensic Science within 30 days after an investigation of such death.

(b) If, however, in the opinion of the Medical Examiner an autopsy is necessary in the public interest or as shall be requested by the Attorney General, the same shall be performed by the Chief Medical Examiner, an Assistant Medical Examiner or by such other competent pathologists as may be designated by the Chief Medical Examiner. No person who authorizes or performs an autopsy pursuant to this chapter shall be liable in any civil action for damages.

(c) A detailed report of the findings written during the progress of the autopsy, related laboratory analysis and the conclusions drawn therefrom shall be filed in the ~~office of the Chief Medical Examiner~~ Division of Forensic Science.

(d) Promptly upon the conclusion of the postmortem examination, the body of the decedent shall be released to such person as shall be designated by a member of the decedent's immediate family, preferably the next of kin or by an appropriate representative of the decedent's estate.

(e) Upon written request the next of kin of the deceased shall receive a copy of the postmortem examination report, the autopsy report and the laboratory reports, unless there shall be a criminal prosecution pending in which case no

such reports shall be released until the criminal prosecution shall have been finally concluded. The charge for completion of an insurance form for proof of death shall be $5.

§ 4708 Forensic Sciences Laboratory.

The Forensic Sciences Laboratory is established and operational within the ~~office of the Chief Medical Examiner~~ Division of Forensic Science. The ~~Chief Medical Examiner~~ Director of the Division of Forensic Science functions as the Director of the Forensic Sciences Laboratory.

§ 4709 Power to administer oaths and issue subpoenas.

The Director of the Division of Forensic Science, the Chief Medical Examiner, the Assistant Medical Examiners and the Deputy Medical Examiners, in the course of investigation of a death, may administer oaths and affirmations and take affidavits and make examinations as to any matter within the jurisdiction of their respective offices, but the Chief Medical Examiner, the Assistant Medical Examiners and the Deputy Medical Examiners may not summon a jury of inquisition. The Chief Medical Examiner, or in the Chief Medical Examiner's absence, Assistant Medical Examiners or Deputy Medical Examiners, shall have the power to issue subpoenas.

§ 4710 Records and reports; evidence.

(a) The Chief Medical Examiner is to keep full and complete records of ~~in~~ the Division of Forensic Science pertaining to the investigation of deaths and postmortem examinations. Such records shall be ~~Chief Medical Examiner's office,~~ properly indexed, giving the name, if known, of every deceased person investigated, the place where the body was found, the date and the cause of death and all other available information relating thereto. The original report of Medical Examiners and the detailed findings of the autopsy and subsequent laboratory examinations, if any, shall be attached to the record of each case.

(b) The Chief Medical Examiner shall deliver to the Attorney General copies of all records relating to every death in which, in the judgment of the investigating Medical Examiner, further investigation may be deemed advisable.

(c) The Attorney General may obtain from the ~~office of the Chief Medical Examiner~~ Division of Forensic Science copies of all records or other information which the Attorney General may deem necessary.

(d) The records of the ~~office of the Chief Medical Examiner~~ Division of Forensic Science prepared by the Director of the Division of Forensic Science ~~Chief Medical Examiner~~ or by anyone under the Director's ~~Chief Medical Examiner's~~ direction or supervision or a true copy thereof certified by the Director or the Chief Medical Examiner shall be received as competent evidence in any court in this State of the matters and facts therein contained.

§ 4711 Disposition of unclaimed body or remains of indigent person.

(a) In any case where there is an unclaimed body or there are remains of indigent persons and it is incumbent on the State or any political subdivision thereof to bury such person found dead, the Chief Medical Examiner or a duly authorized representative shall notify the Division of Social Services of the Department of Health and Social Services to arrange for the burial unless the case falls within the category described in subsection (b) of this section.

(b) When there is a written consent of the next of kin or other legally responsible party, the remains of an indigent person may be cremated or donated for scientific research.

§ 4712 Authority to provide corneas to eye banks.

(a) Upon request of an approved eye bank on behalf of a patient in need of corneal tissue for a transplant, a Medical Examiner is authorized to provide the cornea under the following conditions:

(1) A decedent who may provide a suitable cornea for transplant is under the jurisdiction of the Medical Examiner;

(2) An autopsy will be required;

(3) No objection by the decedent or next of kin is known by the Medical Examiner prior to the removal of the cornea by a representative of an approved eye bank; and

(4) Removal of the cornea for transplant will not interfere with the subsequent course of a postmortem examination or alter the postmortem facial appearance.

(b) For the purposes of this section, the following terms shall have the following meanings:

(1) "Approved eye bank," includes the Medical Eye Bank of Delaware and the Eye Foundation of Delaware Valley;

(2) "Next of kin" means:

a. A spouse;

b. If no spouse, the decedent's adult children;

c. If no spouse or adult children, the decedent's parents;

d. If no spouse, adult children or parents, the person who is legally entitled to claim the decedent's remains for final disposition.

(c) The Medical Examiner or an approved eye bank, while acting in compliance with this section, shall not be liable to the next of kin of a decedent, whose corneal tissue is removed and donated pursuant to this section, for any civil damages.

§ 4713 DNA analysis and data bank.

(a) In any criminal proceeding, DNA (deoxyribonucleic acid) testing shall be deemed to be a reliable scientific technique, and the evidence of a DNA profile comparison shall be admitted to prove or disprove the identity of any person. This section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court. The court shall, regardless of the results of the DNA analysis, if any, consider such other relevant evidence of the identity of the person as shall be admissible in evidence.

(b) (1) Any person convicted on or after June 16, 1994, of any offense or attempted offense defined in subchapter II, subpart D or subchapter V of Chapter 5, Title 11 or who is in the custody of the Department of Correction after June 16, 1994, as a result of a conviction on one of the above offenses shall have a biological sample taken by the Department of Correction for DNA (deoxyribonucleic acid) law-enforcement identification purposes and inclusion in law-enforcement identification databases. Any person convicted on or after June 16, 1994, who is not sentenced to a term of confinement shall provide a biological sample as a condition of such sentence at a time and place specified by the sentencing court.

(2) Any person convicted after July 1, 2003, of any offense that is defined and classified as a felony under Title 11 shall have a biological sample taken by the Department of Correction for DNA (deoxyribonucleic acid) law-enforcement identification purposes and inclusion in law-enforcement identification databases. Any person convicted after July 1, 2003, of such felony offense and who is not sentenced to a term of confinement shall provide a biological sample as a condition of such sentence at a time and place specified by the sentencing court.

(c) The biological samples shall be obtained in a medically approved manner by a physician, registered nurse, licensed practical nurse, phlebotomist, medical technologist or other qualified personnel approved by the Chief Medical Examiner, and packaged and submitted in containers provided or approved by the Division of Forensic Science ~~Chief Medical Examiner, Forensic Sciences Laboratory~~ in accordance with administrative regulations promulgated by the Division of Forensic Science ~~Chief Medical Examiner~~. No civil liability shall attach to any person authorized to obtain a biological sample as provided by this section as a result of obtaining a biological sample from any person, provided the biological sample was obtained according to generally accepted medical procedures.

(d) Any person who tampers or attempts to tamper with any biological sample or the container collected pursuant to subsection (b) or (c) without lawful authority shall be guilty of a Class D felony.

(e) A centralized database of DNA (deoxyribonucleic acid) identification records for convicted criminals shall be established in the Division of Forensic Science ~~Office of the Chief Medical Examiner, Forensic Science Laboratory~~. The established system shall be compatible with the procedures set forth in a national DNA identification index to ensure data exchange on a national level.

(f) The purpose of the centralized DNA database is to assist federal, state and local criminal justice and law enforcement agencies within and outside the State in the identification, detection or exclusion of individuals who are subjects of the investigation or prosecution of sex-related crimes, violent crimes or other crimes and the identification of missing and unidentified persons.

(g) The Division of Forensic Science ~~Chief Medical Examiner and Forensic Sciences Laboratory~~ shall receive, analyze and classify biological samples in compliance with subsections (b) and (c) of this section, and shall record the DNA results in a centralized database for identification and statistical purposes. Except as specifically provided in this section, the results of the analysis shall be securely stored and shall remain confidential.

(h) Records produced from the biological samples shall be used only for law enforcement purposes and shall be exempt from the provisions of the Freedom of Information Act [Chapter 100 of this title].

(i) A person whose DNA profile has been included in the data bank pursuant to this section may petition Superior Court for expungement on the grounds that the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed. The ~~Office of Chief Medical Examiner~~ Division of Forensic Science, ~~Forensic Science Laboratory~~ shall expunge all identifiable information in the data bank pertaining to the person and destroy all biological samples from the person upon receipt of a certified court order.

(j) The ~~Chief Medical Examiner~~ Division of Forensic Science ~~and Forensic Sciences Laboratory~~ shall promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system to include procedures for the collection of biological samples and the database system usage and integrity.

(k) Upon completion of the analysis required by this section, the ~~Office of the Chief Medical Examiner~~ Division of Forensic Science, Forensic Science Laboratory shall forward to the State Bureau of Identification the name and other identifying information required by the State Bureau of Identification of each individual for whom a DNA identification record is developed. Upon receipt of such information the State Bureau of Identification shall make a notation of the existence of such DNA identification record in the criminal history record information file for such individual maintained pursuant to Chapter 85 of Title 11. Such information shall be available to all requesting criminal justice agencies in the same manner and under the same conditions as all other criminal record information maintained by the State Bureau of Identification.

(l) Any person who disseminates, receives or otherwise uses or attempts to use information in the database, knowing that such dissemination, receipt or use is for a purpose other than authorized by law, shall be guilty of a Class A misdemeanor.

(m) For purposes of this section "biological sample" shall mean a blood sample or a buccal swab.

§ 4714 Commission on Forensic Science

(a) The Commission on Forensic Science, hereinafter in this chapter referred to as the Commission, is hereby established. The Commission shall provide oversight and guidance to foster professionalism within, and the development and growth of, the Division of Forensic Science. The Commission shall consist of eight members. The Commissioners shall be the Secretary of the Department of Health and Social Service, the Secretary of the Department of Safety and Homeland Security, the Attorney General, or the Attorney General's designee, the Public Defender or the Public Defender's designee, a member of the Delaware State Senate appointed by the President Pro Tempore, a member of the Delaware House of Representatives appointed by the Speaker, a member appointed by the Delaware Police Chiefs Council, and a member, appointed by the Governor, who has expertise in forensic science.

(b) For administrative and budgetary purposes, the Commission will be placed within the Department of Safety and Homeland Security, Office of the Secretary.

(c) The Director of the Division of Forensic Science shall create an audit process to include evidence accountability, requisite certifications, and security. The Director of the Division of Forensic Science shall file a report on this audit to the Commission and Governor once a year.

(d) The Commission shall undertake the following tasks:

(1) Evaluate and monitor the needs of the Division to ensure that it is able to provide accurate, timely, and responsive forensic sciences services to all members of the criminal justice community;

(2) Evaluate and monitor the needs of the Division as may help preserve the independence of judgment and the integrity of all scientific undertakings by the Division and its personnel;

(3) Evaluate and monitor the human resources needs and the personnel and hiring practices of the Division;

(4) Receive and consider input from all stakeholders in the criminal justice community, including, without limitation, prosecutors, defense attorneys, the courts, law enforcement, victims' advocates, the Domestic Violence Coordinating Council, the Child Death, Near Death and Stillborn Commission, and other interested persons or parties;

(5) Evaluate and monitor the quality assurance structure and processes, including chain of custody practices for drug evidence;

(6) Evaluate and monitor professional competency and accreditation requirements and staff management policies;

(7) Review and comment upon all rules and regulations promulgated pursuant to § 4702 of this title; and

(8) Suggest and support the implementation of improvements to the operations of the Division or its communications and cooperation with other agencies of state and local government.

Section 2. Amend § 7903, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 7903 Powers, duties and functions of the Secretary.

The Secretary may:

(1) Supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees;

(2) Appoint and fix the salary, with the written approval of the Governor, of the Deputy Secretary and the following division directors and office heads, who may be removed from office by the Secretary with the written approval of the Governor, and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary:

a. A Director of the Division of Public Health, who shall be known as the Director of Public Health, and who shall be a licensed physician who shall have had at least 1 year of postgraduate training in public health, or in lieu thereof at least 5 years of experience as a full-time health official;

b. A Director of the Division of Substance Abuse and Mental Health, who shall be known as the Director of Mental Health, and who shall be qualified by appropriate formal education in a field such as psychiatric medicine, psychiatric nursing, clinical psychology or psychiatric social work directly related to the care and treatment of persons with mental or emotional conditions, by direct experience in the care and treatment of persons with mental or emotional conditions and by demonstrated administrative competence;

c. A Director of the Division of Social Services, who shall be known as the Director of Social Services, and who shall be qualified by education, ability and experience in the administration of social work or services;

d. An administrator and head of the Division of Business Administration and General Services who shall be known as the Chief of Business Administration and General Services and who shall be a person qualified by training and experience to perform the duties of the division;

e. An administrator and head of the Division of Planning, Research and Evaluation who shall be known as the Chief of Planning, Research and Evaluation and who shall be a person qualified by training and experience to perform the duties of the division;

f. A Director of the Division of Child Support Enforcement, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

g. A Director of the Division of Services for Aging and Adults with Physical Disabilities, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

h. A Director of the Division of State Service Centers, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

i. A Director of the Division of Long-Term Care Residents Protection, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

~~3) Appoint, with the written approval of the Governor, an administrator and head of the Office of Medical Examiner who shall be known as the Medical Examiner of the State for a term of 10 years, subject to reappointment, but always subject to removal for cause. The Medical Examiner shall be a physician licensed to practice in this State and shall be a board certified pathologist, with preference given to applicants with training and experience in the field of forensic pathology;~~

(4~~3~~) Appoint such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law;

(5~~4~~) Establish a Division of Business Administration and General Services in order to administer and coordinate the record keeping, transportation, fiscal affairs, data processing, statistics, accounting, personnel and such other general services for the Department as the Secretary may deem necessary for the proper, efficient and economical operation of the Department and to coordinate such general services and business administration with other departments, agencies and offices of the government of this State;

(6~~5~~) Establish a Division of Planning, Research and Evaluation in order to provide for and carry out the future comprehensive planning of the programs, policies and operations of the Department and the evaluation, necessary research, data collection and analysis of the programs, policies and operations of the Department;

(7~~6~~) Establish, consolidate, abolish, transfer or combine the powers, duties and functions of the divisions, subdivisions and offices within the Department as the Secretary, with the written approval of the Governor, may deem necessary, providing that all powers, duties and functions required by law shall be provided for and maintained;

(8~~7~~) Make and enter into any and all contracts, agreements or stipulations, and retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract consulting, research, technical and other services and facilities, whenever the same shall be deemed by the Secretary necessary or desirable, in the performance of the functions of the Department and whenever funds shall be available for such purpose. All necessary legal services shall be provided pursuant to Chapter 25 of this title;

(9~~8~~) Delegate any of the Secretary's powers, duties or functions to a director of a division, except the Secretary's power to remove employees of the Department or to fix their compensation;

(~~10~~9) Establish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State;

a. The Secretary shall, in cooperation with the appropriate division directors and office heads, adopt regulations which require dementia specific training each year for persons who are certified, licensed, or registered by the State, and/or who are partially or fully funded by the State, to provide direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia. The mandatory training must include the following topics:

1. Communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia;

2. The psychological, social, and physical needs of those persons; and

3. Safety measures which need to be taken with those persons.

The mandatory training required under this paragraph applies only to those healthcare providers who must participate in continuing education programs;

b. The provisions of paragraph (10)a. of this section do not apply to persons certified to practice medicine under the Medical Practice Act, Chapter 17 of Title 24 or first responders including police officers, firefighters and emergency medical technicians.

(~~11~~10) Maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department;

(~~12~~ 11) Adopt an official seal or seals for the Department;

(~~13~~ 12) The Secretary in cooperation with the division directors shall prepare a proposed budget for the operation of the Department to be submitted for the consideration of the Governor and the General Assembly. The Department shall be operated within the limitations of the annual appropriation and any other funds appropriated by the General Assembly. Special funds may be used in accordance with approved programs, grants and appropriations;

(~~14~~ 13) The Secretary shall be the successor to the State Board of Health exercising the powers and duties granted the Board by Title 16 or § 7904 of this title, which are not inconsistent with the laws of this State;

(~~15~~ 14) The Secretary is empowered to administer a state revolving loan program in accordance with requirements set forth in the Federal Safe Drinking Water Act.

a. Delaware Safe Drinking Water Revolving Fund. - There is hereby established a "Delaware Safe Drinking Water Revolving Fund" as contemplated by and to be administered pursuant to the Federal Safe Drinking Water Act. All federal capitalization grants received pursuant to the Federal Safe Drinking Water Act, all required matching state funds, and all loan repayments received by the State pursuant to any loan agreement made under the Delaware Safe Drinking Water Revolving Fund shall be credited to the Delaware Safe Drinking Water Revolving Fund. In addition, all proceeds of

obligations issued by the State and supported by a pledge or other interest in the funds in the Delaware Safe Drinking Water Revolving Fund shall be held in or for such fund. The Delaware Safe Drinking Water Revolving Fund shall be deemed to be a special fund and shall be approved by the Governor for the following purposes:

1. To accept and retain the funds and revenues specified herein;

2. To make loans to eligible persons for qualifying purposes under the Federal Safe Drinking Water Act;

3. To buy or refinance debt obligations of eligible persons for qualifying purposes under the Federal Safe Drinking Water Act;

4. To guarantee or purchase insurance for obligations of eligible persons for qualifying purposes under the Safe Drinking Water Act;

5. To be a source of revenue or security for the payment of principal and interest on revenue bonds of the State if the proceeds of the sale of such bonds will be deposited in the Delaware Safe Drinking Water Revolving Fund;

6. To earn interest on amounts on deposit in such fund;

7. To establish all necessary interest bearing accounts for deposit of loan repayments;

8. To finance the reasonable costs incurred by the State in the administration of the Delaware Safe Drinking Water Revolving Fund as permitted under the Federal Safe Drinking Water Act; and

9. To accomplish any other allowable purpose under the Federal Safe Drinking Water Act.

The Department is designated as the administering agency of the Delaware Safe Drinking Water Revolving Fund and shall have such power necessary to administer such fund including, but not limited to, the power to enter into capitalization grant agreements with the Environmental Protection Agency, the power to accept capitalization grant awards made under the Federal Safe Drinking Water Act and the power to make loans in accordance with the requirements of the Federal Safe Drinking Water Act, and Chapter 61 of this title, or any successor statute. The Department shall coordinate implementation of the Delaware Safe Drinking Water Revolving Fund with the Delaware Department of Natural Resources and Environmental Control which shall be responsible for financial administration of the loan portion of the Drinking Water State Revolving Fund. The Department shall take all actions necessary to secure for the State the benefits of the Federal Safe Drinking Water Act.

b. Standards and procedures. — Before making any loan from the Delaware Safe Drinking Water Revolving Fund, the Department shall specify:

1. Standards for the eligibility of borrowers and the type of projects to be financed with loans;

2. Procedures for the preparation, review and approval of the "project priority" list, which must contain those projects for which financial assistance is sought;

3. Procedures for submitting applications for financial assistance and procedures for Department approval of such applications;

4. Procedures for completing an environmental review of projects otherwise qualifying under this paragraph which shall be sufficiently consistent with the provisions for environmental review established under applicable state and federal requirements;

5. Conditions for financial assistance; and

6. Other relevant criteria, standards and procedures.

Standards and procedures specified under this paragraph shall provide for final recommendations by the Water Infrastructure Advisory Council of any loan from the Delaware Safe Drinking Water Revolving Fund and the "project priority" list as required by Chapter 61 of this title, or any successor statute.

Section 3. Amend § 7916, Title 29 of the Delaware Code by making striking the section in its entirety as shown by strike through as follows:

~~§ 7916 Office of Medical Examiner.~~

~~The Office of Medical Examiner is established having the power to perform and shall be responsible for the performance of all powers, duties and functions heretofore vested in the Board of Postmortem Examiners for the State of Delaware pursuant to Chapter 47 of this title.~~

Section 4. Amend § 7922, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 7922 Exemptions.

The following positions set forth in this section shall be exempt from Chapter 59 of this title:

(1) Secretary of Health and Social Services;

(2) Director of Public Health;

(3) Director of the Division of Substance Abuse and Mental Health;

(4) Director of Social Services;

(5) ~~Medical Examiner;~~

~~(6)~~ Chief of Business Administration and General Services;

(6 ~~7~~) Chief of Planning, Research and Evaluation;

(7 ~~8~~) Director of Developmental Disabilities Services;

(8 ~~9~~) Director of Child Support Enforcement;

(9 ~~10~~) Director of the Division of Services for Aging and Adults with Physical Disabilities;

(10 ~~11~~) Director of State Service Centers;

(11 ~~12~~) Director of Long-Term Care Resident Protection; and

(12 ~~13~~) Deputy Secretary of the Department of Health and Social Services.

Section 5. Amend § 7923, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 7923 Assumption of functions of prior agencies.

The Department, through appropriate divisions, subdivisions and offices, shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions vested by law in the State Board of Health, the Board of Trustees of the Delaware Hospital for the Chronically Ill, the Hospital Advisory Council, the Department of Mental Health, the Board of Trustees of the Department of Mental Health, the Department of Public Welfare, the Board of Welfare, the Commission for the Blind, and the Commission for the Aging ~~and the Board of Postmortem Examiners of the State of Delaware~~ immediately prior to June 12, 1970, and which are not otherwise specifically transferred to the Department by this chapter.

Section 6. Amend § 8203, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 8203 Powers, duties and functions of the Director.

The Secretary may:

(1) Supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees;

(2) Appoint, and fix the salary of, with the written approval of the Governor, the following division directors who may be removed from office by the Secretary with the written approval of the Governor and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary:

a. A Secretary of the Division of State Police who shall be known as the Superintendent of State Police and shall hold the rank of Colonel. The Superintendent of State Police shall be qualified by training and experience to perform the duties of the office. The Superintendent of State Police shall be chosen from among the ranks of the State Police and shall have been promoted through the normal promotional policies of the State Police;

b. A director of the Delaware Emergency Management Agency who shall be known as the "Director of the Delaware Emergency Management Agency", and who shall be qualified by training and experience to perform the duties of the office;

c. A Director of the Division of Alcohol and Tobacco Enforcement who shall be known as the Director of Alcohol and Tobacco Enforcement, and who shall be qualified by training and experience to perform the duties of the office;

d. A director of the Division of Capitol Police who shall be known as the Chief of Capitol Police, which position shall remain a merit position. The Chief of Capitol Police shall be qualified by training and experience to perform the duties of the office. The Chief of Capitol Police shall be chosen from among the ranks of the Capitol Police and through the normal promotional policies of the Capitol Police.

e. A director of the Division of Communications who shall be known as the "Director of the Division of Communications", and who shall be qualified by training and experience to perform the duties of the office;

f. A director of the Office of Highway Safety who shall be known as the "Director of the Office of Highway Safety", which position shall remain a merit position. The Director of the Office of Highway Safety shall be qualified by training and experience to perform the duties of the office;

g. A director of the State Council for Persons with Disabilities, who shall be known as the "Director of the State Council for Persons with Disabilities", which position shall remain a merit position, and who shall be qualified by training and experience to perform the duties of the office;

h. A director of the Division of Gaming Enforcement who shall be known as the "Director of the Division of Gaming Enforcement" and who shall be qualified by training and experience to perform the duties of the office.; and

i. A director of the Division of Forensic Science who shall be known as the “Director of the Division of Forensic Science” and who shall be qualified by training, experience, education, or ability in the areas of administration and forensic science to perform the duties of Director.

Section 7. Amend § 8214, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 8214 Exemptions.

The following positions set forth in this chapter shall be exempt from Chapter 59 of this title:

(1) Secretary of Public Safety;

(2) Superintendent of State Police;

(3) Director of Civil Defense;

(4) Director of Alcohol and Tobacco Enforcement;

(5) Director of the Division of Forensic Science; and

(6) Chief Medical Examiner.

Section 8. Amend Chapter 82, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 8238 Division of Forensic Science

The Division of Forensic Science is established and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the Office of the Chief Medical Examiner and duties of the medical examiners and Forensic Science Laboratory, as set forth in Title 29, Chapter 47.

Section 9. Amend § 4330, Title 10 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 4330 Chemical test report.

For the purpose of establishing that physical evidence in a criminal or civil proceeding constitutes a particular controlled substance defined under Chapter 47 of Title 16, a report signed by the forensic toxicologist or forensic chemist who performed the test or tests as to its nature is prima facie evidence that the material delivered was properly tested under procedures approved by the Division of Forensic Science ~~office of the Chief Medical Examiner/Forensic Sciences Laboratory~~, that those procedures are legally reliable, that the material was delivered by the officer or person stated in the report and that the material was or contained the substance therein stated, without the necessity of the forensic toxicologist or forensic chemist personally appearing in court, provided the report identifies the forensic toxicologist or forensic chemist as an individual certified by the Division of Forensic Science ~~office of the Chief Medical Examiner/Forensic Sciences Laboratory~~, the Delaware State Police or any county or municipal police department employing analysts of controlled substances, as qualified under standards approved by the Division of Forensic Science ~~office of the Chief Medical Examiner/Forensic Sciences Laboratory~~ to analyze those substances, states that the forensic toxicologist or forensic chemist made an analysis of the material under the procedures approved by the Division of Forensic Science ~~Chief Medical Examiner, Director of Forensic Sciences Laboratory~~ and also states that the substance, in the forensic toxicologist's or forensic chemist's opinion, is or contains the particular controlled substance specified. Nothing in this section precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in or the presumption raised by the report.

Section 10. Amend § 1448(g), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(g) In addition to the penalties set forth in subsection (f) of this section herein, a person who is a prohibited person as described in paragraph (a)(5) of this section and who is 14 years of age or older shall, upon conviction of a first offense, be required to view a film and/or slide presentation depicting the damage and destruction inflicted upon the human body by

a projectile fired from a gun, and shall be required to meet with, separately or as part of a group, a victim of a violent crime, or with the family of a deceased victim of a violent crime. The Division of Youth Rehabilitative Service, with the cooperation of the Division of Forensic Science ~~Office of the Chief Medical Examiner~~ and the Violent Crimes Compensation Board, shall be responsible for the implementation of this subsection.

Section 11. Amend § 8515, Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 8515. Furnishing information of injured or deceased persons.

If a law-enforcement officer or the Division of Forensic Science ~~Office of the Chief Medical Examiner~~ transmits to the Bureau the identification data of any unidentified deceased or injured person or any person suffering from loss of memory, the Bureau shall furnish to such officer or ~~Office~~ the Division any information available pertaining to the identification of such person.

Section 12. Amend § 8701, Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 8701. Created; composition; compensation.

(a) There is hereby created the Criminal Justice Council.

(b) The Council shall consist of 29 members as follows:

(1) The Chief Justice of the Supreme Court, or the Chief Justice's designee;

(2) The President Judge of Superior Court, or the President Judge's designee;

(3) The Chief Judge of Family Court, or the Chief Judge's designee;

(4) The Chief Magistrate of the Justice of the Peace Courts, or the Chief Magistrate's designee;

(5) The Attorney General, or the Attorney General's designee;

(6) The Public Defender, or the Public Defender's designee;

(7) The Commissioner of the Department of Correction, or the Commissioner's designee;

(8) The Chief of the Bureau of Prisons of the Department of Correction, or the Bureau Chief's designee;

(9) The Director of the Division of Youth Rehabilitation, or the Director's designee;

(10) The Chairperson of the Board of Parole, or the Chairperson's designee;

(11) The Superintendent of the State Police, or the Superintendent's designee;

(12) The Chief of the New Castle County Police Department, or the Chief's designee;

(13) The Chief of the Wilmington Police Department, or the Chief's designee;

(14) The Chairperson of the Delaware Police Chiefs' Council, or the Chairperson's designee;

(15) The Director of the Division of Forensic Science, or the Director's ~~Chief Medical Examiner, or the Chief Medical Examiner's~~ designee;

(16) The Secretary of Health and Social Services, or the Secretary's designee;

(17) The Secretary of Labor, or the Secretary's designee

(18) The United States Attorney for the District of Delaware, or the United States Attorney's designee;

(19) The Secretary of Education, or the Secretary's designee;

(20) Five at-large members who shall serve at the pleasure of the Governor for a term of 5 years each;

(21) The Secretary of the Department of Technology and Information, or the Secretary's designee;

(22) The Chief Judge of the Court of Common Pleas, or the Chief Judge's designee;

(23) The Secretary of the Department of Services for Children, Youth and their Families, or the Secretary's designee;

(24) The Secretary of Public Safety, or the Secretary's designee; and

(25) A sitting judge of the United States District Court for the District of Delaware as designated by the Chief Judge of the United States District Court for the District of Delaware.

(c) The terms of those members who serve by virtue of the office they hold shall be concurrent with service in the office from which they derive their membership.

(d) Commission members shall serve without salary, but shall be entitled to reimbursement for travel and other necessary expenses incurred in the performance of official duties.

Section 13. Amend § 2105(a), Title 13 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 2105. Fatal incident reviews.

(a) The Council shall have the power to investigate and review, through a review panel, the facts and circumstances of all deaths and near deaths that occur in Delaware as a result of domestic violence. "Near death" means a victim in serious or critical condition as certified by a physician. This review shall include both homicides and suicides resulting from domestic violence. The ~~Office of the Chief Medical Examiner~~ Division of Forensic Science shall submit to the Council a monthly report within 30 days of the last day of the previous month, of all the homicides and suicides that occurred in Delaware. Reviews may also include cases where the victim suffered a substantial risk of serious physical injury or death. The review of deaths or near deaths involving criminal investigations will be delayed for at least 6 months, and will under no circumstances begin until authorized by the Attorney General's office. Any case involving the death of a minor (any child under the age of 18) related to domestic violence will be reviewed jointly by the appropriate regional

panel of the Child Death, Near Death and Stillborn Commission and the domestic violence fatal incident review panel. The death of a minor will only be reviewed by the domestic violence fatal incident review panel where the minor's parents or guardians were involved in an abusive relationship and the minor's death is directly related to that abuse.

Section 14. Amend § 3123, Title 16 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 3123. Registration of deaths.

(a) A certificate of death for each death which occurs in this State shall be filed with the Office of Vital Statistics, or as otherwise directed by the State Registrar, within 3 days after death and prior to final disposition, and shall be registered if it has been completed and filed in accordance with this section.

(1) If the place of death is unknown but the dead body is found in this State, the certificate of death shall be completed and filed in accordance with this section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it may be determined by approximation.

(2) When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this State, the death shall be registered in this State and the place where it is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this State, the death shall be registered in this State but the certificate shall show the actual place of death insofar as can be determined.

(b) The funeral director who assumes custody of the dead body shall file the certificate of death. The funeral director shall obtain the personal data from the next-of-kin or best qualified person or source available and shall obtain the medical certification from the attending physician or Medical Examiner.

(c) The medical certification shall be completed, signed and returned to the funeral director within 48 hours after death by the attending physician, except when an official death investigation is required by the ~~Office of the Chief Medical Examiner~~ Division of Forensic Science. In the absence of the attending physician the certificate may be completed and signed by the attending physician's designated physician or the chief medical officer of the institution in which death occurred provided such individual has knowledge about the medical history of the case.

(d) When an official death investigation is required pursuant to § 4706(a) of Title 29, the Medical Examiner shall determine the manner and cause of death and shall complete and sign the medical certification.

(e) If the cause of death cannot be determined within 48 hours after death, the attending physician or medical examiner shall file with the Office of Vital Statistics a pending certificate of death and a toxicology study shall be performed. If a cause of death cannot be determined after the toxicology study is performed, the remains and all reports

and/or studies shall be turned over to the ~~Office of the Chief Medical Examiner~~ Division of Forensic Science for review. When the cause of death is determined a revised certification of death shall be issued and presented to the funeral director or the funeral director's agent, who in turn shall file the certificate with the Office of Vital Statistics.

(f) When a death is presumed to have occurred within this State but the body cannot be located, a death certificate may be prepared by the State Registrar upon receipt of a court order which shall include the finding of facts required to complete the death certificate. Such a death certificate shall be marked "By Court Order" and shall show on its face the date of registration and shall identify the court and the date of decree.

Section 15. Amend § 3124, Title 16 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 3124. Registration of spontaneous fetal death.

Each spontaneous fetal death of 350 grams or more, or in the absence of weight, of 20 completed week's gestation or more, calculated from the date the last normal menstrual period began to the date of delivery, which occurs in this State shall be reported within 3 days after delivery to the Office of Vital Statistics by filing a fetal death certificate. Induced terminations of pregnancy shall not be reported as spontaneous fetal deaths.

(1) When a fetal death occurs in an institution, the person in charge of the institution or a designated representative shall prepare and file a Certificate of Fetal Death.

(2) When a fetal death occurs outside an institution, the physician in attendance at or immediately after delivery shall prepare and file a Certificate of Fetal Death. No person other than a physician may sign a Certificate of Fetal Death.

(3) When a fetal death occurs without medical attendance at or shortly after the delivery, or when a fetal death occurs in a moving conveyance and the fetus is first removed from the conveyance in this State or when a fetal death occurs in this State and the place of fetal death is unknown, an investigation by the ~~Office of the Chief Medical Examiner~~ Division of Forensic Science shall be conducted to determine the cause and manner of the fetal death.

Section 16. Amend § 4177(h), Title 21 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(h) (1) For the purpose of introducing evidence of a person's alcohol concentration or the presence or concentration of any drug pursuant to this section, a report signed by the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist who performed the test or tests as to its nature is prima facie evidence, without the necessity of the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist personally appearing in court:

a. That the blood delivered was properly tested under procedures approved by the Division of Forensic Science ~~Forensic Sciences Laboratory~~, ~~Office of the Chief Medical Examiner,~~ or the Delaware State Police Crime Laboratory;

b. That those procedures are legally reliable;

c. That the blood was delivered by the officer or persons stated in the report; and,

d. That the blood contained the alcohol, drugs or both therein stated.

(2) Any report introduced under paragraph (h)(1) of this section must:

a. Identify the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist as an individual certified by the Division of Forensic Science ~~Forensic Sciences Laboratory, Office of the Chief Medical Examiner~~, the Delaware State Police Crime Laboratory or any county or municipal police department employing scientific analysis of blood, as qualified under standards approved by the Division of Forensic Science ~~Forensic Sciences Laboratory~~, ~~Office of the Chief Medical Examiner~~ or the Delaware State Police Crime Laboratory to analyze the blood;

b. State that the person made an analysis of the blood under the procedures approved by the Division of Forensic Science ~~Forensic Sciences Laboratory, Office of the Chief Medical Examiner~~ or the Delaware State Police Crime Laboratory; and,

c. State that the blood, in that person's opinion, contains the resulting alcohol concentration or the presence or concentration of any drug within the meaning of this section.

Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the report entered pursuant to paragraphs (h)(1) and (2) of this section.

(3) For purposes of establishing the chain of physical custody or control of evidence defined in this section which is necessary to admit such evidence in any proceeding, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery stated, without the necessity of a personal appearance in court by the person signing the statement, in accordance with the same procedures outlined in § 4331(3) of Title 10.

(4) In a criminal proceeding, the prosecution shall, upon written demand of a defendant filed in the proceedings at least 15 days prior to the trial, require the presence of the Forensic Toxicologist, Forensic Chemist, State Police Forensic Analytical Chemist, or any person necessary to establish the chain of custody as a witness in the proceeding. The chain of custody or control of evidence defined in this section is established when there is evidence sufficient to eliminate any reasonable probability that such evidence has been tampered with, altered or misidentified.

(i) In addition to any other powers of arrest, any law-enforcement officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section, regardless of

whether the alleged violation was committed in the presence of such officer. This authority to arrest extends to any hospital or other medical treatment facility located beyond the territorial limits of the officer's jurisdiction provided there is probable cause to believe that the violation of this section occurred within the officer's jurisdiction. This authority to arrest also extends to any place where the person is found within 4 hours of the alleged driving of a vehicle if there is reason to believe the person has fled the scene of an accident in which that person was involved, and provided there is probable cause to believe that the violation of this section occurred within the officer's jurisdiction.

(j) Any court in which a conviction of or guilty plea to a driving under the influence offense shall include the blood alcohol concentration of the defendant (if any is on record) when forwarding notice of said conviction or guilty plea to the Division of Motor Vehicles.

Section 17. Amend § 2301, Title 23 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 2301. Definitions.

(a) "Alcohol concentration of 0.08 or more" shall mean:

(1) An amount of alcohol in a sample of a person's blood equivalent to 0.08 or more grams of alcohol per 100 milliliters of blood; or

(2) An amount of alcohol in a sample of a person's breath equivalent to 0.08 or more grams per 210 liters of breath.

(b) "Chemical test" or "test" shall include any form or method of analysis of a person's blood, breath or urine for the purposes of determining alcohol concentration or the presence of drugs which is approved for use by the Division of Forensic Science ~~Forensic Sciences Laboratory, Office of the Chief Medical Examiner~~, the Delaware State Police Crime Laboratory, any state or federal law-enforcement agency, or any hospital or medical laboratory. It shall not, however, include a preliminary screening test of breath performed in order to estimate the alcohol concentration of a person at the scene of a stop or other initial encounter between a law-enforcement officer and the person.

(c) "Operating a vessel or vessel operation" shall include driving, operating or having actual physical control of a vessel or boat.

(d) "Prior or previous offense" shall mean:

(1) A conviction pursuant to this chapter, or a similar statute of any state, local jurisdiction or the District of Columbia, within 5 years immediately preceding the date of the present offense; or

(2) A conviction, under a criminal statute encompassing death or injury caused to another person by the person's operation of a vessel, where operating a vessel under the influence or with a prohibited alcohol concentration was an element of the offense.

For the purpose of computing the periods of time set out in § 2305 of this title, the period shall run from the date of the commission of the prior or previous offense to the date of the commission of the charged offense. In any proceeding under § 2305 of this title, a person may not challenge the validity of any prior or previous conviction unless that person first successfully challenges the prior or previous conviction in the court in which the conviction arose and provides written notice of the challenge in the present proceeding to the prosecution at least 20 days before trial.

(e) "Underway" shall be defined as any vessel which is not at anchor or made fast ashore.

(f) "Vessel" shall mean every device in, upon or by which any person may be transported upon the water excepting devices moved by human power.

(g) "While under the influence" shall mean that the person is, because of alcohol or drugs or a combination of both, less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the operation of a vessel or boat.

Section 18. Amend § 2303, Title 23 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 2303. Consent to submit to chemical test.

(a) Any person who motors, sails, rows, commands, operates or has actual physical control of a vessel or boat underway on the waters of this State shall be deemed to have given consent, subject to this section and § 2302 of this title, to a chemical test or tests of the person's blood, breath and/or urine for the purpose of determining the presence of alcohol or a drug or drugs. The testing may be required of a person when an officer has probable cause to believe the person is in violation of § 2302 of this title or a local ordinance substantially conforming thereto.

(b) At the time that a chemical test specimen is required, the person may be informed that if testing is refused, the person shall be prohibited from operating a vessel upon Delaware's waters for a period of 1 year.

(c) If there are reasonable grounds to believe that there is impairment by a drug or drugs which are not readily subject to detection by a breath test, a blood and/or urine test may be required even after a breath test has been administered.

(d) Alternative tests; physical incapacity. -- If for any reason a person is physically unable to supply enough breath or complete the chemical test, the person shall submit to other chemical tests as designated by the officer, subject to the requirements of subsection (a) of this section. Any person who is unconscious or who is otherwise in a condition

rendering the person incapable of refusal shall be deemed to not have withdrawn the consent provided in this section and any test may be performed as provided in subsection (a) of this section.

(e) Refusal to submit as admissible evidence. -- Upon any trial of any action or proceeding arising out of the acts alleged to have been committed by any person while in violation of § 2302 of this title, the court may admit evidence of the refusal of such person to submit to a chemical test of the person's breath, blood or urine.

(f) Admissibility in evidence of results of chemical test . -- For purposes of a conviction premised upon § 2302(a) of this title or any proceeding pursuant to this code in which an issue is whether a person was operating a vessel while under the influence, evidence establishing the presence and concentration of alcohol or drugs in the person's blood, breath or urine shall be relevant and admissible. Such evidence may include the results from tests of samples of the person's blood, breath or urine taken within 4 hours of operating the vessel or at some later time. In any proceeding, the resulting alcohol or drug concentration reported when a test, as defined in § 2301(b) of this title, is performed shall be deemed to be the actual alcohol or drug concentration in the person's blood, breath or urine without regard to any margin of error or tolerance factor inherent in such tests.

(g) Evidence of an alcohol concentration of 0.05 or less in a person's blood, breath or urine sample taken within 4 hours of operating a vessel and tested as defined in § 2301(b) of this title is prima facie evidence that the person was not under the influence of alcohol within the meaning of this chapter. Evidence of an alcohol concentration of more than 0.05 but less than 0.08 in a person's blood, breath or urine sample taken within 4 hours of operating a vessel and tested as defined in § 2301(b) of this title shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining whether the person was under the influence of alcohol.

(h) Evidence obtained through a preliminary screening test of a person's breath in order to estimate the alcohol concentration of the person at the scene of a stop or other initial encounter between a law-enforcement officer and the person shall be admissible in any proceeding to determine whether probable cause existed to believe that a violation of this Code has occurred. However, such evidence shall not be admissible in the determination of guilt under this section.

(i) Nothing in this section shall preclude conviction of an offense defined in this chapter based solely on admissible evidence other than the results of a chemical test of a person's blood, breath or urine to determine the concentration or presence of alcohol or drugs.

(j) A jury shall be instructed by the court in accordance with the applicable provisions of this section in any proceeding pursuant to this chapter in which an issue is whether a person was operating a vessel while under the influence.

(k) For the purpose of introducing evidence of a person's alcohol concentration pursuant to this section, a report signed by the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist who performed the test or tests as to its nature is prima facie evidence, without the necessity of the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist personally appearing in court:

(1) That the blood delivered was properly tested under procedures approved by the Division of Forensic Science ~~Forensic Sciences Laboratory, Office of the Chief Medical Examiner~~ or the Delaware State Police Crime Laboratory;

(2) That those procedures are legally reliable;

(3) That the blood was delivered by the officer or persons stated in the report; and

(4) That the blood contained the alcohol therein stated.

(l) (1) Any report introduced under subsection (k) of this section must:

a. Identify the Forensic Toxologist, Forensic Chemist or State Police Forensic Analytical Chemist as an individual certified by the Division of Forensic Science ~~Forensic Sciences Laboratory, Office of the Chief Medical Examiner~~, the Delaware State Police Crime Laboratory or any county or municipal police department employing scientific analysis of blood, as qualified under standards approved by the Division of Forensic Science ~~Forensic Sciences Laboratory, Office of the Chief Medical Examiner~~ or the Delaware State Police Crime Laboratory to analyze the blood;

b. State that the person made the analysis of the blood under the procedures approved by the Division of Forensic Science ~~Forensic Sciences Laboratory, Office of the Chief Medical Examiner~~ or the Delaware State Police Crime Laboratory; and

c. State that the blood, in the person's opinion, contains the resulting alcohol concentration within the meaning of this chapter.

Nothing in this section precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the report entered pursuant to subsections (k) and (l) of this section.

(2) For purposes of establishing the chain of physical custody or control of evidence defined in this section which is necessary to admit such evidence in any proceeding, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery stated, without the necessity of a personal appearance in court by the person signing the statement, in accordance with the same procedures outlined in § 4331(3) of Title 10.

(3) In a criminal proceeding, the prosecution shall, upon written demand of a defendant filed in the proceedings at least 15 days prior to the trial, require the presence of the Forensic Toxologist, Forensic Chemist, State Police Forensic Analytical Chemist or any person necessary to establish the chain of custody as a witness in the proceeding. The chain of

custody or control of evidence defined in this section is established when there is evidence sufficient to eliminate any reasonable probability that such evidence has been tampered with, altered or misidentified.

(m) The informing or failure to inform the accused concerning the implied consent provision shall not affect the admissibility of such results in any prosecution for a violation of § 2302(a) of this title.

(n) The doctor-patient privilege shall not apply to the disclosure to law-enforcement personnel nor the admissibility into evidence in any criminal proceeding of the results of a chemical test of a person's blood, breath or urine for the purpose of determining the alcohol or drug content of the person's blood irrespective of whether such test was done at the request of a treating physician, other medical personnel or a peace officer.

Section 19. On or before January 31, 2015, the Commission on Forensic Science will evaluate the structure of the Division of Forensic Science, including whether there are efficiencies or operational improvements gained by consolidating other forensic sciences with the Division of Forensic Science, whether death investigations should be moved from the Division of Forensic Science, or whether there are any other restructurings that would improve the provision of forensic science services in this State, and shall issue a report on this evaluation to the Governor and the General Assembly.

Section 20. This Act shall take effect on July 1, 2014 or 10 days following its enactment into law, whichever is later.

Section 21. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

SYNOPSIS

This Act reorganizes the provision of many forensic sciences into a new Division of Forensic Science organized within the Department of Safety and Homeland Security. The proposed new Division of Forensic Science would consist of the operations previously organized in the Office of the Chief Medical Examiner within the Department of Health and Social Services.

Section 1 of the Act reorganizes the Office of the Chief Medical Examiner as the Division of Forensic Science. The Division shall be led by the Director of the Division of Forensic Science, who shall appoint the Chief Medical Examiner and assistant medical examiners and other personnel in the Division. The Director and the Chief Medical Examiner shall be subject to the same personnel policies as other division directors in the department. Employees of the Division must seek prior written approval of the Secretary of the Department of Safety and Homeland Security to maintain employment outside of the Division.

Section 1 further creates the Commission on Forensic Science, which shall provide oversight and supervision for the Division.

Sections 2 through 5 strike provisions relating to the Office of the Chief Medical Examiner from the chapter governing the Department of Health and Social Services, including certain employment provisions applicable to the Chief Medical Examiner.

Sections 6 through 8 create the Division of Forensic Science within the Department of Safety and Homeland Security.

Sections 9 through 18 make conforming changes to other titles of the Delaware Code to reflect the new organization of the Division of Forensic Science, including working with the courts and law enforcement (sections 9, 10 and 11), participation on the Criminal Justice Council (section 12), providing fatal incident reviews to the Domestic Violence Coordinating Council (section 13), investigation of deaths (sections 14 and 15), and operating a vehicle or vessel under the influence (sections 16 through 18).

Section 19 provides that the Commission on Forensic Science shall study whether any forensic sciences should be consolidated with the Division of Forensic Science, and whether death investigations should occur outside the Division, and requires the Commission to report to the Governor and General Assembly by January 31, 2015. Sections 20 and 21 provide that the Act shall take effect July 1, 2014 or ten days following its enactment, whichever is later, and that provision of the Act are intended to be severable.

Author: Senator Marshall