Title 11

Crimes and Criminal Procedure

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Part I
Delaware Criminal Code
Chapter 1
INTRODUCTORY PROVISIONS

§ 101 Short title.

Part I of this title shall be known as the "Delaware Criminal Code."

(11 Del. C. 1953 § 101; 58 Del. Laws, c. 497 § 1.)

§ 102 Applicability to offenses committed prior to July 1, 1973.

(a) Except as provided in subsections (b) and (c) of this section, this Criminal Code does not apply to offenses committed prior to July 1, 1973. Prosecutions for offenses committed prior to July 1, 1973, shall be governed by the prior law, which is continued in effect for that purpose, as if this Criminal Code were not in force. For the purpose of this section, an offense was committed prior to July 1, 1973, if any of the elements of the offense occurred prior thereto.

(b) In any case pending on or commenced after July 1, 1973, involving an offense committed prior to that date:

(1) Procedural provisions of this Criminal Code shall govern, insofar as they are justly applicable and their applicability does not introduce confusion, delay or manifest injustice;

(2) Provisions of this Criminal Code according a defense or mitigations shall apply, with the consent of the defendant.

(c) Provisions of this Criminal Code governing the treatment and the release or discharge of prisoners, probationers and parolees shall apply to persons under sentence for offenses committed prior to July 1, 1973, except that the minimum or maximum period of their detention or supervision shall in no case be increased, nor shall this Criminal Code affect the substantive or procedural validity of any judgment of conviction entered prior to July 1, 1973, regardless of the fact that appeal time has not run or that an appeal is pending.

(11 Del. C. 1953 § 102; 58 Del. Laws, c. 497 § 1.)

§ 103 Applicability to offenses committed after July 1, 1973.

(a) This Criminal Code establishes the criminal law of this State and governs the construction of and punishment for any offense set forth herein committed after July 1, 1973, as well as the construction and application of any defense to a prosecution for such an offense.

(b) Unless otherwise expressly provided, or unless the context otherwise requires, this Criminal Code governs the construction of any offense defined in a statute other than this Criminal Code and committed after July 1, 1973, as well as the construction and application of any defense to a prosecution for such an offense.

(11 Del. C. 1953 § 103; 58 Del. Laws, c. 497 § 1.)

Part I
Delaware Criminal Code
Chapter 2
GENERAL PROVISIONS CONCERNING OFFENSES

§ 201 General purposes.

The general purposes of this Criminal Code are:

(1) To proscribe conduct which unjustifiably and inexcusably causes or threatens harm to individual or public interests;

(2) To give fair warning of the nature of the conduct proscribed and of the sentences authorized upon conviction;

(3) To define the act or omission and the accompanying mental state which constitute each offense;

(4) To differentiate upon reasonable grounds between serious and minor offenses and to prescribe proportionate penalties therefor; and

(5) To insure the public safety by preventing the commission of offenses through the deterrent influence of the sentences authorized, the rehabilitation of those convicted and their confinement when required in the interests of public protection.

(11 Del. C. 1953 § 201; 58 Del. Laws, c. 497 § 1.)

§ 202 All offenses defined by statute.

(a) No conduct constitutes a criminal offense unless it is made a criminal offense by this Criminal Code or by another law.

(b) This section does not affect the power of a court to punish for civil contempt or to employ any sanction authorized by law for the enforcement of an order or a civil judgment or decree.

(11 Del. C. 1953 § 202; 58 Del. Laws, c. 497 § 1.)

§ 203 Principles of construction.

The general rule that a penal statute is to be strictly construed does not apply to this Criminal Code, but the provisions herein must be construed according to the fair import of their terms to promote justice and effect the purposes of the law, as stated in § 201 of this title.

(11 Del. C. 1953 § 203; 58 Del. Laws, c. 497 § 1.)

§ 204 Territorial applicability.

(a) Except as otherwise provided in this section a person may be convicted under the law of this State of an offense committed by the person's own conduct or by the conduct of another for which the person is legally accountable if:

(1) Either the conduct or the result which is an element of the offense occurs within Delaware; or

(2) Conduct occurring outside the State is sufficient under Delaware law to constitute a conspiracy to commit an offense within the State and an overt act in furtherance of the conspiracy occurs within the State; or

(3) Conduct occurring within the State establishes complicity in the commission of, or an attempt, solicitation or conspiracy to commit, an offense in another jurisdiction which also is an offense under the law of Delaware; or

(4) The offense consists of the omission to perform a legal duty imposed by Delaware law with respect to domicile, residence or a relationship to a person, thing or transaction in the State; or

(5) The offense is based on a statute of Delaware which expressly prohibits conduct outside the State, when the conduct bears a reasonable relation to a legitimate interest of this State and the defendant knows or should know that the defendant's conduct is likely to affect that interest.

(b) Paragraph (a)(1) of this section does not apply when causing a particular result is an element of an offense and the result is caused by conduct occurring outside Delaware which would not constitute an offense if the result had occurred in the same place, unless the defendant intentionally, knowingly or recklessly caused the result within Delaware.

(c) When the offense is homicide, either the death of the victim or the bodily impact causing death constitutes a "result" within the meaning of paragraph (a)(1) of this section and if the body of a homicide victim is found within this State it is presumed that the result occurred within the State.

(11 Del. C. 1953 § 204; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 205 Time limitations.

(a) A prosecution for murder or any class A felony, or any attempt to commit said crimes, may be commenced at any time.

(b) Except as otherwise provided in this section, prosecutions for other offenses are subject to the following periods of limitation:

(1) A prosecution for any felony except murder or any class A felony, or any attempt to commit said crimes, must be commenced within 5 years after it is committed;

(2) A prosecution for a class A misdemeanor must be commenced within 3 years after it is committed;

(3) A prosecution for a class B misdemeanor, a class C misdemeanor, an unclassified misdemeanor or a violation must be commenced within 2 years after it is committed.

(c) If the period prescribed by subsection (b) of this section has expired, a prosecution for any offense in which the accused's acts include

or constitute forgery, fraud, breach of fiduciary duty or actively concealed theft or misapplication of property by an employee, pledgee, bailee or fiduciary may be commenced within 2 years after discovery of the offense has been made or should have been made in the exercise of ordinary diligence by an aggrieved party or by an authorized agent, fiduciary, guardian, personal representative or parent (in the case of an infant) of an aggrieved party who is not a party to the offense. In no case shall this provision extend the period of limitation otherwise applicable by more than an additional 3 years beyond the period specified in subsection (b) of this section.

(d) If the period prescribed by subsection (b) of this section has expired, a prosecution for any offense based upon misconduct in office by a public officer or employee may be commenced at any time when the defendant is in public office or employment or within 2 years thereafter. In no case shall this provision extend the period of limitation otherwise applicable by more than an additional 3 years beyond the period specified in subsection (b) of this section.

(e) Notwithstanding the period prescribed by subsection (b) of this section, a prosecution for any crime that is delineated in § 787 of this title and in which the victim is a minor, subpart D of subchapter II of Chapter 5 of this title, or is otherwise defined as a "sexual offense" by § 761 of this title except § 763, § 764 or § 765 of this title, or any attempt to commit said crimes, may be commenced at any time. No prosecution under this subsection shall be based upon the memory of the victim that has been recovered through psychotherapy unless there is some evidence of the corpus delicti independent of such repressed memory. This subsection applies to all causes of action arising before, on or after July 15, 1992, and to the extent consistent with this subsection, it shall revive causes of action that would otherwise be barred by this section.

(f) An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity therein is terminated. Time starts to run on the day after the offense is committed.

(g) For purposes of this section, a prosecution is commenced when either an indictment is found or an information is filed.

(h) The period of limitation does not run:

(1) During any time when the accused is fleeing or hiding from justice so that the accused's identity or whereabouts within or outside the State cannot be ascertained, despite a diligent search for the accused; or

(2) During any time when the accused in a prosecution has become a fugitive from justice by failing to appear for any scheduled court proceeding related to such prosecution for which proper notice under the law was provided or attempted. It is no defense to a prosecution under this paragraph that the person did not receive notice of the scheduled court proceeding.

(3) During any time when a prosecution, including a prosecution under a defective indictment or information, against the accused for the same conduct has been commenced and is pending in this State.

(i) If the period prescribed by subsection (b) of this section has expired, a prosecution for any offense in this title may be commenced within 10 years after it is committed if based upon forensic DNA testing.

(j) In any prosecution in which subsection (c), (d), (e), (h) or (i) of this section is sought to be invoked to avoid the limitation period of subsection (b) of this section, the State must allege and prove the applicability of subsection (c), (d), (e), (h) or (i) as an element of the offense.

(11 Del. C. 1953 § 205; 58 Del. Laws, c. 497 § 1; 60 Del. Laws, c. 401 § 1; 68 Del. Laws, c. 397 §§ 1, 2; 70 Del. Laws, c. 92 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 264 §§ 1, 2; 72 Del. Laws, c. 320 §§ 1, 2; 74 Del. Laws, c. 56 § 1; 75 Del. Laws, c. 367 § 1; 79 Del. Laws, c. 276 § 4.)

§ 206 Method of prosecution when conduct constitutes more than 1 offense.

(a) When the same conduct of a defendant may establish the commission of more than 1 offense, the defendant may be prosecuted for each offense. The defendant's liability for more than 1 offense may be considered by the jury whenever the State's case against the defendant for each offense is established in accordance with § 301 of this title. The defendant may not, however, be convicted of more than 1 offense if:

(1) One offense is included in the other, as defined in subsection (b) of this section; or

(2) One offense consists only of an attempt to commit the other; or

(3) Inconsistent findings of fact are required to establish the commission of the offenses.

(b) A defendant may be convicted of an offense included in an offense charged in the indictment or information. An offense is so included when:

(1) It is established by the proof of the same or less than all the facts required to establish the commission of the offense charged; or

(2) It consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or

(3) It involves the same result but differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property or public interest or a lesser kind of culpability suffices to establish its commission.

(c) The court is not obligated to charge the jury with respect to an included offense unless there is a rational basis in the evidence for a verdict acquitting the defendant of the offense charged and convicting the defendant of the included offense.

(11 Del. C. 1953 § 206; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 207 When prosecution is barred by former prosecution for the same offense.

When a prosecution is for a violation of the same statutory provisions and is based upon the same facts as a former prosecution, it is barred by the former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal which has not subsequently been set aside. There is an acquittal if the prosecution resulted in a finding of not guilty by the trier of fact or in a determination by the court that there was insufficient evidence to warrant a conviction. A finding of guilty of a lesser included offense is an acquittal of the greater inclusive offense, although the conviction is subsequently set aside.

(2) The former prosecution was terminated, after the information had been filed or the indictment found, by a final order or judgment for the defendant, which has not been set aside, reversed or vacated and which necessarily required a determination inconsistent with a fact or a legal proposition that must be established for conviction of the offense.

(3) The former prosecution resulted in a conviction. There is a conviction if the prosecution resulted in a judgment of conviction which has not been reversed or vacated, a verdict of guilty which has not been set aside and which is capable of supporting a judgment or a plea of guilty or nolo contendere accepted by the court.

(4) The former prosecution was improperly terminated. Except as provided in this subdivision there is an improper termination of a prosecution if the termination is for reasons not amounting to an acquittal, and it takes place after the first witness is sworn but before verdict. Termination under any of the following circumstances is not improper:

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

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

(11 Del. C. 1953 § 207; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 208 When prosecution is barred by former prosecution for different offense.

Although a prosecution is for a violation of a different statutory provision or is based on different facts, it is barred by a former prosecution in a court having jurisdiction over the subject matter of the second prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal which has not subsequently been set aside or in a conviction as defined in § 207 of this title and the subsequent prosecution is for:

a. Any offense of which the defendant could have been convicted on the first prosecution; or

b. The same conduct, unless:

1. The offense for which the defendant is subsequently prosecuted requires proof of a fact not required by the former offense and the law defining each of the offenses is intended to prevent a substantially different harm or evil; or

2. The second offense was not consummated when the former trial began.

(2) The former prosecution was terminated by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the second offense.

(3) The former prosecution was improperly terminated as improper termination is defined in § 207(4) of this title and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

(11 Del. C. 1953 § 208; 58 Del. Laws, c. 497 § 1.)

§ 209 Former prosecution in another jurisdiction; when a bar.

When conduct constitutes an offense within the concurrent jurisdiction of this State and of the United States or another state, a prosecution in any such other jurisdiction is a bar to a subsequent prosecution in this State under the following circumstances:

(1) The first prosecution resulted in an acquittal which has not subsequently been set aside or in a conviction as defined in § 207 of this title and the subsequent prosecution is based on the same conduct, unless:

a. The offense for which the defendant is subsequently prosecuted requires proof of a fact not required by the former offense and the law defining each of the offenses is intended to prevent a substantially different harm or evil; or

b. The second offense was not consummated when the former trial began; or

(2) The former prosecution was terminated, after the information was filed or the indictment found, by an acquittal or by a final order or judgment for the defendant which has not been set aside, reversed or vacated and which acquittal, final order or judgment necessarily required a determination inconsistent with a fact which must be established for conviction of the offense for which the defendant is subsequently prosecuted; or

(3) The former prosecution was improperly terminated as improper termination is defined in § 207(4) of this title and the subsequent prosecution is for an offense of which the defendant could have been convicted had the former prosecution not been improperly terminated.

(11 Del. C. 1953 § 209; 58 Del. Laws, c. 497 § 1.)

§ 210 Former prosecution before court lacking jurisdiction or when fraudulently procured by defendant.

A prosecution is not a bar within the meaning of §§ 207, 208 and 209 of this title under any of the following circumstances:

(1) The former prosecution was before a court which lacked jurisdiction over the defendant or the offense; or

(2) The former prosecution was procured by the defendant without the knowledge of the appropriate prosecuting officer and with the purpose of avoiding the sentence which might otherwise be imposed; or

(3) The former prosecution resulted in a judgment of conviction which was held invalid on appeal or in a subsequent proceeding on a

writ of habeas corpus, coram nobis or similar process.

(11 Del. C. 1953 § 210; 58 Del. Laws, c. 497 § 1.)

§ 211 Repeal of statutes as affecting existing liabilities.

(a) The repeal of any statute creating, defining or relating to any criminal offense set forth under the laws of this State, shall not have the effect of releasing or extinguishing any penalty, forfeiture or liability incurred under such statute, unless the repealing act shall so expressly provide, and such statute shall be treated as remaining in full force and effect for the purpose of sustaining any proper action or prosecution for the enforcement of such penalty, forfeiture or liability.

(b) Any action, case, prosecution, trial or other legal proceeding in progress under or pursuant to any statute relating to any criminal offense set forth under the laws of this State shall be preserved and shall not become illegal or terminated in the event that such statute is later amended by the General Assembly, irrespective of the stage of such proceeding, unless the amending act expressly provides to the contrary. For the purposes of such proceedings, the prior law shall remain in full force and effect.

(71 Del. Laws, c. 263 § 1.)

§§ 212 -220. [Reserved.]

§ 221 Principles of definitions.

(a) In this Criminal Code when the word "means" is employed in defining a word or term, the definition is limited to the meaning given.

(b) In this Criminal Code, when the word "includes" is employed in defining a word or term, the definition is not limited to the meaning given, but in appropriate cases the word or term may be defined in any way not inconsistent with the definition given.

(c) If a word used in this Criminal Code is not defined herein, it has its commonly accepted meaning, and may be defined as appropriate to fulfill the purposes of the provision as declared in § 201 of this title.

(11 Del. C. 1953 § 221; 58 Del. Laws, c. 497 § 1.)

§ 222 General definitions [Effective until June 16, 2017]

When used in this Criminal Code:

(1) "Building," in addition to its ordinary meaning, includes any structure, vehicle or watercraft. Where a building consists of 2 or more units separately secured or occupied, each unit shall be deemed a separate building.

(2) "Controlled substance" or "counterfeit substance" shall have the same meaning as used in Chapter 47 of Title 16.

(3) "Conviction" means a verdict of guilty by the trier of fact, whether judge or jury, or a plea of guilty or a plea of nolo contendere accepted by the court.

(4) "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury, or any disabling chemical spray, as defined in paragraph (7) of this section or any electronic control devices including but not limited to a neuromuscular incapacitation device designed to incapacitate a person.

(5) "Deadly weapon" includes a "firearm", as defined in paragraph (12) of this section, a bomb, a knife of any sort (other than an ordinary pocketknife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain or ice pick or any "dangerous instrument", as defined in paragraph (4) of this section, which is used, or attempted to be used, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocketknife shall be a folding knife having a blade not more than 3 inches in length.

(6) "Defraud" means to acquire a gain or advantage by fraud.

(7) "Disabling chemical spray" includes mace, tear gas, pepper spray or any other mixture containing quantities thereof, or any other aerosol spray or any liquid, gaseous or solid substance capable of producing temporary physical discomfort, disability or injury through being vaporized or otherwise dispersed in the air, or any canister, container or device designed or intended to carry, store or disperse such aerosol spray or such gas or solid.

(8) "Drug" means any substance or preparation capable of producing any alteration of the physical, mental or emotional condition of a person.

(9) "Elderly person" means any person who is 62 years of age or older. Thus, the terms "elderly person" and "person who is 62 years of age or older" shall have the same meaning as used in this Code or in any action brought pursuant to this Code.

(10) "Electronic control device" is a device designed to incapacitate a person, including but not limited to a neuromuscular incapacitation device.

(11) "Female" means a person of the female sex.

(12) "Firearm" includes any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether operable or inoperable, loaded or unloaded. It does not include a BB gun.

(13) "Fraud" means an intentional perversion, misrepresentation or concealment of truth.

(14) "Law" includes statutes and ordinances. Unless the context otherwise clearly requires, "law" also includes settled principles of the common law of Delaware governing areas other than substantive criminal law.

(15) "Law-enforcement officer" includes police officers, the Attorney General and the Attorney General's deputies, agents of the State Division of Alcohol and Tobacco Enforcement, agents employed by a state, county or municipal law-enforcement agency engaged in monitoring sex offenders, correctional officers, probation and parole officers, state fire marshals, municipal fire marshals that are graduates of a Delaware Police Academy which is accredited/authorized by the Council on Police Training, sworn members of the City of Wilmington Fire Department who have graduated from a Delaware Police Academy which is authorized/accredited by the Council on Police Training, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, and constables. A sheriff or deputy sheriff shall be considered a "law-enforcement officer" when acting upon a specific order of a judge or commissioner of Superior Court. Sheriffs and deputy sheriffs shall not have any arrest authority. However, sheriffs and deputy sheriffs may take into custody and transport a person when specifically so ordered by a judge or commissioner of Superior Court.

(16) "Lawful" means in accordance with law or, where the context so requires, not prohibited by law.

(17) "Male" means a person of the male sex.

(18) "Mental illness" means any condition of the brain or nervous system recognized as a mental disease by a substantial part of the medical profession.

(19) "Narcotic drug" shall have the same definition as contained in § 4701(27) of Title 16.

(20) "Oath or affirmation," for the purpose of warrants, can be made via videophone, telephone, secure electronic means or in person.

(21) "Person" means a human being who has been born and is alive, and, where appropriate, a public or private corporation, a trust, a firm, a joint stock company, a union, an unincorporated association, a partnership, a government or a governmental instrumentality.

(22) "Physical force" means any application of force upon or toward the body of another person.

(23) "Physical injury" means impairment of physical condition or substantial pain.

(24) "Public transit operator" means a person in control or in charge of a transportation vehicle for public use, in exchange for a fee or charge, offered by any railroad, street railway, traction railway, motor bus, or trolley coach. Specifically excluded are:

a. Transportation to and from any school or school-sponsored event when such transportation is under the regulation of the Department of Education; and

b. Transportation to and from a church, synagogue or other place of worship;

c. Shuttle-type transportation provided by business establishments without charge to customers of the businesses offering such shuttle transportation between fixed termini; and

d. Limousine services.

(25) "Serious mental disorder" means any condition of the brain or nervous system recognized as defective, as compared with an average or normal condition, by a substantial part of the medical profession.

(26) "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.

(27) "Telephone," in addition to its ordinary meaning, includes any computer (as defined in § 931 of this title) or any other electronic device which is actually used to engage in a wire communication (as defined in § 2401(20) of this title) with any other telephone, computer or electronic device.

(28) "Therapeutic abortion" means an abortion performed pursuant to subchapter IX of Chapter 17 of Title 24.

(29) "Unlawful" means contrary to law or, where the context so requires, not permitted by law. It does not mean wrongful or immoral.

(30) "Vehicle" includes any means in or by which someone travels or something is carried or conveyed or a means of conveyance or transport, whether or not propelled by its own power.

(11 Del. C. 1953 § 222; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 1; 63 Del. Laws, c. 92 § 1; 64 Del. Laws, c. 17 § 1; 68 Del. Laws, c. 378 §§ 1-3; 69 Del. Laws, c. 24 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 383 § 1; 71 Del. Laws, c. 374 §§ 1-3; 72 Del. Laws, c. 34 § 8; 72 Del. Laws, c. 43 § 2; 72 Del. Laws, c. 50 § 1; 72 Del. Laws, c. 371 § 1; 72 Del. Laws, c. 379 § 1; 73 Del. Laws, c. 126 § 1; 73 Del. Laws, c. 249 § 1; 73 Del. Laws, c. 413 § 1; 74 Del. Laws, c. 71 § 4; 74 Del. Laws, c. 250 § 2; 76 Del. Laws, c. 270 §§ 1, 2; 77 Del. Laws, c. 64 § 3; 78 Del. Laws, c. 13 § 3; 78 Del. Laws, c. 224 § 1; 78 Del. Laws, c. 266 § 1; 78 Del. Laws, c. 325 § 3; 79 Del. Laws, c. 200 § 1; 79 Del. Laws, c. 341 § 1.)

§ 222 General definitions [Effective June 16, 2017]

When used in this Criminal Code:

(1) "Building," in addition to its ordinary meaning, includes any structure, vehicle or watercraft. Where a building consists of 2 or more units separately secured or occupied, each unit shall be deemed a separate building.

(2) "Controlled substance" or "counterfeit substance" shall have the same meaning as used in Chapter 47 of Title 16.

(3) "Conviction" means a verdict of guilty by the trier of fact, whether judge or jury, or a plea of guilty or a plea of nolo contendere accepted by the court.

(4) "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury, or any disabling chemical spray, as defined in paragraph (7) of this section or any electronic control devices including but not limited to a neuromuscular incapacitation device designed to incapacitate a person.

(5) "Deadly weapon" includes a "firearm", as defined in paragraph (12) of this section, a bomb, a knife of any sort (other than an

ordinary pocketknife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain or ice pick or any "dangerous instrument", as defined in paragraph (4) of this section, which is used, or attempted to be used, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocketknife shall be a folding knife having a blade not more than 3 inches in length.

(6) "Defraud" means to acquire a gain or advantage by fraud.

(7) "Disabling chemical spray" includes mace, tear gas, pepper spray or any other mixture containing quantities thereof, or any other aerosol spray or any liquid, gaseous or solid substance capable of producing temporary physical discomfort, disability or injury through being vaporized or otherwise dispersed in the air, or any canister, container or device designed or intended to carry, store or disperse such aerosol spray or such gas or solid.

(8) "Drug" means any substance or preparation capable of producing any alteration of the physical, mental or emotional condition of a person.

(9) "Elderly person" means any person who is 62 years of age or older. Thus, the terms "elderly person" and "person who is 62 years of age or older" shall have the same meaning as used in this Code or in any action brought pursuant to this Code.

(10) "Electronic control device" is a device designed to incapacitate a person, including but not limited to a neuromuscular incapacitation device.

(11) "Female" means a person of the female sex.

(12) "Firearm" includes any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether operable or inoperable, loaded or unloaded. It does not include a BB gun.

(13) "Fraud" means an intentional perversion, misrepresentation or concealment of truth.

(14) "Law" includes statutes and ordinances. Unless the context otherwise clearly requires, "law" also includes settled principles of the common law of Delaware governing areas other than substantive criminal law.

(15) "Law-enforcement officer" includes police officers, the Attorney General and the Attorney General's deputies, agents of the State Division of Alcohol and Tobacco Enforcement, agents employed by a state, county or municipal law-enforcement agency engaged in monitoring sex offenders, correctional officers, probation and parole officers, state fire marshals, municipal fire marshals that are graduates of a Delaware Police Academy which is accredited/authorized by the Council on Police Training, sworn members of the City of Wilmington Fire Department who have graduated from a Delaware Police Academy which is authorized/accredited by the Council on Police Training, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, and constables. A sheriff or deputy sheriff shall be considered a "law-enforcement officer" when acting upon a specific order of a judge or commissioner of Superior Court. Sheriffs and deputy sheriffs shall not have any arrest authority. However, sheriffs and deputy sheriffs may take into custody and transport a person when specifically so ordered by a judge or commissioner of Superior Court.

(16) "Lawful" means in accordance with law or, where the context so requires, not prohibited by law.

(17) "Male" means a person of the male sex.

(18) "Mental illness" means any condition of the brain or nervous system recognized as a mental disease by a substantial part of the medical profession.

(19) "Narcotic drug" shall have the same definition as contained in § 4701 of Title 16.

(20) "Oath or affirmation," for the purpose of warrants, can be made via videophone, telephone, secure electronic means or in person.

(21) "Person" means a human being who has been born and is alive, and, where appropriate, a public or private corporation, a trust, a firm, a joint stock company, a union, an unincorporated association, a partnership, a government or a governmental instrumentality.

(22) "Physical force" means any application of force upon or toward the body of another person.

(23) "Physical injury" means impairment of physical condition or substantial pain.

(24) "Public transit operator" means a person in control or in charge of a transportation vehicle for public use, in exchange for a fee or charge, offered by any railroad, street railway, traction railway, motor bus, or trolley coach. Specifically excluded are:

a. Transportation to and from any school or school-sponsored event when such transportation is under the regulation of the Department of Education; and

b. Transportation to and from a church, synagogue or other place of worship;

c. Shuttle-type transportation provided by business establishments without charge to customers of the businesses offering such shuttle transportation between fixed termini; and

d. Limousine services.

(25) "Serious mental disorder" means any condition of the brain or nervous system recognized as defective, as compared with an average or normal condition, by a substantial part of the medical profession.

(26) "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.

(27) "Telephone," in addition to its ordinary meaning, includes any computer (as defined in § 931 of this title) or any other electronic device which is actually used to engage in a wire communication (as defined in § 2401(20) of this title) with any other telephone, computer or electronic device.

(28) "Therapeutic abortion" means an abortion performed pursuant to subchapter IX of Chapter 17 of Title 24.

(29) "Unlawful" means contrary to law or, where the context so requires, not permitted by law. It does not mean wrongful or immoral.

(30) "Vehicle" includes any means in or by which someone travels or something is carried or conveyed or a means of conveyance or transport, whether or not propelled by its own power.

(11 Del. C. 1953 § 222; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 1; 63 Del. Laws, c. 92 § 1; 64 Del. Laws, c. 17 § 1; 68 Del. Laws, c. 378 §§ 1-3; 69 Del. Laws, c. 24 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 383 § 1; 71 Del. Laws, c. 374 §§ 1-3; 72 Del. Laws, c. 34 § 8; 72 Del. Laws, c. 43 § 2; 72 Del. Laws, c. 50 § 1; 72 Del. Laws, c. 371 § 1; 72 Del. Laws, c. 379 § 1; 73 Del. Laws, c. 126 § 1; 73 Del. Laws, c. 249 § 1; 73 Del. Laws, c. 413 § 1; 74 Del. Laws, c. 71 § 4; 74 Del. Laws, c. 250 § 2; 76 Del. Laws, c. 270 §§ 1, 2; 77 Del. Laws, c. 64 § 3; 78 Del. Laws, c. 13 § 3; 78 Del. Laws, c. 224 § 1; 78 Del. Laws, c. 266 § 1; 78 Del. Laws, c. 325 § 3; 79 Del. Laws, c. 200 § 1; 79 Del. Laws, c. 341 § 1; 80 Del. Laws, c. 264 § 1.)

§ 223 Words of gender or number.

Unless the context otherwise requires, words denoting the singular number may, and where necessary shall, be construed as denoting the plural number, and words denoting the plural number may, and where necessary shall, be construed as denoting the singular number, and words denoting the masculine gender may, and where necessary shall, be construed as denoting the feminine gender or the neuter gender.

(11 Del. C. 1953 § 223; 58 Del. Laws, c. 497 § 1.)

§ 224 Valuation of property.

Whenever the value of property is determinative of the degree of an accused's criminal guilt or otherwise relevant in a criminal prosecution, it shall be ascertained as follows:

(1) Except as otherwise specified in this section, "value" means the market value of the property at the time and place of the crime, or if that cannot be satisfactorily ascertained, the cost of replacing the property within a reasonable time after the crime.

(2) Whether or not they have been issued or delivered, the value of certain written instruments, not including those having a readily ascertainable market value, shall be ascertained as follows:

a. The value of an instrument constituting an evidence of debt, such as a check, draft or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied.

b. The value of any other instrument which creates, releases, discharges or otherwise affects any valuable legal right, privilege or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(3) When the value of property cannot satisfactorily be ascertained pursuant to the standards set forth in paragraphs (1) and (2) of this section, its value shall be deemed to be an amount less than $100.

(11 Del. C. 1953 § 224; 58 Del. Laws, c. 497 § 1.)

§§ 225 -230. [Reserved.]

§ 231 Definitions relating to state of mind.

(a) "Criminal negligence". — A person acts with criminal negligence with respect to an element of an offense when the person fails to perceive a risk that the element exists or will result from the conduct. The risk must be of such a nature and degree that failure to perceive it constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation.

(b) "Intentionally". — A person acts intentionally with respect to an element of an offense when:

(1) If the element involves the nature of the person's conduct or a result thereof, it is the person's conscious object to engage in conduct of that nature or to cause that result; and

(2) If the element involves the attendant circumstances, the person is aware of the existence of such circumstances or believes or hopes that they exist.

(c) "Knowingly". — A person acts knowingly with respect to an element of an offense when:

(1) If the element involves the nature of the person's conduct or the attendant circumstances, the person is aware that the conduct is of that nature or that such circumstances exist; and

(2) If the element involves a result of the person's conduct, the person is aware that it is practically certain that the conduct will cause that result.

(d) "Negligence". — A person acts with negligence with respect to an element of an offense when the person fails to exercise the standard of care which a reasonable person would observe in the situation.

(e) "Recklessly". — A person acts recklessly with respect to an element of an offense when the person is aware of and consciously disregards a substantial and unjustifiable risk that the element exists or will result from the conduct. The risk must be of such a nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

(11 Del. C. 1953 § 231; 58 Del. Laws, c. 497 § 1; 63 Del. Laws, c. 88 § 6; 70 Del. Laws, c. 186 § 1.)

§ 232 Definition relating to elements of offense.

"Elements of an offense" are those physical acts, attendant circumstances, results and states of mind which are specifically included within the definition of the offense or, if the definition is incomplete, those states of mind which are supplied by the general provisions of this Criminal Code. Facts establishing jurisdiction and venue and establishing that the offense was committed within the time period prescribed in § 205 of this title must also be proved as elements of the offense.

(11 Del. C. 1953 § 232; 58 Del. Laws, c. 497 § 1.)

§ 233 Definition and classification of offenses.

(a) "Crime" or "offense" means an act or omission forbidden by a statute of this State and punishable upon conviction by:

(1) Imprisonment; or

(2) Fine; or

(3) Removal from office; or

(4) Disqualification to hold any office of trust, honor or profit under the State; or

(5) Other penal discipline.

(b) An act or omission is forbidden by a statute of this State if a statute makes the act or omission punishable by any form of punishment mentioned in subsection (a) of this section.

(c) An offense is either a felony, a misdemeanor or a violation. Any offense not specifically designated by law to be a felony or a violation is a misdemeanor.

(11 Del. C. 1953 § 233; 58 Del. Laws, c. 497 § 1.)

§ 234 Definition of terms requiring certain sentences.

When used for the purpose of describing or requiring a sentence of incarceration imposed pursuant to this title, the terms "minimum," "mandatory," "minimum mandatory" and "mandatory minimum" shall be construed as being synonymous.

(71 Del. Laws, c. 98 § 1.)

§§ 235 -240. [Reserved.]

§ 241 Conviction to precede punishment.

The punishments prescribed by this Criminal Code or by any other statute of a criminal nature may be inflicted only after a judgment of conviction by a court having jurisdiction over the person of the defendant and over the subject matter.

(11 Del. C. 1953 § 241; 58 Del. Laws, c. 497 § 1.)

§ 242 Requirements for criminal liability in general.

A person is not guilty of an offense unless liability is based on conduct which includes a voluntary act or the omission to perform an act which the person is physically capable of performing.

(11 Del. C. 1953 § 242; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 243 Definition of "voluntary act."

"Voluntary act" means a bodily movement performed consciously or habitually as a result of effort or determination, and includes possession if the defendant knowingly procured or received the thing possessed or was aware of the defendant's control thereof for a sufficient period to have been able to terminate possession.

(11 Del. C. 1953 § 243; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§§ 244 -250. [Reserved.]

§ 251 Proof of state of mind required unless otherwise provided; strict liability.

(a) No person may be found guilty of a criminal offense without proof that the person had the state of mind required by the law defining the offense or by subsection (b) of this section.

(b) When the state of mind sufficient to establish an element of an offense is not prescribed by law, that element is established if a person acts intentionally, knowingly or recklessly.

(c) It is unnecessary to prove the defendant's state of mind with regard to:

(1) Offenses which constitute violations, unless a particular state of mind is included within the definition of the offenses; or

(2) Offenses defined by statutes other than this Criminal Code, insofar as a legislative purpose to impose strict liability for such offenses or with respect to any material element thereof plainly appears.

In all cases covered by this subsection, it is nevertheless necessary to prove that the act or omission on which liability is based was voluntary as provided in §§ 242 and 243 of this title.

(11 Del. C. 1953 § 251; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 252 Prescribed state-of-mind requirement applies to all material elements.

When a statute defining an offense prescribes the state of mind that is sufficient for the commission of the offense, without distinguishing among the elements thereof, the provision shall apply to all the elements of the offense, unless a contrary legislative purpose plainly appears.

(11 Del. C. 1953 § 252; 58 Del. Laws, c. 497 § 1.)

§ 253 Substitutes for criminal negligence, recklessness and knowledge.

Whenever a statute provides that negligence suffices to establish an element of an offense, the element is also established if a person acts intentionally, knowingly, recklessly or with criminal negligence. When a statute provides that criminal negligence suffices to establish an element of an offense, the element also is established if a person acts intentionally, knowingly or recklessly. When recklessness suffices to establish an element of an offense, the element also is established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element of an offense, the element also is established if a person acts intentionally.

(11 Del. C. 1953 § 253; 58 Del. Laws, c. 497 § 1; 76 Del. Laws, c. 101 § 7.)

§ 254 Conditional intention.

The fact that a defendant's intention was conditional is immaterial unless the condition negatives the harm or evil sought to be prevented by the statute defining the offense.

(11 Del. C. 1953 § 254; 58 Del. Laws, c. 497 § 1.)

§ 255 Knowledge of high probability.

When knowledge of the existence of a particular fact is an element of an offense, such knowledge is established if a person is aware of a high probability of its existence, unless the person actually believes that it does not exist.

(11 Del. C. 1953 § 255; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§§ 256 -260. [Reserved.]

§ 261 Causation.

Conduct is the cause of a result when it is an antecedent but for which the result in question would not have occurred.

(11 Del. C. 1953 § 261; 58 Del. Laws, c. 497 § 1.)

§ 262 Intentional or knowing causation; different result from that expected.

The element of intentional or knowing causation is not established if the actual result is outside the intention or the contemplation of the defendant unless:

(1) The actual result differs from that intended or contemplated, as the case may be, only in the respect that a different person or different property is injured or affected or that the injury or harm intended or contemplated would have been more serious or more extensive than that caused; or

(2) The actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence to have a bearing on the actor's liability or on the gravity of the offense.

(11 Del. C. 1953 § 262; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 263 Reckless or negligent causation; different result from that expected or overlooked.

The element of reckless or negligent causation is not established if the actual result is outside the risk of which the defendant is aware or, in the case of negligence, of which the defendant should be aware unless:

(1) The actual result differs from the probable result only in the respect that a different person or different property is injured or affected or that the probable injury or harm would have been more serious or more extensive than that caused; or

(2) The actual result involves the same kind of injury or harm as the probable result and is not too remote or accidental in its occurrence to have a bearing on the actor's liability or on the gravity of the offense.

(11 Del. C. 1953 § 263; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 264 Causation in offenses of strict liability.

When causing a particular result is an element of an offense for which strict liability is imposed by law, the element is not established unless the actual result is a probable consequence of the actor's conduct.

(11 Del. C. 1953 § 264; 58 Del. Laws, c. 497 § 1.)

§§ 265 -270. [Reserved.]

§ 271 Liability for the conduct of another — Generally.

A person is guilty of an offense committed by another person when:

(1) Acting with the state of mind that is sufficient for commission of the offense, the person causes an innocent or irresponsible person to engage in conduct constituting the offense; or

(2) Intending to promote or facilitate the commission of the offense the person:

a. Solicits, requests, commands, importunes or otherwise attempts to cause the other person to commit it; or

b. Aids, counsels or agrees or attempts to aid the other person in planning or committing it; or

c. Having a legal duty to prevent the commission of the offense, fails to make a proper effort to do so; or

(3) The person's conduct is expressly declared by this Criminal Code or another statute to establish the person's complicity.

Nothing in this section shall apply to any law-enforcement officer or the officer's agent while acting in the lawful performance of duty.

(11 Del. C. 1953 § 271; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 272 Liability for the conduct of another — No defense.

In any prosecution for an offense in which the criminal liability of the accused is based upon the conduct of another person pursuant to § 271 of this title, it is no defense that:

(1) The other person is not guilty of the offense in question because of irresponsibility or other legal incapacity or exemption, or because of unawareness of the criminal nature of the conduct in question or of the accused's criminal purpose, or because of other factors precluding the mental state required for the commission of the offense; or

(2) The other person has not been prosecuted for or convicted of any offense based on the conduct in question, or has previously been acquitted thereof, or has been convicted of a different offense or in a different degree, or has legal immunity from prosecution for the conduct in question; or

(3) The offense in question, as defined, can be committed only by a particular class of persons, and the defendant, not belonging to that class, is for that reason legally incapable of committing the offense in an individual capacity, unless imposing liability on the defendant is inconsistent with the purpose of the provision establishing the defendant's incapacity.

(11 Del. C. 1953 § 272; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 273 Liability for the conduct of another — Exemption.

Unless otherwise provided by this Criminal Code or by the statute defining the offense, a person is not liable for an offense committed by another person if:

(1) The person is a victim of that offense; or

(2) The offense is so defined that the person's conduct is inevitably incident to its commission; or

(3) The person terminates complicity prior to commission of the offense and:

a. Wholly deprives it of effectiveness in the commission of the offense; or

b. Gives timely warning to the Attorney General or the police or otherwise makes a proper effort to prevent the commission of the offense.

If the actor's conduct constitutes a separate offense, the actor is liable for that offense only and not for the conduct or offense committed by the other person.

(11 Del. C. 1953 § 273; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 274 Offenses involving 2 or more persons; convictions for different degrees of offense.

When, pursuant to § 271 of this title, 2 or more persons are criminally liable for an offense which is divided into degrees, each person is guilty of an offense of such degree as is compatible with that person's own culpable mental state and with that person's own accountability for an aggravating fact or circumstance.

(11 Del. C. 1953 § 274; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 275 Indictment as principal and conviction as accomplice; indictment as accomplice and conviction as principal.

(a) A person indicted for committing an offense may be convicted as an accomplice to another person guilty of committing the offense.

(b) A person indicted as an accomplice to an offense committed by another person may be convicted as a principal.

(11 Del. C. 1953 § 275; 58 Del. Laws, c. 497 § 1.)

§§ 276 -280. [Reserved.]

§ 281 Criminal liability of organizations.

An organization is guilty of an offense when:

(1) The conduct constituting the offense consists of an omission to discharge a specific duty of affirmative performance imposed on organizations by law; or

(2) The conduct constituting the offense is engaged in, authorized, solicited, requested, commanded or recklessly tolerated by the board of directors or by a high managerial agent acting within the scope of employment and in behalf of the organization; or

(3) The conduct constituting the offense is engaged in by an agent of the organization while acting within the scope of employment and in behalf of the organization and:

a. The offense is a misdemeanor or a violation; or

b. The offense is one defined by a statute which clearly indicates a legislative intent to impose such criminal liability on an organization.

(11 Del. C. 1953 § 281; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 71 §§ 1, 2.)

§ 282 Criminal liability of an individual for organizational conduct.

A person is criminally liable for conduct constituting an offense which the person performs or causes to be performed in the name of or in behalf of an organization to the same extent as if the conduct were performed in the person's own name or behalf.

(11 Del. C. 1953 § 282; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 71 §§ 2, 3.)

§ 283 Impermissible organizational activity no defense.

In any prosecution for an offense alleged to have been committed by an organization, it is no defense that the act charged to constitute the offense was an impermissible organizational activity.

(11 Del. C. 1953 § 283; 58 Del. Laws, c. 497 § 1; 74 Del. Laws, c. 71 §§ 2, 3.)

§ 284 Definitions relating to organizational liability.

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

(b) "High managerial agent" means an officer of an organization or any other agent in a position of comparable authority with respect to the formulation of organizational policy or the supervision in a managerial capacity of subordinate employees.

(c) "Organization" means any entity listed in the definition of "person" contained in § 222 of this title, other than an individual human being.

(11 Del. C. 1953 § 284; 58 Del. Laws, c. 497 § 1; 74 Del. Laws, c. 71 §§ 2, 3, 5.)

Part I
Delaware Criminal Code
Chapter 3
PROVING AND DISPROVING CRIMINAL GUILT

§ 301 State's prima facie case; proof beyond reasonable doubt.

(a) In any prosecution for an offense, a prima facie case for the State consists of some credible evidence tending to prove the existence of each element of the offense.

(b) No person may be convicted of an offense unless each element of the offense is proved beyond a reasonable doubt.

(c) In any prosecution for any compound crime, including but not limited to first degree murder under § 636(a)(2) or (a)(6) of this title or for second degree murder under § 635(2) of this title, the corpus delicti of the underlying felony need not be proved independently of a defendant's extrajudicial statement.

(11 Del. C. 1953 § 301; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 463 § 1.)

§ 302 Jury instruction for defendant on reasonable doubt.

(a) Pursuant to § 301(b) of this title, the defendant is entitled to a jury instruction that the jury must acquit if they fail to find each element of the offense proved beyond a reasonable doubt.

(b) The defendant may produce whatever evidence the defendant has tending to negate the existence of any element of the offense, and, if the court finds that a reasonable juror might believe that evidence, the defendant is entitled to a jury instruction that the jury must consider whether the evidence raises a reasonable doubt as to the defendant's guilt.

(11 Del. C. 1953 § 302; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 303 Credible evidence to support defenses.

(a) No defense defined by this Criminal Code or by another statute may be considered by the jury unless the court is satisfied that some credible evidence supporting the defense has been presented.

(b) Evidence supports a defense when it tends to establish the existence of each element of the defense.

(c) If some credible evidence supporting a defense is presented, the defendant is entitled to a jury instruction that the jury must acquit the defendant if they find that the evidence raises a reasonable doubt as to the defendant's guilt.

(11 Del. C. 1953 § 303; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 547 § 1; 70 Del. Laws, c. 186 § 1.)

§ 304 Defendant's affirmative defenses; prove by preponderance of evidence.

(a) When a defense declared by this Criminal Code or by another statute to be an affirmative defense is raised at trial, the defendant has the burden of establishing it by a preponderance of the evidence.

(b) Unless the court determines that no reasonable juror could find an affirmative defense established by a preponderance of the evidence presented by the defendant, the defendant is entitled to a jury instruction that the jury must acquit the defendant if they find the affirmative defense established by a preponderance of the evidence.

(c) An affirmative defense is established by a preponderance of the evidence when the jury is persuaded that the evidence makes it more likely than not that each element of the affirmative defense existed at the required time.

(11 Del. C. 1953 § 304; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 305 Exemption from criminal liability; affirmative defense to be proved by defendant.

When this Criminal Code or another statute specifically exempts a person or activity from the scope of its application and the defendant contends that the defendant is legally entitled to be exempted thereby, the burden is on the defendant to prove, as an affirmative defense, facts necessary to bring the defendant within the exemption.

(11 Del. C. 1953 § 305; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 306 No conclusive presumptions; rebuttable presumptions and proof thereof.

(a) There are no conclusive presumptions in this Criminal Code, and all conclusive presumptions formerly existing in the criminal law of this State are hereby abolished.

(b) Rebuttable presumptions formerly existing in the criminal law of this State are preserved except to the extent that they are inconsistent with this Criminal Code.

(c) Notwithstanding any other provision of this Criminal Code, the following rebuttable presumptions are expressly preserved:

(1) A person is presumed to intend the natural and probable consequences of the person's act.

(2) A person found in possession of goods acquired as a result of the commission of a recent crime is presumed to have committed the crime.

(d) Proof of a fact tending to create a rebuttable presumption not inconsistent with this Criminal Code or a presumption created by this

Criminal Code constitutes prima facie evidence of the presumed conclusion.

(e) The court may tell the jury of the existence of the presumption, and if it does so the defendant is entitled to a jury instruction that the presumption does not relieve the State of its burden of proving guilt beyond a reasonable doubt. Nevertheless, the jury may convict the defendant, despite the existence of evidence tending to rebut the presumption, if they find no reasonable doubt about the defendant's guilt.

(11 Del. C. 1953 § 306; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 2; 70 Del. Laws, c. 186 § 1.)

§ 307 Jury inference of defendant's intention, recklessness, knowledge or belief.

(a) The defendant's intention, recklessness, knowledge or belief at the time of the offense for which the defendant is charged may be inferred by the jury from the circumstances surrounding the act the defendant is alleged to have done. In making the inference permitted by this section, the jury may consider whether a reasonable person in the defendant's circumstances at the time of the offense would have had or lacked the requisite intention, recklessness, knowledge or belief.

(b) When the defendant's intention, recklessness, knowledge or belief is an element of an offense, it is sufficient to establish a prima facie case for the State to prove circumstances surrounding the act which the defendant is alleged to have done from which a reasonable juror might infer that the defendant's intention, recklessness, knowledge or belief was of the sort required for commission of the offense.

(11 Del. C. 1953 § 307; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 308 Construction of provisions allowing no defense.

When a provision of this Criminal Code expressly denies the applications of a specific defense, no inference is thereby created that any other defense is valid.

(11 Del. C. 1953 § 308; 58 Del. Laws, c. 497 § 1.)

Part I
Delaware Criminal Code
Chapter 4
DEFENSES TO CRIMINAL LIABILITY

§ 401 Mental illness or psychiatric disorder.

(a) In any prosecution for an offense, it is an affirmative defense that, at the time of the conduct charged, as a result of mental illness or serious mental disorder, the accused lacked substantial capacity to appreciate the wrongfulness of the accused's conduct. If the defendant prevails in establishing the affirmative defense provided in this subsection, the trier of fact shall return a verdict of "not guilty by reason of insanity."

(b) Where the trier of fact determines that, at the time of the conduct charged, a defendant suffered from a mental illness or serious mental disorder which substantially disturbed such person's thinking, feeling or behavior and/or that such mental illness or serious mental disorder left such person with insufficient willpower to choose whether the person would do the act or refrain from doing it, although physically capable, the trier of fact shall return a verdict of "guilty, but mentally ill."

(c) It shall not be a defense under this section if the alleged insanity or mental illness was proximately caused by the voluntary ingestion, inhalation or injection of intoxicating liquor, any drug or other mentally debilitating substance, or any combination thereof, unless such substance was prescribed for the defendant by a licensed health-care practitioner and was used in accordance with the directions of such prescription. As used in this chapter, the terms "insanity" or "mental illness" do not include an abnormality manifested only by repeated criminal or other antisocial conduct.

(11 Del. C. 1953 § 401; 58 Del. Laws, c. 497 § 1; 63 Del. Laws, c. 328 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 141 §§ 1, 2; 78 Del. Laws, c. 224 §§ 2, 3.)

§ 402 Rules to prescribe procedures for psychiatric examination; testimony of psychiatrist or other expert.

(a) The procedures for examination of the accused by the accused's own psychiatrist or by a psychiatrist employed by the State and the circumstances under which such an examination will be permitted may be prescribed by rules of the court having jurisdiction over the offense.

(b) A psychiatrist or other expert testifying at trial concerning the mental condition of the accused shall be permitted to make a statement as to the nature of the examination, the psychiatrist's or expert's diagnosis of the mental condition of the accused at the time of the commission of the offense charged and the psychiatrist's or expert's opinion as to the extent, if any, to which the capacity of the accused to appreciate the wrongfulness of the accused's conduct or to choose whether the accused would do the act or refrain from doing it or to have a particular state of mind which is an element of the offense charged was impaired as a result of mental illness or serious mental disorder at that time. The psychiatrist or expert shall be permitted to make any explanation reasonably serving to clarify the diagnosis and opinion and may be cross-examined as to any matter bearing on the psychiatrist's or expert's competence or credibility or the validity of the diagnosis or opinion.

(11 Del. C. 1953 § 402; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 224 § 4.)

§ 403 Verdict of "not guilty by reason of insanity;" commitment to Delaware Psychiatric Center of persons no longer endangering the public safety; periodic review of commitments to Delaware Psychiatric Center; participation of patient in treatment program.

(a) Upon the rendition of a verdict of "not guilty by reason of insanity," the court shall, upon motion of the Attorney General, order that the person so acquitted shall forthwith be committed to the Delaware Psychiatric Center.

(b) Except as provided in subsection (c) of this section below, a person committed, confined or transferred to the Delaware Psychiatric Center in accordance with subsection (a) of this section, § 404, § 405, § 406 or § 408 of this title (referred to herein as "the patient") shall be kept there at all times in a secured building until the Superior Court of the county wherein the case would be tried or was tried is satisfied that the public safety will not be endangered by the patient's release. The Superior Court shall without special motion reconsider the necessity of continued detention of a patient thus committed after the patient has been detained for 1 year. The Court shall thereafter reconsider the patient's detention upon petition on the patient's behalf or whenever advised by the Psychiatric Center that the public safety will not be endangered by the patient's release.

(c)(1) Upon petition by a patient confined pursuant to this section, § 404, § 405, § 406 or § 408 of this title, or upon petition by the Center Director of the Delaware Psychiatric Center, the Court may permit housing in an unsecured building or participation by the patient in any treatment program that is offered by the Center, which requires or provides that the patient be placed outside a secured building. Such participation shall include, but not be limited to, employment off hospital grounds, job interviews, family visits and other activities inside and outside the Center, as may be prescribed by the Medical Director in the interest of rehabilitation.

(2) The petition shall include an affidavit from the Medical Director which states that the patient has not exhibited dangerous behavior during the last year of confinement and that in the opinion of the Medical Director, the patient will benefit from such participation.

(3) The petition shall set forth any specific treatment program being sought; the specific goals and course of treatment involved; and a schedule for periodic judicial reevaluation of the patient's treatment status, all of which shall be subject to the Court's approval and modification.

(4) Copies of the petition shall be served on the Attorney General, the Medical Director and the patient or the patient's counsel or guardian.

(5) There shall be a judicial hearing on the petition, and any person or agency served with a copy of the petition, or a representative of such person or agency, shall have the right to testify, present evidence and/or cross-examine witnesses. The patient shall have the right to be represented by counsel at any proceeding held in accordance with this section. The Court shall appoint counsel for the patient if the patient cannot afford to retain counsel.

(6) Upon conclusion of a hearing on a petition pursuant to this section, the Court may approve, modify or disapprove any request or matter within the petition. If the patient's participation in any treatment program is approved, such approval or participation shall be effective for not longer than 6 months from the date of the judge's signature on the petition or order permitting such participation. Immediately prior to the conclusion of the 6-month period, the Center Director shall report to the Court on the patient's status, and make recommendations. Any authorization by the Court for continued participation by the patient in any authorized treatment programs may be extended, modified or discontinued at the end of the effective period with or without further hearings, as the Court may determine.

(d) Any treatment program approved by the Court under this section may be terminated by the Medical Director of the Delaware Psychiatric Center. When a treatment program is terminated earlier than its court-approved expiration date, the Medical Director shall immediately notify the Superior Court. The Superior Court shall, after giving appropriate notice, hear the matter and review the decision of the Medical Director. At such termination hearing, the patient shall have such rights as are provided for other hearings under this section, including the right to counsel, the right to present evidence and the right to cross-examine witnesses. Where the Medical Director's decision to terminate is based upon the patient's mental or psychological condition, the patient may be examined by an independent psychiatrist or other qualified expert; provided, however, that the termination hearing shall not be held until such examination has been finally concluded.

(11 Del. C. 1953 § 403; 58 Del. Laws, c. 497 § 1; 63 Del. Laws, c. 428 §§ 1-3; 65 Del. Laws, c. 90 §§ 1, 2; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 550 § 1.)

§ 404 Confinement in Delaware Psychiatric Center of persons too mentally ill to stand trial; requiring State to prove prima facie case in such circumstances; adjustment of sentences.

(a) Whenever the court is satisfied, after hearing, that an accused person, because of mental illness or serious mental disorder, is unable to understand the nature of the proceedings against the accused, or to give evidence in the accused's own defense or to instruct counsel on the accused's own behalf, the court may order the accused person to be confined and treated in the Delaware Psychiatric Center until the accused person is capable of standing trial. However, upon motion of the defendant, the court may conduct a hearing to determine whether the State can make out a prima facie case against the defendant, and if the State fails to present sufficient evidence to constitute a prima facie case, the court shall dismiss the charge. This dismissal shall have the same effect as a judgment of acquittal.

(b) When the court finds that the defendant is capable of standing trial, the defendant may be tried in the ordinary way, but the court may make any adjustment in the sentence which is required in the interest of justice, including a remission of all or any part of the time spent in the Psychiatric Center.

(11 Del. C. 1953 § 404; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 3; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 550 § 1; 78 Del. Laws, c. 224 § 5.)

§ 405 Confinement in Delaware Psychiatric Center of persons developing mental illness after conviction but before sentencing; adjustment of sentences.

(a) Whenever the court is satisfied that a prisoner has developed a mental illness after conviction but before sentencing so that the prisoner is unable understandingly to participate in the sentencing proceedings, and if the court is satisfied that a sentence of imprisonment may be appropriate, the court may order the prisoner to be confined and treated in the Delaware Psychiatric Center until the prisoner is capable of participating in the sentencing proceedings.

(b) When the court finds that the prisoner is capable of participating in the sentencing proceedings, the prisoner may be sentenced in the ordinary way, but the court may make any adjustment in the sentence which is required in the interest of justice, including a remission of all or any part of the time spent in the Psychiatric Center.

(11 Del. C. 1953 § 405; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 550 § 1; 78 Del. Laws, c. 224 §§ 6, 7.)

§ 406 Transfer of convicted persons becoming mentally disabled from prison to Delaware Psychiatric Center; appointment of physicians to conduct inquiry; expenses of transfer.

(a) Whenever in any case it appears to the Superior Court, upon information received from the Department of Health and Social Services, that a prisoner confined with the Department has developed a mental illness after conviction and sentence, the Court may appoint 2 reputable practicing physicians to inquire of the mental condition of the prisoner and make report of their finding to the Court within 2 days from the date of their appointment, by writing under their hands and seals. Should the report of the physicians be that the prisoner has a mental illness, the prisoner shall at once be ordered by the Court transferred from the prison facility where the prisoner is confined to the Delaware Psychiatric Center.

(b) The expenses of the removal of such a person with a mental illness and of admission into such Psychiatric Center and maintenance therein up and until the time the person is discharged by the Court shall be borne by the State. If any such person with a mental illness has any real or personal estate, the Department of Health and Social Services shall have for the expenses and charges so incurred the same remedy as is provided in § 5127 of Title 16 [repealed].

(11 Del. C. 1953 § 406; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 550 § 1; 78 Del. Laws, c. 224 § 8; 79 Del. Laws, c. 442 § 2.)

§ 407 [Reserved.]

§ 408 Verdict of "guilty, but mentally ill" — Sentence; confinement; discharge from treating facility.

(a) Where a defendant's defense is based upon allegations which, if true, would be grounds for a verdict of "guilty, but mentally ill" or the defendant desires to enter a plea to that effect, no finding of "guilty, but mentally ill" shall be rendered until the trier of fact has examined all appropriate reports (including the presentence investigation); has held a hearing on the sole issue of the defendant's mental illness, at which either party may present evidence; and is satisfied that the defendant did in fact have a mental illness at the time of the offense to which the plea is entered. Where the trier of fact, after such hearing, is not satisfied that the defendant had a mental illness at the time of the offense, or determines that the facts do not support a "guilty, but mentally ill" plea, the trier of fact shall strike such plea, or permit such plea to be withdrawn by the defendant. A defendant whose plea is not accepted by the trier of fact shall be entitled to a jury trial, except that if a defendant subsequently waives the right to a jury trial, the judge who presided at the hearing on mental illness shall not preside at the trial.

(b) In a trial under this section a defendant found guilty but mentally ill, or whose plea to that effect is accepted, may have any sentence imposed which may lawfully be imposed upon any defendant for the same offense. Such defendant shall be committed into the custody of the Department of Correction, and shall undergo such further evaluation and be given such immediate and temporary treatment as is psychiatrically indicated. The Commissioner shall retain exclusive jurisdiction over such person in all matters relating to security. The Commissioner shall thereupon confine such person in the Delaware Psychiatric Center, or other suitable place for the residential treatment of criminally culpable persons with a mental illness under the age of 18 who have been found nonamenable to the processes of Family Court. Although such person shall remain under the jurisdiction of the Department of Correction, decisions directly related to treatment for the mental illness for individuals placed at the Delaware Psychiatric Center, shall be the joint responsibility of the Director of the Division of Substance Abuse and Mental Health and those persons at the Delaware Psychiatric Center who are directly responsible for such treatment. The Delaware Psychiatric Center, or any other residential treatment facility to which the defendant is committed by the Commissioner, shall have the authority to discharge the defendant from the facility and return the defendant to the physical custody of the Commissioner whenever the facility believes that such a discharge is in the best interests of the defendant. The offender may, by written statement, refuse to take any drugs which are prescribed for treatment of the offender's mental illness; except when such a refusal will endanger the life of the offender, or the lives or property of other persons with whom the offender has contact.

(c) When the Psychiatric Center or other treating facility designated by the Commissioner discharges an offender prior to the expiration of such person's sentence, the treating facility shall transmit to the Commissioner and to the Parole Board a report on the condition of the offender which contains the clinical facts; the diagnosis; the course of treatment, and prognosis for the remission of symptoms; the potential for the recidivism, and for danger to the offender's own person or the public; and recommendations for future treatment. Where an offender under this section is sentenced to the Psychiatric Center or other facility, the offender shall not be eligible for any privileges not permitted in writing by the Commissioner (including escorted or unescorted on-grounds or off-grounds privileges) until the offender has become eligible for parole. Where the court finds that the offender, before completing the sentence, no longer needs nor could benefit from treatment for the offender's mental illness, the offender shall be remanded to the Department of Correction. The offender shall have credited toward the sentence the time served at the Psychiatric Center or other facility.

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

(63 Del. Laws, c. 328 § 2; 64 Del. Laws, c. 467 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 550 § 1; 73 Del. Laws, c. 41 § 1; 76 Del. Laws, c. 322 §§ 1-3; 78 Del. Laws, c. 224 § 9; 79 Del. Laws, c. 371 § 9.)

§ 409 Verdict of "guilty, but mentally ill" — Parole; probation.

(a) A person who has been adjudged "guilty, but mentally ill" and who during incarceration is discharged from treatment may be placed on prerelease or parole status under the same terms and laws applicable to any other offender. Psychological or psychiatric counseling and treatment may be required as a condition for such status. Failure to continue treatment, except by agreement of the Department of Correction, shall be a basis for terminating prerelease status or instituting parole violation hearings.

(b) If the report of the Delaware Psychiatric Center or other facility recommends parole, the paroling authority shall within 45 days or at the expiration of the offender's minimum sentence, whichever is later, meet to consider the offender's request for parole. If the report does not recommend parole, but other laws or administrative rules of the Department permit parole, the paroling authority may meet to consider a parole request. When the paroling authority considers the offender for parole, it shall consult with the State Hospital or other facility at

which the offender had been treated, or from which the offender has been discharged.

(c) If an offender who has been found "guilty, but mentally ill" is placed on probation, the court, upon recommendation by the Attorney General, shall make treatment a condition of probation. Reports as specified by the trial judge shall be filed with the probation officer, and the sentencing court. Treatment shall be provided by an agency of the State or, with the approval of the sentencing court and at individual expense, private agencies, private physicians or other mental health personnel.

(63 Del. Laws, c. 328 § 2; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 550 § 1.)

§§ 410 -420. [Reserved.]

§ 421 Voluntary intoxication.

The fact that a criminal act was committed while the person committing such act was in a state of intoxication, or was committed because of such intoxication, is no defense to any criminal charge if the intoxication was voluntary.

(11 Del. C. 1953 § 421; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 103 § 1; 59 Del. Laws, c. 203 § 37; 60 Del. Laws, c. 680 § 1.)

§ 422 Intoxication not mental illness.

Evidence of voluntary intoxication shall not be admissible for the purpose of proving the existence of mental illness, mental defect, serious mental disorder or psychiatric disorder within the meaning of § 401 of this title.

(11 Del. C. 1953 § 422; 58 Del. Laws, c. 497 § 1; 71 Del. Laws, c. 153 § 1; 78 Del. Laws, c. 224 § 10.)

§ 423 Involuntary intoxication as a defense.

In any prosecution for an offense it is a defense that, as a result of intoxication which is not voluntary, the actor at the time of the conduct lacked substantial capacity to appreciate the wrongfulness of the conduct or to perform a material element of the offense, or lacked sufficient willpower to choose whether the person would do the act or refrain from doing it.

(11 Del. C. 1953 § 423; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 424 Definitions relating to intoxication.

As used in §§ 421-423 of this title:

(1) "Intoxication" means the inability, resulting from the introduction of substances into the body, to exercise control over one's mental faculties.

(2) "Voluntary intoxication" means intoxication caused by substances which the actor knowingly introduces into the actor's body, the tendency of which to cause intoxication the actor knows or should know, unless the actor introduces them pursuant to medical advice or under such duress as would afford a defense to a prosecution for a criminal offense.

(11 Del. C. 1953 § 424; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§§ 425 -430. [Reserved.]

§ 431 Duress as affirmative defense; defense unavailable in certain situations.

(a) In any prosecution for an offense, it is an affirmative defense that the defendant engaged in the conduct charged to constitute the offense because the defendant was coerced to do so by the use of, or a threat to use, force against the defendant's person or the person of another, which a reasonable person in the defendant's situation would have been unable to resist.

(b) The defense provided by subsection (a) of this section is unavailable if the defendant intentionally or recklessly placed himself or herself in a situation in which it was probable that the defendant would be subjected to duress.

(c) It is not a defense that a woman acted on the command of her husband, unless she acted under such coercion as would establish a defense under this section. The presumption that a woman acting in the presence of her husband is coerced is abolished.

(11 Del. C. 1953 § 431; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 432 Entrapment as affirmative defense; defense unavailable in certain situations.

(a) In any prosecution for an offense, it is an affirmative defense that the accused engaged in the proscribed conduct because the accused was induced by a law-enforcement official or the law-enforcement official's agent who is acting in the knowing cooperation with such an official to engage in the proscribed conduct constituting such conduct which is a crime when such person is not otherwise disposed to do so. The defense of entrapment as defined by this Criminal Code concedes the commission of the act charged but claims that it should not be punished because of the wrongdoing of the officer originates the idea of the crime and then induces the other person to engage in conduct constituting such a crime when the other person is not otherwise disposed to do so.

(b) The defense afforded by subsection (a) of this section is unavailable when causing or threatening physical injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.

(11 Del. C. 1953 § 432; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 38; 70 Del. Laws, c. 186 § 1.)

§§ 433 -440. [Reserved.]

§ 441 Ignorance or mistake of fact as defense.

In any prosecution for an offense, it is a defense that the accused engaged in the conduct charged to constitute the offense under ignorance or mistake of fact if:

(1) The ignorance or mistake negatives the state of mind for the commission of the offense; or

(2) The statute defining the offense or a statute related thereto expressly provides that the ignorance or mistake constitutes a defense or exemption; or

(3) The ignorance or mistake is of a kind that supports a defense of justification as defined in this Criminal Code.

(11 Del. C. 1953 § 441; 58 Del. Laws, c. 497 § 1.)

§§ 442 -450. [Reserved.]

§ 451 Consent of victim to acts not involving physical injury as defense.

In any prosecution for an offense, it is a defense that the victim consented to the act done, provided that:

(1) The act did not involve or threaten physical injury; and

(2) Such consent negatives an element of the offense.

Any person who enters the presence of other people consents to the normal physical contacts incident to such presence.

(11 Del. C. 1953 § 451; 58 Del. Laws, c. 497 § 1.)

§ 452 Consent of victim to inflictions of physical injury as defense.

In any prosecution for an offense involving or threatening physical injury, it is a defense that the victim consented to the infliction of physical injury of the kind done or threatened, provided that:

(1) The physical injury done or threatened by the conduct consented to is not serious physical injury; or

(2) The physical injury done or threatened is a reasonably foreseeable hazard of joint participation in any concerted activity, athletic contest or sport not prohibited by law.

(11 Del. C. 1953 § 452; 58 Del. Laws, c. 497 § 1.)

§ 453 Circumstances negativing consent as defense.

Unless otherwise provided by this Criminal Code or by the law defining the offense, consent of the victim does not constitute a defense if:

(1) It is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense unless the defendant believes the victim is legally competent; or

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

(3) It is given by a person whose improvident consent is sought to be prevented by the law defining the offense; or

(4) It is induced by force, duress or deception.

(11 Del. C. 1953 § 453; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 224 § 11.)

§ 454 Knowledge of victim's age.

Notwithstanding any provision of law to the contrary, it is no defense for an offense or sentencing provision defined in this title or in Title 16 or 31 which has as an element of such offense or sentencing provision the age of the victim that the accused did not know the age of the victim or reasonably believed the person to be of an age which would not meet the element of such offense or sentencing provision unless the statute defining such offense or sentencing provision or a statute directly related thereto expressly provides that knowledge of the victim's age is an element of the offense or that lack of such knowledge is a defense.

(73 Del. Laws, c. 126 § 2.)

§§ 455 -460. [Reserved.]

§ 461 Justification — A defense.

In any prosecution for an offense, justification, as defined in §§ 462-471 of this title, is a defense.

(11 Del. C. 1953 § 461; 58 Del. Laws, c. 497 § 1.)

§ 462 Justification — Execution of public duty.

(a) Unless inconsistent with the ensuing sections of this Criminal Code defining justifiable use of physical force, or with some other provision of law, conduct which would otherwise constitute an offense is justifiable when it is required or authorized by a provision of law or by a judicial decree, including:

(1) Laws defining duties and functions of public officers;

(2) Laws defining duties of private citizens to assist public servants in the performance of certain of their functions;
(3) Laws governing the execution of legal process;
(4) Laws governing the military services and the conduct of war; and
(5) Judgments or orders of competent courts or tribunals.
(b) The justification afforded by subsection (a) of this section applies when:
(1) The defendant's conduct is required or authorized by the judgment or order of a competent court or tribunal or in the lawful execution of legal process, notwithstanding lack of jurisdiction of the court or defect in the legal process; or
(2) The defendant believes the conduct to be required or authorized to assist a public officer in the performance of the officer's duties, notwithstanding that the officer exceeded the officer's legal authority.
(11 Del. C. 1953 § 462; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 4; 70 Del. Laws, c. 186 § 1.)

§ 463 Justification — Choice of evils.

Unless inconsistent with the ensuing sections of this Criminal Code defining justifiable use of physical force, or with some other provisions of law, conduct which would otherwise constitute an offense is justifiable when it is necessary as an emergency measure to avoid an imminent public or private injury which is about to occur by reason of a situation occasioned or developed through no fault of the defendant, and which is of such gravity that, according to ordinary standards of intelligence and morality, the desirability and urgency of avoiding such injury clearly outweigh the desirability of avoiding the injury sought to be prevented by the statute defining the offense in issue. The necessity and justifiability of such conduct may not rest upon considerations pertaining only to the morality and advisability of the statute, either in its general application or with respect to its application to a particular class of cases arising thereunder.
(11 Del. C. 1953 § 463; 58 Del. Laws, c. 497 § 1.)

§ 464 Justification — Use of force in self-protection.

(a) The use of force upon or toward another person is justifiable when the defendant believes that such force is immediately necessary for the purpose of protecting the defendant against the use of unlawful force by the other person on the present occasion.
(b) Except as otherwise provided in subsections (d) and (e) of this section, a person employing protective force may estimate the necessity thereof under the circumstances as the person believes them to be when the force is used, without retreating, surrendering possession, doing any other act which the person has no legal duty to do or abstaining from any lawful action.
(c) The use of deadly force is justifiable under this section if the defendant believes that such force is necessary to protect the defendant against death, serious physical injury, kidnapping or sexual intercourse compelled by force or threat.
(d) The use of force is not justifiable under this section to resist an arrest which the defendant knows or should know is being made by a peace officer, whether or not the arrest is lawful.
(e) The use of deadly force is not justifiable under this section if:
(1) The defendant, with the purpose of causing death or serious physical injury, provoked the use of force against the defendant in the same encounter; or
(2) The defendant knows that the necessity of using deadly force can be avoided with complete safety by retreating, by surrendering possession of a thing to a person asserting a claim of right thereto or by complying with a demand that the defendant abstain from performing an act which the defendant is not legally obligated to perform except that:
a. The defendant is not obliged to retreat in or from the defendant's dwelling; and
b. The defendant is not obliged to retreat in or from the defendant's place of work, unless the defendant was the initial aggressor; and
c. A public officer justified in using force in the performance of the officer's duties, or a person justified in using force in assisting an officer or a person justified in using force in making an arrest or preventing an escape, need not desist from efforts to perform the duty or make the arrest or prevent the escape because of resistance or threatened resistance by or on behalf of the person against whom the action is directed.
(11 Del. C. 1953 § 464; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 5; 70 Del. Laws, c. 186 § 1.)

§ 465 Justification — Use of force for the protection of other persons.

(a) The use of force upon or toward the person of another is justifiable to protect a third person when:
(1) The defendant would have been justified under § 464 of this title in using such force to protect the defendant against the injury the defendant believes to be threatened to the person whom the defendant seeks to protect; and
(2) Under the circumstances as the defendant believes them to be, the person whom the defendant seeks to protect would have been justified in using such protective force; and
(3) The defendant believes that intervention is necessary for the protection of the other person.
(b) Although the defendant would have been obliged under § 464 of this title to retreat, to surrender the possession of a thing or to comply with a demand before using force in self-protection, there is no obligation to do so before using force for the protection of another person, unless the defendant knows that the defendant can thereby secure the complete safety of the other person.
(c) When the person whom the defendant seeks to protect would have been obliged under § 464 of this title to retreat, to surrender the possession of a thing or to comply with a demand if the person knew that the person could obtain complete safety by so doing, the

defendant is obliged to try to cause the person to do so before using force in the person's protection if the actor knows that complete safety can be secured in that way.

(d) Neither the defendant nor the person whom the defendant seeks to protect is obliged to retreat when in the other's dwelling or place of work to any greater extent than in their own.

(11 Del. C. 1953 § 465; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 466 Justification — Use of force for the protection of property.

(a) The use of force upon or toward the person of another is justifiable when the defendant believes that such force is immediately necessary:

(1) To prevent the commission of criminal trespass or burglary in a building or upon real property in the defendant's possession or in the possession of another person for whose protection the defendant acts; or

(2) To prevent entry upon real property in the defendant's possession or in the possession of another person for whose protection the defendant acts; or

(3) To prevent theft, criminal mischief or any trespassory taking of tangible, movable property in the defendant's possession or in the possession of another person for whose protection the defendant acts.

(b) The defendant may in the circumstances named in subsection (a) of this section use such force as the defendant believes is necessary to protect the threatened property, provided that the defendant first requests the person against whom force is used to desist from interference with the property, unless the defendant believes that:

(1) Such a request would be useless; or

(2) It would be dangerous to the defendant or another person to make the request; or

(3) Substantial harm would be done to the physical condition of the property which is sought to be protected before the request could effectively be made.

(c) The use of deadly force for the protection of property is justifiable only if the defendant believes that:

(1) The person against whom the force is used is attempting to dispossess the defendant of the defendant's dwelling otherwise than under a claim of right to its possession; or

(2) The person against whom the deadly force is used is attempting to commit arson, burglary, robbery or felonious theft or property destruction and either:

a. Had employed or threatened deadly force against or in the presence of the defendant; or

b. Under the circumstances existing at the time, the defendant believed the use of force other than deadly force would expose the defendant, or another person in the defendant's presence, to the reasonable likelihood of serious physical injury.

(d) Where a person has used force for the protection of property and has not been convicted for any crime or offense connected with that use of force, such person shall not be liable for damages or be otherwise civilly liable to the one against whom such force was used.

(11 Del. C. 1953 § 466; 58 Del. Laws, c. 497 § 1; 62 Del. Laws, c. 266 §§ 1, 2; 70 Del. Laws, c. 186 § 1.)

§ 467 Justification — Use of force in law enforcement.

(a) The use of force upon or toward the person of another is justifiable when:

(1) The defendant is making an arrest or assisting in making an arrest and believes that such force is immediately necessary to effect the arrest; or

(2) The defendant is attempting to arrest an individual that has taken a hostage, and refused to comply with an order to release the hostage; and

a. The defendant believes that the use of force is necessary to prevent physical harm to any person taken hostage; or

b. The defendant has been ordered by an individual the defendant believes possesses superior authority or knowledge to apply the use of force.

(b) The use of force is not justifiable under this section unless:

(1) The defendant makes known the purpose of the arrest or believes that it is otherwise known or cannot reasonably be made known to the person to be arrested; and

(2) When the arrest is made under a warrant, the warrant is valid or believed by the defendant to be valid; or

(3) When the arrest is made without a warrant, the defendant believes the arrest to be lawful.

(c) The use of deadly force is justifiable under this section if all other reasonable means of apprehension have been exhausted, and:

(1) The defendant believes the arrest is for any crime involving physical injury or threat thereof, and the deadly force is directed at a vehicle to disable it for the purpose of effecting the arrest, or the defendant believes the arrest is for a felony involving physical injury or threat thereof;

(2) The defendant believes that the force employed creates no substantial risk of injury to innocent persons; and

(3) The defendant believes that there is a substantial risk that the person to be arrested will cause death or serious physical injury, or will never be captured if apprehension is delayed.

(d) The use of force to prevent the escape of an arrested person from custody is justifiable when the force could justifiably have been employed to effect the arrest under which the person is in custody, except that a guard or other person authorized to act as a peace officer is

justified in using any force, including deadly force, which the person believes to be immediately necessary to prevent the escape of a person from a jail, prison or other institution for the detention of persons charged with or convicted of a crime.

(e) The use of force upon or toward the person of another is justifiable when the defendant believes that such force is immediately necessary to prevent such other person from committing suicide, inflicting serious physical injury upon the person's self or committing a crime involving or threatening physical injury, damage to or loss of property or a breach of the peace, except that the use of deadly force is not justifiable under this subsection unless:

(1) The defendant believes that there is a substantial risk that the person whom the defendant seeks to prevent from committing a crime will cause death or serious physical injury to another unless the commission of the crime is prevented and that the use of deadly force presents no substantial risk of injury to innocent persons; or

(2) The defendant believes that the use of deadly force is necessary to suppress a riot or mutiny after the rioters or mutineers have been ordered to disperse and warned, in any manner that the law may require, that such force will be used if they do not obey.

(f) The use of deadly force is justifiable under this section if the defendant is attempting to arrest an individual that has taken a hostage, and has refused to comply with an order to release the hostage; and

(1) The defendant believes that the use of force is necessary to prevent physical harm to any person taken hostage, or the defendant has been ordered by an individual the defendant believes possesses superior authority or knowledge to apply the use of force; and

(2) The defendant believes that the force employed creates no substantial risk of injury to innocent persons; and

(3) The defendant or a person of superior authority or knowledge who order the use of deadly force believes that there is a substantial risk that the person to be arrested will cause death or serious physical injury.

(11 Del. C. 1953 § 467; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 6; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 180 §§ 1, 2.)

§ 468 Justification — Use of force by persons with special responsibility for care, discipline or safety of others.

The use of force upon or toward the person of another is justifiable if it is reasonable and moderate and:

(1) The defendant is the parent, guardian, foster parent, legal custodian or other person similarly responsible for the general care and supervision of a child, or a person acting at the request of a parent, guardian, foster parent, legal custodian or other responsible person, and:

a. The force is used for the purpose of safeguarding or promoting the welfare of the child, including the prevention or punishment of misconduct; and

b. The force used is intended to benefit the child, or for the special purposes listed in paragraphs (2)a., (3)a., (4)a., (5), (6) and (7) of this section. The size, age, condition of the child, location of the force and the strength and duration of the force shall be factors considered in determining whether the force used is reasonable and moderate; but

c. The force shall not be justified if it includes, but is not limited to, any of the following: Throwing the child, kicking, burning, cutting, striking with a closed fist, interfering with breathing, use of or threatened use of a deadly weapon, prolonged deprivation of sustenance or medication, or doing any other act that is likely to cause or does cause physical injury, disfigurement, mental distress, unnecessary degradation or substantial risk of serious physical injury or death; or

(2) The defendant is a teacher or a person otherwise entrusted with the care or supervision of a child for a special purpose, and:

a. The defendant believes the force used is necessary to further the special purpose, including the maintenance of reasonable discipline in a school, class or other group, and that the use of force is consistent with the welfare of the child; and

b. The degree of force, if it had been used by the parent, guardian, foster parent or legal custodian of the child, would be justifiable under paragraph (1)a. and b. of this section and not enumerated under paragraph (1)c. of this section; or

(3) The defendant is the guardian or other person similarly responsible for the general care and supervision of a person who is incompetent, and:

a. The force is used for the purpose of safeguarding or promoting the welfare of the person who is incompetent, including the prevention of misconduct, or, when such person who is incompetent is in a hospital or other institution for care and custody, for the maintenance of reasonable discipline in such institution; and

b. The force used is reasonable and moderate; the size, age, condition of the person who is incompetent, location of the force and the strength and duration of the force shall be factors considered in determining whether the force used is reasonable and moderate; and

c. The force is not enumerated under paragraph (1)c. of this section; and

d. The force is not proscribed as abuse or mistreatment under Chapter 11 of Title 16; or

(4) The defendant is a doctor or other therapist or a person assisting at the doctor's or other therapist's direction, and:

a. The force is used for the purpose of administering a recognized form of treatment which the defendant believes to be adapted to promoting the physical or mental health of the patient; and

b. The treatment is administered with the consent of the patient or, if the patient is a minor or a person who is incompetent, with the consent of a parent, guardian or other person legally competent to consent in the patient's behalf, or the treatment is administered in an emergency when the defendant believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent; or

(5) The defendant is a warden or other authorized official of a correctional institution, or a superintendent, administrator or other authorized official of the Division of Youth Rehabilitative Service, and:

a. The defendant believes that the force used is necessary for the purpose of enforcing the lawful rules or procedures of the institution; and

b. The nature or degree of force used is not forbidden by any statute governing the administration of the institution; and

c. If deadly force is used, its use is otherwise justifiable under this Criminal Code; or

(6) The defendant is a person responsible for the safety of a vessel or an aircraft or a person acting at the responsible person's direction, and:

a. The defendant believes that the force used is necessary to prevent interference with the operation of the vessel or aircraft or obstruction of the execution of a lawful order; and

b. If deadly force is used, its use is otherwise justifiable under this Criminal Code; or

(7) The defendant is a person who is authorized or required by law to maintain order or decorum in a vehicle, train or other carrier or in a place where others are assembled, and:

a. The defendant believes that the force used is necessary for such purpose; and

b. The force used is not designed to cause or known to create a substantial risk of causing death, physical injury or extreme mental distress.

(11 Del. C. 1953 § 468; 58 Del. Laws, c. 497 § 1; 68 Del. Laws, c. 442 §§ 1, 2, 4; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 224 §§ 12, 13.)

§ 469 Justification — Person unlawfully in dwelling.

In the prosecution of an occupant of a dwelling charged with killing or injuring an intruder who was unlawfully in said dwelling, it shall be a defense that the occupant was in the occupant's own dwelling at the time of the offense, and:

(1) The encounter between the occupant and intruder was sudden and unexpected, compelling the occupant to act instantly; or

(2) The occupant reasonably believed that the intruder would inflict personal injury upon the occupant or others in the dwelling; or

(3) The occupant demanded that the intruder disarm or surrender, and the intruder refused to do so.

(63 Del. Laws, c. 276 § 1; 70 Del. Laws, c. 186 § 1.)

§ 470 Provisions generally applicable to justification.

(a) When the defendant believes that the use of force upon or toward the person of another is necessary for any of the purposes for which such relief would establish a justification under §§ 462-468 of this title but the defendant is reckless or negligent in having such belief or in acquiring or failing to acquire any knowledge or belief which is material to the justifiability of the use of force, the justification afforded by those sections is unavailable in a prosecution for an offense for which recklessness or negligence, as the case may be, suffices to establish culpability.

(b) When the defendant is justified under §§ 462-468 of this title in using force upon or toward the person of another but the defendant recklessly or negligently injures or creates a risk of injury to innocent persons, the justification afforded by those sections is unavailable in a prosecution for an offense involving recklessness or negligence towards innocent persons.

(11 Del. C. 1953 § 469; 58 Del. Laws, c. 497 § 1; 63 Del. Laws, c. 276 § 1; 70 Del. Laws, c. 186 § 1.)

§ 471 Definitions relating to justification.

(a) "Deadly force" means force which the defendant uses with the purpose of causing or which the defendant knows creates a substantial risk of causing death or serious physical injury. Purposely firing a firearm in the direction of another person or at a vehicle in which another person is believed to be constitutes deadly force. A threat to cause death or serious bodily harm, by the production of a weapon or otherwise, so long as the defendant's purpose is limited to creating an apprehension that deadly force will be used if necessary, does not constitute deadly force.

(b) "Dwelling" means any building or structure, though movable or temporary, or a portion thereof, which is for the time being the defendant's home or place of lodging.

(c) "Force," in addition to its ordinary meaning, includes confinement.

(d) "Physical force" means force used upon or directed toward the body of another person.

(e) "Unlawful force" means force which is employed without the consent of the person against whom it is directed and the employment of which constitutes an offense or actionable tort or would constitute such offense or tort except for a defense (such as the absence of intent, negligence or mental capacity; duress; youth; or diplomatic status) not amounting to a privilege to use the force. Assent constitutes consent, within the meaning of this section, whether or not it otherwise is legally effective, except assent to the infliction of death or serious bodily harm.

(11 Del. C. 1953 § 470; 58 Del. Laws, c. 497 § 1; 63 Del. Laws, c. 276 § 1; 70 Del. Laws, c. 186 § 1.)

§§ 472 -474. [Reserved.]

§ 475 Immunity as an affirmative defense.

In any prosecution for an offense, it is an affirmative defense that the accused was granted immunity from prosecution for that offense by the Attorney General or a Deputy Attorney General or by court order pursuant to § 3506 of this title. It is also an affirmative defense that the accused was granted immunity from prosecution for a different offense when prosecution for the offense now charged would have been barred by prosecution for the offense as to which immunity was granted under § 208 of this title; provided, that the Attorney General or a Deputy Attorney General may, in granting immunity, stipulate that the immunity applies only to a specific offense, in which case effect shall be given to the stipulation.

(11 Del. C. 1953 § 475; 58 Del. Laws, c. 497 § 1; 63 Del. Laws, c. 271 § 1; 70 Del. Laws, c. 186 § 1.)

§ 476 Racketeering activities; excluded defenses.

(a) In any prosecution under Chapter 15 of this title where it is alleged that the offender or offenders were acting as members of a group or informal organization it shall be no defense to such prosecution or were engaged in any form of racketeering or racketeering activity, that:

(1) One or more members of the group or organization are not criminally responsible for the offense for which the prosecution is brought;

(2) One or more members of the group or organization have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense or are immune from prosecution;

(3) A different person has been charged with, acquitted or convicted of any offense set forth in Chapter 15 of this title.

(b) Once an act of racketeering has been initiated by a group and there is a subsequent change in the number or identity of persons in such group or organization, as long as 2 or more of the original members remain in such group or are involved in a continuing course of conduct constituting an offense under Chapter 15 of this title, it shall be no defense to claim that the defendant was not part of the group or organization.

(65 Del. Laws, c. 493 § 2; 70 Del. Laws, c. 186 § 1.)

§ 477 Organized crime; renunciation.

(a) It is an affirmative defense to a prosecution under § 1503 of this title, that under circumstances manifesting a voluntary and complete renunciation of the criminal objective, the defendant withdrew from the proposed or intended unlawful activity before the commission of an offense set forth in Chapter 15 of this title; and that such person took further affirmative action that, in whole or in part, prevented the commission of the offense.

(b) Renunciation is not "voluntary," if it is motivated in whole or in part:

(1) By circumstances not present or apparent at the inception of the defendant's course of conduct that increased the probability of detection or apprehension, or that made more difficult the accomplishment of the objective; or

(2) By a decision to postpone the criminal conduct until another time, or to transfer the criminal act to another (but similar) objective or victim.

(c) Evidence that the defendant withdrew from the unlawful activity before commission of an offense set forth in Chapter 15 of this title, and made substantial effort to prevent the commission of an offense under that chapter, shall be admissible as mitigation at the hearing on punishment if such person has been found guilty; and in the event of a finding of renunciation under this section, the punishment of such person shall be less than that which would otherwise be imposed. The Court shall determine the extent and genuineness of the renunciation, and determine the reduction.

(65 Del. Laws, c. 493 § 2; 70 Del. Laws, c. 186 § 1.)

Part I
Delaware Criminal Code
Chapter 5
SPECIFIC OFFENSES
Subchapter I
Inchoate Crimes

§ 501 Criminal solicitation in the third degree; class A misdemeanor.

A person is guilty of criminal solicitation in the third degree when, intending that another person engage in conduct constituting a misdemeanor, the person solicits, requests, commands, importunes or otherwise attempts to cause the other person to engage in conduct that would constitute the misdemeanor or an attempt to commit the misdemeanor or which would establish the other's complicity in its commission or attempted commission.

Criminal solicitation in the third degree is a class A misdemeanor.

(11 Del. C. 1953 § 501; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 502 Criminal solicitation in the second degree; class F felony.

A person is guilty of criminal solicitation in the second degree when, intending that another person engage in conduct constituting a felony, the person solicits, requests, commands, importunes or otherwise attempts to cause the other person to engage in conduct which would constitute the felony or an attempt to commit the felony, or which would establish the other's complicity in its commission or attempted commission.

Criminal solicitation in the second degree is a class F felony, unless the person is 18 years of age or older, and the other person had not yet reached his or her eighteenth birthday at the time of the crime, in which case it is a class D felony, or unless the person is more than 3 years older than the other person, and the other person had not yet reached his or her fifteenth birthday at the time of the crime, in which case it is a class D felony.

(11 Del. C. 1953 § 502; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 424 § 1.)

§ 503 Criminal solicitation in the first degree; class E felony.

A person is guilty of criminal solicitation in the first degree when, intending that another person engage in conduct constituting a class A felony, the person solicits, requests, commands, importunes or otherwise attempts to cause the other person to engage in conduct which would constitute the felony or an attempt to commit the felony, or which would establish the other's complicity in its commission or attempted commission.

Criminal solicitation in the first degree is a class E felony, unless the person is 18 years of age or older, and the other person had not yet reached his or her eighteenth birthday at the time of the crime, in which case it is a class C felony, or unless the person is more than 3 years older than the other person, and the other person had not yet reached his or her fifteenth birthday at the time of the crime, in which case it is a class C felony.

(11 Del. C. 1953 § 503; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 424 § 2.)

§§ 504 -510. [Reserved.]

§ 511 Conspiracy in the third degree; class A misdemeanor.

A person is guilty of conspiracy in the third degree when, intending to promote or facilitate commission of a misdemeanor, the person:

(1) Agrees with another person or persons that they or 1 or more of them will engage in conduct constituting the misdemeanor or an attempt or solicitation to commit the misdemeanor; or

(2) Agrees to aid another person or persons in the planning or commission of the misdemeanor or an attempt or solicitation to commit the misdemeanor, and the person or another person with whom the person conspired commits an overt act in pursuance of the conspiracy.

Conspiracy in the third degree is a class A misdemeanor.

(11 Del. C. 1953 § 511; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 7; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 512 Conspiracy in the second degree; class G felony.

A person is guilty of conspiracy in the second degree when, intending to promote or facilitate the commission of a felony, the person:

(1) Agrees with another person or persons that they or 1 or more of them will engage in conduct constituting the felony or an attempt or solicitation to commit the felony; or

(2) Agrees to aid another person or persons in the planning or commission of the felony or an attempt or solicitation to commit the felony; and the person or another person with whom the person conspired commits an overt act in pursuance of the conspiracy.

Conspiracy in the second degree is a class G felony.

(11 Del. C. 1953 § 512; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 7; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 513 Conspiracy in the first degree; class E felony.

A person is guilty of conspiracy in the first degree when, intending to promote or facilitate the commission of a class A felony, the person:

(1) Agrees with another person or persons that they or 1 or more of them will engage in conduct constituting the felony or an attempt or solicitation to commit the felony; or

(2) Agrees to aid another person or persons in the planning or commission of the felony or an attempt or solicitation to commit the felony, and the person or another person with whom the person conspired commits an overt act in pursuance of the conspiracy.

Conspiracy in the first degree is a class E felony.

(11 Del. C. 1953 § 513; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 7; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§§ 514 -520. [Reserved.]

§ 521 Conspiracy.

(a) If a person conspires to commit a number of crimes, the person is guilty of only 1 conspiracy, so long as the multiple crimes are the object of the same agreement of continuous conspiratorial relationship. The person may be convicted of the degree of conspiracy which includes the most serious offense which the person is found guilty of conspiring to commit.

(b) If a person guilty of conspiracy, as defined by §§ 511-513 of this title, knows that a person with whom the person conspires to commit a crime has conspired with another person or persons to commit the same crime, the first person is guilty of conspiring to commit the crime with the other person or persons, whether or not the first person knows their identity.

(c) No person may be convicted of conspiracy to commit an offense when an element of the offense is agreement with the person with whom the person is alleged to have conspired, or when the person with whom the person is alleged to have conspired is necessarily involved with the person in the commission of the offense.

(11 Del. C. 1953 § 521; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 522 Joinder and venue in conspiracy prosecutions.

(a) Subject to subsection (b) of this section, 2 or more persons charged with conspiracy to commit a crime may be prosecuted jointly if:

(1) They are charged with conspiring with one another; or

(2) The conspiracies alleged, whether they have the same or different parties, are so related that they constitute different aspects of a scheme of organized criminal conduct.

(b) In any joint prosecution under subsection (a) of this section:

(1) No defendant shall be charged with a conspiracy in any county other than one in which the defendant entered into the conspiracy or one in which an overt act pursuant to the conspiracy was done by the defendant or by a person with whom the defendant conspired; and

(2) Neither the criminal liability of any defendant nor the admissibility against a defendant of evidence of acts or declarations of another shall be enlarged by the joinder; and

(3) The court may order a severance or take a special verdict as to any defendant who so requests, if it deems such action necessary or appropriate to promote the fair determination of guilt or innocence, and the court may take any other proper measures to protect the fairness of the trial.

(11 Del. C. 1953 § 522; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 523 Criminal solicitation and conspiracy unaffected by matters relating to the complicity of other persons.

(a) It is no defense to a prosecution for criminal solicitation that the person solicited could not be guilty of the crime solicited because of irresponsibility or other legal incapacity or exemption, or because of unawareness of the criminal nature of the conduct solicited or of the defendant's criminal purpose or because of other factors precluding the mental state required for the commission of the crime in question.

(b) It is no defense to a prosecution for criminal conspiracy that, because of irresponsibility or other legal incapacity or exemption, or because of unawareness of the criminal nature of the agreement or the conduct contemplated or of the defendant's criminal purpose or because of other factors precluding the mental state required for commission of the conspiracy or the crime contemplated, 1 or more of the defendant's coconspirators could not be guilty of the conspiracy or the crime contemplated.

(11 Del. C. 1953 § 523; 58 Del. Laws, c. 497 § 1.)

§§ 524 -530. [Reserved.]

§ 531 Attempt to commit a crime.

A person is guilty of an attempt to commit a crime if the person:

(1) Intentionally engages in conduct which would constitute the crime if the attendant circumstances were as the person believes them to be; or

(2) Intentionally does or omits to do anything which, under the circumstances as the person believes them to be, is a substantial step in a course of conduct planned to culminate in the commission of the crime by the person.

Attempt to commit a crime is an offense of the same grade and degree as the most serious offense which the accused is found guilty of attempting.

(11 Del. C. 1953 § 531; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 532 "Substantial step" defined.

A "substantial step" under § 531 of this title is an act or omission which leaves no reasonable doubt as to the defendant's intention to commit the crime which the defendant is charged with attempting.

(11 Del. C. 1953 § 532; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 533 Conduct intended to aid another to commit a crime.

A person who engages in conduct intended to aid another person to commit a crime is guilty of an attempt to commit the crime, although the crime is not committed or attempted by the other person, provided that the conduct would establish the person's complicity under § 271 of this title if the crime were committed by the other person.

(11 Del. C. 1953 § 533; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§§ 534 -540. [Reserved.]

§ 541 Criminal solicitation, conspiracy, attempt to commit a crime; defense of renunciation.

(a) In any prosecution for criminal solicitation or conspiracy in which the crime solicited or the crime contemplated by the conspiracy was not in fact committed, it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of the criminal purpose, the accused prevented the commission of the crime.

(b) In any prosecution for an attempt to commit a crime it is an affirmative defense that, under circumstances manifesting a voluntary and complete renunciation of the criminal purpose, the accused avoided the commission of the crime attempted by abandoning the criminal effort and, if mere abandonment was insufficient to accomplish avoidance, by taking further and affirmative steps which prevented the commission of the crime attempted.

(c) A renunciation is not "voluntary and complete" within the meaning of this section if it is motivated in whole or in part by:

(1) A belief that circumstances exist which increase the probability of detection or apprehension of the accused or another participant in the criminal enterprise, or which render more difficult the accomplishment of the criminal purpose; or

(2) A decision to postpone the criminal conduct until another time or to transfer the criminal effort to another victim or another but similar objective.

(1 Del. C. 1953 § 541; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 542 Exemption of law-enforcement officers.

Nothing in this subchapter shall apply to any law-enforcement officer or the officer's agent while acting in the lawful performance of duty.

(11 Del. C. 1953 § 542; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

Subchapter II

Offenses Against the Person

§ 601 Offensive touching; unclassified misdemeanor; class A misdemeanor.

(a) A person is guilty of offensive touching when the person:

(1) Intentionally touches another person either with a member of his or her body or with any instrument, knowing that the person is thereby likely to cause offense or alarm to such other person; or

(2) Intentionally strikes another person with saliva, urine, feces or any other bodily fluid, knowing that the person is thereby likely to cause offense or alarm to such other person.

(b) When charged with a violation of paragraph (a)(2) of this section, the defendant shall be tested for diseases transmittable through bodily fluids, the cost of such tests to be assessed as costs upon conviction. The results of such tests shall be provided only to the Attorney General, the victim of the offense, the defendant and the Department of Correction's medical care provider.

(c) Any violation of paragraph (a)(1) of this section shall be an unclassified misdemeanor. Notwithstanding the above, any violation of paragraph (a)(1) of this section shall be a class A misdemeanor when the victim is acting in the lawful performance of the victim's duty as 1 of the following: law-enforcement officer, hospital or nursing home employee, physician, medical professional, ambulance attendant, emergency medical technician, advanced emergency medical technician, paramedic, Delaware State Fire Police Officer, correctional officer, volunteer firefighter or full-time firefighter. Any violation of paragraph (a)(2) of this section shall be a class A misdemeanor.

(11 Del. C. 1953 § 601; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 382 § 1; 73 Del. Laws, c. 108 §§ 1, 2; 79 Del. Laws, c. 64 § 1.)

§ 602 Menacing; unclassified misdemeanor.

(a) A person is guilty of menacing when by some movement of body or any instrument the person intentionally places another person in fear of imminent physical injury.

Menacing is an unclassified misdemeanor.

(b) A person is guilty of aggravated menacing when by displaying what appears to be a deadly weapon that person intentionally places another person in fear of imminent physical injury. Aggravated menacing is a class E felony.

(11 Del. C. 1953 § 602; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 159 §§ 1, 2; 70 Del. Laws, c. 186 § 1.)

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

(a) A person is guilty of reckless endangering in the second degree when:

(1) The person recklessly engages in conduct which creates a substantial risk of physical injury to another person; or

(2) Being a parent, guardian or other person legally charged with the care or custody of a child less than 18 years old, the person knowingly, intentionally or with criminal negligence acts in a manner which contributes to or fails to act to prevent the unlawful possession and/or purchase of a firearm by a juvenile. It shall be an absolute defense to this paragraph if the person charged had a lock on the trigger and did not tell or show the juvenile where the key to the trigger lock was kept. It shall also be an absolute defense to this paragraph if the person had locked the firearm in a key or combination locked container and did not tell or show the juvenile where the key was kept or what the combination was.

(b) Reckless endangering in the second degree is a class A misdemeanor.

(11 Del. C. 1953 § 603; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 359 § 1.)

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

A person is guilty of reckless endangering in the first degree when the person recklessly engages in conduct which creates a substantial risk of death to another person.

Reckless endangering in the first degree is a class E felony.

(11 Del. C. 1953 § 604; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 69 Del. Laws, c. 24 § 2; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 34 § 9.)

§ 605 Abuse of a pregnant female in the second degree; class C felony.

(a) A person is guilty of abuse of a pregnant female in the second degree when in the course of or in furtherance of the commission or attempted commission of assault third degree or any violent felony against or upon a pregnant female, or while in immediate flight therefrom, the person recklessly and without her consent causes the unlawful termination of her pregnancy.

(b) It is no defense to a prosecution under this section that the person was unaware that the victim was pregnant.

(c) Prosecution under this section does not preclude prosecution under any other section of the Delaware Code. Abuse of a pregnant female in the second degree is a class C felony.

(72 Del. Laws, c. 43 § 3; 70 Del. Laws, c. 186 § 1.)

§ 606 Abuse of a pregnant female in the first degree; class B felony.

(a) A person is guilty of abuse of a pregnant female in the first degree when in the course of or in furtherance of the commission or attempted commission of assault third degree any violent felony against or upon a pregnant female, or while in immediate flight therefrom, the person intentionally and without her consent causes the unlawful termination of her pregnancy.

(b) It is no defense to a prosecution under this section that the person was unaware that the victim was pregnant.

(c) Prosecution under this section does not preclude prosecution under any other section of the Delaware Code. Abuse of a pregnant female in the first degree is a class B felony.

(72 Del. Laws, c. 43 § 4; 70 Del. Laws, c. 186 § 1.)

§ 607 Strangulation; penalty; affirmative defense.

(a)(1) A person commits the offense of strangulation if the person knowingly or intentionally impedes the breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person.

(2) Except as provided in paragraph (a)(3) of this section, strangulation is a class E felony.

(3) Strangulation is a class D felony if:

a. The person used or attempted to use a dangerous instrument or a deadly weapon while committing the offense; or

b. The person caused serious physical injury to the other person while committing the offense; or

c. The person has been previously convicted of strangulation.

(b) It is an affirmative defense that an act constituting strangulation was the result of a legitimate medical procedure.

(77 Del. Laws, c. 256 § 1.)

§§ 608 -610. [Reserved.]

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

A person is guilty of assault in the third degree when:

(1) The person intentionally or recklessly causes physical injury to another person; or

(2) With criminal negligence the person causes physical injury to another person by means of a deadly weapon or a dangerous instrument.

Assault in the third degree is a class A misdemeanor.

(11 Del. C. 1953 § 611; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

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

(a) A person is guilty of assault in the second degree when:

(1) The person recklessly or intentionally causes serious physical injury to another person; or

(2) The person recklessly or intentionally causes physical injury to another person by means of a deadly weapon or a dangerous instrument; or

(3) The person intentionally causes physical injury to a law-enforcement officer, a volunteer firefighter, a full-time firefighter, emergency medical technician, paramedic, fire police officer, fire marshal, correctional officer, a sheriff, a deputy sheriff, public transit operator, a code enforcement constable or a code enforcement officer who is acting in the lawful performance of duty. For purposes of this subsection, if a law-enforcement officer is off duty and the nature of the assault is related to that law-enforcement officer's official position, then it shall fall within the meaning of "official duties" of a law-enforcement officer; or

(4) The person intentionally causes physical injury to the operator of an ambulance, a rescue squad member, licensed practical nurse, registered nurse, paramedic, or licensed medical doctor while such person is performing a work-related duty; or

(5) The person intentionally causes physical injury to any other person while such person is rendering emergency care; or

(6) The person recklessly or intentionally causes physical injury to another person who is 62 years of age or older; or

(7) The person intentionally assaults a law-enforcement officer while in the performance of the officer's duties, with any disabling chemical spray, or with any aerosol or hand sprayed liquid or gas with the intent to incapacitate such officer and prevent the officer from performing such duties; or

(8) The person intentionally, while engaged in commission of any crime enumerated in this chapter, assaults any other person with any disabling chemical spray, or with any aerosol or hand sprayed liquid or gas with the intent to incapacitate the victim; or

(9) The person intentionally causes physical injury to any state employee or officer when that employee or officer is discharging or attempting to discharge a duty of employment or office; or

(10) The person recklessly or intentionally causes physical injury to a pregnant female. It is no defense to a prosecution under this subsection that the person was unaware that the victim was pregnant; or

(11) A person who is 18 years of age or older and who recklessly or intentionally causes physical injury to another person who has not yet reached the age of 6 years. In any prosecution of a parent, guardian, foster parent, legal custodian or other person similarly responsible for the general care and supervision of a child victim pursuant to this paragraph, the State shall be required to prove beyond a reasonable doubt the absence of any justification offered by § 468(1) of this title. In any prosecution of a teacher or school administrator pursuant to this paragraph, the State shall be required to prove beyond a reasonable doubt the absence of any justification offered by § 468(2) of this title; or

(12) The person recklessly or intentionally causes physical injury to a law-enforcement officer, security officer, fire police officer, fire fighter, paramedic, or emergency medical technician in the lawful performance of their duties by means of an electronic control device shall be a class C felony.

(b) It is no defense, for an offense under paragraph (a)(6) of this section, that the accused did not know the person's age or that the accused reasonably believed the person to be under the age of 62.

(c) It is no defense, for an offense under paragraph (a)(11) of this section, that the accused did not know the person's age or that the accused reasonably believed the person to be 6 years of age or older.

(d) Assault in the second degree is a class D felony.

(11 Del. C. 1953 § 612; 58 Del. Laws, c. 497 § 1; 63 Del. Laws, c. 50 § 1; 63 Del. Laws, c. 237 § 1; 67 Del. Laws, c. 130 § 8; 68 Del. Laws, c. 129 §§ 1, 3; 69 Del. Laws, c. 24 §§ 3, 4; 69 Del. Laws, c. 189 § 1; 69 Del. Laws, c. 367 § 1; 70 Del. Laws, c. 128 §§ 1-5; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 307 § 1; 71 Del. Laws, c. 374 §§ 4, 5; 72 Del. Laws, c. 34 § 10; 72 Del. Laws, c. 43 § 5; 72 Del. Laws, c. 173 §§ 1, 2; 73 Del. Laws, c. 126 §§ 3, 16; 74 Del. Laws, c. 199; 76 Del. Laws, c. 270 § 3; 77 Del. Laws, c. 119 § 1; 77 Del. Laws, c. 265 § 1; 78 Del. Laws, c. 325 § 1; 80 Del. Laws, c. 287 § 1.)

§ 613 Assault in the first degree; class B felony.

(a) A person is guilty of assault in the first degree when:

(1) The person intentionally causes serious physical injury to another person by means of a deadly weapon or a dangerous instrument; or

(2) The person intentionally disfigures another person seriously and permanently, or intentionally destroys, amputates or disables permanently a member or organ of another person's body; or

(3) The person recklessly engages in conduct which creates a substantial risk of death to another person, and thereby causes serious physical injury to another person; or

(4) While engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any felony, the person intentionally or recklessly causes serious physical injury to another person; or

(5) The person intentionally causes serious physical injury to a law-enforcement officer, a volunteer firefighter, a full-time firefighter, emergency medical technician, paramedic, fire police officer, fire marshal, public transit operator, a code enforcement constable or a code enforcement officer who is acting in the lawful performance of duty; or

(6) The person intentionally causes serious physical injury to the operator of an ambulance, a rescue squad member, licensed practical nurse, registered nurse, paramedic, licensed medical doctor or any other person while such person is rendering emergency care; or

(7) The person intentionally causes serious physical injury to another person who is 62 years of age or older.

(b) It is no defense, for an offense under paragraph (a)(7) of this section, that the accused did not know the person's age or that the accused reasonably believed the person to be under the age of 62.

(c) Assault in the first degree is a class B felony.

(11 Del. C. 1953 § 613; 58 Del. Laws, c. 497 § 1; 63 Del. Laws, c. 50 § 2; 63 Del. Laws, c. 237 § 2; 67 Del. Laws, c. 130 § 8; 68 Del. Laws, c. 129 §§ 2, 3; 69 Del. Laws, c. 24 §§ 5, 6; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 34 § 11; 73 Del. Laws, c. 126 §§ 4, 16; 74 Del. Laws, c. 106 § 1; 75 Del. Laws, c. 168 § 1; 77 Del. Laws, c. 119 § 2; 77 Del. Laws, c. 265 § 2; 78 Del. Laws, c. 325 § 2.)

§ 614 Abuse of a sports official; class G felony; class A misdemeanor.

(a) A person is guilty of abuse of a sports official whenever the person intentionally or recklessly commits the following acts against a sports official who is acting in the lawful performance of duty:

(1) Reckless endangering in the second degree, as set forth in § 603 of this title; or

(2) Assault in the third degree, as set forth in § 611 of this title; or

(3) Terroristic threatening, as set forth in § 621 of this title; or

(4) Criminal mischief, as set forth in § 811 of this title.

(b) For purposes of this section, the words "sports official" shall mean any person who serves as a registered, paid or volunteer referee, umpire, line judge or acts in any similar capacity during a sporting event. For purposes of this section, the words, "lawful performance of duty" means the time immediately prior to, during and/or immediately after the sporting event.

(c) Whoever violates subsection (a) of this section shall be guilty of a class A misdemeanor. Upon conviction for a second or subsequent offense under this section, such person shall be guilty of a class G felony. Notwithstanding Chapter 42 of this title, such person shall be fined not less than $1,000 nor more than $2,350. In addition to the fines imposed by this subsection, any person who is guilty of abuse of a sports official shall be prohibited from participating in and/or attending any organized sporting event for a period of not less than 3 months nor more than 12 months.

(d) Except as provided in § 922 of Title 10, and notwithstanding any other provision of law to the contrary, the Court of Common Pleas shall have original jurisdiction to hear, try and finally determine any violation of this section, and any other misdemeanor violation of any offense set forth in this title which was allegedly committed during the same incident. Prosecution under this section shall not preclude a separate charge, conviction and sentence for any other crime set forth in the Code.

(67 Del. Laws, c. 247 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 342 § 1.)

§ 615 Assault by abuse or neglect; class B felony.

Transferred to § 1103B of this title by 78 Del. Laws, c. 406, § 3, effective Sept. 12, 2012.

§ 616 Gang participation.

(a) Definitions. — The following terms shall have the following meaning as used in this section.

(1) "Criminal street gang" means any ongoing organization, association, or group of 3 or more persons, whether formal or informal, having as 1 of its primary activities the commission of 1 or more of the criminal acts enumerated in paragraph (a)(2) of this section, having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(2) "Pattern of criminal gang activity" means the commission of attempted commission of, conspiracy to commit, solicitation of, or conviction of 2 or more of the following criminal offenses, provided that at least 1 of these offenses occurred after July 1, 2003, and that the last of those offenses occurred within 3 years after a prior offense, and provided that the offenses were committed on separate occasions, or by 2 or more persons:

a. Assault, as defined in § 612 or § 613 of this title.

b. Any criminal acts causing death as defined in §§ 632—636 of this title.

c. Any criminal acts relating to sexual offenses defined in §§ 768—780 of this title.

d. Any criminal offenses relating to unlawful imprisonment or kidnapping which are defined in §§ 782—783A of this title.

e. Any criminal acts of arson as defined in §§ 801—803 of this title.

f. Any criminal acts relating to burglary which are defined in §§ 824—826A of this title.

g. Any criminal acts relating to robbery which are defined in §§ 831 and 832 of this title.

h. Any criminal acts relating to theft or extortion which are defined in § 841, § 849 or § 851 of this title, provided that such acts meet the requirements of felony offenses under said sections.

i. Any criminal acts relating to riot, unlawful disruption, hate crimes, stalking or bombs which are defined in § 1302, former § 1303 [repealed], § 1304, § 1312A or § 1338 of this title, provided that such acts meet the requirements of felony offenses under said sections.

j. Any criminal acts involving deadly weapons or dangerous instruments which are defined in § 1442, § 1444, §§1447—1448, § 1449, § 1450, § 1451, § 1454 or § 1455 of this title.

k. Any criminal acts involving controlled substances which are defined by §§ 4752, 4753, 4754, 4755, 4756, 4757(c) of Title 16.

(b) Forbidden conduct. — A person who actively participates in any criminal street gang with knowledge that its members engage in or have engaged in a pattern of criminal gang activity and who knowingly promotes, furthers or assists in any criminal conduct by members of that gang which would constitute a felony under Delaware law, shall be guilty of illegal gang participation. Illegal gang participation is a class F felony.

(c) Sentencing enhancements. —

(1) Any person who is convicted of a class E felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced consistent with the sentence dictated by Delaware law for a class D felony under § 4205(b)(4) of this title.

(2) Any person who is convicted of a class D felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced consistent with the sentence dictated by Delaware law for a class C felony under § 4205(b)(3) of this title.

(3) Any person who is convicted of a class C felony committed for the benefit of, at the direction of, or in association with any criminal street gang, with the specific intent to promote, further, or assist in any criminal conduct by gang members, shall, upon conviction of that felony, be sentenced consistent with the sentence dictated by Delaware law for a class B felony under § 4205(b)(2) of this title.

(74 Del. Laws, c. 115 § 1; 78 Del. Laws, c. 13 § 4; 78 Del. Laws, c. 252 § 5.)

§ 617 Criminal youth gangs.

(a) Definitions. — The following words, terms and phrases, when used in this chapter, shall have their meaning ascribed to them except where the context clearly indicates a different meaning.

(1) "Criminal youth gang" shall mean a group of 3 or more persons with a gang name or other identifier which either promotes, sponsors, assists in, participates in or requires as a condition of membership submission to group initiation that results in any felony or any class A misdemeanor set forth in this title or Title 16.

(2) "Identifier" shall mean common identifying signs, symbols, tattoos, markings, graffiti, or attire or other distinguishing characteristics or indicia of gang membership.

(3) "Student" shall mean any person enrolled in a school grades preschool through 12.

(b) Recruitment or retention of juveniles or students for a criminal street gang or criminal youth gang; penalties. —

(1) Any person who solicits, invites, recruits, encourages or otherwise causes or attempts to cause a juvenile or student to participate in or become a member of a criminal street gang as defined in § 616(a) of this title or criminal youth gang is guilty of a class G felony.

(2) Any person who,

a. In order to encourage a juvenile or student to:

1. Join a criminal youth gang or criminal street gang,
2. Remain as a participant in or a member of a criminal youth gang or criminal street gang, or
3. Submit to a demand by a criminal youth gang or criminal street gang to commit a crime; or

b. In order to prevent a juvenile or student from withdrawing or attempting to withdraw from a criminal youth gang or criminal street gang threatens to commit any crime likely to result in death or in physical injury to the juvenile, the juvenile's property, a member of that juvenile's family or household, or their property; or commits a crime which results in physical injury or death to the juvenile, the juvenile's property, a member of that juvenile's family or household, or their property

shall be guilty of a class F felony and shall constitute a separate and distinct offense. If the acts or activities violating this section also violate another provision of law, a prosecution under this section shall not prohibit or bar any prosecution or proceeding under such other provision or the imposition of any penalties provided for thereby.

(75 Del. Laws, c. 421 § 1; 70 Del. Laws, c. 186 § 1.)

§§ 618 -620. [Reserved.]

§ 621 Terroristic threatening.

(a) A person is guilty of terroristic threatening when that person commits any of the following:

(1) The person threatens to commit any crime likely to result in death or in serious injury to person or property;

(2) The person makes a false statement or statements:

a. Knowing that the statement or statements are likely to cause evacuation of a building, place of assembly, or facility of public transportation;

b. Knowing that the statement or statements are likely to cause serious inconvenience; or

c. In reckless disregard of the risk of causing terror or serious inconvenience; or

(3) The person commits an act with intent of causing an individual to believe that the individual has been exposed to a substance that will cause the individual death or serious injury.

(b) Any violation of paragraph (a)(1) of this section shall be a class A misdemeanor except where the victim is a person 62 years of age or older, in which case any violation of paragraph (a)(1) of this section shall be a class G felony. Any violation of paragraph (a)(2)a. of this section shall be a class E felony. Any violation of paragraph (a)(2)b. or c. of this section shall be a class G felony unless the place at which the risk of serious inconvenience or terror is created is a place that has the purpose, in whole or in part, of acting as a daycare facility, nursery or preschool, kindergarten, elementary, secondary or vocational-technical school, or any long-term care facility in which elderly persons are housed, in which case it shall be a class F felony. Any violation of paragraph (a)(3) of this section shall be a class F felony. Notwithstanding any provision of this subsection to the contrary, a first offense of paragraph (a)(2) of this section by a person 17 years old or younger shall be a class A misdemeanor.

(c) In addition to the penalties otherwise authorized by law, any person convicted of an offense in violation of paragraph (a)(2) of this section shall:

(1) Pay a fine of not less than $1,000 nor more than $2,500, which fine cannot be suspended; and

(2) Be sentenced to perform a minimum of 100 hours of community service.

(d) In addition to the penalties otherwise authorized by law, any person convicted of an offense in violation of paragraph (a)(3) of this section shall pay a fine of not less than $2,000, which fine cannot be suspended.

(11 Del. C. 1953 § 621; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 330 § 1; 73 Del. Laws, c. 126 §§ 5, 6; 73 Del. Laws, c. 255 § 1; 80 Del. Laws, c. 14 § 1.)

§ 622 Hoax device; class F felony.

(a) Whoever possesses, transports, uses or places or causes another to knowingly or unknowingly possess, transport, use or place any hoax device with the intent to cause anxiety, unrest, fear or personal discomfort to any person or group of persons shall be guilty of a class F felony.

(b) For the purposes of this section the following definitions shall apply:

(1) "Destructive device" means any explosive, incendiary, or chemical material or over-pressure device which will rapidly expand in a manner to project material outward at such a rate to cause injury to persons or damage to property.

(2) "Explosive" means any chemical compound, or other substance or containing oxidizing and combustible units or other ingredients in such proportions or quantities that ignition, fire, friction, concussion, percussion, or detonator may produce an explosion capable of causing injury to persons or damage to property.

(3) "Hoax device" shall mean any object or item that would cause a person to reasonably believe that such object or item is or contains a destructive device, Molotov cocktail, incendiary device, or over-pressure device which could cause injury or death.

(4) "Incendiary device" means any item designed to ignite by hand, chemical reaction, timer or by spontaneous combustion and is not designed for lawful purposes or use whatsoever, or any lawful use or purpose has been terminated.

(5) "Molotov cocktail" means a makeshift incendiary bomb made of a breakable container filled with flammable liquid and provided with a wick composed of any substance capable of bringing flame into contact with a wick composed of any substance capable of bringing flame into contact with a liquid.

(6) "Over-pressure device" means a frangible container filled with an explosive gas, chemical or combination of materials, which is designed or constructed so as to cause the container to break or fracture in a manner which is capable of causing death, bodily harm, or property damage.

(74 Del. Laws, c. 420 § 1.)

§§ 623 , 624. [Reserved.]

§ 625 Unlawfully administering drugs; class A misdemeanor.

A person is guilty of unlawfully administering drugs when, for a purpose other than lawful medical or therapeutic treatment, the person intentionally causes stupor, unconsciousness or other alteration of the physical or mental condition of another person by administering to the other person, without consent, a drug.

Unlawfully administering drugs is a class A misdemeanor.

(11 Del. C. 1953 § 625; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 626 Unlawfully administering controlled substance or counterfeit substance or narcotic drugs; class G felony.

A person is guilty of unlawfully administering a controlled substance or counterfeit substance or narcotic drugs when, for a purpose other than lawful medical or therapeutic treatment, the person intentionally introduces or causes introduction into the body of another person, without consent, a controlled substance or counterfeit substance or narcotic drug.

Unlawfully administering controlled substance or counterfeit substance or narcotic drugs is a class G felony.

(11 Del. C. 1953 § 626; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 627 Prohibited acts as to substances releasing vapors or fumes; unclassified misdemeanor.

No person shall:

(1) Intentionally smell or inhale the vapors or fumes from any substance having the property of releasing vapors or fumes for the purpose of producing a condition of intoxication, inebriation, exhilaration, stupefaction or lethargy or for the purpose of dulling the brain or nervous system; provided, that nothing in this section shall prohibit the inhalation of the vapors or fumes of any anesthesia for medical or dental purposes;

(2) Sell or offer to sell to any person any material, product or article of commerce containing any substance having a property of releasing vapors or fumes, if the person has knowledge or is in the possession of such facts that the person should have knowledge that the material, product or article of commerce sold or offered will be used for the purpose of committing any of the acts proscribed in paragraph (1) of this section;

(3) Purchase or offer to purchase for the person or any other person any material, product or article of commerce containing any substance having the property of releasing vapors and fumes if such purchase or offer to purchase is made for the purpose of committing any of the acts proscribed in paragraph (1) of this section.

Any violation of this section shall be an unclassified misdemeanor.

(11 Del. C. 1953 § 627; 58 Del. Laws, c. 497 § 1; 65 Del. Laws, c. 286 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 628 Vehicular assault in the third degree; class B misdemeanor.

A person is guilty of vehicular assault in the third degree when, while in the course of driving or operating a motor vehicle, the person's criminally negligent driving or operation of said vehicle causes physical injury to another person.

Vehicular assault in the third degree is a class B misdemeanor.

(78 Del. Laws, c. 168 § 2.)

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

A person is guilty of vehicular assault in the second degree when:

(1) While in the course of driving or operating a motor vehicle, the person's criminally negligent driving or operation of said vehicle causes serious physical injury to another person; or

(2) While in the course of driving or operating a motor vehicle and under the influence of alcohol or drugs or with a prohibited alcohol or drug content, as defined by § 4177 of Title 21, the person's negligent driving or operation of said vehicle causes physical injury to another person.

Vehicular assault in the second degree is a class A misdemeanor.

(63 Del. Laws, c. 88 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 333 § 5; 75 Del. Laws, c. 315 § 7; 78 Del. Laws, c. 168 §§ 1, 2.)

§ 629 Vehicular assault in the first degree; class F felony.

A person is guilty of vehicular assault in the first degree when while in the course of driving or operating a motor vehicle and under the influence of alcohol or drugs or with a prohibited alcohol or drug content, as defined by § 4177 of Title 21, the person's negligent driving or operation of said vehicle causes serious physical injury to another person.

Vehicular assault in the first degree is a class F felony.

(63 Del. Laws, c. 88 § 2; 67 Del. Laws, c. 130 § 8; 68 Del. Laws, c. 361 §§ 1, 2; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 333 § 5; 75 Del. Laws, c. 315 § 7.)

§ 630 Vehicular homicide in the second degree; class D felony; minimum sentence; juvenile offenders.

(a) A person is guilty of vehicular homicide in the second degree when:

(1) While in the course of driving or operating a motor vehicle, the person's criminally negligent driving or operation of said vehicle causes the death of another person; or

(2) While in the course of driving or operating a motor vehicle, under the influence of alcohol or drugs or with a prohibited alcohol or drug content, as defined by § 4177 of Title 21, the person's negligent driving or operation of said vehicle causes the death of another person.

Vehicular homicide in the second degree is a class D felony.

(b) The minimum sentence required by paragraph (a)(2) of this section shall be 1 year, notwithstanding § 4205(b)(6) of this title. The minimum sentence shall not be subject to suspension, and no person convicted under this section shall be eligible for probation, parole, furlough, work release or supervised custody during the first year of such sentence.

(c) Every person charged under this section after having reached his or her sixteenth birthday, shall be treated for purposes of trial or

other disposition of the charge, including but not limited to sentencing, as an adult, notwithstanding any contrary provisions of statutes governing the Family Court, or any other state law, except that the mandatory minimum sentencing provisions of subsection (b) of this section and § 630A(b) of this title shall not apply to juveniles. Any such case involving a juvenile shall be subject to the transfer provisions of § 1011 of Title 10. Any period of incarceration imposed upon a juvenile by operation of this section shall be served in a juvenile correctional facility until the person attains their 18th birthday, at which time the person shall be transferred to the appropriate adult correctional institution or jail to serve any remaining portion of the sentence.

(63 Del. Laws, c. 88 § 3; 65 Del. Laws, c. 357 § 1; 67 Del. Laws, c. 130 § 8; 67 Del. Laws, c. 246 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 333 § 5; 75 Del. Laws, c. 315 § 7; 78 Del. Laws, c. 168 § 3.)

§ 630A Vehicular homicide in the first degree; class C felony; minimum sentence; juvenile offenders.

(a) A person is guilty of vehicular homicide in the first degree when while in the course of driving or operating a motor vehicle under the influence of alcohol or drugs or with a prohibited alcohol or drug content, as defined by § 4177 of Title 21, the person's criminally negligent driving or operation of said vehicle causes the death of another person.

Vehicular homicide in the first degree is a class C felony.

(b) The minimum sentence required by this section shall be 2 years, notwithstanding § 4205(b)(5) of this title. The minimum sentence shall not be subject to suspension, and no person convicted under this section shall be eligible for probation, parole, furlough, work release or supervised custody during the first 18 months of such sentence.

(c) Every person charged under this section after having reached his or her sixteenth birthday, shall be treated for purposes of trial or other disposition of the charge, including but not limited to sentencing, as an adult, notwithstanding any contrary provisions of statutes governing the Family Court, or any other state law, except that the mandatory minimum sentencing provisions of subsection (b) of this section and § 630(b) of this title shall not apply to juveniles. Any such case involving a juvenile shall be subject to the transfer provisions of § 1011 of Title 10. Any period of incarceration imposed upon a juvenile by operation of this section shall be served in a juvenile correctional facility until the person attains his or her eighteenth birthday, at which time the person shall be transferred to the appropriate adult correctional institution or jail to serve any remaining portion of the sentence.

(63 Del. Laws, c. 88 § 4; 65 Del. Laws, c. 357 § 2; 67 Del. Laws, c. 130 § 8; 67 Del. Laws, c. 246 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 333 § 5; 75 Del. Laws, c. 315 § 7; 78 Del. Laws, c. 168 § 4.)

§ 631 Criminally negligent homicide; class D felony.

A person is guilty of criminally negligent homicide when, with criminal negligence, the person causes the death of another person.

Criminally negligent homicide is a class D felony.

(11 Del. C. 1953 § 631; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 168 § 5.)

§ 632 Manslaughter; class B felony.

A person is guilty of manslaughter when:

(1) The person recklessly causes the death of another person; or

(2) With intent to cause serious physical injury to another person the person causes the death of such person, employing means which would to a reasonable person in the defendant's situation, knowing the facts known to the defendant, seem likely to cause death; or

(3) The person intentionally causes the death of another person under circumstances which do not constitute murder because the person acts under the influence of extreme emotional disturbance; or

(4) The person commits upon a female an abortion which causes her death, unless such abortion is a therapeutic abortion and the death is not the result of reckless conduct; or

(5) The person intentionally causes another person to commit suicide.

Manslaughter is a class B felony.

(11 Del. C. 1953 § 632; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 106 § 2.)

§ 633 Murder by abuse or neglect in the second degree; class B felony.

(a) A person is guilty of murder by abuse or neglect in the second degree when, with criminal negligence, the person causes the death of a child:

(1) Through an act of abuse and/or neglect of such child; or

(2) When the person has engaged in a previous pattern of abuse and/or neglect of such child.

(b) For the purpose of this section:

(1) "Abuse" and "neglect" shall have the same meaning as set forth in § 1100 of this title.

(2) "Child" shall refer to any person who has not yet reached that person's fourteenth birthday.

(3) "Previous pattern" of abuse and/or neglect shall mean 2 or more incidents of conduct:

a. That constitute an act of abuse and/or neglect; and

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

(c) A conviction is not required for an act of abuse or neglect to be used in prosecution of a matter under this section, including an act used as proof of a previous pattern as defined in paragraph (b)(3) of this section. A conviction for any act of abuse or neglect, including one

which may be relied upon to establish a previous pattern of abuse and/or neglect does not preclude prosecution under this section. Prosecution under this section does not preclude prosecution under any other section of the Code.

(d) Murder by abuse or neglect in the second degree is a class B felony. Notwithstanding any provision of this title to the contrary, the minimum sentence for a person convicted of murder by abuse or neglect in the second degree in violation of this section shall be 10 years at Level V.

(70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 266 § 1; 70 Del. Laws, c. 382 § 1; 72 Del. Laws, c. 197 §§ 2-4; 78 Del. Laws, c. 406 § 1.)

§ 634 Murder by abuse or neglect in the first degree; class A felony.

(a) A person is guilty of murder by abuse or neglect in the first degree when the person recklessly causes the death of a child:

(1) Through an act of abuse and/or neglect of such child; or

(2) When the person has engaged in a previous pattern of abuse and/or neglect of such child.

(b) For the purpose of this section:

(1) "Abuse" and "neglect" shall have the same meaning as set forth in § 1100 of this title.

(2) "Child" shall refer to any person who has not yet reached that person's fourteenth birthday.

(3) "Previous pattern" of abuse and/or neglect shall mean 2 or more incidents of conduct:

a. That constitute an act of abuse and/or neglect; and

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

(c) A conviction is not required for an act of abuse or neglect to be used in prosecution of a matter under this section including an act used as proof of the previous pattern as defined in paragraph (b)(3) of this section. A conviction for any act of abuse or neglect including one which may be relied upon to establish the previous pattern of abuse and/or neglect does not preclude prosecution under this section. Prosecution under this section does not preclude prosecution under any other section of the Code.

(d) Murder by abuse or neglect in the first degree is a class A felony.

(70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 266 § 2; 72 Del. Laws, c. 197 §§ 5, 6; 78 Del. Laws, c. 406 § 1.)

§ 635 Murder in the second degree; class A felony.

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

(1) The person recklessly causes the death of another person under circumstances which manifest a cruel, wicked and depraved indifference to human life; or

(2) While engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any felony, the person, with criminal negligence, causes the death of another person.

Murder in the second degree is a class A felony.

(11 Del. C. 1953 § 635; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 35; 67 Del. Laws, c. 130 § 8; 67 Del. Laws, c. 350 § 29; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 106 § 3; 74 Del. Laws, c. 246 § 1.)

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

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

(1) The person intentionally causes the death of another person;

(2) While engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any felony, the person recklessly causes the death of another person.

(3) The person intentionally causes another person to commit suicide by force or duress;

(4) The person recklessly causes the death of a law-enforcement officer, corrections employee, fire fighter, paramedic, emergency medical technician, fire marshal or fire police officer while such officer is in the lawful performance of duties;

(5) The person causes the death of another person by the use of or detonation of any bomb or similar destructive device;

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

(b) Murder in the first degree is a class A felony and shall be punished:

(1) As provided in § 4209 of this title for an offense that was committed after the person had reached the person's eighteenth birthday; and

(2) As provided in § 4209A of this title for an offense that was committed before the person had reached the person's eighteenth birthday.

(11 Del. C. 1953 § 636; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 284 § 1; 63 Del. Laws, c. 354 § 1; 66 Del. Laws, c. 269 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 285 § 2; 74 Del. Laws, c. 246 §§ 2, 3; 77 Del. Laws, c. 191 § 1; 79 Del. Laws, c. 37 § 1.)

§§ 637 -640. [Reserved.]

§ 641 Extreme emotional distress.

The fact that the accused intentionally caused the death of another person under the influence of extreme emotional distress is a

mitigating circumstance, reducing the crime of murder in the first degree as defined by § 636 of this title to the crime of manslaughter as defined by § 632 of this title. The fact that the accused acted under the influence of extreme emotional distress must be proved by a preponderance of the evidence. The accused must further prove by a preponderance of the evidence that there is a reasonable explanation or excuse for the existence of the extreme emotional distress. The reasonableness of the explanation or excuse shall be determined from the viewpoint of a reasonable person in the accused's situation under the circumstances as the accused believed them to be. Extreme emotional distress is not reasonably explained or excused when it is caused or occasioned by the accused's own mental disturbance for which the accused was culpably responsible, or by any provocation, event or situation for which the accused was culpably responsible, or when there is no causal relationship between the provocation, event or situation which caused the extreme emotional distress and the victim of the murder. Evidence of voluntary intoxication shall not be admissible for the purpose of showing that the accused was acting under the influence of extreme emotional distress.

(11 Del. C. 1953 § 641; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 127 § 1.)

§§ 642 -644. [Reserved.]

§ 645 Promoting suicide; class F felony.

A person is guilty of promoting suicide when the person intentionally causes or aids another person to attempt suicide, or when the person intentionally aids another person to commit suicide.

Promoting suicide is a class F felony.

(11 Del. C. 1953 § 645; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§§ 646 -650. [Reserved.]

§ 651 Abortion; class F felony.

A person is guilty of abortion when the person commits upon a pregnant female an abortion which causes the miscarriage of the female, unless the abortion is a therapeutic abortion.

Abortion is a class F felony.

(11 Del. C. 1953 § 651; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 652 Self-abortion; class A misdemeanor.

A female is guilty of self-abortion when she, being pregnant, commits or submits to an abortion upon herself which causes her abortion, unless the abortion is a therapeutic abortion.

Self-abortion is a class A misdemeanor.

(11 Del. C. 1953 § 652; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 653 Issuing abortional articles; class B misdemeanor.

A person is guilty of issuing abortional articles when the person manufactures, sells or delivers any instrument, article, medicine, drug or substance with intent that the same be used in committing an abortion upon a female in circumstances which would constitute a crime defined by this Criminal Code.

Issuing abortional articles is a class B misdemeanor.

(11 Del. C. 1953 § 653; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 654 "Abortion" defined.

"Abortion" means an act committed upon or with respect to a female, whether by another person or by the female herself, whether directly upon her body or by the administering, taking or prescription of drugs or in any other manner, with intent to cause a miscarriage of such female.

(11 Del. C. 1953 § 654; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§§ 655 -760. [Reserved.]

§ 761 Definitions generally applicable to sexual offenses.

(a) "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.

(b) "Cunnilingus" means any oral contact with the female genitalia.

(c) "Fellatio" means any oral contact with the male genitalia.

(d) "Object" means any item, device, instrument, substance or any part of the body. It does not mean a medical instrument used by a licensed medical doctor or nurse for the purpose of diagnosis or treatment.

(e) "Position of trust, authority or supervision over a child" includes, but is not limited to:

(1) Familial, guardianship or custodial authority or supervision; or

(2) A teacher, coach, counselor, advisor, mentor or any other person providing instruction or educational services to a child or children, whether such person is compensated or acting as a volunteer; or

(3) A babysitter, child care provider, or child care aide, whether such person is compensated or acting as a volunteer; or

(4) A health professional, meaning any person who is licensed or who holds himself or herself out to be licensed or who otherwise provides professional physical or mental health services, diagnosis, treatment or counseling which shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists, whether such person is compensated or acting as a volunteer; or

(5) Clergy, including but not limited to any minister, pastor, rabbi, lay religious leader, pastoral counselor or any other person having regular direct contact with children through affiliation with a church or religious institution, whether such person is compensated or acting as a volunteer; or

(6) Any law-enforcement officer, as that term is defined in § 222 of this title, and including any person acting as an officer or counselor at a correctional or counseling institution, facility or organization, whether such person is compensated or acting as a volunteer; or

(7) Any other person who because of that person's familial relationship, profession, employment, vocation, avocation or volunteer service has regular direct contact with a child or children and in the course thereof assumes responsibility, whether temporarily or permanently, for the care or supervision of a child or children.

(f) "Sexual contact" means:

(1) Any intentional touching by the defendant of the anus, breast, buttocks or genitalia of another person; or

(2) Any intentional touching of another person with the defendant's anus, breast, buttocks or genitalia; or

(3) Intentionally causing or allowing another person to touch the defendant's anus, breast, buttocks or genitalia

which touching, under the circumstances as viewed by a reasonable person, is intended to be sexual in nature. "Sexual contact" shall also include touching when covered by clothing.

(g) "Sexual intercourse" means:

(1) Any act of physical union of the genitalia or anus of 1 person with the mouth, anus or genitalia of another person. It occurs upon any penetration, however slight. Ejaculation is not required. This offense encompasses the crimes commonly known as rape and sodomy; or

(2) Any act of cunnilingus or fellatio regardless of whether penetration occurs. Ejaculation is not required.

(h) "Sexual offense" means any offense defined by §§ 763 through 780, 783(4), 783(6), 783A(4), 783A(6), 787(b)(3), 787(b)(4), 1100A, 1108 through 1112B, 1335(a)(6), 1335(a)(7), 1352(2), and 1353(2), and 1361(b) of this title.

(i) "Sexual penetration" means:

(1) The unlawful placement of an object, as defined in subsection (d) of this section, inside the anus or vagina of another person; or

(2) The unlawful placement of the genitalia or any sexual device inside the mouth of another person.

(j) "Without consent" means:

(1) The defendant compelled the victim to submit by any act of coercion as defined in §§ 791 and 792 of this title, or by force, by gesture, or by threat of death, physical injury, pain or kidnapping to be inflicted upon the victim or a third party, or by any other means which would compel a reasonable person under the circumstances to submit. It is not required that the victim resist such force or threat to the utmost, or to resist if resistance would be futile or foolhardy, but the victim need resist only to the extent that it is reasonably necessary to make the victim's refusal to consent known to the defendant; or

(2) The defendant knew that the victim was unconscious, asleep or otherwise unaware that a sexual act was being performed; or

(3) The defendant knew that the victim suffered from a cognitive disability, mental illness or mental defect which rendered the victim incapable of appraising the nature of the sexual conduct or incapable of consenting; or

(4) Where the defendant is a health professional, as defined herein, or a minister, priest, rabbi or other member of a religious organization engaged in pastoral counseling, the commission of acts of sexual contact, sexual penetration or sexual intercourse by such person shall be deemed to be without consent of the victim where such acts are committed under the guise of providing professional diagnosis, counseling or treatment and where at the times of such acts the victim reasonably believed the acts were for medically or professionally appropriate diagnosis, counseling or treatment, such that resistance by the victim could not reasonably have been manifested. For purposes of this paragraph, "health professional" includes all individuals who are licensed or who hold themselves out to be licensed or who otherwise provide professional physical or mental health services, diagnosis, treatment or counseling and shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists

and hypnotherapists; or

(5) The defendant had substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing without the other person's knowledge or against the other person's will, drugs, intoxicants or other means for the purpose of preventing resistance.

(k) A child who has not yet reached that child's sixteenth birthday is deemed unable to consent to a sexual act with a person more than 4 years older than said child. Children who have not yet reached their twelfth birthday are deemed unable to consent to a sexual act under any circumstances.

(11 Del. C. 1953 § 773; 58 Del. Laws, c. 497 § 1; 60 Del. Laws, c. 416 § 1; 61 Del. Laws, c. 56; 65 Del. Laws, c. 494 § 1; 66 Del. Laws, c. 269 §§ 27, 28; 69 Del. Laws, c. 44 § 1; 69 Del. Laws, c. 440 §§ 1, 2; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 285 §§ 3-7; 71 Del. Laws, c. 467 § 6; 72 Del. Laws, c. 109 § 1; 74 Del. Laws, c. 345 § 2; 75 Del. Laws, c. 392 § 2; 76 Del. Laws, c. 66 § 1; 77 Del. Laws, c. 150 §§ 1-3; 77 Del. Laws, c. 318 § 1; 80 Del. Laws, c. 175 § 2.)

§ 762 Provisions generally applicable to sexual offenses.

(a) Mistake as to age. — Whenever in the definition of a sexual offense, the criminality of conduct or the degree of the offense depends on whether the person has reached that person's sixteenth birthday, it is no defense that the actor did not know the person's age, or that the actor reasonably believed that the person had reached that person's sixteenth birthday.

(b) Gender. — Unless a contrary meaning is clearly required, the male pronoun shall be deemed to refer to both male and female.

(c) Separate acts of sexual contact, penetration and sexual intercourse. — Nothing in this title precludes a defendant from being charged with separate offenses when multiple acts of sexual contact, penetration or intercourse are committed against the same victim.

(d) Teenage defendant. — As to sexual offenses in which the victim's age is an element of the offense because the victim has not yet reached that victim's sixteenth birthday, where the person committing the sexual act is no more than 4 years older than the victim, it is an affirmative defense that the victim consented to the act "knowingly" as defined in § 231 of this title. Sexual conduct pursuant to this section will not be a crime. This affirmative defense will not apply if the victim had not yet reached that victim's twelfth birthday at the time of the act.

(11 Del. C. 1953 § 772; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 547 § 3; 61 Del. Laws, c. 56 § 3; 65 Del. Laws, c. 494 § 1; 66 Del. Laws, c. 269 §§ 33, 34; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 285 §§ 8, 9; 75 Del. Laws, c. 392 § 3.)

§ 763 Sexual harassment; unclassified misdemeanor.

A person is guilty of sexual harassment when:

(1) The person threatens to engage in conduct likely to result in the commission of a sexual offense against any person; or

(2) The person suggests, solicits, requests, commands, importunes or otherwise attempts to induce another person to have sexual contact or sexual intercourse or unlawful sexual penetration with the actor, knowing that the actor is thereby likely to cause annoyance, offense or alarm to that person.

Sexual harassment is an unclassified misdemeanor.

(65 Del. Laws, c. 494 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

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

(a) A male is guilty of indecent exposure in the second degree if he exposes his genitals or buttocks under circumstances in which he knows his conduct is likely to cause affront or alarm to another person.

(b) A female is guilty of indecent exposure in the second degree if she exposes her genitals, breast or buttocks under circumstances in which she knows her conduct is likely to cause affront or alarm to another person.

Indecent exposure in the second degree is an unclassified misdemeanor.

(11 Del. C. 1953 § 768; 58 Del. Laws, c. 497 § 1; 65 Del. Laws, c. 494 § 1; 66 Del. Laws, c. 269 § 17; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

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

(a) A male is guilty of indecent exposure in the first degree if he exposes his genitals or buttocks to a person who is less than 16 years of age under circumstances in which he knows his conduct is likely to cause affront or alarm.

(b) A female is guilty of indecent exposure in the first degree if she exposes her genitals, breast or buttocks to a person who is less than 16 years of age under circumstances in which she knows her conduct is likely to cause affront or alarm.

Indecent exposure in the first degree is a class A misdemeanor.

(11 Del. C. 1953 § 768; 58 Del. Laws, c. 497 § 1; 65 Del. Laws, c. 494 § 1; 66 Del. Laws, c. 269 § 18; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 766 Incest; class A misdemeanor.

(a) A person is guilty of incest if the person engages in sexual intercourse with another person with whom the person has 1 of the following relationships:

A male and his child.

A male and his parent.

A male and his brother.
A male and his sister.
A male and his grandchild.
A male and his niece or nephew.
A male and his father's sister or brother.
A male and his mother's sister or brother.
A male and his father's wife.
A male and his wife's child.
A male and the child of his wife's son or daughter.
A female and her parent.
A female and her child.
A female and her brother.
A female and her sister.
A female and her grandchild.
A female and her niece or nephew.
A female and her father's sister or brother.
A female and her mother's sister or brother.
A female and her mother's husband.
A female and her husband's child.
A female and the child of her husband's son or daughter.

(b) The relationships referred to herein include blood relationships without regard to legitimacy and relationships by adoption.

Incest is a class A misdemeanor and is an offense within the original jurisdiction of the Family Court.

(11 Del. C. 1953 § 771; 58 Del. Laws, c. 497 § 1; 65 Del. Laws, c. 494 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

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

A person is guilty of unlawful sexual contact in the third degree when the person has sexual contact with another person or causes the victim to have sexual contact with the person or a third person and the person knows that the contact is either offensive to the victim or occurs without the victim's consent.

Unlawful sexual contact in the third degree is a class A misdemeanor.

(11 Del. C. 1953 § 761; 58 Del. Laws, c. 497 § 1; 65 Del. Laws, c. 494 § 1; 66 Del. Laws, c. 269 § 19; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 768 Unlawful sexual contact in the second degree; class F felony.

A person is guilty of unlawful sexual contact in the second degree when the person intentionally has sexual contact with another person who is less than 18 years of age or causes the victim to have sexual contact with the person or a third person.

Unlawful sexual contact in the second degree is a class F felony.

(11 Del. C. 1953 §§ 761, 762; 58 Del. Laws, c. 497 § 1; 65 Del. Laws, c. 494 § 1; 66 Del. Laws, c. 269 § 20; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 364 § 1; 77 Del. Laws, c. 148 § 33.)

§ 769 Unlawful sexual contact in the first degree; class D felony.

(a) A person is guilty of unlawful sexual contact in the first degree when:

(1) In the course of committing unlawful sexual contact in the third degree or in the course of committing unlawful sexual contact in the second degree, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury to the victim or the person displays what appears to be a deadly weapon or dangerous instrument; or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument.

(2) [Repealed.]

(3) The person intentionally has sexual contact with another person who is less than 13 years of age or causes the victim to have sexual contact with the person or a third person.

(b) Unlawful sexual contact in the first degree is a class D felony.

(11 Del. C. 1953 § 767; 58 Del. Laws, c. 497 § 1; 61 Del. Laws, c. 56 § 2; 65 Del. Laws, c. 494 § 1; 66 Del. Laws, c. 269 § 21; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 93 § 3; 75 Del. Laws, c. 392 § 1; 76 Del. Laws, c. 364 § 2; 77 Del. Laws, c. 148 § 34; 77 Del. Laws, c. 318 § 7.)

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

(a) A person is guilty of rape in the fourth degree when the person:

(1) Intentionally engages in sexual intercourse with another person, and the victim has not yet reached that victim's sixteenth birthday; or

(2) Intentionally engages in sexual intercourse with another person, and the victim has not yet reached that victim's eighteenth birthday, and the person is 30 years of age or older, except that such intercourse shall not be unlawful if the victim and person are married

at the time of such intercourse; or

(3) Intentionally engages in sexual penetration with another person under any of the following circumstances:

a. The sexual penetration occurs without the victim's consent; or

b. The victim has not reached that victim's sixteenth birthday.

(4) [Repealed.]

(b) Paragraph (a)(3) of this section does not apply to a licensed medical doctor or nurse who places 1 or more fingers or an object inside a vagina or anus for the purpose of diagnosis or treatment or to a law-enforcement officer who is engaged in the lawful performance of his or her duties.

Rape in the fourth degree is a class C felony.

(71 Del. Laws, c. 285 § 10; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 318 §§ 7, 9.)

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

(a) A person is guilty of rape in the third degree when the person:

(1) Intentionally engages in sexual intercourse with another person, and the victim has not reached that victim's sixteenth birthday and the person is at least 10 years older than the victim, or the victim has not yet reached that victim's fourteenth birthday and the person has reached that person's nineteenth birthday and is not otherwise subject to prosecution pursuant to § 772 or § 773 of this title; or

(2) Intentionally engages in sexual penetration with another person under any of the following circumstances:

a. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim; or

b. The victim has not reached that victim's sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim.

(3) [Repealed.]

(b) Paragraph (a)(2) of this section does not apply to a licensed medical doctor or nurse who places 1 or more fingers or an object inside a vagina or anus for the purpose of diagnosis or treatment, or to a law-enforcement officer who is engaged in the lawful performance of his or her duties.

(c) Notwithstanding any law to the contrary, in any case in which a violation of subsection (a) of this section has resulted in the birth of a child who is in the custody and care of the victim or the victim's legal guardian or guardians, the court shall order that the defendant, as a condition of any probation imposed pursuant to a conviction under this section, timely pay any child support ordered by the Family Court for such child.

(d) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

Rape in the third degree is a class B felony.

(71 Del. Laws, c. 285 § 11; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 271 §§ 4-6; 77 Del. Laws, c. 318 §§ 7, 8.)

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

(a) A person is guilty of rape in the second degree when the person:

(1) Intentionally engages in sexual intercourse with another person, and the intercourse occurs without the victim's consent; or

(2) Intentionally engages in sexual penetration with another person under any of the following circumstances:

a. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight following the commission of the crime, or during an attempt to prevent the reporting of the crime, the person causes serious physical injury to the victim; or

b. The sexual penetration occurs without the victim's consent, and was facilitated by or occurred during the course of the commission or attempted commission of:

1. Any felony; or

2. Any of the following misdemeanors: reckless endangering in the second degree; assault in the third degree; terroristic threatening; unlawfully administering drugs; unlawful imprisonment in the second degree; coercion or criminal trespass in the first, second or third degree; or

c. The victim has not yet reached that victim's sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person causes serious physical injury to the victim; or

d. The sexual penetration occurs without the victim's consent and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument; or

e. The victim has not yet reached that victim's sixteenth birthday and during the commission of the crime, or during the immediate flight from the crime, or during an attempt to prevent the reporting of the crime, the person displays what appears to be a deadly

weapon or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument; or

f. The sexual penetration occurs without the victim's consent, and a principal-accomplice relationship within the meaning set forth in § 271 of this title existed between the defendant and another person or persons with respect to the commission of the crime; or

g. The victim has not yet reached that victim's twelfth birthday, and the defendant has reached that defendant's eighteenth birthday.

h. [Repealed.]

(b) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(c) Notwithstanding any provision of this title to the contrary, the minimum sentence for a person convicted of rape in the second degree in violation of this section shall be 10 years at Level V.

Rape in the second degree is a class B felony.

(71 Del. Laws, c. 285 § 12; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 93 § 3; 77 Del. Laws, c. 318 § 7.)

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

(a) A person is guilty of rape in the first degree when the person intentionally engages in sexual intercourse with another person and any of the following circumstances exist:

(1) The sexual intercourse occurs without the victim's consent and during the commission of the crime, or during the immediate flight following the commission of the crime, or during an attempt to prevent the reporting of the crime, the person causes physical injury or serious mental or emotional injury to the victim; or

(2) The sexual intercourse occurs without the victim's consent and it was facilitated by or occurred during the course of the commission or attempted commission of:

a. Any felony; or

b. Any of the following misdemeanors: reckless endangering in the second degree; assault in the third degree; terroristic threatening; unlawfully administering drugs; unlawful imprisonment in the second degree; coercion; or criminal trespass in the first, second or third degree; or

(3) In the course of the commission of rape in the second, third or fourth degree, or while in the immediate flight therefrom, the defendant displayed what appeared to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument; or

(4) The sexual intercourse occurs without the victim's consent, and a principal-accomplice relationship within the meaning set forth in § 271 of this title existed between the defendant and another person or persons with respect to the commission of the crime; or

(5) The victim has not yet reached that victim's twelfth birthday, and the defendant has reached that defendant's eighteenth birthday.

(6) [Repealed.]

(b) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(c) Notwithstanding any law to the contrary, a person convicted of rape in the first degree shall be sentenced to life imprisonment without benefit of probation, parole or any other reduction if:

(1) The victim had not yet reached that victim's sixteenth birthday at the time of the offense and the person inflicts serious physical injury on the victim; or

(2) The person intentionally causes serious and prolonged disfigurement to the victim permanently, or intentionally destroys, amputates or permanently disables a member or organ of the victim's body; or

(3) The person is convicted of rape against 3 or more separate victims; or

(4) The person has previously been convicted of unlawful sexual intercourse in the first degree, rape in the second degree or rape in the first degree, or any equivalent offense under the laws of this State, any other state or the United States.

Rape in the first degree is a class A felony.

(71 Del. Laws, c. 285 § 13; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 93 § 3; 77 Del. Laws, c. 318 § 7.)

§ 774 Sexual extortion; class E felony.

A person is guilty of sexual extortion when the person intentionally compels or induces another person to engage in any sexual act involving contact, penetration or intercourse with the person or another or others by means of instilling in the victim a fear that, if such sexual act is not performed, the defendant or another will:

(1) Cause physical injury to anyone;

(2) Cause damage to property;

(3) Engage in other conduct constituting a crime;

(4) Accuse anyone of a crime or cause criminal charges to be instituted against anyone;

(5) Expose a secret or publicize an asserted fact, whether true or false, intending to subject anyone to hatred, contempt or ridicule;

(6) Falsely testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(7) Perform any other act which is calculated to harm another person materially with respect to the other person's health, safety,

business, calling, career, financial condition, reputation or personal relationships.

Sexual extortion is a class E felony.

(68 Del. Laws, c. 379 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 318 §§ 2, 6.)

§ 775 Bestiality.

A person is guilty of bestiality when the person intentionally engages in any sexual act involving sexual contact, penetration or intercourse with the genitalia of an animal or intentionally causes another person to engage in any such sexual act with an animal for purposes of sexual gratification.

Bestiality is a class D felony.

(69 Del. Laws, c. 91 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 318 § 6.)

§ 776 Continuous sexual abuse of a child; class B felony.

(a) A person is guilty of continuous sexual abuse of a child when, either residing in the same home with the minor child or having recurring access to the child, the person intentionally engages in 3 or more acts of sexual conduct with a child under the age of 18 years of age over a period of time, not less than 3 months in duration.

(b) Sexual conduct under this section is defined as any of those criminal sexual acts defined under § 768, § 769, § 770, § 771, § 772, § 773, 777A, § 778, § 778A or § 1108 of this title.

(c) To convict under this section, the trier of fact, if a jury, need unanimously agree only that the requisite number of acts occurred, not on which acts constitute the requisite number.

(d) Continuous sexual abuse of a child is a class B felony.

(69 Del. Laws, c. 442 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 392 § 4; 77 Del. Laws, c. 318 §§ 3, 4, 6.)

§ 777 Dangerous crime against a child, definitions, sentences.

(a) A "dangerous crime against a child" means any criminal sexual conduct against a minor under the age of 14 years as defined in §§ 770-773, § 777A, §§ 778 through 778A, or §§ 1108 through 1112B of this title. For purposes of this section only, and § 762(a) of this title to the contrary notwithstanding, the defendant may use as an affirmative defense that the defendant believed that the victim of the crime was over the age of 16 years of age.

(b) Except as otherwise provided in this title, a person who is at least 18 years of age, or who has been tried as an adult and who is convicted of a dangerous crime against a child as defined in subsection (a) of this section, shall be guilty of a class B felony. For a second offense under this section, the Court shall impose a mandatory sentence of life imprisonment.

(c) A person sentence pursuant to this section shall not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis until the sentence imposed by the Court has been served.

(70 Del. Laws, c. 124 § 1; 71 Del. Laws, c. 467 § 7; 77 Del. Laws, c. 318 §§ 5, 6; 80 Del. Laws, c. 175 § 3.)

§ 777A Sex offender unlawful sexual conduct against a child.

(a) A sex offender who knowingly commits any sexual offense against a child is guilty of sex offender unlawful sexual conduct against a child.

(b) For purposes of this section, "sex offender" means as defined in § 4121 of this title.

(c) For purposes of this section, the term "sexual offense" shall mean any offense designated as a sexual offense by § 761(h) of this title.

(d) For purposes of this section, "child" means any individual who has not reached that child's eighteenth birthday. If the underlying sexual offense involves an offense defined by §§ 1108 through 1112B of this title, "child" also means any individual who is intended by the defendant to appear to be 14 years of age or less. A sex offender who knowingly possesses any material prohibited by § 1111 of this title is committing an offense against a child for purposes of this section.

(e) Sex offender unlawful sexual conduct against a child shall be punished as follows:

(1) If the underlying sexual offense is a misdemeanor, the crime of sex offender unlawful sexual conduct against a child shall be a class G felony except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class C felony;

(2) If the underlying sexual offense is a class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony 1 grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony;

(3) If the underlying sexual offense is a misdemeanor and the victim is under 18 years of age and has a cognitive disability, the crime of sex offender unlawful sexual conduct against a child shall be a class C felony;

(4) If the underlying sexual offense is a class C, D, E, F, or G felony and the victim is under 18 years of age and has a cognitive disability, the crime of sex offender unlawful sexual conduct against a child shall be a class B felony;

(5) If the underlying sexual offense is a class A or B felony, the crime of sex offender unlawful sexual conduct against a child shall be the same grade as the underlying offense, and the minimum sentence of imprisonment required for the underlying offense shall be doubled.

(f) The provisions of this section shall not apply if the defendant is also a child.

(76 Del. Laws, c. 66 § 2; 77 Del. Laws, c. 149 §§ 1, 2; 77 Del. Laws, c. 150 § 4; 77 Del. Laws, c. 318 § 6; 80 Del. Laws, c. 175 § 4.)

§ 778 Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree; penalties.

A person is guilty of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree when the person:

(1) Intentionally engages in sexual intercourse with a child who has not yet reached that child's own sixteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(2) Intentionally engages in sexual penetration with a child who has not yet reached that child's own sixteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(3) Intentionally engages in sexual intercourse or sexual penetration with a child who has reached that child's own sixteenth birthday but has not yet reached that child's own eighteenth birthday when the person is at least 4 years older than the child and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(4) Intentionally engages in sexual intercourse or sexual penetration with a child and the victim has reached that child's own sixteenth birthday but has not yet reached that child's own eighteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(5) Engages in an act of sexual extortion, as defined in § 774 of this title, against a child who has not yet reached that child's own sixteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(6)a. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (1) of this section is a class A felony.

2. Notwithstanding any law to the contrary, a person convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in this paragraph (6) shall be sentenced to life imprisonment without benefit of probation, parole or any other reduction if:

A. At the time of the offense the person inflicts serious physical injury on the victim; or

B. The person intentionally causes serious and prolonged disfigurement to the victim permanently, or intentionally destroys, amputates or permanently disables a member or organ of the victim's body; or

C. The person is convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in this paragraph (6) against 3 or more separate victims; or

D. The person has previously been convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree, unlawful sexual intercourse in the first degree, rape in the second degree or rape in the first degree, or any equivalent offense under the laws of this State, any other state or the United States.

b. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (2) of this section is a class B felony. Notwithstanding any provision of this title to the contrary, the minimum sentence for a person convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (2) of this section shall be 10 years at Level V.

c. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (3) of this section is a class B felony.

d. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (4) of this section is a class C felony.

e. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in paragraph (5) of this section is a class D felony.

(7) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(77 Del. Laws, c. 318 § 6; 70 Del. Laws, c. 186 § 1.)

§ 778A Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree; penalties.

A person is guilty of sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree when the person:

(1) Intentionally has sexual contact with a child who has not yet reached that child's sixteenth birthday or causes the child to have sexual contact with the person or a third person and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(2)a. Is a male who intentionally exposes his genitals or buttocks to a child who has not yet reached that child's sixteenth birthday under circumstances in which he knows his conduct is likely to cause annoyance, affront, offense or alarm when the person is at least 4

years older than the child and he stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

b. Is a female who intentionally exposes her genitals, breast or buttocks to a child who has not yet reached that child's sixteenth birthday under circumstances in which she knows her conduct is likely to cause annoyance, affront, offense or alarm when the person is at least 4 years older than the child and she stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(3) Suggests, solicits, requests, commands, importunes or otherwise attempts to induce a child who has not yet reached that child's sixteenth birthday to have sexual contact or sexual intercourse or unlawful sexual penetration with the person or a third person, knowing that the person is thereby likely to cause annoyance, affront, offense or alarm to the child or another when the person is at least 4 years older than the child and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(4)a. Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree as set forth in paragraph (1) of this section is a class D felony.

b. Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree as set forth in paragraph (2) of this section is a class F felony.

c. Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree as set forth in paragraph (3) of this section is a class G felony.

(5) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(77 Del. Laws, c. 318 § 6; 70 Del. Laws, c. 186 § 1.)

§§ 779 , 779A. Dangerous crime against a child, definitions, sentences; sex offender unlawful conduct against a child.

Transferred to §§ 777 and 777A of this title by 77 Del. Laws, c. 318, § 6, effective June 30, 2010.

§ 780 Female genital mutilation.

(a) A person is guilty of female genital mutilation when:

(1) A person knowingly circumcises, excises or infibulates the whole or any part of the labia majora, labia minora or clitoris of a female minor; or

(2) A parent, guardian or other person legally responsible or charged with the care or custody of a female minor allows the circumcision, excision or infibulation, in whole or in part, of such minor's labia majora, labia minora or clitoris.

(b) Female genital mutilation is a class E felony.

(c) It is not a defense to a violation that the conduct described in subsection (a) of this section above is required as a matter of custom, ritual or standard practice, or that the minor on whom it is performed or the minor's parent or legal guardian consented to the procedure.

(d) A surgical procedure is not a violation of this section if the procedure is:

(1) Necessary to the health of the minor on whom it is performed and is performed by a licensed physician under § 1720 of Title 24 or a physician-in-training under the supervision of a licensed physician; or

(2) Performed on a minor who is in labor or who has just given birth and is performed for medical purposes connected with that labor or birth by a licensed physician under § 1720 of Title 24 or a physician-in-training under the supervision of a licensed physician, or a licensed midwife under § 3336 of Title 18.

(70 Del. Laws, c. 438 § 1; 70 Del. Laws, c. 186 § 1.)

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

A person is guilty of unlawful imprisonment in the second degree when the person knowingly and unlawfully restrains another person.

Unlawful imprisonment in the second degree is a class A misdemeanor.

(11 Del. C. 1953 § 781; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

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

A person is guilty of unlawful imprisonment in the first degree when the person knowingly and unlawfully restrains another person under circumstances which expose that person to the risk of serious physical injury.

Unlawful imprisonment in the first degree is a class G felony.

(11 Del. C. 1953 § 782; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

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

A person is guilty of kidnapping in the second degree when the person unlawfully restrains another person with any of the following purposes:

(1) To hold the victim for ransom or reward; or

(2) To use the victim as a shield or hostage; or

(3) To facilitate the commission of any felony or flight thereafter; or

(4) To inflict physical injury upon the victim, or to violate or abuse the victim sexually; or

(5) To terrorize the victim or a third person; or

(6) To take or entice any child less than 18 years of age from the custody of the child's parent, guardian or lawful custodian;

and the actor voluntarily releases the victim alive, unharmed and in a safe place prior to trial.

Kidnapping in the second degree is a class C felony.

(11 Del. C. 1953 § 783; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 547 § 5; 66 Del. Laws, c. 398 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 148 § 35.)

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

A person is guilty of kidnapping in the first degree when the person unlawfully restrains another person with any of the following purposes:

(1) To hold the victim for ransom or reward; or

(2) To use the victim as a shield or hostage; or

(3) To facilitate the commission of any felony or flight thereafter; or

(4) To inflict physical injury upon the victim, or to violate or abuse the victim sexually; or

(5) To terrorize the victim or a third person; or

(6) To take or entice any child less than 18 years of age from the custody of the child's parent, guardian or lawful custodian;

and the actor does not voluntarily release the victim alive, unharmed and in a safe place prior to trial.

Kidnapping in the first degree is a class B felony.

(59 Del. Laws, c. 547 § 5; 66 Del. Laws, c. 398 § 2; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 148 § 36.)

§ 784 Defense to unlawful imprisonment and kidnapping.

In any prosecution for unlawful imprisonment or kidnapping it is an affirmative defense that the accused was a relative of the victim, and the accused's sole purpose was to assume custody of the victim. In that case, the liability of the accused, if any, is governed by § 785 of this title, and the accused may be convicted under § 785 when indicted for unlawful imprisonment or kidnapping.

(11 Del. C. 1953 § 784; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

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

A person is guilty of interference with custody when:

(1) Being a relative of a child less than 16 years old, intending to hold the child permanently or for a prolonged period and knowing that the person has no legal right to do so, the person takes or entices the child from the child's lawful custodian; or

(2) Knowing that the person has no legal right to do so, the person takes or entices from lawful custody any incompetent person or other person entrusted by authority of law to the custody of another person or an institution.

Interference with custody is a class A misdemeanor except that if the person who interferes with the custody of a child thereafter causes the removal of said child from Delaware, it is a class G felony.

(11 Del. C. 1953 § 785; 58 Del. Laws, c. 497 § 1; 63 Del. Laws, c. 268 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 786 Kidnapping and related offenses; definitions.

(a) "Harm" to a kidnap victim, in addition to its ordinary meaning, includes rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, even if such rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact is not accompanied by physical violence.

(b) "Relative" means a parent, ancestor, brother, sister, uncle or aunt.

(c) "Restrain" means to restrict another person's movements intentionally in such a manner as to interfere substantially with the person's liberty by moving the person from 1 place to another, or by confining the person either in the place where the restriction commences or in a place to which the person has been moved, without consent. A person is moved or confined "without consent" when the movement or confinement is accomplished by physical force, intimidation or deception, or by any means, including acquiescence of the victim, if the victim is a child less than 16 years old or an incompetent person and the parent, guardian or other person or institution having lawful control or custody of the person has not acquiesced in the movement or confinement.

(11 Del. C. 1953 § 786; 58 Del. Laws, c. 497 § 1; 66 Del. Laws, c. 269 § 2; 70 Del. Laws, c. 186 § 1.)

§ 787 Trafficking an individual, forced labor and sexual servitude; class D felony; class C felony; class B felony; class A felony.

(a) For the purposes of this section, the following definitions shall apply:

(1) "Adult" has the meaning ascribed in § 302 of Title 1;

(2) "Coercion" means:

a. The use or threat of force against, abduction of, serious harm to, or physical restraint of an individual;

b. The use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in

the use of force against, abduction of, serious harm to, or physical restraint of an individual;

c. The abuse or threatened abuse of law or legal process;

d. Controlling or threatening to control an individual's access to a controlled substance enumerated in § 4714, § 4716, § 4718, § 4720 or § 4722 of Title 16;

e. The destruction of, taking of, or the threat to destroy or take an individual's identification document or other property;

f. Use of debt bondage;

g. The use of an individual's physical, cognitive disability or mental impairment, where such impairment has substantial adverse effects on the individual's cognitive or volitional functions; or

h. The commission of civil or criminal fraud;

(3) "Commercial sexual activity" means any sexual activity for which anything of value is given, promised to, or received by any person;

(4) "Debt bondage" means inducing an individual to provide:

a. Commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

b. Labor or services in payment toward or satisfaction of a real or purported debt if:

1. The reasonable value of the labor or services is not applied toward the liquidation of the debt; or

2. The length of the labor or services is not limited and the nature of the labor or services is not defined;

(5) "Forced labor or services" means labor, as defined in this section, or services, as defined in this section, that are performed or provided by another person and are obtained or maintained through coercion as enumerated in paragraph (b)(1) of this section;

(6) "Human trafficking" means the commission of any of the offenses created in subsection (b) of this section;

(7) "Identification document" means a passport, driver's license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government, whether actual or purported;

(8) "Labor or services" means activity having economic or financial value, including commercial sexual activity. Nothing in this definition should be construed to legitimize or legalize prostitution;

(9) "Maintain" means in relation to labor or services, to secure continued performance thereof, regardless of any initial agreement on the part of the victim to perform such type of service;

(10) "Minor" has the meaning ascribed in § 302 of Title 1;

(11) "Obtain" means in relation to labor or services, to secure performance thereof;

(12) "Serious harm" means harm, whether physical or nonphysical, including psychological, economic, or reputational, to an individual which would compel a reasonable individual of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm;

(13) "Sexual activity" means any of the sex-related acts enumerated in § 761 of this title, or in § 1342, § 1351, § 1352(1), § 1353(1), § 1354 or § 1355 of this title or sexually-explicit performances;

(14) "Sexually explicit performance" means a live public act or show, production of pornography, or the digital transfer of any of such, intended to arouse or satisfy the sexual desires or appeal to the prurient interest of viewers;

(15) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by state; and

(16) "Victim" means a person who is subjected to the practices set forth in subsection (b) of this section or to conduct that would have constituted a violation of subsection (b) of this section had 79 Del. Laws, c. 276 been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted.

(b) Prohibited activities. —

(1) Trafficking an individual. — A person is guilty of trafficking an individual if the person knowingly recruits, transports, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of forced labor in violation of paragraph (b)(2) of this section or sexual servitude in violation of paragraph (b)(3) of this section. Trafficking an individual is a class C felony unless the individual is a minor, in which case it is a class B felony.

(2) Forced labor. — A person is guilty of forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except where such conduct is permissible under federal law or law of this State other than 79 Del. Laws, c. 276. Forced labor is a class C felony unless the individual is a minor, in which case it is a class B felony.

(3) Sexual servitude. —

a. A person commits the offense of sexual servitude if the person knowingly:

1. Maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity; or

2. Uses coercion or deception to compel an adult to engage in commercial sexual activity.

b. Sexual servitude is a class C felony unless the individual is a minor, in which case it is a class B felony.

c. It is not a defense in a prosecution under paragraph (b)(3)a.1. of this section that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

(4) Patronizing a victim of sexual servitude. — A person is guilty of patronizing a victim of sexual servitude if the person knowingly

gives, agrees to give, or offers to give anything of value so that the person may engage in commercial sexual activity with another person and the person knows that the other person is a victim of sexual servitude. Patronizing a victim of sexual servitude is a class D felony unless the victim of sexual servitude is a minor, in which case it is a class C felony. It is not a defense in a prosecution when the victim of sexual servitude is a minor that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

(5) Trafficking of persons for use of body parts. — A person is guilty of trafficking of persons for use of body parts when a person knowingly:

a. Recruits, entices, harbors, provides or obtains by any means, another person, intending or knowing that the person will have body parts removed for sale; or

b. Benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of this section. Such person shall be guilty of a class A felony. Nothing contained herein shall be construed as prohibiting the donation of an organ by an individual at a licensed medical facility after giving an informed voluntary consent.

(6) Aggravating circumstance. — An aggravating circumstance during the commission of an offense under paragraphs (b)(1)-(3) of this section occurs when:

a. The person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless; or

b. The person used or threatened use of force against, abduction of, serious harm to, or physical restraint of the victim.

If an aggravating circumstance occurred, the classification of the offense under paragraphs (b)(1)-(3) of this section is elevated by 1 felony grade higher than the underlying offense.

(c) Organizational liability. —

(1) An organization may be prosecuted for an offense under this section pursuant to § 281 of this title (Criminal liability of organizations).

(2) The court may consider the severity of an organization's offense under this section and order penalties in addition to those otherwise provided for the offense, including:

a. A fine of not more than $25,000 per offense;

b. Disgorgement of profit from illegal activity in violation of this section; and

c. Debarment from state and local government contracts.

(d) Restitution is mandatory under this section. —

(1) In addition to any other amount of loss identified, the court shall order restitution, including the greater of:

a. The gross income or value to the defendant of the victim's labor or services; or

b. The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) (29 U.S.C. § 201 et seq.) or of Title 19, whichever is greater.

(2) The court shall order restitution under this subsection (d) even if the victim is unavailable to accept payment of restitution.

(3) If the victim is unavailable for 5 years from the date of the restitution order, the restitution ordered under this subsection (d) must be paid to the Victim Compensation Fund established under § 9016 of this title.

(e) Forfeiture. —

(1) On motion, the court shall order a person convicted of an offense under paragraphs (b)(1)-(3) of this section to forfeit any interest in real or personal property that was used or intended to be used to commit or facilitate the commission of the offense or that constitutes or derives from proceeds that the person obtained, directly or indirectly, as a result of the offense.

(2) In any proceeding against real or personal property under this section, the owner may assert a defense, and has the burden of establishing, by a preponderance of the evidence, that the forfeiture is manifestly disproportional to the seriousness of the offense.

(3) Proceeds from the public sale or auction of property forfeited under this subsection must be distributed in the manner otherwise provided for the distribution of proceeds of judicial sales.

(f) Admissibility of certain evidence. — In a prosecution or civil action for damages under this section, evidence of a specific instance of the alleged victim's past sexual behavior, or reputation or opinion evidence of past sexual behavior of the alleged victim, is not admissible unless the evidence is:

(1) Admitted in accordance with §§ 3508 and 3509 of this title; or

(2) Offered by the prosecution in a criminal case to prove a pattern of trafficking by the defendant.

(g) Special provisions regarding a minor. —

(1) A minor who has engaged in commercial sexual activity is presumed to be a neglected or abused child under § 901 et seq. of Title 10. Whenever a police officer has probable cause to believe that a minor has engaged in commercial sexual activity, the police officer shall make an immediate report to the Department of Services for Children, Youth and Their Families pursuant to § 901 et seq. of Title 16.

(2) A party to a juvenile delinquency proceeding in which a minor is charged with prostitution or loitering, or an attorney guardian ad litem or court-appointed special advocate appointed in a proceeding under § 901 et seq. of Title 10, may file a motion on behalf of a minor in a juvenile delinquency proceeding seeking to stay the juvenile delinquency proceedings. Such motion may be opposed by the

Attorney General. The Family Court may consider such a motion and, in its discretion, may stay the juvenile delinquency proceeding indefinitely. Upon such motion, the Department of Services for Children, Youth and Their Families and/or the Family Court may identify and order available specialized services for the minor that, in the opinion of the Department of Services for Children, Youth and Their Families or Family Court, are best suited to the needs of the juvenile. So long as the minor substantially complies with the requirement of services identified by the Department of Services for Children, Youth and Their Families and/or ordered by the Family Court, the Attorney General shall, upon motion, nolle prosequi the stayed charges no earlier than 1 year after the stay was imposed. Upon motion of the Attorney General that the minor has not substantially complied with the requirement of services identified by the Department of Services for Children, Youth and Their Families and/or ordered by the Family Court, the Family Court shall lift the stay for further proceedings in accordance with the regular course of such proceedings.

(h) Defense to charge of prostitution or loitering. — An individual charged with prostitution or loitering committed as a direct result of being a victim of human trafficking may assert as an affirmative defense that the individual is a victim of human trafficking.

(i) Civil action. —

(1) A victim may bring a civil action against a person that commits an offense under subsection (b) of this section for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief.

(2) In an action under this subsection, the court shall award a prevailing victim reasonable attorneys' fees and costs, including reasonable fees for expert witnesses.

(3) An action under this subsection must be commenced not later than 5 years after the later of the date on which the victim:

a. Was freed from the human trafficking situation; or

b. Attained 18 years of age.

(4) Damages awarded to the victim under this subsection for an item must be offset by any restitution paid to the victim pursuant to subsection (d) of this section for the same item.

(5) This subsection does not preclude any other remedy available to the victim under federal law or law of this State other than this section.

(j) Application for pardon and petition to expunge; motion to vacate conviction and expunge record. —

(1) Notwithstanding any provision of Chapter 43 of this title or any other law to the contrary, a person convicted of prostitution, loitering or obscenity committed as a direct result of being a victim of human trafficking may file an application for a pardon pursuant to article VII of the Delaware Constitution and § 4361 et seq. of this title and may file a petition requesting expungement of such criminal record pursuant to § 4371 et seq. of this title.

(2) A person convicted of prostitution, loitering or obscenity as a direct result of being a victim of human trafficking may file a motion in the court in which the conviction was obtained to vacate the judgment of conviction. A motion filed under this paragraph must:

a. Be in writing;

b. Be sent to the Delaware Department of Justice;

c. Be made 2 years after the person's last criminal conviction and within a reasonable period of time after the person ceases to be a victim of trafficking in persons; and

d. Describe the evidence and provide copies of any official documents showing that the person is entitled to relief under this paragraph.

If the motion satisfies the foregoing requirements, the court shall hold a hearing on a motion, provided that the court may dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted. Official documentation of the person's status as a victim of this section, "trafficking in persons," or "a severe form of trafficking" from a federal, state, or local government agency shall create a presumption that the person's participation in the offense of prostitution, loitering or obscenity was a direct result of having been a victim of human trafficking, but shall not be required for the court to grant a petition under this paragraph. If the petitioner can show to the satisfaction of the court that he or she is entitled to relief in a proceeding under this paragraph, the court shall grant the motion and, pursuant to this paragraph, enter an order vacating the judgment of conviction and dismissing the accusatory pleading, and may take such additional action as is appropriate in the circumstances or as justice requires.

(3) Notwithstanding any provision of Chapter 43 of this title or any other law to the contrary, any person filing a motion under paragraph (j)(2) of this section in Superior Court or Family Court may also seek in that motion expungement of the criminal record related to such conviction. If the court grants the motion to vacate the conviction under paragraph (j)(2) of this section and the movant also requested expungement, the court's order shall require expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this paragraph and, notwithstanding any limitations to the contrary, that the provisions of §§ 4374(f), 4376 and 4377 of this title apply to such order.

(4) Notwithstanding any provision of Chapter 43 of this title or any other law to the contrary, any person filing in Court of Common Pleas a motion under paragraph (j)(2) of this section may, upon the Court of Common Pleas' entry of an order granting the motion to vacate, file a petition in the Superior Court seeking expungement of the criminal record related to such conviction and attaching to the petition a certified copy of the Court of Common Pleas' order granting the motion to vacate. Upon finding that the Court of Common Pleas entered an order under paragraph (j)(2) of this section, the Superior Court shall enter an order requiring expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement that the expungement is ordered pursuant to

this paragraph and, notwithstanding any limitations to the contrary, that the provisions of §§ 4374(f), 4376 and 4377 of this title apply to such order.

(k) Human Trafficking Coordinating Council. — The General Assembly hereby creates a permanent Human Trafficking Coordinating Council.

(1) The Council shall consist of the following members or his or her designee:

a. The President Judge of the Superior Court;

b. The Chief Judge of the Family Court;

c. The Chief Judge of the Court of Common Pleas;

d. The Chief Magistrate of the Justice of the Peace Court;

e. The Attorney General;

f. The Chief Defender;

g. The Secretary of the Department of Safety and Homeland Security;

h. A representative of the law-enforcement community appointed by the Secretary of the Department of Safety and Homeland Security;

i. The Secretary of the Department of Education;

j. The Secretary of the Department of Services for Children, Youth and Their Families;

k. The Secretary of the Department of Health and Social Services;

l. The Secretary of the Department of Labor;

m. A representative of the health-care community designated by the Board of Medical Licensure and Discipline;

n. The Commissioner of the Department of Correction; and

o. Three at-large members representing victims of human trafficking or whose expertise would benefit the council who elected by the Council at the first meeting of each calendar year.

(2) The Council shall:

a. Develop a comprehensive plan to provide victims of human trafficking with services;

b. Effectuate coordination between agencies, departments and the courts with victims of human trafficking;

c. Collect and evaluate data on human trafficking in this State;

d. Promote public awareness about human trafficking, victim remedies and services, and trafficking prevention;

e. Create a public-awareness sign that contains the state and National Human Trafficking Resource Center hotline information;

f. Coordinate training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators; and

g. Conduct other appropriate activities.

(3) Meetings; quorum; officers; committees; procedure.

a. The Council shall meet at least 4 times per year. Seven members shall constitute a quorum.

b. The Chairperson shall have the duty to convene and preside over meetings of the Council and prepare an agenda for meetings.

c. The Attorney General shall convene the initial meeting of the Council. At the initial meeting of the Council a Chairperson and Vice Chairperson shall be elected by the council members. Thereafter, in December of each year, the Council shall elect a Chairperson and Vice Chairperson. The Vice Chairperson's duty shall be to act as chairperson in the absence of the Chairperson.

d. The Council shall establish committees composed of Council members and other knowledgeable individuals, as it deems advisable, to assist in planning, policy, goal and priority recommendations and developing implementation plans to achieve the purposes of the Council.

e. The Council shall submit a written report of its activities and recommendations to the Governor, General Assembly and the Chief Justice of the Supreme Court at least once every year on or before September 15.

(l) Display of public awareness sign; penalty for failure to display. —

(1) The Delaware Department of Transportation shall display a public-awareness sign required by this section in every transportation station, rest area, and welcome center in the State which is open to the public.

(2) A public awareness sign created under paragraph (k)(2)e. of this section shall be displayed at the following locations in a place that is clearly conspicuous and visible to employees:

a. An adult entertainment facility;

b. An entity found to be maintaining a criminal nuisance involving prostitution under § 7104 of Title 10;

c. A job recruitment center;

d. A hospital; and

e. An emergency care provider.

(3) The Delaware Department of Labor shall impose a fine of $300 per violation on an employer that knowingly fails to comply with paragraph (k)(2)e. of this section. The fine is the exclusive remedy for failure to comply.

(m) Eligibility for services. —

(1) A victim of human trafficking is eligible for a benefit or service, which is available through the State and identified in the plan

developed under paragraph (k)(2)a. of this section, including compensation under § 9009 of this title, regardless of immigration status.

(2) A minor engaged in commercial sexual activity is eligible for a benefit or service, which is available through the State and identified in the plan developed under paragraph (k)(2)a. of this section, regardless of immigration status.

(3) As soon as practicable after a first encounter with an individual who reasonably appears to a police officer to be a victim or a minor engaged in commercial sexual activity, the police officer shall notify the appropriate state or local agency, as identified in the plan developed under paragraph (k)(2)a. of this section, that the individual may be eligible for a benefit or service under this section.

(n) Law-enforcement agency protocol. —

(1) On request from an individual who a police officer or prosecutor reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. § 1101(a)(15)(T), as amended from time to time, or 8 U.S.C. § 1101(a)(15)(U), as amended from time to time, or for continued presence, under 22 U.S.C. § 7105(c)(3), as amended from time to time, the police officer or prosecutor, as soon as practicable after receiving the request, shall request that a certifying official in his or her law-enforcement agency complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website, and ask a federal law-enforcement officer to request continued presence.

(2) If the law-enforcement agency having responsibility under paragraph (n)(1) of this section determines that an individual does not meet the requirements for such agency to comply with paragraph (n)(1) of this section, that agency shall inform the individual of the reason and that the individual may make another request under paragraph (n)(1) of this section and submit additional evidence satisfying the requirements.

(o) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(76 Del. Laws, c. 125 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 276 § 1; 80 Del. Laws, c. 26 § 3.)

§§ 788 -790. [Reserved.]

§ 791 Acts constituting coercion; class A misdemeanor.

A person is guilty of coercion when the person compels or induces a person to engage in conduct which the victim has a legal right to abstain from engaging in, or to abstain from engaging in conduct in which the victim has a legal right to engage, by means of instilling in the victim a fear that, if the demand is not complied with, the defendant or another will:

(1) Cause physical injury to a person; or

(2) Cause damage to property; or

(3) Engage in other conduct constituting a crime; or

(4) Accuse some person of a crime or cause criminal charges to be instituted against a person; or

(5) Expose a secret or publicize an asserted fact, whether true or false, tending to subject some person to hatred, contempt or ridicule; or

(6) Testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(7) Use or abuse the defendant's position as a public servant by performing some act within or related to the defendant's official duties, or by failing or refusing to perform an official duty in such manner as to affect some person adversely; or

(8) Perform any other act which is calculated to harm another person materially with respect to that person's health, safety, business, calling, career, financial condition, reputation or personal relationships.

Coercion is a class A misdemeanor.

(11 Del. C. 1953 § 791; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 792 Coercion; truth and proper motive as a defense.

In any prosecution for coercion committed by instilling in the victim a fear that the victim or another person would be charged with a crime, it is a defense that the defendant believed the threatened charge to be true and that the defendant's sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge.

(11 Del. C. 1953 § 792; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

Subchapter III

Offenses Involving Property

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

(a) A person is guilty of arson in the third degree when the person recklessly damages a building by intentionally starting a fire or causing an explosion.

(b) In any prosecution under this section it is an affirmative defense that no person other than the accused had a possessory or proprietary interest in the building.

Arson in the third degree is a class G felony.

(11 Del. C. 1953 § 801; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

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

(a) A person is guilty of arson in the second degree when the person intentionally damages a building by starting a fire or causing an explosion.

(b) In any prosecution under this section it is an affirmative defense that:

(1) No person other than the accused had a possessory or proprietary interest in the building, or if other persons had such interests, all of them consented to the accused's conduct; and

(2) The accused's sole intent was to destroy or damage the building for a lawful purpose; and

(3) The accused had no reasonable ground to believe that the conduct might endanger the life or safety of another person or damage another building.

Arson in the second degree is a class D felony.

(11 Del. C. 1953 § 802; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

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

A person is guilty of arson in the first degree when the person intentionally damages a building by starting a fire or causing an explosion and when:

(1) The person knows that another person not an accomplice is present in the building at the time; or

(2) The person knows of circumstances which render the presence of another person not an accomplice therein a reasonable possibility .

Arson in the first degree is a class C felony.

(11 Del. C. 1953 § 803; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 804 Reckless burning or exploding; class A misdemeanor.

(a) A person is guilty of reckless burning or exploding when the person intentionally starts a fire or causes an explosion, whether on the person's own property or on another's, and thereby recklessly places a building or other real or personal property of another in danger of destruction or damage or places another person in danger of physical injury.

(b) Reckless burning or exploding shall be punished as follows:

(1) Where the total amount of pecuniary loss caused by the burning or exploding, when totaled for all victims, is less than $1,500, such burning or exploding shall be a class A misdemeanor.

(2) Where the total amount of pecuniary loss caused by the burning or exploding, when totaled for all victims, is $1,500 or more, such burning or exploding shall be a class G felony.

(11 Del. C. 1953 § 804; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 344 §§ 1, 2.)

§ 805 Cross or religious symbol burning; class A misdemeanor.

A person is guilty of cross or religious symbol burning when the person burns, or causes to be burned, any cross or other religious symbol, upon any private or public property without the express written consent of the owner of such property and without a minimum of 48 hours advanced notification of the proposed burning to the fire board or call board of the county in which the burning is to take place.

Cross or religious symbol burning is a class A misdemeanor.

(69 Del. Laws, c. 106 § 1; 70 Del. Laws, c. 186 § 1.)

§§ 806 -810. [Reserved.]

§ 811 Criminal mischief; classification of crime; defense.

(a) A person is guilty of criminal mischief when the person intentionally or recklessly:

(1) Damages tangible property of another person; or

(2) Tampers with tangible property of another person so as to endanger person or property; or

(3) Tampers or makes connection with tangible property of a gas, electric, steam or waterworks corporation, telegraph or telephone corporation or other public utility, except that in any prosecution under this subsection it is an affirmative defense that the accused engaged in the conduct charged to constitute an offense for a lawful purpose.

(b) Criminal mischief is punished as follows:

(1) Criminal mischief is a class G felony if the actor intentionally causes pecuniary loss of $5,000 or more, or if the actor intentionally causes a substantial interruption or impairment of public communication, transportation, supply of water, gas or power, or other public service;

(2) Criminal mischief is a class A misdemeanor if the actor intentionally or recklessly causes pecuniary loss in excess of $1,000;

(3) Otherwise criminal mischief is an unclassified misdemeanor;

(4) If an actor commits an act of criminal mischief of any degree on or along a Delaware byway, as defined in § 101(a)(9) of Title 17,

the court shall impose a minimum mandatory fine of at least $500.

(c) It is a defense that the defendant has a reasonable ground to believe that the defendant has a right to engage in the conduct set forth in subsection (a) of this section.

(11 Del. C. 1953 § 811; 58 Del. Laws, c. 497 § 1; 60 Del. Laws, c. 590 § 6; 65 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 211 § 1; 77 Del. Laws, c. 133 § 14; 77 Del. Laws, c. 350 § 1.)

§ 812 Graffiti and possession of graffiti implements; class G felony; class A misdemeanor; class B misdemeanor.

(a)(1) A person is guilty of the act of graffiti when the person intentionally, knowingly or recklessly draws, paints, etches or makes any significant mark or inscription upon any public or private, real or personal property of another without the permission of the owner.

(2) Graffiti is a class A misdemeanor, unless the property damage caused thereby exceeds $1500, in which case it is a class G felony. The penalty for graffiti shall include a minimum fine of not less than $1000 which shall not be subject to suspension, restitution for damages to the property and 250 hours of community service, at least 1/2 of which shall be served removing graffiti on public property. The minimum fine and community service hours shall be doubled for a second or subsequent conviction of an act of graffiti. The minimum fine shall also be doubled, and may not be suspended, for a first, second, or subsequent conviction of an act of graffiti which is performed on or along a Delaware byway, as defined in § 101(a)(9) of Title 17.

(b)(1) A person is guilty of possession of graffiti implements when the person possesses any tool, instrument, article, substance, solution or other compound designed or commonly used to etch, paint, cover, draw upon or otherwise place a mark upon a piece of property which that person has no permission or authority to etch, paint, cover, draw upon or otherwise mark, under circumstances evidencing an intent to use the same in order to commit an act of graffiti or damage such property.

(2) Possession of graffiti implements is a class B misdemeanor. The penalty for possession of graffiti implements shall include a minimum fine of not less than $500 which shall not be subject to suspension, restitution for damages to the property and 100 hours of community service, at least 1/2 of which shall be served removing graffiti on public property. The minimum fine and community service hours shall be doubled for a second or subsequent conviction of possession of graffiti implements.

(71 Del. Laws, c. 464 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 68 § 1; 76 Del. Laws, c. 377 § 1; 77 Del. Laws, c. 181 §§ 1, 2; 77 Del. Laws, c. 350 § 2.)

§ 813 Theft of property from a cemetery.

A person commits theft of property from a cemetery when, with the intent as prescribed in § 841 of this title, the person exercises control over flowers, burial mounds, mementos or any other property left by its owner in a cemetery for purposes of honoring the dead; provided, however, that this section shall not be applicable to employees of a cemetery who remove property from a grave site pursuant to cemetery regulations. Whoever commits theft of property from a cemetery shall be guilty of a class A misdemeanor.

(78 Del. Laws, c. 125 § 1.)

§§ 814 -819. [Reserved.]

§ 820 Trespassing with intent to peer or peep into a window or door of another; class B misdemeanor.

A person is guilty of trespassing with intent to peer or peep into a window or door of another when the person knowingly enters upon the occupied property or premises of another utilized as a dwelling, with intent to peer or peep into the window or door of such property or premises and who, while on such property or premises, otherwise acts in a manner commonly referred to as "Peeping Tom." Any person violating this section may be referred by the court to the Delaware Psychiatric Center for examination and for treatment. Justices of the peace shall have concurrent jurisdiction of violations of this section.

Trespassing with intent to peer or peep into a window or door of another is a class B misdemeanor.

(11 Del. C. 1953 § 820; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 550 § 1.)

§ 821 Criminal trespass in the third degree; a violation.

A person is guilty of criminal trespass in the third degree when the person knowingly enters or remains unlawfully upon real property.

Criminal trespass in the third degree is a violation.

(11 Del. C. 1953 § 821; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 822 Criminal trespass in the second degree; unclassified misdemeanor.

A person is guilty of criminal trespass in the second degree when the person knowingly enters or remains unlawfully in a building or upon real property which is fenced or otherwise enclosed in a manner manifestly designed to exclude intruders.

Criminal trespass in the second degree is an unclassified misdemeanor.

(11 Del. C. 1953 § 822; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

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

A person is guilty of criminal trespass in the first degree when the person knowingly enters or remains unlawfully in a dwelling or building used to shelter, house, milk, raise, feed, breed, study or exhibit animals.

Criminal trespass in the first degree is a class A misdemeanor.

(11 Del. C. 1953 § 823; 58 Del. Laws, c. 497 § 1; 65 Del. Laws, c. 482 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

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

A person is guilty of burglary in the third degree when the person knowingly enters or remains unlawfully in a building with intent to commit a crime therein.

Burglary in the third degree is a class F felony.

(11 Del. C. 1953 § 824; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

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

(a) A person is guilty of burglary in the second degree when the person knowingly enters or remains unlawfully:

(1) In a dwelling with intent to commit a crime therein; or

(2) In a building and when, in effecting entry or while in the building or in immediate flight therefrom, the person or another participant in the crime:

a. Is armed with explosives or a deadly weapon; or

b. Causes physical injury to any person who is not a participant in the crime.

Burglary in the second degree is class D felony, except where the person who suffers physical injury is a person 62 years of age or older in which case any violation of this section shall be a class C felony.

(b) Notwithstanding any provision of this section or Code to the contrary, any person convicted of burglary in the second degree shall receive a minimum sentence of:

(1) One year at Level V; or

(2) Three years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for burglary first or second degree or if the conviction is for an offense that was committed within 5 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for burglary first or second degree conviction.

Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title.

(c) The sentencing provisions of subsection (b) of this section apply to attempted burglary in the second degree as well as burglary in the second degree.

(11 Del. C. 1953 § 825; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 126 § 7; 74 Del. Laws, c. 106 § 4; 74 Del. Laws, c. 345 § 4.)

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

(a) A person is guilty of burglary in the first degree when the person knowingly enters or remains unlawfully in a dwelling at night with intent to commit a crime therein, and when, in effecting entry or when in the dwelling or in immediate flight therefrom, the person or another participant in the crime:

(1) Is armed with explosives or a deadly weapon; or

(2) Causes physical injury to any person who is not a participant in the crime.

Burglary in the first degree is a class C felony, except where the person who suffers physical injury is a person 62 years of age or older in which case any violation of this section shall be a class B felony.

(b) Notwithstanding any provision of this section or Code to the contrary, any person convicted of burglary in the first degree shall receive a minimum sentence of:

(1) Two years at Level V; or

(2) Four years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for burglary first or second degree or if the conviction is for an offense that was committed within 5 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for burglary first or second degree conviction.

Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title.

(c) The sentencing provisions of subsection (b) of this section apply to attempted burglary in the first degree as well as burglary in the first degree.

(11 Del. C. 1953 § 826; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 126 § 8; 74 Del. Laws, c. 106 § 5; 74 Del. Laws, c. 345 § 5.)

§ 826A Home invasion; class B felony.

(a) A person is guilty of home invasion when the person knowingly enters or remains unlawfully in a dwelling with intent to commit a violent felony therein, and:

(1) That dwelling is occupied by another person who is not a participant in the crime; and

(2) When, in effecting entry or when in the dwelling or in immediate flight therefrom, the person or another participant in the crime engages in the commission of, or attempts to commit, any of the following felonies:

a. Robbery in any degree;

b. Assault in the first or second degree;

c. Murder in any degree;
d. Manslaughter;
e. Rape in any degree;
f. Kidnapping in any degree; and

(3) When, in effecting entry or when in the dwelling or in immediate flight therefrom, the person or another participant in the crime:
a. Is armed with explosives or a deadly weapon; or
b. Causes physical injury to any person who is not a participant in the crime.

Home invasion is a class B felony.

(b)(1) Notwithstanding any provision of this section or Code to the contrary, any person convicted of home invasion shall receive a minimum sentence of:
a. Six years at Level V; or
b. Eight years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for home invasion or burglary first or second degree or if the conviction is for an offense that was committed within 5 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for home invasion or burglary first- or second-degree conviction.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section or any provision of this section or Code to the contrary, any person convicted of home invasion where the other person present in the dwelling, who is not another participant in the crime, is a person 62 years of age or older shall receive a minimum sentence of:
a. Seven years at Level V; or
b. Nine years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for home invasion or burglary first or second degree or if the conviction is for an offense that was committed within 5 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for home invasion or burglary first or second degree conviction.

Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title.

(c) The sentencing provisions of subsection (b) of this section apply to attempted home invasion as well as home invasion.

(78 Del. Laws, c. 252 § 1.)

§ 827 Multiple offenses.

A person may be convicted both of burglary or home invasion and of the offense which it was the purpose of the person's unlawful entry to commit or for an attempt to commit that offense.

(11 Del. C. 1953 § 827; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 252 § 6.)

§ 828 Possession of burglar's tools or instruments facilitating theft; class F felony.

(a) A person is guilty of possession of burglar's tools or instruments facilitating theft when, under circumstances evidencing an intent to use or knowledge that some other person intends to use the same in the commission of an offense of such character, the person possesses any tool, instrument, or other thing adapted, designed, or commonly used for committing or facilitating:

(1) Offenses involving unlawful entry into or upon premises,

(2) Offenses involving the unlocking, overriding, or disabling of a security device without authorization,

(3) Offenses involving forcible breaking or opening of safes, vending machines, automatic teller machines, lock boxes, gates, doors or any container or depositories of property, or

(4) The offense of identity theft, such as a credit card, driver license or other document issued in a name other than the name of the person who possesses the document.

(b) Possession of burglar's tools or instruments facilitating theft is a class F felony.

(11 Del. C. 1953 § 828; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 478 §§ 1, 2; 72 Del. Laws, c. 297 § 2; 75 Del. Laws, c. 162 § 1.)

§ 829 Definitions relating to criminal trespass, burglary and home invasion.

(a) "Burglar's tool or instruments" includes the term "bump key" which is a type of key used for a specific lock picking technique called lock bumping.

(b) "Dwelling" means a building which is usually occupied by a person lodging therein at night.

(c) A person "enters" upon premises when the person introduces any body part or any part of any instrument, by whatever means, into or upon the premises.

(d) A person "enters or remains unlawfully" in or upon premises when the person is not licensed or privileged to do so. A person who, regardless of intent, enters or remains upon premises which appear at the time to be open to the public does so with license and privilege unless the person defies a lawful order not to enter or remain, personally communicated by the owner of the premises or another authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.

(e) The "intent to commit a crime therein" may be formed prior to the unlawful entry, be concurrent with the unlawful entry or such

intent may be formed after the entry while the person remains unlawfully.

(f) "Night" means a period between 30 minutes after sunset and 30 minutes before sunrise.

(g) "Premises" include the term "building" as defined in § 222 of this title, and any real property.

(h) "Security device" includes any lock, whether mechanical or electronic; or any warning device designed to alert a person or the general public of a possible attempt to gain unlawful entry into or upon premises or a possible attempt to unlock, bypass or otherwise disable a lock.

(i) A person possesses burglar tools or instruments facilitating theft "under circumstances evincing an intent to use or knowledge that some other person intends to use" such when the person possesses the tools or instruments at a time and a place proximate to the commission or attempt to commit a trespass, burglary, home invasion, or theft-related offense or otherwise under circumstances not manifestly appropriate for what lawful uses the tools or instruments may have.

(11 Del. C. 1953 § 829; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 478 § 3; 76 Del. Laws, c. 267 § 1; 76 Del. Laws, c. 310 § 1; 78 Del. Laws, c. 252 §§ 7, 8.)

§ 830 [Reserved.]

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

(a) A person is guilty of robbery in the second degree when, in the course of committing theft, the person uses or threatens the immediate use of force upon another person with intent to:

(1) Prevent or overcome resistance to the taking of the property or to the retention thereof immediately after the taking; or

(2) Compel the owner of the property or another person to deliver up the property or to engage in other conduct which aids in the commission of the theft.

Robbery in the second degree is a class E felony.

(b) In addition to its ordinary meaning, the phrase "in the course of committing theft" includes any act which occurs in an attempt to commit theft or in immediate flight after the attempt or commission of the theft.

(11 Del. C. 1953 § 831; 58 Del. Laws, c. 497 § 1; 65 Del. Laws, c. 517 § 1; 67 Del. Laws, c. 130 § 8; 68 Del. Laws, c. 129 § 4; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 47 § 1.)

§ 832 Robbery in the first degree.

(a) A person is guilty of robbery in the first degree when the person commits the crime of robbery in the second degree and when, in the course of the commission of the crime or of immediate flight therefrom, the person or another participant in the crime:

(1) Causes physical injury to any person who is not a participant in the crime; or

(2) Displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon; or

(3) Is armed with and uses or threatens the use of a dangerous instrument; or

(4) Commits said crime against a person who is 62 years of age or older; or

(5) Threatens death upon another.

Robbery in the first degree is a class B felony.

Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title.

(b) Notwithstanding any provisions of this section or Code to the contrary, any person convicted of robbery in the first degree shall receive a minimum sentence of:

(1) Three years at Level V; or

(2) Five years at Level V, if the conviction is for an offense that was committed within 10 years of the date of a previous conviction for robbery in the first degree or if the conviction is for an offense that was committed within 10 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for robbery in the first degree, whichever is the later date.

(c) The sentencing provisions of this section apply to attempted robbery in the first degree as well as robbery in the first degree.

(11 Del. C. 1953 § 832; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 547 § 6; 60 Del. Laws, c. 240 §§ 1, 2; 63 Del. Laws, c. 329 § 1; 67 Del. Laws, c. 130 §§ 8, 13; 68 Del. Laws, c. 129 § 5; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 126 § 9; 74 Del. Laws, c. 93 § 1; 74 Del. Laws, c. 106 § 6; 74 Del. Laws, c. 345 § 6; 80 Del. Laws, c. 358 § 1.)

§§ 833 , 834. [Reserved.]

§ 835 Carjacking in the second degree; class E felony; class D felony.

(a) A person is guilty of carjacking in the second degree when that person knowingly and unlawfully takes possession or control of a motor vehicle from another person or from the immediate presence of another person by coercion, duress or otherwise without the permission of the other person.

(b)(1) Except as provided in paragraph (b)(2) of this section, carjacking in the second degree is a class E felony.

(2) Carjacking in the second degree is a class D felony if the elements of subsection (a) of this section are met and if, while in

possession or control of the vehicle, the person:

a. Recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person; or

b. Compels a lawful occupant of the vehicle to leave the vehicle; or

c. Causes the vehicle to be operated recklessly.

(c) It is no defense to a prosecution under this section that the offender did not physically drive or operate the motor vehicle, nor is it a defense under this section that the offender did not intend to permanently deprive the owner or another person of the use of the vehicle.

(d) This section is not a related or included offense of § 831 or § 832 of this title. Nothing in this section shall be deemed to preclude prosecution under any other provision of this Code.

(72 Del. Laws, c. 34 § 1.)

§ 836 Carjacking in the first degree; class C felony; class B felony.

(a) A person is guilty of carjacking in the first degree when the person knowingly and unlawfully takes possession or control of a motor vehicle from another person or from the immediate presence of another person by coercion, duress or otherwise without the permission of the other person, and:

(1) While in possession or control of such vehicle the person commits or attempts to commit a class D or greater felony; or

(2) While in possession or control of such vehicle the person drives or operates the vehicle in violation of § 4177 of Title 21; or

(3) While in possession or control of such vehicle the person commits any offense set forth in Chapter 47 of Title 16; or

(4) While in possession or control of such vehicle or while in the course of taking or attempting to take possession or control of such vehicle the person displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon.

(5) While in possession or control of such vehicle the person causes physical injury to another person; or

(6) The person from whom possession or control of the vehicle is taken, or an occupant or passenger of such vehicle, is 62 years of age or older or 14 years of age or younger.

(b) Carjacking in the first degree as defined in paragraphs (a)(1), (a)(2) and (a)(3) of this section is a class C felony. Carjacking in the first degree as defined in paragraphs (a)(4), (a)(5) and (a)(6) of this section is a class B felony.

(c) It is no defense to a prosecution under this section that the offender did not physically drive or operate the motor vehicle, nor is it a defense under this section that the offender did not intend to permanently deprive the owner or another person of the use of the vehicle.

(d) It is no defense to a prosecution under paragraph (a)(6) of this section, that the accused did not know the age of the person from whom possession or control of the vehicle is taken, or an occupant or passenger of such vehicle, or that the accused reasonably believed such person to be under the age of 62 or over the age of 14.

(e) For the purpose of any prosecution under paragraph (a)(5) of this section, it is unnecessary to prove the accused's state of mind with regard to causation of physical injury, notwithstanding the provisions of § 251 or § 252 of this title or any other statute to the contrary.

(f) This section is not a related or included offense of § 831 or § 832 of this title. Nothing in this section shall be deemed to preclude prosecution under any other provision of this Code.

(72 Del. Laws, c. 34 § 2; 74 Del. Laws, c. 93 § 2.)

§ 837 Definitions relating to carjacking.

(a) "Another person" includes the owner of the vehicle or any operator, occupant, passenger of the vehicle or any other person who has an interest in the use of the vehicle which the offender is not privileged to infringe.

(b) "Motor vehicle" or "vehicle," in addition to its ordinary meaning, includes any watercraft.

(72 Del. Laws, c. 34 § 3.)

§§ 838 , 839. [Reserved.]

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

(a) A person is guilty of shoplifting if, while in a mercantile establishment in which goods, wares or merchandise are displayed for sale, the person:

(1) Removes any such goods, wares or merchandise from the immediate use of display or from any other place within the establishment, with intent to appropriate the same to the use of the person so taking, or to deprive the owner of the use, the value or possession thereof without paying to the owner the value thereof; or

(2) Obtains possession of any goods, wares or merchandise by charging the same to any person without the authority of such person or to a fictitious person with a like intent; or

(3) Conceals any such goods, wares or merchandise with like intent; or

(4) Alters, removes or otherwise disfigures any label, price tag or marking upon any such goods, wares or merchandise with a like intent; or

(5) Transfers any goods, wares or merchandise from a container in which same shall be displayed or packaged to any other container with like intent; or

(6) Uses any instrument whatsoever, credit slips or chose in action to obtain any goods, wares or merchandise with intent to appropriate the same to the use of the person so taking or to deprive the owner of the use, the value or the possession thereof without paying to the owner the value thereof.

(b) Any person wilfully concealing unpurchased merchandise of any store or other mercantile establishment, inside or outside the premises of such store or other mercantile establishment, shall be presumed to have so concealed such merchandise with the intention of converting the same to the person's own use without paying the purchase price thereof within the meaning of subsection (a) of this section, and the finding of such merchandise concealed upon the person or among the belongings of such person, outside of such store or other mercantile establishment, shall be presumptive evidence of intentional concealment; and if such person conceals or causes to be concealed such merchandise upon the person or among the belongings of another, the finding of the same shall also be presumptive evidence of intentional concealment on the part of the person so concealing such merchandise.

(c) A merchant, a store supervisor, agent or employee of the merchant 18 years of age or older, who has probable cause for believing that a person has intentionally concealed unpurchased merchandise or has committed shoplifting as defined in subsection (a) of this section, may, for the purpose of summoning a law-enforcement officer, take the person into custody and detain the person in a reasonable manner on the premises for a reasonable time.

(d) A merchant, a store supervisor, agent or employee of the merchant 18 years of age or older who detains, or a merchant, a store supervisor, agent or employee of the merchant who causes or provides information leading to the arrest of any person under subsection (a), (b) or (c) of this section, shall not be held civilly or criminally liable for such detention or arrest provided they had, at the time of such detention or arrest, probable cause to believe that the person committed the crime of shoplifting as defined in subsection (a) of this section.

Shoplifting is a class G felony when the goods, wares or merchandise shoplifted are of the value of $1,500 or more, or when the goods, wares or merchandise shoplifted are from 3 or more separate mercantile establishments and were shoplifted in the same or continuing course of conduct and the aggregate value of the goods is $1,500 or more. When the goods, wares or merchandise shoplifted are of the value of less than $1,500, it is a class A misdemeanor.

(11 Del. C. 1953 § 840; 58 Del. Laws, c. 497 § 1; 60 Del. Laws, c. 590 § 1; 61 Del. Laws, c. 35 § 1; 61 Del. Laws, c. 482 § 1; 65 Del. Laws, c. 497 § 2; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 211 § 2; 72 Del. Laws, c. 222 § 1; 77 Del. Laws, c. 133 § 1.)

§ 840A Use of illegitimate retail sales receipt or Universal Product Code Label.

(a) A person who, with intent to cheat or defraud another, possesses, uses, transfers, makes, alters, counterfeits or reproduces a retail sales receipt or Universal Product Code Label is guilty of an offense under this section.

(b) A person convicted of violating this section shall be guilty of a class A misdemeanor, unless the person is convicted of possessing 15 or more illegitimate retail sales receipts or Universal Product Code Labels or the aggregate value of the money, property or services illegally obtained or credited to an account is $1,500 or more, in which case it is a class F felony.

(73 Del. Laws, c. 31 § 1; 77 Del. Laws, c. 133 § 2.)

§ 841 Theft; class B felony; class D felony; class F felony; class G felony; class A misdemeanor; restitution.

(a) A person is guilty of theft when the person takes, exercises control over or obtains property of another person intending to deprive that person of it or appropriate it. Theft includes the acts described in this section, as well as those described in §§ 841A-846 of this title.

(b) A person is guilty of theft if the person, in any capacity, legally receives, takes, exercises control over or obtains property of another which is the subject of theft, and fraudulently converts same to the person's own use.

(c)(1) Except where a victim is 62 years of age or older, or an "adult who is impaired" as defined in § 3902(2) of Title 31, or a "person with a disability" as defined in § 3901(a)(2) of Title 12, theft is a class A misdemeanor unless the value of the property received, retained or disposed of is $1,500 or more, in which case it is a class G felony.

(2) Where a victim is 62 years of age or older, or an "adult who is impaired" as defined in § 3902(2) of Title 31, or a "person with a disability" as defined in § 3901(a)(2) of Title 12, theft is a class G felony unless the value of the property received, retained or disposed of is $1,500 or more, in which case it is a class F felony.

(3) Notwithstanding paragraphs (c)(1) and (2) of this section:

a. Where the value of the property received, retained or disposed of is more than $50,000 but less than $100,000, theft is a class D felony;

b. Where the value of the property received, retained or disposed of is $100,000 or more, theft is a class B felony.

(d) Upon conviction, the sentencing judge shall require full restitution to the victim for any monetary losses suffered and shall consider the imposition of community service and/or an appropriate curfew for a minor.

(11 Del. C. 1953 § 841; 58 Del. Laws, c. 497 § 1; 60 Del. Laws, c. 590 § 2; 65 Del. Laws, c. 497 § 3; 67 Del. Laws, c. 130 § 8; 69 Del. Laws, c. 315 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 209 § 1; 70 Del. Laws, c. 364 §§ 1, 2; 73 Del. Laws, c. 126 §§ 10, 11; 76 Del. Laws, c. 98 § 3; 77 Del. Laws, c. 133 § 3; 78 Del. Laws, c. 179 §§ 83-91, 371; 78 Del. Laws, c. 353 §§ 1, 2.)

§ 841A Theft of a motor vehicle; class G felony.

(a) A person is guilty of theft of a motor vehicle when the person takes, exercises control over or obtains a motor vehicle of another person intending to deprive the other person of it or appropriate it.

(b) As used in this section "motor vehicle" means an automobile, motorcycle, van, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle which is self-propelled, which is designed to be operated primarily on a roadway as defined in § 101 of Title 21, and in, upon or by which any person or property is or may be transported. "Motor vehicle" as used in this section shall not include any device that is included within the definitions of "moped," "off-highway (OHV)," "triped," "motorized scooter or skateboard," "motorized wheelchair" or "electric personal assistive mobility device (EPAMD)" as defined in § 101 of Title 21.

(c) Theft of a motor vehicle is a class G felony.

(75 Del. Laws, c. 290 § 1.)

§ 841B Theft: Organized retail crime; class A misdemeanor; class E felony.

(a) A person is guilty of "theft: organized retail crime" when the person takes, exercises control over, or obtains retail merchandise of another person intending to deprive that person of it, or receives stolen property in violation of § 851 of this title, in quantities that would not normally be purchased for personal use or consumption, with the intent to appropriate or to resell or reenter the merchandise into commerce.

(b) For purposes of this section, a series of organized retail crime thefts committed by a person or group of persons may be aggregated into 1 count or charge, with the sum of the value of all the retail merchandise being the value considered in determining the degree of theft: organized retail crime.

(c) In addition to the provisions of § 841(c) and (d) of this title, if a defendant has 2 or more times been convicted of theft: organized retail crime, the offense of theft: organized retail crime is a class E felony.

(76 Del. Laws, c. 98 § 4.)

§ 841C Possession or theft of a prescription form or a pad.

(a) A person in possession of a blank prescription form or pad who is not a practitioner as defined in this section shall be guilty of a class G felony. "Possession" in addition to its ordinary meaning, includes location on or about the defendant's person, premises, belongings, vehicle or otherwise within the defendant's reasonable control.

(b) A person is guilty of theft of a blank prescription form or pad when the person is not a practitioner as defined in this section and takes, exercises control over, obtains or receives, produces or reproduces any facsimile or counterfeit version of, or transfers, uses, gives, or sells any copies, facsimiles or counterfeit versions, a prescription form or pad of a practitioner with the intent to deprive the practitioner of the use thereof or to facilitate the commission of drug diversion.

(1) A "practitioner" means:

a. A physician, dentist, veterinarian, scientific investigator or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled or noncontrolled substance in the course of professional practice or research in this State.

b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled or noncontrolled substance in the course of professional practice or research in this State.

(2) Theft of a blank prescription form or pad is a class F felony.

(77 Del. Laws, c. 161 § 1.)

§ 842 Theft; lost or mislaid property; mistaken delivery.

A person commits theft when, with the intent prescribed in § 841 of this title, the person exercises control over property of another person which the person knows to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or the nature or value of the property, without taking reasonable measures to return the property to its owner.

(11 Del. C. 1953 § 842; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 843 Theft; false pretense.

A person commits theft when, with the intent prescribed in § 841 of this title, the person obtains property of another person by intentionally creating or reinforcing a false impression as to a present or past fact, or by preventing the other person from acquiring information which would adversely affect the other person's judgment of a transaction.

(11 Del. C. 1953 § 843; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 844 Theft; false promise.

A person commits theft when, with the intent prescribed in § 841 of this title, the person obtains property of another person by means of a representation, express or implied, that the person or a third person will in the future engage in particular conduct, and when the person does not intend to engage in such conduct or, as the case may be, does not believe the third person intends to engage in such conduct. The accused's intention or belief that a promise would not be performed may not be established by or inferred from the fact alone that the promise was not performed.

(11 Del. C. 1953 § 844; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 845 Theft of services.

(a) A person commits theft when, with the intent specified in § 841 of this title, the person obtains services which the person knows are available only for compensation by deception, threat, false token, false representation or statement or by installing, rearranging or tampering with any facility or equipment or by any other trick, contrivance or any other device to avoid payment for the services.

(b) In any prosecution for theft of services where services have been obtained from a public utility by the installation of, rearrangement of or tampering with any facility or equipment owned or used by the public utility to provide such services, without the consent or permission of the public utility, or by any other trick or contrivance, it shall be a rebuttable presumption that the person to whom the services are being furnished has created, caused or knows of the condition which is a violation of this section.

(c) A person who has obtained services from a public utility by installing, rearranging or tampering with any facility or equipment owned or used by the public utility to provide such services, or by any other trick or contrivance, is presumed to have done so with an intent to avoid, or to enable others to avoid, payment for the services involved.

(d) The rebuttable presumptions referred to in subsections (b) and (c) of this section shall not apply to any person to whom such services have been furnished for less than 31 days or until there has been at least 1 meter reading.

(11 Del. C. 1953 § 845; 58 Del. Laws, c. 497 § 1; 61 Del. Laws, c. 227 §§ 1, 2; 70 Del. Laws, c. 186 § 1.)

§ 846 Extortion; class E felony.

A person commits extortion when, with the intent prescribed in § 841 of this title, the person compels or induces another person to deliver property to the person or to a third person by means of instilling in the victim a fear that, if the property is not so delivered, the defendant or another will:

(1) Cause physical injury to anyone; or

(2) Cause damage to property; or

(3) Engage in other conduct constituting a crime; or

(4) Accuse anyone of a crime or cause criminal charges to be instituted against anyone; or

(5) Expose a secret or publicize an asserted fact, whether true or false, tending to subject anyone to hatred, contempt or ridicule; or

(6) Falsely testify or provide information or withhold testimony or information with respect to another's legal claim or defense; or

(7) Use or abuse the defendant's position as a public servant by performing some act within or related to the defendant's official duties, or by failing or refusing to perform an official duty, in such manner as to affect some person adversely; or

(8) Perform any other act which is calculated to harm another person materially with respect to the person's health, safety, business, calling, career, financial condition, reputation or personal relationships.

Extortion is a class E felony, except where the victim is a person 62 years of age or older, in which case any violation of this section shall be a class D felony.

(11 Del. C. 1953 § 846; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 126 § 12.)

§ 847 Theft, extortion; claim of right as an affirmative defense.

(a) In any prosecution for theft or extortion it is an affirmative defense that the property was appropriated by the actor under a claim of right, made in good faith, to do substantially what the actor did in the manner in which it was done.

(b) In any prosecution for extortion where the facts are as described in § 846(4) of this title, it is an affirmative defense that the accused believed the threatened criminal charge to be true and that the accused's sole purpose was to compel or induce the victim to take reasonable action to make good the wrong which was the subject of the threatened charge.

(11 Del. C. 1953 § 847; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

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

A person is guilty of misapplication of property when, knowingly possessing personal property of another pursuant to an agreement that it will be returned to the owner at a future time, the person sells, loans, leases, pledges, pawns or otherwise encumbers the property without the consent of the owner thereof in such a manner as to create a risk that the owner will be unable to recover it or will suffer pecuniary loss.

Misapplication of property is a class A misdemeanor, unless the value of the property received, retained or disposed of is $1,500 or more, in which case it is a class G felony.

(11 Del. C. 1953 § 848; 58 Del. Laws, c. 497 § 1; 60 Del. Laws, c. 590 § 3; 65 Del. Laws, c. 497 § 4; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 211 § 4; 77 Del. Laws, c. 133 § 4.)

§ 849 Theft of rented property; class A misdemeanor or class G felony.

(a) A person is guilty of theft of rental property if the person, with the intent specified in § 841 of this title, takes, destroys, converts, wrongfully withholds or appropriates by fraud, deception, threat, false token, false representation or statement, or by any trick, contrivance or other device to avoid payment for or to otherwise appropriate rental property entrusted to said person. For purposes of this section, "property" shall include the use of vehicles or other movable property.

(b) If the finder of fact shall find:

(1) That one who has leased or rented the personal property of another, failed to return or make arrangements acceptable to the rentor (lessor) to return the property to the rentor or the rentor's agent within 10 days after proper notice, following the expiration of the rental (lease) contract; and/or

(2) That one who has leased or rented the personal property of another and has returned such property, failed to make payment, at the agreed rental rate, for the full period which the property was rented or leased, except when said person has a good faith dispute with the owner of the rental property as to whether any payment, or additional payment, is due to the owner of the rental property; and/or

(3) That the rentee (lessee) presented identification to the rentor which was materially false, fictitious or not current with respect to name, address, place of employment or other appropriate items,

then the finder of fact shall be permitted, but not required, to presume intent to commit theft.

(c) As used in subsection (b) of this section, "proper notice" shall consist of a written demand by the rentor made after the expiration of the rental period mailed by certified or registered mail to the rentee at:

(1) The address the rentee gave when the rental contract was made; or

(2) The rentee's last known address if later furnished in writing by the rentee or the rentee's agent.

(d) The reasonable and fair market value of the property obtained shall be utilized in determining the amount involved in the theft.

(e) The following 3 factors, if established by the rentee by a preponderance of the evidence, shall constitute an affirmative defense to prosecution for theft, that the rentee:

(1) Accurately stated the rentee's name, address and other material items of identification at the time of the rental;

(2) Failed to receive the rentor's notice personally due in no significant part to the fault of the rentee; and

(3) Returned the personal property to the rentor or the rentor's agent within 48 hours of the commencement of the prosecution, together with any charges for the overdue period and the value of damages (if any) to the property.

Theft of rented property is a class A misdemeanor, unless the value of the property is $1,500 or more, in which case it is a class G felony.

(69 Del. Laws, c. 110 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 211 § 5; 70 Del. Laws, c. 260 §§ 1-3; 77 Del. Laws, c. 133 § 5.)

§ 850 Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices.

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

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

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

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

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

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

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

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

(b) Criminal penalties — (1) Except as provided for in paragraph (b)(2) or (3) of this section, an offense under this section is an unclassified misdemeanor with a sentence up to 1 year incarceration at Level V, and a fine of up to $10,000 for all violations of this section.

(2) A person shall be guilty of a class F felony if:

a. The defendant has been convicted previously under this section or convicted of any similar crime in this or any Federal or other state jurisdiction; or

b. The violation of this section involves at least 10, but not more than 50, unlawful telecommunication or access devices.

(3) A person shall be guilty of a class D felony if:

a. The defendant has been convicted previously on 2 or more occasions for offenses under this section or for any similar crime in this or any federal or other state jurisdiction; or

b. The violation of this section involves more than 50 unlawful telecommunication or access devices.

(4) For purposes of grading an offense based upon a prior conviction under this section or for any similar crime pursuant to paragraphs (b)(2)a. and (3)a. of this section, a prior conviction shall consist of convictions upon separate indictments or criminal complaints for offenses under this section or any similar crime in this or any federal or other state jurisdiction.

(5) As provided for in paragraphs (b)(2)a. and (3)a. of this section, in grading an offense under this section based upon a prior conviction, the term "any similar crime" shall include, but not be limited to, offenses involving theft of service or fraud, including violations of the Cable Communications Policy Act of 1984 (Public Law 98-549, 98 Stat. 2779).

(6) Separate offenses — For purposes of all criminal fines established for violations of this section, the prohibited activity established herein as it applies to each unlawful telecommunication or access device shall be deemed a separate offense.

(7) Fines — For purposes of imposing fines upon conviction of a defendant for an offense under this section, all fines shall be imposed for each unlawful telecommunication or access device involved in the violation.

(8) Restitution — The court shall, in addition to any other sentence authorized by law, sentence a person convicted of violating this section to make restitution in the manner provided in § 4106 of this title.

(9) Forfeiture of unlawful telecommunication or access devices — Upon conviction of a defendant under this section, the court may, in addition to any other sentence authorized by law, direct that the defendant forfeit any unlawful telecommunication or access devices in the defendant's possession or control which were involved in the violation for which the defendant was convicted.

(c) Venue — An offense under this section may be deemed to have been committed at either the place where the defendant manufactures or assembles an unlawful telecommunication or access device, or assists others in doing so, or the places where the unlawful telecommunication or access device is sold or delivered to a purchaser or recipient. It shall be no defense to a violation of this section that some of the acts constituting the offense occurred outside of this State.

(d) Civil action — (1) Any person aggrieved by a violation of this section may bring a civil action in any court of competent jurisdiction.

(2) The court may:

a. Grant preliminary and final injunctions to prevent or restrain violations of this section;

b. At any time while an action is pending, order the impounding, on such terms as it deems reasonable, of any unlawful telecommunication or access device that is in the custody or control of the violator and that the court has reasonable cause to believe was involved in the alleged violation of this section;

c. Award damages as described in paragraph (d)(3) of this section;

d. In its discretion, award reasonable attorney fees and costs, including, but not limited to, costs for investigation, testing and expert witness fees, to an aggrieved party who prevails; and

e. As part of a final judgment or decree finding a violation of this section, order the remedial modification or destruction of any unlawful telecommunication or access device involved in the violation that is in the custody or control of the violator or has been impounded under subsection (b) of this section.

(3) Types of damages recoverable — Damages awarded by a court under this section shall be computed as either of the following:

a. Upon the complaining party's election of such damages at any time before final judgment is entered, the complaining party may recover the actual damages suffered by the complaining party as a result of the violation of this section and any profits of the violator that are attributable to the violation and are not taken into account in computing the actual damages. In determining the violator's profits, the complaining party shall be required to prove only the violator's gross revenue, and the violator shall be required to prove the violator's own deductible expenses and the elements of profit attributable to factors other than the violation; or

b. Upon election by the complaining party at any time before final judgment is entered, that party may recover in lieu of actual damages an award of statutory damages of between $250 to $10,000 for each unlawful telecommunication or access device involved in the action, with the amount of statutory damages to be determined by the court as the court considers just. In any case where the court finds that any of the violations of this section were committed wilfully and for purposes of commercial advantage or private financial gain, the court in its discretion may increase the award of statutory damages by an amount of not more than $50,000 for each unlawful telecommunication or access device involved in the action.

(4) For purposes of all civil remedies established for violations of this section, the prohibited activity established in this section applies to each unlawful telecommunication or access device and shall be deemed a separate violation.

(e) Definitions — As used in this section, the following words and phrases shall have the meanings given to them in this subsection.

(1) "Manufacture or assembly of any unlawful access device" — To make, produce or assemble an unlawful access device or modify, alter, program or reprogram any instrument, device, machine, equipment, technology or software so that it is capable of defeating or circumventing any technology, device or software used by the provider, owner or licensee of a telecommunication service, or of any data, audio or video programs or transmissions, to protect any such telecommunication, data, audio or video services, programs or transmissions from unauthorized receipt, acquisition, access, decryption, disclosure, communication, transmission or retransmission, or to knowingly assist others in those activities.

(2) "Manufacture or assembly of unlawful telecommunications device" — To make, produce or assemble an unlawful telecommunication device or to modify, alter, program or reprogram a telecommunication device to be capable of acquiring, disrupting, receiving, transmitting, decrypting or facilitating the acquisition, disruption, receipt, transmission or decryption of a telecommunication service without the express consent or express authorization of the telecommunication service provider, or to knowingly assist others in those activities.

(3) "Telecommunications device" — Any type of instrument, device, machine, equipment, technology or software which is capable of transmitting, acquiring, decrypting or receiving any telephonic, electronic, data, Internet access, audio, video, microwave or radio transmissions, signals, communications or services, including the receipt, acquisition, transmission or decryption of all such communications, transmissions, signals or services provided by or through any cable television, fiber optic, telephone, satellite, microwave, data transmission, radio, Internet-based or wireless distribution network, system or facility, or any part, accessory or

components thereof, including any computer circuit, security module, smart card, software, computer chip, electronic mechanism or other component, accessory or part of any telecommunication device which is capable of facilitating the transmission, decryption, acquisition or reception of all such communications, transmissions, signals or services.

(4) "Telecommunication service" — Any service provided for a charge or compensation to facilitate the origination, transmission, emission or reception of signs, signals, data, writing, images and sounds or intelligence of any nature by telephone, including cellular telephones, wire, wireless, radio, electromagnetic, photelectronic or photo-optical system, network, facility or technology; and any service provided by any radio, telephone, fiber optic, cable television, satellite, microwave, data transmission, wireless or Internet-based distribution system, network, facility or technology, including, but not limited to, any and all electronic, data, video, audio, Internet access, telephonic, microwave and radio communications, transmissions, signals and services, and any such communications, transmissions, signals and services provided directly or indirectly by or through any of the aforementioned systems, networks, facilities or technologies.

(5) "Telecommunication service provider" — a. A person or entity providing a telecommunication service, whether directly or indirectly as a reseller, including, but not limited to, a cellular, paging or other wireless communications company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office or other equipment or telecommunication service;

b. Any person or entity owning or operating any cable television, satellite, Internet-based, telephone, wireless, microwave, data transmission or radio distribution system, network or facility; and

c. Any person or entity providing any telecommunication service directly or indirectly by or through any such distribution systems, networks or facilities.

(6) "Unlawful access device" — Any type of instrument, device, machine, equipment, technology or software which is primarily designed, assembled, manufactured, sold, distributed, possessed, used or offered, promoted or advertised for the purpose of defeating or circumventing any technology, device or software, or any component or part thereof, used by the provider, owner or licensee of any telecommunication service or of any data, audio or video programs or transmissions, to protect any such telecommunication, data, audio or video services, programs or transmissions from unauthorized receipt, acquisition, access, decryption, disclosure, communication, transmission or retransmission.

(7) "Unlawful telecommunication device" — Any electronic serial number, mobile identification number, personal identification number or any telecommunication device that is capable of acquiring or facilitating the acquisition of a telecommunication service without the express consent or express authorization of the telecommunication service provider, or that has been altered, modified, programmed or reprogrammed alone or in conjunction with another telecommunication device or other equipment to so acquire or facilitate the unauthorized acquisition of a telecommunication service. "Unlawful telecommunication device" also means:

a. Phones altered to obtain service without the express consent or express authorization of the telecommunication service provider, tumbler phones, counterfeit or clone phones, tumbler microchips, counterfeit or clone microchips, and other instruments capable of disguising their identity or location or of gaining unauthorized access to a telecommunications system, network or facility operated by a telecommunication service provider; and

b. Any telecommunication device which is capable of, or has been altered, designed, modified, programmed or reprogrammed, alone or in conjunction with another telecommunication device, so as to be capable of facilitating the disruption, acquisition, receipt, transmission or decryption of a telecommunication service without the express consent or express authorization of the telecommunication service provider, including, but not limited to, any device, technology, product, service, equipment, computer software, or component or part thereof, primarily distributed, sold, designed, assembled, manufactured, modified, programmed, reprogrammed or used for the purpose of providing the unauthorized receipt of, transmission of, disruption of, decryption of, access to, or acquisition of any telecommunication service provided by any telecommunication service provider.

(11 Del. C. 1953 § 850; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 21; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 475 § 1; 73 Del. Laws, c. 106 § 1.)

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

A person is guilty of receiving stolen property if the person intentionally receives, retains or disposes of property of another person with intent to deprive the owner of it or to appropriate it, knowing that it has been acquired under circumstances amounting to theft, or believing that it has been so acquired.

Receiving stolen property is a class A misdemeanor unless the value of the property received, retained or disposed of is $1,500 or more, or unless the receiver has twice before been convicted of receiving stolen property, in which case it is a class G felony.

(11 Del. C. 1953 § 851; 58 Del. Laws, c. 497 § 1; 60 Del. Laws, c. 590 § 4; 65 Del. Laws, c. 497 § 5; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 211 § 6; 77 Del. Laws, c. 133 § 6.)

§ 852 Receiving stolen property; presumption of knowledge.

Knowledge that property has been acquired under circumstances amounting to theft may be presumed in the case of a person who acquires it for a consideration which the person knows is substantially below its reasonable value, or that a person possesses property whose affixed identification or serial number is altered, removed, defaced or falsified. In addition, knowledge that property has been acquired under circumstances amounting to theft shall be presumed in the case of a person or dealer who acquires it for a consideration, when such property consists of traffic signs, other traffic control devices or historical markers and the acquisition is not accompanied by a written

authorization for the property's disposition from the Department of Transportation, Department of State or other entity which owns the property.

(11 Del. C. 1953 § 852; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 27; 67 Del. Laws, c. 238 § 1; 69 Del. Laws, c. 408 § 1; 70 Del. Laws, c. 186 § 1.)

§ 852A Selling stolen property; class A misdemeanor; class G felony.

A person is guilty of selling stolen property if, after the person receives stolen property pursuant to § 851 of this title, the person sells some or all of the stolen property received. A person may be convicted of both receiving stolen property and selling stolen property. Selling stolen property is a class A misdemeanor, unless the value of the resold property is $1,500 or more, or unless the seller has been convicted 2 or more times of selling stolen property, in which cases it is a class G felony.

(76 Del. Laws, c. 147 § 1; 77 Del. Laws, c. 133 § 7.)

§ 853 Unauthorized use of a vehicle; class A misdemeanor.

A person is guilty of unauthorized use of a vehicle when:

(1) Knowing that the person does not have the consent of the owner the person takes, operates, exercises control over, rides in or otherwise uses a vehicle;

(2) Having custody of a vehicle pursuant to an agreement between the person or another and the owner thereof whereby the person or another is to perform for compensation a specific service for the owner involving the maintenance, repair or use of the vehicle, the person intentionally uses or operates it, without the consent of the owner, for the person's own purposes in a manner constituting a gross deviation from the agreed purpose;

(3) Having custody of a vehicle pursuant to an agreement with its owner whereby it is to be returned to the owner at a specified time, the person intentionally retains or withholds possession thereof, without the consent of the owner, for so lengthy a period beyond the specified time as to render the retention or possession a gross deviation from the agreement; or

(4) Such person obtains possession or control over a vehicle, knowing of the existence of a creditor or creditors who are entitled to receive payments on a debt where such vehicle is the only security or represents the major portion of the creditor's security, and such person transfers or purports to transfer the vehicle and responsibility for making payments on such vehicle to a third party, whether or not such third party continues or resumes payment to the creditor or creditors.

Unauthorized use of a vehicle is a class A misdemeanor.

(11 Del. C. 1953 § 853; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 68 Del. Laws, c. 333 §§ 1, 2; 70 Del. Laws, c. 186 § 1.)

§ 854 Identity theft; class D felony.

(a) A person commits identity theft when the person knowingly or recklessly obtains, produces, possesses, uses, sells, gives or transfers personal identifying information belonging or pertaining to another person without the consent of the other person and with intent to use the information to commit or facilitate any crime set forth in this title.

(b) A person commits identity theft when the person knowingly or recklessly obtains, produces, possesses, uses, sells, gives or transfers personal identifying information belonging or pertaining to another person without the consent of the other person, thereby knowingly or recklessly facilitating the use of the information by a third person to commit or facilitate any crime set forth in this title.

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

(d) Identity theft is a class D felony.

(e) When a person is convicted of or pleads guilty to identity theft, the sentencing judge shall order full restitution for monetary loss, including documented loss of wages and reasonable attorney fees, suffered by the victim.

(f) Prosecution under this section does not preclude prosecution or sentencing under any other section of this Code.

(72 Del. Laws, c. 297 § 1; 74 Del. Laws, c. 425 § 1; 79 Del. Laws, c. 260 § 7.)

§ 854A Identity theft passport; application; issuance.

(a) The Office of the Attorney General, in cooperation with any law-enforcement agency, may issue an identity theft passport to a person who is a victim of identity theft in this State and who has filed a police report citing that such person is a victim of a violation of § 854 of this title. A person who has filed with a law-enforcement agency a police report alleging identity theft may apply for an identity theft passport through any law-enforcement agency. The agency shall send a copy of the application and the supporting police report to the Office of the Attorney General. After processing the application and police report, the Office of the Attorney General may issue to the victim an identity theft passport in the form of a card or certificate which may include photo identification.

(b) A victim of identity theft may present that victim's identity theft passport issued under subsection (a) of this section to the following:

(1) A law-enforcement agency to help prevent the victim's arrest or detention for an offense committed by someone other than the victim who is using the victim's identity;

(2) Any of the victim's creditors to aid in a creditor's investigation and establishment of whether fraudulent charges were made against accounts in the victim's name or whether accounts were opened using the victim's identity;

(3) A consumer reporting agency, as defined in § 603(f) of the federal Fair Credit Reporting Act (15 U.S.C. § 1681a(f)), which must accept the passport as an official notice of a dispute and must include notice of the dispute in all future reports that contain disputed information caused by the identity theft.

(c) Acceptance or rejection of an identity theft passport presented by the victim to a law-enforcement agency or creditor pursuant to paragraph (b)(1) or (2) of this section is at the discretion of the law-enforcement agency or creditor. In making a decision for acceptance or rejection, a law-enforcement agency or creditor may consider the surrounding circumstances and available information regarding the offense of identity theft pertaining to the victim.

(d) An application made with the Office of the Attorney General pursuant to subsection (a) of this section, including any supporting documentation, is confidential criminal justice information, is not a public record, and is specifically exempted from public disclosure under the Freedom of Information Act, Chapter 100 of Title 29. However, the Office of the Attorney General may provide access to applications and supporting documentation filed pursuant to this section to other criminal justice agencies in this or another State.

(e) The Office of the Attorney General shall adopt regulations to implement this section. The regulations must include a procedure by which the Office of the Attorney General is reasonably assured that an identity theft passport applicant has an identity theft claim that is legitimate and adequately substantiated.

(75 Del. Laws, c. 338 § 1; 70 Del. Laws, c. 186 § 1.)

§ 855 Theft; indictment and proof.

(a) Every prosecution for theft shall be based upon § 841 of this title.

(b) The defendant may be found guilty of theft if the defendant's conduct falls within any of the sections defining theft. Proof of any conduct constituting theft is sufficient to support an indictment or information charging theft, provided that the conduct proved is sufficiently related to the conduct charged that the accused is not unfairly surprised by the case the accused must meet.

(c) When theft or any related offense is committed in violation of this title pursuant to 1 scheme or continuous course of conduct, whether from the same or several sources, the conduct may be considered as 1 offense and the value of the property or services aggregated in determining whether the theft is a felony or misdemeanor. For purposes of this subsection, related offenses shall include, but are not limited to, violations of §§ 861, 900 and 903 of this title.

(11 Del. C. 1953 § 855; 58 Del. Laws, c. 497 § 1; 66 Del. Laws, c. 251 § 1; 70 Del. Laws, c. 186 § 1.)

§ 856 Theft, receiving stolen property no defense; receiving stolen property, theft no defense; conviction of both offenses.

(a) In any prosecution for theft or theft of a firearm, it is no defense that the accused is in fact guilty of receiving stolen property or receiving a stolen firearm. A person may be convicted of the crime which the person has in fact committed.

(b) In any prosecution for receiving stolen property or receiving a stolen firearm, it is no defense that the accused is in fact guilty of theft or theft of a firearm. A person may be convicted of the crime which the person has in fact committed.

(c) A person may not be convicted of both theft and receiving stolen property, or both theft of a firearm and receiving a stolen firearm, with regard to property appropriated in the same transaction or series of transactions. A person may be charged with the crime the person seems most likely to have committed and may be convicted as provided in subsections (a) and (b) of this section.

(11 Del. C. 1953 § 856; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 260 §§ 1-3.)

§ 857 Theft and related offenses; definitions.

For purposes of §§ 841-856, 1450 and 1451 of this title:

(1) "Appropriate" means to exercise control, or to aid a third person to exercise control, over property of another person permanently or for so extended a period or under such circumstances as to acquire a major portion of its economic value or benefit, or to dispose of property for the benefit of the actor or a third person.

(2) "Dealer" means a person in the business of buying, selling or lending on the security of goods.

(3) "Deprive" means to withhold property of another person permanently or for so extended a period or under such circumstances as to withhold a major portion of its economic value or benefit, or with intent to restore it only upon payment of a reward or other compensation, or to dispose of property of another person so as to make it unlikely that the owner will recover it.

(4) "Obtain" means to bring about or receive a transfer or purported transfer of any interest in property, whether to the defendant or to another person.

(5) "Owner" means a person who has an interest in property which the defendant is not privileged to infringe, as described in paragraph (5) of this section.

(6) "Property" means anything of value except land, and includes things growing on, affixed to or found in land such as topsoil, sand, minerals, gravel and the like, documents although the rights represented thereby have no physical location, contract rights, trade secrets, choses in action and other interests in or claims to admission or transportation tickets, captured or domestic animals, food, drink and electric or other power.

(7) "Property of another person" includes property in which any person other than the defendant has an interest which the defendant is

not privileged to infringe, regardless of the fact that the defendant also has an interest in the property and regardless of the fact that the other person might be precluded from civil recovery because the property was used in an unlawful transaction or was subject to forfeiture as contraband. Property in possession of the actor shall not be deemed property of another who has only a security interest therein, even if legal title is in the creditor pursuant to a conditional sales contract or other security agreement.

(8) "Services" include labor, professional service, transportation, telephone, gas, electricity or other public service, accommodation in hotels, restaurants or elsewhere, admission to exhibitions and use of vehicles or other movable property.

(9) "Trade secret" shall mean "trade secret" as defined in § 2001 of Title 6.

(11 Del. C. 1953 § 857; 58 Del. Laws, c. 497 § 1; 63 Del. Laws, c. 218 §§ 2, 3; 64 Del. Laws, c. 134 § 1.)

§ 858 Unlawful operation of a recording device.

(a)(1) Any person who knowingly operates the audiovisual recording function of any device in a motion picture theater while the motion picture is being exhibited, for the purpose of distributing or transmitting a still photographic image of the motion picture, without the consent of the motion picture theater owner, is guilty of a class B misdemeanor.

(2) Any person who knowingly operates the audiovisual recording function of any device in a motion picture theater for the purpose of recording a motion picture, while the motion picture is being exhibited, without the consent of the motion picture theater owner, is guilty of a is guilty of a class A misdemeanor which notwithstanding any law to the contrary, may also include a fine of up to $50,000.

(b) The term "audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part thereof by means of any technology now known or later developed.

(c) The term "motion picture theater" means a movie theater, screening room, or other public venue that is being utilized primarily for the exhibition of a motion picture at the time of the offense.

(d) A motion picture theater owner, a supervisor, agent or employee, 18 years of age or older, who has probable cause to believe that a person has recorded or transmitted a substantial portion of a motion picture and has intentionally violated paragraph (a)(2) of this section, may, for the purpose of summoning a law-enforcement officer, take the person into custody and detain the person in a reasonable manner on the premises for a reasonable time.

(e) A motion picture theater owner, a supervisor, agent or employee, 18 years of age or older who detains a person pursuant to subsection (d) of this section, or who causes or provides information leading to the arrest of any person under subsection (a) of this section, shall not be held civilly or criminally liable for such detention or arrest provided they had, at the time of such detention or arrest, probable cause to believe that the person committed a crime defined in subsection (a) of this section.

(f) A motion picture theater owner, a supervisor, agent or employee, 18 years of age or older, who has probable cause to believe that a person has committed a crime defined in subsection (a) of this section may eject such person from the premises and shall not be held civilly or criminally liable for such ejection.

(g) This section does not prevent any lawfully authorized investigative, law-enforcement protective, or intelligence gathering employee or agent, of the local, state or federal government, from operating any audiovisual recording device in a motion picture theater, as part of lawfully authorized investigative, protective, law-enforcement, or intelligence-gathering activities.

(75 Del. Laws, c. 316 § 1.)

§ 859 Larceny of livestock; penalty.

(a) Whoever feloniously steals, takes and carries away any cow, steer, bull, calf, heifer or swine is guilty of larceny and a class G felony.

(b) The minimum sentence of imprisonment required by subsection (a) of this section shall not be subject to suspension and no person convicted under this section shall be eligible for probation or parole during the first 6 months of the sentence.

(11 Del. C. 1953 § 859; 59 Del. Laws, c. 60 § 1; 67 Del. Laws, c. 130 § 8; 67 Del. Laws, c. 350 § 7; 70 Del. Laws, c. 186 § 1.)

§ 860 Possession of shoplifter's tools or instruments facilitating theft; class F felony.

(a) A person is guilty of possession of shoplifter's tools or instruments facilitating theft when the person possesses any tool, instrument or other thing adapted, designed or commonly used for committing or facilitating:

(1) Offenses involving shoplifting; or

(2) Offenses involving the overriding, disabling or evading of a security device without authorization.

(3) [Deleted.]

(b) "Security device" includes any lock, whether mechanical or electronic, or any warning device designed to alert a person or the general public of a possible attempt to shoplift any goods, wares or merchandise that are displayed for sale. "Security device" specifically includes, but is not limited to, any electronic or other device that is attached or affixed to any goods, wares or merchandise on display for sale in a mercantile establishment.

(c) A person possesses shoplifting tools or instruments facilitating theft "under circumstances evincing an attempt to use or knowledge that some other person intends to use such" when the person possesses the tools or instruments at a time and a place proximate to the commission or attempt to commit a shoplifting offense or otherwise under circumstances not manifestly appropriate for what lawful uses the tools or instruments may have.

(d) Possession of shoplifters tools or instruments facilitating theft is a class F felony.

(72 Del. Laws, c. 222 § 2; 75 Del. Laws, c. 162 § 2.)

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

(a) A person is guilty of forgery when, intending to defraud, deceive or injure another person, or knowing that the person is facilitating a fraud or injury to be perpetrated by anyone, the person:

(1) Alters any written instrument of another person without the other person's authority; or

(2) Makes, completes, executes, authenticates, issues or transfers any written instrument which purports to be the act of another person, whether real or fictitious, who did not authorize that act, or to have been executed at a time or place or in a numbered sequence other than was in fact the case or to be a copy of an original when no original existed; or

(3) Possesses a written instrument, knowing that it was made, completed or altered under circumstances constituting forgery.

(b) Forgery is classified and punished as follows:

(1) Forgery is forgery in the first degree if the written instrument is or purports to be:

a. Part of an issue of money, stamps, securities or other valuable instruments issued by a government or a governmental instrumentality; or

b. Part of an issue of stock, bonds or other instruments representing interests in or claims against a corporation, business enterprise or other organization or its property.

Forgery in the first degree is a class F felony.

(2) Forgery is forgery in the second degree if the written instrument is or purports to be:

a. A deed, will, codicil, contract, release, assignment, commercial instrument, check or other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status; or

b. A public record, or an instrument filed or required to be filed in or with a public office or public servant; or

c. A written instrument officially issued or created by a public office, public servant or governmental instrumentality; or

d. Part of an issue of tokens, tickets, public transportation transfers, certificates or other articles manufactured and designed for use as symbols of value usable in place of money for the purchase of property or services; or

e. A prescription of a duly licensed physician or other person authorized to issue the same for any drug or any instrument or device for which a prescription is required by law.

Forgery in the second degree is a class G felony.

(3) All other forgery is forgery in the third degree, a class A misdemeanor.

(c) In addition to any other penalty provided by law for violation of this section, the court shall require a person convicted of a violation of this section to make restitution to the party or parties who suffered loss as a result of such forgery.

(11 Del. C. 1953 § 861; 58 Del. Laws, c. 497 § 1; 62 Del. Laws, c. 241 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 862 Possession of forgery devices; class G felony.

A person is guilty of possession of forgery devices when:

(1) The person makes or possesses with knowledge of its character and intending to use it unlawfully any plate, die or other device, apparatus, equipment or article specifically designed for use in counterfeiting or otherwise forging written instruments; or

(2) The person makes or possesses any device, apparatus, equipment or article capable of or adaptable to use for purposes of forgery, intending to use it unlawfully.

Possession of forgery devices is a class G felony.

(11 Del. C. 1953 § 862; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 22; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 863 Forgery and related offenses; definition.

"Written instrument" means any instrument or article containing written or printed matter or the equivalent thereof, used for the purpose of reciting, embodying, conveying or recording information or constituting a symbol or evidence of value, right, privilege or identification.

(11 Del. C. 1953 § 863; 58 Del. Laws, c. 497 § 1.)

§§ 864 -870. [Reserved.]

§ 871 Falsifying business records; class A misdemeanor.

A person is guilty of falsifying business records when, with intent to defraud, the person:

(1) Makes or causes a false entry in the business records of an enterprise; or

(2) Alters, erases, obliterates, deletes, removes or destroys a true entry in the business records of an enterprise; or

(3) Omits to make a true entry in the business records of an enterprise in violation of a duty to do so which the person knows to be imposed by law or by the nature of the person's position; or

(4) Prevents the making of a true entry or causes the omission thereof in the business records of an enterprise.

Falsifying business records is a class A misdemeanor.

(11 Del. C. 1953 § 871; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 872 Falsifying business records; defense.

In any prosecution for falsifying business records it is an affirmative defense that the defendant was a clerk, bookkeeper or other employee who, without personal benefit, merely executed the orders of the employer or of a superior officer or employee generally authorized to direct the defendant's activities.

(11 Del. C. 1953 § 872; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 873 Tampering with public records in the second degree; class A misdemeanor.

A person is guilty of tampering with public records in the second degree when, knowing that the person does not have the authority of anyone entitled to grant it, the person knowingly removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any record or other written instrument filed with, deposited in or otherwise constituting a record of a public office or public servant.

Tampering with public records in the second degree is a class A misdemeanor.

(11 Del. C. 1953 § 873; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§§ 874 , 875. [Reserved.]

§ 876 Tampering with public records in the first degree; class E felony.

A person is guilty of tampering with public records in the first degree when, with intent to defraud, and knowing that the person does not have the authority of anyone entitled to grant it, the person knowingly removes, mutilates, destroys, conceals, makes a false entry in or falsely alters any record or other written instrument filed with, deposited in or otherwise constituting a record of a public office or public servant.

Tampering with public records in the first degree is a class E felony.

(11 Del. C. 1953 § 876; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 877 Offering a false instrument for filing; class A misdemeanor.

A person is guilty of offering a false instrument for filing when, knowing that a written instrument contains a false statement or false information, and intending to defraud the State, a political subdivision thereof or another person, the person offers or presents it to a public office or a public servant with the knowledge or belief that it will be filed with, registered or recorded in or otherwise become a part of the records of the public office or public servant.

Offering a false instrument for filing is a class A misdemeanor.

(11 Del. C. 1953 § 877; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 878 Issuing a false certificate; class G felony.

A person is guilty of issuing a false certificate when, being a public servant authorized by law to make or issue official certificates or other official written instruments, and with intent to defraud, deceive or injure another person, the person issues such an instrument, or makes the same with intent that it be issued, knowing that it contains a false statement or false information.

Issuing a false certificate is a class G felony.

(11 Del. C. 1953 § 878; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§§ 879 , 880. [Reserved.]

§ 881 Bribery; class A misdemeanor.

A person is guilty of bribing when:

(1) The person offers, confers or agrees to confer any benefit upon any employee, agent or fiduciary without the consent of the latter's employer or principal, with intent to influence the latter to take some action with regard to the latter's employer's or principal's affairs which would not be warranted upon reasonable consideration of the factors which that person should have taken into account; or

(2) The person offers, confers or agrees to confer any benefit upon duly appointed representative of a labor organization or duly appointed trustee or representative of an employee welfare trust fund, with intent to influence the latter in respect to any of that person's acts, decisions or duties as a representative or trustee; or

(3) The person offers, confers or agrees to confer any benefit upon a participant in a sports contest, with intent to influence that the participant not to give the best effort in a sports contest; or

(4) The person offers, confers or agrees to confer any benefit upon an official in a sports contest, with intent to influence the official to perform duties improperly.

Bribing is a class A misdemeanor.

(11 Del. C. 1953 § 881; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 882 Bribe receiving; class A misdemeanor.

A person is guilty of bribe receiving if:

Being an employee, agent or fiduciary and, without the consent of the employer or principal, the person solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that the benefit will influence the person to take some action

with regard to the employer's or principal's affairs which would not be warranted upon reasonable consideration of the factors which the person should have taken into account; or

Being a duly appointed representative of a labor organization or a duly appointed trustee or representative of an employee welfare trust fund, the person solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that the benefit will influence the person in respect to any of the person's acts, decisions or duties as representative or trustee; or

Being a participant in a sports contest, the person solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that the person will thereby be influenced not to give the best effort in a sports contest; or

Being an official in a sports contest, the person solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that the person will perform duties improperly.

Bribe receiving is a class A misdemeanor.

(11 Del. C. 1953 § 882; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§§ 883 -890. [Reserved.]

§ 891 Defrauding secured creditors; class A misdemeanor.

A person is guilty of defrauding secured creditors if the person destroys, removes, conceals, encumbers, transfers or otherwise deals with property subject to a security interest, intending to defeat enforcement of that interest.

Defrauding secured creditors is a class A misdemeanor.

(11 Del. C. 1953 § 891; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 892 Fraud in insolvency; class A misdemeanor.

A person is guilty of fraud in insolvency when, with intent to defraud any creditor and knowing that a receiver or other person entitled to administer property for the benefit of creditors has been appointed, or that any other composition or liquidation for the benefit of creditors has been made, the person:

(1) Conveys, transfers, removes, conceals, destroys, encumbers or otherwise disposes of any part of or any interest in the debtor's estate; or

(2) Obtains any substantial part of or interest in the debtor's estate; or

(3) Presents to any creditor or to the receiver or administrator any writing or record relating to the debtor's estate knowing the same to contain a false material statement; or

(4) Misrepresents or fails or refuses to disclose to the receiver or administrator the existence, amount or location of any part of or any interest in the debtor's estate, or any other information which the person is legally required to furnish to the administrator.

Fraud in insolvency is a class A misdemeanor.

(11 Del. C. 1953 § 892; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 893 Interference with levied-upon property; class A misdemeanor.

A person is guilty of interference with levied-upon property when the person hides, destroys or removes from the county in which it is situated when levied upon or seized any property which the person knows has been levied upon or seized under execution, attachment process or distress for rent.

Interference with levied-upon property is a class A misdemeanor.

(11 Del. C. 1953 § 893; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§§ 894 -899. [Reserved.]

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

(a) A person is guilty of issuing a bad check when the person issues or passes a check knowing that it will not be honored by the drawee. For the purpose of this section, as well as in any prosecution for theft committed by means of a bad check, it is prima facie evidence of knowledge that the check (other than a postdated check) would not be honored that:

(1) The issuer had no account with the drawee at the time the check was issued; or

(2) Payment was refused by the drawee upon presentation because the issuer had insufficient funds or credit, and the issuer failed to make good within 10 days after receiving notice of that refusal.

Issuing a bad check is a class A misdemeanor unless the amount of the check is $1,500 or more, in which case it is a class G felony.

(b) The failure of any business or other commercial entity, prior to the completion of a transaction (other than a transaction by mail) for which a check is accepted in person by the payee as consideration for goods or services provided by the payee, to:

(1) Request and inspect the person's valid driver's license or other photo identification card, which lists the person's name, address, date of birth and approximate height and weight, to validate the identity of the person presenting the check; and

(2) Record on the check being presented the person's name, driver's license number, if such person has a driver's license, date of birth and address,

may result in the refusal of a law-enforcement agency to investigate violations of subsection (a) of this section.

(11 Del. C. 1953 § 900; 58 Del. Laws, c. 497 § 1; 64 Del. Laws, c. 125 § 1; 65 Del. Laws, c. 497 § 6; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 211 § 7; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 501 § 1; 77 Del. Laws, c. 133 § 8.)

§ 900A Conditional discharge for issuing a bad check as first offense.

(a) Whenever any person who has not previously been convicted of issuing or passing a bad check under § 900 of this title or under any statute of the United States or of any state relating to the issuing or passing of bad checks pleads guilty to issuing or passing a bad check in violation of § 900 of this title in an amount under $1,500 at the time of arraignment, the court without entering a judgment of guilt and with the consent of the accused may defer further proceedings and place the accused on probation upon terms and conditions, which terms and conditions shall include payment of full restitution in the amount of the check plus any reasonable service fee in connection therewith to the victim of the offense and payment to the State of any court costs associated with the offense. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided.

(b) Upon fulfillment of the terms and conditions, the court shall discharge the person and dismiss the proceedings against the person and shall simultaneously with said discharge and dismissal submit to the State Bureau of Identification pursuant to Chapter 85 of this title the disposition specifying the name of the person and the nature of the proceedings which dispositional information shall be retained by the State Bureau of Identification in accordance with its standard operating procedures.

(c) Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. There may be only 1 discharge and dismissal under this section with respect to any person and no person who is charged with multiple violations of § 900 of this title is eligible for treatment as a first offender under this section.

(66 Del. Laws, c. 252 § 1; 70 Del. Laws, c. 211 § 8; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 133 § 9.)

§ 901 Definition of "issues" and "passes."

(a) "Issues." — A person issues a check when, as drawer thereof or as a person who signs a check as drawer in a representative capacity or as agent of the person whose name appears thereon as the principal drawer or obligor, the person delivers it or causes it to be delivered to a person who thereby acquires a right against the drawer with respect to the check. One who draws a check with intent that it be so delivered is deemed to have issued it if the delivery occurs.

(b) "Passes." — A person passes a check when, being a payee, holder or bearer of a check which previously has been or purports to have been drawn and issued by another, the person delivers it, for a purpose other than collection to a third person who thereby acquires a right with respect thereto.

(11 Del. C. 1953 § 901; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 902 Issuance of bad check by employee as affirmative defense.

In any prosecution for issuing a bad check, it is an affirmative defense that the accused, in acting as drawer in a representative capacity or as agent of the person whose name appears on the check as principal drawer or obligor, did so as an employee who, without personal benefit, merely executed the orders of the employer or of a superior officer or employee generally authorized to direct the accused's activities.

(11 Del. C. 1953 § 902; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

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

(a) A person is guilty of unlawful use of a payment card when the person uses or knowingly permits or encourages another to use a payment card for the purpose of obtaining money, goods, services, or anything of value knowing that:

(1) The card is stolen, forged or fictitious; or

(2) The card belongs to another person who has not authorized its use; or

(3) The card has been revoked or canceled; or

(4) For any other reason use of the card is unauthorized by the issuer.

(b) A person is guilty of unlawful use of a payment card where such person knowingly:

(1) Makes, possesses, sells, gives or otherwise transfers to another, or offers or advertises a payment card with the intent that it be used or with the knowledge or reason to believe that it will be used to obtain money, goods, services, or anything of value without payment of the lawful charges therefor or without authorization of the card holder; or

(2) Publishes a payment card or code of an existing, canceled, revoked, expired or nonexistent payment card, or the numbering or coding which is employed in the issuance of payment cards, with the intent that it be used or with knowledge or reason to believe that it will be used either: to avoid the payment for any money, goods, services, or anything of value; or without authorization of the card holder. As used in this section "publishes" means the communication of information to any 1 or more persons, either orally, in person or by telephone, radio or television, or in a writing of any kind, including without limitation a letter or memorandum, circular or handbill, newspaper or magazine article or book.

(c)(1) Except where the victim of any violation of this section is a person 62 years of age or older, unlawful use of a payment card is a class A misdemeanor unless the value of the money, goods, services, or anything of value secured or sought to be secured by means of the payment card is $1,500 or more, in which case it is a class G felony.

(2) Where the victim of any violation of this section is a person 62 years of age or older, unlawful use of a payment card is a class G felony unless the value of the money, goods, services, or anything of value secured or sought to be secured by means of the payment card is $1,500 or more, in which case it is a class F felony.

(d) Amounts involved in unlawful use of a payment card pursuant to 1 scheme or course of conduct, whether from the same issuer or several issuers, may be aggregated in determining whether such unlawful use constitutes a class A misdemeanor or a class G felony under this section.

(e) A person may be prosecuted and convicted under this section in such county or counties within Delaware where the money, goods, services, or anything of value giving rise to the prosecution were solicited, were received, or were attempted to be received, or where the charges for the money, goods, services, or anything of value were billable in the normal course of business.

(11 Del. C. 1953 § 903; 58 Del. Laws, c. 497 § 1; 60 Del. Laws, c. 590 § 5; 65 Del. Laws, c. 497 § 7; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 211 § 9; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 126 § 13; 77 Del. Laws, c. 133 § 10; 79 Del. Laws, c. 260 § 2.)

§ 903A Reencoder and scanning devices.

(a) Any person who knowingly, wilfully, and with the intent to defraud, possesses a scanning device, or who knowingly, wilfully, and with intent to defraud, uses a scanning device to access, read, obtain, memorize or store, temporarily or permanently, information encoded on the computer chip or magnetic strip or stripe of a payment card without the permission of the authorized user of the payment card is guilty of a class D felony.

(b) Any person who knowingly, wilfully, and with the intent to defraud, possesses a reencoder, or who knowingly, wilfully, and with intent to defraud, uses a reencoder to place encoded information on the computer chip or magnetic strip or stripe of a payment card or any electronic medium that allows an authorized transaction to occur, without the permission of the authorized user of the payment card from which the information is being reencoded is guilty of a class D felony.

(c) Any scanning device or reencoder described in subsection (e) of this section allegedly possessed or used in violation of subsection (a) or (b) of this section shall be seized and upon conviction shall be forfeited.

(d) Any computer, computer system, computer network, or any software or data, owned by the defendant, which is used during the commission of any public offense described in this section or any computer, owned by the defendant, which is used as a repository for the storage of software or data illegally obtained in violation of this section shall be subject to forfeiture.

(e) As used in this section, the following definitions apply:

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

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

(f) Nothing in this section shall preclude prosecution under any other provision of law.

(74 Del. Laws, c. 248 § 1; 79 Del. Laws, c. 260 § 3.)

§ 904 Definition of "payment card"

"Payment card" includes any instrument or device, whether known as a credit card, credit plate, bank service card, banking card, check guarantee card, electronic benefits transfer ("EBT") card, or debit card or by any other name, issued with or without fee by an issuer for the use of the cardholder in obtaining money, goods, services, or anything else of value on credit, by the withdrawing of funds from a deposit account, or through the use of value stored on the card. "Payment card" also includes the number that is assigned to the card even if the physical card, instrument or device is not used or presented.

(11 Del. C. 1953 § 904; 58 Del. Laws, c. 497 § 1; 79 Del. Laws, c. 260 § 1.)

§ 905 Intention and ability to meet obligations as affirmative defense.

In any prosecution for unauthorized use of a payment card under § 903(a)(4) of this title it is an affirmative defense that the accused had the intention and ability to meet all obligations to the issuer arising out of the use of the card.

(11 Del. C. 1953 § 905; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 260 § 4.)

§ 906 Deceptive business practices; class A misdemeanor.

A person is guilty of deceptive business practices when in the course of business the person knowingly or recklessly:

(1) Uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity; or

(2) Sells, offers or exposes for sale, or delivers less than the represented quantity of any commodity or service; or

(3) Takes or attempts to take more than the represented quantity of any commodity or service; or

(4) Sells, offers or exposes for sale adulterated or mislabeled commodities. "Adulterated" means varying from the standard of composition or quality prescribed by or pursuant to any statute providing criminal penalties for such variance, or set by established commercial usage. "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for such variance, or set by established commercial usage; or

(5) Makes a false or misleading statement in any advertisement addressed to the public or to a substantial segment thereof intending to promote the sale or increase the consumption of property or services; or

(6) Makes a false or misleading written statement for the purpose of promoting the sale of securities, or omits information required by law to be disclosed in written documents relating to securities; or

(7) Notifies any other person that the other person has won a prize, received an award or has been selected or is eligible to receive anything of value if the other person is required to respond through the use of a 900 service telephone number or similar service number.

This section shall not apply to publishers, broadcasters, printers or other persons engaged in the dissemination of information or reproduction of printed or pictorial matter who publish, broadcast or reproduce material without knowledge of its deceptive character.

Deceptive business practices are a class A misdemeanor.

(11 Del. C. 1953 § 906; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 68 Del. Laws, c. 240 § 1; 70 Del. Laws, c. 186 § 1.)

§ 907 Criminal impersonation; class A misdemeanor.

A person is guilty of criminal impersonation when the person:

(1) Impersonates another person and does an act in an assumed character intending to obtain a benefit or to injure or defraud another person; or

(2) Pretends to be a representative of some person or organization and does an act in a pretended capacity with intent to obtain a benefit or to injure or defraud another person; or

(3) Pretends to be a public servant, or wears or displays without authority any identification, uniform or badge by which a public servant is lawfully distinguished or identified.

Criminal impersonation is a class A misdemeanor.

(11 Del. C. 1953 § 907; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 907A Criminal impersonation, accident related; class G felony.

A person is guilty of criminal impersonation, accident related, when after being in a motor vehicle accident involving serious physical injury or death to any person:

(1) A driver knowingly pretends to have been someone other than the driver of the vehicle the person was operating; or

(2) Any person knowingly pretends to have been a driver of 1 of the vehicles involved in the accident.

Criminal impersonation, accident related, is a class G felony. The driving privileges of anyone convicted of violating paragraph (1) of this section shall be suspended by the Division of Motor Vehicles for a period of 2 years.

(68 Del. Laws, c. 195 § 1; 70 Del. Laws, c. 186 § 1.)

§ 907B Criminal impersonation of a police officer, firefighter, emergency medical technician (EMT), paramedic or fire police; class E felony, class C felony.

(a) A person is guilty of criminal impersonation of a police officer, firefighter, emergency medical technician (EMT), paramedic or fire police when the person, intending to facilitate the commission of a crime or while in immediate flight therefrom:

(1) Intentionally and without lawful authority impersonates or otherwise pretends to be a police officer, firefighter, emergency medical technician (EMT), paramedic or fire police; or

(2) Without lawful authority does any act intended to create or reinforce a false impression that the person is a police officer, firefighter, emergency medical technician (EMT), paramedic or fire police.

(b) Criminal impersonation of a police officer, firefighter, emergency medical technician (EMT), paramedic or fire police is a class E felony, unless during the course of the commission of the crime, or while in immediate flight therefrom, the person or another participant in the crime:

(1) Causes physical injury to any person who is not a participant in the crime; or

(2) Commits a class A felony or class B felony as defined by this title or any sexual offense as defined by § 761(g) of this title, in which case it is a class C felony.

(c) Nothing in this section shall preclude a separate charge, conviction or sentence for any other crime.

(71 Del. Laws, c. 97 § 1; 76 Del. Laws, c. 68 § 1.)

§ 907C Impersonation as a member or veteran of the United States Armed Forces, class A misdemeanor.

(a) A person is guilty of criminal impersonation of a member or veteran of the United States Armed Forces when he or she intentionally, and without lawful authority, impersonates or otherwise holds himself or herself out to be a veteran or member of the United States Armed Forces or to hold oneself out to have an unearned rank in the United States Armed Forces with the purpose of obtaining money, property, or other tangible benefit.

(b) Any person found guilty of criminal impersonation of a member or veteran of the United States Armed Forces shall be guilty of a class A misdemeanor and receive a minimum fine of not less than $1000, which shall not be subject to suspension.

(80 Del. Laws, c. 368 § 1; 70 Del. Laws, c. 186 § 1.)

§ 908 Unlawfully concealing a will; class G felony.

A person is guilty of unlawfully concealing a will when, with intent to defraud, the person conceals, secretes, suppresses, mutilates or destroys a will, codicil or other testamentary instrument.

Unlawfully concealing a will is a class G felony.

(11 Del. C. 1953 § 908; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 909 Securing execution of documents by deception; class A misdemeanor.

A person is guilty of securing execution of documents by deception when, by knowingly misrepresenting the nature of the document, the person causes another person to execute any instrument affecting, purporting to affect or likely to affect the pecuniary interest of any person.

Securing execution of documents by deception is a class A misdemeanor.

(11 Del. C. 1953 § 909; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 910 Debt adjusting; class B misdemeanor.

A person is guilty of debt adjusting if the person makes a contract, either express or implied, with a particular debtor, whereby the debtor agrees to pay a certain amount of money periodically to the person engaged in the debt-adjusting business who shall, for a consideration, distribute the same among certain specified creditors in accordance with a plan agreed upon.

This section shall not apply to those situations involving debt adjusting incurred incidentally in the lawful practice of law in this State, nor shall anything in this section be construed to apply to any provider which is licensed under Chapter 24A of Title 6.

Debt adjusting is a class B misdemeanor.

(11 Del. C. 1953 § 910; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 430 § 5.)

§ 911 Fraudulent conveyance of public lands; class G felony.

A person is guilty of fraudulent conveyance of public lands when the person executes any deed or other written instrument purporting to convey an interest in land any part of which is public lands of this State, when such person at the time of execution of such instrument knows that the person has no legal or equitable interest in the land described in said instrument.

Fraudulent conveyance of public lands is a class G felony.

(63 Del. Laws, c. 400 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 912 Fraudulent receipt of public lands; class G felony.

A person is guilty of fraudulent receipt of public lands when the person records any deed or other written instrument purporting to transfer to the person an interest in land any part of which is public lands of this State, when such person at the time of recording knows that the transferor had no legal or equitable interest in the land described in said instrument.

Fraudulent receipt of public lands is a class G felony.

(63 Del. Laws, c. 426 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 913 Insurance fraud; class G felony.

(a) A person is guilty of insurance fraud when, with the intent to injure, defraud or deceive any insurer the person:

(1) Presents or causes to be presented to any insurer, any written or oral statement including computer-generated documents as part of, or in support of, a claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains false, incomplete or misleading information concerning any fact or thing material to such claim; or

(2) Assists, abets, solicits or conspires with another to prepare or make any written or oral statement that is intended to be presented to any insurer in connection with, or in support of, any claim for payment or other benefit pursuant to an insurance policy, knowing that such statement contains any false, incomplete or misleading information concerning any fact or thing material to such claim.

Insurance fraud is a class G felony.

(b) All insurance claims forms shall contain a statement that clearly states in substance the following:

"Any person who knowingly, and with intent to injure, defraud or deceive any insurer, files a statement of claim containing any false, incomplete or misleading information is guilty of a felony."

The lack of such a statement shall not constitute a defense against prosecution under this section.

(c) For the purposes of this section, "statement" includes, but is not limited to, a police report, any notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, X rays, test result or other evidence of loss, injury or expense; "insurer" shall include, but is not limited to, a health service corporation or health maintenance organization; and "insurance policy" shall include, but is not limited to, the subscriber and members contracts of health service corporations and health maintenance organizations.

(64 Del. Laws, c. 194; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 913A Health-care fraud; class B felony; class D felony; class G felony.

(a) A person is guilty of health-care fraud when the person knowingly:

(1) Presents or causes to be presented any fraudulent health-care claim to any health-care benefit program; or

(2) Engages in a pattern of presenting or causing to be presented fraudulent health-care claims to any health-care benefit program.

(b) For the purpose of this section:

(1) "Fraudulent health-care claim" means any statement, whether written, oral or in any other form, which is made as part of or in support of a claim or request for payment from any health-care benefit program when such statement knowingly contains false, incomplete or misleading information concerning any fact or thing material to such claim.

(2) "Health-care benefit program" means any plan or contract, whether public or private, under which any medical benefit, equipment, medication or service is provided to any individual. "Health-care benefit program" also includes any individual or entity who is providing a medical benefit, equipment, medication or service for which payment may be made under a plan or contract for the provision of such benefits or services.

(3) "Health-care professional," "health-care practice," "health-care facility" or "health-care services" includes but is not limited to any person who or entity which, for payment, practices in or employs the procedures of medicine, surgery, chiropractic, podiatry, dentistry, optometry, psychology, social work, pharmacy, nursing, physical therapy or any other field concerned with the maintenance or restoration of the health of the body or mind.

(4) "Health-care provider" means any health-care professional, an owner or operator of a health-care practice or facility, any person who creates the impression that the person or the person's practice or facility can provide health-care services, or any person employed or acting on behalf of any of the aforementioned persons.

(5) "Pattern of presenting or causing to be presented" means 3 or more instances of conduct that constitute presenting or causing to be presented fraudulent health-care claims.

(c)(1) Except as provided in paragraphs (2) and (3) of this subsection, health-care fraud is a class G felony.

(2) Health-care fraud is a class D felony if the elements of subsection (a) of this section are met and if:

a. The intended loss to the health-care benefit program is more than $50,000 but less than $100,000;

b. The offender is a health-care provider at the time of the offense or offenses; or,

c. The conduct constitutes a pattern of presenting or causing to be presented fraudulent health-care claims.

(3) Health-care fraud is a class B felony if the elements of subsection (a) of this section are met and if:

a. The intended loss to the health-care benefit program is $100,000 or more; or

b. The offender is a health-care provider at the time of the offense or offenses and the conduct constitutes a pattern of presenting or causing to be presented fraudulent health-care claims.

(4) In addition to the penalties otherwise authorized by this subsection, a person convicted under this section may be subject to a fine of up to 5 times the pecuniary benefit obtained or sought to be obtained through the person's violation of this section.

(d) A conviction is not required for an act of presenting or causing presentation of a fraudulent health-care claim to be used in prosecution of a matter under this section, including an act used as proof of a pattern as defined in paragraph (b)(3) of this section. A conviction for any act of presenting or causing presentation of fraudulent health-care claims, including one which may be relied upon to establish a pattern of presenting or causing presentation of a fraudulent health-care claim, does not preclude prosecution under this section. Prosecution under this section does not preclude prosecution under any other section of the Code.

(72 Del. Laws, c. 337 § 1; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 353 §§ 3-5.)

§ 914 Use of consumer identification information.

(a) Except as provided in subsection (b) of this section, as a condition of accepting a payment card as payment for consumer credit, goods, realty, or services, a person may not write down or request to be written down the address and/or telephone number of the payment card holder on the payment card transaction form.

(b) A person may record the address or telephone number of a payment card holder if the information is necessary for:

(1) The shipping, delivery or installation of consumer goods; or

(2) Special orders of consumer goods or services.

(c) Violation of this section is an unclassified misdemeanor.

(67 Del. Laws, c. 423 § 1; 68 Del. Laws, c. 221 § 1; 79 Del. Laws, c. 260 § 5.)

§ 915 Use of payment card information.

(a) In this section, the following words have the meanings indicated:

(1) "Draft" does not include a credit or debit card sales draft.

(2) "Drawer" means the individual who makes or signs a check or other draft;

(b) Subject to the provisions of subsection (c) of this section, as a condition of accepting a check or other draft as payment for consumer credit, goods, realty or services, a person may not request or record the account number of any payment card of the drawer of the check or other draft.

(c) The provisions of this section do not prohibit a person from:

(1) Requesting the drawer to display a payment card for purposes only of identification or credit worthiness;

(2) Requesting or recording the type or issuer of a payment card of the drawer; or

(3) Recording the number and expiration date of a payment card if the person requesting the information has agreed with the payment card issuer to cash checks as a service to the issuer's cardholders and the issuer has agreed to guarantee payment of cardholder checks

cashed by that person.

(d) Violation of this section is an unclassified misdemeanor.

(67 Del. Laws, c. 420 § 1; 79 Del. Laws, c. 260 § 6.)

§ 915A Credit and debit card transaction receipts; unclassified misdemeanor.

(a) Except as provided in subsection (b) of this section, a person who accepts credit or debit cards in exchange for goods or services shall print not more than 5 digits of that credit or debit card account number on the credit or debit card receipt provided to the cardholder.

(b) This section applies only to receipts that are electronically printed and does not apply to transactions in which the sole means of recording the credit or debit card number is by handwriting or by an imprint or copy of the credit or debit card.

(c) Violation of this section is an unclassified misdemeanor.

(74 Del. Laws, c. 151 § 1.)

§ 916 Home improvement fraud; class G felony, class A misdemeanor.

(a) For the purpose of this section, the following definitions shall apply:

(1) "Contract price" means the total price agreed upon under a home improvement contract.

(2) "Home improvement" means any alteration, repair, addition, modification or improvement to any dwelling or the property on which it is situated, including but not limited to the construction, painting or coating, installation, replacement or repair of driveways, sidewalks, swimming pools, unattached structures, porches, kitchens, bathrooms, chimneys, fireplaces, stoves, air conditioning or heating systems, hot water heaters, water treatment systems, electrical wiring or systems, plumbing fixtures or systems, doors or windows, roofs, gutters, downspouts and siding.

(3) A "home improvement contract" is any agreement, whether written or oral, whereby a person offers or agrees to provide home improvements in exchange for a payment of money regardless of whether any such payments have been made.

(4) A "material fact" is a fact that a reasonable person would consider important when purchasing a home improvement of the variety being offered.

(b) A person is guilty of home improvement fraud who enters, or offers to enter, into a home improvement contract as the provider of home improvements to another person, and who with the intent specified in § 841 of this title:

(1) Uses or employs any false pretense or false promise as those acts are defined in §§ 843 and 844 of this title;

(2) Creates or reinforces a person's impression or belief concerning the condition of any portion of that person's dwelling or property involved in said home improvement contract knowing that the impression or belief is false;

(3) Makes any untrue statement of a material fact or omits to state a material fact relating to the terms of the home improvement contract or the existing condition of any portion of the property which is the subject of said contract;

(4) Receives money for the purpose of obtaining or paying for services, labor, materials or equipment and fails to apply such money for such purpose by:

a. Failing to substantially complete the home improvement for which the funds were provided; or

b. Failing to pay for the services, labor, materials or equipment provided incident to such home improvement; or

c. Diverting said funds to a use other than for which the funds were received; or

(5) Fails to provide that person's own true name, or provides a false name, address or phone number of the business offering said home improvements.

(c) For home improvement fraud under this section, it shall be prima facie evidence of the intent specified in § 841 of this title that the person offering or agreeing to provide home improvements:

(1) Has been previously convicted under this section or under a similar statute of the United States or of any state or of the District of Columbia within 10 years of the home improvement contract in question;

(2) Is currently subject to any administrative orders, judgments or injunctions that relate to home improvements under Chapter 25 of Title 6;

(3) Failed to comply with Chapter 44 of Title 6 with respect to the home improvement contract in question; or

(4) Used or threatened the use of force against the person or property of the person purchasing said home improvement and said person is 62 years of age or older.

(d) Home improvement fraud is a class A misdemeanor, unless:

(1) The contract price or the total amount actually paid to the defendant by or on behalf of the person who purchased the home improvement is $1,500 or more;

(2) The person who purchased the home improvement is 62 years of age or older; or

(3) The defendant has previously been convicted under this section;

in which case it is a class G felony.

(70 Del. Laws, c. 63 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 462 § 1; 73 Del. Laws, c. 126 §§ 14, 15; 77 Del. Laws, c. 133 § 11.)

§ 917 New home construction fraud; class B felony; class D felony; class G felony; class A misdemeanor.

(a) For the purpose of this section, the following definitions shall apply:

(1) A "dwelling" means a building which is usually occupied by a person lodging therein at night but shall not include a mobile home

as defined in § 7003(11) of Title 25.

(2) A "home buyer" means a person who intends to enter into a new home construction contract for himself or herself or on behalf of any person.

(3) A "new home contractor" means any person who offers or provides new home construction services as a general contractor or a subcontractor and shall, in addition, include, but not be limited to, an architect, engineer or real estate broker or agent.

(4) "New home construction" means the erection, installation or construction of a dwelling on a fixed foundation on land which is owned or purchased by a home buyer.

(5) A "new home construction contract" is any agreement, whether written or oral, between a new home contractor and a home buyer whereby the new home contractor agrees to provide new home construction services in exchange for a payment of money.

(6) "Payment of money" means tender of money or other consideration of value by a home buyer or by any lending institution on behalf of the home buyer to a new home contractor as part of a new home construction contract.

(7) For the purpose of this section, land is "purchased" by a home buyer when the home buyer acquires it by sale, negotiation, mortgage, pledge, lien, gift or any other transaction creating an interest in the property prior to the formation of the new home construction contract, or if the home buyer is to purchase the land as part of the new home construction contract.

(b) A person is guilty of new home construction fraud who, with the intent specified in § 841 of this title, enters into a new home construction contract and:

(1) Uses or employs any false pretense or false promise as those acts are defined in §§ 843 and 844 of this title; or

(2) Receives payments and intentionally fails to use said payment or payments for the purpose or purposes identified in the new home construction contract and/or diverts said payment or payments to a use or uses other than the erection, installation or construction of the dwelling identified therein; or

(3) Receives payment or payments and fails to provide that person's own true name or provides a false name, address or phone number of the business offering said new home construction services.

(c) For new home construction fraud under this section, it shall be prima facie evidence of the intent specified in § 841 of this title that the new home contractor:

(1) Has been previously convicted under this section, § 916 of this title, or § 3505 of Title 6 within 10 years of the first payment under the new home construction contract in question; or

(2) Is currently subject to any administrative order, judgment or injunction under Chapter 25 of Title 6 relating to new home construction or home improvements (as defined in paragraph (a)(4) of this section).

(d) New construction fraud is a class A misdemeanor, unless:

(1) The loss to the home buyer is $1,500 or more but less than $50,000, in which case it is a class G felony;

(2) The loss to the home buyer is at least $50,000 but less than $100,000, in which case it is a class D felony; or

(3) The loss to the home buyer is $100,000 or more, in which case it is a class B felony.

(e) For the purpose of calculating the amount of the loss to the home buyer, the loss shall be deemed to be the lesser of the total of all payments actually made by the home buyer or the cost to the home buyer to complete the new home construction according to the terms of the original new home construction contract, whether or not said new home is actually completed.

(71 Del. Laws, c. 46 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 133 § 12; 78 Del. Laws, c. 353 §§ 6- 8.)

§ 918 Ticket scalping.

(a) No person shall sell, resell or exchange any ticket to any event or exhibit at a price higher than the original price on the day preceding or on the day of an event at the Bob Carpenter Sports/Convocation Center on the South Campus of the University of Delaware or of a NASCAR Race held at Dover Downs, or on any state or federal highway artery within this State.

(b) Any person who violates this section shall be guilty of ticket scalping. Any person convicted a first time of ticket scalping is guilty of a class B misdemeanor. Any person convicted a second or subsequent time of ticket scalping shall be guilty of a class A misdemeanor. The Superior Court shall have jurisdiction over any offense charged under this section.

(c) For purposes of this section the word "ticket" shall mean any admittance, receipt, entrance ticket or other evidence of a right to be admitted to an event or exhibit.

(70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 233 § 1; 71 Del. Laws, c. 46 § 1.)

§ 919 [Reserved.]

§ 920 Transfer of recorded sounds; class G felony.

(a) No person shall knowingly transfer or cause to be transferred, directly or indirectly by any means, any sounds recorded on a phonograph record, disc, wire, tape, film or other article upon which sounds are recorded, with the intent to sell or cause to be sold, or to use for profit through public performance, or to use to promote the sale of any product, such article on which sounds are so transferred, without consent of the owner; provided, that such owner is domiciled or has its principal place of business in a country which is a signatory to the Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms (executed on October 29, 1971, Geneva).

(b) For the purposes of this section, "owner" means the person who owns the original fixation of sounds embodied in the master phonograph record, master disc, master wire, master tape, master film or other device used for reproducing sounds on phonograph records, discs, wires, tapes, films or other articles upon which sound is recorded, and from which the transferred recorded sounds are directly or indirectly derived.

(c) Violation of this section shall constitute a class G felony.

(60 Del. Laws, c. 611 § 1; 67 Del. Laws, c. 130 § 8.)

§ 921 Sale of transferred recorded sounds; class A misdemeanor.

(a) No person shall knowingly, or with reasonable grounds to know, advertise or offer for sale or resale, or sell or resell, distribute or possess for such purposes, any article that has been produced in violation of § 920 of this title.

(b) Violation of this section shall constitute a class A misdemeanor.

(60 Del. Laws, c. 611 § 1; 67 Del. Laws, c. 130 § 8.)

§ 922 Improper labeling; class G felony.

(a) No person shall advertise or offer for sale or resale, or sell or resell, or possess for such purposes, any phonograph record, disc, wire, tape, film or other article on which sounds are recorded, unless the cover, box, jacket, or label clearly and conspicuously discloses the actual name and address of the manufacturer thereof, and the name of the actual performer or group.

(b) Violation of this section involving 100 or more improperly labeled sound recordings shall constitute a class G felony, otherwise it is/shall constitute an unclassified misdemeanor.

(c) A second or subsequent violation of this section involving 100 or more improperly labeled sound recordings, or in which the second or subsequent violation plus any and all prior violations of this section added together involve 100 or more improperly labeled sound recordings, shall constitute a class F felony.

(60 Del. Laws, c. 611 § 1; 67 Del. Laws, c. 130 § 8; 75 Del. Laws, c. 410 §§ 1, 2.)

§ 923 Exceptions.

This subpart shall not apply to:

(1) Any broadcaster who, in connection with or as part of a radio, television or cable broadcast transmission, or for the purpose of archival preservation, transfers any such sounds recorded on a sound recording;

(2) Any person who transfers such sounds in the home, for personal use, and without compensation for such transfer;

(3) Any phonograph record, disc, wire, tape, film or other article upon which sound is recorded where a period of 50 years has transpired since the original fixation of sounds thereon was made by the owner or on the owner's behalf.

(60 Del. Laws, c. 611 § 1; 70 Del. Laws, c. 186 § 1.)

§ 924 Civil litigation.

This subpart shall neither enlarge nor diminish the rights of parties in civil litigation.

(60 Del. Laws, c. 611 § 1.)

§ 924A Forfeiture.

If a person is convicted of a violation of § 922 of this title, the court in its sentencing order shall order the forfeiture and destruction or other disposition of:

(1) All articles on which the conviction is based; and

(2) All implements, devices, materials, and equipment used or intended to be used in the manufacture of the recordings on which the conviction is based.

(75 Del. Laws, c. 410 § 3.)

§ 925 Video privacy protection.

(a) A videotape distributor may not wrongfully disclose an individual or summary listing of any videotapes purchased or rented by a protected individual from the videotape distributor.

(b) In this section the following words or terms have the meanings indicated:

(1) "Protected individual" means:

a. The individual described by any information the wrongful disclosure of which is prohibited under this section; or

b. An agent of that individual.

(2) "Publication" means distribution to a person other than the protected individual.

(3) "Videotape distributor" means a person who sells or rents videotapes.

(4)a. "Wrongful disclosure" means any publication that occurs in circumstances in which a protected individual who rents or purchases a videotape has a reasonable expectation of privacy.

b. "Wrongful disclosure" does not include:

1. Any disclosure made incident to the normal course of the business of renting or selling videotapes to a person whom the protected individual authorizes, prior to distribution, to receive the information;

2. Any disclosure made under summons or subpoena to appropriately authorized law enforcement personnel;

3. Any disclosure made to a collection agency or person designated by the videotape distributor for the purpose of collecting an unreturned videotape or an amount equal to the value of the unreturned videotape; or

4. Any disclosure of names and addresses only for commercial mailing list purposes.

(c) A person convicted of violating this section shall be subject to a fine of not more than $500 for each violation, or imprisonment for not more than 6 months for all violations, or both.

(66 Del. Laws, c. 383 § 1.)

§ 926 Trademark counterfeiting.

(a) Any person who knowingly manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses with intent to sell or distribute any items or services bearing or identified by a counterfeit mark shall be guilty of the crime of trademark counterfeiting.

(b) Definitions. — As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

(1) "Counterfeit mark" means:

a. Any unauthorized reproduction or copy of intellectual property.

b. Intellectual property affixed to any item knowingly sold, offered for sale, manufactured or distributed or identifying services offered or rendered, without the authority of the owner of the intellectual property.

(2) "Intellectual property" means any trademark, service mark, trade name, label, term, device, design or word adopted or used by a person to identify that person's goods or services.

(3) "Retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.

(c) Presumption. — A person having possession, custody or control of more than 25 items bearing a counterfeit mark shall be presumed to possess said items with intent to sell or distribute.

(d) Penalties. —

(1) Except as provided in paragraphs (d)(2) and (3) of this section, a violation of this section constitutes a class A misdemeanor.

(2) A violation of this section constitutes a class G felony if:

a. The defendant has previously been convicted under this section; or

b. The violation involved more than 100 but less than 1,000 items bearing a counterfeit mark or the total retail value of all items or services bearing or identified by a counterfeit mark is more than $2,000, but less than $10,000.

(3) A violation of this section constitutes a class E felony if:

a. The defendant has been previously convicted of 2 or more offenses under this section;

b. The violation involved the manufacture or production of items bearing counterfeit marks; or

c. The violation involved 1,000 or more items bearing a counterfeit mark or the total retail value of all items or services bearing or identified by a counterfeit mark is $10,000 or more.

(e) Quantity or retail value. — The quantity or retail value of items or services shall include the aggregate quantity or retail value of all items or services bearing or identified by every counterfeit mark the defendant manufactures, uses, displays, advertises, distributes, offers for sale, sells or possesses.

(f) Fine. — Any person convicted under this section shall be fined not less than $5,000 or an amount up to 3 times the retail value of the items or services bearing or identified by a counterfeit mark, whichever is greater, unless extenuating circumstances are shown by the defendant.

(g) Seizure, forfeiture and disposition. —

(1) Any items bearing a counterfeit mark, and all personal property, including, but not limited to, any items, objects, tools, machines, equipment, instrumentalities or vehicles of any kind, knowingly employed or used in connection with a violation of this section may be seized by any law enforcement officer.

(2) All seized personal property referenced in paragraph (g)(1) of this section shall be forfeited in accordance with applicable law, unless the prosecuting attorney responsible for the charges and the intellectual property owner consent in writing to another disposition.

(h) Evidence. — Any federal or state certificate of registration of any intellectual property shall be prima facie evidence of the facts stated therein.

(75 Del. Laws, c. 120 § 2.)

§§ 927 -930. [Reserved.]

§ 931 Definitions.

As used in this subpart:

(1) "Access" means to instruct, communicate with, store data in or retrieve data from a computer, computer system or computer network.

(2) "Commercial electronic mail" or "commercial e-mail" means any electronic mail message that is sent to a receiving address or

account for the purposes of advertising, promoting, marketing or otherwise attempting to solicit interest in any good service or enterprise.

(3) "Computer" means a programmable, electronic device capable of accepting and processing data.

(4) "Computer network" means:

a. A set of related devices connected to a computer by communications facilities;

b. A complex of 2 or more computers, including related devices, connected by communications facilities; or

c. The communications transmission facilities and devices used to interconnect computational equipment, along with control mechanisms associated thereto.

(5) "Computer program" means a set of instructions, statements or related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.

(6) "Computer services" includes, but is not limited to, computer access, data processing and data storage.

(7) "Computer software" means 1 or more computer programs, existing in any form, or any associated operational procedures, manuals or other documentation.

(8) "Computer system" means a computer, its software, related equipment and communications facilities, if any, and includes computer networks.

(9) "Data" means information of any kind in any form, including computer software.

(10) "Electronic mail" or "e-mail" means any message that is automatically passed from an originating address or account to a receiving address or account;

(11) "Electronic mail service provider" means any person who:

a. Is an intermediary in sending and receiving electronic mail; and

b. Provides to end-users of electronic mail services the ability to send or receive electronic mail.

(12) The "Internet" is a hierarchy of computer networks and systems that includes, but is not limited to, commercial (.com or .co), university (.ac or .edu) and other research networks (.org, .net) and military (.mil) networks and spans many different physical networks and systems around the world.

(13) "Person" means a natural person, corporation, trust, partnership, incorporated or unincorporated association and any other legal or governmental entity, including any state or municipal entity or public official.

(14) "Private personal data" means data concerning a natural person which a reasonable person would want to keep private and which is protectable under law.

(15) "Property" means anything of value, including data.

(16) "Originating address" or "originating account" means the string used to specify the source of any electronic mail message (e.g. company@sender.com);

(17) "Receiving address" or "receiving account" means the string used to specify the destination of any electronic mail message (e.g. person@receiver.com);

(64 Del. Laws, c. 438 § 1; 72 Del. Laws, c. 135 § 3.)

§ 932 Unauthorized access.

A person is guilty of the computer crime of unauthorized access to a computer system when, knowing that the person is not authorized to do so, the person accesses or causes to be accessed any computer system without authorization.

(64 Del. Laws, c. 438 § 1; 70 Del. Laws, c. 186 § 1.)

§ 933 Theft of computer services.

A person is guilty of the computer crime of theft of computer services when the person accesses or causes to be accessed or otherwise uses or causes to be used a computer system with the intent to obtain unauthorized computer services, computer software or data.

(64 Del. Laws, c. 438 § 1; 70 Del. Laws, c. 186 § 1.)

§ 934 Interruption of computer services.

A person is guilty of the computer crime of interruption of computer services when that person, without authorization, intentionally or recklessly disrupts or degrades or causes the disruption or degradation of computer services or denies or causes the denial of computer services to an authorized user of a computer system.

(64 Del. Laws, c. 438 § 1.)

§ 935 Misuse of computer system information.

A person is guilty of the computer crime of misuse of computer system information when:

(1) As a result of accessing or causing to be accessed a computer system, the person intentionally makes or causes to be made an unauthorized display, use, disclosure or copy, in any form, of data residing in, communicated by or produced by a computer system;

(2) That person intentionally or recklessly and without authorization:

a. Alters, deletes, tampers with, damages, destroys or takes data intended for use by a computer system, whether residing within or external to a computer system; or

b. Interrupts or adds data to data residing within a computer system;

(3) That person knowingly receives or retains data obtained in violation of paragraph (1) or (2) of this section; or

(4) That person uses or discloses any data which that person knows or believes was obtained in violation of paragraph (1) or (2) of this section.

(64 Del. Laws, c. 438 § 1; 70 Del. Laws, c. 186 § 1.)

§ 936 Destruction of computer equipment.

A person is guilty of the computer crime of destruction of computer equipment when that person, without authorization, intentionally or recklessly tampers with, takes, transfers, conceals, alters, damages or destroys any equipment used in a computer system or intentionally or recklessly causes any of the foregoing to occur.

(64 Del. Laws, c. 438 § 1.)

§ 937 Unrequested or unauthorized electronic mail or use of network or software to cause same.

A person is guilty of the computer crime of unrequested or unauthorized electronic mail:

(1) When that person, without authorization, intentionally or recklessly distributes any unsolicited bulk commercial electronic mail (commercial E-mail) to any receiving address or account under the control of any authorized user of a computer system. This section shall not apply to electronic mail that is sent between human beings, or when the individual has requested said information. This section shall not apply to the transmission of electronic mail from an organization to its members or where there is a preexisting business relationship. No Internet/interactive service provider shall be liable for merely transmitting an unsolicited, bulk commercial electronic mail message in its network. No Internet/interactive service provider shall be held liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any unsolicited, bulk electronic mail which it believes is, or will be, sent in violation to disconnect or terminate the service of any person that is in violation of this article; or

(2) When a person uses a computer or computer network without authority with the intent to: Falsify or forge electronic mail transmission information in any manner in connection with the transmission of unsolicited bulk electronic mail through or into the computer network of an electronic mail service provider or its subscribers; or

(3) When a person sells, gives or otherwise distributes or possesses with the intent to sell, give or distribute software which:

a. Is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information;

b. Has only limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information; or

c. Is marketed by that person or another acting in concert with that person's knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

(4) For the purposes of this section, conduct occurring outside of the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or if the receiving address or account was under the control of any authorized user of a computer system who was located in Delaware at the time the authorized user received the electronic mail or communication and the defendant was aware of circumstances which rendered the presence of such authorized user in Delaware a reasonable possibility.

(72 Del. Laws, c. 135 § 1; 70 Del. Laws, c. 186 § 1.)

§ 938 Failure to promptly cease electronic communication upon request.

(a) A person is guilty of the computer crime of failure to promptly cease electronic communication upon request when that person intentionally, recklessly or negligently, fails to stop sending commercial electronic mail to any receiving address or account under the control of any authorized user of a computer system after being requested to do so. All commercial electronic mail sent to any receiving address within the State shall have information to the recipient on how to unsubscribe or stop further receipt of commercial electronic mail from the sender.

(b) For the purposes of this section, conduct occurring outside of the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or if the receiving address or account was under the control of any authorized user of a computer system who was located in Delaware at the time the authorized user received the electronic mail or communication and the defendant was aware of circumstances which rendered the presence of such authorized user in Delaware a reasonable possibility.

(72 Del. Laws, c. 135 § 1; 70 Del. Laws, c. 186 § 1.)

§ 939 Penalties.

(a) A person committing any of the crimes described in §§ 932-938 of this title is guilty in the first degree when the damage to or the value of the property or computer services affected exceeds $10,000.

Computer crime in the first degree is a class D felony.

(b) A person committing any of the crimes described in §§ 932-938 of this title is guilty in the second degree when the damage to or the value of the property or computer services affected exceeds $5,000.

Computer crime in the second degree is a class E felony.

(c) A person committing any of the crimes described in §§ 932-938 of this title is guilty in the third degree when:

(1) The damage to or the value of the property or computer services affected is $1,500 or more; or

(2) That person engages in conduct which creates a risk of serious physical injury to another person.

Computer crime in the third degree is a class G felony.

(d) A person committing any of the crimes described in §§ 932-938 of this title is guilty in the fourth degree when the damage to or the value of the property or computer services, if any, is under $1,500.

Computer crime in the fourth degree is a class A misdemeanor.

(e) Any person gaining money, property services or other consideration through the commission of any offense under this subpart, upon conviction, in lieu of having a fine imposed, may be sentenced by the court to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain from the commission of such offense. In such case, the court shall make a finding as to the amount of the defendant's gain from the offense and, if the record does not contain sufficient evidence to support such a finding, the court may conduct a hearing upon the issue. For the purpose of this section, "gain" means the amount of money or the value of property or computer services or other consideration derived.

(f) Amounts included in violations of this subpart committed pursuant to 1 scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the degree of the crime.

(g) For the purposes of this subpart, the value of property or computer services shall be:

(1) The market value of the property or computer services at the time of the violation; or

(2) If the property or computer services are unrecoverable, damaged or destroyed as a result of a violation of this subpart, the cost of reproducing or replacing the property or computer services at the time of the violation.

When the value of the property or computer services or damage thereto cannot be satisfactorily ascertained, the value shall be deemed to be $250.

(h) Notwithstanding this section, the value of private personal data shall be deemed to be $500.

(64 Del. Laws, c. 438 § 1; 67 Del. Laws, c. 130 § 8; 72 Del. Laws, c. 135 §§ 1, 2; 77 Del. Laws, c. 133 § 13.)

§ 940 Venue.

(a) In any prosecution for any violation of §§ 932-938 of this title, the offense shall be deemed to have been committed in the place at which the act occurred or in which the computer system or part thereof involved in the violation was located.

(b) In any prosecution for any violation of §§ 932-938 of this title based upon more than 1 act in violation thereof, the offense shall be deemed to have been committed in any of the places at which any of the acts occurred or in which a computer system or part thereof involved in a violation was located.

(c) If any act performed in furtherance of the offenses set out in §§ 932-938 of this title occurs in this State or if any computer system or part thereof accessed in violation of §§ 932-936 of this title is located in this State, the offense shall be deemed to have occurred in this State.

(64 Del. Laws, c. 438 § 1; 72 Del. Laws, c. 135 §§ 1, 2.)

§ 941 Remedies of aggrieved persons.

(a) Any aggrieved person who has reason to believe that any other person has been engaged, is engaged or is about to engage in an alleged violation of any provision of §§ 932-938 or § 9616A of this title may bring an action against such person and may apply to the Court of Chancery for:

(1) An order temporarily or permanently restraining and enjoining the commencement or continuance of such act or acts;

(2) An order directing restitution; or

(3) An order directing the appointment of a receiver.

Subject to making due provisions for the rights of innocent persons, a receiver shall have the power to sue for, collect, receive and take into possession any property which belongs to the person who is alleged to have violated any provision of this subpart and which may have been derived by, been used in or aided in any manner such alleged violation. Such property shall include goods and chattels, rights and credits, moneys and effects, books, records, documents, papers, choses in action, bills, notes and property of every description including all computer system equipment and data, and including property with which such property has been commingled if it cannot be identified in kind because of such commingling. The receiver shall also have the power to sell, convey and assign all of the foregoing and hold and dispose of the proceeds thereof under the direction of the Court. Any person who has suffered damages as a result of an alleged violation of any provision of §§ 932-938 or § 9616A of this title, and submits proof to the satisfaction of the Court that the person has in fact been damaged, may participate with general creditors in the distribution of the assets to the extent the person has sustained out-of-pocket losses. The Court shall have jurisdiction of all questions arising in such proceedings and may make such orders and judgments therein as may be required.

(b) The Court may award the relief applied for or such other relief as it may deem appropriate in equity.

(c) Independent of or in conjunction with an action under subsection (a) of this section, any person who suffers any injury to person, business or property may bring an action for damages against a person who is alleged to have violated any provision of §§ 932-938 or § 9616A of this title. The aggrieved person shall recover actual damages and damages for unjust enrichment not taken into account in computing damages for actual loss and treble damages where there has been a showing of wilful and malicious conduct.

(d) Proof of pecuniary loss is not required to establish actual damages in connection with an alleged violation of § 935 of this title arising

from misuse of private personal data.

(e) In any civil action brought under this section, the Court shall award to any aggrieved person who prevails reasonable costs and reasonable attorneys' fees.

(f) The filing of a criminal action against a person is not a prerequisite to the bringing of a civil action under this section against such person.

(g) No civil action under this section may be brought but within 3 years from the date the alleged violation of §§ 932-938 or § 9616A of this title is discovered or should have been discovered by the exercise of reasonable diligence.

(64 Del. Laws, c. 439 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 135 §§ 1, 2; 80 Del. Laws, c. 147 § 1.)

§ 951 Money laundering; class D felony.

(a) A person is guilty of money laundering when:

(1) The person knowingly acquires or maintains an interest in, conceals, possesses, transfers, or transports the proceeds of criminal activity; or

(2) The person knowingly conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity; or

(3) The person knowingly invests, expends, or receives, or offers to invest, expend, or receive the proceeds of criminal activity or funds that the person believes are the proceeds of criminal activity; or

(4) The person knowingly finances or invests or intends to finance or invest funds that the person believes are intended to further the commission of criminal activity; or

(5) The person knowingly engages in a transaction involving the proceeds of criminal activity intended, in whole or in part, to avoid a currency transaction reporting requirement under the laws of this State or any other state or of the United States.

(b) Knowledge of the specific nature of the criminal activity giving rise to the proceeds is not required to establish a culpable mental state under this section.

(c) For purposes of this section, the following definitions shall apply:

(1) "Criminal activity" means any offense that is a crime under the Laws of Delaware, another state, or the United States.

(2) "Funds" includes:

a. Coin or currency of the United States or any other country;

b. Bank checks or money orders; or

c. Investment or negotiable instruments, in bearer form or otherwise in such form that title thereto passes upon delivery.

(3) "Funds that the person believes are the proceeds of criminal activity" means any funds that are believed to be proceeds of criminal activity including funds that are not the proceeds of criminal activity.

(4) "Proceeds" means funds acquired or derived directly or indirectly from, produced through, or realized through an act.

(5) "Structure" or "structuring" means that a person, acting alone, or in conjunction with, or on behalf of, other persons, conducts or attempts to conduct 1 or more transactions in currency, in any amount, at 1 or more financial institutions, including video lottery facilities, on 1 or more days, in any manner, for the purpose of evading currency transaction reporting requirements provided by state or federal law. "In any manner" includes, but is not limited to, the breaking down into smaller sums of a single sum of currency meeting or exceeding that which is necessary to trigger a currency reporting requirement or the conduct of a transaction, or series of currency transactions, at or below the reporting requirement. The transaction or transactions need not exceed the reporting threshold at any single financial institution on any single day in order to meet the definition of "structure" or "structuring" provided in this paragraph. Among the factors that the finder of fact may consider in determining that a transaction has been designed to avoid a transaction reporting requirement shall be whether the person, acting alone or with others, conducted 1 or more transactions in currency, in any amount, at 1 or more financial institutions, on 1 or more days, in any manner.

(d) It is a defense to prosecution under this section that the transaction was necessary to preserve a person's right to representation as guaranteed by the Sixth Amendment of the United States Constitution or by article I, § 17 of the Delaware Constitution or that the funds were received as bona fide legal fees by a licensed attorney and at the time of their receipt, the attorney did not have actual knowledge that the funds were derived from criminal activity.

(e) A violation of subsection (a) of this section.

(f) Structuring; avoiding a transaction reporting requirement. — A person is guilty of a crime if, with the purpose to evade a transaction reporting requirement of this State or of 31 U.S.C. § 5311 et seq. or 31 C.F.R. § 103 et seq., or any rules or regulations adopted under those chapters and sections, the person:

(1) Causes or attempts to cause a financial institution, including a video lottery facility, foreign or domestic money transmitter or an authorized delegate thereof, check casher, person engaged in a trade or business or any other individual or entity required by state or federal law to file a report regarding currency transactions or suspicious transactions to fail to file a report; or

(2) Causes or attempts to cause a financial institution, including a video lottery facility, foreign or domestic money transmitter or an authorized delegate thereof, check casher, person engaged in a trade or business or any other individual or entity required by state or federal law to file a report regarding currency transactions or suspicious transactions to file a report that contains a material omission or misstatement of fact; or

(3) Structures or assists in structuring, or attempts to structure or assist in structuring, any transaction with one or more financial

institutions, including a video lottery facility, foreign or domestic money transmitters or an authorized delegate thereof, check cashers, persons engaged in a trade or business or any other individuals or entities required by state or federal law to file a report regarding currency transactions or suspicious transactions.

(g) A violation of subsection (f) of this section is a class G felony.

(h) Money laundering shall not be deemed to be a related or included offense of any other provision of this Code. Prosecution and sentencing for money laundering shall not be deemed to preclude prosecution or sentencing under any other provision of this Code.

(76 Del. Laws, c. 271 § 1; 77 Del. Laws, c. 221 §§ 6-9.)

Subchapter IV

Offenses Relating to Marriage

§ 1001 Bigamy; class G felony.

A person is guilty of bigamy when the person contracts or purports to contract a marriage with another person knowing the person has a living spouse, or knowing the other person has a living spouse.

Bigamy is a class G felony.

(11 Del. C. 1953 § 1001; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1002 Bigamy; defenses.

In any prosecution for bigamy it is a defense that, at the time of the allegedly bigamous marriage:

(1) The accused believed, after diligent inquiry, that the prior spouse was dead; or

(2) The parties to the former marriage had been living apart for 7 consecutive years throughout which the accused had no reasonable grounds to believe that the prior spouse was alive; or

(3) A court in any American or foreign jurisdiction had entered a judgment purporting to terminate or annul any prior disqualifying marriage, and the accused did not know that judgment to be invalid; or

(4) The accused otherwise reasonably believed that the accused was legally eligible to remarry.

(11 Del. C. 1953 § 1002; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1003 Bigamous marriage contracted outside the State.

Whoever, being a resident of Delaware, goes out of the State and contracts a marriage contrary to § 1001 of this title, intending to return and reside in Delaware, and returns accordingly, is guilty of bigamy.

(11 Del. C. 1953 § 1003; 58 Del. Laws, c. 497 § 1.)

§ 1004 Advertising marriage in another state.

A person is guilty of advertising marriage in another state when the person erects any sign or billboard, or publishes or distributes any material giving information relative to the performance of marriage in another state.

Advertising marriage in another state is a violation. In addition, a peace officer of this State may seize and destroy any sign, billboard or material which the officer observes in violation of this section.

(11 Del. C. 1953 § 1004; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

Subchapter V

Offenses Relating to Children and Vulnerable Adults

§ 1100 Definitions relating to children.

When used in this subchapter:

(1) "Abuse" means causing any physical injury to a child through unjustified force as defined in § 468(1)(c) of this title, torture, negligent treatment, sexual abuse, exploitation, maltreatment, mistreatment or any means other than accident.

(2) "Child" shall mean any individual less than 18 years of age. For the purposes of §§ 1108, 1109, 1110, and 1111 of this title, "child" shall also mean any individual who is intended by the defendant to appear to be 14 years of age or less.

(3) "Delinquent child" means a child who commits an act which if committed by an adult would constitute a crime.

(4) "Neglect" or "neglected child" is as defined in § 901 of Title 10.

(5) "Physical injury" to a child shall mean any impairment of physical condition or pain.

(6) "Previous pattern" of abuse and/or neglect shall mean 2 or more incidents of conduct:

a. That constitute an act of abuse and/or neglect; and

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

A conviction is not required for an act of abuse or neglect to be used in prosecution of a matter under this subchapter, including an act

used as proof of a previous pattern as defined in this paragraph. A conviction for any act of abuse or neglect, including 1 which may be relied upon to establish a previous pattern of abuse and/or neglect, does not preclude prosecution under this subchapter.

(7) "Prohibited sexual act" shall include:

a. Sexual intercourse;

b. Anal intercourse;

c. Masturbation;

d. Bestiality;

e. Sadism;

f. Masochism;

g. Fellatio;

h. Cunnilingus;

i. Nudity, if such nudity is to be depicted for the purpose of the sexual stimulation or the sexual gratification of any individual who may view such depiction;

j. Sexual contact;

k. Lascivious exhibition of the genitals or pubic area of any child;

l. Any other act which is intended to be a depiction or simulation of any act described in this paragraph.

(8) "Serious physical injury" shall mean physical injury which creates a risk of death, or which causes disfigurement, impairment of health or loss or impairment of the function of any bodily organ or limb, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.

(9) "Significant intellectual or developmental disabilities" means impairment in the intellectual or physical capacity of a child as evidenced by a discernible inability to function within the normal range of performance and behavior with regard to age, development, and environment.

(10) "Truancy" or "truant" shall refer to a pupil enrolled in grades kindergarten through 12 of a public school who has been absent from school for more than 3 school days during a school year without a valid excuse as defined in regulations of the district board of education of the school district in which the pupil is or should be enrolled pursuant to the provisions of Title 14, or where a student is enrolled in a charter school, by the board of directors of the charter school.

(11) "Visual depiction" includes, but is not limited to:

a. Any image which is recorded, stored or contained on or by developed or undeveloped photographic film, motion picture film or videotape; or

b. Data which is stored or transmitted on or by any computer, or on or by any digital storage medium or by any other electronic means which is capable of conversion into a visual image; or

c. Any picture, or computer-generated image or picture, or any other image whether made, stored or produced by electronic, digital, mechanical or other means.

(11 Del. C. 1953 § 1103; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 547 § 7; 60 Del. Laws, c. 449 § 2; 61 Del. Laws, c. 179 §§ 1, 2; 61 Del. Laws, c. 334 § 4; 63 Del. Laws, c. 290 § 8; 65 Del. Laws, c. 494 § 2; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 266 §§ 3, 4; 72 Del. Laws, c. 346 § 17; 72 Del. Laws, c. 480 §§ 1-4; 74 Del. Laws, c. 175 § 13; 76 Del. Laws, c. 136 § 8; 78 Del. Laws, c. 406 § 1; 80 Del. Laws, c. 175 § 5.)

§ 1100A Dealing in children; class E felony.

A person is guilty of dealing in a child if the person intentionally or knowingly trades, barters, buys or negotiates to trade, barter, buy or sell a child under the age of 18; provided, however, that payment of reasonable medical expenses related to the pregnancy and reasonable room and board to the providers of those services in conjunction with placement of a child for adoption in accordance with § 904(a)(2) of Title 13 shall not constitute a violation of this section.

Dealing in a child is a class E felony.

(67 Del. Laws, c. 100 § 1; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 406 § 1.)

§ 1101 Abandonment of child; class E felony; class F felony.

A person is guilty of abandonment of a child when, being a parent, guardian or other person legally charged with the care or custody of a child, the person deserts the child in any place intending permanently to abandon the child.

Abandonment of a child is a class E felony unless the child is 14 years of age or older. Abandonment of a child 14 years of age or older is a class F felony.

(11 Del. C. 1953 § 1101; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 33 § 1.)

§ 1102 Endangering the welfare of a child; class A misdemeanor; class E or G felony.

(a) A person is guilty of endangering the welfare of a child when:

(1) Being a parent, guardian or any other person who has assumed responsibility for the care or supervision of a child the person:

a. Intentionally, knowingly or recklessly acts in a manner likely to be injurious to the physical, mental or moral welfare of the child; or

b. Intentionally, knowingly or recklessly does or fails to do any act, including failing to report a missing child, with the result that the child becomes a neglected or abused child.

(2) The person knowingly contributes to the delinquency of any child less than 18 years old by doing or failing to do any act with the result, alone or in conjunction with other acts or circumstances, that the child becomes a delinquent child; or

(3) The person knowingly encourages, aids, abets or conspires with the child to run away from the home of the child's parents, guardian or custodian; or the person knowingly and illegally harbors a child who has run away from home; or

(4) The person commits any violent felony, or reckless endangering second degree, assault third degree, terroristic threatening, unlawful imprisonment second degree, or child abuse third degree against a victim, knowing that such felony or misdemeanor was witnessed, either by sight or sound, by a child less than 18 years of age who is a member of the person's family or the victim's family.

(5) The person commits the offense of driving under the influence as set forth in § 4177 of Title 21, or the offense of operating a vessel or boat under the influence as set forth in § 2302 of Title 23, and during the commission of the offense knowingly permits a child less than 18 years of age to be a passenger in or on such vehicle, vessel or boat.

(6) The person commits any offense set forth in Chapter 47 of Title 16 in any dwelling, knowing that any child less than 18 years of age is present in the dwelling at the time.

(7) The person provides or permits a child to consume or inhale any substance not prescribed to the child by a physician, as defined in §§ 4714, 4716, 4718, 4720, and 4722 of Title 16.

(b) Endangering the welfare of a child shall be punished as follows:

(1) When the death of a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class E felony;

(2) When serious physical injury to a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class G felony;

(3) When a child becomes the victim of a sexual offense as defined in § 761(g) of this title while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class G felony;

(4) In all other cases, endangering the welfare of a child is a class A misdemeanor.

(c) For the purpose of imposing the penalties prescribed in paragraph (b)(1), (b)(2) or (b)(3) of this section, it is not necessary to prove the person's state of mind or liability for causation with regard to the resulting death of or physical injury to the child or sexual offense against the child, notwithstanding the provisions of § 251, § 252, § 261, § 262, § 263 or § 264 of this title, or any other statutes to the contrary.

(11 Del. C. 1953 § 1102; 58 Del. Laws, c. 497 § 1; 61 Del. Laws, c. 334 § 6; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 451 §§ 1, 2; 71 Del. Laws, c. 424 § 3; 73 Del. Laws, c. 208 §§ 1, 2, 3; 77 Del. Laws, c. 34 § 1; 78 Del. Laws, c. 242 § 1; 78 Del. Laws, c. 406 § 2; 80 Del. Laws, c. 175 § 6.)

§ 1102A Abandonment of a baby at a hospital as defense.

In any prosecution for an offense set forth in § 1101 or § 1102 of this title, it is a defense if the person surrendered care or custody of a baby directly to an employee or volunteer of a hospital emergency department inside of the emergency department, provided that said baby is surrendered alive, unharmed and is in a safe place therein. For the purposes of this section "baby" means a child not more than 14 days old.

(73 Del. Laws, c. 187 §§ 1, 8; 75 Del. Laws, c. 376 § 1.)

§ 1103 Child abuse in the third degree; class A misdemeanor.

(a) A person is guilty of child abuse in the third degree when:

(1) The person recklessly or intentionally causes physical injury to a child through an act of abuse and/or neglect of such child; or

(2) The person recklessly or intentionally causes physical injury to a child when the person has engaged in a previous pattern of abuse and/or neglect of such child.

(b) This offense shall be a class A misdemeanor.

(78 Del. Laws, c. 406 § 3.)

§ 1103A Child abuse in the second degree; class G felony.

(a) A person is guilty of child abuse in the second degree when:

(1) The person intentionally or recklessly causes physical injury to a child who is 3 years of age or younger; or

(2) The person intentionally or recklessly causes physical injury to a child who has significant intellectual or developmental disabilities;

(3) The person intentionally or recklessly causes physical injury to a child by means of a deadly weapon or dangerous instrument.

(b) This offense shall be a class G felony.

(78 Del. Laws, c. 406 § 3.)

§ 1103B Child abuse in the first degree; class B felony.

A person is guilty of child abuse in the first degree when the person recklessly or intentionally causes serious physical injury to a child:

(1) Through an act of abuse and/or neglect of such child; or

(2) When the person has engaged in a previous pattern of abuse and/or neglect of such child.

Child abuse in the first degree is a class B felony.

(72 Del. Laws, c. 197 § 1; 78 Del. Laws, c. 406 § 3.)

§ 1104 Treatment of a child by a prayer as a defense to a charge of not providing medical care or treatment.

In any prosecution for endangering the welfare of a child, except where it is alleged to be punishable under § 1102(b)(1) or (b)(2) of this title, which is based upon an alleged failure or refusal to provide proper medical care or treatment to an ill child, it is an affirmative defense that the accused is a member or adherent of an organized church or religious group, the tenets of which prescribe prayer as the principal treatment for illness, and treated or caused the ill child to be treated in accordance with those tenets; provided, that the accused may not assert this defense when the person has violated any laws relating to communicable or reportable diseases and to sanitary matters.

(11 Del. C. 1953 § 1104; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 451 § 3.)

§ 1105 Crime against a vulnerable adult.

(a) Any person who commits, or attempts to commit, any of the crimes or offenses set forth in subsection (f) of this section against a person who is a vulnerable adult is guilty of a crime against a vulnerable adult.

(b) A crime against a vulnerable adult shall be punished as follows:

(1) If the underlying offense is an unclassified misdemeanor, or a class B misdemeanor, the crime against a vulnerable adult shall be a class A misdemeanor;

(2) If the underlying offense is a class A misdemeanor, the crime against a vulnerable adult shall be a class G felony;

(3) If the underlying offense is a class D, E, F, or G felony, the crime against a vulnerable adult shall be 1 class higher than the underlying offense.

(c) "Vulnerable adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation, the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.

(d) Notwithstanding any provision of law to the contrary, it is no defense to an offense or sentencing provision set forth in this section that the accused did not know that the victim was a vulnerable adult or that the accused reasonably believed the person was not a vulnerable adult unless the statute defining the underlying offense, or a related statute, expressly provides that knowledge that the victim is a vulnerable adult is a defense.

(e) No person shall be sentenced for both an underlying offense and a crime against a vulnerable adult. No person shall be sentenced for a violation of subsection (a) of this section if the underlying offense, as charged against the accused, has an element that the victim was 62 years of age or older or was an "adult who is impaired" as defined in § 3902 of Title 31.

(f) The following shall be underlying offenses for the purposes of this section:

Title 11:

§ 601	Offensive touching
§ 602(a)	Menacing
§ 602(b)	Aggravated Menacing
§ 603	Reckless endangering in the second degree
§ 604	Reckless endangering in the first degree
§ 605	Abuse of a pregnant female in the second degree
§ 606	Abuse of a pregnant female in the first degree
§ 611	Assault in the third degree
§ 612	Assault in the second degree
§ 621	Terroristic threatening
§ 622	Hoax device
§ 625	Unlawfully administering drugs
§ 626	Unlawfully administering controlled substance or counterfeit substance or narcotic drugs
§ 645	Promoting suicide
§ 763	Sexual harassment
§ 764	Indecent exposure in the second degree
§ 766	Incest
§ 767	Unlawful sexual contact in the third degree
§ 769	Unlawful sexual contact in the first degree
§ 770	Rape in the fourth degree
§ 774	Sexual extortion
§ 780	Female genital mutilation

§ 781	Unlawful imprisonment in the second degree
§ 782	Unlawful imprisonment in the first degree
§ 783	Kidnapping in the second degree
§ 791	Acts constituting coercion
§ 811	Criminal mischief
§ 825	Burglary in the second degree
§ 831	Robbery in the second degree
§ 835	Carjacking in the second degree
§ 841	Theft, except paragraph (c)(3)b.
§ 841A	Theft of a motor vehicle
§ 842	Theft; lost or mislaid property
§ 843	Theft; false pretense
§ 844	Theft; false promise
§ 846	Extortion
§ 848	Misapplication of property
§ 853	Unauthorized use of a vehicle
§ 854	Identity theft
§ 861	Forgery
§ 903	Unlawful use of payment card
§ 909	Securing execution of documents by deception
§ 914	Use of consumer identification information
§ 916	Home improvement fraud
§ 917	New home construction fraud, except paragraph (d)(3)
§ 1001	Bigamy
§ 1311	Harassment
§ 1312	Stalking, except paragraphs (d)(1) and (d)(2)
§ 1335	Violation of privacy
§ 1339	Adulteration
§ 1451	Theft of a firearm
Title 6:	
§ 73-604	Securities fraud.

(11 Del. C. 1953 § 1105; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 416 § 1; 78 Del. Laws, c. 175 § 106; 78 Del. Laws, c. 224 § 15; 79 Del. Laws, c. 260 § 10.)

§ 1106 Unlawfully dealing with a child; class B misdemeanor.

A person is guilty of unlawfully dealing with a child when:

(1) The person knowingly permits a child less than 18 years old to enter or remain in a place where unlawful narcotics or dangerous drugs activity is maintained or conducted; or

(2) The person knowingly permits a child less than 18 years old to enter or remain in a place where unlawful sexual activity is maintained or conducted; or

(3) The person knowingly permits a child less than 18 years old to enter or remain in a place where gambling activity which is made unlawful by this Criminal Code is maintained or conducted; or

(4) The person, being the proprietor or person in charge of any dance house, concert saloon, theater, museum or similar place of amusement, where wines or spirituous or malt liquors are sold or given away, knowingly admits or permits to remain therein any minor under the age of 18 years, unless accompanied by a parent or guardian.

Unlawfully dealing with a child is a class B misdemeanor.

(11 Del. C. 1953 § 1106; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 68 Del. Laws, c. 384 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 318 § 1; 73 Del. Laws, c. 425 §§ 1, 2.)

§ 1107 Endangering children; unclassified misdemeanor.

A person is guilty of endangering children when the person negligently abandons or leaves unattended in any place accessible to children any refrigerator, icebox or similar airtight box or container which has a locking device inoperable from within, without first unhinging and removing the door or lid thereof or detaching the locking device from the door or lid. Nothing in this section prohibits the normal use of a refrigerator, icebox or freezer for the storage of food.

Endangering children is an unclassified misdemeanor.

(11 Del. C. 1953 § 1107; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

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

A person is guilty of sexual exploitation of a child when:

(1) The person knowingly, photographs or films a child engaging in a prohibited sexual act or in the simulation of such an act, or otherwise knowingly creates a visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(2) The person knowingly, finances or produces any motion picture, video or other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(3) The person knowingly publishes or makes available for public distribution or sale by any means, including but not limited to computer, any book, magazine, periodical, pamphlet, photograph, Internet site or web page which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, or knowingly publishes or makes available for public distribution or sale by any means, including computer, any other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(4) The person permits, causes, promotes, facilitates, finances, produces or otherwise advances an exhibition, display or performances of a child engaging in a prohibited sexual act or the simulation of such an act.

Sexual exploitation of a child is a class B felony.

(61 Del. Laws, c. 179 § 3; 63 Del. Laws, c. 28 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 480 §§ 5-7.)

§ 1109 Dealing in child pornography; class B felony.

A person is guilty of dealing in child pornography when:

(1) The person knowingly ships, transmits, mails or transports by any means, including by computer or any other electronic or digital method, any "book, magazine, periodical, pamphlet, video or film depicting a child engaging in a prohibited sexual act or in the simulation of such an act, or knowingly ships, transmits, mails or transports by any means, including by computer or any other electronic or digital method, any other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act;

(2) The person knowingly receives for the purpose of selling or sells any magazine, photograph or film which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, or knowingly receives for the purpose of selling or sells any other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act;

(3) The person knowingly distributes or disseminates, by means of computer or any other electronic or digital method, or by shows or viewings, any motion picture, video or other visual depiction of a child engaging in a prohibited sexual act or the simulation of such an act. The possession or showing of such motion pictures shall create a rebuttable presumption of ownership thereof for the purposes of distribution or dissemination;

(4) The person, intentionally compiles, enters, accesses, transmits, receives, exchanges, disseminates, stores, makes, prints, reproduces or otherwise possesses any photograph, image, file, data or other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act. For the purposes of this subsection, conduct occurring outside the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or if such photograph, image, file or data was compiled, entered, accessed, transmitted, received, exchanged, disseminated, stored, made, printed, reproduced or otherwise possessed by, through or with any computer located within Delaware and the person was aware of circumstances which rendered the presence of such computer within Delaware a reasonable possibility; or

(5) The person knowingly advertises, promotes, presents, describes, transmits or distributes any visual depiction, exhibition, display or performance with intent to create or convey the impression that such visual depiction, exhibition, display or performance is or contains a depiction of a child engaging in a prohibited sexual act or in the simulation of such an act.

Unlawfully dealing in child pornography is a class B felony.

(61 Del. Laws, c. 179 § 4; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 467 §§ 1, 2; 72 Del. Laws, c. 480 §§ 8-14; 76 Del. Laws, c. 364 §§ 3, 4.)

§ 1110 Subsequent convictions of § 1108 or § 1109 of this title.

Any person convicted under § 1109 of this title who is convicted of a second or subsequent violation of that section shall, upon such second or subsequent conviction, be guilty of a class B felony. Any person convicted under § 1108 of this title who is convicted of a second or subsequent violation of that section shall, upon such second or subsequent conviction, be sentenced to life imprisonment.

(61 Del. Laws, c. 179 § 5; 67 Del. Laws, c. 130 § 8.)

§ 1111 Possession of child pornography; class F felony.

A person is guilty of possession of child pornography when:

(1) The person knowingly possesses any visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(2) The person knowingly possesses any visual depiction which has been created, adapted, modified or edited so as to appear that a child is engaging in a prohibited sexual act or in the simulation of such an act.

Possession of child pornography is a class F felony.

(67 Del. Laws, c. 202 § 1; 71 Del. Laws, c. 467 §§ 3, 4; 72 Del. Laws, c. 480 § 15.)

§ 1112 Sexual offenders; prohibitions from school zones.

(a) Any person who is a sexual offender and who:

(1) Resides on or within 500 feet of the property of any school shall be guilty of a class G felony.

(2) Loiters on or within 500 feet of the property of any school shall be guilty of a class F felony.

(b) For purposes of this section, the following definitions shall apply:

(1) "Loiter" means:

a. Standing, sitting idly, whether or not the person is in a vehicle, or remaining in or around school property, while not having reason or relationship involving custody of or responsibility for a pupil or any other specific or legitimate reason for being there; or

b. Standing, sitting idly, whether or not the person is in a vehicle, or remaining in or around school property, for the purpose of engaging or soliciting another person to engage in sexual intercourse, sexual penetration, sexual contact, or sexual harassment, sexual extortion, or indecent exposure.

(2) "Reside" means to dwell permanently or continuously or to occupy a dwelling or home as one's permanent or temporary place of abode.

(3) "School" means any preschool, kindergarten, elementary school, secondary school, vocational technical school or any other institution which has as its primary purpose the education or instruction of children under 16 years of age.

(4) "Sex offender" means as defined in § 4121 of this title.

(c) It shall not be a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place on or within 500 feet of any school property.

(70 Del. Laws, c. 279 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 467 § 8; 77 Del. Laws, c. 318 § 10; 80 Del. Laws, c. 175 § 7.)

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

(a) A person is guilty of sexual solicitation of a child if the person, being 18 years of age or older, intentionally or knowingly:

(1) Solicits, requests, commands, importunes or otherwise attempts to cause any child to engage in a prohibited sexual act; or

(2) Uses a computer, cellular telephone or other electronic device to communicate with another person, including a child, to solicit, request, command, importune, entice, encourage or otherwise attempt to cause a child to engage in a prohibited sexual act.

(3) [Repealed.]

(b) For purposes of this section, "child" means:

(1) An individual who is younger than 18 years of age; or

(2) An individual who represents himself or herself to be younger than 18 years of age; or

(3) An individual whom the person committing the offense believes to be younger than 18 years of age.

(c) For the purposes of this section, conduct occurring outside the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or in the instance of any manner of electronic communication or other communication that does not occur in person, the offense is committed in this State if such communication either originated in this State or is received in this State.

(d) For the purposes of this section, and notwithstanding any section of this title to the contrary, it is a defense to prosecution that at the time the conduct described in subsection (a) of this section occurred the person was married to the child.

(e) For the purposes of this section, it is not a defense to prosecution that at the time the conduct described in subsection (a) of this section occurred:

(1) The solicited prohibited sexual act did not occur; or

(2) The person was engaged in a fantasy or role playing at the time of the commission of the offense.

(f) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(g) Sexual solicitation of a child is a class C felony, except as provided in subsection (h) of this section.

(h) Sexual solicitation of a child is a class B felony if the defendant meets in person or attempts to meet in person with the child for the purpose of engaging in a prohibited sexual act.

(71 Del. Laws, c. 467 § 5; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 148 § 37; 79 Del. Laws, c. 262 § 1.)

§ 1112B Promoting sexual solicitation of a child.

(a) A person is guilty of promoting sexual solicitation of a child if the person, being 18 years of age or older, intentionally or knowingly:

(1) Promotes, entices, offers, encourages, solicits or otherwise attempts to cause any child to engage in a prohibited sexual act; or

(2) Uses a computer, cellular telephone, or other electronic device to communicate with another person to solicit, request, command, importune, entice, encourage or otherwise attempt to cause that person to engage in a prohibited sexual act with a child.

(b) For purposes of this section, "child" means:

(1) An individual who is younger than 18 years of age; or

(2) An individual who represents himself or herself to be younger than 18 years of age; or

(3) An individual whom the person committing the offense believes to be younger than 18 years of age.

(c) For the purposes of this section, conduct occurring outside the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or in the instance of any manner of electronic communication or other communication that does not occur in person, the offense is committed in this State if such communication either originated in this State or is received in this State.

(d) For the purposes of this section, it is not a defense to prosecution that at the time the conduct described in subsection (a) of this

section occurred:

(1) The solicited prohibited sexual act did not occur; or

(2) The person was engaged in a fantasy or role playing at the time of the commission of the offense.

(e) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(f) Promoting sexual solicitation is a class C felony except as provided in subsection (g) of this section.

(g) Promoting sexual solicitation of a child is a class B felony if the defendant meets in person or attempts to meet in person with another person and a child, or otherwise produces or delivers a child to another person, for the purpose of the person engaging in a prohibited sex act with the child.

(79 Del. Laws, c. 262 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1113 Criminal nonsupport and aggravated criminal nonsupport.

(a) A person is guilty of criminal nonsupport when that person knowingly fails, refuses or neglects to provide the minimal requirements of food, clothing or shelter for that person's minor child. Criminal nonsupport is a class B misdemeanor unless the person has previously been convicted of the same offense or the offense of aggravated criminal nonsupport, in which case it is a class A misdemeanor.

(b) A person is guilty of aggravated criminal nonsupport when, being subject to a support order, that person is delinquent in meeting, as and when due, the full obligation established by such support order and has been so delinquent for a period of at least 4 months' duration. Aggravated criminal nonsupport is a class A misdemeanor, unless any 1 of the following aggravating factors is present, in which case aggravated criminal nonsupport is a class G felony:

(1) The person has previously been convicted of aggravated criminal nonsupport;

(2) The person has been delinquent in meeting, as and when due, the full obligation established by such support order for 8 consecutive months; or

(3) The arrearage is $10,000 or more.

(c) In any prosecution for criminal nonsupport, it is an affirmative defense that the accused has fully complied with a support order that was in effect for the support of the subject person during the time period of the offense charged.

(d) In any prosecution for criminal nonsupport or aggravated criminal nonsupport, it is an affirmative defense that the accused was unable to pay or provide support, but the accused's inability to pay or provide support must be the result of circumstances over which the accused had no control. Unemployment or underemployment with justifiable excuse shall constitute a defense to any prosecution for criminal nonsupport or aggravated criminal nonsupport. Justifiable excuse may be established where the accused has been involuntarily terminated from the accused's employment or otherwise had the accused's income involuntarily reduced and is diligently and in good faith seeking reasonably appropriate employment opportunities under all the circumstances or pursuing self-employment.

(e) It is not a defense to a charge of criminal nonsupport or aggravated criminal nonsupport that the person to be supported received support from a source other than the accused.

(f) In any prosecution for criminal nonsupport or aggravated criminal nonsupport, payment records maintained by an administrative agency or court through which a support order is payable, are prima facie evidence of the support paid or unpaid and the accrued arrearages.

(g) A privilege against disclosure of confidential communications between spouses does not apply to a prosecution for criminal nonsupport or aggravated criminal nonsupport, and either spouse shall be competent to testify against the other as to any and all relevant matters.

(h) No civil proceeding in any court or administrative agency shall be a bar to a prosecution for criminal nonsupport or aggravated criminal nonsupport.

(i) The court, in its discretion, may order that any fine upon conviction for criminal nonsupport or aggravated criminal nonsupport be paid for the support of the person entitled to support. If a support order has been entered, a fine paid pursuant to this subsection shall be applied in accordance with the support order.

(j) The court shall order any person convicted of criminal nonsupport or aggravated criminal nonsupport to make restitution to the person entitled to support. The amount of restitution is the arrearages that accrued under a support order during the time period for which the person was convicted of criminal nonsupport or aggravated criminal nonsupport, or, if there is no support order, an amount determined to be reasonable by the court.

(k) As used in this section:

(1) "Child" means any child, whether over or under the age of majority, with respect to whom a support order exists.

(2) "Minor child" means any child, natural or adopted, whether born in or out of wedlock, under 18 years of age, or over 18 years of age but not yet 19 years of age if such child is a student in high school and is likely to graduate.

(3) "Support order" means a judgment, decree or order, whether temporary, final or subject to modification, for the benefit of a child, a spouse or a former spouse or a parent, issued by a court or agency, which provides for monetary support, medical support, health care, arrearages or reimbursement, whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection or otherwise.

(70 Del. Laws, c. 448 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1114 Body-piercing, tattooing or branding; consent for minors; civil and criminal penalties.

(a) No person shall knowingly or negligently tattoo, brand or perform body-piercing on a minor unless that person obtains the prior written consent of the minor's parent over the age of 18 or legal guardian to the specific act of tattooing, branding or body-piercing.

(b) No person shall tattoo, brand or perform body-piercing on another person if the other person is under the influence of alcoholic beverages, being beer, wine or spirits or a controlled substance.

(c) Consent forms required by subsection (a) of this section shall be notarized.

(d)(1) A person who violates this section shall be guilty of a class B misdemeanor for the first offense or a class A misdemeanor for a second or subsequent offense. The Court of Common Pleas shall have original jurisdiction over these offenses for those 18 years of age or older, and the Family Court shall have original jurisdiction for those under the age of 18 at the time of the offense.

(2) In any prosecution for an offense under this subsection, it shall be an affirmative defense that the individual, who has not reached the age of 18, presented to the accused identification, with a photograph of such individual affixed thereon, which identification sets forth information which would lead a reasonable person to believe such individual was 18 years of age or older. A photocopy of the identification shall be attached to the information card that a customer shall complete at the time that the tattoo, body-piercing or branding is obtained.

(e) A person who violates subsection (a) of this section is liable in a civil action for actual damages or $1,000, whichever is greater, plus reasonable court costs and attorney fees.

(f) As used in this section:

(1) "Body-piercing" means the perforation of human tissue excluding the ear for a nonmedical purpose.

(2) "Branding" means a permanent mark made on human tissue by burning with a hot iron or other instrument.

(3) "Controlled substance" means that term as defined in Chapter 47 of Title 16.

(4) "Minor" means an individual under 18 years of age who is not emancipated.

(5) "Tattoo" means 1 or more of the following:

a. An indelible mark made upon the body of another person by the insertion of a pigment under the skin.

b. An indelible design made upon the body of another person by production of scars other than by branding.

(6) Nothing in this section shall require a person to tattoo, brand or body pierce a minor with parental consent if the person does not regularly tattoo, brand or body pierce customers under the age of 18.

(71 Del. Laws, c. 243 § 1.)

§ 1114A Tongue-splitting; class A misdemeanor; class B misdemeanor; class G felony; additional civil penalties.

(a) A person is guilty of tongue-splitting in the first degree if the person is neither a physician nor a dentist, holding a valid license issued under the laws of the State of Delaware, and the person performs an act of tongue-splitting on any other person in this State. Tongue-splitting in the first degree is a class A misdemeanor.

(b) A doctor or dentist is guilty of tongue splitting in the second degree if the doctor or dentist performs an act of tongue-splitting in this State and the person on whom the act of tongue-splitting is performed is either:

(1) Under the influence of alcohol or a controlled substance; or

(2) Is a minor and the person has failed to obtain the prior written and notarized consent of the minor's adult parent or legal guardian to the specific act of tongue-splitting.

Tongue-splitting in the second degree is a class B misdemeanor.

(c) Any person found guilty of a second or subsequent violation of this section is guilty of a class G felony for such second or subsequent offense.

(d) In any prosecution for an offense under paragraph (b)(2) of this section, it shall be an affirmative defense that the accused was presented with a piece of photo identification by the person on whom the accused performed the procedure setting forth such information that would lead a reasonable person to believe the individual was the person pictured on the identification and that the person was 18 years of age or older. Failure of the accused to present a photocopy of the identification to the court when raising a defense under this subsection shall be affirmative proof that no such identification exists.

(e) An act of tongue-splitting performed in violation of subsection (a) of this section constitutes both the practice of medicine without a license and the practice of dentistry without a license. Nothing in this section shall prohibit prosecution under the provisions of either § 1134 of Title 24 relating to the practice of dentistry without a license, or § 1766 of Title 24 relating to the practice of medicine without a license, or both.

(f) In addition to the penalties set forth herein, any person who has performed an act of tongue-splitting in violation of this section shall be held liable in a civil action, brought by any person aggrieved by such act, for actual damages or $1,000, whichever is greater; plus reasonable court costs and attorney fees.

(g) For the purposes of this section "tongue-splitting" means the surgical procedure of cutting a human tongue into 2 or more parts giving it a forked or multi-tipped appearance.

(74 Del. Laws, c. 340 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1115 Definitions.

(1) "Coupon" means any card, paper, note, form, statement, ticket or other issue distributed for commercial or promotional purposes to be later surrendered by the bearer so as to receive any tobacco product without charge or at a discounted price.

(2) "Distribute" means give, deliver or sell, offer to give, deliver or sell, or cause or hire any person to give, deliver or sell, or offer to give, deliver or sell.

(3) "Health warning" means any tobacco product or tobacco substitute label mandated by federal law and intended to alert all users of such tobacco product or tobacco substitute to the health risks associated with tobacco use, including, but not limited to, warning labels imposed under the Federal Cigarette Labeling and Advertising Act (15 U.S.C. § 1331 et seq.) and the Comprehensive Smokeless Tobacco Health Education Act of 1986 (15 U.S.C. § 4401 et seq.).

(4) "Proof of age" means a driver's license or other identification with a photograph of the individual affixed thereon that indicates that the individual is 18 years old or older.

(5) "Public place" means any area to which the general public is invited or permitted, including, but not limited to, parks, streets, sidewalks or pedestrian concourses, sports arenas, pavilions, gymnasiums, public malls and property owned, occupied or operated by the State or by any agency thereof.

(6) "Sample" means a tobacco product or tobacco substitute distributed to members of the general public at no cost for the purpose of promoting the product.

(7) "Sampling" means the distribution of samples or coupons for redemption of tobacco products or tobacco substitutes to members of the general public in a public place.

(8) "Tax stamp" means any required state or federal stamp imposed for the purpose of collecting excise tax revenue.

(9) "Tobacco product" means any product that contains tobacco, including, but not limited to, cigarettes, cigars, pipe tobacco, snuff or smokeless tobacco and is intended for human consumption or use.

(10) "Tobacco store" means any retail establishment where 60% of the retail establishment's gross revenue comes from the retail sale of tobacco products and smoking paraphernalia.

(11) "Tobacco substitute" means any device employing a mechanical heating element, battery, or circuit, regardless of shape or size, that can be used to deliver nicotine into the body through inhalation and that has not been approved by the United States Food and Drug Administration for tobacco cessation or other medical purposes, or any noncombustible product containing nicotine intended for use in such a device that has not been approved by the United States Food and Drug Administration for tobacco cessation or other medical purposes.

(12) "Vending machine" means any mechanical, electronic or other similar device which automatically dispenses tobacco products or tobacco substitutes, usually upon the insertion of a coin, token or slug.

(70 Del. Laws, c. 318 § 4; 79 Del. Laws, c. 249 § 1.)

§ 1116 Sale or distribution of tobacco products or tobacco substitutes to minors.

(a) It shall be unlawful for any person to sell or distribute any tobacco product or tobacco substitute to another person who has not attained the age of 18 years or to purchase any tobacco product or tobacco substitute on behalf of another such person, except that this section shall not apply to the parent or guardian of another such person.

(b) A person engaged in the sale or distribution of tobacco products or tobacco substitutes shall have the right to demand proof of age from a prospective purchaser or recipient of such products.

(c) A person engaged in the sale or distribution of tobacco products or tobacco substitutes shall demand proof of age from a prospective purchaser or recipient of such products who is under 27 years of age.

(70 Del. Laws, c. 318 § 4; 77 Del. Laws, c. 180 § 1; 79 Del. Laws, c. 249 § 1.)

§ 1117 Notice.

A person engaged in the sale or distribution of tobacco products or tobacco substitutes shall post conspicuously at each point of purchase and each tobacco vending machine a notice stating that selling tobacco products or tobacco substitutes to anyone under 18 years of age is illegal, that the purchase of tobacco products or tobacco substitutes by anyone under 18 years of age is illegal and that a violator is subject to fines. The notice shall also state that all persons selling tobacco products or tobacco substitutes are required, under law, to check the proof of age of any purchaser of tobacco products or tobacco substitutes under the age of 27 years. The notice shall include a toll-free telephone number to the Department of Safety and Homeland Security for persons to report unlawful sales of tobacco products or tobacco substitutes. The owners of an establishment who fail to post a notice in compliance with this section shall be subject to a fine of $100.

(70 Del. Laws, c. 318 § 4; 74 Del. Laws, c. 110 § 138; 77 Del. Laws, c. 180 § 2; 79 Del. Laws, c. 249 § 1.)

§ 1118 Distribution of samples to minors.

(a) It shall be unlawful for any person to distribute tobacco product or tobacco substitute samples or coupons for subsequent receipt of free or discounted tobacco products or tobacco substitutes to another person who has not attained the age of 18 years.

(b) A person engaged in sampling shall have the right to demand proof of age from a prospective recipient of samples or of coupons for the redemption of tobacco products or tobacco substitutes.

(70 Del. Laws, c. 318 § 4; 79 Del. Laws, c. 249 § 1.)

§ 1119 Distribution of cigarettes or tobacco substitutes through vending machines.

(a) It shall be unlawful for any person to distribute or permit the distribution of tobacco products or tobacco substitutes through the operation of a vending machine in a public place, except as provided in subsection (b) of this section.

(b) Pursuant to subsection (a) of this section, a person may distribute or permit the distribution of tobacco products or tobacco substitutes through the operation of a vending machine in a taproom, tavern, tobacco shop or in premises in which a person who has not attained the age of 18 years is prohibited by law from entering. A tobacco vending machine must be operated a minimum of 25 feet from any entrance to the premises and must be directly visible to the owner or supervisor of the premises.

(c) It shall be unlawful for any person who owns, operates or manages a business establishment where tobacco products or tobacco substitutes are offered for sale over the counter at retail to maintain such products in any display accessible to customers that is not under the control of a cashier or other employee. This prohibition shall not apply to business establishments to which persons under the age of 18 are not admitted unless accompanied by an adult, tobacco vending machines as permitted under subsection (b) of this section, or tobacco stores. As used in this subsection, "under the control" means customers cannot readily access the tobacco products or tobacco substitutes without the assistance of a cashier or other employee. A display that holds tobacco products or tobacco substitutes behind locked doors shall be constructed as under the control of a cashier or other employee.

(70 Del. Laws, c. 318 § 4; 72 Del. Laws, c. 472 § 2; 77 Del. Laws, c. 180 § 3; 79 Del. Laws, c. 249 § 1.)

§ 1120 Distribution of tobacco products.

(a) No person shall distribute a tobacco product for commercial purposes unless the product is in a sealed package provided by the manufacturer with the required health warning and tax stamp.

(b) No person shall distribute any pack of cigarettes containing fewer than 20 cigarettes.

(70 Del. Laws, c. 318 § 4; 72 Del. Laws, c. 472 § 1.)

§ 1121 Penalties.

Notwithstanding any other provision of Delaware law, a person who violates § 1116, § 1118, § 1119 or § 1120 of this title shall be guilty of a violation and shall be fined $250 for the first offense, $500 for the second offense and $1,000 for the third and all subsequent offenses. Additionally, and notwithstanding any other provision of Delaware law, in imposing a penalty for a second, third or other subsequent offense under this subpart, the court may order the Department of Finance to suspend the defendant's license for sale of tobacco products, issued pursuant to § 5307 of Title 30, for a period not to exceed 6 months. Upon the suspension of such license, the court shall advise the Department of Finance of the suspension in writing. The holder of the license shall surrender the license to the Department of Finance and no refund of fees shall be paid. For purposes of this subpart, a subsequent offense is one that occurs within 12 months of a prior like offense.

(70 Del. Laws, c. 318 § 4.)

§ 1122 Affirmative defense.

In any prosecution for an offense under this subpart, it shall be an affirmative defense that the purchaser or recipient of tobacco products or tobacco substitutes who had not reached the age of 18 years presented to the accused proof of age which set forth information that would lead a reasonable person to believe that such individual was 18 years of age or older.

(70 Del. Laws, c. 318 § 4; 79 Del. Laws, c. 249 § 1.)

§ 1123 Liability of employer.

(a) If a sale or distribution of any tobacco product or tobacco substitute or coupon is made in violation of § 1116, § 1118, § 1119 or § 1120 of this title, the owner, proprietor, franchisee, store manager or other person in charge of the establishment where the violation occurred shall be guilty of the violation and shall be subject to the fine only if the retail licensee has received written notice of the provisions of §§ 1116 through 1121 of this title by the Department of Safety and Homeland Security. For purposes of determining the liability of a person who owns or controls franchises or business operations in multiple locations, for a second or subsequent violation of this subpart, each individual franchise or business location shall be deemed a separate establishment.

(b) Notwithstanding any other provision of this subpart, in any prosecution for a violation of §§ 1116, 1118 and 1120 of this title, the owner, proprietor, franchisee, store manager or other person in charge of the establishment where the alleged violation occurred shall have an affirmative defense if such person or entity can establish that prior to the date of the violation:

(1) Had adopted and enforced a written policy against selling tobacco products or tobacco substitutes to persons under 18 years of age;

(2) Had informed its employees of the applicable laws regarding the sale of tobacco products or tobacco substitutes to persons under 18 years of age;

(3) Required employees to sign a form indicating that they have been informed of and understand the written policy required herein;

(4) Required employees to verify the age of tobacco product or tobacco substitute customers by means of photographic identification; and

(5) Had established and enforced disciplinary sanctions for noncompliance.

(c) The affirmative defense established in subsection (b) of this section may be used by an owner, proprietor, franchisee, store manager

or other person in charge of the establishment no more than twice at each location within any 12-month period.

(70 Del. Laws, c. 318 § 4; 72 Del. Laws, c. 69 § 1; 74 Del. Laws, c. 110 § 138; 79 Del. Laws, c. 249 § 1.)

§ 1124 Purchase or receipt of tobacco products or tobacco substitutes by minors.

(a) It shall be unlawful for any person who has not attained the age of 18 years to purchase a tobacco product or tobacco substitute, to accept receipt of a sample, to exchange a coupon for a tobacco product or tobacco substitute, or to present or offer to another person a purported proof of age which is false, fraudulent or not actually that person's own proof of age, for the purpose of purchasing or receiving any tobacco product or tobacco substitute or redeeming a coupon for a tobacco product or tobacco substitute.

(b) A person who violates subsection (a) of this section shall be adjudged delinquent and shall for a first adjudication be fined $50 or ordered to perform 25 hours of community service work, and for a second adjudication and for all subsequent adjudications be fined $50 and ordered to perform 50 hours of community service work. A subsequent adjudication of delinquency is one that occurs within 12 months of a prior like offense.

(70 Del. Laws, c. 318 § 4; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 249 § 1.)

§ 1125 Unannounced inspections; reporting; enforcement.

(a) The Department of Safety and Homeland Security or its delegates shall be responsible for conducting annual, random, unannounced inspections at locations where tobacco products or tobacco substitutes are sold or distributed to test and ensure compliance with and enforcement of §§ 1116-1120 and 1124 of this title.

(b) Persons under the age of 18 may be enlisted by the Department of Safety and Homeland Security or its delegates to test compliance with and enforcement of §§ 1116-1120 and 1124 of this title, provided however, that such persons may be used only under the direct supervision of the Department of Public Safety, its employees or delegates and only where written parental consent has been provided.

(c) Participation in the inspection and enforcement activities of this section by a person under 18 years of age shall not constitute a violation of this subpart for the person under 18 years of age, and the person under 18 years of age is immune from prosecution thereunder, or under any other provision of law prohibiting the purchase of these products by a person under 18 years of age.

(d) The Department of Safety and Homeland Security shall adopt and publish guidelines for the use of persons under 18 years of age in inspections conducted pursuant to this section.

(e) The Department of Safety and Homeland Security may enter into an agreement with any local law-enforcement agency for delegation of the inspection and enforcement activities of this section within the local law-enforcement agency's jurisdiction. The contract shall require the inspection and enforcement activities of the local law-enforcement agency to comply with this subpart and with all applicable laws.

(f) In cases where inspection and enforcement activities have been delegated to a local law-enforcement agency pursuant to this section, any inspection or enforcement by the Department of Safety and Homeland Security in the jurisdiction of the local law-enforcement agency shall be coordinated with the local law enforcement agency.

(g) The Delaware Department of Health and Social Services shall annually submit to the Secretary of the United States Department of Health and Human Services the report required by § 1926 of the federal Public Health Service Act (42 U.S.C. § 300x-26). A copy of this report shall be available to the Governor and the General Assembly.

(70 Del. Laws, c. 318 § 4; 74 Del. Laws, c. 110 § 138; 79 Del. Laws, c. 249 § 1.)

§ 1126 Jurisdiction.

The Justices of the Peace Court shall have jurisdiction over violations of this subpart, except in the instance of violations by a person who has not attained the age of 18, in which case the Family Court shall have jurisdiction.

(70 Del. Laws, c. 318 § 4.)

§ 1127 Preemption.

The provisions of this subpart shall preempt and supersede any provisions of any municipal or county ordinance or regulation on the subject of this subpart enacted after June 30, 1996.

(70 Del. Laws, c. 318 § 4.)

Subchapter VI

Offenses Against Public Administration

§ 1201 Bribery; class E felony.

A person is guilty of bribery when:

(1) The person offers, confers or agrees to confer a personal benefit upon a public servant upon an agreement or understanding that the public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced; or

(2) The person offers, confers or agrees to confer a personal benefit upon a public servant or party officer upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office; or

(3) The person offers, confers or agrees to confer a personal benefit upon a public servant for having violated a duty as a public servant.

Bribery is a class E felony.

(11 Del. C. 1953 § 1201; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1202 Bribery; defense.

In any prosecution for bribery under § 1201(1) of this title, it is a defense that the accused offered, conferred or agreed to confer the benefit upon the public servant as a result of conduct of the public servant constituting theft or coercion or an attempt to commit theft or coercion.

(11 Del. C. 1953 § 1202; 58 Del. Laws, c. 497 § 1.)

§ 1203 Receiving a bribe; class E felony.

(a) A public servant is guilty of receiving a bribe when the public servant solicits, accepts or agrees to accept a personal benefit from another person upon an agreement or understanding that the public servant's vote, opinion, judgment, action, decision or exercise of discretion as a public servant will thereby be influenced.

(b) A public servant or party officer is guilty of receiving a bribe when the public servant solicits, accepts or agrees to accept personal benefit from another person upon an agreement or understanding that some person will or may be appointed to a public office or designated or nominated as a candidate for public office.

(c) A public servant is guilty of receiving a bribe when the public servant solicits, accepts or agrees to accept a personal benefit from another person for having violated the public servant's duty as a public servant.

Receiving a bribe is a class E felony.

(11 Del. C. 1953 § 1203; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1204 Theft or coercion no defense to receiving a bribe.

It is no defense to a prosecution for receiving a bribe that the conduct charged to constitute the offense also constitutes theft or coercion.

(11 Del. C. 1953 § 1204; 58 Del. Laws, c. 497 § 1.)

§ 1205 Giving unlawful gratuities; class A misdemeanor.

A person is guilty of giving unlawful gratuities when the person knowingly offers, confers or agrees to confer any personal benefit upon a public servant for engaging in official conduct which the public servant is required or authorized to perform, and for which the public servant is not entitled to any special or additional compensation.

Giving unlawful gratuities is a class A misdemeanor.

(11 Del. C. 1953 § 1205; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1206 Receiving unlawful gratuities; class A misdemeanor.

A public servant is guilty of receiving unlawful gratuities when the public servant solicits, accepts or agrees to accept any personal benefit for engaging official conduct which the public servant is required or authorized to perform, and for which the public servant is not entitled to any special or additional compensation.

Receiving unlawful gratuities is a class A misdemeanor.

(11 Del. C. 1953 § 1206; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1207 Improper influence; class A misdemeanor.

A person is guilty of improper influence when:

(1) The person threatens unlawful harm to any person with intent to influence the latter's decision, opinion, recommendation, vote or other exercise of discretion as a public servant, party officer or voter; or

(2) The person threatens unlawful harm to any public servant or party officer with intent to influence that public servant or party officer to violate that public servant's or party officer's duty as a public servant or party officer.

Improper influence is a class A misdemeanor.

(11 Del. C. 1953 § 1207; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1208 Defect in office no defense.

It is no defense to a prosecution for improper influence that a person whom the accused sought to influence was not qualified to act in the desired way, whether because the person had not yet assumed office, or lacked jurisdiction or for any other reason.

(11 Del. C. 1953 § 1208; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1209 Definitions relating to bribery and improper influence.

As used in §§ 1201-1208 of this title:

(1) "Harm" means loss, disadvantage or injury, or anything so regarded by the person affected, including loss, disadvantage or injury to any other person in whose welfare the person is interested.

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

(3) "Personal benefit" means gain or advantage to the recipient personally or anything regarded by the recipient as such gain or advantage, including gain or advantage conferred on the behalf or at the request of the person upon another person in whose welfare the person is interested but not a gain or advantage promised generally to a group or class of voters as a consequence of public measures which a candidate engages to support or oppose.

(4) "Public servant" means any officer or employee of the State or any political subdivision thereof, including legislators and judges, and any person participating as juror, advisor or consultant in performing a governmental function but the term does not include witnesses. This definition includes persons who are candidates for office or who have been elected to office but who have not yet assumed office.

(11 Del. C. 1953 § 1209; 58 Del. Laws, c. 497 § 1; 62 Del. Laws, c. 109 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1210 [Reserved.]

§ 1211 Official misconduct; class A misdemeanor.

A public servant is guilty of official misconduct when, intending to obtain a personal benefit or to cause harm to another person:

(1) The public servant commits an act constituting an unauthorized exercise of official functions, knowing that the act is unauthorized; or

(2) The public servant knowingly refrains from performing a duty which is imposed by law or is clearly inherent in the nature of the office; or

(3) The public servant performs official functions in a way intended to benefit the public servant's own property or financial interests under circumstances in which the public servant's actions would not have been reasonably justified in consideration of the factors which ought to have been taken into account in performing official functions; or

(4) The public servant knowingly performs official functions in a way intended to practice discrimination on the basis of race, creed, color, sex, age, handicapped status or national origin.

Official misconduct is a class A misdemeanor.

(11 Del. C. 1953 § 1211; 58 Del. Laws, c. 497 § 1; 61 Del. Laws, c. 327 § 1; 64 Del. Laws, c. 48 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1212 Profiteering; class A misdemeanor.

A public servant is guilty of profiteering when, in contemplation of official action by the public servant or by a governmental entity with which the public servant is associated, or in reliance on information to which the public servant has access in an official capacity and which has not been made public:

(1) The public servant acquires a pecuniary interest in any property, transaction or enterprise which may be affected by the official action or information; or

(2) The public servant speculates or wagers on the basis of the official action or information; or

(3) The public servant aids another person to do any of the foregoing acts, intending to gain thereby a personal benefit.

Profiteering is a class A misdemeanor.

(11 Del. C. 1953 § 1212; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1213 Definitions relating to abuse of office.

In §§ 1211 and 1212 of this title, the definitions given in § 1209 of this title apply.

(11 Del. C. 1953 § 1213; 58 Del. Laws, c. 497 § 1.)

§§ 1214 -1220. [Reserved.]

§ 1221 Perjury in the third degree; class A misdemeanor.

A person is guilty of perjury in the third degree when the person swears falsely.

Perjury in the third degree is a class A misdemeanor.

(11 Del. C. 1953 § 1221; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1222 Perjury in the second degree; class F felony.

A person is guilty of perjury in the second degree when the person swears falsely and when the false statement is:

(1) Made in a written instrument for which an oath is required by law; and

(2) Made with intent to mislead a public servant in the performance of official functions; and

(3) Material to the action, proceeding or matter involved.

Perjury in the second degree is a class F felony.

(11 Del. C. 1953 § 1222; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1223 Perjury in the first degree; class D felony.

A person is guilty of perjury in the first degree when the person swears falsely and when the false statement consists of testimony and is material to the action, proceeding or matter in which it is made.

Perjury in the first degree is a class D felony.

(11 Del. C. 1953 § 1223; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1224 Definition of "swears falsely."

A person "swears falsely" when the person intentionally makes a false statement or affirms the truth of a false statement previously made, knowing it to be false or not believing it to be true, while giving testimony or under oath in a written instrument or in an unsworn declaration made pursuant to Chapter 53A of Title 10 or § 3927 of Title 10. A false swearing in a written instrument is not complete until the instrument is delivered by its maker, or by someone acting in the maker's behalf to another person with intent that it be uttered or published as true. A person who gives an oral and/or written statement while granted the privilege of the floor during a session of the House of Representatives or Senate of the General Assembly, whether or not that person is under oath, gives testimony within the scope of this section.

(11 Del. C. 1953 § 1224; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 193 § 1; 77 Del. Laws, c. 332 § 2; 80 Del. Laws, c. 283 § 2.)

§ 1225 Inconsistent statements under oath; no need to prove one false; framing indictment; proof of irreconcilable inconsistency; conviction of lesser offense.

When a person has made 2 statements under oath which are inconsistent to the degree that 1 of them is necessarily false, and the circumstances are such that each statement, if false, is perjurious, the inability of the prosecution to establish specifically which of the 2 statements is the false one does not preclude a prosecution for perjury. The prosecution may be conducted as follows:

(1) The indictment or information may set forth the 2 statements and, without designating either, charge that 1 of them is false and perjurious.

(2) The falsity of one or the other of the 2 statements may be established by proof of their irreconcilable inconsistency. Such proof is sufficient to establish a prima facie case of falsity.

(3) If perjury of different degrees would be established by the making of the 2 statements, hypothetically assuming that each is false and perjurious, the defendant may be convicted of the lesser degree at most.

(11 Del. C. 1953 § 1225; 58 Del. Laws, c. 497 § 1.)

§§ 1226 -1230. [Reserved.]

§ 1231 Retraction of false statement as affirmative defense.

In any prosecution for perjury, it is an affirmative defense that the accused retracted the false statement in the course of the proceeding in which it was made, before the false statement substantially affected the proceeding and before it became manifest that its falsity was or would be exposed.

(11 Del. C. 1953 § 1231; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1232 Perjury; no defense.

It is no defense to a prosecution for perjury that:

(1) The accused was not competent under the relevant rules of evidence to make the false statement alleged; or

(2) The accused mistakenly believed the false statement to be immaterial; or

(3) The oath was administered or taken in an irregular manner; or

(4) A document purporting to be made upon oath and uttered or published as so made by the accused was not in fact made under oath; or

(5) The court in which the acts constituting the offense were committed lacked jurisdiction over the person of the accused or over the subject matter.

(11 Del. C. 1953 § 1232; 58 Del. Laws, c. 497 § 1.)

§ 1233 Making a false written statement; class A misdemeanor.

A person is guilty of making a false written statement when the person makes a false statement which the person knows to be false or does not believe to be true in a written instrument bearing a notice, authorized by law, to the effect that false statements therein are punishable.

Making a false written statement is a class A misdemeanor.

(11 Del. C. 1953 § 1233; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1234 Corroboration of testimony of perjury or false written statement.

In any prosecution for perjury or making a false written statement, falsity of a statement may not be established by the uncorroborated testimony of a single witness. Corroboration may be made by circumstantial evidence.

(11 Del. C. 1953 § 1234; 58 Del. Laws, c. 497 § 1.)

§ 1235 Perjury and related offenses; definitions.

(a) A statement is "material" when, regardless of its admissibility under the rules of evidence, it could have affected the course or outcome of the proceeding.

(b) "Oath" includes an affirmation and every other mode authorized by law of attesting the truth of that which is stated.

(c) An affidavit, deposition or other written instrument is one for which an "oath is required by law" when, absent an oath, it does not or would not, according to statute or appropriate regulatory provisions, have legal efficacy in a court of law or before any public or governmental body, agency or public servant to whom it is or might be submitted.

(d) "Public servant" has the meaning given in § 1209(4) of this title.

(e) "Swear" means to state under oath.

(f) "Testimony" means an oral statement made under oath in a proceeding before any court, body, agency, public servant or other person authorized to conduct the proceeding and to administer the oath or cause it to be administered.

(11 Del. C. 1953 § 1235; 58 Del. Laws, c. 497 § 1.)

§§ 1236 -1238. [Reserved.]

§ 1239 Wearing a disguise during the commission of a felony; class E felony.

(a) A person who wears a hood, mask or other disguise during the commission of any felony is guilty of wearing a disguise during the commission of a felony. Wearing a disguise during the commission of a felony is a class E felony.

(b) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted during which the person was wearing a disguise is a lesser included felony of the one originally charged.

(70 Del. Laws, c. 372 § 1.)

§ 1240 Terroristic threatening of public officials or public servants; class G felony.

(a) A person is guilty of terroristic threatening of a public official or public servant when the person threatens to commit any crime likely to result in death or in serious injury to a public official or public servant during or because of the public official's or public servant's exercise of the official's or servant's official functions.

(b) "Public official or public servant" includes any elected official, appointed official, officer or employee of the State or any political subdivision thereof, any judge or other judicial officer, any person participating as a juror, or any person acting as an advisor, contractor or consultant in performing a governmental function. "Public official or public servant" shall include persons who are candidates for office or who have been elected to office, but who have not yet assumed office. For the purposes of this section "public official or public servant" also includes any person who formerly held a position as a public official or public servant.

(c) Terroristic threatening of a public official or public servant is a class G felony.

(70 Del. Laws, c. 551 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 176 § 13; 74 Del. Laws, c. 31 § 1.)

§ 1241 Refusing to aid a police officer; class B misdemeanor.

A person is guilty of refusing to aid a police officer when, upon command by a police officer identifiable or identified by the officer as such, the person unreasonably fails or refuses to aid the police officer in effecting an arrest, or in preventing the commission by another person of any offense.

Refusing to aid a police officer is a class B misdemeanor.

(11 Del. C. 1953 § 1241; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1242 Limitation of civil liability for aiding a police officer.

(a) A person who complies with § 1241 of this title by aiding a police officer, upon command, to affect an arrest or prevent the commission of an offense, shall not be held liable to any person for any damages resulting therefrom; provided, that the person employs means which would have been employed by a reasonable person under the circumstances known to the person at the time.

(b) A duly licensed physician, medical technician or registered nurse requested to withdraw blood from a person by a police officer so as to prevent the loss of evidence of blood alcohol content or the presence of drugs in the blood stream, and a hospital employing such physician, technician or nurse shall not be liable for civil damages for any acts or omissions arising out of the taking of such sample, or the reporting of the results to law-enforcement officials.

(11 Del. C. 1953 § 1242; 58 Del. Laws, c. 497 § 1; 63 Del. Laws, c. 88 § 7; 70 Del. Laws, c. 186 § 1.)

§ 1243 Obstructing fire-fighting operations; class A misdemeanor.

A person is guilty of obstructing fire-fighting operations when the person intentionally and unreasonably obstructs the efforts of any firefighter in extinguishing a fire, or prevents or dissuades another person from extinguishing or helping to extinguish a fire.

Obstructing fire-fighting operations is a class A misdemeanor.

(11 Del. C. 1953 § 1243; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1244 Hindering prosecution; class A misdemeanor.

(a) A person is guilty of hindering prosecution when, with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person whom the person accused of hindering prosecution knows has committed acts constituting a crime, or is being sought by law-enforcement officers for the commission of a crime, the person accused of hindering prosecution:

(1) Harbors or conceals the person; or

(2) Warns the person of impending discovery or apprehension; or

(3) Provides the person with money, transportation, weapon, disguise or other means of avoiding discovery or apprehension; or

(4) Prevents or obstructs, by means of force, intimidation or deception, anyone from performing an act which might aid in the discovery or apprehension of the person or in the lodging of a criminal charge against the person; or

(5) Suppresses, by an act of concealment, alteration or destruction, any physical evidence which might aid in the discovery or apprehension of the person or in the lodging of a criminal charge against the person; or

(6) Aids the person to protect or profit expeditiously from an advantage derived from the person's crime.

(b) Hindering prosecution is a class G felony if the person commits any of the acts set forth in subsection (a) of this section with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person whom that person knows committed acts constituting a felony, or is being sought by law-enforcement officers for the commission of a felony.

(c) Hindering prosecution is a class A misdemeanor if the person commits any of the acts set forth in subsection (a) of this section with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person whom that person knows committed acts constituting a crime other than a felony, or is being sought by law-enforcement officers for the commission of a crime other than a felony.

(11 Del. C. 1953 § 1244; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 52 §§ 1, 2; 70 Del. Laws, c. 186 § 1.)

§ 1245 Falsely reporting an incident; class A misdemeanor.

A person is guilty of falsely reporting an incident when, knowing the information reported, conveyed or circulated is false or baseless, the person:

(1) Initiates or circulates a false report or warning of or impending occurrence of a fire, explosion, crime, catastrophe or emergency under circumstances in which it is likely that public alarm or inconvenience will result or that fire-fighting apparatus, ambulance or a rescue vehicle might be summoned; or

(2) Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion or other catastrophe or emergency which did not in fact occur or does not in fact exist; or

(3) Reports to a law-enforcement officer or agency:

a. The alleged occurrence of an offense or incident which did not in fact occur; or

b. An allegedly impending occurrence of an offense or incident which is not in fact about to occur; or

c. False information relating to an actual offense or incident or to the alleged implication of some person therein; or

d. The alleged abduction of a child which would generate the activation of a state-wide and interstate alert response and law-enforcement broadcast when such abduction has not, in fact, occurred.

(4) Without just cause, calls or summons by telephone, fire alarm system or otherwise, any fire-fighting apparatus, ambulance or rescue truck.

Falsely reporting an incident is a class A misdemeanor, unless the defendant has violated this section previously, in which case it shall be a class G felony. In addition to the penalties otherwise authorized by law, any person convicted of an offense in violation of this section shall pay a fine of not less than $500, or less than $1,000 for a violation of paragraph (3)d. of this section, which fine cannot be suspended and be sentenced to perform a minimum of 100 hours of community service, and shall be required to reimburse the State, or other responding or other investigating governmental agency, for any expenses expended in the investigation and/or response to the incident falsely reported.

(11 Del. C. 1953 § 1245; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 469 § 1; 60 Del. Laws, c. 542 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 412 § 1; 73 Del. Laws, c. 87 § 1; 73 Del. Laws, c. 255 § 2; 75 Del. Laws, c. 86 §§ 1, 2.)

§ 1245A Providing a false statement to law enforcement; class G felony; class A misdemeanor.

(a) A person is guilty of providing a false statement to law enforcement when, with intent to prevent, hinder or delay the investigation of any crime or offense by a law-enforcement officer or agency, the person knowingly provides any false written or oral statement to the law-enforcement officer or agency when such statement is material to the investigation.

(b) As used in this section:

(1) A "statement" is any oral or written assertion and includes, but is not limited to, any oral utterance, any written document or instrument, any computer-generated document or instrument, any police report, or any representation that a person makes under circumstances evidencing an intent that such be used or knowledge that a law-enforcement officer or agency may use such as an assertion of fact.

(2) A statement is "false" when such statement contains untrue, incomplete or misleading information concerning any fact or thing

material to the investigation of a crime or offense by a law-enforcement officer or agency.

(3) A statement is "material" when, regardless of its eventual use or admissibility in an official proceeding, it could have affected the course or outcome of the investigation of a crime or offense by a law-enforcement officer or agency.

(4) An "official proceeding" includes any action or proceeding conducted by or before a legally constituted judicial, administrative or other governmental agency or official, in which evidence or testimony of witnesses may properly be received.

(c) Providing a false statement to law enforcement is a class G felony if the crime or offense being investigated is a felony.

(d) Providing a false statement to law enforcement is a class A misdemeanor if the crime or offense being investigated is other than a felony.

(78 Del. Laws, c. 283 § 1.)

§ 1246 Compounding a crime; class A misdemeanor.

A person is guilty of compounding a crime when:

(1) The person solicits, accepts or agrees to accept any benefit from a person upon any representation or pretense that criminal prosecution of such person shall be dropped, withheld or abandoned, or the sentence thereon reduced, or upon any promise to assert pretended influence to cause such criminal prosecution to be dropped, withheld or abandoned or the sentence thereon reduced; or

(2) The person offers, confers or agrees to confer any benefit upon another person upon an agreement or understanding that the other person will refrain from initiating a prosecution for a crime.

Compounding a crime is a class A misdemeanor.

(11 Del. C. 1953 § 1246; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1247 Defense to compounding a crime.

In any prosecution for compounding a crime, it is an affirmative defense that the benefit did not exceed the amount which the accused believed to be due as restitution or indemnification for harm caused by the crime.

(11 Del. C. 1953 § 1247; 58 Del. Laws, c. 497 § 1.)

§ 1248 Obstructing the control and suppression of rabies.

(a) A person is guilty of obstructing the control and suppression of rabies when the person violates any lawful order of authorized state employees, or their agents, in the enforcement of laws to control and suppress rabies, pursuant to Chapter 82 of Title 3, or prevents or dissuades another person from complying with such orders.

(b) Obstructing the control and suppression of rabies is a Class B misdemeanor. However, obstructing the control and suppression of rabies in a place and at a time when a state of emergency with respect to rabies has been declared pursuant to § 8211 of Title 3 is a class E felony.

(66 Del. Laws, c. 247 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1249 Abetting the violation of driver's license restrictions.

(a) It shall be unlawful for any person to blow into an ignition interlock device, or to start a motor vehicle equipped with such a device, for the purpose of providing an operable motor vehicle to a person whose driving privilege is restricted.

(b) It shall be unlawful for any person to request or solicit any other person to blow into an ignition interlock device, or to start a motor vehicle equipped with such device, for the purpose of providing an operable motor vehicle to a person whose driving privilege is restricted.

(c) It shall be unlawful to tamper with, or to circumvent the operation of, any ignition interlock device.

(d) A violation of this section shall be a class A misdemeanor; provided, however, that a second or subsequent conviction of a violation of this section shall be a class G felony. Where a person violates this section, and such violation is a direct cause of the subsequent death of any person, such violation of this section shall be a class G felony. The Superior Court shall have jurisdiction over all violations of this section.

(67 Del. Laws, c. 437 § 5; 68 Del. Laws, c. 125 § 6; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 353 § 1.)

§ 1250 Offenses against law-enforcement animals.

(a) Harassment of law-enforcement animals. —

(1) A person is guilty of harassment of a law-enforcement animal when such person intentionally harasses, taunts, menaces, challenges or alarms a law-enforcement animal in such a manner as is likely to provoke from such animal a violent, defensive or threatening response, such as lunging, baring of teeth, kicking, spinning or jumping, if such response from the animal causes alarm, distress, fear or risk of injury to any person or to the animal.

(2) Harassment of a law-enforcement animal is an unclassified misdemeanor.

(b) Assault in the second degree against a law-enforcement animal. —

(1) A person is guilty of assault in the second degree against a law-enforcement animal when such person intentionally or recklessly engages in conduct which creates a substantial risk of physical injury or death to a law-enforcement animal, including, but not limited to, beating, poisoning or torturing such animal.

(2) Assault in the second degree against a law-enforcement animal is a class A misdemeanor.

(c) Assault in the first degree against a law-enforcement animal. —

(1) A person is guilty of assault in the first degree against a law-enforcement animal when such person intentionally or recklessly causes serious physical injury or death to such law-enforcement animal.

(2) Assault in the first degree against a law-enforcement animal is a class D felony.

(d) "Law-enforcement animal" defined. — For purposes of this section, the words "law-enforcement animal" shall mean any animal, including, but not limited to, canines, K-9 dogs and horses utilized by any law-enforcement officer, including any corrections officer, in the performance of such officer's duties.

(68 Del. Laws, c. 116 § 2; 70 Del. Laws, c. 54 § 1.)

§ 1251 Escape in the third degree; class A misdemeanor.

A person is guilty of escape in the third degree when the person escapes from custody, including placement in nonsecure facilities by the Division of Youth Rehabilitative Services.

Escape in the third degree is a class A misdemeanor.

(11 Del. C. 1953 § 1251; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 93 § 1.)

§ 1252 Escape in the second degree; class G felony.

A person is guilty of escape in the second degree when the person escapes from a detention facility or from the custody of the Department of Health and Social Services or the Department of Correction.

Escape in the second degree is a class G felony.

(11 Del. C. 1953 § 1252; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 547 § 8; 63 Del. Laws, c. 168 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1253 Escape after conviction; class B felony; class C felony; class D felony.

A person shall be guilty of escape after conviction if such person, after entering a plea of guilty or having been convicted by the court, escapes from a detention facility or other place having custody of such person or from the custody of the Department of Health and Social Services or the Department of Correction.

Escape after conviction shall be a class D felony; provided, however, that if the defendant uses force or the threat of force against another person or possesses a deadly weapon at the time of escape, it shall be a class C felony. If the defendant inflicts injury upon another person during the escape or from the time of escape until such person is again in custody, it shall be a class B felony. Any sentence imposed upon conviction of escape after conviction shall not run concurrently with any other sentence.

(11 Del. C. 1953 § 1253; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 547 § 8; 63 Del. Laws, c. 168 § 2; 67 Del. Laws, c. 130 § 8; 67 Del. Laws, c. 350 § 36; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 67 § 1.)

§ 1254 Assault in a detention facility; penalty; class B and class D felony.

(a) Any person who, being confined in a detention facility, intentionally causes physical injury to a correctional officer, other state employee of a detention facility acting in the lawful performance of duties, any other person confined in a detention facility or any other person at a detention facility or other place having custody of such person shall be guilty of a class D felony.

Notwithstanding Chapter 45 of this title, any person convicted for a violation of this subsection shall be imprisoned for a mandatory minimum period of 2 years which shall commence upon final judgment of conviction. Such sentence shall not be suspended nor shall the defendant be eligible for parole or probation.

(b) Any person who, being confined in a detention facility, intentionally causes serious physical injury to a correctional officer, other state employee of a detention facility acting in the lawful performance of duties, any other person confined in a detention facility or any other person at a detention facility or other place having custody of such person shall be guilty of a class B felony.

Notwithstanding Chapter 45 of this title, any person convicted for a violation of this subsection shall be imprisoned for a mandatory minimum period of 3 years which shall commence upon final judgment of conviction. Such sentence shall not be suspended nor shall the defendant be eligible for parole or probation.

(c) Any person who, being confined in a detention facility, intentionally strikes with urine, feces or other bodily fluid a correctional officer or other State employee of a detention facility acting in the lawful performance of duties or any other person at a detention facility or other place having custody of such person, other than another person confined at a detention facility shall be guilty of a class D felony.

Notwithstanding Chapter 45 of this title, any person convicted for a violation of this subsection shall be imprisoned for a mandatory minimum period of 1 year, which shall commence upon final conviction. Such sentence shall not be suspended nor shall the defendant be eligible for parole or probation.

When charged with a violation of this subsection, the defendant shall be tested for diseases transmittable through bodily fluids, the cost of such tests to be assessed as costs upon conviction. The results of such tests shall be provided only to the Attorney General, the victim of the assault, the defendant and the Department's medical care provider.

(d) The execution and operation of the sentence for any other crime causing such original confinement shall, upon the commencement of the sentence for a violation of this section, be placed in suspension, to be continued only after completion of the sentence for the violation of this section.

(59 Del. Laws, c. 247 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 88 §§ 1-3; 72 Del. Laws, c. 12 §§ 1-3.)

§ 1256 Promoting prison contraband; class F felony; class A misdemeanor.

A person is guilty of promoting prison contraband when:

(1) The person knowingly and unlawfully introduces any contraband into a detention facility; or

(2) The person possesses with intent to deliver any contraband to any person confined within a detention facility; or

(3) Being a person confined in a detention facility, the person knowingly and unlawfully makes, obtains or possesses any contraband.

Promoting prison contraband is a class A misdemeanor except that if the prison contraband is a deadly weapon or any mobile, phone, cellular telephone, or other prohibited electronic device of any kind, it is a class F felony.

(11 Del. C. 1953 § 1256; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 367 § 1.)

§ 1257 Resisting arrest with force or violence, class G felony; resisting arrest, class A misdemeanor.

(a) A person is guilty of resisting arrest with force or violence when:

(1) The person intentionally prevents or attempts to prevent a peace officer from effecting an arrest or detention of the person or another person by use of force or violence towards said peace officer; or

(2) The person intentionally flees from a peace officer, who is effecting an arrest or detention of the person, by use of force or violence towards said peace officer; or

(3) While a peace officer is effecting an arrest or detention of a person, the person causes physical injury to the peace officer.

Resisting arrest with force or violence is a class G felony.

(b) A person is guilty of resisting arrest when the person intentionally prevents or attempts to prevent a peace officer from effecting an arrest or detention of the person or another person or intentionally flees from a peace officer who is effecting an arrest or detention of the person.

Resisting arrest is a class A misdemeanor.

(11 Del. C. 1953 § 1257; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 310 §§ 1-3; 77 Del. Laws, c. 266 § 1; 79 Del. Laws, c. 259 § 1.)

§ 1257A Use of an animal to avoid capture, class G felony; "class A misdemeanor."

(a) A person is guilty of using an animal to avoid capture when, with the intent to prevent, hinder or delay the apprehension of a wanted person, including themselves, they release any animal against a law-enforcement or other authorized person to make arrests under Delaware law.

(b) Use of an animal to avoid capture is a class G felony:

(1) If the person commits any of the acts set forth in subsection (a) of this section with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person whom that person knows committed acts constituting a felony, or is being sought by law-enforcement officers for the commission of a felony, or

(2) If the animal injures the law-enforcement officer.

(c) Use of an animal to avoid capture is a class A misdemeanor if the person commits any of the acts set forth in subsection (a) of this section with intent to prevent, hinder or delay the discovery or apprehension of, or the lodging of a criminal charge against, a person whom that person knows committed acts constituting a crime other than a felony, or is being sought by law-enforcement officers for the commission of a crime other than a felony.

(71 Del. Laws, c. 248 § 1.)

§ 1258 Escape and offenses relating to custody; definitions.

As used in §§ 1251-1257 of this title:

(1) "Contraband" means any intoxicating liquor or drug prohibited under Chapter 47 of Title 16, except as prescribed by a physician for medical treatment, tobacco, nicotine products, any money without the knowledge or consent of the Department of Health and Social Services, any deadly weapon or part thereof or any instrument or article which may be used to effect an escape.

(2) "Custody" means restraint by a public servant pursuant to an arrest, detention or an order of a court.

(3) "Detention facility" means any place used for the confinement of a person:

a. Charged with or convicted of an offense; or

b. Charged with being a delinquent child as defined in § 901 of Title 10; or

c. Held for extradition or as a material witness; or

d. Otherwise confined pursuant to an order of a court.

(4) "Escape" means departure from the place in which the actor is held or detained with knowledge that such departure is unpermitted.

(5) "Other place having custody of such person" includes, but is not limited to, any building, facility, structure, vehicle or property in which a person may be placed while in custody, whether temporarily or permanently and regardless of whether such building, facility, structure, vehicle or property is owned or controlled by the Department of Correction or any other state agency.

(11 Del. C. 1953 § 1258; 58 Del. Laws, c. 497 § 1; 72 Del. Laws, c. 12 § 4; 79 Del. Laws, c. 367 § 1.)

§ 1259 Sexual relations in detention facility; class G felony.

A person is guilty of sexual relations in a detention facility when, being an employee working at a detention facility, a contractor or employee of a contractor at a detention facility, or a volunteer at a detention facility, the person engages in consensual sexual intercourse or sexual penetration with a person in custody on the premises of a detention facility. Violation of this section shall be a class G felony.

(62 Del. Laws, c. 282 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 241 § 1.)

§ 1260 Misuse of prisoner mail; class A misdemeanor; class G felony.

A person is guilty of misuse of prisoner mail when being a person in custody in a state detention facility, or in the custody of the Department of Health and Social Services or the Department of Correction, that person intentionally:

(1) Communicates by mail with a person not in custody in a manner which the person in custody knows is likely to cause inconvenience, annoyance or alarm; or

(2) Designates a written communication as legal mail knowing that said written communication is wholly unrelated to any actual or potential legal matter or to the administration of justice.

Misuse of prisoner mail is a class A misdemeanor unless the person has previously been convicted under this section, in which case it is a class G felony.

(70 Del. Laws, c. 480 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1261 Bribing a witness; class E felony.

A person is guilty of bribing a witness when the person offers, confers or agrees to confer any benefit upon a witness or a person about to be called as a witness in any official proceeding upon an agreement or understanding that:

(1) The testimony of the witness will thereby be influenced; or

(2) The witness will be absent from, or otherwise avoid or seek to avoid appearing or testifying at, the official proceeding.

Bribing a witness is a class E felony.

(11 Del. C. 1953 § 1261; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1262 Bribe receiving by a witness; class E felony.

A witness or a person about to be called as a witness in any official proceeding is guilty of bribe receiving by a witness when the witness solicits, accepts or agrees to accept any benefit from another person upon an agreement or understanding that:

(1) The witness's testimony will thereby be influenced; or

(2) The witness will be absent from, or otherwise avoid or seek to avoid appearing or testifying at, the official proceeding.

Bribe receiving by a witness is a class E felony.

(11 Del. C. 1953 § 1262; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1263 Tampering with a witness; class E felony.

A person is guilty of tampering with a witness when:

(1) The person knowingly induces, influences or impedes any witness or victim by false statement, fraud or deceit, with intent to affect the testimony or availability of such witness; or

(2) The person intentionally causes physical injury to any party or witness or intentionally damages the property of any party or witness on account of past, present or future attendance at any court proceeding or official proceeding of this State or on account of past, present, or future testimony in any action pending therein; or

(3) The person knowingly intimidates a witness or victim under circumstances set forth in subchapter III of Chapter 35 of this title.

Tampering with a witness is a class E felony.

(11 Del. C. 1953 § 1263; 58 Del. Laws, c. 497 § 1; 63 Del. Laws, c. 20 § 1; 63 Del. Laws, c. 275 §§ 1, 2; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1263A Interfering with child witness.

(a) A person commits an offense if, intending to interfere with or prevent the prosecution of any person, the person intentionally or knowingly:

(1) Removes a child from the county of residence of the child knowing that the child is or is likely to become a witness in a criminal case in the county of residence; or

(2) Refuses or fails to produce a child in the person's custody before a court in which there is pending a criminal case in which the child is a witness; or

(3) Confers or offers or agrees to confer a benefit on another person in order to:

a. Cause a child to be removed from the county of residence of the child, knowing the child is or is likely to become a witness in a criminal case in the county of residence; or

b. Cause a person in custody of a child to refuse or fail to produce the child before a court in which there is pending a criminal case in which the child is a witness; or

(4) Harms or threatens to harm another person in order to:

a. Cause a child to be removed from the county of residence, knowing the child is or is likely to become a witness in a criminal

case in the county of residence; or

b. Cause a person in custody of a child to refuse to produce the child before a court in which there is pending a criminal case in which the child is a witness.

(b) For purposes of this section:

(1) The county of residence of a child is the county in which the child resides at the time of the commission of the offense being prosecuted in the criminal case in which the child is a witness;

(2) A child is in the custody of a person if the person is the parent or guardian of the child, is acting in loco parentis to the child or exercises control over the location or supervision of the child; and

(3) A criminal case is pending in a court if an indictment, information or complaint in the case has been filed with or presented to the court.

(c) "Witness" as used in this section means any natural person:

(1) Having knowledge of the existence or nonexistence of facts relating to any crime; or

(2) Whose declaration under oath is received, or has been received, as evidence for any purpose; or

(3) Who has reported any crime to any peace officer, prosecuting agency, law-enforcement officer, probation officer, parole officer, correctional officer or judicial official; or

(4) Who has been served personally or through a parent, guardian, person acting in loco parentis or other custodian, with a subpoena issued under the authority of any court of this State, or any other state or of the United States; or

(5) Who would be believed by any reasonable person to be an individual described in any paragraph of this subsection.

An offense under paragraph (a)(2), (a)(3)b. or (a)(4)b. of this section is a class E felony.

An offense under paragraph (a)(1), (a)(3)a. or (a)(4)a. of this section is a class G felony unless the child is a complaining witness, in which event the offense is a class F felony.

(65 Del. Laws, c. 110 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1264 Bribing a juror; class E felony.

A person is guilty of bribing a juror when the person offers, confers or agrees to confer any benefit upon a juror upon an agreement or understanding that the juror's vote, opinion, judgment, decision or other action as a juror will thereby be influenced.

Bribing a juror is a class E felony.

(11 Del. C. 1953 § 1264; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1265 Bribe receiving by a juror; class E felony.

A juror is guilty of bribe receiving by a juror when the juror solicits, accepts or agrees to accept any benefit from another person upon agreement or understanding that the juror's vote, opinion, judgment, decision or other action as a juror will thereby be influenced.

Bribe receiving by a juror is a class E felony.

(11 Del. C. 1953 § 1265; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1266 Tampering with a juror; class A misdemeanor.

A person is guilty of tampering with a juror when:

(1) With intent to influence the outcome of an official proceeding, the person communicates with a juror in the proceeding, except as permitted by the rules of evidence governing the proceeding; or

(2) In relation to an official proceeding pending or about to be brought before the juror, the person offers, negotiates, confers or agrees to confer any payment or benefit to the juror or to a third person in consideration for supplying any information depicting the juror's service.

For purposes of this section, a juror shall be any person who has received notice of summons to appear for jury service.

Tampering with a juror is a class A misdemeanor.

(11 Del. C. 1953 § 1266; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 158 § 1.)

§ 1267 Misconduct by a juror; class A misdemeanor.

A person is guilty of misconduct by a juror when, in relation to an official proceeding pending or about to be brought before the juror:

(1) The juror agrees to give a vote, opinion, judgment decision or report for or against any party to the action or proceeding, or

(2) The juror solicits, negotiates, accepts or agrees to accept any payment or benefit for himself or herself for a third person in consideration for supplying any information depicting the juror's service.

For purposes of this section, a juror shall be any person who has received notice of summons to appear for jury service.

Misconduct by a juror is a class A misdemeanor.

(11 Del. C. 1953 § 1267; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 323 § 1.)

§ 1268 Communications between jurors not tampering or misconduct.

Nothing in § 1266 or § 1267 of this title applies to communications between jurors in the same proceeding with regard to matters admitted as evidence in the proceeding.

(11 Del. C. 1953 § 1268; 58 Del. Laws, c. 497 § 1.)

§ 1269 Tampering with physical evidence; class G felony.

A person is guilty of tampering with physical evidence when:

(1) Intending that it be used or introduced in an official proceeding or a prospective official proceeding the person:

a. Knowingly makes, devises, alters or prepares false physical evidence; or

b. Produces or offers false physical evidence at a proceeding, knowing it to be false; or

(2) Believing that certain physical evidence is about to be produced or used in an official proceeding or a prospective official proceeding, and intending to prevent its production or use, the person suppresses it by any act of concealment, alteration or destruction, or by employing force, intimidation or deception against any person.

Tampering with physical evidence is a class G felony.

(11 Del. C. 1953 § 1269; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1270 [Reserved.]

§ 1271 Criminal contempt; class A misdemeanor; class B misdemeanor.

A person is guilty of criminal contempt when the person engages in any of the following conduct:

(1) Disorderly, contemptuous or insolent behavior, committed during the sitting of a court, in its immediate view and presence, and directly tending to interrupt its proceedings or to impair the respect due to its authority; or

(2) Breach of the peace, noise or other disturbance directly tending to interrupt a court's proceedings; or

(3) Intentional disobedience or resistance to the process, injunction or other mandate of a court; or

(4) Contumacious refusal to be sworn as a witness in any court proceeding or, after being sworn, to answer any proper interrogatory; o r

(5) Knowingly publishing a false or grossly inaccurate report of a court's proceedings; or

(6) Intentional refusal to serve as a juror; or

(7) Intentional and unexcused failure by a juror to attend a trial at which the person has been chosen to serve as a juror; or

(8) Intentional failure to appear personally on the required date, having been released from custody, with or without bail, by court order or by other lawful authority, upon condition that the person will subsequently appear personally in connection with a criminal action or proceeding.

Criminal contempt is a class A misdemeanor, except for violations of paragraph (1) of this section. A violation of paragraph (1) of this section shall be a class B misdemeanor.

(11 Del. C. 1953 § 1211; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1271A Criminal contempt of a domestic violence protective order; class A misdemeanor; class F felony [Effective until Jan. 1, 2017]

(a) A person is guilty of criminal contempt of a domestic violence protective order when the person knowingly violates or fails to obey any provision of a protective order issued by the Family Court or a court of any state, territory or Indian nation in the United States, as long as such violation or failure to obey occurred in Delaware.

(b) Criminal contempt of a domestic violence protective order is a class A misdemeanor, unless any of the elements set forth in subsection (c) of this section are met, in which case the offense shall be a class F felony.

(c) A person is guilty of felony criminal contempt of a domestic violence protective order if:

(1) Such contempt resulted in physical injury; or

(2) Such contempt involved the use or threatened use of a deadly weapon.

(d) A person found guilty of criminal contempt of a domestic violence protective order shall receive a minimum sentence of 15 days incarceration if:

(1) Such contempt resulted in physical injury; or

(2) Such contempt involved the use or threatened use of a deadly weapon; or

(3) The defendant was convicted of criminal contempt of a domestic violence protective order under this section on 2 or more occasions prior to this violation.

(e) The minimum sentence shall not be subject to suspension and no person subject to the minimum sentence shall be eligible for probation, parole, furlough or suspended custody during said sentence.

(69 Del. Laws, c. 160 § 4; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 179 § 1; 72 Del. Laws, c. 63 § 1; 76 Del. Laws, c. 117 §§ 1-4.)

§ 1271A Criminal contempt of a domestic violence protective order; class A misdemeanor; class F felony [Effective Jan. 1, 2017]

(a) A person is guilty of criminal contempt of a domestic violence protective order when the person knowingly violates or fails to obey any provision of a protective order issued by: the Family Court; a court of any state, territory, or Indian nation in the United States, as long as such violation or failure to obey occurred in Delaware; or a court of Canada, as long as such violation or failure to obey occurred in

Delaware.

(b) Criminal contempt of a domestic violence protective order is a class A misdemeanor, unless any of the elements set forth in subsection (c) of this section are met, in which case the offense shall be a class F felony.

(c) A person is guilty of felony criminal contempt of a domestic violence protective order if:

(1) Such contempt resulted in physical injury; or

(2) Such contempt involved the use or threatened use of a deadly weapon.

(d) A person found guilty of criminal contempt of a domestic violence protective order shall receive a minimum sentence of 15 days incarceration if:

(1) Such contempt resulted in physical injury; or

(2) Such contempt involved the use or threatened use of a deadly weapon; or

(3) The defendant was convicted of criminal contempt of a domestic violence protective order under this section on 2 or more occasions prior to this violation.

(e) The minimum sentence shall not be subject to suspension and no person subject to the minimum sentence shall be eligible for probation, parole, furlough or suspended custody during said sentence.

(69 Del. Laws, c. 160 § 4; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 179 § 1; 72 Del. Laws, c. 63 § 1; 76 Del. Laws, c. 117 §§ 1-4; 80 Del. Laws, c. 373 § 2.)

§ 1272 Criminal contempt; summary punishment.

A person who commits criminal contempt as defined by § 1271(1) of this title may in the discretion of the court be convicted and sentenced for that offense without further criminal proceedings during or immediately after the termination of the proceeding in which the act constituting criminal contempt occurred.

(11 Del. C. 1953 § 1272; 58 Del. Laws, c. 497 § 1.)

§ 1273 Unlawful grand jury disclosure; class B misdemeanor.

A person is guilty of unlawful grand jury disclosure when, being a grand juror, a public prosecutor, a grand jury stenographer, a grand jury interpreter, a peace officer guarding a witness in a grand jury proceeding, or a clerk, attendant, warden or other public servant having official duties in or about a grand jury room or proceeding, the person intentionally discloses to another person the nature or substance of any grand jury testimony, or any decision, result or other matter attending a grand jury proceeding which is required by law to be kept secret, except in the proper discharge of official duties or upon written order of the court.

Unlawful grand jury disclosure is a class B misdemeanor.

(11 Del. C. 1953 § 1273; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1274 Offenses relating to judicial and similar proceedings; definitions.

As used in §§ 1261-1273 of this title:

(1) "Benefit" means gain or advantage, or anything regarded by the beneficiary as gain or advantage, including benefit to any other person in whose welfare the beneficiary is interested.

(2) "Official proceeding" includes any action or proceeding conducted by or before a legally constituted judicial, legislative, administrative or other governmental agency or official, in which evidence or testimony of witnesses may properly be received.

(3) "Physical evidence" means any article, object, document, record or other thing of physical substance which is or is about to be produced or used as evidence in an official proceeding.

(11 Del. C. 1953 § 1274; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

Subchapter VII

Offenses Against Public Health, Order and Decency

§ 1301 Disorderly conduct; unclassified misdemeanor.

A person is guilty of disorderly conduct when:

(1) The person intentionally causes public inconvenience, annoyance or alarm to any other person, or creates a risk thereof by:

a. Engaging in fighting or in violent, tumultuous or threatening behavior; or

b. Making an unreasonable noise or an offensively coarse utterance, gesture or display, or addressing abusive language to any person present; or

c. Disturbing any lawful assembly or meeting of persons without lawful authority; or

d. Obstructing vehicular or pedestrian traffic; or

e. Congregating with other persons in a public place and refusing to comply with a lawful order of the police to disperse; or

f. Creating a hazardous or physically offensive condition which serves no legitimate purpose; or

g. Congregating with other persons in a public place while wearing masks, hoods or other garments rendering their faces

unrecognizable, for the purpose of and in a manner likely to imminently subject any person to the deprivation of any rights, privileges or immunities secured by the Constitution or laws of the United States of America.

(2) The person engages with at least 1 other person in a course of disorderly conduct as defined in paragraph (1) of this section which is likely to cause substantial harm or serious inconvenience, annoyance or alarm, and refuses or knowingly fails to obey an order to disperse made by a peace officer to the participants.

Disorderly conduct is an unclassified misdemeanor.

(11 Del. C. 1953 § 1301; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 §§ 23, 24; 63 Del. Laws, c. 305 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1302 Riot; class F felony.

A person is guilty of riot when the person participates with 2 or more persons in a course of disorderly conduct:

(1) With intent to commit or facilitate the commission of a felony or misdemeanor; or

(2) With intent to prevent or coerce official action; or

(3) When the accused or any other participant to the knowledge of the accused uses or plans to use a firearm or other deadly weapon.

Any other provision of this Criminal Code notwithstanding, whoever violates this section shall be guilty of a class F felony.

Any other provision of this Criminal Code or Title 10 notwithstanding, any person over 16 years old who violates this section shall be prosecuted as an adult.

(11 Del. C. 1953 § 1302; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1303 Disorderly conduct; funeral or memorial service.

(a) A person shall not do any of the following within 300 feet of the building or other location where a funeral or memorial service is being conducted, or within 1,000 feet of a funeral procession or burial:

(1) Direct abusive epithets or make any threatening gesture which the person knows or reasonably should know is likely to provoke a violent reaction by another.

(2) Disturb or disrupt the funeral, memorial service, funeral procession, or burial by conduct intended to disturb or disrupt the funeral, memorial service, funeral procession or burial.

(b) This section applies to conduct within 1 hour preceding, during and within 2 hours after a funeral, memorial service, funeral procession or burial.

(c) A person who commits a violation of this section commits:

(1) A class A misdemeanor for a first offense.

(2) A class F felony for a second or subsequent offense.

(d) This section shall not preclude any county or municipality from legislating and enforcing its own more restrictive law in this regard.

(75 Del. Laws, c. 271 § 1.)

§ 1304 Hate crimes; class A misdemeanor, class G felony, class F felony, class E felony, class D felony, class C felony, class B felony, class A felony.

(a) Any person who commits, or attempts to commit, any crime as defined by the laws of this State, and who intentionally:

(1) Commits said crime for the purpose of interfering with the victim's free exercise or enjoyment of any right, privilege or immunity protected by the First Amendment to the United States Constitution, or commits said crime because the victim has exercised or enjoyed said rights; or

(2) Selects the victim because of the victim's race, religion, color, disability, sexual orientation, gender identity, national origin or ancestry, shall be guilty of a hate crime. For purposes of this section, the term "sexual orientation" means heterosexuality, bisexuality, or homosexuality, and the term "gender identity" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.

(b) Hate crimes shall be punished as follows:

(1) If the underlying offense is a violation or unclassified misdemeanor, the hate crime shall be a class A misdemeanor;

(2) If the underlying offense is a class A, B, or C misdemeanor, the hate crime shall be a class G felony;

(3) If the underlying offense is a class C, D, E, F, or G felony, the hate crime shall be 1 grade higher than the underlying offense;

(4) If the underlying offense is a class A or B felony, the hate crime shall be the same grade as the underlying offense, and the minimum sentence of imprisonment required for the underlying offense shall be doubled.

(70 Del. Laws, c. 138 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 175 §§ 1, 2; 79 Del. Laws, c. 47 § 15.)

§§ 1305 -1310. [Reserved.]

§ 1311 Harassment; class A misdemeanor.

(a) A person is guilty of harassment when, with intent to harass, annoy or alarm another person:

(1) That person insults, taunts or challenges another person or engages in any other course of alarming or distressing conduct which serves no legitimate purpose and is in a manner which the person knows is likely to provoke a violent or disorderly response or cause a

reasonable person to suffer fear, alarm, or distress;

(2) Communicates with a person by telephone, telegraph, mail or any other form of written or electronic communication in a manner which the person knows is likely to cause annoyance or alarm including, but not limited to, intrastate telephone calls initiated by vendors for the purpose of selling goods or services;

(3) Knowingly permits any telephone under that person's control to be used for a purpose prohibited by this section;

(4) In the course of a telephone call that person uses obscene language or language suggesting that the recipient of the call engage with that person or another person in sexual relations of any sort, knowing that the person is thereby likely to cause annoyance or alarm to the recipient of the call; or

(5) Makes repeated or anonymous telephone calls to another person whether or not conversation ensues, knowing that person is thereby likely to cause annoyance or alarm.

(b) Harassment is a class A misdemeanor.

(11 Del. C. 1953 § 1311; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 316 § 3; 74 Del. Laws, c. 362 § 1; 76 Del. Laws, c. 343 §§ 1, 2.)

§ 1312 Stalking; class G felony, class F felony, class C felony.

(a) A person is guilty of stalking when the person knowingly engages in a course of conduct directed at a specific person and that conduct would cause a reasonable person to:

(1) Fear physical injury to himself or herself or that of another person; or

(2) Suffer other significant mental anguish or distress that may, but does not necessarily, require medical or other professional treatment or counseling.

(b) A violation of subsection (a) of this section is a class G felony.

(c) Stalking is a class F felony if a person is guilty of stalking and 1 or more of the following exists:

(1) The person is age 21 or older and the victim is under the age of 14; or

(2) The person violated any order prohibiting contact with the victim; or

(3) The victim is age 62 years of age or older; or

(4) The course of conduct includes a threat of death or threat of serious physical injury to the victim, or to another person; or

(5) The person causes physical injury to the victim.

(d) Stalking is a class C felony if the person is guilty of stalking and 1 or more of the following exists:

(1) The person possesses a deadly weapon during any act; or

(2) The person causes serious physical injury to the victim.

(e) Definitions. — The following terms shall have the following meaning as used in this section:

(1) "Course of conduct" means 3 or more separate incidents, including, but not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about another, or interferes with, jeopardizes, damages, or disrupts another's daily activities, property, employment, business, career, education, or medical care. A conviction is not required for any predicate act relied upon to establish a course of conduct. A conviction for any predicate act relied upon to establish a course of conduct does not preclude prosecution under this section. Prosecution under this section does not preclude prosecution under any other section of the Code.

(2) "A reasonable person" means a reasonable person in the victim's circumstances.

(f) Notwithstanding any contrary provision of § 4205 of this title, any person who commits the crime of stalking by engaging in a course of conduct which includes any act or acts which have previously been prohibited by a then-existing court order or sentence shall receive a minimum sentence of 6 months incarceration at Level V. The first 6 months of said period of incarceration shall not be subject to suspension.

(g) Notwithstanding any contrary provision of § 4205 of this title, any person who is convicted of stalking within 5 years of a prior conviction of stalking shall receive a minimum sentence of 1 year incarceration at Level V. The first year of said period of incarceration shall not be subject to suspension.

(h) In any prosecution under this law, it shall not be a defense that the perpetrator was not given actual notice that the course of conduct was unwanted; or that the perpetrator did not intend to cause the victim fear or other emotional distress.

(i) In any prosecution under this section, it is an affirmative defense that the person charged was engaged in lawful picketing.

(j) This section shall not apply to conduct which occurs in furtherance of legitimate activities of law-enforcement, private investigators, security officers or private detectives as those activities are defined in Chapter 13 of Title 24.

(68 Del. Laws, c. 250 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 316 § 1; 74 Del. Laws, c. 116 §§ 1, 2; 76 Del. Laws, c. 343 § 4.)

§ 1312A Stalking; class F felony.

Transferred to § 1312 of this title by 76 Del. Laws, c. 343, § 4, effective Oct. 14, 2008.

§ 1313 Malicious interference with emergency communications; class B misdemeanor.

(a) As used in this section:

(1) "Emergency communication" means any telephone call or any other form of communication made, transmitted or facilitated by radio, computer or any other electronic device which is intended by its maker to provide warning or information pertaining to any crime, fire, accident, disaster or risk of injury or damage to any person or property.

(2) "Emergency communications center" means any public or private facility or entity which accepts emergency communications for the purpose of notifying, dispatching, directing or coordinating law enforcement, fire, medical, paramedic, ambulance, utility or other public safety personnel.

(b) A person is guilty of malicious interference with emergency communications when the person:

(1) Intentionally prevents or hinders the initiation, making or completion of an emergency communication by another person; or

(2) Intentionally initiates or makes repeated nonemergency communications to any 911 or other emergency communications center, knowing it was thereby likely that the operations of such emergency communications center would be disrupted.

(11 Del. C. 1953 § 1313; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 73 Del. Laws, c. 87 § 2.)

§ 1314 [Reserved.]

§ 1315 Public intoxication; unclassified misdemeanor; violation.

A person is guilty of public intoxication when the person appears in a public place manifestly under the influence of alcohol or narcotics or any other drug not administered or prescribed to be taken by a physician, to the degree that the person may be in danger or endanger other persons or property, or annoy persons in the vicinity.

Public intoxication is a violation, unless the accused has been convicted of public intoxication twice before within 1 year, in which case the offense is an unclassified misdemeanor.

(11 Del. C. 1953 § 1315; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1316 Registration of out-of-state liquor agents; violation.

(a) In order to promote and protect the public safety and the peace of the community, by reason of the presence of many persons engaged in the enforcement of the laws of other states, any agent, employee, or representative of another state shall register with the Delaware Alcoholic Beverage and Tobacco Enforcement not less than 30 days in advance of each entry into a county for the purpose of observing any alcoholic beverage sales.

(b) At the time of registration the person shall provide the following information:

(1) A written statement setting forth the identity of the out-of-state official;

(2) The purpose of the intended entry into the county;

(3) The make, model and license number of each and every vehicle to be used in the conduct of any surveillance activity;

(4) The specific establishments at which surveillance will be conducted; and

(5) The specific times for surveillance of each establishment.

(c) Any person who registers shall be issued a certificate of registration which must be retained in the possession of the person during all investigative or surveillance activities.

(d) Any person who fails to register as required by this section, or who having registered violates any provision of this section, shall lose the right to register or the person's registration, as the case may be, for a period of 6 months.

(e) Any person who, during the period imposed by subsection (d) of this section, violates this section is guilty of a violation.

(f) Upon written request, the Delaware Alcoholic Beverage and Tobacco Enforcement shall release the information regarding agencies and officers who have registered under this section.

(69 Del. Laws, c. 275 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 74.)

§§ 1317 -1319. [Reserved.]

§ 1320 Loitering on property of a state-supported school, college or university; violation.

A person is guilty of loitering on property of a state-supported school, college or university when the person loiters or remains in or about the buildings or grounds of a school, college or university supported in whole or in part with state funds, not having any reason or relationship involving custody of or responsibility for a pupil or student, or any other specific, legitimate reason for being there, and not having written permission from anyone authorized to grant the same.

Any law-enforcement officer, state official or employee, the owner or occupier of such lands or property, an agent or employee of such persons, or any other person or persons whom they may call to their assistance, may arrest such loiterer, either with or without warrant, either upon the premises or in immediate flight therefrom and, if with warrant, then at any place.

Loitering on property of a state-supported school, college or university is a violation.

(11 Del. C. 1953 § 1320; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1321 Loitering; violation.

A person is guilty of loitering when:

(1) The person fails or refuses to move on when lawfully ordered to do so by any police officer; or

(2) The person stands, sits idling or loiters upon any pavement, sidewalk or crosswalk, or stands or sits in a group or congregates with others on any pavement, sidewalk, crosswalk or doorstep, in any street or way open to the public in this State so as to obstruct or hinder the free and convenient passage of persons walking, riding or driving over or along such pavement, walk, street or way, and fails to make way, remove or pass, after reasonable request from any person; or

(3) The person loiters or remains in or about a school building or grounds, not having reason or relationship involving custody of or responsibility for a pupil or any other specific or legitimate reason for being there, unless the person has written permission from the principal; or

(4) The person loiters, remains or wanders about in a public place for the purpose of begging; or

(5) The person loiters or remains in a public place for the purpose of engaging or soliciting another person to engage in sexual intercourse or deviate sexual intercourse; or

(6) The person loiters, congregates with others or prowls in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity, especially in light of the crime rate in the relevant area. Unless flight by the accused or other circumstances make it impracticable, a peace officer shall, prior to any arrest for an offense under this paragraph, afford the accused an opportunity to dispel any alarm which would otherwise be warranted, by requesting identification and an explanation of the person's presence and conduct. No person shall be convicted of an offense under this paragraph if the peace officer did not comply with the preceding sentence, or if it appears that the explanation given by the accused was true and, if believed by the peace officer at the time, would have dispelled the alarm.

Loitering is a violation.

(11 Del. C. 1953 § 1321; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 113 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1322 Criminal nuisance; unclassified misdemeanor.

A person is guilty of criminal nuisance when:

(1) By conduct either unlawful in itself or unreasonable under all the circumstances, the person knowingly or recklessly creates or maintains a condition which endangers the safety or health of others; or

(2) The person knowingly conducts or maintains any premises, place or resort where persons gather for purposes of engaging in unlawful conduct.

Criminal nuisance is an unclassified misdemeanor.

(11 Del. C. 1953 § 1322; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1323 Obstructing public passages; violation.

A person is guilty of obstructing public passages when alone or with other persons and having no legal privilege to do so, the person intentionally or recklessly renders any public passage unreasonably inconvenient or hazardous to use, or the person wilfully enters upon or tampers with or obstructs any public utility right-of-way.

Obstructing a public passage is a violation.

(11 Del. C. 1953 § 1323; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1324 Obstructing ingress to or egress from public buildings; unclassified misdemeanor.

A person is guilty of obstructing ingress to or egress from public buildings when the person knowingly prevents any person from passing through any entrance or exit to a public building, except that this section shall not apply to lawful picketing or to picketing for any lawful union objective.

Obstructing ingress to or egress from public buildings is an unclassified misdemeanor.

(11 Del. C. 1953 § 1324; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1325 Cruelty to animals; class A misdemeanor; class F felony [Effective until final publication of the regulations pursuant to 79 Del. Laws, c. 375, § 5]

(a) For the purpose of this section, the following words and phrases shall include, but not be limited to, the meanings respectively ascribed to them as follows:

(1) "Abandonment" includes completely forsaking or deserting an animal originally under one's custody without making reasonable arrangements for custody of that animal to be assumed by another person.

(2) "Animal" shall not include fish, crustacea or molluska.

(3) "Cruel" includes every act or omission to act whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.

(4) "Cruel mistreatment" includes any treatment whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.

(5) "Cruel neglect" includes neglect of an animal, which is under the care and control of the neglector, whereby pain or suffering is caused to the animal or abandonment of any domesticated animal by its owner or custodian. By way of example, cruel neglect shall also include allowing an animal to live in unsanitary conditions, such as keeping an animal where the animal's own excrement is not removed from the animal's living area and/or other living conditions which are injurious to the animal's health.

(6) "Cruelty to animals" includes mistreatment of any animal or neglect of any animal under the care and control of the neglector, whereby unnecessary or unjustifiable physical pain or suffering is caused. By way of example this includes: Unjustifiable beating of an animal; overworking an animal; tormenting an animal; abandonment of an animal; tethering of dog for 18 hours or more in any 24-hour period, except on land owned or leased by the dog's owner that is not less than 10 acres; tethering any dog for any amount of time if the dog is under 4 months of age or is a nursing mother while the offspring are present, except on land owned or leased by the dog's owner that is not less than 10 acres; and failure to feed properly or give proper shelter or veterinary care to an animal.

(7) "Custody" includes the responsibility for the welfare of an animal subject to one's care and control whether one owns it or not.

(8) "Person" includes any individual, partnership, corporation or association living and/or doing business in the State.

(9) "Proper feed" includes providing each animal with daily food and water of sufficient quality and quantity to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(10) "Proper shelter" includes providing each animal with adequate shelter from the weather elements as required to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(11) "Proper veterinary care" includes providing each animal with veterinary care sufficient to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(12) "Serious injury" shall include any injury to any animal which creates a substantial risk of death, or which causes prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(13) "Tethering" shall include fastening or restraining with a rope, chain, cord, or similar device creating a fixed radius; tethering does not include walking a dog on a leash, regardless of the dog's age.

(b) A person is guilty of cruelty to animals when the person intentionally or recklessly:

(1) Subjects any animal to cruel mistreatment; or

(2) Subjects any animal in the person's custody to cruel neglect; or

(3) Kills or injures any animal belonging to another person without legal privilege or consent of the owner; or

(4) Cruelly or unnecessarily kills or injures any animal whether belonging to the actor or another. This section does not apply to the killing of any animal normally or commonly raised as food for human consumption, provided that such killing is not cruel. A person acts unnecessarily if the act is not required to terminate an animal's suffering, to protect the life or property of the actor or another person or if other means of disposing of an animal exist which would not impair the health or well-being of that animal; or

(5) Confines an animal unattended in a standing or parked motor vehicle in which the temperature is either so high or so low as to endanger the health or safety of the animal. A law-enforcement officer, animal welfare officer, or firefighter who has probable cause to believe that an animal is confined in a motor vehicle under conditions that are likely to cause suffering, injury, or death to the animal may use reasonable force to remove the animal left in the vehicle in violation of this provision. A person removing an animal under this section shall use reasonable means to contact the owner. If the person is unable to contact the owner, the person may take the animal to an animal shelter and must leave written notice bearing his or her name and office, and the address of the location where the animal can be claimed. This provision shall not apply to the legal transportation of horses, cattle, swine, sheep, poultry, or other agricultural animals in motor vehicles designed to transport such animals. The owner of the vehicle from which the animal is rescued and the owner of the animal rescued are not liable for injuries suffered by the person rescuing the animal.

(6) Confines an animal unattended in a standing or parked motor vehicle in which the temperature is either so high or so low as to endanger the health or safety of the animal. A law-enforcement officer, animal welfare officer, or firefighter who has probable cause to believe that an animal is confined in a motor vehicle under conditions that are likely to cause suffering, injury, or death to the animal may use reasonable force to remove the animal left in the vehicle in violation of this provision. A person removing an animal under this section shall use reasonable means to contact the owner. If the person is unable to contact the owner, the person may take the animal to an animal shelter and must leave written notice bearing his or her name and office, and the address of the location where the animal can be claimed. This provision shall not apply to the legal transportation of horses, cattle, swine, sheep, poultry, or other agricultural animals in motor vehicles designed to transport such animals. The owner of the vehicle from which the animal is rescued and the owner of the animal rescued are not liable for injuries suffered by the person rescuing the animal.

Paragraphs (b)(1), (2) and (4) of this section are inapplicable to accepted veterinary practices and activities carried on for scientific research.

Cruelty to animals is a class A misdemeanor, unless the person intentionally kills or causes serious injury to any animal in violation of paragraph (b)(4) of this section or unless the animal is killed or seriously injured as a result of any action prohibited by paragraph (b)(5) of this section, in which case it is a class F felony.

(c) Any person convicted of a misdemeanor violation of this section shall be prohibited from owning or possessing any animal for 5 years after said conviction, except for animals grown, raised or produced within the State for resale, or for sale of a product thereof, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale. Any person convicted of a second or subsequent misdemeanor violation of this section shall be prohibited from owning or possessing any animal for 5 years after said conviction without exception.

A violation of this subsection is subject to a fine in the amount of $1,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of § 3035F of Title 16.

(d) Any person convicted of a felony violation of this section shall be prohibited from owning or possessing any animal for 15 years after said conviction, except for animals grown, raised or produced within the State for resale, or for sale of a product thereof, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale. Any person convicted of a second or subsequent felony violation of this section shall be prohibited from owning or possessing any animal for 15 years after said conviction without exception.

A violation of this subsection is subject to a fine in the amount of $5,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of § 3035F of Title 16.

(e) Any trained and certified animal welfare officer of the Department of Health and Social Service's Office of Animal Welfare or the Department of Agriculture may impound an animal owned or possessed in apparent violation of this section, consistent with § 3035F of Title 16.

(f) This section shall not apply to the lawful hunting or trapping of animals as provided by law.

(g) Notwithstanding any provision to the contrary, for a first offense misdemeanor violation of this section relating to animals left in motor vehicles or the tethering of dogs, a warning shall be issued.

(h) Exclusive jurisdiction of offenses under this section relating to animals left in motor vehicles or the tethering of dogs shall be in the Superior Court.

(11 Del. C. 1953 § 1325; 58 Del. Laws, c. 497 § 1; 62 Del. Laws, c. 71 §§ 1, 2; 63 Del. Laws, c. 260 § 1; 64 Del. Laws, c. 196 §§ 1-3; 67 Del. Laws, c. 130 § 8; 69 Del. Laws, c. 280 §§ 1, 2; 70 Del. Laws, c. 60 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 75 § 1; 73 Del. Laws, c. 182 §§ 1, 2; 73 Del. Laws, c. 238 §§ 1, 2; 78 Del. Laws, c. 390 §§ 1, 2; 80 Del. Laws, c. 156 §§ 1, 2; 80 Del. Laws, c. 200 § 3; 80 Del. Laws, c. 248 § 2.)

§ 1325 Cruelty to animals; class A misdemeanor; class F felony [Effective upon final publication of the regulations pursuant to 79 Del. Laws, c. 375, § 5]

(a) For the purpose of this section, the following words and phrases shall include, but not be limited to, the meanings respectively ascribed to them as follows:

(1) "Abandonment" includes completely forsaking or deserting an animal originally under one's custody without making reasonable arrangements for custody of that animal to be assumed by another person.

(2) "Animal" shall not include fish, crustacea or molluska.

(3) "Cruel" includes every act or omission to act whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.

(4) "Cruel mistreatment" includes any treatment whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.

(5) "Cruel neglect" includes neglect of an animal, which is under the care and control of the neglector, whereby pain or suffering is caused to the animal or abandonment of any domesticated animal by its owner or custodian. By way of example, cruel neglect shall also include allowing an animal to live in unsanitary conditions, such as keeping an animal where the animal's own excrement is not removed from the animal's living area and/or other living conditions which are injurious to the animal's health.

(6) "Cruelty to animals" includes mistreatment of any animal or neglect of any animal under the care and control of the neglector, whereby unnecessary or unjustifiable physical pain or suffering is caused. By way of example this includes: Unjustifiable beating of an animal; overworking an animal; tormenting an animal; abandonment of an animal; tethering of dog for 18 hours or more in any 24-hour period, except on land owned or leased by the dog's owner that is not less than 10 acres; tethering any dog for any amount of time if the dog is under 4 months of age or is a nursing mother while the offspring are present, except on land owned or leased by the dog's owner that is not less than 10 acres; and failure to feed properly or give proper shelter or veterinary care to an animal.

(7) "Custody" includes the responsibility for the welfare of an animal subject to one's care and control whether one owns it or not.

(8) "Person" includes any individual, partnership, corporation or association living and/or doing business in the State.

(9) "Proper feed" includes providing each animal with daily food and water of sufficient quality and quantity to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(10) "Proper shelter" includes providing each animal with adequate shelter from the weather elements as required to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(11) "Proper veterinary care" includes providing each animal with veterinary care sufficient to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(12) "Serious injury" shall include any injury to any animal which creates a substantial risk of death, or which causes prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(13) "Tethering" shall include fastening or restraining with a rope, chain, cord, or similar device creating a fixed radius; tethering does not include walking a dog on a leash, regardless of the dog's age.

(b) A person is guilty of cruelty to animals when the person intentionally or recklessly:

(1) Subjects any animal to cruel mistreatment; or

(2) Subjects any animal in the person's custody to cruel neglect; or

(3) Kills or injures any animal belonging to another person without legal privilege or consent of the owner; or

(4) Cruelly or unnecessarily kills or injures any animal whether belonging to the actor or another. This section does not apply to the killing of any animal normally or commonly raised as food for human consumption, provided that such killing is not cruel. A person acts unnecessarily if the act is not required to terminate an animal's suffering, to protect the life or property of the actor or another person or if other means of disposing of an animal exist which would not impair the health or well-being of that animal; or

(5) Captures, detains, transports, removes or delivers any animal known to be a domestic farm animal, pet or companion animal, or any other animal of scientific, environmental, economic or cultural value, under false pretenses to any public or private animal shelter, veterinary clinic or other facility, or otherwise causes the same through acts of deception or misrepresentation of the circumstances and disposition of any such animal; or

(6) Confines an animal unattended in a standing or parked motor vehicle in which the temperature is either so high or so low as to endanger the health or safety of the animal. A law-enforcement officer, animal welfare officer, or firefighter who has probable cause to believe that an animal is confined in a motor vehicle under conditions that are likely to cause suffering, injury, or death to the animal may use reasonable force to remove the animal left in the vehicle in violation of this provision. A person removing an animal under this section shall use reasonable means to contact the owner. If the person is unable to contact the owner, the person may take the animal to an animal shelter and must leave written notice bearing his or her name and office, and the address of the location where the animal can be claimed. This provision shall not apply to the legal transportation of horses, cattle, swine, sheep, poultry, or other agricultural animals in motor vehicles designed to transport such animals. The owner of the vehicle from which the animal is rescued and the owner of the animal rescued are not liable for injuries suffered by the person rescuing the animal.

Paragraphs (b)(1), (2) and (4) of this section are inapplicable to accepted veterinary practices and activities carried on for scientific research.

Cruelty to animals is a class A misdemeanor, unless the person intentionally kills or causes serious injury to any animal in violation of paragraph (b)(4) of this section or unless the animal is killed or seriously injured as a result of any action prohibited by paragraph (b)(5) of this section, in which case it is a class F felony.

(c) Any person convicted of a misdemeanor violation of this section shall be prohibited from owning or possessing any animal for 5 years after said conviction, except for animals grown, raised or produced within the State for resale, or for sale of a product thereof, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale. Any person convicted of a second or subsequent misdemeanor violation of this section shall be prohibited from owning or possessing any animal for 5 years after said conviction without exception.

A violation of this subsection is subject to a fine in the amount of $1,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of § 3035F of Title 16.

(d) Any person convicted of a felony violation of this section shall be prohibited from owning or possessing any animal for 15 years after said conviction, except for animals grown, raised or produced within the State for resale, or for sale of a product thereof, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale. Any person convicted of a second or subsequent felony violation of this section shall be prohibited from owning or possessing any animal for 15 years after said conviction without exception.

A violation of this subsection is subject to a fine in the amount of $5,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of § 3035F of Title 16.

(e) Any trained and certified animal welfare officer of the Department of Health and Social Service's Office of Animal Welfare or the Department of Agriculture may impound an animal owned or possessed in apparent violation of this section, consistent with § 3035F of Title 16.

(f) This section shall not apply to the lawful hunting or trapping of animals as provided by law.

(g) Notwithstanding any provision to the contrary, for a first offense misdemeanor violation of this section relating to animals left in motor vehicles or the tethering of dogs, a warning shall be issued.

(h) Exclusive jurisdiction of offenses under this section relating to animals left in motor vehicles or the tethering of dogs shall be in the Superior Court.

(11 Del. C. 1953 § 1325; 58 Del. Laws, c. 497 § 1; 62 Del. Laws, c. 71 §§ 1, 2; 63 Del. Laws, c. 260 § 1; 64 Del. Laws, c. 196 §§ 1-3; 67 Del. Laws, c. 130 § 8; 69 Del. Laws, c. 280 §§ 1, 2; 70 Del. Laws, c. 60 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 75 § 1; 73 Del. Laws, c. 182 §§ 1, 2; 73 Del. Laws, c. 238 §§ 1, 2; 78 Del. Laws, c. 390 §§ 1, 2; 79 Del. Laws, c. 375 § 4; 80 Del. Laws, c. 156 §§ 1, 2; 80 Del. Laws, c. 200 § 3; 80 Del. Laws, c. 248 § 2.)

§ 1325A The unlawful trade in dog or cat by-products; class B misdemeanor; class A misdemeanor, penalties.

(a)(1) A person is guilty of the unlawful trade in dog or cat by-products in the second degree if the person knowingly or recklessly sells, barters or offers for sale or barter, the fur or hair of a domestic dog or cat or any product made in whole or in part from the fur or hair of a domestic dog or cat.

(2) This subsection shall not apply to the sale or barter, or offering for sale or barter, of the fur or hair of a domestic dog or cat which has been cut at a commercial grooming establishment, or at a veterinary office or clinic, or for scientific research purposes.

(3) The unlawful trade in dog or cat by-products in the second degree is a class B misdemeanor.

(b)(1) A person is guilty of the unlawful trade in dog or cat by-products in the first degree if the person knowingly or recklessly sells, barters or offers for sale or barter, the flesh of a domestic dog or cat or any product made in whole or in part from the flesh of a domestic dog or cat.

(2) The unlawful trade in dog or cat by-products in the first degree is a class A misdemeanor.

(c) In addition to any other penalty provided by law, any person convicted of a violation of this section shall be:

(1) Prohibited from owning or possessing any domestic dog or cat for 15 years after said conviction, except for those grown, raised or produced within the State for resale, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale;

(2) Subject to a fine in the amount of $2,500 in any court of competent jurisdiction; and

(3) Required to forfeit any domestic dog or cat illegally owned in accordance with the provisions of Chapter 79 of Title 3.

(d) For the purposes of this section, the term "domestic dog or cat" means a dog (Canis familiaris) or cat (Felis catus or Felis domesticus) that is generally recognized in the United States as being a household pet and shall not include coyote, fox, lynx, bobcat or any other wild or commercially raised canine or feline species the fur or hair of which is recognized for use in warm clothing and outer wear by the United States Department of Agriculture and which species is not recognized as an endangered or threatened species by the United States Fish and Wild Life Service or the Delaware Department of Natural Resources and Environmental Control.

(72 Del. Laws, c. 391 § 1.)

§ 1326 Animals; fighting and baiting prohibited; class E felony.

(a) A person who owns, possesses, keeps, trains, or uses a bull, bear, dog, cock, or other animal or fowl for the purpose of fighting or baiting; or a person who is a party to or who causes the fighting or baiting of a bull, bear, dog, cock, or other animal or fowl; or a person who rents or otherwise obtains the use of a building, shed, room, yard, ground, or premises for the purpose of fighting or baiting an animal or fowl; or a person who knowingly suffers or permits the use of a building, shed, room, yard, ground, or premises belonging to the person, or that is under the person's control, for any of the purposes described in this section, is guilty of a class E felony.

(b) A person who is present at a building, shed, room, yard, ground, or premises where preparations are being made for an exhibition prohibited by subsection (a) of this section, and who knows that the exhibition is taking place or is about to take place, is guilty of a class F felony.

(c) A person who gambles on the outcome of an exhibition prohibited by subsection (a) of this section is guilty of a class F felony.

(d) All animals, equipment, devices, and money involved in a violation of this section must be forfeited to the State. Animals so forfeited must be evaluated by a duly incorporated society for the prevention of cruelty to animals, an authorized state agency, or a duly incorporated humane society in charge of animals for eligibility for adoption. After evaluation, animals may also be transferred to a rescue organization. Animals forfeited may be adopted to individuals other than the convicted person or person dwelling in the same household, who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act, or humanely disposed of according to the provisions of subchapter I of Chapter 30F of Title 16.

(e) Prosecution for any offense under this section may not be commenced after 5 years from the commission of the offense.

(f) A person convicted of a violation of this section is prohibited from owning or possessing any animal or fowl for 15 years after conviction.

(g) A fine issued as a result of a violation of this section may not be suspended.

(h) In addition to the penalties provided under this section, the court may require a person convicted of violating this section to attend and participate in an appropriate treatment program or to obtain appropriate psychiatric or psychological counseling, or both. The court may impose the costs of any treatment program or counseling upon the person convicted.

(66 Del. Laws, c. 369 § 2; 67 Del. Laws, c. 130 § 8; 67 Del. Laws, c. 350 §§ 34, 35; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 417 § 1; 73 Del. Laws, c. 238 §§ 3-5; 73 Del. Laws, c. 411 § 1; 76 Del. Laws, c. 259 §§ 1-3; 77 Del. Laws, c. 264 § 1; 79 Del. Laws, c. 374 § 3; 79 Del. Laws, c. 377 § 1.)

§ 1327 Maintaining a dangerous animal; class E felony; class F felony; class A misdemeanor.

(a) A person is guilty of maintaining a dangerous animal when such person knowingly or recklessly owns, controls or has custody over any dangerous animal which causes death, serious physical injury or physical injury to another person or which causes death or serious injury to another animal.

(b) For the purposes of this section, "dangerous animal" means any dog or other animal which:

(1) Had been declared dangerous or potentially dangerous by the Dog Control Panel pursuant to subchapter III of Chapter 17 of Title 7;

(2) Had been trained for animal fighting, or that has been used primarily or occasionally for animal fighting;

(3) Had been intentionally trained so as to increase its viciousness, dangerousness or potential for unprovoked attacks upon human beings or other animals; or

(4) Has an individualized and known propensity, tendency or disposition, specific to the individual dog, for viciousness, dangerousness or unprovoked attacks upon human beings or other animals.

(c) Maintaining a dangerous animal shall be punished as follows:

(1) When a dangerous animal causes the death of a person, maintaining a dangerous animal is a class E felony;

(2) When a dangerous animal causes serious physical injury to a person, maintaining a dangerous animal is a class F felony;

(3) When a dangerous animal causes physical injury to a person or when a dangerous animal causes death or physical injury to another animal, maintaining a dangerous animal is a class A misdemeanor.

(d) This section shall not apply to any dog or other animal trained or owned or used by any law-enforcement agency or any person, company, agency or entity licensed pursuant to Chapter 13 of Title 24.

(e) In any prosecution under this section it shall be an affirmative defense that at the time of the attack during which physical injury, serious physical injury or death was inflicted upon a person:

(1) The victim of the attack was in the course of committing criminal trespass or any violent felony as set forth in this title or was attempting to commit criminal trespass or said violent felony;

(2) The victim had provoked the attack by committing cruelty to animals as defined in § 1325 of this title upon said dangerous animal or by inflicting physical injury upon said dangerous animal; or

(3) The owner or custodian of the dangerous animal was in full compliance with the applicable provisions of subchapter III of Chapter 17 of Title 7, including the requirements pertaining to confinement, restraint and muzzling.

(f) In any prosecution under this section it shall be an affirmative defense that at the time of the attack during which physical injury or death was inflicted upon an animal:

(1) The animal which was injured or killed had entered onto the real property of the owner or custodian of the dangerous animal without permission;

(2) The animal which was injured or killed had provoked the attack by menacing, biting or attacking the dangerous animal or its owner or custodian; or

(3) The owner or custodian of the dangerous animal was in full compliance with the applicable provisions of subchapter III of Chapter 17 of Title 7, including the requirements pertaining to confinement, restraint and muzzling.

(73 Del. Laws, c. 411 § 2.)

§§ 1328 , 1329. [Reserved.]

§ 1330 Smoking on trolleys and buses.

(a) Whoever in any trackless trolley coach, or gasoline or diesel-engine-propelled bus being used as a public conveyance for carrying passengers within this State, smokes or carries a lighted cigarette, cigar or pipe shall be fined not less than $5.00 nor more than $25.

(b) Justices of the peace shall have jurisdiction of offenses under this section.

(60 Del. Laws, c. 66 § 1; 66 Del. Laws, c. 369 § 2; 73 Del. Laws, c. 411 § 2.)

§ 1331 Desecration; class A misdemeanor.

A person is guilty of desecration if the person intentionally defaces, damages, pollutes or otherwise physically mistreats any public monument or structure, any place of worship, the national flag or any other object of veneration by the public or a substantial segment thereof, in a public place and in a way in which the actor knows will outrage the sensibilities of persons likely to observe or discover the actions.

Desecration is a class A misdemeanor.

(11 Del. C. 1953 § 1331; 58 Del. Laws, c. 497 § 1; 65 Del. Laws, c. 463 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1332 Abusing a corpse; class A misdemeanor.

A person is guilty of abusing a corpse when, except as authorized by law, the person treats a corpse in a way that a reasonable person knows would outrage ordinary family sensibilities.

Abusing a corpse is a class A misdemeanor.

(11 Del. C. 1953 § 1332; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1333 Trading in human remains and Associated Funerary Objects.

(a) As used in this section:

(1) "Associated funerary objects" means an item of human manufacture or use that is intentionally placed with human remains at the time of interment in a burial site or later as a part of a death rite or ceremony of a culture, religion or group. "Associated funerary object" includes any gravestone, monument, tomb or other structure in or directly associated with a burial site.

(b) A person is guilty of trading in human remains and associated funerary objects when the person knowingly sells, buys or transports for sale or profit, or offers to buy, sell or transport for sale or profit, within this State, any unlawfully removed human remains or any associated funerary objects.

(c) The provisions of this section shall not apply to:

(1) Any person acting in the course of medical, archaeological, educational or scientific study authorized by an accredited educational institution or governmental entity; or

(2) A licensed mortician or other professional who transports human remains in the course of carrying out the individual's professional duties and responsibilities.

(d) Nothing in this section shall be construed to interfere with the normal operation and maintenance of a public or private cemetery including correction of improper burial siting, and, with the consent of any person who would qualify as an heir of the deceased, moving the remains within a public or private cemetery.

Trading in human remains and associated funerary objects is a class B misdemeanor.

(70 Del. Laws, c. 50 § 1.)

§ 1334 Unlawful use of an unmanned aircraft system; unclassified misdemeanor; class B misdemeanor; class A misdemeanor.

(a) Definitions. — The following terms shall have the following meanings as used in this section.

(1) "Critical infrastructure" means petroleum refineries, petroleum storage facilities, chemical storage facilities, chemical manufacturing facilities, fuel storage facilities, electric substations, power plants, electric generation facilities, military facilities, commercial port and harbor facilities, rail yard facilities, drinking water treatment or storage facilities, correctional facilities, government buildings, and public safety buildings or facilities.

(2) "First responder" means federal, state, and local law-enforcement officers, fire, and emergency medical services personnel, hazardous materials response team members, 9-1-1 dispatchers, or any individual who is responsible for the protection and preservation of life and is directed to respond to an incident that could result in death or serious injury.

(3) "Unmanned aircraft system" means a powered, aerial vehicle that:

a. Does not carry a human operator;

b. Uses aerodynamic forces to provide vehicle lift;

c. Can fly autonomously or be piloted remotely; and

d. Can be expendable or recoverable.

(b) Prohibited acts. — Except as provided in this section, no person shall knowingly operate, direct, or program an unmanned aircraft system to fly:

(1) Over any sporting event, concert, automobile race, festival, or other event at which more than 1500 people are in attendance; or

(2) Over any critical infrastructure; or

(3) Over any incident where first responders are actively engaged in response or air, water, vehicular, ground or specialized transport.

(c) Exemptions. — The prohibitions set forth in subsection (b) of this section shall not apply to:

(1) An unmanned aircraft system used for law-enforcement purposes; or

(2) An unmanned aircraft system flying over property where written permission has been granted by the property owner or occupier; o r

(3) An unmanned aircraft system operated by an institution of higher education for educational purposes in compliance with Federal Aviation Administration regulations; or

(4) An unmanned aircraft system that is being used for a commercial or other purpose if the operator is authorized by the Federal Aviation Administration.

(d) Penalties. — Unlawful use of an unmanned aircraft system is an unclassified misdemeanor for a first offense and a class B misdemeanor for a second or subsequent offense, except that in any case where physical injury to a person or damage to property occurs as a result of a violation of this section unlawful use of an unmanned aircraft system is a class A misdemeanor.

(e) Preemption. — Only the State may enact a law or take any other action to prohibit, restrict, or regulate the testing or operation of an unmanned aircraft systems in the State. This section preempts the authority of a county or municipality to prohibit, restrict, or regulate the testing or operating of unmanned aircraft systems and supersedes any existing law or ordinance of a county or municipality that prohibits, restricts, or regulates the testing or operating of unmanned aircraft systems.

(80 Del. Laws, c. 421 § 1.)

§ 1335 Violation of privacy; class A misdemeanor; class G felony.

(a) A person is guilty of violation of privacy when, except as authorized by law, the person:

(1) Trespasses on property intending to subject anyone to eavesdropping or other surveillance in a private place; or

(2) Installs in any private place, without consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying or broadcasting sounds or events in that place; or

(3) Installs or uses outside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there; or

(4) Intercepts without the consent of all parties thereto a message by telephone, telegraph, letter or other means of communicating privately, including private conversation; or

(5) Divulges without the consent of the sender and the receiver the existence or contents of any message by telephone, telegraph, letter or other means of communicating privately if the accused knows that the message was unlawfully intercepted or if the accused learned of the message in the course of employment with an agency engaged in transmitting it.

(6) Tape records, photographs, films, videotapes or otherwise reproduces the image of another person who is getting dressed or

undressed or has that person's genitals, buttocks or her breasts exposed, without consent, in any place where persons normally disrobe including but not limited to a fitting room, dressing room, locker room or bathroom, where there is a reasonable expectation of privacy. This paragraph shall not apply to any acts done by a parent or guardian inside of that person's dwelling, or upon that person's real property, when a subject of victim of such acts is intended to be any child of such parent or guardian who has not yet reached that child's eighteenth birthday and whose primary residence is in or upon the dwelling or real property of the parent or guardian, unless the acts done by the parent or guardian are intended to produce sexual gratification for any person in which case this paragraph shall apply; or

(7) Secretly or surreptitiously videotapes, films, photographs or otherwise records another person under or through that person's clothing for the purpose of viewing the body of or the undergarments worn by that other person; or

(8) Knowingly installs an electronic or mechanical location tracking device in or on a motor vehicle without the consent of the registered owner, lessor or lessee of said vehicle. This paragraph shall not apply to the lawful use of an electronic tracking device by a law-enforcement officer, nor shall it apply to a parent or legal guardian who installs such a device for the purpose of tracking the location of a minor child thereof; or

(9) Knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates a visual depiction of a person who is nude, or who is engaging in sexual conduct, when the person knows or should have known that the reproduction, distribution, exhibition, publication, transmission, or other dissemination was without the consent of the person depicted and that the visual depiction was created or provided to the person under circumstances in which the person depicted has a reasonable expectation of privacy.

a. For the purposes of the introductory paragraph of this paragraph (a)(9), paragraphs (a)(9)b., and (a)(9)d. of this section:

1. "Nude" means any 1 or more of the following uncovered parts of the human body, or parts of the human body visible through less than opaque clothing:

A. The genitals;

B. The pubic area;

C. The buttocks;

D. Any portion of the female breast below the top of the areola.

2. "Personally identifiable information" means any information about a person that permits the physical or online identifying or contacting of a person. The term includes either a person's face or a person's first and last name or first initial and last name in combination with any 1 or more of the following:

A. A home or other physical address, including street name and name of a city or town;

B. An e-mail address;

C. A telephone number;

D. Geolocation data;

E. Any other identifier that permits the physical or online identifying or contacting of a person.

3. "Sexual conduct" means actual or simulated:

A. Sexual contact;

B. Sexual intercourse;

C. Sexual penetration;

D. Masturbation;

E. Bestiality;

F. Sadism;

G. Masochism; or

H. Explicit representations of the defecation or urination functions.

4. "Sexual contact" means any touching by 1 person of the uncovered anus, breast, buttocks, or genitalia of another person or any touching of a person with the uncovered anus, breasts, buttocks or genitalia of another person.

5. "Sexual intercourse" means any act of physical union of the genitalia or anus of a person with the mouth, anus, or genitalia of another person.

6. "Sexual penetration" means the placement of an object inside the anus or vagina of a person or the placement of a sexual device inside the mouth of a person.

7. "Visual depiction" shall have the meaning as used in § 1100 of this title.

b. A person who has, within the context of a private or confidential relationship, consented to the capture or possession of a visual depiction of the person when nude or when engaging in sexual conduct retains a reasonable expectation of privacy with regard to the reproduction, distribution, exhibition, publication, transmission, or other dissemination of the visual depiction beyond that relationship.

c. For the purposes of this paragraph (a)(9), each of the following shall be an aggravating factor and shall be alleged in the charging information or indictment and constitute an element of the offense:

1. The actor knowingly obtains such visual depictions without the consent of the person depicted.

A. A violation of this paragraph (a)(9)c.1. occurs when a person commits a theft as provided for in § 841, § 842, § 843, or § 844 of this title or obtains such visual depictions by committing unauthorized access to a computer system as provided

for in § 932 of this title or by unauthorized access to electronic mail or an electronic mail service provider as defined in § 931 of this title.

B. A violation of this paragraph (a)(9)c.1. consistent with § 932 of this title is subject to the venue provision in § 940 of this title.

2. The actor knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates such visual depictions for profit.

3. The actor knowingly maintains an Internet website, online service, online application, or mobile application for the purpose of reproducing, distributing, exhibiting, publishing, transmitting, or otherwise disseminating such visual depictions.

4. The actor knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates such visual depictions with the intent to harass, annoy, or alarm the person depicted and such conduct would cause a reasonable person to suffer significant mental anguish or distress.

5. The actor pairs such visual depiction with personally identifiable information of the person depicted.

d. For purposes of this paragraph (a)(9), the fact the actor committed this offense within 5 years of a prior conviction for a violation of this paragraph (a)(9) shall be an aggravating factor for sentencing purposes only and, therefore, this fact is not to be alleged in the charging information or indictment and does not constitute an element of the offense.

e. In addition to when the consent of the person depicted is given, the introductory paragraph of this paragraph (a)(9) and paragraph (a)(9)b. of this section do not apply to any of the following:

1. When the visual depiction is of an individual less than 18 years of age and does not violate § 1108, § 1109, or § 1111 of this title, or any similar provision of this title, and the reproduction, distribution, exhibition, publication, transmission, or other dissemination is not for commercial purposes.

2. When the visual depiction is reproduced, distributed, exhibited, published, transmitted, or otherwise disseminated in the course of lawful and common practices of a law-enforcement officer, the reporting of unlawful conduct, legal proceedings, and medical treatment procedures.

3. When the person depicted has consented to the reproduction, distribution, exhibition, transmission, or other dissemination of the visual depiction for commercial purposes.

4. When the person depicted has voluntarily appeared nude in public or voluntarily engages in sexual conduct in public.

5. When the reproduction, distribution, exhibition, publication, transmission, or other dissemination serves a legitimate public purpose.

f. Nothing within this paragraph (a)(9) shall be construed to impose liability on an interactive computer service, as defined in 47 U.S.C. § 230(f)(2), or an information service or telecommunications service, as defined in 47 U.S.C. § 153, for content provided by the actor or another person.

(b) This section does not apply to:

(1) Overhearing of messages through a regularly installed instrument on a telephone party line or an extension or any other regularly installed instrument or equipment; or

(2) Acts done by the telephone company or subscribers incident to the enforcement of telephone company regulations or subscriber rules relating to the use of facilities; or

(3) Acts done by personnel of any telephone or telegraph carrier in the performance of their duties in connection with the construction, maintenance or operation of a telephone or telegraph system; or

(4) The divulgence of the existence of any message in response to a subpoena issued by a court of competent jurisdiction or a governmental body having subpoena powers; or

(5) Acts done by police officers as provided in §§ 1336 [repealed] and 1431 of this title.

(c) Any violation of paragraph (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(8), or (a)(9) of this section shall be a class A misdemeanor. Any violation of paragraph (a)(6), (a)(7), (a)(9)c., or (a)(9)d. of this section shall be a class G felony.

(11 Del. C. 1953 § 1335; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 180 §§ 1-3; 73 Del. Laws, c. 172 §§ 1, 2, 3; 75 Del. Laws, c. 341 §§ 1, 2; 79 Del. Laws, c. 415 § 1.)

§ 1336 Wiretapping and electronic surveillance.

(232 effective July 23 1999..)

§ 1337 Definitions relating to riot, disorderly conduct and related offenses.

(a) "Private place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access.

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

(11 Del. C. 1953 § 1337; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 25.)

§ 1338 Bombs, incendiary devices, Molotov cocktails and explosive devices; class D felony.

(a) For purposes of this section the following definitions shall be made applicable:

(1) "Incendiary device" means any item designed to ignite by hand, chemical reaction or by spontaneous combustion and is not designed for any lawful purpose or use whatsoever, or any lawful purpose or use has been or is terminated.

(2) "Molotov cocktail" means a makeshift incendiary bomb made of a breakable container filled with flammable liquid and provided with a wick composed of any substance capable of bringing flame into contact with the liquid.

(b) Whoever manufactures, transfers, uses, possesses or transports any bomb, incendiary device, Molotov cocktail or device designed to explode or produce uncontained combustion with intent to cause bodily harm or damage to any property or thing shall be guilty of a class D felony.

(c) Any other provision of this Criminal Code notwithstanding, any person over 16 years old who violates this section shall be prosecuted as an adult.

(d) In any prosecution under this section, it is prima facie evidence of intent to cause bodily harm or damage to any property or thing if the accused had possession of the device prescribed by this section.

(11 Del. C. 1953 § 1338; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8.)

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

(a) A person is guilty of adulteration when:

(1) The person adulterates any substance with the intent to cause death, physical injury or illness of a person;

(2) The person distributes, disseminates, gives, sells or otherwise transfers an adulterated substance with the intent to cause death, physical injury or illness of a person knowing or having reason to know that the substance has been adulterated as defined in subsection (b) of this section.

(b) "Adulteration" means the intentional adding of any substance, which has the capacity either acting alone or in conjunction with the other substance to cause death, physical injury or illness by ingestion, injection, inhalation or absorption, to another substance having a customary or reasonably foreseeable human use.

(c) Adulteration is a class G felony unless the adulteration actually causes physical injury or illness in which case it is a class E felony, or causes death in which case it is a class A felony.

(d) This offense is a separate and distinct offense and shall not limit or restrict prosecution for murder or any other criminal offense.

(64 Del. Laws, c. 191 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1340 Desecration of burial place.

A person is guilty of desecration of a burial place if the person intentionally defaces, damages, pollutes or otherwise physically mistreats any such burial place. Any person who desecrates a burial place is guilty of a class A misdemeanor and upon conviction shall be fined not less than $1,000 nor more than $10,000.

(65 Del. Laws, c. 463 § 2; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1341 Lewdness; class B misdemeanor.

A person is guilty of lewdness when the person does any lewd act in any public place or any lewd act which the person knows is likely to be observed by others who would be affronted or alarmed.

Lewdness is a class B misdemeanor.

(11 Del. C. 1953 § 1341; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1342 Prostitution; class B misdemeanor.

(a)(1) A person is guilty of prostitution when the person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

(2) Prostitution is a class B misdemeanor.

(b)(1) Any person found guilty of an act of prostitution when such crime has occurred on or within 1,000 feet of the property of any school, residence, church, synagogue or other place of worship shall be guilty of a class A misdemeanor. The minimum mandatory fine shall be $500. This fine shall not be suspended.

(2) It shall not be a defense to prosecution for a violation of this section that the person was unaware that the prohibited conduct took place on or within 1,000 feet of any school property, residence, church, synagogue or other place of worship.

(11 Del. C. 1953 § 1342; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 319 § 1.)

§ 1343 Patronizing a prostitute prohibited.

(a) A person is guilty of patronizing a prostitute when:

(1) Pursuant to a prior agreement or understanding, the person pays a fee to another person as compensation for that person's having engaged in sexual conduct with the person; or

(2) The person pays or agrees to pay a fee to another person pursuant to an agreement or understanding that in return therefor that person or a third person will engage in sexual conduct with the person; or

(3) The person solicits or requests another person to engage in sexual conduct with the person in return for a fee.

(b) Patronizing a prostitute is a misdemeanor. The minimum mandatory fine shall be $500. This fine shall not be suspended.

(c) Whenever any vehicle, as defined in § 2321 of this title, has been used in, or in connection with, the offense of patronizing a prostitute, it shall forthwith be seized and taken into custody by the peace officer or officers having knowledge of the facts of such use.

(d) Vehicle seizure shall apply in the case of a defendant who has a previous conviction for the same offense in the previous 5 years. For the purpose of this section, "prior offense" shall be defined as a conviction of § 1343 of this title.

(e)(1) Any person found guilty of patronizing a prostitute and such crime has occurred on or within 1,000 feet of the property of any school, residence, church, synagogue or other place of worship shall be guilty of a class A misdemeanor. The minimum mandatory fine shall be $1,000. This fine shall not be suspended.

(2) It shall not be a defense to prosecution for a violation of this section that the person was unaware that the prohibited conduct took place on or within 1,000 feet of any school property, residence, church, synagogue or other place of worship.

(11 Del. C. 1953 § 1343; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 69 Del. Laws, c. 23 §§ 1, 2, 5, 6; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 319 § 2.)

§ 1344 Prostitution and patronizing a prostitute; no defense.

In any prosecution for prostitution it is no defense that the persons were of the same sex, or that the person who received, agreed to receive or solicited a fee was a male and the person who paid, agreed or offered to pay the fee was a female.

(11 Del. C. 1953 § 1344; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1345 Screening for sexually transmissible diseases.

(a) Any person convicted under § 1342 or § 1343 of this title shall be ordered to undergo testing for sexually transmitted diseases, abbreviated "STD," as designated by the Department of Health and Social Services in its rules and regulations.

(b) The result of any STD test conducted pursuant to this subsection shall not be a public record for purposes of Chapter 100 of Title 29.

(c) The result of any STD testing conducted pursuant to this section shall only be released by the Division of Public Health to the defendant, the defendant's spouse and the court issuing the order for testing except as otherwise permitted under § 711 of Title 16.

(d) The cost of testing under this section shall be paid by the defendant tested unless the court has determined that the defendant is an indigent person.

(e) Filing of a notice of appeal shall not automatically stay an order that the defendant submit to STD testing.

(75 Del. Laws, c. 319 § 4.)

§§ 1346 -1350. [Reserved.]

§ 1351 Promoting prostitution in the third degree; class F felony.

A person is guilty of promoting prostitution in the third degree when the person knowingly advances or profits from prostitution.

Promoting prostitution in the third degree is a class F felony.

(11 Del. C. 1953 § 1351; 58 Del. Laws, c. 497 § 1; 61 Del. Laws, c. 33 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1352 Promoting prostitution in the second degree; class E felony.

A person is guilty of promoting prostitution in the second degree when the person knowingly:

(1) Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by 2 or more prostitutes; or

(2) Advances or profits from prostitution of a person less than 18 years old.

Promoting prostitution in the second degree is a class E felony.

(11 Del. C. 1953 § 1352; 58 Del. Laws, c. 497 § 1; 61 Del. Laws, c. 33 § 2; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1353 Promoting prostitution in the first degree; class C felony.

A person is guilty of promoting prostitution in the first degree when the person knowingly:

(1) Advances prostitution by compelling a person by force or intimidation to engage in prostitution or profits from such coercive conduct by another; or

(2) Advances or profits from prostitution of a person less than 16 years old.

Promoting prostitution in the first degree is a class C felony.

(11 Del. C. 1953 § 1353; 58 Del. Laws, c. 497 § 1; 61 Del. Laws, c. 33 § 3; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1354 Promoting prostitution; attempt to promote prostitution; corroboration.

A person shall not be convicted of promoting prostitution or of an attempt to promote prostitution solely on the uncorroborated testimony of a person whose prostitution activity the person is alleged to have advanced or attempted to advance or from whose prostitution activity the person is alleged to have profited or attempted to profit.

(11 Del. C. 1953 § 1354; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1355 Permitting prostitution; class B misdemeanor.

A person is guilty of permitting prostitution when, having possession or control of premises which the person knows are being used for prostitution purposes, the person fails to halt or abate such use within a reasonable period of time.

Permitting prostitution is a class B misdemeanor.

(11 Del. C. 1953 § 1355; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1356 Definitions relating to prostitution.

As used in §§ 1342-1355 of this title:

(1) "Advance prostitution." — A person advances prostitution when, acting other than as a prostitute or as a patron thereof, the person knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise or engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.

(2) "Profit from prostitution." — A person profits from prostitution when, acting other than as a prostitute receiving compensation for personally rendered prostitution services, the person accepts or receives money or other property pursuant to an agreement or understanding with any person whereby the person participates or is to participate in the proceeds of prostitution activity.

(3) "School" means any preschool, kindergarten, elementary school, secondary school, vocational technical school or any other institution which has as its primary purpose the education or instruction of children under 18 years of age.

(4) "Sexual conduct" means any act designed to produce sexual gratification to either party. It is not limited to intercourse or deviate sexual intercourse.

(11 Del. C. 1953 § 1356; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 319 § 3.)

§§ 1357 -1360. [Reserved.]

§ 1361 Obscenity; acts constituting; class E felony or class G felony; subsequent violations.

(a) A person is guilty of obscenity when the person knowingly:

(1) Sells, delivers or provides any obscene picture, videotape, video game, writing, record, audio cassette tape, compact disc or other representation or embodiment of the obscene;

(2) Presents or directs an obscene play, dance or performance or participates in that portion thereof which makes it obscene;

(3) Publishes, exhibits or otherwise makes available any obscene material;

(4) Possesses any obscene material for purposes of sale or other commercial dissemination; or

(5) Permits a person under the age of 12 to be on the premises where material harmful to minors, as defined by § 1365 of this title, is either sold or made available for commercial distribution and which material is readily accessible to or easily viewed by such minors. Any material covered by this paragraph shall not be considered readily accessible to or easily viewed by minors if it has been placed or otherwise located 5 feet or more above the floor of the subject premises or if the material is concealed so that no more than the top 3 inches is visible to the passerby.

(b) Obscenity is a class E felony if a person sells, delivers or provides any obscene picture, videotape, video game, writing, record, audio cassette tape, compact disc or other representation or embodiment of the obscene to a person under the age of 18. In all other cases, obscenity is a class G felony. In addition to the above penalties, upon conviction of obscenity involving live conduct as defined in § 1364 of this title, the court shall order the business or establishment which presented, displayed or exhibited such conduct closed for a period of 6 months.

(c) Notwithstanding Chapter 42 of this title, the minimum sentence for a subsequent violation of this section occurring within 5 years of a former conviction shall be a fine in the amount of $5,000, imprisonment for a minimum period of 9 months, no portion which may be suspended or reduced, and probation for a period of 2 years; provided, however, that where the defendant is an organization, the fine shall be $10,000. In addition to the above penalties, upon conviction of obscenity involving conduct as defined in § 1364 of this title, the court shall order the business or establishment which presented, displayed or exhibited such conduct closed for a period of 2 years.

(d) Where the criminality of conduct depends on a child being under the age of 12, paragraph (a)(5) of this section, or under the age of 18, subsection (b) of this section, it is no defense that the actor did not know the child's age.

(11 Del. C. 1953 § 1361; 58 Del. Laws, c. 497 § 1; 60 Del. Laws, c. 445 § 1; 61 Del. Laws, c. 121 § 1; 63 Del. Laws, c. 111 §§ 1-3; 67 Del. Laws, c. 130 § 8; 67 Del. Laws, c. 350 §§ 11, 12; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 71 § 2; 74 Del. Laws, c. 380 §§ 1, 2.)

§ 1362 Obscenity; defenses.

In any prosecution for obscenity it is an affirmative defense that dissemination was restricted to:

(1) Institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material; or

(2) Noncommercial dissemination to personal associates of the accused who are known by the accused not to object to the receipt of such material.

(11 Del. C. 1953 § 1362; 58 Del. Laws, c. 497 § 1.)

§ 1363 Obscenity; presumption.

A person who disseminates or possesses obscene material in the course of business is presumed to do so knowingly or recklessly.

(11 Del. C. 1953 § 1363; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1364 Definition of obscene.

Material or live conduct is obscene if:

(1) The average person applying contemporary community standards would find the material or conduct, taken as a whole, appeals to the prurient interests; and

(2) The material depicts or describes or the live conduct portrays:

a. Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated; or

b. Patently offensive representations or descriptions of masturbation, excretory functions, and/or lewd exhibitions of the genitals; and

(3) The work or conduct taken as a whole lacks serious literary, artistic, political or scientific value.

(11 Del. C. 1953 § 1364; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 236 § 1; 63 Del. Laws, c. 111 § 4.)

§ 1365 Obscene literature harmful to minors; class A misdemeanor.

(a) Definitions as used in this section:

(1) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominately appeals to the prurient, shameful or morbid interest of minors and is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

(2) "Known minor" is any person known, in fact, to be under the age of 18 years, or any person, in fact, under the age of 18 years unless a reasonable, bona fide attempt has been made to ascertain the age of that minor.

(3) "Knows" means:

a. Knowledge that the character and content of any material described in paragraph (i)(1) of this section is harmful to minors; or

b. Knowledge of facts that would lead a reasonable person to inquire whether the character and content of any material described in paragraph (i)(1) of this section is harmful to minors; or

c. Knowledge or information that the material described herein has been adjudged to be harmful to minors in a proceeding instituted pursuant to subsection (b) or (i) of this section or is the subject of a pending proceeding instituted pursuant to subsection (b) or (i) of this section.

(4) "Minor" means any person under the age of 17 years.

(5) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple or the depiction of covered male genitals in a discernibly turgid state.

(6) "Sado-masochistic abuse" means flagellation or torture practiced by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(7) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's unclothed genitals or pubic area or a female person's breast.

(8) "Sexual excitement" means the condition of human male or female genitals in a state of sexual stimulation or arousal.

(b) Whenever the Attorney General of this State has reasonable cause to believe that any person is or may become engaged in any of the acts described in paragraph (i)(1), (i)(2) or (i)(4) of this section, the Attorney General shall institute an action in the Court of Chancery for the county where such act is or will be performed for adjudication of the question of whether such material is harmful to minors.

(c) The action authorized by subsection (b) of this section shall be commenced by the filing of a complaint to which shall be attached as an exhibit a true copy of the allegedly harmful material. The complaint shall:

(1) Be directed against such material by name or description;

(2) Allege that such material is harmful to minors;

(3) Designate as respondents and list the names and addresses, if known, of any person in this State engaged or about to be engaged in any of the acts described in paragraph (i)(1), (i)(2) or (i)(4) of this section with respect to such material;

(4) Seek an adjudication that such material is harmful to minors; and

(5) Seek a permanent injunction against any respondent prohibiting the respondent from performing any of the acts described in paragraph (i)(1), (i)(2) or (i)(4) of this section.

(d) Upon the filing of the complaint described in subsection (c) of this section, the Attorney General shall present the same, together with the material attached thereto, as soon as practicable to the Court for its examination and reading. If after such examination and reading the Court finds no probable cause to believe such material to be harmful to minors, the Court shall cause an endorsement to that effect to be placed and dated upon the complaint and shall thereupon dismiss the action. If after such examination and reading the Court finds probable cause to believe such material to be harmful to minors, the Court shall cause an endorsement to that effect to be placed and dated upon the complaint whereupon it shall be the responsibility of the Attorney General promptly to request the Register in Chancery to issue summons and to furnish to the Register in Chancery such number of copies of such complaint and endorsement as are needed for the service of summons. Service of such summons and endorsed complaint shall be made upon the respondents thereto in any manner provided by law.

(e) The author, publisher or any person interested in sending or causing to be sent, bringing or causing to be brought, into this State for sale or commercial distribution, or any person in this State preparing, selling, exhibiting or commercially distributing or possessing with

intent to sell or commercially distribute or exhibit, the material exhibited to the endorsed complaint, may appear and may intervene in accordance with the Rules of the Court of Chancery. If no person appears and files an answer, or moves to intervene within the time set by the rule or by an order of the Court of Chancery, the Court may forthwith adjudge whether the material so exhibited to the endorsed complaint is harmful to minors and enter an appropriate final judgment.

(f)(1) The public policy of this State requires that all proceedings prescribed in this section, other than criminal actions under subsection (i) of this section, be heard and disposed of with the maximum promptness and dispatch commensurate with constitutional requirements, including due process, freedom of the press and freedom of speech.

(2) The Rules of the Court of Chancery shall be applicable, except as they may be modified by this section.

(3) Any party or intervenor shall be entitled, upon request, to a trial of any issue with an advisory jury and the Court, with the consent of all parties, may order a trial of any issue with a jury whose verdict shall have the same effect as in cases of law.

(4) In any action in which an injunction is sought under this section, any respondent or intervenor shall be entitled to a trial of the issues within 1 day, exclusive of Saturday, Sunday and holidays, after joinder of issue, and a decision shall be rendered by the Court or jury, as the case may be, within 2 days, exclusive of Saturday, Sunday and holidays, of the conclusion of the trial. If the issues are being tried before a jury and the jury shall not be able to render a decision within 2 days of the conclusion of the trial, then notwithstanding any other provision of this section, the jury shall be dismissed and a decision shall be rendered by the Court within 2 days of the conclusion of the trial.

(5) In the event that the Court or jury, as the case may be, finds the material exhibited to the complaint not to be harmful to minors, the Court shall enter judgment accordingly and shall dismiss the complaint.

(6) In the event that the Court or jury, as the case may be, finds the material exhibited to the complaint to be harmful to minors, the Court shall enter judgment to such effect and may, in such judgment or in subsequent orders of enforcement thereof, enter a permanent injunction against any respondent prohibiting the respondent from engaging in any of the acts described in paragraph (i)(1), (i)(2) or (i)(4) of this section.

(g) If the Court, pursuant to subsection (d) of this section, finds probable cause to believe the exhibited material to be harmful to minors, and so endorses the complaint, the Court may, upon the motion of the Attorney General and in accordance with the Chancery Court Rules, issue a temporary restraining order against any respondent prohibiting the respondent from selling, commercially distributing or giving away such material to minors or from permitting minors to inspect such material. No temporary restraining order shall be granted without notice to the respondents unless it clearly appears from specific facts shown by affidavit or by the verified complaint that 1 or more of the respondents are engaged in the sale of material harmful to minors and that immediate and irreparable injury to the morals and general welfare of minors in this State will result before notice can be served and a hearing had thereon. All proceedings for temporary restraining order and preliminary injunction shall be governed by the Rules of the Court of Chancery.

(h) Any respondent, or any officer, agent, servant, employee or attorney of such respondent, or any person in active concert or participation by contract or arrangement with such respondent, who receives actual notice, by personal service or otherwise, of any injunction or restraining order entered pursuant to subsection (f) or (g) of this section, and who shall disobey any of the provisions thereof, shall be guilty of contempt of court and upon conviction shall be guilty of a class A misdemeanor.

(i) Any person is guilty of a class A misdemeanor who:

(1) Exhibits for sale, sells, displays, transfers, gives gratis, loans, rents or advertises to a known minor any book, pamphlet, magazine or printed matter, however reproduced, or sound recording or picture, photograph, drawing, sculpture, motion picture film or similar visual representation that such person knows to be in whole or in part harmful to minors.

(2) Sells, gives gratis or transfers an admission ticket or pass to a known minor or admits a known minor to a premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, such person knows to be harmful to minors.

(3) Misrepresents the person's age as 17 years or older for the purpose of evading the restrictions of this section.

(4) Exhibits for sale, sells, displays, gives gratis, transfers, loans or rents any matter enumerated in paragraph (i)(1) of this section that such person knows to be harmful to minors which does not prominently include in such advertisement the words "unlawful to persons under 17 years of age."

(j) No criminal proceeding shall be commenced against any person pursuant to paragraph (i)(1), (i)(2) or (i)(4) of this section unless, prior to the act which is the subject of such proceeding, such person:

(1) Had written notice from the Attorney General that the material which is the subject of such proceeding has been adjudged harmful to minors pursuant to subsection (b) or (i) of this section; or

(2) Has been subject to an order entered pursuant to subsection (b) of this section relating to the material which is the subject of such criminal proceeding, or any other material harmful to minors.

(k) No person shall be subject to prosecution pursuant to this section:

(1) For any sale to a minor where such person had reasonable cause to believe that the minor involved was 17 years old or more, and such minor exhibited to such person a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 17 years old or more; or

(2) For any sale where a minor is accompanied by a parent or guardian, or accompanied by an adult and such person has no reason to suspect that the adult accompanying the minor is not the minor's parent or guardian; or

(3) Where such person is a bona fide school, museum or public library or is acting in an official capacity as an employee of such organization or as a retail outlet affiliated with and serving the educational purposes of such organization.

(l) In order to provide for the uniform application of this section to all minors within this State, it is intended that the sole and only regulation of the matters herein discussed shall be under this section and no municipality, county or other governmental unit within this State shall make any law, ordinance or regulation relating to the subject matter hereof as to minors. All such laws, ordinances and regulations, as they affect minors, whether enacted before or after this section shall become void, unenforceable and of no effect upon April 1, 1973; provided, however, that such prior laws, ordinances and regulations shall govern litigations commenced prior to April 1, 1973, and shall continue in effect solely for that purpose.

(m) This section may be known and cited as Delaware Law on the Protection of Minors From Harmful Materials, and may be referred to by that designation.

(11 Del. C. 1953 § 1365; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 236 § 2; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1366 Outdoor motion picture theaters.

(a) Whoever being the owner or operator of an outdoor motion picture theater exhibits or permits to be exhibited any film not suitable for minors or harmful to minors and which film can be viewed by such minors not in attendance at the said outdoor motion picture theater shall be guilty of a class A misdemeanor.

(b) Definitions as used in this section:

(1) "Code and Rating Administration of the Motion Picture Association of America" ratings are:

"G" — All ages admitted. General audiences;

"PG" — All ages admitted. Parental guidance suggested;

"R" — Restricted. Under 17 requires accompanying parent or adult guardian;

"X" — No one under 17 admitted.

(2) "Film" means any motion picture film or series of films, whether full length or short subject, but does not include newsreels portraying actual current events or pictorial news of the day.

(3) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominately appeals to the prurient, shameful or morbid interest of minors and is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and taken as a whole the work lacks serious literary, artistical, political or scientific value for minors.

(4) "Minor" means any person under the age of 17 years.

(5) "Not suitable for minors" means any film, reel or view which has a rating of "R" or "X" according to the Code and Rating Administration of the Motion Picture Association of America.

(6) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple or the depiction of covered male genitals in a discernibly turgid state.

(7) "Sado-masochistic abuse" means flagellation or torture practiced by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(8) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's unclothed genitals or pubic area or a female person's breast.

(9) "Sexual excitement" means the condition of human male or female genitals in a state of sexual stimulation or arousal.

(10) "Suitable for minors" means any film, reel or view which has a rating of "G" or "PG" according to the Code and Rating Administration of the Motion Picture Association of America.

(59 Del. Laws, c. 258 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1367 Unauthorized promotion of boxing, mixed martial arts or of a combative sports entertainment or combative fighting match, contest, or event; class A misdemeanor.

(a) A person is guilty of the unauthorized promotion of boxing, mixed martial arts or of a combative sports entertainment or combative fighting match, contest, or event if the person promotes, arranges, advertises, or conducts a combative sports entertainment or combative fighting match, contest, or event in violation of Chapter 1 of Title 28.

(b) A charge of the unauthorized promotion of boxing, mixed martial arts or of a combative sports entertainment or combative fighting match, contest, or event shall not exclude prosecution for other offenses or violations of this Code.

(c) The unauthorized promotion of boxing, mixed martial arts or of a combative sports entertainment or combative fighting match, contest, or event is a class A misdemeanor.

(76 Del. Laws, c. 413 § 1.)

§ 1368 Unauthorized participation in a boxing, mixed martial arts or in a combative sports entertainment or combative fighting match, contest, or event; class A misdemeanor.

(a) A person is guilty of the unauthorized participation in a boxing, mixed martial arts or in a combative sports entertainment or combative fighting match, contest, or event if the person participates as a competitor in a boxing, mixed martial arts or in a combative

sports entertainment or combative fighting match, contest, or event in violation of Chapter 1 of Title 28.

(b) A charge of the unauthorized participation in a boxing, mixed martial arts or in a combative sports entertainment or combative fighting match, contest, or event shall not exclude prosecution for other offenses or violations this Code.

(c) The unauthorized participation in a boxing, mixed martial arts or in a combative sports entertainment or combative fighting match, contest, or event is a class A misdemeanor.

(76 Del. Laws, c. 413 § 1.)

§§ 1369 -1400. [Reserved.]

§ 1401 Advancing gambling in the second degree; class A misdemeanor.

A person is guilty of advancing gambling in the second degree when:

(1) The person sells or disposes of, or has in the person's possession with intent to sell or dispose of, a lottery policy, certificate or any other thing by which the person or another person or persons promises or promise, guarantees or guarantee that any particular number, series of numbers, character, ticket or certificate shall, in the event or on the happening of any contingency in the nature of a lottery, entitle the purchaser or holder to receive money, property or evidence of debt; or

(2) The person uses or employs any other device by which such person, or any other person, promises or guarantees as provided in paragraph (1) of this section; or

(3) The person is concerned in interest in lottery policy writing, or in selling or disposing of any lottery policy, certificate, number or numbers or any other thing by which the person or another person or persons promises or promise, guarantees or guarantee that any particular number or numbers, character, ticket or certificate shall, in the event or on the happening of any contingency in the nature of a lottery, entitle the purchaser or holder to receive money, property or evidence of debt; or

(4) The person uses or employs any other device by which such person or any other person promises or guarantees as provided in paragraph (3) of this section.

Advancing gambling in the second degree is a class A misdemeanor.

(11 Del. C. 1953 § 1401; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1402 Foreign lotteries; prima facie evidence; class A misdemeanor.

(a) A person is guilty of engaging in a foreign lottery when the person brings, sends or procures to be brought or sent into this State any scheme of any lottery or any drawing of any such scheme or any ticket or part of a ticket or certificate of or a substitute for any ticket or part of a ticket, and sells or offers for sale any such ticket or part of ticket or any certificate or substitute for a certificate, and circulates in any manner any scheme or any drawing.

(b) On the trial of any person under subsection (a) of this section any lottery scheme drawing, ticket, certificate of or a substitute for a ticket or parts of tickets, which shall be proved to have been by the accused brought or procured to be brought, or sent or procured to be sent into this State or printed or procured to be printed within this State, for the purpose of circulating the same by mail or otherwise, shall be prima facie evidence within the description of this section.

(c) Engaging in foreign lotteries is a class A misdemeanor.

(11 Del. C. 1953 § 1402; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1403 Advancing gambling in the first degree; class A misdemeanor.

A person is guilty of advancing gambling in the first degree when:

(1) The person keeps, exhibits or uses, or is concerned in interest in keeping, exhibiting or using any book, device, apparatus or paraphernalia for the purpose of receiving, recording or registering bets or wagers upon the result of any trial or contest, wherever conducted, of skill, speed or power of endurance of human or beast; or

(2) Being the owner, lessee or occupant of a room, house, building, enclosure or place of any kind, the person keeps, exhibits, uses or employs therein or permits or allows to be kept, exhibited, used or employed therein, or is concerned in interest in keeping, exhibiting, using or employing therein any book, device, apparatus or paraphernalia for the purpose of receiving, recording or registering bets or wagers as provided in paragraph (1) of this section, or of forwarding in any manner money, thing or consideration of value for the purpose of being bet or wagered as provided in paragraph (1) of this section; or

(3) The person records or registers bets or wagers, or receives, contracts or agrees to receive money or anything of value for the purpose or with the intent to bet or wager personally or for another person as provided in paragraph (1) of this section; or

(4) The person directly or indirectly bets or wagers, or promises to bet or wager, money or anything of value as provided in paragraph (1) of this section.

This section does not apply to a bet or wager made on a horse race within the enclosure of any race meeting licensed and conducted under the laws of this State, and made by or through the means of a pari-mutuel or totalizator pool, the conduct of which is licensed by the Delaware Racing Commission or other state licensing agency. Such exception need not be negatived in any indictment or information.

Advancing gambling in the first degree is a class A misdemeanor.

(11 Del. C. 1953 § 1403; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1404 Providing premises for gambling; class A misdemeanor; unclassified misdemeanor.

A person is guilty of providing premises for gambling when:

(1) The person lets, demises or transfers to another person any building, structure, room or rooms knowing that the same will be used for the purpose of committing any gambling offense; or

(2) The person knowingly permits any house, structure, building, room or rooms of which the person has possession or control to be used for the purpose of committing any gambling offense; or

(3) The person contributes to the support and maintenance of any house or place where gambling is carried on or conducted; or

(4) The person keeps or maintains any house or place where gambling is carried on.

Providing premises for gambling or contributing thereto is an unclassified misdemeanor, unless the accused has been convicted, within the previous 5 years, of the same offense or of an offense under § 663 or § 665 of this title as the same existed prior to July 1, 1973, in which case it is a class A misdemeanor.

(11 Del. C. 1953 § 1404; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1405 Possessing a gambling device; class A misdemeanor.

(a) A person is guilty of possessing a gambling device when the person knowingly manufactures, sells, transports, keeps, exhibits, manages, places, possesses or conducts or negotiates any transaction affecting or designed to effect ownership, custody or use of a slot machine or any other gambling device.

(b) Possessing a gambling device is a class A misdemeanor.

(c) A person is not guilty of a violation of this section if the device or machine is either:

(1) An antique slot machine which is not used for gambling purposes; or

(2) Any slot machine or gambling device which is manufactured (including, without limitation, the retrofitting or alteration of a finished machine or device), assembled, transported, kept, exhibited, managed, placed or possessed by a person within this State or which is the subject of any negotiation which involves a transaction affecting or designed to affect the ownership, custody or use of such machine or device by such person in this State where:

a. Such person is duly licensed to conduct a manufacturing or other business in this State; and

b. Such person is registered in accordance with the federal Gambling Devices Act of 1962 as amended (15 U.S.C. § 1171 et seq.) and is in the business of designing, assembling, manufacturing, selling, supplying, repairing or retrofitting slot machines, gambling devices or component parts thereof exclusively for lawful possession and use.

(d) For purposes of this section, a slot machine is an antique machine if such machine is at least 25 years old.

(e) For purposes of this section, a "video lottery machine," as defined in § 4803 of Title 29, which is owned or leased by the State for use in the Delaware video lottery shall not constitute either a slot machine or a gaming device.

(11 Del. C. 1953 § 1405; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 68 Del. Laws, c. 252 § 1; 69 Del. Laws, c. 375 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 421 §§ 1, 2; 77 Del. Laws, c. 219 § 4; 78 Del. Laws, c. 245 § 1.)

§ 1406 Being concerned in interest in keeping any gambling device; class A misdemeanor.

(a) A person is guilty of being concerned in interest in keeping any gambling device when:

(1) The person keeps or exhibits a gaming table, faro bank, sweat cloth, roulette table or other device under any denomination at which cards, dice or any other game of chance is played for money, or other thing of value or other gambling device of any kind whatsoever; or

(2) The person, with the intent that it shall be kept or exhibited for use by the public, buys, sells or distributes a gaming table, faro bank, sweat cloth or other gambling device; or

(3) The person is a partner or concerned in interest in the keeping or exhibiting of a gaming table, faro bank, sweat cloth or other gambling device.

(b) Being concerned in interest in keeping any gambling device is a class A misdemeanor.

(c) An antique slot machine, as defined in § 1405 of this title, is not a gambling device for purposes of this section.

(11 Del. C. 1953 § 1406; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 68 Del. Laws, c. 252 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1407 Engaging in a crap game; violation.

A person is guilty of engaging in a crap game when the person takes part in or is knowingly present at the form of gambling commonly known as crap, in which money or other valuable things are played for by means of dice.

Engaging in a crap game is a violation.

(11 Del. C. 1953 § 1407; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1408 Merchandising plans are not gambling.

Sections 1401-1405 of this title are inapplicable to any plan for stimulating public interest in, or sale of, merchandise, services or exhibitions unless the plan requires that the chance to win a prize be paid for in money or something of actual pecuniary value or that some items be bought or to any lottery under state control for the purpose of raising funds.

(11 Del. C. 1953 § 1408; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 364 § 1.)

§ 1409 Exemption of law-enforcement officer.

Nothing in subpart D of subchapter VII of this chapter shall apply to any law-enforcement officer or officer's agent while acting in the lawful performance of duty.

(11 Del. C. 1953 § 1409; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1410 [Reserved.]

§ 1411 Unlawfully disseminating gambling information; class A misdemeanor.

A person is guilty of unlawfully disseminating gambling information when:

(1) Being a public utility it knowingly furnishes to another person a private wire for use in disseminating information in furtherance of gambling or for gambling purposes; or

(2) The person knowingly uses a private wire in disseminating or receiving information in furtherance of gambling or for gambling purposes; or

(3) The person engages in the business of or receives compensation in any form for disseminating or receiving information in furtherance of gambling or for gambling purposes by means of a private wire or a call service.

Unlawfully disseminating gambling information is a class A misdemeanor.

(11 Del. C. 1953 § 1411; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1412 Revocation of service contracts or denial of application for service; exemption from liability.

(a) The Attorney General, if the Attorney General has reasonable cause to believe that any service furnished by a public utility is being used or will be used to disseminate information in furtherance of gambling or for gambling purposes, may give notice to the person who has contracted with or is applying to the public utility for such service that the Attorney General intends to seek a court order that the service contract be revoked or the application for service be denied.

(b) The notice permitted in subsection (a) of this section shall be served personally upon the person who has contracted with or is applying to the public utility for the service. If personal service is not reasonably possible, the notice may be posted in a conspicuous place on the premises to which the service is furnished. The notice shall specify the time and place where the hearing will be held, and the court before which it will be held.

(c) A hearing shall be held in the Superior Court at the time specified in the notice. At the hearing, evidence bearing on the use of the public utility service in question may be presented by the State and by or on behalf of the person who has contracted for or is applying for the service.

(d) If the Court, after hearing, determines that there is probable cause to believe that the service furnished by the public utility is being used or will be used to disseminate information in furtherance of gambling or for gambling purposes, it shall order that the contract to furnish the service be revoked or that the application for service be denied.

(e) No public utility shall be held liable at law or in equity for revocation of a contract, or denying an application for service, when ordered to do so as provided by this section.

(11 Del. C. 1953 § 1412; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1413 Exemption for operations of lottery under State control.

The sale, lease, transport, ownership, possession, exhibition, manufacture, servicing, marketing or use of a video lottery machine, sports lottery machine, table game equipment or any equipment, supplies, information or data in connection with the operations of a lottery under State control (including the operations of a video lottery agent in accordance with Chapter 48 of Title 29) shall not be a violation of §§ 1401-1412 of this title.

(77 Del. Laws, c. 219 § 27.)

§§ 1414 -1420. [Reserved.]

§ 1421 Obstructions; service of notice.

If the Attorney General finds that access to a building, apartment or place, which the Attorney General has reasonable cause to believe is resorted to for the purpose of gambling in violation of the laws of this State, is barred by an obstruction, the Attorney General shall cause to be served in the manner provided by law for service of civil summons upon the occupant or owner a notice to appear before the Superior Court and to show cause why the unusual obstructions should not be removed.

(11 Del. C. 1953 § 1421; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1422 Posting of notice.

If the occupant or owner cannot be found, the prescribed notice shall be posted upon the outside of the premises.

(11 Del. C. 1953 § 1422; 58 Del. Laws, c. 497 § 1.)

§ 1423 Contents of notice.

The notice which is served personally upon the occupant or owner or is posted upon the outside of the premises shall in all cases designate the name of the Court in which the rule will be heard, and shall further contain the time and the date upon which the rule will be brought on for hearing.

(11 Del. C. 1953 § 1423; 58 Del. Laws, c. 497 § 1.)

§ 1424 Hearing.

At the time stated in the notice, a hearing shall be held in the Superior Court. At the hearing, evidence bearing on the matter may be presented by the State and by or on behalf of the person served with the notice or alleged to be the occupant or owner of the premises. The Court may grant a continuance if it is reasonably necessary in order that all relevant evidence may be heard.

(11 Del. C. 1953 § 1424; 58 Del. Laws, c. 497 § 1.)

§ 1425 Findings of Court; order for removal.

If the Court, after a hearing upon the requisite matters, finds that there is reasonable cause to believe that the premises are resorted to for the purpose of gambling and that access is barred by an obstruction, the Court shall order the occupant or owner to remove the obstruction.

(11 Del. C. 1953 § 1425; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 §§ 26, 31.)

§ 1426 Official removal upon noncompliance with removal order.

In the event that the obstructions are not removed within a period of 7 days after the order for removal, the Attorney General shall cause the obstructions to be removed from the premises or place.

(11 Del. C. 1953 § 1426; 58 Del. Laws, c. 497 § 1.)

§ 1427 Collection of removal expenses; status of contractor; amount of lien.

The expenses of a removal under § 1426 of this title shall be collected by the Attorney General in the manner provided by law for the filing and collection of a mechanic's lien.

(11 Del. C. 1953 § 1427; 58 Del. Laws, c. 497 § 1.)

§ 1428 Maintaining an obstruction; class A misdemeanor; a violation.

A person is guilty of maintaining an obstruction when, being the owner or occupant of a building or other place from which an obstruction has been removed as provided in §§ 1421-1427 of this title, the person again erects or permits the erection of an obstruction.

Maintaining an obstruction is a violation unless the accused has been convicted of the same offense within the previous 2 years, in which case it is a class A misdemeanor. The section does not limit the power of the State to seek the removal of the obstruction as provided in §§ 1421-1427 of this title.

(11 Del. C. 1953 § 1428; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§§ 1429 , 1430. [Reserved.]

§ 1431 Telephone messages received or overheard by police as evidence.

In any prosecution for a gambling offense, evidence that a police officer, when making an arrest for a gambling offense, received or overheard telephone messages intended for the accused or an associate of the accused which tend to prove that gambling activity was being conducted is admissible. The gathering and disclosure of such evidence, including the contents of the telephone messages received or overheard, does not violate any law of this State.

(11 Del. C. 1953 § 1431; 58 Del. Laws, c. 497 § 1.)

§ 1432 Gambling; definitions.

(a) "Call service" means the furnishing of information upon request therefor or by prearrangement over general telegraphic, telephonic or teletypewriter exchange or toll service.

(b) "Dissemination" means the act of transmitting, distributing, advising, spreading, communicating, conveying or making known.

(c) "Gambling device" means any device, machine, paraphernalia or equipment which is used or usable in the playing phases of any gambling activity, whether the activity consists of gambling between persons or gambling by a person involving the playing of a machine. Lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices.

(d) "Gambling offense" means any offense defined in §§ 1401-1431 of this title.

(e) "Private wire" means service equipment, facilities, conduits, poles, wires, circuits, systems by means of which service is furnished for communication purposes, either through the medium of telephone, telegraph, Morse, teletypewriter, loudspeaker or any other means, or by which the voice or electrical impulses are sent over a wire, and which services are contracted for or leased for services between 2 or more points specifically designated, and are not connected to or available for general telegraphic, telephonic or teletypewriter exchange or toll service, and includes such services known as "special contract leased wire service," "leased line," "private line," "private system," "Morse line," "private wire," but does not include the usual and customary telephone or teletypewriter service by which the subscriber may be connected at each separate call to any other telephone or teletypewriter designated by the subscriber only through the general telephone or teletypewriter exchange system or toll service.

(f) "Public utility" means a person, partnership, association or corporation owning or operating in this State equipment or facilities for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

(g) "Obstruction" means a door, window, shutter, screen bar or grating of unusual strength, or any unnecessary number of doors, windows or obstructions other than what is usual and ordinary in the normal or usual use of a building, apartment or place, by which access to any building, apartment or place is barred.

(h) "Slot machine" means a gambling device which, as a result of the insertion of a coin or other object, operates, either completely automatically or with the aid of a physical act by the player, in such manner that, depending upon elements of chance, it may eject something of value.

(11 Del. C. 1953 § 1432; 58 Del. Laws, c. 497 § 1; 70 Del. Laws, c. 186 § 1.)

§§ 1433 -1440. [Reserved.]

§ 1441 License to carry concealed deadly weapons.

(a) A person of full age and good moral character desiring to be licensed to carry a concealed deadly weapon for personal protection or the protection of the person's property may be licensed to do so when the following conditions have been strictly complied with:

(1) The person shall make application therefor in writing and file the same with the Prothonotary of the proper county, at least 15 days before the then next term of the Superior Court, clearly stating that the person is of full age and that the person is desirous of being licensed to carry a concealed deadly weapon for personal protection or protection of the person's property, or both, and also stating the person's residence and occupation. The person shall submit together with such application all information necessary to conduct a criminal history background check. The Superior Court may conduct a criminal history background check pursuant to the procedures set forth in Chapter 85 of Title 11 for the purposes of licensing any person pursuant to this section.

(2) At the same time the person shall file, with the Prothonotary, a certificate of 5 respectable citizens of the county in which the applicant resides at the time of filing the application. The certificate shall clearly state that the applicant is a person of full age, sobriety and good moral character, that the applicant bears a good reputation for peace and good order in the community in which the applicant resides, and that the carrying of a concealed deadly weapon by the applicant is necessary for the protection of the applicant or the applicant's property, or both. The certificate shall be signed with the proper signatures and in the proper handwriting of each such respectable citizen.

(3) Every such applicant shall file in the office of the Prothonotary of the proper county the application verified by oath or affirmation in writing taken before an officer authorized by the laws of this State to administer the same, and shall under such verification state that the applicant's certificate and recommendation were read to or by the signers thereof and that the signatures thereto are in the proper and genuine handwriting of each. Prior to the issuance of an initial license the person shall also file with the Prothonotary a notarized certificate signed by an instructor or authorized representative of a sponsoring agency, school, organization or institution certifying that the applicant: (i) has completed a firearms training course which contains at least the below-described minimum elements; and (ii) is sponsored by a federal, state, county or municipal law enforcement agency, a college, a nationally recognized organization that customarily offers firearms training, or a firearms training school with instructors certified by a nationally recognized organization that customarily offers firearms training. The firearms training course shall include the following elements:

a. Instruction regarding knowledge and safe handling of firearms;

b. Instruction regarding safe storage of firearms and child safety;

c. Instruction regarding knowledge and safe handling of ammunition;

d. Instruction regarding safe storage of ammunition and child safety;

e. Instruction regarding safe firearms shooting fundamentals;

f. Live fire shooting exercises conducted on a range, including the expenditure of a minimum of 100 rounds of ammunition;

g. Identification of ways to develop and maintain firearm shooting skills;

h. Instruction regarding federal and state laws pertaining to the lawful purchase, ownership, transportation, use and possession of firearms;

i. Instruction regarding the laws of this State pertaining to the use of deadly force for self-defense; and

j. Instruction regarding techniques for avoiding a criminal attack and how to manage a violent confrontation, including conflict resolution.

(4) At the time the application is filed, the applicant shall pay a fee of $65 to the Prothonotary issuing the same.

(5) The license issued upon initial application shall be valid for 3 years. On or before the date of expiration of such initial license, the licensee, without further application, may renew the same for the further period of 5 years upon payment to the Prothonotary of a fee of $65, and upon filing with said Prothonotary an affidavit setting forth that the carrying of a concealed deadly weapon by the licensee is necessary for personal protection or protection of the person's property, or both, and that the person possesses all the requirements for the issuance of a license and may make like renewal every 5 years thereafter; provided, however, that the Superior Court, upon good cause presented to it, may inquire into the renewal request and deny the same for good cause shown. No requirements in addition to those specified in this paragraph may be imposed for the renewal of a license.

(b) The Prothonotary of the county in which any applicant for a license files the same shall cause notice of every such application to be

published once, at least 10 days before the next term of the Superior Court. The publication shall be made in a newspaper of general circulation published in the county. In making such publication it shall be sufficient for the Prothonotary to do the same as a list in alphabetical form stating therein simply the name and residence of each applicant respectively.

(c) The Prothonotary of the county in which the application for license is made shall lay before the Superior Court, at its then next term, all applications for licenses, together with the certificate and recommendation accompanying the same, filed in the Prothonotary's office, on the first day of such application.

(d) The Court may or may not, in its discretion, approve any application, and in order to satisfy the Judges thereof fully in regard to the propriety of approving the same, may receive remonstrances and hear evidence and arguments for and against the same, and establish general rules for that purpose.

(e) If any application is approved, as provided in this section, the Court shall endorse the word "approved" thereon and sign the same with the date of approval. If not approved, the Court shall endorse the words "not approved" and sign the same. The Prothonotary, immediately after any such application has been so approved, shall notify the applicant of such approval, and following receipt of the notarized certification of satisfactory completion of the firearms training course requirement as set forth in paragraph (a)(3) of this section above shall issue a proper license, signed as other state licenses are, to the applicant for the purposes provided in this section and for a term to expire on June 1 next succeeding the date of such approval.

(f) The Secretary of State shall prepare blank forms of license to carry out the purposes of this section, and shall issue the same as required to the several Prothonotaries of the counties in this State. The Prothonotaries of all the counties shall affix to the license, before lamination, a photographic representation of the licensee.

(g) The provisions of this section do not apply to the carrying of the usual weapon by the police or other peace officers.

(h) Notwithstanding any provision to the contrary, anyone retired as a police officer, as "police officer" is defined by § 1911 of this title, who is retired after having served at least 20 years in any law-enforcement agency within this State, or who is retired and remains currently eligible for a duty-connected disability pension, may be licensed to carry a concealed deadly weapon for the protection of that retired police officer's person or property after that retired police officer's retirement, if the following conditions are strictly complied with:

(1) If that retired police officer applies for the license within 90 days of the date of that retired police officer's retirement, the retired police officer shall pay a fee of $65 to the Prothonotary in the county where that retired police officer resides and present to the Prothonotary both:

a. A certification from the Attorney General's office, in a form prescribed by the Attorney General's office, verifying that the retired officer is in good standing with the law-enforcement agency from which the retired police officer is retired; and

b. A letter from the chief of the retired officer's agency verifying that the retired officer is in good standing with the law-enforcement agency from which the retired police officer is retired; or

(2) If that retired police officer applies for the license more than 90 days, but within 20 years, of the date of that retired police officer's retirement, the retired police officer shall pay a fee of $65 to the Prothonotary in the county where the retired police officer resides and present to the Prothonotary certification forms from the Attorney General's office, or in a form prescribed by the Attorney General's office, that:

a. The retired officer is in good standing with the law-enforcement agency from which that retired police officer is retired;

b. The retired officer's criminal record has been reviewed and that the retired police officer has not been convicted of any crime greater than a violation since the date of the retired police officer's retirement; and

c. The retired officer has not been committed to a psychiatric facility since the date of the retired police officer's retirement.

(i) Notwithstanding anything contained in this section to the contrary, an adult person who, as a successful petitioner seeking relief pursuant to Part D, subchapter III of Chapter 9 of Title 10, has caused a protection from abuse order containing a firearms prohibition authorized by § 1045(a)(8) of Title 10 or a firearms prohibition pursuant to § 1448(a)(6) of this title to be entered against a person for alleged acts of domestic violence as defined in § 1041 of Title 10, shall be deemed to have shown the necessity for a license to carry a deadly weapon concealed for protection of themselves pursuant to this section. In such cases, all other requirements of subsection (a) of this section must still be satisfied.

(j) Notwithstanding any other provision of this Code to the contrary, the State of Delaware shall give full faith and credit and shall otherwise honor and give full force and effect to all licenses/permits issued to the citizens of other states where those issuing states also give full faith and credit and otherwise honor the licenses issued by the State of Delaware pursuant to this section and where those licenses/permits are issued by authority pursuant to state law and which afford a reasonably similar degree of protection as is provided by licensure in Delaware. For the purpose of this subsection "reasonably similar" does not preclude alternative or differing provisions nor a different source and process by which eligibility is determined. Notwithstanding the forgoing, if there is evidence of a pattern of issuing licenses/permits to convicted felons in another state, the Attorney General shall not include that state under the exception contained in this subsection even if the law of that state is determined to be "reasonably similar." The Attorney General shall communicate the provisions of this section to the Attorneys General of the several states and shall determine those states whose licensing/permit systems qualify for recognition under this section. The Attorney General shall publish on January 15 of each year a list of all States which have qualified for reciprocity under this subsection. Such list shall be valid for one year and any removal of a State from the list shall not occur without 1 year's notice of such impending removal. Such list shall be made readily available to all State and local law-enforcement agencies within

the State as well as to all then-current holders of licenses issued by the State of Delaware pursuant to this section.

(k) The Attorney General shall have the discretion to issue, on a limited basis, a temporary license to carry concealed a deadly weapon to any individual who is not a resident of this State and whom the Attorney General determines has a short-term need to carry such a weapon within this State in conjunction with that individual's employment for the protection of person or property. Said temporary license shall automatically expire 30 days from the date of issuance and shall not be subject to renewal, and must be carried at all times while within the State. However, nothing contained herein shall prohibit the issuance of a second or subsequent temporary license. The Attorney General shall have the authority to promulgate and enforce such regulations as may be necessary for the administration of such temporary licenses. No individual shall be issued more than 3 temporary licenses.

(l) All applications for a temporary license to carry a concealed deadly weapon made pursuant to subsection (k) of this section shall be in writing and shall bear a notice stating that false statements therein are punishable by law.

(m) Notwithstanding any other law or regulation to the contrary, any license issued pursuant to this section shall be void, and is automatically repealed by operation of law, if the licensee is or becomes prohibited from owning, possessing or controlling a deadly weapon as specified in § 1448 of this title.

(11 Del. C. 1953 § 1441; 58 Del. Laws, c. 497 § 1; 60 Del. Laws, c. 419 §§ 1-3; 67 Del. Laws, c. 41 § 1; 67 Del. Laws, c. 260 § 1; 68 Del. Laws, c. 9 §§ 1, 2; 68 Del. Laws, c. 410 §§ 1-3; 69 Del. Laws, c. 299 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 343 § 1; 71 Del. Laws, c. 246 § 1; 71 Del. Laws, c. 252 § 1; 72 Del. Laws, c. 61 § 6; 73 Del. Laws, c. 7 § 1; 73 Del. Laws, c. 252 § 7; 74 Del. Laws, c. 140 §§ 1-3; 77 Del. Laws, c. 230 §§ 1-4.)

§ 1441A State implementation of the federal Law Enforcement Officers Safety Act of 2004 (18 U.S.C. § 926B as amended in 2010 and 2013); carrying of concealed firearms by qualified law-enforcement officers.

(a) Notwithstanding any other provision of the law of any state or any political subdivision thereof, an individual who is a qualified law-enforcement officer and who is carrying the identification required by subsection (d) of this section may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b) of this section.

(b) This section shall not be construed to supersede or limit the laws of any state that:

(1) Permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) Prohibit or restrict the possession of firearms on any state or local government property, installation, building, base, or park.

(c) As used in this section, the term "qualified law-enforcement officer" means an employee of a governmental agency who:

(1) Is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under 10 U.S.C. § 807(b) (article 7(b) of the Uniform Code of Military Justice);

(2) Is authorized by the agency to carry a firearm;

(3) Is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;

(4) Meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;

(5) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(6) Is not prohibited by federal law from receiving a firearm.

(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed that identifies the employee as a police officer or law-enforcement officer of the agency.

(e) As used in this section, the term "firearm":

(1) Except as provided in this subsection, has the same meaning as in 18 U.S.C. § 921;

(2) Includes ammunition not expressly prohibited by federal law or subject to the provisions of the National Firearms Act [26 U.S.C. § 5801 et seq.]; and

(3) Does not include:

a. Any machinegun (as defined in § 5845 of the National Firearms Act [26 U.S.C. § 5845]);

b. Any firearm silencer (as defined in 18 U.S.C. § 921); and

c. Any destructive device (as defined in 18 U.S.C. § 921).

(f) For the purposes of this section, a law-enforcement officer of the Amtrak Police Department, a law-enforcement officer of the Federal Reserve, or a law-enforcement or police officer of the executive branch of the federal government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under 10 U.S.C. § 807(b) (article 7(b) of the Uniform Code of Military Justice).

(76 Del. Laws, c. 320 § 1; 70 Del. Laws, c. 186 § 1; 80 Del. Laws, c. 181 § 1.)

§ 1441B State implementation of the federal Law Enforcement Officers Safety Act of 2004 (18 U.S.C. § 926C as amended in 2010 and 2013); carrying of concealed firearms by qualified retired law-enforcement officers.

(a) Notwithstanding any other provision of the law of any state or any political subdivision thereof, an individual who is a qualified retired law-enforcement officer and who is carrying the identification required by subsection (d) of this section may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b) of this section.

(b) This section shall not be construed to supersede or limit the laws of any state that:

(1) Permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) Prohibit or restrict the possession of firearms on any state or local government property, installation, building, base, or park.

(c) As used in this section, the term "qualified retired law-enforcement officer" means an individual who:

(1) Separated from service in good standing from service with a public agency as a law-enforcement officer;

(2) Before such separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest or apprehension under 10 U.S.C. § 807(b) (article 7(b) of the Uniform Code of Military Justice);

(3)a. Before such separation, served as a law-enforcement officer for an aggregate of 10 years or more; or

b. Separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) During the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law-enforcement officers, as determined by the former agency of the individual, the state in which the individual resides or, if the state has not established such standards, either a law-enforcement agency within the state in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state;

(5)a. Has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in paragraph (d)(1) of this section; or

b. Has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described in paragraph (d)(1) of this section;

(6) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) Is not prohibited by federal law from receiving a firearm.

(d) The identification required by this subsection is:

(1) A photographic identification issued by the agency from which the individual separated from service as a law-enforcement officer that identifies the person as having been employed as a police officer or law-enforcement officer and indicates that the individual has, not less recently than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm; or

(2)a. A photographic identification issued by the agency from which the individual separated from service as a law-enforcement officer that identifies the person as having been employed as a police officer or law-enforcement officer; and

b. A certification issued by the state in which the individual resides or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state that indicates that the individual has, not less than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the state or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state to have met:

1. The active duty standards for qualification in firearms training, as established by the state, to carry a firearm of the same type as the concealed firearm; or

2. If the state has not established such standards, standards set by any law-enforcement agency within that state to carry a firearm of the same type as the concealed firearm.

(e) As used in this section:

(1) The term "firearm":

a. Except as provided in this paragraph, has the same meaning as in 18 U.S.C. § 921;

b. Includes ammunition not expressly prohibited by federal law or subject to the provisions of the National Firearms Act [26 U.S.C. § 5801 et seq.]; and

c. Does not include:

1. Any machinegun (as defined in § 5845 of the National Firearms Act [26 U.S.C. § 5845]);

2. Any firearm silencer (as defined in 18 U.S.C. § 921); and

3. Any destructive device (as defined in 18 U.S.C. § 921); and

(2) The term "service with a public agency as a law-enforcement officer" includes service as a law-enforcement officer of the Amtrak Police Department, service as a law-enforcement officer of the Federal Reserve, or service as a law-enforcement or police officer of the executive branch of the federal government.

(3) The term "a firearm of the same type" means a revolver or a semi-automatic pistol.

(80 Del. Laws, c. 181 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1442 Carrying a concealed deadly weapon; class G felony; class D felony.

A person is guilty of carrying a concealed deadly weapon when the person carries concealed a deadly weapon upon or about the person without a license to do so as provided by § 1441 of this title.

Carrying a concealed deadly weapon is a class G felony, unless the deadly weapon is a firearm, in which case it is a class D felony.

It shall be a defense that the defendant has been issued an otherwise valid license to carry a concealed deadly weapon pursuant to terms of § 1441 of this title, where:

(1) The license has expired,

(2) The person had applied for renewal of said license within the allotted time frame prior to expiration of the license, and

(3) The offense is alleged to have occurred while the application for renewal of said license was pending before the court.

(11 Del. C. 1953 § 1442; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 547 § 13; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 313 §§ 1, 6.)

§ 1443 Carrying a concealed dangerous instrument; class A misdemeanor.

(a) A person is guilty of carrying a concealed dangerous instrument when the person carries concealed a dangerous instrument upon or about the person.

(b) It shall be a defense that the defendant was carrying the concealed dangerous instrument for a specific lawful purpose and that the defendant had no intention of causing any physical injury or threatening the same.

(c) For the purposes of this section, disabling chemical spray, as defined in § 222 of this title, shall not be considered to be a dangerous instrument.

(d) Carrying a concealed dangerous instrument is a class A misdemeanor.

(11 Del. C. 1953 § 1443; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 547 § 14; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 374 § 6.)

§ 1444 Possessing a destructive weapon; class E felony.

(a) A person is guilty of possessing a destructive weapon when the person sells, transfers, buys, receives or has possession of a bomb, bombshell, firearm silencer, sawed-off shotgun, machine gun or any other firearm or weapon which is adaptable for use as a machine gun.

(b) Possessing a destructive weapon is a class E felony. This section does not apply to members of the military forces or to members of a police force in this State duly authorized to carry a weapon of the type described; nor shall the provisions contained herein apply to authorized and certified (by an accredited state enforcement agency) state and federal wildlife biologists possessing firearm silencers for the purposes of wildlife disease or wildlife population control, or persons possessing machine guns for scientific or experimental research and development purposes, which machine guns have been duly registered under the National Firearms Act of 1968 (26 U.S.C. § 5801 et seq.).

(c) The term "shotgun" as used in this section means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger. The term "sawed-off shotgun" as used in this section means a shotgun having 1 or more barrels less than 18 inches in length or any weapon made from a shotgun (whether by alteration, modification or otherwise) if such weapon as modified has an overall length of less than 26 inches.

(11 Del. C. 1953 § 1444; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 547 § 12; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 411 § 1.)

§ 1445 Unlawfully dealing with a dangerous weapon; unclassified misdemeanor.

A person is guilty of unlawfully dealing with a dangerous weapon when:

(1) The person possesses, sells or in any manner has control of:

a. A weapon which by compressed air or by spring discharges or projects a pellet, slug or bullet, except a BB or air gun which does not discharge or project a pellet or slug larger than a BB shot; or

b. A pellet, slug or bullet, intending that it be used in any weapon prohibited by paragraph (1)a. of this section; or

(2) The person sells, gives or otherwise transfers to a child under 16 years of age a BB or air gun or spear gun or BB shot, unless the person is that child's parent or guardian, or unless the person first receives the permission of said parent or guardian; or

(3) Being a parent, the person permits the person's child under 16 years of age to have possession of a firearm or a BB or air gun or spear gun unless under the direct supervision of an adult; or

(4) The person sells, gives or otherwise transfers to a child under 18 years of age a firearm or ammunition for a firearm, unless the person is that child's parent or guardian, or unless the person first receives the permission of said parent or guardian; or

(5) The person sells, gives or otherwise transfers a firearm to any person knowing that said person intends to commit any felony, class A misdemeanor or drug related criminal offense while in possession of said firearm.

Unlawfully dealing with a firearm or dangerous weapon is an unclassified misdemeanor, unless the person is convicted under paragraph (4) of this section, in which case it is a class G felony, or unless the person is convicted under paragraph (5) of this section, in which case it is a class E felony.

(11 Del. C. 1953 § 1445; 58 Del. Laws, c. 497 § 1; 64 Del. Laws, c. 44 § 1; 67 Del. Laws, c. 130 § 8; 69 Del. Laws, c. 312 §§ 1-3; 70 Del. Laws, c. 186 § 1.)

§ 1446 Unlawfully dealing with a switchblade knife; unclassified misdemeanor.

A person is guilty of unlawfully dealing with a switchblade knife when the person sells, offers for sale or has in possession a knife, the blade of which is released by a spring mechanism or by gravity.

Unlawfully dealing with a switchblade knife is an unclassified misdemeanor.

(11 Del. C. 1953 § 1446; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1446A Undetectable knives; commercial manufacture, import for commercial sale, or offers for commercial sale; or possession.

(a) Any person in this state who commercially manufactures or causes to be commercially manufactured, or who knowingly imports into the state for commercial sale, keeps for commercial sale, or offers or exposes for commercial sale, or who possesses any undetectable knife is guilty of a class G felony. As used in this section, an "undetectable knife" means any knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict serious physical injury or death that is commercially manufactured to be used as a weapon and is not detectable by a metal detector or magnetometer because there is no material permanently affixed that would be detectable by a metal detector or magnetometer, either handheld or otherwise, that is set at standard calibration.

(b) Notwithstanding any other provision of law, all knives or other instruments with or without a handguard that are capable of ready use as a stabbing weapon that may inflict serious physical injury or death that are commercially manufactured in this state that utilize materials that are not detectable by a metal detector or magnetometer, shall be manufactured to include permanently installed materials that will ensure they are detectable by a metal detector or magnetometer, either handheld or otherwise, that is set at standard calibration.

(c) This section shall not apply to the manufacture or importation of undetectable knives for sale to a law-enforcement or military entity nor shall this section apply to the subsequent sale of these knives to law enforcement or military entity.

(d) This section shall not apply to the manufacture or importation of undetectable knives for sale to federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that the undetectable knives are properly housed and secured from unauthorized handling, nor shall this section apply to the subsequent sale of the knives to these societies, museums, and collections.

(75 Del. Laws, c. 348 § 1.)

§ 1447 Possession of a deadly weapon during commission of a felony; class B felony.

(a) A person who is in possession of a deadly weapon during the commission of a felony is guilty of possession of a deadly weapon during commission of a felony.

Possession of a deadly weapon during commission of a felony is a class B felony.

(b) Any sentence imposed for a violation of this section shall not be subject to suspension and no person convicted for a violation of this section shall be eligible for good time, parole or probation during the period of the sentence imposed.

(c) Any sentence imposed upon conviction for possession of a deadly weapon during the commission of a felony shall not run concurrently with any other sentence. In any instance where a person is convicted of a felony, together with a conviction for the possession of a deadly weapon during the commission of such felony, such person shall serve the sentence for the felony itself before beginning the sentence imposed for possession of a deadly weapon during such felony.

(d) Every person charged under this section over the age of 16 years shall be tried as an adult, notwithstanding any contrary provision of statutes governing the Family Court or any other state law.

(e) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted and during which the person possessed the deadly weapon is a lesser included felony of the one originally charged.

(11 Del. C. 1953 § 1447; 58 Del. Laws, c. 497 § 1; 59 Del. Laws, c. 203 § 34; 59 Del. Laws, c. 547 § 15; 60 Del. Laws, c. 306 §§ 1, 2; 63 Del. Laws, c. 412 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 107 § 1.)

§ 1447A Possession of a firearm during commission of a felony; class B felony.

(a) A person who is in possession of a firearm during the commission of a felony is guilty of possession of a firearm during the commission of a felony. Possession of a firearm during the commission of a felony is a class B felony.

(b) A person convicted under subsection (a) of this section shall receive a minimum sentence of 3 years at Level V, notwithstanding the provisions of § 4205(b)(2) of this title.

(c) A person convicted under subsection (a) of this section, and who has been at least twice previously convicted of a felony in this State or elsewhere, shall receive a minimum sentence of 5 years at Level V, notwithstanding the provisions of §§ 4205(b)(2) and 4215 of this title.

(d) Any sentence imposed for a violation of this section shall not be subject to suspension and no person convicted for a violation of this section shall be eligible for good time, parole or probation during the period of the sentence imposed.

(e) Any sentence imposed upon conviction for possession of a firearm during the commission of a felony shall not run concurrently with any other sentence. In any instance where a person is convicted of a felony together with a conviction for the possession of a firearm during the commission of such felony, such person shall serve the sentence for the felony itself before beginning the sentence imposed for possession of a firearm during such felony.

(f) Every person charged under this section over the age of 15 years shall be tried as an adult, notwithstanding any contrary provisions or statutes governing the Family Court or any other state law.

(g) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted and during which the person possessed the firearm is a lesser included felony of the one originally charged.

(69 Del. Laws, c. 229 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 596 § 7; 73 Del. Laws, c. 107 §§ 2, 3.)

§ 1448 Possession and purchase of deadly weapons by persons prohibited; penalties [Effective Jan. 1, 2017]

(a) Except as otherwise provided herein, the following persons are prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm within the State:

(1) Any person having been convicted in this State or elsewhere of a felony or a crime of violence involving physical injury to another, whether or not armed with or having in possession any weapon during the commission of such felony or crime of violence;

(2) Any person who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium, unless such person can demonstrate that he or she is no longer prohibited from possessing a firearm pursuant to § 1448A of this title;

(3) Any person who has been convicted for the unlawful use, possession or sale of a narcotic, dangerous drug or central nervous system depressant or stimulant as those terms were defined prior to the effective date of the Uniform Controlled Substances Act in June 1973 or of a narcotic drug or controlled substance as defined in Chapter 47 of Title 16;

(4) Any person who, as a juvenile, has been adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their twenty-fifth birthday;

(5) Any juvenile, if said deadly weapon is a handgun, unless said juvenile possesses said handgun for the purpose of engaging in lawful hunting, instruction, sporting or recreational activity while under the direct or indirect supervision of an adult. For the purpose of this subsection, a "handgun" shall be defined as any pistol, revolver or other firearm designed to be readily capable of being fired when held in 1 hand;

(6) Any person who is subject to a Family Court protection from abuse order (other than an ex parte order), but only for so long as that order remains in effect or is not vacated or otherwise terminated, except that this paragraph shall not apply to a contested order issued solely upon § 1041(1)d., e., or h. of Title 10, or any combination thereof;

(7) Any person who has been convicted in any court of any misdemeanor crime of domestic violence. For purposes of this paragraph, the term "misdemeanor crime of domestic violence" means any misdemeanor offense that:

a. Was committed by a member of the victim's family, as "family" is defined in § 901 of Title 10 (regardless, however, of the state of residence of the parties); by a former spouse of the victim; by a person who cohabited with the victim at the time of or within 3 years prior to the offense; by a person with a child in common with the victim; or by a person with whom the victim had a substantive dating relationship, as defined in § 1041 of Title 10, at the time of or within 3 years prior to the offense; and

b. Is an offense as defined under § 601, § 602, § 603, § 611, § 614, § 621, § 625, § 628A, § 763, § 765, § 766, § 767, § 781, § 785 or § 791 of this title, or any similar offense when committed or prosecuted in another jurisdiction; or

(8) Any person who, knowing that he or she is the defendant or co-defendant in any criminal case in which that person is alleged to have committed any felony under the laws of this State, the United States or any other state or territory of the United States, becomes a fugitive from justice by failing to appear for any scheduled court proceeding pertaining to such felony for which proper notice was provided or attempted. It is no defense to a prosecution under this paragraph that the person did not receive notice of the scheduled court proceeding.

(9) Any person, if the deadly weapon is a semi-automatic or automatic firearm, or a handgun, who, at the same time, possesses a controlled substance in violation of § 4763, or § 4764 of Title 16.

(10) Except for "antique firearms", any validly seized deadly weapons or ammunition from a person prohibited as a result of a felony conviction under Delaware law, federal law or the laws of any other state, or as otherwise prohibited under this subsection (a) of this section may be disposed of by the law enforcement agency holding the weapon or ammunition, pursuant to § 2311 of this title.

a. "Antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily restored to a firing condition.

b. A person prohibited under this section has the burden of proving that the subject firearm is an antique firearm as defined in paragraph (a)(10)a. of this section subject to an exemption under this section and § 2311 of this title.

(b) Any prohibited person as set forth in subsection (a) of this section who knowingly possesses, purchases, owns or controls a deadly weapon or ammunition for a firearm while so prohibited shall be guilty of possession of a deadly weapon or ammunition for a firearm by a person prohibited.

(c) Possession of a deadly weapon by a person prohibited is a class F felony, unless said deadly weapon is a firearm or ammunition for a firearm, and the violation is one of paragraphs (a)(1)-(8) of this section, in which case it is a class D felony, or unless the person is eligible for sentencing pursuant to subsection (e) of this section, in which case it is a class C felony. As used herein, the word "ammunition" shall mean 1 or more rounds of fixed ammunition designed for use in and capable of being fired from a pistol, revolver, shotgun or rifle but shall not mean inert rounds or expended shells, hulls or casings.

(d) Any person who is a prohibited person solely as the result of a conviction for an offense which is not a felony shall not be prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm if 5 years have elapsed from the date of conviction.

(e)(1) Notwithstanding any provision of this section or Code to the contrary, any person who is a prohibited person as described in this section and who knowingly possesses, purchases, owns or controls a firearm or destructive weapon while so prohibited shall receive a

minimum sentence of:

a. Three years at Level V, if the person has previously been convicted of a violent felony;

b. Five years at Level V, if the person does so within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or

c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

(2) Any person who is a prohibited person as described in this section because of a conviction for a violent felony and who, while in possession or control of a firearm in violation of this section, negligently causes serious physical injury to or the death of another person through the use of such firearm, shall be guilty of a class B felony and shall receive a minimum sentence of:

a. Four years at Level V; or

b. Six years at Level V, if the person causes such injury or death within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or

c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

d. Nothing in this paragraph shall be deemed to be a related or included offense of any other provision of this Code. Nothing in this paragraph shall be deemed to preclude prosecution or sentencing under any other provision of this Code nor shall this paragraph be deemed to repeal any other provision of this Code.

(3) Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title. For the purposes of this subsection, "violent felony" means any felony so designated by § 4201(c) of this title, or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a violent felony by § 4201(c) of this title.

(4) Any sentence imposed for a violation of this subsection shall not be subject to suspension and no person convicted for a violation of this subsection shall be eligible for good time, parole or probation during the period of the sentence imposed.

(f)(1) Upon conviction, any 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, for a first offense, receive a minimum sentence of 6 months of Level V incarceration, and shall receive a minimum sentence of 1 year of Level V incarceration for a second and subsequent offense, which shall not be subject to suspension. Any sentence imposed pursuant to this subsection shall not be subject to §§ 4205(b) and 4215 of this title.

(2) The penalties prescribed by this subsection and subsection (g) of this section shall be imposed regardless of whether or not the juvenile is determined to be amenable to the rehabilitative process of the Family Court pursuant to § 1010(c) of Title 10 or any successor statute.

(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 and the Violent Crimes Compensation Board, shall be responsible for the implementation of this subsection.

(11 Del. C. 1953 § 1448; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 68 Del. Laws, c. 422 § 1; 69 Del. Laws, c. 313 §§ 1, 2; 69 Del. Laws, c. 441 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 230 §§ 1-5; 71 Del. Laws, c. 358 §§ 1, 2; 72 Del. Laws, c. 61 §§ 1, 2; 74 Del. Laws, c. 106 § 7; 75 Del. Laws, c. 78 § 1; 76 Del. Laws, c. 99 § 1; 76 Del. Laws, c. 101 §§ 1-5; 78 Del. Laws, c. 13 §§ 5, 6; 78 Del. Laws, c. 135 §§ 6-8; 78 Del. Laws, c. 137 § 5; 78 Del. Laws, c. 168 § 6; 79 Del. Laws, c. 124 §§ 1, 2; 79 Del. Laws, c. 188 § 1; 79 Del. Laws, c. 265 § 10; 80 Del. Laws, c. 190 § 2.)

§ 1448 Possession and purchase of deadly weapons by persons prohibited; penalties [Effective until Jan. 1, 2017]

(a) Except as otherwise provided herein, the following persons are prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm within the State:

(1) Any person having been convicted in this State or elsewhere of a felony or a crime of violence involving physical injury to another, whether or not armed with or having in possession any weapon during the commission of such felony or crime of violence;

(2) Any person who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium, unless such person can demonstrate that he or she is no longer prohibited from possessing a firearm pursuant to § 1448A of this title;

(3) Any person who has been convicted for the unlawful use, possession or sale of a narcotic, dangerous drug or central nervous system depressant or stimulant as those terms were defined prior to the effective date of the Uniform Controlled Substances Act in June 1973 or of a narcotic drug or controlled substance as defined in Chapter 47 of Title 16;

(4) Any person who, as a juvenile, has been adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their twenty-fifth birthday;

(5) Any juvenile, if said deadly weapon is a handgun, unless said juvenile possesses said handgun for the purpose of engaging in lawful hunting, instruction, sporting or recreational activity while under the direct or indirect supervision of an adult. For the purpose of this subsection, a "handgun" shall be defined as any pistol, revolver or other firearm designed to be readily capable of being fired when held in 1 hand;

(6) Any person who is subject to a Family Court protection from abuse order (other than an ex parte order), but only for so long as that order remains in effect or is not vacated or otherwise terminated, except that this paragraph shall not apply to a contested order issued solely upon § 1041(1)d., e., or h. of Title 10, or any combination thereof;

(7) Any person who has been convicted in any court of any misdemeanor crime of domestic violence. For purposes of this paragraph, the term "misdemeanor crime of domestic violence" means any misdemeanor offense that:

a. Was committed by a member of the victim's family, as "family" is defined in § 901(12) of Title 10 (regardless, however, of the state of residence of the parties); by a former spouse of the victim; by a person who cohabitated with the victim at the time of the offense; or by a person with a child in common with the victim; and

b. Is an offense as defined under § 601, § 602, § 603, § 611, § 614, § 621, § 625, § 628A, § 763, § 765, § 766, § 767, § 781, § 785 or § 791 of this title, or any similar offense when committed or prosecuted in another jurisdiction; or

(8) Any person who, knowing that he or she is the defendant or co-defendant in any criminal case in which that person is alleged to have committed any felony under the laws of this State, the United States or any other state or territory of the United States, becomes a fugitive from justice by failing to appear for any scheduled court proceeding pertaining to such felony for which proper notice was provided or attempted. It is no defense to a prosecution under this paragraph that the person did not receive notice of the scheduled court proceeding.

(9) Any person, if the deadly weapon is a semi-automatic or automatic firearm, or a handgun, who, at the same time, possesses a controlled substance in violation of § 4763, or § 4764 of Title 16.

(10) Except for "antique firearms", any validly seized deadly weapons or ammunition from a person prohibited as a result of a felony conviction under Delaware law, federal law or the laws of any other state, or as otherwise prohibited under this subsection (a) of this section may be disposed of by the law enforcement agency holding the weapon or ammunition, pursuant to § 2311 of this title.

a. "Antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily restored to a firing condition.

b. A person prohibited under this section has the burden of proving that the subject firearm is an antique firearm as defined in paragraph (a)(10)a. of this section subject to an exemption under this section and § 2311 of this title.

(b) Any prohibited person as set forth in subsection (a) of this section who knowingly possesses, purchases, owns or controls a deadly weapon or ammunition for a firearm while so prohibited shall be guilty of possession of a deadly weapon or ammunition for a firearm by a person prohibited.

(c) Possession of a deadly weapon by a person prohibited is a class F felony, unless said deadly weapon is a firearm or ammunition for a firearm, and the violation is one of paragraphs (a)(1)-(8) of this section, in which case it is a class D felony, or unless the person is eligible for sentencing pursuant to subsection (e) of this section, in which case it is a class C felony. As used herein, the word "ammunition" shall mean 1 or more rounds of fixed ammunition designed for use in and capable of being fired from a pistol, revolver, shotgun or rifle but shall not mean inert rounds or expended shells, hulls or casings.

(d) Any person who is a prohibited person solely as the result of a conviction for an offense which is not a felony shall not be prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm if 5 years have elapsed from the date of conviction.

(e)(1) Notwithstanding any provision of this section or Code to the contrary, any person who is a prohibited person as described in this section and who knowingly possesses, purchases, owns or controls a firearm or destructive weapon while so prohibited shall receive a minimum sentence of:

a. Three years at Level V, if the person has previously been convicted of a violent felony;

b. Five years at Level V, if the person does so within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or

c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

(2) Any person who is a prohibited person as described in this section because of a conviction for a violent felony and who, while in possession or control of a firearm in violation of this section, negligently causes serious physical injury to or the death of another person through the use of such firearm, shall be guilty of a class B felony and shall receive a minimum sentence of:

a. Four years at Level V; or

b. Six years at Level V, if the person causes such injury or death within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or

c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

d. Nothing in this paragraph shall be deemed to be a related or included offense of any other provision of this Code. Nothing in this paragraph shall be deemed to preclude prosecution or sentencing under any other provision of this Code nor shall this paragraph be deemed to repeal any other provision of this Code.

(3) Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title. For the purposes of this subsection, "violent felony" means any felony so designated by § 4201(c) of this title, or any offense set forth under the laws of the

United States, any other state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a violent felony by § 4201(c) of this title.

(4) Any sentence imposed for a violation of this subsection shall not be subject to suspension and no person convicted for a violation of this subsection shall be eligible for good time, parole or probation during the period of the sentence imposed.

(f)(1) Upon conviction, any 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, for a first offense, receive a minimum sentence of 6 months of Level V incarceration, and shall receive a minimum sentence of 1 year of Level V incarceration for a second and subsequent offense, which shall not be subject to suspension. Any sentence imposed pursuant to this subsection shall not be subject to §§ 4205(b) and 4215 of this title.

(2) The penalties prescribed by this subsection and subsection (g) of this section shall be imposed regardless of whether or not the juvenile is determined to be amenable to the rehabilitative process of the Family Court pursuant to § 1010(c) of Title 10 or any successor statute.

(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 and the Violent Crimes Compensation Board, shall be responsible for the implementation of this subsection.

(11 Del. C. 1953 § 1448; 58 Del. Laws, c. 497 § 1; 67 Del. Laws, c. 130 § 8; 68 Del. Laws, c. 422 § 1; 69 Del. Laws, c. 313 §§ 1, 2; 69 Del. Laws, c. 441 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 230 §§ 1-5; 71 Del. Laws, c. 358 §§ 1, 2; 72 Del. Laws, c. 61 §§ 1, 2; 74 Del. Laws, c. 106 § 7; 75 Del. Laws, c. 78 § 1; 76 Del. Laws, c. 99 § 1; 76 Del. Laws, c. 101 §§ 1-5; 78 Del. Laws, c. 13 §§ 5, 6; 78 Del. Laws, c. 135 §§ 6-8; 78 Del. Laws, c. 137 § 5; 78 Del. Laws, c. 168 § 6; 79 Del. Laws, c. 124 §§ 1, 2; 79 Del. Laws, c. 188 § 1; 79 Del. Laws, c. 265 § 10.)

§ 1448A Criminal history record checks for sales of firearms.

(a) No licensed importer, licensed manufacturer or licensed dealer shall sell, transfer or deliver from inventory any firearm, as defined in § 222 of this title, to any other person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, without conducting a criminal history background check in accordance with regulations promulgated by the United States Department of Justice pursuant to the National Instant Criminal Background Check System ("NICS"), 28 C.F.R. §§ 25.1-25.11, as the same may be amended from time to time, to determine whether the transfer of a firearm to any person who is not licensed under 18 U.S.C. § 923 would be in violation of federal or state law.

(b) No licensed importer, licensed manufacturer or licensed dealer shall sell, transfer or deliver from inventory any firearm, as defined in § 222 of this title, to any other person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, unless and until being informed that it may "proceed" with the sale, transfer or delivery from inventory of a firearm by the Federal Bureau of Investigation (FBI), NICS Section pursuant to the request for a criminal history record check required by subsection (a) of this section or 25 days have elapsed from the date of the request for a background check and a denial has not occurred.

(c) Any person who is denied the right to receive or purchase a firearm in connection with subsection (a) of this section or § 1448B(a) of this title may request from the Federal Bureau of Investigation a written explanation for such denial; an appeal of the denial based on the accuracy of the record upon which the denial is based; and/or that erroneous information on the NICS system be corrected and that the person's rights to possess a firearm be restored. All requests pursuant to this subsection (c) shall be made in accordance with applicable federal laws and regulations, including without limitation 28 C.F.R. § 25.10. In connection herewith, at the request of a denied person, the Federal Firearms Licensed (FFL) dealer and SBI shall provide to the denied person such information as may be required by federal law or regulation in order for such person to appeal or seek additional information hereunder.

(d) Compliance with the provisions of this section shall be a complete defense to any claim or cause of action under the laws of this State for liability for damages arising from the importation or manufacture of any firearm which has been shipped or transported in interstate or foreign commerce. In addition, compliance with the provisions of this section or § 1448B of this title, as the case may be, shall be a complete defense to any claim or cause of action under the laws of this State for liability for damages allegedly arising from the actions of the transferee subsequent to the date of said compliance wherein the claim for damages is factually connected to said compliant transfer.

(f) Any licensed dealer, licensed manufacturer, licensed importer or employee thereof who wilfully and intentionally requests a criminal history record check from the Federal Bureau of Investigation, NICS for any purpose other than compliance with subsection (a) of this section or § 1448B(a) of this title, or wilfully and intentionally disseminates any criminal history record information to any person other than the subject of such information or discloses to any person the unique identification number shall be guilty of a class A misdemeanor. The Superior Court shall have exclusive jurisdiction for all offenses under this subsection.

(g) Any person who, in connection with the purchase, transfer, or attempted purchase or transfer of a firearm pursuant to subsection (a) of this section or § 1448B(a) of this title, wilfully and intentionally makes any materially false oral or written statement or wilfully and intentionally furnishes or exhibits any false identification intended or likely to deceive the licensee shall be guilty of a class G felony.

(h) Any licensed dealer, licensed manufacturer, licensed importer or employee thereof who wilfully and intentionally sells or delivers a firearm in violation of this section shall be guilty of a class A misdemeanor. Second or subsequent offenses by an individual shall be a class G felony.

(i) The SBI shall provide to the judiciary committees of the Senate and House of Representatives an annual report including the number of inquiries made pursuant to this section and § 1448B of this title for the prior calendar year. Such report shall include, but not be limited to, the number of inquiries received from licensees, the number of inquiries resulting in a determination that the potential buyer or transferee was prohibited from receipt or possession of a firearm pursuant to §§ 1448 and 1448B of this title or federal law.

(j) Notwithstanding Chapter 89 of this title, Chapter 10 of Title 29, and other Delaware laws, the SBI is authorized and directed to release records and data required by this section and by § 1448B of this title. The SBI shall not release or disclose criminal records or data except as specified in this section and in § 1448B of this title.

(k) No records, data, information or reports containing the name, address, date of birth or other identifying data of either the transferor or transferee or which contain the make, model, caliber, serial number or other identifying data of any firearm which are required, authorized or maintained pursuant to this section, § 1448B of this title or by Chapter 9 of Title 24, shall be subject to disclosure or release pursuant to the Freedom of Information Act, Chapter 100 of Title 29.

(e) The provisions of this section shall not apply to:

(1) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;

(2) Any replica of any firearm described in paragraph (e)(1) of this section if such replica:

a. Is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition; or

b. Uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;

(3) Any shotgun, which is defined as a firearm designed or intended to be fired from the shoulder and designed or made to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger;

(4) The return, by a licensed pawnbroker, of a firearm to the person from whom it was received;

(5) Transactions in which the potential buyer or transferee holds a valid concealed deadly weapons license pursuant to §§ 1441, 1441A and 1441B of this title; and

(6) Transactions involving a "law-enforcement officer" as defined by § 222 of this title.

(l) Relief from Disabilities Program. — A person who is subject to the disabilities of 18 U.S.C. § 922(d)(4) and (g)(4) or of § 1448(a)(2) of this title because of an adjudication or commitment under the laws of this State may petition for relief from a firearms prohibition from the Relief from Disabilities Board. The Relief from Disabilities Board shall be comprised of 3 members, with the chairperson appointed by and serving at the pleasure of the Secretary of Safety and Homeland Security, and 2 members appointed by and serving at the pleasure of the Secretary of the Department of Health and Social Services, 1 of whom shall be a licensed psychiatrist.

(1) The Board shall consider the petition for relief in accordance with the following:

a. The Board shall give the petitioner the opportunity to present evidence to the Board in a closed and confidential hearing on the record; and

b. A record of the hearing shall be maintained by the Board for purposes of appellate review.

(2) In determining whether to grant relief, the Board shall consider evidence regarding the following:

a. The circumstances regarding the firearms disabilities pursuant to § 1448(a)(2) of this title and 18 U.S.C. § 922(d)(4) and (g)(4);

b. The petitioner's record, which must include, at a minimum, the petitioner's mental health record, including a certificate of a medical doctor or psychiatrist licensed in this State that the person is no longer suffering from a mental disorder which interferes or handicaps the person from handling deadly weapons;

c. Criminal history records; and

d. The petitioner's reputation as evidenced through character witness statements, testimony, or other character evidence.

(3) The Board shall have the authority to require that the petitioner undergo a clinical evaluation and risk assessment, which it may also consider as evidence in determining whether to approve or deny the petition for relief.

(4) After a hearing on the record, the Board shall grant relief if it finds, by a preponderance of the evidence, that:

a. The petitioner will not be likely to act in a manner dangerous to public safety; and

b. Granting the relief will not be contrary to the public interest.

(5) The Board shall issue its decision in writing explaining the reasons for a denial or grant of relief.

(6) Any person whose petition for relief has been denied by the Relief from Disabilities Board shall have a right to a de novo judicial review in the Superior Court. The Superior Court shall consider the record of the Board hearing on the petition for relief, the decision of the Board, and, at the Court's discretion, any additional evidence it deems necessary to conduct its review.

(7) Upon notice that a petition for relief has been granted, the Department of Safety and Homeland Security shall, as soon as practicable:

a. Cause the petitioner's record to be updated, corrected, modified, or removed from any database maintained and made available to NICS to reflect that the petitioner is no longer subject to a firearms prohibition as it relates to § 1448(a)(2) of this title and 18 U.S.C. § 922(d)(4) and (g)(4); and

b. Notify the Attorney General of the United States that the petitioner is no longer subject to a firearms prohibition pursuant to § 1448(a)(2) of this title and 18 U.S.C. § 922(d)(4) and (g)(4).

(m) The Department of Safety and Homeland Security shall adopt regulations relating to compliance with NICS, including without limitation issues relating to the transmission of data, the transfer of existing data in the existing state criminal background check database and the relief from disabilities process set forth in subsection (k) of this section. In preparing such regulations, the Department shall consult with the Department of Health and Social Services, the courts, the Department of Children, Youth and Their Families, the Department of State and such other entities as may be necessary or advisable. Such regulations shall include provisions to ensure the identity, confidentiality and security of all records and data provided pursuant to this section.

(67 Del. Laws, c. 414 § 1; 69 Del. Laws, c. 224 § 3; 69 Del. Laws, c. 293 §§ 1-5; 70 Del. Laws, c. 20 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 104 § 1; 78 Del. Laws, c. 137 §§ 6-13; 79 Del. Laws, c. 20 §§ 2-7; 80 Del. Laws, c. 273 § 1.)

§ 1448B Criminal history record checks for sales of firearms — Unlicensed persons.

(a) No unlicensed person shall sell or transfer any firearm, as defined in § 222 of this title, to any other unlicensed person without having conducted a criminal history background check through a licensed firearms dealer in accordance with § 1448A of this title and § 904A of Title 24, as the same may be amended from time to time, to determine whether the sale or transfer would be in violation of federal or state law, and until the licensed firearms dealer has been informed that the sale or transfer of the firearm may "proceed" by the Federal Bureau of Investigation, NICS Section or 25 days have elapsed from the date of the request for a background check and a denial has not occurred.

(b) For purposes of this section:

(1) "Licensed dealer" means any person licensed as a deadly weapons dealer pursuant to Chapter 9 of Title 24 and 18 U.S.C. § 921 et seq.

(2) "Transfer" means assigning, pledging, leasing, loaning, giving away, or otherwise disposing of, but does not include:

a. The loan of a firearm for any lawful purpose, for a period of 14 days or less, by the owner of said firearm to a person known personally to him or her;

b. A temporary transfer for any lawful purpose that occurs while in the continuous presence of the owner of the firearm, provided that such temporary transfer shall not exceed 24 hours in duration;

c. The transfer of a firearm for repair, service or modification to a licensed gunsmith or other person lawfully engaged in such activities as a regular course of trade or business; or

d. A transfer that occurs by operation of law or because of the death of a person for whom the prospective transferor is an executor or administrator of an estate or a trustee of a trust created in a will.

(3) "Unlicensed person" means any person who is not a licensed importer, licensed manufacturer or licensed dealer.

(c) The provisions of this section shall not apply to:

(1) Transactions in which the potential purchaser or transferee is a parent, mother-in-law, father-in-law, stepparent, legal guardian, grandparent, child, daughter-in-law, son-in-law, stepchild, grandchild, sibling, sister-in-law, brother-in-law, spouse, or civil union partner of the seller or transferor;

(2) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;

(3) Any replica of any firearm described in paragraph (c)(2) of this section if such replica:

a. Is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition; or

b. Uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;

(4) Any muzzle-loading firearm designed for hunting or competitive shooting not requiring a criminal background check pursuant to federal law;

(5) Transactions in which the potential purchaser or transferee is a qualified active duty law-enforcement officer or a qualified retired law-enforcement officer, as such terms are defined in § 1441A of this title;

(6) Transactions in which the potential purchaser or transferee holds a current and valid concealed carry permit issued by the Superior Court of the State of Delaware pursuant to § 1441 of this title.

(7) Transactions in which the prospective buyer or transferee is a bona fide member or adherent of an organized church or religious group, the tenets of which prohibit photographic identification; provided, however, that no unlicensed person shall sell or transfer any firearm to any such person without having conducted a criminal history background check in accordance with subsection (f) of this section hereunder to determine whether the sale or transfer would be in violation of federal or state law;

(8) Transactions involving the sale or transfer of a curio or relic to a licensed collector, as such terms are defined in 27 C.F.R. 478.11, as the same may be amended from time to time;

(9) Transactions involving the sale or transfer of a firearm to an authorized representative of the State or any subdivision thereof as part of an authorized voluntary gun buyback program.

(d) Notwithstanding anything to the contrary herein, no fee for a criminal history background check may be charged for the return of a firearm to its owner that has been repaired, serviced or modified by a licensed gunsmith or other person lawfully engaged in such activities as a regular course of trade or business.

(e) Any person who knowingly sells or transfers a firearm in violation of this section shall be guilty of a class A misdemeanor. Any subsequent offense shall be a class G felony. The Superior Court shall have exclusive jurisdiction for all offenses under this section.

(f) The State Bureau of Investigation (the "Bureau") shall facilitate the sale or transfer of any firearm in which the prospective buyer is a bona fide member or adherent of an organized church or religious group, the tenets of which prohibit photographic identification, pursuant to the following procedure. For purposes of this subsection, the terms "prospective buyer" and "prospective seller" shall include prospective transferors and prospective transferees, respectively.

(1) The prospective buyer and seller shall jointly appear at the State Bureau of Investigation during regular hours of business, and shall inform the Bureau of their desire to avail themselves of the procedure set forth herein. The actual cost of the criminal history background check shall be paid by either the prospective buyer or prospective seller.

(2) The prospective buyer shall be required to submit fingerprints and other necessary information in order to obtain a report of the individual's entire criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). In addition, the prospective buyer shall submit to the Bureau a signed affidavit stating that photographic identification conflicts with the tenets of an organized church or religious group of which the prospective buyer is a bona fide member.

(3) In the event that said background check reveals that the prospective buyer is prohibited from possessing, purchasing or owning a firearm, the Bureau shall so inform both parties of that fact and the transfer shall not take place.

(4) The Bureau shall maintain a record of all background checks under this section to the same extent as is required of licensed dealers pursuant to Chapter 9 of Title 24.

(5) The Bureau is hereby authorized to promulgate such reasonable forms and regulations as may be necessary or desirable to effectuate the provisions of this subsection.

(79 Del. Laws, c. 20 § 1; 70 Del. Laws, c. 186 § 1; 80 Del. Laws, c. 273 § 2.)

§ 1449 Wearing body armor during commission of felony; class B felony.

(a) A person who wears body armor during the commission of a felony is guilty of wearing body armor during the commission of a felony.

(b) Notwithstanding § 4205 of this title, the minimum sentence for violation of this section shall be not less than 3 years which minimum sentence shall not be subject to suspension and no person convicted for a violation of this section shall be eligible for parole or probation during such 3 years.

(c) Any sentence imposed upon conviction for wearing body armor during the commission of a felony shall not run concurrently with any other sentence. In any instance where a person is convicted of a felony, together with the conviction for wearing body armor during the commission of a felony, such person shall serve the sentence for the felony itself before beginning the sentence imposed for wearing body armor during the commission of such felony.

(d) Every person charged under this section over the age of 16 years shall be tried as an adult, notwithstanding any contrary provision of statutes governing the Family Court or any other state law.

(e) As used in this section, the term "body armor" means any material designed to provide bullet penetration resistance.

(f) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted and during which the person wore body armor is a lesser included felony of the one originally charged.

(g) Wearing body armor during the commission of a felony is a class B felony.

(63 Del. Laws, c. 368 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1450 Receiving a stolen firearm; class F felony.

A person is guilty of receiving a stolen firearm if the person intentionally receives, retains or disposes of a firearm of another person with intent to deprive the owner of it or to appropriate it, knowing that it has been acquired under circumstances amounting to theft, or believing that it has been so acquired. Receiving a stolen firearm is a class F felony. Knowledge that a firearm has been acquired under circumstances amounting to theft may be presumed in the case of a person who acquires it for a consideration which the person knows is substantially below its reasonable value.

(64 Del. Laws, c. 38 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1451 Theft of a firearm; class F felony.

(a) A person is guilty of theft of a firearm when the person takes, exercises control over or obtains a firearm of another person intending to deprive the other person of it or appropriate it.

(b) Theft of a firearm is a class F felony.

(64 Del. Laws, c. 37 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1452 Unlawfully dealing with knuckles-combination knife; class B misdemeanor.

A person is guilty of unlawfully dealing with a knuckles-combination knife when the person sells, offers for sale or has in possession a knife, the blade of which is supported by a knuckle ring grip handle.

Unlawfully dealing with a knuckles-combination knife is a class B misdemeanor.

(65 Del. Laws, c. 465 § 1; 67 Del. Laws, c. 130 § 8; 70 Del. Laws, c. 186 § 1.)

§ 1453 Unlawfully dealing with martial arts throwing star; class B misdemeanor.

A person is guilty of unlawfully dealing with a martial arts throwing star when the person sells, offers for sale or has in possession a sharp metal throwing star.

Unlawfully dealing with a martial arts throwing star is a class B misdemeanor.

(65 Del. Laws, c. 465 § 1; 67 Del. Laws, c. 130 § 8.)

§ 1454 Giving a firearm to person prohibited; class F felony.

A person is guilty of giving a firearm to certain persons prohibited when the person sells, transfers, gives, lends or otherwise furnishes a firearm to a person knowing that said person is a person prohibited as is defined in § 1448 of this title.

Giving a firearm to certain persons prohibited is a class F felony.

(68 Del. Laws, c. 47 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1455 Engaging in a firearms transaction on behalf of another; class F felony; class C felony.

A person is guilty of engaging in a firearms transaction on behalf of another when the person purchases or obtains a firearm on behalf of a person not qualified to legally purchase, own or possess a firearm in this State or for the purpose of selling, giving or otherwise transferring a firearm to a person not legally qualified to purchase, own or possess a firearm in this State.

Engaging in a firearms transaction on behalf of another is a class F felony for the first offense, and a class C felony for each subsequent like offense.

(69 Del. Laws, c. 220 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1456 Unlawfully permitting a minor access to a firearm; class A misdemeanor.

(a) A person is guilty of unlawfully permitting a minor access to a firearm when the person intentionally or recklessly stores or leaves a loaded firearm within the reach or easy access of a minor and where the minor obtains the firearm and uses it to inflict serious physical injury or death upon the minor or any other person.

(b) It shall be an affirmative defense to a prosecution under this section if:

(1) The firearm was stored in a locked box or container or in a location which a reasonable person would have believed to be secure from access to a minor; or

(2) The minor obtains the firearm as the result of an unlawful entry by any person; or

(3) The serious physical injuries or death to the minor or any other person results from a target or sport shooting accident or hunting accident.

(c) Unlawfully permitting a minor access to a firearm is a class A misdemeanor.

(69 Del. Laws, c. 360 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1457 Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F felony; class A or B misdemeanor.

(a) Any person who commits any of the offenses described in subsection (b) of this section, or any juvenile who possesses a firearm or other deadly weapon, and does so while in or on a "Safe School and Recreation Zone" shall be guilty of the crime of possession of a weapon in a Safe School and Recreation Zone.

(b) The underlying offenses in Title 11 shall be:

(1) Section 1442. — Carrying a concealed deadly weapon; class G felony; class D felony.

(2) Section 1444. — Possessing a destructive weapon; class E felony.

(3) Section 1446. — Unlawfully dealing with a switchblade knife; unclassified misdemeanor.

(4) Section 1448. — Possession and purchase of deadly weapons by persons prohibited; class F felony.

(5) Section 1452. — Unlawfully dealing with knuckles-combination knife; class B misdemeanor.

(6) Section 1453. — Unlawfully dealing with martial arts throwing star; class B misdemeanor.

(c) For the purpose of this section, "Safe School and Recreation Zone" shall mean:

(1) Any building, structure, athletic field, sports stadium or real property owned, operated, leased or rented by any public or private school including, but not limited to, any kindergarten, elementary, secondary or vocational-technical school or any college or university, within 1,000 feet thereof; or

(2) Any motor vehicle owned, operated, leased or rented by any public or private school including, but not limited to, any kindergarten, elementary, secondary, or vocational-technical school or any college or university; or

(3) Any building or structure owned, operated, leased or rented by any county or municipality, or by the State, or by any board, agency, commission, department, corporation or other entity thereof, or by any private organization, which is utilized as a recreation center, athletic field or sports stadium.

(d) Nothing in this section shall be construed to preclude or otherwise limit a prosecution of or conviction for a violation of this chapter or any other provision of law. A person may be convicted both of the crime of possession of a weapon in a Safe School and Recreation Zone and of the underlying offense as defined elsewhere by the laws of the State.

(e) It shall not be a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place on or in a Safe School and Recreation Zone.

(f) It shall be an affirmative defense to a prosecution for a violation of this section that the weapon was possessed pursuant to an authorized course of school instruction, or for the purpose of engaging in any school-authorized sporting or recreational activity. The affirmative defense established in this section shall be proved by a preponderance of the evidence. Nothing herein shall be construed to establish an affirmative defense with respect to a prosecution for any offense defined in any other section of this chapter.

(g) It is an affirmative defense to prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, and that no person under the age of 18 was present in such private residence at any time during the commission of the offense. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. Nothing herein shall be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

(h) This section shall not apply to any law-enforcement or police officer, or to any security officer as defined in Chapter 13 of Title 24.

(i) For purposes of this section only, "deadly weapon" shall include any object described in § 222(5) or (12) of this title or BB guns.

(j) The penalty for possession of a weapon in a Safe School and Recreation Zone shall be:

(1) If the underlying offense is a class B misdemeanor, the crime shall be a class A misdemeanor;

(2) If the underlying offense is an unclassified misdemeanor, the crime shall be a class B misdemeanor;

(3) If the underlying offense is a class E, F, or G felony, the crime shall be one grade higher than the underlying offense.

(4) If the underlying offense is a class D felony, the crime shall also be a class D felony.

(5) In the event that an elementary or secondary school student possesses a firearm or other deadly weapon in a Safe School and Recreation Zone in addition to any other penalties contained in this section, the student shall be expelled by the local school board or charter school board of directors for a period of not less than 180 days unless otherwise provided for in federal or state law. The local school board or charter school board of directors may, on a case by case basis, modify the terms of the expulsion.

(70 Del. Laws, c. 213 § 1; 74 Del. Laws, c. 131 §§ 1-4; 76 Del. Laws, c. 326 § 1; 77 Del. Laws, c. 64 §§ 1, 2; 77 Del. Laws, c. 313 §§ 4, 5.)

§ 1458 Removing a firearm from the possession of a law-enforcement officer; class C felony.

(a) A person shall not knowingly or recklessly remove or attempt to remove a firearm, disabling chemical spray, baton or other deadly weapon from the possession of another person or deprive the other person of its use if:

(1) The person has knowledge or reason to know that the other person is employed as:

a. A law-enforcement officer including, but not limited to, all those defined as "police officer" in § 1911(a) of this title, who is authorized by law to make arrests;

b. A sheriff, deputy sheriff, constable, judicial assistant, court bailiff or other court security officer or court bailiff;

c. An employee of the Department of Correction, the Division of Parole and Probation or the Department of Youth Rehabilitative Services;

d. A special investigator or state detective with the Delaware Department of Justice, Office of the Attorney General; or

e. An armored car guard licensed pursuant to § 1317 or § 1320 of Title 24; and

(2) The other person is lawfully acting within the course and scope of that other person's employment.

(b) A person who violates this section is guilty of a class C felony.

(71 Del. Laws, c. 62 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 374 § 7.)

§ 1459 Possession of a weapon with a removed, obliterated or altered serial number.

(a) No person shall knowingly transport, ship, possess or receive any firearm with the knowledge that the importer's or manufacturer's serial number has been removed, obliterated or altered in a manner that has disguised or concealed the identity or origin of the firearm.

(b) This section shall not apply to a firearm manufactured prior to 1973.

(c) Possessing, transporting, shipping or receiving a firearm with a removed, obliterated or altered serial number pursuant to this section is a class D felony.

(71 Del. Laws, c. 251 § 1.)

§ 1460 Possession of firearm while under the influence.

(a) A person is guilty of possession of a firearm while under the influence of alcohol or drugs when the person possesses a firearm in a public place while under the influence of alcohol or drugs. It shall be an affirmative defense to prosecution under this section that, the firearm was not readily operable, or that the person was not in possession of ammunition for the firearm. The Superior Court shall have original and exclusive jurisdiction over a violation of this section.

(b) For purposes of this section, the following definitions shall apply:

(1) "Not readily operable" means that the firearm is disassembled, broken down, or stored in a manner to prevent its immediate use.

(2) "Possess," "possession" or "possesses" means that the person has the item under his or her dominion and authority, and that said item is at the relevant time physically available and accessible to the person.

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

(4) "Under the influence of alcohol or drugs" means:

a. Having an amount of alcohol in a sample of the person's blood equivalent to .08 or more grams of alcohol per hundred milliliters of blood, or an amount of alcohol in a sample of breath equivalent to .08 or more grams per 210 liters of breath. A person shall be guilty, without regard to the person's alcohol concentration at the time of possession of a firearm in violation thereof, if such person's alcohol concentration is .08 or more within 4 hours after the person was found to be in possession of a firearm, and that alcohol concentration is the result of an amount of alcohol present in, or consumed by such person when that person was in possession of a firearm; or

b. Being manifestly under the influence of alcohol or any illicit or recreational drug, as defined in § 4177(c) of Title 21, or any other drug not administered or prescribed to be taken by a physician, to the degree that the person may be in danger or endanger other persons or property, or annoy persons in the vicinity,

provided that no person shall be "under the influence of alcohol or drugs" for purposes of this section when the person has not used or consumed an illicit or recreational drug prior to or during an alleged violation, but has only used or consumed such drug after the person has allegedly violated this section and only such use or consumption after such alleged violation caused the person's blood to contain an amount of alcohol or drug or an amount of a substance or compound that is the result of the use or consumption of the drug within 4 hours after the time of the alleged violation thereof.

(c) A law-enforcement officer who has probable cause to believe that a person has violated this section may, with or without the consent of the person, take reasonable steps to conduct chemical testing to determine the person's alcohol concentration or the presence of illicit or recreational drugs. A person's refusal to submit to chemical testing shall be admissible in any trial arising from a violation of this section.

(d)(1) Except as provided in paragraph (d)(2) of this section, possession of a firearm while under the influence is a class A misdemeanor.

(2) Possession of a firearm while under the influence is a class G felony if the conviction is for an offense that was committed after a previous conviction for possession of a firearm while under the influence.

(78 Del. Laws, c. 136 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 396 § 2.)

§ 1461 Report of loss, theft of firearm.

(a) Any owner of a firearm, defined in § 222 of this title, shall report the loss or theft of the firearm within 7 days after the discovery of the loss or theft to either:

(1) The law-enforcement agency having jurisdiction over the location where the loss or theft of the firearm occurred; or

(2) Any State Police troop.

(b) Whoever is convicted of a violation of this section shall:

(1) For the first offense, be guilty of a violation and be subject to a civil penalty of not less than $75 nor more than $100.

(2) For a second offense committed at any time after the sentencing or adjudication of a first offense, be guilty of a violation and be subject to a civil penalty of not less than $100 nor more than $250.

(3) For a third or subsequent offense committed at any time after the sentencing or adjudication of a second offense, be guilty of a class G felony.

(79 Del. Laws, c. 41 § 1.)

§§ 1462 -1469. [Reserved.]

§ 1470 Definitions.

(a) "Cheat" means to alter the element of chance, method of selection, or criteria which determines:

(1) The result of the game;

(2) The amount or frequency of payment in a game, including intentionally taking advantage of a malfunctioning machine;

(3) The value of a wagering instrument; or

(4) The value of a wagering credit.

(b) "Cheating device" means any physical, mechanical, electromechanical, electronic, photographic, or computerized device used in such a manner as to cheat, deceive or defraud a video lottery machine or a table game. This includes, but is not limited to, slugs, plastic, tape, string or dental floss which is placed inside a coin or bill acceptor or any other opening in a video lottery machine in a manner to simulate coin or currency acceptance, and is thereafter withdrawn, or forged or stolen keys used to gain access to a machine to remove its contents, or game cards or dice that have been marked, loaded or tampered with.

(c) "Paraphernalia for the manufacturing of cheating devices" means the equipment, products or materials that are intended for use or designed for use in manufacturing, producing, fabricating, preparing, testing, analyzing, packaging, storing or concealing a counterfeit facsimile of the chips, tokens, debit instruments or other wagering devices approved by the State Lottery Office or lawful coin or currency of the United States of America. This term includes, but is not limited to, lead or lead alloy molds, forms, or similar equipment capable of producing a likeness of a gaming token or United States coin or currency; melting pots or other receptacles; torches; tongs, trimming tools or other similar equipment; and equipment that can be used to manufacture facsimiles of debit instruments or wagering instruments approved by the State Lottery Office.

(d) "Table game" shall mean any game played with cards, dice or any mechanical, electromechanical or electronic device or machine

(excluding video lottery machines) for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, twenty-one, poker, craps, roulette, keno, bingo, wheel of fortune or any variation of these games, whether or not similar in design or operation.

(e) "Video lottery machine" shall mean any machine in which bills, coins or tokens are deposited in order to play in a game of chance in which the results, including options to the player, are randomly and immediately determined by the machine. A machine may use spinning reels or video displays or both, and may or may not dispense coins or tokens directly to winning players. A machine shall be considered a video lottery machine notwithstanding the use of an electronic credit system making the deposit of bills, coins or tokens unnecessary.

(73 Del. Laws, c. 232 § 1; 77 Del. Laws, c. 221 §§ 1, 2.)

§ 1471 Prohibited acts.

(a) It shall be unlawful for any person to use a cheating device in a video lottery machine or at a table game or to have possession of such a device in a video lottery facility, including its parking areas and/or adjacent facilities.

(b) It shall be unlawful for any person to possess, use or have paraphernalia for manufacturing cheating devices.

(c) It shall be unlawful for any person to cheat in order to collect or take or attempt to cheat in order to collect or take money or anything of value, for themselves or for another, in or from a video lottery machine or a table game in a video lottery facility, including its parking areas and/or adjacent facilities.

(d) It shall be unlawful for any person to manipulate or alter, with the intent to cheat, any physical, mechanical, electromechanical, electronic, or computerized component of a video lottery machine or of a table game, contrary to the designed and normal operational purpose for the component, including, but not limited to, varying the pull of the handle of a video lottery machine, knowing that the manipulation can or could affect the outcome of the game.

(e) It shall be unlawful for any person to use, sell or possess counterfeit slugs, counterfeit tokens, counterfeit gaming chips, counterfeit debit instruments or other counterfeit wagering instruments or any other counterfeit device resembling tokens, gaming chips, debit or other wagering instruments approved by the State Lottery Office for use in a video lottery machine or at a table game in a video lottery facility, including its parking areas and/or adjacent facilities.

(f) It shall be unlawful for any person to place, increase or decrease a wager or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of a table game or any event that affects the outcome of the game or which is the subject of the wager or to aid anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a wager or determining the course of play contingent upon that event or outcome.

(g) It shall be unlawful for any person to claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a video lottery machine or a table game, with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount won.

(h) It shall be unlawful for any employee or agent of a video lottery facility to knowingly fail to collect a losing wager or pay an amount greater on any wager than required under the rules of a table game.

(i) It shall be unlawful for any person to place or increase a wager or attempt to place or increase a wager after acquiring knowledge of the outcome of the table game or other event which is the subject of the wager.

(j) It shall be unlawful for any person to reduce the amount wagered or remove or cancel the wager or to attempt to reduce the amount wagered or remove or cancel the wager after acquiring knowledge of the outcome of the table game or other event which is the subject of the wager.

(k) It shall be unlawful for any person to directly or indirectly offer, confer or agree to confer to another, or solicit, accept or agree to accept from another, anything of value to anyone, for the purpose of influencing the outcome of a race, sporting event, contest or table game upon which a wager may be made, or to place, increase or decrease a wager after acquiring knowledge, not available to the general public, that anyone has been offered, promised or given anything of value for the purpose of influencing the outcome of the race, sporting event, contest or game upon which the wager is placed, increased or decreased.

(l) It shall be unlawful for any person at a video lottery facility, including its parking areas and/or adjacent facilities, without the written consent of the Delaware Lottery Director to use, or possess with the intent to use, any electronic, electrical or mechanical device that is designed, constructed or programmed to assist the user or another person:

(1) In projecting the outcome of a table game or video lottery machine;

(2) In keeping track of the cards played;

(3) In analyzing the probability of the occurrence of an event relating to the game; or

(4) In analyzing the strategy for playing or wagering to be used in the game.

(73 Del. Laws, c. 232 § 1; 77 Del. Laws, c. 221 § 3.)

§ 1472 Penalties.

(a) Any person convicted of conduct constituting a violation of § 1471(a), (b), (d), (e) or (l) of this title shall be guilty of a class A misdemeanor for a first offense and a class G felony for a second or subsequent conviction in this State or a state with a comparable criminal code section within 3 years of a first offense.

(b) Any person convicted of conduct constituting a violation of § 1471(c), (f), (g), (h), (i), or (j) of this title shall be guilty of:

(1) A class A misdemeanor if the amount involved is less than $1,500 or;

(2) A class G felony if the amount involved is $1,500 or more but not greater than $50,000;

(3) A class E felony if the amount involved is more than $50,000 but less than $100,000;

(4) A class C felony if the amount involved is $100,000 or more.

(c) Any person convicted of conduct constituting a violation of § 1471(k) of this title shall be guilty of a class G felony.

(d) Amounts involved pursuant to 1 scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the crime.

(e) Upon conviction, the sentencing judge shall require full restitution to the victim for any monetary losses suffered and shall consider the imposition of community service and/or an appropriate curfew for a minor.

(f) Any cheating devices, slugs, paraphernalia for the manufacturing of cheating devices or related materials used by the person shall be forfeited to the Delaware State Police, including vehicles used to store such devices or paraphernalia. The Courts of the Justices of the Peace shall have concurrent jurisdiction with the Court of Common Pleas for misdemeanor offenses under this subpart and the Superior Court shall have exclusive jurisdiction for felony offenses under this subchapter.

(73 Del. Laws, c. 232 § 1; 77 Del. Laws, c. 221 § 4.)

§ 1473 Preclusions.

Nothing in this subchapter shall be construed as to prohibit the prosecution for an offense in this subchapter and any other provision of Delaware law.

(73 Del. Laws, c. 232 § 1.)

§ 1474 Detention and questioning of person suspected of violating § 1471 of this title; limitations on liability; posting of notice.

(a) Any video lottery agent, licensee, or that video lottery agent's or licensee's officers, employees or agents may question any person at the video lottery agent's or licensee's video lottery facility suspected of violating any of the provisions of § 1471 of this title. No video lottery agent or any of that video lottery agent's officers, employees or agents is criminally or civilly liable:

(1) On account of any such questioning; or

(2) For reporting to the Delaware Lottery, Division of Gaming Enforcement or appropriate law-enforcement authorities the person suspected of the violation.

(b) Any video lottery agent or any of its officers, employees or agents who has probable cause for believing that there has been a violation of § 1471 of this title in a video lottery facility, including its parking areas and/or adjacent facilities, by any person may take that person into custody and detain that person in the video lottery facility in a reasonable manner and for a reasonable length of time while awaiting the arrival of law-enforcement officials, who shall be summoned without delay. Such a taking into custody and detention does not render the video lottery agent or that video lottery agent's officers, employees or agents criminally or civilly liable unless it is established by clear and convincing evidence that the taking into custody and detention are unreasonable under all the circumstances.

(c) No video lottery agent or its officers, employees or agents is entitled to the immunity from liability provided for in subsection (b) of this section unless there is displayed in a conspicuous place in the video lottery facility a notice in boldface type clearly legible and in substantially this form:

"Any video lottery agent, or any of that video lottery agent's officers, employees or agents who has probable cause for believing that any person has violated any provision of § 1471 of Title 11 may detain that person in this facility."

(77 Del. Laws, c. 221 § 5; 70 Del. Laws, c. 186 § 1.)

Part I
Delaware Criminal Code
Chapter 15
ORGANIZED CRIME AND RACKETEERING

§ 1501 Statement of purpose.

The purpose of this chapter is to guard against and prevent the infiltration and illegal acquisition of legitimate economic enterprises by racketeering practices, and the use and exploitation of both legal and illegal enterprises to further criminal activities. This chapter is intended to apply to conduct beyond what is traditionally regarded as "organized crime" or "racketeering."

(65 Del. Laws, c. 493 § 1.)

§ 1502 Definitions.

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

(1)a. "Beneficial interest" shall include any of the following:

1. The interests of a person as a beneficiary under any trust arrangement under which a trustee holds legal or record title to personal or real property; or

2. The interests of a person, under any other form of express fiduciary arrangement, pursuant to which any other person holds legal or record title to personal or real property for the benefit of such person.

b. The term "beneficial interest" shall not include the interest of a stockholder in a corporation, or the interest of a partner in either a general partnership or a limited partnership.

(2) "Documentary materials" shall mean any book, paper, document, writing, drawing, graph, chart, photograph, phonorecord, magnetic tape, computer printout, and any data compilation from which information can be obtained or from which information can be translated into useable form, or other tangible item.

(3) "Enterprise" shall include any individual, sole proprietorship, partnership, corporation, trust or other legal entity; and any union, association or group of persons associated in fact, although not a legal entity. The word "enterprise" shall include illicit as well as licit enterprises, and governmental as well as other entities.

(4) "Foreign corporation" shall have the same definition as is set forth in § 371 of Title 8.

(5) "Pattern of racketeering activity" shall mean 2 or more incidents of conduct:

a. That:

1. Constitute racketeering activity;

2. Are related to the affairs of the enterprise;

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

b. Where:

1. At least 1 of the incidents of conduct occurred after July 9, 1986;

2. The last incident of conduct occurred within 10 years after a prior occasion of conduct; and

3. As to criminal charges, but not as to civil proceedings, at least 1 of the incidents of conduct constituted a felony under the Delaware Criminal Code, or if committed subject to the jurisdiction of the United States or any state of the United States, would constitute a felony under the Delaware Criminal Code if committed in the State.

(6) "Pecuniary value" shall mean:

a. Anything of value in the form of money, a negotiable instrument, a commercial interest or anything else which constitutes an economic advantage; or

b. Any other property or service that has a value in excess of $100.

(7) "Personal property" shall include any personal property or any interest in such personal property, or any right, including bank accounts, debts, corporate stocks, patents or copyrights. An item of personal property or a beneficial interest in personal property shall be deemed to be located where the trustee is, where the personal property is or where the instrument evidencing the right is.

(8) "Principal" shall mean a person who engages in conduct constituting a violation, or one who is legally accountable for the unlawful conduct of another person or entity.

(9) "Racketeering" shall mean to engage in, to attempt to engage in, to conspire to engage in or to solicit, coerce or intimidate another person to engage in:

a. Any activity defined as "racketeering activity" under 18 U.S.C. § 1961(1)(A), (1)(B), (1)(C) or (1)(D); or

b. Any activity constituting any felony which is chargeable under the Delaware Code or any activity constituting a misdemeanor under the following provisions of the Delaware Code:

1. Chapter 53 of Title 30 relating to evasion of payment of cigarette taxes;

2. Chapter 73 of Title 6 relating to the sale of securities;
3. Chapter 5 of Title 11 relating to prostitution;
4. Chapter 5 of Title 11 and Title 6 relating to forgery and counterfeiting;
5. Chapter 5 of Title 11 relating to perjury;
6. Chapter 5 of Title 11 and Title 28 relating to bribery and misuse of public office and improper influence;
7. Chapter 5 of Title 11 relating to obscenity;
8. Chapter 5 of Title 11 and Title 28 relating to gambling;
9. Title 11 and Title 16 relating to drug abuse, prevention and control;
10. Chapter 5 of Title 11 relating to tampering with jurors, evidence and witnesses;
11. Chapter 51 of Title 30 relating to motor fuel tax offenses;
12. Chapter 5 of Title 11 relating to human trafficking; or
13. Chapter 5 of Title 11 relating to animal fighting and baiting;

(10) "Real property" shall mean any real property situated in this State or any interest in such real property, including, but not limited to, any lease of or mortgage upon such real property.

(11)a. "Trustee" shall include:

1. Any person acting as trustee under a trust in which the trustee holds legal or record title to personal or real property; or
2. Any person who holds legal or record title to personal or real property, for which any other person has a beneficial interest; or
3. Any successor trustee.

b. The term "trustee" shall not include an assignee or trustee for an insolvent debtor, nor an executor, administrator, administrator with will annexed, testamentary trustee, conservator, guardian or committee appointed by, under the control of, or accountable to, a court.

(12) "Unlawful debt" shall mean a debt incurred or contracted in an illegal gambling activity or business; or a debt which is unenforceable under state law, in whole or in part, as to either principal or interest.

(65 Del. Laws, c. 493 § 1; 79 Del. Laws, c. 276 § 8; 80 Del. Laws, c. 263 § 1.)

§ 1503 Violations.

(a) It shall be unlawful for any person employed by, or associated with, any enterprise to conduct or participate in the conduct of the affairs of the enterprise through a pattern of racketeering activity or collection of an unlawful debt.

(b) It is unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property or personal property, of any nature, including money.

(c) It is unlawful for any person who has received any proceeds derived, directly or indirectly, from a pattern of racketeering activity in which such person has participated, to use or invest, directly or indirectly, any part of such proceeds or any proceeds derived from the investment or use thereof, in the acquisition of any interest in, or the establishment or operation of, any enterprise or real property.

(d) It is unlawful for any person to conspire or attempt to violate any of the provisions of subsection (a), (b) or (c) of this section.

(65 Del. Laws, c. 493 § 1.)

§ 1504 Criminal penalties.

(a) Any person convicted of conduct constituting a violation of any of the provisions of this chapter shall be guilty of a class B felony, and shall be punished by imprisonment and pay a fine of not less than $25,000.

(b) Any person convicted of conduct constituting a violation of any of the provisions of § 1503 of this title shall criminally to forfeit, to the State any real or personal property used in the course of, intended for use in the course of, derived from, or realized through conduct in violation of § 1503 of this title including any property constituting an interest in or means of control or influence over the enterprise involved in the conduct in violation of § 1503 of this title or any property constituting proceeds derived from the conduct in violation of § 1503 of this title including:

(1) Any position, office, appointment, tenure, commission or employment contract of any kind that the person acquired or maintained in violation of § 1503 of this title or through which the person conducted or participated in the conduct of the affairs of any enterprise in violation of § 1503 of this title or that afforded the person a source of influence or control over the affairs of an enterprise that the person exercised in violation of § 1503 of this title;

(2) Any compensation, right or benefit derived from a position, office, appointment, tenure, commission or employment contract described in § 1503 of this title that accrued to the person during the period of conduct in violation of § 1503 of this title;

(3) Any interest in, security of, claim against, or property or contractual right affording the person a source or influence or control over the affairs of an enterprise that the person exercised in violation of § 1503 of this title; or

(4) Any amount payable or paid under any contract for goods or services that was awarded or performed in violation of § 1503 of this title.

(c) In lieu of any fine otherwise authorized by law, any person convicted of engaging in racketeering, or any other conduct in violation of § 1503 of this title, through which such person derived pecuniary value, or by which the person caused personal injury or property damage or other loss, may be sentenced to pay a fine that does not exceed 3 times the gross value gained, or 3 times the gross loss caused, whichever is the greater, plus court costs and the costs of investigation and prosecution, reasonably incurred.

(d) Upon conviction of a person under this chapter, the Superior Court shall authorize the Attorney General to seize all property or other interests declared forfeited under this chapter upon such terms and conditions as the Court shall deem proper. The State shall dispose of all property or other interests seized under this chapter as soon as feasible, making due provision for the rights of innocent persons. If a property right or other interest is not exercisable or transferable for value by the State, it shall expire and shall not revert to the convicted person.

(65 Del. Laws, c. 493 § 1; 67 Del. Laws, c. 130 § 8; 67 Del. Laws, c. 350 § 13; 70 Del. Laws, c. 186 § 1.)

§ 1505 Civil remedies.

(a) The Superior Court of this State shall have jurisdiction to prevent and restrain violations of this chapter by issuing appropriate orders, including but not limited to: Ordering any person to divest any interest, direct or indirect, in any enterprise; imposing reasonable restrictions on the future activities or investments of any person including, but not limited to, prohibiting any person from engaging in the same type of endeavor as the enterprise engaged in; or ordering the dissolution or reorganization of any enterprise, making due provision of the rights of innocent persons.

(b) The Attorney General may institute proceedings under § 1503 of this title and in addition for damages, civil forfeiture and a civil penalty of up to $100,000 for each incident of activity constituting a violation of this chapter. In any action brought by the State under § 1503 of this title, the Court shall proceed as soon as practicable to hold a hearing and reach a final determination in the matter. Pending final determination thereof, the Court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of any satisfactory performance bond, as it shall deem proper.

(c) Any person directly or indirectly injured by reason of any conduct constituting a violation of this chapter may sue therefor in any appropriate court, and if successful shall recover 3 times the actual damages sustained and, when appropriate, punitive damages. Damages under this subsection are not limited to competitive or distinct injury. Plaintiffs who substantially prevail shall also recover attorneys' fees in the trial and appellate courts, together with the costs of investigation and litigation, reasonably incurred; provided, however, no action may be had under § 1503 of this title except against a defendant who has been criminally convicted of a racketeering activity which was the source of the injury alleged, and no action may be brought under this provision except within 1 year of such conviction.

(d) Any person who is injured by reason of any violation of this chapter shall have a right or claim to property forfeited under § 1504 of this title, or to the proceeds derived therefrom, which right or claim shall be superior to that of the State (other than for costs) in the same property or proceeds. To enforce such right or claim, the injured person must intervene.

(e) Upon the filing of a civil proceeding or action, the plaintiff shall immediately notify the Attorney General of the filing. The Attorney General may intervene upon certification that in the opinion of the Attorney General the action is of general public interest.

(f) Notwithstanding any other provision of law providing a shorter period of limitations, a civil proceeding or action under this paragraph may be commenced within 5 years after the conduct made unlawful under § 1504 of this title or when the cause of action otherwise accrues or within an longer statutory period that shall be applicable. If a criminal proceeding or civil action or other proceeding is brought or intervened in by the Attorney General to punish, prevent or restrain any activity made unlawful under § 1504 of this title, the running of the period of limitations prescribed by this subsection with respect to any other cause of action of an aggrieved person based in whole or part upon any matter complained of in any such prosecution, action or proceeding, shall be suspended during the pendency of such prosecution, action or proceeding and for 2 years following its termination.

(65 Del. Laws, c. 493 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1506 Forfeiture proceedings.

(a) The Attorney General is authorized to institute and conduct any proceedings under this chapter for the forfeiture of real or personal property to the State. All property of every kind used or intended for use in the course of, derived from, or realized through a pattern of racketeering conduct is subject to forfeiture to the State. Forfeiture shall be by means of a procedure which may be known and referred to as a "R.I.C.O. forfeiture proceeding."

(b) A R.I.C.O. forfeiture proceeding under this chapter may be commenced before or after seizure of the property. If the complaint is filed before seizure, it shall state what property is sought to be forfeited; that the property is within the jurisdiction of the Court; the grounds for forfeiture; and the name of each person known to have or claim an interest in the property.

(c) To the extent that property which has been forfeited under this chapter cannot be located; has been transferred, sold or deposited with third parties; or has been placed beyond the jurisdiction of the State, the Attorney General may institute and conduct any proceedings to retrieve such property as are necessary and appropriate, including forfeiture of any other property of the defendant up to the value of the property that is unreachable.

(d) No person convicted under this chapter nor any person acting in concert with or on behalf of the person shall be eligible to purchase forfeited property from the State. The interests of an innocent party in the property shall not be subject to forfeiture.

(e) The Court may, upon such terms and conditions as it deems appropriate, order that the property be sold by an innocent party who holds a lien on, or security interest in, the property at any time during the proceedings. Any proceeds from such sale, over and upon the amount necessary to satisfy the lien or security interest, shall be paid into the court pending final judgment in the forfeiture proceeding. No such sale shall be ordered, however, unless the obligation upon which the lien or security interest is based is in default.

(f) The proceeds of any sale or other disposition of forfeited property imposed under this chapter, whether by final judgment, settlement

or otherwise, shall be applied in the following order:

(1) To the fees and costs of the forfeiture and sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs;

(2) If any funds remain, then to all costs and expenses of investigation and prosecution, including costs of resources and personnel incurred in investigation and prosecution;

(3) If any funds remain, then the remainder or $1,000, whichever is less, to the Crime Victim Compensation Fund;

(4) If any funds remain, to the Special Law Enforcement Assistance Fund, or its successor; or if no such fund is in existence, to the fund which is dedicated entirely to law enforcement.

(65 Del. Laws, c. 493 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1507 Racketeering lien notice; lis pendens; construction of section.

(a) Upon the institution of any criminal or civil proceeding under this chapter, the State, then or at any time during the pendency of the proceedings, may file in the official records of any 1 or more counties of this State, a racketeering (or "R.I.C.O.") lien notice. Such notice shall create, and be equivalent to, a lien. No filing fee or other charge shall be required as a condition for filing such lien notice, and the Prothonotary shall, upon the presentation of the lien notice, immediately record it in the official records.

(b) The racketeering (R.I.C.O.) lien notice shall be signed by the Attorney General, the Chief Deputy Attorney General or the State Prosecutor. The notice shall be in such form as the Attorney General shall prescribe and shall set forth the following information:

(1) The name of the person against whom the civil proceeding has been brought. The notice may, but is not required to, list any other aliases, names or fictitious titles under which the person may be known. In its discretion the State may also list any corporation, partnership or other entity which is owned or controlled by such person;

(2) If known to the Attorney General, the present residence and business address of the person named in the racketeering lien notice, and addresses for other names set forth in such lien notice;

(3) A reference to the criminal or civil proceeding, stating that a proceeding under this chapter has been brought against the person named in the racketeering lien notice, and including the name of the county or counties where the proceeding has been initiated;

(4) A statement that the notice is being filed pursuant to this chapter;

(5) The name and address of the agency within the State Department of Justice that can answer any further questions; and

(6) Such other information as the Attorney General shall deem appropriate.

(c) The Attorney General or a Deputy Attorney General may amend any lien filed under this section at any time, by filing an amended racketeering lien in the same manner as a R.I.C.O. lien. An amended racketeering lien shall identify, with reasonable certainty, the lien which is being amended.

(d) The Attorney General or a Deputy Attorney General shall, as soon as practicable after filing the racketeering lien notice, furnish to any person named in the lien a notice of the filing of such lien. The notice may be mailed by certified mail, return receipt requested. Failure to notify the person named in the lien in accordance with this subsection shall not invalidate nor otherwise affect any racketeering lien notice filed in accordance with this section.

(e) A racketeering lien is perfected against interests in personal property by filing the lien notice with the Secretary of State, except that in the case of a titled motor vehicle it shall be filed with the Division of Motor Vehicles. A racketeering lien is perfected against interests in real property by filing the lien notice with the Prothonotary in the county in which the real property is located. The State may give such additional notice of the lien as it deems appropriate.

(f) The filing of a notice of lien in accordance with this section creates a lien in favor of the State in:

(1) Any interest of the defendant in real property situated in the county in which the lien notice is filed, then maintained or thereafter acquired in the name of the defendant identified in the notice;

(2) Any interest of the defendant in personal property situated in this State, then maintained or thereafter acquired in the name of the defendant identified in the lien notice; and

(3) Any property identified in the lien notice to the extent of the defendant's interest therein.

(g) The filing of a racketeering lien notice under this section is notice to all persons dealing with the person or property identified in the lien of the State's claim. The lien created in favor of the State in accordance with this section is superior to and prior to the claims and interests of any other person, except a person possessing:

(1) A valid lien perfected prior to the filing of the racketeering lien notice;

(2) In the case of real property, an interest acquired and recorded prior to the filing of the racketeering lien notice; or

(3) In the case of personal property, an interest acquired prior to the filing of the racketeering lien notice.

(h) Where a trustee conveys title to real property against which a R.I.C.O. lien notice has been filed; and the lien notice has been filed in the county in which the property is located and names a person who, to the actual knowledge of the trustee, holds a beneficial interest in the trust, the trustee shall be liable to the State for the greater of:

(1) The amount of proceeds received directly by the person named in the R.I.C.O. lien notice, as a result of the conveyance;

(2) The amount of proceeds received by the trustee as a result of the conveyance, and distributed to any person named in the lien notice; or

(3) The fair market value of the interest of the person named in the lien notice in the real property so conveyed; provided, however,

that if the trustee conveys the real property, and holds proceeds that would otherwise be paid or distributed to the beneficiary (or at the direction of the beneficiary or the beneficiary's designee), the trustee's liability shall not exceed the amount of the proceeds so held for so long as the proceeds are held by the trustee.

(i) Upon entry of judgment in favor of the State, the State may proceed to execute thereon as in the case of any other judgment, except that in order to preserve the State's lien priority, as provided in this section, the State shall (in addition to such other notice as is required by law) give at least 30 days' notice of such execution to any person, possessing at the time such notice is given, an interest recorded subsequent to the date the State's lien was perfected.

(j) Upon the entry of a final judgment in favor of the State, or an order providing for forfeiture of property to the State, the title of the State to the property:

(1) In the case of real property, or a beneficial interest in real property, relates back to the date of filing the racketeering lien notice; or if no racketeering lien notice was filed, then to the date of recording of the final judgment, or an abstract thereof, in the county where the real property is located.

(2) In the case of personal property or a beneficial interest in personal property, relates back to the date the personal property was seized by the State, or the date of filing of a racketeering lien notice in accordance with this section, whichever is earlier; but if the property was not seized, and no racketeering lien was filed, then to the date the final judgment was filed with the Secretary of State, or in the case of a titled motor vehicle, with the Division of Motor Vehicles.

(k) This section shall not limit any right of the State to obtain any order or injunction, receivership, writ, attachment, garnishment or other remedy; nor limit any right of action which is appropriate to protect the interests of the State, or which is available under other applicable law.

(l) In the event the Attorney General determines that the provisions of this section are unclear or insufficient the Attorney General may petition the Superior Court for the promulgation of rules to further clarify, or more effectively accomplish, the intent of this chapter and of this section. Where any rule promulgated by the Court conflicts with any provision of this section, this section shall be paramount.

(65 Del. Laws, c. 493 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1508 Term of lien notice.

(a) The term of a racketeering lien notice shall be for a period of 6 years from the date of filing, unless a renewal lien notice has been filed; and, in such case, the term of the renewal lien notice shall be for a period of 6 years from the date of its filing. The State shall be entitled to only 1 renewal of a specific racketeering lien notice.

(b) The Attorney General may release, in whole or in part, any racketeering lien notice or may release any specific real property or beneficial interest from a lien notice upon such terms and conditions as the Attorney General, or the Court, may determine. Any release of a racketeering lien notice executed by the Attorney General may be filed in the official records of any county. No charge or fee shall be imposed for the filing of any release of a racketeering lien notice.

(c) If no civil proceeding has been instituted by the Attorney General, seeking a forfeiture of any property owned by the person named in the racketeering lien notice, the acquittal in the criminal proceeding of such person named in the lien notice or the dismissal of the criminal proceeding, shall terminate the lien notice; and, in such case, the filing of the racketeering lien notice shall have no effect. Where a civil proceeding has been instituted, and the criminal proceeding has been dismissed, or the person named in the racketeering lien notice has been acquitted in the criminal proceeding, the lien notice shall continue for the duration of the civil proceeding.

(d) If no civil proceeding is then pending against the person named in a R.I.C.O. lien notice, any person named in the lien notice may institute a civil action against the State, seeking a release or extinguishment of the State's lien. Notice of such civil action shall be filed in the county where the lien notice was filed.

(65 Del. Laws, c. 493 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1509 Investigative powers of Attorney General.

(a) Whenever the Attorney General has reasonable cause to believe that any person or enterprise may have knowledge of, has been engaged in or is engaging in any conduct in violation of this chapter, the Attorney General may, in the Attorney General's discretion, conduct an investigation of such conduct. The Attorney General is authorized before the commencement of any civil or criminal proceeding under this chapter to subpoena witnesses. The Attorney General may issue in writing and cause to be served on any person an investigative demand to compel the attendance of witnesses, examine witnesses under oath, require the production of evidence or documentary materials, and require answers to written interrogatories to be furnished under oath.

(b) The production of documentary material in response to an investigative demand served under this section shall be made pursuant to a sworn certificate, in such form as the demand designates, by the person, if a natural person, to whom the demand is directed or, if not a natural person, by an individual having knowledge of the facts and circumstances relating to the production of materials, which certificate shall affirm that all of the documentary material required by the investigative demand and in the possession, custody or control of the person to whom the demand is directed has been produced and made available to the custodian.

(c) The Attorney General may, in the Attorney General's discretion, require the production under this section of documentary materials prior to the taking of any testimony of the person subpoenaed. The required documentary materials shall be made available for inspection or copying during normal business hours at the principal place of business of the person served, or at such other time and place as may be

agreed upon between the person served and the Attorney General.

(d) The examination of all persons pursuant to this section shall be conducted by the Attorney General or by a person designated in writing to be the Attorney General's representative, before an officer chosen by the Attorney General who is authorized to administer oaths in this State. The statements made shall be taken down stenographically, or by a sound-recording device, and shall be transcribed.

(e) No person shall, with intent to avoid, evade, prevent or obstruct compliance in whole or in part by any person with any duly served investigative demand of the Attorney General under this section, knowingly remove to any place, conceal, withhold, destroy, mutilate, alter or by any other means falsify any documentary material or materials that are the subject of the demand. A violation of this subsection is a class E felony. The Attorney General shall investigate suspected violations of this section.

(f) In the event a witness subpoenaed under this section fails or refuses to appear, or to produce documentary materials as provided herein, or to give testimony relevant or material to an investigation, the Attorney General may petition the Superior Court in the county where the witness resides for an order requiring the witness to attend and testify, or to produce the documentary materials. Any failure or refusal by the witness to obey an order of the Court may be punishable by the Court as contempt.

(65 Del. Laws, c. 493 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1510 Registration of foreign corporations.

(a) Each foreign corporation desiring to acquire of record any real property shall have, prior to acquisition, and shall continuously maintain in this State during any year thereafter in which such real property is owned by the corporation:

(1) A registered office; and

(2) A registered agent, which agent may be either:

a. An individual resident in this State, whose business office is identical with such registered office; or

b. Another corporation authorized to transact business in this State, having a business office identical with such registered office.

A foreign corporation that, prior to acquisition of any real property in this State, complies with the requirements of § 371 of Title 8 and thereafter continuously maintains a registered agent in this State for the purposes of that section shall be deemed to have complied with the requirements of this subsection.

(b) Each foreign corporation shall file with the Secretary of State on or before June 30 of each year, a sworn report on such forms as the Secretary of State shall prescribe, setting forth:

(1) The name of such corporation;

(2) The street address and the principal office of such corporation;

(3) The name and street address of the registered agent and registered office of such corporation; and

(4) The signature of the corporate president, vice-president, secretary, assistant secretary or treasurer attesting to the accuracy of the report as of the date immediately preceding filing of the report.

A foreign corporation that complies with § 374 of Title 8 by filing the annual report as required by that section shall be deemed to have complied with this subsection.

(c) Each foreign corporation which fails to comply with subsections (a) and (b) of this section shall not be entitled to sue or to defend in the courts of the State, until such corporation has a registered agent and registered office pursuant to subsection (a) of this section (or until such corporation registers with the Secretary of State pursuant to § 371 of Title 8) and complies with subsection (b) of this section by filing a report pursuant to such subsection (or pursuant to § 374 of Title 8).

(d) The filing of a report by a corporation as required by this section shall be solely for the purposes of this chapter and, notwithstanding any other act, shall not be used as a determination of whether the corporation is doing business in this State; provided, however, that this subsection shall not apply to a foreign corporation which satisfies the requirements of subsection (b) of this section by filing an annual report under § 374 of Title 8.

(e) This section shall not apply to any foreign financial, banking, insurance or lending organization whose lending activities are regulated by any other state or the United States of America.

(f) The Secretary of State may establish fees for any filings required by this section, which fees shall not exceed those prescribed for similar filings as stated in § 391 of Title 8.

(65 Del. Laws, c. 493 § 1; 71 Del. Laws, c. 171 § 2.)

§ 1511 Use of property and funds for law-enforcement purposes.

(a) All cash, bonds and other funds forfeited to the State in accordance with this chapter which remain after distribution pursuant to § 1506(f) of this title shall be deposited into the Special Law Enforcement Assistance Fund [§ 4110 et seq. of this title].

(b) Personalty forfeited to the State which is not cash or currency shall not be sold or otherwise converted until the Attorney General determines, in writing, that such personalty cannot be used for law-enforcement related purposes. If the Attorney General determines that there is a law-enforcement use for such personalty, the personalty shall become state property and the Department of Justice shall have the right of first refusal.

(65 Del. Laws, c. 493 § 1; 73 Del. Laws, c. 94 § 21.)

Part II
Criminal Procedure Generally
Chapter 17
GENERAL PROVISIONS

§ 1701 Benefit of clergy.

The benefit of clergy shall not exist within this State.

(Code 1852 § 2956; Code 1915 § 4824; Code 1935 § 5313; 11 Del. C. 1953 § 1701.)

§ 1702 Information against organization; process.

Whenever an organization is informed against in a criminal proceeding, process shall be issued against such organization in the usual form and shall be served upon such organization in the same manner as process is served upon organizations in civil cases. An organization so served with process shall appear by an attorney in the court out of which such process has been issued by the time of the return of such writ, or upon motion of the Attorney General, final judgment shall be given against it upon the information.

(Code 1915 § 4818A; 28 Del. Laws, c. 247; Code 1935 § 5319; 11 Del. C. 1953 § 1702; 74 Del. Laws, c. 71 §§ 1, 2.)

Part II
Criminal Procedure Generally
Chapter 19
ARREST AND COMMITMENT; FRESH PURSUIT
Subchapter I
Arrest and Commitment

§ 1901 Definitions.

As used in this subchapter:

(1) "Arrest" is the taking of a person into custody in order that the person may be forthcoming to answer for the commission of a crime.

(2) "Peace officer" is any public officer authorized by law to make arrests in a criminal case. Sheriffs and sheriff deputies are not authorized by law to make arrests in criminal cases.

(Code 1935 §§ 5343-A; 48 Del. Laws, c. 304; 11 Del. C. 1953 § 1901; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 266 § 2.)

§ 1902 Questioning and detaining suspects.

(a) A peace officer may stop any person abroad, or in a public place, who the officer has reasonable ground to suspect is committing, has committed or is about to commit a crime, and may demand the person's name, address, business abroad and destination.

(b) Any person so questioned who fails to give identification or explain the person's actions to the satisfaction of the officer may be detained and further questioned and investigated.

(c) The total period of detention provided for by this section shall not exceed 2 hours. The detention is not an arrest and shall not be recorded as an arrest in any official record. At the end of the detention the person so detained shall be released or be arrested and charged with a crime.

(Code 1935 §§ 5343-B; 48 Del. Laws, c. 304; 11 Del. C. 1953 § 1902; 56 Del. Laws, c. 152 § 1; 70 Del. Laws, c. 186 § 1.)

§ 1903 Searching questioned person for weapon.

A peace officer may search for a dangerous weapon any person whom the officer has stopped or detained to question as provided in § 1902 of this title, whenever the officer has reasonable ground to believe that the officer is in danger if the person possesses a dangerous weapon. If the officer finds a weapon, the officer may take and keep it until the completion of the questioning, when the officer shall either return it or arrest the person. The arrest may be for the illegal possession of the weapon.

(Code 1935 § 5343C; 48 Del. Laws, c. 304; 11 Del. C. 1953 § 1903; 70 Del. Laws, c. 186 § 1.)

§ 1904 Arrest without warrant [Effective until Jan. 1, 2017]

(a) An arrest by a peace officer without a warrant for a misdemeanor is lawful whenever the officer has reasonable ground to believe that the person to be arrested has committed a misdemeanor:

(1) In the officer's presence;

(2) Out of the officer's presence and without the State, and if law-enforcement officers of the state where the misdemeanor was committed request an arrest and the accused will not be apprehended unless immediately arrested;

(3) Out of the officer's presence and within the State for the crime of shoplifting and the arrest is based upon personal investigation at the scene of arrest and where a store employee is present who has observed the activity of the person to be arrested and that person is still present;

(4) Out of the officer's presence and within the State for any misdemeanor involving physical injury or the threat thereof or any misdemeanor involving illegal sexual contact or attempted sexual contact;

(5) Out of the officer's presence and within the State for a violation of a protective order issued by Family Court or a court of any state, territory, or Indian nation in the United States; or

(6) Out of the officer's presence and within the State for any misdemeanor occurring on school property.

(b) An arrest by a peace officer without a warrant for a felony, whether committed within or without the State, is lawful whenever:

(1) The officer has reasonable ground to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed; or

(2) A felony has been committed by the person to be arrested although before making the arrest the officer had no reasonable ground to believe the person committed it.

(c) Notwithstanding any other provision of law to the contrary, an arrest by a peace officer without a warrant for violation of probation is lawful whenever the peace officer has a reasonable ground to believe that the person to be arrested has committed a new offense within or

without the State during a period of probation and has thereby violated a condition of said probation imposed upon the person by a court of this State. A reasonable ground to believe that a person has committed a new offense may be based upon, but is not limited to, a finding of probable cause to issue a warrant for the new offense made by a neutral magistrate, an indictment returned by a grand jury for the new offense or an information for the new offense filed in any court.

Any person arrested pursuant to the provisions of this subsection shall be processed in accordance with the provisions of § 1909 of this title, at which time bail shall be set on both the new offense and the violation of probation.

(Code 1935 §§ 5343-F; 48 Del. Laws, c. 304; 11 Del. C. 1953 § 1906; 58 Del. Laws, c. 448; 64 Del. Laws, c. 362 § 1; 69 Del. Laws, c. 160 § 5; 70 Del. Laws, c. 58 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 437 § 1; 72 Del. Laws, c. 63 § 2.)

§ 1904 Arrest without warrant [Effective Jan. 1, 2017]

(a) An arrest by a peace officer without a warrant for a misdemeanor is lawful whenever the officer has reasonable ground to believe that the person to be arrested has committed a misdemeanor:

(1) In the officer's presence;

(2) Out of the officer's presence and without the State, and if law-enforcement officers of the state where the misdemeanor was committed request an arrest and the accused will not be apprehended unless immediately arrested;

(3) Out of the officer's presence and within the State for the crime of shoplifting and the arrest is based upon personal investigation at the scene of arrest and where a store employee is present who has observed the activity of the person to be arrested and that person is still present;

(4) Out of the officer's presence and within the State for any misdemeanor involving physical injury or the threat thereof or any misdemeanor involving illegal sexual contact or attempted sexual contact;

(5) Out of the officer's presence and within the State for a violation of a protective order issued by: Family Court; a court of any state, territory, or Indian nation in the United States; or a court of Canada; or

(6) Out of the officer's presence and within the State for any misdemeanor occurring on school property.

(b) An arrest by a peace officer without a warrant for a felony, whether committed within or without the State, is lawful whenever:

(1) The officer has reasonable ground to believe that the person to be arrested has committed a felony, whether or not a felony has in fact been committed; or

(2) A felony has been committed by the person to be arrested although before making the arrest the officer had no reasonable ground to believe the person committed it.

(c) Notwithstanding any other provision of law to the contrary, an arrest by a peace officer without a warrant for violation of probation is lawful whenever the peace officer has a reasonable ground to believe that the person to be arrested has committed a new offense within or without the State during a period of probation and has thereby violated a condition of said probation imposed upon the person by a court of this State. A reasonable ground to believe that a person has committed a new offense may be based upon, but is not limited to, a finding of probable cause to issue a warrant for the new offense made by a neutral magistrate, an indictment returned by a grand jury for the new offense or an information for the new offense filed in any court.

Any person arrested pursuant to the provisions of this subsection shall be processed in accordance with the provisions of § 1909 of this title, at which time bail shall be set on both the new offense and the violation of probation.

(Code 1935 §§ 5343-F; 48 Del. Laws, c. 304; 11 Del. C. 1953 § 1906; 58 Del. Laws, c. 448; 64 Del. Laws, c. 362 § 1; 69 Del. Laws, c. 160 § 5; 70 Del. Laws, c. 58 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 437 § 1; 72 Del. Laws, c. 63 § 2; 80 Del. Laws, c. 373 § 3.)

§ 1905 Validity of arrest on improper grounds.

If a lawful cause of arrest exists, the arrest is lawful even though the officer charges the wrong offense or gives a reason that does not justify the arrest.

(Code 1935 §§ 5343-G; 48 Del. Laws, c. 304; 11 Del. C. 1953 § 1907.)

§ 1906 Possession and display of warrant.

An arrest by a peace officer acting under a warrant is lawful even though the officer does not have the warrant in possession at the time of the arrest, but, if the person arrested so requests, the warrant shall be shown to the person as soon as practicable.

(Code 1935 §§ 5343-H; 48 Del. Laws, c. 304; 11 Del. C. 1953 § 1908; 70 Del. Laws, c. 186 § 1.)

§ 1907 Summons instead of arrest; form; penalty for nonappearance.

(a) In any case in which it is lawful for a peace officer to arrest without a warrant a person for a misdemeanor, the officer may, but need not, give the person a written summons in substantially the following form:

Violator's Last Name First Middle O.C.P. Birth Date Sex
No. M F

No. and Street City State Color Occupation
W B O

Owner's Name First Middle State Tag No.

Address

Specific Offense Sec. No. Date Acc.

Time M. Yes No

Hundred County Route No. Exact Location

S K NC

Magistrate Arresting Officer Date of Trial

_____ Troop Time

Address

You are hereby directed to appear at the time and place designated above to stand trial for the offense indicated. A failure to obey this summons may result in fine or imprisonment, or both.

Final Disposition of Upper Court Remarks

_____

TRAFFIC ARREST REPORT
DELAWARE STATE POLICE

(b) If the person fails to appear in answer to the summons, or if there is reasonable cause to believe that the person will not appear, a warrant for the person's arrest may issue.

(c) Whoever wilfully fails to appear in answer to the summons may be fined not more than $100 or imprisoned for not more than 30 days, or both.

(Code 1935 §§ 5343-I; 48 Del. Laws, c. 304; 11 Del. C. 1953 § 1909; 70 Del. Laws, c. 186 § 1.)

§ 1908 Release of person arrested without warrant.

(a) Any officer in charge of a police department or any officer delegated by the officer may release, instead of taking before a magistrate, any person who has been arrested without a warrant by an officer of that department whenever:

(1) The officer is satisfied either that there is no ground for making a criminal complaint against the person and no further proceedings are desirable; or

(2) The person was arrested for a misdemeanor and has signed an agreement to appear in court at a time designated, if the officer is satisfied that the person is a resident of the State and will appear in court at the time designated.

(b) A person released as provided in this section shall have no right to sue on the ground that the person was released without being brought before a magistrate.

(Code 1935 §§ 5343-J; 48 Del. Laws, c. 304; 11 Del. C. 1953 § 1910; 57 Del. Laws, c. 694 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1909 Hearing without delay; permissible delay.

(a) If not otherwise released, every person arrested shall be brought before a magistrate without unreasonable delay, and in any event the person shall, subject to the limitations contained in subsection (b) of this section below, be so brought within 24 hours of arrest, unless the court, for good cause shown, orders that person be held for a further period not to exceed 48 hours.

(b) Persons unable to knowingly and intelligently participate in the presentment proceedings because of incapacitation as a result of the consumption of alcohol or the use of drugs may, until such time as they are able to meaningfully participate in those proceedings, be held in police custody or be temporarily committed with bail and conditions of release to the custody of the Department of Correction on order of and following a determination of incapacitation by a magistrate. This temporary holding or commitment should not exceed 12 hours from the time of commitment until presentment, unless the court, for good cause shown, orders that person be held for a further period not to exceed 24 additional hours.

(Code 1935 §§ 5343-K; 48 Del. Laws, c. 304; 11 Del. C. 1953 § 1911; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 257 § 1.)

§ 1910 Identification of witness.

Whenever a peace officer has reasonable ground to believe that a crime has been committed, the officer may stop any person who the officer has reasonable ground to believe was present thereat and may demand the person's name and address. If the person fails to give identification to the satisfaction of the officer, the officer may take the person forthwith before a magistrate. If the person fails to give identification to the satisfaction of the magistrate, the latter may require the person to furnish bond or may commit the person to jail until the person so gives identification.

(Code 1935 §§ 5343-L; 48 Del. Laws, c. 304; 11 Del. C. 1953 § 1912; 70 Del. Laws, c. 186 § 1.)

§ 1911 Police officers; statewide authority.

(a) For purposes of this section "police officer" means any police officer holding current certification by the Council on Police Training as provided by Chapter 84 of this title and who is:

(1) A member of the Delaware State Police;
(2) A member of the New Castle County Police;
(3) A member of the police department, bureau or force of any incorporated city or town;
(4) A member of the Delaware River and Bay Authority Police;
(5) A member of the Capitol Police;
(6) A member of the University of Delaware Police;
(7) A law-enforcement officer of the Department of Natural Resources and Environmental Control;
(8) An agent of the State Division of Alcohol and Tobacco Enforcement;
(9) An officer or agent of the State Police Drug Diversion Unit;
(10) A state detective or special investigator of the Department of Justice;
(11) Delaware State University Police; or
(12) A member of the Office of the State Fire Marshal.

(b) A police officer may arrest without a warrant at any location within the State any person the officer has reasonable grounds to believe is committing or attempting to commit a felony in the officer's presence.

(c) An on-duty police officer may arrest upon view and without a warrant at any location within the State any person when probable cause exists to believe that the person is committing or attempting to commit any crime which creates a substantial risk of death or serious physical injury to another person or which constitutes a violation of § 4177 of Title 21.

(d) An "on-duty" police officer may arrest at any location in the State any person for any offense committed within the jurisdiction of the officer's employing agency and for whose arrest a warrant has been issued. The "on-duty" police officer shall, where acting outside of the officer's jurisdiction, take reasonable measures to notify the primary jurisdictional police agency of the intended time and place of the execution of the arrest warrant.

(e) A police officer may render assistance to another police officer at any location within the State when the officer reasonably believes that the police officer to be assisted is lawfully performing that officer's duty and that death or injury will occur to that police officer if assistance is not provided.

(f) When police officers who are certified by the Delaware Council on Police Training are dispatched by a Public Safety Answering Point outside of their respective jurisdiction as conservators of the peace, those officers shall be considered to be acting as officers of the dispatching agency and have the powers of arrest thereof.

(g) A police officer acting under the authority of this section shall be considered to be acting within the scope of employment.

(h) This section shall not serve to limit the authority of members of the Delaware State Police or other police officers as provided for elsewhere in this title or by other authority.

(i) "Police officer" as used in this code shall not include sheriffs and sheriff deputies.

(64 Del. Laws, c. 101 § 1; 65 Del. Laws, c. 207 § 1; 66 Del. Laws, c. 305 § 1; 67 Del. Laws, c. 220 § 1; 68 Del. Laws, c. 313 § 1; 70 Del. Laws, c. 105 § 13; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 465 § 1; 72 Del. Laws, c. 379 § 2; 73 Del. Laws, c. 195 § 1; 74 Del. Laws, c. 250 § 2; 76 Del. Laws, c. 43 § 1; 76 Del. Laws, c. 160 § 1; 76 Del. Laws, c. 332 § 1; 78 Del. Laws, c. 155 § 3; 78 Del. Laws, c. 266 § 3; 78 Del. Laws, c. 377 § 1.)

§ 1912 Federal law-enforcement officers; authority; immunity.

A sworn federal law-enforcement officer, who in an official capacity is authorized by law to make arrests, shall have the same legal status and immunity from suit in this State as a member of the Delaware State Police when making an arrest in this State concerning a nonfederal crime, only if:

(1) The federal officer reasonably believes that the person arrested has committed or is committing a felony in the officer's presence; or
(2) The federal officer is rendering assistance to a peace officer of this State in an emergency or at the request of the peace officer.

(64 Del. Laws, c. 354 § 1; 70 Del. Laws, c. 186 § 1.)

Subchapter II

Fresh Pursuit

§ 1931 Definitions.

As used in this subchapter:

"Fresh pursuit" includes fresh pursuit as defined by the common law, and also the pursuit of a person who has committed a felony or a misdemeanor or a violation of the Motor Vehicle Code of this State or who is reasonably suspected of having committed a felony or a misdemeanor or a violation of the Motor Vehicle Code of this State, and also includes the pursuit of a person suspected of having

committed a supposed felony or misdemeanor or violation of the Motor Vehicle Code of the State though no violation of the law has actually been committed, if there is reasonable grounds for believing that a violation of the law has been committed; however, fresh pursuit as used in this subchapter does not necessarily imply instant pursuit, but pursuit without unreasonable delay.

(41 Del. Laws, c. 216 § 5; 11 Del. C. 1953 § 1931; 56 Del. Laws, c. 154 § 1.)

§ 1932 Arrest by out-of-state police.

(a) Any member of a duly organized state, county or municipal peace unit of another state of the United States who enters this State in fresh pursuit, and continues within this State in such fresh pursuit, of a person in order to arrest the person on the ground that the person is believed to have committed a felony, a misdemeanor or a violation of the motor vehicle code in such other state, shall have the same authority to arrest and hold such person in custody, as has any member of any duly organized state, county or municipal peace unit of this State, to arrest and hold in custody a person on the ground that the person is believed to have committed a felony, a misdemeanor or a violation of the Motor Vehicle Code in this State.

(b) This section shall not be construed so as to make unlawful any arrest in this State which would otherwise be lawful.

(41 Del. Laws, c. 216 §§ 1, 3; 11 Del. C. 1953 § 1932; 56 Del. Laws, c. 154 § 2; 70 Del. Laws, c. 186 § 1.)

§ 1933 Hearing before justice of the peace; waiver of extradition.

If an arrest is made in this State by an officer of another state in accordance with § 1932 of this title, the officer shall without unnecessary delay take the person arrested before a justice of the peace of the county in which the arrest was made, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the justice of the peace determines that the arrest was lawful the justice of the peace shall commit the person arrested to await for a reasonable time the issuance of an extradition warrant by the Governor of this State, or admit the person to bail for such purpose. If the justice of the peace determines that the arrest was unlawful the justice of the peace shall discharge the person arrested.

If the person so arrested waives extradition in the manner provided by law, upon the filing of the waiver at the central office or headquarters of any local, county or state police, or at the local office of the Attorney General, the officer having the arrested person in charge may forthwith take the person from this State to the state where the arrested person is wanted for having committed the felony.

(41 Del. Laws, c. 216 § 2; 11 Del. C. 1953 § 1933; 70 Del. Laws, c. 186 § 1.)

§ 1934 Short title.

This subchapter may be cited as the "Uniform Law on Fresh Pursuit."

(41 Del. Laws, c. 216 § 8; 11 Del. C. 1953 § 1934.)

§ 1935 Fresh pursuit by county, municipal, town and other peace units.

Any peace officer of a duly organized county, municipal, town, interstate bridge or university peace unit or a law-enforcement officer of the Department of Natural Resources and Environmental Control, but not county sheriffs or their deputies, may carry out fresh pursuit of any person anywhere within this State, regardless of the original territorial jurisdiction of such officer, in order to arrest such person pursued, when there is reasonable grounds to suspect that a felony, misdemeanor, or violation of the Motor Vehicle Code has been committed in this State by such person.

(11 Del. C. 1953 § 1935; 56 Del. Laws, c. 154 § 3; 66 Del. Laws, c. 304 § 1; 70 Del. Laws, c. 105 § 14; 78 Del. Laws, c. 266 § 4.)

Subchapter III

Police Mutual Aid Agreements

§ 1941 Short title.

This subchapter may be cited as the "Police Mutual Assistance Act."

(11 Del. C. 1953 § 1941; 57 Del. Laws, c. 433; 75 Del. Laws, c. 36 § 1.)

§ 1942 Definitions.

As used in this subchapter:

(1) "Emergency" means any such circumstance which, in the judgment of the principal law-enforcement officer of the requesting jurisdiction, requires additional police assistance, and shall include such planned or anticipated or scheduled events that, in the judgment of the principal law-enforcement officer of the requesting jurisdiction, will require additional police resources beyond the reasonable capacity of the requesting jurisdiction. The governing body of a jurisdiction may determine the circumstances under which police officers of its jurisdiction, together with all necessary equipment, may lawfully go or be sent beyond the territorial limits of its jurisdiction to any point within or without the State.

(2) "Jurisdiction" means a recognized geographic area such as a county, incorporated municipality or the legislatively defined area of responsibility of the Delaware River and Bay Authority or the Department of Safety and Homeland Security or the Department of Natural Resources and Environmental Control and/or the University of Delaware and/or Delaware State University in which the

governing body and its police have the authority, capacity, power and right to enforce laws.

(3) "Mutual assistance" means the provisions under this subchapter enabling the police of one jurisdiction to enter into another jurisdiction for purpose of rendering assistance upon the request of the other jurisdiction.

(4) "Police" includes all authorized law-enforcement personnel of a jurisdiction.

(11 Del. C. 1953 § 1942; 57 Del. Laws, c. 433; 66 Del. Laws, c. 110 § 1; 66 Del. Laws, c. 306 §§ 1, 2; 70 Del. Laws, c. 105 §§ 15, 16; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 138 §§ 2, 3; 72 Del. Laws, c. 367 § 1; 74 Del. Laws, c. 110 § 138; 75 Del. Laws, c. 36 § 1.)

§ 1943 Use of police from other jurisdictions in emergencies.

Whenever the necessity arises during an emergency, upon request, the police of one jurisdiction may, pursuant to this subchapter, lawfully enter into another jurisdiction for the purpose of assisting in meeting such emergency.

(11 Del. C. 1953 § 1943; 57 Del. Laws, c. 433; 75 Del. Laws, c. 36 § 1.)

§ 1944 Mutual assistance.

(a) The police agency of a jurisdiction may in its discretion provide mutual assistance for such periods as it deems advisable with any other jurisdiction within or without the State, including the District of Columbia, in order to establish and carry into effect a plan to provide mutual assistance through the furnishing of police and all necessary equipment in the event of an emergency.

(b) No police agency of a jurisdiction shall provide mutual assistance unless the assisting party shall:

(1) Indemnify the requesting agency for any and all claims which may arise out of authorized activities of the other parties outside their respective jurisdiction.

(2) Indemnify the requesting agency from all claims by third parties of the property damage or personal injury which may arise out of authorized activities of the other parties while acting outside their respective jurisdiction.

(11 Del. C. 1953 § 1944; 57 Del. Laws, c. 433; 66 Del. Laws, c. 110 § 2; 72 Del. Laws, c. 130 § 1; 75 Del. Laws, c. 36 § 1.)

§ 1945 Liability insurance.

The governing body of any jurisdiction in this State is authorized to procure or extend the necessary public liability insurance to cover claims arising out of mutual assistance to other jurisdictions.

(11 Del. C. 1953 § 1945; 57 Del. Laws, c. 433; 66 Del. Laws, c. 110 § 3; 75 Del. Laws, c. 36 § 1.)

§ 1946 Direction and authorization of activities.

(a) The principal law-enforcement officer on duty of a jurisdiction shall be responsible for directing the activities of all police coming into that officer's jurisdiction pursuant to this subchapter.

(b) The principal law-enforcement officer shall be empowered to authorize all police from a foreign jurisdiction to the same extent as if they were duly authorized law-enforcement officers of the jurisdiction.

(11 Del. C. 1953 § 1946; 57 Del. Laws, c. 433; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 36 § 1.)

§ 1947 Immunities; benefits.

Police, when acting outside their respective jurisdictions pursuant to mutual assistance, shall have all the immunities from liability and exemptions from law, ordinances and regulations and shall have all the pension, relief, disability workers' compensation and other benefits enjoyed by them while performing their respective duties within their own jurisdiction. Nothing in this subchapter shall be construed as in any way limiting the provisions of § 1911 of this title.

(11 Del. C. 1953 § 1947; 57 Del. Laws, c. 433; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 36 § 1.)

Part II
Criminal Procedure Generally
Chapter 21
RELEASE OF PERSONS ACCUSED OF CRIMES

§ 2101 Purposes of this chapter.

It is the purpose of this chapter to reform the system of bail in the various courts of this State and to empower and equip the courts to utilize a system of personal recognizance or an unsecured personal appearance bond to be used wherever feasible consistent with a reasonable assurance of the appearance of the accused and the safety of the community in connection with the release of persons accused of crime pending a final determination of the court as to the guilt of such persons.

(11 Del. C. 1953 § 2101; 56 Del. Laws, c. 231 § 1.)

§ 2102 Definitions.

For purposes of this chapter the following definitions shall apply:

(1) "Attorney General" includes any Deputy Attorney General or any other prosecutor of the State, county or municipality.

(2) "Bailable offense" is any offense not punishable by death.

(3) "Capital crime" includes any crime for which the punishment shall be death.

(4) "Cash personal appearance bond" is a bond of the accused promising appearance in court, secured by cash only.

(5) "Court" includes Superior Court, Court of Common Pleas, Family Court of the State, and Justice of the Peace Court.

(6) "Crime" includes any offense which is punishable by a fine or imprisonment.

(7) "Personal recognizance" is the written recognizance of the accused that the accused will obey the further direction of the court.

(8) "Record finding" is a memorandum, notation, opinion, order or other writing in the file of the case of the accused reflecting the decision made by the court.

(9) "Secured personal appearance bond" is a bond of the accused promising appearance in court, guaranteed by a surety, property, cash or other assets.

(10) "Unsecured personal appearance bond" is an undertaking by the accused promising appearance in court where, upon failure to appear, the accused will be liable for the amount of the bond, but the bond is not guaranteed by any surety or specific pledge of property or other assets.

(11) "Violent felonies" or "violent felony" shall consist of all felonies designated as violent felonies in § 4201(c) of this title.

(11 Del. C. 1953 § 2102; 56 Del. Laws, c. 231 § 1; 66 Del. Laws, c. 300 § 3; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 176 § 14; 79 Del. Laws, c. 36 § 1.)

§ 2103 Persons charged with a capital crime.

(a) A capital crime shall not be bailable, and a person so charged shall be held in custody without bail until the charge be withdrawn, reduced or dismissed or until the court shall otherwise order after a trial which results in less than a conviction of a capital crime or except as provided in subsection (b) of this section.

(b) The Superior Court may admit to bail a person charged with a capital crime if, after full inquiry, the Superior Court shall determine that there is good ground to doubt the truth of the accusation, and the burden of demonstrating such doubt shall be on the accused.

(11 Del. C. 1953 § 2103; 56 Del. Laws, c. 231 § 1.)

§ 2103A Detention of youth charged with Superior Court offenses.

When a child has reached that child's sixteenth birthday and is found to be nonamenable to the rehabilitative processes of the Family Court or is charged with an offense in Superior Court and thereafter makes application for transfer of said charges to Family Court pursuant to § 1011 of Title 10 and is denied or fails to make application pursuant to § 1011 of Title 10 within the required time and is therefore held over for trial in Superior Court, the youth shall be remanded to the Department of Correction if held in default of bail. When a child (youth) has been lawfully administratively remanded or transferred to the Department of Correction ("DOC"), DOC shall be exclusively responsible for all aspects of the child's (youth's) care, custody and control, including services associated with those responsibilities upon such remand and transfer. The Department of Services for Children, Youth and Their Families ("DSCYF") shall have no authority or jurisdiction of such child (youth).

(69 Del. Laws, c. 354 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 597 § 2; 71 Del. Laws, c. 5 § 1; 72 Del. Laws, c. 149 § 1.)

§ 2104 Release on bail or recognizance of persons charged with any other crime.

(a) Any person who is arrested and charged with any crime other than a capital crime shall be released either:

(1) On the person's own recognizance; or

(2) Upon the execution of an unsecured personal appearance bond of the accused in an amount specified by the court; or

(3) Upon the execution of a secured personal appearance bond, the amount of the bond and the nature of the surety to be determined by

the court; or

(4) Upon execution of a cash personal appearance bond, the amount of the bond to be determined by the court.

(b) The court shall impose the following conditions of release for any person released on bail or recognizance:

(1) Require the person to return to the court at any time upon notice and submit to the orders and processes of the court; and

(2) Prohibit the person from committing any criminal offense.

(c) The court may also impose 1 or more of the conditions of release set forth in § 2108 of this title.

(d) The determination of whether the accused shall be released under paragraph (a)(1), (a)(2), (a)(3) or (a)(4) of this section above and the conditions (other than the mandatory conditions in paragraph (b) of this section above) of the release shall be in the discretion of the court subject to this chapter. In making a release determination, or imposing conditions set forth in § 2108 of this title, the court shall employ an objective risk assessment instrument to gauge the person's risk of flight and re-arrest and the safety of the victim and the community. The risk assessment instrument shall be responsive to the needs of victims of domestic violence and sexual assault. The Statistical Analysis Center shall provide the court with a report of rates of re-arrest and failure to appear as required by persons released by the court. Use of the objective risk assessment instrument shall commence by December 31, 2013.

(e) If the accused has furnished surety, the court shall, at that time, review conditions and may impose any conditions as are set forth in § 2108 of this title before the accused is released, including specific consideration for the safety of the victim and the community.

(f) Any person who is arrested and thereafter released from custody pursuant to this chapter, and who subsequently:

(1) Tenders to the Superior Court a plea of guilty or nolo contendere to any felony for which a mandatory, minimum, minimum mandatory or mandatory minimum period of incarceration is required; or

(2) Is convicted upon a verdict of guilty of any felony for which a mandatory, minimum, minimum mandatory or mandatory minimum period of incarceration is required,

shall immediately be remanded to the custody of the Department of Correction, and shall be incarcerated in lieu of bail until the sentence for said felony is imposed. The provisions of this subsection shall not apply to pleas or convictions for any felony set forth in Title 21.

(11 Del. C. 1953 § 2104; 56 Del. Laws, c. 231 § 1; 66 Del. Laws, c. 300 § 4; 69 Del. Laws, c. 252 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 98 §§ 2-4; 78 Del. Laws, c. 392 § 1; 79 Del. Laws, c. 36 § 1; 79 Del. Laws, c. 244 § 2.)

§ 2105 Release on personal recognizance or on unsecured personal appearance bond.

(a) The court shall release a person accused of a bailable crime on the person's own recognizance or upon the execution of an unsecured personal appearance bond of the accused in an amount to be determined by the court when the court is satisfied from all the circumstances and the criteria set forth in subsection (b) of this section that it is reasonably likely that the accused will appear as required before or after conviction of the crime charged and that there is no substantial risk to the safety of the community in permitting such unsecured release.

(b) In determining whether the accused is likely to appear as required and that there will be no substantial risk to the safety of the community the court shall, on the basis of available information, take into consideration the nature and circumstances of the crime charged, whether a firearm was used or possessed, the possibility of statutory mandatory imprisonment, whether the crime was committed against a victim with intent to hinder prosecution, the family ties of the accused, the accused's employment, financial resources, character and mental condition, the length of residence in the community, record of convictions, habitual offender eligibility, custody status at time of offense, history of amenability to lesser sanctions, history of breach of release, record of appearances at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

(c) If the court has determined that the accused shall not be released in accordance with this section, it shall make a record finding of the reason or reasons for such action and shall permit the release of the accused upon the furnishing of surety satisfactory to the court in an amount to be determined by the court.

(11 Del. C. 1953 §§ 2105, 2106; 56 Del. Laws, c. 231 § 1; 63 Del. Laws, c. 215 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 36 § 1.)

§ 2106 Posting of operator's license as security for court appearance.

(63 Del. Laws, c. 215 § 2; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 110 § 4; Del. Laws, c. 36 § 1, eff June 4, 2013.)

§ 2107 Determining the amount of bail.

(a) In determining the amount of bail to be required to be posted as surety under § 2105 of this title or to be required for an unsecured personal appearance bond of the accused, the court shall not require oppressive bail but shall require such bail as reasonably will assure the reappearance of the accused, compliance with the conditions set forth in the bond and the safety of the community. In fixing the amount, the court shall also take into consideration the criteria set forth in § 2105(b) of this title.

(b) In any event, if a person is charged with an offense punishable by fine only, the amount of the bail shall not exceed double the amount of the maximum fine for each charge. When a person has been convicted of an offense and only a fine has been imposed as the sentence of the court, the amount of bail shall not exceed double the amount of the fine.

(c) Notwithstanding any provision of this title to the contrary, for a person charged with committing a violent felony involving a firearm or with committing a violent felony while on probation or pretrial release, the presumption is that a cash personal appearance bond will be set.

(11 Del. C. 1953 § 2107; 56 Del. Laws, c. 231 § 1; 79 Del. Laws, c. 36 § 1.)

§ 2108 Conditions for release.

(a) In addition to the mandatory conditions set forth in § 2104(b) of this title, in connection with either a secured release or an unsecured release of any person the court may also impose 1 or more of the following conditions:

(1) Place the person in the custody of a designated person or organization agreeing to supervise the person;

(2) Place the person under the supervision of a presentence or probation officer;

(3) Place restrictions on the travel, associations, activities, consumption of alcoholic beverages, drugs or barbiturates, or place of abode of the person during the period of release;

(4) Require the person to have no contact or restricted contact with the victim, the victim's family, victim's residence, place of employment, school or location of offense;

(5) Require periodic reports from the person to an appropriate agent or officer of the court including the attorney for the accused;

(6) Require psychiatric or medical treatment of the person;

(7) Require the person to provide suitable support for the person's family under supervision of an officer of the court or the Family Court, with the consent of the Family Court;

(8) Require a person who has been convicted to duly prosecute any post-conviction remedies or appeals; and if the case is affirmed or reversed and remanded, such person shall forthwith surrender to the Court;

(9) Impose any other condition deemed reasonably necessary to assure appearance as required and to carry out the purpose of this chapter.

(b) In connection with either a secured release or an unsecured release of any person charged with any crime involving child sexual abuse or exploitation, the court shall also impose a condition that the person have no contact with children, except upon good cause shown, and as otherwise provided by the court, and that such condition remain in full force and effect until a nolle prosequi is filed, the case is dismissed or an adjudication of not guilty is returned, whichever shall first occur, or if the person is adjudicated guilty by way of a plea of guilty or a conviction by court or jury, at the time of sentencing, unless further made a condition of probation by the sentencing judge.

(c) In connection with either a secured release or unsecured release of any person charged with a violation of § 4177 of Title 21 which is alleged to be punishable as a felony pursuant to that section, the court shall impose a condition that the person not drive a vehicle, as defined by that section, until a nolle prosequi is filed, the case is dismissed or an adjudication of not guilty is returned, whichever shall first occur, or if the person is adjudicated guilty by way of plea of guilty or a conviction by court or jury, at the time of sentencing, unless further made a condition of probation by the sentencing judge.

(11 Del. C. 1953 § 2108; 56 Del. Laws, c. 231 § 1; 66 Del. Laws, c. 300 §§ 5, 6; 68 Del. Laws, c. 367 §§ 1, 2; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 152 § 1; 79 Del. Laws, c. 36 § 1.)

§ 2109 Failure to provide recognizance, bond, or consent to conditions; contact with victim or victim's family.

(a) If the accused does not provide the personal recognizance, secured or unsecured bond or if the person does not agree to meet the conditions for release, the person shall be held in the custody of the Department of Correction until the person cures such failure or until the court otherwise orders.

(b) If the accused is committed in lieu of bail, the court may require such person, while in custody, to have no contact with the victim or the victim's family.

(c) If the accused is committed in lieu of bail, and knowingly breaches any conditions imposed in connection with that bail, each such failure or breach shall be a separate crime, and upon conviction thereof shall be punished as follows:

(1) If the person was held in connection with 1 or more charges of a felony prior to trial, or while awaiting sentence or pending appeal or certiorari after conviction of 1 or more felonies or misdemeanors, the person shall be guilty of a felony and punished by imprisonment of not to exceed 5 years or a fine of $5,000, or both;

(2) If the person was held in connection with 1 or more charges of misdemeanor prior to trial, the person shall be fined not more than $500 or imprisoned not more than 1 year, or both.

(11 Del. C. 1953 § 2109; 56 Del. Laws, c. 231 § 1; 66 Del. Laws, c. 300 § 7; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 143; 80 Del. Laws, c. 51 § 1.)

§ 2110 Modification of bail, security or conditions.

(a) Either the accused or the Attorney General may apply to the court for any modification of any determination by the court as to the decision of the type of release, the amount and nature of the bond or surety, or the conditions of release. Such application shall be at such times, upon such conditions and in such manner as the Rules of Superior Court may provide.

(b) Where the court modifies any bail amount, the court shall review conditions and may impose any conditions as are set forth in § 2108 of this title, including specific considerations for the safety of the victim and the community.

(11 Del. C. 1953 § 2110; 56 Del. Laws, c. 231 § 1; 66 Del. Laws, c. 300 § 8.)

§ 2111 Procedure for taking bail or implementing this chapter.

Except as provided herein, the procedure for taking bail or implementing this chapter shall be as provided by the Rules of the Superior Court.

(11 Del. C. 1953 § 2111; 56 Del. Laws, c. 231 § 1; 79 Del. Laws, c. 36 § 1.)

§ 2112 Bail after transfer to another court or after conviction.

Once bail has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction, the latter court may continue the original bail in that court. After conviction, the court may order that the original bail stand as bail pending appeal or deny, increase or reduce bail.

(11 Del. C. 1953 § 2112; 56 Del. Laws, c. 231 § 1.)

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

(a) If the accused shall fail to appear as required by the recognizance or bond or shall commit any material breach of the conditions set forth in § 2104(b) or § 2108 of this title, the court shall issue a warrant and cause the arrest of such person and the cancellation of any recognizance and the return to the court for a redetermination of the disposition of the accused.

(b) Upon the return of the accused before the court pursuant to subsection (a) of this section or if the accused shall not be found, the court shall act with respect to the forfeiture of any secured or unsecured bond pursuant to the Rules of the Superior Court and shall redetermine the type of release, the amount of bail, if any, and conditions of the further release of the accused. Notwithstanding any law to the contrary, no property, cash, surety or other assets shall be forfeited except upon failure of the accused to appear as required by any court.

(c) If the accused knowingly fails to appear as required or knowingly breaches any condition of release, each such failure or breach shall be a separate crime, and upon conviction thereof shall be punished as follows:

(1) If the person was released in connection with 1 or more charges of a felony prior to trial, or while awaiting sentence or pending appeal or certiorari after conviction of 1 or more felonies or misdemeanors, the person shall be guilty of a felony and punished by imprisonment of not to exceed 5 years or a fine of $5,000, or both;

(2) If the person was released in connection with 1 or more charges of misdemeanor prior to trial, the person shall be fined not more than $500 or imprisoned not more than 1 year, or both.

(d) The Justice of the Peace Court shall have jurisdiction over violations of this section if punishable as misdemeanors and if the jurisdiction over the underlying offense remains with the Justice of the Peace Court.

(e) Any person released pursuant to this chapter shall notify the court, before which the case is pending, of any changes of address or residence within 5 days of such change. Failure to make such notification will result in constructive receipt of any subpoena issued to the person by or on behalf of the court to the last address or residence given to the court by that person.

(f) Nothing in this chapter shall interfere with or prevent the exercise by any court of its power to punish for contempt.

(11 Del. C. 1953 § 2113; 56 Del. Laws, c. 231 § 1; 69 Del. Laws, c. 198 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 172 § 1; 74 Del. Laws, c. 322 § 1; 79 Del. Laws, c. 36 § 1.)

§ 2114 Administration of this chapter.

(a) The Department of Correction shall administer such provisions of this chapter as are not exclusively the province of the judges of the respective courts of this State.

(b) The Department of Correction may make investigations relative to the release of persons charged with criminal offenses and advise and assist the courts to carry out the purposes of this chapter.

(c) The Department of Correction shall have the power necessary to carry out the purposes of this chapter, including subpoena power, and as shall be provided by the Rules of the Superior Court.

(d) The Commissioner of the Department of Correction may employ 1 supervisor, and such assisting and clerical staff as may be necessary to carry out this chapter.

(11 Del. C. 1953 § 2114; 56 Del. Laws, c. 231 § 1; 79 Del. Laws, c. 36 § 1.)

§ 2115 Forfeiture and default of bail bonds.

(a) If the accused shall fail to appear as required by any court, except the House Sergeant of the Wilmington City Police, while under a bond, and the court pursuant to this chapter or court rule finds the accused in default and forfeits the bond, the proceeds shall be forwarded to the State Treasurer and deposited in the General Fund.

(b) All funds held by the State in any depository derived from forfeiture or default of bonds from any court, except the House Sergeant of the Wilmington City Police, shall immediately be forwarded to the State Treasurer and deposited in the General Fund.

(c) The proceeds of any bond forfeited for the accused's failure to appear in any child support proceeding shall be paid over to the payee of the child support order and applied to the child support account.

(59 Del. Laws, c. 360 § 1; 70 Del. Laws, c. 449 § 3; 71 Del. Laws, c. 176 § 15; 79 Del. Laws, c. 36 § 1.)

§ 2116 Revocation of bail upon subsequent arrest.

(a) For the purposes of this section:

(1) "Original offense" means any violent felony which is alleged to have been committed by a person who is thereafter released from custody upon that person's own recognizance or upon the execution of a secured or unsecured personal appearance bond or a cash personal appearance bond;

(2) "Subsequent offense" means any violent felony or any similar offense set forth under the laws of another state, the United States or

any territory of the United States which is alleged to have been committed by a person during the period of that person's secured or unsecured release in connection with an original offense.

(b) In connection with either a secured release or unsecured release of any person charged with any violent felony, if after such release the accused is charged by arrest, warrant, indictment or information with the commission of a subsequent offense, that person shall be brought before the Superior Court. If after a hearing, the Superior Court finds proof positive or presumption great that the accused has committed a subsequent offense during such period of release, notwithstanding any provision of this chapter or any statute or court rule to the contrary, the Court shall revoke the bail to which the person was admitted in connection with the original offense.

(c) Notwithstanding any provision of this chapter or any other statute or court rule to the contrary, whenever the accused is charged with a subsequent offense, any recognizance or bond relating to the original offense shall be temporarily revoked by any court, including the Justice of the Peace Court, Court of Common Pleas, or Superior Court, before whom the person is then appearing, and the person shall be held in lieu of bail for the original offense until such time as the Superior Court holds a hearing to determine whether there is proof positive or presumption great that the accused committed a subsequent offense during the period of release.

(d) Notwithstanding any provision of this chapter or any statute or court rule to the contrary, any person whose bail is revoked by the Superior Court pursuant to this section shall be subject to bail on the original offense in an amount at least twice the amount of bail originally set. If the bail on the original offense was not already cash, the amount of bail may be posted only in the form of a cash personal appearance bond.

(73 Del. Laws, c. 372 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 36 § 1; 79 Del. Laws, c. 244 § 1.)

Part II
Criminal Procedure Generally
Chapter 23
SEARCH AND SEIZURE
Subchapter I
General Provisions

§ 2301 Search to accord with statute or Constitution.

No person shall search any person, house, building, conveyance, place or other thing without the consent of the owner (or occupant, if any) unless such search is authorized by and made pursuant to statute or the Constitution of the United States.

(Code 1935 §§ 5343-AA; 48 Del. Laws, c. 303; 11 Del. C. 1953 § 2301; 53 Del. Laws, c. 359 § 1; 56 Del. Laws, c. 422 § 1.)

§ 2302 Search without warrant in hot pursuit.

A search of a person, house, building, conveyance, place or other thing may be made without a warrant if the search is made for a person hotly pursued provided the pursuer has probable cause to believe that such person has committed a felony or a misdemeanor.

(Code 1935 §§ 5343-BB; 48 Del. Laws, c. 303; 11 Del. C. 1953 § 2302; 56 Del. Laws, c. 422 § 2.)

§ 2303 Search without warrant incident to arrest.

A search of a person, house, building, conveyance, place or other thing may be made without a warrant if:

(1) The search is made incidental to and contemporaneous with a lawful arrest;

(2) The search is made in order to find and seize:

a. The fruits of a crime;

b. The means by which the crime was committed;

c. Weapons and other things to effect an escape from arrest or custody; and

d. Evidentiary matter pertaining to the commission of a crime.

(Code 1935 §§ 5343-CC; 48 Del. Laws, c. 303; 11 Del. C. 1953 § 2303; 56 Del. Laws, c. 422 § 3.)

§ 2304 Persons authorized to issue search warrants.

Any Judge of the Superior Court, the Court of Common Pleas, or any justice of the peace, or any magistrate authorized to issue warrants in criminal cases may, within the limits of their respective territorial jurisdictions, issue a warrant to search any person, house, building, conveyance, place or other thing for each or any of the items specified in § 2305 of this title.

(Code 1935 §§ 5343-DD; 48 Del. Laws, c. 303; 11 Del. C. 1953 § 2304; 49 Del. Laws, c. 220 § 9; 53 Del. Laws, c. 359 § 1; 56 Del. Laws, c. 422 § 4; 71 Del. Laws, c. 176 § 16.)

§ 2305 Objects of search warrant.

A warrant may authorize the search of any person, house, building, conveyance, place or other things for any of the following:

(1) Papers, articles or things of any kind which were instruments of or were used in a criminal offense, the escape therefrom or the concealment of said offense or offenses;

(2) Property obtained in the commission of a crime, whether the crime was committed by the owner or occupant of the house, building, place or conveyance to be searched or by another;

(3) Papers, articles, or things designed to be used for the commission of a crime and not reasonably calculated to be used for any other purpose;

(4) Papers, articles or things the possession of which is unlawful;

(5) Papers, articles or things which are of an evidentiary nature pertaining to the commission of a crime or crimes;

(6) Persons for whom a warrant of arrest has been issued.

(Code 1935 §§ 5343-DD; 48 Del. Laws, c. 303; 11 Del. C. 1953 § 2305; 53 Del. Laws, c. 359 § 1; 56 Del. Laws, c. 442 § 5.)

§ 2306 Application or complaint for search warrant.

The application or complaint for a search warrant shall be in writing, signed by the complainant and verified by oath or affirmation. It shall designate the house, place, conveyance or person to be searched and the owner or occupant thereof (if any), and shall describe the things or persons sought as particularly as may be, and shall substantially allege the cause for which the search is made or the offense committed by or in relation to the persons or things searched for, and shall state that the complainant suspects that such persons or things are concealed in the house, place, conveyance or person designated and shall recite the facts upon which such suspicion is founded.

(Code 1935 §§ 5343-DD; 48 Del. Laws, c. 303; 11 Del. C. 1953 § 2306; 53 Del. Laws, c. 359 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2307 Issuance; contents; execution and return of search warrants.

(a) Issuance of search warrants; contents — If the judge, justice of the peace or other magistrate finds that the facts recited in the complaint constitute probable cause for the search, that person may direct a warrant to any proper officer or to any other person by name for service. The warrant shall designate the house, place, conveyance or person to be searched, and shall describe the things or persons sought as particularly as possible.

(b) Execution and return with inventory — The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made forthwith and shall be accompanied by a written inventory of any property taken. The inventory shall be made and signed by the officer executing the warrant in the presence of the person from whose possession or premises the property was taken, if they are present, or if they are not present, in the presence of at least 1 witness. The judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(Code 1935 §§ 5343-DD; 48 Del. Laws, c. 303; 11 Del. C. 1953 § 2307; 49 Del. Laws, c. 220 § 9; 53 Del. Laws, c. 359 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 314 §§ 1, 2, 3, 4.)

§ 2308 Search at nighttime.

A search warrant shall not authorize the person executing it to search any dwelling house in the nighttime unless the judge, justice of the peace or magistrate is satisfied that it is necessary in order to prevent the escape or removal of the person or thing to be searched for, and then the authority shall be expressly given in the warrant. For purposes of this section the term "nighttime" shall mean the period of time between 10:00 p.m. and 6:00 a.m.

(Code 1935 §§ 5343-DD; 48 Del. Laws, c. 303; 11 Del. C. 1953 § 2308; 49 Del. Laws, c. 220 § 9; 63 Del. Laws, c. 308 § 1.)

§ 2309 Grounds for seizure of subject matter of search.

(a) Any papers, articles or things which are the subject matter of a search warrant may be seized:

(1) By any peace officer without a search warrant where such paper, article or thing is in plain view without the necessity of a search.

(2) Where such paper, article or thing is discovered pursuant to a valid search, with or without a search warrant, whether or not such paper, article or thing is an object of the search or is described in the search warrant.

(b) The officer taking property under the warrant shall give to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken or shall leave the copy and receipt at the place from which the property was taken. The return shall be made forthwith and shall be accompanied by a written inventory of any property taken. The inventory shall be made and signed by the officer executing the warrant in the presence of the person from whose possession or premises the property was taken, if they are present, or, if they are not present, in the presence of at least 1 witness. The judge shall upon request deliver a copy of the inventory to the person from whom or from whose premises the property was taken and to the applicant for the warrant.

(Code 1935 §§ 5343-EE; 48 Del. Laws, c. 303; 11 Del. C. 1953 § 2309; 73 Del. Laws, c. 314 § 5.)

§ 2309A Objects subject to search and seizure.

(a) When used in this subchapter, the terms "property" and "papers, articles or things" shall, in addition to their ordinary meanings, include any funds placed in a bank or other monetary account.

(b) Any papers, articles, things or other property which represent or is traceable to the fruits of a crime or which represent or is traceable to the proceeds obtained, directly or indirectly, as a result of the commission of a crime, shall be subject to search and seizure pursuant to this subchapter.

(75 Del. Laws, c. 106 § 1.)

§ 2310 Short form of affidavit, application and search warrant.

(a) The following shall be sufficient form of affidavit and application for search warrant:

IN THE (NAME OF COURT)
STATE OF DELAWARE
STATE OF DELAWARE
IN THE MATTER OF:

	AFFIDAVIT AND AP-
(NAME OF PERSONS, HOUSE,	PLICATION FOR
PLACE OR THING TO BE	SEARCH
SEARCHED)	

STATE OF DELAWARE
COUNTY SS.

Be it remembered that on this..... day of....., A.D. 20...., before me (name of judge or justice of peace and designation of court), personally appeared (name and rank of affiant and designation of police department of which affiant is a member), who being by me duly sworn (or affirmed) deposes (or depose) and says (or say):

That the affiant (or affiants) has (or have) reason to believe and does (or do) believe that in the (house, place, conveyance or person known as..... designate and describe briefly,) the owner(s) (or occupant(s)) is (are) (name and owner or owners, occupant or occupants) there has been and/or there is now located and/or concealed certain property in said house, place, conveyance and/or on the person or persons of the occupants thereof, consisting of property, papers, articles or things which are the instruments of a criminal offense, and/or obtained in the commission of a crime, and/or designated to be used in the commission of a crime, and not reasonably calculated to be used for any other purpose and/or the possession of which is unlawful and, in particular, (describe the property or person expected to be found) which said property, papers, articles or things were, are, or will be possessed and/or used in violation of Title 11, Chapter....., Section....., Delaware Code, in that (designate offense by name and brief statement of its commission).

And that the facts tending to establish probable cause for believing that the foregoing grounds for the application exist are as follows:

(State briefly only. Also, if authority is sought to search a dwelling house in the nighttime, set forth briefly the facts which show that the nighttime search is necessary to prevent the escape or removal of the person or thing to be searched for.)

WHEREFORE, this (these) affiant(s) prays (or pray) that a search warrant may be issued authorizing a search of the aforesaid (house, place, conveyance, person or persons, or occupant or occupants) in the manner provided by law.

Affiant

Affiant

SWORN to (or affirmed) and subscribed before me this..... day of....., A.D. 20.....

(Judge or Justice of Peace —
Designate name, title and court)

(b) The following shall be a sufficient form of search warrant where search of a dwelling house in the nighttime is not authorized:

IN THE (NAME OF COURT) STATE OF DELAWARE
IN THE (NAME OF COURT) STATE OF DELAWARE
IN THE MATTER OF:
(NAME OF PERSON, HOUSE, PLACE OR THING TO BE SEARCHED) SEARCH WARRANT

THE STATE OF DELAWARE TO: (Name and rank of person or persons directed to make search and designation of police department of which such persons are members) with the assistance of any police officer or constable or any other necessary or proper person or persons or assistance.

GREETINGS:

Upon the annexed affidavit and application or complaint for a search warrant, as I am satisfied that there is probable cause to believe that certain property, namely (describe the property) used or intended to be used for

,

is being concealed on the (premises) (person) described in the annexed affidavit and application or complaint;

NOW THEREFORE, YOU ARE HEREBY COMMANDED within 10 days of the date hereof to search the above-named person, persons, house, conveyance or place for the property specified in the annexed affidavit and application, and to search any occupant or occupants found in the house, place, or conveyance above named for such property, serving this warrant and making the search in the daytime, or in the nighttime if the property to be searched is not a dwelling house, and, if the property, papers, articles or things, or any part thereof, be found there, to seize it, giving to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or leaving the copy and receipt at the place from which the property was taken, and to prepare a signed inventory of the goods seized in the presence of the person from whose possession or premises the property was taken, if they are present, or, if they are not present, in the presence of at least 1 witness, and to return this warrant, accompanied by the written inventory, to me forthwith.

DATED the..... day of.....,
A.D. 20.....

(Judge or Justice of Peace —
Designate name, title and court)

(c) The following shall be sufficient form of search warrant where search of a dwelling house in the nighttime is authorized:

IN THE (NAME OF COURT) STATE OF DELAWARE
IN THE (NAME OF COURT) STATE OF DELAWARE
IN THE MATTER OF:
(NAME OF PERSON, HOUSE, PLACE OR THING TO BE SEARCH WARRANT

SEARCHED)

THE STATE OF DELAWARE TO: (Name and rank of person or persons directed to make search and designation of police department of which such persons are members) with the assistance of any police officer or constable or any other necessary or proper person or persons or assistance.

GREETINGS:

Upon the annexed affidavit and application or complaint for a search warrant, as I am satisfied that there is probable cause to believe that certain property, namely (describe the property) used or intended to be used for

,

is being concealed on the (premises) (person) described in the annexed affidavit and application or complaint; and that search of the premises in the nighttime is necessary in order to prevent the escape or removal of the person or thing to be searched for;

NOW THEREFORE, YOU ARE HEREBY COMMANDED within 3 days of the date hereof to search the above-named person, persons, house, place or conveyance for the property specified in the annexed affidavit and application, and to search any occupant or occupants found in the house, place or conveyance above named for such property serving this warrant and making the search in the daytime, or in the nighttime and, if the property, papers, articles or things, or any part thereof, be found there, to seize it, giving to the person from whom or from whose premises the property was taken a copy of the warrant and a receipt for the property taken, or leaving the copy and receipt at the place from which the property was taken, and to prepare a signed inventory of the goods seized in the presence of the person from whose possession or premises the property was taken, if they are present, or, if they are not present, in the presence of at least 1 witness, and to return this warrant, accompanied by the written inventory, to me forthwith.

DATED the..... day of.....,

A.D. 20.....

(Judge or Justice of Peace —
Designate name, title and court)

(11 Del. C. 1953 § 2310; 53 Del. Laws, c. 359 § 2; 57 Del. Laws, c. 428; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 314 §§ 6, 7.)

§ 2311 Disposition of property validly seized.

(a) The following disposition shall be made of any papers, articles or things validly seized:

(1) If the papers, articles or things were obtained as the result of the commission of a crime, they shall be returned to their lawful owners;

(2) If the papers, articles or things were property which represents or is traceable to the fruits of a crime or which represents or is traceable to the proceeds obtained, directly or indirectly, as a result of the commission of a crime and the person from whom they are seized is duly convicted of the alleged crime, the court may order that the property be disposed of or dispersed in a manner consistent with § 4106 of this title or otherwise disposed of as the court directs;

(3) If the papers, articles or things were allegedly used in the commission of a crime, they shall be returned to the person from whom seized if such person is not thereafter duly convicted of the alleged crime; but if such person is duly convicted of the alleged crime, the papers, articles and things shall be disposed of as the court directs;

(4) If possession of the papers, articles or things seized is unlawful, they shall, upon petition, be disposed of as any Judge of the Superior Court directs.

(b) Any papers, articles or things validly seized may be retained by the police for a reasonable length of time for the purpose of apprehending the offender or using the papers, articles or things so seized as evidence in any criminal trial, or both.

(c) A deadly weapon or ammunition which was validly seized from a person who is prohibited from purchasing, owning, possessing or controlling a deadly weapon as a result of a felony conviction under Delaware law, federal law or the law of any other state, or who is otherwise prohibited under § 1448 of this title may be disposed of by the law-enforcement agency holding the weapon or ammunition, after the exhaustion of any right of direct appeal, and after proper notice of the intent to dispose of such deadly weapon or ammunition 6 months from the date of the notice, unless such deadly weapon or ammunition has been claimed by the owner or a third party. If the deadly weapon or ammunition shall remain unclaimed after 6 months from the date of notice, then no party shall thereafter have the right to assert ownership thereof, and the law-enforcement agency may dispose of such deadly weapon or ammunition following the expiration of the period set forth in subsection (d) of this section. For purposes of this section, "disposition" may include the sale or transfer of the firearms to a federal licensed dealer, defined as a person licensed as a firearms collector, dealer, importer, or manufacturer under the provisions of 18 U.S.C. § 922 et seq., or destruction of the firearms and ammunition.

(1) Any person requesting the return of any deadly weapon or ammunition hereunder shall have the burden to prove that he or she is the owner thereof and is not otherwise prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition.

(2) Any third party requesting the return of any deadly weapon or ammunition hereunder shall also have the burden to prove ownership by devise, gift, sale or other legally-recognized process for conveying ownership.

(d) Any law-enforcement agency denying an owner or a third party the possession of any deadly weapon or ammunition pursuant to this section shall not dispose of such deadly weapon or ammunition until the expiration of 60 calendar days from the date of denial.

(e) Notwithstanding anything in this section to the contrary, any law-enforcement agency holding a deadly weapon or ammunition validly seized from a person who is subject to a Family Court protection from abuse order pursuant to § 1448(a)(6) of this title may dispose of such deadly weapon or ammunition after the expiration or termination of such order and after proper notice is provided to the owner in accordance with subsections (c) and (d) of this section.

(f) For purposes of this section:

(1) "Last-known address" shall mean the last known address of the owner of any deadly weapon or ammunition hereunder as determined through the Delaware Criminal Justice Information System (DELJIS), the Family Court of the State or the address noted on the owner's most recent driver's license, vehicle registration or Division of Motor Vehicle identification card. In accordance with this section, the Family Court is authorized to provide to law-enforcement the most recent address of an owner who was, or is, a party to any Family Court proceeding.

(2) "Proper notice" shall mean notice of a law-enforcement agency's intention to dispose of a deadly weapon or ammunition in accordance with this section by written notice, via certified letter, return receipt requested, to the owner's last known address and by publication in a local or statewide newspaper at least once a week for 2 consecutive weeks. Such notice shall state that the local law-enforcement agency may not dispose of said deadly weapon or ammunition until the expiration of the notice period set forth in this section.

(3) "Third party" shall mean any person requesting the return of any deadly weapon or ammunition hereunder who is not the party to whom notice was sent in accordance with subsection (c) of this section.

(g) If a law-enforcement agency denies any request for the return of a deadly weapon or ammunition hereunder, the person or third party so denied shall have the right to file a petition in any court of competent jurisdiction for the return of the deadly weapon or ammunition, in addition to any other rights such person may have. A law-enforcement agency shall not dispose of a deadly weapon or ammunition subject to such a petition until a final adjudication and the expiration of any appeal period. The petition filed pursuant to this subsection shall include the following:

(1) A complete description of the property including all identification and registration numbers if applicable;

(2) The name and last known address of the owner or owners of the property;

(3) The names and addresses of any persons who claim to or have an interest or lien in the subject property;

(4) A statement of the value of the subject property; and

(5) A statement by the petitioner that he or she requested the return of a deadly weapon or ammunition from a law-enforcement agency, and that such request was denied.

(h) Upon receipt of a petition which is made pursuant to subsection (g) of this section, the court shall send a notice and a copy of the petition to the law-enforcement agency holding the deadly weapon or ammunition and to all other owners and/or lienholders of said property identified in the petition. Such notice shall include:

(1) A statement that a petition has been made with the court;

(2) A statement that the owner or other person has a legal right to a hearing in the courts and that if a hearing is desired then the owner or other person shall file with the court an answer to the petition;

(3) A statement that if an answer is filed a hearing will be promptly scheduled and the owners or other interested persons may appear to contest the claim;

(4) A statement that the court will enter a judgment in favor of the petitioner unless an answer is filed within 20 days after the date on which the notice was mailed;

(5) A statement that the person may be liable for costs if a judgment is entered in favor of the petitioner.

(i) If the court receives an answer described in paragraph (h)(3) of this section, the court shall notify the petitioner and all parties of the hearing date to determine ownership of the deadly weapon or ammunition. If no answer is filed pursuant to paragraph (h)(3) of this section, then the court shall issue an order declaring that the petitioner has full right, title and interest to the said deadly weapon or ammunition.

(Code 1935 §§ 5343-GG; 48 Del. Laws, c. 303; 11 Del. C. 1953 § 2311; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 106 § 2; 76 Del. Laws, c. 99 § 2; 78 Del. Laws, c. 135 §§ 1-5, 10.)

Subchapter II

Vehicles

§ 2321 Definitions.

As used in this subchapter:

"Vehicle" includes all motor-propelled vehicles, wagons, carts, carriages, bicycles, vessels and aircraft.

(42 Del. Laws, c. 144 § 1; 11 Del. C. 1953 § 2321; 58 Del. Laws, c. 424 § 3.)

§ 2322 Grounds for seizure.

Whenever any vehicle, as defined in this subchapter, has been used in, or in connection with, the commission of any felony or in connection with the flight or escape of any person who has committed any felony or in the transporting of cigarettes in violation of Chapter

53 of Title 30, or in a violation of § 1343 of this title, it shall forthwith be seized and taken into custody by the peace officer or officers having knowledge of the facts of such use.

(42 Del. Laws, c. 144 § 2; 11 Del. C. 1953 § 2322; 55 Del. Laws, c. 277 § 5; 58 Del. Laws, c. 424 § 4; 69 Del. Laws, c. 23 § 3.)

§ 2323 Transportation of controlled substances as grounds for seizure.

Whenever any vehicle, as defined in this subchapter, is used or intended for use to transport or in any manner to facilitate the transportation of any controlled substance in violation of subchapter IV of Chapter 47 of Title 16, it shall forthwith be seized and taken into custody by the peace officer or officers having knowledge of the facts of such use, but:

(1) No vehicle used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the vehicle is a consenting party or privy to a violation of the Controlled Substances Act;

(2) No vehicle is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(3) A vehicle is not subject to forfeiture for a violation of §§ 4761(a) or (b), 4763, 4764 of Title 16; and

(4) A forfeiture of a vehicle encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission.

(11 Del. C. 1953 § 2322A; 58 Del. Laws, c. 424 § 2; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 13 § 7.)

§ 2324 Condemnation proceedings; rule-making power of Superior Court.

The vehicle seized under this subchapter shall be proceeded against by the Attorney General on behalf of this State, by libel in the Superior Court for the condemnation and forfeiture of the vehicle to this State. The Superior Court may by rule provide for the practice and procedure under this subchapter, including the giving of notice of the pendency of the libel of condemnation to all parties in interest, and in any event notice by registered United States mail to the last known post-office address of the party in interest, or by publication in a newspaper of general circulation in this State as the Court by rule or order prescribes shall be sufficient.

(42 Del. Laws, c. 144 § 3; 11 Del. C. 1953 § 2323.)

§ 2325 Disposition of seized vehicles.

Upon the judgment of the Superior Court, the vehicle so seized and all of the rights, title and interest therein, or any right, title or interest in and to any such motor vehicle, as the Court determines, shall be forfeited to the State and the vehicle shall be committed to the custody of the Department of Safety and Homeland Security, Division of State Police for its use. If the Department of Safety and Homeland Security, Division of State Police determines that such seized vehicle is not suitable for its purposes, custody will be transferred to the State Treasurer, who may allocate the same to and for the use of any other state bureau, department, agency or officer or may sell the same and deposit the proceeds into the Special Law Enforcement Assistance Fund.

(42 Del. Laws, c. 144 § 4; 11 Del. C. 1953 § 2324; 63 Del. Laws, c. 140 § 2; 65 Del. Laws, c. 87 § 172; 74 Del. Laws, c. 110 § 138.)

§ 2326 Application of subchapter.

This subchapter with respect to condemnation and forfeiture shall not apply to or against the owner of a vehicle who has not knowingly used or permitted the vehicle to be used in, or in connection with, the commission of a felony, or who has not knowingly and voluntarily used or permitted the vehicle to be used in, or in connection with, the flight or escape of any person who has committed any such felony or in the transporting of cigarettes in violation of Chapter 53 of Title 30, or in a violation of § 1343 of this title. Nothing in this subchapter shall be construed as authorizing the condemnation and forfeiture of the interest of any bona fide mortgagee or lienholder with respect to the vehicle but the burden in all such cases shall be upon such mortgagee or lienholder to show that it did not know or have cause to know, at the time its interest accrued, of a contemplated unlawful use of such vehicle.

(42 Del. Laws, c. 144 § 5; 11 Del. C. 1953 § 2325; 55 Del. Laws, c. 277 § 6; 58 Del. Laws, c. 424 § 5; 69 Del. Laws, c. 23 § 4; 70 Del. Laws, c. 186 § 1.)

Part II
Criminal Procedure Generally
Chapter 24
WIRETAPPING, ELECTRONIC SURVEILLANCE AND INTERCEPTION OF COMMUNICATIONS
Subchapter I
Electronic Surveillance and Interception of Communications

§ 2401 Definitions.

When used in this chapter:

(1) "Aggrieved person" means a person who was a party to any intercepted wire, oral or electronic communication or a person against whom the interception was directed.

(2) "Aural transfer" means a transfer containing the human voice at any point between and including the point of origin and the point of reception.

(3) "Communication common carrier" means any person engaged as a common carrier for hire in the transmission of wire or electronic communications.

(4) "Contents," when used with respect to any wire, oral or electronic communication, includes any information concerning the identity of the parties to the communication or the existence or substance of that communication.

(5) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data or intelligence of any electromagnetic, photoelectronic or photooptical system. However, "electronic communication" does not include:

a. Any wire or oral communication;

b. Any communication made through a tone-only paging device; or

c. Any communication from a tracking device.

(6) "Electronic communication service" means any service that provides to users of the service the ability to send or receive wire, oral or electronic communications.

(7) "Electronic communications system" means any wire, oral, radio, electromagnetic, photooptical or photoelectronic facilities for the transmission of wire, oral or electronic communications, and any computer facilities or related electronic equipment for the wire, oral or electronic storage of electronic communications.

(8) "Electronic, mechanical, or other device" means any device or electronic communication instrument other than:

a. Any telephone or telegraph instrument, equipment or other facility for the transmission of electronic communications, or any component thereof, which is furnished to the subscriber or user by a provider of wire or electronic communication service in the ordinary course of its business and is being used by the subscriber or user in the ordinary course of its business or furnished by the subscriber or user for connection to the facilities of the service and used in the ordinary course of its business or which is being used by a communications common carrier in the ordinary course of its business or which is being used by an investigative or law-enforcement officer in the ordinary course of that officer's duties; or,

b. A hearing aid or similar device being used to correct subnormal hearing to not better than normal.

(9) "Electronic storage" means any temporary, intermediate storage of a wire, oral or electronic communication incidental to the electronic transmission of the communication. "Electronic storage" includes any storage of a wire, oral or electronic communication by an electronic communication service for purposes of backup protection of the communication.

(10) "Intercept" means the aural or other acquisition of the contents of any wire, oral or electronic communication through the use of any electronic, mechanical or other device.

(11) "Investigative or law-enforcement officer" means any officer of this State or a political subdivision of this State, who is empowered by law to conduct investigations or to make arrests for offenses enumerated in this title, any sworn law-enforcement officer of the federal government or of any other state or a political subdivision of another state working with and under the direction of an investigative or law-enforcement officer of this State or a political subdivision of this State, or any attorney authorized by law to prosecute or participate in the prosecution of such offenses.

(12) "Judge," when referring to a judge authorized to receive applications for and to enter orders authorizing interception of wire, oral or electronic communications, means 1 or more of the several Judges of the Superior Court to be designated from time to time by the President Judge of the Superior Court to receive applications for and to enter orders authorizing interception of wire, oral or electronic communications pursuant to this chapter.

(13) "Oral communication" means any oral communication uttered by a person made while exhibiting an expectation that such communication is not subject to interception and under circumstances justifying such expectation, but such term does not include any

electronic communication.

(14) "Pen register" means a device that records and decodes electronic or other impulses that identify the numbers dialed or otherwise transmitted on the telephone line to which the device is attached. "Pen register" does not include any device used by a provider or customer of a wire or electronic communication service for billing, or recording as an incident to billing, for communications services provided by the provider or any device used by a provider or customer of a wire communication service for cost accounting or other similar purposes in the ordinary course of its business.

(15) "Person" means any employee or agent of this State or a political subdivision thereof, or any individual, partnership, association, joint stock company, trust or corporation.

(16) "Readily accessible to the general public" means, with respect to a radio communication, that the communication is not:

a. Scrambled or encrypted;

b. Transmitted using modulation techniques the essential parameters of which have been withheld from the public with the intention of preserving the privacy of the communication; or

c. Except for tone-only paging device communications, transmitted over frequencies reserved for private use and licensed for private use under federal or State law.

(17) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.

(18) "Trap and trace device" means a device that captures the incoming electronic or other impulses that identify the originating number of an instrument or device from which a wire or electronic communication was transmitted.

(19) "User" means any person or entity that uses an electronic communication service and is duly authorized by the provider of the service to engage in that use.

(20) "Wire communication" means any aural transfer made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable or other like connection between the point of origin and the point of reception (including the use of a connection in a switching station) furnished or operated by any person licensed to engage in providing or operating such facilities for the transmission of communications.

(72 Del. Laws, c. 232 § 1.)

§ 2402 Interception of communications generally; divulging contents of communications, violations of chapter.

(a) Prohibited acts. — Except as specifically provided in this chapter or elsewhere in this Code no person shall:

(1) Intentionally intercept, endeavor to intercept, or procure any other person to intercept or endeavor to intercept any wire, oral or electronic communication;

(2) Intentionally disclose or endeavor to disclose to any other person the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this chapter; or

(3) Intentionally use or endeavor to use the contents of any wire, oral or electronic communication, knowing or having reason to know that the information was obtained through the interception of a wire, oral or electronic communication in violation of this chapter.

(b) Penalties for violation of subsection (a) of this section. — Any person who violates subsection (a) of this section shall be guilty of a class E felony and be fined not more than $10,000.

(c) Lawful acts. — It is lawful:

(1) For an operator of a switchboard or an officer, employee or agent of a provider of wire or electronic communication service whose facilities are used in the transmission of wire or electronic communication to intercept, disclose or use such communication in the normal course of employment while engaged in any activity that is necessarily incident to the rendition of such person's service or to the protection of the rights or property of the provider of that service, except that a provider of wire communications service to the public may not utilize service observing or random monitoring except for mechanical or service quality control checks.

(2) For a provider of wire or electronic communication service, its officers, employees and agents, landlords, custodians or other persons to provide information, facilities or technical assistance to persons authorized by federal or State law to intercept wire, oral, or electronic communications or to conduct electronic surveillance, if the provider, its officers, employees or agents, landlord, custodian or other specified person has been provided with a court order signed by an authorizing judge directing the provision of information, facilities or technical assistance.

a. An order as prescribed by this paragraph shall set forth the period of time during which the provision of the information, facilities or technical assistance is authorized and specify the information, facilities or technical assistance required.

b. A provider of wire or electronic communication service, its officers, employees or agents, or landlord, custodian or other specified person may not disclose the existence of any interception or surveillance or the device used to accomplish the interception or surveillance with respect to which the person has been furnished an order under this paragraph, except as may otherwise be required by legal process and then only after prior notification to the judge who granted the order, if appropriate, or the Attorney General of this State or the Attorney General's designee. Any unauthorized disclosure shall render the person liable for compensatory damages.

c. No cause of action shall lie in any court against any provider of wire or electronic communication service, its officers, employees or agents, or landlord, custodian or other specified person for providing information, facilities, or assistance in accordance with the terms of a court order issued pursuant to this chapter.

(3) For an investigative or law-enforcement officer acting in a criminal investigation or any other person acting at the prior direction and under the supervision of an investigative or law-enforcement officer in such investigation pursuant to a court order issued by the Superior Court pursuant to § 2407 of this title to intercept a wire, oral or electronic communication in order to provide evidence of the commission of the offenses including racketeering, murder, kidnapping, human trafficking, gambling, robbery, bribery, extortion, dealing in narcotic drugs or dangerous drugs, dealing in central nervous system depressant or stimulant drugs, controlled substances or counterfeit controlled substances, prison escape, jury tampering, stalking, any felony involving risk of physical injury to a victim or any conspiracy or solicitation to commit any of the foregoing offenses or which may provide evidence aiding in the apprehension of the perpetrator of any of the foregoing offenses.

(4) For a person to intercept a wire, oral or electronic communication where the person is a party to the communication or where one of the parties to the communication has given prior consent to the interception, unless the communication is intercepted for the purpose of committing any criminal or tortious act in violation of the constitutions or laws of the United States, this State or any other state or any political subdivision of the United States or this or any other state.

(5) For a law-enforcement officer in the course of the officer's regular duty to intercept an oral communication, if:

a. The law-enforcement officer initially detained 1 of the parties and overhears a conversation;

b. The law-enforcement officer is a party to the oral communication;

c. Both parties to the oral communication are present in a law-enforcement facility where there is notice to occupants that such communications are monitored;

d. The law-enforcement officer has been identified as a law-enforcement officer to the other party to the oral communication prior to any interception; or

e. The oral interception is being made as part of a video tape recording.

(6) For an officer, employee or agent of a government emergency communications center to intercept a wire, oral or electronic communication where the officer, agent or employee is a party to a conversation concerning an emergency.

(7) For law-enforcement personnel or those acting under their direction to utilize body wires to intercept oral communications in the course of a criminal investigation when the law-enforcement personnel or a person acting under their direction is a party to the communication. Communications intercepted by such means may be recorded and may be used against the defendant in a criminal proceeding.

(8) For a person:

a. To intercept or access an electronic communication made through an electronic communication system that is configured so that the electronic communication is readily accessible to the general public;

b. To intercept any radio communication that is transmitted:

1. By any station for the use of the general public or that relates to ships, aircraft, vehicles or persons in distress;

2. By any governmental, law enforcement, civil defense, private land mobile or public safety communications system, including police and fire, readily accessible to the general public;

3. By a station operating on an authorized frequency within the bands allocated to the amateur, citizens band or general mobile radio services; or

4. By any marine or aeronautical communications system;

c. To intercept any wire or electronic communication the transmission of which is causing harmful interference to any lawfully operating station or consumer electronic equipment to the extent necessary to identify the source of the interference; or,

d. For other users of the same frequency to intercept any radio communication made through a system that utilizes frequencies monitored by individuals engaged in the provision or the use of the system, if the communication is not scrambled or encrypted.

(9) To use a pen register or trap and trace device.

(10) For a provider of electronic communication service to record the fact that a wire or electronic communication was initiated or completed in order to protect the provider or another provider furnishing service toward the completion of the wire or electronic communication or a user of that service, from fraudulent, unlawful or abusive use of the service.

(11) For a person acting under color of law and employed for such purpose by the Department of Correction to intercept an electronic or oral communication of any individual confined to a State correctional facility. At the direction of the Commissioner of Correction or the Commissioner's designee, a person performing an official investigation into suspected criminal activity may monitor and intercept the incoming and outgoing electronic communication of any individual incarcerated in a State correctional facility. The Department may also employ devices to monitor any incarcerated individual's incoming and outgoing electronic communication for words or phrases that would justify further investigation. The Department shall not monitor or intercept any communication between an individual confined in a State correctional facility and that individual's attorney.

(d) Divulging contents of communications. — Except as provided in this subsection, a person or entity providing an electronic communication service to the public may not intentionally divulge the contents of any communication (other than one to the person or

entity providing the service, or an agent of the person or entity) while in transmission on that service to any person or entity other than an addressee or intended recipient of the communication or an agent of the addressee or intended recipient.

(1) A person or entity providing electronic communication service to the public may divulge the contents of a communication:

a. As otherwise authorized by federal or state law;

b. To a person employed or authorized, or whose facilities are used, to forward the communication to its destination; or

c. That were inadvertently obtained by the service provider and that appear to pertain to the commission of a crime, if the divulgence is made to a law-enforcement agency.

(2) Unless the conduct is for the purpose of direct or indirect commercial advantage or private financial gain, conduct that would otherwise be an offense under this subsection is not an offense if the conduct consists of or relates to the interception of a satellite transmission that is not encrypted or scrambled and that is transmitted:

a. To a broadcasting station for purposes of retransmission to the general public; or

b. As an audio subcarrier intended for redistribution to facilities open to the public, but not including data transmissions or telephone calls.

(e) Penalties for divulging contents of communications. — Whoever violates subsection (d) of this section shall:

(1) Except as otherwise provided in this subsection, be guilty of a class F felony and fined not more than $10,000.

(2) For any offense that is a first offense:

a. Which was not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; and

b. Which involved a wire or electronic communication that was a radio communication that was not scrambled or encrypted; and

c. Which involved a communication that was not the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication;

be guilty of a class A misdemeanor.

(3) For any offense that is a first offense:

a. Which was not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; and

b. Which involved a wire or electronic communication that was a radio communication that was not scrambled or encrypted; and

c. Which involved a communication that was the radio portion of a cellular telephone communication, a public land mobile radio service communication or a paging service communication;

be guilty of an unclassified misdemeanor.

(f) Civil liability for violations of § 2402 or § 2403 of this title. — A person who engages in conduct in violation of § 2402 or § 2403 of this title is subject to suit by the federal government or by the State in a court of competent jurisdiction, if the communication is:

(1) A private satellite video communication that is not scrambled or encrypted and the conduct in violation of § 2402 or § 2403 of this title is the private viewing of that communication and is not for a tortious or illegal purpose or for purposes of direct or indirect commercial advantage or private commercial gain; or

(2) A radio communication that is transmitted on frequencies allocated under Subpart D of Part 74 [47 C.F.R. § 74.401 et seq.] of the Rules of the Federal Communications Commission that is not scrambled or encrypted and the conduct in violation of § 2402 or § 2403 of this title is not for a tortious or illegal purpose or for purpose of direct or indirect commercial advantage or private commercial gain.

(g) Injunctive relief — Civil penalties. — The State is entitled to appropriate injunctive relief in an action under this subsection if the violation is the person's first offense under paragraph (e)(1) of this section and the person has not been found liable in a prior civil action under § 2409 of this title. However, in any action under this subsection, if the violation is a second or subsequent offense under paragraph (e)(1) of this section or if the person has been found liable in a prior civil action under § 2409 of this title, the person is subject to a mandatory civil fine of not less than $400. The Court may use any means within its authority to enforce an injunction issued under this subsection and shall impose a civil fine of not less than $500 for each violation of an injunction issued under this subsection.

(72 Del. Laws, c. 232 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 276 § 7.)

§ 2403 Manufacture, possession or sale of intercepting device.

(a) Prohibited acts. — Except as otherwise specifically provided by this chapter, any person who manufactures, assembles, possesses or sells any electronic, mechanical or other device knowing or having reason to know that the design of the device is primarily for the purpose of the surreptitious interception of wire, oral or electronic communications, shall be guilty of a Class F felony and be fined not more than $10,000.

(b) Lawful acts. — It is lawful under this section for:

(1) A provider of wire or electronic communication service or an officer, agent, employee of, or person under contract with a service provider, in the normal course of the business of providing that wire or electronic communication service, to manufacture, assemble, possess or sell any electronic, mechanical or other device knowing or having reason to know that the design of the device is primarily for the purpose of the surreptitious interception of wire, oral or electronic communications.

(2) A person under contract with the United States, a state, a political subdivision of a state or the District of Columbia, in the normal course of the duties of the United States, a state, a political subdivision thereof or the District of Columbia to manufacture, assemble,

possess or sell any electronic, mechanical or other device knowing or having reason to know that the design of the device is primarily for the purpose of the surreptitious interception of wire, oral or electronic communications.

(3) An officer, agent or employee of the United States in the normal course of that individual's lawful duties to manufacture, assemble, possess or sell any electronic, mechanical or other device knowing or having reason to know that the design of the device is primarily for the purpose of the surreptitious interception of wire, oral or electronic communications. However, any sale made under the authority of this paragraph may only be for the purpose of disposing of obsolete or surplus devices.

(4) An officer, agent or employee of a law-enforcement agency of this State or a political subdivision of this State in the normal course of that individual's lawful duties to manufacture, assemble, possess or sell any electronic, mechanical or other device knowing or having reason to know that the design of the device is primarily for the purpose of the surreptitious interception of wire, oral or electronic communications; provided, however, that the particular officer, agent or employee is specifically authorized by the chief administrator of such law-enforcement agency to manufacture, assemble or possess the device for a particular law-enforcement purpose. However, any sale made under the authority of this paragraph may only be for the purpose of disposing of obsolete or surplus devices.

(72 Del. Laws, c. 232 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2404 Admissibility of evidence.

Whenever any wire or oral communication has been intercepted, no part of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial, hearing or other proceeding in or before any court, grand jury, department, officer, agency, regulatory body, legislative committee or other authority of this State or a political subdivision thereof if the disclosure of that information would be in violation of this chapter.

(72 Del. Laws, c. 232 § 1.)

§ 2405 Authorities permitted to apply for order authorizing interception.

The Attorney General, Chief Deputy Attorney General, State Prosecutor or Chief Prosecutor of any county may apply to a judge authorized to receive intercept applications and the judge, in accordance with § 2407 of this title, may grant an order authorizing the interception by investigative or law-enforcement officers of wire, oral or electronic communications when the interception may provide evidence:

(1) Of the commission of the offense of racketeering, murder, kidnapping, human trafficking, gambling, robbery, bribery, extortion, dealing in narcotic drugs or dangerous drugs, dealing in central nervous system depressant or stimulant drugs, dealing in controlled substances or counterfeit controlled substances, prison escape, jury tampering, or stalking;

(2) Of the commission of any felony creating a risk of physical injury to a person;

(3) Of any conspiracy or solicitation to commit any of the offenses set forth in paragraph (1) or (2) of this section; or

(4) Aiding in the apprehension of the perpetrator of any of the offenses set forth in this section.

No application or order shall be required if the interception is lawful under the provisions of § 2406(c) of this title.

(72 Del. Laws, c. 232 § 1; 79 Del. Laws, c. 276 § 7.)

§ 2406 Lawful disclosure or use of contents of communication.

(a) Disclosure by investigative or law-enforcement officer. — Any investigative or law-enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral or electronic communication or evidence derived therefrom may disclose the contents to another investigative or law-enforcement officer of any state, any political subdivision of a state, the United States or any territory, protectorate or possession of the United States, including the District of Columbia, to the extent that the disclosure is appropriate to the proper performance of the official duties of the officer making or receiving the disclosure.

(b) Use of contents by officer. — Any investigative or law-enforcement officer who, by any means authorized by this chapter, has obtained knowledge of the contents of any wire, oral or electronic communication or evidence derived therefrom or an investigative or law-enforcement officer of any state or any political subdivision of a state, the United States or any territory, protectorate or possession of the United States, including the District of Columbia, who obtains such knowledge by lawful disclosure may use the contents to the extent that the use is appropriate to the proper performance of the officer's official duties.

(c) Disclosure while giving testimony. — Any person who has received, by any means authorized by this chapter, any information concerning a wire, oral or electronic communication, or evidence derived therefrom intercepted in accordance with the provisions of this chapter may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of any state or any political subdivision of a state, the United States or any territory, protectorate or possession of the United States, including the District of Columbia.

(d) Privileged character of communication not lost. — Any contents of wire, oral or electronic communication intercepted in accordance with or in violation of the provisions of this chapter that would otherwise be considered privileged under the law do not lose their privileged character through such interception.

(e) Communications relating to offenses not specified in order. — When an investigative or law-enforcement officer, while engaged in intercepting wire, oral or electronic communications in the manner authorized herein, intercepts wire, oral or electronic communications relating to offenses other than those specified in the order of authorization, the contents thereof and evidence derived therefrom may be disclosed or used consistent with subsection (a), (b) or (c) of this section. The contents and any evidence derived therefrom may be used

under subsection (c) of this section when authorized or approved by a judge authorized to receive intercept applications where the judge finds on subsequent application that the contents were otherwise intercepted in accordance with this chapter. Such application should be made forthwith.

(f) Disclosure by law-enforcement officers of other jurisdictions. — Any investigative or law-enforcement officer of any state or political subdivision of a state, the United States, or any territory, protectorate or possession of the United States, including the District of Columbia, who has lawfully received any information concerning a wire, oral or electronic communication or evidence lawfully derived therefrom that would have been lawful for a law-enforcement officer of this State to receive pursuant to this chapter may disclose the contents of that communication or the derivative evidence while giving testimony under oath or affirmation in any proceeding held under the authority of this State or any political subdivision of this State.

(72 Del. Laws, c. 232 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2407 Ex parte order authorizing interception.

(a) Application. — Any application for an order authorizing the interception of a wire, oral or electronic communication shall be made in writing upon oath or affirmation to a judge of competent jurisdiction and shall state the applicant's authority to make the application. Each application shall include the following information:

(1) The identity of the investigative or law-enforcement officer making the application and the officer authorizing the application;

(2) A full and complete statement of the facts and circumstances relied upon by the applicant to justify the applicant's belief that an order should be issued, including:

a. Details as to the particular offense that has been, is being, or is about to be committed;

b. A description of the nature and location of the facilities from which or the place where the communication is to be intercepted;

c. A description of the type of communication sought to be intercepted; and

d. The identity of the person, if known, committing the offense and whose communications are to be intercepted;

(3) A full and complete statement as to whether or not other investigative procedures have been tried and failed, why such procedures reasonably appear to be unlikely to succeed if tried, or why such procedures would be too dangerous if tried;

(4) A statement of the period of time for which the interception is required to be maintained. If the nature of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a description of facts establishing probable cause to believe additional communications of the same type will occur thereafter;

(5) A full and complete statement of the facts concerning all previous applications known to the individual authorizing and making the application that have been made to a judge for authorization to intercept wire, oral or electronic communications involving any of the same persons, facilities or places specified in the application and the action taken on each application; and

(6) When the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain the results.

(b) Additional evidence in support of applications. — The judge may require the applicant to furnish additional testimony or documentary evidence in support of an application.

(c) Issuance of order. —

(1) Upon the application a judge may enter an ex parte order, as requested or as modified, authorizing interception of wire, oral or electronic communications within the territorial jurisdiction permitted under paragraph (c)(2) or (3) of this section, if the judge determines on the basis of the facts submitted by the applicant that:

a. There is probable cause for belief that an individual is committing, has committed, or is about to commit an offense enumerated in § 2405 of this title;

b. There is probable cause for belief that particular communications concerning that offense will be obtained through the interception;

c. Normal investigative procedures have been tried and have failed or reasonably appear to be unlikely to succeed if tried or to be too dangerous; and

d. There is probable cause for belief that the facilities from which or the place where the wire, oral or electronic communications are to be intercepted are being used or are about to be used in connection with the commission of the offense or are leased to, listed in the name of, or commonly used by an individual engaged in criminal activity described.

(2) Except as provided in paragraph (c)(3) of this section, an ex parte order issued under paragraph (c)(1) of this section may authorize the interception of wire, oral or electronic communications only within the territorial jurisdiction of the court in which the application was filed.

(3) If an application for an ex parte order is made by the Attorney General or other designee, an order issued under paragraph (c)(1) of this section may authorize the interception of communications sent or received by a mobile telephone anywhere within the State so as to permit the interception of the communications regardless of whether the mobile telephone is physically located within the jurisdiction of the court in which the application was filed at the time of the interception; however, the application must allege that the offense being investigated may transpire in the jurisdiction of the court in which the application is filed.

(d) Contents of order. —

(1) Each order authorizing the interception of any wire, oral or electronic communication shall specify:

a. The identity of the person, if known, whose communications are to be intercepted;

b. The nature and location of the communications facilities as to which or the place where authority to intercept is granted;

c. A description of the type of communication sought to be intercepted and a statement of the offense to which it relates;

d. The identity of the agency authorized to intercept the communications and of the person authorizing the application; and

e. The period of time during which the interception is authorized, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(2) An order authorizing the interception of a wire, oral or electronic communication, upon request of the applicant, shall direct that a provider of wire or electronic communication service, landlord, custodian or other person furnish the applicant forthwith all information, facilities and technical assistance necessary to accomplish the interception unobtrusively and with a minimum of interference with the services that the service provider, landlord, custodian or person ordered by the court accords the person whose communications are to be intercepted. Any provider of wire or electronic communication service, landlord, custodian or other person furnishing the facilities or technical assistance shall be compensated by the applicant for reasonable expenses incurred in providing facilities or assistance.

(e) Extensions. —

(1) An order entered under this section may not authorize the interception of any wire, oral or electronic communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than 30 days. The 30-day period begins on the earlier of the day on which the investigative or law-enforcement officer first begins to conduct an interception under the order or 10 days after the order is entered.

(2) Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (a) of this section and upon the court making the findings required by subsection (c) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than 30 days.

(3) Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize the interception of communications not otherwise subject to interception under this chapter, and must terminate upon attainment of the authorized objective, or in any event in 30 days.

(4) In the event the intercepted communication is in a code or foreign language and an expert in that foreign language or code is not reasonably available during the interception period, minimization may be accomplished as soon as practicable after the interception. An interception under this chapter may be conducted in whole or in part by federal, State or local government personnel, or by an individual operating under a contract with the State or a political subdivision of the State acting under the supervision of an investigative or law-enforcement officer authorized to conduct the interception.

(5) Notwithstanding any other provision of this chapter, any investigative or law-enforcement officer specially designated by the Attorney General or designee who reasonably determines that:

a. An emergency situation exists that involves:

1. Immediate danger of death or serious physical injury to any person;

2. Activities related to escape or attempted escape from custody;

3. Conspiratorial activities threatening the national security interest; or

4. Conspiratorial activities characteristic of organized crime;

that requires a wire, oral or electronic communication to be intercepted before an order authorizing such interception can, with due diligence, be obtained; and

b. There are grounds upon which an order could be entered under this chapter to authorize such interception;

may intercept such wire, oral or electronic communication if an application for an order approving the interception is made in accordance with this section within 48 hours after the interception has occurred or begins to occur. In the absence of an order, such interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event such application for approval is denied, the contents of any wire, oral or electronic communication intercepted shall be treated as having been obtained in violation of this chapter, and an inventory shall be served as provided for in subsection (g) of this section on the person named in the application.

(f) Reports to issuing judge. — Whenever an order authorizing interception is entered pursuant to this section, the order shall require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. The reports shall be made at the time and place required by the issuing judge.

(g) Recordings of contents of intercepted communications; sealing applications and orders; notice to parties. —

(1) The contents of any wire, oral or electronic communication intercepted by any means authorized by this section, if possible, shall be recorded on tape or wire or other comparable device. The recording of the contents of any wire, oral or electronic communication under this subsection shall be done in a way as will protect the recording from editing or other alterations as may be practicable. Upon the expiration of the period of the order, or extensions thereof, such recordings shall be made available to the judge issuing such order and sealed under the judge's directions. Custody of the recordings shall be wherever ordered by the issuing judge. The recordings may not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for 10 years. Duplicate recordings may be made for lawful use or disclosure pursuant to this chapter. The presence of the seal provided by this subsection or a satisfactory explanation for the absence thereof shall be a prerequisite for the use of disclosure of the contents of any wire, oral or electronic

communication or evidence derived therefrom under this chapter.

(2) Applications made and orders granted under this subsection shall be sealed by the issuing or denying judge. Custody of the applications and orders shall be as ordered by that judge. The applications and orders shall be disclosed only upon a showing of good cause before that judge and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for 10 years.

(3) Any violation of the provisions of this subsection may be punished as criminal contempt in violation of § 1271 of this title by the issuing or denying judge.

(4) Within a reasonable time but not later than 90 days after the termination of the period of an order or extensions thereof, the issuing judge shall cause to be served, on the persons named in the order and the other parties to intercepted communications as the judge may determine in that judge's discretion that is in the interest of justice, an inventory that shall include notice of:

a. The fact of the entry of the order;

b. The date of the entry of the order and the period of authorized interception; and,

c. The fact that during the period, wire, oral or electronic communications were or were not intercepted.

The judge, upon the filing of a motion, shall make available to the person or the person's counsel for inspection, portions of the intercepted communications, applications and orders pertaining to that person and the alleged crime.

(5) Upon an ex parte motion showing of good cause to the judge, the serving of any inventory required by this section may be delayed. The periods of delay may not be longer than the authorizing judge deems necessary to achieve the purposes for which such delay was granted and in no event for longer than 30 days. No more than 3 periods of delay may be granted. Any order issued extending the time in which the inventory notice is to be served must be under seal of the court and treated in the same manner as the order authorizing interception.

(h) Prerequisites to use of contents of communication as evidence. — The contents of any intercepted wire, oral or electronic communication or evidence derived therefrom may not be received in evidence or otherwise disclosed in any trial, hearing or other proceeding in the courts of this State unless each party, not less than 10 days before the trial, hearing or proceeding, has been furnished with a copy of the court order and accompanying application under which the interception was authorized. Where no application or order was required for the interception under the provisions of this chapter, each party, not less than 10 days before the trial, hearing or proceeding, shall be furnished with information concerning when, where and how the interception took place and why no application or order was required. This 10-day period may be waived by the judge if that judge finds that it was not possible to furnish the party with the above information 10 days before the trial, hearing or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(i) Suppression of contents of communication; appeal from denial of application for order of approval. —

(1) Any aggrieved person in any trial, hearing or proceeding in or before any court, department, officer, agency, regulatory body or other authority of this State or a political subdivision thereof may move to suppress the contents of any intercepted wire, oral or electronic communication or evidence derived therefrom on the grounds that:

a. The communication was unlawfully intercepted;

b. The order of authorization under which it was intercepted is insufficient under this chapter; or

c. The interception was not made in conformity with the order of authorization granted under this chapter.

(2) This motion shall be made at least 10 days before the trial, hearing or proceeding except upon good cause shown. If the motion is granted, the contents of the intercepted wire, oral or electronic communication or evidence derived therefrom shall be treated as having been obtained in violation of this chapter. The judge, upon the filing of the motion by the aggrieved person, in that judge's discretion may make available to the aggrieved person or such person's counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice.

(3) In addition to any other right to appeal, the State shall have the right to appeal from the denial of an application for an order of approval if the Attorney General or Deputy Attorney General shall certify to the judge denying the application that the appeal is not taken for the purposes of delay. The appeal shall be taken within 30 days after the date the order was entered.

(72 Del. Laws, c. 232 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2408 Reports to President Judge.

(a) Report by Judge. — Within 30 days after the expiration of an order or an extension or renewal thereof entered under this chapter or the denial of an order confirming verbal approval of interception, the issuing or denying Judge shall make a report to the President Judge of the Superior Court stating:

(1) That an order, extension or renewal for which application was made;

(2) The type of order for which application was made;

(3) That the order was granted as applied for, was modified or was denied;

(4) The period of the interceptions authorized by the order and the number and duration of any extensions or renewals of the order;

(5) The offense specified in the order or extension or renewal of an order;

(6) The identity of the person authorizing the application and of the investigative or law-enforcement officer and agency for whom it was made; and

(7) The character of the facilities from which or the place where the communications were to be intercepted.

(b) Reports by Attorney General. — The Attorney General or Deputy Attorney General specifically designated by the Attorney General shall make and file all reports required by federal law.

(72 Del. Laws, c. 232 § 1.)

§ 2409 Civil liability; defense to civil or criminal action.

(a) Civil liability. — Any person whose wire, oral or electronic communication is intercepted, disclosed or used in violation of this chapter shall have a civil cause of action against any person who intercepts, discloses, uses, or procures any other person to intercept, disclose or use the communications and be entitled to recover from any person:

(1) Actual damages, but not less than liquidated damages computed at the rate of $100 a day for each day of violation or $1,000, whichever is higher;

(2) Punitive damages; and,

(3) A reasonable attorneys' fee and other litigation costs reasonably incurred.

(b) Defense. — A good faith reliance on a court order or legislative authorization shall constitute a complete defense to any civil or criminal action brought under this chapter or under any other law.

(72 Del. Laws, c. 232 § 1.)

§ 2410 Breaking and entering, etc., to place or remove equipment.

Any person who breaks and enters, enters under false pretenses, or trespasses upon any premises with the intent to place, adjust or remove wiretapping or electronic surveillance or eavesdropping equipment without a court order shall be guilty of a class C felony.

(72 Del. Laws, c. 232 § 1.)

§ 2411 Hostage and barricade situations.

(a) The Superintendent of the Delaware State Police or the commander of the law-enforcement agency of any political subdivision of this State may designate 1 or more law-enforcement officers as hostage and barricade communications specialists.

(b) Each communication common carrier providing service to Delaware residents shall designate 1 or more individuals to provide liaison with law-enforcement agencies for the purposes of this section.

(c) The supervising law-enforcement officer, who has jurisdiction in any situation in which there is probable cause to believe that a criminal enterprise involving hostage holding is occurring or that a person has barricaded himself or herself within a structure and poses an immediate threat of physical injury to others, may order a communication common carrier, or a communication common carrier's employee, officer or director, or a hostage and barricade communications specialist to interrupt, reroute, divert or otherwise control any wire, oral or electronic communications service involved in the hostage or barricade situation for the purpose of preventing wire, oral or electronic communication by a hostage holder or barricaded person with any person other than a law-enforcement officer or a person authorized by the officer or for the purpose of otherwise monitoring communications in the hostage or barricade situation.

(d) A hostage and barricade communications specialist shall be ordered to act under subsection (c) of this section only if the communication common carrier providing service in the area has been contacted and requested to act under subsection (c) of this section and:

(1) Declines to respond to the officer's request because of a threat of physical injury to its employees; or

(2) Indicates when contacted that it will be unable to respond appropriately to the officer's request within a reasonable time from the receipt of the request.

(e) The supervising law-enforcement officer may give an order under subsection (c) of this section only after that supervising law-enforcement officer has given written or oral representation of the hostage or barricade situation to the communication common carrier providing service to the area in which it is occurring. If an order is given based on an oral representation, the oral representation shall be followed by a written confirmation of that representation within 48 hours of the order.

(f) Good faith reliance on an order by a supervising law-enforcement officer who has the real or apparent authority to issue an order under this section shall constitute a complete defense to any action against a communication common carrier or a communication common carrier's employee, officer or director that arises out of attempts by the communication common carrier or the employee, officer or director of the communication common carrier to comply with such an order.

(g) For the purposes of this section, "supervising law-enforcement officer" means an officer having a rank equivalent to or greater than a lieutenant of any law-enforcement agency of the State or any political subdivision of the State.

(72 Del. Laws, c. 232 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2412 Obstruction, impediment or prevention of interception.

(a) Giving notice of interception. — A person who has knowledge that an investigative or law-enforcement officer has been authorized or has applied for authorization under this chapter to intercept wire, oral or electronic communications may not give notice or attempt to give notice of an authorized interception or pending application for authorization for interception to any other person in order to obstruct, impede or prevent such interception.

(b) Penalties. — A person who violates the provisions of subsection (a) of this section shall be guilty of a class F felony and be fined not

more than $10,000.
(72 Del. Laws, c. 232 § 1.)

Subchapter II

Stored Wire and Electronic Communications and Transactional Records Access

§ 2421 Obtaining, altering or preventing authorized access.

(a) General provisions. — Except as provided in subsection (c) of this section, a person may not obtain, alter or prevent authorized access to a wire or electronic communication while it is in electronic storage in an electronic communications system by:

(1) Intentionally accessing with authorization a facility through which an electronic communication service is provided; or

(2) Intentionally exceeding an authorization to access a facility through which an electronic communication service is provided.

(b) Penalties. — A person who violates the provisions of subsection (a) of this section is subject to the following penalties:

(1) If the offense is committed for purposes of commercial advantage, malicious destruction or damage, or private commercial gain:

a. For a first offense, the person shall be guilty of a class B misdemeanor and be fined not more than $250,000; and

b. For a second or subsequent offense, the person shall be guilty of a Class A misdemeanor and be fined not more than $250,000.

(2) In all other circumstances, the person shall be guilty of a class B misdemeanor and be fined not more than $5,000.

(c) Applicability of section. — Subsection (a) of this section does not apply to conduct authorized:

(1) By the person or entity providing a wire or electronic communications service;

(2) By a user of a wire or electronic communications service with respect to a communication of or intended for that user; or

(3) Under the provisions of this chapter.

(72 Del. Laws, c. 232 § 1.)

§ 2422 Divulging contents of communications generally.

(a) Prohibited acts. —

(1) Except as provided in subsection (b) of this section, a person or entity providing an electronic communications service to the public may not knowingly divulge to any other person or entity the contents of a communication while the communication is in electronic storage by that service.

(2) Except as provided in subsection (b) of this section, a person or entity providing remote computing service to the public may not knowingly divulge to any other person or entity the contents of any communication which is carried or maintained on that service which it has received:

a. On behalf of and by means of computer processing of communication or by means of electronic transmission from a subscriber or customer of the service; and

b. Solely for the purpose of providing storage or computer processing services to a subscriber or customer if the provider is not authorized to access the contents of any communications for purposes of providing any services other than storage or computer processing.

(b) Lawful acts. — A person or entity may divulge the contents of a communication:

(1) To an addressee or intended recipient of the communication or an agent of the addressee or intended recipient;

(2) With the lawful consent of the originator or an addressee or intended recipient of the communication, or the subscriber, in the case of remote computing service;

(3) To a person employed or authorized by facilities or services used to forward the communication to its destination;

(4) If necessarily incident to the rendition of the service or to the protection of the rights or property of the provider of that service;

(5) To a law-enforcement agency if the contents were inadvertently obtained by the service provider and appear to pertain to the commission of a crime; or

(6) If otherwise authorized under the provisions of this chapter.

(72 Del. Laws, c. 232 § 1.)

§ 2423 Disclosure of information.

(a) Disclosure of contents of communications to investigative or law-enforcement officers by electronic communication service or remote computing service. —

(1) An investigative or law-enforcement officer may require a provider of electronic communication service or remote computing service to disclose the contents of an electronic communication that is in electronic storage in an electronic communications system or remote computing service for 180 days or less only in accordance with a search warrant issued by a court of competent jurisdiction.

(2) An investigative or law-enforcement officer may require a provider of electronic communication service or remote computing service to disclose the contents of an electronic communication that is in electronic storage in an electronic communications system or remote computing service for more than 180 days in accordance with the procedures provided under subsection (b) of this section.

(b) Procedures. —

(1) An investigative or law-enforcement officer may require a provider of remote computing service to disclose the contents of an electronic communication to which this section applies:

a. Without notice to the subscriber or customer if the officer obtains a search warrant issued by a court of competent jurisdiction; or

b. With prior notice to the subscriber or customer if the officer:

1. Obtains a subpoena issued by a court of competent jurisdiction, a grand jury, or as authorized by Chapter 25 of Title 29; or

2. Obtains a court order requiring the disclosure under subsection (d) of this section.

(2) The procedures set forth in this subsection apply to any electronic communication that is held or maintained on a remote computer service that it has received:

a. On behalf of and by means of electronic transmission from or created by means of computer processing of communications received by means of electronic transmission from a subscriber or customer of the remote computing service; and

b. Solely for the purpose of providing storage or computer processing services to the subscriber or customer if the provider is not authorized to access the contents of any communication for purposes of providing any services other than storage or computer processing.

(c) Definition of "record or other information." —

(1) For the purposes of this subsection, "record or other information" does not include the contents of communications to which subsections (a) and (b) of this section apply.

(2) Except as provided in this subdivision, a provider of electronic communications service or remote computing service may not disclose a record or other information pertaining to a subscriber or customer of the service to any person other than an investigative or law-enforcement officer.

A provider of electronic communications service or remote computing service shall disclose a record or other information pertaining to a subscriber to or a customer of the service to an investigative or law-enforcement officer only if the officer:

a. Obtains a subpoena issued by a court of competent jurisdiction, a grand jury, or as authorized by Chapter 25 of Title 29;

b. Obtains a search warrant from a court of competent jurisdiction;

c. Obtains a court order requiring the disclosure under subsection (d) of this section; or

d. Has the consent of the subscriber or customer to the disclosure.

(3) An investigative or law-enforcement officer receiving records or information under this subsection is not required to provide notice to a subscriber or customer.

(d) Court orders. —

(1) A court of competent jurisdiction may issue an order requiring disclosure under subsection (b) or (c) of this section only if the investigative or law-enforcement officer shows that there is reason to believe the contents of an electronic communication that is in an electronic communications system or remote computing service or the record or other information sought is relevant to a legitimate law-enforcement inquiry.

(2) A court issuing an order under this section may quash or modify the order on a motion made promptly by the service provider if the information or records requested are unusually voluminous in nature or if compliance with the order otherwise would cause an undue burden on the provider.

(e) Causes of action. — Nothing in this chapter may be construed as creating a cause of action against any provider of electronic communication service or remote computing service, such service's officers, employees, or agents or other specified persons for providing information, facilities or assistance in accordance with the terms of a court order, warrant, subpoena or certification under this chapter.

(72 Del. Laws, c. 232 § 1.)

§ 2424 Backup copies of communications.

(a) Required by subpoena or court order; creation; notice to subscriber; destruction —

(1) A subpoena or court order issued under § 2423 of this title may include a requirement that the service provider to whom the request is directed create a backup copy of the contents of the electronic communications sought in order to preserve those communications. Without notifying the subscriber or customer of the subpoena or court order, the service provider shall create a backup copy as soon as practicable consistent with the provider's regular business practices and shall confirm to the investigative or law-enforcement agency that the backup copy has been made. The service provider shall create a backup copy under this subsection within 2 business days after the day on which the service provider received the subpoena or court order.

(2) Except as provided in § 2425 of this title, the investigative or law-enforcement officer shall give notice to the subscriber or customer within 3 days after the day on which the governmental entity receives confirmation that a backup copy has been made under paragraph (a)(1) of this section.

(3) The service provider may not destroy the backup copy until the later of:

a. The date of delivery of the information; or

b. The resolution of any proceedings based upon the information provided, including appeals, or any proceedings concerning a subpoena or court order issued under § 2423 of this title.

(4) The service provider shall release the backup copy to the requesting investigative or law-enforcement officer no sooner than 14

days after the day on which the officer gives notice to the subscriber or customer, if the service provider:

a. Has not received notice from the subscriber or customer that the subscriber or customer has challenged the officer's request; or,

b. Has not initiated proceedings to challenge the officer's request.

(5) An investigative or law-enforcement officer may seek to require the creation of a backup copy under paragraph (a)(1) of this section if the officer determines that there is reason to believe that notification to the subscriber or customer under § 2423 of this title of the existence of the subpoena or court order will result in destruction of or tampering with evidence. Such a determination under this paragraph is not subject to challenge by the subscriber or customer or service provider.

(b) Quashing subpoena; vacating court order. —

(1) Within 14 days after a subscriber or customer receives notice from an investigative or law-enforcement officer under paragraph (a)(2) of this section, the subscriber or customer may file a motion to quash the subpoena or vacate the court order. The subscriber or customer shall serve a copy of the motion on the investigative or law-enforcement officer and give written notice of the challenge to the service provider. A motion to vacate a court order shall be filed in the court that issued the order. Any motion to quash a subpoena shall be filed in the Superior Court. Any motion or application under this subsection shall contain an affidavit or sworn statement averring:

a. That the applicant is a customer of or subscriber to the service from which the contents of electronic communications maintained for the applicant have been sought; and

b. The applicant's reasons for believing that the records sought are not relevant to a legitimate law-enforcement inquiry or that there has not been substantial compliance with this chapter in some other respect.

(2) The applicant shall serve a copy of the motion or application on the investigative or law-enforcement officer in accordance with the Rules of the Superior Court.

(3) If the court finds that the applicant has complied with paragraphs (b)(1) and (2) of this section, the court shall order the investigative or law-enforcement officer to file a sworn response, which may be filed in camera if the investigative or law-enforcement officer includes in the response the reasons which make an in camera review appropriate.

a. If the court is unable to determine the motion or application on the basis of the parties" initial allegations and response, the court may conduct additional proceedings as it deems appropriate.

b. All such proceedings shall be completed and the motion or application decided as soon as practicable after the filing of the investigative or law-enforcement officer's response.

(c) Findings of the court on application to quash. —

(1) If the court finds that the applicant is not the subscriber or customer for whom the communications sought by the investigative or law-enforcement officer are maintained or that there is a reason to believe that the law-enforcement inquiry is legitimate and that the communications sought are relevant to that inquiry, the court shall deny the motion or application and order the subpoena or court order to be enforced.

(2) If the court finds that the applicant is the subscriber or customer for whom the communications sought by the investigative or law-enforcement officer are maintained and that there is no reason to believe that the communications sought are relevant to a legitimate law-enforcement inquiry or that there has not been substantial compliance with this chapter, the court shall order the subpoena to be quashed or the court order to be vacated.

(d) Nature of order; no interlocutory appeal. — A court order denying a motion or application under this subsection is not a final order and no interlocutory appeal may be taken by the customer.

(72 Del. Laws, c. 232 § 1.)

§ 2425 Delay in giving notices.

(a) Definitions. — When used in this section:

(1) "Adverse result" means:

a. Endangering the life or physical safety of an individual;

b. Flight from prosecution;

c. Destruction of or tampering with evidence;

d. Intimidation of potential witnesses; or

e. Otherwise seriously jeopardizing an investigation or unduly delaying a trial.

(2) "Supervisory official" means:

a. The Superintendent or Deputy Superintendent of the Delaware State Police;

b. The chief of police, deputy chief of police or equivalent official of a law-enforcement agency of any political subdivision of the state; or

c. The Attorney General of the State, Chief Deputy Attorney General, State Prosecutor, Chief Prosecutor of any County or a Deputy Attorney General.

(b) Delaying required notices. — An investigative or law-enforcement officer acting under § 2423 of this title may:

(1) If a court order is sought, include in the application a request for an order delaying the notification required under § 2424 of this title for a period not to exceed 90 days, which the court shall grant if the court determines that there is reason to believe that notification of the existence of the court order may have an adverse result; or

(2) If a subpoena issued by a court of competent jurisdiction or a grand jury or the Attorney General is obtained, delay the notification required under § 2424 of this title for a period not to exceed 90 days, upon the execution of a written certification to a court of competent jurisdiction by a supervisory official that there is reason to believe that notification of the existence of the subpoena may have an adverse result.

(c) The investigative or law-enforcement officer shall maintain a true copy of a certification executed under paragraph (b)(2) of this section.

(d) Extensions of a delay in notification may be granted by the court upon application or by certification by a supervisory official under the same procedures prescribed in subsection (b) of this section. An extension may not exceed 90 days.

(e) Upon expiration of the period of a delay of notification under subsection (b) or (d) of this section, the investigative or law-enforcement officer shall serve upon by hand or deliver by registered or first class mail to the customer or subscriber a copy of the process or request together with a notice that:

(1) States with reasonable specificity the nature of the law-enforcement inquiry; and

(2) Informs the customer or subscriber:

a. That information maintained for the customer or subscriber by the service provider named in the process or request was supplied to or requested by that investigative or law-enforcement officer and the date on which the information was supplied or the request was made;

b. That notification of the customer or subscriber was delayed;

c. Of the identity of the investigative or law-enforcement officer or court that made the certification or determination authorizing the delay; and

d. Of the statutory authority for the delay.

(f) Notices not required or previously delayed. — If notice to the subscriber is not required under § 2423(b)(1) of this title or if notice is delayed under subsection (b) or (d) of this section, an investigative or law-enforcement officer acting under § 2423 of this title may apply to a court for an order requiring a provider of electronic communications service or remote computing service to whom a warrant, subpoena or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena or court order. The court shall enter an order under this subsection if the court determines that there is reason to believe that notification of the existence of the warrant, subpoena or court order will have an adverse result.

(72 Del. Laws, c. 232 § 1.)

§ 2426 Reimbursement of costs.

(a) General provision. — Except as otherwise provided in subsection (c) of this section, an investigative or law-enforcement officer obtaining the contents of communications, records or other information under § 2422, § 2423 or § 2424 of this title shall pay to the person or entity assembling or providing the information a fee for reimbursement for costs that are reasonably necessary and that have been directly incurred in searching for, assembling, reproducing or otherwise providing the information. Reimbursable costs shall include any costs due to necessary disruption of normal operations of an electronic communications service or remote computing service in which the information may be stored.

(b) Amount of fee. — The amount of the fee authorized under subsection (a) of this section shall be mutually agreed upon by the investigative or law-enforcement officer and the person or entity providing the information, or in the absence of agreement, shall be determined by the court which issued the order for production of the information or the court in which a criminal prosecution relating to the information would be brought, if no court order was issued for production of the information.

(c) Exceptions. — The requirement of subsection (a) of this section does not apply with respect to records or other information maintained by a communications common carrier that relate to telephone toll records and telephone listings obtained under § 2423 of this title. The court may, however, order a payment described in subsection (a) of this section if the court determines the information required is unusually voluminous in nature or otherwise caused an undue burden on the provider.

(72 Del. Laws, c. 232 § 1.)

§ 2427 Civil actions.

(a) Right to relief. — Except as provided in subsection (e) of this section, a provider of electronic communication service, a subscriber or customer aggrieved by a knowing or intentional violation of §§ 2421-2425 of this title may recover appropriate relief in a civil action against the person or entity that engaged in the violation.

(b) Appropriate relief. — In a civil action under this section, appropriate relief includes:

(1) Appropriate preliminary and other equitable or declaratory relief;

(2) Damages under subsection (c) of this section; and

(3) A reasonable attorneys' fee and other litigation costs reasonably incurred.

(c) Damages. — The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, but in no case shall a person entitled to recover receive less than $1,000.

(d) Defenses. — A good faith reliance on any of the following is a complete defense to any civil or criminal action brought under this

section or any other law of this state:

(1) A court warrant or order, a grand jury or Attorney General's subpoena, a legislative authorization or a statutory authorization; or

(2) A good faith determination that § 2403 or § 2423 of this title permitted the conduct that is the subject of the action.

(e) Limitations period. — A civil action under this section shall be filed within 2 years after the day on which the claimant first discovered or had a reasonable opportunity to discover the violation.

(72 Del. Laws, c. 232 § 1.)

Subchapter III

Pen Traces and Trap and Trace Devices

§ 2430 Definition of "court of competent jurisdiction"

When used in § 2431, § 2432, § 2433 or § 2434, "court of competent jurisdiction" means the Superior Court of this State.

(72 Del. Laws, c. 232 § 1.)

§ 2431 Installation and use generally.

(a) Court order required. — Except as provided in subsection (b) of this section, a person may not install or use a pen register or a trap and trace device without first obtaining a court order under § 2433 of this title.

(b) Exceptions. — Subsection (a) of this section does not apply to the use of a pen register or a trap and trace device by a provider of wire or electronic communication service:

(1) Relating to the operation, maintenance and testing of a wire or electronic service or to the protection of the rights or property of the provider, or to the protection of users of that service from abuse of service or unlawful use of service; or

(2) To record the fact that a wire or electronic communication was initiated or completed in order to protect the provider, another provider furnishing service toward the completion of the wire communication, or a user of that service from fraudulent, unlawful or abusive use of this service, or with the consent of the user of that service.

(c) Penalties. — A person who violates subsection (a) of this section shall be guilty of a class A misdemeanor and be fined not more than $5,000.

(72 Del. Laws, c. 232 § 1.)

§ 2432 Application for order to install and use.

(a) General provisions. — An investigative or law-enforcement officer may make application for an order or an extension of an order under § 2433 of this title authorizing or approving the installation and use of a pen register or a trap and trace device, in writing, under oath or equivalent affirmation, to a court of competent jurisdiction of this State.

(b) Contents of application. — An application under subsection (a) of this section shall include:

(1) The identity of the law-enforcement or investigative officer making the application and the identity of the law-enforcement agency conducting the investigation; and

(2) A statement under oath by the applicant that the information likely to be obtained is relevant to an ongoing criminal investigation being conducted by that agency.

(72 Del. Laws, c. 232 § 1.)

§ 2433 Order authorizing installation and use.

(a) General provisions. — Upon an application made under § 2432 of this title, the court shall enter an ex parte order authorizing the installation and use of a pen register or a trap and trace device within the jurisdiction of the court if the court finds that the information likely to be obtained by the installation and use is relevant to an ongoing criminal investigation.

(b) Contents of order. — An order issued under this section shall:

(1) Specify the identity, if known, of the person to whom is leased or in whose name is listed the electronic communication service to which the pen register or trap and trace device is to be attached;

(2) Specify the identity, if known, of the person who is the subject of the criminal investigation;

(3) Specify the number and, if known, physical location of the electronic communication service to which the pen register or trap and trace device is to be attached and in the case of a trap and trace device, the geographic limits of the trap and trace order;

(4) Contain a description of the offense to which the information likely to be obtained by the pen register or trap and trace device relates; and

(5) Direct, upon the request of the applicant, the furnishing of information, facilities and technical assistance necessary to accomplish the installation of the pen register or trap and trace device under § 2434 of this title.

(c) Duration. —

(1) An order issued under this section shall authorize the installation and use of a pen register or a trap and trace device for a period not to exceed 60 days.

(2) Extensions of an order issued under this section may be granted upon an application for an order as prescribed by § 2432 of this title and upon the judicial finding required under subsection (a) of this section. An extension may not exceed 60 days.

(d) Restrictions. — An order authorizing or approving the installation and use of a pen register or a trap and trace device shall direct that:

(1) The order be sealed until further order of the court; and

(2) The person owning or leasing the line to which the pen register or a trap and trace device is attached or who has been ordered by the court to provide assistance to the applicant, not disclose the existence of the pen register or trap and trace device or the existence of the investigation to the listed subscriber or to any other person, unless or until otherwise ordered by the court.

(72 Del. Laws, c. 232 § 1.)

§ 2434 Assistance to investigative or law-enforcement officer or agency.

(a) Installation and use. — Upon the request of an investigative or law-enforcement officer authorized to install and use a pen register under this chapter, a provider of wire or electronic communication service, landlord, custodian or other person shall furnish the investigative or law-enforcement officer with all information, facilities and technical assistance necessary to accomplish the installation of the pen register unobtrusively and with a minimum of interference with the services that the person ordered by the court accords the party with respect to whom the installation and use is to take place, if such assistance is directed by a court order under § 2433 of this title.

(b) Receipt of results. — Upon the request of an officer of law-enforcement agency authorized to receive the results of a trap and trace device under this chapter, a provider of a wire or electronic communication service, landlord, custodian or other person shall install the device on the appropriate line and shall furnish the investigative or law-enforcement officer all additional information, facilities and technical assistance including installation and operation of the device unobtrusively and with a minimum of interference with the services that the person ordered by the court accords the party with respect to whom the installation and use is to take place, if the installation and assistance is directed by a court order under § 2433 of this title. Unless otherwise ordered by the court, the results of the trap and trace device shall be furnished to the officer of a law-enforcement agency, designated in the court order, at reasonable intervals during regular business hours for the duration of the order.

(c) Compensation. — A provider of a wire or electronic communication service, landlord, custodian or other person who furnishes facilities or technical assistance under this section shall be compensated for reasonable expenses incurred in providing the facilities and assistance.

(d) Causes of action. — Nothing in this chapter may be construed as creating a cause of action against any provider of a wire or electronic communication service, its officers, employees, agents or other specified persons for providing information, facilities or assistance in accordance with the terms of a court order under § 2430, § 2431, § 2432 or § 2433 of this title.

(e) Defenses. — A good faith reliance on a court order, a legislative authorization or a statutory authorization is a complete defense against any civil or criminal action brought under § 2430, § 2431, § 2432 or § 2433 of this title or under any other law.

(72 Del. Laws, c. 232 § 1.)

Part II
Criminal Procedure Generally
Chapter 25
EXTRADITION AND DETAINERS
Subchapter I
Extradition; Uniform Criminal Extradition Law

§ 2501 Definitions.

As used in this subchapter, unless the context indicates a different intent:

(1) "Executive authority" includes the governor and any person performing the functions of governor in a state other than this State.

(2) "Governor" includes any person performing the functions of Governor by authority of the law of this State.

(3) "State," referring to a state other than this State, includes any other state or territory, organized or unorganized, of the United States of America.

(41 Del. Laws, c. 213 § 1; 11 Del. C. 1953 § 2501.)

§ 2502 Fugitives from justice; duty of Governor.

Subject to this subchapter, the provisions of the Constitution of the United States and any and all acts of Congress enacted in pursuance thereof, the Governor of this State shall have arrested and delivered up to the executive authority of any other state of the United States any person charged in that state with treason, felony or other crime, who has fled from justice and is found in this State.

(41 Del. Laws, c. 213 § 2; 11 Del. C. 1953 § 2502.)

§ 2503 Form of demand.

No demand for the extradition of a person charged with crime in another state shall be recognized by the Governor unless in writing alleging, except in cases arising under § 2506 of this title, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter the accused fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon or by a copy of a judgment of conviction or of a sentence imposed in execution thereof, together with a statement by the executive authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of bail, probation or parole. The indictment, information or affidavit made before the magistrate shall substantially charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment of conviction or sentence shall be authenticated by the executive authority making the demand.

(41 Del. Laws, c. 213 § 3; 11 Del. C. 1953 § 2503; 70 Del. Laws, c. 186 § 1.)

§ 2504 Investigation by Governor.

When a demand is made upon the Governor of this State by the executive authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney General or any prosecuting officer in this State to investigate or assist in investigating the demand, and to report to the Governor the situation and circumstances of the person so demanded, and whether the person ought to be surrendered.

(41 Del. Laws, c. 213 § 4; 11 Del. C. 1953 § 2504; 70 Del. Laws, c. 186 § 1.)

§ 2505 Persons imprisoned or awaiting trial; involuntary departure.

(a) When it is desired to have returned to this State a person charged in this State with a crime, and such person is imprisoned or is held under criminal proceedings then pending in another state, the Governor of this State may agree with the executive authority of such other state for the extradition of such person before the conclusion of such proceedings or the person's term of sentence in such other state, upon condition that such person be returned to such other state at the expense of this State as soon as the prosecution in this State is terminated.

(b) The Governor of this State may surrender, on demand of the executive authority of any other state, any person in this State who is charged in the manner provided in § 2523 of this title with having violated the laws of the state whose executive authority is making the demand, even though such person left the demanding state involuntarily.

(41 Del. Laws, c. 213 § 5; 11 Del. C. 1953 § 2505; 70 Del. Laws, c. 186 § 1.)

§ 2506 Persons absent at time of commission of crime.

The Governor of this State may surrender, on demand of the executive authority of any other state, any person in this State charged in such other state in the manner provided in § 2503 of this title with committing an act in this State, or in a third state, intentionally resulting in a crime in the state whose executive authority is making the demand, and the provisions of this chapter not otherwise inconsistent shall

apply to such cases, even though the accused was not in that state at the time of the commission of the crime, and has not fled therefrom.

(41 Del. Laws, c. 213 § 6; 11 Del. C. 1953 § 2506.)

§ 2507 Governor's warrant of arrest; issuance.

If the Governor decides that the demand should be complied with, the Governor shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom the Governor thinks fit to entrust with the execution thereof. The warrant shall substantially recite the facts necessary to the validity of its issuance.

(41 Del. Laws, c. 213 § 7; 11 Del. C. 1953 § 2507; 70 Del. Laws, c. 186 § 1.)

§ 2508 Contents of warrant.

Such warrant shall authorize the peace officer or other person to whom directed to arrest the accused at any time and any place where the accused may be found within the State and to command the aid of all peace officers or other persons in the execution of the warrant, and to deliver the accused, subject to this subchapter, to the duly authorized agent of the demanding state.

(41 Del. Laws, c. 213 § 8; 11 Del. C. 1953 § 2508; 70 Del. Laws, c. 186 § 1.)

§ 2509 Authority of arresting officer to command assistance.

Every peace officer or other person empowered to make the arrest under this subchapter shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in the execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

(41 Del. Laws, c. 213 § 9; 11 Del. C. 1953 § 2509.)

§ 2510 Rights of accused; habeas corpus.

No person arrested upon such warrant shall be delivered over to the agent whom the executive authority demanding the person has appointed to receive the person unless the person is first taken forthwith before a judge of a court of record or a justice of the peace in this State, who shall inform the person of the demand made for the person's surrender and of the crime with which the person is charged, and that the person has the right to demand and procure legal counsel. If the prisoner or the prisoner's counsel states that the person or they desire to test the legality of the prisoner's arrest, the judge or justice of the peace shall fix a reasonable time to be allowed within which to apply for a writ of habeas corpus. When such writ is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the Deputy Attorney General of the county in which the arrest is made and in which the accused is in custody, or to the Attorney General or the Chief Deputy Attorney General, and to the agent of the demanding state.

(41 Del. Laws, c. 213 § 10; 11 Del. C. 1953 § 2510; 70 Del. Laws, c. 186 § 1.)

§ 2511 Denial of rights of accused; penalty.

Whoever, being an officer, delivers to the agent for extradition of the demanding state a person in the officer's custody under the Governor's warrant, in wilful disobedience of § 2510 of this title, shall be fined not more than $1,000 or imprisoned not more than 6 months, or both.

(41 Del. Laws, c. 213 § 11; 11 Del. C. 1953 § 2511; 70 Del. Laws, c. 186 § 1.)

§ 2512 Confinement in jail.

(a) The officer or persons executing the Governor's warrant of arrest, or the agent of the demanding state to whom the prisoner has been delivered, may, when necessary, confine the prisoner in the jail of any county, town or city through which the officer passes; and the keeper of such jail shall receive and safely keep the prisoner until the officer or person having charge of the prisoner is ready to proceed on the officer's route, such officer or person being chargeable with the expense of keeping.

(b) The officer or agent of a demanding state to whom a prisoner has been delivered following extradition proceedings in another state, or to whom a prisoner has been delivered after waiving extradition in such other state, and who is passing through this State with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county, town or city through which the officer passes; and the keeper of such jail shall receive and safely keep the prisoner until the officer or agent having charge of the prisoner is ready to proceed on the officer's route, such officer or agent, however, being chargeable with the expense of keeping. Such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that the officer is actually transporting such prisoner to the demanding state after a requisition by the executive authority of such demanding state. Such prisoner shall not be entitled to demand a new requisition while in this State.

(41 Del. Laws, c. 213 § 12; 11 Del. C. 1953 § 2512; 70 Del. Laws, c. 186 § 1.)

§ 2513 Arrest prior to requisition.

Whenever any person within this State shall be charged on the oath of any credible person before any judge or justice of the peace of this State with the commission of any crime in any other state and, except in cases arising under § 2506 of this title, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of bail, probation or parole, or whenever complaint has been made before any judge or justice of the peace in this State setting forth on the affidavit of any credible person in another state that a crime has been committed in such other state and that the accused has been charged in such

state with the commission of the crime, and, except in cases arising under § 2506 of this title, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of bail, probation or parole, and is believed to be in this State, the judge or justice of the peace shall issue a warrant directed to any peace officer commanding the officer to apprehend the person named therein, wherever the person so named is found in this State, and to bring the accused before the same or any other judge, justice of the peace or court who or which is available in or convenient of access to the place where the arrest is made, to answer the charge or complaint and affidavit.

(41 Del. Laws, c. 213 § 13; 11 Del. C. 1953 § 2513; 70 Del. Laws, c. 186 § 1.)

§ 2514 Arrest without warrant.

The arrest of a person may be lawfully made by any peace officer or a private person, without a warrant, upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding 1 year, but when so arrested the accused shall be taken before a judge or justice of the peace with all practicable speed and complaint shall be made against the accused under oath setting forth the ground for the arrest as in § 2513 of this title, and thereafter the accused's answer shall be heard as if the accused had been arrested on a warrant.

(41 Del. Laws, c. 213 § 14; 11 Del. C. 1953 § 2514; 70 Del. Laws, c. 186 § 1.)

§ 2515 Commitment awaiting requisition; bail.

If from the examination before the judge or justice of the peace it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under § 2506 of this title, that the person has fled from justice, the judge or justice of the peace shall, by a warrant reciting the accusation, commit the person to jail for such a time not exceeding 30 days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the executive authority of the state having jurisdiction of the offense, unless the accused gives bail as provided in § 2516 of this title, or until the accused is legally discharged.

(41 Del. Laws, c. 213 § 15; 11 Del. C. 1953 § 2515; 70 Del. Laws, c. 186 § 1.)

§ 2516 Admission to bail; conditions of bond.

Unless the offense with which the prisoner is charged is shown to be an offense punishable by death or life imprisonment under the laws of the state in which it was committed, a judge or justice of the peace in this State may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as the judge or justice deems proper, conditioned for the prisoner's appearance before the judge or justice at a time specified in such bond, and for the prisoner's surrender, to be arrested upon the warrant of the Governor of this State.

(41 Del. Laws, c. 213 § 16; 11 Del. C. 1953 § 2516; 70 Del. Laws, c. 186 § 1.)

§ 2517 Extension of time of commitment.

If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge or justice of the peace may discharge the accused or may recommit the accused for a further period not to exceed 60 days, or a judge or justice of the peace may again take bail for the accused's appearance and surrender, as provided in § 2516 of this title, but within a period not to exceed 60 days after the date of such new bond.

(41 Del. Laws, c. 213 § 17; 11 Del. C. 1953 § 2517; 70 Del. Laws, c. 186 § 1.)

§ 2518 Forfeiture of bail.

If the prisoner is admitted to bail, and fails to appear and surrender according to the conditions of the bond, the judge or justice of the peace by proper order shall declare the bond forfeited and order the accused's immediate arrest, without warrant if the accused is within this State. Recovery may be had on such bond in the name of the State as in the case of other bonds given by the accused in criminal proceedings within this State.

(41 Del. Laws, c. 213 § 18; 11 Del. C. 1953 § 2518; 70 Del. Laws, c. 186 § 1.)

§ 2519 Persons under criminal prosecution.

If a criminal prosecution has been instituted against such person under the laws of this State and is still pending, the Governor, in the Governor's discretion, either may surrender the accused on demand of the executive authority of another state or hold the accused until the accused has been tried and discharged or convicted and punished in this State.

(41 Del. Laws, c. 213 § 19; 11 Del. C. 1953 § 2519; 70 Del. Laws, c. 186 § 1.)

§ 2520 Inquiry into guilt of accused.

The guilt or innocence of the accused as to the crime of which the accused is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as provided in this subchapter has been presented to the Governor, except as it is involved in identifying the person held as the person charged with the crime.

(41 Del. Laws, c. 213 § 20; 11 Del. C. 1953 § 2520; 70 Del. Laws, c. 186 § 1.)

§ 2521 Recall of warrant; issuance of alias.

The Governor may recall the Governor's own warrant of arrest or may issue another warrant whenever the Governor deems proper.

(41 Del. Laws, c. 213 § 21; 11 Del. C. 1953 § 2521; 70 Del. Laws, c. 186 § 1.)

§ 2522 Warrant to receive fugitive from State.

Whenever the Governor of this State demands a person charged with crime or with escaping from confinement or breaking the terms of bail, probation or parole in this State, from the executive authority of any other state, or from the Chief Justice or an Associate Justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United States, the Governor shall issue a warrant under the seal of this State, to some agent, commanding the agent to receive the person so charged if delivered to the agent and convey the accused to the proper officer of the county in this State in which the offense was committed.

(41 Del. Laws, c. 213 § 22; 11 Del. C. 1953 § 2522; 70 Del. Laws, c. 186 § 1.)

§ 2523 Application for issuance of requisition.

(a) When the return to this State of a person charged with crime in this State is required, the Attorney General or any Deputy Attorney General shall present to the Governor a written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged, the approximate time and place of its commission, the state in which the accused is believed to be, including the location of the accused therein, at the time the application is made and certifying that, in the opinion of the Attorney General or Deputy Attorney General the ends of justice require the arrest and return of the accused to this State for trial and that the proceeding is not instituted to enforce a private claim.

(b) When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of bail, probation or parole, the Attorney General or any Deputy Attorney General, the parole board, or any agent thereof, probation or court officer, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which the person was convicted, the circumstances of the person's escape from confinement or of the breach of the terms of bail, probation or parole, the state in which the person is believed to be, including the location of the person therein, at the time application is made.

(c) The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by 2 certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge or justice of the peace, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The Attorney General or any Deputy Attorney General, parole board, or any agent thereof, probation or court officer, warden or sheriff may also attach such further affidavits and other documents in duplicate as deemed proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and 1 of the certified copies of the indictment, complaint, information, affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Secretary of State to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

(41 Del. Laws, c. 213 § 23; 11 Del. C. 1953 § 2523; 70 Del. Laws, c. 186 § 1.)

§ 2524 Costs and expenses.

(a) The actual expenses of agents appointed by the Governor to serve requisition papers may be paid indirectly, by having the agent pay the agent's own expenses and then later seek reimbursement by submitting receipts to the State Treasurer; or they may be paid directly, by having the agent pay for the expenses with a credit card registered in the name of the Department of Justice.

(1) When the indirect method is chosen, the agent shall be reimbursed only for reasonable, authorized, extradition-related expenses. Further, the State Treasurer shall reimburse the agent only for receipts that have been approved by the Attorney General or 1 of the Attorney General's deputies.

(2) Similarly, when the direct method is chosen, the credit card may be used only for reasonable, authorized, extradition-related expenses; the agent shall be personally liable for any unauthorized excesses or abuses of the credit card.

(b) Upon the conviction of any individual returned to this State by requisition proceedings, the court shall assess the costs of requisition in the same manner as other costs of the case.

(c) All money received by the State in payment of the costs of requisition shall be credited by the State Treasurer to a fund to be known as the "Extradition Fund."

(d) The Extradition Fund shall be a revolving fund and shall consist of funds transferred to it pursuant to recovery of the costs of requisitions.

(e) If, at the end of any fiscal year, the balance in the Extradition Fund exceeds $40,000, the excess shall be withdrawn from the Extradition Fund and deposited in the General Fund.

(f) The Attorney General is authorized to expend from the Extradition Fund such funds as are necessary for the payment of operating costs, expenses and charges incurred in connection with the requisition proceedings necessary to return individuals to this State.

(41 Del. Laws, c. 213 § 24; 11 Del. C. 1953 § 2524; 64 Del. Laws, c. 122 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 296 § 1.)

§ 2525 Immunity from process in civil actions.

A person brought into this State by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal

process in civil actions arising out of the same facts as the criminal proceedings to answer which the person is being or has been returned, until the person has been convicted in the criminal proceeding, or, if acquitted, until the person has had reasonable opportunity to return to the state from which the person was extradited.

(41 Del. Laws, c. 213 § 25; 11 Del. C. 1953 § 2525; 70 Del. Laws, c. 186 § 1.)

§ 2526 Waiver of requisition.

Any person arrested or detained for the commission of a crime in a foreign jurisdiction, may, after the rights to demand requisition papers have been fully explained, waive requisition and consent to return to the jurisdiction in which the person is wanted. The waiver of requisition shall be in writing, and shall set forth that the person voluntarily waives requisition and that the person's rights have been fully explained and are understood, which shall be signed by the prisoner and 3 other witnesses in the prisoner's presence. The proper signing of such a waiver of requisition shall constitute ample authority for the sheriff, or other officer having the prisoner in custody, to deliver the prisoner to the duly authorized agent commissioned to receive the prisoner. The sheriff, or other officer having the prisoner in charge, before the officer surrenders the prisoner shall be satisfied that the agent is duly authorized and commissioned to receive the prisoner, and shall, unless the agent is a known peace officer, demand and retain the agent's warrant of authority, which the officer shall file and preserve together with the prisoner's waiver of requisition.

(41 Del. Laws, c. 213 § 25a; 11 Del. C. 1953 § 2526; 70 Del. Laws, c. 186 § 1.)

§ 2527 Preservation of rights of State.

Nothing in this subchapter shall be deemed to constitute a waiver by this State of its right, power or privilege to try such demanded person for crime committed within this State, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose of trial, sentence or punishment for any crime committed within this State, nor shall any proceedings had under this subchapter which result in, or fail to result in, extradition be deemed a waiver by this State of any of its rights, privileges or jurisdiction in any way whatsoever.

(41 Del. Laws, c. 213 § 25b; 11 Del. C. 1953 § 2527.)

§ 2528 Prosecution for other crimes after extradition.

After a person has been brought back to this State by or after waiver of extradition proceedings, the person may be tried in this State for other crimes which the person may be charged with having committed here as well as that specified in the requisition for extradition.

(41 Del. Laws, c. 213 § 26; 11 Del. C. 1953 § 2528; 70 Del. Laws, c. 186 § 1.)

§ 2529 Construction.

The provisions of this subchapter shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

(41 Del. Laws, c. 213 § 27; 11 Del. C. 1953 § 2529.)

§ 2530 Short title.

This subchapter may be cited as the "Uniform Criminal Extradition Law."

(41 Del. Laws, c. 213 § 30; 11 Del. C. 1953 § 2530.)

Subchapter II

Detainers; Uniform Agreement on Detainers

§ 2540 Preamble; purpose.

The Agreement on Detainers is enacted into law and entered into by this State with all other jurisdictions legally joining therein in the form substantially as follows:

The contracting states solemnly agree that the party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations or complaints. The party states also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

(11 Del. C. 1953 § 2540; 57 Del. Laws, c. 223 § 1.)

§ 2541 Definitions.

As used in this agreement:

(1) "Receiving state" shall mean the state in which trial is to be had on an indictment, information or complaint pursuant to § 2542 or §

2543 of this title.

(2) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that the prisoner initiates a request for final disposition pursuant to § 2542 of this title or at the time that a request for custody or availability is initiated pursuant to § 2543 of this title.

(3) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(11 Del. C. 1953 § 2541; 57 Del. Laws, c. 223 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2542 Written notice requesting disposition, trial within 180 days; waiver of extradition.

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information or complaint on the basis of which a detainer has been lodged against the prisoner, the prisoner shall be brought to trial within 180 days after the prisoner shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of imprisonment and the request for a final disposition to be made of the indictment, information or complaint; provided, that for good cause shown in open court, the prisoner or the prisoner's counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in subsection (a) of this section shall be given or sent by the prisoner to the Commissioner of Correction or other official having custody of the prisoner, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The Commissioner of Correction, the Commissioner's delegated agent or other official having custody of the prisoner shall promptly inform the prisoner of the source and contents of any detainer lodged against the prisoner and shall also inform the prisoner of the right to make a request for final disposition of the indictment, information or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to subsection (a) of this section shall operate as a request for final disposition of all untried indictments, informations or complaints on the basis of which detainers have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The Commissioner of Correction or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this subsection shall be accompanied by copies of the prisoner's written notice, request and the certificate. If trial is not had on any indictment, information or complaint contemplated by this section prior to the return of the prisoner to the original place of imprisonment, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to subsection (a) of this section shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of subsection (d) of this section, and a waiver of extradition to the receiving state to serve any sentence there imposed upon the prisoner, after completion of the term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of the prisoner's body in any court where the prisoner's presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with this agreement. Nothing in this subsection shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to execution of the request for final disposition referred to in subsection (a) of this section shall void the request.

(g) Written notice shall not be deemed to have been caused to be delivered to the prosecuting officer and the appropriate court of this State in accordance with subsection (a) of this section until such notice or notification has actually been received by the appropriate court and by the appropriate prosecuting attorney of this State, the prosecuting attorney's deputy, an assistant or any other person empowered to receive mail on behalf of said attorney.

(11 Del. C. 1953 § 2542; 57 Del. Laws, c. 223 § 1; 63 Del. Laws, c. 32 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2543 Approval of court; disapproval of governor, trial; dismissal.

(a) The appropriate officer of the jurisdiction in which an untried indictment, information or complaint is pending shall be entitled to have a prisoner against whom the officer has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with § 2544(a) of this title, upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided, that the court having jurisdiction of such indictment, information or complaint shall have duly approved, recorded and transmitted the request; and provided further, that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon the governor's own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in subsection (a) of this section, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner and any decisions of the state parole agency relating to the prisoner. The authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this section, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or the prisoner's counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this section shall be construed to deprive any prisoner of any right which the prisoner may have to contest the legality of the prisoner's delivery as provided in subsection (a) of this section, but such delivery may not be opposed or denied on the ground that the executive authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information or complaint contemplated by this section prior to the prisoner's being returned to the original place of imprisonment pursuant to § 2544(e) of this title, such indictment, information or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(11 Del. C. 1953 § 2543; 57 Del. Laws, c. 223 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2544 Delivery of temporary custody; refusal; return; responsibility.

(a) In response to a request made under § 2542 or § 2543 of this title, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in § 2542 of this title. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place for trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) Proper identification and evidence of the officer's authority to act for the state into whose temporary custody the prisoner is to be given;

(2) A duly certified copy of the indictment, information or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of the person, or in the event that an action on the indictment, information or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in § 2542 or § 2543 of this title, the appropriate court of the jurisdiction where the indictment, information or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in 1 or more untried indictments, informations or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for attendance at court and while being transported to or from any place where the prisoner's presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the 1 or more untried indictments, informations or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping and returning the prisoner. This subsection shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing contained in this subsection shall be construed to alter or affect any internal relationship among the department, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(11 Del. C. 1953 § 2544; 57 Del. Laws, c. 223 § 1; 70 Del. Laws, c. 186 § 1.)

§ 2545 Time periods; determination; tolling.

(a) In determining the duration and expiration dates of the time periods provided in §§ 2542 and 2543 of this title, the running of the time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the

matter.

(b) No provision of this agreement, and no remedy made available by this agreement, shall apply to any person who is adjudged to be mentally ill.

(11 Del. C. 1953 § 2545; 57 Del. Laws, c. 223 § 1.)

§ 2546 Commissioner of Correction designated enforcing officer.

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement; for purposes of this section in this State the Commissioner of the Department of Correction of this State is so designated.

(11 Del. C. 1953 § 2546; 57 Del. Laws, c. 223 § 1.)

§ 2547 Effect of agreement; repeal; preservation of rights.

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw by enacting a statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

(11 Del. C. 1953 § 2547; 57 Del. Laws, c. 223 § 1.)

§ 2548 Construction; severability.

This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability to any government, agency, person or circumstance is held invalid, the validity of the remainder of this agreement and the applicability to any government, agency, person or circumstance shall not be affected. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(11 Del. C. 1953 § 2548; 57 Del. Laws, c. 223 § 1.)

§ 2549 Habitual offenders law; application.

Nothing in this agreement shall be construed to require the application of the habitual offenders law to any person on account of any conviction had in a proceeding brought to final disposition by reason of the use of the agreement.

(11 Del. C. 1953 § 2549; 57 Del. Laws, c. 223 § 1.)

§ 2550 Power of Commissioner of Correction; transfer of inmate.

It shall be lawful and mandatory upon the Commissioner of Correction or other official in charge of a penal or correctional institution in this State to give over the person of any inmate whenever so required by the operation of the Agreement on Detainers.

(11 Del. C. 1953 § 2550; 57 Del. Laws, c. 223 § 1.)

Part II
Criminal Procedure Generally
Chapter 27
JURISDICTION AND VENUE
Subchapter I
General Provisions

§ 2701 Original jurisdiction.

(a) The justices of the peace shall have original jurisdiction to hear, try and finally determine all violations alleged to have been committed. They shall have such jurisdiction over misdemeanors alleged to have been committed only when it is expressly conferred by law. Such jurisdiction, unless otherwise expressly provided by law, shall be throughout the State.

(b) The Court of Common Pleas for the State shall have original jurisdiction to hear, try and finally determine all misdemeanors and violations alleged to have been committed within the State, except where jurisdiction over such offenses is vested exclusively in another court.

The Court of Common Pleas shall have original jurisdiction to hear, try and finally determine all offenses committed within the City of Wilmington against any of the laws, ordinances, regulations or charter of the City.

The jurisdiction conferred by this subsection includes concurrent jurisdiction with the justices of the peace in all cases in which the justices of the peace have jurisdiction.

(c) The Superior Court shall have jurisdiction, original and concurrent, over all crimes, except where jurisdiction is exclusively vested in another court.

(d) The Family Court of the State shall have such criminal jurisdiction, exclusive or concurrent, as is expressly conferred upon it by law.

(e) The jurisdiction conferred by this section to hear, try and finally determine prosecutions of a crime or offense includes the power to issue all process and to conduct such proceedings as may be necessary or appropriate for the complete exercise of such jurisdiction.

(11 Del. C. 1953 § 2701; 58 Del. Laws, c. 497 § 2; 59 Del. Laws, c. 133 § 2; 59 Del. Laws, c. 547 § 16; 71 Del. Laws, c. 176 § 17.)

§ 2702 Jurisdiction of the Justice of the Peace Court of offenses contained in Chapter 5 of this title.

(a) The Justice of the Peace Court shall have original jurisdiction to hear, try and finally determine all misdemeanors created in Chapter 5 of this title, and any attempt, conspiracy or solicitation to commit such misdemeanors unless such jurisdiction is excluded by subsection (b) of this section or is otherwise excluded by law.

(b) The Justice of the Peace Court shall not have jurisdiction over the following misdemeanors created in Chapter 5 of this title:

(1) Section 601(a)(2) of this title (offensive touching with bodily fluid).
(2) Section 614 of this title (assault on a sports official);
(3) Section 625 of this title (unlawfully administering drugs);
(4) Section 627 of this title (prohibited acts as to substances releasing vapors or fumes);
(5) Section 628A of this title (vehicular assault in the second degree);
(6) Section 652 of this title (self-abortion);
(7) Section 653 of this title (issuing abortional articles);
(8) Section 763 of this title (sexual harassment);
(9) Section 764 of this title (indecent exposure 2nd degree);
(10) Section 765 of this title (indecent exposure 1st degree);
(11) Section 766 of this title (incest);
(12) Section 767 of this title (unlawful sexual contact 3rd degree);
(13) Section 785 of this Title (interference with custody);
(14) Section 805 of this title (cross or religious symbol burning);
(15) Section 850 of this title (use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices);
(16) Section 871 of this title (falsifying business records);
(17) Section 873 of this title (tampering with public records);
(18) Section 877 of this title (offering a false instrument for filing);
(19) Section 881 of this title (bribery);
(20) Section 882 of this title (bribe receiving);
(21) Section 892 of this title (fraud in insolvency);
(22) Section 906 of this title (deceptive business practices);
(23) Section 910 of this title (debt adjusting);

(24) Section 916 of this title (home improvement fraud);
(25) Section 917 of this title (new home construction fraud);
(26) Section 918 of this title (ticket scalping)
(27) Section 921 of this title (sale of transferred recorded sounds);
(28) Section 932 of this title (unauthorized access to computer system);
(29) Section 933 of this title (theft of computer services);
(30) Section 934 of this title (interruption of computer services);
(31) Section 935 of this title (misuse of computer system information);
(32) Section 936 of this title (destruction of computer equipment);
(33) Section 937 of this title (unrequested or unauthorized electronic mail);
(34) Section 938 of this title (failure to promptly cease electronic communication upon request);
(35) Section 1101 of this title (abandonment of a child);
(36) Section 1103 of this title (child abuse in the third degree);
(37) Section 1102 of this title (endangering the welfare of a child).
(38) Section 1105 of this title (crime against a vulnerable adult);
(39) Section 1106 of this title (unlawfully dealing with a child);
(40) Section 1113 of this title (criminal nonsupport);
(41) Section 1114 of this title (body-piercing; tattooing or branding);
(42) Section 1205 of this title (giving unlawful gratuities);
(43) Section 1206 of this title (receiving unlawful gratuities);
(44) Section 1207 of this title (improper influence);
(45) Section 1211 of this title (official misconduct);
(46) Section 1212 of this title (profiteering);
(47) Section 1246 of this title (compounding a crime);
(48) Section 1249 of this title (abetting the violation of driver's license restrictions);
(49) Section 1250 of this title (offenses against law-enforcement animals);
(50) Section 1256 of this title (promoting prison contraband);
(51) Section 1260 of this title (misuse of prisoner mail);
(52) Section 1266 of this title (tampering with a juror);
(53) Section 1267 of this title (misconduct by a juror);
(54) Section 1271A of this title (criminal contempt of a domestic violence protective order);
(55) Section 1273 of this title (unlawful grand jury disclosure);
(56) Section 1304 of this title (hate crimes);
(57) Section 1327 of this title (maintaining a dangerous animal);
(58) Section 1332 of this title (abusing a corpse);
(59) Section 1333 of this title (trading in human remains and associated funerary objects);
(60) Section 1335 of this title (violation of privacy);
(61) Section 1365 of this title (obscene literature harmful to minors);
(62) Section 1366 of this title (outdoor motion picture theatres);
(63) Section 1411 of this title (unlawfully disseminating gambling information);
(64) Section 1428 of this title (maintaining an obstruction of gambling location);
(65) Section 1448A of this title (offenses related to criminal history record checks for sale of firearms);
(66) Section 1456 of this title (unlawfully permitting a minor access to a firearm);
(67) Section 1457 of this title (possession of a weapon in a safe school zone).

(11 Del. C. 1953 § 2702; 58 Del. Laws, c. 497 § 2; 59 Del. Laws, c. 203 § 33; 59 Del. Laws, c. 547 §§ 17, 18; 63 Del. Laws, c. 327 § 1; 66 Del. Laws, c. 141 § 1; 69 Del. Laws, c. 301 § 1; 71 Del. Laws, c. 240 § 2; 72 Del. Laws, c. 83 § 1; 72 Del. Laws, c. 147 § 1; 72 Del. Laws, c. 391 § 2; 73 Del. Laws, c. 31 §§ 2, 3; 73 Del. Laws, c. 36 § 1; 73 Del. Laws, c. 255 §§ 3, 4; 74 Del. Laws, c. 155 § 1; 74 Del. Laws, c. 322 §§ 2, 3; 77 Del. Laws, c. 416 § 1; 78 Del. Laws, c. 168 § 7; 78 Del. Laws, c. 406 § 4.)

Subchapter II

Venue

§ 2731 Bigamy.

In any case of bigamy, prosecution may be had in the county where the bigamous marriage was contracted, where the offender resides or where the offender is apprehended.

(11 Del. C. 1953 § 2731; 58 Del. Laws, c. 497 § 2; 70 Del. Laws, c. 186 § 1.)

§ 2732 Homicide.

In every case of murder and of manslaughter, if a person is poisoned or wounded in 1 county and dies thereof in another county, prosecution shall be had in the county wherein such person was poisoned or wounded. Whenever the cause producing the death of a person happens in a county and the death out of it, the offense shall be deemed complete in the county wherein the cause happens and shall there be inquired of, heard and determined.

(Code 1852 § 2947; Code 1915 § 4818; Code 1935 § 5306; 11 Del. C. 1953 § 2732.)

§ 2733 Offenses involving the conduct of another.

Any prosecution involving liability for the conduct of another may be heard and determined in the county in which the principal crime was committed or in the county where the offense charged was committed.

(11 Del. C. 1953 § 2733; 58 Del. Laws, c. 497 § 2.)

§ 2734 Receiving stolen property.

A person charged with receiving stolen property may be prosecuted either in the county wherein the theft was committed or in the county where property was received.

(11 Del. C. 1953 § 2734; 58 Del. Laws, c. 497 § 2.)

§ 2735 Transportation of stolen property by thief.

If property is stolen in 1 county of this State and carried into another by the thief, the thief may be prosecuted in either county.

(11 Del. C. 1953 § 2735; 58 Del. Laws, c. 497 § 2.)

§ 2736 Offenses begun in this State.

If any criminal offense is begun in this State and completed elsewhere, it shall be deemed to have been committed in this State, and may be dealt with, inquired of, tried, determined and punished in this State in the same manner as if it had been actually and wholly committed in this State.

(21 Del. Laws, c. 307; Code 1915 § 4818; Code 1935 § 5306; 11 Del. C. 1953 § 2736.)

§ 2737 Kidnapping.

In any case of kidnapping, the prosecution may be had in the county where the crime was commenced or in any county through which the person kidnapped was transported.

(11 Del. C. 1953 § 2737; 58 Del. Laws, c. 497 § 2.)

§ 2738 Computer fraud or misuse.

A person charged with computer fraud or misuse may be prosecuted in the county where the act was committed, in the county where the violator had possession of any proceeds or materials used in such violation or in the county where the principal place of business of the owner or lessee of the computer or computer system is located.

(63 Del. Laws, c. 422 § 2.)

Part II
Criminal Procedure Generally
Chapter 31
INDICTMENT AND INFORMATION

§ 3101 Degrees of murder.

The different degrees of murder shall be distinguished in indictments.

(Code 1852 § 2960; Code 1915 § 4828; Code 1935 § 5317; 11 Del. C. 1953 § 3102.)

§ 3102 Forgery.

In an indictment for forgery, it is sufficient to set forth the substance of the instrument whereof the forgery is alleged.

(Code 1852 § 2961; Code 1915 § 4829; Code 1935 § 5320; 11 Del. C. 1953 § 3103.)

§ 3103 Perjury.

In an indictment for perjury, it is sufficient to set forth the substance of the offense charged, stating before whom or in what court the oath or affirmation was administered or taken, the general nature of the cause or proceedings, with the names of the parties and proper averments to falsify the matter wherein the perjury is assigned, without setting forth the complaint, answer, indictment, information, declaration or any part of any record, either in law or in equity and without setting forth the commission or authority of the court or person, before whom the perjury was committed.

(Code 1852 § 2964; Code 1915 § 4833; Code 1935 § 5324; 11 Del. C. 1953 § 3104.)

§ 3104 Ownership or possession of property by more than 1 person.

Whenever it may be necessary, in any indictment or information, to state ownership of any property, real or personal, belonging to, or in the possession of more than 1 person, whether such persons be partners in trade, joint tenants, parceners or tenants in common, trustees or members of a joint stock company, it shall be sufficient to name 1 person only, and the property may be described as belonging to the person so named, and another or others, as the case may be.

(Code 1852 § 2962; Code 1915 § 4830; Code 1935 § 5321; 11 Del. C. 1953 § 3105.)

§ 3105 Description of money.

When money, whether coins or paper money, is the subject of larceny, it shall be sufficient to describe the same in the indictment or information as "money of the aggregate value of.... dollars."

In any indictment or information the words "money," "dollars" or "cents" shall be construed to mean lawful money of the United States.

(19 Del. Laws, c. 268; Code 1915 § 4831; 29 Del. Laws, c. 265 § 1; Code 1935 § 5322; 11 Del. C. 1953 § 3106.)

§ 3106 Allegation of intent to defraud.

Whenever it may be necessary, in any indictment or information, to allege an intent to injure or defraud, it shall be sufficient to allege an intent to injure or defraud without naming the particular person or body corporate intended to be injured or defrauded, and on the trial of the action it shall not be deemed a variance, but be deemed sufficient, if there appear to be an intent to injure or defraud the United States, or any state, territory, county, town or other municipal or public corporation, or any public officer in an official capacity, or any private corporation, copartnership or member thereof, or any particular person or persons.

(11 Del. C. 1953 § 3107; 50 Del. Laws, c. 403 § 1; 70 Del. Laws, c. 186 § 1.)

§ 3107 DNA.

(a) In any indictment for a crime in which the identity of the accused is unknown, it is sufficient to describe the accused as a person whose name is unknown but who has a particular DNA profile.

(b) Definitions — In this section the following words have the meanings indicated.

(1) "Deoxyribonucleic acid (DNA)" means the molecules in all cellular forms that contain genetic information in a patterned chemical structure of each individual.

(2) "DNA profile" means an analysis that utilizes the restriction fragment length polymorphism analysis or polymerase chain reaction analysis of DNA resulting in the identification of an individual's patterned chemical structure of genetic information.

(73 Del. Laws, c. 160 § 1.)

Part II
Criminal Procedure Generally
Chapter 33
TRIAL JURORS

§ 3301 Examination upon voir dire in capital cases.

When a juror is called in a capital case, the juror shall be first sworn or affirmed upon the voir dire and then asked, under the direction of the court, if the juror has formed or expressed any opinion in regard to the guilt or innocence of the prisoner at the bar. If the answer is in the negative, the juror shall be sworn as a juror in the case, unless the juror has conscientious scruples against finding a verdict of guilty in a case where the punishment is death, even if the evidence should so warrant, or unless the juror shall be peremptorily challenged, challenged for cause or excused by consent of counsel on both sides. If the juror's answer to the question be in the affirmative, the juror shall be disqualified to sit in the case, unless the juror shall say, upon oath or affirmation, to the satisfaction of the court, that the juror feels able, notwithstanding such an opinion, to render an impartial verdict upon the law and the evidence, in which event the juror shall be a competent juror, if not otherwise disqualified, challenged or excused.

(17 Del. Laws, c. 221; Code 1915 § 4823; Code 1935 § 5312; 11 Del. C. 1953 § 3301; 70 Del. Laws, c. 186 § 1.)

Part II
Criminal Procedure Generally
Chapter 35
WITNESSES AND EVIDENCE
Subchapter I
General Provisions

§ 3501 Testimony of accused persons.

Every person who is accused of any crime whatsoever, punishable by the laws of this State, may upon trial before any tribunal established by the Constitution or laws of this State, testify in the person's own behalf, and may testify for or against any other person jointly tried with the person. A refusal or failure to testify shall not be construed or commented upon as an indication of guilt.

(19 Del. Laws, c. 777; Code 1915 § 4215; Code 1935 § 4690; 11 Del. C. 1953 § 3501; 70 Del. Laws, c. 186 § 1.)

§ 3502 Testimonial immunity.

(a) A party to an offense under Chapter 15 of this title may be required to furnish evidence, or to testify concerning the offense.

(b) No evidence or testimony required to be furnished under this section, nor any information directly or indirectly derived from such evidence or testimony, may be used against the witness in any criminal case, except in a prosecution for perjury or contempt.

(c) If a witness or other person is or may be called to produce evidence at a hearing or trial under Chapter 15 of this title, or at an investigation brought by the Attorney General under § 1509 of this title, the Superior Court for the county in which the hearing, trial or investigation is or may be held shall, upon certification in writing of such request by the Attorney General, require such person to produce the evidence, notwithstanding the person's refusal to do so on the basis of the privilege against self-incrimination.

(65 Del. Laws, c. 493 § 3; 70 Del. Laws, c. 186 § 1.)

§ 3503 Prima facie evidence of bank incorporation.

In criminal proceedings it shall be prima facie evidence of the incorporation of a bank that it has been reputed to be an incorporated bank or has issued notes as a bank.

(Code 1852 § 2350; Code 1915 § 4227; Code 1935 § 4702; 11 Del. C. 1953 § 3503.)

§ 3504 Proof of possession of property.

In the prosecution of any offense committed upon, in relation to or in any way affecting any real estate, or personal property, chose in action or thing, it is sufficient if it is proved in the trial that, at the time when the offense was committed, either the actual or constructive possession, or the general or special property, in the whole, or any part thereof, was in the person or community, alleged in the indictment or information to be the owner thereof.

(Code 1852 § 2967; Code 1915 § 4834; Code 1935 § 5325; 11 Del. C. 1953 § 3505.)

§ 3505 Evidence of alcohol in blood of one operating motor vehicle under influence of liquor.

(Repealed by 69 Del. Laws, c. 325 § 1, effective July 8, 1994.)

§ 3506 Obtaining of testimony under court order; witness immunity.

(a) In any criminal action or in any investigation carried on by the grand jury, if a person refuses to answer any question or to produce evidence of any kind solely on the ground that the person may thereby be incriminated, the Superior Court, upon motion of the Attorney General, may order such person to answer the question or produce the evidence after notice to the witness and a hearing; provided, however, the Court shall not enter such order if the Court finds:

(1) That such person may be subjected to criminal prosecution relating to the same transaction or occurrence under the laws of the United States or any other state and that any such evidence so compelled could be used against the person in any such prosecution; or

(2) Such order would otherwise be clearly contrary to the public interest.

Such person, so ordered by the Court, shall comply with the Court order. After complying, such person shall not be prosecuted or subjected to penalty or forfeiture for or on account of any transaction, matter or thing concerning which, in accordance with the order, the person gave answer or produced evidence; provided that, but for this section, such person would have been privileged to withhold the answer given or the evidence produced. In no event, however, shall such person, acting pursuant to such order, be exempt from prosecution or penalty or forfeiture for any perjury, false statement or contempt committed in answering or failing to answer, or in producing or failing to produce evidence in accordance with the order, and any testimony or evidence so given or produced shall not by virtue of this section be rendered inadmissible in evidence upon any criminal action, investigation or proceeding concerning such perjury, false statement or contempt.

(b) No statement or other evidence obtained from any person who shall have been compelled to make such statement or produce such evidence by any court of competent jurisdiction of the United States or of any other state pursuant to a claim of privilege and court order under a statute substantially equivalent to subsection (a) of this section shall be admissible in evidence in any criminal prosecution in this State against such person arising out of the same transaction or occurrence.

(11 Del. C. 1953 § 3508; 56 Del. Laws, c. 151; 70 Del. Laws, c. 186 § 1.)

§ 3507 Use of prior statements as affirmative evidence.

(a) In a criminal prosecution, the voluntary out-of-court prior statement of a witness who is present and subject to cross-examination may be used as affirmative evidence with substantive independent testimonial value.

(b) The rule in subsection (a) of this section shall apply regardless of whether the witness' in-court testimony is consistent with the prior statement or not. The rule shall likewise apply with or without a showing of surprise by the introducing party.

(c) This section shall not be construed to affect the rules concerning the admission of statements of defendants or of those who are codefendants in the same trial. This section shall also not apply to the statements of those whom to cross-examine would be to subject to possible self-incrimination.

(11 Del. C. 1953 § 3509; 57 Del. Laws, c. 525.)

§ 3508 Rape — Sufficiency of evidence; proceedings in camera.

(a) In any prosecution for the crime of any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact; an attempt to commit any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, if such attempt conforms to § 531 of this title; solicitation for the crime of any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, if such offense conforms to § 502 of this title; or conspiracy to commit any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, if such offense conforms to § 512 of this title, if evidence of the sexual conduct of the complaining witness is offered to attack the credibility of the complaining witness the following procedure shall be followed:

(1) The defendant shall make a written motion to the court and prosecutor stating that the defense has an offer of proof concerning the relevancy of evidence of the sexual conduct of the complaining witness which the defendant proposes to present, and the relevancy of such evidence in attacking the credibility of the complaining witness.

(2) The written motion shall be accompanied by an affidavit in which the offer of proof shall be stated.

(3) If the court finds that the offer of proof is sufficient, the court shall order a hearing out of the presence of the jury, if any, and at such hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant.

(4) At the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant, and is not inadmissible, the court may issue an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. The defendant may then offer evidence pursuant to the order of the court.

(b) As used in this section, "complaining witness" shall mean the alleged victim of any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, any degree of attempted rape, attempted unlawful sexual intercourse, attempted unlawful sexual penetration or attempted unlawful sexual contact, conspiracy or assault.

(60 Del. Laws, c. 257 § 1; 66 Del. Laws, c. 269 §§ 3-5; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 285 § 2.)

§ 3509 Rape — Admissibility of certain evidence.

(a) Notwithstanding any other provision of this Code to the contrary, and except as provided in this section, in any prosecution for any degree of rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, any opinion evidence, reputation evidence and evidence of specific instances of the complaining witness' sexual conduct, or any of such evidence, is not admissible by the defendant in order to prove consent by the complaining witness.

(b) This section, however, shall not be applicable to evidence of the complaining witness' sexual conduct with the defendant.

(c) If the prosecutor introduces evidence, including testimony of a witness, or the complaining witness as a witness gives testimony, and such evidence or testimony relates to the complaining witness' sexual conduct, the defendant may cross-examine the witness who gives such testimony and offer relevant evidence limited specifically to the rebuttal of such evidence introduced by the prosecutor or given by the complaining witness.

(d) Nothing in this section shall be construed to make inadmissible any evidence offered to attack the credibility of the complaining witness as provided in § 3508 of this title.

(e) As used in this section, "complaining witness" shall mean the alleged victim of the crime charged, the prosecution of which is subject to this section.

(60 Del. Laws, c. 257 § 1; 66 Del. Laws, c. 269 § 6; 71 Del. Laws, c. 285 § 2.)

§ 3510 Admissibility of certificate of title in criminal proceedings involving motor vehicles.

In any criminal proceeding in which ownership, possession or use of a motor vehicle is an issue, a certified copy of the certificate of title on file with the Division of Motor Vehicles shall be admissible as proof of ownership of the motor vehicle.

(64 Del. Laws, c. 276 § 1.)

§ 3511 Videotaped deposition and procedures for child witnesses.

(a) In any criminal case or hearing on delinquency, upon motion of the Deputy Attorney General prior to trial and with notice to the defense, the court may order all questioning of any witnesses under the age of 12 years to be videotaped in a location designated by the court. Persons present during the videotaping shall include the witness, the Deputy Attorney General, the defendant's attorney and any person whose presence would contribute to the welfare and well-being of the witness, and if the court permits, the person necessary for operating the equipment. Only the attorneys or a defendant acting pro se may question the child. The court shall permit the defendant to observe and hear the videotaping of the witness in person or, upon motion by the State, the court may exclude the defendant providing the defendant is able to observe and hear the witness and communicate with the defense attorney. The court shall ensure that:

(1) The recording is both visual and oral and is recorded on film or videotape or by other electronic means;

(2) The recording equipment was capable of making an accurate recording, the operator was competent to operate such equipment and the recording is accurate and is not altered;

(3) Each voice on the recording is identified;

(4) Each party is afforded an opportunity to view the recording before it is shown in the courtroom.

(b) If the court orders testimony of a witness taken under this section, the witness may not be compelled to testify in court at the trial or upon any hearing for which the testimony was taken. At the trial or upon any hearing, a part or all of the videotaped deposition, so far as otherwise admissible under the rules of evidence, may be used as substantive evidence. If only a part of a deposition is offered in evidence by a party, an adverse party may require the party to offer all of it which is relevant to the part offered and any party may offer other parts. Objections to deposition testimony or evidence or parts thereof and the grounds for the objection shall be stated at the time of the taking of the deposition.

(c) The witness need not be physically present in the courtroom when the videotape is admitted into evidence.

(d) The cost of such videotaping shall be paid by the court.

(e) Videotapes which are part of the court record are subject to a protective order of the court for the purpose of protecting the privacy of the witness.

(65 Del. Laws, c. 109 § 1; 70 Del. Laws, c. 186 § 1.)

§ 3512 Presence of victims.

Any victim or the victim's immediate family shall have the right to be present during all stages of a criminal proceeding even if called upon to testify therein, unless good cause can be shown by the defendant to exclude them.

(67 Del. Laws, c. 232 § 1; 70 Del. Laws, c. 186 § 1.)

§ 3513 Hearsay exception for child victim's or witness's out-of-court statement of abuse.

(a) An out-of-court statement made by a child victim or witness who is under 11 years of age at the time of the proceeding concerning an act that is a material element of the offense relating to sexual abuse, physical injury, serious physical injury, death, abuse or neglect as described in any felony delineated in subpart A, B or D of subchapter II of Chapter 5 of this title, or in any of the felonies delineated in § 782, § 783, § 783A, § 787, § 1100A, § 1102, § 1108, § 1109, § 1111, § 1112A, § 1112B, § 1335(a)(6), § 1335(a)(7), § 1353(2), or § 1361(b) of this title or in any attempt to commit any felony delineated in this paragraph that is not otherwise admissible in evidence is admissible in any judicial proceeding if the requirements of subsections (b) through (f) of this section are met.

(b) An out-of-court statement may be admitted as provided in subsection (a) of this section if:

(1) The child is present and the child's testimony touches upon the event and is subject to cross-examination rendering such prior statement admissible under § 3507 of this title; or

(2)a. The child is found by the court to be unavailable to testify on any of these grounds:

1. The child's death;

2. The child's absence from the jurisdiction;

3. The child's total failure of memory;

4. The child's persistent refusal to testify despite judicial requests to do so;

5. The child's physical or mental disability;

6. The existence of a privilege involving the child;

7. The child's incompetency, including the child's inability to communicate about the offense because of fear or a similar reason; or

8. Substantial likelihood that the child would suffer severe emotional trauma from testifying at the proceeding or by means of a videotaped deposition or closed-circuit television; and

b. The child's out-of-court statement is shown to possess particularized guarantees of trustworthiness.

(c) A finding of unavailability under paragraph (b)(2)a.8. of this section must be supported by expert testimony.

(d) The proponent of the statement must inform the adverse party of the proponent's intention to offer the statement and the content of the statement sufficiently in advance of the proceeding to provide the adverse party with a fair opportunity to prepare a response to the statement before the proceeding at which it is offered.

(e) In determining whether a statement possesses particularized guarantees of trustworthiness under paragraph (b)(2) of this section, the court may consider, but is not limited to, the following factors:

(1) The child's personal knowledge of the event;

(2) The age and maturity of the child;

(3) Certainty that the statement was made, including the credibility of the person testifying about the statement;

(4) Any apparent motive the child may have to falsify or distort the event, including bias, corruption or coercion;

(5) The timing of the child's statement;

(6) Whether more than 1 person heard the statement;

(7) Whether the child was suffering pain or distress when making the statement;

(8) The nature and duration of any alleged abuse;

(9) Whether the child's young age makes it unlikely that the child fabricated a statement that represents a graphic, detailed account beyond the child's knowledge and experience;

(10) Whether the statement has a "ring of verity," has internal consistency or coherence and uses terminology appropriate to the child's age;

(11) Whether the statement is spontaneous or directly responsive to questions;

(12) Whether the statement is suggestive due to improperly leading questions;

(13) Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the child's statement.

(f) The court shall support with findings on the record any rulings pertaining to the child's unavailability and the trustworthiness of the out-of-court statement.

(68 Del. Laws, c. 362 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 467 § 9; 72 Del. Laws, c. 212 §§ 1-3; 80 Del. Laws, c. 175 § 8.)

§ 3514 Testimony of victim or witness in child abuse, and victim of domestic violence, sexual assault or stalking cases by means of secured video connection.

(a)(1) In any prosecution involving any offense set forth in § 3513(a) of this title, domestic violence as defined in § 1041 of Title 10, and §§ 768 thru 778 and 1312 of this title a court may order that the testimony of a witness less than 11 years of age or any victim of the offenses described herein be taken outside the courtroom and shown in the courtroom by means of secured video connection if:

a. The testimony is taken during the proceeding; and

b. The judge determines that testimony by the witness less than 11 years of age or any victim of the offenses described herein in the courtroom will result in the witness less than 11 years of age or any victim of the offenses described herein suffering serious emotional distress such that the witness less than 11 years of age or any victim of the offenses described herein cannot reasonably communicate.

(2) Only the prosecuting attorney, the attorney for the defendant, and the judge may question the child victim or witness.

(3) The operators of the secured video connection shall make every effort to be unobtrusive.

(b)(1) Only the following persons may be in the room when the witness less than 11 years of age or any victim of the offenses described herein testifies by closed circuit television:

a. The prosecuting attorney;

b. The attorney for the defendant;

c. The operators of the closed circuit television equipment; and

d. Any person whose presence, in the opinion of the court, contributes to the well-being of the witness less than 11 years of age or any victim of the offenses described herein, including a person who has dealt with the witness less than 11 years of age or any victim of the offenses described herein in a therapeutic setting concerning the abuse.

(2) During the witness or victim's testimony by secured video connection, the judge and the defendant shall be in the courtroom.

(3) The judge and the defendant shall be allowed to communicate with the persons in the room where the witness less than 11 years of age or any victim of the offenses described herein is testifying by any appropriate electronic method.

(c) The provisions of this section do not apply if the defendant is an attorney pro se.

(d) This section may not be interpreted to preclude, for purposes of identification of a defendant, the presence of both the victim and the defendant in the courtroom at the same time.

(e) The proponent of the witness's or victim's testimony must inform the adverse party of the proponent's intention to offer the testimony and the content of the testimony sufficiently in advance of the proceeding to provide the adverse party with fair opportunity to prepare a response to the testimony before the proceeding at which it is offered.

(68 Del. Laws, c. 407 § 1; 72 Del. Laws, c. 212 §§ 4, 5; 80 Del. Laws, c. 59 § 1.)

§ 3515 Admissibility of DNA profiles.

(a) Definitions — In this section the following words have the meanings indicated.

(1) "Deoxyribonucleic acid (DNA)" means the molecules in all cellular forms that contain genetic information in a patterned chemical structure of each individual.

(2) "DNA profile" means an analysis that utilizes the restriction fragment length polymorphism analysis of DNA resulting in the

identification of an individual's patterned chemical structure of genetic information.

(b) Purposes — In any criminal proceeding, the evidence of a DNA profile is admissible to prove or disprove the identity of any person, if the party seeking to introduce the evidence of a DNA profile:

(1) Notifies in writing the other party or parties by mail at least 45 days before any criminal proceeding; and

(2) Provides, if requested in writing, the other party or parties at least 30 days before any criminal proceeding with:

a. Duplicates of the actual autoradiographs generated;

b. The laboratory protocols and procedures;

c. The identification of each probe utilized;

d. A statement describing the methodology of measuring fragment size and match criteria; and

e. A statement setting forth the allele frequency and genotype data for the appropriate database utilized.

(c) Prerequisites — If a party is unable to provide the information required under subsection (b) of this section at least 30 days prior to the criminal proceeding, the court may grant a continuance to permit such timely disclosures as justice may require.

(69 Del. Laws, c. 249 § 2.)

§ 3516 Hearsay exception for an adult who is impaired or patient or resident victim's out-of-court statement of abuse.

(a) An out-of-court statement made by an adult who is impaired, as defined in § 3902 of Title 31, or by a patient or resident of a state facility, as defined in § 1131 of Title 16, at the time of the proceeding concerning an act that is a material element of any of the following offenses:

(1) Abuse, neglect, exploitation or mistreatment of an adult who is impaired or a patient/resident, as set forth in § 3913 of Title 31 and § 1136 of Title 16 respectively; or

(2) Any felony set forth in this title which is defined as a violent felony pursuant to § 4201 of this title; or

(3) Any felony set forth in subparts D, E, H or I of subchapter III of Chapter 5 of this title, that is not otherwise admissible in evidence, is admissible in any judicial proceeding if the requirements of subsections (b) through (f) of this section are met.

(b) An out-of-court statement may be admitted as provided in subsection (a) of this section if:

(1) The victim is present and the victim's testimony touches upon the event and is subject to cross-examination rendering such prior statement admissible under § 3507 of this title; or

(2)a. The victim is found by the court to be unavailable to testify on any of these grounds and there is corroborative evidence to support the out-of-court statement:

1. The victim's death;

2. The victim's absence from the jurisdiction;

3. The victim's total failure of memory due to age or other infirmity;

4. The victim's physical or mental disability including the inability to communicate about the offense because of fear or a similar reason; or

5. Substantial likelihood that the victim would suffer severe medical or emotional trauma from testifying at the proceeding or by means of a videotaped deposition or closed-circuit television; and

b. The victim's out-of-court statement is shown to possess particularized guarantees of trustworthiness.

(c) A finding of unavailability under paragraph (b)(2)a.5. of this section must be supported by expert testimony.

(d) The proponent of the statement must inform the adverse party of the proponent's intention to offer the statement and the content of the statement sufficiently in advance of the proceeding to provide the adverse party with a fair opportunity to prepare a response to the statement before the proceeding at which it is offered.

(e) In determining whether a statement possesses particularized guarantees of trustworthiness under paragraph (b)(2)b. of this section, the court may consider, but is not limited to, the following factors:

(1) The victim's personal knowledge of the event;

(2) The victim's communicative and cognitive abilities at the time the statement is made;

(3) Certainty that the statement was made, including the credibility of the person testifying about the statement;

(4) Any apparent motive the victim may have to falsify or distort the event, including bias, corruption, coercion or a history of false reporting;

(5) The timing of the victim's statement;

(6) Whether more than 1 person heard the statement;

(7) Whether the victim was suffering pain or distress when making the statement;

(8) The nature and duration of any alleged abuse, neglect, exploitation or mistreatment;

(9) Whether the statement has a "ring of verity," has internal consistency or coherence and uses terminology appropriate to the victim's mental abilities;

(10) Whether the statement is spontaneous or directly responsive to questions;

(11) Whether the statement is suggestive due to improperly leading questions; or

(12) Whether extrinsic evidence exists to show the defendant's opportunity to commit the act complained of in the victim's statement.

(f) The court shall support with findings on the record any rulings pertaining to the victim's unavailability and the trustworthiness of the out-of-court statement.

(71 Del. Laws, c. 334 § 1; 78 Del. Laws, c. 179 § 371; 78 Del. Laws, c. 224 §§ 16, 17.)

Subchapter II

Uniform Law to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings

§ 3521 Definitions.

As used in this subchapter:

(1) "State" includes any territory of the United States and District of Columbia.

(2) "Summons" includes a subpoena, order or other notice requiring the appearance of a witness.

(3) "Witness" includes a person whose testimony is desired in any proceeding or investigation by a grand jury or in any criminal proceeding.

(41 Del. Laws, c. 214 § 1; 11 Del. C. 1953 § 3521.)

§ 3522 Testimony in another state.

(a) If a judge of a court of record in any state which by its laws has made provision for commanding persons within that state to attend and testify in this State certifies under the seal of such court that there is a criminal prosecution pending in such court, or that a grand jury investigation has commenced or is about to commence, that a person being within this State is a material witness in such prosecution or grand jury investigation, and that the person's presence will be required for a specified number of days, upon presentation of such certificate to any judge of a court of record in the county in which such person is, such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

(b) If at a hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to be compelled to attend and testify in the prosecution or a grand jury investigation in the other state and that the laws of the state in which the prosecution is pending or grand jury investigation has commenced or is about to commence will give to the witness protection from arrest and the service of civil and criminal process, the judge shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the court where the prosecution is pending or where a grand jury investigation has commenced or is about to commence at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(c) If the certificate recommends that the witness be taken into immediate custody and delivered to an officer of the requesting state to assure attendance in the requesting state, such judge may, in lieu of notification of the hearing, direct that such witness be forthwith brought before the judge for said hearing; and the judge at the hearing being satisfied of the desirability of such custody and delivery, for which determination the certificate shall be prima facie proof of such desirability, may, in lieu of issuing subpoena or summons, order that said witness be forthwith taken into custody and delivered to an officer of the requesting state.

(d) If the witness, who is summoned as above provided, after being paid or tendered by some properly authorized person the sum of 10 cents a mile for each mile by the ordinarily traveled route to and from the court where the prosecution is pending and $5 for each day that the witness is required to travel and attend as a witness, fails without good cause to attend and testify as directed in the summons, the witness shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

(41 Del. Laws, c. 214 § 2; 11 Del. C. 1953 § 3522; 70 Del. Laws, c. 186 § 1.)

§ 3523 Testimony in this State.

(a) If a person in any state, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations commenced or about to commence in this State, is a material witness in a prosecution pending in a court of record in this State or in a grand jury investigation which has commenced or is about to commence, a judge of such court may issue a certificate under the seal of the court stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of this State to assure attendance in this State. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(b) If the witness is summoned to attend and testify in this State the witness shall be tendered the sum of 10 cents a mile for each mile by the ordinarily traveled route to and from the court where the prosecution is pending and $5.00 for each day that the witness is required to travel and attend as a witness. A witness who has appeared in accordance with the summons shall not be required to remain within this State a longer period of time than the period mentioned in the certificate, unless otherwise ordered by the court. If such witness, after coming into this State, fails without good cause to attend and testify as directed in the summons, the witness shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from a court of record in this State.

(41 Del. Laws, c. 214 § 3; 11 Del. C. 1953 § 3523; 70 Del. Laws, c. 186 § 1.)

§ 3524 Immunity from arrest and service of process.

(a) If a person comes into this State in obedience to a summons directing the person to attend and testify in this State the person shall not, while in this State pursuant to such summons, be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before the person's entrance into this State under the summons.

(b) If a person passes through this State while going to another state in obedience to a summons to attend and testify in that state or while returning therefrom, the person shall not while so passing through this State be subject to arrest or the service of process, civil or criminal, in connection with matters which arose before the person's entrance into this State under the summons.

(41 Del. Laws, c. 214 § 4; 11 Del. C. 1953 § 3524; 70 Del. Laws, c. 186 § 1.)

§ 3525 Uniformity of interpretation.

This subchapter shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it.

(41 Del. Laws, c. 214 § 5; 11 Del. C. 1953 § 3525.)

§ 3526 Short title.

This subchapter may be cited as "Uniform Law to Secure the Attendance of Witnesses From Without a State in Criminal Proceedings."

(41 Del. Laws, c. 214 § 6; 11 Del. C. 1953 § 3526.)

Subchapter III

Intimidation of Witnesses and Victims

§ 3531 Definitions.

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

(1) "Malice" shall mean an intent to vex, annoy, harm or injure in any way another person, or to thwart or interfere in any manner with the orderly administration of justice.

(2) "Victim" shall mean any natural person against whom any crime (as defined under the laws of this State, of any other state or of the United States) has been attempted, is being perpetrated or has been perpetrated.

(3) "Witness" shall mean any natural person:

a. Having knowledge of the existence or nonexistence of facts relating to any crime; or

b. Whose declaration under oath is received, or has been received, as evidence for any purpose; or

c. Who has reported any crime to any peace officer, prosecuting agency, law-enforcement officer, probation officer, parole officer, correctional officer or judicial officer; or

d. Who has been served with a subpoena issued under the authority of any court of this State, of any other state or of the United States; or

e. Who would be believed by any reasonable person to be an individual described in any paragraph of this subparagraph of this paragraph.

(63 Del. Laws, c. 275 § 3.)

§ 3532 Act of intimidation; class D felony.

Except as provided in § 3533 of this title, every person who knowingly and with malice prevents or dissuades (or who attempts to prevent or dissuade) any witness or victim from attending or giving testimony at any trial, proceeding or inquiry authorized by law is committing an act of intimidation and is guilty of a class D felony. A person who knowingly and with malice retaliates against any victim or witness who has attended or given testimony at any trial proceeding or inquiry authorized by law by committing any crime as defined by the laws of this State against such victim or witness is committing an act of intimidation and is guilty of a class D felony. A person who knowingly and with malice attempts to prevent another person who has been the victim of a crime, or a witness to a crime (or any person acting on behalf of a victim or witness) from:

(1) Making any report of such crime or victimization to any peace officer, law-enforcement officer, prosecuting agency, probation officer, parole officer, correctional officer or judicial officer;

(2) Causing a complaint, indictment, information, probation or parole violation to be sought or prosecuted, or from assisting in the prosecution thereof; or

(3) Arresting, causing or seeking the arrest of any person in connection with such crime or victimization;

Is guilty of a class D felony.

(63 Del. Laws, c. 275 § 3; 71 Del. Laws, c. 430 § 1; 79 Del. Laws, c. 237 § 1.)

§ 3533 Aggravated act of intimidation; class B felony.

Every person doing any of the acts set forth in § 3532 of this title, knowingly and with malice under 1 or more of the following circumstances, shall be guilty of a class B felony if, in addition, such act:

(1) Is accompanied by an express or implied threat of force or violence, upon a victim, a witness or any third person (or upon the property of a victim, witness or third person);

(2) Is in furtherance of a conspiracy;

(3) Is committed by any person who has been convicted of any violation of this subchapter, any predecessor law hereto, the statute of any other state or any federal statute which would be a violation of this subchapter if committed in this State; or

(4) Committed, for pecuniary gain or for any other consideration, by any person acting upon the request of another person.

(63 Del. Laws, c. 275 § 3; 79 Del. Laws, c. 237 § 2.)

§ 3534 Attempt to intimidate.

Every person attempting the commission of any act described in §§ 3532 and 3533 of this title is guilty of the offense attempted, without regard to the success or failure of such attempt. The fact that no person was actually physically injured, or actually intimidated, shall be no defense against any prosecution under this subchapter.

(63 Del. Laws, c. 275 § 3.)

§ 3535 Protective orders — Issuance.

Any court with jurisdiction over any criminal matter may in its discretion and upon good cause (which may include, but is not limited to, such matters as credible hearsay, the declaration of the prosecutor or the declaration of the defense attorney) find that intimidation or dissuasion of a victim or witness has occurred (or is reasonably likely to occur) and may issue orders including, but not limited to, the following:

(1) An order that a defendant not violate any provision of this subchapter;

(2) An order that a person before the court other than a defendant (including, but not limited to, a subpoenaed witness) not violate any provision of this subchapter;

(3) An order that a designated person maintain a prescribed geographic distance from any other person specified by the court;

(4) An order that any designated person have no communication whatsoever with any person specified by the court, except through an attorney, and under such reasonable restrictions as the court may impose;

(5) An order for a hearing to determine if any order under this section should be issued;

(6) An order that a particular law-enforcement agency within the jurisdiction of the court provide protection for a person specified by the court.

(63 Del. Laws, c. 275 § 3.)

§ 3536 Protective orders — Violations.

(a) A person who violates an order made pursuant to this subchapter may be punished for any substantive offense set forth in this subchapter.

(b) A person who violates an order made pursuant to this subchapter may be punished as a contempt of the court making such order. No finding of contempt shall be a bar to prosecution for a substantive offense under this subchapter, but:

(1) Any person so held in contempt shall be entitled to credit for any punishment imposed therein, against any sentence imposed upon conviction for that offense; and

(2) Any conviction or acquittal for any substantive offense under this subchapter shall be a bar to subsequent punishment for contempt arising out of the same act.

(c) A person who violates an order made pursuant to this subchapter may be punished by revocation of any form of pretrial release, by the forfeiture of bail and/or by the issuance of a bench warrant which requires the defendant's arrest or which remands the defendant into custody. Said revocation may, after a hearing, and upon a showing by a clear and convincing evidence in the sound discretion of the court, be made either where the violation complained of has been committed by the defendant personally, or has in any way been caused indirectly or through the encouragement of the defendant.

(63 Del. Laws, c. 275 § 3.)

§ 3537 Pretrial release.

(a) Any pretrial release of any defendant (whether on bail or under any other form of recognizance) shall be deemed, as a matter of law, to include a condition that the defendant neither do, nor cause to be done, nor knowingly permit to be done on the defendant's behalf, any act proscribed by this subchapter hereof and any wilful violation of said condition is subject to sanction as prescribed in § 3536 of this title whether or not the defendant was the subject of an order under § 3535 of this title.

(b) From and after June 22, 1982, any receipt or any bail or bond given by the clerk of any court, by any surety or bondsperson and/or any other form of conditional release shall contain, in a conspicuous location, notice that such bail bond, or other release, is conditioned upon strict adherence to the requirements and prohibitions of this subchapter.

(63 Del. Laws, c. 275 § 3; 70 Del. Laws, c. 186 § 1.)

Part II
Criminal Procedure Generally
Chapter 39
SENTENCE, JUDGMENT, EXECUTION AND MANDATORY TESTING
Subchapter I
Sentence, Judgment and Execution

§ 3901 Fixing term of imprisonment; credits.

(a) When imprisonment is a part of the sentence, the term shall be fixed, and the time of its commencement and ending specified. An act to be done at the expiration of a term of imprisonment shall be done on the last day thereof, unless it be Sunday, and in that case, the day previous. Months shall be reckoned as calendar months.

(b) All sentences for criminal offenses of persons who at the time sentence is imposed are held in custody in default of bail, or otherwise, shall begin to run and be computed from the date of incarceration for the offense for which said sentence shall be imposed, unless the person sentenced shall then be undergoing imprisonment under a sentence imposed for any other offense or offenses, in which case the said sentence shall begin to run and be computed, either from the date of imposition thereof or from the expiration of such other sentence or sentences, as the court shall, in its discretion, direct.

(c) Any period of actual incarceration of a person awaiting trial, who thereafter before trial or sentence succeeds in securing provisional liberty on bail, shall be credited to the person in determining the termination date of sentence. Where a prisoner is hospitalized, the time spent in an institution under involuntary restraint is to be credited to the person when calculating the sentence under this subsection.

(d) The court shall direct whether the sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently or consecutively with any other sentence of confinement imposed on such criminal defendant. Notwithstanding the foregoing, no sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently with any other sentence of confinement imposed on such criminal defendant for any conviction of the following crimes:

Title 11, Section	Crime
606	Abuse of a pregnant female in the first degree
613	Assault in the first degree
632	Manslaughter
635	Murder in the second degree
636	Murder in the first degree
772	Rape in the second degree
773	Rape in the first degree
777A	Sex offender unlawful sexual conduct against a child
778(1), (2) or (3)	Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree
783	Kidnapping in the second degree
783A	Kidnapping in the first degree
803	Arson in the first degree
825	Burglary in the second degree
826	Burglary in the first degree
826A	Home invasion
832	Robbery in the first degree
836	Carjacking in the first degree
1254	Assault in a detention facility
1447A	Possession of a firearm during the commission of a felony

or for any sentence for possession of a firearm by a person prohibited where the criminal defendant was previously convicted of a Title 11 violent felony.

(e) For purposes of this section, "Title 11 violent felony" means any Title 11 offense identified in § 4201(c) of this title, or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a Title 11 offense identified in § 4201(c) of this title.

(Code 1852 §§ 2931, 2932; Code 1915 § 4813; Code 1935 § 5301; 11 Del. C. 1953 § 3902; 49 Del. Laws, c. 244; 60 Del. Laws, c. 308 §§ 1, 2; 61 Del. Laws, c. 158 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 297 § 1.)

§ 3902 Solitary confinement.

In every case of sentence to imprisonment for a term exceeding 3 months, the court may by the sentence direct that a certain portion of the term of imprisonment, not exceeding 3 months, shall be in solitary confinement; and any person so sentenced shall not be allowed to work during that portion of the term of imprisonment.

(Code 1852 §§ 2927, 2929; 21 Del. Laws, c. 247 § 4; 27 Del. Laws, c. 271; Code 1915 §§ 4810, 4811; Code 1935 § 5299; 11 Del. C. 1953 § 3203.)

§ 3903 Delivery of copy of sentence to warden.

The Prothonotary shall deliver to the warden of the workhouse or jail in which the convicted person is to be confined a duly certified copy of the sentence in every criminal case.

(Code 1852 § 2930; Code 1915 § 4812; 40 Del. Laws, c. 226 § 5; Code 1935 § 5300; 11 Del. C. 1953 § 3904.)

§ 3904 [Reserved.]

§ 3905 Instructions on separate issues of guilt and insanity; instructions on verdicts.

At the conclusion of a trial under this title, where warranted by the evidence, the charge to the jury shall contain instructions that shall consider separately the issues of guilt and the presence or absence of insanity, and shall also contain instructions as to the verdicts of "guilty;" "guilty, but mentally ill;" "not guilty by reason of insanity;" and "not guilty" with regard to the offense or offenses charged and, as required by law, any lesser included offenses.

(63 Del. Laws, c. 328 § 3.)

§ 3906 Domestic violence offenses.

The sentence for a second conviction for any crime or attempt to commit any crime hereinafter specifically named when such crime is committed by a member of the victim's family as defined by § 901(12) of Title 10, regardless of the state of residence of the parties; by a former spouse of the victim; by a person who cohabited with the victim at the time of the offense; or by a person with a child in common with the victim shall include completion of a psychocial assessment. Such crimes shall be:

(1) Any offense set forth in subchapter II of Chapter 5 of this title;

(2) Any offense set forth in subparts A and B of subchapter III of Chapter 5 of this title;

(3) Any offense set forth in subpart A of subchapter V of Chapter 5 of this title;

(4) Any offense set forth in § 1301, § 1311, § 1312 or § 1312A [transferred to § 1312] of this title, administered by any agency or batterer's intervention treatment provider certified by the Domestic Violence Coordinating Council, and adherence to all recommendations made in the completed assessment. The court shall impose any other appropriate legal sanction, including fines or incarceration, along with the required completion of the assessment.

Nothing in this section shall be construed to preclude a court from mandating this treatment in any first offense situation.

(72 Del. Laws, c. 62 § 1.)

Subchapter II

Voluntary and Mandatory Testing of Offenders Charged with Certain Sex Crimes

§ 3910 Definitions.

For purposes of this subchapter, the following words, terms and phrases shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

"Human immunodeficiency virus test" means a test or tests of an individual for presence of human immunodeficiency virus, or for antibodies or antigens that result from human immunodeficiency virus infection, or for any other substance specifically indicating human immunodeficiency virus infection, and includes preliminary screening tests.

(69 Del. Laws, c. 231 § 1.)

§ 3911 Human immunodeficiency virus (HIV) testing at the request of the victim.

At the request of the victim and/or by order of the court, a defendant who has been arrested for a crime which has sexual intercourse, deviant sexual intercourse, or sexual contact as an element must submit to testing for HIV not later than 48 hours after the victim has requested, and/or the court has ordered, such testing.

(69 Del. Laws, c. 231 § 1; 76 Del. Laws, c. 365 § 1.)

§ 3912 Test result not a public record.

The result of any human immunodeficiency virus test conducted pursuant to this subchapter shall not be a public record for purposes of Chapter 100 of Title 29.

(69 Del. Laws, c. 231 § 1; 76 Del. Laws, c. 365 § 2.)

§ 3913 Test results; notification to Department of Correction; counseling; cost; notice of appeal not to automatically stay order for HIV testing.

(a) The result of any human immunodeficiency virus testing conducted pursuant to this subchapter shall only be made available by the Division of Public Health to the victim, or the parent or guardian of the victim who is a minor or has an intellectual disability or a mental incapacity, the defendant, the court issuing the order for testing, and any other person or agency pursuant to Chapters 12 and 12A of Title 16.

(b) In addition, the Division of Public Health shall provide to the Department of Correction the result of any human immunodeficiency virus test conducted pursuant to this subchapter which indicates that the defendant is infected with the human immunodeficiency virus. The Department of Correction shall use this information solely for the purpose of providing medical treatment to the defendant while incarcerated in any correctional institution.

(c) If the human immunodeficiency virus test indicates the presence of human immunodeficiency virus infection, the Division of Public Health shall provide counseling to the victim and the defendant regarding human immunodeficiency virus disease, and referral for appropriate health-care and support services.

(d) The cost of testing under this subchapter shall be paid by the defendant tested, unless the court has determined that the defendant is an indigent person.

(e) Filing of a notice of appeal shall not automatically stay an order that the defendant submit to a human immunodeficiency virus test.

(f) A defendant must submit to follow-up tests for HIV as may be medically appropriate.

(69 Del. Laws, c. 231 § 1; 76 Del. Laws, c. 365 §§ 2, 3; 78 Del. Laws, c. 224 § 18.)

§ 3914 [Transferred.]

Subchapter III

Mandatory Testing of Offenders Charged With Assault or Related Offenses Against Law-Enforcement Officers

§ 3915 Scope.

A person who is charged with any criminal offense in which it is alleged that the person interfered with the official duties of a law-enforcement officer by biting, scratching, spitting or transferring blood or other bodily fluids on or through the skin or membranes of a law-enforcement officer is subject to a court order requiring testing for the human immunodeficiency virus, any antibody to human immunodeficiency virus or hepatitis.

(72 Del. Laws, c. 22 § 1.)

§ 3916 Petition and hearing.

(a) The law-enforcement officer or the employing agency or entity may petition the Superior Court for an order authorizing testing for the human immunodeficiency virus, any antibody to human immunodeficiency virus, or hepatitis. The Superior Court shall hear the petition promptly.

(b) If the Court finds that probable cause exists to believe that a possible transfer of blood or other bodily fluid occurred between the person charged and the law-enforcement officer, the Court shall order that the person charged provide 2 specimens of blood for testing.

(72 Del. Laws, c. 22 § 1.)

§ 3917 Notice provided.

(a) Notice of the test results shall be provided as prescribed by the Division of Public Health to the person tested, as well as to the law-enforcement officer named in the petition and to the officer's employing agency or entity, who shall otherwise maintain the confidentiality of that information.

(b) The result of any test conducted pursuant to this subchapter shall not be a public record for purposes of Chapter 100 of Title 29.

(72 Del. Laws, c. 22 § 1.)

§ 3918 Positive results; counseling; costs.

(a) If the test indicates the presence of human immunodeficiency virus infection, the Division of Public Health shall provide counseling to the law-enforcement officer and the person charged with the criminal offense regarding human immunodeficiency virus disease, and referral for appropriate health care and support services.

(b) The cost of testing under this subchapter shall be paid by the person tested, unless the court has determined that person is indigent.

(72 Del. Laws, c. 22 § 1.)

Part II
Criminal Procedure Generally
Chapter 41
FINES, COSTS, PENALTIES AND FORFEITURES
Subchapter I
General Provisions

§ 4101 Payment of fines, costs and restitution upon conviction.

(a) On conviction upon indictment or information for any crime or offense, all the costs shall be paid by the party convicted.

(b) Immediately upon imposition by a court, including a justice of the peace, of any sentence to pay a fine, costs, restitution or all 3, the same shall be a judgment against the convicted person for the full amount of the fine, costs, restitution or all 3, assessed by the sentence. Such judgment shall be immediately executable, enforceable and/or transferable by the State or by the victim to whom such restitution is ordered in the same manner as other judgments of the court. If not paid promptly upon its imposition or in accordance with the terms of the order of the court, or immediately if so requested by the State, the clerk or Prothonotary shall cause the judgment to be entered upon the civil judgment docket of the court; provided, however, that where a stay of execution is otherwise permitted by law such a stay shall not be granted as a matter of right but only within the discretion of the court. If the court imposing any sentence to pay a fine, costs, restitution or all 3 has no civil docket for the entry of a judgment, then such court may immediately transfer such judgment to the civil judgment docket of an appropriate court, as shall be determined by the court imposing such sentence. Judgments docketed pursuant to this subsection shall be exempt from the provisions of § 4711 of Title 10 which mandate the expiration of judgments, and which require the renewal of such judgments.

(c) The provisions of this section are cumulative and shall not impair any judgment given upon any conviction.

(d) In addition to, and at the same time as, any fine, penalty or forfeiture is assessed to any criminal defendant or any child adjudicated delinquent, there shall be levied an additional penalty of $1.00 imposed and collected by the courts for crimes or offenses as defined in § 233 of this title. When a fine, penalty or forfeiture is suspended, in whole or in part, the penalty assessment shall not be suspended.

(1) Upon collection of the penalty assessment, the same shall be paid over to the prothonotary or clerk of courts, as the case may be, who shall collect the same and transmit it to the State Treasury to be deposited in a separate account for the administration of this subsection, which account shall be designated the "Videophone Fund," which is hereby created. This fund is to be administered by the Criminal Justice Council. Funds shall be utilized to cover line charges, maintenance costs and purchase and upgrade of videophone systems used by state and local agencies in the criminal justice system.

(2) For each fiscal year, if the balance in the Videophone Fund exceeds $250,000, said funds shall be transferred to the General Fund of the State of Delaware on June 30. The Criminal Justice Council shall submit a detailed spending plan for the use of the videophone funds to the Director of the Office of Management and Budget and Controller General no later than September 30 of each fiscal year. No funds shall be expended until the plan is approved by the Director of the Office of Management and Budget and the Controller General.

(3) The courts may expunge the record of any videophone assessment which remains uncollected for a period in excess of 3 years.

(e)(1) If any school teacher or administrator who holds a license or certificate under Title 14 or who is a teacher or administrator in a charter school but is exempt from licensing under § 507(c) of Title 14 or is a teacher or administrator employed by any state agency or under contract to a state agency is convicted of a violation of § 904(c) of Title 4 as a felony offense in this title, any offense in Chapter 47 of Title 16, and/or any offense in the Delaware Code that is a crime against a child, or a similar statute of another state, commonwealth or the District of Columbia, the court shall forward a copy of the conviction data to the employing school district's superintendent, school person-in-charge or state agency head.

(2) If the arrest and conviction occurs outside the State of Delaware, the teacher or administrator shall notify the superintendent, school person-in-charge or state agency head by providing copies of the conviction documents and sentence.

A teacher or administrator who fails to comply with paragraph (e)(2) of this section shall be guilty of a violation.

(f) In addition to, and at the same time as, any fine, penalty or forfeiture is assessed to any criminal or traffic defendant or any child adjudicated delinquent, there shall be levied an additional penalty of $1.00 imposed and collected by the courts for crimes or offenses as defined in § 233 of this title. When a fine, penalty or forfeiture is suspended, in whole or in part, the penalty assessment shall not be suspended.

(1) Upon collection of the penalty assessment, the same shall be paid over to the prothonotary or clerk of courts, as the case may be, who shall collect the same and transmit it to the State Treasury to be deposited in a separate account for the administration of this subsection, which account shall be designated the "DELJIS Fund", which is hereby created. The Fund is to be administered by the DELJIS Director. Funds shall be utilized to cover line charges, maintenance costs and upgrading of software and hardware that comprise the system known as the Criminal Justice Information System (CJIS) utilized by state and local law-enforcement agencies in addition to

all agencies designated as "Criminal Justice Agencies".

(2) For each fiscal year, if the balance in the DELJIS Fund exceeds $250,000, said funds shall be transferred to the General Fund of the State on June 30. The DELJIS Director shall submit a detailed spending plan for the use of the DELJIS funds to the Director of the Office of Management and Budget and Controller General no later than September 30 of each fiscal year. No funds shall be expended until the plan is approved by the Director of the Office of Management and Budget and the Controller General.

(g)(1) In addition to, and at the same time as any fine, penalty or forfeiture is assessed to a criminal defendant, recipient of a civil offense, or any child adjudicated delinquent, there shall be levied an additional surcharge of 50% of the fine for the Transportation Trust Fund imposed and collected for any violations of Title 21.

(2) For fiscal years ending prior to July 1, 2008, no more than $1.5 million of the surcharge collected under this Section shall be deposited into the Transportation Trust Fund. Any amount in excess of $1.5 million collected prior to July 1, 2008, shall be deposited into the General Fund.

(3) If a fine or penalty is waived in whole or in part, the court may, in its discretion, waive up to the same percentage of the assessment.

(h) In addition to, and at the same time as, any fine or other penalty is assessed to any criminal or traffic defendant or any child adjudicated delinquent, there shall be levied an additional penalty of $15 imposed and collected by the courts for each crime and offense as defined in § 233 of this title or for any civil violation or civil penalty under this title or Title 21. When a fine or other penalty is suspended in whole or in part, the penalty assessment may not be suspended, except for a violation of § 4129 of Title 21.

(1) Upon collection of the penalty assessment, the assessment must be paid over to the prothonotary or clerk of courts, as the case may be, who shall collect the same and transmit it to the State Treasury to be deposited in a separate account for the administration of this subsection, which account shall be designated the "Fund to Combat Violent Crimes," which is hereby created.

(2) One-half of the Fund, but no more than $2,125,000 per year, shall be distributed to the Department of Safety and Homeland Security for use in connection with initiatives to combat violent crime. Funds distributed to the Department of Safety and Homeland Security hereunder may be used to cover salaries, overtime and other salary costs, expenses, equipment, and supplies for state troopers and other personnel.

(3) One-half of the Fund, but no more than $2,125,000 per year, shall be distributed to local law-enforcement agencies for use in connection with initiatives to combat violent crime. Funds may be used to cover overtime, expenses, equipment and supplies, and as otherwise set forth in paragraph (h)(6) of this section.

(4) The Fund to Combat Violent Crimes Committee shall administer the moneys distributable to local law-enforcement agencies hereunder. The Committee shall be comprised of 5 members, namely the Secretary of the Department of Safety and Homeland Security, the Superintendent of the Delaware State Police, the Attorney General, the President of the Delaware Police Chiefs Council and the President of the Delaware State Lodge of the Fraternal Order of Police, or the respective designees of such members. The Secretary of the Department of Safety and Homeland Security shall be the chairperson of the Committee.

a. All local law-enforcement agencies seeking funds hereunder shall submit a yearly request for funding to the Committee. Such request shall include, without limitation:

1. A detailed description of how the requested funds will be used by the local law-enforcement agency to combat violent crime;

2. The amount of any and all funds received by said local law-enforcement agency from the Fund during the previous 5 fiscal years; and

3. The name of the local law-enforcement agency requesting said funds and the name of the individual in such agency who shall be responsible for keeping accurate records as to the use of said funds.

b. In addition, prior to receiving any funds hereunder in any fiscal year, all local law-enforcement agencies shall certify in writing to the Committee that:

1. Funds received from the Fund to Combat Violent Crimes will supplement, not supplant, any nonstate funding to local law-enforcement agencies that would otherwise be available for activities funded under this paragraph;

2. The award of any funds hereunder shall not guarantee that funding shall be available to the same extent in future fiscal years;

3. The responsibility for any future decrease in funding shall be borne by the local law-enforcement agency, not the State.

c. The Committee may require such additional information from local law-enforcement agencies, and may otherwise adopt such procedures and forms, as shall be necessary for the effective administration of this paragraph.

(5) If a majority of the Committee determines that all of the funds requested by a local law-enforcement agency will be used for purposes permitted hereunder, the Committee shall authorize payment to each local law-enforcement agency as follows:

a. Each full-time local law-enforcement agency shall receive $15,000 per year and each part-time local law-enforcement agency shall receive $7,500 per year.

b. All funds in excess of the amounts set forth above shall be distributed to local law-enforcement agencies on a pro rata basis, based upon the local law-enforcement agency's actual strength of full-time sworn officers.

(6) Local law-enforcement agencies shall not be permitted to use moneys hereunder to cover salaries or other salary costs, except

overtime, unless the Committee:

a. Determines that sufficient funding is available from the Fund to Combat Violent Crimes to support such expenditures on a long-term basis; and

b. Issues a written opinion to that effect, signed by all of the members of the Committee and provided to the Governor and the chair and co-chair of the Joint Finance Committee, no earlier than June 30, 2012.

(7) Any funds granted to a local law-enforcement agency pursuant to paragraphs (h)(5) and (6) of this section that are not fully expended within 12 months of receipt thereof must be returned by the agency to the Fund to Combat Violent Crimes within 60 days, unless the agency has requested and has received an authorization in writing for an extension of up to 120 days by the Committee.

(8) Notwithstanding anything to the contrary herein, no more than $4.25 million of the funds collected under this paragraph in each fiscal year shall be deposited into the Fund to Combat Violent Crimes. Any amount in excess of $4.25 million in each fiscal year shall be deposited into the General Fund.

(9) For purposes of this section:

a. "Full-time local law-enforcement agency" shall mean any local law-enforcement agency providing continuous, 24-hour coverage to a county or municipality.

b. "Fund" shall mean the Fund to Combat Violent Crimes.

c. "Initiative to combat violent crime" means any initiative, plan, proposal, operation or strategy designed to reduce the prevalence of 1 more offenses classified as a "violent felonies" pursuant to § 4201(c) of this title.

d. "Local law-enforcement agency" means any county or municipal police department within this State, but does not include any county sheriff's office.

e. "Part-time local law-enforcement agency" shall mean any local law-enforcement agency providing less than continuous, 24-hour coverage to a county or municipality.

(i) Prior to any fine, penalty or forfeiture being assessed a criminal defendant or any child adjudicated delinquent, the Attorney General or other prosecuting agency shall notify the court if the victim was 62 years of age or older. In addition to, and at the same time as, any fine, penalty or forfeiture is assessed to any criminal defendant or any child adjudicated delinquent, there shall be levied an additional penalty of $100 imposed and collected by the courts for crimes or offenses in Chapter 5 of Title 11 where the victim was 62 years of age or older. When a fine, penalty or forfeiture is suspended, in whole or in part, the penalty assessment under this subsection shall not be suspended.

(1) Upon collection of the penalty assessment, the same shall be paid over to the prothonotary or clerk of courts, as the case may be, who shall collect the same and transmit it to the State Treasury to be deposited in a separate account for the administration of this subsection, which account shall be designated the "Senior Trust Fund", which is hereby created. The Fund is to be administered by the Director of the Division of Services for Aging and Adults with Physical Disabilities. The Fund shall be utilized in providing assistance for new or expanded programs on or after October 1, 2012, for the senior population. The Senior Trust Fund must be used to support the direct provision of aging services by community based service organizations.

(2) The Director of the Division of Services for Aging and Adults with Physical Disabilities shall submit a spending plan for providing assistance for new or expanded programs for the senior population to the Director of the Office of Management and Budget and Controller General no later than September 30 of each fiscal year. No funds shall be expended until the plan is approved by the Director of the Office of Management and Budget and the Controller General.

(j) In addition to, and at the same time as any fine, penalty, or forfeiture assessed to a criminal defendant or recipient of a civil offense, there shall be levied an additional penalty of $10 imposed and collected for any violations of Title 21. When a fine, penalty, or forfeiture is suspended, in whole or in part, this penalty assessment may not be suspended, except for a violation of § 4129 of Title 21.

(1) This penalty assessment shall, for collection purposes, have first priority over all other penalty assessments created by this section and shall:

a. Have first priority after payments to the Victim Compensation Fund and restitution, consistent with § 4106(c) of this title, and the Court Security Fund, created by § 8505 of Title 10; and

b. Have priority over all other penalty assessments, costs, or fees established by an act of the General Assembly.

(2) Upon collection of this penalty assessment, the assessment must be paid over to the State Treasury to be deposited in a separate account for the administration of this subsection, which account shall be designated as the "Volunteer Ambulance Company Fund" (Fund), which is hereby created.

(3) The Fund shall be administered by the State Fire Prevention Commission. The Commission shall pay the moneys from the Fund directly to each volunteer ambulance company in this State in proportion to the number of ambulance runs by a volunteer ambulance company out of the total number of ambulance runs by all volunteer ambulance companies in this State.

(4) For the purposes of this subsection:

a. "Ambulance runs" means volunteer ambulance company responses to dispatched calls for service.

b. "Basic life support (BLS)" shall have the same meaning as set forth in § 9702 of Title 16.

c. "Volunteer ambulance company" means a nonprofit ambulance company that is certified by the State Fire Prevention Commission and is providing basic life support services (BLS).

(Code 1852 §§ 2939-2941; Code 1915 § 4816; Code 1935 § 5304; 11 Del. C. 1953 § 4101; 57 Del. Laws, c. 508 §§ 1, 2; 63 Del. Laws, c. 140 § 1; 63 Del. Laws, c. 141 § 6; 70 Del. Laws, c. 461 § 1; 71 Del. Laws, c. 43 § 2; 71 Del. Laws, c. 387 § 1; 74 Del. Laws, c. 27 §§

7, 8; 74 Del. Laws, c. 68 § 70; 75 Del. Laws, c. 88 § 21(6); 75 Del. Laws, c. 424 § 1; 76 Del. Laws, c. 77 § 1; 76 Del. Laws, c. 133 § 1; 78 Del. Laws, c. 160 § 1; 78 Del. Laws, c. 239 § 1; 79 Del. Laws, c. 436 § 1; 80 Del. Laws, c. 74 § 1; 80 Del. Laws, c. 276 §§ 1, 2.)

§ 4102 Payment of costs upon acquittal.

(a) If, upon indictment or information, the defendant is acquitted, the costs shall be paid by the county.

(b) In cases of surety of the peace (which are herein deemed to be cases of a criminal nature) the court may order that the costs shall be paid by the defendant or by the prosecutor or by the county, as it deems just.

(Code 1852 §§ 2942, 2943; 20 Del. Laws, c. 596; Code 1915 § 4817; Code 1935 § 5305; 11 Del. C. 1953 § 4102; 63 Del. Laws, c. 140 § 1.)

§ 4103 Refund of fines upon reversal of conviction.

(a) The State Treasurer shall remit to each person, or to the attorney of such person, who has paid a fine upon a conviction which was later set aside by a court of higher jurisdiction upon a certiorari or appeal from the lower court.

(b) The State Treasurer shall pay the refund upon proper voucher drawn by the person, or by the attorney of such person, upon whom the fine was originally imposed when the voucher is accompanied by a certificate of the Prothonotary of any of the several counties showing that the conviction of the lower court upon which the fine was imposed has been set aside by a higher court.

(c) The State Treasurer shall remit the amount of any fine or costs to each person, or the attorney of such person, who has paid a fine upon conviction before a justice of the peace, which conviction was later set aside by the same Justice of the Peace Court. The State Treasurer shall pay such refund upon proper voucher drawn by such person, or by the attorney of such person, upon whom the fine was originally imposed when the voucher is accompanied by a certified copy of the docket entries of the case in the Justice of the Peace Court showing the setting aside of the conviction, together with the certificate of the Clerk of the Justice of the Peace Court, verifying the final disposition of the case, and stating that the remittance of the fine or costs to such person is proper.

(d) The State Treasurer shall remit the amount of any fine or costs to each person, or the attorney of such person, who has paid a fine upon conviction in the Court of Common Pleas, which conviction was later set aside by the Court of Common Pleas. The State Treasurer shall pay such refund upon proper voucher drawn by such person, or by the attorney of such person, upon whom the fine was originally imposed when the voucher is accompanied by a certified copy of the docket entries of the case in the Court of Common Pleas showing the setting aside of the conviction together with the certificate of the Clerk of the Court of Common Pleas verifying the final disposition of the case and stating that the remittance of the fine or costs to such person is proper.

(48 Del. Laws, c. 278 §§ 1, 2; 11 Del. C. 1953 § 4104; 56 Del. Laws, c. 394; 58 Del. Laws, c. 210; 63 Del. Laws, c. 140 § 1; 78 Del. Laws, c. 243 § 1.)

§ 4104 Fines, costs or restitution; how collected; holding operator's license as security for payment.

(a) When a court imposes a fine, costs or restitution upon a defendant, the court or justice of the peace may direct as follows:

(1) That the defendant pay the entire amount at the time sentence is imposed;

(2) That the defendant pay a specified portion of the fine, costs or restitution at designated periodic intervals, and in such case may direct that the fine, costs or restitution be remitted to a probation officer who shall report to the court, at such periods as the court may direct, any failure to comply with the orders; or

(3) Where the defendant is sentenced to a period of probation as well as fine, costs or restitution that payment of the fines, costs or restitution shall be a condition of the probation.

(b) Any court, including a justice of the peace, may, in its discretion, permit any person sentenced to pay a fine upon conviction of crime, in lieu of the payment of the fine ordered, to execute a bond acknowledging the amount of the fine imposed upon the person as a debt due and owing to this State and binding the person unto this State in an amount equal to 10 times the fine imposed. The bond shall be so conditioned that, should the amount of the fine imposed be paid to this State on or before the tenth day next following the day on which the fine is imposed, then in that event the bond shall be null and void. The bond shall contain a warrant of attorney authorizing the Prothonotary or any attorney of record in this State or elsewhere to appear in any court, including a justice of the peace, and confess judgment against the person so bound. Upon execution of the bond the convicted person shall be required to list on the reverse thereof all motor vehicles and real property owned by the person or in which the person has any title or interest with a description and the location thereof.

(c) Any court may, in its discretion, direct any person sentenced to pay a fine or restitution upon conviction of a crime, who is employed within this State or by a Delaware resident or employer, to execute an assignment of a specified periodic sum not to exceed 1/3 of the person's total earnings, which assignment shall direct the person's employer to withhold and remit that amount to this State up to the total of the fine, costs and restitution imposed.

An assignment of earnings executed in accordance with this subsection shall be binding upon an employer in the same manner as an attachment of wages pursuant to Title 10, except that an assignment need be filed only once with the employer who shall make the withholding and remittances until the full amount is paid. An amount of total earnings consistent with federal law may be assigned. An employer shall take no action against an employee who has executed an assignment, and the penalty imposed upon an employee solely because of an assignment under this subsection shall be in accordance with the manner set forth for attachments.

(d) For purposes of ensuring the payment of fines, restitution and the enforcement of any orders imposed under this section, the court shall retain jurisdiction over the convicted person until any fine or restitution imposed shall have been paid in full. The court may write off

the fines, costs and restitution of any convicted person when the court receives evidence that such person is deceased.

(e) Whenever any person lawfully possessed of an operator's license theretofore issued to the person by the Division of Motor Vehicles of the Department of Transportation of the State, or under the laws of any other state or territory, or of the District of Columbia, shall be arrested and charged with any violation of the traffic or criminal laws of this State, or of any political subdivision thereof, a court, as a condition of sentencing, may take and hold, as security for the payment of any fine, costs, restitution or Victims Compensation Fund assessment, the operator's license so issued to the defendant.

(f) Any person whose operator's license has been deposited with a court, pursuant to subsection (e) of this section above, shall be issued a receipt by the court taking said license upon a form substantially as set forth in this subsection, and thereafter said person shall be permitted to operate a motor vehicle upon the highways of the State during the pendency of the case in which the license was taken, unless the person's license or privilege to operate a motor vehicle is otherwise revoked, suspended or cancelled.

FORM OF RECEIPT

The operator's license of....., license number..... is held by the..... Court, State of Delaware, as security for the payment of a fine, costs, restitution or Victims Compensation Fund assessment in Case No..... Please accept this receipt as a substitute for that license as provided by Title 11, § 4104(e), Delaware Code, as amended. Payment is due by..... This receipt is not valid after said date. Failure to appear will result in license suspension. An attempt to secure, or the securing of, a duplicate operator's license during the period in which this court holds an operator's license shall be considered as a contempt of court under 11 Del. C., § 1271(3).

Judge

(g) The clerk of the court in which the sentence was imposed and for which a person's license was taken as security, pursuant to subsection (e) of this section, shall immediately forward to the Division of Motor Vehicles of the State the license if the person fails to pay by the date indicated in the receipt as prescribed by subsection (f) of this section above. The Director of the Division of Motor Vehicles shall, upon receipt of a license so forwarded by the clerk, suspend the operator's license and driving privileges of the defaulting driver until notified by the court that payment of the fine, costs, restitution or Victims Compensation Fund assessment has been made. If the person be from another state or territory or the District of Columbia of the United States, the Director of the Division of Motor Vehicles shall further advise the motor vehicle administrator of the state, territory or the District of Columbia of this State's suspension and request that said person's license to drive be suspended until the fine, costs, restitution or Victims Compensation Fund assessment have been paid.

(h) The clerk of the court in which the sentence was imposed and for which a person's operator's license was taken as security, pursuant to subsection (e) of this section, shall immediately return the person's operator's license upon payment of the fine, costs, restitution or Victims Compensation Fund assessment within the period as prescribed by the sentencing judge and as reflected in the form set forth in subsection (f) of this section.

(11 Del. C. 1953 § 4105; 57 Del. Laws, c. 198 § 2; 57 Del. Laws, c. 513 §§ 2, 3; 59 Del. Laws, c. 194 § 1; 59 Del. Laws, c. 269 § 1; 63 Del. Laws, c. 140 § 1; 63 Del. Laws, c. 141 §§ 7, 8; 63 Del. Laws, c. 223 §§ 1-4; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 110 § 5.)

§ 4105 Default in payment of fine; inability to pay.

(a) No person sentenced to pay a fine, costs or restitution upon conviction of a crime shall be ordered to be imprisoned in default of the payment of such fine, costs or restitution.

(b)(1) Where a person sentenced to pay a fine, costs, restitution or all 3, on conviction of a crime is unable or fails to pay such fine, costs, restitution or all 3, at the time of imposition of sentence or in accordance with the terms of payment set by the court, the court may order the person to report at any time to the Commissioner of the Department of Correction, or a person designated by the Commissioner, for work for a number and schedule of hours necessary to discharge the fine, costs or restitution imposed.

(2) For purposes of this section, the hourly rate shall be established in accordance with the then prevailing federal minimum wage, and shall be used in computing the amount credited to any person discharging fines, costs and restitution.

(3) In cases involving Justices of the Peace Courts, the Chief Magistrate thereof shall establish guidelines for the number of hours of work which may be assigned and the Courts shall adhere to said guidelines.

(4) The Department may approve public work assignments for convicted persons in accordance with subsection (c) of this section, whereupon the Commissioner, or a person designated by the Commissioner, may assign the convicted person to work under the supervision of any state, county or municipal agency on any project or assignment specifically certified for that purpose.

(5) The Department of Correction shall not compensate any convicted person assigned to work under the supervision of any state, county or municipal agency but shall credit such person with the number of hours of satisfactory service.

(6) When the number of such hours equals the number of hours imposed by the court, the Department shall certify this fact to the appropriate court, and the court shall proceed as if the fines, costs and restitution had been paid in cash. Fines, costs and restitution successfully worked off under this subsection shall not be considered as receivables of the court, but the records shall show the hours worked.

(7) Failure to comply with an order of the court made pursuant to this section shall be punishable as civil contempt and all courts shall have the power to punish as a civil contempt any convicted person who fails to comply with such an order.

(8) In the event a person serves all or part of a sentence of incarceration for contempt of court in accordance with this subsection, the length of the sentence being in the court's discretion and based upon the amount of the outstanding fines and costs, the court shall cancel

all or part of the fines and costs. The amount of fines and costs cancelled shall be commensurate with the amount of the time served.

(9) For any offense in which the penalty is civil, a court may order a person to report to the Commissioner of the Department of Correction, or a person designated by the Commissioner, for work under this subsection and consistent with the procedures of this subsection until the civil penalties and costs are discharged. Notwithstanding paragraph (b)(7) of this section, a person's failure to participate in work ordered under this paragraph is not punishable as contempt of court. A person's failure to participate in work ordered under this paragraph may result in the transfer of the judgment to the Office of State Court Collections Enforcement to be collected according to § 4104 of this title.

(c) Any agency of the State, county or any municipality or any nonprofit organization approved by the court may submit public work projects or proposed assignments to the Department of Correction for certification as approved public work projects under this section. Upon certification the agency will be notified and the Commissioner of the Department of Correction will be authorized to begin to assign convicted persons to the certified project or assignment.

(d) Notwithstanding subsection (a) of this section, where a defendant sentenced to be imprisoned is ordered to pay a fine, costs, restitution or all 3, the court may order an additional sentence of imprisonment in lieu of requiring the payment of the fine, costs, restitution or all 3; provided, however, that this additional sentence of imprisonment may not exceed 30 days, to be served concurrently or consecutively with the sentence originally imposed, as the court may order.

(e) A court having probationary powers may, in its discretion, treat any failure to comply with a court order in respect to fines, costs, restitution or all 3 either as a civil contempt or as if the defendant had been placed on probation and the probation violated; provided, however, that any sentence for violation of probation may not exceed 30 days.

(11 Del. C. 1953 § 4106; 57 Del. Laws, c. 198 § 3; 57 Del. Laws, c. 509; 57 Del. Laws, c. 513 § 4; 59 Del. Laws, c. 145 § 1; 59 Del. Laws, c. 270 § 1; 60 Del. Laws, c. 465 § 1; 62 Del. Laws, c. 220 § 1; 63 Del. Laws, c. 140 § 1; 63 Del. Laws, c. 141 § 9; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 19 § 1; 80 Del. Laws, c. 254 § 1.)

§ 4106 Restitution for property damage or loss.

(a) Any person convicted of stealing, taking, receiving, converting, defacing or destroying property, shall be liable to each victim of the offense for the value of the property or property rights lost to the victim and for the value of any property which has diminished in worth as a result of the actions of such convicted offender and shall be ordered by the court to make restitution. If the court does not require that restitution be paid to a victim, the court shall state its reason on the record. The convicted offender shall also be liable for direct out-of-pocket losses, loss of earnings and other expenses and inconveniences incurred by victim as a direct result of the crime. For each criminal offense resulting in arrest in which property is alleged to have been unlawfully taken, damaged or otherwise diminished in value, a loss statement shall be prepared, by the police or by the victim when there is no police involvement, documenting for the court the value of the property lost or diminished as a direct result of the crime.

(b) In accordance with the evidence presented to the court, the court shall determine the nature and amount of restitution, if any, to be made to each victim of the crime of each convicted offender. The offender shall be ordered to pay a fixed sum of restitution or shall be ordered to work a fixed number of hours under the work referral program administered by the Department of Correction, or both.

(c) In the event a convicted offender is ordered by the court to pay fines, costs or other financial obligations along with restitution, payments shall first be applied to Victim Compensation Fund, next to pay restitution and then to the other payments ordered to be made.

(d) Each court shall establish procedures for the collection and disbursement of funds ordered under this section, including notification of the victim that restitution has been ordered. Such procedures shall at minimum include the following:

(1) All restitution payments shall be disbursed to victims within 90 days of receipt or whenever the accumulated amount of the restitution payments received is $50 or more, whichever event first occurs.

(2) Where there are multiple victims, disbursements shall be in proportion to the amounts owed to each victim, with individuals to receive disbursements in full before insurance companies receive any disbursements.

(3) Any and all interest earned on deposited restitution payments shall be set aside and deposited on at least a quarterly basis to the Victim Compensation Fund.

Any and all principal amounts received as restitution payments which are unclaimed after 5 years from date of receipt shall be deposited in the Victim Compensation Fund.

If, at any time in the future, the victim owed restitution requests the transferred funds, and makes application to the Victim Compensation Fund Board, said moneys will be refunded, following verification by the transferring Court.

(e) An order of restitution may not preclude the victim from proceeding in a civil action to recover damages from the offender. A civil verdict shall be reduced by the amount of restitution paid under the criminal restitution order.

(63 Del. Laws, c. 141 § 1; 66 Del. Laws, c. 174 § 1; 67 Del. Laws, c. 260 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 220 § 1.)

Subchapter II

Special Law Enforcement Assistance Fund

§ 4110 Purpose; created.

The General Assembly hereby declares that in order to provide funds to enhance the suppression, investigation and prosecution of criminal activity, promote officer safety, facilitate the training of law-enforcement personnel, further public safety, public education, and community awareness and improve victim services, it is necessary to establish a fund for the use of law-enforcement agencies in the State. This special fund is hereby created and shall be known as the "Special Law Enforcement Assistance Fund."

(63 Del. Laws, c. 140 § 1; 79 Del. Laws, c. 107 § 1.)

§ 4111 Use.

(a) The use of money from the Special Law Enforcement Assistance Fund [SLEAF] must be for the purposes declared in § 4110 of this title. The Attorney General shall allocate resources and approve expenditures in respect of permitted uses in accordance with this subchapter, including any disbursement guidelines established under § 4113(a) of this title, and shall consider the recommendations of the SLEAF Committee, as defined below, in connection with any such allocation or approval.

(b), (c) [Repealed.]

(63 Del. Laws, c. 140 § 1; 77 Del. Laws, c. 176 § 1; 79 Del. Laws, c. 107 § 1.)

§ 4112 Source of funds.

(a) Upon the forfeiture of any money in a criminal case in any court of this State, the same shall be paid over to the Prothonotary or clerk of the court, as the case may be, who shall collect the same and transmit it to the State Treasurer to be held as special funds for the purposes referred to in §§ 4110 and 4111 of this title. The Special Law Enforcement Assistance Fund shall not include fines, court costs or restitution ordered by the court in any criminal case, nor shall it include bail forfeitures. It shall, however, include any money or the proceeds obtained from the sale or other disposition of any property which is forfeited to the State by determination of the court that the property was:

(1) Used for criminal purposes; or

(2) Obtained as the fruits of a criminal enterprise.

(b) Upon the signing of any forfeiture order pursuant to this section, the clerk of the court or the Prothonotary in which the order was signed shall transmit a copy of said order to the State Treasurer. If the forfeited money is not in the possession of the court clerk or Prothonotary, the money shall be transmitted to the State Treasurer, for deposit into the Special Law Enforcement Assistance Fund directly by the law-enforcement agency which is in possession of the money.

(63 Del. Laws, c. 140 § 1; 63 Del. Laws, c. 356 § 1; 67 Del. Laws, c. 260 § 1.)

§ 4113 Disbursement of funds [Effective until Sept. 26, 2016]

(a) The disbursement of funds from this account shall be made by the State Treasurer to a law-enforcement agency only upon written application by the agency and upon authorization by the Attorney General, the Director of the Office of Management and Budget and the Controller General on a form designed for such purpose by the Attorney General and the State Treasurer. Guidelines for appropriate uses of the fund shall be established by the Attorney General with the concurrence of the Director of the Office of Management and Budget and the Controller General.

(b) This application and authorization form must include the following information:

(1) The amount of funds requested;

(2) The anticipated purpose for which such funds are requested;

(3) The amount of any and all funds received by said agency from the Special Law Enforcement Assistance Fund during the previous 5 fiscal years; and

(4) The name of the agency requesting said funds and the name of the individual in that agency who shall be responsible for keeping accurate records as to the use of said funds.

(c) The Attorney General shall determine whether or not the expressed purposes for expenditures requested are:

(1) Included within those purposes allowed under this subchapter;

(2) Consistent with the disbursement guidelines; and

(3) In the best interests of law enforcement.

In determining whether proposed expenditures meet these criteria, the Attorney General shall periodically meet and confer with and consider the recommendations of a special advisory committee with respect to all such proposed expenditures, which special advisory committee is hereby created and shall be known as the "Special Law Enforcement Assistance Fund Committee" or "SLEAF Committee." Thereafter, the Attorney General, with the concurrence of the Director of the Office of Management and Budget and the Controller General, may authorize the expenditures in whole or in part and only then shall the funds be paid to the appropriate law-enforcement agencies. The recommendations of the Special Law Enforcement Assistance Fund Committee shall not be binding on the Attorney General, the Director of the Office of Management and Budget or the Controller General.

(d) The methods and procedures established for the application and expenditure of this Fund are not subject to the normal accounting practices set forth in Chapter 65 of Title 29.

(e) All records, applications, approvals, authorizations and reports required by this subchapter shall be exempt from disclosure under Chapter 100 of Title 29. In addition, the SLEAF Committee shall not be deemed a public body as defined in or otherwise subject to the open meeting provisions of Chapter 100 of Title 29.

(f) For purposes of this subchapter, the SLEAF Committee shall mean an advisory body comprised initially of the following 8 members:

(1) The State Prosecutor, acting on behalf of the Department of Justice, who shall serve as the Chairperson of the SLEAF Committee;

(2) The chief law-enforcement officer or other representative of the Delaware State Police;

(3) The chief law-enforcement officer or other representative of the New Castle County Police Department;

(4) The chief law-enforcement officer or other representative of the Wilmington City Police Department;

(5) The chief law-enforcement officer or other representative of the Dover City Police Department;

(6) An at-large representative of county, municipal and other local law-enforcement agencies located within New Castle County, as designated by the local chiefs' association;

(7) An at-large representative of county, municipal and other local law-enforcement agencies located within Kent County, as designated by the local chiefs' association; and

(8) An at-large representative of county, municipal and other local law-enforcement agencies located within Sussex County, as designated by the local chiefs' association.

The SLEAF Committee shall meet quarterly, at times and locations specified by the Chairperson, to review applications and make recommendations to the Attorney General with respect to applications and the allocation of funds. The SLEAF Committee may adopt such advisory committee bylaws or other rules or procedures governing the SLEAF Committee and the conduct of its affairs as the SLEAF Committee deems appropriate or necessary to carry out its duties under this subchapter.

(63 Del. Laws, c. 140 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 94 §§ 19, 20; 75 Del. Laws, c. 88 § 21(6); 79 Del. Laws, c. 107 § 1.)

§ 4113 Disbursement of funds [Effective Sept. 26, 2016] [For application of this section, see 80 Del. Laws, c. 281, § 3]

(a) The disbursement of funds from this account shall be made by the State Treasurer to a law-enforcement agency only upon written application by the agency and upon authorization by the Attorney General, the Director of the Office of Management and Budget and the Controller General on a form designed for such purpose by the Attorney General and the State Treasurer. Guidelines for appropriate uses of the fund shall be established by the Attorney General with the concurrence of the Director of the Office of Management and Budget and the Controller General.

(b) This application and authorization form must include the following information:

(1) The amount of funds requested;

(2) The anticipated purpose for which such funds are requested;

(3) The amount of any and all funds received by said agency from the Special Law Enforcement Assistance Fund during the previous 5 fiscal years; and

(4) The name of the agency requesting said funds and the name of the individual in that agency who shall be responsible for keeping accurate records as to the use of said funds.

(c)(1) The Attorney General shall determine whether or not the expressed purposes for expenditures requested are:

a. Included within those purposes allowed under this subchapter;

b. Consistent with the disbursement guidelines; and

c. In the best interests of law enforcement.

(2) In determining whether proposed expenditures meet these criteria, the Attorney General shall periodically meet and confer with and consider the recommendations of a special advisory committee with respect to all such proposed expenditures, which special advisory committee is hereby created and shall be known as the "Special Law Enforcement Assistance Fund Committee" or "SLEAF Committee." Thereafter, the Attorney General, with the concurrence of the Director of the Office of Management and Budget and the Controller General, may authorize the expenditures in whole or in part and only then shall the funds be paid to the appropriate law-enforcement agencies. The recommendations of the Special Law Enforcement Assistance Fund Committee shall not be binding on the Attorney General, the Director of the Office of Management and Budget or the Controller General.

(3) The SLEAF Committee shall develop procedures to allow an applicant to submit an application that the applicant believes would be exempted from the definition of public record contained in Chapter 100 of Title 29. Such an application shall not be a public record while the SLEAF Committee reviews the application to determine if the application, or any portion thereof, would be exempted from the definition of public record. If the SLEAF Committee determines the application, or any portion thereof, would not be exempted from the definition of public record, the applicant may withdraw the application within 10 business days of the determination. If the applicant withdraws the application, it shall be exempt from disclosure under Chapter 100 of Title 29 to the extent it would have been exempt prior to being submitted to the SLEAF Committee. If the applicant does not withdraw the application within the allotted 10 business days, the application shall thereafter be subject to Chapter 100 of Title 29.

(d) The methods and procedures established for the application and expenditure of this Fund are not subject to the normal accounting practices set forth in Chapter 65 of Title 29.

(e) All records, applications, approvals, authorizations and reports required by this subchapter shall be subject to Chapter 100 of Title 29. In addition, the SLEAF Committee shall be deemed a public body as defined in Chapter 100 of Title 29. Any records, applications, approvals, authorizations, and reports required by this subchapter may be redacted to the extent permitted by Chapter 100 of Title 29.

(f) For purposes of this subchapter, the SLEAF Committee shall mean an advisory body comprised initially of the following 8 members:

(1) The State Prosecutor, acting on behalf of the Department of Justice, who shall serve as the Chairperson of the SLEAF Committee;

(2) The chief law-enforcement officer or other representative of the Delaware State Police;

(3) The chief law-enforcement officer or other representative of the New Castle County Police Department;

(4) The chief law-enforcement officer or other representative of the Wilmington City Police Department;

(5) The chief law-enforcement officer or other representative of the Dover City Police Department;

(6) An at-large representative of county, municipal and other local law-enforcement agencies located within New Castle County, as designated by the local chiefs' association;

(7) An at-large representative of county, municipal and other local law-enforcement agencies located within Kent County, as designated by the local chiefs' association; and

(8) An at-large representative of county, municipal and other local law-enforcement agencies located within Sussex County, as designated by the local chiefs' association.

The SLEAF Committee shall meet quarterly, at times and locations specified by the Chairperson, to review applications and make recommendations to the Attorney General with respect to applications and the allocation of funds. The SLEAF Committee may adopt such advisory committee bylaws or other rules or procedures governing the SLEAF Committee and the conduct of its affairs as the SLEAF Committee deems appropriate or necessary to carry out its duties under this subchapter.

(63 Del. Laws, c. 140 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 94 §§ 19, 20; 75 Del. Laws, c. 88 § 21(6); 79 Del. Laws, c. 107 § 1; 80 Del. Laws, c. 281 § 1.)

§ 4114 Accounting of funds; permissible types of investigative activities.

(a) Each agency receiving funding from the Special Law Enforcement Assistance Fund during any fiscal year shall render on or before June 30 of each year a full and complete accounting for the use of such funds to the Attorney General, who shall attain such accountings for inspection by the State Auditor. Any funding received from the Special Law Enforcement Assistance Fund during any fiscal year that remains in the hands of any agency at the end of the fiscal year and that has not been earmarked for or allocated to expenditures that were authorized under this subchapter prior to the end of the fiscal year must be returned by the agency to the Special Law Enforcement Assistance Fund unless the agency has requested and received an authorization in writing for an extension of up to 120 days by the Attorney General.

(b) [Repealed.]

(63 Del. Laws, c. 140 § 1; 74 Del. Laws, c. 57 § 2; 78 Del. Laws, c. 28 § 1; 79 Del. Laws, c. 107 § 1.)

§ 4115 Review [Effective until Sept. 26, 2016]

Any agency receiving funds from the Special Law Enforcement Assistance Fund shall, on or before July 15, submit a detailed and complete accounting of the disbursement for all such funds from the prior fiscal year to the Auditor of Accounts and the Attorney General. The Auditor and Attorney General shall review said accounting and shall maintain them as confidential files. The Attorney General shall submit on or before October 1 of each year a confidential report to the Chairperson and Vice-Chairperson of the Joint Finance Committee summarizing the expenditures from this Fund during the preceding fiscal year.

(63 Del. Laws, c. 140 § 1.)

§ 4115 Review [Effective Sept. 26, 2016] [For application of this section, see 80 Del. Laws, c. 281, § 3]

Any agency receiving funds from the Special Law Enforcement Assistance Fund shall, on or before July 15, submit a detailed and complete accounting of the disbursement for all such funds from the prior fiscal year to the Auditor of Accounts and the Attorney General. The Auditor and Attorney General shall review said accounting and shall maintain them. The Attorney General shall submit on or before October 1 of each year a report to the Chairperson and Vice-Chairperson of the Joint Finance Committee summarizing the expenditures from this Fund during the preceding fiscal year.

(63 Del. Laws, c. 140 § 1; 80 Del. Laws, c. 281 § 2.)

§ 4116 Excess funds.

If at any time the amount of funds segregated in the Special Law Enforcement Assistance Fund exceeds $500,000, the excess shall be deposited in the General Fund.

(63 Del. Laws, c. 140 § 1; 74 Del. Laws, c. 111 § 33.)

Subchapter III

Sex Offender Management and Public Safety

§ 4120 Registration of sex offenders.

(a) Unless otherwise indicated, the definitions set forth in § 4121(a) of this title shall apply to this section. In addition, when used in this section, the phrase "custodial institution" includes any Level IV or V facility operated by or for the Department of Correction, the Division

of Youth Rehabilitative Services or the Delaware Psychiatric Center, or any like institution, and the phrase "temporary resident" shall include any person who is for more than 7 days or for more than an aggregate of 30 days in any 12-month period, employed or works in Delaware, or who is a full- or part-time student in Delaware. A student is any person who attends or enrolls in any public or private educational facility, including, but not limited to, colleges or universities.

(b)(1) Any sex offender who is released, discharged or paroled from any Level IV or Level V facility or other custodial institution after that sex offender has completed a sentence imposed following a conviction for any offense specified in § 4121(a)(4) of this title shall be required to register as a sex offender, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register. The registration shall be completed during the Level IV or V sentence, but not more than 90 days, nor less than 45 days, prior to the offender's release, discharge or parole. The registration information shall be collected from the sex offender by the agency having custody over the sex offender at the time specified herein for registration. This subsection shall apply to any sex offender who is sentenced to serve any portion of the sex offender's sentence at Level IV or V, unless such sentence is suspended in its entirety, in which case subsection (c) of this section shall apply. The registration required by this subsection shall be required whenever the sex offender is released from any Level V facility to any Level IV facility, and again when the offender is released from the Level IV facility.

(2) If an offender is released to a treatment program by the Division of Youth Rehabilitative Services and the date of release could not have been determined 45 days prior to release, registration shall be completed within 48 hours of determining the release date, or upon release, whichever is earlier, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register.

(3) If an offender is attending school, the offender shall inform the principal of the school upon enrollment of the offender's registration, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register.

(c) Any sex offender who is sentenced to Level IV home confinement, or to a period of probation at Level III or below, or who is required to pay a fine of any amount following a conviction for any offense specified in § 4121(a)(4) of this title shall be required to register as a sex offender, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register. The registration information shall be collected from the sex offender by the sentencing court following the conviction, but no later than the time of sentencing.

(d)(1) Registration information shall be collected by the agency or court specified in subsections (b) and (c) of this section on registration forms provided by the Superintendent of the Delaware State Police. The original copy of the completed and executed registration form shall be forwarded by the registering agency or court to the Superintendent of the Delaware State Police within 3 business days following the completion of the form. The completed registration form shall be signed by the sex offender and by a witness to the signature representing the registering agency or court. The Superintendent of the Delaware State Police shall notify the chief law-enforcement officer having jurisdiction over the sex offender's residence, place of employment, and/or study. The notice shall include, but is not limited to, all available registration information pertaining to the sex offender as set forth herein. The registration information shall be immediately entered into DELJIS by the registering agency or court, unless such agency or court does not have access to DELJIS in which case the completed registration form shall be immediately forwarded to the Superintendent of the Delaware State Police who shall immediately enter the registration information into DELJIS. Registration information entered into DELJIS pursuant to this subsection shall be entered into a database of registered sex offenders which shall be developed and maintained by DELJIS. Nothing herein shall prevent the use of the registered sex offender database for any lawful purpose. The Superintendent of the Delaware State Police shall have the authority to audit the registration forms and information, and shall have the authority to require the sex offender to provide revised or additional information, photographs, fingerprints or exemplars if those submitted are deemed to be insufficient, and the sex offender may be required to appear at a Delaware State Police facility for such purposes.

(2) The registration forms shall include, but are not limited to, the following information: the sex offender's legal name, any previously used names, aliases or nicknames, Social Security number, e-mail address or addresses, Internet identifiers, and the age, gender, race and physical description of the sex offender. The registration form shall also include all other known identifying factors, the offense history and the sex offender's current residences or anticipated place of future residences, places of study and/or places of employment, and the registration plate numbers and descriptions of any vehicles owned or operated by the offender, including any watercraft or aircraft with the locations where such vehicles are docked, parked or otherwise stored, copies of that offender's passport, any licenses to engage in an occupation or to carry out a trade or business, and the offender's home telephone number and any cellular telephone numbers. The forms shall also include a statement of any relevant conditions of release, discharge, parole or probation applicable to the sex offender. Additionally, the form shall identify the age of the victim or victims of the offense or offenses and describe the victim's relationship to the offender. The form shall also indicate on its face that false statements therein are punishable by law. A photograph of the offender taken at the time of registration shall be appended to the registration form. Notwithstanding any provision to the contrary, a DNA sample will also be taken from the offender. The resulting DNA profile will be submitted for entry into the Combined DNA Index System (CODIS). All information collected pursuant to this paragraph shall be kept in digitized form in an electronic database maintained by the designated Delaware Police facility responsible for registration.

(e)(1) Any person convicted of any offense specified in the laws of another state, commonwealth, territory, or other jurisdiction of the

United States or any foreign government, which is the same as, or equivalent to, any of the offenses set forth in § 4121(a)(4) of this title; or any person convicted of any federal or military offense enumerated in 42 U.S.C. § 16911(5)(A)(iii) and (iv), who is a permanent or temporary resident of the State on the date of that person's conviction shall register as a sex offender within 3 business days of conviction, unless the person is confined in a penal institution located outside the State at the time of conviction, in which case the person shall register as a sex offender within 3 business days of that person's first return to the State of Delaware after release from custody. Any such person shall register at a designated Delaware State Police facility, and the Delaware State Police shall be deemed to be the registering agency.

(2) Any person convicted of any offense specified in the laws of another state, the United States or any territory of the United States, or any foreign government, which is the same as, or equivalent to, any of the offenses set forth in § 4121(a)(4) of this title; or any person convicted of any federal or military offense enumerated in 42 U.S.C. § 16911(5)(A)(iii) and (iv), who is not a permanent or temporary resident of the State on the date of that person's conviction, and who thereafter becomes a permanent or temporary resident of the State shall register as a sex offender within 3 business days of establishing permanent or temporary residency within the State. Any such person shall register at a designated Delaware State Police facility, and the Delaware State Police shall be deemed to be the registering agency.

(3) Any person convicted as described in paragraph (1) or paragraph (2) of this subsection, who is thereafter released on probation, parole or any form of early release which is supervised or monitored by the Department of Correction or the Division of Youth Rehabilitative Services shall be registered pursuant to this subsection. The Department of Correction or the Division of Rehabilitative Services shall ensure and verify such registration.

(f)(1) Any sex offender who is required to register pursuant to this section who thereafter changes the sex offender's own name, residence address or place of employment and/or study shall reregister with the Delaware State Police by appearing in person within 3 business days of the change. The sex offender shall be required to provide adequate verification of residence at the stated address. The Superintendent of the Delaware State Police shall be deemed to be the registering agency and shall comply with the requirements of subsection (d) of this section.

(2) Within 3 business days of receiving a re-registration as provided in paragraph (f)(1) of this section, the Superintendent of the Delaware State Police shall notify the chief law-enforcement officer having jurisdiction over the sex offender's prior residence, place of employment or study and the chief law-enforcement officer having jurisdiction over the offender's new residence, or place of employment or study. The notice shall include, but is not limited to, all available registration information pertaining to the sex offender as set forth in subsection (d) of this section.

(3) Whenever a sex offender who is required to register re-registers pursuant to this subsection, notification shall be provided pursuant to the requirements of § 4121 of this title.

(4) Any agency or court which collects information from a sex offender pursuant to this section shall, at the time of registration, provide written notice to the sex offender of the offender's duty to re-register pursuant to this section. The written notice shall also inform the offender that if the offender changes residence to another State, such new address must be registered with the Delaware State Police, with the law-enforcement agency having jurisdiction over the offender's new residence, and that the offender must comply with any sex offender registration requirement in the new state of residence. The written notice shall also inform the offender that the offender must also comply with any sex offender registration requirement in any state where the offender is employed, carries on a vocation, or is a student. The written notice shall be provided on forms provided by the Superintendent of the Delaware State Police. Receipt of this written notice shall be acknowledged by the sex offender, who shall sign the original copy of the written notice. The original copy of the written notice shall be forwarded to the Superintendent of the Delaware State Police along with the registration form. Failure of the registering agency to provide such written notice shall not constitute a defense to any prosecution based upon a violation of this section.

(5) The requirements of this subsection shall apply regardless of whether the sex offender's new residence is located within or without the State.

(6) Any sex offender who is required to re-register pursuant to this subsection, who is serving a sentence at Level II, III or IV at the time of such re-registration, may re-register with the agency supervising that sex offender's sentence within 3 business days of the change of address.

(7) For purposes of this subchapter, "residence" shall be defined as the real property the person owns as a place of abode, the real property the person leases as a place of abode, the real property the person uses as a place of abode, the real property where the person vacations for a period greater than 2 weeks within a 1-year period, and the real property where the person is an overnight guest for a period greater than 2 weeks within a 1-year period. A sex offender may have more than 1 address that meets this definition of residence at the same time. If the sex offender has more than 1 residence address at the same time, the offender must register each of those addresses. In any prosecution for the offense of failing to re-register as a sex offender, the prosecution shall not be required to prove that the sex offender abandoned one residence in order to establish that the offender established another residence.

(g) Any person required to register as a sex offender pursuant to this section shall be required periodically to verify that the person continues to reside at the address provided at the time of registration. The frequency of periodic address verification shall be:

(1) Every 90 days for life following the date of completion of the initial registration form if the person is designated to Risk Assessment Tier III pursuant to § 4121 of this title. A Tier III offender shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registry information every 90 days for life; or

(2) Every 6 months after the completion of the initial registration form, if the person is designated to Risk Assessment Tier II pursuant to § 4121 of this title. A Tier II offender shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registry information every 6 months unless relieved of registration obligations.

(3) Every year after the completion of the initial registration form, if the person is designated to Risk Assessment Tier I pursuant to § 4121 of this title. A Tier I offender shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registry information every 12 months unless relieved of registration obligations.

There shall be assessed an annual administrative fee in the amount of $30 collected from the offender by January 31 of each year payable at the time of verification.

(h) Any sex offender required to register pursuant to this section who seeks relief or redesignation must petition the Superior Court for release from the registration requirements as set forth in § 4121(e)(2) of this title.

(i) Any agency responsible for complying with this section may promulgate reasonable regulations, policies and procedures for the purpose of implementing this section. Such rules, regulations, policies and procedures shall be effective and enforceable upon their adoption by the agency, and shall not be subject to Chapter 11 or Chapter 101 of Title 29.

(j) All elected and appointed public officials, public employees or public agencies including but not limited to the members of the Sex Offender Management Board, are immune from civil liability for any discretionary decision to release relevant information, unless it is shown that the official, employee or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public. There shall be no civil legal remedies available as a cause of action against any public official, public employee or public agency for failing to release information as authorized in this section.

(k) A warrant shall issue for any sex offender required to register who knowingly or recklessly fails to register or re-register or provide verification on the date on which it is required pursuant to this section or § 4121 of this title or to otherwise comply with any of the provisions of this section or § 4121 of this title, and any sex offender doing so shall be guilty of a class G felony.

(l) Any registration or re-registration information collected by the Superintendent of the Delaware State Police pursuant to this section shall be promptly forwarded to the Federal Bureau of Investigation for use pursuant to 42 U.S.C. § 14072 [repealed, but see 42 U.S.C. § 16919].

(m) Notwithstanding any law, rule or regulation to the contrary, any law-enforcement agency may release relevant information collected pursuant to this section where it is necessary to protect the public concerning a sex offender required to register pursuant to this section, except that the identity of a victim of the offense, any arrests not resulting in conviction, the offender's social security number and travel and/or immigration document numbers shall not be released.

(69 Del. Laws, c. 282 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 397 §§ 1-19, 23[24], 24[25], 25[26], 23[27]; 71 Del. Laws, c. 203 §§ 1-5; 71 Del. Laws, c. 429; 73 Del. Laws, c. 122 §§ 2, 3; 73 Del. Laws, c. 245 §§ 1-3; 73 Del. Laws, c. 418 §§ 1, 2; 76 Del. Laws, c. 25 §§ 1-8; 76 Del. Laws, c. 88 § 4; 76 Del. Laws, c. 374 §§ 1-3; 77 Del. Laws, c. 148 §§ 1-11; 78 Del. Laws, c. 367 § 1; 79 Del. Laws, c. 123 § 3.)

§ 4120A Sex Offender Management Board.

(a) The General Assembly hereby declares that the comprehensive evaluation, identification, classification, treatment, and continued monitoring of sex offenders who are subject to the supervision of the criminal justice system is necessary in order to work toward the reduction of recidivism by such offenders. Therefore, the General Assembly hereby creates a Board which shall develop and standardize the evaluation, identification, classification, treatment, and continued monitoring of sex offenders at each stage of the criminal justice system so that such offenders will curtail recidivistic behavior and the protection of victims and potential victims will be enhanced. The General Assembly hereby recognizes that some sex offenders cannot or will not respond to treatment and that, in creating the Board described in this section, the General Assembly does not intend to imply that all sex offenders can be successful in treatment. Further, the General Assembly mandates that each member agency as outlined below must act in accordance with the standards established by the Board.

(b) Definitions. — As used in this section, unless the context otherwise requires, the following words and phrases shall have the meaning ascribed to them in this section:

(1) "Board" means the Sex Offender Management Board created in this § 4120A.

(2) "Sex offender" or "offender" means any person who has ever been convicted or adjudicated of an offense as defined in Title 11, §§ 761 and 4121(a)(4) of this title.

(3) "Treatment" means therapy, monitoring, and supervision of any sex offender which conforms to the standards created by the State's Sex Offender Management Board.

(c) Creation of the Sex Offender Management Board. —

(1) There is hereby created, in the Delaware Department of Safety and Homeland Security, a Sex Offender Management Board which shall consist of the following members:

a. The President Judge of the Delaware Superior Court, or the President Judge's designee;

b. The Commissioner of the Delaware Department of Correction, or the Commissioner's designee;

c. A representative from the Office of Probation and Parole appointed by the Commissioner of the Delaware Department of

Correction;

d. The Chairperson of the Board of Parole or the Chairperson's designee;

e. A representative from the Division of Prevention and Behavioral Health Services appointed by the Secretary for the Delaware Department of Children, Youth and Their Families;

f. One licensed mental health professional with experience in treatment of adult sex offenders appointed by the Governor, and who shall serve on the Board for a term of 4 years;

g. One member at-large who can represent sex abuse victims, victims' rights organizations, and/or the community at large appointed by the Governor, and who shall serve on the Board for a term of 4 years;

h. The Secretary for the Delaware Department of Health and Social Services, or the Secretary's designee;

i. The Superintendent of the Delaware State Police, or the Superintendent's designee;

j. One member who is a recognized expert in the treatment of juvenile sex offenders, appointed by the Governor, and who shall serve on the Board for a term of 4 years;

k. The Attorney General for the State, or the Attorney General's designee;

l. The Chief Defender of the State, or the Chief Defender's designee;

m. The Chairperson of the Police Chief's Council of Delaware, or the Chairperson's designee;

n. Two members appointed by the Governor who are recognized experts in the field of sexual abuse and who can represent sexual abuse victims and victims' rights organizations, and who shall serve on the Board for a term of 4 years;

o. A member of the Delaware State Police Sex Offender Registry appointed by the Superintendent of the Delaware State Police;

p. The Executive Director of Delaware Criminal Justice Information System (DELJIS), or the Executive Director's designee;

q. A representative from Youth Rehabilitative Services appointed by the Secretary for the Delaware Department of Children, Youth and Their Families;

r. One member from the Delaware Department of Education who has experience in dealing with juvenile sex offenders in the public school system appointed by the Secretary for the Delaware Department of Education;

s. The Chief Judge of Family Court or the Chief Judge's designee; and,

t. The Secretary for the Delaware Department of Safety and Homeland Security, or the Secretary's designee.

(2) Members shall serve without compensation.

(3) The Secretary of the Delaware Department of Safety and Homeland Security shall preside as Chairperson of the Board or shall appoint a presiding officer for the Board from among the members appointed in paragraph (c)(1) of this section who shall preside over the Board as Chairperson for a period not to exceed 2 years.

(4) The Board shall elect from amongst its membership, a Vice Chair, who shall become the Chairperson of the Board upon the expiration of the Chairperson's term.

(5) The Board shall meet on a regular basis. Meetings shall be subject to all relevant open-meeting laws and regulations.

(6) The Sex Offender Management Board shall adopt bylaws, within 6 months from the enactment of this section, to govern itself. Such bylaws shall include, at a minimum, the factors outlined within this section.

(7) The Board may, as needed and appropriate, create subcommittees, task forces, or working groups to explore specific issues or opportunities or to provide subject matter expertise in the promulgation of the rules and regulations and the development of standards and programs as they relate to the evaluation, identification, classification, treatment and continued monitoring of sex offenders within the criminal justice system.

(8) The Board shall adopt rules and regulations to effectuate compliance by all affected agencies.

(d) The duties and authority of the Sex Offender Management Board shall be as follows:

(1) Prior to January 1, 2011, the Board shall develop and prescribe a standardized procedure for the evaluation, identification, and classification of adult and juvenile sex offenders. Such procedure shall provide for an evaluation, identification, and classification of the offender and recommend behavior management, monitoring, and treatment based upon the knowledge that some sex offenders are extremely habituated and that there is no known cure for the propensity to commit sexual abuse. The Board shall develop and implement measures of success based upon a no-cure policy for intervention. The Board shall develop and implement methods of intervention for sex offenders which have as a priority the physical and psychological safety of victims and potential victims and which are appropriate to the needs of the particular offender, so long as there is no reduction of the safety of victims and potential victims.

(2) Prior to January 1, 2011, the Board shall develop guidelines and standards for a system of programs for the treatment of sex offenders which can be utilized by offenders who are incarcerated or under the supervision of the Department of Correction or the Board of Parole. The programs developed pursuant to this subsection shall be as flexible as possible so that such programs may be utilized by each offender to prevent the offender from harming victims and potential victims. Such programs shall be structured in such a manner that the programs provide a continuing monitoring process as well as a continuum of treatment programs for each offender as that offender proceeds through the criminal justice system and may include, but shall not be limited to, group counseling, individual counseling, outpatient treatment, inpatient treatment, or treatment in a therapeutic community. Also, such programs shall be developed in such a manner that, to the extent possible, the programs continue to be accessible by all offenders in the criminal justice system.

(3) On or before January 1, 2011, the Board shall consult on and approve the risk assessment screening instrument to assist any

sentencing authority in determining the likelihood that an offender would commit 1 or more sex offenses. In carrying out this duty, the Board shall consider sex offender risk assessment research and shall consider as 1 element the risk posed by a sex offender who suffers from a mental abnormality, psychosis, or personality disorder that makes the person more likely to engage in sexually violent predatory offenses.

(4) The Board shall develop criteria for measuring a sex offender's progress in treatment. The criteria shall be designed to assist the Courts and the State Board of Parole in determining whether a sex offender would pose an undue public safety threat to the community if that sex offender were released from incarceration, released to a reduced level of supervision, or discharged from probation or parole. The criteria shall not limit the decision-making authority of the courts or the State Board of Parole.

(5) The Board shall research and analyze the effectiveness of the monitoring and tracking, evaluation, identification, classification, and treatment procedures and programs developed pursuant to this section. The Board shall also develop and prescribe a system for implementation of the guidelines and standards developed pursuant to this § 4120A and for tracking offenders who have been subjected to evaluation, identification, classification, and treatment pursuant to this section. The Board shall implement the guidelines and standards so developed in this § 4120A by no later than January 1, 2012.

(6) The Board shall research and analyze the safety issues raised by living arrangements for and the location of sex offenders within the community, including but not limited to shared or structured living arrangements. At a minimum, the Board shall consider the issues raised by the location of sex offender residences, especially in proximity to public or private schools and child care facilities, and public notification of the location of sex offender residences. On or before July 15, 2010, the Board shall prepare and submit a report concerning the research and analysis conducted pursuant to this paragraph and any related legislative recommendations. The Board shall submit the report to the Public Safety, Judiciary and Corrections Committees of the House of Representatives and the Senate. On or before January 1, 2012, the Board shall adopt such guidelines as it may deem appropriate regarding the living arrangements and location of sex offenders. The Board shall accomplish the requirements specified in this paragraph within existing appropriations.

(7) Prior to January 1, 2012, the Board, in collaboration with law-enforcement agencies, victim advocacy organizations, the Department of Education, and the Department of Safety and Homeland Security, shall develop, for use by schools, educational materials regarding general information about sex offenders, safety concerns related to sex offenders, and other relevant material. The Board shall provide these materials to the Department of Education, and the Department of Education shall make these materials available to schools in the State.

(8) The Board and the individual members thereof shall be immune from any liability, whether civil or criminal, for the good faith performance of the duties of the Board as specified in this section except when such performance constitutes wilful or wanton conduct or gross negligence.

(e) Each sex offender sentenced by a court for an offense committed on or after January 1, 2010, shall be required, as a part of any sentence to probation, community corrections, or incarceration with the Department of Correction, to undergo treatment to the extent appropriate to such offender based upon the recommendations of the evaluation and identification.

(f) Each sex offender placed on parole by the State Board of Parole on or after January 1, 2010, shall be required, as a condition of such parole, to undergo treatment based upon the recommendations of the evaluation and identification regarding such offender during the offender's incarceration or any period of parole.

(g) The Board shall require any person who applies for placement, including any person who applies for continued placement, on the list of persons who may provide sex offender treatment and sex offender services pursuant to this section, to submit fingerprints and other necessary information in order to obtain the following:

(1) A report of the applicant's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Bureau of Identification Central Repository contains no such information relating to that person.

(2) A report of the applicant's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for the purposes of this section and the Board shall be the screening point for the receipt of said federal criminal history records.

(3) The Board may obtain such other information and recommendations from third parties which may be relevant to the applicant's fitness to provide sex offender treatment and sex offender services pursuant to this section.

(h) The Board shall use the information obtained from the State and national criminal history record check and the current background investigation in determining whether to place or continue the placement of the person on the approved provider list.

(76 Del. Laws, c. 88 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 148 §§ 30-32; 77 Del. Laws, c. 327 § 210; 79 Del. Laws, c. 123 § 4; 80 Del. Laws, c. 26 § 3.)

§ 4121 Community notification of sex offenders on probation, parole, conditional release or release from confinement.

(a) When used in this subchapter:

(1) "Community notification" means notice which is provided by any method devised specifically to notify members of the public who are likely to encounter a sex offender. Methods of notification may include, but not be limited to, door-to-door appearances, mail, electronic mail, telephone, fax, newspapers or notices, or any combination thereof, to schools, licensed day care facilities, public libraries, any other organization, company or individual upon request, and other accessible public facilities within the community.

"Community notification" also includes notice provided through an alert system added to the Delaware State Police Sex Offender Registry Internet Web Site that allows governmental agencies, public officials (such as county or municipal Executives, Mayors, Commissioners, or Council Members), and members of the general public to register to receive updates by geographical region whenever a sex offender is added to, deleted from, or has any change in status on the registry created pursuant to § 4120 of this title. Community notification shall include where possible all information required to be included in the searchable records pursuant to paragraph (a)(3) of this section.

(2) "Conviction" and "convicted" shall include, in addition to their ordinary meanings, adjudications of delinquency and persons who enter a plea of guilty, or are found guilty but mentally ill or not guilty by reason of insanity, as provided in § 401 of this title.

(3) "Searchable records available to the public" means records regarding every sex offender who has been convicted and who is thereafter designated to Risk Assessment Tier II or III pursuant to this section. Such records shall also include the last verified addresses for the offender, and shall identify the specific sex offense or offenses for which the offender was convicted, the date or dates of the convictions and all information required for registration pursuant to § 4120(d)(2) of this title as is practicable given the method of community notification, except that relationship to the victim shall not be a searchable record and age of victim shall be searchable only by age ranges birth to 11 years, 12 to 15 years, 16 to 17 years, and 18 and above. The records may also include other information designated for public access by the Superintendent of the Delaware State Police. Exempt from the records are the identity of the victims, the Social Security number of the offender, and arrests that did not result in conviction. The public access records shall include a warning that information should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address. The warning shall note that any such action could result in civil or criminal penalties. These records shall be searchable by the name of the sex offender, by suitable geographic criteria, and by as many other required data elements as is technically feasible. These records shall be made available upon request through police agencies, public libraries, public schools and the Internet. The records shall be maintained by the Superintendent of the Delaware State Police, as set forth in § 4120 of this title, and elsewhere in this section. They shall be updated as often as practicable, but not less than every 3 months.

(4) "Sex offender" means any person who is, or has been:

a. Convicted of any of the offenses specified in §§ 765 through 780, § 787(b)(3)-(4), § 1100A, §§ 1108 through 1112B, § 1335(a)(6), § 1335(a)(7), § 1352(2), § 1353(2) or § 1361(b) of this title, or of any attempt or conspiracy to commit any of the aforementioned offenses; or

b. Any juvenile who is adjudicated delinquent of any offense which would constitute any of the offenses set forth in paragraph (a)(4)a. of this section if that juvenile delinquent had been charged as an adult; or

c. Convicted or adjudicated delinquent of any offense specified in the laws of another state, commonwealth, territory, or other jurisdiction of the United States requiring registration in that jurisdiction, or a conviction or adjudication in any foreign government, which is the same as, or equivalent to, any of the offenses set forth in paragraph (a)(4)a., (a)(4)b. or (a)(4)d. of this section; or convicted of any federal or military offense enumerated in 42 U.S.C. § 16911(5)(A)(iii) and (iv); or

d. Convicted or adjudicated delinquent of a violation of § 783(4) or § 783(6) or § 783A(4) or § 783A(6) of this title; or

e. Charged by complaint, petition, information or indictment with any of the offenses set forth in paragraph (a)(4)a., (a)(4)b., (a)(4)c. or (a)(4)d. of this section, and who thereafter pleads guilty to any offense included in the originally charged offense, as provided in § 206 of this title, if the person is thereafter designated as a sex offender by the sentencing judge pursuant to subsection (c) of this section; or

f. Convicted or adjudicated delinquent of any of the offenses set forth in paragraph (a)(4)a., (a)(4)b., (a)(4)c. or (a)(4)d. of this section, or of any offense which is the same as or equivalent to such offenses as the same existed and were defined under the laws of this State existing at the time of such conviction; or

g. Any person convicted after June 27, 1994, of a violation of § 764 of this title if the person had previously been convicted of the same offense or any other offense set forth in this paragraph, and the previous conviction occurred within 5 years of the date of the conviction for the current offense.

(b) Upon a person's conviction or adjudication of delinquency or at the time of sentencing for any offense set forth in paragraph (a)(4)a., (a)(4)b., (a)(4)d., (a)(4)e., (a)(4)f., or (a)(4)g. of this section, the court shall inform the person that the person shall be designated as a sex offender and that a Risk Assessment Tier will be assigned to that person by the court, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register.

(c) Following the sentencing of a person convicted or adjudicated delinquent for any offense described in paragraph (a)(4)e. of this section, or following a finding by the sentencing court that the person has violated the terms of that person's own probation or parole as set forth in paragraph (a)(4)f. of this section, the sentencing court shall assign the defendant to the Risk Assessment Tier applicable for the originally charged offense, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register.

(d) Sex offenders shall be assigned to a Risk Assessment Tier as follows, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register:

(1) Risk Assessment Tier III. — Any sex offender convicted or adjudicated delinquent of any of the following offenses shall be designated by the court to Risk Assessment Tier III:

a. Rape in the first degree, rape in the second degree, rape in the third degree if the offense involved a child under the age of 13 or the offense involved force or threat of physical violence, or was without consent, unlawful sexual contact in the first degree, unlawful sexual intercourse in the first or second degree, unlawful sexual penetration in the first or second degree, unlawful sexual contact in the first degree, sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree, sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree if the offense involved a child under the age of 13, continuous sexual abuse of a child, sexual exploitation of a child, trafficking in persons where the victim is under the age of 13 or the offense involved sexual servitude of a minor through force or threat of force, sexual extortion if the offense involved force or threat of force, dangerous crime against a child if the offense involved force or the threat of force; or

b. Kidnapping in the first or second degree, if a purpose of the crime was to take or entice any child less than 18 years of age from the custody of the child's parent, guardian, or lawful custodian, where the defendant is not a parent, step parent, or guardian of the victim, to inflict physical injury upon the victim, or to violate or abuse the victim sexually; or

c. Federal offenses found at 18 U.S.C. § 2241, § 2242, § 2244, or any comparable military offense specified by the Secretary of Defense under § 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. § 951 note); or

d. Any attempt or conspiracy to commit any of the offenses set forth in paragraph (d)(1)a. or (d)(1)b. of this section; or

e. Any offense specified in the laws of another state, any territory of the United States or any foreign government, which is the same as, or equivalent to, any offense set forth in paragraphs (d)(1)a. through (d)(1)e. of this section; or

f. Upon motion of the State, any person convicted of any felony set forth in §§ 761 through 777 or §§ 1108 through 1112A of this title which is not otherwise set forth in paragraphs (d)(1)a. through (d)(1)c. of this section, if the victim of the offense had not yet reached that victim's sixteenth birthday at the time of the crime, and if the sentencing court determines by a preponderance of the evidence, after it weighs all relevant evidence which bears upon the particular facts and circumstances of the offense and the character and propensities of the offender, that public safety will be enhanced by assigning the offender to Risk Assessment Tier III.

(2) Risk Assessment Tier II. — Risk Assessment Tier II. Any sex offender convicted or adjudicated delinquent of any of the following offenses shall be designated by the court to Risk Assessment Tier II:

a. Rape in the third degree unless the offense involved a child under 12 or the offense involved force or the threat of physical violence, rape in the fourth degree, sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree unless the offense involved a child under 12, unlawful sexual contact in the second degree, unlawful sexual intercourse in the third degree, unlawful sexual penetration in the third degree, sexual extortion unless the offense involved force or the threat of force, bestiality, dangerous crime against a child unless the offense involved force or the threat of force, unlawfully dealing in child pornography, possession of child pornography, providing obscene materials to a person under the age of 18, sexual solicitation of a child, trafficking in persons where the offense involved sexual servitude of a minor aged 13 to 17 years old unless the offense involved force or threat of force, promoting prostitution in the second degree, promoting prostitution in the first degree; or

b. Federal offenses found at 18 U.S.C. § 2243, § 2244, § 2251, § 2251A, § 2252, § 2252A, § 2260, § 2421, § 2422(b), § 2423(a); or

c. Any comparable military offense specified by the Secretary of Defense under § 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. § 951 note); or

d. Any attempt or conspiracy to commit any of the offenses set forth in paragraph (d)(2)a. of this section; or

e. Any offense specified in the laws of another state, the United States, any territory of the United States or any foreign government, which is the same as, or equivalent to, any of the offenses set forth in paragraph (d)(2)a. and b. of this section; or

f. Upon motion of the State, any person convicted of any offense set forth in §§ 761 through 767 or §§ 1108 through 1111 or § 1321(5) or § 1352(2) or § 1353(2) of this title which is not otherwise specified in this paragraph, or in paragraph (d)(1) of this section, if the sentencing court determines by a preponderance of the evidence after it weighs all relevant evidence which bears upon the particular facts and circumstances or details of the commission of the offense and the character and propensities of the offender, that public safety will be enhanced by assigning the offender to Risk Assessment Tier II; or

g. Any person described in paragraph (a)(4)f. of this section.

(3) Risk Assessment Tier I. — Risk Assessment Tier I. Any sex offender not otherwise designated to Risk Assessment Tier II or III in accord with paragraphs (d)(1) and (2) of this section shall be designated by the court to Risk Assessment Tier I. Moreover, offenders convicted of the following federal offenses shall register under Tier I: 18 U.S.C. § 1591; § 1801; § 2252(CP) [sic]; § 2252B; § 2252C; § 2422(a); § 2423(b), (c); § 2424; § 2425; or any comparable military offense specified by the Secretary of Defense under § 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. § 951 note).

(4) Notwithstanding any provision of this section to the contrary, any sex offender who has previously been convicted of any offense set forth in paragraph (d)(1) or paragraph (d)(2) of this section and who is thereafter convicted of any second or subsequent offense set forth in paragraph (d)(1) or paragraph (d)(2) of this section shall be designated to Risk Assessment Tier III.

(5) Notwithstanding any provision in this section to the contrary, any sex offender who has previously been convicted of any offense set forth in paragraph (d)(3) of this section and who is thereafter convicted of an offense which would otherwise result in a designation to Risk Assessment Tier I shall be designated to Risk Assessment Tier II if the conviction for the subsequent offense occurred within 5 years of the previous conviction.

(6) Notwithstanding any provision in this section or in § 4120 of this title to the contrary, any person who would otherwise be designated as a sex offender pursuant to this section and to § 4120 of this title may petition the sentencing court for relief from such designation, and from all obligations imposed by this section and § 4120 of this title if:

a. The Tier II or Tier III offense for which the person was convicted was a misdemeanor and the victim was not a child under 13 years of age; and

b. The person has not previously been convicted of a violent felony, or any other offense set forth in paragraph (a)(4) of this section, or of any offense specified in the laws of another state, the United States or any territory of the United States, or any offense in a foreign jurisdiction which is the same as, or equivalent to, such offenses; and

c. The sentencing court determines by a preponderance of the evidence that such person is not likely to pose a threat to public safety if released from the obligations imposed by this section, and by § 4120 of this title.

Notwithstanding anything in this paragraph to the contrary, no person designated as a Tier II or Tier III sex offender shall be afforded relief from designation as a sex offender if the victim of any of the offenses for which the person was convicted were less than 12 years old at the time of the crime, unless the person was also less than 18 years old at the time of the crime in which case the prohibition set forth in this sentence shall not apply. Any person seeking relief from designation as a sex offender under this paragraph shall file a petition with the sentencing court prior to sentencing requesting such relief. The petition shall be granted or denied by the sentencing court after it weighs all relevant evidence which bears upon the particular facts and circumstances of the offense, and the character and propensities of the offender.

(7) In any case in which the State seeks to have the offender designated to a Risk Assessment Tier higher than the presumptive tier, the motion required by this subsection shall be filed by the State before sentencing, provided that such a motion shall be unnecessary if any written plea agreement relating to the conviction clearly informs the defendant of the State's intention to request a higher Tier designation.

(e)(1) Any person designated as a sex offender who is required to register pursuant to this section shall comply with the registration provisions of § 4120 of this title as follows:

a. For life, if the sex offender is designated to Risk Assessment Tier III, or if the person is designated to Risk Assessment Tier I or II, and has previously been convicted of any of the offenses specified in paragraph (a)(4)a., (a)(4)c. or (a)(4)d. of this section;

b. For 25 years following the sex offender's release from Level V custody, or for 25 years following the effective date of any sentence to be served at Level IV or below, if the person is designated to Risk Assessment Tier II, and is not otherwise required to register for life pursuant to this subsection, except that any time spent at any subsequent period of Level V custody shall not be counted against such 25-year period; or

c. For 15 years following the sex offender's release from Level V custody, or for 15 years following the effective date of any sentence to be served at Level IV or below, if the person is designated to Risk Assessment Tier I, and is not otherwise required to register for life pursuant to this subsection, except that any time spent at any subsequent period of Level V custody shall not be counted against such 15-year period.

(2) Notwithstanding any provision in this section to the contrary:

a. Any sex offender designated to Risk Assessment Tier III may petition to the Superior Court for redesignation to Risk Assessment Tier II if 25 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and the offender has successfully completed an appropriate sex offender treatment program certified by the State, has not been convicted of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 25 years have elapsed from the date of the subsequent conviction or finding of a violation, during which time no additional convictions or findings of violation can have occurred. Notwithstanding any provision of this section or § 4120 of this title to the contrary, any sex offender who is redesignated from Risk Assessment Tier III to Risk Assessment Tier II shall continue to comply with the registration and re-registration requirements imposed by § 4120(g) upon Tier III offenders for life. Any re-designation from Risk Assessment Tier III to Risk Assessment Tier II shall not release the offender from the requirement of lifetime registration or address verification every 90 days pursuant to § 4120(g)(1)(a) of this title [repealed] and paragraph (e)(1) of this section.

b. Any sex offender designated to Risk Assessment Tier II may petition the Superior Court for redesignation to Risk Assessment Tier I if the victim was not a child under 18 years of age and 10 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and the offender has successfully completed an appropriate sex offender treatment program certified by the State and has not been convicted of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 10 years have elapsed from the date of the subsequent conviction or finding of violation, during which time no additional convictions or findings of violation can have occurred.

c. Any sex offender designated to Risk Assessment Tier I may petition the Superior Court for relief from designation as a sex

offender, and from all obligations imposed pursuant to this section and § 4120 of this title, if 10 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and if the offender has successfully completed an appropriate sex offender treatment program certified by the State and has not been convicted of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 10 years have elapsed from the date of the subsequent conviction or finding of violation, during which time no additional convictions or findings of violation can have occurred.

d. The Superior Court shall not grant a petition for redesignation or relief filed pursuant to this subsection unless:

1. The sex offender establishes, by a preponderance of the evidence, that the public safety no longer requires preservation of the original designation; and

2. The Court provides the Attorney General with notice of the petition and with a reasonable period of time to be heard upon the matter.

e. When considering a petition for redesignation, the Court shall weigh all the relevant evidence which bears upon the character and propensities of the offender, and the facts and circumstances of that offender's prior offenses. The Court may in its discretion hold a hearing on the petition. If the Court grants the petition, it shall promptly notify the Sex Offender registry.

(f) Whenever a sex offender is released, discharged or paroled from any Level IV or V or other custodial institution after that sex offender has completed a Level IV or V sentence imposed following a conviction for any offense specified in paragraph (a)(4) of this section, the agency having custody over the sex offender at the time of the release, discharge or parole shall provide written notice of the release, discharge or parole to the Superintendent of the Delaware State Police, to the chief law-enforcement officer having jurisdiction over the offender's intended residence, to the original arresting law-enforcement agency and to the Attorney General. Such notice shall be provided not more than 90 days, and not less than 45 days, prior to the offender's release, discharge or parole. The notice shall include, but is not limited to, the sex offender's legal name, and any previously used names, aliases or nicknames, and the age, gender, race and physical characteristics of the sex offender, a photograph of the offender taken within 90 days of that offender's release, along with any other known identifying factors, the person's offense history and that person's place of anticipated future residence, school and/or employment. The notice shall also include a statement of any relevant conditions of release, discharge, parole or probation applicable to the offender. Additionally, the form shall identify or describe that offender's relationship to the victim. Notwithstanding any law, rule or regulation to the contrary, no person shall be released from any Level V facility unless and until that person has made a good faith effort to cooperate with the appropriate authorities pursuant to this section except that no such person shall be held at Level V pursuant to this subsection beyond the maximum period of such custody originally ordered by the sentencing court. The notice required by this subsection shall be required whenever the offender is released from any Level V facility to any Level IV facility, and again when such offender is released from the Level IV facility.

(g) Whenever a sex offender is sentenced to a period of probation at Level III or below, or is required to pay a fine in any amount following a conviction for any offense specified in paragraph (a)(4) of this section, the sentencing court shall provide the notice specified in subsection (f) of this section to the entities specified therein. This subsection shall not apply whenever a sex offender is sentenced to serve a portion of that sex offender's sentence at Level IV or Level V, unless such sentence is suspended in its entirety. Notice pursuant to this subsection shall be provided within 3 business days of sentencing.

(h) Upon receipt of the notice specified in subsections (f) and (g) of this section, the Attorney General shall use any reasonable means to notify the victim or victims of the crime or crimes for which the sex offender was convicted of the release or sentencing unless the victim has requested not to be notified. Such notice may include any information provided pursuant to subsections (f) and (g) of this section.

(i) When a sex offender assigned to Risk Assessment Tier II or III provides registration information as provided by § 4120 of this title, the chief law-enforcement officer of the local jurisdiction where the offender intends to reside, or the Superintendent of the State Police if no local police agency exists, shall provide public notification as follows:

(1) For sex offenders assigned to Risk Assessment Tier II, notification shall consist of searchable records available to the public, and may also consist of community notification pursuant to paragraph (l)(3) of this section; or

(2) For sex offenders assigned to Risk Assessment Tier III, notification shall consist of searchable records available to the public as well as community notification.

(3) For sex offenders assigned to Tier II or III, notice shall be given to any school the offender plans to attend and/or to the chief law-enforcement officer of the local jurisdiction where the offender plans to study or be employed.

(j) A complete register of all persons convicted of any of the offenses specified in paragraph (a)(4) of this section, who are thereafter designated sex offenders pursuant to this section, shall be created, maintained and routinely updated and audited by the Delaware State Police. The register shall be immediately accessible by the use of DELJIS computer by all law-enforcement agencies. The register shall be searchable by the name of the sex offender and by suitable geographic criteria.

(k) Notwithstanding any law, rule or regulation to the contrary, if after the exercise of due diligence by the sex offender, the offender is unable to secure an anticipated place of future residence, for the purposes of this subsection the offender shall be designated as "homeless." "Homeless persons" must report their habitual locale, park or locations during the day and night, public buildings, restaurants, and libraries

frequented. The term "homeless" shall also include any person who anticipates a future place of residence in or at any temporary homeless shelter or other similar place of temporary residence for 7 or more days. The fact that a sex offender has secured an anticipated place of future residence at a homeless shelter or other similar place of temporary residence shall be reported by the court or agency having custody of the offender, along with the name and address of the shelter or residence as required by subsections (h) and (i) of this section, but such information shall not be included in any public notification required or permitted by subsection (i) or subsection (j) of this section, except that such information shall be provided to the agency, organization or entity having supervisory or operational authority over such shelter or similar place of temporary residence. Notwithstanding any law, rule or regulation to the contrary, any sex offender who is designated as "homeless" pursuant to this section shall verify the sex offender's own registration information as follows:

(1) A Tier III sex offender designated as "homeless" shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registration information every week following the date of completion of the initial registration form;

(2) A Tier II sex offender designated as "homeless" shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registration information every 30 days following the date of completion of the initial registration form;

(3) A Tier I sex offender designated as "homeless" shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registration information every 90 days following the date of completion of the initial registration form.

(l)(1) All elected public officials, public employees and public agencies are immune from civil liability for any discretionary decision to release relevant information unless it is shown that the official, employee or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant information to other employees, officials or public agencies as well as to the general public.

(2) There shall be no civil legal remedies available as a cause of action against any public official, public employee or public agency for failing to release information as authorized in this section.

(3) Any information contained in searchable records available to the public may be used in any manner by any person or by any public, governmental or private entity, organization or official, or any agent thereof, for any purpose consistent with the enhancement of public safety.

(m) Notwithstanding any law, rule or regulation to the contrary, upon a finding of probable cause that a sex offender has failed to comply with any provision of § 4120 of this title, the sex offender may be designated to Risk Assessment Tier III until such time as the agency or court to which the sex offender is obligated to provide notice determines that the sex offender is again in compliance with § 4120 of this title. In such cases, the agency or court which investigates the alleged noncompliance shall, upon a finding of probable cause that a violation has occurred, immediately notify the Superintendent of the Delaware State Police that a violation of the provisions of § 4120 of this title has occurred and that, as a result, the sex offender is redesignated to Risk Assessment Tier III until such time as the offender complies fully with § 4120 of this title. The agency or court shall also immediately notify the Superintendent of the Delaware State Police when the sex offender is again in compliance with § 4120 of this title, at which time the sex offender will be returned to that sex offender's originally designated Risk Assessment Tier.

(n) Notwithstanding any provision of this section to the contrary, any sex offender convicted of any offense specified in paragraph (a)(4)c. of this section shall be designated to a Risk Assessment Tier by the court. The designation shall be in accord with the provisions of subsection (d) of this section.

(o) When a sex offender is designated to a Risk Assessment Tier pursuant to this section, that fact shall be made a part of any written or electronic sentencing order produced by the sentencing court, and shall be entered into the DELJIS system by the sentencing court. The agency responsible for registering the offender shall have the information entered into the DELJIS system for any offender designated pursuant to subsection (n) of this section.

(p) Any agency responsible for complying with this section shall be permitted to promulgate reasonable regulations, policies and procedures to implement this statute. Such rules, regulations, policies and procedures shall be effective and enforceable upon their adoption by the agency, and shall not be subject to Chapter 11 or Chapter 101 of Title 29.

(q) This section shall be effective notwithstanding any law, rule or regulation to the contrary.

(r) Any sex offender who knowingly or recklessly fails to comply with any provision of this section shall be guilty of a class G felony.

(s) Subject to § 4122 of this title, this section shall apply to all persons convicted.

(t)(1) If a school, school district or licensed child care provider receives community notification, the community notification must be placed in a binder and kept in the administrative office available to view upon request by adults and juveniles with adult supervision. No community notification may be removed from the binder unless the school or child care provider is notified of an address change informing them that the offender has moved from the community. The school, school district or licensed child care provider shall notify parents and staff frequently through their regular communications of the availability and location of the community notification binder.

(2) The physical posting of community notifications in public school buildings and licensed child care facilities is prohibited.

(3) Schools shall ensure that students are taught personal safety and awareness skills in an age-appropriate manner consistent with the Delaware Health Education Curriculum Framework.

(u) Notwithstanding any provision of this section or title to the contrary, any Tier III sex offender being monitored at Level IV, III, II or I, shall as a condition of their probation, wear a GPS locator ankle bracelet paid for by the probationer. The obligation to pay for the GPS locator ankle bracelet shall not apply to any juvenile who is adjudicated delinquent and designated a Tier III sex offender pursuant to this

title.

(v) If any provision of this subchapter or any amendment hereto, or the application thereof to any person, thing or circumstances is held invalid, such invalidity shall not affect the provisions or application of this subchapter or such amendments that can be given effect without the invalid provisions or application, and to this end the provisions of this subchapter and such amendments are declared to be severable.

(71 Del. Laws, c. 429 § 2; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 410 §§ 1-3; 72 Del. Laws, c. 480 § 16; 73 Del. Laws, c. 122 §§ 1, 4, 5, 6, 7, 8, 9, 10, 11; 73 Del. Laws, c. 172 § 4; 73 Del. Laws, c. 177 § 1; 73 Del. Laws, c. 230 § 2; 73 Del. Laws, c. 245 §§ 4-8; 74 Del. Laws, c. 26 § 1; 76 Del. Laws, c. 25 §§ 9-51; 76 Del. Laws, c. 123 § 1; 76 Del. Laws, c. 374 §§ 4-24; 77 Del. Laws, c. 148 §§ 12-29; 77 Del. Laws, c. 318 §§ 6, 11, 12; 78 Del. Laws, c. 406 § 1; 79 Del. Laws, c. 58 § 1; 79 Del. Laws, c. 123 § 5; 79 Del. Laws, c. 276 § 5; 80 Del. Laws, c. 175 § 9.)

§ 4122 Transition provisions.

(a) Section 4121 of this title and this section shall be retroactively applicable to any person convicted of a registering offense.

(b) Notwithstanding any law, rule or regulation to the contrary, as soon after March 1, 1999, as is practicable, the Attorney General shall apply § 4121 of this title to those persons identified by subsection (a) of this section, and will redesignate those persons to a Risk Assessment Tier pursuant to § 4121 of this title. Upon the redesignation, the Attorney General will provide notice of such redesignation by registered or certified mail to the person's last registered address, or by any other means which creates a reliable record of the receipt by the offender of such notice or of the attempts to provide the offender with the notice. The notice shall advise the person as to the duties and consequences imposed by law upon persons designated to the particular Risk Assessment Tier, and of the person's right to elect a hearing on the issue of the new Risk Assessment Tier designation. The Attorney General shall have the authority to promulgate reasonable regulations to implement this subsection. Such regulations shall be effective and enforceable upon their adoption, and shall not be subject to Chapters 11 and 101 of Title 29.

(c) Any sex offender redesignated to a Risk Assessment Tier pursuant to this section shall have the right to request that the Board of Parole review and finally determine such designation. The request shall be made in writing and delivered to the Board of Parole within 10 days of the receipt by the offender of the notice described in subsection (b) of this section. The Board of Parole shall promptly forward a copy of the request to the Attorney General. Failure of the offender to deliver the request to the Board of Parole within the time limits specified shall constitute a waiver of the offender's right to review.

(d) Following receipt of timely notice by the Board of Parole, it shall hold a hearing to determine the appropriateness of the Attorney General's new Risk Assessment Tier designation. The person and the Attorney General shall have the right to be heard at the hearing. The Board of Parole shall have the authority to promulgate reasonable regulations to implement this subsection and subsection (c) of this section. Such regulations shall be effective and enforceable upon their adoption, and shall not be subject to Chapters 11 and 101 of Title 29.

(e) Notwithstanding any law, rule or regulation to the contrary, when considering a request for review pursuant to subsection (c) of this section, the Board of Parole may redesignate the Risk Assessment Tier at its discretion and without regard to the restrictions of § 4121(d) of this title. The Board of Parole may weigh the relevant evidence which bears upon the character and propensities of the offender, and the facts and the circumstances of that offender's prior offenses. This evidence may include the lack of subsequent criminal offenses, the completion of treatment, and the passage of time since the registering offense.

(f) In any case where the Board of Parole has redesignated the Risk Assessment Tier pursuant to subsection (c) of this section, the Superior Court shall retain jurisdiction to review the redesignation.

(1) Following the receipt of any application for review of redesignation pursuant to subsection (c) of this section, the Board of Parole shall hold a hearing under the provisions of § 4350(a) of this title for the purpose of making a recommendation to the trial court as to the approval or disapproval of the application. This hearing shall not be held unless written notice of the hearing is provided to the Attorney General's office at least 30 days prior to scheduled hearing date. A copy of the application for review shall be provided to the Attorney General's office along with written notice of the hearing date.

(2) Following the hearing described in paragraph (f)(1) of this section, the Board of Parole may reject an application for review if it determines that the application is not based on good cause. Notwithstanding any provisions of this section to the contrary, any application rejected pursuant to this paragraph shall not be forwarded to the Superior Court.

(g) Whenever an offender fails to elect a hearing in a timely fashion, the Attorney General shall forward notice of the redesignated Risk Assessment Tier to the Superintendent of the Delaware State Police and to the chief law enforcement officer of the jurisdiction where the person is residing at the time of the redesignation. In the event the person requests a hearing, at the conclusion of the hearing and upon rendering its decision in the matter, the Board of Parole shall forward a notice of the redesignated Risk Assessment Tier to the Superintendent of the Delaware State Police and to the chief law enforcement officer of the jurisdiction where the person is residing at the time of the redesignation. The Superintendent of the Delaware State Police shall enter information pertaining to any redesignation pursuant to this section into the DELJIS computer system.

(h) Upon Risk Assessment Tier redesignation pursuant to this section, §§ 4120 and 4121 of this title shall apply. Until redesignation, §§ 4120 and 4336 of this title shall remain in full force and effect.

(71 Del. Laws, c. 429 § 2; 76 Del. Laws, c. 374 § 25; 80 Del. Laws, c. 167 § 1.)

§ 4123 Juveniles adjudicated delinquent of sex offenses.

(a) Notwithstanding any law, rule or regulation to the contrary, this section shall apply to any sex offender who was a juvenile on the date

of the offense and adjudicated delinquent by the Family Court.

(b) Prior to sentencing any juvenile adjudicated delinquent of a sex offense, Family Court shall order and receive a comprehensive evaluation, risk assessment and treatment recommendations for said juvenile by a certified mental health professional who specializes in the evaluation and/or treatment of juvenile sex offenders. If said juvenile is already in treatment at the time of adjudication, the current treatment provider may provide the evaluation, risk assessment and treatment recommendations required above.

(c) Following receipt by Family Court and the parties of the comprehensive evaluation, risk assessment and treatment recommendations required by subsection (b) of this section, Family Court shall conduct a sentencing hearing in which the Court shall address appropriate treatment for the juvenile, and the registration and community notification requirements for the juvenile as follows:

(1) If the juvenile was at least 14 years old on the date of the sex offense, and was adjudicated delinquent of any of the offenses enumerated in § 770(a)(3)a. of this title where "without the victim's consent" has the definition specified in § 761(j) of this title, §§ 771-778, § 780, § 783 or § 783A of this title if the purpose of the crime was to violate or abuse the victim sexually, § 787(b)(2), or § 1100A of this title, or if the victim of the felony level offense was 5 years old or younger, or of conspiracy, under §§ 512 and 513 of this title, or attempt, under § 531 of this title, to commit any of those enumerated offenses, the juvenile shall be immediately registered as a sex offender as prescribed by § 4120 of this title, and the community shall be provided notification as prescribed by § 4121 of this title. The Family Court shall have no discretion to modify these registration or community notification requirements.

(2) If the juvenile does not fit the criteria set forth in paragraph (c)(1) of this section above, the Family Court shall have the discretion to relieve the juvenile of registration and community notification requirements or to assign such juvenile to a lower tier than that prescribed by § 4121 of this title if the Court determines by a preponderance of the evidence that such juvenile is not likely to pose a threat to public safety if relieved of the requirements or assigned to a lower tier. In making this determination, the Family Court shall consider all relevant factors, including:

a. The risk the juvenile poses to the victim, the community and to other potential victims;

b. The nature and circumstances of the offense;

c. The impact on the victim, including the effects of registration and community notification;

d. The comprehensive evaluation, risk assessment and treatment recommendations or outcomes for the juvenile required by subsection (b) of this section;

e. The likelihood of successful rehabilitation, if known; and

f. The adverse impact of public registration on the juvenile and the rehabilitative process.

(d) Any juvenile who does not fit the criteria set forth in paragraph (c)(1) of this section above and has been registered as a sex offender, may through his or her parent or guardian, or upon becoming an adult, petition Family Court for a registry review hearing as set forth below. Provided, however, that the prohibition involving offenses where the victim was 5 years old or younger shall not apply to this section. The Family Court shall hold the hearing at either the conclusion of treatment or 2 years from date of adjudication, whichever comes first. Family Court may maintain the current tier designation for the adjudicated offense pursuant to § 4121 of this title, or where it appears by a preponderance of the evidence after consideration of the factors set forth in paragraph (c)(2) of this section above that modification will not pose a threat to public safety, the Court may relieve the person of all registration and notification requirements or assign the person to a lower tier. All such petitions shall be filed in the Family Court in the county in which such case was adjudicated. The provisions of this paragraph shall be applicable whether the sex offender registration occurred prior to or after October 16, 2013, and in the case of adjudication occurring before October 16, 2011, the Family Court shall hold the review hearing as soon as practicable after receiving a petition.

(e) If a juvenile does not fit the criteria of paragraph (c)(1) of this section, the decision of the Family Court with regard to registration may be appealed by the State or the juvenile.

(79 Del. Laws, c. 123 § 6; 70 Del. Laws, c. 186 § 1.)

Part II
Criminal Procedure Generally
Chapter 42
CLASSIFICATION OF OFFENSES; SENTENCES

§ 4201 Transition provisions.

(a) Felonies are classified, for the purpose of sentence, into 7 categories:

(1) Class A felonies;
(2) Class B felonies;
(3) Class C felonies;
(4) Class D felonies;
(5) Class E felonies;
(6) Class F felonies;
(7) Class G felonies.

(b) Any crime or offense which is designated as a felony but which is not specifically given a class shall be a class G felony and shall carry the sentence provided for said class felony.

(c) The following felonies shall be designated as violent felonies:

Title 11, Section	Crime
513	Conspiracy First Degree
602	Aggravated Menacing
604	Reckless Endangering First Degree
605	Abuse of a Pregnant Female in the Second Degree
606	Abuse of a Pregnant Female in the First Degree
607	Strangulation
612	Assault in the Second Degree
613	Assault in the First Degree
614	Assault on a Sports Official
[Former] 615	Assault by Abuse
617	Criminal Youth Gangs
629	Vehicular Assault in the First Degree
630	Vehicular Homicide in the Second Degree
630A	Vehicular Homicide in the First Degree
631	Criminally Negligent Homicide
632	Manslaughter
633	Murder by Abuse or Neglect in the Second Degree
634	Murder by Abuse or Neglect in the First Degree
635	Murder in the Second Degree
636	Murder in the First Degree
645	Promoting Suicide
768	Unlawful Sexual Contact in the Second Degree
769	Unlawful Sexual Contact in the First Degree
770	Former Unlawful Sexual Penetration in the Third Degree or Rape in the Fourth Degree
771	Former Unlawful Sexual Penetration in the Second Degree or Rape in the Third Degree
772	Former Unlawful Sexual Penetration in the First Degree or Rape in the Second Degree
773	Former Unlawful Sexual Intercourse in the Third Degree or Rape in the First Degree
774	Sexual Extortion
775	Bestiality
776	Continuous Sexual Abuse of Child
777	Dangerous Crime Against a Child
777A	Sex Offender Unlawful Sexual Conduct Against a Child
778	Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the First Degree
778A	Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the Second Degree
782	Unlawful Imprisonment in the First Degree
783	Kidnapping in the Second Degree

783A Kidnapping in the First Degree
787 Trafficking of an Individual, Forced Labor and Sexual Servitude
802 Arson in the Second Degree
803 Arson in the First Degree
825 Burglary in the Second Degree
826 Burglary in the First Degree
826A Home Invasion
831 Robbery in the Second Degree
832 Robbery in the First Degree
835 Carjacking in the Second Degree
836 Carjacking in the First Degree
846 Extortion
1108 Sexual Exploitation of a Child
1109 Unlawfully Dealing in Child Pornography
1112A Sexual Solicitation of a Child
1112B Promoting Sexual Solicitation of a Child
1250 Assault in the First Degree Against a Law-Enforcement Animal
1253 Escape After Conviction, if convicted as a Class C Felony or a Class B Felony
1254 Assault in a Detention Facility
1256 Promoting Prison Contraband (Deadly Weapon)
1257(a) Resisting Arrest with Force or Violence
1302 Riot
1304 Hate Crimes
1312 Stalking
1338 Bombs, Incendiary Devices, Molotov Cocktails and Explosive Devices
1339 Adulteration (Causing Injury or Death)
1353 Promoting Prostitution in the First Degree
1442 Carrying a Concealed Deadly Weapon (Firearm Offense)
1444 Possessing a Destructive Weapon
1445 Unlawfully Dealing With a Dangerous Weapon
1447 Possessing a Deadly Weapon During the Commission of a Felony
1447A Possessing a Firearm during the Commission of a Felony
1448(e) Possession of a Deadly Weapon by Persons Prohibited (Firearm or Destructive Weapon Purchased, Owned, Possessed or Controlled by a Violent Felon).
1455 Engaging in a Firearms Transaction on Behalf of Another (Subsequent Offense)
1449 Wearing Body Armor During the Commission of a Felony
1503 Racketeering
3533 Aggravated Act of Intimidation
Title 16, Section Crime
1136 Abuse/Mistreatment/Neglect of a Patient
4751 Former Manufacture/Delivery/Possession With Intent to Deliver a Controlled or Counterfeit Controlled Substance, Manufacture or Delivery Causing Death
4752 Former Manufacture/Delivery/Possession With Intent to Deliver a Controlled or Counterfeit Controlled Substance
4752A Former Unlawful Delivery of a Noncontrolled Substance
4753A Former Trafficking in Marijuana, Cocaine, Illegal Drugs, Methamphetamine, LSD, Designer Drugs or MDMA
4752 Drug Dealing — Aggravated Possession; Class B Felony
4753 Drug Dealing — Aggravated Possession; Class C Felony
4754(1) Drug Dealing — Aggravated Possession; Class D Felony
4761 Former Distribution to Minors
4761(c) and (d) Illegal Delivery of Prescription Drugs
4774 Delivery of Drug Paraphernalia to a Minor
Title 31, Section Crime
3913 Abuse/Neglect/Exploit/Mistreat an Adult who is Impaired

(d) Any attempt to commit any felony designated in subsection (c) of this section as a violent felony shall also be designated as a violent

felony.

(67 Del. Laws, c. 130 § 6; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 477 § 1; 71 Del. Laws, c. 285 § 14; 71 Del. Laws, c. 467 § 10; 72 Del. Laws, c. 34 § 5; 72 Del. Laws, c. 43 § 6; 72 Del. Laws, c. 197 § 7; 72 Del. Laws, c. 480 § 17; 74 Del. Laws, c. 106 § 8; 75 Del. Laws, c. 421 § 3[2]; 76 Del. Laws, c. 66 § 3; 76 Del. Laws, c. 343 § 5; 77 Del. Laws, c. 313 § 2; 77 Del. Laws, c. 318 § 13; 78 Del. Laws, c. 13 §§ 8-10; 78 Del. Laws, c. 224 § 19; 78 Del. Laws, c. 252 § 9; 78 Del. Laws, c. 406 § 3; 79 Del. Laws, c. 276 § 3; 80 Del. Laws, c. 28 § 1; 80 Del. Laws, c. 173 § 1.)

§ 4202 Classification of misdemeanors.

(a) Misdemeanors are classified for the purpose of sentence into 2 categories:

(1) Class A misdemeanors;

(2) Class B misdemeanors.

(b) Any offense defined by statute which is not specifically designated a felony, a class A misdemeanor, a class B misdemeanor or a violation shall be an unclassified misdemeanor or an environmental misdemeanor or environmental violation.

(67 Del. Laws, c. 130 § 6; 70 Del. Laws, c. 436 § 10; 79 Del. Laws, c. 421 § 13.)

§ 4203 Violations.

There shall be a class of offenses denominated violations. No offense is a violation unless expressly declared to be a violation in this Criminal Code or in the statute defining the offense.

(11 Del. C. 1953 § 4203; 58 Del. Laws, c. 497 § 2.)

§ 4204 Authorized disposition of convicted offenders.

(a) Every person convicted of an offense shall be sentenced in accordance with this Criminal Code, with the exception of an environmental misdemeanor as defined in § 1304 of Title 7. This section applies to all judgments of conviction, whether entered after a trial or upon a plea of guilty or nolo contendere.

(b) A person convicted of a class A felony may be sentenced to life imprisonment in accordance with § 4205 of this title, unless the conviction is for first-degree murder, in which event § 4209 of this title shall apply. Notwithstanding any other statute, a sentence under § 4209 of this title may not be suspended or reduced by the court.

(c) When a person is convicted of any offense other than a class A felony the court may take the following action:

(1) Impose a sentence involving an Accountability Level I sanction. — Such sanctions include imposition of a fine as provided by law for the offense or placement of the offender upon unsupervised probation with or without special conditions, or with or without the imposition of a fine as provided by law for the offense;

(2) Impose a sentence involving an Accountability Level II sanction. — Such a sanction includes a placement of the offender upon supervised probation amounting to field supervision rather than intensive supervision, with or without special conditions, or with or without the imposition of a fine as provided by law for the offense;

(3) Impose a sentence involving an Accountability Level III sanction. — Such sanctions include placement of the offender upon intensive supervision or placement of the offender upon community service, with or without special conditions, or with or without the imposition of a fine as provided by law for the offense. Such intensive supervision shall entail at least the equivalent of 1 hour of supervision per day and no more than 56 hours of supervision per week;

(4) Impose a sentence involving an Accountability Level IV sanction. — Such sanctions include placement of the offender upon partial confinement under house arrest under the supervision of the Department of Correction or commitment of the offender to the Department of Correction under partial confinement to a half-way house or restitution center or placement of the offender in a residential treatment facility, all with or without special conditions, and all with or without the imposition of a fine as provided by law for the offense;

(5) Impose a sentence involving an Accountability Level V sanction. — Such a sentence consists of the commitment of the offender to the Department of Correction for a period of incarceration, with or without the imposition of a fine provided by law for the offense;

(6) Impose a period of incarceration, with or without the imposition of a fine provided by law for the offense, and placement of the offender in a less restrictive sanction, with or without special conditions, to commence when the offender is released from incarceration;

(7) Suspend the imposition or execution of sentence, or suspend a portion thereof;

(8) Impose any sentence as authorized in this subsection to include any special condition such as the payment of restitution to the victim or victims of the crime for which the offender is being sentenced and/or participation in a drug/alcohol outpatient treatment program, job training program, mental health treatment program, education program, community service program or other like programs. With regard to any such programs, the offender may be ordered to pay a fee covering, in whole or in part, the costs of such program and such fees shall be based upon the offender's ability to pay therefor;

(9) Wherever a victim of crime suffers a monetary loss as a result of the defendant's criminal conduct, the sentencing court shall impose as a special condition of the sentence that the defendant make payment of restitution to the victim in such amount as to make the victim whole, insofar as possible, for the loss sustained. Notwithstanding any law, rule or regulation to the contrary, for the purposes of ensuring the payment of restitution the court shall retain jurisdiction over the offender until the amount of restitution ordered has been paid in full;

(10) Whenever restitution is ordered pursuant to paragraph (c)(9) of this section or any other applicable statute or rule, and if deemed

appropriate to ensure or facilitate the collection of restitution from the defendant or if otherwise required by statute, the court may impose a sentence involving an Accountability Level I—Restitution Only sanction. Such a sanction shall be limited to the placement of the offender upon unsupervised probation, and the conditions of such probation shall be limited to those that are necessary to ensure or facilitate the collection of restitution. No offender shall be found to be in violation of the conditions of such a sanction unless the offender is found to be in violation of an applicable restitution order.

(d) Notwithstanding anything in this Criminal Code to the contrary, probation or a suspended sentence shall not be substituted for imprisonment where the statute specifically indicates that a prison sentence is a mandatory sentence, a minimum sentence, a minimum mandatory sentence or a mandatory minimum sentence, or may not otherwise be suspended.

(e) The court may authorize the payment of a fine in installments. When imposing probation the court shall direct that the offender be subject to the supervision of the Department of Correction and the court order shall specify those conditions under which the offender may remain at liberty on probation.

(f) In committing an offender to the Department of Correction the court shall fix the maximum term of incarceration.

(g) Where modification of judgment is not provided by rule of court, the court may modify a judgment within 90 days after it is ordered. Dispositions other than commitment to the Department of Correction, and such commitments which are revoked, shall not entail the loss by the offender of any civil rights, except as provided in the state Constitution.

(h) The court may direct that a person placed on probation be released on entering into a recognizance, with or without surety, during such period as the court directs, to appear and receive sentence when called upon, and, in the meantime, to keep the peace and be of good behavior.

(i) The court may, if it thinks proper, direct that the offender pay the costs of the prosecution or some portion thereof, and may further impose terms and conditions to be complied with by the offender during any period which it deems proper.

(j) At any time within the period mentioned in the recognizance, but not afterwards, the court may, upon being satisfied by information on oath that the offender has failed to observe any of the conditions of recognizance, or any of the terms or conditions of probation, issue an order for the offender's apprehension and thereupon, after proper hearing, impose sentence upon the offender.

(k)(1) Except as provided in this subsection, notwithstanding any statute, rule, regulation or guideline to the contrary, the court may direct as a condition to a sentence of imprisonment to be served at Level V or otherwise that all or a specified portion of said sentence shall be served without benefit of any form of early release, good time, furlough, work release, supervised custody or any other form of reduction or diminution of sentence.

(2) For the purposes of this subsection, statutes which authorize early release, good time, furlough, work release, supervised custody, or reduction or diminution of sentence include but are not limited to §§ 4205(h) and (i), 4206(g) and (h), 4217, 4381, 6533, 6533A [repealed] and 6537-6539 of this title.

(3) The provisions of this subsection shall be applicable only to sentences of imprisonment at Level V for 1 year or less, or to sentences of imprisonment at Level V which are equal to the statutory maximum Level V sentence available for the crime or offense.

(l) Except when the court imposes a life sentence or sentence of death, whenever a court imposes a period of incarceration at Level V custody for 1 or more offenses that totals 1 year or more, then that court must include as part of its sentence a period of custodial supervision at either Level IV, III or II for a period of not less than 6 months to facilitate the transition of the individual back into society. The 6-month transition period required by this subsection may, at the discretion of the court, be in addition to the maximum sentence of imprisonment established by the statute.

(m) As a condition of any sentence, and regardless of whether such sentence includes a period of probation or suspension of sentence, the court may order the offender to engage in a specified act or acts, or to refrain from engaging in a specified act or acts, as deemed necessary by the court to ensure the public peace, the safety of the victim or the public, the rehabilitation of the offender, the satisfaction of the offender's restitution obligation to the victim or the offender's financial obligations to the State, or for any other purpose consistent with the interests of justice. The duration of any order entered pursuant to this subsection shall not exceed the maximum term of commitment provided by law for the offense or 1 year, whichever is greater; provided that in all cases where no commitment is provided by law the duration of such order shall not exceed 1 year. A violation of any order issued pursuant to this subsection shall be prosecuted pursuant to § 1271 of this title. Any such prosecution pursuant to § 1271 of this title shall not preclude prosecution under any other provision of this Code.

(n) Whenever a court imposes a sentence inconsistent with the presumptive sentences adopted by the Sentencing Accountability Commission, such court shall set forth on the record its reasons for imposing such penalty.

(11 Del. C. 1953 § 4204; 58 Del. Laws, c. 497 § 2; 62 Del. Laws, c. 259 § 2; 66 Del. Laws, c. 134 §§ 1, 2; 67 Del. Laws, c. 130 §§ 6, 17, 18; 67 Del. Laws, c. 260 § 1; 67 Del. Laws, c. 350 §§ 1, 33; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 436 § 11; 71 Del. Laws, c. 32 § 1; 71 Del. Laws, c. 98 § 5; 71 Del. Laws, c. 154 § 1; 74 Del. Laws, c. 27 §§ 1-3.)

§ 4204A Confinement of youth convicted in Superior Court.

(a) When a child who has reached that child's sixteenth birthday is sentenced in Superior Court such sentence shall be served with the Department of Correction.

(b) When a child who has not reached that child's sixteenth birthday is sentenced in Superior Court to a period of incarceration, such sentence shall initially be served in a juvenile facility upon imposition of the sentence and such child shall remain in the custody of or be

transferred forthwith to the Division of Youth Rehabilitative Services until the child's sixteenth birthday, at which time such child shall be transferred forthwith to the Department of Correction to serve the remaining portion of said sentence.

(c) When a child (youth) has been lawfully sentenced in Superior Court or has been lawfully transferred to the Department of Correction (DOC), DOC shall be exclusively responsible for all aspects of the child's (youth's) care, custody and control, including services associated with those responsibilities. The Department of Correction, and not the Department of Services for Children, Youth and Their Families shall have authority or jurisdiction of such child (youth).

(d)(1) Notwithstanding any provision of this title to the contrary, any offender sentenced to an aggregate term of incarceration in excess of 20 years for any offense or offenses other than murder first degree that were committed prior to the offender's eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 20 years of the originally imposed Level V sentence.

(2) Notwithstanding any provision of this title to the contrary, any offender sentenced to a term of incarceration for murder first degree when said offense was committed prior to the offender's eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 30 years of the originally imposed Level V sentence.

(3) Notwithstanding any provision of this subsection or title to the contrary, any offender who has petitioned the Superior Court for sentence modification pursuant to this subsection shall not be eligible to submit a second or subsequent petition until at least 5 years have elapsed since the date on which the Court ruled upon the offender's most recent petition. Further, the Superior Court shall have the discretion at the time of each sentence modification hearing to prohibit a subsequent sentence modification petition for a period of time in excess of 5 years if the Superior Court finds there to be no reasonable likelihood that the interests of justice will require another hearing within 5 years.

(4) Notwithstanding the provisions of § 4205 or § 4217 of this title, any court rule or any other provision of law to the contrary, a Superior Court Judge upon consideration of a petition filed pursuant to this subsection (d), may modify, reduce or suspend such petitioner's sentence, including any minimum or mandatory sentence, or a portion thereof, in the discretion of the Court. Nothing in this section, however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section.

(5) The Superior Court shall have the authority to promulgate appropriate rules to regulate the filing and litigation of sentence modification petitions pursuant to this paragraph.

(69 Del. Laws, c. 353 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 597 § 2; 71 Del. Laws, c. 5 §§ 2-4; 72 Del. Laws, c. 149 § 2; 79 Del. Laws, c. 37 § 4.)

§ 4205 Sentence for felonies.

(a) A sentence of incarceration for a felony shall be a definite sentence.

(b) The term of incarceration which the court may impose for a felony is fixed as follows:

(1) For a class A felony not less than 15 years up to life imprisonment to be served at Level V except for conviction of first degree murder in which event § 4209 of this title shall apply.

(2) For a class B felony not less than 2 years up to 25 years to be served at Level V.

(3) For a class C felony up to 15 years to be served at Level V.

(4) For a class D felony up to 8 years to be served at Level V.

(5) For a class E felony up to 5 years to be served at Level V.

(6) For a class F felony up to 3 years to be served at Level V.

(7) For a class G felony up to 2 years to be served at Level V.

(c) In the case of the conviction of any felony, the court shall impose a sentence of Level V incarceration where a minimum sentence is required by subsection (b) of this section and may impose a sentence of Level V incarceration up to the maximum stated in subsection (b) of this section for each class of felony.

(d) Where a minimum, mandatory, mandatory minimum or minimum mandatory sentence is required by subsection (b) of this section, such sentence shall not be subject to suspension by the court.

(e) Where no minimum sentence is required by subsection (b) of this section, or with regard to any sentence in excess of the minimum required sentence, the court may suspend that part of the sentence for probation or any other punishment set forth in § 4204 of this title.

(f) Any term of Level V incarceration imposed under this section must be served in its entirety at Level V, reduced only for earned "good time" as set forth in § 4381 of this title.

(g) No term of Level V incarceration imposed under this section shall be served in other than a full custodial Level V institutional setting unless such term is suspended by the court for such other level sanction.

(h) The Department of Correction, the remainder of this section notwithstanding, may house Level V inmates at a Level IV work release center or halfway house during the last 180 days of their sentence; provided, however, that the first 5 days of any sentence to Level V, not suspended by the court, must be served at Level V.

(i) The Department of Correction, the remainder of this section notwithstanding, may grant Level V inmates 48-hour furloughs during the last 120 days of their sentence to assist in their adjustment to the community.

(j) No sentence to Level V incarceration imposed pursuant to this section is subject to parole.

(k) In addition to the penalties set forth above, the court may impose such fines and penalties as it deems appropriate.

(l) In all sentences for less than 1 year the court may order that more than 5 days be served in Level V custodial setting before the Department may place the offender in Level IV custody.

(67 Del. Laws, c. 130 § 6; 67 Del. Laws, c. 260 § 1; 71 Del. Laws, c. 98 § 6; 74 Del. Laws, c. 106 §§ 9, 10.)

§ 4205A Additional penalty for serious sex offenders or pedophile offenders.

(a) Notwithstanding any provision of this chapter or any other laws to the contrary, a defendant convicted of any crime set forth in § 771(a)(2), § 772, § 773, § 776, § 777, § 777A, § 778(1) or (2) of this title shall be sentenced to not less than 25 years up to life imprisonment to be served at Level V if:

(1) The defendant has previously been convicted or adjudicated delinquent of any sex offense set forth in this title and classified as a class A or B felony, or any similar offense under the laws of another state, the United States or any territory thereof; or

(2) The victim of the instant offense is a child less than 14 years of age.

(b) A fiscal report on the financial impact of this legislation shall be submitted by the Criminal Justice Coordinator or designee to the Controller General and Chairpersons of the Joint Finance Committee no later than March 15, 2008, after consultation with the Chief Judge of Superior Court, the Commissioner of Corrections, the Attorney General and Chief Defender or their designee.

(75 Del. Laws, c. 438 § 1; 77 Del. Laws, c. 318 § 14; 80 Del. Laws, c. 26 § 3; 80 Del. Laws, c. 349 § 1.)

§ 4206 Sentence for misdemeanors.

(a) The sentence for a class A misdemeanor may include up to 1 year incarceration at Level V and such fine up to $2,300, restitution or other conditions as the court deems appropriate.

(b) The sentence for a class B misdemeanor may include up to 6 months incarceration at Level V and such fine up to $1,150, restitution or other conditions as the court deems appropriate.

(c) The sentence for an unclassified misdemeanor shall be a definite sentence fixed by the court in accordance with the sentence specified in the law defining the offense. If no sentence is specified in such law, the sentence may include up to 30 days incarceration at Level V and such fine up to $575, restitution or other conditions as the court deems appropriate. Notwithstanding the foregoing, in any municipality with a population greater than 50,000 people, any offense under the building, housing, health or sanitation code which is classified therein as a misdemeanor, the sentence for any person convicted of such a misdemeanor offense shall include the following fines and may include restitution or such other conditions as the court deems appropriate:

(1) For the first conviction: no less than $250, nor more than $1,000;

(2) For the second conviction for the same offense; no less than $500, nor more than $2,500; and

(3) For all subsequent convictions for the same offense: no less than $1,000 nor more than $5,000.

In any municipality with a population greater than 50,000 people, a conviction for a misdemeanor offense, which is defined as a "continuing" or "ongoing" violation, shall be considered a single conviction for the purposes of paragraphs (c)(1)-(3) of this section. For all convictions subsequent to the second, the minimum fines required herein shall not be suspended, but such amounts imposed over the minimum may be suspended or subject to such other conditions as the court deems appropriate. The provisions of this subsection relating to municipalities with a population greater than 50,000 people shall not apply to offenses or convictions involving single family residences that are occupied by an owner of the property.

(d) The court may suspend any sentence imposed under this section for probation or any of the other sanctions set forth in § 4204 of this title.

(e) Any term of Level V incarceration imposed under this section must be served in its entirety at Level V, reduced only for earned "good time" as set forth in § 4381 of this title.

(f) No term of Level V incarceration imposed under this section shall be served in other than a full custodial Level V institutional setting unless such term is suspended by the court for such other level sanction.

(g) The Department of Correction, the remainder of this section notwithstanding, may house Level V inmates at a Level IV work release center or halfway house during the last 180 days of their sentence; provided, however, that the first 5 days of any sentence to Level V, not suspended by the court, must be served at Level V.

(h) The Department of Correction, the remainder of this section notwithstanding, may grant Level V inmates 48-hour furloughs during the last 120 days of their sentence to assist in their adjustment to the community.

(i) Any sentence for issuing a worthless check pursuant to § 900 of this title shall require restitution to the person to whom the check was given. For the purposes of this subsection, restitution shall mean the amount for which the check was written plus a service fee of $30 for processing a worthless check, or a fee of $50 if more than 1 check by same person was processed.

(j) In all sentences for less than 1 year the court may order that more than 5 days be served in Level V custodial setting before the Department may place the offender in Level IV custody.

(66 Del. Laws, c. 253 § 1; 67 Del. Laws, c. 130 § 6; 67 Del. Laws, c. 260 § 1; 67 Del. Laws, c. 350 § 2; 68 Del. Laws, c. 9 § 5; 74 Del. Laws, c. 153 § 1.)

§ 4207 Sentences for violations.

(a) The Court may impose a fine of up to $345 for the first offense of any violation, up to $690 for the second offense of that same violation and up to $1,150 for the third offense of the same violation; provided, that only violations which occurred within 5 years of the

violation for which sentence is imposed shall be considered in determining sentence.

(b) The Court may impose a period of Level I probation up to 1 year for any violation.

(67 Del. Laws, c. 130 § 6; 67 Del. Laws, c. 260 § 1.)

§ 4208 Fines for organizations.

A sentence to pay a fine, when imposed on an organization, shall be the amount specified in the law setting forth the offense if a penalty is specified in that law, or, if there is no specific penalty defined in the law setting forth the offense, a sentence to pay a fine when imposed on an organization shall be as follows:

(1) For a felony or a misdemeanor resulting in death or serious physical injury, such fine as the court deems reasonable and appropriate;

(2) For a felony that does not result in death or serious physical injury, not more than $500,000;

(3) For a class A misdemeanor that results in physical injury, not more than $250,000;

(4) For a class A misdemeanor that does not result in physical injury, not more than $100,000;

(5) For a class B misdemeanor, class C or unclassified misdemeanor that results in physical injury, not more than $75,000;

(6) For a class B misdemeanor, class C or unclassified misdemeanor that does not result in physical injury, not more than $50,000; or

(7) For a violation, not more than $10,000.

If the defendant derives pecuniary gain from the offense, or if the offense results in pecuniary loss or damage to a person or organization other than the defendant, the defendant may be fined an amount equal to 3 times the amount of the pecuniary gain or 3 times the value of the pecuniary loss or damage incurred in lieu of the penalties set forth in paragraphs (1)-(7) of this section.

(11 Del. C. 1953 § 4208; 58 Del. Laws, c. 497 § 2; 68 Del. Laws, c. 9 §§ 3, 4; 74 Del. Laws, c. 71 § 6.)

§ 4209 Punishment, procedure for determining punishment, review of punishment and method of punishment for first-degree murder committed by adult offenders.

(a) Punishment for first-degree murder. — Any person who is convicted of first-degree murder for an offense that was committed after the person had reached the person's eighteenth birthday shall be punished by death or by imprisonment for the remainder of the person's natural life without benefit of probation or parole or any other reduction, said penalty to be determined in accordance with this section.

(b) Separate hearing on issue of punishment for first-degree murder. —

(1) Upon a conviction of guilt of a defendant of first-degree murder, the Superior Court shall conduct a separate hearing to determine whether the defendant should be sentenced to death or to life imprisonment without benefit of probation or parole as authorized by subsection (a) of this section. If the defendant was convicted of first-degree murder by a jury, this hearing shall be conducted by the trial judge before that jury as soon as practicable after the return of the verdict of guilty. Alternate jurors shall not be excused from the case prior to submission of the issue of guilt to the trial jury and may, but need not be, separately sequestered until a verdict on guilt is entered. If the verdict of the trial jury is guilty of first-degree murder said alternates shall sit as alternate jurors on the issue of punishment. If, for any reason satisfactory to the Court, any member of the trial jury is excused from participation in the hearing on punishment, the trial judge shall replace such juror or jurors with alternate juror or jurors. If a jury of 12 jurors cannot participate in the hearing a separate and new jury, plus alternates, shall be selected for the hearing in accordance with the applicable rules of the Superior Court and laws of Delaware, unless the defendant or defendants and the State stipulate to the use of a lesser number of jurors.

(2) If the defendant was convicted of first-degree murder by the Court, after a trial and waiver of a jury trial or after a plea of guilty or nolo contendere, the hearing shall be conducted by the trial judge before a jury, plus alternates, empaneled for that purpose and selected in accordance with the applicable rules of the Superior Court and laws of Delaware, unless said jury is waived by the State and the defendant in which case the hearing shall be conducted, if possible, by and before the trial judge who entered the finding of guilty or accepted the plea of guilty or nolo contendere.

(c) Procedure at punishment hearing. —

(1) The sole determination for the jury or judge at the hearing provided for by this section shall be the penalty to be imposed upon the defendant for the conviction of first-degree murder. At the hearing, evidence may be presented as to any matter that the Court deems relevant and admissible to the penalty to be imposed. The evidence shall include matters relating to any mitigating circumstance and to any aggravating circumstance, including, but not limited to, those aggravating circumstances enumerated in subsection (e) of this section. Notice in writing of any aggravating circumstances and any mitigating circumstances shall be given to the other side by the party seeking to introduce evidence of such circumstances prior to the punishment hearing, and after the verdict on guilt, unless in the discretion of the Court such advance notice is dispensed with as impracticable. The record of any prior criminal convictions and pleas of guilty or pleas of nolo contendere of the defendant or the absence of any such prior criminal convictions and pleas shall also be admissible in evidence.

(2) At the hearing the Court shall permit argument by the State, the defendant and/or the defendant's counsel, on the punishment to be imposed. Such argument shall consist of opening statements by each, unless waived, opening summation by the State, rebuttal summation by the defendant and/or the defendant's counsel and closing summation by the State.

(3)a. Upon the conclusion of the evidence and arguments the judge shall give the jury appropriate instructions and the jury shall retire to deliberate and report to the Court an answer to the following questions:

1. Whether the evidence shows beyond a reasonable doubt the existence of at least 1 aggravating circumstance as enumerated

in subsection (e) of this section; and

2. Whether, by a preponderance of the evidence, after weighing all relevant evidence in aggravation or mitigation which bear upon the particular circumstances or details of the commission of the offense and the character and propensities of the offender, the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist.

b.1. The jury shall report to the Court its finding on the question of the existence of statutory aggravating circumstances as enumerated in subsection (e) of this section. In order to find the existence of a statutory aggravating circumstance as enumerated in subsection (e) of this section beyond a reasonable doubt, the jury must be unanimous as to the existence of that statutory aggravating circumstance. As to any statutory aggravating circumstances enumerated in subsection (e) of this section which were alleged but for which the jury is not unanimous, the jury shall report the number of the affirmative and negative votes on each such circumstance.

2. The jury shall report to the Court by the number of the affirmative and negative votes its recommendation on the question as to whether, by a preponderance of the evidence, after weighing all relevant evidence in aggravation or mitigation which bear upon the particular circumstances or details of the commission of the offense and the character and propensities of the offender, the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist.

(4) In the instructions to the jury the Court shall include instructions for it to weigh and consider any mitigating circumstances or aggravating circumstances and any of the statutory aggravating circumstances set forth in subsection (e) of this section which may be raised by the evidence. The jury shall be instructed to weigh any mitigating factors against the aggravating factors.

(d) Determination of sentence. —

(1) If a jury is impaneled, the Court shall discharge that jury after it has reported its findings and recommendation to the Court. A sentence of death shall not be imposed unless the jury, if a jury is impaneled, first finds unanimously and beyond a reasonable doubt the existence of at least 1 statutory aggravating circumstance as enumerated in subsection (e) of this section. If a jury is not impaneled, a sentence of death shall not be imposed unless the Court finds beyond a reasonable doubt the existence of at least 1 statutory aggravating circumstance as enumerated in subsection (e) of this section. If a jury has been impaneled and if the existence of at least 1 statutory aggravating circumstance as enumerated in subsection (e) of this section has been found beyond a reasonable doubt by the jury, the Court, after considering the findings and recommendation of the jury and without hearing or reviewing any additional evidence, shall impose a sentence of death if the Court finds by a preponderance of the evidence, after weighing all relevant evidence in aggravation or mitigation which bears upon the particular circumstances or details of the commission of the offense and the character and propensities of the offender, that the aggravating circumstances found by the Court to exist outweigh the mitigating circumstances found by the Court to exist. The jury's recommendation concerning whether the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist shall be given such consideration as deemed appropriate by the Court in light of the particular circumstances or details of the commission of the offense and the character and propensities of the offender as found to exist by the Court. The jury's recommendation shall not be binding upon the Court. If a jury has not been impaneled and if the existence of at least 1 statutory aggravating circumstance as enumerated in subsection (e) of this section has been found beyond a reasonable doubt by the Court, it shall impose a sentence of death if the Court finds by a preponderance of the evidence, after weighing all relevant evidence in aggravation or mitigation which bears upon the particular circumstances or details of the commission of the offense and the character and propensities of the offender, that the aggravating circumstances found by the Court to exist outweigh the mitigating circumstances found by the Court to exist.

(2) Otherwise, the Court shall impose a sentence of imprisonment for the remainder of the defendant's natural life without benefit of probation or parole or any other reduction.

(3)a. Not later than 90 days before trial the defendant may file a motion with the Court alleging that the defendant had a serious intellectual developmental disorder at the time the crime was committed. Upon the filing of the motion, the Court shall order an evaluation of the defendant for the purpose of providing evidence of the following:

1. Whether the defendant has a significantly subaverage level of intellectual functioning;

2. Whether the defendant's adaptive behavior is substantially impaired; and

3. Whether the conditions described in paragraphs (d)(1) and (d)(2) of this section existed before the defendant became 18 years of age.

b. During the hearing authorized by subsections (b) and (c) of this section, the defendant and the State may present relevant and admissible evidence on the issue of the defendant's alleged serious intellectual developmental disorder, or in rebuttal thereof. The defendant shall have the burden of proof to demonstrate by clear and convincing evidence that the defendant had a serious intellectual developmental disorder at the time of the offense. Evidence presented during the hearing shall be considered by the jury in making its recommendation to the Court pursuant to paragraph (c)(3) of this section as to whether the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist. The jury shall not make any recommendation to the Court on the question of whether the defendant had a serious intellectual developmental disorder at the time the crime was committed.

c. If the defendant files a motion pursuant to this paragraph claiming he or she had a serious intellectual developmental disorder at the time the crime was committed, the Court, in determining the sentence to be imposed, shall make specific findings as to the existence of a serious intellectual developmental disorder at the time the crime was committed. If the Court finds that the defendant has established by clear and convincing evidence that the defendant had a serious intellectual developmental disorder at the time the

crime was committed, notwithstanding any other provision of this section to the contrary, the Court shall impose a sentence of imprisonment for the remainder of the defendant's natural life without benefit of probation or parole or any other reduction. If the Court determines that the defendant has failed to establish by clear and convincing evidence that the defendant had a serious intellectual developmental disorder at the time the crime was committed, the Court shall proceed to determine the sentence to be imposed pursuant to the provisions of this subsection. Evidence on the question of the defendant's alleged serious intellectual developmental disorder presented during the hearing shall be considered by the Court in its determination pursuant to this section as to whether the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist.

d. When used in this paragraph:

1. "Adaptive behavior" means the effectiveness or degree to which the individual meets the standards of personal independence expected of the individual's age group, sociocultural background and community setting, as evidenced by significant limitations in not less than 2 of the following adaptive skill areas: communication, self-care, home living, social skills, use of community resources, self-direction, functional academic skills, work, leisure, health or safety;

2. "Serious intellectual developmental disorder" means that an individual has significantly subaverage intellectual functioning that exists concurrently with substantial deficits in adaptive behavior and both the significantly subaverage intellectual functioning and the deficits in adaptive behavior were manifested before the individual became 18 years of age; and

3. "Significantly subaverage intellectual functioning" means an intelligent quotient of 70 or below obtained by assessment with 1 or more of the standardized, individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.

(4) After the Court determines the sentence to be imposed, it shall set forth in writing the findings upon which its sentence is based. If a jury is impaneled, and if the Court's decision as to whether the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist differs from the jury's recommended finding, the Court shall also state with specificity the reasons for its decision not to accept the jury's recommendation.

(e) Aggravating circumstances. —

(1) In order for a sentence of death to be imposed, the jury, unanimously, or the judge where applicable, must find that the evidence established beyond a reasonable doubt the existence of at least 1 of the following aggravating circumstances which shall apply with equal force to accomplices convicted of such murder:

a. The murder was committed by a person in, or who has escaped from, the custody of a law-enforcement officer or place of confinement.

b. The murder was committed for the purpose of avoiding or preventing an arrest or for the purpose of effecting an escape from custody.

c. The murder was committed against any law-enforcement officer, corrections employee, firefighter, paramedic, emergency medical technician, fire marshal or fire police officer while such victim was engaged in the performance of official duties.

d. The murder was committed against a judicial officer, a former judicial officer, Attorney General, former Attorney General, Assistant or Deputy Attorney General or former Assistant or Deputy Attorney General, State Detective or former State Detective, Special Investigator or former Special Investigator, during, or because of, the exercise of an official duty.

e. The murder was committed against a person who was held or otherwise detained as a shield or hostage.

f. The murder was committed against a person who was held or detained by the defendant for ransom or reward.

g. The murder was committed against a person who was a witness to a crime and who was killed for the purpose of preventing the witness's appearance or testimony in any grand jury, criminal or civil proceeding involving such crime, or in retaliation for the witness's appearance or testimony in any grand jury, criminal or civil proceeding involving such crime.

h. The defendant paid or was paid by another person or had agreed to pay or be paid by another person or had conspired to pay or be paid by another person for the killing of the victim.

i. The defendant was previously convicted of another murder or manslaughter or of a felony involving the use of, or threat of, force or violence upon another person.

j. The murder was committed while the defendant was engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any degree of rape, unlawful sexual intercourse, arson, kidnapping, robbery, sodomy, burglary, or home invasion.

k. The defendant's course of conduct resulted in the deaths of 2 or more persons where the deaths are a probable consequence of the defendant's conduct.

l. The murder was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, use of an explosive device or poison or the defendant used such means on the victim prior to murdering the victim.

m. The defendant caused or directed another to commit murder or committed murder as an agent or employee of another person.

n. The defendant was under a sentence of life imprisonment, whether for natural life or otherwise, at the time of the commission of the murder.

o. The murder was committed for pecuniary gain.

p. The victim was pregnant.

q. The victim was particularly vulnerable due to a severe intellectual, mental or physical disability.

r. The victim was 62 years of age or older.

s. The victim was a child 14 years of age or younger, and the murder was committed by an individual who is at least 4 years older than the victim.

t. At the time of the killing, the victim was or had been a nongovernmental informant or had otherwise provided any investigative, law enforcement or police agency with information concerning criminal activity, and the killing was in retaliation for the victim's activities as a nongovernmental informant or in providing information concerning criminal activity to an investigative, law enforcement or police agency.

u. The murder was premeditated and the result of substantial planning. Such planning must be as to the commission of the murder itself and not simply as to the commission or attempted commission of any underlying felony.

v. The murder was committed for the purpose of interfering with the victim's free exercise or enjoyment of any right, privilege or immunity protected by the First Amendment to the United States Constitution, or because the victim has exercised or enjoyed said rights, or because of the victim's race, religion, color, disability, national origin or ancestry.

(2) In any case where the defendant has been convicted of murder in the first degree in violation of any provision of § 636(a)(2)-(6) of this title, that conviction shall establish the existence of a statutory aggravating circumstance and the jury, or judge where appropriate, shall be so instructed. This provision shall not preclude the jury, or judge where applicable, from considering and finding the statutory aggravating circumstances listed in this subsection and any other aggravating circumstances established by the evidence.

(f) Method and imposition of sentence of death. — The imposition of a sentence of death shall be upon such terms and conditions as the trial court may impose in its sentence, including the place, the number of witnesses which shall not exceed 10, and conditions of privacy, and shall occur between the hours of 12:01 a.m. and 3:00 a.m. on the date set by the trial court. The trial court shall permit one adult member of the immediate family of the victim, as defined in § 4350(e) of this title, or the victim's designee, to witness the execution of a sentence of death pursuant to the rules of the court, if the family provides reasonable notice of its desire to be so represented. Punishment of death shall, in all cases, be inflicted by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until such person sentenced to death is dead, and such execution procedure shall be determined and supervised by the Commissioner of the Department of Correction. The administration of the required lethal substance or substances required by this section shall not be construed to be the practice of medicine and any pharmacist or pharmaceutical supplier is authorized to dispense drugs to the Commissioner or the Commissioner's designee, without prescription, for carrying out the provisions of this section, notwithstanding any other provision of law. Such sentence may not be carried out until final review thereof is had by the Delaware Supreme Court as provided for in subsection (g) of this section. The Court or the Governor may suspend the execution of the sentence until a later date to be specified, solely to permit completion of the process of judicial review of the conviction.

If the execution of the sentence of death as provided above is held unconstitutional by a court of competent jurisdiction, then punishment of death shall, in all cases, be inflicted by hanging by the neck. The imposition of a sentence of death shall be upon such terms and conditions as the trial court may impose in its sentence, including the place, the number of witnesses and conditions of privacy. Such sentence may not be carried out until final review thereof is had by the Delaware Supreme Court as provided in subsection (g) of this section. The Court or the Governor may suspend the execution of the sentence until a later date to be specified, solely to permit completion of the process of judicial review of the conviction.

(g) Automatic review of death penalty by Delaware Supreme Court. —

(1) Whenever the death penalty is imposed, and upon the judgment becoming final in the trial court, the recommendation on and imposition of that penalty shall be reviewed on the record by the Delaware Supreme Court. Absent an appeal having been taken by the defendant upon the expiration of 30 days after the sentence of death has been imposed, the Clerk of the Superior Court shall require a complete transcript of the punishment hearing to be prepared promptly and within 10 days after receipt of that transcript the clerk shall transmit the transcript, together with a notice prepared by the clerk, to the Delaware Supreme Court. The notice shall set forth the title and docket number of the case, the name of the defendant, the name and address of any attorney and a narrative statement of the judgment, the offense and the punishment prescribed. The Court shall, if necessary, appoint counsel to respond to the State's positions in the review proceedings.

(2) The Supreme Court shall limit its review under this section to the recommendation on and imposition of the penalty of death and shall determine:

a. Whether, considering the totality of evidence in aggravation and mitigation which bears upon the particular circumstances or details of the offense and the character and propensities of the offender, the death penalty was either arbitrarily or capriciously imposed or recommended, or disproportionate to the penalty recommended or imposed in similar cases arising under this section.

b. Whether the evidence supports the jury's or the judge's finding of a statutory aggravating circumstance as enumerated in subsection (e) of this section and, where applicable, § 636(a)(2)-(6) of this title.

(3) The Supreme Court shall permit the defendant and the State to submit briefs within the time provided by the Court, and permit them to present oral argument to the Court.

(4) With regard to review of the sentence in accordance with this subsection, the Court shall:

a. Affirm the sentence of death.

b. Set aside the sentence of death and remand for correction of any errors occurring during the hearing and for imposition of the appropriate penalty. Such errors shall not affect the determination of guilt and shall not preclude the reimposition of death where appropriately determined after a new hearing on punishment.

c. Set forth its findings as to the reasons for its actions.

(h) Ordinary review not affected by section. — Any error in the guilt phase of the trial may be raised as provided by law and rules of court and shall be in addition to the review of punishment provided by this section.

(11 Del. C. 1953 § 4209; 58 Del. Laws, c. 497 § 2; 59 Del. Laws, c. 284 § 2; 61 Del. Laws, c. 41 § 1; 63 Del. Laws, c. 357 § 1; 65 Del. Laws, c. 281 § 1; 65 Del. Laws, c. 494 § 4; 66 Del. Laws, c. 269 § 29; 68 Del. Laws, c. 189 §§ 1-4; 69 Del. Laws, c. 206 § 1; 69 Del. Laws, c. 439 § 1; 70 Del. Laws, c. 33 § 1; 70 Del. Laws, c. 137 § 1; 70 Del. Laws, c. 182 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 430 § 2; 73 Del. Laws, c. 423 §§ 1, 2, 3, 4, 5; 73 Del. Laws, c. 424 § 1; 74 Del. Laws, c. 174 §§ 1, 2, 4; 75 Del. Laws, c. 166 § 1; 77 Del. Laws, c. 191 § 2; 78 Del. Laws, c. 224 §§ 20, 21; 78 Del. Laws, c. 252 § 10; 79 Del. Laws, c. 37 § 2.)

§ 4209A Punishment for first-degree murder committed by juvenile offenders.

Any person who is convicted of first-degree murder for an offense that was committed before the person had reached the person's eighteenth birthday shall be sentenced to term of incarceration not less than 25 years to be served at Level V up to a term of imprisonment for the remainder of the person's natural life to be served at Level V without benefit of probation or parole or any other reduction.

(79 Del. Laws, c. 37 § 3.)

§ 4210 Arrest and disposition of intoxicated persons.

(a) Any intoxicated person taken into custody for a violation of § 1315 of this title shall immediately be taken to a detoxification center where the person shall be admitted as a patient.

(1) The arresting officer shall leave a summons for such intoxicated person with the chief medical officer of the detoxification center ordering such intoxicated person to appear before a justice of the peace at a date not to exceed a period of 5 days from the date of admission to the center.

(2) The intoxicated person shall be given a physical examination to determine the possible existence of any disease or ailment which threatens the health or safety of such individual; and upon a finding of any such disease or ailment, the medical staff of the detoxification center shall give such treatment as it deems necessary and practicable.

(b) Upon regaining sobriety and being informed of the person's physical condition, the person in custody shall inform the chief medical officer of the detoxification center as to whether, until such time as the person is to appear for trial, the person wishes to remain a patient or be released from custody.

(c) Should the person in custody validly consent to remain as a patient and to undergo testing procedures, the person shall be tested to determine if the person is a chronic alcoholic. A diagnosis of chronic alcoholism shall serve as an affirmative defense to violations of § 1315 of this title.

(d) Should it be shown to the satisfaction of the court that the person accused of intoxication suffers from chronic alcoholism, the person shall be acquitted of the charge of drunkenness and:

(1) Released from custody; or

(2) Temporarily released from custody under such conditions of treatment as the court may prescribe; such period of temporary release shall not exceed 1 year after which defendant shall be unconditionally released.

(11 Del. C. 1953 § 4210; 58 Del. Laws, c. 497 § 2; 70 Del. Laws, c. 186 § 1.)

§ 4211 Payment of expenses.

Any person treated under § 4210 of this title shall, any law to the contrary notwithstanding, be responsible for the incurred expenses, and shall be billed for same by the Department of Mental Health.

(11 Del. C. 1953 § 4211; 58 Del. Laws, c. 497 § 2.)

§ 4212 Definitions relating to §§ 4210 and 4211.

For the purposes of §§ 4210 and 4211 of this title, the following words and phrases shall have the meanings respectively ascribed to them:

(1) "Chronic alcoholic" shall mean a person who compulsively and habitually uses alcoholic beverages to the extent that they injure the person's health and interfere with the person's social and economic functioning.

(2) "Detoxification center" shall mean a medical facility, approved by the Department of Health and Social Services, or its successor, which shall provide appropriate medical services for intoxicated persons, including initial examination, diagnosis and temporary treatment.

(3) "Intoxicated person" shall mean a person whose powers of self-control have been substantially impaired because of the consumption of alcohol.

(4) "Sobriety" shall mean an individual's state of being when not under the influence of alcohol.

(5) "Valid consent" shall mean the voluntary giving of assent to testing procedures by a legally competent person; in the case of a minor or incompetent, such assent shall be obtained from a parent or guardian of the individual or in the absence of either, a person in loco parentis, to undergo testing.

(11 Del. C. 1953 § 4212; 58 Del. Laws, c. 497 § 2; 70 Del. Laws, c. 186 § 1.)

§ 4213 Arrest of persons under the influence of drugs; drug detoxification centers.

(a) For purposes of this section only, the following phrases shall have meanings respectively ascribed to them:

(1) "A person under the influence of drugs" shall mean a person whose powers of self-control have been substantially impaired because of the consumption of a drug described in Chapter 47 of Title 16.

(2) "Drug abuser" shall mean any person who compulsively and habitually uses drugs to the extent that they injure the person's health and interfere with the person's social and economic functioning.

(b) The Director of the Division of Drug Abuse Control shall designate certain hospital, clinic or other treatment facilities as "drug detoxification centers." The Director shall so designate such a facility only when the Director is satisfied that the facility has the medical and other staff, as well as the equipment, to diagnose and treat drug abusers as provided for in this section.

(c) Upon arrest for any crime which is not a felony under this title or Title 16, an arrestee who believes that the arrestee is under the influence of drugs as defined in subsection (a) of this section shall have the right to request immediate admission to a drug detoxification center. Upon such request, the arresting officer shall, as soon as transportation is available and as soon as conditions at the scene of the arrest permit, arrange to have the arrestee transported to the nearest available drug detoxification center.

(1) No expression of a desire to be admitted to a drug detoxification center shall be admissible in evidence in any criminal prosecution against the arrestee.

(2) Notwithstanding any provision of this Code to the contrary, no arrestee shall be heard to object in any court to failure to arraign the arrestee before a magistrate during the period of transportation to or stay in a drug detoxification center, or for a reasonable time not to exceed 24 hours after release.

(3) An arresting officer shall, when the officer suspects an arrestee of being under the influence of drugs, inform the arrestee of the rights under this section.

(4) No arrestee may revoke a request to be taken to a drug detoxification center after having made that request, and any drug detoxification center to which an arrestee is brought must consent to admission and testing of the arrestee, subject to limitations of facilities and staff.

(d) A drug detoxification center shall initially test admittees under this section to determine if they are under the influence of drugs or are drug abusers. If tests prove negative, the admittee shall be released forthwith to the custody of the arresting authorities. Any arrestee requesting admission to a drug detoxification center is deemed to consent to all medical and psychiatric tests considered necessary by the center to carry out its function under this section. The results of tests taken at a drug detoxification center or statements made by admittees under this section to drug detoxification center staff shall not be admissible as evidence in a criminal prosecution against the admittee.

(e) Admittees under this section whom the drug detoxification center determines to be drug abusers shall be asked if they wish to receive further treatment. Those consenting to further treatment shall remain until discharged by the drug detoxification center or until they wish to leave. No one admitted under this section shall be permitted to leave the drug detoxification center until the arresting police agency is notified.

(f) Upon a satisfactory showing to the court that a person is a drug abuser as defined in subsection (a) of this section and has completed treatment under this section in a manner satisfactory to the chairperson of the drug diagnostic team at the drug detoxification center to which the person was admitted, the charge of consumption or use of the drug, under Chapter 47 of Title 16, shall be dismissed.

(g) Whenever a police officer sees a person whom the officer believes to have taken drugs and needs medical treatment, the police officer may take that person into custody and arrange to have the person taken to a drug detoxification center or arrange to secure other medical help. This subsection shall apply whether or not the officer may under the circumstances lawfully arrest the person whom the officer believes to have taken drugs. No officer acting in good faith shall be subject to criminal or civil liability for any action under this subsection.

(h) To further the implementation of this section, the Director of the Division of Drug Abuse Control may prescribe regulations for the operation of drug detoxification centers and may assist such drug detoxification centers by distributing to them such funds as the General Assembly may from time to time appropriate to the Director for expenditure on their behalf.

(11 Del. C. 1953 § 4212A; 58 Del. Laws, c. 250 § 1; 58 Del. Laws, c. 497 § 3; 58 Del. Laws, c. 543; 70 Del. Laws, c. 186 § 1.)

§ 4214 Habitual criminal; life sentence.

(a) Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title, or any person who has been 3 times convicted of any felony under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony is declared to be an habitual criminal. The court, upon the State's petition, shall impose the applicable minimum sentence pursuant to subsection (b), (c) or (d) of this section and may, in its discretion, impose a sentence of up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(b) Any person who has been 3 times convicted of a felony under the laws of this State, and/or any other state, United States or any

territory of the United States, and who shall thereafter be convicted of a subsequent felony, which is the person's first Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title, shall receive a minimum sentence of 1/2 of the statutory maximum penalty provided elsewhere in this title, unless the maximum statutory penalty is life in which case the minimum sentence shall be 30 years, for the subsequent felony which forms the basis of the States petition to have the person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(c) Any person who has been 2 times convicted of a felony under the laws of this State, and/or any other state, United States or any territory of the United States, and 1 time convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent Title 11 violent felony, or attempt to commit such a violent felony, as defined by § 4201(c) of this title, shall receive a minimum sentence of the statutory maximum penalty provided elsewhere in this title for the fourth or subsequent felony which forms the basis of the State's petition to have the person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(d) Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a third or subsequent felony which is a Title 11 violent felony, or an attempt to commit such a violent felony, as defined in § 4201(c), shall receive a minimum sentence of the statutory maximum statutory penalty provided elsewhere in this title for the third or subsequent Title 11 violent felony which forms the basis of the State's petition to have the person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(e) Notwithstanding any provision of this title to the contrary, any sentence imposed pursuant to subsection (b), (c), or (d) of this section shall not be subject to suspension by the court, and shall be served in its entirety at full custodial Level V institutional setting without the benefit of probation or parole, except that any such sentence shall be subject to the provisions of §§ 4205(h), 4381 and 4382 of this title. For purposes of the computation of good time under § 4381 of this title, a life sentence imposed pursuant only to this section shall equate to a sentence of 45 years.

(f) Notwithstanding any statute, court rule or regulation to the contrary, beginning January 1, 2017, any person sentenced as an habitual criminal prior to July 19, 2016, shall be eligible to petition the Superior Court for sentence modification after the person has served a sentence of incarceration equal to any applicable mandatory sentence otherwise required by this section or the statutes describing said offense or offenses, whichever is greater. Absent extraordinary circumstances, the petitioner may only file 1 application for sentence modification under this section. A Superior Court Judge upon consideration of a petition filed pursuant to this subsection may modify, reduce or suspend such petitioner's sentence, excepting any minimum or mandatory sentence required by this section or the statutes describing said offense or offenses. If a Superior Court Judge modifies such petitioner's sentence, the Judge may impose a suspended sentence that includes a probationary term. Nothing in this section, however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section. For the purposes of this subsection, the "applicable mandatory sentence" shall be calculated by reference to the penalties prescribed for the relevant offense or offenses by this Code as of July 19, 2016, unless said offense has been repealed, in which case the penalties prescribed by this Code at the time of the act repealing said offense shall be controlling. The Superior Court shall establish rules to implement this subsection which are consistent with the statute, and those rules shall also provide that all petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a Title 16 offense are heard first, followed by all petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a crime against property, followed by all other petitions. The rules shall also provide for an initial review, including review of a formal response by the Department of Justice after consulting with the victim or victims, of sentence modification petitions involving crimes against persons or property, for the purpose of ensuring that victims are not inconvenienced by petitions that should be denied based upon the documents submitted; in cases not denied in this manner, all victims shall be given an opportunity to be heard. The Superior Court's review of any petitions filed pursuant to this subsection shall include a review of the applicant's prior criminal history, including arrests and convictions, a review of the applicant's conduct while incarcerated, and available evidence as to the likelihood that the applicant will reoffend if released, including a formal, recent risk assessment. The Superior Court shall articulate on the record the results of its review and its rationale for granting or denying a petition. In all cases where sentence modifications are granted, modified sentences should provide for step-down provisions to ensure successful reintegration of persons into the community. By January 1, 2017, the Department of Correction shall notify any criminal defendant whose Level V sentence was imposed under a statutory sentencing regimen which was subsequently changed in a manner that reduced the sentence applicable to the defendant's convictions, including any criminal defendant who received a minimum mandatory sentence that no longer exists by virtue of the enactment of 80 Del. Laws, c. 28. The Department of Correction shall similarly notify the attorney of record, and if the attorney of record is unavailable to receive notice, the Office of Defense Services.

(11 Del. C. 1953 § 4213; 58 Del. Laws, c. 497 § 2; 59 Del. Laws, c. 547 §§ 19-21; 65 Del. Laws, c. 159 § 1; 66 Del. Laws, c. 269 § 7; 67 Del. Laws, c. 350 § 37; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 477 § 2; 71 Del. Laws, c. 285 §§ 15, 16; 72 Del. Laws, c. 34 § 4; 72 Del. Laws, c. 43 § 7; 72 Del. Laws, c. 197 § 8; 74 Del. Laws, c. 346 § 1; 77 Del. Laws, c. 318 § 15; 78 Del. Laws, c. 13 §§ 11, 12; 78 Del. Laws, c. 252 § 11; 78 Del. Laws, c. 406 § 3; 79 Del. Laws, c. 89 § 1; 80 Del. Laws, c. 321 § 1.)

§ 4215 Sentence of greater punishment because of previous conviction.

(a) If at the time of sentence, it appears to the court that the conviction of a defendant constitutes a second or other conviction making the defendant liable to a punishment greater than the maximum which may be imposed upon a person not so previously convicted, the court shall fully inform the defendant as to such previous conviction or convictions and shall call upon the defendant to admit or deny such previous conviction or convictions. If the defendant shall admit the previous conviction or convictions, the court may impose the greater punishment. If the defendant shall stand silent or if the defendant shall deny the prior conviction or convictions, the defendant shall be tried upon the issue of previous conviction; provided, however, that the foregoing procedure shall not apply in cases of fourth offenders liable to sentence of life imprisonment under § 4214 of this title.

(b) If, at any time after conviction and before sentence, it shall appear to the Attorney General or to the Superior Court that, by reason of such conviction and prior convictions, a defendant should be subjected to § 4214 of this title, the Attorney General shall file a motion to have the defendant declared an habitual criminal under § 4214 of this title. If it shall appear to the satisfaction of the Court at a hearing on the motion that the defendant falls within § 4214 of this title, the Court shall enter an order declaring the defendant an habitual criminal and shall impose sentence accordingly.

(11 Del. C. 1953 § 4214; 58 Del. Laws, c. 497 § 2; 70 Del. Laws, c. 186 § 1.)

§ 4215A Sentence of greater punishment because of previous conviction under prior law or the laws of other jurisdictions.

(a) Notwithstanding any provision of law to the contrary, if a previous conviction for a specified offense would make the defendant liable to a punishment greater than that which may be imposed upon a person not so convicted, that previous conviction shall make the defendant liable to the greater punishment if that previous conviction was:

(1) For an offense specified in the laws of this State or for an offense which is the same as, or equivalent to, such offense as the same existed and was defined under the laws of this State existing at the time of such conviction; or

(2) For an offense specified in the laws of any other state, local jurisdiction, the United States, any territory of the United States, any federal or military reservation, or the District of Columbia which is the same as, or equivalent to, an offense specified in the laws of this State.

(b) This section shall apply to any offense or sentencing provision defined in this Code unless the statute defining such offense or sentencing provision or a statute directly related thereto expressly provides that this section is not applicable to such offense or sentencing provision.

(74 Del. Laws, c. 62 § 1.)

§ 4216 Transition provisions.

(a) Where an inmate is serving a sentence to Level V (incarceration) imposed not under the Truth in Sentencing Act of 1989 and receives a subsequent sentence to Level V under the provisions of the Truth in Sentencing Act, serving of the earlier sentence shall be suspended and the inmate shall serve the new Level V sentence until it is completed and then resume serving the original sentence.

(b) Where an inmate is serving a "nonmandatory" Level V (incarceration) sentence and is subsequently sentenced to a mandatory term of incarceration, serving of the earlier sentence shall be suspended and the inmate shall serve the new mandatory Level V sentence until it is completed and then resume serving the earlier sentence.

(c) Where an inmate is serving Level V (incarceration) sentence or sentences imposed not under the Truth in Sentencing Act of 1989, and is subsequently sentenced to Level V under the provisions of the Truth in Sentencing Act and had less than an aggregate 3 years remaining on the prior sentence or sentences, the court at the time of sentencing under the Truth in Sentencing Act may in its discretion suspend the remainder of the prior non-Truth in Sentencing Level V sentence or sentences, unless such sentence was a statutory mandatory term.

(d) Any individual convicted of a crime on or after January 1, 1990, which crime occurred prior to June 30, 1990, may elect to be sentenced under the provisions of the Truth in Sentencing Act of 1989 rather than under the prior provisions of this title.

(67 Del. Laws, c. 130 § 14; 67 Del. Laws, c. 350 §§ 3, 28.)

§ 4217 Jurisdiction over sentence retained.

(a) In any case where the trial court has imposed an aggregate sentence of incarceration at Level V in excess of 1 year, the court shall retain jurisdiction to modify the sentence to reduce the level of custody or time to be served under the provisions of this section.

(b) The court may modify the sentence solely on the basis of an application filed by the Department of Correction for good cause shown which certifies that the release of the defendant shall not constitute a substantial risk to the community or the defendant's own self.

(c) Good cause under this section shall include, but not be limited to, rehabilitation of the offender, serious medical illness or infirmity of the offender and prison overcrowding.

(d)(1) Any application filed by the Department of Correction under this section shall be filed with the Board of Parole. The Board of Parole shall have the authority to promulgate reasonable regulations concerning the form and content of said applications. The Board of Parole may require the Department of Correction to provide it with any information in the possession of the Department reasonably necessary for the Board to assess such applications.

(2) Following the receipt of any application for modification filed by the Department of Corrections which conforms with any regulations and requirements of the Board of Parole promulgated pursuant to paragraph (d)(1) of this section, the Board of Parole shall

hold a hearing under the provisions of § 4350(a) of this title for the purpose of making a recommendation to the trial court as to the approval or disapproval of the application. This hearing shall not be held unless written notice of the hearing is provided to the Attorney General's office at least 30 days prior to scheduled hearing date. A copy of the Department of Correction's application for modification shall be provided to the Attorney General's office along with written notice of the hearing date.

(3) Following the hearing described in paragraph (d)(2) of this section, the Board of Parole may reject an application for modification if it determines that the defendant constitutes a substantial risk to the community, or if it determines that the application is not based on good cause. Notwithstanding any provisions of this section to the contrary, any application rejected pursuant to this paragraph shall not be forwarded to the Superior Court, and any offender who is the subject of such rejected application shall not be the subject of a subsequent application for modification for at least 1 year, except in the case of serious medical illness or infirmity of said offender.

(4) Only in those cases where the Board by a majority vote recommends a modification of the sentence shall the application be submitted to the Court for consideration.

(e) Upon receipt of the recommendation of the Board of Parole, the court may in its discretion grant or deny the application for modification of sentence. The Court may request additional information, but need not hold further hearings on the application. The Court shall not act upon the application without first providing the Attorney General's office with a reasonable period of time to be heard on the matter. Should the Court deny the application because of a determination that the defendant constitutes a substantial risk to the community, or because it determines that the application lacks good cause, the defendant who is the subject of the denied application shall not be the subject of a subsequent application for modification for at least 1 year, except in the case of serious medical illness or infirmity of the defendant.

(f) Notwithstanding any provision of this section to the contrary, in the case of any offender who is serving a sentence of incarceration at Level V imposed pursuant to a conviction for any crime, the Court may order that said offender shall be ineligible for sentence modification pursuant to this section until a specified portion of said Level V sentence has been served, except that no offender who is serving a sentence of incarceration at Level V imposed pursuant to a conviction for a violent felony in Title 11 shall be eligible for sentence modification pursuant to this section until the offender has served at least 1/2 of the originally imposed Level V sentence, and no offender who is serving a statutory mandatory term of incarceration at Level V imposed pursuant to a conviction for any offense set forth in Title 11 shall be eligible for sentence modification pursuant to this section during the mandatory portion of said sentence. Nothing in this paragraph shall preclude a sentence modification pursuant to this section which is based solely upon serious medical illness or infirmity of the offender.

(g) Nothing contained in this section shall be construed to limit the court's ability to modify a sentence within the scope of the trial court's duly promulgated rules.

(h) For purposes of this section, "rehabilitation" is defined as the process of restoring an individual to a useful and constructive place in society especially through some form of vocational, correctional, or therapeutic retraining.

(67 Del. Laws, c. 130 § 14; 67 Del. Laws, c. 350 §§ 4-6; 69 Del. Laws, c. 311 §§ 1-3; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 362 §§ 1, 2.)

§ 4218 Probation before judgment.

(a) Subject to the limitations set forth in this section, for a violation or misdemeanor offense under Title 4, 7, or 11, or for any violation or misdemeanor offense under Title 21 which is designated as a motor vehicle offense subject to voluntary assessment by § 709 of Title 21, or a violation of § 2702 of Title 14, or for violations of § 4166(d) of Title 21, or for violations of § 4172 of Title 21, or for a violation of a county or municipal code, or for a misdemeanor offense under § 4764, § 4771 or § 4774 of Title 16, a court exercising criminal jurisdiction after accepting a guilty plea or nolo contendere plea may, with the consent of the defendant and the State, stay the entry of judgment, defer further proceedings, and place the defendant on "probation before judgment" subject to such reasonable terms and conditions as may be appropriate. The terms and conditions of any probation before judgment shall include the following requirements: (i) the defendant shall provide the court with that defendant's current address; (ii) the defendant shall promptly provide the court with written notice of any change of address; and (iii) the defendant shall appear if summoned at any hearing convened for the purpose of determining whether the defendant has violated or fulfilled the terms and conditions of probation before judgment. The terms and conditions may include any or all of the following:

(1) Ordering the defendant to pay a pecuniary penalty;

(2) Ordering the defendant to pay court costs to the State;

(3) Ordering the defendant to pay restitution;

(4) Ordering the defendant to perform community service;

(5) Ordering the defendant to refrain from contact with certain persons; and

(6) Ordering the defendant to conduct themselves in a specified manner.

The length of the period of probation before judgment shall be fixed by the court, but in no event shall the total period of probation before judgment exceed the maximum term of commitment provided by law for the offense or 1 year, whichever is greater.

(b) This section may not be substituted for:

(1) Section 1024 of Title 10. First offenders domestic violence diversion program;

(2) Section 900A of this title. Conditional discharge for issuing a bad check as first offense; or

(3) Section 4177B of Title 21. First offenders; election in lieu of trial.

(c)(1) Notwithstanding any provision of this section to the contrary, no person shall be admitted to probation before judgment if:

b. The person is charged with any offense set forth in this title, and has previously been convicted of any violent felony;

c. The person is charged with any offense set forth in this title, and has previously been convicted of any nonviolent felony within 10 years of the date of the commission of the alleged offense;

d. The person is charged with any offense set forth in this title, and has previously been convicted of any misdemeanor offense within 5 years of the date of the commission of the alleged offense;

e. The person is charged with any offense set forth in Title 4 or 7, and has been previously convicted of any offense set forth in Title 4 or 7 within 5 years of the date of the commission of the alleged offense;

f. The person is currently charged with any offense set forth in § 709 of Title 21, and has been previously convicted of any offense set forth in Title 21 within 5 years of the date of the commission of the alleged offense;

g. The person is currently charged with a violation of § 2702 of Title 14 and has been previously convicted of a violation of 2702 of Title 14 within 5 years of the date of the alleged offense; or

h. The person is charged with a violation of a county or municipal code provision and has previously been convicted of a violation of another county or municipal code provision within 5 years of the date of the commission of the alleged offense.

i. The person is charged with an offense involving a motor vehicle and holds a commercial driver license (CDL).

(2) For the purposes of this subsection, the following shall also constitute a previous conviction:

a. A conviction under the laws of another state, the United States, or any territory of the United States of any offense which is the same as, or equivalent to, any offense specified in paragraph (c)(1) of this section;

b. An adjudication of delinquency; or

c. Any adjudication, resolution, disposition or program set forth in § 4177B(e)(1) of Title 21.

a. The person is currently serving a sentence of incarceration, probation, parole or early release of any type imposed for another offense;

(e) Nothing in this section shall be construed to permit probation before judgment for a violation of a county or municipal code that would not be permitted for the corresponding state code offense.

(f) Upon a violation of a term or condition of the Court's order of probation before judgment, the Court may enter judgment and proceed with disposition of the person as if the person had not been placed on probation before judgment.

(g) Upon fulfillment of the terms and conditions of probation before judgment, the Court shall enter an order discharging the person from probation. The burden shall be upon the defendant to demonstrate that the terms and conditions of probation have been fulfilled. The discharge is the final disposition of the matter. Discharge of a person under this section shall be without judgment of conviction and is not a conviction for purposes of any disqualification or disability imposed by law because of conviction of a crime.

(i) Notwithstanding the provisions of subsection (a) of this section to the contrary, in any case in which the Delaware Department of Justice does not intend to enter its appearance, the consent of the State shall not be required prior to placing a defendant on "probation before judgment." Notwithstanding the foregoing, except for the offenses under Title 21 to which this section applies, the Attorney General or other prosecuting authority may advise the court of aggravating circumstances in opposition to placing a defendant on "probation before judgment."

(h) Notwithstanding any provision of this section to the contrary, the court shall not admit a defendant to probation before judgment nor otherwise apply any provision of this section unless the defendant first gives written consent to the court permitting any hearing or proceeding pursuant to this section to occur in the defendant's absence if:

(1) Timely notice of the hearing or proceeding is sent or delivered to the address provided by the defendant pursuant to subsection (a) of this section; and

(2) The defendant fails to appear at said proceeding.

(d) This section shall not be available to any person who has previously been admitted to probation before judgment for any offense within 5 years of the current offense.

In the event that a defendant fails to appear at any hearing or proceeding pursuant to this section, the court may proceed in the defendant's absence if it first finds that timely notice of the hearing or proceeding was sent or delivered to the address provided by the defendant pursuant to subsection (a) of this section. Nothing in this subsection shall limit the power of the Court to hold a hearing to determine whether a defendant is in violation of the terms of that defendant's probation.

(72 Del. Laws, c. 126 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 453 §§ 1-8; 73 Del. Laws, c. 301 §§ 3, 4; 75 Del. Laws, c. 184 § 1; 75 Del. Laws, c. 364 § 2; 76 Del. Laws, c. 251 § 2; 78 Del. Laws, c. 13 § 13; 78 Del. Laws, c. 230 § 2; 80 Del. Laws, c. 238 § 1; 80 Del. Laws, c. 415 § 1.)

§ 4219 Continuous Remote Alcohol Monitoring Program.

(a) There is hereby established for sentencing and probation purposes a Continuous Remote Alcohol Monitoring Program which shall use technology to monitor offenders for alcohol use. The program shall be administered by the Department of Correction which shall have the sole authority to determine which offenders are accepted into the program.

(b) The Board of Parole or any Court of competent jurisdiction may request and recommend, as part of conditions of release or the sentence of any person convicted under § 4177(a) of Title 21 for a first offense where the first offender election is not available, or for a

subsequent offense involving a blood alcohol content of .20 or higher, a period of continuous remote alcohol monitoring not to exceed 90 days for a first offense and 120 days for a second offense.

(c) Any inmate incarcerated for violations of § 4177 of Title 21 and selected for participation in the program shall be released on Level IV status, subject to the conditions of the program, and those conditions imposed by the sentencing judge. The remainder of the participant's sentence of incarceration shall be suspended upon completion of the program requirements. Participants failing to satisfactorily complete the program shall be returned to the Board of Parole or the sentencing authority for resentencing.

(d) Any offender considered for participation must agree to adhere to the conditions established for participation before being accepted into the program.

(e) The Department of Correction shall report annually on the use of the program, and its effectiveness as a supervision mechanism.

(75 Del. Laws, c. 143 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 381 §§ 1, 2; 76 Del. Laws, c. 134 § 1; 76 Del. Laws, c. 366 § 1.)

§ 4220 Modification, suspension or reduction of sentence for substantial assistance.

(a) The Attorney General may move the sentencing court to modify, reduce or suspend the sentence of any person who is convicted of any crime or offense specified in this Code, and who provides substantial assistance in the identification, arrest or prosecution of any other person for a crime or offense specified in this Code, in the laws of the United States, or any other state or territory of the United States.

(b) Upon good cause shown, any motion made pursuant to subsection (a) of this section may be filed and heard in camera.

(c) The provisions of § 4204(d) or § 4217 of this title, any court rule or any other provision of law to the contrary notwithstanding, a judge of the court that is imposing or that has imposed a sentence, upon hearing a motion filed pursuant to subsection (a) of this section, may modify, reduce or suspend that sentence, including any minimum or mandatory sentence, or a portion thereof, if the court finds that the person rendered such substantial assistance.

(77 Del. Laws, c. 46 § 1.)

§ 4221 Modification, deferral, suspension or reduction of sentence for serious physical illness, injury or infirmity.

Notwithstanding any provision of law to the contrary, a court may modify, defer, suspend or reduce a minimum or mandatory sentence of 1 year or less, or a portion thereof, where the court finds by clear and convincing evidence, or by stipulation of the State, that the person to be sentenced suffers from a serious physical illness, injury or infirmity with continuing treatment needs which make incarceration inappropriate and that such person does not constitute a substantial risk to the community.

(77 Del. Laws, c. 304 § 1.)

Part II
Criminal Procedure Generally
Chapter 43
SENTENCING, PROBATION, PAROLE AND PARDONS
Subchapter I
Purposes, Construction and Definitions

§ 4301 Purposes and construction.

This chapter shall be construed to the end that the treatment of persons convicted of crime shall take into consideration their individual characteristics, circumstances, needs and potentialities as revealed by a case study, and that whenever it appears desirable in the light of the needs of public safety and their own welfare, such person shall be dealt with, at restricted liberty in the community, by a uniformly organized system of constructive rehabilitation, under probation or parole supervision instead of in a correctional institution.

(11 Del. C. 1953 § 4301; 54 Del. Laws, c. 349 § 7.)

§ 4302 Definitions.

As used in this chapter:

(1) "Board of Pardons" means that Board as established by the Constitution and laws.

(2) "Commissioner" or "Commissioner of the Department" means Commissioner of the Department of Correction.

(3) "Community service" means the performance of work or service for a nonprofit or other tax-supported entity by an offender without pay for a specified period of time. Such service is intended as a symbolic form of restitution meant to serve as an appropriate means of punishment and rehabilitation of the offender and as a means of addressing the community's need to be made whole.

(4) "Conditional release" means the release of an offender from incarceration to the community by reason of diminution of the period of confinement through merit and good behavior credits. A person so released shall be known as a releasee.

(5) "Court" means Superior Court, Family Court, Court of Common Pleas, or Justices of the Peace Courts.

(6) "Department" means the Department of Correction.

(7) "Judge" means any judge of any court as herein defined.

(8) "Law" means the laws of this State, including any ordinance of any subdivision or municipality.

(9) "Merit and good behavior credits" means that diminution of the period of confinement, as provided by law, by reason of industrious and cooperative conduct.

(10) "Offender" means any person who has been brought within the jurisdiction of the Superior Court, Family Court, or Court of Common Pleas or within the scope of duties of the Board of Parole or the Board of Pardons.

(11) "Parole" means the release by the Parole Board of an offender from incarceration to the community prior to the expiration of the offender's term, subject to the supervision and guidance of the Department. A person placed upon parole shall be known as a parolee.

(12) "Parole Board" means the duly established Board of Parole as the paroling authority of the State.

(13) "Presentence investigation" means the procedure by which the court, subsequent to conviction but prior to sentencing, obtains information concerning the offender sufficient to evaluate the offender's conduct and to determine the offender's potentialities for rehabilitation, with appropriate recommendations for judicial disposition. Said presentence investigation shall be embodied in a written report.

(14) "Probation" means the sentencing without imprisonment of an offender by judgment of the court following establishment of guilt, subject to the conditions imposed by the court, including the supervision and guidance of the Department's field services. A person placed upon probation or under suspended sentence under supervision shall be known as a probationer.

(15) "Probation and parole officer" means an employee of the Department with the qualifications, and having powers and responsibilities pertaining to investigation, supervision and otherwise, provided by law or determined by the Department within the scope of this chapter.

(11 Del. C. 1953 § 4302; 54 Del. Laws, c. 349 § 7; 57 Del. Laws, c. 591 §§ 44-46; 59 Del. Laws, c. 370 § 1; 60 Del. Laws, c. 251 §§ 7-9; 66 Del. Laws, c. 233 § 2; 67 Del. Laws, c. 316 § 1; 67 Del. Laws, c. 442 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 176 §§ 18, 19; 78 Del. Laws, c. 305 § 1.)

Subchapter II
Probation and Parole Services

§ 4321 Probation and parole officers.

(a) The Department and its probation and parole officers shall conduct such preparole investigations or perform such other duties under this chapter as may be ordered by the court, Parole Board or Department; provided, however, that all presentence investigations and reports for the Superior Court and the Court of Common Pleas shall be prepared as provided in § 4335 of this title.

(b)(1) The Department shall furnish to each person released under the supervision of the Department a written statement of the conditions of the person's probation or parole and shall instruct the person regarding these conditions.

(2) The officers, under the supervision of the Department, shall evaluate each person in their charge under Supervision Accountability Level II, III or IV, using an objective risk and needs assessment instrument and shall create a case plan for those persons assessed to be moderate- to high-risk that targets the need factors identified by the assessment. The Department shall make efforts to provide treatment and services responsive to the person's needs and characteristics. Use of the objective risk assessment instrument and associated case plans shall commence by December 31, 2013.

(3) The officers shall keep informed of the conduct and condition of persons in their charge, shall aid them to secure employment, shall exercise supervision over them, shall see that they are in compliance with and fulfill the conditions of their release and shall use all suitable methods to aid and encourage them to bring about improvement in their conduct and conditions and to meet their probation or parole obligations.

(4)a. A special condition of supervision may be set by orders of the court, Board of Parole or the probation and parole officer acting under the authority of the court or Board of Parole.

b. Special conditions of supervision imposed by the probation and parole officer shall be in accordance with Department procedures and may be enforced in the interim period of final review by the court or Board of Parole.

(c) The officer shall keep detailed records of their work, shall assist in the collection and dispersal of all moneys in accordance with the orders of the court and Department and shall make such reports in writing and perform such other duties which the rules and regulations of the Department require, or which the court, the Board of Parole or the Commissioner may require.

(d) Probation and parole officers shall exercise the same powers as constables under the laws of this State and may conduct searches of individuals under probation and parole supervision in accordance with Department procedures while in the performance of the lawful duties of their employment and shall execute lawful orders, warrants and other process as directed to the officer by any court, judge or Board of Parole of this State; however, a probation and parole officer shall only have such power and duties if the officer participates in and/or meets the minimum requirements of such training and education deemed necessary by the Department and Board of Examiners.

(e) Probation and parole officers may be tasked to participate in joint operations with federal authorities while in the performance of the lawful duties of their employment. Any contraband, property and/or money seized in the course of such joint operations shall be apportioned in accordance with federal distribution guidelines. Any distribution to probation and parole shall become the property of the Department of Correction, Bureau of Community Corrections. Any proceeds from the disposal of such property shall be used for the purchase of security equipment and technology necessary for the support of the employees of the Bureau.

(f) Specialized juvenile probation and parole officers, assigned to the Division of Youth Rehabilitative Services and as designated and sworn by the Secretary of the Department of Services for Children, Youth and Their Families, shall exercise the same powers as constables exercise under the laws of this State, and may conduct searches of individuals under the supervision of the Department of Services for Children, Youth and Their Families' Division of Youth Rehabilitative Services in accordance with agency procedure, while in the performance of the lawful duties of their employment, and shall execute lawful orders, warrants and other process as directed to such officer by any court or judge; however, a specialized juvenile probation and parole officer shall have such above-enumerated powers and duties only if the officer has met the minimum requirements of training and education deemed necessary by the Department of Services for Children, Youth and Their Families.

(g) The Department shall undertake an assessment of the availability of community resources to meet the treatment and rehabilitation needs of the supervised population every 3 years and endeavor to develop and support programs in accordance with identified needs. The first 3-year report shall be completed by December 31, 2013.

(11 Del. C. 1953 § 4321; 54 Del. Laws, c. 349 § 7; 67 Del. Laws, c. 442 § 3; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 108 § 1; 73 Del. Laws, c. 60 § 1; 77 Del. Laws, c. 443 § 1; 78 Del. Laws, c. 392 §§ 2, 3; 79 Del. Laws, c. 283 § 1.)

§ 4322 Protection of records.

(a) The presentence report (other than a presentence report prepared for the Superior Court or the Court of Common Pleas), the preparole report, the supervision history and all other case records obtained in the discharge of official duty by any member or employee of the Department shall be privileged and shall not be disclosed directly or indirectly to anyone other than the courts as defined in § 4302 of this title, the Board of Parole, the Board of Pardons, the Attorney General and the Deputies Attorney General or others entitled by this chapter to receive such information; except that the court or Board of Pardons may, in its discretion, permit the inspection of the report or parts thereof by the offender or the offender's attorney or other persons who in the judgment of the court or Board of Pardons have a proper interest therein, whenever the best interest of the State or welfare of a particular defendant or person makes such action desirable or helpful. No person committed to the Department shall have access to any of said records. The presentence reports prepared for the Superior Court and the Court of Common Pleas shall be under the control of those Courts respectively.

(b) The Commissioner or the Commissioner's designees may receive and use, for the purpose of aiding in the treatment of rehabilitation of offenders, the preparole report, the supervision history and other Department of Correction case records, provided that such information

or reports remain privileged for any other purpose.

This subsection shall not apply to the presentence reports of the Superior Court and the Court of Common Pleas which reports shall remain under the control of such Courts.

(c) No inmate shall be provided a copy of the Department of Correction Policy and Procedures Manuals, The Bureau of Prisons Policy and Procedures Manuals, nor any of the Department of Correction Facilities Operational Procedures, Administrative Regulations and Post Orders.

(d) The Department of Correction Policies and Procedures, including any Policy, Procedure, Post Order, Facility Operational Procedure or Administrative Regulation adopted by a Bureau, facility or department of the Department of Correction shall be confidential, and not subject to disclosure except upon the written authority of the Commissioner.

(e) The Department of Services for Children, Youth and Their Families may receive and use, for the purposes of investigating child abuse, neglect and dependency, providing services to prevent further child abuse, neglect and dependency or in aiding in reunification of families, information contained in Department records concerning offenders, providing that such information or reports remain privileged for any other purpose. This information may contain, but is not limited to, information concerning program participation in level IV and level V institutions, special conditions of probation or parole, compliance with those conditions and general supervision in the community.

(f) Any subpoena issued for any record of the Department of Correction, or for any record of its employees maintained in the course of their duties, shall comply with the following procedure:

(1) The subpoena shall be issued at least 30 days in advance of the date on which production of the records is due.

(2) A copy of the subpoena shall be served on the State Solicitor.

Any subpoena issued without compliance with the requirements of this section shall be deemed void ab initio. Any such subpoena shall be reasonably limited in quantity with regard to the purpose for production and the issuer of the subpoena shall tender payment for the cost of the photocopying as established by the Department.

(g) Any subpoena issued for any record of the Department of Correction, or for any record of its employees maintained in the course of their duties, in a civil action between private parties shall comply with the following procedure:

(1) Where the information sought may reasonably be expected to be in the possession of 1 of the parties to the litigation, as well as in the possession of the Department, the information shall first be sought from the party to the litigation having possession of the information.

(2) Prior to seeking criminal history records from the Department, the party seeking the information shall first attempt to obtain criminal history information through proper procedures at the State Bureau of Identification, pursuant to § 8513 of this title.

(3) Any subpoena issued under this subsection shall meet the requirements of subsection (f) of this section above.

(h)(1) Any subpoena or summons issued for testimony of any official or employee of the Department of Correction shall be issued at least 30 days in advance of the date on which the testimony is due, and a copy of the subpoena or summons shall be served on the State Solicitor.

(2) Any subpoena or summons issued for testimony of any official or employee of the Department of Correction, where the substance of the testimony would involve information contained in the records of the Department, shall comply with the requirements of subsection (f) of this section above, and the subpoena or summons shall be deemed a subpoena for the Department's records. The Department or its Deputy Attorney General shall notify the issuer when a subpoena or summons for testimony is deemed a subpoena for records and subsection (f) of this section applies.

(3) The requirements of this subsection apply to both criminal and civil actions and in all courts.

(i) Notwithstanding any language in this section or elsewhere to the contrary, the time requirements in this section regarding the issuance of subpoenas shall not apply to any subpoena issued in:

(1) Any criminal proceeding in which the penalty of death is sought by the prosecution;

(2) Any civil or criminal case where the issuing party has less than 45 days' notice of the trial date; or

(3) If the party issuing the subpoena can show that the late subpoena was issued as a result of information provided by the State less than 45 days prior to the trial date.

(11 Del. C. 1953 § 4322; 54 Del. Laws, c. 349 § 7; 56 Del. Laws, c. 149; 66 Del. Laws, c. 233 § 3; 69 Del. Laws, c. 226 § 1; 71 Del. Laws, c. 324 § 1; 72 Del. Laws, c. 17 § 1; 75 Del. Laws, c. 368 §§ 1-4.)

Subchapter III

Probation and Sentencing Procedures

§ 4331 Presentence investigation; victim impact statement.

(a) Upon conviction of any person for any crime and before sentencing, the court may, before fixing punishment or imposing sentence, direct an Investigative Services officer to thoroughly investigate and report upon the history of the accused and any and all other relevant facts, to the end that the court may be fully advised as to the appropriate and just sentence to be imposed; provided, however, that if the court orders such investigation for an offender convicted of murder in the first or second degree, rape in the first, second or third degree,

unlawful sexual intercourse in the first or second degree, the manufacture, delivery or possession with intent to manufacture a narcotic drug, or trafficking under § 4753A of Title 16 [repealed], with respect to a narcotic drug, the offender shall immediately be remanded to the James T. Vaughn Correctional Center during the time such investigation is being conducted. All time spent by the offender in custody prior to completion of the presentence investigation and all other sentencing procedures shall be credited against the amount of time which the offender is sentenced to serve.

(b) Whenever an investigation by the Investigative Services Office is ordered by the court, the Investigative Services Office should inquire promptly into such things as the circumstances of the offense, the motivation of the offender, the criminal record, social history, behavior pattern and present condition of the offender. The presentence investigation should include administration of an objective risk and needs assessment instrument, and should note wherein the judicial alternatives of the court and appropriate conditions of supervision may play a role in the rehabilitation of the offender as a law-abiding citizen. All local and state agencies shall make available to the Investigative Services Office such records as the Investigative Services Office may request. The investigation should include physical and mental examination of the offender, when, in the opinion of the court, it is desirable. As soon as practicable or as ordered by the court, the presentence report shall be forwarded to the sentencing judge of the court in each case.

(c) The Investigative Services Office may conduct any additional investigations or perform any other investigative tasks, with the preparation of appropriate reports, as may be desirable to facilitate the appropriate sentencing of an offender or other court proceedings. In order to facilitate the appropriate sentencing of any offender or for any other court proceedings, the Investigative Services Office may be ordered by the court to administer an objective risk and needs assessment instrument and prepare an appropriate report thereof for the court.

(d) Except for those offenses where no victim can be ascertained, a victim impact statement shall be presented to the court prior to the sentencing of a convicted person, where such person has been convicted of:

(1) A felony;

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

(3) A misdemeanor which resulted in physical injury or death.

The victim impact statement shall 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].

(e) A victim impact statement shall:

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

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

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

(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;

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

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

(f) If a victim or other person identified in subsection (e) of this section is deceased; is a child; is under a mental, physical or legal disability; or is otherwise unable to provide the information required under this section, such information may be obtained from the personal representative, guardian, committee, family member, treatment professional, child protection agency or such other involved state agency as the presentence officer may deem necessary.

(g) The provisions of this section relating to victim impact statements shall apply only to those victims who have cooperated with the court and with Investigative Services officers. The provisions of this section relating to victim impact statements shall apply to all courts having original jurisdiction to hear, try and finally determine criminal offenses; provided, however, that such provisions shall not apply to Justices of the Peace Courts.

(h) Notwithstanding any statute, rule or regulation to the contrary, upon conviction of any person for any sexual offense, as defined in § 761 of this title, and upon request of either party, the court shall direct that a presentence report be prepared by a presentence officer.

(i) In any case involving a felony conviction for which a presentence investigation is being conducted, the person conducting the investigation shall (1) provide the convicted felon with a copy of § 1448 of this title and (2) attempt to determine if the convicted felon is in possession of any firearms in violation of § 1448 of this title. This attempt shall include reasonable efforts to contact other persons in the convicted felon's household and the victim, and shall also include a check of the Superior Court's list of persons holding concealed weapons permits. If the person conducting the investigation believes that the convicted felon is in possession of any firearms in violation of § 1448 of this title, the Attorney General shall be notified for appropriate enforcement action.

(11 Del. C. 1953 § 4331; 54 Del. Laws, c. 349 § 7; 59 Del. Laws, c. 94 § 1; 59 Del. Laws, c. 316 § 1; 60 Del. Laws, c. 114 § 1; 63 Del. Laws, c. 358 § 1; 64 Del. Laws, c. 352 §§ 1, 2; 66 Del. Laws, c. 269 § 8; 71 Del. Laws, c. 176 § 20; 71 Del. Laws, c. 285 §§ 17, 18; 73 Del. Laws, c. 60 §§ 2, 3, 4, 5; 73 Del. Laws, c. 151 § 1; 76 Del. Laws, c. 232 § 2; 78 Del. Laws, c. 392 §§ 4, 18.)

§ 4332 Conditions of probation or suspension of sentence; house arrest for nonviolent offenders.

(a) The Department may adopt standards concerning the conditions of probation or suspension of sentence which the court may use in a

given case. The standard conditions shall apply in the absence of any other specific or inconsistent conditions imposed by the court. The presentence report may recommend conditions to be imposed by the court. However, nothing in this chapter shall limit the authority of the court to impose or modify any general or specific conditions of probation or suspension of sentence. The Department may recommend and, by order duly entered, the court may impose and may at any time order modification of any conditions of probation or suspension of sentence. Before any such conditions are modified, a report by the Department shall be presented to and considered by the court. The court shall cause a copy of any such order to be delivered to the Department and to the probationer.

(b) The Department may adopt standards governing any program of house arrest for nonviolent offenders. The presentence report may recommend conditions to be imposed by the court. In addition to any conditions imposed by the Department or by the court, each program involving house arrest for nonviolent offenders, regardless of the official or unofficial name of the program, shall include a reasonable monthly payment by each offender participating in the program, clear and consistent sanctions when a participant in the program violates any of the conditions, and the ownership or leasing of all equipment by the Department of Correction.

(c) The Department is authorized to use offender electronic monitoring systems and any new or emerging offender monitoring technology that will assist in the supervision of offenders placed on house arrest.

(d) The Department is authorized to supervise offenders on house arrest without the use of any specific electronic equipment, so long as sufficient and reasonable methods for ensuring compliance with the terms of house arrest are employed.

(11 Del. C. 1953 § 4333; 54 Del. Laws, c. 349 § 7; 66 Del. Laws, c. 29 § 1; 76 Del. Laws, c. 399 § 1.)

§ 4332A Imposition of community service.

(a) A court may impose a period of community service, as defined in this chapter, either as a condition of probation or as the sole sanction imposed at sentencing.

(b) The specified number of hours of community service shall be fixed by the court, but in no case shall the total number of hours imposed exceed the maximum term of incarceration provided by law for the instant offense. In cases where no incarceration is provided by law, the number of hours of community service fixed by the court shall not exceed 100.

(c) In the event that community service is imposed by the court as a condition of probation, noncompliance with the community service order shall constitute a violation of the conditions of probation.

(d) In the event that community service is imposed as the sole sanction by the court, noncompliance with the community service order shall constitute criminal contempt.

(e) The Department shall, by the promulgation of regulations or other appropriate standards, administer and enforce the terms of all court orders involving the imposition of community service.

(67 Del. Laws, c. 316 § 2.)

§ 4333 Period of probation or suspension of sentence; termination.

(a) The period of probation or suspension of sentence shall be fixed by the court subject to the provisions of this section. Any probation or suspension of sentence may be terminated by the court at any time and upon such termination or upon termination by expiration of the term, an order to this effect shall be entered by the court.

(b) The length of any period of probation or suspension of sentence shall be limited to:

(1) Two years, for any violent felony in this title as designated in § 4201(c) of this title;

(2) Eighteen months, for any offense set forth in Title 16; or

(3) One year, for any offense not otherwise specified in paragraph (b)(1) or (2) of this section.

(c) Any offender who is serving more than 1 sentence imposed following convictions in more than 1 case shall not serve a consecutive period of probation or suspension of sentence that is in excess of the limitations imposed by subsection (b) of this section. Any sentence of probation or suspension of sentence (or any portion thereof) which, if served consecutively to another such sentence, would result in an aggregate sentence of probation or suspension of sentence in excess of the limitations imposed by subsection (b) of this section shall be deemed to be concurrent to such other sentence. The provisions of this subsection shall not apply to a sentence imposed for a conviction involving an offense committed while the offender was serving a period of probation or suspension of sentence.

(d) The limitations set forth in subsections (b) and (c) of this section shall not apply:

(1) To any sentence imposed for a conviction of any sex offense as defined in § 761 of this title if the sentencing court determines on the record that a longer period of probation or suspension of sentence will reduce the likelihood that the offender will commit a sex offense or other violent offense in the future;

(2) To any sentence imposed for any violent felony in this title as designated by § 4201(c) of this title if the sentencing court determines on the record that public safety will be enhanced by a longer period of probation or suspension of sentence; or

(3) To any sentence imposed for any offense set forth in the Delaware Code if the sentencing court determines on the record that a longer period of probation or suspension of sentence is necessary to ensure the collection of any restitution ordered, except that any period of probation ordered pursuant to this paragraph that is in excess of the limitations set forth in subsections (b) and (c) of this section shall be served at Accountability Level I — Restitution Only pursuant to the terms of § 4204(c)(10) of this title.

(e) The limitations set forth in subsection (b) and (c) of this section may be exceeded by up to 90 days by the sentencing court if it determines that the defendant has not yet completed a substance abuse treatment program ordered by the court, provided, that each

extension of sentence ordered pursuant to this subsection shall be preceded by a hearing, and by a finding on the record, that such extension of sentence is necessary to facilitate the completion of the substance abuse treatment program.

(f) Except as provided by subsection (g) of this section, in no event shall the total period of probation or suspension of sentence exceed the maximum term of commitment provided by law for the offense or 1 year, whichever is greater; provided, that in all cases where no commitment is provided by law the period of probation or suspension of sentence shall not be more than 1 year.

(g)(1) Any period of custodial supervision imposed pursuant to § 4204(l) of this title shall not be subject to the limitations set forth by this section.

(2) As used in this section, the phrase "period of probation or suspension of sentence" shall not include any period of a sentence that is designated by the sentencing court to be served at Supervision Accountability Level IV as defined in § 4204(c)(4) of this title.

(h) Notwithstanding any provision of this Code or court rule to the contrary, any superior court judge who is presiding over any proceeding at which an offender is sentenced or found to have violated any condition or term of an imposed period of probation or suspension of sentence shall be deemed to have jurisdiction over any sentence to a period of probation or suspension of sentence currently being served by the offender regardless of the court or county in which such sentence was originally imposed, and may modify, revoke or terminate any such period of probation or suspension of sentence.

(i) The Department shall have the authority without leave of the court to reclassify any offender sentenced to probation at Accountability Levels I, II or III, provided that the Department shall first evaluate the offender using an objective classification tool designed to assist in the determination of the appropriate level of probation. Offenders shall be reevaluated and reclassified periodically as the Department deems necessary and appropriate.

(j) Notwithstanding any other provision to the contrary, the provisions of subsections (b), (c), (d) and (e) of this section shall be applicable to sentences imposed prior to June 1, 2003, only upon an order of the Court entered for good cause shown after its consideration of an application for sentence modification filed by the Department of Correction.

(11 Del. C. 1953 § 4334; 54 Del. Laws, c. 349 § 7; 74 Del. Laws, c. 27 § 4; 74 Del. Laws, c. 88 §§ 1-4; 74 Del. Laws, c. 345 § 1; 78 Del. Laws, c. 392 § 5.)

§ 4334 Arrest for violation of conditions; subsequent disposition.

(a) The court may issue a warrant for the arrest of a probationer for violation of any of the conditions of probation or suspension of sentence, or a notice to appear to answer to a charge of violation. Such notice shall be personally served upon the probationer. The warrant shall authorize officers to return the probationer to the custody of the court or to the Department.

(b) The Commissioner, or any probation officer, when in the Commissioner's or probation officer's judgment there has been a violation of any condition of probation or suspension of sentence, may arrest such probationer without a warrant, or may deputize any other officer with power of arrest to do so by giving that officer a written statement setting forth that the probationer has, in the judgment of the Commissioner or probation officer, violated the conditions of probation or suspended sentence. The written statement delivered with the probationer by the arresting officer to the official in charge of the place of detention shall be sufficient warrant for the detention of the probationer. When an arrest is made by a probation officer, the Department shall present to the detaining authority a written statement of the circumstances of violation. Provisions regarding release on bail of persons charged with crime shall be applicable to the probationers arrested under these provisions.

(c) Upon such arrest and detention, the Department shall immediately notify the court and shall submit in writing a report showing in what manner the probationer has violated the conditions of probation or suspension of sentence. Thereupon, or upon arrest by warrant as provided in subsection (b) of this section, the court shall cause the probationer to be brought before it without unnecessary delay, for a hearing on the violation charge. The hearing may be informal or summary. If the violation is established, the court may continue or revoke the probation or suspension of sentence, and may require the probation violator to serve the sentence imposed, or any lesser sentence, and, if imposition of sentence was suspended, may impose any sentence which might originally have been imposed.

(d) Notwithstanding any provision of subsection (c) of this section or any other law, rule or regulation to the contrary, the Department is authorized to administratively resolve technical and minor violations of the conditions of probation or supervision at Accountability Levels I, II, III or IV when a sanction less restrictive than Level V is being sought by the Department as a result of the violation, and is further authorized to administratively resolve technical and minor violations of conditions of probation at Accountability Levels I, II, III, or IV by placing the probationer at Accountability Level IV for a period of not more than 5 days consecutively, and not more than 10 days in any 1 calendar year, or on home confinement for a period of not more than 10 days consecutively, and not more than 20 days per calendar year. The Department shall adopt written procedures providing for administrative review for all cases in which an offender is placed at Level IV or home confinement pursuant to this subsection. All administrative dispositions imposed pursuant to this subsection shall be documented in the offender's record and shall be made available to the court in the event of a subsequent violation which is considered by the court. For the purposes of this subsection, the term "technical and minor violations of the conditions of probation or supervision" shall not include arrests or convictions for new criminal offenses. Under this section, the purpose of home confinement is to reduce the number of persons held at Level V and Level IV facilities by substituting home confinement when appropriate. The Department shall develop guidelines for probation officers to assist them in providing consistent and appropriate responses to compliance and violations of the conditions of probation or supervision.

(e) A probationer for whose return a warrant cannot be served, shall be deemed a fugitive from justice or to have fled from justice. If it

shall appear that probationer has violated probation or suspended sentence, the court shall determine whether the time from issuing of the warrant to the date of the probationer's arrest, or any part of it, shall be counted as time served on probation or suspended sentence.

(f) The Justice of the Peace Court shall have jurisdiction over violations of probation where such probation or suspension of sentence was pursuant to an order of the Justice of the Peace Court.

(11 Del. C. 1953 § 4335; 54 Del. Laws, c. 349 § 7; 66 Del. Laws, c. 133 § 1; 67 Del. Laws, c. 442 § 2; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 27 § 5; 74 Del. Laws, c. 322 § 4; 78 Del. Laws, c. 392 § 6.)

§ 4335 Presentence investigations; Superior Court; Court of Common Pleas; Investigative Services Officers.

(a)(1) Chief Investigative Services Officer — The Superior Court and the Court of Common Pleas may appoint a suitable person in each of the counties of the State to conduct such presentence investigations and to perform such other duties, within or without the county of the person's residence, as the Court may direct. Each person so appointed shall be a resident of this State and shall hold office at the pleasure of the Court. Each of such persons shall be the Chief Investigative Services Officer and shall be an officer of the Court.

(2) Investigative Services Officer — The Superior Court and the Court of Common Pleas may also appoint an appropriate number of Investigative Services Officers in each county who shall have powers and responsibilities to conduct presentence investigations, as well as other types of investigations and investigative tasks, as directed by the Court and under the supervision of the Chief Investigative Services Officer.

(3) Support staff — The Court may also appoint appropriate support staff in each county to ensure the proper functioning of each Investigative Services Office.

(b) Badges and identification — Each Chief Investigative Services Officer and Investigative Services Officer shall be provided by the Court with an appropriate badge and identification.

(c) Presentence investigations for Superior Court — Each Investigative Services Officer shall conduct such presentence investigations for the Superior Court as it shall direct, including an inquiry into such things as the circumstances of the offense, the motivation of the offender, and the criminal record, social history, behavior pattern and present condition of the offender. The report thereof shall be in such form and over such subjects as the Superior Court shall direct.

(d) Presentence investigations for the Court of Common Pleas — Each Investigative Services Officer for the Court of Common Pleas shall conduct such presentence investigations for the Court of Common Pleas as it shall direct, including inquiring into such things as the circumstances of the offense, the motivations of the offender, and the criminal record, social history, behavior pattern and the present condition of the offender. The report thereof shall be in such form and cover such subjects as the Court of Common Pleas shall direct. In any county where a Court of Common Pleas Investigative Services Office does not exist, each Superior Court Investigative Services Officer shall, with the approval of the Superior Court, conduct such presentence investigations for the Court of Common Pleas as said Court shall order. The report thereof shall be in such form and cover such subjects as the Court of Common Pleas shall direct.

(e) "Investigative Services Officer" definition. — An "Investigative Services Officer" is a person selected by the Court through such person's training and experience to produce reports as identified above to assist the Court in determining restitution, costs and recommendations for sentences for a person convicted of an offense under the Delaware Code.

(11 Del. C. 1953 § 4336; 54 Del. Laws, c. 349 § 7; 57 Del. Laws, c. 184; 57 Del. Laws, c. 228 §§ 11-35; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 60 § 6; 78 Del. Laws, c. 227 § 1.)

§ 4336 Community notice of offenders on probation, parole, conditional release, or release from confinement.

(a) Notwithstanding any other provision of law to the contrary, the Department of Correction or the Department of Services to Children, Youth and Their Families (DSCYF) as the case may be, shall provide written notice to the Attorney General, to the chief law-enforcement officer of the jurisdiction which made the original arrest, to the chief law-enforcement officer where the prisoner intends to reside and to the Superintendent of State Police, of the release from incarceration of any person who has been convicted of:

(1)a. Any of the offenses specified in §§ 764 through 777 of this title;

b. Any of the offenses specified in §§ 1108 through 1111 of this title; or

c. Attempt to commit any of the foregoing offenses, or of the release of any juvenile adjudicated delinquent on the basis of an offense which, if committed by an adult, would constitute:

(2)a. Any of the offenses specified in §§ 764 through 777 of this title;

b. Any of the offenses specified in §§ 1108 through 1111 of this title; or

c. Attempt to commit any of the foregoing offenses.

(b) Notwithstanding any other provision of law to the contrary, the official in charge of any other institution where an inmate is confined because of the commission or attempt to commit any of the offenses specified subsection (a) of this section, or the official in charge of a state hospital to which a person is committed as a result of having been convicted or adjudged guilty but mentally ill or adjudged not guilty by reason of insanity of 1 of the offenses specified in subsection (a) of this section, shall provide written notice to the Attorney General, to the chief law-enforcement officer of the jurisdiction which made the original arrest, to the chief law-enforcement officer where the prisoner intends to reside and to the Superintendent of State Police of the release from such institution or state hospital of any such inmate or person.

(c) Any notice required pursuant to subsection (a) or subsection (b) of this section shall be given no more than 90 days, and no less than 45 days, prior to such person's release. The notice shall include, without limitation, the legal name, any alias or nicknames, age, sex, race,

fingerprints, all known identifying factors, offense history, anticipated future residence and a photo of the released person supplied by the Department of Correction or the DSCYF, as the case may be, and taken not more than 90 days prior to release. No person shall be released from incarceration or confinement unless and until the person cooperates with the appropriate authorities pursuant to this section.

(d) Notwithstanding any other provision of law to the contrary, the court, where a person convicted of any of the offenses specified in subsection (a) of this section is released by a state court on probation or discharged by a state court upon payment of a fine, shall provide written notice to the Attorney General, to the chief law-enforcement officer of the jurisdiction which made the original arrest, to the chief law-enforcement officer where the convicted person intends to reside and to the Superintendent of State Police of the release from such court.

(e) Any notice pursuant to subsection (d) of this section shall be given no more than 5 working days after the person's release. The notice shall include, without limitation, the following information as it is available to the court or notation as to the repository for said information: the legal name, any alias or nicknames, age, sex, race, fingerprints, all known identifying factors, offense history, anticipated future residence and a photo taken not more than 90 days prior to release.

(f) The Attorney General shall use any reasonable means to notify the victim of the anticipated release unless the victim has requested not to be notified.

(g) The Attorney General shall, within 10 days after receiving notification of a pending release pursuant to subsection (a) or subsection (b) of this section, or notification of release pursuant to subsection (d) of this section, assess the offender in accordance with the Registrant Risk Assessment Scale, the form of which and a manual for which are attached hereto as Exhibit A. The Attorney General shall notify the Delaware State Police and the chief law-enforcement officer of the jurisdiction where the offender intends to reside as to the resulting score on the Registrant Risk Assessment Scale, and shall forward a copy of the completed Registrant Risk Assessment Scale to the Superintendent of the Delaware State Police and to the chief law-enforcement officer of the jurisdiction where the registrant offender intends to reside.

(h) The chief law-enforcement officer of the jurisdiction where the inmate intends to reside, or the Superintendent of State Police if no local agency exists, shall provide notification of the convicted sex offender's release in accordance with the following guidelines:

(1) Those persons receiving a "Low Risk" score on the Registrant Risk Assessment Scale shall be considered a Tier One offender. The release of Tier One offenders will require notification to all law-enforcement agencies with jurisdiction over the area where the offender intends to reside.

(2) Those persons receiving a "Moderate Risk" score on the Registrant Risk Assessment Scale shall be considered a Tier Two offender. In addition to law-enforcement notification, the release of a Tier Two offender shall require a Community Organization Alert pursuant to this paragraph. Such Community Organization Alert may include a photograph of the offender if deemed appropriate by the notifying agency. In order to be a community organization entitled to Tier Two notification, such organizations must register with the local law-enforcement agency, or where the community has no local law-enforcement agency, with the Superintendent of State Police. Organizations may only be included on the notification list if they operate an establishment where children gather under their care or where women are cared for. The State Board of Education shall provide all law-enforcement agencies within the State a list of all educational institutions within the Board's administration. Every law-enforcement agency shall automatically register each institution on the Board's list located within its jurisdiction. Notification will go to those organizations which, at any specific time, are likely to encounter the released offender. "Likely to encounter" for the purposes of this section means that the location of any organization is such that they are in close geographic proximity to a location where the released offender resides or visits or can be presumed to visit on a regular basis.

(3) Those persons receiving a "High Risk" score on the Registrant Risk Assessment Scale shall be considered a Tier Three offender. In addition to law-enforcement notification and a Community Organization Alert, the release of a Tier Three offender shall require community notification pursuant to this paragraph. Community notification shall be conducted by door-to-door appearances or by mail or by other methods devised specifically to notify members of the public likely to encounter the offender. Community notification should be targeted to a defined community. Such community notification may include a photograph of the offender if deemed appropriate by the notifying agency.

(i) A complete register of all persons convicted after June 27, 1994, of any of the offenses specified in subsection (a) of this section, or of attempt to commit any of such offenses shall be created, maintained and routinely updated by the Delaware State Police for immediate accessibility by the Delaware Justice Information System (DelJIS) computer to all law-enforcement agencies. Such register shall be accessible by the name of each offender or by county of residence of each offender. The register required by this subsection shall be established by the Delaware State Police no later than 6 months after June 21, 1996.

(j) All elected public officials, public employees and public agencies are immune from civil liability for any discretionary decision to release relevant information unless it is shown that the official, employee or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public.

(k) There shall be no civil legal remedies available as a cause of action against any public official, public employee or public agency for failing to release information as authorized in this section.

(l) In addition to those circumstances enumerated in this section, law-enforcement agencies shall notify any member of the public of the release of a person described in subsection (a), subsection (b) or subsection (d) of this section where such released person may pose a

particular threat or danger to a member of the public.

(m) The Court in which any person described in subsection (a) of this section is sentenced shall designate for the Department of Correction or the DSCYF, as the case may be, at the time of sentencing that notice in accordance with this section shall be required.

(n) The Court in which any person described in subsection (b) of this section is sentenced shall designate for the official in charge of the institution of confinement or state hospital at the time of sentencing that notice in accordance with this section shall be required.

(o) The Court in which any person described in subsection (d) of this section is sentenced shall determine, at the time of sentencing, that notice in accordance with this section shall be required.

(p) The Department of Technology and Information shall provide public notification of the name of every person designated by the Attorney General as a Tier Three sex offender pursuant to paragraph (h)(3) of this section (including any known alias), the last verified address of the offender, the title of any sex offense for which the offender has been convicted and the date of conviction. Such information shall be searchable by the name of the sex offender and by geographic criteria, and shall be made available to the public by the Internet, and by printed copy that shall be available on request at any state or local police agency and all public libraries within the State. Such information shall be updated as often as practicable, but not less than every 3 months, and shall be maintained by the Superintendent of the Delaware State Police, as set forth in § 4120 of this title, and elsewhere in this section.

(q) This section shall apply with respect to persons convicted after June 21, 1996, but before March 1, 1999.

(69 Del. Laws, c. 469 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 373 § 1; 71 Del. Laws, c. 428 § 1; 71 Del. Laws, c. 429 § 3; 74 Del. Laws, c. 128 § 1; 77 Del. Laws, c. 318 § 6.)

Subchapter IV

Parole

§ 4341 Selection, appointment and removal of Board of Parole.

(a) The Board of Parole shall consist of a Chairperson and 4 other members, all of whom shall be appointed by the Governor and confirmed by a majority of the members elected to the Senate. One member shall be from each county and 1 additional member shall be from the City of Wilmington. Appointed members may include, but not be limited to, those who have a demonstrated interest in correctional treatment, social welfare, or victim advocacy.

(b) The Chairperson shall be paid a salary which shall be fixed by the Governor.

(c) The Chairperson shall be experienced in the area or areas of probation, parole and/or other related areas of corrections.

(d) The Chairperson shall serve at the pleasure of the Governor, and all other members shall serve a 4-year term, provided that no more than 1 member's term shall expire annually. The Governor may appoint members for terms of less than 4 years to ensure that the Board members' terms expire on a staggered basis. A member shall hold office until a successor has been appointed and qualified.

(e) The Governor may remove a member of the Board only for disability, inefficiency, neglect of duty or malfeasance in office. A member may be deemed in neglect of duty if he or she is absent from 3 consecutive Board meetings without adequate reason or if they attend less than 50% of Board meetings in a calendar year. Before such removal the Governor shall give the member a written copy of the charges against such member and shall fix the time when such member can be heard in such member's defense, which shall not be less than 10 days thereafter.

(11 Del. C. 1953 § 4341; 54 Del. Laws, c. 349 § 7; 57 Del. Laws, c. 597 § 1; 59 Del. Laws, c. 172 §§ 1, 2; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 299 § 1; 79 Del. Laws, c. 366 § 1.)

§ 4342 Adequate quarters; personnel; seal.

(a) The Board shall obtain and maintain suitable and adequate quarters and shall employ those persons necessary to carry out its functions. For administrative and budgetary purposes, the Board shall be placed within the Criminal Justice Council. Fiscal oversight shall be provided by the Criminal Justice Council as determined by the Executive Director of the Criminal Justice Council.

(b) The Board shall adopt an official seal of which the courts shall take judicial notice.

(11 Del. C. 1953 § 4342; 54 Del. Laws, c. 349 § 7; 57 Del. Laws, c. 591 § 52; 57 Del. Laws, c. 597 § 2; 79 Del. Laws, c. 366 § 1.)

§ 4343 Duties.

The Board shall:

(1) Be the paroling authority for the State;

(2) Establish rules and regulations for the conduct of its own proceedings, and rules of procedure for the effective enforcement of this chapter. Copies of said rules and regulations shall be published and may be obtained upon request;

(3) Determine the salary of any employee within the total appropriation in addition to proper expenses;

(4) Meet at least once a month, for the transaction of business, and a sufficient other number of times as shall be necessary adequately to perform its duties under this chapter;

(5) Keep a record of its acts and notify each applicant for parole, and the Department of its decisions;

(6) Consult with the Department in the formulation and establishment of policies and procedures, fully to carry out the objectives of

parole and correctional treatment in the best interests of the public;

(7) Cooperate with the Department in preparing the annual report of the Board to be submitted to the Governor and make available and submit to the Department all statistical and other data of its work and compilation and analysis of dispositions as it shall require. The Board may make a separate statement or include such statement in the report of the Department to the Governor;

(8) Act as advisory board to the Board of Pardons. When a person in legal custody of the Department of Correction applies to the Board of Pardons for recommendation for a pardon or commutation of sentence, the Parole Board, upon request, shall furnish to each member of the Board of Pardons and to the Governor a report of the record of such person, which shall include its opinion as to the state of rehabilitation of such person.

(11 Del. C. 1953 § 4343; 54 Del. Laws, c. 349 § 7; 57 Del. Laws, c. 597 § 3; 60 Del. Laws, c. 251 § 10; 78 Del. Laws, c. 305 § 1.)

§ 4344 Compensation and expenses.

(a) Each member of the Board except the Chairperson shall receive $300 per day, for services when attending a meeting of the Board. The meetings of the Board shall not exceed 50 in any year; however, the Governor may, in the Governor's discretion, give written authorization to the Board to hold as many meetings in excess of 50 in any year as the business of the Board may require.

(b) In addition, each member shall receive mileage incurred attending such meetings and performing such duties.

(11 Del. C. 1953 § 4344; 54 Del. Laws, c. 349 § 7; 57 Del. Laws, c. 597 § 4; 58 Del. Laws, c. 145; 59 Del. Laws, c. 172 § 3; 62 Del. Laws, c. 68 § 138; 62 Del. Laws, c. 86 § 40; 65 Del. Laws, c. 348 § 89; 69 Del. Laws, c. 459 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 329 § 1.)

§ 4345 Information on applications for parole and review to be provided by Chairperson.

At least 14 days before any meeting of the Board, the Chairperson shall provide all the members of the Board with copies of all pertinent information and materials at the Chairperson's disposal concerning all applications for parole coming before the Board at that meeting, or concerning any reviews which shall be undertaken at that meeting.

(11 Del. C. 1953 § 4345; 57 Del. Laws, c. 597 § 5; 70 Del. Laws, c. 186 § 1.)

§ 4346 Eligibility for parole.

(a) A person confined to any correctional facility administered by the Department may be released on parole by the Board if the person has served 1/3 of the term imposed by the court, such term to be reduced by such merit and good behavior credits as have been earned, or 120 days, whichever is greater. For the purpose of this subchapter, "court" shall include any court committing an offender to the Department.

(b) Consistent with law, the Board, upon written recommendation of the court which imposed the sentence, or the Department, may reduce the minimum term of eligibility when the Board is satisfied that the best interest of the public and the welfare of the person will be served by such reduction. Such reduction in the minimum term of eligibility for parole shall be by order of the Board stating the specific date when said person shall become eligible for parole; but such reduction of the minimum term of eligibility for parole shall have no effect on the maximum limits of the sentence. The order of reduction by the Board shall be made in open hearing.

(c) The Board shall have authority to act where the maximum term has been commuted by the Governor. For all purposes of this section, a person sentenced to imprisonment for life shall be considered as having been sentenced to a fixed term of 45 years.

(d) Consistent with law, the Board may adopt such other rules as it deems proper or necessary with respect to the eligibility of persons for parole, the conduct of parole hearings or conditions to be imposed upon parolees.

(e) Whenever the physical or mental condition of any person confined in any institution demands treatment which the Department cannot furnish, the Department may, if such action seems necessary for the well-being of such person, recommend the case be considered by the Board of Parole at a regular or special meeting. When such case is so considered, the Board of Parole, if satisfied that removal from the institution is necessary for the well-being of such person, may order the release of such person on parole without regard to the time already served by such person. The Board of Parole shall parole in such case only when arrangements have been made for the treatment of the person in some institution. The Board of Parole may impose any conditions of parole in such case, may revoke such parole without hearing at any time and for any cause, and order the return of the person to the Department.

(11 Del. C. 1953 § 4346; 54 Del. Laws, c. 349 § 7.)

§ 4347 Parole authority and procedure.

(a) A person committed to the custody of the Department who will be eligible for parole within 180 days may apply for a parole hearing on forms promulgated by the Board. Upon receipt of such application, the Board shall notify the Bureau Chief of Prisons of said application and request verification of parole eligibility and the information required in subsection (d) of this section which shall be provided the Board within 30 days. Upon receipt of the foregoing information, the Board shall determine within 30 days if a parole hearing will be scheduled. If the hearing is denied or if the hearing is held and the parole denied the applicant and the Department shall be advised in writing by the Board of the earliest date, not sooner than 6 months for an applicant with a good-time release date of 3 years or less and not sooner than 1 year for an applicant with a good-time release date of more than 3 years, upon which the applicant shall be eligible to again apply for a parole hearing in accordance within this section.

(b) If any person eligible for parole fails to make an application as specified in subsection (a) of this section, the Department shall have

no duty to such person to provide the Board with the information otherwise required by this chapter and the Board shall have no duty to such person to consider such person for parole. Notwithstanding the failure of a person to apply for parole, the Department is permitted to provide the Board with the information otherwise required by this chapter and the Board may, in turn, consider such person for parole.

(c) A parole may be granted when in the opinion of the Board there is reasonable probability that the person can be released without detriment to the community or to person, and where, in the Board's opinion, parole supervision would be in the best interest of society and an aid to rehabilitation of the offender as a law-abiding citizen. A parole shall be ordered only in the best interest of society, not as an award of clemency, and shall not be considered as a reduction of sentence or a pardon. A person shall be placed on parole only when the Board believes that the person is able and willing to fulfill the obligations of a law-abiding citizen. Among the factors the Board shall consider when determining if a defendant shall be placed on parole are as follows: job skills, progress towards or achievement of a general equivalency diploma, substance abuse treatment and anger management and conflict resolution.

(d) Within 1 month prior to the time an offender is scheduled for a parole hearing, the Department shall submit a progress report with parole recommendations to the Parole Board, and the Department shall submit a carefully evaluated parole plan with recommendations. At the same time a copy of the progress report and the parole plan and recommendations shall also be submitted to the Delaware State Police and to the arresting public police organization, along with the date and location of the scheduled parole hearing. Moreover, whenever possible and feasible, the Department shall notify the aggrieved party of the crime or crimes for which the offender was sentenced and the date and location of the scheduled parole hearing.

(e) The Board shall have no obligation to allow a person eligible for parole to appear before it, and the Board may deny a parole application without having interviewed the applicant. In no case, however, shall the Board grant a parole without having first had the applicant personally appear before the Board and be interviewed by it.

(f) All paroles shall issue upon order of the Board duly adopted by a majority of those present and voting; provided, however, no person who has been convicted of and imprisoned for murder in the first or second degree, rape in the first, second or third degree, unlawful sexual intercourse in the first or second degree, kidnapping or any offense relating to the sale, attempt to sell, delivery or possession with intent to sell or deliver a narcotic drug shall be granted a parole except by order of the Board duly adopted by at least 4 of the 5 members of the Board. A quorum shall be a minimum of 3 members.

No parole shall be issued to any prisoner who has been convicted in a court of law and sentenced for committing or attempting to commit the offense of "escape after conviction" as set forth in § 1253 of this title until such time as that prisoner has served the amount of time equivalent to and commensurate with that imposed in the sentence set forth by the court for said escape or attempt to escape.

No parole shall be issued to any prisoner who has been convicted and sentenced in a court of law for the offense of "conspiracy in the second degree" as defined in § 512 of this title with respect to directly and actively aiding or abetting an escape as defined in § 1253 of this title until such time as an equivalent amount of time commensurate with that which has been imposed under the sentence set forth by the court for said conspiracy has been served.

(g) Every person while on parole shall remain in the legal custody of the Department but shall be subject to the orders of the Board of Parole.

(h) Where civil rights would otherwise be forfeited, they shall be forfeited only during any period of incarceration.

(i) The period served on parole or conditional release shall be deemed service of the term of imprisonment, and subject to the provisions contained in § 4352 of this title, relating to a person who is a fugitive from or has fled from justice, the total time served may not exceed the maximum term or sentence. When a person on parole or conditional release has performed the obligations of that person's release for such time as shall satisfy the Board that the person's final release is not incompatible with the best interest of society and the welfare of the individual, the Board may make a final order of discharge and issue a certificate of discharge to the person; but no such order of discharge shall be made within 1 year after the date of release except where the sentence expires earlier thereto. Such discharge, and the discharge of a person who has served person's term of imprisonment, shall have the effect of restoring all civil rights lost by operation of law upon commitment. Except when discharged herein a person on parole or conditional release shall be on parole until the expiration of the maximum term for which the person is sentenced.

(j) Each person who is eligible for parole or conditional release under this subchapter is eligible to be a candidate for appointment to the house arrest program for nonviolent offenders. A person shall be eligible for consideration to participate in the house arrest program if such person meets all of the requirements of subsection (c) of this section and in addition:

(1) Makes regular payments, per month, toward the costs incurred by the State in maintaining the program;

(2) Performs such stipulated number of hours of public service work as are directed by the court or by the Department;

(3) Makes restitution to any victim or victims in such amounts as the court shall determine. Full or partial restitution, in such manner as the court determines, is a requirement for participation, or continued participation, in the program.

(k) Notification of parole eligibility —

(1) At least 30 days prior to a scheduled parole hearing for an inmate convicted of a felony offense, the Board shall notify the victim or the immediate family of the victim of the date, time and place of the scheduled hearing. A copy of any rules developed pursuant to § 4350(a) of this title shall be included with the notice. However, at any time, the victim or the victim's immediate family can request that no notification be sent.

(2) At least 30 days prior to a scheduled parole hearing for an inmate convicted of a felony offense, the Board shall send a notice of the

date, time and place of the scheduled hearing to the attorney general.

(3) At least 30 days prior to a scheduled parole hearing for an inmate convicted of a felony offense, the Board shall cause notice of the date, time and place of the scheduled hearing to be published in a newspaper with an average daily statewide circulation of at least 15,000 copies, of which at least 5,000 copies shall be in the county in which the offense occurred.

(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 under paragraphs (k)(1) and/or (2) of this section.

(2) No later than 10 days after a parole hearing resulting in parole of an applicant, the Board shall cause notice of its decision to be published in the same newspaper in which the notice of the hearing was published.

(m) Prior to 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 submit a written statement. However, in no event shall the hearing be postponed more than 45 days from the original scheduled date.

(n) Any notice required to be provided to the victim or to 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.

(11 Del. C. 1953 § 4347; 54 Del. Laws, c. 349 § 7; 57 Del. Laws, c. 584; 59 Del. Laws, c. 125 § 1; 60 Del. Laws, c. 707 § 1; 63 Del. Laws, c. 331 § 1; 64 Del. Laws, c. 22 §§ 1-5; 64 Del. Laws, c. 188 § 1; 66 Del. Laws, c. 29 § 2; 66 Del. Laws, c. 269 § 31; 67 Del. Laws, c. 355 § 1; 68 Del. Laws, c. 373 §§ 1, 2; 70 Del. Laws, c. 168 § 2; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 285 § 17; 75 Del. Laws, c. 102 § 1; 78 Del. Laws, c. 305 § 1.)

§ 4348 Release upon merit and good behavior credits.

A person released on or after August 8, 2012, having served that person's term or terms in incarceration, less such merit and good behavior credits as have been earned, shall, upon release, be deemed as released on probation until the expiration of the maximum term or terms for which the person is sentenced. A person may waive the right to conditional release, in which case the person shall serve the remainder of the term or terms in prison. Such waiver shall be in writing.

(11 Del. C. 1953 § 4348; 54 Del. Laws, c. 349 § 7; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 392 § 7; 79 Del. Laws, c. 187 § 3.)

§ 4349 Information from the Department and others.

The Department shall grant to the Board or its representatives access to any person over whom the Board has jurisdiction under this chapter, and shall provide facilities for communicating with and observing such person, and make available to the Board such reports as the Board shall require concerning the conduct and character of any person in the custody of the Department, the institutional plan of treatment for such person or any other facts deemed by the Board pertinent in determining whether the person shall be paroled. The Department shall furnish to the Board such reports as the Board shall require concerning casework performed in the community with relatives or others connected with the person, investigations of parole plans or other reports or facts deemed by the Board pertinent in determining whether or not the person shall be paroled. All police agencies of this State, upon request, shall furnish the Board with any information at their disposal in regard to any person to be considered for parole.

(11 Del. C. 1953 § 4349; 54 Del. Laws, c. 349 § 7.)

§ 4350 Conduct of hearings on applications for parole.

(a) The Board shall adopt rules for hearing oral statements or arguments by persons not connected with the Department of Correction when hearing applications for parole. In developing those rules, the Board shall reserve for itself the right to:

(1) Limit the length of each statement;

(2) Restrict the number of individuals allowed to attend parole hearings in accordance with physical limitations or security requirements of the hearing facilities; and

(3) Deny admission or continued attendance to individuals who threaten or present a danger to the attendees or participants or who disrupt the hearing.

The Board shall also accept written statements.

(b) The Board may take formal action to close their proceedings upon a majority vote of members present for the following reasons:

(1) To protect ongoing law-enforcement investigations, upon written request of the attorney general or law-enforcement agency;

(2) To deliberate upon oral or written arguments received;

(3) To provide opportunity for applicants to challenge confidential information which they believe is detrimental to their applications; or

(4) At the request of the victim or, in the case of first-degree murder, the immediate family of the victim.

(c) The Department of Correction may appear personally before the Board to advise and be heard by the Board with respect to any application for parole being considered.

(d) When the Board is hearing an application for parole made by an offender, the victim or immediate family of the victim of such crime or their duly appointed representatives may make oral statements or arguments before the Board with respect to the application for parole being considered. Victims or their representatives shall have priority in making statements before the Board.

(e) As used in this section, the phrase "immediate family" shall mean widow, widower, parents, children, brothers and sisters of the victim.

(11 Del. C. 1953 § 4350; 54 Del. Laws, c. 349 § 7; 60 Del. Laws, c. 64 § 1; 70 Del. Laws, c. 168 § 1.)

§ 4351 Witnesses; production of records.

The Board may issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers and documents necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by any member of the Board. Subpoenas so issued may be served by Department employees or by any person authorized to serve subpoenas by the Rules of Civil Procedure of the Superior Court and shall be served and returned as provided by said Rules. The fees of witnesses shall be the same as allowed in the Superior Court and shall be paid by the State Treasurer from any moneys in the Treasury of the State not otherwise appropriated, upon a warrant signed by a member of the Board and its Secretary. Any person who testifies falsely or fails to appear when subpoenaed, or refuses to produce such material pursuant to the subpoena, shall be subject to the same orders and penalties to which a person before said Court is subject. The Superior Court, upon application of the Board, may in its discretion compel the attendance of witnesses, the production of such material and the giving of testimony before the Board, by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before such Superior Court.

(11 Del. C. 1953 § 4351; 54 Del. Laws, c. 349 § 7.)

§ 4352 Return of violator of parole; procedure and action on violation.

(a) At any time during release on parole the Board or any member thereof may issue a warrant for the arrest of a released person for violation of any of the conditions of release, or a notice to appear to answer to a charge of violation. Such notice shall be served personally upon the person. The warrant shall authorize any officer authorized to serve process in this State to return the person to the actual custody of the correctional facility from which the person was released, or to any other suitable detention facility designated by the Board or Department. When, in the judgment of the Commissioner or of any probation and parole officer, there has been a violation of the conditions of release, the Commissioner or the probation and parole officer may arrest such parolee without a warrant, or the Commissioner or the probation and parole officer may deputize any other officer with power of arrest to do so by giving officer a written statement setting forth that the parolee has, in the judgment of the Commissioner or probation and parole officer, violated the conditions of parolee's release. The written statement delivered with the person by the arresting officers to the official in charge of the facility to which the person is brought for detention shall be sufficient warrant for detaining the parolee.

(b) After making an arrest the Department shall present to the detaining authorities a statement of the circumstances of violation. Pending hearing, as hereinafter provided, upon any charge of violation, the person shall remain incarcerated in the institution.

(c) Upon such arrest and detention, the Department shall immediately notify the Board and shall submit a report showing in what manner the person had violated the conditions of release. The Board shall cause the person to be brought promptly before it for a hearing on the violation charge, under such rules and regulations as the Board may adopt.

(d) If the violation is established by the hearing, the Board may continue or revoke the parole, or enter such other order as it may see fit.

(e) A person for whose return a warrant has been issued by the Board shall, if it is found that the warrant cannot be served, be deemed to be a fugitive from justice or to have fled from justice.

(f) If it shall appear that the person has violated the provisions of the person's release, the Board shall determine whether the time from the issuing of the warrant to the date of the person's arrest, or any part of it, shall be counted as time under the sentence.

(g) Any person who commits a crime while at large on parole and is convicted and sentenced therefor shall serve the unexpired portion of the term under which the person was released consecutively after any new sentence for the new offense.

(11 Del. C. 1953 § 4352; 54 Del. Laws, c. 349 § 7; 59 Del. Laws, c. 546 § 1; 67 Del. Laws, c. 442 § 1; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 392 § 8.)

§ 4353 Mental health evaluations required prior to parole.

(a) No person who has been convicted of and imprisoned for any class A felony, felony sex offense or any felony wherein death or assault to a victim occurred shall be released from incarceration by the Parole Board until the Parole Board has considered a mental health evaluation of such person. The Parole Board, in its discretion, may request mental health evaluations on persons convicted and imprisoned for any offense not enumerated above.

(b) The Department of Correction shall ensure that mental health evaluations required by subsection (a) of this section are available to the Parole Board at the time of the hearing in those cases wherein a favorable recommendation is made by the Department to the Board.

In cases wherein a favorable recommendation is not made by the Department but the Parole Board has determined that the person is otherwise suitable for release on parole, the Parole Board must request a mental health evaluation, pursuant to this section.

(c) The Parole Board may consider any mental health evaluation conducted within 12 months prior to the person's parole hearing in lieu of requesting a new mental health evaluation. However, for persons convicted and imprisoned for any of the offenses listed in subsection (a) of this section, the Parole Board may determine that it requires additional information. In such case as additional information is required, no person shall be released from incarceration until such additional information has been considered by the Parole Board.

(d) Mental health evaluations conducted pursuant to this section will be administered by a person with professional education and training. The mental health evaluation to the Parole Board shall consist of:

(1) Background information or historical information about the person's mental health;

(2) Information about the person's functioning in the prison or institutional setting;

(3) A description of the person's current mental health; and

(4) A summary with a prognosis of expected behavior if the person were paroled, including any specific recommendations for mental health care.

(e) Any mental health evaluations prepared pursuant to this section will be provided to each member of the Parole Board for their consideration in determining whether the person should be released from prison.

(f) Nothing in this section shall preclude the parole of a person for treatment to another institution because of a physical or mental condition, as provided in § 4346 of this title.

(11 Del. C. 1953 § 4353; 57 Del. Laws, c. 596 § 1; 66 Del. Laws, c. 269 § 9; 67 Del. Laws, c. 315 § 1; 68 Del. Laws, c. 372 § 1; 69 Del. Laws, c. 336 § 1.)

§ 4354 Applicability to sentences imposed pursuant to truth in sentencing.

No sentence imposed pursuant to the provisions of the Truth and Sentencing Act of 1989, including sentences imposed for felonies under § 4177 of Title 21, shall be subject to parole under the provisions of this subchapter.

(67 Del. Laws, c. 130 § 7; 80 Del. Laws, c. 120 § 2.)

Subchapter V

Interstate Compact For The Supervision Of Adult Offenders

§ 4358 Terms of the compact between the states.

The Governor shall execute a compact on behalf of the State with any of the United States legally joining therein in the form substantially as follows:

INTERSTATE COMPACT FOR THE SUPERVISION OF ADULT OFFENDERS

PREAMBLE

* WHEREAS, the interstate compact for the supervision of Parolees and Probationers was established in 1937, it is the earliest corrections "compact" established among the states and has not been amended since its adoption over 62 years ago; and

* WHEREAS, this compact is the only vehicle for the controlled movement of adult parolees and probationers across state lines, and it currently has jurisdiction over more than a quarter of a million offenders; and

* WHEREAS, the complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements and sex offender registration; and

* WHEREAS, after hearings, national surveys, and a detailed study by a task force appointed by the National Institute of Corrections, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns and offender accountability; and

* WHEREAS, upon the adoption of this Interstate Compact for Adult Offender Supervision, it is the intention of the legislature to repeal the previous Interstate Compact for the Supervision of Parolees and Probationers on the effective date of this Compact.

ARTICLE 1

PURPOSE

The compacting states to this Interstate Compact recognize that each state is responsible for the supervision of adult offenders in the community who are authorized pursuant to the Bylaws and Rules of this compact to travel across state lines both to and from each compacting state in such a manner as to track the location of offenders, transfer supervision authority in an orderly and efficient manner, and when necessary return offenders to the originating jurisdictions. The compacting states also recognize that Congress, by enacting the Crime Control Act, 4 U.S.C. § 112 (1965), has authorized and encouraged compacts for cooperative efforts and mutual assistance in the prevention of crime. It is the purpose of this compact and the Interstate Commission created hereunder, through means of joint and cooperative action among the compacting states: to provide the framework for the promotion of public safety and protect the rights of victims through the control and regulation of the interstate movement of offenders in the community; to provide for the effective tracking, supervision, and rehabilitation of these offenders by the sending and receiving states; and to equitably distribute the costs, benefits and obligations of the compact among the compacting states. In addition, this compact will: create an Interstate Commission which will establish uniform procedures to manage the movement between states of adults placed under community supervision and released to the community under the jurisdiction of courts, paroling authorities, corrections or other criminal justice agencies which will promulgate rules to achieve the purpose of this compact; ensure an opportunity for input and timely notice to victims and to jurisdictions where defined offenders are authorized to travel or to relocate across state lines; establish a system of uniform data collection, access to information on active cases by authorized criminal justice officials, and regular reporting of Compact activities to heads of state councils, state executive, judicial, and legislative branches and criminal justice administrators; monitor compliance with rules governing interstate movement of offenders and initiate interventions to address and correct non-compliance; and coordinate training and education regarding regulations of

interstate movement of offenders for officials involved in such activity.

The compacting states recognize that there is no "right" of any offender to live in another state and that duly accredited officers of a sending state may at all times enter a receiving state and there apprehend and retake any offender under supervision subject to the provisions of this compact and bylaws and rules promulgated hereunder. It is the policy of the compacting states that the activities conducted by the Interstate Commission created herein are the formation of public policies and are therefore public business.

ARTICLE II

DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

* "Adult" means both individuals legally classified as adults and juveniles treated as adults by court order, statute, or operation of law;

* "By-laws" mean those by-laws established by the Interstate Commission for its governance, or for directing or controlling the Interstate Commission's actions or conduct;

* "Compact Administrator" means the individual in each compacting state appointed pursuant to the terms of this compact responsible for the administration and management of the state's supervision and transfer of offenders subject to the terms of this compact, the rules adopted by the Interstate Commission and policies adopted by the State Council under this compact;

* "Compacting State" means any state, which has enacted the enabling legislation for this compact;

* "Commissioner" means the voting representative of each compacting state appointed pursuant to Article III of this compact;

* "Interstate Commission" means the Interstate Commission for Adult Offender Supervision established by this compact;

* "Member" means the commissioner of a compacting state or designee, who shall be a person officially connected with the commissioner;

* "Non-Compacting State" means any state, which has not enacted the enabling legislation for this compact;

* "Offender" means an adult placed under, or subject, to supervision as the result of the commission of a criminal offense and released to the community under the jurisdiction of courts, paroling authorities, corrections, or other criminal justice agencies;

* "Person" means any individual, corporation, business enterprise, or other legal entity, either public or private;

* "Rules" means acts of the Interstate Commission, duly promulgated pursuant to Article VIII of this compact, substantially affecting interested parties in addition to the Interstate Commission, which shall have the force and effect of law in the compacting states;

* "State" means a state of the United States, the District of Columbia and any other territorial possessions of the United States; and

* "State Council" means the resident members of the State Council for Interstate Adult Offender Supervision created by each state under Article III of this compact.

ARTICLE III

THE COMPACT COMMISSION

The compacting states hereby create the "Interstate Commission for Adult Offender Supervision". The Interstate Commission shall be a body corporate and joint agency of the compacting states. The Interstate Commission shall have all the responsibilities, powers and duties set forth herein, including the power to sue and be sued, and such additional powers as may be conferred upon it by subsequent action of the respective legislatures of the compacting states in accordance with the terms of this compact.

The Interstate Commission shall consist of Commissioners selected and appointed by resident members of a State Council for Interstate Adult Offender Supervision for each state. In addition to the Commissioners who are the voting representatives of each state, the Interstate Commission shall include individuals who are not commissioners but who are members of interested organizations; such non-commissioner members must include a member of the national organizations of governors, legislators, state chief justices, attorneys general and crime victims. All non-commissioner members of the Interstate Commission shall be ex-officio (non-voting) members. The Interstate Commission may provide in its by-laws for such additional, ex-officio, non-voting members, as it deems necessary.

Each compacting state represented at any meeting of the Interstate Commission is entitled to one vote. A majority of the compacting states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the by-laws of the Interstate Commission. The Interstate Commission shall meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of 27 or more compacting states, shall call additional meetings. Public notice shall be given of all meetings and meetings shall be open to the public.

The Interstate Commission shall establish an Executive Committee which shall include commission officers, members and others as shall be determined by the By-laws. The Executive Committee shall have the power to act on behalf of the Interstate Commission during periods when the Interstate Commission is not in session, with the exception of rulemaking and/or amendment to the Compact. The Executive Committee oversees the day-to-day activities managed by the Executive Director and Interstate Commission staff; administers enforcement and compliance with the provisions of the compact, its by-laws and as directed by the Interstate Commission and performs other duties as directed by Commission or set forth in the By-laws.

ARTICLE IV

THE STATE COUNCIL

Each member state shall create a State Council for Interstate Adult Offender Supervision which shall be responsible for the appointment of the commissioner who shall serve on the Interstate Commission from that state. Each state council shall appoint as its commissioner the Compact Administrator from that state to serve on the Interstate Commission in such capacity under or pursuant to applicable law of the

member state. While each member state may determine the membership of its own state council, its membership must include at least one representative from the legislative, judicial, and executive branches of government, victims groups and compact administrators. Each compacting state retains the right to determine the qualifications of the Compact Administrator who shall be appointed by the state council or by the Governor in consultation with the Legislature and the Judiciary. In addition to appointment of its commissioner to the National Interstate Commission, each state council shall exercise oversight and advocacy concerning its participation in Interstate Commission activities and other duties as may be determined by each member state including but not limited to, development of policy concerning operations and procedures of the compact within that state.

ARTICLE V

POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall have the following powers:

* To adopt a seal and suitable by-laws governing the management and operation of the Interstate Commission;

* To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact;

* To oversee, supervise and coordinate the interstate movement of offenders subject to the terms of this compact and any by-laws adopted and rules promulgated by the compact commission;

* To enforce compliance with compact provisions, Interstate Commission rules, and by-laws, using all necessary and proper means, including but not limited to, the use of judicial process;

* To establish and maintain offices;

* To purchase and maintain insurance and bonds;

* To borrow, accept, or contract for services of personnel, including, but not limited to, members and their staffs;

* To establish and appoint committees and hire staff which it deems necessary for the carrying out of its functions including, but not limited to, an executive committee as required by Article III which shall have the power to act on behalf of the Interstate Commission in carrying out its powers and duties hereunder;

* To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties and determine their qualifications; and to establish the Interstate Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel;

* To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of same;

* To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve or use any property, real, personal, or mixed;

* To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal or mixed;

* To establish a budget and make expenditures and levy dues as provided in Article X of this compact;

* To sue and be sued;

* To provide for dispute resolution among Compacting States;

* To perform such functions as may be necessary or appropriate to achieve the purposes of this compact;

* To report annually to the legislatures, governors, judiciaries, and state councils of the compacting states concerning the activities of the Interstate Commission during the preceding year. Such reports shall also include any recommendations that may have been adopted by the Interstate Commission;

* To co-ordinate education, training and public awareness regarding the interstate movement of offenders for officials involved in such activity; and

* To establish uniform standards for the reporting, collecting, and exchanging of data.

ARTICLE VI

ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. By-laws.

The Interstate Commission shall, by a majority of the Members, within twelve months of the first Interstate Commission meeting, adopt By-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Compact, including, but not limited to:

Establishing the fiscal year of the Interstate Commission;

Establishing an executive committee and such other committees as may be necessary;

Providing reasonable standards and procedures:

(i) For the establishment of committees; and

(ii) Governing any general or specific delegation of any authority or function of the Interstate Commission;

Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each such meeting;

Establishing the titles and responsibilities of the officers of the Interstate Commission;

Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Interstate Commission. Notwithstanding any civil service or other similar laws of any Compacting State, the By-laws shall exclusively govern the

personnel policies and programs of the Interstate Commission; and

Providing a mechanism for winding up the operations of the Interstate Commission and the equitable return of any surplus funds that may exist upon the termination of the Compact after the payment and/or reserving of all of its debts and obligations;

Providing transition rules for "start-up" administration of the compact;

Establishing standards and procedures for compliance and technical assistance in carrying out the compact.

B. Officers and Staff.

The Interstate Commission shall, by a majority of the Members, elect from among its Members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the By-laws. The chairperson or, in his or her absence or disability, the vice-chairperson, shall preside at all meetings of the Interstate Commission. The Officers so elected shall serve without compensation or remuneration from the Interstate Commission; PROVIDED THAT, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as officers of the Interstate Commission.

The Interstate Commission shall, through its executive committee, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Interstate Commission may deem appropriate. The executive director shall serve as secretary to the Interstate Commission, and hire and supervise such other staff as may be authorized by the Interstate Commission, but shall not be a member.

C. Corporate Records of the Interstate Commission.

The Interstate Commission shall maintain its corporate books and records in accordance with the By-laws;

D. Qualified Immunity, Defense and Indemnification.

The Members, officers, executive director and employees of the Interstate Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities; PROVIDED, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or wilful and wanton misconduct of any such person.

The Interstate Commission shall defend the Commissioner of a Compacting State, or his or her representatives or employees, or the Interstate Commission's representatives or employees, in any civil action seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties or responsibilities; PROVIDED, that the actual or alleged act, error or omission did not result from intentional wrongdoing on the part of such person.

The Interstate Commission shall indemnify and hold the Commissioner of a Compacting State, the appointed designee or employees, or the Interstate Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred within the scope of Interstate Commission employment, duties or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties or responsibilities, provided, that the actual or alleged act, error or omission did not result from gross negligence or intentional wrongdoing on the part of such person.

ARTICLE VII

ACTIVITIES OF THE INTERSTATE COMMISSION

The Interstate Commission shall meet and take such actions as are consistent with the provisions of this Compact.

Except as otherwise provided in this Compact and unless a greater percentage is required by the By-laws, in order to constitute an act of the Interstate Commission, such act shall have been taken at a meeting of the Interstate Commission and shall have received an affirmative vote of a majority of the members present.

Each Member of the Interstate Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Interstate Commission. A Member shall vote in person on behalf of the state and shall not delegate a vote to another member state. However, a State Council shall appoint another authorized representative, in the absence of the commissioner from that state, to cast a vote on behalf of the member state at a specified meeting. The By-laws may provide for Members' participation in meetings by telephone or other means of telecommunication or electronic communication. Any voting conducted by telephone, or other means of telecommunication or electronic communication shall be subject to the same quorum requirements of meetings where members are present in person.

The Interstate Commission shall meet at least once during each calendar year. The chairperson of the Interstate Commission may call additional meetings at any time and, upon the request of a majority of the Members, shall call additional meetings.

The Interstate Commission's By-laws shall establish conditions and procedures under which the Interstate Commission shall make its information and official records available to the public for inspection or copying. The Interstate Commission may exempt from disclosure any information or official record to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating such Rules, the Interstate Commission may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in the Compact. The Interstate Commission shall promulgate Rules consistent with the principles contained in the "Government in Sunshine Act", 5 U.S.C. § 552(b), as may be amended. The Interstate Commission and any of its committees may close a meeting to the public where it determines by two-thirds vote that an open meeting would be likely to:

* Relate solely to the Interstate Commission's internal personnel practices and procedures;
* Disclose matters specifically exempted from disclosure by statute;
* Disclosure trade secrets or commercial or financial information which is privileged or confidential;
* Involve accusing any person of a crime, or formally censuring any person;
* Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
* Disclose investigatory records compiled for law enforcement purposes;
* Disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of, the Interstate Commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;
* Disclose information, the premature disclosure of which would significantly endanger the life of a person or the stability of a regulated entity;
* Specifically relate to the Interstate Commission's issuance of a subpoena, or its participation in a civil action or proceeding.

For every meeting closed pursuant to this provision, the Interstate Commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Interstate Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any roll-call vote (reflected in the vote of each Member on the question). All documents considered in connection with any action shall be identified in such minutes.

The Interstate Commission shall collect standardized data concerning the interstate movement of offenders as directed through its By-laws and Rules which shall specify the data to be collected, the means of collection and data exchange and report requirements.

ARTICLE VIII

RULEMAKING FUNCTIONS OF THE INTERSTATE COMMISSION

The Interstate Commission shall promulgate Rules in order to effectively and efficiently achieve the purposes of the Compact including transition rules governing administration of the compact during the period in which it is being considered and enacted by the states;

Rulemaking shall occur pursuant to the criteria set forth in this Article and the By-laws and Rules adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the Federal Administrative Procedure Act, 5 U.S.C. § 551 et seq., and the Federal Advisory Committee Act, 5 U.S.C. app. 2, § 1 et seq., as may be amended (hereinafter "APA"). All Rules and amendments shall become binding as of the date specified in each Rule or amendment.

If a majority of the legislatures of the Compacting States rejects a Rule, by enactment of a statute or resolution in the same manner used to adopt the compact, then such Rule shall have no further force and effect in any Compacting State.

When promulgating a Rule, the Interstate Commission shall:

* Publish the proposed Rule stating with particularity the text of the Rule which is proposed and the reason for the proposed Rule;
* Allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available;
* Provide an opportunity for an informal hearing; and
* Promulgate a final Rule and its effective date, if appropriate, based on the rulemaking record.

Not later than 60 days after a Rule is promulgated, any interested person may file a petition in the United States District Court for the District of Columbia or in the Federal District Court where the Interstate Commission's principal office is located for judicial review of such Rule. If the court finds that the Interstate Commission's action is not supported by substantial evidence, (as defined in the APA), in the rulemaking record, the court shall hold the Rule unlawful and set it aside.

Subjects to be addressed within 12 months after the first meeting must at a minimum include:

* Notice to victims and opportunity to be heard;
* Offender registration and compliance;
* Violations/returns;
* Transfer procedures and forms;
* Eligibility for transfer;
* Collection of restitution and fees from offenders;
* Data collection and reporting;
* The level of supervision to be provided by the receiving state;
* Transition rules governing the operation of the Compact and the Interstate Commission during all or part of the period between the effective date of the Compact and the date on which the last eligible state adopts the Compact;
* Mediation, arbitration and dispute resolution.

The existing rules governing the operation of the previous Compact superseded by this Act shall be null and void 12 months after the first meeting of the Interstate Commission created hereunder.

Upon determination by the Interstate Commission that an emergency exists, it may promulgate an emergency rule which shall become effective immediately upon adoption, provided that the usual rulemaking procedures provided hereunder shall be retroactively applied to said rule as soon as reasonably possible, in no event later than 90 days after the effective date of the rule.

ARTICLE IX

OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION BY THE INTERSTATE COMMISSION

A. Oversight.

The Interstate Commission shall oversee the interstate movement of adult offenders in the Compacting States and shall monitor such activities being administered in Non-Compacting States which may significantly affect Compacting States.

The courts and executive agencies in each Compacting State shall enforce this Compact and shall take all actions necessary and appropriate to effectuate the Compact's purposes and intent. In any judicial or administrative proceeding in a Compacting State pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Interstate Commission, the Interstate Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes.

B. Dispute Resolution.

The Compacting States shall report to the Interstate Commission on issues or activities of concern to them, and cooperate with and support the Interstate Commission in the discharge of its duties and responsibilities.

The Interstate Commission shall attempt to resolve any disputes or other issues which are subject to the Compact and which may arise among Compacting States and Non-Compacting States.

The Interstate Commission shall enact a By-law or promulgate a Rule providing for both mediation and binding dispute resolution for disputes among the Compacting States.

C. Enforcement.

The Interstate Commission, in the reasonable exercise of its' discretion, shall enforce the provisions of this Compact using any or all means set forth in Article XII, Section B, of this Compact.

ARTICLE X

FINANCE

The Interstate Commission shall pay or provide for the payment of the reasonable expenses of its establishment, organization and ongoing activities.

The Interstate Commission shall levy on and collect an annual assessment from each Compacting State to cover the cost of the internal operations and activities of the Interstate Commission and its staff which must be in a total amount sufficient to cover the Interstate Commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the Interstate Commission, taking into consideration the population of the state and the volume of interstate movement of offenders in each Compacting State and shall promulgate a Rule binding upon all Compacting States which governs said assessment.

The Interstate Commission shall not incur any obligations of any kind prior to securing the funds adequate to meet the same; nor shall the Interstate Commission pledge the credit of any of the Compacting States, except by and with the authority of the Compacting State.

The Interstate Commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Interstate Commission shall be subject to the audit and accounting procedures established under its By-laws. However, all receipts and disbursements of funds handled by the Interstate Commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the Interstate Commission.

ARTICLE XI

COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

Any state, as defined in Article II of this compact, is eligible to become a Compacting State. The Compact shall become effective and binding upon legislative enactment of the Compact into law by no less than 35 of the States. The initial effective date shall be the later of July 1, 2001, or upon enactment into law of the Compact into law by that State. The governors of Non-Member states or their designees will be invited to participate in Interstate Commission activities on a non-voting basis prior to adoption of the compact by all states and territories of the United States.

Amendments to the Compact may be proposed by the Interstate Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Interstate Commission and the Compacting States unless and until it is enacted into law by unanimous consent of the Compacting States.

ARTICLE XII

WITHDRAWAL, DEFAULT, TERMINATION, AND JUDICIAL ENFORCEMENT

A. Withdrawal.

Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State; PROVIDED, that a Compacting State may withdraw from the Compact ("Withdrawing State") by enacting a statute specifically repealing the statute which enacted the Compact into law.

The effective date of withdrawal is the effective date of the repeal.

The Withdrawing State shall immediately notify the Chairperson of the Interstate Commission in writing upon the introduction of

legislation repealing this Compact in the Withdrawing State. The Interstate Commission shall notify the other Compacting States of the Withdrawing State's intent to withdraw within sixty days of its receipt thereof.

The Withdrawing State is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.

Reinstatement following withdrawal of any Compacting State shall occur upon the Withdrawing State re-enacting the Compact or upon such later date as determined by the Interstate Commission.

B. Default.

If the Interstate Commission determines that any Compacting State has at any time defaulted ("Defaulting State") in the performance of any of its obligations or responsibilities under this Compact, the By-laws or any duly promulgated Rules the Interstate Commission may impose any or all of the following penalties:

* Fines, fees and costs in such amounts as are deemed to be reasonable as fixed by the Interstate Commission;

* Remedial training and technical assistance as directed by the Interstate Commission;

* Suspension and termination of membership in the compact;

* Suspension shall be imposed only after all other reasonable means of securing compliance under the By-laws and Rules have been exhausted.

Immediate notice of suspension shall be given by the Interstate Commission to the Governor, the Chief Justice or Chief Judicial Officer of the state; the majority and minority leaders of the defaulting state's legislature, and the State Council.

The grounds for default include, but are not limited to, failure of a Compacting State to perform such obligations or responsibilities imposed upon it by this Compact, Interstate Commission By-laws, or duly promulgated Rules. The Interstate Commission shall immediately notify the Defaulting State in writing of the penalty imposed by the Interstate Commission on the Defaulting State pending a cure of the default. The Interstate Commission shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Interstate Commission, in addition to any other penalties imposed herein, the Defaulting State may be terminated from the Compact upon an affirmative vote of a majority of the Compacting States and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of suspension. Within 60 days of the effective date of termination of a Defaulting State, the Interstate Commission shall notify the Governor, the Chief Justice or Chief Judicial Officer and the Majority and Minority Leaders of the Defaulting State's legislature and the state council of such termination.

The Defaulting State is responsible for all assessments, obligations and liabilities incurred through the effective date of termination including any obligations, the performance of which extends beyond the effective date of termination.

The Interstate Commission shall not bear any costs relating to the Defaulting State unless otherwise mutually agreed upon between the Interstate Commission and the Defaulting State. Reinstatement following termination of any Compacting State requires both a re-enactment of the Compact by the Defaulting State and the approval of the Interstate Commission pursuant to the Rules.

C. Judicial Enforcement.

The Interstate Commission may, by majority vote of the Members, initiate legal action in the United States District Court for the District of Columbia or, at the discretion of the Interstate Commission, in the Federal District where the Interstate Commission has its offices to enforce compliance with the provisions of the Compact, its duly promulgated Rules and By-laws, against any Compacting State in default. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

D. Dissolution of Compact.

The Compact dissolves effective upon the date of the withdrawal or default of the Compacting State which reduces membership in the Compact to one Compacting State.

Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Interstate Commission shall be wound up and any surplus funds shall be distributed in accordance with the By-laws.

ARTICLE XIII

SEVERABILITY AND CONSTRUCTION

The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.

The provisions of this Compact shall be liberally constructed to effectuate its purposes.

ARTICLE XIV

BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other Laws.

Nothing herein prevents the enforcement of any other law of a Compacting State that is not inconsistent with this Compact.

All Compacting States' laws conflicting with this Compact are superseded to the extent of the conflict.

B. Binding Effect of the Compact.

All lawful actions of the Interstate Commission, including all Rules and By-laws promulgated by the Interstate Commission, are binding upon the Compacting States.

All agreements between the Interstate Commission and the Compacting States are binding in accordance with their terms.

Upon the request of a party to a conflict over meaning or interpretation of Interstate Commission actions, and upon a majority vote of the Compacting States, the Interstate Commission may issue advisory opinions regarding such meaning or interpretation.

In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Interstate Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the Compacting State and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.

(11 Del. C. 1953 § 4358; 54 Del. Laws, c. 349 § 7; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 91 § 1.)

§ 4359 Short title; Service fee.

This subchapter may be cited as the Interstate Compact for Adult Offender Supervision. Any probationee who applies under this Compact for interstate transfer into or from the State of Delaware shall pay to the Department of Correction a service fee of $50 to defray costs under the Compact.

(11 Del. C. 1953 § 4359; 54 Del. Laws, c. 349 § 7; 74 Del. Laws, c. 91 § 1.)

§ 4359A State Council for Interstate Adult Offender Supervision.

(a) The State Council for Interstate Adult Offender Supervision is hereby established and shall consist of 7 members as follows:

(1) The Commissioner of Correction, or the Commissioner's designee.

(2) The Director of Probation and Parole, or the Director's designee.

(3) A member of the Delaware Senate appointed by the President Pro Tempore of the Senate to serve at the pleasure of the President Pro Tempore.

(4) A member of the Delaware House of Representatives appointed by the Speaker of the House to serve at the pleasure of the Speaker of the House.

(5) A member of the state judiciary appointed by the Chief Justice of the Delaware Supreme Court to serve at the pleasure of the Chief Justice.

(6) Two members appointed by the Governor who shall serve at the pleasure of the Governor. At least 1 of these appointments must be a representative of a victims' assistance or advocacy organization.

(b) By majority vote of the members, the State Council for Interstate Adult Offender Supervision shall select a chairperson who shall serve as the Compact Commissioner and Administrator to the Interstate Commission for Adult Offender Supervision.

(c) The State Council shall exercise oversight and advocacy concerning the State's participation in Interstate Commission activities and other duties including, but not limited to, the development of policy concerning operations and procedures of the Compact within the State.

(d) The State Council shall meet at least twice each year.

(77 Del. Laws, c. 178 § 1.)

Subchapter VI

Clemency

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

(a) The Board of Pardons as constituted by article VII of the Constitution of this State shall have power to issue subpoenas requiring the attendance of such witnesses and the production of such records, books, papers and documents necessary for investigation of the case of any person before it. Subpoenas may be signed and oaths administered by any member of the Board. Subpoenas so issued may be served by Department employees or by any person authorized to serve subpoenas by the Rules of Civil Procedure of the Superior Court and shall be served and returned as provided by said Rules.

(b) The fees of witnesses shall be the same as allowed in the Superior Court and shall be paid by the State Treasurer from any moneys in the Treasury of the State not otherwise appropriated, upon a warrant signed by a member of the Board and its secretary.

(c) Any person who testifies falsely or fails to appear when subpoenaed, or refuses to produce such material pursuant to the subpoena, shall be subject to the same orders and penalties to which a person before the Superior Court is subject.

(d) Upon the application of any convicted felon for a pardon, the Board shall notify the Superior Court and the Attorney General of such application. The Attorney General in cooperation with the Superior Court shall send notice of such application 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 notice shall contain the time, date and place where the matter shall be heard by the Board. Where 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 good faith effort shall be made to send the notice to the parent, guardian or custodian of such person. 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. Each such victim or witness shall 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 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.

(e) The Superior Court, upon application of the Board, may in its discretion compel the attendance of witnesses, the production of such material and the giving of testimony before the Board, by an attachment for contempt or otherwise in the same manner as production of evidence may be compelled before the Superior Court.

(f) Upon the request of the Board of Pardons, the Department, to the extent authorized by the Commissioner, shall make investigations and recommendations and report thereon with respect to any application before the Board of Pardons.

(11 Del. C. 1953 § 4361; 54 Del. Laws, c. 349 § 7; 67 Del. Laws, c. 242 §§ 1-3; 70 Del. Laws, c. 186 § 1.)

§ 4362 Psychiatric examinations.

(a) When the Board of Pardons considers for recommendation to the Governor, for pardon or commutation of sentence, any person who has been convicted of an act causing death (subpart B of subchapter II of Chapter 5 of this title); sexual offenses (subpart D of subchapter II of Chapter 5 of this title); kidnapping and related offenses (subpart E of subchapter II of Chapter 5 of this title); arson and related offenses (subpart A of subchapter III of Chapter 5 of this title); home invasion; burglary in the first degree; burglary in the second degree; robbery (subpart C of subchapter III of Chapter 5 of this title); offenses relating to children and vulnerable adults (subchapter V of Chapter 5 of this title); cruelty to animals; abusing a corpse; unlawful use of an incendiary device, bomb or other explosive device; abuse of children (Chapter 9 of Title 16); and distribution of a controlled substance to a person under age 18 (former § 4761 of Title 16 (repealed)); or for an attempt as provided by statute to commit any of these crimes, there shall be furnished to each member of the Board of Pardons and to the Governor, in case recommendation for a pardon or commutation of sentence be made, a copy of the report of the psychiatrist and/or psychologist who have examined such person, as provided in subsection (b) of this section.

(b) Prior to consideration by the Board of Pardons of any application for a pardon or a commutation of sentence made by any person who has been incarcerated for any of the crimes stated in subsection (a) of this section, such person shall be examined by a psychiatrist or by a psychologist within a 12-month period immediately preceding consideration of such person's case by the Board of Pardons. The Commissioner of the Department of Correction or the Commissioner's designee may request the Director of the Delaware Psychiatric Center to cause examination and studies to be made.

(c) Any psychiatrist or psychologist who, pursuant to subsection (b) of this section, examines any applicant for a pardon or a commutation of sentence shall furnish to each member of the Board of Pardons a report containing their respective findings, opinions as to the mental and emotional health of the applicant, and opinions as to the probability of the applicant again committing any crime if released. If the Board of Pardons recommends a pardon or a commutation of sentence, a copy of any report submitted to the Board by any psychiatrist or psychologist shall be provided to the Governor.

(d) If examination and clinical studies as provided in this section cannot be made at the correctional institution, the prisoner may be transferred, under adequate security safeguards, to the Delaware Psychiatric Center for such examination and studies.

(11 Del. C. 1953 § 4362; 57 Del. Laws, c. 594 § 1; 59 Del. Laws, c. 528 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 550 § 1; 72 Del. Laws, c. 429 §§ 1-3; 76 Del. Laws, c. 344 §§ 1, 2; 78 Del. Laws, c. 224 § 14; 78 Del. Laws, c. 252 § 12.)

§ 4363 Request for advice from Board of Parole.

Whenever the Board of Pardons receives an application for recommendation of pardon or commutation of sentence from a person who is in legal custody of the Department of Correction, the Board shall request from the Board of Parole a report summarizing the complete record of such person, which shall include an opinion as to the state of rehabilitation of such person. The report shall be furnished by the Parole Board as provided in § 4343(8) of this title.

(11 Del. C. 1953 § 4363; 57 Del. Laws, c. 595 § 1; 80 Del. Laws, c. 51 § 2.)

§ 4364 Effect of pardon; restoration of civil rights.

Except as otherwise provided by the Delaware Constitution, or expressly by any provision of the Delaware Code or any court rule, the granting of an unconditional pardon by the Governor shall have the effect of fully restoring all civil rights to the person pardoned. Such civil rights include, but are not limited to, the right to vote, the right to serve on a jury if selected, the right to purchase or possess deadly weapons and the right to seek and hold public office provided however, that this section shall not limit or affect the Governor's authority to place lawful conditions upon the granting of a pardon. Notwithstanding the granting of a pardon or any provision of this section, no person who shall be convicted of embezzlement of the public money, bribery, perjury or other infamous crime, shall be eligible to a seat in either House of the General Assembly, or capable of holding any office of trust, honor or profit under this State.

(74 Del. Laws, c. 156 § 1.)

Subchapter VII

Expungement of Criminal Records

§ 4371 Statement of policy.

The General Assembly finds that arrest records can be a hindrance to an innocent citizen's ability to obtain employment, obtain an education or to obtain credit. This subchapter is intended to protect innocent persons from unwarranted damage which may occur as the result of arrest and other criminal proceedings which are unfounded or unproven.

(62 Del. Laws, c. 317 § 2.)

§ 4372 Termination of criminal action in favor of accused.

(a) If a person is charged with the commission of a crime or crimes and the case is terminated in favor of the accused, the person may request the expungement of the police records and the court records relating to the case pursuant to the provisions of this subchapter.

(b) For the purposes of this subchapter, a case shall be deemed to be "terminated in favor of the accused" only if:

(1) The accused is acquitted of all charges related to the case;

(2) A nolle prosequi is entered on all charges related to the case;

(3) The accused is placed on probation before judgment, fulfills the terms and conditions of probation, and the court enters an order discharging the person from probation; or

(4) All charges related to the case are otherwise dismissed.

(c) For the purposes of this subchapter, "case" means a charge or set of charges related to a complaint or incident that are or could be properly joined for prosecution.

(62 Del. Laws, c. 317 § 2; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 150 § 5; 76 Del. Laws, c. 392 § 1; 79 Del. Laws, c. 211 § 2.)

§ 4373 Mandatory expungement.

(a) If a person is charged with the commission of a crime which is designated as a misdemeanor or violation in Title 4, 7, 11, 16 or 23, or a county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any Title 4, 7, 11, 16 or 23 offense, excepting those crimes specifically exempted in subsection (c) of this section, and the case is terminated in favor of the accused, and the person has not previously been convicted of another criminal offense, upon an appropriate request to the State Bureau of Identification by such person the police records and court records, including any electronic records, relating to the charge or charges shall be expunged if the person has not been convicted of any crime since the date upon which the case was terminated in favor of the accused.

(b) If the State Bureau of Identification determines that expungement is mandated pursuant to the terms of this section it shall promptly so notify the courts and police agencies where records pertaining to the case are located or maintained, and any court where the case was terminated, disposed of or concluded. All records appropriately specified in the expungement request shall, within 60 days of the determination that such request is mandated pursuant to the terms of this section, be removed from the files, and placed in the control of the Supervisor of the State Bureau of Identification who shall be designated to retain control over all expunged records, and who shall insure that the records or the information contained therein is not released for any reason except as specified in this subchapter. A court and/or police agency which receives a notice of expungement from the State Bureau Identification shall provide the Bureau with written confirmation of the completion of the expungement. In response to requests from nonlaw-enforcement officers for information or records on the person who was arrested, the law-enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record.

(c) Mandatory expungement pursuant to this section shall not be applicable to the records of any case in which the defendant was charged with 1 or more of the following crimes, or any county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any crime specified herein:

(1) Any misdemeanor designated as a sex offense pursuant to § 761 of this title;

(2) Any misdemeanor set forth in subpart A of subchapter II of Chapter 5 of this title;

(3) Unlawful imprisonment pursuant to § 781 of this title;

(4) Interference with custody pursuant to § 785 of this title;

(5) Coercion pursuant to § 791 of this title;

(6) Trespassing with intent to peer or peep, pursuant to § 820 of this title;

(7) Endangering the welfare of a child, pursuant to § 1102 of this title;

(8) Crime against a vulnerable adult, pursuant to § 1105 of this title;

(9) Any misdemeanor set forth in subparts A, B, C or F of subchapter VI of Chapter 5 of this title;

(10) Any misdemeanor or violation set forth in Chapter 85 of this title;

(11) Patient abuse, pursuant to § 1136 of Title 16;

(12) Operation of a vessel or boat while under the influence, pursuant to § 2302 of Title 23.

(d) At the time the application requesting expungement is filed with the State Bureau of Identification the applicant shall pay a reasonable fee to the State Bureau of Identification. The applicant shall attach a copy of that applicant's criminal history as maintained by the State Bureau of Identification to any application requesting expungement filed pursuant to this section. The State Bureau of Identification shall summarily reject any application for expungement that does not include the applicant's criminal history without further notice to the applicant.

(e) The State Bureau of Identification shall be authorized to promulgate reasonable regulations and a reasonable fee schedule to accomplish the purposes of this section.

(f) An offense for which records have been expunged pursuant to this section shall not have to be disclosed by the person as an arrest for any reason, except for disclosure to criminal justice agencies, as defined in § 8502(5) of this title, for the purposes provided in § 4376(a) of this title.

(62 Del. Laws, c. 317 § 2; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 150 § 6; 76 Del. Laws, c. 392 § 2; 77 Del. Laws, c. 156 § 1; 77 Del. Laws, c. 348 § 1; 77 Del. Laws, c. 416 § 1; 78 Del. Laws, c. 256 §§ 1, 2.)

§ 4374 Discretionary expungement.

(a) Notwithstanding any provision of § 4373 of this title to the contrary, if a person is charged with the commission of a crime, or a violation of any county or municipal code, ordinance, or regulation, and the case is terminated in favor of the accused, the person may file a petition in the Superior Court in the county where the case was terminated, disposed of or concluded setting forth the relevant facts and requesting expungement of the police records and the court records, or includes any electronic records, relating to the charge or charges. Discretionary expungement pursuant to this section shall not be applicable to the records of any case that may be expunged pursuant to the provisions of § 4373 of this title; provided, however, where a person was charged with a criminal offense where discretionary expungement pursuant to this section applies, but also was charged, within the same case, with a criminal offense where mandatory expungement pursuant to § 4373 of this title applies, such person must file a petition in Superior Court pursuit to this section.

(b) After the petition requesting expungement is filed with the Superior 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 30 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 pursuant to this section. The Court shall summarily reject any petition for expungement that does not include the petitioner's criminal history.

(c) Unless the Court believes a hearing is necessary, petitions shall be disposed of without a hearing. If the Court finds that the continued existence and possible dissemination of information relating to the arrest of the petitioner causes, or may cause, circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records relating to the charge or case. Otherwise, it shall deny the petition. The burden shall be on the petitioner to allege specific facts in support of that petitioner's allegation of manifest injustice, and the burden shall be on the petitioner to prove such manifest injustice by a preponderance of the evidence. The fact that the petitioner has previously been convicted of a criminal offense, other than that referred to in the petition, shall be considered by the Court as prima facie evidence that the continued existence and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the petitioner. A petition filed by the Attorney General or the Attorney General's designee pursuant to subsection (e) of this section shall be granted by the Court.

(d) The State shall be made party defendant to the proceeding. Any party aggrieved by the decision of the Court may appeal, as provided by law in civil cases.

(e) Notwithstanding any provision of this subchapter or any other statute or rule to the contrary, the Attorney General or the Attorney General's designee responsible for prosecuting a criminal action may petition the Court to expunge the instant arrest record of a defendant if at the time of a state motion to dismiss or entry a nolle prosequi in the case, the prosecutor has determined that the continued existence and possible dissemination of information relating to the arrest of the defendant for the matter dismissed or for which a nolle prosequi was entered may cause circumstances which constitute a manifest injustice to the defendant.

(f) If an order expunging the records is granted by the Court, all the criminal records specified in the order shall, within 60 days of the order, be removed from the files, and placed in the control of the Supervisor of the State Bureau of Identification who shall be designated to retain control over all expunged records, and who shall insure that the records or the information contained therein is not released for any reason except as specified in this subchapter. A court and/or police agency which receives a notice of expungement from the State Bureau Identification shall provide the Bureau with written confirmation of the completion of the expungement. The State Bureau of Identification shall provide the Court which entered the order with written confirmation of the execution of the order. In response to requests from nonlaw-enforcement officers for information or records on the person who was arrested, the law-enforcement officers and departments shall reply, with respect to the arrest and proceedings which are the subject of the order, that there is no record. No order requiring an expungement of any record shall be entered or enforced if such order is contrary to the provisions of this subchapter. The State Bureau of Identification shall promptly notify the Court if it is unable to comply with any order issued pursuant to this subchapter.

(g)(1) Notwithstanding any provision of this subchapter or any other statute or rule to the contrary, the police records and the court records relating to any charge set forth in Title 21, or in any county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any Title 21 offense, shall not be expunged pursuant to this subchapter unless the charge or charges is one of those specifically enumerated in paragraph (g)(2) of this section.

(2) Discretionary expungement pursuant to this section shall be applicable when otherwise appropriate for the following Title 21 offenses, or any county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any Title 21 offense specified herein:

a. Driving after judgment prohibited, pursuant to § 2810 of Title 21;

b. Reckless driving, pursuant to § 4175 of Title 21;

c. Operation of a motor vehicle causing death, pursuant to § 4176A of Title 21;

d. Driving under the influence, pursuant to § 4177 of Title 21; or

e. Operating a commercial vehicle with a prohibited blood alcohol concentration or while impaired by drugs, pursuant to § 4177M of Title 21.

(h) The Superior Court shall establish a reasonable fee schedule for the filing of a petition of expungement pursuant to this section.

(i) An offense for which records have been expunged pursuant to this section shall not have to be disclosed by the person as an arrest for any reason, except for disclosure to criminal justice agencies, as defined in § 8502(5) of this title, for the purposes provided in § 4376(a) of this title.

(76 Del. Laws, c. 392 § 3; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 348 § 2; 78 Del. Laws, c. 256 §§ 3-5.)

§ 4375 Discretionary expungement following a pardon.

(a) Notwithstanding any provision of this subchapter or any other law to the contrary, a person who was convicted of a misdemeanor or violation excepting those crimes specifically exempted in subsection (b) of this section who is thereafter unconditionally pardoned by the Governor may request a discretionary expungement pursuant to the procedures set forth in § 4374 of this title. The burden shall be on the petitioner to allege specific facts in support of that petitioner's allegation of manifest injustice, and the burden shall be on the petitioner to prove such manifest injustice by a preponderance of the evidence. The fact that the petitioner was convicted of the criminal offense that is the subject of that petitioner's expungement application shall be considered by the Court as prima facie evidence that the continued existence and possible dissemination of information relating to the arrest in question does not constitute a manifest injustice to the petitioner.

(b) Discretionary expungement following a pardon pursuant to this section shall not be applicable to the records of any case in which the defendant was charged with 1 or more of the following crimes, or any county or municipal code, ordinance, or regulation which is the same as, or equivalent to, any crime specified herein:

(1) Any misdemeanor or violation involving embezzlement of public money, bribery or perjury;

(2) Any misdemeanor designated as a sex offense pursuant to § 761 of this title;

(3) Any misdemeanor set forth in subparts A, B, C or F of subchapter VI of Chapter 5 of this title;

(4) Unlawful imprisonment pursuant to § 781 of this title;

(5) Interference with custody pursuant to § 785 of this title; or

(6) Coercion pursuant to § 791 of this title.

(76 Del. Laws, c. 392 § 3; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 156 § 2; 78 Del. Laws, c. 256 § 6.)

§ 4376 Disclosure of expunged records.

(a) Except for disclosure to law-enforcement officers acting in the lawful performance of their duties in investigating criminal activity or for the purpose of an employment application as an employee of a law-enforcement agency, it shall be unlawful for any person having or acquiring access to an expunged court or police record to open or review it or to disclose to another person any information from it without an order from the court which ordered the record expunged. In addition to such other lawful purposes as may be prescribed by statute or otherwise, criminal justice agencies shall have access to records of expunged probations before judgment and past participation in the First Offenders Controlled Substance Diversion Program or a court-supervised drug diversion program for the purpose of determining whether a person is eligible for a probation before judgment, as set forth in § 4218 of this title, or for participation in the First Offenders Controlled Substance Diversion Program, as set forth in § 4767 of Title 16 or for participation in a court-supervised drug diversion program.

(b) Where disclosure to law-enforcement officers in the lawful performance of their duties in investigating criminal activity is permitted by subsection (a) of this section, such disclosure shall apply for the purpose of investigating particular criminal activity in which the person, whose records have been expunged, is considered a suspect and the crime being investigated is a felony or pursuant to an investigation of an employment application as an employee of a law-enforcement agency.

(c) Nothing contained in this subchapter shall require the destruction of photographs or fingerprints taken in connection with any felony arrest and which are utilized solely by law-enforcement officers in the lawful performance of their duties in investigating criminal activity.

(d) Nothing herein shall require the destruction of court records or records of the Department of Justice. However, all such records, including docket books, relating to a charge which has been the subject of a destruction order shall be so handled to ensure that they are not open to public inspection or disclosure.

(e) An offense for which records have been expunged pursuant to this subchapter shall not have to be disclosed by the person as an arrest for any reason.

(f) Any person who violates subsection (a) of this section shall be guilty of a class B misdemeanor, and shall be punished accordingly.

(g) The State Bureau of Identification shall make available to criminal justice agencies such electronic records as will enable criminal justice agencies to determine whether a person who seeks to participate in the First Offenders Controlled Substance Diversion Program or to obtain a probation before judgment disposition or to participate in a court-supervised drug diversion program has done so before and had the record expunged.

(62 Del. Laws, c. 317 § 2; 76 Del. Laws, c. 392 § 3; 77 Del. Laws, c. 348 §§ 3-6; 78 Del. Laws, c. 13 § 14; 78 Del. Laws, c. 256 §§ 7-12.)

§ 4377 Notification to federal government.

Upon the granting by the court for an order for the expungement of records in accordance with this subchapter, a copy of such order shall be forwarded to the federal Department of Justice.

(62 Del. Laws, c. 317 § 2; 76 Del. Laws, c. 392 § 3.)

§ 4378 Expungement of offenses resolved by probation before judgment and the first offenders controlled substances diversion program.

(Repealed by 77 Del. Laws, c. 348 § 7, effective Oct 10, 2010.)

Subchapter VIII

Diminution of Confinement

§ 4381 Earned good time.

(a) Subject to the limitations set forth in subsection (b) of this section, all sentences, other than a life sentence, imposed for any offense pursuant to any provision of this title, Title 16 and/or Title 21 may be reduced by good time credit under the provisions of this subchapter and rules and regulations adopted by the Commissioner of Corrections. This provision will apply regardless of any previously imposed statutory limitations set forth in this title, Title 16 or Title 21.

(b) The awarding of good time credit set forth in subsection (a) of this section above will not apply to sentences imposed pursuant to § 4214 or § 4204(k) of this title or sentences imposed prior to the enactment of this statute.

(c) "Good time" may be earned for good behavior while in the custody of the Department of Correction when the person has not been guilty of any violation of discipline, rules of the Department or any criminal activity and has labored with diligence toward rehabilitation according to the following conditions:

(1) During the first year of any sentence, good time may be awarded at the rate of 2 days per month beginning on the first day of confinement.

(2) After completing 365 days of any sentence, good time may be awarded at the rate of 3 days per month.

(3) No person shall be awarded more than 36 days of good time under this subsection for good behavior in any 1 year consisting of 365 calendar days actually served.

(d) "Good time" may be earned by participation in education, rehabilitation, work, or other programs as designated by the Commissioner. Good time may be awarded for satisfactory participation in approved programs at a rate of up to 5 days per calendar month. For offenders sentenced on or after August 8, 2012, up to 60 days of additional good time may be awarded for successful completion of an approved program designed to reduce recidivism.

(e) No more than a total of 160 days of "good time" may be earned in any 1 year consisting of 365 days actually served. Good time credits shall be applied such that the resulting release date is not prior to the effective completion date of the offender's approved program. For offenders serving multiple sentences, good time shall be credited to the consolidated time being served, rather than individually to each sentence.

(67 Del. Laws, c. 130 § 5; 74 Del. Laws, c. 346 § 2; 76 Del. Laws, c. 351 §§ 1-3; 77 Del. Laws, c. 406 § 1; 78 Del. Laws, c. 392 §§ 9, 10; 79 Del. Laws, c. 187 § 1.)

§ 4382 Forfeiture of good time.

(a) Any person subject to the custody of the Department at Level IV or V shall, upon the conviction of any crime during the term of the sentence, forfeit all good time accumulated to the date of the criminal act; this forfeiture is not subject to suspension.

(b) Any person subject to the custody of the Department of Correction at Level IV or V who is determined to have violated the rules of the Department of Correction shall under the rules and procedures of the Department forfeit all or part of the good time accrued to the date of such offense. Forfeiture under this subsection may be suspended by the Department for the purposes of encouraging rehabilitation or compliance with discipline.

(c) Any person subject to the custody of the Department who is determined to have physically assaulted any correctional officer or employee of the Department shall, in addition to any criminal or civil penalties which may be imposed, forfeit all good time accumulated to date of the assault; this forfeiture is not subject to suspension.

(d) When good time is actually ordered forfeit, it may not be recovered by the incarcerated person.

(e) Any person subject to the custody of the Department at Level IV or Level V, who is found by a court or a federal court to have filed a factually frivolous claim, malicious claim or legally frivolous claim and sanctioned by the court or federal court pursuant to § 8805(a) or (b) of Title 10, shall be deemed to have failed to earn behavior good time credits within the meaning of § 4381(c) of this title and shall have a portion of that person's good time credits accumulated pursuant to § 4381(c) of this title forfeited to the extent and in accordance with the order issued pursuant to § 8805 of Title 10.

(67 Del. Laws, c. 130 § 5; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 411 § 3; 70 Del. Laws, c. 581 § 1; 77 Del. Laws, c. 406 § 1.)

§ 4383 Earned compliance credit for probation.

(a) Any periods of probation sentenced to or released to probation on or after August 8, 2012, may be reduced by earned compliance credit under the provisions of this chapter and rules and regulations adopted by the Department of Correction.

(b) Persons under supervision may earn up to 30 days of credit for 30 days of compliance with conditions of supervision, not to exceed 1/2 of their probationary period.

Earned compliance credit will be forfeited upon conviction of a new crime and may be forfeited upon revocation of probation.

(c) For any offender released on or after August 8, 2012, a period of conditional release shall be served concurrently with the probationary period.

(d) Earned compliance credit shall not be available to reduce any period of probation:

(1) Imposed for any sexual offense as defined in § 761 of this title; or

(2) Imposed for any violent felony in this title as designated by § 4201(c) of this title; or

(3) Imposed for any offense set forth in the Delaware Code if the period of probation is imposed to ensure the collection of any restitution ordered and the individual is sentenced to Accountability Level I—Restitution Only; or

(4) Imposed for such other categories of offenses as set forth in the rules and regulations adopted by the Department of Correction.

(78 Del. Laws, c. 392 § 11; 79 Del. Laws, c. 187 § 2.)

§ 4384 [Reserved.]

Subchapter IX

House Arrest

§ 4391 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) "Crime of violence" shall mean any crime which involves the use or threat of physical force or violence against any individual. For purposes of this subchapter, no motor vehicle offense is a crime of violence where it is not a part of an additional crime.

(2) "Good standing" shall mean that an offender participating in the house arrest program has, at the time such person entered the program and continuously thereafter, met the following qualifications:

a. No pending warrants or charges;

b. No major violations during the immediately preceding 45 days;

c. Adherence to all conditions of probation, work-release and case plans.

(3) "House arrest" or "house arrest program" shall mean a form of intensive supervised custody in the community, including surveillance on weekends, administered by intensive supervision officers. The house arrest program shall be limited to nonviolent offenders and shall be an individual program in which the freedom of the offender is restricted within the stable, approved place of residence of the nonviolent offender or within the stable, approved place of residence of a parent, sibling or child of the nonviolent offender and in which specific sanctions are imposed and enforced.

(4) "Nonviolent offender" shall mean a person who is an applicant for the house arrest program and who has been convicted of an offense which is not a crime of violence.

(5) "Public service" shall mean that work which is required of an offender participating in the house arrest program and shall include work which such offender is ordered to perform, without payment, for the benefit of the community, separate and apart from any paid employment which such offender may be permitted to obtain. All public service work shall be performed for designated tax-supported or tax-exempt entities which have entered into an informal agreement with the Department to administer the work performed by such offender. The words "public service" shall include, but are not limited to, any of the following:

a. Work on any property or building owned or leased by the State, by any county or by a municipality or by any nonprofit organization or agency or work for any program under the control or sponsorship of a charitable enterprise;

b. Work on a state, county or municipally-owned road or highway;

c. Landscaping, maintenance or service work in any state, county or municipal park or recreation areas;

d. Work in a state, county or municipal hospital or for any nonprofit health or medical center or facility.

(66 Del. Laws, c. 29 § 3.)

§ 4392 Identification and selection of participants.

(a) An offender sentenced to supervision Level I, II or III is not eligible for house arrest placement unless specifically ordered by the sentencing judge, or as a result of administrative detention under § 4334(d) of this title.

(b) Any person committed to the corrections center to serve a short-term sentence for a nonviolent crime shall be identified by the classification officer before or upon arrival at the corrections center if such person has not already been identified prior to transportation to

the corrections center.

(c) The sentencing judge, in sentencing an offender, may impose a house arrest sentence as an alternative to imprisonment.

(66 Del. Laws, c. 29 § 3; 76 Del. Laws, c. 399 § 2; 78 Del. Laws, c. 392 § 13.)

§ 4393 Requirements for participation.

(a) No person shall be eligible for the house arrest program unless such person meets the following requirements:

(1) Participation shall be voluntary;

(2) Participation shall be limited to the following types of offenders:

a. Individuals found guilty of nonviolent crimes and who, due to the characteristics of the crime and/or the offender's background, would not be placed on regular probation;

b. Probation violators charged with technical or misdemeanor violations;

c. Parole violators charged with technical or misdemeanor violations.

(b) The supervision of offenders assigned to home confinement and the use of the electronic monitoring devices shall be restricted to the area within the geographical boundaries of the State unless otherwise determined by the Commissioner of the Department of Correction.

(66 Del. Laws, c. 29 § 3; 73 Del. Laws, c. 320 § 3.)

§ 4394 Requirements for continued participation.

No person shall remain in the house arrest program if such person fails to meet any of the following conditions:

(1) Each participant shall perform whatever community service work is assigned by the court or by the Department;

(2) Each participant shall remain confined to the residence approved by the program, except for approved employment, public service work or other special activities approved by the program;

(3) Each participant shall make such regular restitution payments to each victim or victims of the crime as are determined by the court;

(4) Each participant shall have an approved, stable residence;

(5) Each participant shall have stable employment as defined by Department rules and regulations;

(6) Each participant shall remain in good standing as a condition of continued participation in the program;

(7) Each person in a house arrest program shall participate in all counselling activities and requirements, including such group programs and meetings as are directed by the court or by the Department;

(8) Each participant shall report to a designated officer as directed by the court or by the Department.

(66 Del. Laws, c. 29 § 3; 67 Del. Laws, c. 442 § 2.)

Part II
Criminal Procedure Generally
Chapter 45
APPEAL; STAY OF EXECUTION; POSTCONVICTION REMEDY

§ 4501 Formal defects and clerical errors.

In a criminal case, judgment shall not be reversed for any clerical misprision or formal defect, if the record contains substantial ground for judgment.

The omission of the words "with force and arms" shall be deemed a defect in form merely.

(Code 1852 § 2968; Code 1915 § 4835; Code 1935 § 5326; 11 Del. C. 1953 § 4501.)

§ 4502 Stay of execution on writ of error or certiorari; requirements.

No writ of error or writ of certiorari issuing from the Supreme Court in any criminal cause shall operate as a stay of execution of the sentence of the trial court unless such writ of error or writ of certiorari be sued out within 30 days from the date of final judgment in the court below, and unless the plaintiff in error obtains from the trial court (or, if the trial court refuses, then from 1 of the Justices of the Supreme Court) a certificate that there is reasonable ground to believe that there is error in the record which might require a reversal of the judgment below, or that the record presents an important question of substantive law which ought to be decided by the Supreme Court, and unless the plaintiff in error furnishes bond to the State, with surety to be approved and in an amount to be fixed by 1 of the Justices of the Supreme Court, conditioned as prescribed by rule of court. In cases where sentence of life imprisonment has been imposed, there shall be no stay of execution, and no supersedeas bond taken or allowed. In cases where sentence of death has been imposed, the trial court, if the certificate provided for in this section has been granted, may stay the execution of the death penalty pending the determination of the cause by the Supreme Court, but the defendant below shall not be released from custody.

(Code 1915 § 4847B; 35 Del. Laws, c. 231; Code 1935 § 5327; 11 Del. C. 1953 § 4502.)

§ 4503 Convictions before alderman or mayor; advising accused of right to trial by Court of Common Pleas.

(a) Excepting those cases in which the sentence for the conviction of a crime was imprisonment not exceeding 1 month, or a fine not exceeding $100, any person convicted before any alderman or mayor of any incorporated city or town in this State for the violation of any city or town ordinance may appeal from such conviction to the Court of Common Pleas of the county in which the person has been so convicted, upon giving bond to the State with surety satisfactory to the alderman or mayor before whom such person was convicted, binding the person taking the appeal to appear before the Court. Notice of such an appeal shall be given to such alderman or mayor within 15 days from the time of conviction, counting the date of conviction as 1, and the bond with surety shall be filed within 15 days. Such appeal shall be prosecuted and the proceedings therein shall be had as in an appeal from a conviction before a justice of the peace in the case of a violation of the laws relating to the operation of motor vehicles.

(b) In all criminal cases in all incorporated cities or towns where a mayor or alderman has jurisdiction to hear and determine the matter and the accused has the right to elect to have the case tried by the Court of Common Pleas, every mayor or alderman shall advise such accused of the right to so elect, before the mayor or alderman shall have jurisdiction to try the case.

(46 Del. Laws, c. 107; 11 Del. C. 1953 § 4503; 58 Del. Laws, c. 62; 61 Del. Laws, c. 206 § 1; 69 Del. Laws, c. 423 § 15; 70 Del. Laws, c. 186 § 1.)

§ 4504 Postconviction remedy.

(a) Except at a time when direct appellate review is available, and subject to the time limitations set forth in this subsection, a person convicted of a crime may file in the court that entered the judgment of conviction a motion requesting the performance of forensic DNA testing to demonstrate the person's actual innocence. Any such motion may not be filed more than 3 years after the judgment of conviction is final. The motion may be granted if:

(1) The testing is to be performed on evidence secured in relation to the trial which resulted in the conviction;

(2) The evidence was not previously subject to testing because the technology for testing was not available at the time of the trial;

(3) The movant presents a prima facie case that identity was an issue in the trial;

(4) The movant presents a prima facie case that the evidence to be tested has been subject to a chain of custody sufficient to establish that the evidence has not been substituted, tampered with, degraded, contaminated, altered or replaced in any material aspect;

(5) The requested testing has the scientific potential to produce new, noncumulative evidence materially relevant to the person's assertion of actual innocence; and

(6) The requested testing employs a scientific method which is generally accepted within the relevant scientific community, and which satisfies the pertinent Delaware Rules of Evidence concerning the admission of scientific testimony or evidence.

(b) Except at a time when direct appellate review is available, a person convicted of a crime who claims that DNA evidence not available at trial establishes the petitioner's actual innocence may commence a proceeding to secure relief by filing a motion for a new trial in the

court that entered the judgment of conviction. The court may grant a new trial if the person establishes by clear and convincing evidence that no reasonable trier of fact, considering the evidence presented at trial, evidence that was available at trial but was not presented or was excluded, and the evidence obtained pursuant to subsection (a) of this section would have convicted the person.

(c) The court shall impose reasonable conditions on the testing designed to protect the state's interests in the integrity of the evidence and the testing process.

(d) Any motion filed pursuant to this section shall be served upon the State. The State shall have an absolute right to appeal to an appellate court any order granting a motion for a new trial pursuant to this section.

(e) The cost of DNA testing ordered under subsection (a) of this section shall be borne by the State or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the means to pay.

(72 Del. Laws, c. 320 § 3.)

Part III
Procedure in Particular Courts
Chapter 51
SUPERIOR COURT
Subchapter I
General Provisions

§ 5101 Writs or precepts to take persons indicted.

The Superior Court may issue writs or precepts, under the seal of the Court, to any sheriff, or other officer, of any county in the State, to take any person indicted.

(Code 1852 § 1931; Code 1915 § 3800; Code 1935 § 4312; 11 Del. C. 1953 § 5101.)

§ 5102 Subpoenas and warrants generally; enforcement.

The Superior Court, in the exercise of its criminal jurisdiction, may issue subpoenas and other warrants into any county in the State, for summoning or bringing any person to give evidence in any matter triable before it and may enforce obedience by fine or imprisonment. Such subpoenas and warrants shall be in such form as may be prescribed by the Rules of the Court.

(Code 1852 § 1931; Code 1915 § 3800; Code 1935 § 4312; 11 Del. C. 1953 § 5102.)

§ 5103 Assignment of counsel.

(a) The Superior Court shall assign counsel to any person on trial for murder, manslaughter or any offense punishable by death, or the offense of being an accomplice or accessory to any such crime, if such person is unable to obtain counsel.

(b) The Court may assign counsel to any person in any criminal prosecution as provided by the Rules of Criminal Procedure for the Superior Court.

(Code 1852 §§ 1925, 1926, 1929; 11 Del. Laws, c. 225 § 1; Code 1915 §§ 3793, 3794, 3798; Code 1935 §§ 4305, 4306, 4310; 11 Del. C. 1953 § 5103.)

§ 5104 Composition of Court in cases tried without jury; concurrence of all Judges sitting.

In a criminal case tried without a jury, the Superior Court shall consist of either 1, 2 or 3 Judges, as the Court shall determine; but if more than 1 Judge shall try such case, the concurrence of all the Judges sitting shall be required for a verdict.

(Code 1915 § 4847C; 35 Del. Laws, c. 233; Code 1935 § 5310; 11 Del. C. 1953 § 5104.)

§ 5105 Legal counsel for public officers and employees.

Any public officer or employee, in any criminal action against such officer or employee arising from the officer's or employee's state employment, shall be entitled to petition the Court for a Court-appointed attorney to represent the officer's or employee's interests in the matter. If the Judge, after consideration of the petition, examination of the petitioner and receipt of such further evidence as the Judge may require, determines that the petition has merit, the Judge shall appoint an attorney to represent the interests of such public officer or employee. The Court-appointed attorney shall continue such representation until the final determination of the matter, even if the case is transferred to another court, unless such attorney is earlier released by such person or by the Court. This section shall also apply to all federal courts within this State.

(60 Del. Laws, c. 474 § 2; 60 Del. Laws, c. 676 § 2; 70 Del. Laws, c. 186 § 1.)

§ 5106 Plea negotiations by the State.

(a) In every criminal case in the Superior Court involving a felony wherein the Department of Justice agrees to accept a plea of guilty to less than the original most serious charge indicted by the county grand jury or originally filed by information, the prosecuting attorney shall state on the record:

(1) That the prosecuting attorney notified and discussed the plea agreement with the victim prior to its entry; or

(2) If notification was not reasonably possible, what steps were taken to give such information to the victim.

(b) In any case where the victim is deceased, the information required by subsection (a) of this section shall be given to any known next of kin. If the victim is an organization, such information shall be given to a responsible officer. If the victim is a minor child, such information shall be given to the parent or guardian of said child.

(c) For purposes of this section, "victim" is one who was injured or killed as the result of a criminal offense or who suffered monetary loss as a result of such an offense.

(d) No violation of this section shall be considered as a basis for setting aside a guilty plea entered by a defendant or for any other relief.

(67 Del. Laws, c. 317 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 71 § 2.)

Subchapter II
Rules of Criminal Procedure

§ 5121 Adoption; scope.

(a) The Superior Court may, from time to time, adopt and promulgate general rules which prescribe and regulate the form and manner of process, pleading, practice and procedure governing criminal proceedings in the Superior Court from their inception to their termination, including such proceedings before inferior courts and justices of the peace as are preliminary to indictment or information filed in the Superior Court.

(b) Such rules shall not abridge, enlarge or modify the substantive rights of any person, and shall preserve the right of trial by jury as at common law and as declared by the statutes and Constitution of this State.

(c) The Rules of Criminal Procedure for the Superior Court adopted and promulgated by the Supreme Court prior to the enactment of this Code shall take effect upon the enactment of this Code. Any amendments of or supplements to such Rules which the Superior Court may hereafter adopt and promulgate shall take effect upon such date as the Superior Court shall fix in its order adopting and promulgating such amendments or supplements. After the effective date of any rule adopted and promulgated under this section, all laws inconsistent or in conflict therewith shall be of no further force or effect.

(d) Nothing in this title, anything therein to the contrary notwithstanding, shall in any way limit, supersede or repeal any such rules heretofore prescribed under authority of law.

(48 Del. Laws, c. 209; 11 Del. C. 1953 § 5121.)

§ 5122 Conflict between rules and statutes.

Any inconsistency or conflict between any rule of court promulgated under the authority of § 5121 of this title, or prior law, and any of the provisions of this Code or other statute of this State, dealing with practice and procedure in criminal actions in the Superior Court, shall be resolved in favor of such rule of court.

(11 Del. C. 1953 § 5122.)

Subchapter III

Child Victims and Witnesses

§ 5131 Legislative intent.

The General Assembly finds that it is necessary to provide child victims and witnesses with additional consideration and different treatment than that usually required for adults. It is therefore the intent of the General Assembly to provide each child who is involved in a criminal proceeding within the Superior Court with certain fundamental rights and protections.

(65 Del. Laws, c. 158 § 1.)

§ 5132 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) "Child" shall mean a person who has not yet reached their eighteenth birthday.

(2) "Victim" or "witness" shall not include any child accused of committing a felony; provided, however, that the word "victim" or "witness" may, in the Court's discretion, include:

a. A child where such child's participation in a felony appears to have been induced, coerced or unwilling; or

b. A child who has participated in the felony, but who has subsequently and voluntarily agreed to testify on behalf of the State.

(65 Del. Laws, c. 158 § 1; 70 Del. Laws, c. 186 § 1.)

§ 5133 Expedited proceedings.

In all criminal proceedings in the Superior Court involving a child victim or witness, the Court and the prosecution shall take appropriate action to ensure a prompt trial in order to minimize the length of time a child victim or witness must endure the stress of the victim's or witness' 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 child victim or witness.

(65 Del. Laws, c. 158 § 1; 70 Del. Laws, c. 186 § 1.)

§ 5134 Additional rights and services.

(a) A child victim or witness is entitled to an explanation, in language understood by the child, of all legal proceedings in which the child is to be involved.

(b) A child victim or witness is entitled to be accompanied, in all proceedings, by a "friend" or other person in whom the child trusts, which person shall be permitted to advise the judge, when appropriate and as a friend of the Court, regarding the child's ability to

understand proceedings and questions.

(c) A child victim or witness is entitled to information about, and referrals to, appropriate social services and programs to assist such child, and the child's family, in coping with the emotional impact of the crime, and the subsequent Court proceedings in which the child is to become involved.

(65 Del. Laws, c. 158 § 1.)

Part III
Procedure in Particular Courts
Chapter 53
COURT OF COMMON PLEAS

§ 5301 General provisions.

(a) The accused shall have the right to trial by petit jury in all criminal cases except as otherwise provided by statute.

(b) The Court shall have the power to receive pleas of guilty from persons charged with misdemeanors and to impose sentence or probation according to law, as fully as is now done by the Superior Court.

(c) From any order, rule, decision, judgment or sentence of the Court in a criminal action, the accused shall have the right of appeal to the Superior Court in and for the county wherein the information was filed as provided in § 28, article IV of the Constitution of the State. Such appeal to the Superior Court shall be reviewed on the record and shall not be tried de novo.

(11 Del. C. 1953 § 5301; 59 Del. Laws, c. 133 § 3; 69 Del. Laws, c. 421 § 1.)

§ 5302 Rules of criminal procedure.

The Judges of the Court, or a majority of them, may, from time to time, adopt and promulgate general rules which prescribe and regulate the form and manner of process, pleading, practice and procedure governing criminal proceedings in the Court from inception to termination.

(11 Del. C. 1953 § 5302; 59 Del. Laws, c. 133 § 3.)

§ 5303 Election by accused to have case tried by Court when proceeding brought before justice of the peace.

The accused in all criminal cases in which there is a possibility that a period of incarceration may be imposed or the maximum fine is $100 or more where a justice of the peace or alderman or mayor of any incorporated city or town, except the City of Newark, in the county where the charge is brought has jurisdiction and power to hear and finally determine the matter, may elect at any time prior to day of trial to have the case tried by the Court. If an offense or criminal case within the exclusive jurisdiction of a justice of the peace or alderman or mayor of any incorporated city or town, except the City of Newark, is or may be joined properly with a criminal case or other offense that is within the jurisdiction of the Court and has been transferred upon the accused's election pursuant to this section, such criminal case shall be within the jurisdiction of the Court.

(11 Del. C. 1953 § 5303; 59 Del. Laws, c. 133 § 3; 61 Del. Laws, c. 207 § 1; 63 Del. Laws, c. 398 § 1; 78 Del. Laws, c. 207 §§ 1, 2.)

§ 5304 Contempt; issuance of process in aid of jurisdiction.

(a) The Court may punish contempt and may issue all process necessary for the exercise of its criminal jurisdiction, which process may be executed in any part of the State.

(b) The Court, in the exercise of its criminal jurisdiction, may issue subpoenas and other warrants into any county in the State for summoning or bringing any person to give evidence in any matter triable before it and may enforce obedience by fine or imprisonment. Such subpoenas and warrants shall be in such form as may be prescribed by the Rules of the Court.

(11 Del. C. 1953 § 5304; 59 Del. Laws, c. 133 § 3; 73 Del. Laws, c. 130 § 1.)

§ 5305 Bail and commitment upon election to trial by Court.

(a) In all those cases where, by § 5303 of this title, the accused may elect to be tried by the Court, if the accused elects to be tried by the Court, the justice of the peace shall hold such accused under sufficient bail for a hearing or for accused's appearance at the Court where the matter shall proceed as though originating in the Court by information filed.

(b) In default of bail, the person accused shall be committed to the custody of the Department of Correction to await the session of the Court.

(11 Del. C. 1953 § 5305; 59 Del. Laws, c. 133 § 3; 70 Del. Laws, c. 186 § 1; 80 Del. Laws, c. 51 § 3.)

§ 5306 Witness fees.

(a) The witnesses attending the Court in criminal cases shall receive the same fees as in the Superior Court.

(b) In criminal cases witness fees shall be taxed as part of the costs of such proceeding.

(11 Del. C. 1953 § 5306; 59 Del. Laws, c. 133 § 3.)

§ 5307 Legal counsel for public officers and employees.

Any public officer or employee, in any criminal action against such officer or employee arising from the officer's or employee's state employment, shall be entitled to petition the Court for a Court-appointed attorney to represent the officer's or employee's interests in the matter. If the Judge, after consideration of the petition, examination of the petitioner and receipt of such further evidence as the Judge may require, determines that the petition has merit, the Judge shall appoint an attorney to represent the interests of such public officer or

employee. The Court-appointed attorney shall represent such person at all stages, trial and appellate, until the final determination of the matter, unless the attorney is earlier released by such person or by the Court. In any action where the Court-appointed attorney has been appointed in the Court of Common Pleas, such attorney shall remain the Court-appointed attorney of said public official or employee even when the case is transferred for any reason to another court of this State. This section shall also apply to all federal courts within this State.

(60 Del. Laws, c. 474 § 3; 60 Del. Laws, c. 676 § 3; 70 Del. Laws, c. 186 § 1.)

§ 5308 Preliminary hearing.

A Court of Common Pleas Judge shall conduct a preliminary hearing in accordance with the rules of criminal procedure promulgated by the Court of Common Pleas.

(61 Del. Laws, c. 348 § 1.)

Part III
Procedure in Particular Courts
Chapter 59
JUSTICES OF THE PEACE

§ 5901 Advising accused of right to trial by Court of Common Pleas.

In all criminal cases in all counties where a justice of the peace has jurisdiction to hear and determine the matter and the accused has the right to elect to have the case tried by the Court of Common Pleas, every justice of the peace shall advise such accused of the accused's right to so elect, before the justice shall have jurisdiction to try the case.

(Code 1915 § 3763E; 29 Del. Laws, c. 250; 37 Del. Laws, c. 262 §§ 17, 19, 20; 38 Del. Laws, c. 199 §§ 1, 2; 40 Del. Laws, c. 235 §§ 1, 2; 40 Del. Laws, c. 236; Code 1935 §§ 5811, 5839; 42 Del. Laws, c. 184; 46 Del. Laws, c. 176; 11 Del. C. 1953 § 5901; 50 Del. Laws, c. 58 § 1; 58 Del. Laws, c. 432; 70 Del. Laws, c. 186 § 1.)

§ 5902 Assault; trial procedure.

In every case of assault in which the defendant elects to be tried in the Justice of the Peace Court, the prosecution shall proceed consistent with the Justice of the Peace Court Criminal Rules.

(Code 1852 § 2016; Code 1915 § 3958; Code 1935 § 4458; 11 Del. C. 1953 § 5905; 75 Del. Laws, c. 278 § 3.)

§ 5903 Arrest upon complaint; escaped persons.

Every justice of the peace shall cause to be arrested, on proper complaint, all persons found within the justice's county charged with any offense and all persons who, after committing any offense in such county, shall escape out of the same.

(Code 1852 § 2035; Code 1915 § 3976; Code 1935 § 4476; 11 Del. C. 1953 § 5906; 70 Del. Laws, c. 186 § 1.)

§§ 5904 , 5905. Arrest of drunkards and profane swearers; Sunday hearing of motor vehicle, motorboat, fish and game and Criminal Code violations.

(Repealed by 75 Del. Laws, c. 278 § 2, effective June 13, 2006.)

§ 5906 Examination of complainants; warrant of arrest; form.

(a) When complaint is made in due form to a justice of the peace, alleging that an offense has been committed, the justice shall carefully examine the complainant on oath or affirmation and if the justice considers there is probable ground for the accusation, the justice shall issue the law-enforcement officer a warrant.

(b) A warrant of arrest may be in the form prescribed by the Justice of the Peace Court Criminal Rules.

(c) The warrant shall ordinarily be directed to any law-enforcement officer in the county in which the alleged offense was committed, but in case of an emergency the warrant may be directed to any law-enforcement officer in the State.

(d) A copy of the complaint shall be attached to the warrant.

(Code 1852 §§ 2023-2025; Code 1915 § 3968; Code 1935 § 4468; 11 Del. C. 1953 § 5910; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 278 §§ 4-6.)

§ 5907 Disposition of complaint by third person of an assault and battery.

(Repealed by 75 Del. Laws, c. 278 § 2, effective June 13, 2006.)

§ 5908 Execution of warrant of arrest.

A warrant of arrest, issued by a justice of the peace in 1 county, may be executed in any county of the State. The constable or officer having it in hand may command aid as in the constable's or officer's own county.

(Code 1852 § 2036; Code 1915 § 3977; Code 1935 § 4477; 11 Del. C. 1953 § 5912; 70 Del. Laws, c. 186 § 1.)

§ 5909 Proceedings on arrest.

(a) Upon the arrest of any person according to this chapter, the person arrested shall be brought before a Justice of the Peace Court in the county in which the offense was alleged to have occurred unless a Justice of the Peace Court in another county is closer to the place where the offense was alleged to have occurred, in which case the prosecution may be before said Court.

(b) The Justice of the Peace Court before which the person is brought shall try the case so far as to determine whether the defendant ought to be discharged, or bound for the defendant's appearance at court or held to answer finally before the Justice of the Peace Court. In which last case, the justice shall proceed to hear fully and to determine the case. But if the matter is not properly cognizable before the justice for final decision, the justice shall commit, or bind, the party for the party's appearance at the court having cognizance of the case.

(Code 1852 § 2026; Code 1915 § 3970; Code 1935 § 4470; 11 Del. C. 1953 § 5913; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 342 §§ 1, 2.)

§ 5910 Use of audiovisual devices.

Anything else in this or any other chapter or title notwithstanding, those proceedings specified by court rule may be conducted by audiovisual device. Audiovisual monitors shall be situated in the courtroom and at the location where the defendant is physically located so as to provide the public, the court and the defendant with a view of the proceedings. Such court proceedings may be conducted by a Justice of the Peace Court in the same or another county from that in which the defendant is physically located.

(71 Del. Laws, c. 43 § 1.)

§ 5911 Procedure where probable ground for accusation is found.

(a) If a justice of the peace considers there is probable ground for an accusation, the justice shall, in case of a capital crime, commit the accused for trial, and in any other case bind the accused, with sufficient surety, for the accused's appearance at such court having jurisdiction of the offense for the county where the offense is alleged to have been committed, and, if the accused does not give such surety, shall commit the accused for trial.

(b) The justice shall also bind material witnesses for their appearance, without surety, unless the justice believes the witness will not appear, and that the loss of the witness' testimony ought not to be risked. In which case, justice may require surety and may commit the witness if it is not given.

(c) Such binding of the accused and of the witnesses shall be as provided in Chapter 21 of this title.

(Code 1852 §§ 2030-2032; Code 1915 § 3972; Code 1935 § 4472; 11 Del. C. 1953 § 5915; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 278 § 7.)

§ 5912 Subpoenas and warrants in criminal cases; enforcement.

Any justice of the peace, in the exercise of that justice's criminal jurisdiction, may issue subpoenas and other warrants into any county in the State for summoning or bringing any person to give evidence in any matter triable before the justice and may enforce obedience by fine or imprisonment. Such subpoenas and warrants shall be in such form as may be prescribed by the Rules of the Court.

(Code 1852 §§ 2033, 2034; Code 1915 §§ 3973, 3974; Code 1935 §§ 4473, 4474; 11 Del. C. 1953 § 5916; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 130 § 2.)

§ 5913 Endorsing names of witnesses on commitments and recognizances.

(a) Justices of the peace and other officers of this State, who give persons charged with the commission of any crime, preliminary hearings, shall endorse on the back of such commitments and recognizances, the names of state's witnesses, and their place of residence. The prothonotaries of the respective counties shall insert the place of residence of such witnesses after their names in the subpoenas.

(b) Whoever violates this section shall be fined not more than $10.

(18 Del. Laws, c. 239; Code 1915 § 3975; Code 1935 § 4475; 11 Del. C. 1953 § 5917.)

§ 5914 Transcripts of docket entries.

(a) The Justice of the Peace Court, upon request and payment or tender of the legal fee, shall make and certify under seal a true transcript of all the docket entries in any cause before the court, or upon any record in the Court's possession, or if specially required, a full and true copy of all the records, entries, process and papers in or touching in such cause. Such transcript or copy shall be received in evidence in any court.

(b) Upon an appeal, a transcript shall be sufficient, unless a full copy be specially requested. Upon a certiorari, the Justice of the Peace Court shall make a full copy of the entire record and proceedings.

(c) Whoever, being authorized to prepare or issue a transcript or record of the proceedings, upon such request and payment or tender of the lawful fees:

(1) Refuses or neglects to perform the duty required by this section; or

(2) Falsely certifies any such transcript or full copy; or

(3) Uses any fraud, falsehood or deceit in making the same,

shall be fined not more than $100, and shall be liable to the party aggrieved in double damages.

(d) Any court reviewing the record on appeal or on application for a writ may, in a proper case, supported by affidavit, require the production of the original record.

(Code 1852 §§ 2053-2056; Code 1915 § 3987; Code 1935 § 4486; 11 Del. C. 1953 § 5918; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 278 § 8.)

§ 5915 Fines, costs and restitution; collection and disposition.

(a) All fines, costs, restitution, penalties, charges and emoluments imposed or levied by the Justice of the Peace Court, including those costs now levied for constables, shall be for such amounts as are provided by law, and all such amounts imposed or levied shall be collected by the Justice of the Peace Court imposing the same for which a proper receipt shall be given to the person paying the same. Every and all amounts so collected shall be recorded showing the purpose for which the amounts were collected, the name of the person paying same and such other information as the Justice of the Peace Court may require. The information so maintained shall be open to inspection by the State Treasurer and the State Auditor or their authorized agents at all times. All fines and penalties collected for each calendar month shall be paid over by the Justice of the Peace Court to the State Treasurer within 15 days after the first day of the succeeding calendar month, provided that any such fines or forfeitures which, by the laws of this State, are due and payable to a county or municipality thereof shall be

paid by the Justice of the Peace Court to the county or municipality entitled thereto.

(b) All fines collected for the violation of any of this title, in the limits of any county, incorporated city or town in this State where arrests are procured by the authorized representatives of that county, incorporated city or town, shall be paid to that county, incorporated city or town within which such offense was committed for the use of that county, incorporated city or town. Nothing in this subsection shall be construed to entitle any county to fines, penalties or forfeitures arising from an arrest made under this title by an authorized representative of that county for a violation committed within any incorporated city or town. All the fines, penalties and forfeitures imposed and collected in any county of this State for violation of any of the laws of this title, where the arrests are procured by the authorized representatives of the Department of Safety and Homeland Security, shall inure and be paid to the State Treasurer for the General Fund. Such fines, penalties and forfeitures shall be collected as other fines, penalties and forfeitures are collected under the laws of this State, and the officers collecting them shall make a monthly report thereof to the State Treasurer on blanks to be furnished for that purpose by the Department of Safety and Homeland Security. All costs collected for the violation of any of this title shall be paid to the jurisdiction whose court imposed said costs.

(Code 1852 § 2017; Code 1915 § 3959; Code 1935 § 4459; 43 Del. Laws, c. 229 § 1; 11 Del. C. 1953 § 5919; 55 Del. Laws, c. 85 § 33D; 55 Del. Laws, c. 359; 57 Del. Laws, c. 123; 63 Del. Laws, c. 141 § 2; 65 Del. Laws, c. 218 §§ 1, 2; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 110 § 138; 75 Del. Laws, c. 278 §§ 9, 10.)

§ 5916 Collecting costs according to statute; acting as collecting agent; penalties.

(Repealed by 75 Del. Laws, c. 278 § 2, effective June 13, 2006.)

§ 5917 Jurisdiction over violations of ordinances, codes and regulations of the governments of the several counties and municipalities; penalty; appeal; disposition of fines.

(a) Justices of the peace shall have jurisdiction throughout the State to hear, try and finally determine any violation or violations of any ordinance, code or regulation of the governments of their respective counties and municipalities, including those classified in such ordinance, code or regulation as misdemeanors. Any person convicted of such violations may be fined not more than $1,000 for each violation.

Notwithstanding the foregoing, in any municipality with a population greater than 50,000 people, and in New Castle County, any offense under the building, housing, health or sanitation code which is classified therein as a misdemeanor, the sentence for any person convicted of such a misdemeanor offense shall include the following fines and may include restitution or such other conditions as the court deems appropriate:

(1) For the first conviction: no less than $250, nor more than $1,000;

(2) For the second conviction for the same offense: no less than $500, nor more than $2,500; and

(3) For all subsequent convictions for the same offense: no less than $1,000 nor more than $5,000.

In any municipality with a population greater than 50,000 people, a conviction for a misdemeanor offense, which is defined as a "continuing" or "ongoing" violation, shall be considered a single conviction for the purposes of paragraphs (a)(1)-(3) of this section. For all convictions subsequent to the second, the minimum fines required herein shall not be suspended, but such amounts imposed over the minimum may be suspended or subject to such other conditions as the court deems appropriate. The provisions of this subsection relating to municipalities with a population greater than 50,000 people shall not apply to offenses or convictions involving single family residences that are occupied by an owner of the property.

(b) Every person convicted under this section shall have the right to appeal to the Court of Common Pleas of this State. No such conviction or sentence shall be stayed pending appeal unless the person convicted shall give bond in an amount and with surety to be fixed by the justice of the peace before whom such person was convicted, at the time such appeal was taken. Such appeal shall be taken and bond given within 5 days from the time of conviction.

(c) Election to have a case tried by the Court of Common Pleas pursuant to § 5303 of this title shall not be applicable to violations under this section, except that any violation under this section accompanied in the same case by an additional charge or charges over which the Court of Common Pleas has jurisdiction is eligible to be transferred under such election.

(d) All fines collected for the violation of any ordinance, code or regulation of any county or municipality of this State where a summons was issued or where an arrest was procured by the authorized representatives of that county or municipality shall be paid to that county or municipality within which such violation occurred for the use of that county or municipality; otherwise such fines shall inure and be paid to the State Treasurer for the General Fund. Nothing in this subsection shall be construed to entitle any county to fines, penalties or forfeitures arising from a summons issued or an arrest made under this section by an authorized representative of that county for a violation committed within any incorporated city or town. Fines, penalties and forfeitures collected under this section shall be collected and disbursed as other fines, penalties and forfeitures are collected and disbursed under the laws of this State, and the officers collecting them shall make a monthly report thereof to the State Treasurer on blanks to be furnished for that purpose by the Department of Safety and Homeland Security. All costs collected for the violation of any county or municipal ordinance, code or regulation shall be paid to the jurisdiction whose court imposed said costs.

(11 Del. C. 1953 § 5921; 58 Del. Laws, c. 38; 59 Del. Laws, c. 263 § 1; 65 Del. Laws, c. 218 § 3; 67 Del. Laws, c. 358 § 1; 69 Del. Laws, c. 423 § 17; 74 Del. Laws, c. 110 § 138; 74 Del. Laws, c. 153 § 2; 74 Del. Laws, c. 322 § 5; 75 Del. Laws, c. 212 § 2; 78 Del. Laws, c. 133 § 1.)

§ 5918 Records of warrants and bonds.

All traffic and criminal warrants and bonds shall be retained of record in the Justice of the Peace Court that issued same. A justice of the peace shall certify transcripts of such records to be a true copy of the original.

(27 Del. Laws, c. 275; Code 1915 § 3963; 28 Del. Laws, c. 239; 34 Del. Laws, c. 218; Code 1935 § 4463; 11 Del. C. 1953 § 5924; 59 Del. Laws, c. 315 § 1; 75 Del. Laws, c. 278 § 11.)

§ 5919 Legal counsel for public officers and employees.

(Repealed by 75 Del. Laws, c. 278 § 2, effective June 13, 2006.)

§ 5920 Appeals.

From any order, ruling, decision, judgment or sentence of the Court entered in a Justice of the Peace Court in a criminal action pursuant to this title in which the sentence shall be imprisonment exceeding 1 month or a fine exceeding $100, the accused shall have the right of appeal to the Court of Common Pleas in and for the county wherein the offense was committed. Such appeal to the Court of Common Pleas shall be tried de novo.

(70 Del. Laws, c. 89 § 1.)

Part IV
Prisons and Prisoners
Chapter 65
DEPARTMENT OF CORRECTION
Subchapter I
Purposes, Definitions and Powers

§ 6501 Establishment.

There is established a Department of Correction. Said Department shall be a continuation of and successor to the State Board of Corrections existing prior to July 8, 1964.

(11 Del. C. 1953 § 6504; 54 Del. Laws, c. 349 § 1.)

§ 6502 Purposes and construction; custody of inmates.

(a) A Department of Correction is established to provide for the treatment, rehabilitation and restoration of offenders as useful, law-abiding citizens within the community. To achieve these purposes more effectively in a coordinated and united manner, the Department shall be completely responsible for the maintenance, supervision and administration of adult detention and correctional services and facilities of the State, which include institutional facilities and probation and parole services. These institutions and services shall be diversified in program, construction and staff to provide effectively and efficiently for the maximum study, care, custody, training and supervision and treatment of those persons committed to the institutional facilities or on probation or parole, so that they may be prepared for release, aftercare, discharge or supervision in the community. This chapter shall be liberally construed so as to effectuate its purposes.

(b) The Department shall accept custody of all persons committed to it by courts of competent jurisdiction. Persons committed to the custody of the Department shall not be released from custody except in accordance with this title or by order of a court of competent jurisdiction.

(c) Nothing in this title shall be construed to require the release of persons committed to the custody of the Department, nor shall anything in this title be construed as a limitation on the inmate population at any of the facilities maintained by the Department.

Nothing in any regulation promulgated by the Department shall be construed as a limitation on the inmate population at any of the facilities maintained by the Department.

(d) In the event that: (1) The number of persons housed by the Department at any of its facilities exceeds the design capacity of that facility; and (2) because the inmate population at that facility exceeds the design capacity of that facility the Department is unable to provide conditions of confinement as may otherwise be required by this title or by the regulations promulgated by the Department, then the Department shall not be required to provide said conditions of confinement to the extent it is unable to do so because of the inmate population at that facility. The Commissioner shall determine the design capacity of each of the facilities maintained by the Department.

(e) For purposes of this section, the term "inmate population" shall include both convicted and pretrial detentioners.

(11 Del. C. 1953 § 6501; 54 Del. Laws, c. 349 § 1; 62 Del. Laws, c. 61 §§ 1, 2.)

§ 6503 Definitions.

As used in this chapter:

(1) "Commissioner" or "Commissioner of Correction" means the Commissioner of the Department of Correction.

(2) "Department" means the Department of Correction. References in other statutes to the State Board of Corrections or Board of Trustees or workhouse or jail shall be deemed to mean the Department.

(3) "Law" includes the laws and ordinances of this State, political subdivisions and municipalities thereof.

(4) "Offender" includes any person convicted of a crime or offense as defined in § 101 of this title or the ordinances of any incorporated municipality of this State, including a person committed for civil or criminal contempt, except,

a. A person not yet 18 years old when adjudged by a Family or Juvenile Court of this State except when committed to the Department in accordance with law, and

b. A person who has been determined to be mentally ill or criminally inclined and has been committed to another appropriate authority.

(11 Del. C. 1953 § 6502; 54 Del. Laws, c. 349 § 1; 57 Del. Laws, c. 591 § 47; 58 Del. Laws, c. 172 § 2; 60 Del. Laws, c. 251 §§ 11-13; 64 Del. Laws, c. 108 § 15; 78 Del. Laws, c. 305 § 2.)

§ 6504 General powers and duties of the Department.

The Department, subject only to powers vested in the judicial and certain executive departments and officers of the State, shall have the duties set forth in this chapter and the exclusive jurisdiction over the care, charge, custody, control, management, administration and supervision of:

(1) All offenders and persons under the custody of the Department;

(2) All institutions for the custody, correction and rehabilitation of persons committed to its care;

(3) Such other facilities as may be established by the Department for the safekeeping, correction or rehabilitation of offenders and persons;

(4) Probation services for courts having jurisdiction of offenders;

(5) Parole services for persons within the institutions and facilities of the Department or on parole;

(6) Furnishing the Board of Parole adequate office facilities and supplies to properly perform its duties;

(7) Providing consultation services and establishing standards on the design and construction of buildings, programs, administration of detention, jail or other facilities, operated by any county or municipality, and to provide a course of training for the personnel of same and establish standards for the same, with annual inspections, publishing the results of such inspections, as well as statistical and other data on persons held in the same;

(8) Operating classification committees, diagnostic and treatment programs and such other programs as may be desirable to fulfill the purposes of this chapter;

(9) Employing such officers, employees and agents and securing offices and quarters as deemed necessary to discharge the functions of the Department;

(10) Receiving all offenders committed to the Department;

(11) Executing the orders of the court as to sentences of corporal and capital punishment;

(12) Selling the products of its institutions and farms to other institutions supported in all or part by taxes levied within the State, prices to be set as provided by rules of the Department. All funds received from such sales shall be deposited in the General Fund. In the event that there is a surplus of the products of the Department's institutions and farms which cannot be sold to the other institutions supported in whole or part by taxes levied within the State, the Department may sell such surplus products on the open market. All funds received from such sales shall be deposited in the General Fund;

(13) To agree with the proper authorities of the United States for payment to the General Fund of the State of such sums as shall be fixed by the Department for the maintenance and support of offenders committed to the Department by authority of the United States;

(14) Collecting a fee as a condition of probation supervision. An offender sentenced to probation shall be charged a fixed fee of $200 for each period of probation. If an offender is serving multiple sentences of probation simultaneously, the sentences shall be treated as 1 period of probation for the purposes of assessing and collecting the supervision fee. The Bureau Chief of Community Corrections shall develop policies and procedures with regard to determining an offender's ability to pay the fee. Such policies and procedures shall be applied on a consistent basis to all offenders, and shall be subject to approval by the Commissioner of Correction. In the event the Department determines an offender is unable to pay the fee due to lack of employment or other significant extenuating circumstances, such as an offender's responsibility to remit payment for victim compensation, restitution or child support, said inability shall not constitute a violation of supervision. The offender shall remain liable to pay the fee at such time as the Department determines offender is able to do so.

(11 Del. C. 1953 § 6505; 54 Del. Laws, c. 349 § 1; 64 Del. Laws, c. 108 § 15; 66 Del. Laws, c. 233 § 1; 68 Del. Laws, c. 289 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 27 § 6; 78 Del. Laws, c. 305 § 2.)

§ 6505 Powers of the Board.

(11 Del. C. 1953 § 6513; 54 Del. Laws, c. 349 § 1; Del. Laws, c. 305 § 7, eff July 5, 2012.)

§ 6506 Employment of personnel.

(a) The Department shall be the hiring agency for all correctional officers and other persons employed by the Department. Any applicant for employment by the Department shall take such physical, mental, and intelligence or other tests as the Department shall prescribe, and shall provide the Department with such information as it may need for its employment decisions.

(b) Prior to making an employment decision on an applicant for employment by the Department, the Department shall obtain the applicant's entire criminal history record from both the State and the Federal Bureau of Investigation. Prior to employing the applicant, the Department shall complete and review the results of a computerized name search of the National Crime Information Center (NCIC) and the Criminal Justice Information System (CJIS) maintained by the Delaware Criminal Justice Information System (DELJIS) to determine if the applicant has any criminal history record information. Based on the results of the computerized name searches for criminal history records, the Department shall not employ any individual who has ever been convicted of a felony offense in this or any other state or jurisdiction, or who has ever been convicted of an offense in another state or jurisdiction that would be a felony offense in the State of Delaware. Prior to employing the applicant, the Department also shall initiate a background search using any state or federal automated fingerprint identification system. Upon receiving the results of fingerprint-based searches for background information, the Department shall immediately terminate the employment of any individual employed by the Department who has ever been convicted of a felony offense in this or any other state or jurisdiction, or who has ever been convicted of an offense in another state or jurisdiction that would be a felony offense in the State of Delaware.

(c) Notwithstanding the above prohibition on employment and the provisions of § 8914 of Title 29, the Department may, upon an individual's release from a Level 4 or Level 5 vocational program, employ on a casual/seasonal basis an ex-offender disqualified from

employment pursuant to subsection (b) of this section, above, demonstrating exceptional job skills (as determined by the Department in its sole discretion) in certain qualified positions for a period of time not to exceed 6 months. The Department may not employ an ex-offender disqualified from employment pursuant to subsection (b) of this section, above, unless the Department has adopted policies and procedures governing the terms and conditions of employment for such individuals, identifying the qualified positions available to such individuals and setting forth the selection criteria and job qualifications and requirements for each qualified position. Individuals employed under this subsection shall not be covered by any union contract or Chapter 59 of Title 29. Nothing in this section shall create any right, privilege or entitlement to employment of any kind to any individual.

(d) The initial employment of any person by the Department shall be on a probationary basis for the first 6 months or in accordance with the union contract during which time the probationary employee shall not be eligible for merit system status. Upon the successful completion of the probationary period, the employee shall be covered by the classified service as defined under Chapter 59 of Title 29. This subjection shall not apply to any individual hired on a casual/seasonal basis pursuant to subsection (c) of this section, above.

(60 Del. Laws, c. 654 § 1; 73 Del. Laws, c. 66 § 1; 78 Del. Laws, c. 305 § 7; 79 Del. Laws, c. 296 § 1.)

Subchapter II

Commissioner of Correction

§ 6516 Commissioner in charge.

The Commissioner shall assume full and active charge of the Department, its facilities and services, and is the chief executive and administrative officer of the Department.

(11 Del. C. 1953 § 6516; 54 Del. Laws, c. 349 § 1.)

§ 6517 Duties and responsibilities of the Commissioner.

The Commissioner shall carry out and provide for:

(1) Promulgating rules and regulations to carry out the Commissioner's duties and operate the Department;

(2) The organization, maintenance, control and operation of the Department;

(3) The custody, study, training, treatment, correction and rehabilitation of persons committed to the Department;

(4) Regulating the nature and limitations of authorized punishments for violations of the rules established for the government of any institution or facility under the jurisdiction of the Department, but corporal punishment shall not be inflicted therefor; providing by general rule for a merit system for reduction of confinement;

(5) The administration, supervision, operation, management and control of state correction institutions, farms or any other institution or facility under the jurisdiction of the Department;

(6) The management and control of institutional labor and industry;

(7) The operation of probation and parole field services;

(8) The employment of such officers, employees and agents as may be deemed necessary to discharge the functions of the Department, together with establishing their qualifications and the establishment of a merit system and training programs;

(9) Developing a suitable administrative structure providing for divisions, bureaus and services within the Department;

(10) Governing the transportation and transfer of offenders and persons between the various institutions and facilities under its jurisdiction or elsewhere as provided in this chapter, transfers to be made by issued orders, the reasons thereof to be made a matter of record, in each case. No female offender or person shall be transferred unless accompanied by at least 1 female officer or guard;

(11) Managing and supervising the Department and doing any and all things necessary to carry out and to fulfill the purposes of this chapter; and

(12) Administering the medical/treatment services contract, or appointing a designee to administer the medical/treatment contract.

(11 Del. C. 1953 § 6517; 54 Del. Laws, c. 349 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 320 § 1; 78 Del. Laws, c. 305 § 7.)

§ 6518 Adult Correction Healthcare Review Committee.

(a) The Adult Correction Healthcare Review Committee (Committee) is hereby established. The Committee shall consist of 6 members appointed by the Governor and confirmed by the Delaware State Senate which shall include the following;

(1) A Delaware licensed physician;

(2) A Delaware licensed psychiatrist;

(3) A Delaware licensed psychologist;

(4) A Delaware licensed registered nurse;

(5) A member of the Delaware Bar;

(6) An expert in the field of substance abuse treatment.

(b) The Chief of Correctional Healthcare Services shall serve as an ex officio nonvoting member. All other members shall be appointed for a term of 3 years.

(c) The Medical Society of Delaware, the Delaware Psychiatric Society, the Delaware Psychological Association, the Delaware Nurses

Association, and the Delaware State Bar Association, may submit recommendations to the Governor for consideration of appointment.

(d) The chair of the Committee shall be elected annually by majority vote of the current Committee members.

(e) The Committee serves in an advisory capacity to the Commissioner of the Department of Correction on all matters in Delaware's adult correction system relating to the provision of inmate healthcare services, the review of all inmate deaths and autopsies relating to those deaths, the construction of healthcare contracts that provide inmate healthcare services, and the review of all statistics relating to inmate healthcare. The Committee shall not be considered a public body as defined at § 10002 of Title 29.

(f) The Committee shall:

(1) Perform advisory reviews of medical records of inmates who have died while incarcerated;

(2) Review and monitor the quality and appropriateness of healthcare services rendered in Delaware's adult correctional facilities;

(3) Review critical incident and mortality and morbidity review reports;

(4) Receive and review monthly summaries of inmate, staff, public, and other grievances and the resolutions of these grievances in order to be fully appraised of the state of healthcare services in Delaware's adult correction facilities;

(5) Receive and review monthly reports of inmate hospital admissions and infectious disease diagnoses, such as hepatitis C, tuberculosis, human immunodeficiency virus (HIV), methicillin resistant staphylococcus aureus (MRSA), and meningitis, from all adult correction facilities;

(6) Have access to any and all otherwise protected healthcare information relating to current and former inmates supervised by the Department of Correction notwithstanding any other statute to the contrary; and

(7) Review and advise on any other matters relating to adult inmate healthcare that the Committee considers reasonable and worthwhile including, but not limited to, the following:

a. Assurance that all inmates receive appropriate and timely services in a safe environment;

b. Systematic monitoring of the treatment environment;

c. Assisting in the reduction of professional and general liability risks;

d. Enhancing efficient utilization of resources;

e. Assisting in credential review;

f. Enhancing the identification of continuing educational needs;

g. Facilitating the identification of strengths, weaknesses, and opportunities for improvement;

h. Facilitating the coordination and integration of information systems; and

i. Assuring the resolution of identified problems.

(g) The Committee shall refer to the appropriate licensing board grievance cases in which there is a serious deviation from the community standard of care by a healthcare worker or other employee of a prison healthcare contractor, if the healthcare worker or other employee's profession or occupation is governed under Title 24.

(h) The Department of Correction shall forward copies of National Commission of Correctional Health Care (NCCHC) and American Correctional Association (ACA) surveys, reports, and evaluations to the Committee upon their request. Whenever a survey, evaluation, or similar act is conducted by or on behalf of NCCHC or ACA, the Committee may be contacted and be allowed to contribute to the survey, evaluation, or other activity. The transmission of documents in the possession of the Department of Correction to the Committee shall not be considered a waiver of any statutory or common law privilege.

(i) Any document received or generated by the Committee is hereby specifically excluded from the definition of public record as set forth at § 10002 of Title 29.

(j) This section is intended only to provide ongoing independent review, monitoring, advice, and critique of the provision of healthcare to inmates within the custody of the Department of Correction. Accordingly, nothing in this chapter shall give rise to any right, entitlement or a private cause of action for civil damages or injunctive relief for any public or private party.

(k) The Committee shall submit a report by December 31 of each year to the Governor and the General Assembly on the state of inmate healthcare in Delaware's adult correction system.

(76 Del. Laws, c. 388 § 1; 78 Del. Laws, c. 382 § 1; 80 Del. Laws, c. 378 § 1.)

Subchapter III

Bureaus and Divisions of the Department

§ 6520 Establishment of Bureaus.

There shall be within the Department a Bureau of Management Services, Bureau of Correctional Healthcare Services, Bureau of Prisons and Bureau of Community Corrections, and such other bureaus, divisions and subdivisions, with such personnel as the Commissioner shall deem desirable.

(11 Del. C. 1953 § 6520; 54 Del. Laws, c. 349 § 1; 78 Del. Laws, c. 305 § 7.)

Subchapter IV

Division of Field Services

§ 6521 Division of Field Services.

(11 Del. C. 1953 § 6521; 54 Del. Laws, c. 349 § 1; 57 Del. Laws, c. 233 § 1; 75 Del. Laws, c. 88 § 20(1); Del. Laws, c. 305 § 7, eff July 5, 2012.)

Subchapter V

Diagnostic Services and Special Groups

§ 6523 Rehabilitation services.

(a) The Department shall make social, medical, psychological and other appropriate studies and investigations of persons committed to its care for the purpose of rehabilitation of said persons. At the request of any sentencing court, the Department shall, to the extent possible, receive for study and report to the court concerning any person who has been convicted, is before the court for sentencing and is subject to commitment to the Department.

(b) The Department shall take steps to ensure that infectious diseases are not disseminated among the persons committed to the Department's care and staff. In performing the function, the Department is empowered to review medical histories, to complete medical histories, to complete appropriate medical examinations, to perform laboratory tests as are deemed appropriate, and to begin a course of treatment on persons committed to its care.

(11 Del. C. 1953 § 6523; 54 Del. Laws, c. 349 § 1; 65 Del. Laws, c. 424 § 1; 78 Del. Laws, c. 305 § 7.)

§ 6524 Special problem groups.

The Department may establish facilities for the treatment of alcoholics, prostitutes, drug addicts and other such groups as the Department shall determine. The Department shall coordinate its work with any other state agency to reduce overlapping or duplication of functions and services.

(11 Del. C. 1953 § 6524; 54 Del. Laws, c. 349 § 1.)

§ 6525 Treatment of inmates with mental illnesses and serious mental disorders; transfer.

(a) The Department shall establish resources and programs for the treatment of persons with mental illnesses and serious mental disorders, either in a separate facility or as part of other institutions or facilities of the Department. The Department shall coordinate its work with any other state agency to reduce overlapping or duplication of functions and services.

(b) The Commissioner is empowered to transfer to other appropriate state institutions for care and treatment inmates who have been determined to have mental illnesses. Transfer may also be made to such facilities in other jurisdictions, or to municipal or private facilities, upon the consent of responsible administrators of such facilities. Such transfers shall occur only as set forth at § 5153 of Title 16. Inmates to be transferred as contemplated herein who have not reached the age of 18 years and have been found nonamenable to the processes of Family Court shall not be transferred to the Delaware Psychiatric Center. Nonamenable inmates under the age of 18 years shall be transferred to appropriate residential treatment facilities within the State of Delaware or in other states.

(c) When, in the judgment of the administrator of the institution to which an inmate has been transferred, the inmate has recovered from the condition which occasioned the transfer, the inmate shall be returned to the Department.

(11 Del. C. 1953 § 6525; 54 Del. Laws, c. 349 § 1; 70 Del. Laws, c. 186 § 1; 76 Del. Laws, c. 322 §§ 4-6; 78 Del. Laws, c. 224 § 22.)

§ 6526 Special facilities for witnesses and those awaiting trial.

Special facilities shall be provided for witnesses detained for inability to give bail and those awaiting trial, as the Department deems fit and necessary.

(11 Del. C. 1953 § 6526; 54 Del. Laws, c. 349 § 1; 58 Del. Laws, c. 172 § 1; 64 Del. Laws, c. 108 § 33.)

§ 6527 Creation and responsibility of classification boards.

(a) The Department shall classify persons in the several institutions and facilities by the use of 2 separate and distinct classification boards to be known as The Institutional Classification Board and The Institutional Release Classification Board with powers and responsibilities delineated in subchapter VI of this chapter.

(b) The Institutional Classification Board shall be responsible for the classification of all inmates residing and remaining in the several institutions and facilities.

(c) The Institutional Release Classification Board shall be responsible for the classification of all inmates that are being considered for release from the several institutions and facilities under the jurisdiction of the Department.

(60 Del. Laws, c. 703 § 1.)

Subchapter VI

Classification and Employment

§ 6529 Institutional Classification Board; discretion of Department in adopting classification systems.

(a) The Institutional Classification Board shall classify persons in the several institutions and facilities and shall promulgate regulations in accordance with which 1 or more classification committees shall be organized and operated not inconsistent with § 6527(b) of this title.

(b) The Institutional Classification Board's purpose is the organization and harmony of inmate life.

(c) The Institutional Classification Board shall consist of an equal number of individuals from both the custodial staff and the treatment staff.

(d) The warden shall maintain the power to veto decisions of the Board.

(e) Nothing in this chapter shall be construed to require the Department to institute or maintain any system of classification of convicted persons for the purpose of assignment to institutions or housing units within institutions. However, the Department may, at its discretion, institute or maintain any such system at any or all of its institutions.

(f) Nothing in this chapter shall be construed to require the Department to reduce the inmate population of any of its institutions below the capacity for which that institution was designed in order to accommodate any system of classification of convicted persons for purposes of assignment to institutions or housing units within an institution which the Department institutes or maintains.

(g) Nothing in this chapter requiring or permitting the Department to institute or maintain a program or programs for the custody, rehabilitation or care of persons coming under the jurisdiction of the Department, including but not limited to such programs as may be required or permitted by §§ 6530 and 6531 of this title, shall be construed to require the Department to reduce the inmate population at any of its institutions below the capacity for which that institution was designed.

(11 Del. C. 1953 § 6529; 54 Del. Laws, c. 349 § 1; 60 Del. Laws, c. 703 § 2; 61 Del. Laws, c. 193 §§ 1, 2.)

§ 6529A Institutional Release Classification Board.

(a) The Institutional Release Classification Board shall classify any and all inmates seeking release from an institution for whatever reason.

(b) The Institutional Release Classification Board shall consist of 7 members: Two members each from the custodial staff and treatment staff as well as 3 individuals to be appointed by the Criminal Justice Council and whose terms shall run for a period of 4 years from the date of appointment.

(c) The 3 individuals to be appointed by the Criminal Justice Council shall receive compensation in the amount of $90 per meeting. However, no member so appointed shall receive compensation in excess of $4,000 per annum.

(d) The warden of the institution shall possess veto power over decisions of the Board and also shall possess discretionary authority to grant a furlough in the event of the sudden death of a member in an inmate's immediate family.

(60 Del. Laws, c. 703 § 2; 66 Del. Laws, c. 349 § 1; 78 Del. Laws, c. 305 § 7.)

§ 6530 Classification committee; information.

Immediately after a person who has been sentenced to 90 days or more of imprisonment is received at any institution under the jurisdiction of the Department, a classification committee shall obtain and file complete information with regard to such person. Similar records may be compiled on persons sentenced to less than 90 days, in accordance with rules and regulations of the Department. When all such existing available records have been assembled, each such classification committee shall determine whether or not any further investigation is necessary, and, if so, it shall make such additional investigation. Each classification committee shall determine and prescribe the custodial and rehabilitation program and the care for each person coming under its jurisdiction. The classification committee shall determine the persons who shall work and labor and shall assign persons to jobs, studies and programs according to their abilities and in the manner best calculated to effectuate their training and rehabilitation. Review for reclassification shall occur periodically in accordance with the Department's regulations, or whenever the committee shall deem it advisable.

(11 Del. C. 1953 § 6530; 54 Del. Laws, c. 349 § 1.)

§ 6531 Treatment and rehabilitation programs.

(a) Persons committed to the institutional care of the Department shall be dealt with humanely, with effort directed to their rehabilitation. To the maximum extent possible, the Department shall evaluate each person using an objective risk and needs assessment instrument and shall create a case plan for those persons assessed to be moderate- to high-risk that targets the need factors identified by the assessment. The Department shall prioritize the provision of such evaluations according to the length of sentence and the severity of the conduct giving rise to the sentence of incarceration. The Department shall make efforts to provide treatment and services responsive to the person's needs and characteristics. Use of the objective risk assessment instrument shall commence by December 31, 2013.

(b) The Department shall establish alcohol and drug counseling and treatment programs for inmates. The Department may further establish a program of mandatory drug testing for inmates. In establishing such programs, the Department shall also establish rules and regulations regarding the order in which inmates shall be eligible to participate in such courses. Such regulations shall accord priority to inmates testing positive for illegal drugs, and inmates serving sentences imposed for drug-related offenses.

(c) When the Department shall make programs of counseling and treatment available to inmates at a correctional facility, inmates at such facility who are eligible in accordance with the rules and regulations of the Department established under subsection (b) of this section,

shall be required to enroll in and participate in such programs.

(d) The costs of providing such counseling and treatment programs established pursuant to subsections (b) and (c) of this section shall, in accordance with a schedule to be established by the Department, be assessed against those inmates required under subsection (c) of this section to be enrolled, and may be deducted from said inmate's account in accordance with the provisions of § 6532(f) of this title.

(e) Inmates required to participate in compulsory programs of drug or alcohol counseling or treatment established by the Department pursuant to this section shall not be eligible for parole nor shall the Department apply for modification of sentence until successfully completing such programs. Inmates refusing to participate in such programs shall further be subject to such other disciplinary measures as the Commissioner shall establish by regulation.

(f) The Department shall establish programs of work, case work counseling and psychotherapy, library and religious services and commissary, and shall further establish procedures for the classification of inmates for those purposes.

(g) The Department shall undertake an assessment of its ability to meet treatment and rehabilitation needs of the confined population every 3 years and endeavor to provide programs in accordance with identified needs. The first report shall be completed by December 31, 2012.

(11 Del. C. 1953 § 6531; 54 Del. Laws, c. 349 § 1; 67 Del. Laws, c. 396 § 7; 78 Del. Laws, c. 392 §§ 14, 15.)

§ 6531A Education programs.

(a) The Department of Education and the Department of Correction shall be jointly responsible for the administration of a prison education program. The Department of Correction and the Department of Education shall work collaboratively through designated agency contracts to accomplish this task.

(b) The Department of Education and the Department of Correction shall be responsible for the oversight and management of the prison education program, including academic courses leading towards a high school diploma, life skills, special education, media resource services and vocational technical courses. The Department of Education shall be responsible for the establishment of rules and regulations regarding the administration of academic and vocational programs within the prison education program. The Department of Education shall be responsible for hiring teachers to provide instruction in these programs. The Department of Education shall further supervise these employees, who shall be considered employees of the Department of Education and are subject to all rules and regulations of the Department. Employees who are assigned to the prison education program as teachers that have remained Department of Correction employees shall be supervised by the Department of Education. Teachers who were employees at the time this legislation is enacted, that work for the Department of Correction, shall have the right to transfer to the Department of Education each year upon notification to the Department of Education by April 15 and such transfer shall become effective July 1 of that year. Any position transfer made pursuant to this section shall become permanent. If a remaining Department of Correction teacher position becomes vacant, the position and the associated funding shall be transferred to the Department of Education. Any Department of Education employee working in the prison education program and whose permanent work assignment location resides within or on the campus of a Department of Correction Level 5 or Level 4 facility must submit to the same random drug testing procedure required of Department of Correction employees.

(c) The Department of Correction through the wardens of each facility shall be responsible for classifying offenders in and out of the prison education program, providing dedicated facilities that accommodate the educational needs, and disciplining inmates who have displayed inappropriate behavior in the prison education program. The Department of Correction shall conduct security and background checks on all potential prison education personnel and notify the Department of Education as to the results of that security check.

(d) When the Department of Education shall make prison education programs available to inmates at a correctional facility, inmates at such facility who are eligible, in accordance with rules and regulations established under subsections (b) and (c) of this section, shall be required to enroll in and attend such courses.

(e) Inmates required to participate in compulsory programs of education as established under this section shall not be eligible for parole nor shall the Department of Correction apply for a modification of sentence until successfully obtaining a high school diploma or G.E.D. Inmates refusing to participate in such programs shall be subject to such disciplinary measures as the Commissioner of Correction shall establish by regulation.

(f) The Department of Education shall continue to provide funding through its discretionary federal special education funds for a portion of the education costs associated with prison inmates aged 18 to 21 years who qualify for special education.

(67 Del. Laws, c. 396 § 5; 73 Del. Laws, c. 137 § 2; 73 Del. Laws, c. 320 § 4; 76 Del. Laws, c. 20 § 1.)

§ 6532 Work by inmates.

(a) The Department may establish compulsory programs of employment, work experience and training for all physically able inmates. To the maximum extent practical, these programs shall approximate normal conditions of employment in free agriculture, industry and business, with respect to equipment, management practices and general procedures.

(b) The products of inmate labor and services may be sold and marketed to tax-supported departments and institutions and agencies of the State and its governmental subdivisions and such other employers or entities within or outside of the State, as the Department shall determine. The Department may make contractual arrangements for the use of inmate labor by other tax-supported units of government responsible for the conservation of natural resources or other public works. The Department may also assign inmates to community work projects including, but not limited to, litter control along state highways and on state beaches and trash removal from state facilities, as

provided in subsection (c) of this section.

(c) Before entering into an agreement with any other state department seeking prisoner-workers in accordance with this section, the Department shall have established a pilot litter-control program in each of the 3 counties with the cooperation of the Department of Transportation. The Department of Transportation shall advise the Department as to the kinds of equipment and the costs thereof that will be required and will act at all times as the consultant to the Department in this program.

(d) Inmates shall be compensated, at rates fixed by the Department, for labor performed, including institutional maintenance.

(e) In the event that an inmate shall labor for more than 40 hours in 1 week, said inmate shall be compensated at 1 1/2 times the regular hourly rates paid to said inmates for such work time the inmate has labored in excess of 40 hours in 1 week.

(f) The Department shall cause to be placed into an account, payable to each inmate upon the inmate's discharge, income from the inmate's employment and any other income or benefits, accruing to or payable to, and for the benefit of said inmate, including but not limited to any worker's compensation or Social Security benefits. From the account of each inmate, the Department shall deduct, in order of the priority set forth herein, the following sums:

(1) Support payments for dependents of the inmate who are receiving public assistance during the period of incarceration, or to whom the inmate is under a court ordered obligation to provide support and restitution as may have been assessed against said inmate pursuant to court order;

(2) Court costs, fines, and such other items as may be assessed against said inmate pursuant to court order; and

(3) A proportionate share of the costs of incarceration of inmates in the facility in which said inmate is housed including but not limited to room, board, medical care, legal services, prison education, training, library services, counseling and treatment services, religious services and other programs and services as shall be provided together with an allocation of the overhead for operating such prison and the Department in accordance with a fee schedule to be established by the Department.

(g) In assigning inmates to employment, work experience, training and community work project programs in accordance with this section:

(1) Assignments to programs conducted or operated outside the physical boundaries of Department-run correctional facilities shall not be available to inmates serving time for any crime classified as a class A felony, or any crime classified as a class B felony which involves a sex offense, escape or assault.

(2) The Department is authorized to establish regulations or guidelines further restricting the participation of inmates in such programs so as to minimize potential danger to the community.

(h) The Department is authorized to revoke previously earned good time (whether such good time was earned pursuant to this section or other provisions of this title) from inmates who refuse to perform labor as required by the Department pursuant to this section. In addition, the Department may impose such other lawful disciplinary measures as it deems appropriate upon inmates refusing to perform labor as required by the Department pursuant to this section.

(i) No greater amount of labor shall be required of any inmate than the inmate's physical health and strength will reasonably permit, nor shall any inmate be placed at such labor as the institutional physician determines to be beyond the inmate's ability to perform.

(j) Inmates refusing to participate in compulsory programs of employment established by the Department pursuant to this program shall not be eligible for parole nor shall the Department apply for modification of sentence, and shall further be subject to such other disciplinary measures as the Commissioner may establish by regulation.

(11 Del. C. 1953 § 6532; 54 Del. Laws, c. 349 § 1; 62 Del. Laws, c. 96 § 1; 62 Del. Laws, c. 350 § 1; 62 Del. Laws, c. 377 §§ 1, 2; 67 Del. Laws, c. 350 § 31; 67 Del. Laws, c. 396 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 327 § 230.)

§ 6533 Outside employment; work release.

(a) The Department shall adopt rules and regulations governing the employment of trustworthy inmates outside the institutions and facilities under the jurisdiction of the Department. Said Department shall adopt policies and procedures outlining the latitude and limitations of employers who utilize the service of inmates and provide provisions for any violation by said employer.

(b) Any inmate employed under subsection (a) of this section shall continue to be in the legal custody of the Department, notwithstanding the inmate's absence from an institution by reason of such employment and any employer of any such person shall be considered the representative of, or keeper for, the Department.

(c) Whoever, being an employer or other person, through negligent control of the inmate or otherwise, permits, or whoever counsels, advises, aids, assists, abets or procures the escape from the legal control of the Department of any inmate employed under this subchapter, shall be fined, or imprisoned, or both.

(d) Notwithstanding any other provision of this section or title to the contrary, no person shall be permitted work release under this section, until such person is within 6 months from the date of such person's release from custody, as determined by the Department, if the person is:

(1) Serving a sentence imposed for a class A felony; or

(2) Serving a sentence imposed pursuant to § 4214 of this title; or

(3) Has previously been convicted of 2 or more of the following crimes set forth in this title under sections:

513 Conspiracy first degree;

531 Any attempt to commit any crime listed in this paragraph;

604 Reckless endangering first degree;
612 Assault second degree;
613 Assault first degree;
629 Vehicular assault first degree;
630 Vehicular homicide second degree;
630A Vehicular homicide first degree;
631 Criminally negligent homicide;
632 Manslaughter;
635 Murder second degree;
768 Unlawful sexual contact second degree;
769 Unlawful sexual contact first degree;
Former 770 Unlawful sexual penetration third degree;
Former 771 Unlawful sexual penetration second degree;
Former 772 Unlawful sexual penetration first degree;
Former 773 Unlawful sexual intercourse third degree;
Former 774 Unlawful sexual intercourse second degree;
770 Rape in the fourth degree;
771 Rape in the third degree;
772 Rape in the second degree;
773 Rape in the first degree;
776 Continuous sexual abuse of a child;
782 Unlawful imprisonment first degree;
783 Kidnapping second degree;
783A Kidnapping first degree;
801 Arson third degree;
802 Arson second degree;
803 Arson first degree;
831 Robbery second degree;
832 Robbery first degree;
835 Carjacking in the second degree;
836 Carjacking in the first degree;
1108 Sexual exploitation of a child;
1254 Assault in a detention facility;
1302 Riot;
1312A Stalking;
1338 Bombs, incendiary devices, Molotov cocktails and explosive devices;
1447 Possession of a deadly weapon during the commission of a felony;
1447A Possession of a firearm during the commission of a felony;
1448 Possession of a deadly weapon by a person prohibited; or
3533 Aggravated act of intimidation.

(e) All wages, salary, or other compensation earned by or payable to an inmate employed in accordance with this section shall be placed in said inmate's account and subject to deductions in accordance with the provisions of § 6532(f) of this title.

(f) Notwithstanding any other provision of this section or title to the contrary, no person who has previously been convicted under § 1252 or § 1253 of this title or any attempt to commit such crimes under § 531 of this title shall be permitted outside employment or work release under this section.

(g) Funds collected for goods produced or services performed by offenders housed at a Community Corrections facility shall be deposited in the Bureau of Community Corrections Special Services Fund. Such funds shall be used to support the operational costs for offender re-entry and work programs in the Bureau of Community Corrections. The Bureau of Community Corrections Special Services Fund shall be appropriated and expended in conformity with the annual Appropriations Act of the State.

(11 Del. C. 1953 § 6533; 54 Del. Laws, c. 349 § 1; 58 Del. Laws, c. 433; 60 Del. Laws, c. 705 § 1; 61 Del. Laws, c. 363 § 1; 67 Del. Laws, c. 396 § 3; 70 Del. Laws, c. 181 §§ 1, 2; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 285 §§ 19, 20; 72 Del. Laws, c. 34 § 6; 77 Del. Laws, c. 318 § 6; 78 Del. Laws, c. 290 § 210.)

§ 6533A [Reserved.]

§ 6534 Payment of compensation.

(a) The balance remaining in an inmate's account established and maintained in accordance with § 6532(f) of this title shall be paid to the

inmate at the time of the inmate's release, except that the Department may from time to time, in its discretion, or upon order from a court of competent jurisdiction, pay all or part thereof to the inmate as spending money. The Department shall establish guidelines and procedures for payments to inmates in accordance with this section.

(b) The Department shall have the authority to deduct from any inmate's wages resulting from employment under the Private Sector/Prison Industries Enhancement Certification Program a portion thereof to be applied to the Victim Compensation Fund created pursuant to Chapter 90 of this title. All deductions made by the Department pursuant to this subsection shall be limited to no more than 20 percent and no less than 5 percent of an inmate's gross wages received under the Program.

(11 Del. C. 1953 § 6534; 54 Del. Laws, c. 349 § 1; 67 Del. Laws, c. 396 § 4; 67 Del. Laws, c. 436 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6534A Claims for costs of support; lien.

Upon the sentencing of any convicted criminal to incarceration in any state correctional facility, the Attorney General may file a claim for future maintenance and support of such inmate with the court from which said inmate was sentenced, and thereupon the court may make an order making such inmate's estate or property liable for the expenses of such future care and support by the Department as is more fully provided in § 6532(f) of this title, and such claim, upon approval by the court, shall constitute a lien upon all property, real and personal, of said prisoner.

(67 Del. Laws, c. 396 § 2.)

§ 6534B Delaware Correctional Industries Special Fund.

(a) There is hereby established a Delaware Correctional Industries Special Fund which shall consist of:

(1) Moneys received from the sale of products as described in § 6532 of this title;

(2) Moneys received through the contract of service or labor as described in § 6532 of this title;

(3) Moneys received per § 6532(f)(3) of this title;

(4) Moneys received per § 6531A(c) of this title; and

(5) Moneys received per § 6531(d) of this title.

(b) Funds from the Delaware Correctional Industries Special Fund shall be expended only for the following purposes:

(1) Financing the Delaware Correctional Industries programs, including, but not limited to, all prison manufacturing, construction, contractual services and labor provided;

(2) Financing the educational programs required by § 6531A of this title;

(3) Financing the treatment and rehabilitation programs required by § 6531 of this title;

(4) Financing any and all programs as itemized in § 6532(f)(3) of this title; and

(5) Financing the casual/seasonal positions referenced in § 6506(c) of this title.

(c) The Delaware Correctional Industries Special Fund shall be appropriated and expended in conformity with the annual Appropriations Act of the State.

(d) Nothing in this subchapter shall preclude the appropriation of general funds to support the programs itemized in subsection (b) of this section.

(67 Del. Laws, c. 396 § 8; 78 Del. Laws, c. 305 § 7; 79 Del. Laws, c. 296 § 2.)

Subchapter VII

Discipline, Medical Care and Discharge

§ 6535 Discipline.

The Department shall promulgate rules and regulations for the maintenance of good order and discipline in the facilities and institutions of the Department, including procedures for dealing with violations. Prisoners of the Department shall have access to those portions of the disciplinary rules that apply to them, at places and times deemed reasonable and appropriate by the Commissioner. There shall be a record of charges of infractions by inmates, any punishments imposed and of medical inspections made.

(11 Del. C. 1953 § 6535; 54 Del. Laws, c. 349 § 1; 71 Del. Laws, c. 306 § 1.)

§ 6536 Medical care.

(a) The Department shall promulgate reasonable standards, and shall establish reasonable health, medical and dental services, for each institution, including preventive, diagnostic and therapeutic measures on both an out-patient and hospital basis for all types of patients. The nature and extent of such medical and dental services shall be determined by the Commissioner of Correction in consultation with the Bureau Chief of Correctional Healthcare Services. The Department may authorize, under regulations, inmates to be taken, with or without guard, to a medical institution or facility outside the institution.

(b) The Department shall charge a reasonable fee as defined by the Department for every inmate initiated visit with an institutional health-care practitioner for examination and/or treatment. The Department shall not charge an inmate for medical visits initiated by medical/mental health staff, visits as a result of a reference to a physician from a physician's assistant or nurse practitioner, follow-up visits

initiated by a medical professional or visits resulting from a chronic medical condition. The Department shall not be responsible for the cost of medical visits to or by outside medical consultants if the visits were not ordered by institutional medical services personnel. Notwithstanding the above, an inmate shall not be refused medical treatment for financial reasons; provided, however, that the Department shall debit an inmate's account for future payment to the Department in the event funds are deposited in said account and the Department shall retain records of an inmate's account upon the release of the inmate from the custody of the Department if such account has a negative balance. The outstanding balance of such an account shall be reinstated should that person be committed to the custody of the Department at some future time.

(c) The Department may charge a reasonable fee, not to exceed the cost to the Department, for any prescription or nonprescription medication. The Department shall not be responsible for the cost of prescriptive drugs or medications prescribed by outside medical consultants unless approved by institutional medical services personnel. Notwithstanding the above, an inmate shall not be refused medications for financial reasons; provided, however, that the Department shall debit an inmate's account for future payment to the Department in the event funds are deposited in said account and the Department shall retain account records upon the release of the inmate from the custody of the Department if such account has a negative balance. The outstanding balance of such account shall be reinstated should that person be committed to the custody of the Department in the future.

(d) Notwithstanding any provision of the Delaware Code to the contrary, there shall be established a special fund of the State to be known as the Medical Cost Recovery Fund. The Department of Correction shall, commencing upon July 1, 1996, deposit funds assessed pursuant to subsections (b) and (c) of this section into the Medical Cost Recovery Fund. The Department may use the Medical Cost Recovery Fund to defray the costs of medical services provided to inmates.

(e) The Department shall provide onsite hospice services to any terminally ill inmate or defendant confined in facilities operated by the Department at the request of a care provider with whom the Department has a contract. Hospice services provided by the Department, or its contractor, must be provided in a manner consistent with the regulations of the Department of Health and Social Services (DHSS), and shall meet all licensure standards set forth therein, governing the provision of hospice services in the State to the fullest extent possible without compromising the security and safety considerations of the institutions wherein the hospice services are being provided. The Department of Correction (DOC) may require alternate procedures for the provision of hospice services in any DOC facility where strict adherence to DHSS regulations would compromise the security and safety considerations of that facility. DOC contractors need not apply for or obtain a license from DHSS in order to provide hospice services in any DOC facility. For the purposes of this section, "hospice" and "hospice services" shall be as defined by DHSS regulations.

(11 Del. C. 1953 § 6536; 54 Del. Laws, c. 349 § 1; 56 Del. Laws, c. 60; 70 Del. Laws, c. 410 § 1; 72 Del. Laws, c. 475 § 1; 78 Del. Laws, c. 305 § 7; 79 Del. Laws, c. 56 § 1.)

§ 6537 Inmate contacts outside institution.

(a) The Department shall authorize, under reasonable conditions, visits to, and correspondence with, inmates by relatives, friends and others and temporary release of inmates for such occasions as the death of a member of the inmate's family, or interview of the inmate by a prospective employer.

(b) With the exception of the authority granted under § 4205(h) and (l) of this title, the Department shall have no authority to place any person convicted of a class A felony, during the first 10 years of said sentence, or of any class A or B felony sex offense or C felony sex offense, during the first 10 years of said sentence, or any person sentenced pursuant to § 4204(k) of this title on any program or status beyond the confines of a secured institution to which the person must be classified. In the event of the death or serious illness of an immediate family member, or a similar emergency, the Commissioner of Correction shall have the authority to permit such person an escorted visit within the State under strict security. In the event that there exists extraordinary circumstances, excluding emergency situations authorized by the Commissioner pursuant to the previous sentence of this subsection, and the Commissioner of Correction agrees, the Commissioner may petition the Superior Court, after notice to the Attorney General, for permission to exempt an individual from the limitations contained in this section.

(11 Del C. 1953 § 6537; 54 Del. Laws, c. 349 § 1; 65 Del. Laws, c. 245 § 1; 67 Del. Laws, c. 350 § 32; 70 Del. Laws, c. 186 § 1.)

§ 6538 Furloughs.

(a) The Department shall promulgate strict rules and regulations subject to the approval of the Institutional Release Classification Board under which inmates, as part of a program looking to their release from the custody of the Department, or their treatment, may be granted temporary furloughs from the institution to visit their families or to be interviewed by prospective employers.

(b) In the case of death, furloughs shall only be granted to an inmate for an immediate family which would include said inmate's mother, father, son, daughter, brother, sister, husband or wife. An inmate shall only be granted a furlough to attend a private viewing or wake with the inmate's immediate family. The Institutional Release Classification Board, or the warden in charge of the institution, in cases of emergency, shall set the conditions of an inmate's furlough, including the determination of whether the inmate should be handcuffed to the officer and when such action should take place.

(c) Inmates taking part in choral presentations and other legitimate programs shall be escorted by custodial officers whenever leaving the institution. Transportation and custodial costs shall be borne by the individuals or groups requesting the inmates' appearance and shall not be at the State's expense.

(d) The Department may permit inmates to participate in Community Service Projects by granting special furloughs for the period of such projects, not to exceed 14 days. Such furloughs shall not be considered personal furloughs under the Department rules and regulations. The time spent participating in a Community Service Project may be counted towards a restitution or community service component of a sentence. During a Community Service Project, the inmate need not be under the continual escort and supervision of custodial officers. All associated transportation and custodial costs shall be the responsibility of the organization which sponsors the Community Service Project.

(e) Notwithstanding any provision of this section or title to the contrary, no person serving a sentence imposed for a class A felony shall be permitted to participate in any furlough or furlough program under this section.

(11 Del. C. 1953 § 6538; 54 Del. Laws, c. 349 § 1; 60 Del. Laws, c. 704 § 1; 61 Del. Laws, c. 363 § 2; 70 Del. Laws, c. 67 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6539 Supervised custody program.

(a) Notwithstanding any provision of this title to the contrary, the Department may place inmates outside the institutions and facilities under the jurisdiction of the Department.

(b) The Department shall establish rules and regulations governing the eligibility of inmates for such placement and governing the conduct of inmates so placed.

(c) No inmate shall be placed in the supervised custody program established by this section unless, in addition to meeting eligibility requirements imposed by Departmental rules or regulations, the Department, in its discretion, determines that an inmate is trustworthy and does not pose a threat to the safety of the community.

(d) Any inmate released from incarceration pursuant to this section shall continue to be in the legal custody of the Department, notwithstanding the inmate's absence from a correctional institution.

(e) If any person released pursuant to this section shall violate any of the conditions of the person's release, the person shall immediately be returned to incarceration. Nothing in this section shall limit the discretion of the Department to return persons released pursuant to this section to incarceration. Placement into the supervised custody program shall be a privilege, not a right or entitlement, which may be withdrawn by the Department, in its absolute discretion. There shall be no judicial review of the refusal by the Department to place any inmate into the supervised custody program; nor shall there be any judicial review of the withdrawal of such privilege by the Department.

(f) Notwithstanding any provision of this title to the contrary, persons convicted of class A felonies, persons detained in default of bail and persons sentenced to minimum mandatory terms of incarceration shall not be eligible for the supervised custody program.

(62 Del. Laws, c. 259 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6540 Discharge allowance.

(a) Persons discharged upon completion of their term or released on parole or mandatory conditional release may be supplied in accordance with the Department's rules and regulations, within budget requirements, with satisfactory clothing and transportation to the point of destination within the State. If the inmate's family is financially able, or if the inmate has resources, these shall be used prior to the use of public funds.

(b) Payments to eligible inmates who upon their release from an adult correctional facility are financially unable to obtain transportation away from the facility shall be expended as follows:

(1) Upon release, a prisoner who within 30 days prior to release has $50 or more in the prisoner's inmate account or accounts shall not be eligible for such payment, but shall be paid the amount in the prisoner's inmate account or accounts.

(2) Upon release, a prisoner who has less than $50 in the prisoner's inmate account or accounts shall be paid the amount remaining in the prisoner's account or accounts and may be paid an additional sum sufficient to ensure transportation to the prisoner's place of residence. Such sum sufficient, together with the funds available in the inmate account, shall not exceed $50.

(3) Any prisoner who, after using option (1) or (2) of this subsection, has insufficient funds to provide a one-way bus ticket to the prisoner's place of residence, shall forfeit all such funds and shall be provided with a 1-way bus ticket to the prisoner's place of residence, as well as sufficient funding to provide food during travel.

(11 Del. C. 1953 § 6539; 54 Del. Laws, c. 349 § 1; 62 Del. Laws, c. 259 § 1; 73 Del. Laws, c. 320 § 2; 70 Del. Laws, c. 186 § 1.)

§ 6541 Publication of names of inmates on supervised custody, work release or furloughs.

(a) Upon placing an inmate on supervised custody, work release or furloughs which shall include personal special visits whether escorted or unescorted the Department shall publish the name of that inmate and the crimes for which the inmate is incarcerated. Said information shall be published in each of the 3 counties of this State in a newspaper located in that county and having a general circulation throughout the county. No inmate shall be placed on supervised custody, work release or furloughs which shall include personal special visits whether escorted or unescorted until the notice provided for herein has been released for publication to the newspaper. This section shall not apply to those inmates being released on furlough or special visit for the purpose of attending the funeral of an immediate family member as specified under § 6538(b) of this title.

(b) In cases of inmates convicted of crimes against persons, including robbery, prior to publication of names, the Department shall notify the victim at the victim's last known place of residence.

(64 Del. Laws, c. 200 § 1; 65 Del. Laws, c. 396 §§ 1-4; 70 Del. Laws, c. 186 § 1.)

Subchapter VIII
General Provisions

§ 6550 Seal; authentication.

The Department shall adopt a seal. Copies of all records and papers in the offices of the Department, certified by an authorized agent of the Department and authenticated by the seal, shall be evidence with like effect as the original.

(11 Del. C. 1953 § 6550; 54 Del. Laws, c. 349 § 1.)

§ 6551 Cooperation with other departments and agencies.

The Department shall cooperate with the courts and with public and private agencies and offices to assist it in attaining its purposes. The Department may enter into agreements with other departments of federal, state and municipal government for the employment of persons committed to the charge of the Department.

(11 Del. C. 1953 § 6551; 54 Del. Laws, c. 349 § 1.)

§ 6552 Discharge of employees.

All discharges shall be for cause and in accordance with regulations and procedures established by the Department. Upon requesting in writing, any discharged employee shall be given a hearing before the Board.

(11 Del. C. 1953 § 6552; 54 Del. Laws, c. 349 § 1.)

§ 6553 Compensation of employees.

(11 Del. C. 1953 § 6553; 54 Del. Laws, c. 349 § 1; Del. Laws, c. 305 § 7, eff July 5, 2012.)

§ 6554 Bond of officers and employees.

(11 Del. C. 1953 § 6554; 54 Del. Laws, c. 349 § 1; 70 Del. Laws, c. 186 § 1; Del. Laws, c. 305 § 7, eff July 5, 2012.)

§ 6555 [Reserved.]

§ 6556 Facilities, equipment and supplies.

The Department shall acquire, by lease, purchase or otherwise, all necessary facilities, equipment, supplies or articles for the carrying out of its duties in the safekeeping, maintenance, improvement and rehabilitation of those in its care.

(11 Del. C. 1953 § 6555; 54 Del. Laws, c. 349 § 1; 59 Del. Laws, c. 532 § 1.)

§ 6557 Offices and quarters.

The Department shall secure and furnish offices and quarters sufficient for its needs.

(11 Del. C. 1953 § 6556; 54 Del. Laws, c. 349 § 1; 59 Del. Laws, c. 532 § 1.)

§ 6558 Lands and buildings.

The Department may acquire, by lease, purchase or otherwise, and hold in the name of the State for the use of the Department, all necessary lands and buildings for the carrying out of its duties and functions.

(11 Del. C. 1953 § 6557; 54 Del. Laws, c. 349 § 1; 59 Del. Laws, c. 532 § 1.)

§ 6559 Contracts; limitations for interest.

No officer or employee of the Department may be directly or indirectly concerned or interested in any contract, purchase or sale made by the Department or by its authority, or may accept any reward or gift, or any promise of any reward or gift, directly or indirectly from any person interested in any contract, purchase or sale made by the Department or its authority, and every officer and employee shall report to the Department all offenses coming to the officer's or employee's knowledge.

(11 Del. C. 1953 § 6558; 54 Del. Laws, c. 349 § 1; 59 Del. Laws, c. 532 § 1; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 305 § 7.)

§ 6560 Annual reports.

The Commissioner shall make a report every year on or before November 15 to the Governor, showing the financial operation of the Department for the preceding year, together with adequate statistical information concerning the persons committed to the Department, or under the supervision of the Department, with such research reports, analysis, planning, evaluation and recommendations as may appear necessary to the advancement of the interest of the Department and its objectives. A copy of said report shall be sent to each member of the General Assembly and shall be made available to other agencies and citizens, as desired.

(11 Del. C. 1953 § 6559; 54 Del. Laws, c. 349 § 1; 59 Del. Laws, c. 532 § 1; 78 Del. Laws, c. 305 § 7.)

§ 6561 Police powers of correction officers, employees and internal affairs investigators.

(a) All correctional officers and employees of the Department shall have the full power of a State Police officer when:

(1) On duty at 1 of the correctional institutions; or

(2) In charge of prisoners at any place within the State and while going to or returning from such duty; or

(3) Searching for escaped prisoners.

(b) Only those correctional officers and employees who have been sworn in by the Commissioner shall have the power of a police officer under this section. The Department shall provide appropriate identification for all such correctional officers and employees.

(c) In addition to the police powers set forth in subsection (a) of this section, any internal affairs investigator in the Department who has been sworn in by the Commissioner in accordance with subsection (b) of this section shall:

(1) Exercise the full power of a State Police officer when acting in the course and scope of the investigator's duties as an internal affairs investigator on or off the premises of a correctional institution; provided, however, that before an internal affairs investigator executes a search warrant or makes an arrest off the premises of a correctional institution, the Commissioner shall notify the Superintendent of the Delaware State Police or the Attorney General or both;

(2) Have the right of access at all times to the books, papers, records and other documents of the Department or any of its bureaus, divisions, units or other administrative subdivisions; and

(3) Have the power to summon employees of the Department as witnesses pursuant to a lawful internal affairs investigation.

(11 Del. C. 1953 § 6560; 54 Del. Laws, c. 349 § 1; 59 Del. Laws, c. 532 § 1; 66 Del. Laws, c. 85 § 202; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 305 § 7.)

§ 6562 [Reserved.]

§ 6562A Furnishing contraband; penalty.

Whoever furnishes to any person committed to the jurisdiction of the Department:

(1) Any intoxicating liquor or narcotic drug of any kind except as prescribed by a physician for medical treatment; or

(2) Any money without the knowledge and consent of the Department; or

(3) Any deadly weapon or part thereof, or any instrument or article which may be used to effect an escape,

shall be punished by fine or imprisonment, or both.

(11 Del. C. 1953 § 6561; 54 Del. Laws, c. 349 § 1; 59 Del. Laws, c. 532 § 1; 71 Del. Laws, c. 100 § 1.)

§ 6562B Confiscated Contraband Interdiction Fund.

The General Assembly hereby declares that in order to provide funds to combat the unlawful trafficking of drugs, unlawful gambling activities and gang activities within secure correctional facilities, it is necessary to create a separate special fund within the Bureau of Prisons. All moneys collected as contraband or from the proceeds of the auction or sale of property confiscated from the inmate population at each of these institutions shall be set aside into a special fund. This special fund is hereby created within the Office of the Bureau Chief of Prisons and shall be known as the Confiscated Contraband Interdiction Fund.

(1) Use of funds. — Funds deposited into the Confiscated Contraband Interdiction Fund shall be expended only to procure, sustain, and maintain the adequacy of investigative and security operations within the Bureau of Prisons.

(2) Creation of fund. — Upon the confiscation of any moneys or upon the receipt of the proceeds from any auction or commercially reasonable sale of confiscated property obtained as a result of any investigation, interdiction, or prosecution of disciplinary, civil, or criminal violations at the facilities listed herein the same shall be placed in the Confiscated Contraband Interdiction Fund. All auctions or sales of confiscated property as authorized herein shall be administered and approved by the Bureau Chief of Prisons.

(3) Disbursement of fund. — The disbursement of the funds from this account shall be made only upon approval by the Bureau Chief of Prisons. All requests for funds must be by written application and on a form designed for such purpose. This application and authorization form must include the following:

a. The amount of funds requested;

b. The anticipated purpose for which such funds are requested;

c. The name of the person requesting the funds and the name of the person who shall be responsible for keeping accurate records as to the use of the funds.

The Bureau Chief of Prisons shall determine whether or not the expressed purpose for the expenditure requested is within the purposes allowed under this section and whether the proposed expenditure of funds for the expressed purpose will be in the best interests of the Bureau of Prisons. If the Bureau Chief of Prisons determines that the proposed expenditure meets those criteria, the Bureau Chief of Prisons may authorize the expenditure in whole or in part and only then shall the funds be expended as requested.

(4) Accounting of funds. — Funds obtained pursuant to this subchapter shall be used only for the purposes set out in paragraph (1) of this section. Any and all funds shall be accounted for by the support services manager on or before June 30 of each year. The Bureau Chief of Prisons shall maintain a full and complete accounting for the use of such funds.

(5) Review of records. — Any funds requested and disbursed shall be accounted for through an itemized report by the Bureau Chief of Prisons to the Commissioner of Correction due no later than July 31 of each year which details each request and expenditure from the prior fiscal year.

(6) Excess funds. — If at any time the fund aggregated in this special fund exceeds $10,000, the excess shall be deposited in the General Fund.

(71 Del. Laws, c. 100 § 1; 76 Del. Laws, c. 232 § 2; 79 Del. Laws, c. 16 § 1.)

§ 6563 Incarceration upon arrest by private detective.

All persons arrested by private detectives or private detective agencies on state, county or municipal warrants, or in any other manner, shall be incarcerated only in the custody of the Department or in a place provided by the State, county or municipality for the incarceration of persons.

(11 Del. C. 1953 § 6562; 54 Del. Laws, c. 349 § 1; 59 Del. Laws, c. 532 § 1.)

§ 6564 Violation of § 6563 of this title.

Whoever, being a private detective, violates § 6563 of this title shall be fined not less than $100 nor more than $500, or, in default of the payment of such fine, imprisoned not less than 6 months nor more than 1 year.

(11 Del. C. 1953 § 6563; 54 Del. Laws, c. 349 § 1; 59 Del. Laws, c. 532 § 1.)

§ 6565 Mandatory training of correctional officers; exceptions; appropriations.

(a) All correctional officers of the Department shall be required to complete a basic training program as a condition of employment or continued employment.

(b) All correctional officers shall be required to complete advanced annual training after having completed the basic training program.

(c) The Department shall be responsible for administering the mandatory basic and advanced training programs for all correctional officers with responsibility and authority to obtain professional assistance from other sources to accomplish the purposes and objectives of the programs.

(d) There will be no exceptions granted to any correctional officer employed by the Department from the training provisions established by this section.

(e) The General Assembly shall appropriate each year to the Department of Correction such funds as are necessary for the purpose of carrying out this section.

(60 Del. Laws, c. 617 § 1.)

Subchapter IX

Interstate Corrections Compact

§ 6570 Title.

This subchapter may be cited as the "Interstate Corrections Compact."

(11 Del. C. 1953 § 6570; 57 Del. Laws, c. 275.)

§ 6571 Interstate Corrections Compact.

The Interstate Corrections Compact is enacted into law and entered into by this State with any other states legally joining therein in the form substantially as follows: INTERSTATE CORRECTIONS COMPACT

ARTICLE I

ARTICLE I

Purpose and Policy

The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders with the most economical use of human and material resources.

ARTICLE II Definitions

ARTICLE II Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed, under sentence to or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for persons with mental illness or serious mental disorders, in which inmates as defined in subsection (d) of this article above may lawfully be confined.

ARTICLE III Contracts

ARTICLE III Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.

2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV Procedures and Rights

ARTICLE IV Procedures and Rights

(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to Article III of this compact, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III of this compact.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his or her status changed on account of any action or proceeding in which he or she could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his or her exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V Acts Not Reviewable in Receiving State; Extradition

ARTICLE V Acts Not Reviewable in Receiving State; Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he or she is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI Federal Aid

ARTICLE VI Federal Aid

Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII

ARTICLE VII

Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any 2 states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

ARTICLE VIII Withdrawal and Termination

ARTICLE VIII Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until 1 year after the notices provided in said statute have been sent. Such withdrawals shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX Other Arrangements Unaffected

ARTICLE IX Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X Construction and Severability

ARTICLE X Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(11 Del. C. 1953 § 6571; 57 Del. Laws, c. 275; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 224 § 23.)

§ 6572 Powers.

The Commissioner of the Department of Correction is hereby authorized and directed to do all things necessary or incidental to the carrying out of the Compact in every particular.

(11 Del. C. 1953 § 6572; 57 Del. Laws, c. 275.)

§ 6573 Execution.

The Governor shall execute the Interstate Corrections Compact on behalf of this State with any of the United States legally joining

therein.

(11 Del. C. 1953 § 6573; 57 Del. Laws, c. 275.)

Subchapter IX-A

International Transfer of Prisoners

§ 6575 Authorization.

Notwithstanding any law of this State to the contrary, if a treaty in effect between the United States and a foreign country provides for the transfer of convicted offenders to the country of which they are citizens or nationals, the Governor may authorize, on behalf of the State and subject to the terms of the treaty, the Commissioner of the Department of Correction to consent to the transfer of offenders and take any other action necessary to initiate the participation of this State in the treaty.

(74 Del. Laws, c. 258 § 1.)

Subchapter X

Sentencing Accountability Commission

§ 6580 Established; composition; purpose.

(a) The Delaware Sentencing Accountability Commission (hereinafter referred to as the "Commission") is hereby established. The Commission shall consist of 11 members, the body of which shall be comprised as follows:

(1) Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years;

(2) The Attorney General or the Attorney General's designee;

(3) The Chief Defender or the Chief Defender's designee;

(4) The Commissioner of Corrections or the Commissioner of Corrections' designee;

(5) Four other members-at-large, each of whom shall, by training or experience, possess a knowledge of Delaware sentencing practices, 2 to be appointed by the Governor, 1 by the President Pro Tempore of the Senate and 1 by the Speaker of the House. One of the members-at-large shall be appointed by the Governor for a 2-year term; the remaining members-at-large shall be appointed for 4-year terms; provided that each succeeding term following the initial term of all 4 members-at-large shall be 4 years.

The Chief Justice shall designate 1 of the members of the judiciary serving on the Commission to serve as Chairperson of the Commission.

(b) It shall be the overall purpose of this body to establish a system which emphasizes accountability of the offender to the criminal justice system and accountability of the criminal justice system to the public.

For purposes of this subchapter, the grouping of punishments consistent with the guidelines developed by the Commission shall be known as "accountability levels."

(c) The Commission shall develop sentencing guidelines consistent with the overall goals of ensuring certainty and consistency of punishment commensurate with the seriousness of the offense and with due regard for resource availability and cost. In developing these guidelines, the Commission shall also consider the following additional goals in the priority in which they appear:

(1) Incapacitation of the violence-prone offender;

(2) Restoration of the victim as nearly as possible to the victim's preoffense status; and

(3) Rehabilitation of the offender.

(64 Del. Laws, c. 402 § 1; 80 Del. Laws, c. 26 § 3.)

§ 6581 Sentencing guidelines.

(a) A computer-driven model of proposed sentencing criteria shall be created by March 1, 1985, which will be able to project the effect of alternative policy decisions on the Department of Correction resources. Sentencing guidelines will be drafted with nonbinding pilot testing by July 1, 1985.

The Commission shall submit to the Supreme Court on or before March 1, 1986, sentencing guidelines developed in accordance with § 6580(c) of this title for adoption by court rule. Such guidelines shall have no force or effect unless so adopted, and shall not in any event authorize or be construed as authorizing the exercise of any power or duty exceeding or conflicting with those heretofore or hereafter granted by act of the General Assembly or pursuant to inherent authority granted under the Delaware Constitution.

(b) The Commission, on or before July 1, 1987, shall recommend to the Governor and the General Assembly legislation necessary for the implementation of the sentencing guidelines.

(c) Consistent with the goals of this subchapter, the sentencing guidelines recommended by the Commission shall:

(1) Formulate a series of sanctions ranging from nonincarcerative to incarcerative. These sanctions may include, but not be limited to,

fines, costs, restitution, unsupervised and/or supervised probation, community service, work release and community-based residential and nonresidential programs, work camps and electronic monitoring. These sanctions shall be placed in one or more accountability levels;

(2) Establish detailed objective criteria to be utilized in determining which offenders shall be assigned to each of the various accountability levels, such criteria to combine factors relating to the nature of the offense, the background and criminal history of the offender and the availability of resources;

(3) Define under what conditions of aggravation or mitigation and in what manner a sentencing judge may impose a sentence outside of the sentencing guidelines and recommend such mitigating and/or aggravating circumstances; and

(4) Define under what circumstances, by what process, and by whom offenders may be moved from 1 accountability level to another, subject to any law regulating such movement.

(d) The Commission shall estimate to what extent public and private resources are appropriate and available to meet the specifications and supervision standards necessitated by the population of offenders to be assigned to each level.

(e) The Commission shall define the roles of the various criminal justice agencies in the implementation of the proposed guidelines.

(f) The Commission shall recommend, as appropriate, mechanisms to insure that offenders are assessed a reasonable fee for their supervision and/or treatment.

(g) The Commission shall also recommend a procedure or a tribunal for appellate review by either the defendant or the State when sentences are imposed outside of the guidelines.

(h) The Commission shall have the authority to collect from any state or local governmental entity information, data, reports, statistics or such other material which is necessary to carry out the Commission's functions.

(i) The executive department shall provide staff services for the Commission which shall, for administrative purposes, be placed within that office.

(j) The Commission shall carry out such other duties consistent with its mandate as the General Assembly or the executive department shall from time to time direct.

(64 Del. Laws, c. 402 § 1; 65 Del. Laws, c. 206 § 1.)

§ 6581A Additional duties of the Commission.

The Delaware Sentencing Accountability Commission (SENTAC) is hereby directed, pursuant to § 6581(j) of this title, to modify or amend its Benchbook, so that the sentencing guidelines set forth in the Benchbook recommend that, in cases in which the weight of the controlled substance significantly exceeds the Tier 2 Controlled Substances Quantity and in which there is a conviction pursuant to § 4752 of Title 16, a sentence guideline range that is commensurate with the seriousness of the offense.

(78 Del. Laws, c. 13 § 20.)

§ 6582 Treatment Access Committee established.

(a) There is established a permanent committee of the Sentencing Accountability Commission which shall be known as the "Treatment Access Committee."

(b) The Treatment Access Committee shall be comprised of 7 voting members which shall include:

(1) The Chairperson of SENTAC, ex officio, who shall serve as Chairperson of the Committee;

(2) The Secretary of Health and Social Services, ex officio;

(3) The Secretary of the Department of Youth Services, ex officio;

(4) The Commissioner of Corrections, ex officio;

(5) The Chairperson of the Board of Parole, ex officio;

(6) Two additional members, 1 of whom shall represent the President of the Senate and 1 of whom shall represent the Speaker of the House; and

(7) Such other nonvoting members as will assist the Committee in performing its functions as are appointed by the Chairperson of SENTAC.

(c) The Treatment Access Committee shall supervise the establishment of a Treatment Access Center for substance abusing offenders. The Treatment Access Center shall be designed in a manner to coordinate the provision of substance abuse evaluation and treatment by public and private providers to criminal defendants and youths adjudicated delinquent or pending such adjudication. The Committee shall have the power through its Chairperson to make and enter into any and all contracts, agreements or stipulations; and to seek, accept and receive funds, grants or donations necessary to fulfill the purposes of this section.

(d) The Treatment Access Committee shall supervise the expenditure of funds from the Substance Abuse Rehabilitation, Treatment, Education and Prevention Fund. It shall make grants to the Treatment Access Center, and to other state and local public entities or agencies for substance abuse treatment, rehabilitation, education or prevention activities, subject to the provisions of § 4803A(b) of Title 16.

(e) The Treatment Access Committee shall report annually to SENTAC and the General Assembly on its activities and the status of substance abuse problems in Delaware.

(68 Del. Laws, c. 443 § 7; 70 Del. Laws, c. 186 § 1.)

Subchapter XI

Institutional Planning

§ 6590 Comprehensive plan.

The Department shall develop a comprehensive plan for determining the need for establishing various types of correctional facilities, for selecting the location of a correctional facility, and for determining the size of the correctional facility. The comprehensive plan shall include procedures for evaluation of environmental, social, economic, transportation, land use, property value, public and social services impacts generated by the construction of a particular facility in any proposed location within the State. The comprehensive plan shall not be implemented until the General Assembly, by concurrent resolution adopted by a majority of those elected and serving in each house thereof by a roll call vote, approves the comprehensive plan.

(67 Del. Laws, c. 254 § 1.)

§ 6591 Procedure.

(a) The Department shall determine the need for a correctional facility based upon the comprehensive plan developed pursuant to § 6590 of this title.

(b) Following a formal determination of need for such facility by the Department, the Department shall publish a notice in 2 newspapers of general circulation within this State that it proposes to establish a correctional facility in a particular town, city or county.

(c) In addition to the general notice specified in subsection (b) of this section, the Department shall further provide written notice within 30 days of the publishing of said general notice to the following officials:

(1) The state senator and the state representative representing the district or districts in the county and town or city where the proposed correctional facility is to be located.

(2) The chief elected official of the county and town or city in which the proposed correctional facility is to be located.

(3) Each member of the governing body of the county and town or city in which the proposed correctional facility is to be located.

(4) The president of the local school board of the school district or districts in the county and town or city in which the proposed correctional facility is to be located.

(5) The president of each state-supported college or university whose campus is located within the county, town or city where the proposed correctional facility is to be located.

(d) In addition to the notice required by paragraph (c)(3) of this section, the Department, on or before the date of the issuance of said notice, shall request the chief elected official of the county in which the proposed correctional facility is to be located to create a local advisory board to assist in the identification of potential sites for the correctional facility, to act as a liaison between the Department and the local community, and to ensure that the comprehensive plan is being followed by the Department. The advisory board shall consist of no less than 7 and no more than 11 citizens of the county, town or city in which the proposed correctional facility is to be located. The citizens appointed to the advisory committee shall be fairly representative, in terms of economic status, race, education and the like, of the population of the county, city or town where the proposed correctional facility is to be located.

(e) After the requirements of subsections (a), (b), (c) and (d) of this section are completed, and the Department has identified a potential site, the Department shall hold public hearing or hearings on at least 2 different dates in the city or town in which the potential site is located. If the potential site is in an unincorporated area, the public hearings shall be held in the county seat of the county in which the potential site is located. The Department shall participate in the hearings and shall make a reasonable effort to respond in writing to concerns and questions raised on the record at the hearings. The hearing shall not be held until the local advisory board created by subsection (d) of this section has organized or no sooner than 30 days after the notice is sent pursuant to subsection (c) of this section, whichever occurs first.

(f) The hearings to be conducted under subsection (e) of this section shall be open to the public and shall be held in a place available to the general public. Any person shall be permitted to attend a hearing except as otherwise provided herein. A person shall not be required as a condition of attendance at a hearing to register or otherwise provide the person's name or other information. A person shall be permitted to address the hearing under written procedures established by the Department. A person shall not be excluded from a hearing except for a breach of peace actually committed at the meeting.

(g) The following provisions shall apply with respect to public notice of hearings required under this section:

(1) The public notice required under this section shall always contain the name of the Department, its telephone number and address.

(2) A copy of the public notice shall always be posted at the Department's principal office and other locations considered appropriate by the Department.

(3) Public notice of the hearings required under this section shall be prominently posted in the office of the county clerk of the county in which the proposed facility is to be located at least 10 days prior to each hearing and shall state the date, time and place of the hearing. The required public notice of hearing shall also be published at least 10 days prior to the hearing in a newspaper of general circulation within the county in which the proposed facility is to be located.

(4) A public notice stating the date, time and place of the hearing shall be prominently posted at least 10 days before the hearing.

(h) Minutes of each hearing required under this section shall be kept by the Department showing the date, time, place, members of the local advisory board present, members of the local advisory board absent, and a summary of the discussions at the hearing. The minutes shall be public record open to public inspection and shall be available at the address designated on the posted public notices. Copies of the

minutes shall be available from the Department to the public at the reasonable estimated cost for printing and copying.

(i) On the basis of the information developed by the Department during the course of the site selection process and after community concerns have been responded to by the Department pursuant to subsection (e) of this section, a final site determination shall be made by the Department for the proposed correctional facility. The Department shall make a finding that the site determination was made in compliance with this section.

(67 Del. Laws, c. 254 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6592 Action for noncompliance with site selection process.

(a) Any person who resides in the city, town or county in which the Department has determined a need for a correctional facility may bring an action in a court of proper jurisdiction if the Department has not followed the site selection process set forth in this subchapter.

(b) An action brought under this section shall not be maintained if it is filed more than 60 days after the Department formally announces its final site selection.

(67 Del. Laws, c. 254 § 1.)

Part IV
Prisons and Prisoners
Chapter 66
RESTRAINT OF PREGNANT PRISONERS

§ 6601 Findings and purposes.

The General Assembly hereby finds that restraining a pregnant woman can pose undue health risks to the woman and her unborn fetus. Freedom from physical restraints is especially critical during labor, delivery, and postpartum recovery after delivery. Women often need to move around during labor and recovery, including moving their legs as part of the birthing process. Restraints on a pregnant woman can interfere with the medical staff's ability to appropriately assist in childbirth or to conduct sudden emergency procedures. Shackling is unnecessary and dangerous to a woman's well-being.

(78 Del. Laws, c. 330 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6602 Definitions.

As used in this chapter:

(1) "Correctional institution" means any entity under the authority of any state, county, or municipal law-enforcement division that has the power to detain and/or restrain a person under the laws of the State.

(2) "Corrections official" means the official responsible for oversight of a correctional institution, or his or her designee.

(3) "Extraordinary circumstances" means a substantial flight risk or some other extraordinary medical or security circumstance that dictates restraints be used to ensure the safety and security of the prisoner or detainee, the staff of the correctional institution or medical facility, other prisoners or detainees, or the public.

(4) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

(5) "Postpartum recovery" means, as determined by a woman's physician, the period immediately following delivery, including the entire period she is in the hospital or infirmary after birth.

(6) "Prisoner or detainee" means any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of a criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program. Included is any person detained under the immigration laws of the United States at any correctional facility.

(7) "Restraints" means any physical restraint or mechanical device used to control the movement of a prisoner or detainee's body and/or limbs, including, but not limited to, flex cuffs, soft restraints, hard metal handcuffs, a black box, Chubb cuffs, leg irons, belly chains, a security (tether) chain, or a convex shield.

(78 Del. Laws, c. 330 § 1; 70 Del. Laws, c. 186 § 1.)

§ 6603 Use of restraints on pregnant prisoners.

(a) A correctional institution shall not use restraints on a pregnant prisoner or detainee during labor, delivery, or postpartum recovery, unless the corrections official makes an individualized determination that the prisoner or detainee presents an extraordinary circumstance, except that:

(1) If the doctor, nurse or other health professional treating the prisoner requests that restraints not be used, the corrections officer accompanying the prisoner or detainee shall immediately remove all restraints; and

(2) Under no circumstances shall leg or waist restraints be used on any prisoner or detainee who is in labor or delivery.

(b) If restraints are used on a prisoner or detainee pursuant to subsection (a) of this section:

(1) The type of restraint applied and the application of the restraint must be done in the least restrictive manner necessary; and

(2) The corrections official shall make written findings within 10 days as to the extraordinary circumstances that dictated the use of the restraints. These findings shall be kept on file by the correctional institution for at least 5 years.

(78 Del. Laws, c. 330 § 1.)

§ 6604 Enforcement.

(a) By August 11, 2012, all affected correctional institutions in Delaware shall adopt policies and procedures, pursuant to this chapter as contemplated by § 4322(d) of this title.

(b) Correctional institutions shall inform pregnant prisoners and detainees of the rules developed pursuant to subsection (a) of this section upon determination of the pregnancy.

(c) Notwithstanding any other provisions to the contrary or § 4322(c) and (d) of this title, by September 10, 2012, correctional institutions shall inform all staff contractors, medical providers, prisoners and detainees in the custody of the affected correctional institutions about the policies and procedures developed pursuant to subsection (a) of this section.

(78 Del. Laws, c. 330 § 1.)

§ 6605 Annual report.

No later than 30 days before the end of each fiscal year, the Commissioner of the Department of Correction shall submit a written report to the Office of the Governor that certifies compliance with this chapter and includes, when appropriate, an account of every instance of shackling. The written report shall not contain any individually identifying information of any prisoner or detainee. Such reports shall be made available for public inspection.

(78 Del. Laws, c. 330 § 1.)

Part IV
Prisons and Prisoners
Chapter 67
BOOT CAMP INTENSIVE INCARCERATION

§ 6701 Findings and purposes.

(a) The General Assembly hereby finds that certain offenders, especially young adults, respond positively to a short term military-type program which would provide for the restructuring of behavior through a highly-regimented routine of physical exercise, hard work, continued education, and substance abuse therapy. The General Assembly also finds that the cost of incarcerating the increasing number of criminal offenders in conventional prison facilities has been increasing annually, and there is an urgent need to develop and implement innovative and cost-effective options to alleviate prison overcrowding.

(b) This chapter has the following purposes:

(1) Deterrence. — To include a "shock" component to give certain offenders, especially young first offenders, an advance warning of the unpleasant consequences of conventional imprisonment, in an attempt to discourage future criminal behavior;

(2) Cost effectiveness. — To reduce future corrections expenses by utilizing cost avoidance as an effective strategy of cost savings and capital savings due to implementation of this chapter.

(3) Rehabilitation. — To develop a foundation on which a participant in the program can develop the self-control needed to meet daily stresses and challenges;

(4) Behavior modification. — To instill more positive attitudes and behavior within each participant, which will be reflected, upon release, in less negative behavior and no subsequent arrests for violent crimes.

(70 Del. Laws, c. 244 § 1.)

§ 6702 Definitions.

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

(1) "Bureau" shall mean the Bureau of Prisons.

(2) "Department" shall mean the Department of Correction.

(70 Del. Laws, c. 244 § 1.)

§ 6703 "Violent crime" defined.

For purposes of this chapter, the words "violent crime" shall mean: abuse of an adult who is impaired; abuse of a patient in a nursing facility; abuse of a patient causing injury; abuse of a patient causing death; adulteration causing death; adulteration causing injury; aggravated intimidation; arson in the first degree; arson in the second degree; assault in the first degree; assault in the second degree; assault in the third degree; assault in the first degree on K-9 dog causing, injury or death to the dog; assault on a K-9 dog with risk of injury to the dog; assault in a detention facility which causes injury; assault in a detention facility; assault on a sports official; bestiality; home invasion; burglary in the first degree; carjacking; carrying a concealed deadly weapon (firearm offense); continuous sexual abuse of child; criminally negligent homicide; dealing with child pornography, second offense; possession of a destructive weapon; reckless endangering; escape after conviction; escape in the second degree; extortion; possession of an explosive device; unlawful imprisonment; incest; kidnapping in the first degree; kidnapping in the second degree; manslaughter; manufacture or use or possession of explosives or an incendiary device; murder in the first degree, murder in the second degree; organized crime and racketeering; possession of a deadly weapon during the commission of a felony; possession of a destructive weapon; possession of a firearm during the commission of a felony; promoting prison contraband (weapon); promoting prostitution in the first degree; racketeering; reckless endangering first degree; reckless endangering in the second degree; riot; robbery in the first degree; robbery in the second degree; continued sexual abuse of child; unlawful sexual contact in the first degree; unlawful sexual contact in the second degree; unlawful sexual contact in the third degree; sexual exploitation of a child; sexual extortion; rape in the first degree; rape in the second degree; rape in the third degree; rape in the fourth degree; unlawful sexual intercourse in the first degree; unlawful sexual intercourse in the second degree; unlawful sexual intercourse in the third degree; unlawful sexual penetration in the first degree; unlawful sexual penetration in the second degree; unlawful sexual penetration in the third degree; stalking; terroristic threatening; unlawful firearm transactions (second or subsequent offense); unlawful imprisonment in the first degree; unlawful transportation of a firearm to commit a felony; vehicular assault in the first degree; vehicular assault in the second degree; vehicular homicide in the first degree; vehicular homicide in the second degree; wearing body armor during felony.

(70 Del. Laws, c. 244 § 1; 71 Del. Laws, c. 7 § 1; 71 Del. Laws, c. 285 § 21; 77 Del. Laws, c. 313 § 3; 78 Del. Laws, c. 13 §§ 15, 16; 78 Del. Laws, c. 224 § 24; 78 Del. Laws, c. 252 § 13.)

§ 6704 Establishment of boot camp programs.

(a) The Bureau of Prisons may establish 1 or more regimented boot camp inmate training programs. Subject to appropriations therefor,

each such program shall include, but not be limited to:

(1) A military-style intensive physical training and discipline component;

(2) An educational and vocational component, emphasizing job-seeking skills;

(3) A health education component;

(4) A substance abuse education and treatment component, which shall be structured as an integral part of the boot camp program; and

(5) Such other activities as may be deemed appropriate and effective by the Bureau.

(b) The Bureau may establish and enforce standards for the boot camp program, and each component set forth in paragraphs (a)(1) through (a)(5) of this section.

(c) The boot camp facilities and all boot camp participants should be effectively separated from the general inmate population, and shall be supervised by a specially-trained staff.

(d) The boot camp program shall be 6 months in duration; provided however, that any participant who is assigned to the program shall remain in the program at least 1 month, unless the camp commander, in the commander's discretion, determines otherwise. In exceptional cases, a participant may be retained in the program in order to join the next following class if the additional time spent in the program is, in the opinion of the Bureau, needed to allow such person to complete the program successfully after illness or other circumstance has delayed such person's normal progress through the program.

(e) Selection for participation in a boot camp program is a privilege, and not a right. No person has the right to participate in a boot camp program.

(70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 244 § 1.)

§ 6705 Sentencing; boot camp designation.

(a) Each participant in the boot camp program shall have first been convicted of a criminal offense. The selection of boot camp participants shall be made by the Bureau from those offenders not otherwise excluded under this section. However, satisfying the statutory or regulatory qualifications for admission to the boot camp program shall not mean that an offender shall automatically be permitted to participate in the program.

(b) Notwithstanding the provisions of subsection (a) of this section, the following offenders shall not be classified or otherwise permitted to participate in the boot camp program:

(1) Any person declared to be an habitual offender under § 4214 of this title;

(2) Any person who is serving a sentence of Level V incarceration for a violent crime;

(3) Any person who is serving a sentence for a violation of probation or parole where the crime for which the offender was originally convicted is any class A, B or C Title 11 violent felony, or any sexual offense as set forth in subpart D of subchapter II of Chapter 5 of this title or any of the following offenses: Vehicular homicide first and second degree, criminally negligent homicide, promoting prison contraband felony or stalking;

(4) Any person designated by the sentencing court or the Attorney General pursuant to subsection (c) of this section as not being eligible for the boot camp program.

(c) The sentencing court or the Attorney General shall have the authority to designate any person as bootcamp ineligible at the time of sentencing. Such designation shall be specifically and clearly set forth in the sentencing order.

(d) Subject to the provisions of subsections (a), (b)(1) and (b)(3) of this section, any person serving a sentence for a violation of probation or parole shall be eligible for the boot camp program.

(70 Del. Laws, c. 244 § 1; 71 Del. Laws, c. 7 § 2; 71 Del. Laws, c. 174 §§ 1-3; 71 Del. Laws, c. 484 § 1.)

§ 6706 Criteria for selection and classification by the Bureau.

In order for a person to be eligible for selection by the Bureau for the boot camp program, such person shall:

(1) Not be subject to any of the exclusionary criteria under § 6705(b) or (c) of this title;

(2) Be at least 18 years of age at the time of sentencing;

(3) Have been sentenced to a period of incarceration of 5 years or less;

(4) In accordance with the Bureau's assessment and determination, be physically and mentally capable of successfully completing the rigorous boot camp program; provided, however, no such assessment and/or determination shall be deemed as a waiver of any of the various immunity defenses or otherwise trigger a duty, obligation and/or liability on the Department or Bureau not presently provided under applicable law;

(5) Be a resident of the State; and

(6) Have a term of not less than 9 months, nor have more than 18 months remaining in Level V incarceration.

(70 Del. Laws, c. 244 § 1; 71 Del. Laws, c. 7 § 3.)

§ 6707 Contract; admission into the program.

No offender may participate in the boot camp program unless such individual voluntarily enrolls by agreeing to be bound by a written contract with the Bureau, which contract shall clearly set forth the obligations, duties, responsibilities and expectations with which such offender must comply. A representative of the Bureau shall also explain to the offender the intended benefits of the program, and the consequences of failing the program. The time served as a boot camp participant shall begin the first day such person is physically within

the camp.

(70 Del. Laws, c. 244 § 1.)

§ 6708 Evaluation of program participants.

Each participant shall be evaluated by members of the boot camp staff on a continual basis throughout the period of such person's participation in the program. Such evaluation shall include the participant's performance within the program, the likelihood of successful adjustment after release, and such other matters which the boot camp staff deems relevant or important.

(70 Del. Laws, c. 244 § 1.)

§ 6709 Conduct and administration of boot camp program.

(a) The program shall be a rigorous military-type program which, among other features, shall include mandatory physical training; hard labor which has a rational goal or objective; military formations, drills and courtesy; regimentation of all activities, except those which are specifically exempted by the camp commander; control which is strict, but not capricious; uniformity and cleanliness in dress and appearance; education and counseling; and drug treatment, counseling and education where appropriate.

(b) The Bureau and the camp commander shall establish rules and regulations for the conduct and administration of each boot camp program. Such rules and regulations shall reflect the goals and objectives of this chapter, and shall include a system of rewards for individuals and groups based upon achievements and progress in achieving camp standards and requirements; and shall include sanctions, administered by the staff within the confines and authority of the camp, to punish those individuals whose demeanor, behavior or attitude do not comply with camp standards and requirements. The rules and regulations shall also include the supervision and the structure to be used in each program offered by the camp.

(c) The camp commander and staff shall be responsible for the day-to-day functions and decisions affecting the operations of the boot camp. Each full-time employee employed inside the boot camp shall, to the extent possible, be a volunteer regardless of job description or function. All boot camp employees shall receive appropriate specialized boot camp training. Each drill instructor shall receive specialized drill instructor training, preferably military training, from an agency which specializes in such training. Boot camp employees shall receive, for the same general responsibilities, the same salaries as prison employees not employed in a boot camp. Job bidding shall not be used in the selection of the camp staff.

(d) Participants may be formed into work squads by boot camp staff to perform labor-intensive projects outside the perimeters of the camp. No wages shall be paid to individual participants working outside the camp, but the camp commander may from time to time receive funds or gifts for the general use or benefit of the camp or for all participants. Work squads may be utilized to work on state, county, municipal or town projects; for disaster relief, civil or community emergencies; and for specific projects for nonprofit organizations, if the Bureau determines that the project is of direct benefit to a community or a large number of people, and not for the organization itself. No work squad is permitted to do any labor for the benefit of any individual or commercial entity. Approved projects may include, but not limited to, highway cleanup and trash removal; timber clearing on state forestry lands; preparing and stacking sandbags in the event of a flood; and beach and state park clean-up. Participants are not employees for purpose of workers' compensation. Notwithstanding any provision of this title to contrary, any boot camp participant who is otherwise appropriately classified to the boot camp program may participate in work squads pursuant to this section.

(70 Del. Laws, c. 244 § 1; 71 Del. Laws, c. 7 § 4.)

§ 6710 Sanctions; removal from the program.

(a) A participant who is accepted into the boot camp program shall not receive any credit for time spent in the program, except for actual time served, unless such participant completes the full program. Before any participant is deemed to have completed the full boot camp program, such participant must have been graduated from the program with a written certification of successful completion.

(b) A participant who fails to complete the boot camp program, who is administratively terminated from the program, or who violates any conditions of the program, shall be re-classified to serve the full unexpired term of the original sentence.

(c) Upon the successful completion of the boot camp program as determined by the Department in its sole discretion, and having served at least 6 months of incarceration, the participant shall be allowed to serve the remaining part of the participant's Level V sentence at either Level IV or Level III, in the discretion of the Department. Should a boot camp graduate violate the Level IV or Level III conditions of supervision, such person shall upon conviction of a violation of probation, be returned to Level V custody to serve the full term of the original Level V sentence, less the 6 months served in boot camp.

(70 Del. Laws, c. 244 § 1.)

§ 6711 Aftercare; intensive parole supervision.

A person who has successfully completed the boot camp program shall be placed under parole supervision (Level IV or Level III supervision). During this period, such person shall participate in an aftercare program which emphasizes completion of GED requirements where appropriate, drug and alcohol education and treatment; the development of job placement skills and opportunities; and the learning of successful employment habits and attitudes.

(70 Del. Laws, c. 244 § 1.)

§ 6712 First offender boot camp diversion program.

(a) Subject to the provisions of this section and notwithstanding any other law, rule or regulation to the contrary, any person convicted upon a plea of guilty or otherwise convicted of any of the offenses set forth in subsection (b) of this section may petition the court to defer further sentencing proceedings, and to divert the offender to the boot camp program. In addition, the Department of Correction may petition the court on behalf of any person in its custody who has been convicted of an offense set forth in subsection (b) of this section, for a sentence modification suspending the remainder of the offender's Level V sentence, and diverting such person to the boot camp diversion program ("modify and divert"). The Attorney General shall receive prior notice of all such applications and be provided an opportunity to be heard. Any offender diverted pursuant to this subsection shall be subject to the terms and conditions of this section. No person shall be eligible for boot camp pursuant to this section if the Attorney General's Office, upon written motion, opposes such boot camp diversion pursuant to paragraph (c)(2) of this section.

(b) Subject to the provisions of this section, certain persons convicted of the following offenses shall be potentially eligible for diversion to the boot camp inmate training program:

(1) Any offense in Title 16 relating to manufacture, delivery, or possession of controlled substances or prescription drugs, but not including §§ 4752-4756 of Title 16, except as set forth below; or

(2) Drug dealing or aggravated possession as set forth in §§ 4752-4756 of Title 16, but only if the weight of the illegal substance possessed is less than the minimum required for a Tier 3 Controlled Substances Quantity, as defined in § 4751C(3) of Title 16; or

(3) Burglary in the second degree, as set forth in § 825 of this title, but only if the defendant has not previously been convicted of burglary in the second degree or burglary in the first degree, as set forth in § 826 of this title.

(c) Notwithstanding any other provision of this section, no person shall be diverted to the boot camp program pursuant to this section or to otherwise utilize the provisions of this section, if:

(1) Such person has previously been incarcerated as an adult pursuant to a sentence imposed for a criminal conviction for any offenses set forth in Title 11 or 16, or any equivalent offense set forth under the laws of this State, any other state, or the United States or any territory thereof, and was previously sentenced to a term of more than 1 year of Level V incarceration, which was not suspended.

(2) The Attorney General's Office, upon written motion, opposes the Diversion. Such motion shall clearly articulate the specific reasons for such opposition.

(3) The Attorney General's Office offers the Boot Camp Diversion Program as part of a proposed plea agreement, the appellant rejects the offer, and the appellant is subsequently convicted after trial.

(d) Subject to the provisions of this section, and notwithstanding any other law, rule or regulation to the contrary, if the sentencing court chooses to grant the petition to defer or to modify and divert, as set forth in subsection (a) of this section, the sentencing court shall enter a judgment of conviction; and shall then defer sentencing, or modify the imposition of the remainder of any Level V sentence, including any Level V sentence otherwise required by § 4752 of Title 16, or by § 825, § 826 or § 4205 of this title or by any other law. The court shall then remand the offender to the custody of the Department of Correction upon the condition that the offender shall complete a program of supervision which shall include:

(1) Placement in a boot camp facility with a substance abuse treatment program for a period of not less than 6 months, to be followed by supervision at Level IV or III, or both, for a period of 1 and 1/2 years;

(2) A requirement that, while at supervision Level IV or III, the offender comply with the terms of a curfew, said terms to be imposed by either the sentencing court or the Department of Correction. The terms of said curfew may include mandated compliance with certain geographical limitations, prohibitions or restrictions;

(3) A requirement that, while at supervision Level IV or III, the offender participate in substance abuse treatment which shall include periodic, random urine surveillance during the entire period of supervision at Level IV or III, or both;

(4) Payment of the costs of prosecution, and payment of a $500 civil penalty to the Substance Abuse Rehabilitation, Education and Prevention Fund; and

(5) Any other terms or provisions deemed appropriate by the sentencing court or the Department of Correction.

(e) Whenever the court defers or modifies a sentence pursuant to this section, it shall inform the offender of the sentence to be imposed or reinstated in the event that the offender fails to comply with any of the terms of supervision or probation imposed pursuant to this section. Such term of imprisonment shall not be less than any applicable sentence mandated for the offense or offenses of which the offender was convicted, as set forth in § 4752 of Title 16, or § 825, § 826 or § 4205 of this title. Failure of the court to comply with this subsection shall not preclude the sentencing court from complying with any of the other provisions of this section.

(f) Whenever the court defers further sentencing proceedings pursuant to this section, it shall have the authority to remand the offender to the custody of the Department of Correction at Accountability Level III, IV or V until such offender is placed in a boot camp facility.

(g) The Department of Correction shall closely monitor all participants in this program, and shall ensure that those program participants at supervision Level IV or III shall be monitored by officers specifically assigned to such duties. The Department of Correction shall at all times have on duty no fewer than 8 probation officers (2 for each county and 2 for the City of Wilmington) who shall promptly respond to police agencies as requested for the purpose of taking custody of any person who is believed to have violated the terms or conditions of that person's program of supervision or probation at the boot camp, or at Level IV or III. Pursuant to Chapter 43 of this title such probation officer shall promptly file a probation violation report setting forth the nature and circumstances of the alleged violation with the

appropriate court.

(h) Upon receipt of an allegation that an offender has violated the terms of that offender's supervision, the sentencing court shall cause the offender to be brought before it without unnecessary delay. Upon a finding that the offender has violated any of the terms or conditions of supervision or probation at the boot camp or at Level IV or Level III, the court shall proceed to sentencing on all charges for which sentencing was originally deferred pursuant to this section, and shall impose not less than the full applicable Level V sentence mandated for the offense or offenses of which the offender was convicted, as set forth in § 4752 of Title 16, or § 825, § 826 or § 4205 of this title. If the offender had already been sentenced and the sentence was modified pursuant to this section, the offender shall serve the remainder of that original sentence. No credit time shall be given for any time spent in boot camp, Level IV or Level III. Failure of the sentencing court to comply with the sentencing provisions of this subsection shall constitute an illegal sentence within the meaning of Chapter 99 of Title 10.

(i) Upon conclusion of the period of supervision and probation imposed pursuant to this section, the court may find that the offender has successfully completed the program, and, if it does, it shall discharge the offender from probation.

(j) Prior to the release of any offender from the boot camp to supervision Level IV or III, the Department of Correction shall enter into the DELJIS criminal history system information identifying the offender as a first offender drug felon.

(71 Del. Laws, c. 174 § 4; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 484 §§ 2-7; 74 Del. Laws, c. 106 §§ 11, 12; 75 Del. Laws, c. 167 § 1; 78 Del. Laws, c. 13 §§ 17-19.)

Part V
Law-Enforcement Administration
Chapter 81
FIREARM FORENSICS

§ 8101 Declaration of policy.

It shall be the policy of this State for its various law-enforcement agencies to fully employ electronic technology and interjurisdictional information and analysis sharing programs to deter and solve gun crimes.

(80 Del. Laws, c. 426 § 1.)

§ 8102 Procedure for certain seized, recovered firearms, shell casings.

(a) Whenever a law-enforcement agency seizes or recovers a firearm that was unlawfully possessed, used for any unlawful purpose, recovered from the scene of a crime, is reasonably believed to have been used or associated with the commission of a crime, or is acquired by the agency as an abandoned or discarded firearm, the agency shall:

(1) Transmit and receive information relating to that firearm with the National Crime Information Center System;

(2) Transmit and receive information relating to that firearm to the United States Alcohol, Tobacco, Firearms, and Explosives E-Trace System; and

(3) Arrange for every such firearm to be test-fired as soon as may be practicable and the results of that test-firing be forthwith submitted to the National Integrated Ballistics Identification Network to determine whether the firearm is associated or related to a crime, criminal event, or any individual associated or related to a crime or criminal event or reasonably believed to be associated or related to a crime or criminal event.

(b) Whenever a law-enforcement agency recovers any spent shell casing at a crime scene or has reason to believe that the recovered spent shell casing is related to or associated with the commission of a crime or the unlawful discharge of a firearm, the agency shall, as soon as may be practicable, submit the ballistics information to the National Integrated Ballistics Identification Network.

(c) The Department of Safety and Homeland Security, in cooperation with the Department of Justice, shall develop and promulgate a statewide standard protocol for the recovery and forensic processing of firearms and firearm-related evidence where such firearm was unlawfully possessed, used for any unlawful purpose, recovered from the scene of a crime, or reasonably believed to have been used or associated with the commission of a crime.

(80 Del. Laws, c. 426 § 1.)

Part V
Law-Enforcement Administration
Chapter 82
CAPITOL POLICE

§ 8201 Appointment and classification; primary duty.

The Department of Safety and Homeland Security, hereinafter in this chapter referred to as "Department," may appoint police officers whose primary duty shall be to compel the enforcement of all laws within the State. They shall be officially known and referred to as "Capitol Police."

(75 Del. Laws, c. 322 § 4.)

§ 8202 Powers and duties of Capitol Police; local police officers assisting Capitol Police.

Capitol Police shall have police powers similar to those of constables and other police officers, and shall be conservators of the peace throughout the State, and they shall suppress all acts of violence, and enforce all laws relating to the safety of persons and property. In addition to the foregoing, Capitol Police shall be authorized to develop, implement, maintain, exercise and update Comprehensive School Safety Plans (CSSPs) pursuant to § 8237 of Title 29 and such regulations adopted in connection therewith, as directed by the Secretary of Safety and Homeland Security.

(75 Del. Laws, c. 322 § 4; 78 Del. Laws, c. 405 § 2.)

§ 8203 Salaries.

Each of the Capitol Police shall receive a salary in accordance with the current annual State Budget Act.

(75 Del. Laws, c. 322 § 4.)

§ 8204 Uniforms.

The Chief of Capitol Police shall, subject to the approval of the Department, prescribe the specifications for the standard uniforms to be used by the Capitol Police.

(75 Del. Laws, c. 322 § 4.)

§ 8205 Capitol Police stations; location, staff and equipment.

The Department shall establish and maintain at least 3 Capitol Police offices in the State, 1 of which shall be located at New Castle County Courthouse, New Castle County, 1 of which shall be located in Kent County, and 1 of which shall be located in Sussex County, and such other offices as the Department deems necessary for the proper policing of, and for the enforcement of the laws of the State. Such Capitol Police stations as are herein directed to be established and maintained shall each be staffed with members of the Capitol Police, and shall each be equipped with radio equipment to aid in the police work of the Department.

(75 Del. Laws, c. 322 § 4.)

Part V
Law-Enforcement Administration
Chapter 83
STATE POLICE
Subchapter I
General Provisions

§ 8301 Appointment and classification; primary duty.

The Department of Safety and Homeland Security, hereinafter in this chapter referred to as "Department," may appoint police officers whose primary duty shall be to compel the enforcement of all laws relating to the weight, speed and operation of vehicles on the public highways of the State. They shall be officially known and referred to as "State Police." The Department may classify such State Police according to such rank as the Department determines, and according to the duties assigned to them from time to time by the Department. The Superintendent of the State Police shall hold the rank of Colonel and shall be so classified by the Department. There may not be less than 660 authorized police officers. Calculations for determining the number of such positions shall include any appropriated (ASF) and nonappropriated (NSF) special funded positions.

(34 Del. Laws, c. 84 §§ 1, 2; 37 Del. Laws, c. 73; Code 1935 § 5747; 45 Del. Laws, c. 276; 47 Del. Laws, c. 1; 11 Del. C. 1953 § 8301; 53 Del. Laws, c. 235 § 1; 56 Del. Laws, c. 438 § 1; 57 Del. Laws, c. 670 § 3A; 58 Del. Laws, c. 495; 66 Del. Laws, c. 241 § 1; 67 Del. Laws, c. 47 § 209; 69 Del. Laws, c. 291 § 244; 69 Del. Laws, c. 461 § 1; 72 Del. Laws, c. 98 § 1; 74 Del. Laws, c. 110 § 138; 75 Del. Laws, c. 354 § 3.)

§ 8302 Powers and duties of State Police; local police officers assisting State Police.

(a) State Police shall have police powers similar to those of constables and other police officers, and shall be conservators of the peace throughout the State, and they shall suppress all acts of violence, and enforce all laws relating to the safety of persons and property. The State Police shall be the primary law-enforcement agency within the State. The State Police shall have exclusive jurisdiction, excluding the incorporated limits of any municipality maintaining an established police department, for police investigations of the following:

(1) Homicide;
(2) Suicide;
(3) All other deaths requiring medical examiner's investigation;
(4) Kidnapping;
(5) Rape and unlawful sexual intercourse; and
(6) All attempts thereof.

(b) When police officers who are certified by the Delaware Council on Police Training are acting outside their respective jurisdiction as conservators of the peace in response to a request for assistance from the State Police, those officers shall be considered to be acting as State Police Officers and shall have the powers of arrest thereof.

(c) State Police shall have all powers and jurisdiction to enforce all county noise ordinances duly enacted in the unincorporated areas of Kent County and Sussex County.

(34 Del. Laws, c. 84 § 4; Code 1935 § 5747; 45 Del. Laws, c. 276; 11 Del. C. 1953 § 8302; 58 Del. Laws, c. 204; 60 Del. Laws, c. 103 § 1; 61 Del. Laws, c. 7 § 1; 66 Del. Laws, c. 269 § 10; 72 Del. Laws, c. 131 § 1; 74 Del. Laws, c. 45 § 1; 76 Del. Laws, c. 111 § 1.)

§ 8303 Salaries.

Each of the State Police shall receive a salary in accordance with the current State Police compensation schedule. Years of service commence as of anniversary date of hire. The Superintendent of State Police shall receive a salary that is 9 percent greater than the Assistant Superintendent of State Police. The Assistant Superintendent of State Police shall receive a salary that is 9 percent greater than the average salary of the State Police majors.

(34 Del. Laws, c. 84 § 3; 35 Del. Laws, c. 64; 37 Del. Laws, c. 76; Code 1935 § 5747; 45 Del. Laws, c. 276 § 1; 11 Del. C. 1953 § 8303; 56 Del. Laws, c. 353 § 1; 57 Del. Laws, c. 331 § 1; 58 Del. Laws, c. 332 § 1; 59 Del. Laws, c. 379 § 1; 60 Del. Laws, c. 696 § 1; 71 Del. Laws, c. 132 § 246; 76 Del. Laws, c. 280 § 288.)

§ 8304 Uniforms.

The Superintendent of State Police shall, subject to the approval of the Department, prescribe the specifications for the standard uniforms to be used by the State Police.

(34 Del. Laws, c. 84; 37 Del. Laws, c. 73; Code 1935 § 5748; 43 Del. Laws, c. 263 § 1; 11 Del. C. 1953 § 8304.)

§ 8305 State Police stations; location, staff and equipment.

The Department shall establish and maintain at least 5 State Police stations in the State, 1 of which shall be located at Penny Hill, New

Castle County, 1 of which shall be located at or near the intersection of Routes 40 and 896, New Castle County, 1 of which shall be located at or near the City of Dover, Kent County, 1 of which shall be located at or near Bridgeville, Sussex County and 1 of which shall be located at or near Georgetown, Sussex County, and such other stations as the Department deems necessary for the proper policing of the highways of the State and for the enforcement of the laws of the State. Such State Police stations as are herein directed to be established and maintained shall each be staffed with members of the State Police, and shall each be equipped with radio equipment to aid in the police work of the Department.

(Code 1935 § 5747A; 46 Del. Laws, c. 49 § 1; 11 Del. C. 1953 § 8305; 72 Del. Laws, c. 340 § 1.)

§ 8306 Work week.

The regular work week of all members of the State Police appointed by the Department shall consist of a 5-day, 40-hour week, except at such times as the Department, acting upon the specific recommendation of the Superintendent of State Police, may declare a longer regular work week during periods of special need.

(11 Del. C. 1953 § 8306; 49 Del. Laws, c. 101 § 1; 57 Del. Laws, c. 331 § 2; 57 Del. Laws, c. 670 § 3B; 58 Del. Laws, c. 332 § 2.)

§ 8307 Disposition of lost or stolen property or money.

(a) Whenever any personal property of any kind, except money, comes into the custody of the State Police and the person entitled to possession of the same cannot be located and fails to claim the same for a period of 1 year, the Superintendent of the State Police may dispose of the same at public sale at some place which shall be convenient and accessible to the public, provided that the time, place and terms of said sale, together with a description of said personal property, shall be inserted in 1 or more daily newspapers published in the State at least once each week for 2 successive weeks prior to said sale. The Superintendent shall in the Superintendent's discretion fix the terms of sale and may employ an auctioneer to make the sale. If the personal property be of the kind for which a certificate of title or registration shall or should have been issued by any commissioner, commission or department, whether state or federal, the Superintendent shall cause notice by registered mail to be sent at least 10 days prior to the sale to the owner and lien holder, if any, shown on the records of such commissioner, commission or department, or to the person entitled to the possession thereof, if an address be known or if it can be ascertained by the exercise of reasonable diligence; and if said address cannot be so ascertained, then such notice shall not be required to be given.

(b) After deducting from the proceeds of the sale the expense of making the same and the amount of storage and any other repair or tow charges incurred during the period in which the same was in custody, and after the payment of all liens to which said property was subject in the order of their priority, the balance remaining, if any, shall be paid into the Police Retirement Fund of the State Police. If the owner or the person entitled to the possession of personal property, sold as aforesaid, shall present to the Superintendent a claim, duly sworn to, at any time within 3 years from the date of such sale, for the balance remaining from the proceeds of such sale, the Superintendent shall cause to be paid from said Police Retirement Fund the amount of such balance, without interest, to such claimant. If no claim for such balance is made within 3 years from the date of such sale, such balance shall become the property of said Police Retirement Fund in the same manner as other sums contributed thereto.

(c) Whenever any lost, abandoned or stolen money comes into the custody of the State Police, the Superintendent of the State Police shall make a reasonable effort to locate the owner thereof. If the owner of any stolen money cannot be located or fails to claim such stolen money within 1 year from the date that it came into the custody of the State Police, such money shall become the property of the State Police Retirement Fund in the same manner as other sums contributed thereto. If the owner of any lost or abandoned money cannot be located or fails to claim such lost or abandoned money within 1 year from the date that it came into the custody of the State Police, such money shall become the property of the person who delivered custody of such money to the State Police and shall be returned by the Superintendent to such person as soon as is practicable.

(d) No action for the recovery of personal property, money or damages arising under this section shall be brought after the expiration of 3 years from the accruing of the cause of such action; provided, however, that this subsection shall not be deemed to constitute a waiver of any immunity from suit to which the Superintendent of State Police may otherwise by law be entitled.

(e) The certificate of the Superintendent that any such personal property has been sold to a purchaser as provided in this section shall constitute sufficient evidence of title to any property so sold in order to enable any such purchaser to obtain a certificate of title and registration from the appropriate commissioner, commission or department, which shall recognize such certificate of the Superintendent as sufficient authority for the issuance of a certificate of title and registration.

(f) This section shall not apply to any property the disposition of which is provided for elsewhere in this title.

(11 Del. C. 1953 § 8307; 50 Del. Laws, c. 239 § 1; 61 Del. Laws, c. 95 §§ 1-3; 70 Del. Laws, c. 186 § 1.)

§ 8308 Crime Reduction Fund.

(a) The Superintendent of the State Police is authorized to administer a fund to be known as the "Crime Reduction Fund."

(b) Expenses for the administration of this Fund shall be paid by the State Treasurer out of funds of the General Fund, not otherwise appropriated, not to exceed $10,000 in any fiscal year.

(11 Del. C. 1953 § 8308; 57 Del. Laws, c. 493.)

Subchapter II

Pensions; Disability and Death Benefits

§ 8322 Police Retirement Fund.

The Police Retirement Fund, hereafter in this subchapter referred to as "Fund," shall be created in the following manner:

All rewards offered for any particular service, when otherwise payable to any member of the State Police, shall be paid to the Secretary of Finance and shall be credited by the Secretary to the account of the Fund. Also there shall be deducted each month from the monthly payroll of each member of the State Police 5 percent of the amount of the member's salary and such amount shall be paid to the Secretary of Finance and shall be credited by the Secretary to the account of the Fund; provided, however, that for any member of the State Police who has completed 20 years of credited service and who was hired before July 1, 1980, and for any member of the State Police who has completed 25 years of credited service and who was hired after July 1, 1980, as defined in this chapter, there shall be deducted from the monthly payroll of each such member of the State Police 2 percent of the amount of the member's salary and such amount shall be paid to the Secretary of Finance and shall be credited by the Secretary to the account of the Fund. At the same time, the Secretary of Finance shall transfer from the funds of the Department of Safety and Homeland Security and credit to the Fund, each month, a sum equivalent to 5 percent of the amount of the monthly payroll of all of the members of the State Police. If at any time there shall be insufficient money in the Fund for the purposes of this subchapter, the Secretary of Finance shall transfer from the funds of the Department of Safety and Homeland Security sufficient money to make up any such deficiency. No money shall be paid out of the Fund thus created, except for the purposes of this subchapter and on warrants of the Board of Pension Trustees. The assets of the Fund will be commingled in the Delaware Public Employees' Retirement System as provided for by § 8308 of Title 29. Effective July 1, 1997, employee pension contributions made pursuant to this section shall not be subject to adjustment or recovery after the expiration of 3 full calendar years from December 31 of the year in which the contributions were made unless no contributions were paid during that calendar year.

(41 Del. Laws, c. 262 § 2; 11 Del. C. 1953 § 8322; 57 Del. Laws, c. 741 §§ 41B, 41C; 60 Del. Laws, c. 695 § 1; 66 Del. Laws, c. 295 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 121 § 4; 71 Del. Laws, c. 165 § 6; 74 Del. Laws, c. 110 § 138.)

§ 8323 Eligibility for pensions; employment of pension beneficiaries by the State; exceptions.

(a) Any member of the State Police who has served as such for a period of 20 years may retire, or any member who has reached the age of 55 years shall be retired; in either event, the retired member shall thereupon receive monthly, from the Fund, an amount equal to 1/2 of the monthly salary received by such member at the time of retirement; provided, however, that members of the State Police retired prior to January 1, 1972, shall as of that date receive an amount equal to one half of the monthly salary provided under this chapter for an active-duty officer of equivalent rank. Thereafter, pensions of retired State Police shall not be recomputed based on the salaries of active-duty State Police; provided further, however, that as of July 1, 1974, the monthly amount payable to retirees shall increase on July 1 of each year by any cumulative percentage increase in the national consumer price index average of the previous calendar year, plus the aggregated cumulative percentage change in the national consumer price index average of the previous consecutive years in which an increase was not granted. A cumulative percentage decrease in any calendar year shall not result in any reduction in the pension rates.

(b) Any former or present member of the State Highway Police, State Police, or any successor or substitute therefor, who shall have been a member of the County Police of New Castle County, shall receive full credit for the time served in such County Police in computing the number of years' service required to receive pension benefits provided in subsection (a) of this section.

(c) An individual shall not receive a pension under this subchapter for any month which the individual is an employee, as defined in § 8301 of this title or § 5501 of Title 29, unless the individual is:

(1) An official elected by popular vote at a regular or special election; or

(2) An official appointed by the Governor; or

(3) A registration or election official or a juror; or

(4) Receiving an ordinary service, disability or survivor's pension.

The employment, except employment as an elected official, may not be used for further retirement benefits.

(d) Nothing in this section shall prevent the employment by the State as a registration or election official or as a juror of any person receiving a state pension. Persons so employed may receive the compensation provided by law without deduction from their state pension.

(e) Any former or present member of the State Highway Police, State Police, or any successor or substitute therefor, who shall have been a member of the Delaware Memorial Bridge Police before the establishment of the Delaware River and Bay Authority, shall receive full credit for the time served in such Delaware Memorial Bridge Police in computing the number of years' service required to receive pension benefits provided in subsection (a) of this section.

(f) Nothing in this section shall prevent the employment by the State as a registration or election official or as a juror any person receiving a state pension. Persons so employed may receive the compensation provided by law without deduction from their state pension.

(g) Nothing in this section shall prevent the employment by the Superior Court, Court of Chancery, Court of Common Pleas or Family Court in or of any county of any person receiving a State Police pension. Persons so employed may receive compensation for such services without deduction from their State Police pension.

(h) No retired member of the Uniformed Division, State Police, entitled to receive a pension under subsection (a) of this section, shall receive a monthly pension less than any retiree on the retired rolls from the immediately prior retiring class, and of the same active-duty

rank, if such difference is solely the result of a cost-of-living increase granted to such retiree.

(i) A member of the State Police hired prior to July 1, 1980, and who has 20 years of credited service shall have a vested right to a service pension as provided for in this subsection at a rate not less than the pension payment due upon completing 20 years of credited service; payments of said pension benefit shall increase pursuant to this section based upon increased annual salary adjustments and/or promotional increases that may occur subsequent to the twentieth year of credited service. A member's vested pension under this subsection shall be payable upon the effective date of termination of employment as a member of the State Police.

(j) Any reduction in a member's salary, mandated as part of the FY 2010 Annual Appropriations Act [77 Del. Laws, c. 84] and implemented during FY 2010, shall not be used when computing a member's final monthly salary. Rather, the member's base salary as of June 30, 2009, shall be used in calculating the member's monthly salary as defined in subsection (a) of this section.

(41 Del. Laws, c. 263 § 3; 46 Del. Laws, c. 271 § 1; 11 Del. C. 1953 § 8323; 50 Del. Laws, c. 57 § 1; 54 Del. Laws, c. 55; 54 Del. Laws, c. 89 § 1; 54 Del. Laws, c. 158; 55 Del. Laws, c. 26; 55 Del. Laws, c. 189 § 2; 56 Del. Laws, c. 304; 57 Del. Laws, c. 100 § 1; 57 Del. Laws, c. 228 § 12; 57 Del. Laws, c. 654; 57 Del. Laws, c. 741 § 41C; 58 Del. Laws, c. 332 § 3; 60 Del. Laws, c. 694 § 1; 61 Del. Laws, c. 456 § 1; 66 Del. Laws, c. 192 § 1; 66 Del. Laws, c. 277 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 142 § 3; 72 Del. Laws, c. 384 §§ 1, 2; 77 Del. Laws, c. 84 § 86.)

§ 8324 Eligibility of permanently injured; retirement for injury or disease.

Any former, present or future member of the State Highway Police or the State Police, who has heretofore received or who may hereafter receive permanent injuries in the performance of the member's duties, shall upon certification of a physician selected by the Board of Pension Trustees or by the injured person, be entitled to receive a pension equal to 1/2 of the member's salary at the time the injury was received; but no such pension shall be paid as long as such person is regularly employed as a State Police Officer. When, however, a member of the State Police shall desire to retire by reason of injury or disease, the member shall make application in writing to the Board of Pension Trustees for such retirement. Whereupon, the Board of Pension Trustees shall call to its assistance the aid of a physician or surgeon representing the Board of Pension Trustees, and the member may also call to the member's aid a physician or surgeon. Any member of the Board of Pension Trustees may administer oaths to such physician or surgeon or to any other person called as a witness with respect to the matter before the Board of Pension Trustees, and the Board of Pension Trustees shall determine by resolution passed by at least a majority of the members of the Board of Pension Trustees, whether such member is entitled to the benefits of this subchapter, and if so determined, such member shall be retired upon a pension equal to 3/4 of the member's salary at the time of retirement, together with cost of medical attention, if such medical attention be made necessary by reason of such injury or disease; provided, however, that members of the State Police who by reason of permanent injuries received in the performance of their duties and who for that reason have retired prior to January 1, 1972, shall as of that date receive an amount equal to 3/4 of the monthly salary provided under this chapter for an active duty officer of an equivalent rank in accordance with § 8326 of this title. Thereafter, pensions of State Police retired by reason of permanent injuries received in the performance of their duties shall not be recomputed based on the salaries of active duty State Police; provided further, however, that members of the State Police retired by reason of injury not received in the performance of their duties or disease prior to January 1, 1972, shall as of that date receive an amount equal to one half of the monthly salary provided under this chapter for an active duty officer of equivalent rank in accordance with § 8326 of this title. Thereafter, pensions of State Police members retired by reason of injury or disease shall not be recomputed based on the salaries of active duty State Police; provided further, however, that as of July 1, 1974, the monthly amount payable to State Police retired by reason of permanent injuries received in the performance of their duties and by State Police retired by reason of other injury or disease shall increase on July 1 of each year by any cumulative percentage increase in the national consumer price index average of the previous calendar year, plus the aggregated cumulative percentage change in the national consumer price index average of the previous consecutive years in which an increase was not granted. A cumulative percentage decrease in any calendar year shall not result in any reduction in the pension rates.

Any member who is entitled to a pension equal to 3/4 of the member's salary pursuant to this section shall be examined by at least 2 competent physicians employed by the Department of Health and Social Services every 6 months in order to determine the continuing eligibility of said member. Should such pensioner reside without the territorial limits of the State, the pensioner shall submit certificates of examination by 2 competent physicians approved by the Department of Health and Human Services or comparable agency of the state of residence for the foregoing purpose.

(41 Del. Laws, c. 262 § 4; 11 Del. C. 1953 § 8324; 54 Del. Laws, c. 89 § 2; 54 Del. Laws, c. 230; 57 Del. Laws, c. 741 § 41C; 58 Del. Laws, c. 332 § 4; 70 Del. Laws, c. 149 § 7; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 384 §§ 3, 4.)

§ 8325 Eligibility of dependents.

The surviving spouse or minor children or sole dependent parent of any member of the State Police, who shall have heretofore or shall hereafter die after having been retired or after having been eligible to retire under this subchapter, or who shall have heretofore or shall hereafter lose life in the performance of the member's duties, or when death results from injury received in the performance of the member's duties, shall receive a pension equal to three fourths of the salary of such member at the time of death. Such pension to such minor children shall be discontinued when the youngest dependent child shall cease to be a dependent as defined by § 8351(4) of this title; provided, however, that anyone entitled to receive a pension under this section prior to January 1, 1972, shall as of that date receive an amount equal to three fourths of the monthly payment to which the decedent would have been entitled under this chapter had the death occurred on or after January 1, 1972. Thereafter, pensions of those eligible under this section shall not be recomputed based on the salaries of active duty

State Police; provided further, however, that as of July 1, 1974, the monthly amount payable to those eligible under this section shall increase on July 1 of each year by any cumulative percentage increase in the national consumer price index average of the previous calendar year, plus the aggregated cumulative percentage change in the national consumer price index average of the previous consecutive years in which an increase was not granted. A cumulative percentage decrease in any calendar year shall not result in any reduction in the pension rates. Any pension to a surviving spouse that has been discontinued as a result of remarriage shall be reinstated as of July 1, 2002, at the rate that the surviving spouse would have been receiving if the surviving spouse's pension had not been discontinued.

(41 Del. Laws, c. 262 § 5; 11 Del. C. 1953 § 8325; 50 Del. Laws, c. 491 § 1; 54 Del. Laws, c. 89 § 3; 54 Del. Laws, c. 129; 58 Del. Laws, c. 332 § 5; 67 Del. Laws, c. 20 §§ 1, 2; 69 Del. Laws, c. 154 §§ 1, 3; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 384 §§ 5, 6; 73 Del. Laws, c. 396 § 1.)

§ 8326 Nonoccupational disability pension; eligibility.

Any present or future member of the State Police who shall become disabled due to any nonoccupational injury or disease, or who shall die while an active member of the State Police and after having served as an active member of the State Police for at least one third of the required number of years for regular pension, shall be eligible for a nonoccupational disability pension. When a member of the State Police shall desire to retire by reason of a nonoccupational injury or disease that causes the member to become disabled, the member shall make application in writing, and, in the case of death, the surviving spouse, minor children or dependent parent shall make application in writing to the Board of Pension Trustees for such pension. Whereupon, the Board of Pension Trustees shall call to its assistance the aid of a physician or surgeon representing the Board of Pension Trustees, and the member may also call to the member's aid a physician or surgeon. The Board of Pension Trustees shall determine by resolution, passed by at least a majority of the members of the Board of Pension Trustees, whether such member is entitled to the benefits of this subchapter, and if so determined, such member shall be retired upon a pension equal to one half of the member's salary at the time of retirement, and in the case of death, the following persons shall receive a pension equal to one half of the salary of the member in the following order of preference: surviving spouse, children, dependent parent. Such pension to such children shall be discontinued when the youngest living dependent child shall cease to be a dependent as defined by § 8351(4) of this title. Nothing in this section shall be construed as to conflict with any other section contained within this subchapter; provided, however, that any retired police member entitled to receive a pension under this section prior to January 1, 1972, shall, as of that date, receive an amount equal to one half the monthly salary provided under this chapter for an active duty officer of the same rank as that held by the retired State Police member. Thereafter, pensions of retired State Police members eligible to receive such pensions under this section shall not be recomputed based on the salaries of active duty member of the State Police. A dependent entitled to receive a payment under this section prior to January 1, 1972, shall as of that date receive an amount equal to one half the monthly salary provided under this chapter to an active duty officer of the same rank as the decedent through whom the dependent claims. Thereafter, pensions of dependents eligible to receive payments under this section shall not be recomputed based on the salaries of active duty State Police members. Provided further, that as of July 1, 1974, the monthly amount payable to those eligible to receive payments under this section shall increase on July 1 of each year by any cumulative percentage increase in the national consumer price index average of the previous calendar year, plus the aggregated cumulative percentage change in the national consumer price index average of the previous consecutive years in which an increase was not granted. A cumulative percentage decrease in any calendar year shall not result in any reduction in the pension rates.

(11 Del. C. 1953 § 8326; 52 Del. Laws, c. 128; 54 Del. Laws, c. 89 § 4; 57 Del. Laws, c. 741 § 41C; 58 Del. Laws, c. 332 § 6; 67 Del. Laws, c. 20 § 3; 69 Del. Laws, c. 154 §§ 3, 4; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 384 §§ 7, 8.)

§ 8327 Limitations on pension benefits.

Sections 8323, 8324 and 8326 of this title shall apply to and be for the benefit of any member of the State Police retired as of June 28, 1963, or at any time thereafter, or to the surviving spouse, minor children or sole dependent parent, as the case may be, and such pension payments, as adjusted from time to time as provided in this subchapter, shall continue so long as any person is entitled thereto by virtue of this subchapter.

(11 Del. C. 1953 § ?8327; 54 Del. Laws, c. 89 § 5; 56 Del. Laws, c. 115; 69 Del. Laws, c. 154 § 3; 70 Del. Laws, c. 186 § 1.)

§ 8328 Adjustment of benefits.

(a) On and after July 1, 1972, no pension which has been in effect for 3 years shall be subject to adjustment. This provision shall not apply to adjustments of pensions required to implement subsection (b) of this section.

(b) Effective September 1, 1972, the amount of any pension in effect on July 1, 1969, shall be the greater of: (1) The monthly pension rate paid in July, 1969, or (2) the recalculated amount determined as a result of audits made between May, 1971, and June 30, 1972, inclusive of any increases provided between July 1, 1969, and June 30, 1972, provided that the minimum pension payable for any month after July, 1969, shall be the monthly pension rate paid in July, 1969.

(c) Any pension overpayments discovered as a result of audits made between May, 1971, and June 30, 1972, shall not be subject to recovery.

(11 Del. C. 1953 § 8328; 58 Del. Laws, c. 527 § 2.)

§ 8329 Withdrawal of pension contributions.

Upon the withdrawal from service of a member who is not eligible for a service or disability pension, the accumulated contributions with

interest shall be paid to the member. This section shall be applied retrospectively to members who withdrew from service on or after July 1, 1976.

(62 Del. Laws, c. 397 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8330 Employer pickup of employee contributions.

(a) Each participating employer, pursuant to the provisions of § 414(h)(2) of the United States Internal Revenue Code [26 U.S.C. § 414(h)(2)], shall pick up and pay the contributions which would otherwise be payable by the members under § 8322 of this title. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the member's compensation.

(b) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each member's compensation equal to the amount of the member's contributions picked up by the employer. This deduction, however, shall not reduce the member's compensation for purposes of computing benefits under the retirement system pursuant to this chapter.

(c) Member contributions shall be credited to a separate account within the member's individual account so that the amount contributed prior to the effective date for the pickup of member contributions may be distinguished from the amounts contributed on or after the effective date.

(d) The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

(68 Del. Laws, c. 358 § 4.)

§ 8331 Burial benefits.

(a) Upon the death of an individual receiving a pension under this subchapter, a benefit will be paid from the Fund in the same manner as benefits provided under § 5546 of Title 29.

(b) The benefit granted under this section shall not be construed as a contractual obligation of the State or of the Pension Fund and may be revised or terminated by an Act of the General Assembly.

(70 Del. Laws, c. 77 § 1; 76 Del. Laws, c. 80 § 90.)

§ 8332 Payment of benefits.

Benefits shall be due and payable under this chapter only to the extent provided in this chapter, and neither the State nor the Closed State Police Retirement Fund shall be liable for any amount in excess of such sums.

(71 Del. Laws, c. 132 § 85.)

§ 8333 Attachment and assignment of benefits.

Except for orders of the Delaware Family Court for a sum certain payable on a periodic basis, the benefits provided by this chapter shall not be subject to attachment or execution and shall be payable only to the beneficiary designated and shall not be subject to assignment or transfer.

(71 Del. Laws, c. 337 § 6.)

§ 8334 Establishment of Fund.

There shall be established a State Police Retirement Fund, hereinafter referred to as "Fund," to which state appropriations and other employer contributions shall be deposited monthly and to which employee contributions shall be deposited upon deduction from the employee's paycheck and to which earnings on investments, any other contributions, gifts, donations, grants, refunds and reimbursements shall be deposited upon receipt and from which benefits shall be paid and fees and expenses authorized by the Board shall be paid. Subject to Internal Revenue Code § 401(a)(24) [26 U.S.C. § 401(a)(24)], the assets of the Fund will be commingled in the Delaware Public Employees' Retirement System as provided for by § 8308 of this title. The assets of the Fund are held in trust and may not be used for or diverted to any purpose other than for the exclusive benefit of the employees and their beneficiaries.

(76 Del. Laws, c. 279 § 9.)

Subchapter III

Service, Disability and Survivor's Pensions

§ 8351 Definitions.

As used in this subchapter:

(1) "Board" shall mean the Board of Pension Trustees established by § 8308 of Title 29.

(2) "Compensation" shall mean all salary or wages, excluding overtime payments and special payments for extra duties, payable to a member for service.

(3) "Credited service" shall mean, for any member:

a. Service as an employee; and

b. Equalized state service if the member elects a unified pension.

(4) "Dependent" shall mean a dependent child or dependent parent. A dependent child is a person who is unmarried and either:

a. Has not attained age 18; or

b. Has attained age 18 but not age 22 and is attending school on a full-time basis; or

c. Has attained age 18 and is permanently disabled as the result of a disability which began before the child attained age 18.

A dependent parent is the parent of a member who was receiving at least one half of the parent's support from the member at the time of the member's death.

(5) "Employee" shall mean an individual who is first employed by the State on or after July 1, 1980, on a full-time basis pursuant to an appointment as a State Police officer, as provided in § 8301 of this title.

(6) "Equalized state service" shall mean:

a. Years of service as an "employee" as defined in § 5501(f)(1) and (3) of Title 29, multiplied by 25/30, provided that the individual is not accruing nor collecting benefits under Chapter 55 of Title 29. It shall not include service for which the employee has received the withdrawal benefit provided by § 5530 of Title 29, or the refund provided by § 5523(b) of Title 29, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

b. Years of service as an "employee" as defined in § 5501(f)(1) and (3) of Title 29, multiplied by 25/30, provided that the individual is not accruing nor collecting benefits under Chapter 55 of Title 29. It shall not include service for which the employee has received the withdrawal benefit provided by § 5530 of Title 29, or the refund provided by § 5523(b) of Title 29, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

c. Years of service as an "employee" as defined in § 8801(5) of this title multiplied by 25/25, provided that the individual is not accruing nor collecting benefits under Chapter 88 of this title. It shall not include service for which the employee has received the withdrawal benefit provided by § 8824 of this title, or the refund provided by § 8814(d) of this title, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

(7) "Final average compensation" shall mean 1/36 of the compensation paid to an employee during any period of 36 consecutive months or any 36 months comprised of 3 periods of 12 consecutive months in the years of credited service in which the compensation was highest.

(8) "Fund" shall mean the Fund established by § 8393 of this title.

(9) "Inactive member" shall mean a member who:

a. Has terminated service;

b. Is not eligible to begin receiving a service or disability pension; and

c. Has neither applied for nor received a refund of the contributions.

(10) "Member" shall mean a person who is first hired as an employee on or after July 1, 1980, and whose compensation is not subject to the federal old-age, survivors and disability insurance tax.

(11) "Normal retirement date" shall mean the date at which a member is eligible for a service pension pursuant to § 8363(a) of this title. For a member who has received a disability benefit, the period of disability plus credited service, not to exceed 25 years, shall be used in determining normal retirement date.

(12) "Partial disability" shall mean a medically determined physical or mental impairment which renders the member unable to function as a State Police officer and which is reasonably expected to last at least 12 months.

(13) "Primary survivor" shall mean a person in the following order of priority, unless the priority is changed by the member on a form prescribed by the Board and filed with the Board at the time of the member's death:

a. The surviving spouse; or

b. If there is no eligible surviving spouse, a dependent child (or with the survivor's pension divided among them in equal shares, all such children, including any resulting from a pregnancy prior to the member's death); or

c. If there is no eligible surviving spouse, or eligible dependent child, a dependent parent (or, with the survivor's pension divided between them in equal shares, both such parents).

(14) "Retired member" shall mean a member who has terminated service, other than an inactive member, who is eligible to receive a service or disability pension under this subchapter.

(15) "Total disability" shall mean a medically determined physical or mental impairment which renders the member totally unable to work in any occupation for which the member is reasonably suited by training or experience, which is reasonably expected to last at least 12 months.

(62 Del. Laws, c. 361 § 1; 67 Del. Laws, c. 86 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 167 § 1; 79 Del. Laws, c. 140 § 1; 79 Del. Laws, c. 174 § 1.)

§ 8352 Employment of pensioners.

An individual shall not receive a pension under this subchapter for any month during which the individual is an employee, as defined in § 8351(5) of this title or § 5501 of Title 29, unless the individual is:

(1) An official elected by popular vote at a regular or special election; or
(2) An official appointed by the Governor; or
(3) A registration or election official, or a juror; or
(4) Receiving an ordinary service, disability or survivor's pension.

The employment, except employment as an elected official, may not be used for further retirement benefits.

(62 Del. Laws, c. 361 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 142 §§ 1, 2.)

§ 8353 Attachment and assignment of benefits.

Except for orders of the Delaware Family Court for a sum certain payable on a periodic basis, the benefits provided by this chapter shall not be subject to attachment or execution and shall be payable only to the beneficiary designated and shall not be subject to assignment or transfer.

(62 Del. Laws, c. 361 § 1; 71 Del. Laws, c. 337 § 1.)

§§ 8354 -8360. [Reserved.]

§ 8361 Mandatory retirement.

A member may retire after accumulating 20 years of credited service as defined in § 8351(3)a. of this title, or shall be retired upon reaching the age of 55 years.

(62 Del. Laws, c. 361 § 1; 66 Del. Laws, c. 192 § 2; 72 Del. Laws, c. 483 § 2.)

§ 8362 Retirement option.

When the member applies for a pension, the member shall choose either a unified pension or an ordinary pension.

(62 Del. Laws, c. 361 § 1; 67 Del. Laws, c. 86 § 9; 70 Del. Laws, c. 186 § 1.)

§ 8363 Eligibility for service pension.

(a) A member shall become eligible to receive a service pension, after the member has terminated employment, beginning with the month when:

(1) The member has 10 years of credited service, and has attained age 62; or
(2) The member's age plus credited service (but not less than 10 years) equals 75; or
(3) The member has 10 years of service and is retired due to age, pursuant to § 8361 of this title; or
(4) The member has 20 years of credited service.

(b) An inactive member with a vested right to a service pension shall become eligible to receive such pension, computed in accordance with this subchapter in effect when the member ceased to be an employee, beginning with the first month after attainment of age 62.

(c) For purposes of this section, credited service shall include any period during which a member is receiving a disability pension as provided by this subchapter.

(d) Any member of the Delaware River and Bay Authority Police Department, the University of Delaware Police Department or a municipal police department not covered under § 8351(6) of this title who is subsequently employed by the Delaware State Police may receive credit for such previous service upon payment to the Fund, on or before the date of issuance of the individual's first benefit check, of a single lump sum payment equal to the actuarial value of the pension benefits to be derived from such service credits compiled on the basis of actuarial assumptions approved by the Board and the individual's attained age and final average compensation.

(62 Del. Laws, c. 361 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 483 § 1; 73 Del. Laws, c. 373 § 1; 74 Del. Laws, c. 412 § 1.)

§ 8364 Vested rights; cancellation of service credits.

(a) A member who has 10 years of credited service shall have a vested right to a service pension.

(b) If a member who has less than 10 years of credited service ceases to be an employee, the member's service credits to the date of termination shall be cancelled unless:

(1) The member again becomes an employee within 4 months after such cessation of employment; or
(2) The member subsequently acquires 5 years of credited service; or
(3) The member has joined the state employees' pension system; and provided that if the member has withdrawn contributions the member repays with interest at a rate determined by the Board.

(c) For purposes of this section, credited service shall include any period during which a member is receiving a disability pension as provided by this subchapter.

(d) A former employee's vested right shall be forfeited upon application for a refund of accumulated contributions.

(62 Del. Laws, c. 361 § 1; 67 Del. Laws, c. 86 § 12; 70 Del. Laws, c. 186 § 1.)

§ 8365 Eligibility for disability pension.

(a) A member who suffers a partial or total disability resulting from an individual and specific act the type of which would normally occur only while employed as a police officer shall be eligible for a duty-connected disability pension. If such act involves a traumatic

event which directly causes an immediate cardiovascular condition which results in partial or total disability, the member shall be eligible for a partial or total duty-connected disability pension.

(b) A member with 5 years of credited service who suffers a partial or total disability and who is not eligible for a duty-connected disability pension shall be eligible for an ordinary partial or total disability pension.

(c) The determination of disability and its cause shall be made by the Board after receiving the recommendation of its medical committee.

(d) For the purposes of this section, whether a member is employed as an on-duty state trooper, as a municipal officer pursuant to a contract with the State, or on an authorized special duty function, the following duties shall be presumed to occur only while employed as a police officer, without limiting the scope of acts embraced by subsection (a) of this section:

(1) Engaging in a high-speed chase;

(2) Effecting an arrest (criminal or traffic);

(3) Pursuing a suspect (criminal or traffic);

(4) Patrolling (criminal or traffic);

(5) Directing traffic or removing traffic hazards;

(6) Assisting a civilian, for example, a motorist alongside of the highway or rendering aid in a life-threatening situation (fire, drowning);

(7) In-service training other than physical fitness;

(8) Performing police functions at a crime scene or in connection with the investigation thereof; or

(9) Being assaulted whether by a suspect, detainee, arrestee, prisoner or mental patient.

(62 Del. Laws, c. 361 § 1; 70 Del. Laws, c. 374 § 1.)

§ 8366 Payment of service pension.

Service pension payments shall be made to a retired member for each month beginning with the month in which the member becomes eligible to receive such pension and ending with the month in which the member dies.

(62 Del. Laws, c. 361 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8367 Payment of disability pension.

(a) Disability pension payments shall be made to a member for each month beginning with the month in which the member becomes eligible to receive such pension and ending with the month in which the member ceases to be eligible or dies.

(b) Any member receiving a disability pension who has not reached normal retirement date shall report to the Board annually, in a form prescribed by the Board, total earnings from any gainful occupation or business and worker's compensation benefits in the preceding calendar year. The excess of such earnings and/or such benefits over the current base pay of the rank held at the time of disability shall be deducted from the disability pension beginning 90 days following the day the report is due, in a manner determined by the Board. If any member received a disability pension for less than 12 months in the calendar year for which earnings are reported, the deduction, if any, shall be determined on a pro rata basis.

(c) If a member who is initially determined to be totally disabled recovers, yet is still partially disabled, the total disability pension shall be reduced to a partial disability pension for as long as the member shall remain partially disabled.

(d) If a member who is disabled recovers and is no longer totally or partially disabled, the disability pension shall be discontinued unless:

(1) The member has reached normal retirement date; or

(2) In the case of a duty-connected disability, the member is not offered employment by the State in a position for which the member is suited by training and experience.

(e) A member aggrieved by the reclassification or termination of disability pension pursuant to subsection (c) or (d) of this section may appeal such decision to the Superior Court within 30 days of the day the decision is mailed. The appeal shall be on the record, without a trial de novo. The Court may remand the case to the Board for further proceedings on the record if the Court determines that the record is insufficient for review. When factual determinations are at issue, the Court's review, in the absence of actual fraud, shall be limited to a determination of whether the Board's decision is supported by substantial evidence in the record.

(62 Del. Laws, c. 361 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8368 Amount of ordinary service pension [For application of this section, see 79 Del. Laws, c. 315, § 10]

(a) The amount of the monthly ordinary service pension payable to a retired member shall be the sum of 2.5% of final average compensation multiplied by years of service up to 20 years inclusive, plus 3.5% of final average compensation multiplied by years of service above 20 years.

(b) Notwithstanding provisions of this chapter to the contrary, a member may elect to have his or her service or disability pension computed under this chapter reduced by 2% thereby providing a survivor's pension equal to 2/3 of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(c) Notwithstanding provisions of this chapter to the contrary, a member may elect to have his or her service or disability pension computed under this chapter reduced by 3% thereby providing a survivor's pension equal to 75% of such reduced amount to the employee's

eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(d) Notwithstanding provisions of this chapter to the contrary, a member may elect to have his or her service or disability pension computed under this chapter reduced by 6% thereby providing a survivor's pension equal to 100% of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(62 Del. Laws, c. 361 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 483 § 4; 79 Del. Laws, c. 315 § 7.)

§ 8369 Amount of unified service, disability or survivor pension.

The amount of the unified pension payable to an employee, former employee or survivor shall be the sum of:

(1) The amount computed according to subchapter III of this chapter, exclusive of service credited under § 8351(6) of this title; plus

(2) The sum of the amounts computed, based on credited service as an employee, according to subchapter II of Chapter 55 of Title 29; subchapter II of Chapter 55A of Title 29; and Chapter 88 of this title.

(62 Del. Laws, c. 361 § 1; 67 Del. Laws, c. 86 § 7.)

§ 8370 Amount of duty-connected disability pension.

(a) The duty-connected total disability pension shall be 75% of compensation plus 10% of compensation for each dependent during the period of dependency, not to exceed a total of 25% of compensation for all dependents.

(b) The duty-connected partial disability pension shall be computed in the same manner as the service pension based on credited service accrued to the date of disability, subject to a minimum of 50% of compensation.

(c) Medical costs made necessary by reason of duty-connected disability shall be paid by the Fund.

(62 Del. Laws, c. 361 § 1.)

§ 8371 Amount of ordinary disability pension.

The ordinary disability pension shall be computed in the same manner as the service pension based on credited service accrued to the date of disability, subject to the following:

(1) In the case of total disability, the minimum pension shall be 50% of compensation plus 5% of compensation for each dependent during the period of dependency, not to exceed a total of 20% of compensation for all dependents; and

(2) In the case of partial disability, the minimum pension shall be 30% of compensation.

(62 Del. Laws, c. 361 § 1.)

§ 8372 Ordinary survivor's pension [For application of this section, see 79 Del. Laws, c. 315, § 10]

(a) Upon the death of a member in service, a monthly survivor's pension shall be payable to the primary survivor equal to 1/2 of the member's compensation.

(b) Upon the death of a member in service, whose death occurred in the line of duty, a monthly survivor's pension shall be payable to the primary survivor equal to three-quarters of the member's compensation.

(c) Upon the death of a retired member, a monthly survivor's pension shall be payable to the primary survivor and surviving dependents equal to the greater of: (i) 1/2 of such service or disability pension; (ii) if such pension was computed under the provisions of § 8368(b) of this title, 2/3 of such service or disability pension; (iii) if such pension was computed under the provisions of § 8368(c) of this title, 75% of such service or disability pension; or (iv) if such pension was computed under the provisions of § 8368(d) of this title, 100% of such service or disability pension. If the primary survivor is the surviving spouse, such person must have been married to the deceased member:

(1) Prior to retirement; or

(2) For at least 1 year before the date of death, unless the death was the result of an accident.

(d) A survivor's pension shall begin with the month following the month in which the member or retired member dies. If payable to a surviving spouse who dies, it shall become payable in the following month to the next primary survivor as defined in § 8351(13) of this title or cease with that month in the absence of eligible dependents. If payable to a child who dies or fails to meet the conditions of eligibility in § 8351(4) of this title it shall become payable in the following month to a dependent parent or cease with that month in the absence of eligible parents. If payable to a parent, it shall cease with the month in which the parent dies.

(62 Del. Laws, c. 361 § 1; 67 Del. Laws, c. 86 § 16; 69 Del. Laws, c. 154 § 2; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 100 §§ 1, 2; 79 Del. Laws, c. 315 § 8.)

§ 8373 Death benefit.

Upon the death of a member, inactive member, retired member or individual receiving a survivor's pension, there shall be paid to the designated beneficiary or beneficiaries or, in the absence of a designated beneficiary, to the estate of the member, inactive member, retired member or survivor, a lump sum equal to the excess, if any, of the accumulated member contributions with interest over the aggregate of all pension payments made.

(62 Del. Laws, c. 361 § 1.)

§ 8374 Withdrawal benefit.

(a) The accumulated contributions with interest of a member who is neither eligible for a service nor disability pension, nor has a vested right to a service pension, shall be refunded upon withdrawal from service. There shall be a rebuttable presumption that a former member who fails to apply for a withdrawal benefit within 5 years after the date of withdrawal has waived the right to such benefit.

(b) If a member has a vested right to a service pension and withdraws from service and is not immediately eligible for a service or disability benefit, the member may request refund of accumulated contributions with interest. Refund of such contributions shall extinguish all rights to benefits under this subchapter.

(62 Del. Laws, c. 361 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8375 Adjustment of benefits.

(a) A pension payable under this subchapter shall be adjusted no less liberally than adjustments made for pensions payable under the State Employees' Pension Plan, taking into account adjustments to Social Security benefits payable to state employees.

(b) Any reduction in a member's salary, mandated as part of the FY 2010 Annual Appropriations Act [77 Del. Laws, c. 84] and implemented during FY 2010, shall not be used when computing an employee's final average compensation. Rather, the member's base salary as of June 30, 2009, shall be used in calculating the employee's final average compensation as defined in § 8351(7) of this title.

(c) If the final average compensation of an employee has been reduced because of a leave of absence resulting from presidential determinations to augment active forces, such employee shall have their final average compensation adjusted by their amount of military compensation. This adjustment will be no greater then what the employee would have received had they remained in employment for the period of leave. The employee will contribute 7% of the amount that was adjusted.

(62 Del. Laws, c. 361 § 1; 77 Del. Laws, c. 84 § 87; 77 Del. Laws, c. 167 § 2.)

§ 8376 Application for benefits.

(a) A service pension, disability pension, survivor's pension, death benefit or withdrawal benefit shall be paid only upon the filing of an application in a form prescribed by the Board. A monthly benefit shall not be payable for any month earlier than the second month preceding the date on which the application for such benefit is filed.

(b) The Board may require any member, inactive member, retired member or eligible survivor to furnish such information as may be required for the determination of benefits under this subchapter, or to authorize the Board to procure such information. The Board may withhold payment of any pension under this subchapter, whenever the determination of such pension is dependent upon such information and the member, inactive member, retired member or eligible survivor does not cooperate in the furnishing or procuring thereof.

(c) A service pension, disability pension, or survivor's pension applied for under this act may be paid into a Miller Trust Bank account, pursuant to the creation of an irrevocable income assignment trust ("Miller Trust"), established on behalf of an eligible pensioner or survivor covered under this chapter who is a person with disabilities, so long as the Miller Trust is established consistent with the laws of the State of Delaware, the laws of the United States and in accordance with the rules and regulations of the local and federal agencies responsible for administering assistance programs for persons with disabilities.

(62 Del. Laws, c. 361 § 1; 77 Del. Laws, c. 408 § 5.)

§ 8377 Dual membership prohibited.

No member covered by this subchapter may be covered by subchapter II of this chapter.

(62 Del. Laws, c. 361 § 1.)

§§ 8378 -8390. [Reserved.]

§ 8391 Member contributions.

Effective January 1, 2001, member contributions to the Fund shall be 7% of monthly compensation. Effective July 1, 1997, employee pension contributions made pursuant to this section shall not be subject to adjustment or recovery after the expiration of 3 full calendar years from December 31 of the year in which the contributions were made unless no contributions were paid during that calendar year.

(62 Del. Laws, c. 361 § 1; 71 Del. Laws, c. 165 § 7; 72 Del. Laws, c. 483 § 3.)

§ 8392 Actuarial valuations and appropriations.

(a) The actuary shall prepare an actuarial valuation of the assets and liabilities of the funds as of June 30, each year. On the basis of reasonable actuarial assumptions and tables approved by the Board, the actuary shall determine the normal cost required to meet the actuarial cost of current service and the unfunded actuarial accrued liability.

(b) The State's appropriation to the funds for fiscal year 2008, and for each fiscal year thereafter, shall be the percentage of covered payroll approved by the Board on the basis of the most recent actuarial valuation, and shall equal the sum of the normal cost plus the payment required to implement the provisions of subsection (c) of this section plus the payment required to amortize the unfunded actuarial accrued liability using an open amortization period of 20 years. The amortization payment shall be an amount computed as a level percentage of the prospective total covered payroll over the remainder of the amortization periods, with such prospective total covered payroll to be determined on the basis of a growth rate, as determined by the Board, compounded annually. Except as provided in subsection (c) of this section, all funds appropriated pursuant to this subsection shall be deposited into the Fund established by § 8393 of this title.

(c) In order to provide a fund for postretirement increases, the State shall include in its annual appropriation payments equal to 2.33% of covered payroll, subject to the limitations contained in § 5548(a)(2) of Title 29. Beginning with the fiscal year 94 budget, .70% of covered payroll shall be appropriated; in fiscal year 95, 1.11% of covered payroll shall be appropriated; in fiscal year 96, 1.52% of covered payroll shall be appropriated; in fiscal year 97, 1.93% of covered payroll shall be appropriated; in fiscal year 98 and each fiscal year thereafter 2.33% of covered payroll shall be appropriated. Funds appropriated to implement this subsection shall be deposited into the Post Retirement Fund established by § 5548 of Title 29.

(69 Del. Laws, c. 104 § 3; 76 Del. Laws, c. 80 § 68; 78 Del. Laws, c. 116 § 6.)

§ 8393 Establishment of Fund.

There shall be established a State Police Retirement Fund, hereinafter referred to as the "Fund," separate and distinct from the Fund established under subchapter II of this chapter, to which state appropriations and other employer contributions shall be deposited monthly, and to which member contributions shall be deposited upon deduction from the member's paycheck, and to which earnings on investments, refunds and reimbursements shall be deposited upon receipt, and from which benefits shall be paid and fees and expenses authorized by the Board shall be paid. Subject to Internal Revenue Code § 401(a)(24) [26 U.S.C. § 401(a)(24)], the assets of the Fund will be commingled in the Delaware Public Employees' Retirement System as provided for by § 8308 of this title. The assets of the Fund are held in trust and may not be used for or diverted to any purpose other than for the exclusive benefit of the employees and their beneficiaries.

(62 Del. Laws, c. 361 § 1; 71 Del. Laws, c. 121 § 5; 76 Del. Laws, c. 279 § 10.)

§ 8394 Employer pickup of member contributions.

(a) Each participating employer, pursuant to the provisions of § 414(h)(2) of the United States Internal Revenue Code [26 U.S.C. § 414(h)(2)], shall pick up and pay the contributions which would otherwise be payable by the members under § 8391 of this title. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the member's compensation.

(b) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each member's compensation equal to the amount of the member's contributions picked up by the employer. This deduction, however, shall not reduce the member's compensation for purposes of computing benefits under the retirement system pursuant to this chapter.

(c) Member contributions shall be credited to a separate account within the member's individual account so that the amount contributed prior to the effective date for the pickup of member contributions may be distinguished from the amounts contributed on or after the effective date.

(d) The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

(68 Del. Laws, c. 358 § 5.)

§ 8395 Burial benefits.

(a) Upon the death of an individual receiving a pension under this subchapter, a benefit will be paid from the Fund in the same manner as benefits provided under § 5546 of Title 29.

(b) The benefit granted under this section shall not be construed as a contractual obligation of the State or of the Pension Fund and may be revised or terminated by an act of the General Assembly.

(70 Del. Laws, c. 77 § 2; 76 Del. Laws, c. 80 § 91.)

§ 8396 Payment of benefits.

Benefits shall be due and payable under this chapter only to the extent provided in this chapter, and neither the State nor the New State Police Retirement Fund shall be liable for any amount in excess of such sums.

(71 Del. Laws, c. 132 § 86.)

§ 8397 Other post-employment benefits appropriations.

Funds appropriated to implement this section shall be deposited into the OPEB Fund as established by § 5281 of Title 29.

(76 Del. Laws, c. 70 § 9.)

Part V
Law-Enforcement Administration
Chapter 84
DELAWARE POLICE TRAINING PROGRAM

§ 8401 Definitions.

As used in this chapter:

(1) "Approved school" means a school authorized by the Council to provide a mandatory training and education for police officers as prescribed in this chapter.

(2) "Articulation agreement" means a written agreement for the transfer of academic credit.

(3) "Council" means the Council on Police Training.

(4) "Permanent appointment" means appointment by the authority of any municipality or governmental unit in or of this State or the University of Delaware to permanent status as a police officer.

(5) "Police officer" means a sworn member of a police force or other law-enforcement agency of this State or of any county or municipality who is responsible for the prevention and the detection of crime and the enforcement of laws of this State or other governmental units within the State.

a. For purposes of this chapter this term shall include permanent full-time law-enforcement officers of the Department of Natural Resources and Environmental Control, state fire marshals, municipal fire marshals who are graduates of a Delaware Police Academy which is accredited/authorized by the Council on Police Training, sworn members of the City of Wilmington Fire Department who have graduated from a Delaware Police Academy which is authorized/accredited by the Council on Police Training, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, agents of the State Division of Alcohol and Tobacco Enforcement, officers or agents of the State Police Drug Diversion Unit, officers or agents of the Delaware Police Sex Offender Task Force, agents employed by a state, county or municipal law-enforcement agency engaged in monitoring sex offenders, state detective or special investigator of the Department of Justice and officers of the University of Delaware Police Division, Delaware State University Police Department.

b. For purposes of this chapter this term shall not include the following:

1. A sheriff, regular deputy sheriff or constable.

2. A security force for a state agency or other governmental unit; or, a seasonal, temporary or part-time law-enforcement officer of the Department of Natural Resources and Environmental Control.

3. A person holding police power by virtue of occupying any other position or office.

4. An animal welfare officer of the Office of Animal Welfare or the Department of Agriculture.

(6) "Seasonal appointment" means appointment for less than 6 months each year but more than 4 weeks for police duties necessitated by seasonal demands.

(11 Del. C. 1953 § 8401; 57 Del. Laws, c. 261; 57 Del. Laws, c. 670 § 1A; 63 Del. Laws, c. 31 § 1; 68 Del. Laws, c. 172 §§ 1, 2; 68 Del. Laws, c. 330 § 1; 72 Del. Laws, c. 367 § 2; 72 Del. Laws, c. 371 § 2; 72 Del. Laws, c. 379 § 3; 73 Del. Laws, c. 195 § 3[2]; 73 Del. Laws, c. 249 § 2; 74 Del. Laws, c. 250 § 2; 74 Del. Laws, c. 331 § 1; 76 Del. Laws, c. 43 § 2; 76 Del. Laws, c. 163 § 1; 78 Del. Laws, c. 155 § 4; 79 Del. Laws, c. 200 § 1; 80 Del. Laws, c. 200 § 5.)

§ 8402 Members of Council.

(a) The Council shall be composed of 12 members.

(b) The Council shall be composed of: a chairperson to be appointed by and to serve at the pleasure of the Governor; the Attorney General; the Superintendent of the Delaware State Police; the Chief of the City of Wilmington Police; the Chief of the New Castle County Police Department; the Chief of the City of Dover Police Department; the Chief of the City of Newark Police Department; the Secretary of Education; the President of the Delaware League of Local Governments; the mayor or police commissioner of an incorporated municipality in Kent County, to be appointed by the Governor; the mayor or police commissioner of an incorporated municipality in Sussex County, to be appointed by the Governor; the Chairperson of the Delaware Police Chiefs' Council, Inc. The Chairperson shall have had substantial practical experience in the field of law enforcement.

(11 Del. C. 1953 § 8403; 57 Del. Laws, c. 261; 57 Del. Laws, c. 670 §§ 1B, 1C; 63 Del. Laws, c. 31 § 1; 65 Del. Laws, c. 492 §§ 1, 2; 68 Del. Laws, c. 49 §§ 1, 2; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 65 § 9.)

§ 8403 Organization of Council.

(a) A Vice-Chairperson and a Secretary shall be elected from among the members of the Council. The Council shall hold no less than 2 regular meetings each year and may meet at such other times as it may determine. The Chairperson shall fix the time and place of such meetings in the Commissioner's discretion, but upon written request of any 3 members, the Chairperson shall call a meeting pursuant to the terms of such request. Seven members shall constitute a quorum. Each member of the Council may have a proxy to represent the member at Council meetings.

(b) Notwithstanding any provision of law, Council membership shall not disqualify any member from holding any other public or private employment or constitute a forfeit of such office.

(c) Council members shall receive no compensation for their services but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

(11 Del. C. 1953 § 8404; 57 Del. Laws, c. 261; 57 Del. Laws, c. 670 § 1C; 63 Del. Laws, c. 31 § 1; 65 Del. Laws, c. 492 § 3; 68 Del. Laws, c. 49 § 3; 70 Del. Laws, c. 186 § 1.)

§ 8404 Powers and duties.

(a) The Council may:

(1) Establish minimum qualifications for applicants as police officers;

(2) Establish minimum educational and training qualifications requisite to permanent appointment as a police officer;

(3) Issue certification of completion of police officer training prescribed under this chapter;

(4) Suspend or revoke certification in the event that an individual:

a. Obtained a certificate by fraud or deceit;

b. Has failed to successfully complete any in-service or advanced training required by the Council;

c. Has been convicted of a felony, or of a misdemeanor involving moral turpitude, or of any local, state or federal criminal offense involving, but not limited to, theft, fraud, or violation of the public trust, or of any drug law;

d. Has been found, after examination by a licensed psychologist or psychiatrist, to be psychologically or emotionally unfit to perform the duties or exercise the powers and authority of a police officer;

e. Has received a hearing pursuant to the Police Officer's Bill of Rights, or who has knowingly and voluntarily waived that individual's right to such a hearing and:

1. Has been discharged from employment with a law-enforcement agency for a breach of internal discipline; or

2. Has retired or resigned prior to the entry of findings of fact concerning an alleged breach of internal discipline for which the individual could have been legitimately discharged had the individual not retired from or resigned that individual's position prior to the imposition of discipline by the employing agency.

(5) Prescribe standards for in-service or continued training of police officers, which shall include at least 2 hours every 4 years on the detection, prevention and prosecution of sexual assault for all police officers who perform uniformed patrol duties or are assigned to investigative units responsible for sex crimes, and which training shall be conducted on a staggered basis so that half of the eligible members of any law-enforcement or police organization receive said training in each 2-year period;

(6) Establish minimum educational and training qualifications for seasonal employment as a police officer;

(7) Establish certification and recertification requirements for police officer applicants who have previously been employed with permanent appointment as a police officer but have not been so employed within the 12 months prior to application;

(8) Prescribe equipment and facility standards for schools at which police training courses shall be conducted, including but not limited to existing county or municipal schools;

(9) Establish minimum training requirements, attendance requirements and standards of operations for police training schools;

(10) Prescribe minimum qualifications for instructors at such schools and certify, as qualified, or decertify such instructors to their particular courses of study;

(11) Approve and issue certificates of approval to such police training schools, to inspect such schools from time to time and to revoke for cause any approval or certificate issued to such schools;

(12) Consult and cooperate with all agencies of government, state and local, concerning the development and administration of the training and standard program and to contract with such agencies as it deems necessary to the performance of its powers and duties;

(13) Accept or receive grants or donations from any source, public or private, for the purposes of this chapter;

(14) Make such rules and regulations as may be necessary to carry out the purposes and objectives of this chapter;

(15) Provide a modification from the application of any provision of this chapter or the rules and regulations promulgated thereunder, for any police officer of a municipality if:

a. The police officer is employed on a seasonal basis; and

b. The municipality makes application for such modification and establishes that it will suffer a hardship if the modification is not granted;

(16) Establish an approved training program for seasonal police officers which shall be required prior to active police duty, and in addition, if the officer is to be armed, that the police officer be certified in the use of firearms at an approved police training school;

(17) Authorize articulation agreements between an approved school and an accredited institution of higher education located in the State for the provision of police officer training prescribed under this chapter;

(18) Establish the criteria to afford reciprocity to police officers certified in other states by an agency like the Council or by the federal government by waiving some or all of the minimum education and training qualifications for police officers under this chapter if they have satisfied substantially equivalent education and training;

(19) Mandate training for all persons seeking permanent or seasonal appointment as a police officer in the detection, prosecution and prevention of child sexual and physical abuse, exploitation and domestic violence, and the obligations imposed by Delaware law,

including § 903 of Title 16, and federal law in the prompt reporting thereof. Such training shall be coordinated under §§ 911 and 931(b)(4) of Title 16 to ensure consistent trainings across disciplines.

(b) The Director of the Delaware State Police Training Division shall be responsible for administering the mandatory training and education for police officers program with responsibility and authority to obtain professional assistance from other police and professional organizations to accomplish the purposes and objectives of the program.

(11 Del. C. 1953 § 8405; 57 Del. Laws, c. 261; 57 Del. Laws, c. 670 § 1D; 63 Del. Laws, c. 31 § 1; 67 Del. Laws, c. 313 § 1; 68 Del. Laws, c. 330 §§ 2-4; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 331 §§ 2-4; 77 Del. Laws, c. 323 § 3; 80 Del. Laws, c. 55 § 1; 80 Del. Laws, c. 187 § 8.)

§ 8404A Hearings.

In all situations where the provisions of § 8404(a)(4) or § 8410(b) of this title are to be applied to or invoked against any agency or individual, that agency or individual shall be entitled to a hearing in the manner prescribed herein:

(1) The Chairperson shall select 3 members of the Council to comprise a board which will hear evidence on the allegation (hereinafter "board").

(2) Upon conclusion of the hearing provided for in this section, the board shall submit its findings and recommendation to the full Council in writing for consideration and vote.

(3) The ultimate findings of the Council shall be final, except that any ruling adverse to any party participating in the hearing may be appealed to the Superior Court within 15 days of receipt of written notification of said finding. Absent an appeal, all findings of the Council shall become final upon expiration of said appeal deadline.

(4) All hearings shall be conducted in accordance with the Administrative Procedures Act [Chapter 101 of Title 29].

(67 Del. Laws, c. 313 § 2; 70 Del. Laws, c. 186 § 1.)

§ 8405 Mandatory training; exceptions.

(a) Except as provided in subsection (d) of this section, every municipality or other governmental unit of this State employing or intending to employ police officers shall require their attendance at an approved school. Every such municipality, other governmental unit or the University of Delaware or Delaware State University shall require that no person be given or accept an appointment as a police officer unless such person has successfully completed the required police training and education course at an approved school.

(b) Police officers already serving under permanent appointment on July 11, 1969, shall not be compelled to meet this requirement as a condition of:

(1) Tenure;

(2) Continuing employment;

(3) Reemployment; or

(4) Employment by another police agency, provided that the period of suspended services under paragraph (b)(3) or (4) of this section does not exceed 12 months.

Failure of any such police officer to fulfill such requirements as the Council may hereafter establish by regulation shall not make the officer ineligible for promotion to which the officer might otherwise be eligible. The exemptions granted under this subsection shall not be construed to include in-service or continued training requirements which may be established by Council.

(c) All police officers and all persons seeking permanent appointment as a police officer shall undergo training to assist them in identifying symptoms of mental illness, mental disability, and/or physical disability and in responding appropriately to situations involving persons having a mental illness, mental disability, and/or physical disability. The training must include instruction concerning the interaction between police officers and minors that have a mental illness, mental disability and/or physical disability. Additionally, all police officers serving under permanent appointment as of January 1, 2007, must undertake this training by January 1, 2008.

(d) A component of training for all persons enrolled in an approved school shall be a course in the detection, prosecution and prevention of sexual assault. Such evidence-based training shall be victim-centered, and trauma-informed.

(e) Nothing contained in this chapter shall limit the authority, power or duties of the Secretary of Public Safety as set forth in § 8203 of Title 29.

(11 Del. C. 1953 § 8406; 57 Del. Laws, c. 261; 57 Del. Laws, c. 670 § 1D; 63 Del. Laws, c. 31 § 1; 67 Del. Laws, c. 230 §§ 1, 2; 68 Del. Laws, c. 330 § 5; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 367 § 3; 75 Del. Laws, c. 292 § 1; 80 Del. Laws, c. 55 § 1.)

§ 8406 [Reserved.]

§ 8407 Compensation.

During any training program, the compensation or wages of any trainee police officer shall be the responsibility of the employing authority. The responsibility for providing all other costs, including but not limited to tuition, living expenses, books and equipment excluding transportation costs of any trainee police officer shall be that of the Council.

(11 Del. C. 1953 § 8408; 57 Del. Laws, c. 261; 57 Del. Laws, c. 670 § 1D; 63 Del. Laws, c. 31 § 1.)

§ 8408 Appropriations.

The General Assembly shall appropriate each year to the Council through the Department of Safety and Homeland Security such funds as are necessary for the purpose of carrying out this chapter.

(11 Del. C. 1953 § 8410; 57 Del. Laws, c. 261; 57 Del. Laws, c. 670 § 1E; 63 Del. Laws, c. 31 § 1; 74 Del. Laws, c. 110 § 138.)

§ 8409 Reimbursement.

Every municipality or other governmental unit of this State or the University of Delaware or Delaware State University intending to employ on a permanent basis police officers who have satisfactorily completed the mandatory training as required under this chapter and who have completed their training while in the employ of another municipality or another governmental unit of this State or the University of Delaware or Delaware State University within 2 years from the date of satisfactory completion of such mandatory training, shall reimburse the municipality or other governmental unit or the University of Delaware or Delaware State University with whom the police officer was employed at the time of attending the mandatory training program for the cost of training such officer, which shall include the salary, uniforms and equipment and other training expenses incurred while the officer was attending the mandatory training program. During the first year after completion of the mandatory training program the municipality or other governmental unit or the University of Delaware or Delaware State University by whom the police officer was employed at the time of attending the mandatory training program shall be reimbursed for 100 percent for those expenses. During the second year the municipality or other governmental unit shall be reimbursed for 50 percent of those expenses.

(11 Del. C. 1953 § 8411; 59 Del. Laws, c. 102 § 1; 63 Del. Laws, c. 31 § 1; 72 Del. Laws, c. 367 § 4.)

§ 8410 Uncertified police officers.

(a) Police officers of the State or any county or municipality or the University of Delaware or Delaware State University which do not meet the requirements of this chapter and the criteria as established by the Council shall not have the authority to enforce the laws of the State.

(b) A police force of any county or municipality which does not meet the requirements of this chapter and the criteria established by the Council will be ineligible to apply for or receive state aid to local law-enforcement funds.

(63 Del. Laws, c. 31 § 1; 72 Del. Laws, c. 367 § 5.)

Part V
Law-Enforcement Administration
Chapter 85
STATE BUREAU OF IDENTIFICATION
Subchapter I
General Provisions

§ 8501 Purpose of subchapter.

(a) The purpose of this subchapter is to create and maintain an accurate and efficient criminal justice information system in Delaware consistent with this chapter and applicable federal law and regulations, the need of criminal justice agencies and courts of the State for accurate and current criminal history record information, and the right of individuals to be free from improper and unwarranted intrusions into their privacy.

(b) In order to achieve this result, the General Assembly finds that there is a need:

(1) To designate the State Bureau of Identification as the central state repository for criminal history record information;

(2) To require the rapid identification, classification and filing of fingerprints;

(3) To require the reporting of accurate, relevant and current information to the central repository by all criminal justice agencies;

(4) To insure that criminal history record information is kept accurate and current; and

(5) To prohibit the improper dissemination of such information.

(c) This subchapter is intended to provide a basic statutory framework within which these objectives can be attained.

(63 Del. Laws, c. 188 § 1.)

§ 8502 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) "Administration of criminal justice" shall mean performance of any of the following activities: Detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correction supervision, or rehabilitation of accused persons or criminal offenders, criminal identification activities, and the collection, storage and dissemination of criminal history record information.

(2) "Conviction data" means any criminal history record information relating to an arrest which has led to a conviction or other disposition adverse to the subject. "Conviction or other disposition adverse to the subject" means any disposition of charges, except a decision not to prosecute, a dismissal or acquittal; provided, however, that a dismissal entered after a period of probation, suspension or deferral of sentence shall be considered a disposition adverse to the subject.

(3) "Criminal history background check" means the acquisition of state or federal criminal history record information for an individual.

(4) "Criminal history record information" shall mean information collected by state or federal criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations or other formal criminal charges and any disposition arising therefrom, sentencing, correctional supervision and release. "Criminal history record information" shall include the names and identification numbers of police, probation, and parole officers, and such information shall not be within the definition of a "public record" for purposes of the Freedom of Information Act, Chapter 100 of Title 29. Pursuant to the provisions of this subchapter, upon application the State Bureau of Investigation shall release to members of the news media, and to individuals and agencies as defined by this subchapter, a random number that is unique and permanent to each arresting officer as a surrogate for the officer's agency or department-issued identification number. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. Nor shall the term include information contained in:

a. Posters, announcements or lists for identifying or apprehending fugitives or wanted persons;

b. Original records of entry such as police blotters maintained by criminal justice agencies which are compiled chronologically and required by law with long-standing custom to be made public, if such records are organized on a chronological basis;

c. Court records of public judicial proceedings;

d. Published court or administrative opinions or public judicial, administrative or legislative proceedings;

e. Records of traffic offenses maintained by the Division of Motor Vehicles for the purpose of regulating the issuance, supervision, revocation or renewal of driver's, pilot's or other operator's licenses;

f. Announcements of executive clemency.

(5) "Criminal justice agency" shall mean:

a. Every court of this State and of every political subdivision thereof;

b. A government agency or any sub-unit thereof which performs the administration of criminal justice pursuant to statute or

executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. Such agencies shall include, but not be limited to, the following:

1. The Delaware State Police.
2. All law-enforcement agencies and police departments of any political subdivision of this State.
3. The State Department of Justice.
4. The Office of the Solicitor of the City of Wilmington.
5. The Delaware Criminal Justice Information System, Office of the Director.
6. The Department of Correction.
7. The Division of Youth Rehabilitative Services.
8. The Division of Family Services.
9. The Division of Alcohol and Tobacco Enforcement.
10. The Federal Bureau of Investigation.
11. The Division of Professional Regulation.
12. The Office of Animal Welfare.

(6) "Criminal Justice Information System" shall mean the computer hardware, software and communications network managed, operated and/or maintained for the Delaware Criminal Justice Information System.

(7) "Disposition" shall include, but not be limited to, trial verdicts of guilty or not guilty, nolle prosequis, Attorney General probations, pleas of guilty or nolo contendere, dismissals, incompetence to stand trial, findings of delinquency or nondelinquency and initiation and completion of appellate proceeding.

(8) "Dissemination" shall mean the transmission of criminal history record information, or the confirmation of the existence or nonexistence of such information. The term shall not include:

a. Internal use of information by an officer or employee of the agency which maintains such information;

b. Transmission of information to the State Bureau of Identification;

(10) "Law-enforcement officer" shall include police officers, special investigators pursuant to § 9016 of Title 29, the Attorney General and the Attorney General's deputies, state fire marshals, municipal fire marshals that are graduates of a Delaware Police Academy which is accredited/authorized by the Council on Police Training, sworn members of the City of Wilmington Fire Department who have graduated from a Delaware Police Academy which is authorized/accredited by the Council on Police Training, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, sheriffs and their regular deputies, agents of the State Division of Alcohol and Tobacco Enforcement, correctional officers, animal welfare officers of the Office of Animal Welfare, and constables. For purposes of this subchapter, sheriffs and their regular deputies shall not have any arrest authority.

c. Transmission of information to another criminal justice agency in order to permit the initiation of subsequent criminal justice proceedings;

(11) "Nonconviction data" means arrest information without disposition if an interval of 1 year has elapsed from the date of arrest and no active prosecution of the charge is pending, or information disclosing that the police have elected not to refer a matter to a prosecutor, or that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed, as well as all acquittals and all dismissals.

d. Transmission of information in response to inquiries from criminal justice agencies via authorized system terminals, which agencies provide and/or maintain the information through those terminals.

(12) "Recipient agency" means any government agency which is directed or authorized by law to conduct a criminal history background check for the purposes of employing or licensing any individual in this State.

(9) "Governmental agency" shall mean any agency of the government of the United States or the State of Delaware or any political subdivision thereof. It does not include a private individual, any private corporate entity or other nongovernmental entity.

(13) "Release status" shall mean information concerning whether or not an individual is incarcerated and the reason therefor, which shall include but is not limited to information concerning releases on bail, or on own recognizance, commitments in default of bail, referrals to other agencies, decision of prosecutors not to commence or to postpone criminal proceedings, release from institutions and any conditions imposed concerning those released.

(63 Del. Laws, c. 188 § 1; 65 Del. Laws, c. 452 §§ 1-3; 68 Del. Laws, c. 101 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 199 §§ 12, 13; 71 Del. Laws, c. 205 § 1; 72 Del. Laws, c. 50 § 1; 72 Del. Laws, c. 371 § 3; 72 Del. Laws, c. 379 §§ 4, 5; 73 Del. Laws, c. 249 § 3; 73 Del. Laws, c. 252 §§ 1-5; 74 Del. Laws, c. 224 § 1; 74 Del. Laws, c. 250 § 2; 77 Del. Laws, c. 326 § 1; 78 Del. Laws, c. 266 § 5; 80 Del. Laws, c. 200 § 6.)

§ 8503 Function; administration; appointment of Director.

(a) The State Bureau of Identification, hereinafter referred to as the "Bureau," is continued within the Division of State Police. The Bureau shall be the central state repository for criminal history record information (CHRI) and such additional information as specified in this subchapter.

(b) Subject to this subchapter, the Bureau shall be administered by the Superintendent of State Police. It shall be equipped and

maintained by the State Police as a separate budget unit within the Department of Safety and Homeland Security.

(c) The Superintendent of State Police shall appoint, subject to the approval of the Department of Safety and Homeland Security, a Director of the Bureau. The Director shall be a regularly appointed member of State Police, who shall be trained and experienced in the classification and filing of fingerprints, and the Director and all other employees of the Bureau shall be subject to the same rules and regulations governing the State Police.

(d) A representative of the Bureau to be designated by the Superintendent shall be a member of any board or regulatory body established for the collection, retention and dissemination of criminal history information.

(42 Del. Laws, c. 181 § 1; 11 Del. C. 1953 § 8501; 57 Del. Laws, c. 670 §§ 4A, 4B; 63 Del. Laws, c. 188 § 1; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 110 § 138.)

§ 8504 Personnel.

The Bureau personnel shall consist of regular appointed members of the State Police, and such other personnel as may be deemed necessary to carry out this chapter. The personnel so appointed shall each be experienced in the work to be performed by them.

(42 Del. Laws, c. 181 § 2; 11 Del. C. 1953 § 8502; 63 Del. Laws, c. 188 § 1.)

§ 8505 Duty to provide security of criminal history record information and security investigations.

(a) The Director shall provide security of criminal history record information contained in the facilities of the Bureau.

(b) The Director shall establish procedures to assure that Bureau records, under the control or custody of any authorized agency, shall be protected from unauthorized access, disclosure or dissemination.

(c) Each employee of the Bureau working with or having access to criminal history record information shall be made familiar with the substance and intent of this chapter.

(d) Direct access to criminal history record information from the Bureau shall be available only to authorized officers or employees of a criminal justice agency, and, as necessary, to other authorized personnel essential to the proper operation of the criminal history record information system.

(e) The Director shall be responsible for investigations of violations of this chapter.

(63 Del. Laws, c. 188 § 1; 68 Del. Laws, c. 101 § 2.)

§ 8506 Duty to maintain complete and accurate records; performance of annual audit.

(a) The Bureau shall maintain in a complete and accurate manner information received pursuant to this subchapter to the maximum extent feasible.

(b) Any and all criminal history records and other information which is transmitted directly by computer terminal by a criminal justice agency shall be deemed to have been transmitted to the Bureau within the meaning of this subchapter.

(c) The Bureau shall file all information received by it and shall make a systematic record and index thereof, to the end of providing a method of convenient reference and consultation. No information identifying a person received by the Bureau may be destroyed by it until 10 years after the person identified is known or reasonably believed to be dead, or until that person reaches age 80 or reaches age 75 with no criminal activity listed on the person's record in the past 40 years, whichever shall first occur, except as otherwise provided by statute.

(d) A criminal justice agency shall, upon finding inaccurate criminal history record information of a material nature, notify all criminal justice agencies, and all other persons and agencies, known to have received such information.

(e) When a criminal justice agency receives notification that an inaccuracy appears in criminal history record information having originated with that agency, such agency shall take appropriate steps to correct the inaccuracy.

(f) The Bureau shall assure that an annual audit is conducted of a representative sample of agencies accessing or maintaining data files as provided in this subchapter. This audit shall encompass both manual and computerized data systems, and shall be conducted at such time and according to procedures as the Bureau shall prescribe. A full report of the findings of each audit made pursuant to this subsection shall be communicated to the individual agency so audited.

(42 Del. Laws, c. 181 § 9; 11 Del. C. 1953 § 8509; 63 Del. Laws, c. 188 § 1; 67 Del. Laws, c. 379 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8507 Information to be supplied by law-enforcement officers.

(a) Every law-enforcement officer of the State and of any political subdivision thereof shall transmit to the Bureau:

(1) Within 48 hours after the arrest of any individual, the names, fingerprints if taken and such other data as the Director may from time to time prescribe of all individuals arrested for a criminal offense, including, but not limited to:

a. An indictable offense, or such nonindictable offense as is, or may hereafter be, included in the compilations of the United States Department of Justice;

b. Being a fugitive from justice;

(2) The fingerprints, photographs and other data prescribed by the Director concerning unidentified dead persons;

(3) The fingerprints, photographs and other data prescribed by the Director of all individuals making application for a permit to buy or possess illegal weapons or firearms or to carry concealed a deadly weapon;

(4) A record of the indictable offenses and such nonindictable offenses as are committed within the jurisdiction of the reporting officer, including a statement of the facts of the offense and a description of the offender, so far as known, the offender's method of operation,

changes in release status and such other information as the Director may require;

(5) Copies of such reports as are required by law to be made, and as shall be prescribed by the Director, to be made by pawnshops, second-hand dealers and dealers in weapons.

(b) All photographs submitted of individuals described in this section shall be of a recent date, taken while such individuals are attired in civilian clothes.

(42 Del. Laws, c. 181 §§ 3, 6; 11 Del. C. 1953 §§ 8503, 8506; 61 Del. Laws, c. 321 § 1; 63 Del. Laws, c. 188 § 1.)

§ 8508 Information to be supplied by court officials.

Every court of this State or of any political subdivision thereof having original or appellate jurisdiction over indictable offenses, or over such nonindictable offenses as are herein mentioned, shall transmit to the Bureau in such manner as the Director shall designate such information regarding every indictment, information, petitions or complaints of delinquency, or other formal criminal charge, and every change in release status, disposition and sentencing made thereof within 90 days of said action.

(42 Del. Laws, c. 181 § 4; 11 Del. C. 1953 § 8504; 63 Del. Laws, c. 188 § 1; 68 Del. Laws, c. 101 § 3.)

§ 8509 Information to be supplied by heads of institutions.

Every person in responsible charge of an institution to which there are committed individuals convicted of crime, or persons declared to be not guilty by reason of mental illness, or declared incompetent to stand trial for criminal offenses or involuntarily committed for mental illness pursuant to Chapter 50 of Title 16, shall:

(1) Transmit to the Bureau the names, dates of birth and Social Security numbers of all adults so committed and shall report any subsequent change in release status. Every person in responsible charge of such institutions shall also forward to the Bureau the names and photographs of all individuals who are to be discharged from such institutions, after having been confined in such institutions. Such photographs shall be taken immediately before release of such individuals, and the individual shall be attired in civilian clothes.

(2) Pursuant to § 1448A of this title, cause to be transmitted to the Federal Bureau of Investigation, National Instant Criminal Background Check System, such information as may be required to comply with federal laws and regulations relating to background checks for the purchase or transfer of firearms.

(42 Del. Laws, c. 181 § 5; 11 Del. C. 1953 § 8505; 63 Del. Laws, c. 188 § 1; 69 Del. Laws, c. 224 § 2; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 137 §§ 3, 4.)

§ 8510 Information to be supplied by Department of Correction and Division of Youth Rehabilitative Services.

The Department of Correction and the Division of Youth Rehabilitative Services shall, within 48 hours, transmit to the Bureau:

(1) The names, fingerprints, photographs and other data prescribed by the Director, concerning all persons who are received or committed to such penal institution, or who are placed on parole or probation for any offense. Such photographs shall be of a recent date, and taken while such individuals are attired in civilian clothes;

(2) The names and photographs of all prisoners who are to be released or discharged from such institutions, after having been confined in such institutions. Such photographs shall be taken immediately before release of such persons, and the person shall be attired in civilian clothes;

(3) Notice of all paroles granted, revoked or completed, changes in release status, conditional releases, commutations of sentence, pardons and deaths of all persons described in paragraphs (1) and (2) of this section.

(63 Del. Laws, c. 188 § 1; 65 Del. Laws, c. 452 § 4; 70 Del. Laws, c. 186 § 1.)

§ 8510A Information to be supplied by Division of Professional Regulation.

The Division of Professional Regulation shall transmit to the Bureau, in such manner as the Director shall designate, certain information regarding the Division's investigations, civil enforcement actions or complaints, and changes in license status when such information is related to alleged criminal conduct. By December 27, 2010, the Division, in cooperation with the Executive Director of the Delaware Criminal Justice Information System, shall promulgate regulations governing what information the Division must supply to the Bureau, and the time period in which it must do so.

(77 Del. Laws, c. 326 § 2.)

§ 8511 Time period for submission of required information.

If no time period is prescribed in this subchapter for the submission of information to the Bureau, the information required shall be submitted within such time period and in such manner as the Director shall designate.

(42 Del. Laws, c. 181 § 7; 11 Del. C. 1953 § 8507; 63 Del. Laws, c. 188 § 1.)

§ 8512 Access to institutions and public records.

Any employee of the Bureau, upon written authorization by the Director, may enter any correctional center or mental institution to take or cause to be taken fingerprints or photographs or to conduct investigations relative to any person confined therein, for the purpose of obtaining information which may lead to the identification of criminals; and every person who has charge or custody of public records or documents from which it may reasonably be supposed that information described in this subchapter can be obtained, shall grant access

thereto to any employee of the Bureau upon written authorization by the Director or shall produce such records or documents for the inspection and examination of such employee.

(42 Del. Laws, c. 181 § 8; 11 Del. C. 1953 § 8508; 63 Del. Laws, c. 188 § 1.)

§ 8513 Dissemination of criminal history record information.

(a) Upon application, the Bureau shall furnish a copy of all information available pertaining to the identification and criminal history of any person or persons of whom the Bureau has a record to:

(1) Criminal justice agencies and/or courts of the State or of any political subdivision thereof or to any similar agency and/or court in any State or of the United States or of any foreign country for purposes of the administration of criminal justice and/or criminal justice employment;

(2) Any person or the person's attorney of record who requests a copy of the person's own Delaware criminal history record, provided that such person:

a. Submits to a reasonable procedure established by standards set forth by the Superintendent of the State Police to identify one's self as the person whose record this individual seeks; and

b. Pays a reasonable fee as set by the Superintendent, payable to the Delaware State Police;

(3) The Office of Defense Services when requesting information about an individual for whom the Office of Defense Services is attorney of record.

(b) Upon application, the Bureau shall, based on the availability of resources and priorities set by the Superintendent of State Police, furnish information pertaining to the identification and criminal history of any person or persons of whom the Bureau has a record, provided that the requesting agency or individual submits to a reasonable procedure established by standards set forth by the Superintendent of the State Police to identify the person whose record is sought. These provisions shall apply to the dissemination of criminal history record information to all of the following:

(1) Individuals and public bodies for any purpose authorized by Delaware state statute or executive order, court rule or decision or order.

(2) Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement. Said agreement shall embody an agency agreement as prescribed in § 8611 of this title.

(3) Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to a specific agreement with a criminal justice agency. Said agreement shall embody an agency agreement as prescribed in 8611 of this title.

(4) Individuals and agencies for purposes of international travel.

(5) Individuals and agencies required to provide a security clearance for matters of national security.

(c) Upon application the Bureau may, based upon the availability of resources and priorities set by the Superintendent of State Police, furnish information pertaining to the identification and conviction data of any person or persons of whom the Bureau has record, provided that the requesting agency or individual submits to a reasonable procedure established by standard set forth by the Superintendent of State Police to identify the person whose record is sought. These provisions shall apply to the dissemination of conviction data to:

(1) Individuals and agencies for the purpose of employment of the person whose record is sought, provided:

a. The requesting individual or agency pays a reasonable fee as set by the Superintendent, payable to the Delaware State Police; and

b. The use of the conviction data shall be limited to the purpose for which it was given;

(2) Members of the news media, provided that the use of conviction data shall be limited to the purpose for which it was given, and the requesting media or news agency pays a reasonable fee as set by the Superintendent, payable to the Delaware State Police.

(d) Dissemination of criminal history record information by any person or agency other than the Bureau or its designee is prohibited. This provision shall not prohibit dissemination by any criminal justice agency in those cases in which time is of the essence and the Bureau is technologically incapable of responding within the necessary time period. Under such circumstances the foregoing rules concerning dissemination are to be adhered to.

(e) Appropriate records of dissemination shall be retained by the Bureau and criminal justice agencies storing, collecting and disseminating criminal history record information to facilitate audits. Such records shall include, but not be limited to, the names of persons and agencies to whom information is disseminated and the date upon which such information is disseminated.

(f) Unless otherwise specified by the court order directing that a record be sealed, such sealing shall not preclude dissemination of the arrest or conviction information concerning the subject of the court order, nor shall it preclude dissemination of the fact a sealed record exists, providing any dissemination made is pursuant to this chapter and Chapter 43 of this title.

(g) Notwithstanding any law or court rule to the contrary, the dissemination to the defendant or defense attorney in a criminal case of criminal history record information pertaining to any juror in such case is prohibited. For the purposes of this subsection, "juror" includes any person who has received notice or summons to appear for jury service. This subsection shall not prohibit the disclosure of such information as may be necessary to investigate misconduct by any juror.

(42 Del. Laws, c. 181 § 11; 11 Del. C. 1953 § 8511; 59 Del. Laws, c. 551; 63 Del. Laws, c. 188 § 1; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 385 § 1; 76 Del. Laws, c. 392 § 5; 77 Del. Laws, c. 348 § 8; 80 Del. Laws, c. 26 § 3; 80 Del. Laws, c. 169 § 11.)

§ 8513A Governmental agency access to the Criminal Justice Information System (CJIS)

(71 Del. Laws, c. 205 § 2; Del. Laws, c. 169 § 11, eff Aug 17, 2015.)

§ 8514 User agreements.

Transferred to § 8611 of this title by 80 Del. Laws, c. 169, § 1, effective August 17, 2015.

§ 8515 Furnishing information of injured or deceased persons.

If a law-enforcement officer or the Division of Forensic Science 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 the Division any information available pertaining to the identification of such person.

(42 Del. Laws, c. 181 § 12; 11 Del. C. 1953 § 8512; 63 Del. Laws, c. 188 § 1; 79 Del. Laws, c. 265 § 11.)

§ 8516 Furnishing information without application.

Although no application for information has been made to the Bureau as provided in § 8513 of this title, the Bureau may transmit such information as the Director, in the Director's discretion, designates to such persons as are authorized by § 8513 of this title to make application for it and as are designated by the Director.

(42 Del. Laws, c. 181 § 13; 11 Del. C. 1953 § 8513; 63 Del. Laws, c. 188 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8517 Local assistance.

(a) At the request of any officer or official described in §§ 8507, 8509 and 8510 of this title, the Superintendent of State Police may direct the Director to assist such officer:

(1) In the establishment of local identification and record system;

(2) In investigating the circumstances of any crime and in the identification, apprehension and conviction of the perpetrator or perpetrators thereof, and for this purpose may detail such employee or employees of the Bureau, for such length of time as the Director deems fit; and

(3) Without such request the Director shall, at the direction of the Governor, detail such employee or employees, for such time as the Governor deems fit, to investigate any crime within this State, for the purpose of identifying, apprehending and convicting the perpetrator or perpetrators thereof.

(b) The Governor may, in the Governor's discretion, delegate to the Secretary of Public Safety the powers, duties or functions set forth in this section.

(42 Del. Laws, c. 181 § 14; 11 Del. C. 1953 § 8514; 57 Del. Laws, c. 670 § 4C; 63 Del. Laws, c. 188 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8518 Scientific crime detection laboratory.

To the end that the Bureau may be able to furnish the assistance and aid specified in § 8517 of this title, the Superintendent of the State Police may direct the Director to organize in the Bureau and maintain therein scientific crime detection laboratory facilities.

(42 Del. Laws, c. 181 § 15; 11 Del. C. 1953 § 8515; 63 Del. Laws, c. 188 § 1.)

§ 8519 Certified copies of records.

Any copy of a record, picture, photograph, fingerprint or other paper or document in the files of the Bureau certified by the Director or the Director's designee to be a true copy of the original shall be admissible in evidence in any court of this State in the same manner as the original might be.

(42 Del. Laws, c. 181 § 16; 11 Del. C. 1953 § 8516; 63 Del. Laws, c. 188 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8520 Annual report.

The Director shall submit to the Superintendent of State Police an annual report of the conduct of the office. This report shall present summary statistics of the information collected by the Bureau.

(42 Del. Laws, c. 181 § 17; 11 Del. C. 1953 § 8517; 63 Del. Laws, c. 188 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8521 Access to files.

Only employees of the Bureau and persons specifically authorized by the Director shall have access to the files or records of the Bureau. No such file or record or information shall be disclosed by any person so authorized except to officials as in this subchapter provided.

(42 Del. Laws, c. 181 § 18; 11 Del. C. 1953 § 8518; 63 Del. Laws, c. 188 § 1.)

§ 8522 Authority to take fingerprints, photographs and other data.

(a) To the end that the officers and officials described in §§ 8507, 8509, 8510 and 8525 of this title may be enabled to transmit the reports required of them, such officers and officials shall have the authority and duty to take, or cause to be taken, fingerprints, photographs and other data of persons described in such section. A like authority shall be had by employees of the Bureau who are authorized to enter any institution under § 8512 of this title, as to persons confined in such institutions.

(b) Every person arrested for a crime or crimes enumerated in § 8507 of this title shall submit to being fingerprinted, photographed and shall supply such information as required by the Superintendent. Whoever shall fail to comply with this section shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title. The Justice of the Peace Court shall have jurisdiction over violations of this section.

(42 Del. Laws, c. 181 § 19; 11 Del. C. 1953 § 8519; 63 Del. Laws, c. 188 § 1; 74 Del. Laws, c. 322 § 6.)

§ 8523 Penalties.

(a) Whoever intentionally neglects or refuses to make any report lawfully required of the person under this subchapter, or to do or perform any other act so required to be done or performed by the person, or hinders or prevents another from doing an act so required to be done by such person, shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title.

(b) Any person who knowingly and wrongfully destroys or falsifies by addition or deletion any computerized or manual record of the Bureau or of a criminal justice agency, which contains criminal history record information, or who knowingly permits another to do so, shall be guilty of a class E felony and shall be punished according to Chapter 42 of this title.

(c) Any person who knowingly provides CHRI to another for profit is guilty of a class E felony and shall be punished according to Chapter 42 of this title.

(d) Any person who knowingly provides criminal history record information to a person or agency not authorized by this subchapter to receive such information or who knowingly and wrongfully obtains or uses such information shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title.

(e) Conviction of a violation of this section shall be prima facie grounds for removal from employment by the State or any political subdivision thereof, in addition to any fine or other sentence imposed.

(42 Del. Laws, c. 181 §§ 20, 21; 11 Del. C. 1953 §§ 8520, 8521; 63 Del. Laws, c. 188 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8524 Admissible evidence.

Nothing in this subchapter, or amendments adopted pursuant thereto, shall provide the basis for exclusion or suppression of otherwise admissible evidence in any proceeding before a court, or other official body empowered to subpoena such evidence.

(63 Del. Laws, c. 188 § 1.)

§ 8525 Information voluntarily supplied by individuals.

Whenever a person appears before any of the officers mentioned in § 8507 of this title, and requests an impression of the person's fingerprints, such mentioned officer shall comply with the request, and make at least 2 copies of the impressions on forms supplied by the Bureau. One copy shall be forwarded to the Federal Bureau of Investigation at Washington, D.C., and 1 copy shall be forwarded promptly to the Bureau, subject to § 8513 of this title, together with any personal identification data obtainable. The Bureau shall accept and file such fingerprints and personal identification data submitted voluntarily by such resident in a separate filing system, for the purpose of securing a more certain and easy identification in case of death, injury, loss of memory or change of appearance.

(42 Del. Laws, c. 181 § 10; 11 Del. C. 1953 § 8510; 63 Del. Laws, c. 188 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8526 Voluntary fingerprinting of certain school children.

(a) The Superintendent of State Police shall provide for the training on a time-available basis of volunteers who are nominated by the board of education of each reorganized school district or board of trustees of each private school from parent teacher associations, parent teacher organizations, citizens' advisory councils or other involved groups such as the Girls' Clubs of Delaware, Incorporated, who are involved in student activities or pilot programs dealing with the subject at hand, or as individuals for the purpose of voluntary fingerprinting of pupils in any grades from kindergarten through grade 9. Upon completion of such training prescribed by the Superintendent of State Police, such volunteers may take fingerprints pursuant to this section.

(b) Public and private school officials shall cooperate with the aforesaid organizations in the nomination of volunteers and in setting dates for fingerprinting pupils pursuant to this section and providing school facilities and personnel to assist the volunteers in the fingerprinting process; provided, however, unless otherwise approved by the local board of education that fingerprinting of a pupil shall not occur during school hours for said pupil.

(c) Each school shall provide a form authorizing a pupil's participation in the fingerprinting program upon the signature of the pupil's parent or guardian. No pupil shall be fingerprinted unless a signed authorization form is in the possession of school officials or person conducting the fingerprinting.

(d) School officials shall notify the parents or guardians of eligible pupils of the date set for the fingerprinting program at least 2 weeks prior thereto. For purposes of this subsection, "eligible pupils" means pupils who have not been fingerprinted previously pursuant to this section.

(e) Fingerprinting pursuant to this section shall be done on a fingerprint card provided by the school with the form thereof approved by the Superintendent of State Police. In addition to fingerprints the card shall contain the following information: Name, address, race, sex, date of birth, birthplace, height, weight, color of hair, color of eyes, complexion, scars and the name of the parent or guardian of the pupil.

(f) The completed fingerprint card and any duplicate shall be given to the pupil's parent or guardian. Only upon the request of the pupil's parent or guardian may a duplicate fingerprint card be made.

(64 Del. Laws, c. 201 § 1.)

§ 8527 Criminal history background checks; state and/or federal CHRI reports; receipt by government agencies; procedures.

(a) Notwithstanding any other provision of the law to the contrary, any recipient agency seeking a criminal history background check for the purposes of employing or licensing any individual in this State pursuant to a statutory mandate or authorization shall submit to the Bureau, in the manner and form designated by the Superintendent of State Police, fingerprints and other necessary information in order to obtain the following:

(1) A report of the individual's entire state criminal history record information from the Bureau or a statement from the Bureau that the State Bureau of Identification Central Repository contains no such information relating to that person (state CHRI report); and

(2) A report of the individual's entire federal criminal history record information from the Federal Bureau of Investigation (federal CHRI report).

(b) Unless otherwise specified by statute, the recipient agency shall pay to the Bureau all fees associated with the acquisition of state and federal CHRI reports.

(c) All CHRI reports obtained pursuant this section shall be forwarded to the recipient agency for review associated with the employment and/or licensing of the individual for whom the CHRI reports are sought. For the purposes of this section the Bureau shall be the intermediary and the recipient agency shall be the screening point for the receipt of CHRI reports.

(d) All CHRI reports obtained pursuant to this section are confidential and may only be disclosed to the chief officer of the recipient agency, or his or her designee, or to the individual employed by the recipient agency who has been designated by statute to receive CHRI reports. If disclosed to a designee of the chief officer of the recipient agency, then prior to processing any state or federal CHRI reports, said designee shall receive training in confidentiality and shall sign an agreement to keep such information confidential. Notwithstanding the foregoing and unless otherwise specified by statute, any recipient agency to whom a CHRI report has been disclosed pursuant to this section shall review such CHRI report with the individual for whom it was sought upon the individual's request.

(e) The State Bureau of Identification may release any subsequent CHRI reports to a recipient agency when properly requested. No federal CHRI report shall be disclosed to any private entity at any time except as expressly authorized by the Federal Bureau of Investigation.

(f) Information provided to the recipient agency pursuant this section by the individual for whom any CHRI report is being sought shall be accompanied by an oath or affirmation provided by the recipient agency and signed by the individual under penalty of perjury:

(1) Indicating that said information is true and complete to the best of the individual's knowledge; and

(2) Acknowledging that knowingly and intentionally providing false, incomplete or inaccurate information is a felony.

(g) Any person for whom a CHRI report is being sought pursuant to this section who knowingly and intentionally provides a recipient agency or the Bureau with false, incomplete or inaccurate information shall be guilty of a class F felony and shall be punished according to Chapter 42 of this title. Conviction pursuant to this subsection shall not preclude prosecution for perjury in the second degree pursuant to Chapter 5 of this title.

(h) This section shall apply to any recipient agency seeking a state or federal CHRI report for the purposes of employing or licensing any individual in this State.

(73 Del. Laws, c. 252 § 6; 70 Del. Laws, c. 186 § 1.)

Subchapter II

Missing Persons

§ 8531 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) "Complaint" shall mean any report, notification or information given to a law-enforcement officer that a person is missing or cannot, with reasonable care, be located;

(2) "Missing person" shall mean a person who is missing, and who also meets 1 of the following characteristics:

a. Such person is physically or mentally disabled;

b. Such person was, or is, in the company of another person under circumstances indicating that the missing person's safety may be in danger;

c. Such person is missing under circumstances indicating that the disappearance was not voluntary;

d. Such person is an unemancipated minor.

(3) "Unemancipated minor" shall mean a minor who has not married, and who resides with a parent or other legal guardian.

(4) "Verified location" shall mean the location where it has been confirmed that the missing person was last seen. Such confirmation may include credible witness identification and or video surveillance or similar technology verification.

(65 Del. Laws, c. 48 § 2; 78 Del. Laws, c. 327 § 1.)

§ 8532 Original complaint.

A missing person complaint may be made to any county, town, city or state law-enforcement agency or any other appropriate state agency. The law-enforcement agency having primary jurisdiction over the verified location where a missing person was last seen shall be responsible for receiving a missing person complaint and initiating the investigation. If the location where the missing person was last seen cannot be verified, the law-enforcement agency having primary jurisdiction over the missing person's last known place of residence shall be responsible for receiving a missing person complaint and initiating the investigation. Such complaint shall state the age of the missing person. When an agency has received a missing person complaint, such agency shall immediately disseminate all known facts concerning the missing person to all county and state law-enforcement agencies, and to any other law-enforcement agency which may be appropriate. A new missing person complaint shall have high priority.

(65 Del. Laws, c. 48 § 2; 78 Del. Laws, c. 327 § 1.)

§ 8533 Law-enforcement reports.

The law-enforcement agency which has primary jurisdiction in the area from which a missing person complaint has been filed shall prepare, as soon as practicable, a report on the missing person. Such report shall include, but is not limited to, the following:

(1) All information contained in the original complaint;

(2) All information or evidence gathered by the preliminary investigation, if one was made;

(3) A statement, by the law-enforcement officer in charge, setting forth that officer's assessment of the case, based upon all evidence and information received;

(4) Any additional, supplemental or unusual information which the agency feels may be of importance in locating the missing person.

(65 Del. Laws, c. 48 § 2.)

§ 8534 Dissemination of missing person report.

Upon completion of the missing person report, the law-enforcement agency shall send a copy of the report to:

(1) Each law-enforcement officer having jurisdiction over the location in which the missing person was last seen, or the missing person's last known place of residence;

(2) Each state agency which the reporting law-enforcement agency considers to be potentially involved, and each private agency known to the law-enforcement agency which has, as a part of its functions, the searching for or location of missing persons;

(3) Each state agency to which the nearest relative to the missing person, or the complaint if no relative is located, requests that the report be sent; provided, however, that the forwarding of any report under this section shall be at the discretion of the law-enforcement agency;

(4) Each law-enforcement agency which requests a copy of the missing person report.

(65 Del. Laws, c. 48 § 2; 78 Del. Laws, c. 327 § 2.)

§ 8535 Unemancipated minors.

(a) If a report of a missing person involves an unemancipated minor, the law-enforcement agency shall immediately transmit all proper information for inclusion into the National Crime Information Center (N.C.I.C.) computer.

(b) If a report of a missing person involves an unemancipated minor, the law-enforcement agency shall not prevent an immediate active investigation on the basis of any agency rule which specifies an automatic time limitation for a missing person investigation.

(65 Del. Laws, c. 48 § 2.)

§ 8536 Dental records.

Each law-enforcement agency shall be provided with dental authorization forms, promulgated by the Attorney General, which when signed by a parent or guardian of a minor shall permit release of dental records to law-enforcement authorities. Where the missing person complaint indicates that the missing person is under 18 years of age, a properly executed dental authorization shall be taken to the family dentist and any other dentist who has records which would assist in identification of the missing person. Such dental identification shall be disseminated to the Medical Examiner and all other appropriate state agencies.

(65 Del. Laws, c. 48 § 2.)

§ 8537 Unidentified deceased persons — Duties of law-enforcement agency.

It shall be the duty of every law-enforcement agency to:

(1) Acquire, collect, classify and preserve any information which would assist in the identification of any deceased individual who has not been identified after the discovery of such deceased individual;

(2) Acquire, collect, classify and preserve immediately any information which would assist in the location of any missing person, including any minor, and provide confirmation as to any entry to the parent, legal guardian or next of kin of such person; and the agency shall acquire, collect, classify and preserve such information as it deems necessary from each such parent, guardian or next of kin; and

(3) Exchange such records and information as are provided for in this section with other law-enforcement agencies of this State, of any other state, or of the United States. With respect to missing minors, such information shall be transmitted immediately to other law-

enforcement agencies.
(65 Del. Laws, c. 48 § 2.)

§ 8538 Unidentified deceased persons — Fingerprints.

The Medical Examiner shall promptly furnish the Department of Safety and Homeland Security with copies of the fingerprints of each unidentified deceased person. The copies of such fingerprints shall be on standardized cards, and shall be accompanied by descriptions and other identifying data, including any available information concerning the date and place of death. In any instance where it is not physically possible to furnish prints of all 10 fingers, the prints or partial prints of any fingers, together with identifying data, shall be forwarded by the Medical Examiner to the Department.
(65 Del. Laws, c. 48 § 2; 74 Del. Laws, c. 110 § 138.)

Subchapter III

Missing Children Information Clearinghouse

§ 8541 Established.

The Missing Children Information Clearinghouse, hereinafter referred to as "Clearinghouse," is created within the State Bureau of Identification. The Clearinghouse is established as a central repository of information regarding missing children. Such information shall be collected and disseminated to assist in the location of missing children. The Director of the State Bureau of Identification shall establish services deemed appropriate by the Superintendent of State Police to aid in the location of missing children.
(64 Del. Laws, c. 388 § 1; 65 Del. Laws, c. 48 § 1.)

§ 8542 Definitions.

As used in this subchapter:

(1) "Missing child" means any person who is under the age of 18 years, whose temporary or permanent residence is in Delaware, or is believed to be in Delaware, whose location has not been determined, and who has been reported as missing to a law-enforcement agency.

(2) "Missing child report" is a report prepared on a form designed by the Clearinghouse for use by private citizens and law-enforcement agencies to report missing children information to the Clearinghouse.
(64 Del. Laws, c. 388 § 1; 65 Del. Laws, c. 48 § 1.)

§ 8543 Duties.

The Clearinghouse shall:

(1) Provide a form of missing child report for use by private citizens and law-enforcement agencies;

(2) Establish a system of interstate communication of information relating to children determined to be missing by the parent, guardian or legal custodian of the child, or by a law-enforcement agency;

(3) Provide a centralized file for the exchange of information of missing children within the State;

(4) Interface with the National Crime Information Center for the exchange of information on a missing child suspected of interstate travel;

(5) Collect, process, maintain and disseminate information on missing children and strive to maintain or disseminate only accurate and complete information.
(64 Del. Laws, c. 388 § 1; 65 Del. Laws, c. 48 § 1.)

§ 8544 Filing missing child reports; notification upon location; purging information; return of fingerprints.

(a) Every constable, chief police officer, officer in charge, member of the State Police and other law-enforcement agency and officer of the State and of any local governmental unit shall immediately accept and act upon information on any missing child by police radio broadcasts and by causing missing child entries into DELJIS and NCIC and shall transmit information to the Clearinghouse, so far as available, on a missing child report concerning a missing child within 24 hours after receipt thereof. The investigating law-enforcement agency shall also notify the Delaware Information Analysis Center (DIAC) who shall assist the investigating law-enforcement agency in regard to the search and location of the missing child.

(b) Any parent, guardian or legal custodian may submit a missing child report to a local law-enforcement agency having jurisdiction for investigation and referral of the missing child report to the Clearinghouse on any child whose whereabouts is unknown, regardless of the circumstances, which shall be included in the Clearinghouse data base.

(c) The parent, guardian or legal custodian responsible for notifying the Clearinghouse or a law-enforcement agency of a missing child shall immediately notify such agency or the Clearinghouse of any child whose location has been determined.

(d) Information received pursuant to this section shall be purged by the appropriate law-enforcement agency and the Clearinghouse immediately upon location of a missing child who has been included in the Clearinghouse database. Any fingerprints of a missing child provided to a law-enforcement agency or the Clearinghouse by a parent, guardian or legal custodian shall be returned to the person

providing them upon location of a missing child.

(e) The Delaware State Police shall adopt rules and regulations for the utilization of the DIAC to assist investigative law-enforcement agencies during their investigation as a resource for the receipt, analysis and dissemination of information to those entities that have a need and right to know about the missing child.

(64 Del. Laws, c. 388 § 1; 65 Del. Laws, c. 48 § 1; 76 Del. Laws, c. 385 §§ 1, 2; 78 Del. Laws, c. 266 § 6.)

Subchapter IV

Child Sex Abuse Information Repository

§ 8550 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) "Child" shall mean any person who is less than 18 years old;

(2) "Child sexual abuse" means any of the following crimes committed against a child:

a. Any sexual offense or child exploitation in violation of any offense within subchapter II, subpart D, and subchapter V of Chapter 5 of this title committed by an adult;

b. Notwithstanding § 1009 of Title 10, any adjudication of delinquency which, if the person had been charged as an adult, would constitute an offense in violation of any offense within subchapter II, subpart D, and subchapter V of Chapter 5 of this title committed by a juvenile; or

c. Any conviction, plea or adjudication of delinquency under the laws of another state, territory or jurisdiction which is the same as or equivalent to the preceding specified offenses.

(3) The term "child sex abuser information" means the following information concerning a person who has been convicted of a violation of the criminal child sex abuse laws of this State:

a. Name, Social Security number, age, race, sex, date of birth, height, weight, hair and eye color, address of legal residence and a brief description of the crime or crimes committed by the offender;

b. A copy of the fingerprints of the offender; and

c. Any information that the State Bureau of Identification, the Federal Bureau of Investigation or the National Crime Information Center determines may be useful in identifying child sex abusers;

(4) The term "criminal child sex abuse laws of this State" means those sections of the Delaware Criminal Code which establish criminal penalties for the commission of child sex abuse by a parent or other family member of a child or by any other person;

(5) "National Crime Information Center" means the division of the Federal Bureau of Investigation that serves as a computerized information source on wanted criminals, persons named in arrest warrants, runaways, missing children and stolen property for use by federal, state and local law-enforcement authorities.

(68 Del. Laws, c. 441 § 1; 73 Del. Laws, c. 45 § 1.)

§ 8551 Establishment of Child Sex Abuse Information Repository.

The Child Sex Abuse Information Repository is hereby created within the State Bureau of Identification. The Child Sex Abuse Information Repository is established as a central repository of child sex abuser information.

(68 Del. Laws, c. 441 § 1.)

§ 8552 Guidelines.

(a) The Director of the State Bureau of Identification shall coordinate the reporting of child sex abuser information to the Child Sex Abuse Information Repository and shall issue guidelines to all law-enforcement agencies in the State to ensure reporting accuracy.

(b) The guidelines established under subsection (a) of this section shall require that all convictions under the criminal child sex abuse laws of this State are reported to the Child Sex Abuse Information Repository.

(68 Del. Laws, c. 441 § 1.)

§ 8553 Duties.

The Director of the State Bureau of Identification shall ensure that:

(1) Reports of all convictions under the criminal child sex abuse laws of this State are maintained by the Child Sex Abuse Information Repository;

(2) The Child Sex Abuse Information Repository works closely with schools, daycare centers and the Department of Services for Children, Youth and Their Families in providing child sex abuser information;

(3) The Child Sex Abuse Information Repository reports child sex abuser information to the National Crime Information Center; and

(4) The Child Sex Abuse Information Repository maintains close liaison with the National Center on Child Abuse and Neglect and the National Center for Missing and Exploited Children for exchange of information.

(68 Del. Laws, c. 441 § 1.)

Subchapter V

Criminal Background Check for Child Care Providers

§ 8560 Definitions.

(68 Del. Laws, c. 441 § 1; 69 Del. Laws, c. 144 §§ 1, 2; 70 Del. Laws, c. 577 §§ 5, 6; Del. Laws, c. 154 § 2, eff Apr 7, 2016.)

§ 8561 Information to be provided to child care providers.

(68 Del. Laws, c. 441 § 1; 69 Del. Laws, c. 144 § 3; 69 Del. Laws, c. 316 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 577 §§ 1-4; 73 Del. Laws, c. 45 § 2; 73 Del. Laws, c. 412 §§ 8, 9; Del. Laws, c. 154 § 2, eff Apr 7, 2016.)

§ 8562 Penalties.

(68 Del. Laws, c. 441 § 1; Del. Laws, c. 154 § 2, eff Apr 7, 2016.)

§ 8563 Child Protection Registry check for health care.

(a) Definitions. —

(1) "Direct access" means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

(2) "Health-care facility" means any custodial or residential facility where health, nutritional or personal care is provided for persons, including nursing homes, hospitals, home health-care facilities and adult day-care facilities.

(3) "Person seeking employment" means any person applying for employment in a health-care facility.

(b) No employer who operates a health-care facility may hire any person seeking employment without requesting and receiving a Child Protection Registry check for the person. Notwithstanding any provision to the contrary, no person seeking employment with such an employer may be hired if the person seeking employment is currently on the Child Protection Registry at Child Protection Level III or IV as provided in subchapter II of Chapter 9 of Title 16, or has been convicted of any offense contained in Child Protection Level IV, or for 7 years after the conviction date if the person has been convicted of any Level III offense in which a child was the victim. A person who is employed in a health-care facility has an affirmative duty to inform, and shall inform, that person's own employer of any criminal conviction or of any entry on the Child Protection Registry.

(c) Any employer who is required to request a Child Protection Registry check under this section shall obtain a statement signed by the person seeking employment wherein the person authorizes a full release for the employer to obtain the information provided pursuant to such a check.

(d) Notwithstanding the provisions of this section, when exigent circumstances exist which require an employer to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested a Child Protection Registry check. The employment of the person pursuant to this subsection shall be conditional and contingent upon the receipt of the Child Protection Registry check by the employer. Any person hired pursuant to this subsection shall be informed in writing, and shall acknowledge in writing, that the person's own employment is conditional, and contingent upon receipt of the Child Protection Registry check.

(e) The Department of Services for Children, Youth and Their Families shall promulgate regulations giving guidance for a procedure to notify employers of any relevant matters indicated in the Child Protection Registry check.

(f) Costs associated with providing a Child Protection Registry check shall be borne by the State.

(g) Any employer who hires a person seeking employment without requesting and receiving a Child Protection Registry check for such person shall be subject to a civil penalty or not less than $1,000 nor more than $5,000 for each violation.

(h) [Repealed.]

(71 Del. Laws, c. 199 § 15; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 200 § 2; 73 Del. Laws, c. 412 §§ 10-19; 80 Del. Laws, c. 154 § 2.)

§ 8564 Adult Abuse Registry check.

(a) Definitions. — As used in this section:

(1) "Adult abuse" means:

a. Physical abuse by unnecessarily inflicting pain or injury to an adult who is impaired. This includes, but is not limited to, hitting, kicking, pinching, slapping, pulling hair or any sexual molestation. When any act constituting physical abuse has been proven, the infliction of pain shall be assumed.

b. Emotional abuse which includes, but is not limited to, ridiculing or demeaning an adult who is impaired, making derogatory remarks to an adult who is impaired or cursing directed towards an adult who is impaired, or threatening to inflict physical or emotional harm on an adult who is impaired.

(2) "Adult who is impaired" means any person 18 years of age or older who, because of physical or mental disability, is substantially impaired in the ability to provide adequately for the person's own care and custody or any person who is a patient or resident of a nursing

facility and similar facility.

(3) "Child care facility" means any child care facility that is required to be licensed by the Department of Services for Children, Youth and Their Families.

(4) "Direct access" means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

(5) "Financial exploitation" means the illegal or improper use or abuse by another person, whether for profit or other advantage, of the resources or financial rights of an adult who is impaired.

(6) "Health-care service provider" means any person or entity that provides services in a custodial or residential setting where health, nutritional or personal care is provided for persons receiving care, including, but not limited to, hospitals, home health-care agencies, adult care facilities, temporary employment agencies and contractors that place employees or otherwise provide services in custodial or residential settings for persons receiving care, and hospice agencies. "Health-care services provider" does not include any private individual who is seeking to hire a self-employed health caregiver in a private home.

(7) "Mistreatment" includes the inappropriate use of medications, isolation, or physical or chemical restraints on or of an adult who is impaired.

(8) "Neglect" means:

a. Lack of attention to physical needs of the adult who is impaired including, but not limited to, toileting, bathing, meals and safety;

b. Failure to report the health problems or changes in health problems or changes in health condition of an adult who is impaired to an immediate supervisor or nurse;

c. Failure to carry out a prescribed treatment plan for an adult who is impaired; or

d. A knowing failure to provide adequate staffing which results in a medical emergency to any adult who is impaired where there has been documented history of at least 2 prior cited instances of such inadequate staffing levels in violation of staffing levels required by statute or regulations promulgated by the Department of Health and Social Services, all so as to evidence a wilful pattern of such neglect.

(9) "Nursing facility" and "similar facility" means any facility required to be licensed under Chapter 11 of Title 16. This includes, but is not limited to, facilities commonly called nursing homes, assisted living facilities, intermediate care facilities for persons with intellectual disabilities, neighborhood group homes, family care homes and rest residential care facilities. Also included are the Stockley Center, the Delaware Psychiatric Center and hospitals certified by the Department of Health and Social Services pursuant to § 5001 or § 5136 [repealed] of Title 16.

(10) "Person receiving care" means a person who, because of that person's physical or mental condition, requires a level of care and services suitable to that person's needs to contribute to that person's health, comfort and welfare.

(11) "Person seeking employment" means any person applying for employment with or in a health-care service provider, nursing facility or similar facility or child care facility where the employment may afford direct access, or a person applying for licensure to operate a child care facility. It shall also include a self-employed health caregiver who has direct access in any private home.

(b) The name of any person found, after investigation by the Department of Health and Social Services, to have committed adult abuse, neglect, mistreatment or financial exploitation shall be entered on the Adult Abuse Registry; provided, however, that such person may request an administrative hearing pursuant to Department of Health and Social Services regulations before such entry becomes final. The hearing officer for the administrative hearing shall have the power to compel the attendance of witnesses and the production of evidence. The finding by the hearing officer shall constitute the final decision of the Department of Health and Social Services and shall be appealable, on the record, by either party to Superior Court.

(c) No health-care service provider, nursing home or similar facility, or child care facility shall hire any person seeking employment without first checking the Adult Abuse Registry. For purposes of this subsection, the Adult Abuse Registry shall be the central registry of information maintained pursuant to Chapter 79 of Title 29 relating to the individuals against whom a charge of patient abuse, neglect, mistreatment or financial exploitation has been substantiated.

(d) Notwithstanding the provisions of this section, when exigent circumstances exist which require an employer subject to this section to fill a position in order to maintain the required or desired level of service, the employer may hire a person seeking employment on a conditional basis after the employer has requested an Adult Abuse Registry check. Any person hired pursuant to this subsection shall be informed in writing, and shall acknowledge in writing, that the person's employment is conditional and contingent upon receipt of the Adult Abuse Registry check.

(e) Records relating to the Adult Abuse Registry are not public records and are not subject to disclosure under Chapter 100 of Title 29. Regulations promulgated by the Department of Health and Social Services may authorize online access to the names of those actively listed on the Adult Abuse Registry and whether the listing is due to a substantiated finding of abuse, neglect, mistreatment or financial exploitation.

(f) The Delaware Department of Health and Social Services shall promulgate regulations to implement this section. Such regulations may include regulations for Adult Abuse Registry checks of contractors providing services in a custodial or residential setting for persons receiving care, regulations for the disclosure of Adult Abuse Registry records, regulations to establish hearing procedures and length of

time on the Adult Abuse Registry, and regulations for the removal of a person from the Adult Abuse Registry before the expiration of the person's registration period where the Delaware Department of Health and Social Services deems that the person no longer poses a threat to any person receiving care.

(g) Costs associated with providing an Adult Abuse Registry check shall be borne by the State.

(h) Any employer who is required to request and receive an Adult Abuse Registry check and fails to do so shall be subject to a civil penalty of not less than $1,000 nor more than $5,000 for each violation. The Justice of the Peace Courts shall have jurisdiction over this offense.

(71 Del. Laws, c. 201 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 476 § 1; 75 Del. Laws, c. 147 § 1; 77 Del. Laws, c. 89 §§ 1-3, 5; 78 Del. Laws, c. 224 § 25; 79 Del. Laws, c. 442 § 2.)

Subchapter VI

Criminal Background Check for Public School Related Employment

§ 8570 Definitions.

(69 Del. Laws, c. 144 § 4; 70 Del. Laws, c. 170 §§ 1, 2; 73 Del. Laws, c. 65 § 10; Del. Laws, c. 154 § 2, eff Apr 7, 2016.)

§ 8571 Screening procedure required.

(69 Del. Laws, c. 144 § 4; 70 Del. Laws, c. 170 §§ 3-5; 70 Del. Laws, c. 186 § 1; 73 Del. Laws, c. 65 § 11; 73 Del. Laws, c. 412 § 20; Del. Laws, c. 154 § 2, eff Apr 7, 2016.)

§ 8572 Penalties.

(69 Del. Laws, c. 144 § 4; 72 Del. Laws, c. 294 § 5; Del. Laws, c. 154 § 2, eff Apr 7, 2016.)

Subchapter VII

Gold Alert Program for Certain Missing Persons

§ 8580 Definitions.

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

(1) "ACIM Alert Program" or "ACIM" means "A Child is Missing Alert Program". The ACIM Alert Program is a national rapid-response communication network that offers free assistance to law-enforcement agencies to aid in the recovery, identity, or apprehension of missing persons through the use of immediate public notification and dissemination of information via telephone in a targeted community.

(2) "Gold Alert Program" or "Program" means the procedures used to aid in the identification and location of a missing person as defined under paragraphs (4), (5), and (6) of this section. Gold Alerts may be local, regional, or statewide. The initial decision to issue a local Gold Alert is at the discretion of the investigating law-enforcement agency.

(3) "Investigating law-enforcement agency" means the law-enforcement agency which has primary jurisdiction in the area in which a missing person complaint has been filed.

(4) "Missing person with a disability" means a person:

a. Whose whereabouts are unknown;

b. Whose domicile at the time that the person is reported missing is Delaware;

c. Who has a disability; and,

d. Whose disappearance poses a credible threat to the health or safety of the person, as determined by the investigating law-enforcement agency.

(5) "Missing senior citizen" means a person:

a. Whose whereabouts are unknown;

b. Whose domicile at the time that the person is reported is missing is Delaware;

c. Whose age at the time that the person is first reported missing is 60 years of age or older; and

d. Whose disappearance poses a credible threat to the health or safety of the person, as determined by the investigating law-enforcement agency.

(6) "Missing suicidal person" means a person:

a. Whose whereabouts are unknown;

b. Whose domicile at the time that the person is reported missing is Delaware;

c. Whose disappearance is voluntary; and

d. Whose statements, actions, or conduct indicate that the missing person may voluntarily cause or inflict harm on himself or

herself, and whose disappearance poses a credible threat to the health or safety of the person, as determined by the investigating law-enforcement agency.

(76 Del. Laws, c. 379 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8581 Establishment of the Delaware Gold Alert Program.

(a) Each investigating law-enforcement agency shall implement an alert program, consistent with the ACIM Alert Program, for missing senior citizens, missing suicidal persons, and missing persons with disabilities, and may promulgate necessary rules and regulations for the program. The rules and regulations shall include the following:

(1) Procedures for the use of the Delaware Information Analysis Center (DIAC) to provide support to the investigating law-enforcement agency as a resource for the receipt, analysis, and dissemination of information regarding the missing person and the missing person's whereabouts;

(2) Procedures for the investigating law-enforcement agency to use to verify whether a senior citizen, a suicidal person, or a person with a disability is missing and the circumstances under which the agency must enter descriptive information of the missing person into the Delaware Criminal Justice Information System (DELJIS) and the National Crime Information Center (NCIC) system. The investigating law-enforcement agency shall further notify the Delaware Information Analysis Center (DIAC), who shall make all the necessary notifications and assist the investigating law-enforcement agency; and

(3) The process for reporting the information to designated media outlets in Delaware.

(b) The Delaware State Police shall adopt rules and regulations for the use of the DIAC to assist investigating law-enforcement agencies during their investigations as a resource for the receipt, analysis, and dissemination of information to those agencies that have a need and right to know about the missing person.

(76 Del. Laws, c. 379 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8582 Activation of the Gold Alert Program.

(a) When a law-enforcement agency receives notice that a senior citizen, a suicidal person, or a person with a disability is missing, the agency shall solicit information from the missing person's family or legal guardian to provide information regarding the missing person's physical or mental condition, or both. When the investigating law-enforcement agency verifies that the person is missing, the investigating law-enforcement agency shall enter the descriptive information of the missing person into the Delaware Criminal Justice Information System (DELJIS) and the National Crime Information Center (NCIC) system. The investigating law-enforcement agency shall further notify the Delaware Information Analysis Center (DIAC), who shall make all the necessary notifications and assist the investigating law-enforcement agency.

(b) When an investigating law-enforcement agency has verified that a senior citizen, a suicidal person, or a person with a disability is missing, the investigating law-enforcement agency shall send an alert to designated media outlets in Delaware. The alert must include all appropriate information that may assist in the safe return of the missing senior citizen, suicidal person, or person with a disability, along with a statement instructing anyone with information relating to the missing person to contact the investigating law-enforcement agency or a law-enforcement agency within their jurisdiction. Additionally, when an investigating law-enforcement agency has verified that a senior citizen, a suicidal person, or a person with a disability is missing, the investigating law-enforcement agency shall contact the Department of Transportation. The Department of Transportation shall adopt rules and regulations for the display on its variable message signs of appropriate information that may assist in the safe return of the missing senior citizen, suicidal person, or person with a disability consistent with the Manual on Uniform Traffic Control Devices and federal requirements.

(76 Del. Laws, c. 379 § 1; 78 Del. Laws, c. 16 § 1.)

§ 8583 Cancellation of a Gold Alert.

(a) The investigating law-enforcement agency shall notify the designated media outlets when a Gold Alert has been cancelled.

(b) A law-enforcement agency that locates a missing person who is the subject of a Gold Alert shall notify DELJIS, NCIC, and the DIAC as soon as possible that the missing person has been located.

(76 Del. Laws, c. 379 § 1.)

Subchapter VIII

Blue Alert Program for Apprehension of Persons Suspected of Killing or Injuring Law-Enforcement Officers

§ 8584 Definitions.

(a) "ACIM Alert Program" means the "A Child Is Missing Alert Program," a national rapid-response communication network that offers free assistance to law-enforcement agencies to aid in the recovery, identity, or apprehension of missing persons through the use of immediate public notification and dissemination of information via telephone in a targeted community.

(b) "Gold Alert Program" means the program established in subchapter VII of this chapter to aid in the identification and location of

certain missing persons.

(c) "Investigating law-enforcement agency" means the law-enforcement agency that has primary jurisdiction over the area in which a law-enforcement officer has been injured or killed.

(d) "Law-enforcement agency" means a government agency or any subunit thereof which performs the administration of criminal justice pursuant to statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. For the purposes of this subchapter, such agencies shall include, but are not limited to, the following:

(1) The Delaware State Police;

(2) All law-enforcement agencies and police departments of any political subdivision of this State;

(3) The Department of Correction; and

(4) The Department of Justice.

(e) "Law-enforcement officer" includes police officers, the Attorney General and the Attorney General's deputies, sheriffs and their regular deputies, agents of the State Division of Alcohol and Tobacco Enforcement, correctional officers, state fire marshals, municipal fire marshals that are graduates of a Delaware Police Academy which is accredited/authorized by the Council on Police Training, sworn members of the City of Wilmington Fire Department who have graduated from a Delaware Police Academy which is authorized/accredited by the Council on Police Training, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, and constables. For purposes of this subchapter, "law-enforcement officer" also includes an employee of a federal governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and who has statutory powers of arrest. For purposes of this subchapter, sheriffs and their regular deputies shall not have any arrest authority.

(77 Del. Laws, c. 469 § 1; 78 Del. Laws, c. 266 § 7.)

§ 8585 Establishment of the Delaware Blue Alert Program.

Each investigating law-enforcement agency shall implement an alert program, consistent with the ACIM Alert Program and the Gold Alert Program, for the apprehension of persons suspected of killing or seriously injuring law-enforcement officers, and may promulgate necessary rules and regulations for implementing the program. The rules and regulations shall include the following:

(1) Procedures for the use of the Delaware Information Analysis Center to provide support to the investigating law-enforcement agency as a resource for the receipt, analysis, and dissemination of information regarding the suspect and the suspect's whereabouts and/or method of escape;

(2) The process for reporting the information to designated media outlets in Delaware; and

(3) Procedures for the investigating law-enforcement agency to determine quickly whether an officer has been "seriously injured or killed" and a Blue Alert therefore needs to be activated.

(77 Del. Laws, c. 469 § 1.)

§ 8586 Activation of the Blue Alert Program.

(a) The Blue Alert Program shall be activated when a suspect for a crime involving the death or serious injury of a law-enforcement officer has not been apprehended and may be a serious threat to the public. Upon notification by an investigating law-enforcement agency that a suspect in a case involving the death or serious injury of a peace officer has not been apprehended and may be a serious threat to the public, the investigating law-enforcement agency shall activate the Blue Alert system and shall notify appropriate participants in the Blue Alert system, as established by regulations promulgated pursuant to this subchapter, when the investigating law-enforcement agency believes that:

(1) A suspect has not been apprehended;

(2) A suspect may be a serious threat to the public; and

(3) Sufficient information is available to disseminate to the public that could assist in locating and apprehending the suspect.

(b) When a Blue Alert is activated pursuant to subsection (a) of this section, the investigating law-enforcement agency shall provide the descriptive information to the Delaware Criminal Justice Information System and the National Crime Information Center system. The investigating law-enforcement agency shall also notify the Delaware Information Analysis Center, which shall make all necessary notifications and provide appropriate assistance to the investigating law-enforcement agency.

(c) When an investigating law-enforcement agency receives notice that a law-enforcement officer has been seriously injured or killed, the agency shall send an alert to designated media outlets in Delaware. The alert must include all appropriate information that may assist in the speedy apprehension of the suspect, including a statement instructing any person with information relating to the incident causing the serious injury or death of the law-enforcement officer to contact the investigating law-enforcement agency.

(d) The investigating law-enforcement agency shall assess the appropriate boundaries of the Blue Alert based on the nature of the suspect and the circumstances surrounding the crime. The Blue Alert area may be less than statewide if the investigating law-enforcement agency determines that the nature of the event makes it probable that the suspect did not leave a designated geographic location.

(77 Del. Laws, c. 469 § 1.)

§ 8587 Termination of a Blue Alert.

(a) The investigating law-enforcement agency shall terminate the Blue Alert with respect to a particular suspect when the suspect is

located or the incident is otherwise resolved, or when the investigating law-enforcement agency determines that the Blue Alert system is no longer an effective tool for locating and apprehending the suspect.

(b) The investigating law-enforcement agency shall notify other law-enforcement agencies, Delaware Criminal Justice Information System, National Crime Information Center, the Delaware Information Analysis Center, and other appropriate participants in the Blue Alert system, when a Blue Alert for a particular suspect has been terminated. The investigating law-enforcement agency shall also notify the designated media outlets when a Blue Alert for a particular suspect has been terminated.

(77 Del. Laws, c. 469 § 1.)

Subchapter IX

Criminal Background Check for Student Teachers

§ 8590 Definitions.

(77 Del. Laws, c. 373 § 1; Del. Laws, c. 154 § 2, eff Apr 7, 2016.)

§ 8591 Screening Procedures.

(77 Del. Laws, c. 373 § 1; Del. Laws, c. 154 § 2, eff Apr 7, 2016.)

§ 8592 Penalties.

(77 Del. Laws, c. 373 § 1; Del. Laws, c. 154 § 2, eff Apr 7, 2016.)

Subchapter X

Driving Privilege Cards

§ 8593 Definitions.

For purposes of this subchapter:

(1) "Applicant" shall mean a prospective driving privilege card holder.

(2) "Driving privilege card" shall mean a card issued pursuant to § 2711(d) of Title 21, to undocumented immigrants who are not eligible for a Delaware driver's license.

(80 Del. Laws, c. 67 § 4.)

§ 8594 Authority of the State Bureau of Identification.

This subchapter is intended for use by an applicant for a driving privilege card who may or may not have sufficient identification or documentation to prove his or her identity, pursuant to the procedures established in § 8595 of this title. The State Bureau of Identification, hereinafter referred to as "Bureau," shall facilitate the criminal background check of applicants. The Bureau is hereby authorized to promulgate such reasonable forms, fees, and regulations as may be necessary or desirable to effectuate the provisions of this subchapter.

(80 Del. Laws, c. 67 § 4; 70 Del. Laws, c. 186 § 1.)

§ 8595 Application process.

(a) The applicant shall appear at the Bureau during regular hours of business, and shall inform the Bureau of the applicant's desire to avail himself or herself of the procedure set forth in this section.

(1) The applicant shall produce identification documentation. Acceptable documentation shall include the following, with other documentation to be evaluated on a case-by-case basis:

a. A birth certificate;

b. A foreign passport;

c. A foreign driver's license; or

d. School Identification that includes a photograph.

(2) The applicant will sign an affidavit attesting to his or her identity. The affidavit will inform the applicant that if any of the information provided is proven to be false the applicant could be prosecuted under § 907 of this title.

(3) The applicant shall be required to submit fingerprints and other necessary information in order for the Bureau to run a search of Delaware state criminal databases. This search shall include a review of the applicant's Delaware criminal history record to determine if the applicant has an alias linked to fingerprints on file at the Bureau.

(4) If the review pursuant to paragraph (a)(3) of this section identifies a conflict between the name the applicant provided and an alias on file with the State, or the applicant has an outstanding warrant for criminal charges in Delaware, the applicant's fingerprints and other necessary information will be sent by the Bureau to the Federal Bureau of Investigation for a national background check. This national background check shall be comprised of a report of the applicant's entire federal criminal history record, pursuant to the Federal Bureau

of Investigation appropriation of Title 42 of Public Law 92-544 (28 CFR § 20.33 (a)(3)). The Bureau shall be the recipients of said federal criminal history records. All costs associated with obtaining the criminal history reports required by this paragraph shall be borne by the applicant. The applicant must resolve the conflict prior to becoming eligible to obtain a driving privilege card.

(5) Fees for the criminal history background check shall be paid by the applicant prior to the commencement of the background check.

(b) The Bureau shall maintain a record of all background checks under this section to the same extent as is required by law.

(c) The Bureau will make the result known to the Division of Motor Vehicles once the applicant has successfully completed the background check. The Bureau will coordinate with the Division of Motor Vehicles to develop a procedure to ensure the applicant who successful completes this subchapter's procedures is the same individual who applies for a driving privilege card.

(80 Del. Laws, c. 67 § 4; 70 Del. Laws, c. 186 § 1; 80 Del. Laws, c. 197 § 1.)

Part V
Law-Enforcement Administration
Chapter 86
DELAWARE CRIMINAL JUSTICE INFORMATION SYSTEM

§ 8601 Purpose.

The purpose of this chapter is to manage and maintain an accurate and efficient criminal justice information system in Delaware consistent with Chapter 85 of this title and applicable federal law and regulations, the need of criminal justice agencies and courts of the State for accurate and current criminal justice information, and the right of individuals to be free from improper and unwarranted intrusions into their privacy.

(63 Del. Laws, c. 352 § 1; 80 Del. Laws, c. 169 § 1.)

§ 8602 Definitions.

For the purposes of this chapter:

(1) "Access" means the physical or electronic privilege to view, modify, or make use of criminal justice information, whether direct or indirect. For purposes of this term:

a. "Direct" means access to CJIS whether via authorized and approved Delaware Criminal Justice Information system (DELJIS) credentials or an authorized agency portal.

b. "Indirect" means access to criminal justice information, in oral, online or printed form, by an individual without approved DELJIS credentials for direct access.

(2) "Administration of criminal justice" means performance of any of the following activities: detection, apprehension, detention, pretrial release, posttrial release, prosecution, adjudication, correction supervision or rehabilitation of accused persons or criminal offenders, criminal identification activities, and the collection, storage, and dissemination of criminal justice information.

(3) "Authorized agency" means any entity, criminal justice agency, or governmental agency which the Board determines complies with §§ 8610 and 8611 of this title.

(4) "Authorized user" means any employee, intern, extern, contractor, volunteer, or other individual, acting on behalf of an authorized agency, who has been appropriately vetted by the Board and has been granted access to criminal justice information.

(5) "Biographic data" means information about individuals associated with a unique case, and not necessarily connected to identity data. Biographic data does not provide a history of an individual, only information related to a unique case.

(6) "Biometric data" means data derived from 1 or more intrinsic physical or behavioral traits of humans typically for the purpose of uniquely identifying individuals from within a population. The term includes fingerprints, palm prints, iris scans, and facial recognition data.

(7) "Board" means the Delaware Criminal Justice Information System Board of Managers.

(8) "Case or incident history" means all relevant information gathered about an individual, organization, incident, or combination thereof, arranged so as to serve as an organized record to provide analytic value for a criminal justice agency. In regard to criminal justice information, it is the information about the history of incidents.

(9) "Criminal history record information" has the same meaning as set forth in § 8502 of this title.

(10) "Criminal justice agency" has the same meaning as set forth in § 8502 of this title.

(11) "Criminal justice information" or "CJI" means all Criminal Justice Information System data. The term includes: criminal history record information; biographic data; biometric data; identity history; person, organization, property, or Division of Motor Vehicles data; case or incident history; and other data necessary for authorized agencies to make hiring decisions, perform their mission, and enforce the laws of this State.

(12) "Criminal Justice Information System" or "CJIS" means the computer hardware, software, and communication network which is managed, operated, and maintained by the DELJIS for the collection, warehousing, and timely dissemination of CJI to authorized agencies.

(13) "Disposition" includes: trial verdicts of guilty or not guilty; nolle prosequis; Attorney General probations; pleas of guilty or nolo contendere; dismissals; findings of incompetence to stand trial, delinquency or nondelinquency, or responsible or not responsible; and the initiation and completion of appellate proceedings.

(14) "Dissemination" means the transmission of criminal justice information, or the confirmation of the existence or nonexistence of such information. The term shall not include any of the following:

a. Internal use of information by an officer or employee of the agency which maintains such information.

b. Transmission of information to the State Bureau of Identification.

c. Transmission of information to a criminal justice agency in order to permit the initiation of subsequent criminal justice proceedings.

d. Transmission of information in response to inquiries from criminal justice agencies.

(15) "Governmental agency" means any agency of the government of the United States or the State of Delaware or any political subdivision thereof. It does not include a private individual, corporation, or other nongovernmental entity.

(16) "Identity history" means textual data that corresponds with an individual's biometric data, providing a history of criminal or civil events for the identified individual.

(17) "Property data" means information about vehicles and property associated with a crime.

(18) "Requesting party" means any entity, criminal justice agency, or governmental agency seeking access to CJIS.

(63 Del. Laws, c. 352 § 1; 65 Del. Laws, c. 451 §§ 1-3; 68 Del. Laws, c. 103 §§ 1, 2; 71 Del. Laws, c. 204 § 1; 74 Del. Laws, c. 224 § 2; 77 Del. Laws, c. 326 § 3; 80 Del. Laws, c. 169 § 2.)

§ 8603 Board of Managers — Established; purpose; composition; term of office; staff; powers.

(a) The Delaware Criminal Justice Information System Board of Managers is hereby established.

(b) The Board shall establish policy for the development, implementation, and operation of comprehensive data systems in support of the criminal justice system of this State.

(c) The Board shall be composed of 16 members, 11 of whom shall be voting members as follows:

(1) One member of the Delaware State Police, to be designated by the Superintendent of the Delaware State Police;

(2) One member of a municipal police department, to be designated by the Chairperson of the Delaware Police Chiefs' Council;

(3) One member of the Department of Correction, to be designated by the Commissioner of Correction;

(4) One member of the Division of Youth Rehabilitative Services, to be designated by the Director of the Division of Youth Rehabilitative Services;

(5) Three members to be designated by the Chief Justice of the Supreme Court, 1 of whom shall represent the Family Court, and 1 to represent all other courts of the State;

(6) One member of the Department of Justice, to be designated by the Attorney General;

(7) One member of the Office of Defense Services, to be designated by the Chief Defender;

(8) One member-at-large to be designated by the Governor; and

(9) One member of the New Castle County Police Department as designated by the Colonel of the New Castle County Police.

(d) In addition, there shall be 5 nonvoting members:

(1) Two members of the General Assembly, 1 Senator to be designated by the President Pro Tempore of the Senate, and 1 Representative to be designated by the Speaker of the House of Representatives;

(2) One member of the Delaware State Bureau of Identification, to be designated by the Superintendent of the Delaware State Police;

(3) One member of the department (or agency) within the State with overall responsibility for providing information resource management, to be designated by the director or chief official of that agency; and

(4) One member of the Delaware Criminal Justice Council, to be designated by the Chairperson of that Council.

(e) Each Board member shall serve at the pleasure of, and for the term prescribed by, the officer or individual by whom such member was appointed.

(f) The agencies represented on the Board shall provide the Board with adequate staff support to assure that applicable provisions of this chapter are effectively carried out, not inconsistent with state law.

(g) The Board shall have the power and authority to:

(1) Designate an Executive Committee which may act between meetings of the Board, subject to confirmation of its decisions by a quorum of the Board, which Executive Committee shall consist of not less than 3 members of the Board and shall be chaired by the Board Chairperson.

(2) Appoint, supervise and evaluate an Executive Director to implement and administer this chapter.

(3) Approve the Executive Director's annual budget request and other applications for funds from any sources.

(4) Recommend any legislation necessary for the implementation, operation and maintenance of the criminal justice information system.

(5) Establish and implement policy for providing management and administrative statistics and for coordinating technical assistance to serve the information needs of criminal justice agencies, planners, administrators, legislators and the general public.

(6) Perform all functions necessary to carry out the duties of this chapter.

(63 Del. Laws, c. 352 § 1; 65 Del. Laws, c. 451 §§ 4-6; 68 Del. Laws, c. 103 §§ 3, 4; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 307 §§ 1-4; 80 Del. Laws, c. 26 § 3; 80 Del. Laws, c. 169 § 3.)

§ 8604 Board of Managers — Duty to ensure compliance with statute.

The Board shall ensure that all authorized agencies collecting, storing, or disseminating criminal justice information and other information concerning crimes and offenders comply with this chapter, Chapter 85 of this title, subchapter III, subpart K of Chapter 5 of this title, § 305(m) of Title 21, and the rules and regulations promulgated by the Board under § 8605 of this title.

(63 Del. Laws, c. 352 § 1; 80 Del. Laws, c. 169 § 4.)

§ 8605 Rules and regulations.

The Board shall have the power and authority to promulgate rules and regulations to insure compliance with this chapter not inconsistent with Chapter 85 of this title.

(63 Del. Laws, c. 352 § 1; 68 Del. Laws, c. 103 § 5.)

§ 8606 Office of the Director; function and duties.

(a) Appointment and duties of Executive Director. — The Executive Director shall be appointed by and serve at the pleasure of the Board. The duties of the Executive Director shall include:

(1) The employment and supervision of required employees.

(2) The preparation and management of an annual budget, and such other funds as are designated for the development and operation of the Criminal Justice Information System.

(3) Providing such administrative support to the Board as may be necessary.

(4) The preparation of policy or procedure to implement this chapter and Chapter 85 of this title.

(5) Being the Chief Operational Officer of the Criminal Justice Information System.

(6) The preparation of an annual report on the status of the Criminal Justice Information System.

(7) Making and entering into a cooperative agreement, contract, or memorandum of understanding, whenever deemed necessary or desirable to perform the functions of the Criminal Justice Information System and whenever funds are available for such purpose. All necessary legal services shall be provided under Chapter 25 of Title 29.

(b) Primary functions. — The primary function of the Office of the Director shall be the assurance of the efficient and reliable development and operation of the hardware, software, and database which comprise the Criminal Justice Information System; thereby, effectively collecting, storing, and disseminating through the automated system, for all authorized users, criminal justice information.

(c) Duty to provide security. — The Office of the Director shall provide for automated security as follows:

(1) Provide secure access for all authorized users through the administration of the Delaware Criminal Justice Information System security programs.

(2) Employ effective and technologically adequate software and hardware designs to prevent unauthorized access or modifications to any information contained within the Criminal Justice Information System.

(3) Ensure that access to computer facilities, systems operating environments, data file contents, and system documentation, whether in use or stored in a media library, shall be restricted to authorized agencies and authorized users.

(4) Procedures shall be instituted to assure that all Delaware Justice Information System facilities provide safe and secure record storage.

(5) Procedures shall be instituted to assure that any authorized agency or authorized user shall be responsible for the physical security of criminal justice information, or other such sensitive information, under its control or in its custody, and such information shall be protected from unauthorized access, disclosure, or dissemination.

(6) Direct access to criminal justice information, or other such sensitive information, shall be available only to authorized users essential to the proper operation of the Criminal Justice Information System.

(7) Each authorized user working with, or having access to the Criminal Justice Information System shall be made familiar with the substance and intent of this chapter, Chapter 85 of this title, and any rules and regulations promulgated by the Board under § 8605 of this title.

(d) Duty to maintain complete and accurate records; performance of an audit. — The Office of the Director, or such contracted firms as may be employed, shall conduct an audit of the Criminal Justice Information System files and of the agencies accessing the system. The audit will be conducted according to established systems auditing procedures, and other such procedures as the Board may prescribe.

(e) Duty to provide training. — The Office of the Director shall assure that training programs are established for all automated systems within the scope of the Criminal Justice Information System and provide for adequate documentation and manuals for the use of such systems. No authorized user will be granted access to criminal justice information without attending minimum training as prescribed by the Board.

(f) Duty to assure system operations. — The Office of the Director shall provide for the continued operation of the Criminal Justice Information System, including such maintenance as required.

(g) Duty to provide information resource management. — The Office of the Director shall provide the management of the Criminal Justice Information System data, assuring the effective use of the information resource.

(h) Duty to assure compliance with state criminal justice system; duty to provide effective management. — The Office of the Director shall have the duty to assure that all Criminal Justice Information System developments shall meet the requirements of the state criminal justice system and its authorized agencies, and provide for the effective management of the development process.

(i) Duties pursuant to cooperative agreement, contract, or memorandum of understanding. — The Office of the Director shall perform such duties as the Board deems necessary within the bounds of the Criminal Justice Information System, its management and maintenance, as established through cooperative agreement, contract, or memorandum of understanding.

(68 Del. Laws, c. 103 § 5; 80 Del. Laws, c. 169 § 5.)

§ 8607 Violations and investigations.

All suspected or reported violations of this chapter, Chapter 85 of this title, subchapter III, subpart K of Chapter 5 of this title, § 305(m) of Title 21, or the rules and regulations promulgated by the Board under § 8605 of this title shall be reported to the Office of the Director who shall investigate the reported violation.

(68 Del. Laws, c. 103 § 6; 80 Del. Laws, c. 169 § 6.)

§ 8608 Authorized users.

(a) No individual shall be an authorized user with an authorized agency which has or allows access to criminal justice information without meeting the minimum requirements prescribed by the Board to determine if the individual could endanger the security, privacy, or integrity of such information.

(b) The Board shall initiate or cause to be initiated administrative action leading to the suspension or removal of an authorized user's access if that authorized user violates this chapter, Chapter 85 of this title, subchapter III, subpart K of Chapter 5 of this title, § 305(m) of Title 21, or the rules and regulations promulgated by the Board under § 8605 of this title.

(c) The Board shall establish rules and regulations for resolving appeals by authorized users to the Board.

(d) Nothing in this chapter or in any rule promulgated by the Board under § 8605 of this title shall limit the authority of an authorized agency to deny the appointment, promotion, or transfer of any individual to any position which requires access to criminal justice information.

(e) An authorized user who knowingly or recklessly violates the terms of this chapter, Chapter 85 of this title, subchapter III, subpart K of Chapter 5 of this title, § 305(m) of Title 21, or the rules and regulations promulgated by the Board under § 8605 of this title shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title.

(f) Any individual who is denied access to criminal justice information shall be given a written statement of the reason or reasons therefor by the agency responsible for such action.

(63 Del. Laws, c. 352 § 1; 68 Del. Laws, c. 103 § 5; 80 Del. Laws, c. 169 § 7.)

§ 8609 Denial of appointment, etc., to position allowing access to criminal history record information.

(63 Del. Laws, c. 352 § 1; 68 Del. Laws, c. 103 § 5; Del. Laws, c. 169 § 8, eff Aug 17, 2015.)

§ 8610 Access to Criminal Justice Information System; conditions.

Access to the Criminal Justice Information System, including computerized criminal justice information, shall be available to a requesting party provided that the requesting party meets all of the following conditions:

(1) Offer written evidence that the public interest in dissemination or access outweighs the security and privacy interests of the person or persons upon whom access is sought, and that access is germane to the mission of the requesting party.

(2) Submit to an application procedure as established by the Board. The application procedure shall identify the specific information being sought.

(3) Have its application approved by the Board. The Board may approve an application in whole, in part, or as modified by the Board. The Board's decision on an application requires a majority vote of the Board.

(4) Enter into an agency agreement as prescribed in § 8611 of this title, upon approval of the requesting party's application by the Board.

(5) Bear all costs associated with CJIS access, once granted.

(71 Del. Laws, c. 204 § 2; 80 Del. Laws, c. 169 § 9.)

§ 8611 Agency agreements.

(a) Use of criminal justice information shall be restricted to the purpose for which it was given.

(b) An authorized agency shall not disseminate criminal justice information, except as otherwise provided in Chapter 85 of this title or as required by Delaware law.

(c) An agency agreement shall, at a minimum, do all of the following:

(1) Specifically authorize access to the data or information.

(2) Limit the use of the data or information to purpose for which it was given.

(3) Ensure the security and confidentiality of the data or information consistent with this chapter.

(d) An authorized agency which has entered into an agency agreement, and which knowingly or recklessly violates the terms of that agreement, shall be guilty of a class A misdemeanor and shall be punished according to Chapter 42 of this title. Upon such violation, the agency agreement shall be terminable at the option of the State Bureau of Identification or the Board.

(63 Del. Laws, c. 188 § 1; 80 Del. Laws, c. 169 § 10.)

Part V
Law-Enforcement Administration
Chapter 87
CRIMINAL JUSTICE COUNCIL

§ 8700 Mission statement.

The Delaware Criminal Justice Council is an independent body committed to leading the criminal justice system through a collaborative approach that calls upon the experience and creativity of the Council, all components of the system, and the community. The Council shall continually strive for an effective system that is fair, efficient, and accountable.

(75 Del. Laws, c. 193 § 1.)

§ 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 Chief Defender, or the Chief 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 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.

(61 Del. Laws, c. 495 § 2; 63 Del. Laws, c. 170 § 1; 63 Del. Laws, c. 191 § 4; 64 Del. Laws, c. 407 § 2; 67 Del. Laws, c. 85 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 45 §§ 1-3; 72 Del. Laws, c. 290 §§ 1-3; 75 Del. Laws, c. 193 §§ 4-7; 78 Del. Laws, c. 293 § 1; 78 Del. Laws, c. 305 § 3; 79 Del. Laws, c. 265 § 12; 80 Del. Laws, c. 26 § 3.)

§ 8702 Meetings; quorum; committees; procedure.

(a) The Council shall meet at least 8 times per year. At least 1 meeting each calendar year shall be held in each county. Ten members shall constitute a quorum.

(b) The Council may establish committees as it deems advisable, but only the Council itself may set policy or take other official action.

(c) The Council may promulgate rules of procedure governing its operations, provided that they are in accordance with Chapters 100 and 101 of Title 29, and provided that no rule shall permit proxy voting at more than 2 meetings per calendar year.

(61 Del. Laws, c. 495 § 2; 63 Del. Laws, c. 170 §§ 2, 3; 64 Del. Laws, c. 407 § 2.)

§ 8703 Officers.

(a) In December of each year, the Council shall elect a Chairperson and a Vice-Chairperson who shall serve terms of office coinciding with the following calendar year. Officers may be reelected.

(b) If the Chairperson resigns or ceases to be a member of the Council, the Vice-Chairperson shall become the Chairperson and there shall be an election to fill the unexpired term of the Vice-Chairperson at the next Council meeting.

(c) If the Vice-Chairperson resigns or ceases to be a member of the Council, there shall be an election to fill the unexpired term of the Vice-Chairperson at the next Council meeting.

(d) It shall be the duty of the Chairperson to convene and preside over meetings of the Council and prepare an agenda for meetings, except for the initial meeting of the Council, which shall be convened and presided over by the Chief Justice of the Supreme Court.

(e) It shall be the duty of the Vice-Chairperson to act as Chairperson in the absence of the Chairperson.

(64 Del. Laws, c. 407 § 2.)

§ 8704 Powers and duties.

The Council shall:

(1) Continuously study the administration of justice in this State and develop and implement policies and programs for improving the effectiveness of the criminal justice system in this State;

(2) Receive, consider and, at its discretion, investigate criticisms and suggestions pertaining to the administration of justice in the State;

(3) Submit to the General Assembly each January a program of recommended legislation to improve the criminal justice system;

(4) Recommend to the Governor and criminal justice agencies and courts of the State or political subdivisions thereof, either upon request or upon the Council's own motion, such changes in rules, organization or methods of operation as it may deem advisable;

(5) Review any application for federal funds by any criminal justice agency or court of the State or political subdivision thereof, prior to the submission of said application or request to the Delaware State Clearinghouse Committee, and provide the Clearinghouse Committee with any comments the Council deems appropriate;

(6) Allocate among the criminal justice agencies and courts of the State or political subdivisions thereof all federal funds for the improvement of the state criminal justice system if such funds are provided by the federal government in the form of a block or categorical grant;

(7) Have the authority to collect from any state or local governmental entity information, reports, statistics or other such material which is necessary to carry out the Council's function;

(8) Provide training and technical assistance to criminal justice agencies;

(9) Perform such other duties as may be necessary to carry out this chapter; and

(10) Allocate funds resulting from the certified copy fees for marriage license/certificates, pursuant to § 3132(b) of Title 16. Moneys resulting from the copy fees shall constitute The Domestic Violence Fund. The Fund shall be administered by the Criminal Justice Council and shall be used to make grants to programs providing direct services to victims of domestic violence and submit an annual report each fiscal year to the General Assembly delineating how and where the funds collected were spent. The Criminal Justice Council shall publish a Domestic Violence Fund, Request for Proposals, once a year and provide annual grants to eligible programs. The Domestic Violence Coordinating Council will participate in the review of grant applications. To be eligible to receive funds under this section, a domestic violence program must meet the following requirements:

a. It shall have been in operation on the preceding July 1 and shall continue to be in service;

b. It shall offer direct victim services; and

c. It must be a nonprofit corporation.

(61 Del. Laws, c. 495 § 2; 64 Del. Laws, c. 407 § 2; 76 Del. Laws, c. 375 § 4.)

§ 8705 Officials to furnish information.

It shall be the duty of all officials of the State or any political subdivision thereof to furnish any information and compile any report which may be requested by the Council.

(64 Del. Laws, c. 407 § 2.)

§ 8706 Criminal justice agencies and courts to provide assistance.

It shall be the duty of all criminal justice agencies and courts of the State or any political subdivision thereof to provide such staff or other assistance as may reasonably be requested by the Council to carry out its functions under this chapter.

(64 Del. Laws, c. 407 § 2.)

§ 8707 Annual report; quarterly reports.

(a) The Council shall compile the recommendations made pursuant to § 8704(4) of this title and such other information as it deems appropriate into an annual report, which shall be made available to the Governor, the criminal justice agencies and courts of the State and political subdivisions thereof, and upon request to members of the General Assembly and the public.

(b) The Council shall compile a record of all funding distributions made by the Council during each fiscal quarter into a quarterly report

which shall be made available to the General Assembly at the close of the quarter.

(61 Del. Laws, c. 495 § 2; 64 Del. Laws, c. 407 § 2; 75 Del. Laws, c. 193 §§ 2, 3.)

§ 8708 Public hearings.

The Council shall hold public hearings annually in each county for the purpose of carrying out its duties under § 8704(1), (2) and (4) of this title.

(64 Del. Laws, c. 407 § 2.)

§ 8709 Executive Director; staff.

The Executive Director of the Criminal Justice Council shall be appointed by and serve at the pleasure of a majority of the members of the Council. The Executive Director shall act as secretary to the Council. The Executive Director shall be paid such compensation as shall be determined by the General Assembly. The Executive Director may employ such personnel as are necessary to carry out the functions of this chapter, subject to the approval of the Council and within the limits of any appropriation made by the General Assembly.

(61 Del. Laws, c. 495 § 2; 63 Del. Laws, c. 170 § 1; 63 Del. Laws, c. 191 § 4; 64 Del. Laws, c. 407 § 2.)

Part V
Law-Enforcement Administration
Chapter 88
DELAWARE COUNTY AND MUNICIPAL POLICE/FIREFIGHTER PENSION PLAN

§ 8801 Definitions.

As used in this chapter:

(1) "Board" shall mean the Board of Pension Trustees established by § 8308 of Title 29.

(2) "Compensation" shall mean all salary or wages, excluding overtime payments and special payments for extra duties, payable to a member for service.

(3) "Credited service" shall mean, for any member:

a. Service as an employee;

b. Equalized state service if the member elects a unified pension;

c. Service as an employee before the date of affiliation with the Fund by the employer, provided the actuarially-determined past service cost associated with such service is paid into the Fund on a schedule approved by the Board of Pension Trustees; and

d. Service with a police department not covered under paragraph (6) of this section by someone who is subsequently employed as a police officer by a county or municipality in Delaware, which has affiliated with the Fund established by this chapter may receive credit for such previous service upon payment to the Fund, on or before the date of issuance of the individual's first benefit check, of a single lump sum payment equal to the actuarial value of the pension benefits to be derived from such service credits compiled on the basis of actuarial assumption approved by the board and the individual's attained age and final average compensation.

(4) "Dependent" shall mean a dependent child or dependent parent. A dependent child is a person who is unmarried and either has not attained age 18, or has attained age 18 but not age 22 and is attending school on a full-time basis, or has attained age 18 and is permanently disabled as the result of a disability which began before the dependent attained age 18. A dependent parent is the parent of a member who was receiving at least one half of the support from the member at the time of the member's death.

(5) "Employee" shall mean:

a. An individual who is employed on a full-time basis as a police officer by a county or municipality in Delaware which has affiliated with the Fund established by this chapter; or

b. An individual who is employed on a full-time basis as a uniformed firefighter by the City of Wilmington after affiliation by the City of Wilmington with the Fund established by this chapter; or

c. An individual employed on a full-time basis as a uniformed paramedic by a county in Delaware which has affiliated with the Fund established by this chapter.

(6) "Equalized state service" shall mean:

a. Years of service as an "employee" as defined in § 5501(f)(1) and (3) of Title 29, multiplied by 25/30, provided that the individual is not accruing nor collecting benefits under Chapter 55 of Title 29. It shall not include service for which the employee has received the withdrawal benefit provided by § 5530 of Title 29, or the refund provided by § 5523(b) of Title 29, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

b. Years of service as an "employee" as defined in § 5551(5) of Title 29, multiplied by 25/30, provided that the individual is not accruing nor collecting benefits under Chapter 55A of Title 29. It shall not include service for which the employee has received the withdrawal benefit provided by § 5580 of Title 29, or the refund provided by § 5573(b) of Title 29, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

c. Years of service as an "employee" as defined in § 8351(5) of this title, multiplied by 25/25, provided that the individual is not accruing nor collecting benefits under subchapter III of Chapter 83 of this title. It shall not include service for which the employee has received the withdrawal benefit provided by § 8374 of this title, or the refund provided by § 8364(d) of this title, unless such benefit or refund is first repaid with interest at a rate determined by the Board before such service may be equalized.

(7) "Final average compensation" shall mean 1/36 of the compensation paid to an employee during any period of 36 consecutive months for services rendered during those 36 months, in the years of credited service in which the compensation was highest.

(8) The clause "for which the member is eligible under the Federal Social Security Act" shall mean the old age insurance benefit or the disability insurance benefit for which an individual is or will be eligible by virtue of age and the wage credits under the Federal Social Security Act (42 U.S.C. § 301 et seq.), based on the final average compensation and the Federal Social Security Act (42 U.S.C. § 301 et seq.) in effect when the individual ceased to be an employee under this chapter and computed in accordance with rules and regulations approved by the Board, regardless of any other factors such as, without limitation, whether the employee has made application for Social Security benefits or is subsequently employed.

(9) "Fund" shall mean the Fund established by § 8843 of this title.

(10) "Inactive member" shall mean a member who is an employee on or after the member:

a. Has terminated service;

b. Is not eligible to begin receiving a service or disability pension; and

c. Has neither applied for nor received a refund of contributions.

(11) "Member" shall mean a person who is an employee on or after the date the employer affiliates with the Fund.

(12) "Normal retirement date" shall mean the date at which a member is eligible for a service pension pursuant to § 8813(a) of this title. For a member who has received a disability benefit, the period of disability plus credited service, not to exceed 25 years, shall be used in determining normal retirement date.

(13) "Partial disability" shall mean a medically determined physical or mental impairment which renders the member unable to function as a police officer and which is reasonably expected to last at least 12 months.

(14) "Primary survivor" shall mean a person in the following order of priority, unless the priority is changed by the member on a form prescribed by the Board on file with the Board at the time of the member's death:

a. The surviving spouse, or

b. If there is no eligible surviving spouse, a dependent child (or with the survivor's pension divided among them in equal shares, all such children, including and resulting from a pregnancy prior to the member's death), or

c. If there is no eligible surviving spouse, or eligible dependent child, a dependent parent (or, with the survivor's pension divided between them in equal shares, both such parents).

(15) "Retired member" shall mean a member who has terminated service, other than an inactive member, who is eligible to receive a service or disability pension under this chapter.

(16) "Total disability" shall mean a medically determined physical or mental impairment which renders the member totally unable to work in any occupation for which the member is reasonably suited by training or experience, which is reasonably expected to last at least 12 months.

(64 Del. Laws, c. 445 § 1; 65 Del. Laws, c. 91 § 1; 67 Del. Laws, c. 86 § 2; 67 Del. Laws, c. 327 § 2; 70 Del. Laws, c. 186 § 1; 74 Del. Laws, c. 43 § 1; 79 Del. Laws, c. 140 § 1; 79 Del. Laws, c. 174 § 1; 79 Del. Laws, c. 413 § 1.)

§ 8802 Employment of pensioners.

An individual shall not receive a service or disability pension under this chapter for any month during which the individual is an employee as defined in § 8801 of this title, unless:

(1) The individual is a police officer who has retired from 1 county or municipal employer and has been appointed by the executive branch and confirmed by the legislative branch of a different county or municipal employer participating in the County Municipal Police/Firefighter Pension Plan; or

(2) The individual is a temporary employee whose earnings from such employment do not exceed the maximum allowed by Social Security without affecting Social Security benefits; and

(3) The individual's employment under paragraphs (1) and (2) of this section is not pension creditable service time and may not be used to earn any retirement benefits in the Delaware County and Municipal Police/Firefighter Pension Plan.

(64 Del. Laws, c. 445 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 407 § 1.)

§ 8803 Garnishment and assignment of benefits prohibited.

Except for orders of the Delaware Family Court for a sum certain payable on a periodic basis, the benefits provided by this chapter shall not be subject to attachment or execution and shall be payable only to the beneficiary designated and shall not be subject to assignment or transfer.

(64 Del. Laws, c. 445 § 1; 71 Del. Laws, c. 337 § 2.)

§ 8804 Waiver of benefits.

Any individual entitled to any benefits under this chapter may decline to accept all or any part of such benefits by a waiver signed and filed with the Board. Such waiver may be revoked in writing at any time, but no payment of the benefits waived shall be made covering the period during which such waiver was in effect.

(64 Del. Laws, c. 445 § 1.)

§ 8805 Optional participation of counties and municipalities.

Any county or municipality may elect to participate in the County and Municipal Police/Firefighter Pension Plan beginning July 1 of any year on or after July 1, 1984. Application to participate shall be by resolution approved by the governing body of the county or municipality and shall be submitted to the Board in such form as the Board shall determine not later than 90 days prior to the date participation is to begin, except such time limit may be reduced by the Board. Any such application, upon approval by the Board, shall be irrevocable. Each participating county and municipality shall provide such information to the Board as it may require for the administration of this chapter.

(64 Del. Laws, c. 445 § 1; 67 Del. Laws, c. 327 § 3.)

§§ 8806 -8810. [Reserved.]

§ 8811 Mandatory retirement.

A member shall retire on the member's mandatory retirement date as established by the employer.

(64 Del. Laws, c. 445 § 1; 75 Del. Laws, c. 133 § 8.)

§ 8812 Retirement option.

When the member applies for a pension, the member shall choose either a unified pension or an ordinary pension.

(64 Del. Laws, c. 445 § 1; 67 Del. Laws, c. 86 § 10; 70 Del. Laws, c. 186 § 1.)

§ 8813 Eligibility for service pension.

(a) A member shall become eligible to receive a service pension, after the member has terminated employment, beginning with the month when:

(1) The member has 5 years of credited service and has attained age 62; or

(2) The member's age plus credited service (but not less than 10 years) equals 75; or

(3) The member has 5 years of credited service, and has retired under the provisions of § 8811 of this title; or

(4) The member has 20 years of credited service.

(b) An inactive member with a vested right to a service pension shall become eligible to receive such pension, computed in accordance with the provisions of this chapter in effect when the member ceased to be an employee, beginning with the first month after attainment of age 62.

(c) For purposes of this section, credited service shall include any period during which a member is receiving a disability pension as provided by this chapter.

(64 Del. Laws, c. 445 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 143 § 1; 75 Del. Laws, c. 133 § 9; 76 Del. Laws, c. 214 § 1.)

§ 8814 Vesting rights; return to service.

(a) A member who has 5 years of credited service shall have a vested right to a service pension.

(b) If a member who has less than 5 years of credited service ceases to be an employee, the service credits to the date of termination shall be cancelled unless:

(1) The member again becomes an employee within 4 months after such cessation of employment; or

(2) The member subsequently acquires 5 years of credited service; or

(3) The member has joined a state pension plan which provides for a unified state service pension and subsequently acquires 5 years of credited service; and provided that, if the member has withdrawn that member's own contributions, the member repays them with interest at a rate determined by the Board.

(c) For purposes of this section, credited service shall include any period during which a member is receiving a disability pension as provided by this chapter.

(d) A former employee's vested right shall be forfeited upon application for a refund of accumulated contribution.

(64 Del. Laws, c. 445 § 1; 67 Del. Laws, c. 86 § 11; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 133 § 7; 76 Del. Laws, c. 214 § 1.)

§ 8815 Eligibility for disability pension.

(a) A member who suffers a partial or total disability resulting from an individual and specific act, the type of which would normally occur only while employed as a police officer/firefighter, shall be eligible for a duty-connected disability pension. If such act involves a traumatic event which directly causes an immediate cardiovascular condition which results in partial or total disability, the member shall be eligible for a partial or total duty-connected disability pension.

(b) A member with 5 years of credited service who suffers a partial or total disability and who is not eligible for a duty-connected disability pension shall be eligible for an ordinary partial or total disability pension.

(c) The determination of disability and its cause shall be made by the Board after receiving the recommendation of its medical committee.

(d) For the purposes of this section, whether a member is employed as an on-duty police officer or on an authorized special duty function, the following duties shall be presumed to occur only while employed as a police officer without limiting the scope of acts embraced by subsection (a) of this section:

(1) Engaging in a high-speed chase;

(2) Effecting an arrest (criminal or traffic);

(3) Pursuing a suspect (criminal or traffic);

(4) Patrolling (criminal or traffic);

(5) Directing traffic or removing traffic hazards;

(6) Assisting a civilian, for example, a motorist alongside of the highway or rendering aid in a life-threatening situation (fire, drowning);

(7) In-service training other than physical fitness;

(8) Performing police functions at a crime scene or in connection with the investigation thereof; or

(9) Being assaulted whether by a suspect, detainee, arrestee, prisoner or mental patient.

(64 Del. Laws, c. 445 § 1; 67 Del. Laws, c. 327 § 4; 70 Del. Laws, c. 389 § 1.)

§ 8816 Payment of service pension.

Service pension payments shall be made to a retired member for each month beginning with the month in which the member becomes eligible to receive such pension and ending with the month in which the member dies.

(64 Del. Laws, c. 445 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8817 Payment of disability pension.

(a) Disability pension payments shall be made to a member for each month beginning with the month in which the member becomes eligible to receive such pension and ending with the month in which the member ceases to be eligible or dies.

(b) Any member receiving a disability pension who has not reached normal retirement date shall report to the Board annually, in a form prescribed by the Board, total earnings from any gainful occupation or business and Worker's Compensation benefits in the preceding calendar year. The excess of such earnings and/or such benefits over the current base pay of the rank held at the time of disability shall be deducted from the disability pension beginning 90 days following the day the report is due, in a manner determined by the Board. If any member received a disability pension for less than 12 months in the calendar year for which earnings are reported, the deduction, if any, shall be determined on a pro rata basis.

(c) If a member who is initially determined to be totally disabled recovers, yet is still partially disabled, the total disability pension shall be reduced to a partial disability pension for as long as the member shall remain partially disabled.

(d) If a member who is disabled recovers and is no longer totally or partially disabled, the disability pension shall be discontinued unless:

(1) The member has reached normal retirement date, or

(2) In the case of a duty-connected disability, the member is not offered employment by the council or municipality in a position for which the member is suited by training and experience.

(e) A member aggrieved by the reclassification or termination of disability pension pursuant to subsection (c) or (d) of this section may appeal such decision to the Superior Court within 30 days of the day the decision is mailed. The appeal shall be on the record, without a trial de novo. The Court may remand the case to the Board for further proceedings on the record if the Court determines that the record is insufficient for review. When factual determinations are at issue, the Court's review, in the absence of actual fraud, shall be limited to a determination of whether the Board's decision is supported by substantial evidence in the record.

(64 Del. Laws, c. 445 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8818 Amount of ordinary service pension.

The amount of the monthly ordinary service pension payable to a retired member shall be the sum of 2.5% of final average compensation multiplied by years of service up to 20 years inclusive, plus 3.5% of final average compensation multiplied by years of service above 20 years.

(64 Del. Laws, c. 445 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 133 § 1.)

§ 8819 Amount of unified service, disability or survivor pension.

The amount of the unified pension payable to an employee, former employee or survivor shall be the sum of the following:

(1) The amount computed according to this chapter, exclusive of service credited under § 8801(6) of this title; plus

(2) The sum of the amounts computed, based on credited service as an employee, according to subchapter II of Chapter 55 of Title 29; subchapter II of Chapter 55A of Title 29; and subchapter III of Chapter 83 of this title.

(64 Del. Laws, c. 445 § 1; 67 Del. Laws, c. 86 § 8.)

§ 8820 Amount of duty-connected disability pension.

(a) The duty-connected total disability pension shall by 75% of final average compensation plus 10% of final average compensation for each dependent during the period of dependency, not to exceed a total of 25% of final average compensation for all dependents.

(b) The duty-connected partial disability pension shall be computed in the same manner as the service pension based on credited service accrued to the date of disability, subject to a minimum of 50% of final average compensation.

(c) Medical costs made necessary by reason of duty-connected disability which are in excess of those amounts paid by any health care coverage or worker's compensation shall be paid by the Fund. Payments under this subsection will be paid upon the filing of a claim in a form prescribed by the Board.

(64 Del. Laws, c. 445 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 133 §§ 2, 3.)

§ 8821 Amount of ordinary disability pension.

The ordinary disability pension shall be computed in the same manner as the service pension based on credited service accrued to the date of disability, subject to the following:

(1) In the case of total disability, the minimum pension shall be 50% of final coverage compensation plus 5% of final average compensation for each dependent during the period of dependency, not to exceed a total of 20% of final average compensation for all dependents; and

(2) In the case of partial disability, the minimum pension shall be 30% of final average compensation.

(64 Del. Laws, c. 445 § 1; 70 Del. Laws, c. 186 § 1; 75 Del. Laws, c. 133 § 4.)

§ 8821A Amount of ordinary service or disability pensions [For application of this section, see 79 Del. Laws, c. 315, § 10]

(a) Notwithstanding provisions of this chapter to the contrary, an employee may elect to have his or her service or disability pension computed under this chapter reduced by 2% thereby providing a survivor's pension equal to 2/3 of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(b) Notwithstanding provisions of this chapter to the contrary, an employee may elect to have his or her service or disability pension computed under this chapter reduced by 3% thereby providing a survivor's pension equal to 75% of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(c) Notwithstanding provisions of this chapter to the contrary, a member may elect to have his or her service or disability pension computed under this chapter reduced by 6% thereby providing a survivor's pension equal to 100% of such reduced amount to the employee's eligible survivor or survivors at the time of the employee's death. This election must be made in a form approved by the Board, filed prior to the issuance of the employee's first benefit check and shall be irrevocable.

(78 Del. Laws, c. 374 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 315 § 5.)

§ 8822 Ordinary survivor's pension [For application of this section, see 79 Del. Laws, c. 315, § 10]

(a) Upon the death of a member in service, a monthly survivor's pension shall be payable to his or her eligible survivor or survivors equal to 3/4 of the service pension the employee would have been eligible to receive had he or she elected the option provided under § 8821A(b) of this title.

(b) Upon the death of an employee in service, whose death occurred in the line of duty, a monthly survivor's pension shall be payable to the primary survivor equal to 3/4 of the member's compensation.

(c) Upon the death of an individual receiving a service or disability pension at the time of his or her death, a monthly survivor's pension shall be payable to the primary survivor and surviving dependents equal to the greater of: (i) 50% of such service or disability pension; (ii) if such pension was computed under the provisions of § 8821A(a) of this title, 2/3 of such service or disability pension; (iii) if such pension was computed under the provisions of § 8821A(b) of this title, 75% of such service or disability pension; or (iv) if such pension was computed under the provisions of § 8821A(c) of this title, 100% of such service or disability pension. If the primary survivor is the surviving spouse, such person must have been married to the deceased member:

(1) Prior to retirement; or

(2) For at least 1 year before the date of death, unless the death was the result of an accident.

(d) A survivor's pension shall begin with the month following the month in which the member or retired member dies. If payable to a surviving spouse who dies or marries, it shall become payable in the following month to the next primary survivor as defined in § 8801 of this title or cease with that month in the absence of the eligible dependents. If payable to a child who dies or fails to meet the conditions of eligibility in § 8801(4) of this title, it shall become payable in the following month to a dependent parent or cease with that month in the absence of eligible parents. If payable to a parent, it shall cease with the month in which the parent dies.

(64 Del. Laws, c. 445 § 1; 67 Del. Laws, c. 86 § 16; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 374 § 2; 78 Del. Laws, c. 375 § 1; 79 Del. Laws, c. 315 § 6.)

§ 8823 Death benefit.

Upon the death of a member, inactive member, retired member or individual receiving a survivor's pension, there shall be paid to the designated beneficiary or beneficiaries or, in the absence of a designated beneficiary, to the estate of the member, inactive member, retired member or survivor, a lump sum equal to the excess, if any, of the accumulated member contributions with interest over the aggregate of all pension payments made.

(64 Del. Laws, c. 445 § 1.)

§ 8824 Withdrawal benefit.

(a) The accumulated contributions with interest of a member who is neither eligible for a service nor disability pension, nor has a vested right to a service pension, shall be refunded upon withdrawal from service.

(b) If a member has a vested right to a service pension and withdraws from service and is not immediately eligible for a service or disability benefit, the member may request a refund of accumulated contributions with interest. Refund of such contributions shall extinguish all rights to benefits under this chapter.

(64 Del. Laws, c. 445 § 1; 70 Del. Laws, c. 186 § 1.)

§ 8825 Adjustment of benefits.

(a) A pension payable under this chapter shall be adjusted no less liberally than adjustments made for pensions payable under the State Employees' Pension Plan, taking into account adjustments to Social Security benefits payable to state employees.

(b) Any monthly service pension, disability pension or survivor pension based on a former service or disability pension which is payable

on July 7, 2005, shall be increased effective July 1, 2005, by the amount of difference between the pensioner's computed benefit under this chapter of this title, as effective July 1, 2005, less the benefit previously awarded under this chapter of this title.

(64 Del. Laws, c. 445 § 1; 75 Del. Laws, c. 133 § 6.)

§ 8826 Application for benefits.

(a) A service pension, disability pension, survivor's pension, death benefit or withdrawal benefit shall be paid only upon the filing of an application in a form prescribed by the Board. A monthly benefit shall not be payable for any month earlier than the second month preceding the date on which the application for such benefit is filed.

(b) The Board may require any member, inactive member, retired member or eligible survivor to furnish such information as may be required for the determination of benefits under this chapter or to authorize the Board to procure such information. The Board may withhold payment of any pension under this chapter, whenever the determination of such pension is dependent upon such information and the member, inactive member, retired member or eligible survivor does not cooperate in the furnishing or procuring thereof.

(c) A service pension, disability pension, or survivor's pension applied for under this act may be paid into a Miller Trust Bank account, pursuant to the creation of an irrevocable income assignment trust ("Miller Trust"), established on behalf of an eligible pensioner or survivor covered under this chapter who is a person with disabilities, so long as the Miller Trust is established consistent with the laws of the State of Delaware, the laws of the United States and in accordance with the rules and regulations of the local and federal agencies responsible for administering assistance programs for persons with disabilities.

(64 Del. Laws, c. 445 § 1; 77 Del. Laws, c. 408 § 4.)

§§ 8827 -8840. [Reserved.]

§ 8841 Member contributions.

(a) Effective January 1, 2006, member contributions to the fund shall be 7% of monthly compensation.

(b) An employee can repay a withdrawal benefit using a rollover distribution from:

(1) A direct rollover of an eligible rollover distribution from:

a. A qualified plan described in § 401(a) of the United States Internal Revenue Code [26 U.S.C. § 401(a)];

b. An annuity contract described in § 403(b) of the United States Internal Revenue Code [26 U.S.C. § 403(b)]; or

c. An eligible plan under § 457(b) of the United States Internal Revenue Code [26 U.S.C. § 457(b)].

(2) A participant contribution of an eligible rollover distribution from:

a. A qualified plan described in § 401(a) of the United States Internal Revenue Code [26 U.S.C. § 401(a)];

b. An annuity contract described in § 403(b) of the United States Internal Revenue Code [26 U.S.C. § 403(b)]; or

c. An eligible plan under § 457(b) of the United States Internal Revenue Code [26 U.S.C. § 457(b)].

(3) A participant rollover contribution of the portion of a distribution from an individual retirement account or annuity described in § 408 of the United States Internal Revenue Code [26 U.S.C. § 408] that is eligible to be rolled over and would otherwise be includible in gross income.

(64 Del. Laws, c. 445 § 1; 72 Del. Laws, c. 143 § 2; 73 Del. Laws, c. 419 §§ 4, 5; 75 Del. Laws, c. 133 § 5.)

§ 8842 Employer contributions.

The contribution of the county or municipality for each fiscal year shall be the percentage of covered payroll approved by the Board on the basis of the most recent actuarial valuation and shall equal:

(1) The normal cost; plus

(2) Adjustments for actuarial gains and losses or increases in benefits adopted on or subsequent to participation; plus

(3) Administrative costs.

(64 Del. Laws, c. 445 § 1.)

§ 8843 Fund established.

There shall be established a County and Municipal Police/Firefighter Retirement Fund, hereinafter referred to as the "Fund," separate and distinct from the fund established under subchapters II and III of Chapter 83 of this title, to which county or municipal appropriations and other employer contributions shall be deposited monthly, and to which member contributions shall be deposited upon deduction from the member's paycheck, and to which earnings on investments, refunds and reimbursements shall be deposited upon receipt, and from which benefits shall be paid and fees and expenses authorized by the Board shall be paid. Subject to Internal Revenue Code § 401(a)(24) [26 U.S.C. § 401(a)(24)], the assets of the Fund will be commingled in the Delaware Public Employees' Retirement System as provided for by § 8308 of this title. The assets of the Fund are held in trust and may not be used for or diverted to any purpose other than for the exclusive benefit of the employees and their beneficiaries.

(64 Del. Laws, c. 445 § 1; 67 Del. Laws, c. 327 § 5; 71 Del. Laws, c. 121 § 9; 76 Del. Laws, c. 279 § 11.)

§ 8844 Employer pickup of member contributions.

(a) Each participating employer, pursuant to the provisions of § 414(h)(2) of the United States Internal Revenue Code [26 U.S.C. §

414(h)(2)], shall pick up and pay the contributions which would otherwise be payable by the members under § 8841 of this title. The contributions so picked up shall be treated as employer contributions for purposes of determining the amounts of federal income taxes to withhold from the member's compensation.

(b) Member contributions picked up by the employer shall be paid from the same source of funds used for the payment of compensation to a member. A deduction shall be made from each member's compensation equal to the amount of the member's contributions picked up by the employer. This deduction, however, shall not reduce the member's compensation for purposes of computing benefits under the retirement system pursuant to this chapter.

(c) Member contributions shall be credited to a separate account within the member's individual account so that the amount contributed prior to the effective date for the pickup of member contributions may be distinguished from the amounts contributed on or after the effective date.

(d) The contributions, although designated as employee contributions, are being paid by the employer in lieu of the contributions by the employee. The employee will not be given the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system.

(68 Del. Laws, c. 358 § 6.)

§ 8845 Payment of benefits.

Benefits shall be due and payable under this chapter only to the extent provided in this chapter, and neither the State nor the County and Municipal Police/Firefighter Retirement Fund shall be liable for any amount in excess of such sums.

(71 Del. Laws, c. 132 § 88.)

Part V
Law-Enforcement Administration
Chapter 89
STATISTICAL ANALYSIS CENTER

§ 8901 Established; employees.

(a) The Statistical Analysis Center is hereby located within the Criminal Justice Council. The Director of the Statistical Analysis Center shall be qualified by education or experience to carry out the mission of the Statistical Analysis Center and shall report to the Director of the Criminal Justice Council.

(b) The Director of the Statistical Analysis Center may employ such personnel as are necessary to carry out the functions of this chapter, subject to the approval of the Director of the Criminal Justice Council and within the limits of any appropriation made by the General Assembly. The staff of the Statistical Analysis Center is hereby placed under the authority of and is subject to the oversight and supervision of the Director of the Criminal Justice Council.

(72 Del. Laws, c. 395 § 100; 75 Del. Laws, c. 88 § 21(6); 78 Del. Laws, c. 78 § 73.)

§ 8902 Mission.

The Statistical Analysis Center shall provide the State with a professional capability for objective, interpretive analysis of data relating to crime and criminal justice issues in order to improve the effectiveness of policy-making, program development, planning and reporting.

(72 Del. Laws, c. 395 § 100.)

§ 8903 General powers and duties.

In pursuit of its mission, the Statistical Analysis Center shall have the following powers, duties and functions:

(1) Generate statistical and analytical products concerning crime and the criminal justice system in the State;

(2) Provide statistical and analytical services from available information upon request;

(3) Provide technical assistance in the identification of sources, collection, analysis, interpretation and dissemination of criminal justice statistics to state and local governmental agencies;

(4) Identify, collect, analyze and disseminate statistics regarding the resources expended on criminal justice in the State;

(5) Promote the orderly development of criminal justice information and statistical systems within the State;

(6) Maintain a state-level capability for providing state and local governments with access to federal resources in criminal justice statistical information in cooperation with the U.S. Department of Justice,

(7) Serve as the clearinghouse and point of contact for the U.S. Department of Justice and for state agencies, local government agencies, the courts, and appropriate nongovernmental organizations;

(8) Direct or participate in the research design for the analysis of crime or criminal justice issues for the State;

(9) Conduct research and provide analyses as required to determine the impact proposed policy changes may have on the criminal justice system; and

(10) Submit annually to the Governor, Chief Justice, President Pro Tem of the Senate, and the Speaker of the House a report examining 1-year, 2-year, and 3-year rates of re-arrest, reconviction, and recommitment of released offender cohorts. The first report shall be submitted by July 31, 2013.

(72 Del. Laws, c. 395 § 100; 78 Del. Laws, c. 392 § 16.)

§ 8904 Access to information and data.

The Statistical Analysis Center shall have full access to all information and data in any form, including computerized files and official records, to accomplish its research and analysis. All data referencing individuals shall be used only for research purposes and shall not in any way be shared or portrayed as to identify any individual so as to meet both state and federal security and privacy laws. It shall be the duty of all officials of the State or any political subdivision thereof to furnish any information and compile any report that may be requested by the Statistical Analysis Center.

(72 Del. Laws, c. 395 § 100.)

§ 8905 Criminal justice agencies and courts to provide assistance.

It shall be the duty of all criminal justice agencies and courts of the State or any political subdivision thereof to provide such assistance as may reasonably be requested by the Statistical Analysis Center to carry out its mission under this chapter.

(72 Del. Laws, c. 395 § 100.)

Part V

Law-Enforcement Administration

Chapter 89A

DELAWARE COUNTY AND MUNICIPAL POLICE/FIREFIGHTERS' RETIREE PENSION PLAN

§§ 8901A -8906A. Definitions; optional participation of counties and municipalities; payment of pension; adjustment of benefits; employer contributions; fund established.

(Repealed by 76 Del. Laws, c. 279 § 12, effective July 1, 2008.)

Part V
Law-Enforcement Administration
Chapter 89B
CALL LOCATION INFORMATION [EFFECTIVE FEB. 7, 2016]

§ 8901B Definitions [Effective Feb. 7, 2016]

As used in this chapter:

(1) "Law-enforcement agency" means a government agency or any subunit thereof which performs the administration of criminal justice pursuant to state or federal law or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice. For the purposes of this subchapter, such agencies shall include, but are not limited to, the following:

a. The Delaware State Police;

b. All law-enforcement agencies and police departments of any political subdivision of this State;

c. The Department of Correction; and

d. The Department of Justice.

(2) "Provider" is as defined in § 10002 of Title 16.

(3) "Public safety answering point" is as defined in § 10002 of Title 16.

(4) "Wireless provider" is as defined in § 10002 of Title 16.

(5) "Wireless service" is as defined in § 10002 of Title 16.

(6) "Wireless service customer" is as defined in § 10002 of Title 16.

(80 Del. Laws, c. 152 § 1.)

§ 8902B Provision of call location information by wireless service provider to law enforcement [Effective Feb. 7, 2016]

(a) Upon request of a law-enforcement agency or a public safety answering point on behalf of a law-enforcement agency, a wireless provider shall provide call location information concerning the telecommunications device of a wireless service customer to the requesting law-enforcement agency or public safety answering point. A law-enforcement agency or public safety answering point shall only request information under this chapter for the purposes of responding to a call for emergency services or in an emergency situation that involves the risk of death or serious physical harm.

(b) A wireless provider may establish protocols by which the carrier voluntarily discloses call location information.

(c) No cause of action shall lie in any court against a wireless provider, its directors, officers, employees, agents, or vendors for providing cell location tracking information to a law-enforcement agency or public safety answering point as required by this chapter.

(d) The Delaware State Police Headquarters Communications shall obtain contact information from all wireless providers authorized to do business in this State to facilitate a request from a law-enforcement agency or a public safety answering point on behalf of a law-enforcement agency for call location information under this section. The Delaware State Police Headquarters Communications shall disseminate the contact information to each public safety answering point in this State.

(80 Del. Laws, c. 152 § 1.)

Part VI
Victims of Crimes
Chapter 90
COMPENSATION FOR INNOCENT VICTIMS OF CRIME

§ 9001 Declaration of purpose.

The General Assembly hereby declares that it serves a purpose, and is of benefit to the State, to indemnify those persons who are victims of crimes committed within the State or Delaware victims of terrorist acts, and it is therefore the declared purpose of this chapter to promote the public welfare by establishing a means of meeting the additional hardships imposed upon the innocent victims of certain crimes, and the families and dependents of those victims.

(59 Del. Laws, c. 519 § 1; 60 Del. Laws, c. 436 § 1; 73 Del. Laws, c. 250 § 1; 77 Del. Laws, c. 193 § 1.)

§ 9002 Definitions.

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

(1) "Agency" shall mean the Victims' Compensation Assistance Program.

(2) "Appeals Board" shall mean the Victims' Compensation Assistance Program Appeals Board.

(3) "Child" shall mean an unmarried person who is under 18 years of age, and shall include the stepchild, foster child, or adopted child of the victim, or child conceived prior to, but born after, the personal injury or death of the victim.

(4) "Council" shall mean the Victims' Compensation Assistance Program Advisory Council.

(5) "Crime" for purposes of this chapter shall mean:

a. Any specific offense set forth in Chapter 5 of this title, if the offense was committed after July 1, 1973, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives, unlawful use of firearms, stalking or endangering the welfare of a child;

b. Any specific offense set forth in former Chapter 3 of this title, if such offense was committed prior to July 1, 1973, and contains the characteristics of murder, rape or any other sexual assault or sexual abuse, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives or unlawful use of firearms;

c. Any specific offense occurring in another state, possession or territory of the United States or in violation of the United States Criminal Code, in which a person whose domicile is in Delaware is a victim, if the offense contains the characteristics of murder, rape or any other sexual assault or sexual abuse, manslaughter, assault, kidnapping, arson, burglary, riot, robbery, unlawful use of explosives or unlawful use of firearms as set forth in Chapter 5 of this title;

d. Any specific act of delinquency by a child, which if committed by an adult would constitute a specific offense set forth in Chapter 5 of this title, and contains the characteristics of murder, rape, unlawful sexual intercourse, unlawful sexual penetration or unlawful sexual contact, manslaughter, assault, kidnapping, arson, burglary, robbery, riot, unlawful use of explosives or unlawful use of firearms;

e. An act of terrorism, as defined in 18 U.S.C. § 2331, committed outside, or inside, the United States against a resident or domiciliary of this State;

f. Any offense under the Criminal Code or the Motor Vehicle Code containing as an element the act of driving under the influence of alcohol or any drug or driving with a prohibited blood alcohol concentration, vehicular homicide in any degree, vehicular assault in any degree, operation of a motor vehicle causing death, or leaving the scene of an accident involving personal injury;

g. Any act of domestic violence or abuse; or

h. Any act of human trafficking as defined in § 787 of this title.

(6) "Dependent" shall mean a person wholly or substantially dependent upon the income of the victim at the time of victim's death, or would have been so dependent but for the incompetency of the victim due to the injury from which the death resulted, and shall include a child born after the death of the victim.

(7) "Guardian" shall mean any person, governmental instrumentality or private organization who is entitled by law or legal appointment to care for and manage the person or property, or both, of a child or incompetent.

(8) "Incompetent" shall mean a person who is incapable of managing the person's own affairs, as determined by the Agency or by a court of competent jurisdiction.

(9) "Pecuniary loss" in instances of personal injury shall include medical expenses, including psychiatric care and mental health counseling of the victim or secondary victims; nonmedical remedial care and treatment rendered in accordance with a religious method of healing; hospital expenses; loss of past or future earnings (including, but not limited to, reimbursement for vacation, sick and compensatory time) because of a disability resulting from such personal injury. "Pecuniary loss" in instances of death of the victim shall

include funeral and burial expenses, loss of support to the dependents of the victim and mental health counseling to secondary victims. "Pecuniary loss" includes any other expenses actually and necessarily incurred as a result of the personal injury or death, but it does not include property damage. "Pecuniary loss" includes, but is not limited to, the following:

a. Crime scene cleanup not to exceed $1,000;

b. Temporary housing not to exceed $1,500;

c. Moving expenses not to exceed $1,000;

d. Essential personal safety property not to exceed $1,500;

e. Lost wages of parents or others charged with the care, custody or guardianship of a child victim while providing care to a child victim;

f. Reasonable expenses, other than counseling of secondary victims where the victim has been killed by the act of a person during the commission of a crime, as defined in this chapter, not to exceed $1,000;

g. The deductible under a policy of automobile insurance where a motor vehicle is stolen in connection with a crime, as defined in this chapter, not to exceed the amount of the deductible;

h. Housing-related expenses, including, but not limited to, mortgage, rent, security deposit, or other housing costs and furniture not to exceed 3 times the victim's monthly prospective housing cost;

i. Loss of support for victims of violence, not to exceed $3,000, when it is established that:

1. The offender was gainfully employed or had other legal income at the time the crime as defined by the chapter was committed against the victim;

2. The victim is fully or partially dependent on the income of the offender; and

3. The victim no longer has that income from the offender;

j. Compensation for towing and impoundment expenses incurred as a direct result of a crime as defined in this chapter;

k. The cost to change locks and replace items seized as evidence;

l. Child care not to exceed the deposit plus 2 months of care by a state-approved or licensed day care provider; or

m. Reimbursement for reasonable expenses incurred due to attendance at criminal proceedings as a witness for the prosecution;

(10) "Personal injury" shall mean bodily harm; or mental, emotional or psychological harm, or shall include pregnancy resulting from the crime.

(11) "Secondary victims" shall mean any parent, stepparent, grandparent, son, daughter, spouse, sibling, half-sibling, fiancé, caretaker of the victim, any child who resides on a regular or semi-regular basis with any adult who is the victim of, or convicted of, any crime involving an act of domestic violence, the parents of a victim's spouse or any other person who resided in the victim's household at the time of the crime or at the time of the discovery of the crime.

(12) "Victim" shall mean a person who is injured or killed by the act of any other person during the commission of a crime as defined in this chapter.

(59 Del. Laws, c. 519 § 1; 60 Del. Laws, c. 436 § 2; 66 Del. Laws, c. 262 § 1; 66 Del. Laws, c. 269 § 11; 67 Del. Laws, c. 71 § 1; 69 Del. Laws, c. 156 §§ 1, 2; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 11 §§ 1, 2; 71 Del. Laws, c. 424 §§ 4, 6; 72 Del. Laws, c. 460 §§ 1-5, 19; 73 Del. Laws, c. 250 §§ 2, 3; 74 Del. Laws, c. 296 §§ 1-6; 76 Del. Laws, c. 360 § 1; 77 Del. Laws, c. 193 § 1; 78 Del. Laws, c. 103 §§ 6, 7; 79 Del. Laws, c. 276 § 2.)

§ 9003 Advisory Council.

(a) This hereby establishes within the Department of Justice the Victim's Compensation Assistance Program Advisory Council, hereafter "the Council," consisting of 11 members with at-large members appointed by the Governor. The following shall be members of the Council:

(1) The Attorney General or the Attorney General's designee;

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

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

(4) The Chairperson of the Sexual Assault Network of Delaware or the Chairperson's designee;

(5) Seven at-large members with 1 member from the medical profession, 1 member from the mental health profession, law-enforcement police based advocate, and one member of the public each from the City of Wilmington, New Castle County, Kent County, and Sussex County.

(b) The term of Council members appointed by the Governor shall be 3 years and shall terminate upon the Governor's appointment of a new member to the Council. A member shall continue to serve until that member's successor is duly appointed but a holdover under this provision does not affect the expiration date of a succeeding term.

(c) In case of a vacancy on the Council before the expiration of member's term, a successor shall be appointed by the Governor within 30 days of the vacancy 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 shall be eligible for reelection.

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

(59 Del. Laws, c. 519 § 1; 60 Del. Laws, c. 436 § 3; 61 Del. Laws, c. 409 § 68; 65 Del. Laws, c. 268 § 2; 66 Del. Laws, c. 85 § 49; 67 Del. Laws, c. 208 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 460 § 21; 77 Del. Laws, c. 193 § 1.)

§ 9004 Functions of the Council.

The Council shall have the following functions, powers and duties:

(1) To review and comment on such rules and regulations as are proposed by the Agency.

(2) To serve in an advisory capacity to the Agency and Appeals Board.

(3) Recommend adoption, amendment, or rescission of rules, regulations and policies implementing this chapter.

(4) In its discretion, prepare an independent annual report describing the Council's activities.

(59 Del. Laws, c. 519 § 1; 66 Del. Laws, c. 261 § 1; 67 Del. Laws, c. 208 § 2; 77 Del. Laws, c. 193 § 1; 79 Del. Laws, c. 125 § 2.)

§ 9005 Victim Compensation Assistance Program.

(a) This hereby establishes the Victim Compensation Assistance Program, hereafter the "Agency," which shall function under the authority of the Department of Justice and which shall have the sole jurisdiction over the awarding of compensation for victims of crime.

(b) Executive Director. — The Executive Director shall be appointed by and report to the Attorney General. The Executive Director shall manage the Agency staff and supervise the claims review process and payment of compensation to victims.

(c) The Executive Director and staff shall support the Advisory Council and the Appeals Board.

(d) Staff. — The Executive Director may employ staff and contract for services as necessary and authorized to carry out the purpose of the Victim Compensation Assistance Program, Advisory Council and Appeals Board. The total number of employees of the Agency shall not exceed 8 at any given time.

(77 Del. Laws, c. 193 § 1.)

§ 9006 Function of the Agency.

The Agency, subject to the approval of the Department of Justice, shall have the following functions, powers and duties:

(1) To meet and function at any place within the State;

(2) To obtain the services of other governmental agencies upon request and to utilize those services when necessary;

(3) To receive, investigate, and determine awards, and to process for claims payment for emergency and indemnification applications filed pursuant to this chapter as follows:

a. The Agency shall determine the award for claims for less than $12,500, except for emergency claims, in which case an Appeals Board member shall be contacted and, if available, shall be part of the determination;

b. The Agency and one Appeals Board member shall determine the award for any claim exceeding $12,500; and

c. When an Appeals Board member has been involved in the initial determination of a claim pursuant to paragraph (3)a. or b. of this section, that Appeals Board member shall be recused from any further consideration of that claim.

(4) To publish reports, information and other data collected by the Agency;

(5) To annually render to the Governor and General Assembly a written report of the Agency's activities and recommendations;

(6) To provide indemnification claim forms for purposes of this chapter and to specify the information to be included in such forms;

(7) To adopt, promulgate, amend, and rescind such rules and regulations as are required to carry out this chapter;

(8) To reimburse other governmental agencies pursuant to this chapter for emergency awards to victims, secondary victims, or claimants;

(9) To recover through reimbursement by the criminal defendant the full amount of compensation paid to victims of crimes committed by the defendant;

(10) To recover through reimbursement from victims, claimants, and their dependents funds received from other sources of payment, as set forth herein; and

(11) To administer the Victims Compensation Fund established by this chapter.

(77 Del. Laws, c. 193 § 1; 79 Del. Laws, c. 125 § 2; 79 Del. Laws, c. 404 § 1.)

§ 9007 Victims' Compensation Assistance Program Appeals Board.

(a) There is hereby established the Victims' Compensation Assistance Program Appeals Board, hereafter "Appeals Board", which shall be composed of 5 members to be appointed by the Governor and confirmed by the Senate. No more than 3 members shall be of 1 major political party. Appeals Board representation shall reflect representation from all counties of the State.

(b) Members of the Violent Crimes Compensation Board serving on July 31, 2009, will become the members of the Victims Compensation Appeals Board. They will serve the balance of their terms in accordance with the provisions of the statute in existence at the time of their last reappointment. Upon expiration of the current terms of the Appeals Board members, their compensation will be $100 per meeting. The compensation of all other Appeals Board members shall be $100 per meeting.

(c) The term of Appeals Board members shall be 3 years. A member shall continue to serve until that member's successor is duly appointed but a holdover under this provision does not affect the expiration date of the succeeding term.

(77 Del. Laws, c. 193 § 1; 70 Del. Laws, c. 186 § 1.)

§ 9008 Function of the Appeals Board.

(a) The Appeals Board shall have the power and authority to meet and function in any place within the State.

(b) The Appeals Board shall have the power and authority to affirm, reverse or modify the Agency's claims decisions subject to the

provisions of § 9009 of this title.

(77 Del. Laws, c. 193 § 1.)

§ 9009 Administrative provisions; compensation.

In any instance in which a person sustains personal injury or is killed by any crime as the same is defined in this chapter, then the person or estate may file a claim with the Victims' Compensation Assistance Program, hereafter the "Agency," for indemnification of all pecuniary loss which is a direct result of such crime:

(1) If a claim is approved as filed, the award shall be the amount of pecuniary loss actually and reasonably sustained by reason of the personal injury in question minus the amount the claimant has or will receive as indemnification from any other source, including any applicable insurance.

(2) In the event of a death caused by a crime of violence, any person who legally or voluntarily assumes the obligation to pay the medical or burial expenses incurred as a direct result of such injury and death shall be eligible to file a claim with the Agency. This provision for payment in case of death shall not apply to any insurer or public entity.

(3) The Agency is not compelled to provide compensation in any case, nor is it compelled to award the full amount claimed. The Agency may make its award of compensation dependent upon such condition or conditions as it deems desirable.

(4) If the claimant is dissatisfied with the Agency's decision, the claimant may, within 15 days after the date the decision is mailed, file a request for reconsideration of the claim. The request should include additional information from the claimant that supports the claim request. The agency's final decision will be mailed to the claimant.

(5) If the claimant is dissatisfied with the Agency's final decision, the claimant may, within 15 days after the date the decision is mailed, request a hearing before the Appeals Board.

(6) Any claimant who is dissatisfied by the Appeals Board's decision concerning compensation or any conditions attached to the award of such compensation may appeal to the Superior Court within 30 days following the date the decision of the Appeals Board is mailed to the claimant. Any appeal to Superior Court shall not be de novo.

(7) Payment may be made in accordance with this chapter, whether or not the alleged perpetrator of the criminal act is prosecuted or convicted, in the discretion of the Agency. Payment may be made even though the person committing the crime is legally deemed to not have intended the act by reason of age, insanity, drunkenness or is otherwise deemed legally incapable of mens rea.

(8) Upon determination of the Agency of the amount of compensation due, the Agency shall issue to the Delaware State Treasurer a statement certifying such amount. Upon receipt of such certification by the Agency, the Treasurer shall pay to the person named therein such amounts as are specified and under the conditions specified therein. The Treasurer shall make no payments until the time for appeal of the certification has passed unless the claimant has waived the right to appeal in writing. If an appeal is made, there shall be no payment until there has been a binding legal adjudication of the matter.

(9) A person whose domicile is in Delaware and who is the victim or secondary victim of a violent crime which occurs in another state, possession or territory of the United States may make an application for compensation if:

a. The crimes would be compensable had they occurred in Delaware; and

b. The placement or placements of the crime or crimes occurred in states, possessions or territories of the United States not having eligible crime victim compensation programs that provide benefits equal to the benefits provided pursuant to this chapter.

(10) Where compensation has been paid to a claimant, the Agency shall not reopen or reinvestigate a case after 2 years from the date of the last payment by the Agency, except where the Agency in its discretion determines that the circumstances render this requirement unreasonable. Where compensation has been denied to a claimant, reopening and reinvestigation shall be limited to the circumstances set forth in Superior Court Civil Rule 60.

(11) Notwithstanding the provision of paragraph (10) of this section and § 9010(a)(3), (4) and (5) of this title to the contrary, the Agency may make an award for the payment of mental health counseling services pursuant to this chapter upon a claim made by the victim of any crime which occurred prior to the victim's eighteenth birthday so long as the occurrence of the crime is appropriately documented, and such claim is filed prior to the victim's twentieth birthday. The Agency may also, upon good cause shown, permit a victim whose claim had previously been decided by the Agency to request that such claim be reopened for the purpose of making an award for the payment for mental health counseling services, and the Agency may reopen or reinvestigate the case and award such compensation, if such victim had not yet reached that victim's eighteenth birthday by the date of the Agency's original decision, and provided that the request for reopening is filed prior to the victim's twentieth birthday. However, the foregoing limitations in this paragraph (11) regarding the victim's twentieth birthday shall not apply in cases of crimes involving sexual assault or abuse.

(12) Notwithstanding any provision to the contrary, the Agency shall not limit acceptance or consideration of any applications arising from sexual assault or abuse of a child which may have otherwise been barred from consideration by a statute of limitations.

(13)a. Notwithstanding the provisions of paragraph (10) of this section or any other provisions of this chapter to the contrary, where:

1. Further investigation into a previously reported crime is initiated by a law-enforcement agency;

2. An offender appears in any judicial or administrative proceeding regarding a criminal charge, conviction, or sentence, including but not limited to a trial, appeal, postconviction relief, mediation, penalty, parole or pardon hearing;

3. The offender is released from incarceration; or

4. The death penalty is imposed pursuant to § 4209 of this title;

any victim or secondary victim of such crime committed by such offender may apply for reimbursement as set forth in paragraph (13)b. of this section.

b. A victim or secondary victim may apply for reimbursement under the circumstances set forth in paragraph (13)a. of this section for the following:

1. The cost of mental health counseling services, not to exceed 50 sessions;

2. Reasonable expenses incurred due to attendance at criminal proceedings;

3. Expenses for essential personal safety property, not to exceed $1,500;

provided that such costs are incurred within 1 year prior to, or within 2 years after, the opening of such investigation, the date of such judicial or administrative proceeding or the release or execution date of the offender.

c. Any payments made pursuant to this subsection are subject to the provisions of § 9010 of this title with regard to denial and reduction of claims, and to § 9011 of this title with regard to payment.

(59 Del. Laws, c. 519 § 1; 60 Del. Laws, c. 436 §§ 4, 5; 65 Del. Laws, c. 268 § 1; 66 Del. Laws, c. 262 § 2; 68 Del. Laws, c. 35 § 1; 68 Del. Laws, c. 213 § 1; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 424 § 5; 72 Del. Laws, c. 460 §§ 6-8, 15; 74 Del. Laws, c. 296 §§ 7, 8; 76 Del. Laws, c. 360 §§ 2, 3; 77 Del. Laws, c. 193 § 1; 77 Del. Laws, c. 204 § 1; 78 Del. Laws, c. 103 §§ 1, 2.)

§ 9010 Denial of claim; reduction.

(a) The Agency shall deny payment of a claim for the following reasons:

(1) Where the claimant was the perpetrator of the crime on which the claim is based, or was a principal involved in the commission of a crime at the time when the personal injury upon which the claim is based was incurred;

(2) Where the claimant incurred the personal injury on which the claim is based through collusion with the perpetrator of the crime;

(3) Where the claimant refused to give reasonable cooperation to state or local law-enforcement agencies in their efforts to apprehend or convict the perpetrator of the crime in question;

(4) Where the claim has not been filed within 1 year after the personal injury on which the claim in based, unless an extension is granted by the Agency or the Agency in its discretion determines that the circumstances render this requirement unreasonable;

(5) Where the claimant has failed to report the crime to a law-enforcement agency within 72 hours of its occurrence. This requirement shall be waived where:

a. The crime has been reported to an appropriate governmental agency, such as child and/or adult protective services or the Family Court;

b. The claimant can provide a protection from abuse order;

c. The claimant has cooperated with law enforcement or an appropriate government agency in cases of crimes involving domestic violence, sexual assault or abuse; or

d. Where the Agency in its discretion determines that the circumstances of the crime render this requirement unreasonable.

(6) Where the victim is injured as a result of that victim's own suicide or attempted suicide, unless the suicide or attempted suicide is directly related to a prior criminal victimization for which compensation is eligible pursuant to this chapter;

(7) Where the victim has sustained injuries during a drug-related crime in which the victim was an illegal participant;

(8) Where the victim is delinquent in the payment of any penalty assessment levied pursuant to § 9016 of this title, or in the payment of an order of restitution payable to the Victim Compensation Fund; provided, however, that the Agency may condition payment of a claim upon the satisfaction of such delinquencies. In addition, the Agency may, for hardship or other good cause, waive the provisions of this paragraph in their entirety.

(b) In determining whether or not to make an award under this chapter, or in determining the amount of any award, the Agency may consider any circumstances it deems to be relevant, including the behavior of the victim which directly or indirectly contributed to injury or death, unless such injury or death resulted from the victim's lawful attempt to prevent the commission of a crime or to apprehend an offender.

(c) If the victim bears any share of responsibility that caused injury or death, the Agency shall reduce the amount of compensation in accordance with its assessment of the degree of such responsibility attributable to the victim. A claim may be denied or reduced if the victim of the personal injury in question, either through negligence or through wilful and unlawful conduct, substantially provoked or aggravated the incident giving rise to the injury.

(d) In no event shall the Agency deny any claim solely because the applicant was a child victim of sexual assault or abuse, and said applicant either delayed reporting the abuse or assault to authorities or said applicant delayed an application for services to mitigate the effects of the impact of sexual assault or abuse.

(59 Del. Laws, c. 519 § 1; 65 Del. Laws, c. 268 § 3; 68 Del. Laws, c. 35 § 2; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 18 §§ 1, 2; 72 Del. Laws, c. 460 §§ 9, 20; 74 Del. Laws, c. 296 §§ 9-12; 76 Del. Laws, c. 360 § 4; 77 Del. Laws, c. 193 § 1; 78 Del. Laws, c. 103 §§ 3-5.)

§ 9011 Payment of compensation.

(a) Any person, regardless of age or mental condition, is entitled to make application for compensation under this chapter if the person is a victim as defined herein. In any instance in which the person entitled to make application is deemed by law to be incompetent the person may nevertheless appear in person or the application may be made on the person's behalf by any person acting as a relative, guardian or

attorney. Every victim making application shall be entitled to appear and be heard by the Agency in accordance with § 9012(b), (c), and (d) of this title.

(b) Except in cases of dire hardship, as determined by the Agency, there shall be no payment of compensation where the claim is for less than $25. Awards may be paid in a lump sum, or in periodic payments as determined by the Agency. Each and every payment shall be exempt from attachment, garnishment or any other remedy available to creditors for the collection of a debt.

(c) The Agency may require any injured person filing a claim pursuant to this chapter to submit to a physical or mental examination by a physician or physicians selected by the Agency.

(d) No compensation shall be awarded under the chapter to any individual victim (or in case of the death of the victim, to dependent relatives, or to the victim's legal representative) in a total amount in excess of $25,000; provided, however, that the Agency may award compensation to victims who are permanently and totally disabled in an amount not to exceed $50,000.

(e) Although a person otherwise incompetent may appear and press a claim before the Agency, payment of compensation shall not be made directly to any person legally incompetent to receive same but shall be made to a third person for the benefit of such incompetent. In the case of any payment for the benefit of a child or incompetent, the Agency shall order the payee to file an accounting with the Agency no later than January 31 of each year for the previous calendar year, and to take such other action as the Agency shall determine to be necessary and appropriate for the benefit of the child or incompetent.

(f) The Agency shall deduct from its award of compensation any payments received by the victim, claimant, or by any of the victim's dependents, from:

(1) The offender;

(2) Any person on behalf of the offender:

(3) Any insurer;

(4) The United States or any state: or

(5) The State of Delaware or any of its political subdivisions;

If such payments were in any manner made to compensate such person or persons for personal injury or death arising from the crime or incident giving rise to the claim.

(g) In the event that payment of an award of compensation has been received by the victim or claimant, or any dependent of the victim, and payments as set forth is subsection (f) of this section above are received, the victim, claimant, or dependent shall be obligated to reimburse the Agency for such funds received, to the full extent of the compensation paid by the agency.

(h) The Director shall have authority to accept reimbursement of less than the full amount of compensation paid, but only in cases where the victim, claimant, or dependent is subjected to extreme hardship, as determined in the sole discretion of the Director.

(i) The reimbursement provisions of subsections (f), (g), and (h) of this section above shall not apply to any life insurance proceeds.

(59 Del. Laws, c. 519 § 1; 60 Del. Laws, c. 436 § 6; 64 Del. Laws, c. 273 § 1; 67 Del. Laws, c. 84 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 460 §§ 10-12; 77 Del. Laws, c. 193 § 1; 78 Del. Laws, c. 103 § 8; 79 Del. Laws, c. 404 § 4.)

§ 9012 Form of claim; investigation—hearing.

(a) All claims filed with the Agency shall be written and shall accurately describe the crime and circumstances which brought about the injury, damage or death, shall state the time and place the injury occurred, state the names of all persons involved if known and shall contain the amount claimed by the applicant. The Agency shall initiate an investigation of the claim within 30 days of the filing of the claim. After this investigation, the Agency shall render a decision on whether or not to award compensation to the claimant, and if an award is made, the amount of that award. The Agency shall immediately mail a copy of its decision to the claimant, together with written notice of the claimants' options for redress if dissatisfied with the Agency decision.

(b) If the claimant is dissatisfied with the Agency's decision, the claimant may, within 15 days after the date the Agency decision is mailed, request either a reconsideration of the decision by the Executive Director or a review of the Agency's decision by the Appeals Board. If such request is not timely made, then the Agency decision shall be final and not appealable to the Appeals Board or the Superior Court, notwithstanding § 9009(4), (5) and (6) of this title.

(c) If a reconsideration is timely requested, the Executive Director shall review the claimants' information and render a final decision. This decision will immediately be mailed to the claimant, together with written notice of the claimant's right to request an appeal.

(d) If an appeal is timely requested, the Appeals Board shall fix the time and place for hearing the appeal. The Agency shall, at least 20 days before the time set for the hearing, mail notices of the time and place of such hearing to all interested persons and agencies. At the appeal hearing, the claimant may present evidence to the Appeals Board to show why the Agency's decision should be reversed or modified. Within 90 days of the conclusion of any and all hearings on the matter, the Appeals Board shall mail to the claimant a statement of its final decision to award or deny the claim and a statement of any conditions under which the claim shall be awarded. The Appeals Board may affirm, reverse or modify the Agency's decision.

(59 Del. Laws, c. 519 § 1; 60 Del. Laws, c. 436 §§ 7, 8; 68 Del. Laws, c. 239 §§ 1, 2; 72 Del. Laws, c. 460 §§ 13, 14, 16; 77 Del. Laws, c. 193 § 1.)

§ 9013 Attorney fees.

A claimant need not be represented by an attorney before the Appeals Board, but if such person is represented the Appeals Board may award an amount for services rendered. Such fees shall not exceed $1,000 or 15% of the amount awarded, whichever sum is less, and shall

be in addition to the amount of compensation awarded to the claimant. An attorney shall not charge, demand, receive or collect for services rendered in connection with any proceedings under this chapter any amount other than awarded as attorneys' fees under this section.

(59 Del. Laws, c. 519 § 1; 77 Del. Laws, c. 193 § 1.)

§ 9014 Recovery from the criminal.

(a) Whenever any person is convicted of an offense and a payment of compensation is, or has been, made under this chapter for a personal injury or death resulting from the act constituting such offense, the State may institute an action against such person for the recovery of the whole or any specified part of the compensation in any Superior Court within the State, or in any other court, either state or federal, if such court has custody or control of funds of the criminal or which may be awarded to the criminal. Any amounts recovered under this section shall be deposited to the fund which finances the administration of this chapter.

(b) Any payment of compensation under this chapter shall not affect any right of any person to recover damages in a civil action from the person or persons convicted of the offense giving rise to the claim for compensation.

(c) Whenever any person is sentenced for an offense and compensation has been paid under this chapter to a victim of such offense, the Agency may assert a claim for reimbursement of the Victims' Compensation Fund as restitution from the criminal defendant. In support of such claim, the Agency shall submit an affidavit with supporting documentation to the sentencing court, setting forth all payments made to victims of such offenses. Restitution may be awarded to the Agency. A hearing on restitution will be held upon the timely request of the defendant. Where the compensation of the victim is continuing, and the full amount of reimbursement due has not been established by the Agency, the affidavit may so state, and the sentencing court may reserve jurisdiction over any future claim for reimbursement to the Agency. Any supplemental claim for reimbursement to the Agency shall be brought within 2 years of the offense date, or prior to the expiration of a term of probation imposed on the defendant for an offense giving rise to the claim for compensation, whichever date comes first. The courts shall establish procedures for determining the amount of reimbursement due to the Victims' Compensation Fund from offenders.

(59 Del. Laws, c. 519 § 1; 77 Del. Laws, c. 193 § 1; 79 Del. Laws, c. 404 § 2.)

§ 9015 Assignment and subrogation.

(a) Awards and recoveries granted under this chapter shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this chapter shall be subject to execution, levy, attachment, garnishment or other legal process, or to the operation of any bankruptcy or insolvency law.

(b) There shall be no substitution or subrogation, whether conventional or legal, of any indebtedness or right of action by virtue of any claim of guarantee or surety, agency, lien, payments or advances made, or any claim made by the person convicted of the act giving rise to any compensation awarded under this chapter.

(59 Del. Laws, c. 519 § 1; 77 Del. Laws, c. 193 § 1.)

§ 9016 Penalty assessment.

(a) In addition to, and at the same time as, any fine is assessed to any criminal defendant or any child adjudicated delinquent, there shall be levied an additional penalty of 18% of every fine, penalty and forfeiture imposed and collected by the courts for crimes or offenses as defined in § 233 of this title, or $10 per offense of conviction, whichever is greater. Where multiple offenses are involved, the penalty assessment shall be based upon the total fine for all offenses. When a fine, penalty or forfeiture is suspended, in whole or in part, the penalty assessment shall not be suspended; provided, however, that if the penalty assessment herein imposed remains uncollected for a period in excess of 3 years, the courts may expunge the record of such assessment.

(b) Upon collection of the penalty assessment, the same shall be paid over to the prothonotary or clerk of court as the case may be, who shall collect the same and transmit it to the State Treasury to be deposited in a separate account for the administration of this chapter, which account shall be designated the "Victim 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 shall be deposited in the General Fund.

(59 Del. Laws, c. 519 § 1; 60 Del. Laws, c. 436 § 9; 63 Del. Laws, c. 227 § 1; 67 Del. Laws, c. 71 § 2; 67 Del. Laws, c. 260 § 1; 68 Del. Laws, c. 213 § 2; 68 Del. Laws, c. 223 § 1; 73 Del. Laws, c. 312 § 36; 77 Del. Laws, c. 193 § 1; 79 Del. Laws, c. 125 § 3.)

§ 9017 Annual reports.

The Department of Justice shall transmit to the Governor, State Auditor and the General Assembly an annual report of the activity of the Victim's Compensation Assistance Program under this chapter, including the claim number of each applicant for compensation, the amount claimed and the amount of compensation awarded.

(59 Del. Laws, c. 519 § 1; 60 Del. Laws, c. 436 § 10; 69 Del. Laws, c. 250 § 1; 77 Del. Laws, c. 193 § 1.)

§ 9018 Compensating fine.

In any court of the State upon the conviction of any person or the adjudication of delinquency of any child for a crime resulting in the personal injury or death of another person, the court may, in addition to any other penalty, and in addition to reimbursement to the Victims Compensation Fund, order such person to pay a compensating fine, in lieu of, but greater than, the penalty set forth in § 9016 of this title. The amount of such fine shall be in the discretion of the court and shall be commensurate with the malice shown and the injury done to the

victim. All fines paid in accordance with this section shall be deposited into the Victim Compensation Fund.

(59 Del. Laws, c. 519 § 1; 67 Del. Laws, c. 71 § 3; 67 Del. Laws, c. 260 § 1; 77 Del. Laws, c. 193 § 1; 79 Del. Laws, c. 404 § 3.)

§ 9019 Oaths; production of witnesses and records.

The Executive Director and each member of the Appeals Board shall have the power to administer oaths, subpoena witnesses and compel the production of books, papers and records relevant to any investigation or hearing authorized by this chapter. Any person who shall fail to appear in response to a subpoena or to answer any question, or produce any books, papers and records relevant to any such investigation or hearing may be compelled to do so by order of the Superior Court.

(60 Del. Laws, c. 436 § 11; 77 Del. Laws, c. 193 § 1.)

§ 9020 Filing false claim.

(a) Any claim under this chapter which is false in part or in whole shall constitute a false written statement in violation of § 1233 of this title.

(b) Any person who files a false claim under this chapter shall forfeit any compensation and shall reimburse and repay the Victims Compensation Assistance Program for any compensation received pursuant to this chapter.

(60 Del. Laws, c. 436 § 12; 77 Del. Laws, c. 193 § 1.)

§ 9021 Persons to whom chapter applicable.

This chapter shall apply to:

(1) All persons, including nonresidents of Delaware, who are victims of crimes committed on January 1, 1975, or thereafter within this State; and

(2) All Delaware residents and domiciliaries who are victims of terrorist acts.

(60 Del. Laws, c. 436 § 13; 72 Del. Laws, c. 460 § 17; 73 Del. Laws, c. 250 § 4; 77 Del. Laws, c. 193 § 1.)

§ 9022 Conflict of interest.

Any member of the Victims' Compensation Assistance Program, Advisory Council or Appeals Board with a direct or indirect interest in a matter in question shall disqualify himself or herself from any consideration of that matter.

(65 Del. Laws, c. 64 § 1; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 193 § 1.)

§ 9023 Payment for forensic medical examinations for victims of sexual offense.

(a) The cost of a forensic medical examination done for the purpose of gathering evidence that can be used in the prosecution of a sexual offense may be paid from the Victim Compensation Fund.

(b) "Forensic medical examination" shall be defined as medical diagnostic procedures examining for physical trauma, and determining penetration, force or lack of consent. The cost of the examination shall include collecting all evidence as called for in the sexual offense evidence collection kits and may include any of the following, if done as part of the forensic medical examination:

(1) Physician's fees for the collection of the patient history, physical, collection of specimens and treatment for the prevention of venereal disease, including 1 return follow-up visit;

(2) Emergency department expenses, including emergency room fees and cost of pelvic tray; and

(3) Laboratory expenses for wet mount for sperm, swabs for acid phosphates and ABH antigen; blood typing, serology for syphilis and Hepatitis B; cultures for gonorrhea, chlamydia, trichomonas and other sexually transmitted diseases; pregnancy testing; urinalysis; and any other laboratory test needed to collect evidence that could be used in the prosecution of the offense.

(c) Hospitals and health-care professions shall provide forensic medical examinations free of charge to the victims of sexual offenses. Any hospital or health care professional performing a forensic medical examination shall seek reimbursement for the examination from the patient's insurance carrier, including Medicaid and Medicare, if available. If insurance is unavailable, or does not cover the full costs of the forensic medical examination, the service provider may seek reimbursement from the Compensation Fund. The Agency shall authorize the repayment for reasonable expenses incurred during the forensic medical examination. Such reimbursement shall not exceed a maximum amount to be determined by the Agency. If the hospital or health-care professional has recovered from insurance, the Agency shall only provide compensation sufficient to total the maximum amount provided for in the Agency's rules and regulations.

(d) The victim of the sexual offense shall not pay any out-of-pocket costs associated with the forensic medical examination and shall not be required to file an application with the Agency. Notwithstanding other language in this chapter, all forensic medical examinations of victims of a sexual offense not covered by insurance shall be paid for through the Victim Compensation Fund and such payment shall be considered full compensation to the hospital or health care professional providing such services.

(e) In addition to, and at the same time as, any other fine or penalty assessed on any criminal defendant, all defendants convicted of a sexual offense as defined in § 761 of this title shall be assessed an additional fine that shall be used to reimburse the Victim Compensation Fund for forensic medical examination payments. All defendants convicted of sexual offenses shall pay $50 for each misdemeanor level count for which they are convicted and $100 for each felony level count for which they are convicted. All fines paid in accordance with this section shall be deposited into the Victims' Compensation Fund.

(f) Nothing in this section shall preclude victims from applying to the Agency for other costs incurred.

(70 Del. Laws, c. 40 § 1; 77 Del. Laws, c. 193 § 1.)

§ 9024 Payment for child psychological assessments and short-term counseling.

(a) The costs of a psychological assessment done for the purposes of evaluating the mental health needs of a child victim may be paid from the Victims' Compensation Fund.

(b) The costs of short-term counseling, as defined by the Agency, for the purposes of meeting the mental health needs of a child victim may be paid from the Victims' Compensation Fund.

(c) Any psychological assessment or counseling provided pursuant to this section shall be provided by a qualified mental health practitioner as determined by the Agency. The Agency shall authorize the repayment of reasonable expenses for a psychological assessment and/or short-term counseling. Such reimbursement shall not exceed a maximum amount to be determined by the Agency. Any mental health practitioner performing a psychological assessment and/or short-term counseling pursuant to this section shall seek reimbursement for such services from the patient's insurance carrier, including Medicaid and Medicare, if available. If the mental health practitioner has recovered from insurance, the Agency shall only provide compensation sufficient to total the maximum amount provided for in the Board's rules and regulations. Funding for psychological assessments and/or short-term counseling shall be available to the victim regardless of other health insurance resources which may exist.

(d) A parent or guardian acting on behalf of a child victim shall not pay any out-of-pocket costs associated with a psychological assessment or short-term counseling, and shall not be required to file an application with the Agency. Notwithstanding other language in this chapter, all psychological assessments and short-term counseling expenses of child victims shall be paid for through the Victims' Compensation Fund and such payment shall be considered full compensation to the mental health practitioner providing such services.

(e) Nothing in this section shall preclude a victim from applying to the Agency for other costs incurred.

(f) For the purpose of this section, "child victim" or "child" means any victim or person who had not yet reached that victim's or person's eighteenth birthday on the date of the commission of the crime.

(71 Del. Laws, c. 424 § 7; 70 Del. Laws, c. 186 § 1; 77 Del. Laws, c. 193 § 1.)

§ 9025 Enactment.

(a) To the extent that they may be under the administrative control of the Administrative Office of the Courts, as of July 1, 2009, the Executive Director and staff of the Violent Crime Compensation Board are transferred to the Department of Justice for budgetary and administrative purposes. Such employees shall be deemed to be employees of the Department of Justice with all benefits they may have accrued in the classified service as of July 1, 2009.

(b) The Advisory Council shall be established on July 1, 2009, and allow for the appointment of the 7 Advisory Council members by the Governor.

(c) The effective date for new process and procedures under the Victims' Compensation Assistance Program shall be August 30, 2009.

(d) The effective date for all new and pending claims to be processed through the newly established Victims' Compensation Assistance Program shall be August 30, 2009.

(77 Del. Laws, c. 193 § 1.)

Part VI
Victims of Crimes
Chapter 91
DISTRIBUTION OF MONEYS RECEIVED AS RESULT OF COMMISSION OF CRIME

§ 9101 Findings.

The General Assembly finds that it is against public policy and the welfare of the citizens of Delaware to allow a person accused or convicted of a crime to benefit financially from a published reenactment of said crime or any incidents involved therein. The General Assembly further finds that a system is required to provide for the distribution of moneys received as a result of the commission of a crime in order that victims of crime may be adequately compensated.

(64 Del. Laws, c. 169 § 1.)

§ 9102 Definitions.

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

(1) "Board" shall mean the Violent Crimes Compensation Board, as established by this title.

(2) "Person convicted of a crime" shall mean any person convicted of a crime in this State either by entry of a plea of guilty, a plea of nolo contendere, a "Robinson plea" or by conviction after trial as well as a person found not guilty as a result of the defense of mental disease or defect pursuant to this title.

(3) "Victim" shall mean a person who suffers personal, physical, mental or emotional injury, or pecuniary loss, as a direct result of the commission of a crime enumerated in Chapter 5 of this title.

(64 Del. Laws, c. 169 § 1; 67 Del. Laws, c. 260 § 1; 68 Del. Laws, c. 394 § 1.)

§ 9103 Distribution of moneys.

(a) Every person, firm, corporation, partnership, association or other legal entity contracting with any person or the representative or assignee of any person convicted of a crime in this State, with respect to the reenactment of such crime, by way of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, live entertainment of any kind, or from the expression of such convicted person's thoughts, feelings, opinions or emotions regarding such crime if such expression represents the primary contents of a movie, book, magazine article, tape recording, phonograph record, radio or television presentation, or live entertainment of any kind, shall submit a copy of such contract to the Board and pay over to the Board any moneys which would otherwise, by terms of such contract, be owing to the person convicted or the person's representatives. The Board shall deposit such moneys in an escrow account for the benefit of and payable to any victim or the legal representative of any victim of crimes committed by such convicted person, provided that such victim, or the legal representative of any such victim, within 5 years from the establishment of such escrow account, brings a civil action in a court of competent jurisdiction and recovers a money judgment for damages against such person or the person's representatives.

(b) The Board, at least once every 6 months for 5 years from the date it receives such moneys, shall cause to have published a legal notice in a newspaper or newspapers of general circulation in the county wherein the crime was committed, and in the county contiguous to such county, advising such victims that such escrow accounts are available to satisfy money judgments pursuant to this chapter. The Board may, in its discretion, provide for such additional notice as it deems necessary.

(c) Upon a showing by any convicted person that 5 years have elapsed from the date of establishment of such escrow account, and further that no actions are pending against such convicted person pursuant to this chapter, the Board shall immediately pay over any moneys in such escrow account to such person or the person's legal representatives.

(d) Notwithstanding the foregoing provision of this chapter, the Board shall make payments from an escrow account to any person convicted of crime upon order of any court of competent jurisdiction after a showing by such person that such moneys shall be used for the exclusive purpose of retaining legal representation at any stage of the criminal proceeding against such person, including the appeals process. The Board may in its discretion and after notice to victims of the crime make payments from the escrow account to a representative of any person convicted of a crime for the necessary fees and expenses incident to the generation and procurement of the moneys paid into the escrow account, provided the Board finds that such payments would be in the best interest of the victims of the crime and would not be contrary to public policy. The total of all payments made from the escrow account under this subsection shall not exceed one fifth of the total moneys paid into the escrow account and available to satisfy civil money judgments obtained by victims of the crime.

(e) Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this chapter, shall be null and void as against the public policy of this State.

(f) For purposes of this chapter, notwithstanding any other provision of the Delaware Code, claims on moneys in the escrow account shall have the following priorities:

(1) Payments ordered by the Board or a court pursuant to subsection (d) of this section.

(2) Judgments obtained by the Division of Revenue, State of Delaware, against the convicted person pursuant to Chapter 5 of Title 30.

(3) Subrogation claims of the State in an amount not to exceed one third of the net amount of the civil judgment obtained by a victim which is payable directly to the victim from the escrow account.

(4) Civil judgments of the crime victims.

(5) Other judgment creditors or persons claiming moneys through the person convicted of a crime who present lawful claims, including local government tax authorities.

(6) The person convicted of the crime.

(g) The Board may bring an action in a court of competent jurisdiction for a declaratory judgment where it cannot determine the priority of claims and the proper distribution of any escrow account.

(h) Moneys in an escrow account shall not be subject to execution, levy, attachment or lien except in accordance with the priority of claims established in this chapter.

(64 Del. Laws, c. 169 § 1; 68 Del. Laws, c. 394 § 2; 70 Del. Laws, c. 186 § 1.)

§ 9104 Board as exclusive escrow agent.

Notwithstanding any other provisions of law, the Board shall have exclusive jurisdiction and control, as escrow agent, over any moneys subject to this chapter. No distribution of moneys in such escrow accounts shall be made except by determination and order of the Board.

(64 Del. Laws, c. 169 § 1.)

§ 9105 Judicial review.

Any party aggrieved by a final determination and order of the Board may appeal such final determination and order to the Superior Court.

(64 Del. Laws, c. 169 § 1.)

§ 9106 Penalties.

Any person convicted of a violation of this chapter shall be guilty of a class A misdemeanor.

(64 Del. Laws, c. 169 § 1.)

Part VI
Victims of Crimes
Chapter 92
LAW-ENFORCEMENT OFFICERS' BILL OF RIGHTS

§ 9200 Limitations on political activity; "law-enforcement officer" defined; rights of officers under investigation.

(a) A law-enforcement officer within a jurisdiction in this State has the same rights to engage in political activity as are afforded to any other person. The right to engage in political activity shall not apply to any law-enforcement officer while on duty or when acting in an official capacity or while in uniform.

(b) For purposes of this chapter a "law-enforcement officer" is defined as a police officer who is a sworn member of the Delaware State Police, of the Wilmington City Police Department, of the New Castle County Police, of the University of Delaware Police Division, the Delaware State University Police Department, of the police force established by the Delaware River and Bay Authority, or of the police department, bureau of police or police force of any incorporated municipality, city or town within this State or who is a sworn uniformed police or enforcement officer of the Department of Natural Resources and Environmental Control or of the Delaware State Capital Police, or a Probation and Parole Officer of the Department of Correction or a State Fire Marshall Deputy or a state detective or special investigator of the Department of Justice, an agent of the State Police Drug Diversion Unit or an agent of the State Division of Alcohol and Tobacco Enforcement; provided, however, that this chapter shall not apply to the Superintendent or Deputy Superintendent of the Delaware State Police, or to any officer above the rank of Captain in the Delaware State Police, or to the chief of police of any police force in this State, or to any other officer who is the highest ranking officer in the law-enforcement agency. Furthermore, no law-enforcement officer not a member of 1 of the above agencies shall be covered by this chapter.

(c) Whenever a law-enforcement officer is under investigation or is subjected to questioning for any reason which could lead to disciplinary action, demotion or dismissal, the investigation or questioning shall be conducted under the following conditions:

(1) The questioning shall be conducted at a reasonable hour, preferably at a time when the officer is on duty unless the gravity of the investigation in the opinion of the investigator is of such degree that immediate questioning is required.

(2) The questioning shall take place at the agency headquarters or at the office of the local troop or police unit in which the incident allegedly occurred as designated by the investigating officer or unless otherwise waived in writing by the officer being investigated.

(3) The law-enforcement officer under investigation shall be informed of the name, rank and command of the officer in charge of the investigation. All questions directed to the officer shall be asked by and through no more than 2 investigators. No formal complaint against a law-enforcement officer seeking dismissal or suspension or other formal disciplinary action shall be prosecuted under departmental rule or regulation unless the complaint is supported by substantial evidence derived from an investigation by an authorized member of the department or another officer who is certified by the Council on Police Training pursuant to Chapter 84 of this title and has experience and/or training on conducting an internal law-enforcement investigation and is appointed by the Chief of Police of the law-enforcement department to conduct the investigation of the officer in question.

(4) The law-enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to being questioned.

(5) Interview sessions shall be for reasonable periods of time. There shall be times provided for the officer to allow for such personal necessities and rest periods as are reasonably necessary.

(6) Except upon refusal to answer questions pursued in a valid investigation, no officer shall be threatened with transfer, dismissal or other disciplinary action.

(7) A complete record, either written, taped or, if taped, transcribed as soon as practicable, shall be kept of all interviews held in connection with the administrative investigation upon notification that substantial evidence exists for seeking an administrative sanction of the law-enforcement officer. A copy of the record shall be provided to the officer or the officer's counsel at the officer's expense upon request.

(8) If the law-enforcement officer under interrogation is under arrest or may reasonably be placed under arrest as a result of the investigation, the officer shall be informed of the officer's rights, including the reasonable possibility of the officer's arrest prior to the commencement of the interrogation.

(9) Upon request, any officer under questioning shall have the right to be represented by counsel or other representative of the officer's choice, who shall be present at all times during the questioning unless waived in writing by the investigated officer. The questioning shall be suspended for a period of time if the officer requests representation until such time as the officer can obtain the representative requested if reasonably available.

(10) An officer who is charged with violating any departmental rules or regulations, or the officer's representative, will be provided access to transcripts, records, written statements, written reports, analyses and video tapes pertinent to the case if they are exculpatory, intended to support any disciplinary action or are to be introduced in the departmental hearing on the charges involved. Upon demand by

the officer or counsel, they shall be produced within 48 hours of the written notification of the charges.

(11) At the conclusion of the administrative investigation, the investigator shall inform in writing the officer of the investigative findings and any recommendation for further action.

(12) All records compiled as a result of any investigation subject to the provisions of this chapter and/or a contractual disciplinary grievance procedure shall be and remain confidential and shall not be released to the public.

(d) Unless otherwise required by this chapter, no law-enforcement agency shall be required to disclose in any civil proceeding, other than those brought by a citizen against a law-enforcement officer alleging that the officer breached the officer's official duties and that such breach resulted in injury or other damage to the citizen, any:

(1) Personnel file; or

(2) Internal affairs investigatory file compiled in connection with a law-enforcement officer under investigation or subjected to questioning for any reason which could lead to disciplinary action, demotion, or dismissal.

(65 Del. Laws, c. 12 § 1; 65 Del. Laws, c. 139 §§ 1, 2; 67 Del. Laws, c. 237 § 1; 69 Del. Laws, c. 298 § 1; 70 Del. Laws, c. 175 § 1; 70 Del. Laws, c. 186 § 1; 70 Del. Laws, c. 467 § 1; 71 Del. Laws, c. 456 § 1; 72 Del. Laws, c. 367 § 6; 76 Del. Laws, c. 43 § 3; 76 Del. Laws, c. 303 §§ 1, 2; 77 Del. Laws, c. 158 § 1; 78 Del. Laws, c. 155 § 5; 79 Del. Laws, c. 340 § 1.)

§ 9201 Insertion of adverse material in officer's file.

No law-enforcement agency shall insert any adverse material into the file of any officer except the file of the internal investigation or the intelligence division unless the officer has had an opportunity to review, sign, receive a copy of and comment in writing on the adverse material.

(65 Del. Laws, c. 12 § 1.)

§ 9202 Disclosure of personal assets.

No officer shall be required or requested to disclose any item of personal property, income, assets, sources of income, debts, personal or domestic expenditures (including those of any member of the officer's household), unless such information is necessary in investigating a violation of any federal, state or local ordinance with respect to the performance of official duties or unless such disclosure is required by state or federal law.

(65 Del. Laws, c. 12 § 1; 70 Del. Laws, c. 186 § 1.)

§ 9203 Hearing — Required on suspension or other disciplinary action.

If a law-enforcement officer is: (1) suspended for any reason, or (2) charged with conduct alleged to violate the rules or regulations or general orders of the agency that employs the officer, or (3) charged with a breach of discipline of any kind, which charge could lead to any form of disciplinary action (other than a reprimand) which may become part of the officer's permanent personnel record, then that officer shall be entitled to a hearing which shall be conducted in accordance with this chapter unless a contractual disciplinary grievance procedure executed by and between the agency and the bargaining unit of that officer is in effect, in which case the terms of that disciplinary grievance procedure shall take precedence and govern the conduct of the hearing.

(65 Del. Laws, c. 12 § 1; 65 Del. Laws, c. 139 § 3; 70 Del. Laws, c. 186 § 1.)

§ 9204 Hearing — Scheduling; notice.

In the event an officer is entitled to a hearing, a hearing shall be scheduled within a reasonable period of time from the alleged incident, but in no event more than 30 days following the conclusion of the internal investigation, unless waived in writing by the charged officer. The officer shall be given written notice of the time and place of the hearing and the issues involved, including a specification of the actual facts that the officer is charged with having committed; a statement of the rule, regulation or order that those facts are alleged to violate; and a copy of the rule, regulation or order. The charge against the law-enforcement officer shall advise the officer of the alleged facts and that the violation of the rule constituted a basis for discipline, and shall specify the range of applicable penalties that could be imposed.

(65 Del. Laws, c. 12 § 1; 70 Del. Laws, c. 186 § 1.)

§ 9205 Hearing — Procedure.

(a) An official record including testimony and exhibits shall be kept of the hearing.

(b) The hearing shall be conducted within the department by an impartial board of officers. The prosecuting party and the officer and/or the officer's representative shall be given an opportunity to present evidence and argument with respect to the issues involved. Both the department and the officer may be represented by legal counsel. In the event an impartial board cannot be convened, then a board of 3 officers or more shall be convened under the auspices of the Delaware Criminal Justice Council. Any officer appointed under this subsection, either within the department or under the auspices of the Criminal Justice Council, shall not be liable for civil damages from any acts or omissions arising out of such officer's service on the board as long as the member of the board of officers acted in good faith and without malice in carrying out that member's responsibilities or duties. A member of the board of officers is presumed to have acted in good faith and without malice unless proven otherwise.

(c) Evidence which possesses probative value commonly accepted by reasonable and prudent persons in the conduct of their affairs shall be admissible in evidence and given probative effect. The tribunal conducting the hearing shall give effect to the rules of privilege recognized by law and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. All records and documents which

any party desires to use shall be offered and made a part of the record. Documentary evidence may be received in the form of copies of excerpts or by incorporation by reference.

(d) Every party shall have the right of cross-examination of witnesses who testify and may submit rebuttal evidence.

(e) The tribunal may take notice of judicially cognizable facts and in addition may take notice of general, technical or scientific facts within its specialized knowledge. Parties shall be notified beforehand of the materials so noticed by the trial board. No law-enforcement officer may be adjudged guilty of any offense unless the hearing tribunal is satisfied that guilt has been established by substantial evidence.

(65 Del. Laws, c. 12 § 1; 65 Del. Laws, c. 139 § 4; 70 Del. Laws, c. 186 § 1; 71 Del. Laws, c. 166 § 1.)

§ 9206 Hearing — Evidence obtained in violation of officer's rights.

No evidence may be obtained, received or admitted into evidence in any proceeding of any disciplinary action which violates any of the rights established by the United States Constitution or Delaware Constitution or by this chapter. The tribunal may not enter any judgment or sustain any disciplinary action based on any evidence obtained in violation of the officer's rights as contained in this chapter.

(65 Del. Laws, c. 12 § 1.)

§ 9207 Hearing — Written decision and findings of fact to be delivered to officer.

Any decision, order or action taken following the hearing shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement upon each issue in the case. A copy of the decision or order accompanying findings and conclusions along with the written action and right of appeal, if any, shall be delivered or mailed promptly to the law-enforcement officer or to the officer's attorney or representative of record.

(65 Del. Laws, c. 12 § 1; 70 Del. Laws, c. 186 § 1.)

§ 9208 Extra work as punishment prohibited.

No law-enforcement officer shall be compelled to work extra duty without compensation as a penalty for a disciplinary infraction. No suspension for any period of time provided in departmental rules and regulations shall affect the law-enforcement officer's eligibility for pension, hospitalization, medical and life insurance coverage or other benefits specifically protected under the contract of employment. Suspension may affect time of pension eligibility by contractual provision or other statutory provision. Nothing herein shall prevent any law-enforcement agency from requiring reimbursement by a suspended law-enforcement officer of the officer's employee contribution to benefits during the officer's time of suspension.

(65 Del. Laws, c. 12 § 1; 70 Del. Laws, c. 186 § 1.)

§ 9209 Application of chapter.

The chapter shall apply to all law-enforcement disciplinary proceedings throughout the State, conducted by the law-enforcement agencies specified in § 9200(b) of this title.

(65 Del. Laws, c. 12 § 1; 65 Del. Laws, c. 139 § 5.)

Part VI
Victims of Crimes
Chapter 93
POLICE CHIEF DUE PROCESS

§ 9301 Police chief removal; right to hearing; appeal.

(a) No colonel, chief of police or any officer who is the highest ranking officer of a legislatively authorized police department within this State, except the Police Chief of the City of Wilmington, Chief of New Castle County Police, and any colonel, chief of police or highest ranking officer of a police agency that is a division of the Department of Safety and Homeland Security, shall be dismissed, demoted or otherwise removed from office unless there is a showing of just cause and such person has been given notice in writing of the specific grounds for such action and an opportunity to be heard in the person's own defense, personally and/or by counsel, at a hearing, which may be public at the request of the person, before a panel appointed under the auspices of the Delaware Criminal Justice Council, such panel to consist of 3 persons, 1 to be appointed by the Chair of the Delaware Police Chiefs' Council, 1 by the President of the Delaware League of Local Governments, and 1 by the Chair of the Delaware Criminal Justice Council, provided that the Delaware Criminal Justice Council appointee shall not be an actively-serving law-enforcement officer. Such hearing shall be held on not less than 5 days written notice and not more than 30 days after such notice, unless the parties agree otherwise, in writing. The hearing panel's decision shall be by majority vote and based upon the evidence presented at the hearing. The hearing panel shall issue a written decision as to whether the charges against the colonel, chief or highest ranking officer were substantiated or unsubstantiated within 20 days of the conclusion of the hearing.

(b) If the hearing panel determines that the charges against the colonel, chief or highest ranking officer were unsubstantiated, it may award the colonel, chief or highest ranking officer his or her reasonable attorneys' fees.

(c) Any appeals from the process described in subsection (a) of this section shall be on the record to the Superior Court from the county in which the hearing was held. All such appeals shall be undertaken by filing a notice of appeal with the Court within 90 days of receipt of the hearing panel's written decision.

(d) By September 30, 2013, the Delaware Criminal Justice Council, the Delaware Police Chiefs' Council, and the Delaware League of Local Governments shall each appoint 2 representatives to a Rules Committee. One representative from the Delaware Criminal Justice Council shall chair the committee.

(e) By March 30, 2014, the Rules Committee created pursuant to subsection (d) of this section shall adopt rules and procedures to govern proceedings brought under this section. Thereafter, the Rules Committee shall meet at the call of the Chair to amend the rules and procedures as deemed necessary or appropriate.

(66 Del. Laws, c. 343 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 317 §§ 1-4; 79 Del. Laws, c. 68 § 1.)

Part VI
Victims of Crimes
Chapter 94
VICTIMS' BILL OF RIGHTS
Subchapter I
Victims Generally

§ 9401 Definitions.

As used in this chapter, unless the context otherwise requires:

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

(2) "Crime" means 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.
826A. Home invasion; class B felony.
831. Robbery in the second degree; class E felony.
832. Robbery in the first degree.
835. Carjacking in the second degree; class E felony, class D felony.
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 INCOMPETENTS
1101. Abandonment of child; class A misdemeanor.
1102. Endangering the welfare of a child; class A misdemeanor.
1103B. Child abuse in the first degree; class B felony.
1103. Child abuse in the third degree; class A misdemeanor.
1103A. Child abuse in the second degree; class G 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.

(3) "Member of the victim's family" means the spouse, a child by birth or adoption, a 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 does not include an individual who is accountable for the crime or a crime arising from the same conduct, criminal episode or plan.

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

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

(6) "Representative of the victim" means a member of the victim's family or an individual designated by the victim or by a court in which the crime is being or could be prosecuted.

(7) "Victim" means the person, organization, partnership, business, corporation, agency or governmental entity 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.

(8) "Witness" means any person other than a law-enforcement officer or probation officer who has knowledge of the existence or nonexistence of any fact related to any crime, or any person who has reported any crime to any law-enforcement officer or probation officer, or any person other than a law-enforcement officer or probation officer who 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 be believed by any reasonable person to be an individual described by this paragraph.

(68 Del. Laws, c. 445 § 1; 69 Del. Laws, c. 167 § 1; 70 Del. Laws, c. 101 § 1; 71 Del. Laws, c. 176 § 22; 71 Del. Laws, c. 285 §§ 22, 23; 71 Del. Laws, c. 467 § 11; 72 Del. Laws, c. 34 § 7; 72 Del. Laws, c. 211 § 1; 72 Del. Laws, c. 297 § 3; 73 Del. Laws, c. 255 § 5; 73 Del. Laws, c. 329 § 53; 77 Del. Laws, c. 416 § 1; 78 Del. Laws, c. 168 § 8; 78 Del. Laws, c. 252 § 14; 79 Del. Laws, c. 260 § 11; 79 Del. Laws, c. 276 § 6; 80 Del. Laws, c. 175 § 10.)

§ 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 shall enforce compliance with this chapter on behalf of victims, witnesses and members of their families.

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

(c) Failure to provide a right, privilege or notice to a victim under this chapter shall not be grounds for the defendant to seek to have a conviction or sentence set aside.

(68 Del. Laws, c. 445 § 1; 69 Del. Laws, c. 167 § 1; 70 Del. Laws, c. 101 § 3; 72 Del. Laws, c. 211 § 2.)

§ 9403 Nondisclosure of information about victim.

(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.

(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 residential address or place of employment on the record unless the court finds that disclosure of the information is necessary.

(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 under the Freedom of Information Act [Chapter 100 of Title 29].

(68 Del. Laws, c. 445 § 1; 69 Del. Laws, c. 167 § 1; 72 Del. Laws, c. 211 §§ 3-5.)

§ 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.

(68 Del. Laws, c. 445 § 1; 69 Del. Laws, c. 167 § 1.)

§ 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.

(68 Del. Laws, c. 445 § 1; 69 Del. Laws, c. 167 § 1; 69 Del. Laws, c. 318 § 1.)

§ 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.

(68 Del. Laws, c. 445 § 1; 69 Del. Laws, c. 167 § 1.)

§ 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.

(68 Del. Laws, c. 445 § 1; 69 Del. Laws, c. 167 § 1; 69 Del. Laws, c. 318 § 3.)

§ 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.

(68 Del. Laws, c. 445 § 1; 69 Del. Laws, c. 167 § 1.)

§ 9409 Limitations on employer.

An employer may not discharge or discipline a victim or a representative of the victim for:

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

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

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

(68 Del. Laws, c. 445 § 1; 69 Del. Laws, c. 167 § 1.)

§ 9410 Information from law-enforcement agency.

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

(1) An explanation of the victim's rights under this chapter;

(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;

(5) Notice of the Violent Crimes Compensation Program;

(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.

(69 Del. Laws, c. 167 § 1; 69 Del. Laws, c. 318 §§ 1, 4.)

§ 9411 Information concerning pretrial and trial matters.

(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;

(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.

In the Municipal Court the notice required by this section shall be provided by the Court.

(69 Del. Laws, c. 167 § 1; 69 Del. Laws, c. 318 §§ 1, 5, 8, 9; 71 Del. Laws, c. 176 § 23.)

§ 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.

(69 Del. Laws, c. 167 § 1; 69 Del. Laws, c. 318 §§ 6, 10; 71 Del. Laws, c. 176 § 24.)

§ 9413 Information concerning confinement.

(a) The Department of Correction and the Department of Services for Children, Youth and Their Families shall notify in writing those victims of the following regarding defendants in their custody:

(1) Projected release date;
(2) Release or release to a community-based program; and
(3) Parole Board hearing date.

(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.

(c) Notwithstanding any provision to the contrary, upon the request of the victim, the Department of Correction and the Department of Services for Children, Youth and Their Families shall provide the victim with information concerning the terms of probation, parole or other condition of release and the defendant's compliance or noncompliance with the sentence, probation, 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.

(69 Del. Laws, c. 167 § 1; 69 Del. Laws, c. 318 §§ 1, 7; 72 Del. Laws, c. 345 § 1.)

§ 9414 General requirements for information.

(a) Unless the form of notice is expressly set forth by this chapter, information required to be furnished under this chapter may be furnished orally or in written form.

(b) A person responsible for furnishing information may rely upon the most recent name, address and telephone number furnished by the victim.

(69 Del. Laws, c. 167 § 1.)

§ 9415 Presentence report.

In preparing a presentence report, the Investigative Services Officer shall make a reasonable effort to confer with the victim. 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.

(69 Del. Laws, c. 167 § 1; 73 Del. Laws, c. 60 § 7.)

§ 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.

(69 Del. Laws, c. 167 § 1; 69 Del. Laws, c. 318 § 1.)

§ 9417 Requirement of state agencies to file annual reports.

All agencies given duties by this chapter shall submit an annual report with related statistics outlining compliance with this chapter. The annual report shall be submitted 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. 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. The Governor shall advise state agencies of any statutory changes that require an amendment to this chapter.

(69 Del. Laws, c. 167 § 1; 69 Del. Laws, c. 318 § 2.)

§ 9418 Victims' Rights Fund.

All fines collected under Chapter 48 of Title 21 shall be deposited into a Victims' Rights Fund established within the State Treasurer's Office. Proceeds of this Fund are to be used for the establishment of necessary infrastructure and systems development in support of victim notification initiatives.

(69 Del. Laws, c. 169 § 2.)

§ 9419 Rights of qualifying neighborhood or home owners' 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].

(70 Del. Laws, c. 101 § 2.)

§ 9420 Polygraph testing of a victim.

(a) A law-enforcement officer, prosecuting officer or other government official shall not ask or require an adult, youth or child 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, the refusal of a victim to submit to a polygraph examination or other truth telling device shall not prevent the investigation, charging or prosecution of an alleged sex offense, defined in Chapter 5, subchapter II, subpart D of this title, against the victim.

(76 Del. Laws, c. 294 § 1.)

Subchapter II

Victims and Witnesses with Cognitive Disabilities

§ 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.

(74 Del. Laws, c. 44 § 1.)

§ 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.

(74 Del. Laws, c. 44 § 1.)

§ 9423 Expedited proceedings.

In all criminal proceedings involving a victim or witness 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 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 witness with a cognitive disability.

(74 Del. Laws, c. 44 § 1; 70 Del. Laws, c. 186 § 1.)

§ 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 the victim's or witness's family, in coping with the emotional impact of the crime, and the subsequent court proceedings in which the victim or witness is to become involved.

(74 Del. Laws, c. 44 § 1; 70 Del. Laws, c. 186 § 1; 79 Del. Laws, c. 371 § 10.)

Part VII
Special Programs
Chapter 95
VICTIM-OFFENDER MEDIATION

§ 9501 Purpose.

(a) The General Assembly finds and declares that:

(1) The resolution of felony, misdemeanor and juvenile delinquent disputes can be costly and complex in a judicial setting where the parties involved are necessarily in an adversary posture and subject to formalized procedures; and

(2) Victim-offender mediation programs can meet the needs of Delaware's citizens by providing forums in which persons may voluntarily participate in the resolution of certain criminal offenses in an informal and less adversarial atmosphere.

(b) It is the intent of the General Assembly that each program established pursuant to this chapter:

(1) Stimulate the establishment and use of victim-offender mediation programs to help meet the need for alternatives to the courts for the resolution of certain criminal offenses, whether before or after adjudication;

(2) Encourage continuing community participation in the development, administration and oversight of local victim-offender mediation programs;

(3) Offer structures for victim-offender mediation which may serve as models for programs in other communities; and

(4) Serve a specific community or locale and resolve certain criminal offenses that arise within that community or locale.

(70 Del. Laws, c. 444 § 1.)

§ 9502 Program funding; operation; supervision.

(a) There is hereby established a Victim-Offender Mediation Committee to be composed of the Attorney General, Chief Defender, Chief Magistrate, Chair of the Criminal Justice Council, State Court Administrator and the Chief Judge of Family Court or their designees to administer this chapter. No funds shall be awarded or program approved without the approval of the Victim-Offender Mediation Committee.

(b) To be eligible for state funds, a program must do the following:

(1) Be operated by a 501(c)(3) [26 U.S.C. § 501(c)(3)] organization in Delaware;

(2) Provide neutral mediators who have received training in conflict resolution techniques;

(3) Comply with this chapter and the rules adopted by the Victim-Offender Mediation Committee;

(4) Provide victim-offender mediation in felony, misdemeanor and juvenile delinquency cases without cost to the participants; and

(5) At the conclusion of the mediation process provide a written agreement or decision to the referral source setting forth the settlement of the issues and future responsibilities of each participant.

(c) Each program that receives funds under this chapter must be operated under a contract with the Victim-Offender Mediation Committee and must comply with this chapter.

(d) An organization applying to the Victim-Offender Mediation Committee for funding is to include the following information in its application:

(1) Cost of operating the victim-offender mediation program, including the compensation of employees;

(2) Description of the proposed area of service and number of participants expected to be served;

(3) Proof of nonprofit status; and

(4) Charter of incorporation.

(e) The Chair of the Victim-Offender Mediation Committee or the Chair's designee may inspect, examine and audit the fiscal affairs of victim-offender mediation programs.

(f) A program operated under this chapter is not a state agency or an instrumentality of the State. Employees and volunteers of a program are not employees of the State.

(g) A program that receives funds from the Victim-Offender Mediation Committee under this chapter must annually provide the Victim-Offender Mediation Committee with statistical data regarding the following:

(1) The operating budget;

(2) The number of case referrals, categories, or types of cases referred;

(3) The number of parties serviced;

(4) The number of cases resolved;

(5) The nature of the resolution, amount, and type of restitution to the victim and/or community;

(6) The rate of compliance;

(7) The length of total case processing time by the victim-offender mediation program;

(8) Community service hours agreed to, if applicable; and

(9) Community service hours completed, if applicable.

The data shall maintain the confidentiality and anonymity of all mediation participants.

(70 Del. Laws, c. 444 § 1; 70 Del. Laws, c. 186 § 1; 72 Del. Laws, c. 190 § 3; 80 Del. Laws, c. 26 § 3.)

§ 9503 Confidentiality.

All memoranda, work notes or products, or case files or programs established under this chapter are confidential and privileged and are not subject to disclosure in any judicial or administrative proceeding unless the court or administrative tribunal determines that the materials were submitted by a participant to the program for the purpose of avoiding discovery of the material in a subsequent proceeding. Any communication relating to the subject matter of the resolution made during the mediation process by any participant, mediator or any other person is a privileged communication and is not subject to disclosure in any judicial or administrative proceeding unless all parties to the communication waive the privilege. The foregoing privilege and limitation of evidentiary use does not apply to any communication of a threat that injury or damage may be inflicted on any person or on the property of a party to the dispute, to the extent the communication may be relevant evidence in a criminal matter. Nothing in this section shall prevent the Victim-Offender Mediation Committee from obtaining access to any information it deems necessary to administer this chapter.

(70 Del. Laws, c. 444 § 1.)

§ 9504 Eligibility.

No offender shall be admitted to the program unless the Attorney General certifies that the offender is appropriate to the program, regardless of any criteria established under any program or this chapter.

Any person who voluntarily enters a mediation process at a victim-offender mediation program established under this chapter may revoke that person's consent, withdraw from mediation and seek judicial or administrative redress prior to reaching a written agreement. No legal penalty, sanction or restraint may be imposed upon the person for such withdrawal.

(70 Del. Laws, c. 444 § 1; 70 Del. Laws, c. 186 § 1.)

§ 9505 Immunity.

(a) Members of the Victim-Offender Mediation Committee or board of directors of an organization with a victim-offender mediation program are immune from suit in any civil action based upon any proceedings or other official acts performed in good faith as members of the board.

(b) State employees and employees and volunteers of a victim-offender mediation program are immune from suit in any civil action based on any proceedings or other official act performed in their capacity as employees or volunteers, except in cases of wilful or wanton misconduct.

(c) A victim-offender mediation program is immune from suit in any civil action based on any of its proceedings or other official acts performed by its employees, volunteers or members of its board of directors, except (1) in cases of wilful or wanton misconduct by its employees or volunteers, and (2) in cases of official acts performed in bad faith by members of its board.

(70 Del. Laws, c. 444 § 1.)

Part VII
Special Programs
Chapter 96
PROTECTION OF WITNESSES AND CRIME VICTIMS
Subchapter I
Protection of Witnesses

§ 9601 Witness relocation and services.

(a) The Attorney General may provide for the health, safety, security and welfare of a witness or a potential witness for the State government in an official proceeding concerning criminal activity or other serious offense, if the Attorney General determines that an offense involving a crime of violence directed at the witness with respect to that proceeding or an offense set forth in subchapter III of Chapter 35 of this title directed at the witness or a potential witness is likely to be committed. The Attorney General may also provide for the health, safety, security and welfare of the immediate family of, or a person otherwise closely associated with, such witness or potential witness if the family or person may also be endangered on account of the participation of the witness in the judicial proceeding.

(1) The Attorney General shall issue guidelines defining the types of cases for which the exercise of the authority of the Attorney General as set forth in this subchapter would be appropriate.

(2) The State and its officers and employees shall not be subject to any civil liability on account of any decision to provide or not to provide services under this subchapter.

(b) In connection with the provision of services under this subchapter to a witness, a potential witness, or an immediate family member or close associate of a witness or potential witness, the Attorney General shall take such action as the Attorney General determines to be necessary to protect the person involved from bodily injury or otherwise to assure the health, safety, security and welfare of that person, including the psychological well-being and social adjustment of that person, for as long as, in the judgment of the Attorney General, the danger to that person exists. The Attorney General may provide some or all of the following services by regulation:

(1) Provide suitable documents to enable the person to establish a new identity or otherwise protect the person;

(2) Provide housing for the person;

(3) Provide for the transportation of household furniture and other personal property to a new residence of the person;

(4) Provide to the person a payment to meet basic living expenses, in a sum established in accordance with regulations issued by the Attorney General, for such time as the Attorney General determines to be warranted;

(5) Assist the person in obtaining employment;

(6) Provide other services necessary to assist the person in becoming self-sustaining;

(7) Disclose or refuse to disclose the identity or location of the person relocated or protected, or any other matter concerning the person or the program after weighing the danger such a disclosure would pose to the person, the detriment it would cause to the general effectiveness of the program, and the benefit it would afford to the public or to the person seeking the disclosure, except that the Attorney General shall, upon the request of law-enforcement officials or pursuant to a court order, without undue delay, disclose to such officials the identity, location, criminal records and fingerprints relating to the person relocated or protected when the Attorney General knows or the request indicates that the person is under investigation for or has been arrested for or charged with an offense that is punishable by more than one year in prison or that is a crime of violence;

(8) Exempt procurement for services, materials, and supplies, and the renovation and construction of safe sites within existing buildings from other provisions of law as may be required to maintain the security of protective witnesses and the integrity of the witness security program established pursuant to this subchapter;

(9) Authorize expenditures to provide to law-enforcement protection to ensure the safety and security of the person and/or the person's dwelling and/or the person's place of business; and

(10) Authorize other expenditures and/or provide other services reasonably intended to provide for the health, safety, security and welfare of the person.

The Attorney General shall establish an accurate, efficient and effective system of records concerning the criminal history of persons provided services under this subchapter in order to provide the information described in paragraph (b)(7) of this section.

(c) Deductions shall be made from any payment made to a person pursuant to paragraph (b)(4) of this section hereof to satisfy obligations of that person for family support payments pursuant to a state court order.

(d) Any person who, without the authorization of the Attorney General, knowingly discloses any information received from the Attorney General under paragraph (b)(7) of this section shall be fined $5,000 or imprisoned for 5 years, or both. The Superior Court shall have exclusive jurisdiction of any violation of this subsection.

(e)(1) Before providing services to any person under this subchapter, the Attorney General shall, to the extent practicable, obtain

information relating to the suitability of the person for inclusion in the program, including the criminal history, if any, and a psychological evaluation of, the person. A psychological evaluation shall only be required if the Attorney General intends to establish a new identity and/or a new permanent place of residence for the person. The Attorney General shall also make a written assessment in each case of the seriousness of the investigation or case in which the person's information or testimony has been or will be provided and the possible risk of danger to other persons and property which could be created by providing services to a person and shall determine whether the need for that person's testimony outweighs the risk of danger to the public. In assessing whether services should be provided to a person under this subchapter, the Attorney General shall consider the person's criminal record, alternatives to providing services under this subchapter, the possibility of securing similar testimony from other sources, the need for protecting the person, the relative importance of the person's testimony, the results of psychological examinations, whether providing such services will substantially infringe upon the relationship between a child who would be relocated in connection with such services and that child's parent who would not be so relocated, and such other factors as the Attorney General considers appropriate. The Attorney General shall not provide services to any person under this subchapter if the risk of danger to the public created by the provision of such services, including the potential harm to innocent victims, outweighs the need for that person's testimony. This subsection shall not be construed to authorize the disclosure of the written assessment made pursuant to this subsection.

(2) In addition to the requirements set forth in paragraph (e)(1) of this section, before providing services under this subchapter which are intended to establish a new identity and/or a new permanent place of residence for the person, the Attorney General shall secure a psychological evaluation of the person which shall assess the risk of danger to the public, including the potential harm to innocent victims, potentially created by the provision of such services.

(f) Before providing services to any person under this subchapter, the Attorney General shall enter into a memorandum of understanding with that person. Each such memorandum of understanding shall set forth the responsibilities of that person, including:

(1) The agreement of the person, if a witness or potential witness, to testify and provide information to all appropriate law-enforcement officials concerning all appropriate proceedings;

(2) The agreement of the person not to commit any crime;

(3) The agreement of the person to take all necessary steps to avoid detection by others of the facts concerning the services provided to that person under this subchapter;

(4) The agreement of the person to comply with legal obligations and civil judgments against that person;

(5) The agreement of the person to cooperate with all reasonable requests of officers and employees of the state and other law-enforcement officers who are providing services under this subchapter;

(6) The agreement of the person to designate another person to act as agent for the service of process;

(7) The agreement of the person to make a sworn statement of all outstanding legal obligations, including obligations concerning child custody and visitation;

(8) The agreement of the person to disclose any probation or parole responsibilities, and if the person is on probation or parole under the laws of another State, to consent to supervision by the State of Delaware; and

(9) The agreement of the person to regularly inform the appropriate program official of the activities and current address of such person. Each such memorandum of understanding shall also set forth the services which the Attorney General has determined will be provided to the person under this subchapter, and the procedures to be followed in the case of a breach of the memorandum of understanding, as such procedures are established by the Attorney General. Such procedures shall include a procedure for filing and resolution of grievances of persons provided services under this subchapter regarding the administration of the program. This procedure shall include the opportunity for resolution of a grievance by a person who was not involved in the case.

(g)(1) The attorney General shall enter into a separate memorandum of understanding pursuant to this subsection with each person to whom services are provided under this subchapter who is 18 years of age or older. The memorandum of understanding shall be signed by the Attorney General and the person to whom services are provided.

(2) The Attorney General may delegate the responsibility initially to authorize services under this subchapter only to the Chief Deputy Attorney General or the State Prosecutor.

(h) If the Attorney General determines that harm to the person for whom services may be provided under this subchapter is imminent or that failure to provide immediate services would otherwise seriously jeopardize an ongoing investigation, the Attorney General may provide temporary services to such person under this subchapter before making the written assessment and determination required by subsection (e) of this section or entering into the memorandum of understanding required by subsection (f) of this section. In such a case the Attorney General shall make such assessment and determination and enter into such memorandum of understanding without undue delay after the services are initiated.

(i) The Attorney General may terminate the services provided under this subchapter to any person who substantially breaches the memorandum of understanding entered into between the Attorney General and that person pursuant to subsection (f) of this section, or who provides false information concerning the memorandum of understanding or the circumstances pursuant to which the person was provided services under this subchapter, including information with respect to the nature and circumstances concerning child custody and visitation. Before terminating such services, the Attorney General shall send notice to the person involved of the termination of the services provided under this subchapter and the reasons for the termination. The decision of the Attorney General to terminate such services shall not be

subject to judicial review.

(74 Del. Laws, c. 57 § 1; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 28 § 1.)

§ 9602 Civil judgments.

(a) If a person provided services which include the establishment of a new identity and/or new place of permanent residence under this subchapter is named as a defendant in a civil cause of action arising prior to or during the period in which the services are provided, process in the civil proceeding may be served upon that person or an agent designated by that person for that purpose. The Attorney General shall make reasonable efforts to serve a copy of the process upon the person protected at the person's last known address. The Attorney General shall notify the plaintiff in the action whether such process has been served. If a judgment in such action is entered against that person, the Attorney General shall determine whether the person has made reasonable efforts to comply with the judgment. The Attorney General shall take appropriate steps to urge the person to comply with the judgment. If the Attorney General determines that the person has not made reasonable efforts to comply with the judgment, the Attorney General may, after considering the danger to the person and upon the request of the person holding the judgment, disclose the identity and location of the person to the plaintiff entitled to recovery pursuant to the judgment. Any such disclosure of the identity and location of the person shall be made upon the express condition that further disclosure by the plaintiff of such identity or location may be made only if essential to the plaintiff's efforts to recover under the judgment, and only to such additional persons as is necessary to effect the recovery.

Any such disclosure or nondisclosure by the Attorney General shall not subject the State and its officers or employees to any civil liability.

(b)(1) Any person who holds a judgment entered by a federal or state court in that person's favor against a person provided services which include the establishment of a new identity and/or a new place of employment under this subchapter may, upon a decision by the Attorney General to deny disclosure of the current identity and location of such person, bring an action against the person in the Superior Court. Such action shall be brought within 120 days after the petitioner requested the Attorney General to disclose the identity and location of the person to whom services have been provided under this subchapter. The complaint in such action shall contain statements that the petitioner holds a valid judgment of a federal or state court against a person provided services under this subchapter and that the petitioner sought to enforce the judgment by requesting the Attorney General to disclose the identity and location of such person.

(2) The petitioner in an action described in paragraph (b)(1) of this section shall notify the Attorney General of the action at the same time the action is brought. The Attorney General shall appear in the action and shall affirm or deny the statements in the complaint that the person against whom the judgment is allegedly held is provided services under this subchapter and that the petitioner requested the Attorney General to disclose the identity and location of such person for the purpose of enforcing the judgment.

(3) Upon a determination:

a. That the petitioner holds a judgment entered by a federal or state court; and

b. That the Attorney General has declined to disclose to the petitioner the current identify and location of the person against whom the judgment was entered,

(c) The provisions of this section shall not apply to a court order to which § 9603 of this title applies.

the court shall appoint a guardian to act on behalf of the petitioner to enforce the judgment. The clerk of the court shall forthwith furnish the guardian with a copy of the order of appointment. The Attorney General shall disclose to the guardian the current identity and location of the person to whom services have been provided and any other information necessary to enable the guardian to carry out that guardian's duties under this subsection.

(4) It is the duty of the guardian to proceed with all reasonable diligence and dispatch to enforce the rights of the petitioner under the judgment. The guardian shall, however, endeavor to carry out such enforcement duties in a manner that maximizes, to the extent practicable, the safety and security of the person to whom services have been provided under this subchapter. In no event shall the guardian disclose the new identity or location of such person without the permission of the Attorney General, except that such disclosure may be made to a federal or state court in order to enforce the judgment. Any good faith disclosure made by the guardian in the performance of the guardian's duties under this subsection shall not create any civil liability against the State or any of its officers or employees, or the guardian.

(5) Upon appointment, the guardian shall have the power to perform any act with respect to the judgment which the petitioner could perform, including the initiation of judicial enforcement actions in any federal or state court or the assignment of such enforcement actions to a third party under applicable federal or state law. The Superior Court Rules of Civil Procedure shall apply in any action brought under this subsection to enforce a federal or state court judgment.

(6) The cost of any action brought under this subsection with respect to a judgment, including any enforcement action described herein, and the compensation to be allowed to a guardian appointed in any such action shall be fixed by the court and shall be apportioned among the parties as follows:

a. The petitioner shall be assessed the amount the petitioner would have paid to collect on the judgment in an action not arising under the provisions of this subsection; and

b. The protected person shall be assessed the costs which are normally charged to debtors in similar actions and any other costs which are incurred as a result of an action brought under this subsection.

In the event that the costs and compensation to the guardian are not met by the petitioner or by the protected person, the court may, in its

discretion, enter judgment against the state for costs and fees reasonably incurred as a result of the action brought under this subsection.

(7) No officer or employee of the Department of Justice shall in any way impede the efforts of a guardian appointed under this subsection to enforce the judgment with respect to which the guardian was appointed.

(74 Del. Laws, c. 57 § 1; 70 Del. Laws, c. 186 § 1; 78 Del. Laws, c. 28 § 1.)

§ 9603 Child custody arrangement.

(a) The Attorney General may not relocate any child in connection with services provided to a person under this subchapter if it appears that a person other than that protected person has legal custody of that child.

(b) Before services which include the establishment of a new identity and/or new place of permanent residence are provided under this subchapter to any person:

(1) Who is a parent of a child of whom that person has custody; and

(2) Who has obligations to another parent of that child with respect to custody or visitation of that child under a court order,

the Attorney General shall obtain and examine a copy of such order for the purpose of assuring that compliance with the order can be achieved. If compliance with a visitation order cannot be achieved, the Attorney General may provide services under this subchapter to the person only if the parent being relocated initiates legal action to modify the existing court order under paragraph (e)(1) of this section. The parent being relocated must agree in writing before being provided such services to abide by any ensuing court orders issued as a result of an action to modify.

(c) With respect to any person provided services which include the establishment of a new identity and/or new place of permanent residence under this subchapter:

(1) Who is the parent of a child who is relocated in connection with such services; and

(2) Who has obligations to another parent of that child with respect to custody or visitation of that child under a state court order,

the Attorney General shall, as soon as practicable after the person and child are so relocated, notify in writing the child's parent who is not so relocated that a child has been provided services under this subchapter. The notification shall also include statements that the rights of the parent not so relocated to visitation or custody, or both, under the court order shall not be infringed by the relocation of the child and the Department of Justice responsibility with respect thereto. The Department of Justice will pay all reasonable costs of transportation and security incurred in insuring that visitation can occur at a secure location, but in no event shall it be obligated to pay such costs for visitation in excess of 30 days a year. Additional visitation may be paid for, in the discretion of the Attorney General, by the Department of Justice in extraordinary circumstances. In the event that the unrelocated parent pays visitation costs, the Department of Justice may, in the discretion of the Attorney General, extend security arrangements associated with such visitation.

(d)(1) With respect to any person provided services which include the establishment of a new identity and/or new place of permanent residence under this subchapter:

a. Who is the parent of a child who is relocated in connection with such services; and

b. Who has obligations to another parent of that child with respect to custody or visitation of that child under a court order,

(e)(1) In any case in which the Attorney General determines that, as a result of the relocation of a person and a child of whom that person is a parent in connection with the provision of services under this subchapter, the implementation of a court order with respect to custody or visitation of that child would be substantially impossible, the Attorney General may bring, on behalf of the person provided services under this subchapter, an action to modify the court order. Such action may be brought in the county in which the parent resides who would not be or was not relocated in connection with the services provided under this subchapter. In an action brought under this paragraph, if the Attorney General establishes, by clear and convincing evidence, that implementation of the court order involved would be substantially impossible, the court may modify the court order but shall, subject to appropriate security considerations, provide an alternative as substantially equivalent to the original rights of the nonrelocating parent as feasible under the circumstances.

(2) With respect to any state court order in effect to which this section applies, if the parent who is not relocated in connection with the services provided under this subchapter intentionally violates a reasonable security requirement imposed by the Attorney General with respect to the implementation of that court order, the Attorney General may bring an action in the county in which that parent resides to modify the court order. The court may modify the court order if the court finds such an intentional violation. The procedures for mediation and arbitration provided herein shall not apply to actions for modification brought under this subsection.

(f) In any case in which a person provided services which include the establishment of a new identity and/or new place of permanent residence under this subchapter is the parent of a child of whom that person has custody and has obligations to another parent of that child concerning custody and visitation of that child which are not imposed by court order, that person, or the parent not relocated in connection with such services may bring an action in the county in which the parent not relocated resides to obtain an order providing for custody or visitation, or both, of that child. In any such action, all the provisions of subsection (d) of this section shall apply.

(g) In any case in which an action under this section involves court orders from different States with respect to custody or visitation of the same child, the court shall resolve any conflicts by applying the rules of conflict of laws of the state in which the court is sitting.

(h)(1) Subject to paragraph (h)(2) of this section, the costs of any action described in subsection (d), (e) or (f) of this section shall be paid by the State.

(2) The Attorney General shall insure that any state court order in effect to which this section applies is carried out. The Department of Justice shall pay all costs and fees described in subsections (c) and (d) of this section.

(i) As used in this section, the term "parent" includes any person who stands in the place of a parent by law.

an action to modify that court order may be brought by any party to the court order in the Family Court in the county in which the child's parent resides who has not been relocated in connection with such services.

(2) With respect to actions brought under paragraph (d)(1) of this section, the Family Court shall establish a procedure to provide a reasonable opportunity for the parties to the court order to mediate their dispute with respect to the order. The court shall provide a mediator for this purpose. If the dispute is mediated, the court shall issue an order in accordance with the resolution of the dispute.

(3) If, within 60 days after an action is brought under paragraph (d)(1) of this section hereof to modify a court order, the dispute has not been mediated, any party to the court order may request arbitration of the dispute. In the case of such a request, the court shall appoint a commissioner to act as arbitrator, who shall be experienced in domestic relations matters. The court and the commissioner shall, in determining the dispute, give substantial deference to the need for maintaining parent-child relationships, and any order issued by the court shall be in the best interests of the child. In actions to modify a court order brought under this subsection, the court and the commissioner shall apply the law of the State in which the court order was issued. The costs to the state of carrying out a court order may be considered in an action brought under this subsection to modify that court order but shall not outweigh the relative interests of the parties themselves and the child.

(4) Until a court order is modified under this subsection, all parties to that court order shall comply with their obligations under that court order subject to the limitations set forth in this section.

(5) With respect to any person provided services which include the establishment of a new identity and/or new place of permanent residence under this subchapter who is the parent of a child who is relocated in connection with such services, the parent not relocated in connection with such services may bring an action in the Family Court for violation by that protected person of a court order with respect to custody or visitation of that child. If the court finds that such a violation has occurred, the court may hold the person to whom services have been provided in contempt.

Once held in contempt, the person to whom such services have been provided shall have a maximum of 60 days, in the discretion of the Attorney General, to comply with the court order. If the person fails to comply with the order within the time specified by the Attorney General, the Attorney General shall disclose the new identity and address of the protected person to the other parent and terminate any financial assistance to such person unless otherwise directed by the court.

(6) The State shall pay litigation costs, including reasonable attorneys' fees, incurred by a parent who prevails in enforcing a custody or visitation order, but shall retain the right to recover such costs from the person to whom services have been provided under this subchapter.

(74 Del. Laws, c. 57 § 1; 78 Del. Laws, c. 28 § 1.)

§ 9604 Cooperation of other state agencies and governments; reimbursement of expenses.

Each state agency shall cooperate with the Attorney General in carrying out the provisions of this subchapter and may provide, on a reimbursable basis, such personnel and services as the Attorney General may request in carrying out those provisions.

(74 Del. Laws, c. 57 § 1; 78 Del. Laws, c. 28 § 1.)

§ 9605 Additional authority of Attorney General.

The Attorney General may enter into such contracts or other agreements as may be necessary to carry out this subchapter. Any such contract or agreement which would result in the State being obligated to make outlays may be entered into only to the extent and in such amount as may be provided in advance in an Appropriation Act.

(74 Del. Laws, c. 57 § 1; 78 Del. Laws, c. 28 § 1.)

§ 9606 Source of funding.

All expenses incurred by the Attorney General to provide any service pursuant to this subchapter shall be paid from the Special Law Enforcement Assistance Fund established by § 4110 of this title.

(74 Del. Laws, c. 57 § 1; 78 Del. Laws, c. 28 § 1.)

Subchapter II

Address Confidentiality Act

§ 9611 Definitions.

When used in this subchapter, the following words and phrases shall have the meanings ascribed to them in this section except where the context clearly indicates a different meaning:

(1) "Actual address" shall mean a residential address, school address or work address of an individual.

(2) "Image" includes, but is not limited to, any photograph, video, sketch, or computer-generated image that provides a means to visually identify the person depicted.

(3) "Internet" has the meaning used in § 931 of this title.

(4) "Law-enforcement agency" means the police department of any political subdivision of this State, the Delaware State Police, the Capitol Police, and the Delaware Department of Justice.

(5) "Post or display publicly" means to communicate, transmit, or otherwise make available to any other person.

(6) "Program" means the Address Confidentiality Program of the Department of Justice.

(7) "Program participant" means any person certified by the Department of Justice as eligible to participate in the address confidentiality program established by this subchapter.

(8) "Protected witnesses" means any person to whom the Department of Justice is providing witness protection services pursuant to this chapter.

(9) "Substitute address" means the official address or confidential address designated by the Attorney General.

(10) "Victim of domestic violence" means a person who is a victim of domestic violence as that term is defined by § 1041 of Title 10, or any equivalent provision in the laws of any other state, the United States, or any territory, District or subdivision thereof or any other foreign jurisdiction.

(11) "Victim of sexual assault" means a victim of an offense set forth in §§ 768 through 780, and 787 of this title, or any equivalent provision in the laws of any other state, the United States, or any territory, District or subdivision thereof or any other foreign jurisdiction.

(12) "Victim of stalking" means a victim of an offense set forth in §§ 1312 and 1312A [transferred to § 1312] of this title, or any equivalent provision in the laws of any other state, the United States, or any territory, District or subdivision thereof or any other foreign jurisdiction.

(78 Del. Laws, c. 28 § 1; 80 Del. Laws, c. 147 § 2.)

§ 9612 Address Confidentiality Program.

(a) The Department of Justice shall establish a program to be known as the Address Confidentiality Program. Upon application and certification, persons eligible pursuant to this subchapter shall be provided a substitute address by the Program.

(b) The Program shall forward all correspondence sent by first class, express, registered and certified mail at no expense to a program participant and may arrange to receive and forward other classes or kinds of mail at the program participant's expense.

(c) Upon a person's certification for participation in the Program, the Department of Justice will provide notice of that fact and the program participant's substitute address to the appropriate officials and parties involved in an ongoing civil or criminal case in which a program participant is a victim, witness, or party.

(d) All records relating to applicants and program participants are the property of the Department of Justice. These records, including but not limited to program applications, a participants' actual addresses and waiver proceedings, shall be deemed to be confidential, and shall also not be subject to the provisions of Chapter 100 of Title 29.

(78 Del. Laws, c. 28 § 1.)

§ 9613 Persons eligible to apply.

The following persons shall be eligible to apply to become program participants:

(1) A victim of domestic violence, sexual assault, or stalking who has filed for a protection from abuse order or who is or was named as a victim in any criminal or delinquency proceeding brought for the purpose of determining liability for the commission of any crime or offense as those terms are defined in § 233 of this title, and who further states that he or she fears future violent acts by the perpetrator of the abuse; or

(2) A person who has a valid agreement with the Department of Justice as set out in § 9601(f) of this title; or

(3) A person who is a member of the same household as a program participant. A parent or guardian may apply to the program on behalf of a minor; or in the case of an adult individual who is incapacitated, application may be made by the person holding power of attorney;

(4) A person who has obtained or is seeking relief from a domestic violence program or service, as certified by the director of that program or his or her designee.

(78 Del. Laws, c. 28 § 1; 70 Del. Laws, c. 186 § 1.)

§ 9614 Application, certification and termination process.

A person shall file an application with the Program in a manner prescribed by the Program. The Department of Justice shall have the authority to promulgate appropriate policies and procedures regarding certification and termination. Certification shall be valid for a period of 3 years following the date of certification unless the certification is withdrawn or canceled before the expiration of that period, or a person's participation in the program is otherwise terminated.

(78 Del. Laws, c. 28 § 1.)

§ 9615 Agency use of designated address.

Federal, state and local government agencies shall accept the substitute address designated on a valid program participation card issued to the program participant by the Program as the program participant's address except as follows:

(1) When the federal, state or local government agency has been granted a waiver pursuant to § 9617 of this title; or

(2) When the program participant is any of the following:

a. A released offender complying with pretrial supervision, probation or parole or similar requirements imposed by any other jurisdiction; or

b. A convicted sexual offender who has fulfilled the offender's sentence but must register the offender's community residence as required under §§ 4120-4121 of this title or any similar registration requirement imposed by any other jurisdiction.

(78 Del. Laws, c. 28 § 1.)

§ 9616 Disclosure of actual address.

The Department of Justice shall not disclose the actual address of a program participant except when:

(1) A federal, state or local government agency has been granted a waiver by the Program and the disclosure is made pursuant to § 9617 of this title; or

(2) The Program determines that disclosure is required due to an emergency and the disclosure is made pursuant to § 9618 of this title; or

(3) A court of competent jurisdiction orders the Program to disclose the program participant's actual address and disclosure is made pursuant to the court order.

(78 Del. Laws, c. 28 § 1.)

§ 9616A Publicly posting or displaying program participant's actual address, telephone number, or image on the Internet.

(a) No person shall post or display publicly on the Internet, or solicit, sell, or trade on the Internet, the actual address, telephone number, or image of a program participant with the intent to do either of the following:

(1) Incite another person to imminently use that information to commit a crime involving violence or a threat of violence against, or to cause bodily harm to, the program participant identified in the posting or display, or any member of the program participant's household; or

(2) Threaten the program participant identified in the posting or display, or any member of the program participant's household, in a manner that places the person or persons threatened in objectively reasonable fear for their personal safety.

(b) No person shall post or display publicly on the Internet the actual address or telephone number of a program participant if that program participant, a parent or guardian of that program participant if the program participant is a minor, or a person holding power of attorney for the program participant if the program participant is an incapacitated adult individual, has made a written demand of that person not to disclose the program participant's actual address or telephone number. A written demand made under this subsection shall include a sworn statement declaring that the program participant is subject to the protection of this subchapter and describing a reasonable fear for the safety of that program participant or any member of the program participant's household, based on a violation of subsection (a) of this section. A written demand made under this subsection shall be effective for 3 years even if the program participant's certification is withdrawn or canceled, or the program participant's participation is otherwise terminated, before the end of the 3-year period. This subsection shall not apply to a person defined in § 4320(4) of Title 10.

(c) An interactive computer service or access software provider, as defined in 47 U.S.C. § 230(f), shall not be liable under this section unless the interactive computer service or access software provider intends to abet or cause bodily harm that is likely to occur or threatens to cause bodily harm to a program participant or any person residing at or regularly present at the same actual address.

(80 Del. Laws, c. 147 § 3.)

§ 9617 Waiver process.

(a) A federal, state or local government agency may request disclosure of a program participant's actual address pursuant to this section. The Department of Justice shall have the authority to promulgate appropriate policies and procedures regarding the waiver process.

(b) The Department of Justice shall promptly conduct a review of all requests received pursuant to this section. In conducting a review, the Program shall notify the program participant of the request and consider all information received and any other appropriate information that the Program may require to make a determination.

(c) Any government agency granted a waiver by the Program pursuant to this section shall be permitted to use the actual address in the manner authorized by the Department of Justice.

(d) Upon denial of a federal, state or local government agency's request for waiver, the Program shall provide prompt written notification to the agency stating that the agency's request has been denied and setting forth the specific reasons for the denial.

(e) Within 15 days after notification that the Program has denied the federal, state or local government agency's request for waiver, the agency may file a request for review of the decision by the Attorney General.

(f) Nothing in this section shall be construed to prevent the Program from granting a waiver to a federal, state or local government agency pursuant to this section upon receipt of a program participant's written consent to do so.

(78 Del. Laws, c. 28 § 1.)

§ 9618 Emergency disclosure.

The Program shall establish a system to promptly respond to requests for emergency disclosures if the disclosure:

(1) Will prevent physical harm or significant economic loss to a program participant or to a program participant's family member; or

(2) Is made to a law-enforcement agency for law-enforcement purposes and the circumstances warrant immediate disclosure.

(78 Del. Laws, c. 28 § 1.)

§ 9619 Penalties.

(a) Any person who knowingly provides false information in regard to a material fact contained in any application made pursuant to this subchapter shall be subject to termination from the program and to criminal penalties under § 1233 of this title, or any other applicable provision of this Code.

(b) Any person who intentionally, knowingly or recklessly attempts to gain access to or gains access to a program participant's actual address by fraud or misrepresentation may be subject to criminal penalties under §§ 873, 876, and 932 of this title, or any other applicable provision of this Code.

(c) A person who lawfully obtains a program participant's actual address and who subsequently discloses or uses the actual address in a manner not authorized by this subchapter may be subject to criminal penalties under §§ 873, 876, and 932 of this title, or any other applicable provision of this Code.

(d) A person who violates § 9616A(a) of this title is guilty of a class A misdemeanor, except that the violation is:

(1) A class G felony if the violation results in physical injury to the program participant or a member of the program participant's household; or

(2) A class D felony if the violation results in serious physical injury to the program participant or a member of the program participant's household.

(e) The remedies for aggrieved persons set forth in § 941 of this title are available to program participants for violations of § 9616A of this title.

(78 Del. Laws, c. 28 § 1; 80 Del. Laws, c. 147 § 4.)

Part VII
Special Programs
Chapter 97
ESTABLISHMENT OF THE DELAWARE POLICE ACCREDITATION COMMISSION

§ 9701 Legislative intent.

WHEREAS, the safety of all Delawareans is of paramount importance; and

WHEREAS, municipal, county, university, and Delaware River and Bay Authority police departments, in addition to the Delaware State Police and other State agency police departments, provide a critical role in protecting the lives and property of the citizens of Delaware; and

WHEREAS, many smaller police departments within the State do not have the resources or manpower to complete the rigorous standards issued by the Commission on Accreditation of Law Enforcement Agencies, Inc.; and

WHEREAS, the effectiveness of public safety departments would be better served by a statewide accreditation council and standards achievable by a majority of the departments; and

WHEREAS, the citizens who reside in those jurisdictions would benefit by those departments achieving State accreditation and maintaining those standards; and

WHEREAS, the establishment of Delaware standards for a State accreditation program requires statewide coordination and leadership.

(76 Del. Laws, c. 231 § 1.)

§ 9702 Establishment of the Delaware Police Accreditation Commission.

(a) The Delaware Police Accreditation Commission (hereinafter "the DPAC") is hereby created.

(b) The members of the DPAC shall be appointed by the Governor. The DPAC shall consist of the following members:

(1) The Attorney General;

(2) The President Pro Tem of the State Senate or designee;

(3) The Speaker of the House of Representatives or designee;

(4) The Chairperson, Delaware Council on Police Training;

(5) The Chairperson, Delaware Police Chiefs' Council;

(6) The Superintendent, Delaware State Police;

(7) The Colonel of the New Castle County Police;

(8) The Chairperson, Sussex County Chiefs organization;

(9) The Chairperson, Kent County Chiefs organization;

(10) The Chairperson, Accreditation Committee, Delaware Police Chiefs' Council;

(11) The Chief of Police, City of Dover;

(12) The Chief, New Castle City Police Department;

(13) The Executive Director, Delaware League of Local Governments;

(14) The Executive Director, Delaware Police Chiefs' Council;

(15) A representative of the Office of the Governor who shall serve as Chair; and

(16) The Chief of the Wilmington Police Department.

(c) All members of the DPAC shall serve at the pleasure of the Governor.

(d) The Chairperson of the DPAC may form subcommittees consistent with the needs of the DPAC to address police accreditation issues included, but not limited to technical support, operations support, and training support. The subcommittees may include individuals who are not members of the DPAC, but who have an interest or expertise in police accreditation issues. Each subcommittee shall be chaired by a member of the DPAC.

(76 Del. Laws, c. 231 § 1; 70 Del. Laws, c. 186 § 1.)

§ 9703 Specific functions, bylaws.

The purpose of the DPAC shall be to provide policy level direction and draft and implement state level police accreditation standards for matters related to accreditation. To that end, it shall:

(1) Develop a statewide police accreditation program.

(2) Develop standards for the police accreditation program to ensure consistency of police operations statewide.

(3) Promote cooperation among state, municipal, university, and Delaware River and Bay Authority police agencies in addressing statewide accreditation needs in Delaware.

(4) Provide recommendations to the Governor and the Delaware General Assembly, when appropriate, concerning issues related to state level police accreditation standards in Delaware.

(5) The DPAC shall operate in accordance with bylaws that it adopts. These bylaws may be amended, supplemented, or repealed by the DPAC in accordance with the Freedom of Information Act, Chapter 100 of Title 29.

(76 Del. Laws, c. 231 § 1.)