

SPONSOR:

DELAWARE STATE SENATE

150th GENERAL ASSEMBLY

SENATE BILL NO.

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

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

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

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

Part I: Delaware Criminal Code.

Subpart A. General provisions.

Chapter 1. Preliminary provisions.

§ 101. Short Title.

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

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

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

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

§ 103. Definitions.

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Serious physical injury to 5 or more persons.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Whether the conduct is actual or simulated.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. In the direction of another person.

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

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

a. A firearm, whether operable or inoperable.

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

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

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

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

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

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

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

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

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

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

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

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

a. An individual less than 18 years old.

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

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

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

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

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

a. A bomb or bomb shell.

b. A firearm silencer.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. A penis or scrotum.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. An ultimate sexual act.

2. A sadomasochistic sexual act.

3. Masturbation.

4. Excretory functions.

5. Lewd exhibition of the genitals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. A personal gain or advantage to the recipient.

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Constitute an act of abuse or neglect.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. Creates a risk of death.

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

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

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

1. Creates a substantial risk of death.

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

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

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

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

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

a. Sexual intercourse or oral or object penetration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. Has reported an offense.

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

§ 104. Principle of construction; general purposes.

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

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

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

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

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

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

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

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

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

§ 105. All offenses defined by statute; applicability.

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

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

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

§ 107. State criminal jurisdiction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 108. Burdens of proof; permissive inferences.

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

(b) Burden of production.

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

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

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

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

(c) Burden of persuasion.

(1) State's burden of persuasion.

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

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

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

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

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

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

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

§ 109. Words of gender or number.

Unless the context requires otherwise:

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

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

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

Chapter 2. Basic requirements of offense liability.

§ 201. Basis of liability.

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

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

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

§ 202. Offense elements defined.

(a) "Elements" of an offense means:

(1) both:

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

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

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

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

Circumstance element; Conduct element; Result element.

§ 203. Causal relationship between conduct and result.

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

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

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

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

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

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

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

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

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

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

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

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

Voluntary act.

§ 205. Culpability requirements.

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

(b) Culpability requirements defined.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Whether conduct constitutes an offense.

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

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

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

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

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

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

§ 206. Ignorance or mistake negating required culpability.

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

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

(b) Mistake defense negating required culpability.

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

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

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

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

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

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

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

§ 208. Consent.

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

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

(1) Not serious physical injury.

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

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

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

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

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

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

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

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

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

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

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

1. Is entirely accounted for by the other.

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

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

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

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

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

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

a. The other offense.

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

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

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

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

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

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

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

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

§ 210. Accountability for the conduct of another.

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

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

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

b. The person intentionally does either of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The other person has been acquitted.

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

(1) The person's own culpability.

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

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

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

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

§ 211. Voluntary intoxication.

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

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

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

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

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

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

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

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

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

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

Chapter 3. General defenses.

Subchapter I. Justification defenses.

§ 301. General provisions governing justification defenses.

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

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

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

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

(e) Causing justifying circumstances.

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

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

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

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

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

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

Force.

§ 302. Choice of evils.

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

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

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

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

§ 303. Execution of public duty.

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

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

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

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

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

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

(1) A defect in legal process.

(2) The court lacks jurisdiction.

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

Public servant.

§ 304. Law enforcement authority.

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

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

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

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

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

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

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

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

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

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

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

(b) Use of force to prevent an escape.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. It is consistent with the individual's welfare.

c. It does not cause physical injury, mental distress, unnecessary degradation, or create a substantial risk of serious physical injury or death.

(4) A doctor or therapist, or an individual assisting at the doctor or therapist's direction, and both of the following conditions are met:

a. The force is necessary to administer a recognized form of treatment that is adapted to promoting the physical or mental health of the individual.

b. The treatment is administered under either of the following circumstances:

1. With the individual's consent or, if the individual is less than 18 years old or entrusted by authority of law to the custody of another person or to an institution, with the consent of a parent, guardian, or other person legally competent to consent on the individual's behalf.

2. In an emergency, when no one competent to consent for the individual can be consulted and a reasonable person wishing to safeguard the welfare of the individual would consent.

(5) A correctional officer, and the force used is necessary to enforce the lawful rules or procedures of the institution.

(6) A person responsible for the safety of an aircraft, train, vehicle, vessel, or other carrier, or a person acting at the responsible person's direction, and the force used is necessary to prevent either of the following:

a. Interference with the operation of the carrier.

b. Obstruction of the execution of a lawful order.

(7) A person who is authorized or required by law to maintain order or decorum in an aircraft, train, vehicle, vessel, or other carrier, or in any place where persons are assembled, and the force used meets all of the following criteria:

a. Is necessary for that purpose.

b. Does not create a substantial risk of death, physical injury, or extreme mental distress.

(b) When use of deadly force not justified. The use of deadly force is not justified under this section, but it may be justified under § 306 of this title.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Child; Correctional officer; Deadly Force; Force; Physical injury; Serious physical injury; Vessel.

§ 306. Defense of person.

(a) Use of force. The use of force against an aggressor is justified when and to the extent the force is immediately necessary to defend oneself or another person against the aggressor's use of unjustified force.

(b) Limitations.

(1) Defense of another. A person is justified in using force in defense of another individual under subsection (a) of this section only if both of the following apply:

a. The person would have been justified in using the force if the person had been the object of aggression.

b. The person would have been justified in using the force on the person's own behalf.

(2) Resisting arrest. The use of force is not justified under subsection (a) of this section to resist or assist another in resisting an arrest that is made by a peace officer, regardless of whether the arrest is lawful.

(c) Use of deadly force.

(1) Justified in limited circumstances. The use of deadly force is justified under this section only if it is necessary to protect the person or another individual against death, serious physical injury, kidnapping, or sexual intercourse compelled by force or threat of force.

(2) Retreat, surrendering possession, or complying with aggressor's demands.

a. Generally. The use of deadly force is not justified if the necessity of using deadly force can be avoided, thereby securing the complete safety of any individual in danger, by doing any of the following:

1. Retreating.

2. Surrendering possession of a thing to a person asserting a claim of right to the thing.

3. Complying with a demand that the person abstains from performing an act that the person is not legally obligated to perform.

b. Exceptions.

1. An individual is not obligated to retreat in or from the individual's dwelling or, if the individual acts to protect another individual, the other individual's dwelling.

2. An individual is not obligated to retreat in or from the individual's place of work or, if the individual acts to protect another individual, the other individual's place of work, unless the defendant was the initial aggressor.

3. The limitation in this subsection does not apply to a peace officer who is justified in using deadly force under § 304 of this title.

(d) Use of force to prevent suicide. An individual may use force upon or toward another individual when and to the extent the force is immediately necessary to prevent the other individual from committing suicide or inflicting serious physical injury upon the other individual.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Dwelling; Peace officer; Serious physical injury; Sexual intercourse; Unjustified; Vessel.

§ 307. Defense of property.

(a) The use of force against an aggressor is justified under this subsection if all of the following apply:

(1) The force is immediately necessary to prevent the aggressor's unjustified trespass upon, or other unjustified interference with, real or personal property.

(2) The individual or another individual on whose behalf the individual acts lawfully possesses the property.

(3) Before employing force, the individual first requests that the aggressor cease trespassing upon or interfering with the property, unless any of the following apply:

a. The request would be useless.

b. The request would endanger the individual or another individual.

c. Before a request can be effectively made, material harm will be done to the physical condition of the property to be protected.

(b) Justified detention by special parties. The conduct of a merchant or an operator of a lawful gambling facility, or an agent or employee of the merchant or operator, is justified if it is necessary to detain an individual who has intentionally concealed unpurchased merchandise, committed theft, or cheated in a manner described in § 1382 of this title, if all of the following conditions are met:

(1) The detainer is 18 or more years old.

(2) The detention lasts long enough only for the person to promptly summon a law enforcement officer.

(c) When use of deadly force not justified. Use of deadly force is not justified under this section, but it may nevertheless be justified under § 306 of this title.

(d) No civil liability for justified conduct. A person whose conduct is justified under this section is not, due to that conduct, civilly liable to the person against whom the force is used.

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

Deadly force; Force; Law enforcement officer; Property; Real property; Unjustified.

Subchapter II. Excuse defenses.

§ 321. General provisions governing excuse defenses.

(a) Conduct for which a defendant is excused is not necessarily justified.

(1) Except as otherwise provided by law, conduct for which a person is excused is not justified, and may be resisted and interfered with as justified by law.

(2) A person who assists conduct for which another person is excused, is not excused for the person's assistance solely because the other person is excused.

(b) Causing the excusing conditions not automatic bar to excuse defense.

(1) The fact that a person caused the condition giving rise to an excuse defense under this subchapter does not prevent the person from being excused for the offense.

(2) Liability for culpably causing excusing conditions. Nevertheless, a person commits an offense if, acting with the culpability required by the offense, the person causes the condition that excuses the person or another person for engaging in the offense.

(3) Defense to causing conditions. A person may have a general defense to the person's conduct that gives rise to liability under paragraph (b)(2) of this section.

(c) Mistake as to an excuse is no defense. Except as otherwise provided by law, it is not a defense that a defendant mistakenly believes that the defendant satisfies the requirements of an excuse defense.

(d) Burden of persuasion. Unless this subchapter expressly provides otherwise, the defendant carries the burden of persuasion on all excuse defenses by a preponderance of the evidence.

§ 322. Involuntary act; involuntary omission.

(a) Involuntary act. A person is excused for the person's offense if liability is based upon an act, and the act is not a product of the person's effort or determination.

(b) Involuntary omission. A person is excused for the person's offense if liability is based upon an omission, and the person is physically incapable of performing, or otherwise cannot reasonably be expected under the circumstances to perform, the omitted act.

§ 323. Mental illness or serious mental disorder.

(a) Excuse defined. A person is excused for her or his offense if, at the time of the offense, both of the following apply:

(1) The person suffers from a mental illness or serious mental disorder.

(2) As a result of the mental illness or serious mental disorder, either of the following applies:

a. The person does not perceive the physical nature or foresee the physical consequences of the person's conduct.

b. The person lacks substantial capacity to appreciate the wrongfulness of the person's conduct.

(b) Modified verdict and additional procedures. If a defendant is excused under subsection (a) of this section, the trier of fact shall return a verdict of "not guilty by reason of insanity," and the defendant is subject to the procedures under § 3701 of Title 11.

(c) Guilty, but mentally ill.

(1) No excuse. A person is not excused for the person's offense and the trier of fact may return a verdict of "guilty, but mentally ill," if, at the time of the offense, both of the following apply:

a. The defendant suffers from a mental illness or serious mental disorder.

b. As a result of the mental illness or serious mental disorder, any of the following apply:

1. The defendant's thinking, feeling, or behavior is substantially disturbed.

2. The defendant lacks sufficient willpower to choose whether to engage in or refrain from the criminal conduct.

(2) Verdict option at the request of the defendant. The jury may be given the verdict option described in this subsection only upon the request of the defendant.

(3) Additional procedures. A person who is found "guilty, but mentally ill" is subject to the procedures under §§ 3705–06 of Title 11.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Mental illness or serious mental disorder.

§ 324. Involuntary intoxication.

(a) Excuse defined. A person is excused for the person's offense if, at the time of the offense, both of the following apply:

(1) The person is involuntarily intoxicated.

(2) As a result of involuntarily intoxication, at least 1 of the following apply:

a. The person does not perceive the physical nature or foresee the physical consequences of the defendant's conduct.

b. The person lacks substantial capacity to appreciate the wrongfulness of the defendant's conduct.

c. The person lacks substantial capacity to choose whether to engage in or refrain from the conduct constituting the offense.

(b) Causing excusing conditions. This section may not be deemed to preclude liability under § 321(b)(2) of this title.

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

§ 325. Duress.

(a) Excuse defined. A person is excused for the person's offense if, at the time of the offense, all of the following apply:

(1) The person is coerced to perform the offense conduct by means of force or threat, which a person of reasonable firmness in the person's situation would have been unable to resist.

(2) As a result, the person is not sufficiently able to resist committing the offense conduct so as to be justly held accountable for it.

(b) Defined terms. "Coerce" means any act that satisfies the definition of coercion in § 1063 of this title.

§ 326. Ignorance due to unavailable law.

A person is excused for the person's offense if all of the following apply:

(1) Before the conduct constituting the offense was committed, the law relating to the offense was not made available in a way that would give notice to a reasonable person.

(2) As a result, at the time of the offense, the person does not know that the person's conduct is criminal.

§ 327. Reliance upon official misstatement of law.

A person is excused for the person's offense if both of the following apply:

(1) The person reasonably relies upon an official misstatement of law contained in any of the following:

a. A statute or other enactment.

b. A judicial decision, opinion, or judgment.

c. An administrative order.

d. An official interpretation of the public officer or body charged by law with responsibility for the interpretation, administration, or enforcement of the law defining the offense.

(2) As a result of the official misstatement of law, at the time of the offense, the person does not know the person's conduct is criminal.

§ 328. Reasonable mistake of law unavoidable by due diligence.

A person is excused for the person's offense if all of the following apply:

(1) The person pursues with due diligence all reasonably viable means available to ascertain the meaning and application of the offense to the person's conduct.

(2) The person honestly and in good faith concludes that the person's conduct is lawful in circumstances where a law-abiding and prudent person would also so conclude.

(3) Notwithstanding the conditions in paragraphs (1) and (2) of this section being met, at the time of the offense, the person does not know the person's conduct is criminal.

§ 329. Mistake as to a justification.

(a) A person is excused for the person's offense if both of the following apply:

(1) Under the circumstances as the person believes them to be, the person's conduct satisfies the requirements of a justification defense defined in Subchapter I of Chapter 3 of this part.

(2) The person's mistake is any of the following:

a. Reasonable.

b. Less culpable than the culpability required by any of the following:

1. The result element of the offense charged.

2. If no result element exists, the circumstance element most central to the offense charged.

(b) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Circumstance element; Reasonable mistake; Result element.

Subchapter III. Nonexculpatory defenses.

§ 341. General provisions governing nonexculpatory defenses.

(a) Assistance of, resistance to, and interference with conduct subject to a nonexculpatory defense. Except as otherwise provided by law, conduct for which a person has a nonexculpatory defense is not justified, and may be

resisted and interfered with as authorized by law. A person who assists conduct for which another has a nonexculpatory defense, does not have a defense based solely upon the nonexculpatory defense of the other person.

(b) Mistake as to a nonexculpatory defense is no defense. Except as otherwise provided by this part, it is not a defense that a person mistakenly believes the person has a nonexculpatory defense.

(c) Burden of persuasion on defendant. Unless expressly provided otherwise, the defendant has the burden of persuasion for a nonexculpatory defense and must prove the defense by a preponderance of the evidence.

(d) Determination by court. Unless expressly provided otherwise, the court shall determine the defenses in this subchapter.

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

§ 342. Prosecution barred if not commenced within time limitation period.

(a) Time limitations. A prosecution is barred unless commenced within the following applicable time period, which starts as provided in subsection (e) of this section:

(1) A prosecution for a Class 1 or Class 2 felony, or a sexual offense constituting a felony, may be commenced at any time.

(2) A prosecution for any other felony must be commenced within 5 years.

(3) A prosecution for a sexual offense constituting a misdemeanor must be commenced within 5 years.

(4) A prosecution for a Class A misdemeanor must be commenced within 3 years.

(5) A prosecution for any other offense must be commenced within 2 years.

(b) Extended periods. If the period prescribed in subsection (a) of this section has expired, a prosecution nevertheless may be commenced if any of the following apply:

(1) No more than 2 years have elapsed since the offense has been discovered or should reasonably have been discovered. This paragraph (b)(1) of this section does not extend the period of limitation otherwise applicable by more than 3 years.

(2) For any offense based upon misconduct of a public servant in office, no more than 2 years have elapsed since the end of the time the defendant holds office.

(3) For any offense for which the victim is less than 18 years old, no more than 2 years have elapsed since the victim turned 18 years old.

(4) For a prosecution based upon forensic DNA testing, no more than 10 years have elapsed from the time the offense is committed.

(c) Period of limitation tolled. The period of limitation does not run during any of the following periods of time:

(1) During which the defendant is fleeing or hiding from justice, so that the defendant's identity or whereabouts cannot be ascertained despite a diligent search.

(2) After the defendant has failed to appear for any scheduled court proceeding related to the prosecution, for which lawful notice was provided or properly attempted.

(3) During which a prosecution against the defendant for the same conduct is pending in this State, even if the information or indictment was defective.

(d) State's burden to prove extension or tolling. In any prosecution in which subsection (b) or (c) of this section is sought to be invoked to avoid or extend the limitation period of subsection (a) of this section, the State must prove the subsection's applicability by a preponderance of the evidence.

(e) Start of the limitation period. The period of limitation starts to run on the day after the offense is committed. An offense is committed when either of the follow apply:

(1) Every element of the offense occurs.

(2) A legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity in it is terminated.

(f) Commencement of prosecution. A prosecution is commenced when either an indictment is returned or an information is filed.

(g) Period during which prosecution is pending. A prosecution is pending from the time it is commenced through the final disposition of the case, including the final disposition of the case upon appeal.

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

§ 343. Entrapment.

(a) Defense defined. A person has a defense if all of the following apply:

(1) The person engages in an offense because the person is induced to do so by a law enforcement officer or an agent acting in knowing cooperation with a law enforcement officer.

(2) The law enforcement officer's or agent's conduct creates a substantial risk that a reasonable, law-abiding citizen would have been induced to commit the offense.

(3) The person is not predisposed to commit the offense.

(b) Defense unavailable for causing or threatening physical injury. A defense under subsection (a) of this section is unavailable when causing or threatening physical injury is an element of the offense charged.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Law enforcement officer; Physical injury.

§ 344. Prior prosecution for same offense as a bar to present prosecution.

(a) Bar to prosecution defined. When a prosecution is for a violation of the same statutory provision and is based upon the same facts as a prior prosecution, it is barred by the prior prosecution if any of the following apply:

(1) The prior prosecution resulted in an acquittal that was not later set aside.

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

(3) The prior prosecution resulted in a conviction.

(4) The prior prosecution was improperly terminated.

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

§ 345. Prior prosecution for different offense as a bar to present prosecution.

(a) Bar to prosecution defined. Although a prosecution is for a violation of a different statutory provision or is based on different facts, it is barred by a prior prosecution in a court having jurisdiction over the subject matter of the present prosecution if any of the following apply:

(1) The prior prosecution resulted in either an acquittal that was not later set aside or a conviction, and the present prosecution is for either of the following:

a. An offense of which the defendant could have been convicted in the prior prosecution.

b. The same conduct, unless either of the following apply:

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

2. The presently prosecuted offense was not consummated when the prior trial began.

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

(3) The prior prosecution was improperly terminated and the present prosecution is for an offense of which the defendant could have been convicted had the prior prosecution not been improperly terminated.

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

§ 346. Prior prosecution by another jurisdiction as a bar to present prosecution.

(a) Bar to prosecution defined. When conduct constitutes an offense within the concurrent jurisdiction of this State and of the United States or another state, a prosecution in 1 of those jurisdictions is a bar to the present prosecution in this State if any of the following apply:

(1) The prior prosecution resulted in either an acquittal that was not later set aside or conviction, and the present prosecution is based on the same conduct, unless any of the following apply:

a. The offense for which the defendant is presently being prosecuted requires proof of a fact not required by the offense in the prior prosecution, and the law defining each of the offenses is intended to prevent a substantially different harm or evil.

b. The presently prosecuted offense was not consummated when the prior trial began.

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

(3) The prior prosecution was improperly terminated and the present prosecution is for an offense of which the defendant could have been convicted had the prior prosecution not been improperly terminated.

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

Acquittal; Conviction; Improperly terminated.

§ 347. Prosecution not barred where prior prosecution was before a court lacking jurisdiction, or was fraudulently procured by defendant, or resulted in conviction held invalid.

(a) A prosecution is not a bar within the meaning of § 344, § 345, or § 346 of this title if any of the following apply:

(1) The prior prosecution was before a court that lacked jurisdiction over the defendant or the offense.

(2) The defendant procured the prior prosecution without the knowledge of the appropriate prosecuting officer and with intent to avoid the sentence that might otherwise be imposed.

(3) The prior prosecution resulted in a judgment of conviction that was held invalid on appeal or in a later proceeding.

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

Conviction.

§ 348. Prosecutorial grant of immunity.

(a) Defense defined. A person has a defense if the Attorney General or the Attorney General's designee granted the person immunity from prosecution, or otherwise by operation of law, for any of the following:

(1) The offense being prosecuted.

(2) A different offense, if § 345 of this section would have barred the offense presently charged by prosecution for the offense for which immunity was granted.

(b) Exception: Attorney General's stipulation. At the time immunity is granted, the Attorney General or the Attorney General's designee may stipulate that immunity applies only to a specific offense, in which case paragraph (a)(2) of this section does not apply.

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

Chapter 4. Liability of organizations.

§ 401. Criminal liability of organizations.

(a) An organization may be prosecuted for the commission of an offense if the conduct constituting the offense meets any of the following conditions:

(1) Consists of an omission to discharge a specific duty of affirmative performance imposed upon the organization by law.

(2) Is engaged in, authorized, solicited, requested, commanded, or recklessly tolerated by either of the following:

a. The board of directors.

b. A high managerial agent acting within the scope of employment and on behalf of the organization.

(3) Is engaged in by an agent of the organization while acting within the scope of employment and on behalf of the organization, and any of the following apply:

a. The offense is a misdemeanor or a violation.

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

(b) Impermissible organizational activity no defense. In a prosecution of an organization for an offense, it is not a defense that the conduct charged to constitute the offense was an activity prohibited by the organization's bylaws, policies, procedures, rules, or other standards of conduct.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Agent of the organization; High managerial agent; Organization.

§ 402. Criminal liability of an individual for organizational conduct.

(a) Membership in organization no shield from liability.

(1) An individual is legally accountable for conduct constituting an offense that the person performs or causes to be performed in the name of or on behalf of an organization to the same extent as if the conduct were performed in the person's own name or behalf.

(2) Whenever a duty to act is imposed by law upon an organization, any high managerial agent of the organization having primary responsibility for the discharge of that duty is legally accountable for an omission to perform the required act to the same extent as if the duty were imposed by law directly upon the agent, if the agent is aware of a substantial risk that the agent has primary responsibility for the discharge of that duty.

(b) Punishment for individuals applies. An individual who has been convicted of an offense by reason of the individual's legal accountability for the conduct of an organization is subject to the punishment authorized by law for an individual upon conviction of the offense, even if a lesser or different punishment is authorized for the organization.

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

High managerial agent; Organization.

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

Chapter 5. Inchoate offenses.

§ 501. Criminal Attempt.

(a) Offense defined. A person is guilty of attempt to commit an offense if the person does all of the following:

(1) Acts with the culpability required for commission of the offense.

(2) Intends to engage in the conduct that would constitute the offense under the circumstances as the person believes them to be.

(3) Takes a substantial step toward commission of the offense. “Substantial step” means the person has completed or believes the person has completed any of the following:

a. The conduct constituting the offense.

b. The last act needed to cause the result element of the offense.

(b) Conduct constituting a substantial step. Conduct does not constitute a substantial step toward commission of an offense under subsection (a) of this section unless the conduct is strongly corroborative of the defendant’s intention to engage in the offense conduct.

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

Result element.

§ 502. Criminal solicitation.

(a) Offense defined. A person is guilty of solicitation to commit an offense if the person does all of the following:

(1) Acts with the culpability required for commission of the offense.

(2) Intends to bring about the conduct that would constitute the offense under the circumstances as the person believes them to be.

(3) Intentionally commands, encourages, or requests another person to engage in either of the following:

a. The conduct.

b. An attempt to commit the conduct.

(b) Uncommunicated solicitation. The defendant's failure to communicate with the other person the defendant solicits to commit an offense is immaterial under paragraph (a)(3) of this section if the defendant's conduct is designed to effect the communication.

§ 503. Criminal conspiracy.

(a) Offense defined. A person is guilty of conspiracy to commit an offense if all of the following apply:

(1) The person acts with the culpability required for commission of the offense.

(2) The person intends to bring about the conduct that would constitute the offense under the circumstances as the person believes them to.

(3) The person agrees with another person that 1 or more of them will engage in any of the following:

a. The conduct.

b. An attempt or solicitation to commit the conduct.

(4) Either of the following performs an overt act in support of the conspiracy:

a. The defendant.

b. A person with whom the defendant agrees to engage in the conduct.

(b) Knowledge of co-conspirator's identity not required. A person may be found to have conspired with another person even if the person is unaware of the third person's identity if all of the following apply:

(1) The person has conspired with another person to commit an offense.

(2) The person knows that the other person with whom the person has conspired with under paragraph (b)(1) of this section has conspired with another person to commit the same offense.

(c) Joinder and venue in conspiracy prosecutions.

(1) Joinder. Subject to the provisions in paragraph (c)(2) of this section, 2 or more defendants charged with conspiracy to commit an offense may be prosecuted jointly if any of the following apply:

a. The defendants are charged with conspiring with one another.

b. The conspiracies alleged, whether they involve the same or different defendants, are so related that they constitute different aspects of a scheme of organized criminal conduct.

(2) Venue, severance, and fairness. In a joint prosecution under paragraph (c)(1) of this section, all of the following apply:

a. A defendant may be charged with conspiracy only in either of the following counties:

1. The county in which the defendant entered into the conspiracy.

2. The county in which an overt act under paragraph (a)(4) of this section was performed.

b. The joinder does not enlarge the criminal liability of a defendant or the admissibility against a defendant of evidence of acts or declarations of another.

c. If the court deems it necessary or appropriate to promote the fair determination of guilt or innocence, the court may do any of the following:

1. Order a severance or take a special verdict as to any defendant who requests it.

2. Take any other proper measures to protect the fairness of the trial.

§ 504. Unconvictable confederate no defense.

It is not a defense for a defendant who solicits or conspires with another person to commit an offense if any of the following apply to the other person:

(1) Has not been prosecuted or convicted.

(2) Has been convicted of a different offense or grade of offense.

(3) Lacked the capacity to commit an offense.

(4) Has been acquitted.

§ 505. Defense for victims and conduct inevitably incident.

Unless otherwise provided by this part or the law defining the offense, it is a defense to soliciting or conspiring to commit an offense that any of the following apply:

(1) The defendant is the victim of the offense.

(2) The offense is defined in such a way that the defendant's conduct is inevitably incident to its commission.

§ 506. Defense for renunciation preventing commission of the offense.

(a) In a prosecution for attempt, solicitation, or conspiracy in which the offense contemplated was not in fact committed, it is a defense that the defendant prevented the commission of the offense under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal purpose.

(b) A renunciation is not "voluntary and complete" within the meaning of subsection (a) when it is motivated in whole or in part by either of the following:

(1) A belief that circumstances exist that:

a. Increase the probability of detection or apprehension of the person or another participant in the criminal enterprise.

b. Render accomplishment of the criminal purpose more difficult.

(2) A decision to:

a. Postpone the criminal conduct until another time.

b. Transfer the criminal effort to another victim or another but similar objective.

§ 507. Grading of criminal attempt, solicitation, and conspiracy.

Attempt, solicitation, and conspiracy are offenses of 1 grade lower than the most serious offense that is attempted or solicited, or is an object of the conspiracy.

§ 508. Possessing instruments of crime.

(a) Offense defined. A person commits an offense if all of the following conditions are met:

(1) The person possesses anything that is any of the following:

a. Specially made or specially adapted for criminal use.

b. Commonly used for criminal purposes and possessed by the person under circumstances consistent with unlawful intent.

(2) The person intends to employ the object criminally.

(b) Grading. Possessing instruments of crime is a Class A misdemeanor.

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

Chapter 6. Offense grades and their implications.

§ 601. Offense grades.

(a) Classified Offenses. Each offense in this part is classified as 1 of the following:

(1) A Class 1 felony.

(2) A Class 2 felony.

(3) A Class 3 felony.

(4) A Class 4 felony.

(5) A Class 5 felony.

(6) A Class 6 felony.

(7) A Class 7 felony.

(8) A Class 8 felony.

(9) A Class 9 felony.

(10) A Class A misdemeanor.

(11) A Class B misdemeanor.

(12) A Class C misdemeanor.

(13) A Class D misdemeanor.

(14) A violation.

(b) Unclassified offenses. An offense provided under the law of this State other than this part is classified as follows:

(1) If the offense provides a term of imprisonment, the following apply:

a. An offense providing imprisonment of more than 6 months is a Class A misdemeanor.

b. An offense providing imprisonment of 6 months or less but more than 3 months is a Class B misdemeanor.

c. An offense providing imprisonment of 3 months or less but more than 30 days is a Class C misdemeanor.

d. An offense providing imprisonment of 30 days or less is a Class D misdemeanor.

(2) If the offense does not provide a term of imprisonment but declares itself to be a felony or misdemeanor, the following apply:

a. A felony must be treated as a Class A misdemeanor.

b. A misdemeanor is a Class D misdemeanor.

(3) An offense that does not declare itself to be a felony or misdemeanor, and does not provide a sentence of imprisonment, is a Class D misdemeanor.

§ 602. Authorized terms of imprisonment.

(a) Except as otherwise provided, authorized terms of imprisonment are as follows:

(1) For a Class 1 felony:

a. for a person who is 18 years or older, life.

b. for a person who is less than 18 years old, a maximum of life but not less than 25 years.

(2) For a Class 2 felony, a maximum of life, but no less than 15 years.

(3) For a Class 3 felony, no more than 35 years, and no less than 5 years if all of the following apply:

a. An element of the offense or grade provision includes causing physical injury, engaging in sexual conduct, use of a deadly weapon, or a drug and the drug is a Schedule I or Schedule II drug.

b. The defendant knowingly commits the elements of the offense.

(4) For a Class 4 felony, no more than 30 years, and no less than 3 years if all of the following apply:

a. An element of the offense or grade provision includes causing physical injury, engaging in sexual conduct, use of a deadly weapon, or a drug and the drug is a Schedule I or Schedule II drug.

b. The defendant knowingly commits the elements of the offense.

(5) For a Class 5 felony, no more than 25 years, and no less than 2 years if any of the following apply:

a. Both of the following:

1. An element of the offense or grade provision includes causing physical injury, engaging in sexual conduct, use of deadly weapon, or a drug and the drug is a Schedule I or Schedule II drug.

2. The defendant knowingly commits the elements of the offense.

b. Elements of the offense or grade provision include recklessly causing the death of another person.

(6) For a Class 6 felony, no more than 15 years.

(7) For a Class 7 felony, no more than 8 years.

(8) For a Class 8 felony, no more than 4 years.

(9) For a Class 9 felony, no more than 2 years.

(10) For a Class A misdemeanor, no more than 1 year.

(11) For a Class B misdemeanor, no more than 6 months.

(12) For a Class C misdemeanor, no more than 3 months.

(13) For a Class D misdemeanor, no more than 30 days.

(14) For a violation, no term of imprisonment is authorized.

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

Deadly weapon; Physical injury; Sexual conduct.

§ 603. Authorized fines; restitution.

(a) Authorized fines. Except as otherwise provided, the authorized maximum fine is as follows:

- (1) For a Class 1 felony, \$1,000,000.
- (2) For a Class 2 felony, \$600,000.
- (3) For a Class 3 felony, \$300,000.
- (4) For a Class 4 felony, \$150,000.
- (5) For a Class 5 felony, \$115,000.
- (6) For a Class 6 felony, \$80,000.
- (7) For a Class 7 felony, \$40,000.
- (8) For a Class 8 felony, \$20,000.
- (9) For a Class 9 felony, \$10,000.
- (10) For a Class A misdemeanor, \$4,000.
- (11) For a Class B misdemeanor, \$2,000.
- (12) For a Class C or D misdemeanor, \$1,000.
- (13) For a violation, \$500.

(b) Fines for organizations. When imposed upon an organization, except as otherwise provided, the authorized maximum fine is the greatest of the following amounts:

- (1) For an offense resulting in death or serious physical injury, any amount the court deems reasonable and appropriate.
- (2) Three times the pecuniary loss or damage caused or gain derived.
- (3) For a felony, \$1,000,000.
- (4) For a Class A misdemeanor that results in physical injury, \$250,000.
- (5) For a Class A misdemeanor that does not result in physical injury, \$100,000.
- (6) For a Class B, C, or D misdemeanor that results in physical injury, \$75,000.
- (7) For a Class B, C, or D misdemeanor that does not result in physical injury, \$50,000.
- (8) For a violation, \$10,000.

(c) Restitution. If the criminal conduct constituting an offense results in monetary loss to a victim of the offense, the defendant must make payment of restitution to the victim equal to the value of the loss sustained.

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

§ 604. General adjustments to offense grade.

(a) Repeat felon. The grade of a felony must be increased by 1 grade if either of the following are true:

(1) All of the following apply:

a. The defendant has previously been convicted of 2 felonies.

b. The defendant has served time in prison for at least 1 of the prior felonies during the past 10 years.

c. The grade of each of the prior felonies was equal to or greater than the grade of the present felony.

(2) All of the following apply:

a. The defendant has previously been convicted of a felony, and an element of both the prior felony and the present felony, or their grade provisions, includes engaging in sexual conduct.

b. The victim of the present offense is less than 16 years old.

c. The defendant is at least 18 years old.

(b) Vulnerable or elderly victim. The grade of an offense must be increased by 1 grade if the victim is any of the following:

(1) A vulnerable person.

(2) Sixty-five or more years old.

(c) Hate crime. The grade of an offense must be increased by 1 grade if the defendant did any of the following:

(1) Committed the offense with intent to interfere with the victim's free exercise or enjoyment of any right, privilege, or immunity protected by the First Amendment to the United States Constitution.

(2) Selected the victim because of the victim's race, religion, color, disability, sexual orientation, gender identity, national origin, or ancestry.

(d) Criminal street gangs. The grade of an offense must be increased by 1 grade if the defendant committed the offense under all of the following circumstances:

(1) With intent to promote, further, or assist in any criminal conduct by members of a criminal street gang.

(2) For the benefit of, at the direction of, or in association with a criminal street gang.

(e) Wearing a disguise or body armor during commission of a felony. The grade of a felony must be increased by 1 grade if, during its commission, the defendant wears any of the following:

(1) A hood, mask, or other article with intent to obscure the defendant's identifying features.

(2) Any material designed to provide bullet penetration resistance.

(f) Limitations on grade adjustments.

(1) Specific provision controls. A grade adjustment in this section does not apply if a specific provision of this part has already taken into account the facts that must be proven to establish the grade adjustment.

(2) Ceiling on grade adjustments.

a. General grade adjustments. Subsections (b) through (e) of this section do not apply if the unadjusted offense grade is a Class 1, 2, 3, 4, or 5 felony.

b. No adjustments to certain felonies. An upward grade adjustment, whether contained in this section or a specific offense provision, may not be made to a Class 1 or 2 felony.

(3) Cumulative grade adjustments. Unless a specific offense provision states otherwise, only 1 upward adjustment may be applied to the grade of an offense.

(g) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Criminal street gang; Gender identity; Sexual orientation; Vulnerable person.

§ 605. Valuation of property for the purposes of grading.

(a) Generally. Except as provided under subsection (b) of this section, if the value of property determines the grade of an offense, the value is whichever of the following applies:

(1) The market value of the property at the time and place of the offense.

(2) If the value described in paragraph (a)(1) of this section cannot be ascertained with reasonable certainty, the cost of replacing, reproducing, or recovering the property within a reasonable time after the offense.

(b) Written instruments. If the value of a written instrument determines the grade of an offense the value of the written instrument is determined as follows:

(1) If the written instrument is evidence of a debt, such as a check, draft, or promissory note, value of the instrument is the amount due or collectible on the debt, taking into account any amount already satisfied.

(2) If the written instrument creates, releases, discharges, or otherwise affects any valuable legal right, privilege or obligation, the value of the instrument is the greatest amount of economic loss that the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) Default. If the value of property cannot be satisfactorily ascertained under subsection (a) or (b) of this section, the value of the property is determined as follows:

(1) If the property is private personal data, its value is \$500.

(2) If the property is electronic or computer equipment, or computer services, its value is \$250.

(3) For any property other than under paragraphs (c)(1) and (2) of this section, its value is less than \$100.

(d) Aggregation for theft and related offenses. If theft, as defined in § 1101 of this title, or any offense contained in Subchapter II of Chapter 11 of this part is committed in a single scheme or continuous course of conduct, whether from the same or several sources, the conduct may be considered a single offense, and the value of the property or services may be aggregated for grading purposes.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Computer services; Owner; Private personal data; Written instrument.

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

Subpart B. Specific Offenses.

Chapter 10. Offenses against the person.

Subchapter I. Homicide offenses.

§ 1001. Aggravated murder.

(a) Offense defined. A person commits an offense if the person does either of the following:

(1) Intentionally causes the death of another person.

(2) Knowingly causes the death of a law enforcement officer, corrections employee, fire fighter, paramedic, emergency medical technician, fire marshal, or fire police officer, and the offense is committed while the victim is engaged in the lawful performance of the victim's duties.

(b) Grading. Aggravated murder is a Class 1 felony. The death penalty may be imposed, subject to the procedures and standards of § 4209 of this title, but only if the offense was committed after the person reached 18 years of age.

§ 1002. Murder.

(a) Offense defined. A person commits an offense if the person causes the death of another person:

(1) Knowingly.

(2) Recklessly, and any of the following apply:

a. The person acts under circumstances manifesting an extreme indifference to the value of human life.

b. The victim is a law enforcement officer, corrections employee, fire fighter, paramedic, emergency medical technician, fire marshal, or fire police officer, and the offense is committed while the victim is engaged in the lawful performance of the victim's duties.

c. Death is caused by the use or detonation of a bomb or similar destructive device.

d. The offense is committed with intent to avoid or prevent the lawful arrest of any person.

(3) With criminal negligence, while committing, fleeing from, or attempting any felony, apart from the conduct causing death.

(b) Grading. Murder is a Class 2 felony.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Attempt or attempting; Law enforcement officer.

§ 1003. Manslaughter.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Recklessly causes the death of another person.

(2) Causes the death of another person under circumstances that would be an offense under § 1001 or § 1002 of this title, but both of the following mitigating circumstances exist:

a. The person is under the influence of extreme mental or emotional disturbance.

b. There is a reasonable explanation for the extreme mental or emotional disturbance, the reasonableness of which is to be determined based on the following criteria:

1. From the viewpoint of a reasonable person in the defendant's situation.

2. Under the circumstances as the defendant believed them to be.

(b) Application of mitigation under paragraph (a)(2) of this section.

(1) Burden of persuasion. The defendant carries the burden of persuasion on the mitigation provided in paragraphs (a)(2)a. and (a)(2)b. of this section, and must prove those elements by a preponderance of the evidence.

(2) Knowingly causing mitigating conditions. The mitigation under paragraph (a)(2) of this section are not available to a defendant who knowingly causes the conditions constituting the mitigation.

(c) Grading. Manslaughter is a Class 5 felony.

§ 1004. Criminally negligent homicide.

(a) Offense defined. A person commits an offense if the person causes with criminal negligence the death of another person.

(b) Grading. Criminally negligent homicide is graded as follows:

(1) A Class 4 felony if the defendant causes the death by use of a firearm that the defendant possesses in violation of § 1404 of this title (Possessing a firearm by a prohibited person).

(2) A Class 7 felony in all other cases.

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

§ 1005. Aiding suicide; committing homicide by causing suicide.

(a) Offense defined. A person commits an offense if the person knowingly aids another in committing suicide.

(b) Grading. Aiding suicide is graded as follows:

(1) A Class 7 felony, if the suicide is committed.

(2) A Class 8 felony, if the suicide is attempted.

(3) A Class 9 felony, if the person attempts to aid another person in committing suicide, but the other person does not attempt suicide.

(c) Committing homicide by causing suicide. A person may be convicted of an offense under § 1001 through § 1104 of this title for causing another person to commit suicide only if the person causes the suicide by force, threat, or coercion.

(d) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Attempt; Force;
Suicide.

(2) "Coercion" means any act that satisfies the definition of coercion in § 1063 of this title.

§ 1006. Unlawful abortion; instruments of an unlawful abortion.

(a) Unlawful abortion, defined. A person commits an offense if all of the following apply:

(1) The person performs an abortion upon a woman or has an abortion performed upon herself.

(2) The pregnancy is in fact terminated and does not result in a live birth.

(3) The abortion is not an authorized abortion.

(b) Instruments of unlawful abortion, offense defined. A person commits an offense if the person manufactures, sells, or delivers any instrument, article, medicine, drug, or substance with intent that the item be used to perform an abortion in violation of subsection (a) of this section.

(c) Grading.

(1) Unlawful abortion is graded as follows:

a. A Class A misdemeanor, if the person is a pregnant woman who has an abortion performed upon herself.

b. A Class 9 felony in all other cases.

(2) Instruments of unlawful abortion is a Class B misdemeanor.

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

Subchapter II. Robbery; assault; endangerment; threat offenses.

§ 1021. Robbery and carjacking.

(a) Offense defined. A person commits an offense if the person does all of the following:

(1) Knowingly and unlawfully takes property from another person or in the presence of another person.

(2) Takes property under paragraph (a)(1) of this section by using force or threat of force during the taking, attempted taking, or flight from the taking or attempted taking.

(b) Grading.

(1) Carjacking. If the person, in the course of committing an offense under subsection (a) of this section, takes possession of a motor vehicle, airplane, vessel or other vehicle, the offense is:

a. A Class 4 felony, if an occupant or passenger of the vehicle is 14 years old or younger.

b. A Class 6 felony, if, while in possession or control of the vehicle, the person does any of the following:

1. Commits or attempts to commit a felony that is Class 7 or greater.

2. Commits an offense under § 1025 of this title.

3. Commits an offense under Subchapter II of Chapter 14 of this title.

c. A Class 7 felony, if, while in possession or control of the vehicle, the defendant does either of the following:

1. Commits an offense under § 1024 of this title.

2. Compels a lawful occupant of the vehicle to leave the vehicle.

d. A Class 8 felony in all other cases.

(2) Aggravated robbery. The offense is a Class 4 felony if, in the course attempting, committing, or in flight from attempting or committing the offense under subsection (a), the person does any of the following:

a. Causes physical injury to any person who is not a participant in the offense.

b. Displays a deadly weapon or an object intended to appear to be a deadly weapon.

c. Represents by word or conduct that the person is in possession or control of a deadly weapon.

(3) Robbery. If paragraphs (b)(1) and (b)(2) do not apply, the offense is a Class 8 felony.

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

Deadly weapon; Motor vehicle; Physical injury; Property; Vessel.

§ 1022. Assault; strangulation.

(a) Assault, offense defined. A person commits an offense if the person knowingly does any of the following:

(1) Causes physical injury to another person.

(2) Makes physical contact of an offensive or alarming nature with another person.

(b) Strangulation, offense defined. A person commits an offense if the person knowingly causes the breathing or blood circulation of another person to be impeded by applying pressure on the throat or neck of the other person.

(c) Grading.

(1) Enhanced aggravated assault. The offense under paragraph (a)(1) of this section is a Class 5 felony if the person knowingly does any of the following:

a. Amputates or otherwise removes a part of the victim's body.

b. Causes serious physical injury to another person while engaged in commission of or flight from any felony.

c. Causes serious physical injury by means of a firearm or other deadly weapon.

(2) Aggravated assault. The offense under paragraph (a)(1) of this section is a Class 7 felony if any of the following apply:

a. The person causes serious physical injury.

b. The person causes physical injury to a pregnant female.

c. The offense is committed by means of a firearm or other deadly weapon.

(3) Assault. If paragraphs (c)(1) or (c)(2) do not apply, the offense is graded as follows:

a. A Class A misdemeanor, if committed under paragraph (a)(1) of this section.

b. If committed under paragraph (a)(2) of this section, as follows:

1. A Class B misdemeanor, if the person makes contact with the person using urine, feces, or vomit.

2. A Class D misdemeanor in all other cases.

(4) Strangulation is graded as follows:

a. A Class 7 felony, if the person does any of the following:

1. Displays or uses a dangerous instrument or a deadly weapon during commission of the offense.

2. Causes serious physical injury.

b. A Class 8 felony in all other cases.

(5) Special victims, grade adjustment. The grade of assault, aggravated assault, or enhanced aggravated assault is increased by 1 grade if the victim is any of the following:

a. A law enforcement officer, firefighter, emergency medical technician, paramedic, fire marshal, public transit operator, or code enforcement officer who is acting in the lawful performance of duty.

b. Rendering emergency medical care.

c. A state employee or officer discharging a duty of employment or office.

d. Under 6 years old, and the person is 18 years or older.

e. Located in a detention facility, and the person is confined in that detention facility.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Abuse of a child; Deadly weapon; Firearm; Law enforcement officer; Neglect of a child; Physical injury; Serious physical injury.

§ 1023. Reckless injuring.

(a) Offense defined. A person commits an offense if the person recklessly causes physical injury to another person.

(b) Grading. Reckless injuring is graded as follows:

(1) If the injury caused is serious physical injury, the offense is graded as follows:

a. A Class 6 felony, if the offense results in the unlawful termination of the victim's pregnancy without the victim's consent.

b. A Class 8 felony in all other cases.

(2) If the injury caused is serious physical injury, the offense is graded as follows:

a. A Class 9 felony if injury is caused by a deadly weapon or dangerous instrument.

b. The offense is a Class B misdemeanor in all other cases.

(3) Special victims, grade adjustment. The grade of reckless injuring must be increased by 1 grade if the victim is any of the following:

a. A law enforcement officer, firefighter, emergency medical technician, paramedic, fire marshal, public transit operator, or code enforcement officer who is acting in the lawful performance of duty.

b. Rendering emergency medical care.

c. A state employee or officer discharging a duty of employment or office.

d. Under 6 years old, and the person is 18 years or older.

e. Located in a detention facility, and the person is confined in that detention facility.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Abuse of a child; Dangerous instrument; Deadly weapon; Neglect of a child; Physical injury; Serious physical injury.

§ 1024. Reckless endangerment.

(a) Offense defined. A person commits an offense if the person engages in conduct by which the person creates a substantial risk of physical injury to another person.

(b) Grading. Reckless endangerment is graded as follows:

(1) A Class 9 felony, if the person creates a substantial risk of death or serious physical injury.

(2) A Class B misdemeanor in all other cases.

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

§ 1025. Operating a vehicle while under the influence of drugs or alcohol.

(a) Offense defined. A person commits an offense if the person operates a vehicle, airplane, or vessel while chemically impaired.

(b) Grading. Operating a vehicle while under the influence of drugs or alcohol is graded as follows:

(1) A Class A misdemeanor, if paragraphs (b)(2) through (b)(4) of this section do not apply.

(2) A Class 9 felony, if the person has previously been convicted of 2 offenses under this section within the past 10 years.

(3) A Class 7 felony, if the person has previously been convicted of 3 offenses under this section within the past 10 years.

(4) A Class 6 felony, if the person has previously been convicted of 4 offenses under this section.

(c) Exception.

(1) General repeat offense grade adjustment. Section 604(a) of this title does not apply to an offense under this section.

(2) Felony murder. An offense under this section may not be an underlying felony in a prosecution under § 1002(a)(3) of this title.

(d) Additional civil and procedural provisions. A person convicted of this offense is subject to civil consequences and procedures set forth in § 4177 of Title 21 and Chapter 23 of Title 23.

(e) Prescription drug taken as directed: defense. It is a defense to prosecution under this section that the person's chemical impairment was due entirely to consumption of a drug, if the person meets both of the following conditions:

(1) Had an authorized prescription for the consumed drug.

(2) Consumed the drug according to the directions and terms of the authorized prescription.

(f) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Authorized prescription; Chemically impaired; Vessel.

§ 1026. Genital mutilation of a female minor.

(a) Offense defined. A defendant commits an offense if the defendant does any of the following:

(1) Knowingly circumcises, excises, or infibulates the whole or any part of the genitalia of a female child.

(2) Being a parent or guardian of a female child, allows the act to be performed on the child.

(b) Custom or ritual not a defense. It is not a defense to an offense under this section that the act is required or permitted as a matter of custom, ritual, or standard practice.

(c) Grading. Genital mutilation of a female minor is a Class 7 felony.

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

Child; Genitalia.

§ 1027. Terroristic threats; menacing.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Recklessly causes another person to experience extreme fear or distress by threatening to commit an offense under this part that is likely to result in death or serious injury to person or property.

(2) Intentionally places another person in fear of imminent physical injury.

(b) Grading. Terroristic threats and menacing is graded as follows:

(1) If committed under paragraph (a)(1) of this section, as follows:

a. A Class 9 felony, if the victim is or has ever been a public servant and the threat is made because of the victim's status as such.

b. A Class A misdemeanor in all other cases.

(2) If committed under paragraph (a)(2) of this section, as follows:

a. A Class 9 felony, if fear is created by any of the following:

1. Displaying a firearm or deadly weapon.

2. Causing the victim to believe that the victim is or has been exposed to a substance or device that could cause physical injury or death.

b. A Class B misdemeanor if fear is created by congregating with other persons in a public place while wearing masks, hoods, or other garments rendering their faces unrecognizable.

c. A Class D misdemeanor in all other cases.

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

Physical injury; Property; Public servant.

§ 1028. Unlawfully administering drugs.

(a) Offense defined. A person commits an offense if the person administers a drug to another person without that person's consent, thereby intentionally causing stupor, unconsciousness, or any other alteration of the other person's physical or mental condition.

(b) Grading. Unlawfully administering drugs is a Class 9 felony.

§ 1029. Reckless infliction of severe mental or emotional harm.

(a) Abuse of vulnerable people, offense defined. A person commits an offense if all of the following conditions are met:

(1) The person has a duty to provide medical or personal care or maintenance.

(2) The person recklessly does any of the following:

a. Causes severe mental or emotional harm.

b. Fails to provide the care or maintenance necessary for the safety and welfare of the victim.

(3) The victim is any of the following:

a. A vulnerable person.

b. A patient or resident of any facility that provides medical or personal care.

(b) Hazing, offense defined. A person commits an offense if the person's conduct meets all of the following:

(1) Recklessly creates a substantial risk of severe mental or emotional harm to another person.

(2) As part of a program to initiate, admit, or renew membership of the other person in any organization.

(c) Grading.

(1) Abuse of a vulnerable person is a Class A misdemeanor.

(2) Hazing is a Class B misdemeanor.

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

Vulnerable person.

Subchapter III. Sexual offenses.

§ 1041. Rape; sexual assault.

(a) Offense, defined. A person commits an offense if the person causes another person to submit to or engage in sexual intercourse, oral or object penetration, or sexual contact with anyone, and any of the following apply:

(1) The person uses force, coercion, deception, or any other compulsion that would cause a reasonable person to submit under the circumstances.

(2) The person knows that the victim is any of the following:

a. Unable to understand the nature of the act.

b. Unable to consent to the act.

c. Unconscious, asleep, or otherwise unaware of the act.

(3) The person substantially impaired the victim's power to appraise or control the victim's own conduct by administering or employing, without the victim's knowledge or against the victim's will, drugs, intoxicants, or other means for the purpose of preventing resistance.

(4) The victim is:

a. Less than 16 years old, and the person is more than 4 years older than the victim.

b. Less than 12 years old.

(b) Grading.

(1) Enhanced aggravated rape. The offense defined in subsection (a) of this section is a Class 3 felony if the offense conduct is sexual intercourse and:

a. During the commission or attempted commission of the offense, immediate flight from the offense, or an attempt to prevent the offense from being reported, the person does any of the following:

1. Causes serious physical injury to the victim.

2. Displays a deadly weapon or an object intended to appear to be a deadly weapon.

3. Represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument.

b. The person commits an offense defined in subsection (a)(4)b. of this section and the defendant is 18 years or older.

c. The person acts with the active participation or assistance of 1 or more other persons who are present at the time of the act of sexual intercourse or oral or object penetration.

(2) Aggravated rape. The offense defined in subsection (a) of this section is a Class 4 felony if the offense conduct is sexual intercourse and:

a. The person causes physical injury to the victim during any of the following:

1. Commission or attempted commission of the offense.

2. Flight from the offense.

3. Attempt to prevent the offense from being reported.

b. The person commits an offense defined in subsection (a)(4)a. and the victim is 14 years old or younger.

c. The person commits another felony in the course of committing or fleeing from the offense defined in section (a) of this subsection.

(3) Forcible rape. The offense defined in subsection (a) of this section is a Class 6 felony if the offense conduct is sexual intercourse caused by force or coercion.

(4) Rape. The offense defined in subsection (a) of this section is a Class 7 felony in all other cases where the offense conduct is sexual intercourse.

(c) Oral or object penetration, grading. If oral or object penetration is the offense conduct committed in the offense defined in subsection (a) of this section, the grade of the offense is 1 grade lower than that provided under subsection (b) of this section for similar circumstances.

(d) Sexual assault, grading. If the offense conduct is sexual contact, rather than sexual intercourse, the grade of the offense is 4 grades lower than that provided under subsection (b) of this section for similar circumstances.

(e) Offense committed against a child by a person in a position of trust, grade adjustment. The grade of an offense defined in subsection (a) of this section is increased by 1 grade if all of the following apply:

(1) The person occupies a position of trust, authority, or supervision over the victim.

(2) The victim is less than 16 years old.

(f) No defense for mistake as to age under 16. Where an element of the offense or grading provision under this section requires that the victim be any age less than 16 years old, it is not a defense that any of the following apply to the person:

(1) Did not know the victim's age to be less than 16 years old.

(2) Reasonably believed the victim was 16 years or older.

(g) Child support. In a conviction under this section where the offense resulted in the birth of a child, and the child is in the custody and care of the victim or the victim's legal guardian, the court shall make it a condition of any probation term imposed on the person that the person timely pay child support as the Family Court orders for that child.

(h) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Attempt or attempting; Dangerous instrument; Deadly weapon; Deceiving or deception; Force; Oral or object penetration;

Position of trust, authority, or supervision; Physical injury; Serious physical injury; Sexual contact; Sexual intercourse.

(2) “Coercion” means any act that satisfies the definition of coercion in § 1063 of this title.

§ 1042. Prohibited sexual contact by a person in a position of trust.

(a) Offense defined. A person commits an offense if the person engages in sexual contact with another person, and any of the following apply:

(1) The victim is in custody at a detention facility, and the person is an employee, volunteer, or other person working at the detention facility.

(2) The victim is a child, and the person is in a position of trust, authority, or supervision over the victim.

(3) The victim is a patient or resident of any facility where medical or personal care is provided, and the person is an employee, volunteer, or other person working at the facility.

(b) Grading. Prohibited sexual contact by a person in a position of trust is graded as follows:

(1) A Class 6 felony, if the offense conduct is sexual intercourse.

(2) A Class 7 felony, if the offense conduct is oral or object penetration.

(3) A Class 9 felony, if the offense conduct is sexual contact.

(c) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Child; Oral or object penetration; Position of trust, authority, or supervision; Sexual contact.

(2) “Facility” means as defined in § 1131 of Title 16 but does not include a detention facility.

§ 1043. Bestiality.

(a) Offense defined. A person commits an offense if the person intentionally does any of the following:

(1) Engages in sexual contact with the genitalia of an animal.

(2) Causes another person to engage in sexual contact with the genitalia of an animal with intent to gratify the defendant’s own sexual desire.

(b) Grading. Bestiality is a Class 7 felony.

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

Sexual contact.

§ 1044. Prohibited conduct by a person convicted of a sexual offense against a child.

(a) Offense defined. A person commits an offense if all of the following apply:

(1) The person has been previously convicted of committing any of the following offenses:

a. An offense contained in this subchapter.

b. The offense defined in any of the following sections of this title:

1. Section 1321 of this title.

2. Section 1322(b)(1) of this title.

3. Section 1323 of this title.

4. Paragraphs 1324(a)(1), (a)(2), or (b)(3)a. of this title.

5. Section 1342 of this title.

6. Section 1365 of this title.

c. The equivalent of an offense under paragraphs (a)(1)a. and (a)(1)b. of this section in another jurisdiction.

(2) The person loiters or resides on or within 500 feet of the property of any institution that has as its primary purpose the education or instruction of children less than 16 years old.

(b) Grading. Prohibited conduct by a person convicted of a sexual offense against a child is a Class 9 felony.

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

Dwelling; Loiters; Reside.

§ 1045. Sexual harassment.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Threatens to engage in conduct likely to result in the commission of a sexual offense against another person.

(2) Knowingly causes annoyance, offense, or alarm to another person by suggesting, soliciting, requesting, commanding, or otherwise attempting to induce another to engage in sexual contact with the person.

(b) Grading.

(1) Sexual harassment is a Class 9 felony, if both of the following apply:

a. The victim is a person less than 16 years of age, and over whom the person stands in a position of trust, authority, or supervision.

b. The person is at least 4 years older than the victim.

(2) If paragraph (b)(1) of this section does not apply, sexual harassment is graded as follows:

a. A Class A misdemeanor, if committed under paragraph (a)(1) of this section.

b. A Class D misdemeanor, if committed under paragraph (a)(2) of this section.

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

Position of trust, authority, or supervision; Sexual contact.

§ 1046. Culpability; exception; evidence requirement.

(a) Culpability as to age. Unless expressly provided otherwise, if an offense in this chapter requires that the victim be under a specific age, it need be proven only that the defendant was criminally negligent as to the victim being under that age.

(b) Medical treatment exception. A medical examination or procedure is not an offense under this chapter if the examination or procedure is conducted in a way that meets all of the following conditions:

(1) With intent to provide diagnosis or treatment.

(2) By a licensed medical professional, parent, or guardian.

(3) In a manner consistent with reasonable medical standards.

(c) Sexual intercourse evidence. Evidence of emission of semen is not required to prove sexual intercourse occurred.

Subchapter IV. Kidnapping; coercion; restraint; related offenses.

§ 1061. Kidnapping and unlawful restraint.

(a) Unlawful restraint, offense defined. Except as authorized by law, a person commits an offense if the person knowingly and materially interferes with another person's liberty, without the other person's consent, by doing any of the following:

(1) Moving the other person from one place to another.

(2) Confining the other person.

(b) Kidnapping, offense defined. A person commits an offense if the person commits unlawful restraint as defined in subsection (a) of this section, with the intent to do any of the following:

(1) Hold the other person for ransom or reward.

(2) Use the person as a shield or hostage.

(3) Facilitate the commission of any felony or flight thereafter.

(4) Inflict physical injury upon the other person, or violate or abuse the other person sexually.

(5) Terrorize the other person or a third person.

(6) Take or entice a child from the custody of the child's parent, guardian, or lawful custodian, if the person is not a relative of the child.

(c) Grading.

(1) Unlawful restraint is graded as follows:

a. A Class 9 felony, if the person's conduct recklessly creates a substantial risk of serious physical injury to the victim.

b. A Class A misdemeanor in all other cases.

(2) Kidnapping is graded as follows:

a. A Class 4 felony if the person does not voluntarily release the victim alive, unharmed, and in a safe place before trial.

b. A Class 6 felony in all other cases.

(d) Relationship to interference with custody. A person who does not satisfy the elements of paragraph (b)(6) of this section because the person is a relative of the other person may nevertheless be liable under § 1364 of this title.

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

§ 1062. Human trafficking.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Knowingly trades, barter, buys, or sells an individual.

(2) Knowingly uses force, coercion, intimidation, or deception to compel an individual to provide labor or services, including prostitution.

(3) Knowingly obtains, transports, harbors, isolates, or provides an individual, or secures continued performance of the labor or services of an individual in any of the following ways:

a. Knowing that the individual is being compelled to provide labor or services, as provided in paragraph (a)(2) of this section.

b. Knowing that the individual will have body parts removed for sale.

(4) Benefits financially from participation in a venture that the person knows has engaged in acts constituting an offense under paragraph (a)(3)b. of this section.

(b) Grading. Human trafficking is graded as follows:

(1) A Class 3 felony, if committed under paragraph (a)(3)b. or (a)(4) of this section.

(2) A Class 4 felony, if committed under paragraph (a)(2) or (a)(3)a. of this section.

(3) A Class 7 felony, in all other cases.

(4) Grade adjustments. The grade of human trafficking is increased by 1 grade if any of the following apply:

a. The victim is a child.

b. The defendant recruited, enticed, or obtained the victim from a shelter designed to serve any of the following:

1. Victims of human trafficking, domestic violence, or sexual assault.

2. Runaway youth, foster children, or individuals who are homeless.

(c) Exception, payments related to adoption. It is not a violation of paragraph (a)(1) of this section to pay, in conjunction with placement of a child for adoption under § 904(a)(2) of Title 13, any of the following:

(1) Reasonable medical expenses related to pregnancy.

(2) Reasonable room and board to providers of services.

(d) Additional penalties.

(1) Forfeiture.

a. In general. The Court shall order any person convicted of an offense under this section to forfeit any interest in property for which any of the following apply:

1. Was used or intended to be used to facilitate the commission of human trafficking.

2. Constitutes or derives from proceeds that the person obtained, directly or indirectly, as a result of human trafficking.

b. Organizational forfeiture. The Court may order an organization convicted under this section to forfeit any of the following:

1. Profits from activities in violation of this section.

2. State and local government contracts.

(2) Restitution.

a. Valuation. In ordering restitution under § 603(c) of this title for a violation of this section, the Court may order the greatest of any of the following:

1. The gross income or value to the defendant of the victim's labor or services.
2. The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of Title 19 of this code or the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.

b. Victim availability.

1. The Court must order restitution for violations of this section, even if the victim is unavailable to accept payment of restitution.

2. If the victim is unavailable for 5 years from the date of the restitution order, the restitution must be paid to the Victim Compensation Fund established under § 9016 of this title.

(e) Motion to vacate sentence; expungement.

(1) Motion to vacate: procedures and presumptions.

a. A defendant convicted of prostitution, loitering, or an obscenity or child pornography offense as a direct result of being a victim of human trafficking may file a motion in the court in which the conviction was obtained to vacate the judgment of conviction.

b. Contents of motion. A motion filed under this subsection must meet all of the following:

1. Be in writing.
2. Be sent to the Delaware Department of Justice.
3. Be made 2 years after the defendant's last criminal conviction and within a reasonable period of time after the victim ceases to be a victim of human trafficking.
4. Describe the evidence and provide copies of any official documents showing that the defendant is entitled to relief under this subsection.

c. The court shall hold a hearing on any motion that satisfies the requirements of paragraph (e)(1)b. of this section, unless the motion fails to assert grounds on which relief may be granted, in which case the motion may be dismissed.

d. Presumption of direct result. Official documentation of the victim's status as a victim under this section or a similar offense in a different jurisdiction, whether from a federal, state, or local government

agency, creates a rebuttable presumption that the defendant committed the offense as a direct result of human trafficking.

e. Burden on defendant. The defendant must prove the defendant is entitled to relief under this subsection by a preponderance of the evidence.

f. Vacated sentence mandatory. If the defendant meets the burden under paragraph (e)(1)e. of this section, the court shall grant the motion, and may take any additional action that is appropriate in the circumstances or that justice requires.

(2) Expungement following vacated judgment of conviction. Notwithstanding any provision of law to the contrary all of the following apply:

a. A defendant seeking a vacated judgment of conviction under paragraph (e)(1) of this section may seek expungement of the criminal record related to that conviction either in the same motion or after the motion has been granted.

b. If the motion to vacate is granted, the motion to expunge must also be granted, subject to the provisions of 11 Del. C. §§ 4374(f), 4376, and 4377.

(f) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Child; Deception.

(2) “Coercion” means any act that satisfies the definition of coercion in § 1063 of this title.

§ 1063. Coercion.

(a) Offense defined. A person commits an offense if, with intent to cause another person to perform or to omit to perform any act, the person threatens to do any of the following:

(1) Cause physical injury to any person.

(2) Cause damage to property.

(3) Engage in other conduct constituting a crime.

(4) Accuse any person of an offense or cause criminal charges to be instituted against a person.

(5) Expose a secret or publicize an asserted fact, whether true or false, tending to subject a person to hatred, contempt, or ridicule.

(6) Testify or provide information or withhold testimony or information with respect to another person's legal claim or defense.

(7) Use or abuse the person's position as a public servant by performing an act within or related to the person's official duties, or by failing or refusing to perform an official duty so as to affect another person adversely.

(8) Perform any other act that is calculated to cause material harm to another person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.

(b) Defense. In a prosecution under paragraph (a)(4) of this section, it is a defense that both of the following apply:

(1) The person believed the threatened criminal charge to be true.

(2) The person's sole purpose was to compel or induce the other person to take reasonable action to make good the wrong that was the subject of the threatened charge.

(c) Grading. Coercion is a Class A misdemeanor.

Section 9. Amend Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 11. Property offenses.

Subchapter I. Theft offenses.

§ 1101. Consolidated grading of theft offenses.

(a) Consolidation. Conduct prohibited by § 1102 through § 1107 of this title constitutes a single offense of theft. A prosecution for theft may be supported by evidence that it was committed in any manner described in § 1102 through § 1107 of this title.

(b) Grading. Any offense defined in § 1102 through § 1107 of this title is graded as follows:

(1) A Class 6 felony, if the value of the property is \$1,000,000 or more.

(2) A Class 7 felony, if the value of the property is \$100,000 or more.

(3) A Class 8 felony, if any of the following apply:

a. The value of the property is \$25,000 or more.

b. The property is a firearm.

(4) A Class 9 felony, if any of the following apply:

a. The value of the property is \$1,500 or more.

b. The property is a motor vehicle.

c. The property is a blank prescription pad, and the defendant is not a practitioner.

(5) A Class A misdemeanor, if the value of the property is \$1,000 or more.

(6) A Class B misdemeanor, if the value of the property is \$100 or more.

(7) A Class C misdemeanor, if the value of the property is less than \$100 and the defendant has been previously convicted of an offense of a similar nature.

(8) A violation in all other cases.

(c) Extortion. Grade adjustment. The grade of the offense is increased by 1 grade when theft is committed in the manner described in § 1104 of this title.

(d) Claim of right. It is a defense to prosecution for theft that the defendant reasonably believed the defendant had a right to use or possess the property.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Firearm; Motor vehicle; Practitioner; Property; Value.

§ 1102. Theft by taking or disposition.

(a) Offense defined. A person commits theft if the person does all of the following:

(1) Knowingly takes or obtains without consent, or exercises unauthorized control over the property of another person;

(2) With the intent to deprive the other person of that property.

(b) Shoplifting: permissive inferences. If the theft is from a retail store, the trier of fact may infer any of the following:

(1) A person who intentionally conceals unpurchased merchandise of that store, inside or outside the premises of the store, does so with the intent required in paragraph (a) of this section.

(2) A person who intentionally alters, removes, or otherwise disfigures any packaging, label, price tag, or marking affixed to unpurchased merchandise of that store, inside the premises of the store, does so with the intent required in paragraph (a)(2) of this section.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Deprive; Obtain; Owner; Property; Property of another.

§ 1103. Theft by deception.

(a) Offense defined. A person commits theft if the person intentionally obtains the property of another person by deceiving the other person or a third person.

(b) Inferences.

(1) Permissive. The trier of fact may infer the deception required in paragraph (a) of this section if the defendant leased or rented personal property of another person, and the defendant did any of the following:

a. Failed to return or make arrangements acceptable to the owner to return the property to the owner or the owner's agent within 10 days after proper notice, following the expiration of the lease or rental agreement.

b. After returning the lease or rental property, failed to make payment, at the agreed rental rate, for the full period which the property was leased or rented, except when the defendant has a good faith dispute with the owner of the property as to the amount owed.

c. Presented to the owner materially false or incorrect identification as to name, address, place of employment, or other information for the purpose of entering into the lease or rental agreement.

d. Proper notice. To make proper notice under paragraph (b)(1)a. of this section, the owner may mail the notice by certified or registered mail to an address supplied by the defendant at the time of the lease or rental agreement, or the defendant's last known address if later furnished by the defendant or the defendant's agent.

(2) Failure to perform a promise.

a. Mere failure to perform promise. Deception as to a person's intention to perform a promise may not be inferred solely from the fact that the promise was not later performed.

b. Exception. Notwithstanding paragraph (b)(2)a. of this section, deception may be inferred if both of the following apply:

1. The promise related to and was made in the course of business.

2. The person was not properly licensed to engage in that business.

(c) Defense. It is a defense in a prosecution for theft by deception in which the defendant leased or rented personal property of another, if the defendant does all of the following:

(1) Accurately stated the defendant's name, address, and other material items of identification at the time of rental.

(2) Failed to receive the owner's notice due to no material fault of the defendant.

(3) Returned the personal property to the owner or the owner's agent within 48 hours of the commencement of the prosecution, together with any charges for the overdue period and the value of damage to the property, if any.

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

Deceiving; Property; Property of another.

§ 1104. Theft by extortion.

(a) Offense defined. A person commits theft by extortion if the person intentionally deprives another of property by means of coercion that would constitute an offense under § 1063 of this title.

(b) Defense. In a prosecution involving coercion under § 1063(a)(4) of this title, it is a defense that all of the following occurred:

(1) The defendant believed the threatened criminal charge to be true.

(2) The defendant's sole purpose was to compel or induce the victim to take reasonable action to make good the wrong that was the subject of the threatened charge.

(c) Defined terms.

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

(2) "Coercion" means any act that satisfies the definition of coercion in § 1063 of this title.

§ 1105. Theft of property lost, mislaid, or delivered by mistake.

(a) Offense defined. A person commits theft if the person does all the following:

(1) Comes into possession of property that the person knows has been lost, mislaid, or delivered by mistake as to the nature or amount of the property or as to the recipient.

(2) Acts with the intent to deprive another of such property.

(3) Fails to take reasonable measures to return the property to its owner.

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

Deprive; Property.

§ 1106. Theft of services.

(a) Offense defined. A person commits theft of services if the person does all of the following:

(1) The person knowingly obtains, without consent, services that the defendant knows are available only for compensation.

(2) By any of the following:

a. Deception, threat, or false representation or statement.

b. By installing, rearranging, or tampering with any facility or equipment.

(3) With the intent to avoid payment for the services.

(b) Theft from public utilities: permissive inferences.

(1) The trier of fact may infer that the person to whom the services are being furnished created the condition violating paragraph (a)(2)b. of this section with the intent required in paragraph (a)(3) of this section if all of the following apply:

a. The services have been obtained from a public utility.

b. The public utility owns the facilities or equipment owned or used to provide its services.

(2) Exception. Paragraph (b)(1) of this section does not apply to any person to whom the services have been furnished for fewer than 31 days, or until there has been at least 1 meter reading.

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

Obtain; Services.

§ 1107. Receiving stolen property.

(a) Offense defined. A person commits an offense if the person:

(1) Intentionally receives, retains, or disposes of property of another,

(2) With intent to deprive the owner of the property,

(3) Knowing or believing that the property has been stolen.

(b) Permissive inference. The trier of fact may infer the knowledge or belief required under paragraph (a) of this section that the property has been stolen if any of the following apply:

(1) The person acquires the property for consideration which the person knows is substantially below its reasonable value.

(2) The person is found in possession or control of property whose affixed identification or serial number is altered, removed, defaced, or falsified.

(3) The person is a person or dealer who acquires the property for consideration, when such property consists of traffic signs, other traffic control devices, or historical markers, and the acquisition is not accompanied by a written authorization for the property's disposition from the Department of Transportation, Department of State, or other person which owns the property.

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

Dealer; Deprive; Property of another; Receive; Stolen.

§ 1108. Unauthorized distribution of protected works.

(a) Offense defined. A person commits an offense if:

(1) The person sells, gives, or otherwise makes available to another whose identity is known to the person,

(2) A protected work that the person knows is only available for compensation,

(3) With intent to enable the other person to avoid payment to the owner of the protected work.

(b) Exception; lawfully obtained originals. Subsection (a) of this section does not apply to original copies of protected works that the defendant obtained lawfully.

(c) Grading. Unauthorized distribution of protected works is graded as follows:

(1) A Class A misdemeanor, if distributed to 1,000 or more recipients.

(2) A Class D misdemeanor, if distributed to 100 or more recipients.

(3) A violation, if distributed to fewer than 100 recipients.

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

Protected work.

§ 1109. Unauthorized use of a vehicle.

(a) Offense defined. A person commits an offense if any of the following apply:

(1) The person knowingly operates another person's motor vehicle, airplane, vessel, or other vehicle, without the owner's consent to do so.

(2) The person has custody of another person's vehicle under an agreement that the person will perform for compensation a specific service for the owner involving the maintenance, repair, or use of the vehicle, and the person operates the vehicle without consent of the owner in a manner constituting a gross deviation from the agreed purpose of the person's custody.

(3) The defendant has custody of another person's vehicle under an agreement that the defendant is to return the vehicle to the owner at a specified time and the defendant intentionally retains or withholds possession without consent of the owner for so lengthy a period beyond the specified time as to be a gross deviation from the agreement.

(b) Grading. Unauthorized use of a vehicle is a Class A misdemeanor.

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

Motor vehicle; Vessel.

Subchapter II. Forgery and fraudulent practices.

§ 1121. Forgery and counterfeiting.

(a) Forgery, offense defined. A person commits an offense if, with intent to defraud, deceive, or injure anyone, the person does any of the following:

(1) Alters any written instrument of another person without the other person's authority.

(2) Makes, completes, executes, authenticates, issues, or transfers any written instrument so that it purports to be any of the following:

a. To be the act of another person who did not authorize that act.

b. To have been executed at a time or place, or in a numbered sequence, other than was in fact the case.

c. To be a copy of an original when no original existed.

(3) Possesses a written instrument, knowing that it was made, completed, or altered under circumstances constituting forgery.

(4) Puts forward any written instrument that the person knows to be forged in a manner specified in paragraph (a)(1) or (a)(2) of this section.

(b) Counterfeiting, offense defined. A person commits an offense if the person knowingly manufactures, uses, displays, advertises, distributes, sells, or possesses with intent to sell or distribute any item or service bearing or identified by a counterfeit mark.

(c) Grading.

(1) Forgery, grading. Forgery is graded as follows:

a. A Class 8 felony if the written instrument is or purports to be any of the following:

1. Part of an issue of money, stamps, securities, or other valuable instruments that the government issued.

2. Part of an issue of stock, bonds, or similar instruments representing interests in or claims against any property or enterprise.

b. A Class 9 felony, if the written instrument is or purports to be a deed, will, codicil, contract, release, assignment, commercial instrument, check, or similar instrument evidencing, creating, transferring, terminating, or otherwise affecting a legal right, interest, obligation, or status.

c. A Class A misdemeanor in all other cases.

(2) Counterfeiting, grading.

a. The grading for counterfeiting is determined by the value of the item or service bearing or identified by a counterfeit mark and the grade values under § 1101(b) of this title (Consolidation of theft offenses).

b. Valuation. If an item bearing a counterfeit mark is a component of a finished product, the value of the finished product must be used for grading purposes.

(d) Permissive inference. The trier of fact may infer intent to sell or distribute items bearing a counterfeit mark, if a defendant possesses or controls more than 25 items bearing a counterfeit mark.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Counterfeit mark; Defraud; Put forward; Security; Written instrument.

§ 1122. Fraudulent tampering with records.

(a) Offense defined. A person commits an offense if, with intent to defraud anyone, the person:

(1) Tampers with or fails to properly maintain public records, as would constitute an offense under § 1223(a) of this title.

(2) Issues, offers, or presents an instrument that contains false statements or false information.

(b) Grading. Fraudulent tampering with records is a Class 9 felony.

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

§ 1123. Fraudulent treatment of public records.

(a) Offense defined. A person commits an offense if, with intent to defraud anyone, the person obtains, displays, possesses, or upon proper demand fails to surrender any document that a governmental entity issued.

(b) Grading. Fraudulent treatment of public records is a Class A misdemeanor.

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

§ 1124. Issuing a bad check.

(a) Offense defined. A person commits an offense if the person issues or passes a check, knowing it will not be honored by the drawee.

(b) Grading. Issuing a bad check is graded based on the value of the check and the grade values under § 1101(b) of this title.

(c) Permissive inference. The trier of fact may infer that the issuer knew the check would not be honored, if any of the following apply:

(1) The issuer had no account with the drawee at the time the check was issued.

(2) The drawee refused payment upon presentation, on or after the date written on the check, or for lack of funds, and the issuer failed to make good within 10 days after receiving notice of the refusal.

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

§ 1125. Unlawful use of a payment card.

(a) Offense defined. A person commits an offense if the person uses a payment card with the intent to obtain property or services, knowing any of the following:

(1) The card is stolen, forged, or fictitious.

(2) The card has been revoked or cancelled.

(3) That, for any other reason, the use of the card is not authorized by the issuer or cardholder.

(b) Grading.

(1) Generally. Unlawful use of payment card is graded based on the value of the property or services obtained by use of the payment card and the grade values under § 1101(b) of this title.

(2) Aggregation of instances of conduct. If the defendant commits the offense in a single scheme or continuous course of conduct, whether involving 1 issuer or several issuers, the defendant's conduct may be considered a single offense, and the value of the property or services may be aggregated for grading purposes.

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

Payment card; Services; Stolen; Value.

§ 1126. Deceptive business practices.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Uses a weight, measure, or any other device for determining or recording the quality or quantity of a commodity to be sold and the person knows the weight, measure, or other device is false or misleading.

(2) Sells, offers or exposes for sale, or delivers what the person knows to be less than the represented quantity of any commodity or service.

(3) Takes what the person knows to be more than the represented quantity of any commodity or service.

(4) Sells, or offers or exposes for sale, commodities the person knows to be adulterated or mislabeled.

(5) Makes a statement the person knows to be false or misleading in any advertisement addressed to the public or a substantial segment of the public, with the intent to promote the sale or increase the consumption of property or services.

(6) Makes what the person knows is a false or misleading written statement to promote the sale of securities, or omits information required by law to be disclosed in written documents relating to securities.

(7) Notifies another person that the other person has won a prize, received an award or has been selected or is eligible to receive anything of value if the other person is required to respond through the use of a 900 service telephone number or similar pay-per-call service number.

(b) Exception; republication. This section does not apply to a person in a case involving false or misleading information if all of the following apply:

(1) The person publishes information that originates from another source.

(2) The person does not know of the information's deceptive character.

(c) Grading. The offense of engaging in deceptive business practices is graded based on the amount of the victim's loss and the grade values under § 1101(b) of this title.

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

Adulterated; Mislabeled; Services.

§ 1127. Defrauding secured creditors.

(a) Offense defined. A person commits an offense if the person destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest, with intent to hinder enforcement of the security interest.

(b) Grading. Defrauding secured creditors is graded based on the amount of the victim's loss and the grade values under § 1101(b) of this title.

§ 1128. Fraud in insolvency.

(a) Offense defined. A person commits an offense if the person, with intent to defraud any creditor and knowing that proceedings have been or are about to be instituted for the appointment of a receiver or other person entitled to administer property for the benefit of creditors has been appointed, or that any other composition or liquidation for the benefit of creditors has been or is about to be made, does any of the following:

(1) Conveys, transfers, removes, conceals, destroys, encumbers, or otherwise disposes of any part of or any interest in the debtor's estate.

(2) Obtains any substantial part of or interest in the debtor's estate.

(3) Presents to any creditor or to the receiver or administrator any written instrument or record relating to the debtor's estate, knowing that it contains a material false statement.

(4) Knowingly misrepresents or fails or refuses to disclose to the receiver or administrator the existence, amount, or location of any part of or any interest in the debtor's estate, or any other information that the person is legally required to furnish to the administrator.

(b) Grading. Fraud in insolvency is graded based on the amount of the victim's loss and the grade values under § 1101(b) of this title.

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

Defraud; Written instrument.

§ 1129. Identity theft.

(a) Offense defined. A person commits an offense if, with intent to defraud, the person does any of the following:

(1) Obtains, sells, gives, or transfers personal identifying information belonging or pertaining to another person without the consent of the other person.

(2) Possesses or uses a scanning device to obtain information encoded on a payment card.

(3) Possesses or uses a reencoder to place encoded information on a payment card or any electronic medium without the permission of the owner of the card.

(4) Writes down or requests to be written down the address, telephone number, account number, or any other personal identification information of the payment card holder, unless the information is necessary for any of the following:

a. The shipping, delivery or installation of consumer goods.

b. Special orders of consumer goods or services.

(b) Grading. Identity theft is graded as follows:

(1) A Class 8 felony, if paragraphs (a)(1), (a)(2), or (a)(3) of this section apply.

(2) A Class D misdemeanor, if paragraph (a)(4) of this section applies.

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

Personal identifying information; Reencoder; Scanning device; Services.

§ 1130. Commercial bribery.

(a) Offense defined. A person commits an offense if the person does all of the following:

(1) Acts with the intent to do any of the following:

a. Influence another in any respect to that person's acts, decisions, or duties.

b. Be influenced by another person in any respect to the person's acts, decisions, or duties.

(2) Offers, confers, agrees to confer, solicits, accepts, or agrees to accept any benefit as consideration for violating or agreeing to violate a duty of fidelity of any of the following individuals who are not authorized by law to accept that benefit:

a. A partner, agent, or employee of another.

b. A trustee, guardian, or other fiduciary.

c. A lawyer, physician, accountant, appraiser, or other professional adviser.

d. An officer, director, manager, or other participant in the direction of the affairs of an incorporated or unincorporated association.

e. An official or participant in a sports contest.

(b) Grading. Commercial bribery is a Class A misdemeanor.

§ 1131. Fraudulent conveyance or receipt of public lands.

(a) Offense defined. A person commits an offense if, with intent to defraud, the person executes or receives any deed or other written instrument purporting to convey an interest in land, a part of which is public lands of this State if the person does not have a legal or equitable interest in the land described in the instrument.

(b) Grading. Fraudulent conveyance or receipt of public lands is a Class 9 felony.

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

Defraud; Written instrument.

§ 1132. Unauthorized impersonation.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) With the intent to obtain a benefit or injure or defraud another person, misrepresents that the person is any of the following:

a. Another person, real or fictitious.

b. A member or veteran of the United States Armed Forces or holds oneself out to have an unearned rank in the United States Armed Forces.

(2) Falsely represents that the person is a bail bond agent.

(3) Having been involved in a motor vehicle accident resulting in serious physical injury or death to another person, falsely represents whether the person was operating a motor vehicle involved in the accident.

(b) Grading. Unauthorized impersonation is graded as follows:

(1) A Class A misdemeanor, if under paragraph (a)(1) or (a)(2) of this section.

(2) A Class 9 felony, if under paragraph (a)(3) of this section.

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

Motor vehicle; Serious physical injury.

Subchapter III. Arson and other property damage offenses.

§ 1141. Arson.

(a) Offense defined. A person commits an offense if the person damages a building by intentionally starting a fire or causing an explosion.

(b) Grading.

(1) Knowingly causing damage. If the person knew the damage would result, arson is graded as follows:

a. A Class 4 felony, if the person knew another person was within the building at the time of the offense.

b. A Class 6 felony, if the person was reckless as to the presence of another person within the building at the time of the offense.

c. A Class 7 felony in all other cases.

(2) Recklessly causing damage. Arson is a Class 9 felony, if the person was reckless as to the resulting damage.

(c) Ownership exception. Except under paragraph (b)(1)a. or (b)(1)b. of this section, a person does not commit an offense under § 1141 of this section if the building belongs solely to the person.

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

§ 1142. Endangering by fire or explosion.

(a) Offense defined. A person commits an offense if the person does both of the following:

(1) Intentionally starts a fire or causes an explosion, whether on the person's own property or another person's property, and

(2) Thereby recklessly creates a risk of damaging another person's building or other real or personal property.

(b) Grading. The offense of endangering by fire or explosion is a Class A misdemeanor.

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

§ 1143. Unlawful incendiary devices.

(a) Offense defined. A person commits an offense if the person manufactures or possesses any incendiary device with intent to cause physical injury or to unlawfully damage any property.

(b) Grading. Unlawful incendiary devices are a Class 7 felony.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Damage; Incendiary device; Physical injury; Property.

§ 1144. Criminal damage.

(a) Offense defined. A person commits criminal damage if the person does any of the following:

- (1) Damages property of another person.
- (2) Tamper with property of another person and thereby creates a risk of damage to property.
- (3) Unlawfully tampers with the tangible property of a public service.

(b) Grading.

(1) Recklessly causing damage. Where damage, loss, or risk is recklessly caused, criminal damage is graded as follows:

- a. A Class 7 felony, if the pecuniary loss is \$1,000,000 or more.
- b. A Class 8 felony, if the pecuniary loss is \$100,000 or more.
- c. A Class 9 felony, if the pecuniary loss is \$25,000 or more.
- d. A Class A misdemeanor, if any of the following apply:
 1. The pecuniary loss is \$1,500 or more.
 2. The person intentionally causes a substantial interruption or impairment of a public service.
- e. A Class B misdemeanor, if the pecuniary loss is \$1,000 or more.
- f. A Class C misdemeanor, if the pecuniary loss is \$100 or more.
- g. A Class D misdemeanor if the pecuniary loss is less than \$100 and the person has been previously convicted of an offense of a similar nature.
- h. A violation, in all other cases.

(2) Knowingly causing damage. The grade of criminal damage under paragraphs (b)(1)a. through (b)(1)g. of this section are increased by 1 grade if the defendant knowingly causes the damage, loss, or risk.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Damage; Public service; Property of another.

§ 1145. Causing or risking catastrophe.

(a) Causing catastrophe.

(1) Offense defined. A person commits an offense if the person causes a catastrophe by fire, flood, avalanche, collapse of a building, bridge, or tunnel, use of a catastrophic agent, unauthorized disposal of solid

waste, or any other means of causing potentially widespread injury or damage. As used in this section, “solid waste” means as defined in § 6302 of Title 7.

(2) Grading. Causing catastrophe is graded as follows:

a. A Class 2 felony, if the person causes the catastrophe knowingly.

b. A Class 4 felony, if the person causes the catastrophe recklessly.

(b) Risking catastrophe.

(1) Offense defined. A person commits an offense if the person recklessly creates a risk of catastrophe by any of the means described in paragraph (a)(1) of this section.

(2) Grading. Risking catastrophe is a Class 8 felony.

(c) Threatening to cause catastrophe.

(1) Offense defined. A person commits an offense if the person threatens to cause a catastrophe using any of the means described in paragraph (a)(1) of this section.

(2) Grading. Threatening to cause catastrophe is a Class 9 felony.

(d) Failure to prevent catastrophe.

(1) Offense defined. A person who recklessly fails to take reasonable measures to prevent or mitigate a catastrophe commits failure to prevent catastrophe if the person does either of the following:

a. Knows that the person is under an official, contractual, or other legal duty to take such measures.

b. Did or assented to the act causing or threatening the catastrophe.

(2) Grading. Failure to prevent catastrophe is a Class A misdemeanor.

(e) Limitation on convictions for multiple related offenses. Section 209 of this title (Conviction when the defendant satisfies the requirements of more than one offense or grade) may prohibit convictions under both this section and another offense based upon the same conduct.

(f) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Catastrophe; Catastrophic agent.

§ 1146. Dangerous violation of environmental statutes or regulations; unsafe handling of hazardous waste; improper disposal of solid waste.

(a) Dangerous violation of environmental statutes or regulations. A person commits an offense if both of the following apply:

(1) The person recklessly engages in conduct that violates a rule, regulation, or statutory prohibition under the jurisdiction of the Department of Natural Resources and Environmental Control.

(2) The person's conduct does any of the following:

a. Causes serious physical injury to another person.

b. Creates a substantial risk of serious physical injury or death to another person.

(b) Unsafe handling of hazardous waste. A person commits an offense if the person dumps, discharges, abandons, treats, stores, or disposes of hazardous waste in any place that the person knows is not an authorized hazardous waste facility.

(c) Improper disposal of solid waste. A person commits an offense if the person disposes of solid waste into the ocean waters of the State, the Delaware Bay, the inland bays, or waters of exceptional recreational or ecological significance.

(d) Grading.

(1) Dangerous violation of environmental statutes or regulations and Unsafe handling of hazardous waste are graded as follows:

a. A Class 7 felony, if serious physical injury is caused.

b. A Class 8 felony, if the person's conduct creates a substantial risk of serious physical injury or death to another person.

(2) Unsafe handling of hazardous waste, in all other cases, is graded as a Class 9 felony.

(3) Improper disposal of solid waste is graded as follows:

a. A Class 9 felony, if the person knowingly engaged in the prohibited conduct.

b. A Class A misdemeanor, if the person recklessly engaged in the prohibited conduct.

(e) Fines. For each day that the defendant's conduct of unsafe handling of hazardous waste under subsection (b) of this section, or improperly disposing of solid waste under subsection (c) of this section continues, the defendant may be subjected to a maximum fine of five times that provided for the grade of the offense under § 603(a) of this title. But imposition of a fine under this subsection is instead of, not in addition to, any other fine provided under § 603 of this title.

(f) Limitation on indictment. A person may not be indicted nor may the State file an information or petition, based upon the same conduct and victim, with both an offense under this section and an offense under Chapter 10 of this Title or another offense under Chapter 11 of this Title.

(g) Consent due to profession. It is a defense to prosecution under subsection (a) of this section that both of the following apply:

(1) The injured or endangered person consented to the specific conduct charged.

(2) The danger and conduct charged were reasonably foreseeable hazards of an occupation, business, or profession.

(h) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Death; Serious physical injury.

(2) The following terms used in this section have the meaning given in § 6072 of Title 7: Inland bays; Waters of exceptional recreational or ecological significance.

(3) The following terms used in this section have the meaning given in § 6302 of Title 7: Disposal; Hazardous waste; Solid waste; Storage; Treatment.

Subchapter IV. Burglary and other criminal trespass offenses.

§ 1161. Burglary and home invasion.

(a) Burglary, offense defined. A person commits burglary if the person does all of the following:

(1) With intent to commit an offense within.

(2) Enters or remains in a building.

(3) Knowing that the person has no license or privilege to do so.

(b) Exception. It is not an offense under this section to enter or remain upon premises which appears at the time to be open to the public, unless the person does any of the following:

(1) Defies a lawful order not to enter or remain upon such premises, and the owner of the premises or another authorized person personally communicated to the person that the lawful order exists.

(2) In a building partially open to the public, enters or remains in that part of the building which is not open to the public.

(c) Grading.

(1) Home invasion. The offense is a Class 6 felony if, in the course of committing an offense under subsection (a) of this section, all of the following apply:

a. The offense is committed in the dwelling of another.

b. The dwelling is occupied.

c. The offense intended under paragraph (a)(1) of this section is robbery, aggravated or enhanced aggravated assault, homicide, rape, or kidnapping.

d. The person attempts to complete the offense intended under paragraph (a)(1) of this section.

(2) Aggravated burglary. If, in the course of committing an offense under subsection (a) of this section, the person commits the offense in the dwelling of another, it is:

a. A Class 7 felony, if committed at night.

b. A Class 8 felony in all other cases.

(3) Burglary. In all other cases, the offense is a Class 9 felony.

(4) Grade adjustment. The grade of an offense committed under subsection (a), (b), or (c) of this section is increased by 1 grade if, during commission of or flight from the offense, any of the following apply:

a. The defendant is armed with explosives or a deadly weapon.

b. The defendant causes physical injury to another person who is not a participant in the offense.

(d) No merger with underlying offense. A defendant may be convicted of both an offense under § 1161 and of committing or attempting to commit the offense that was the purpose of the defendant's unlawful entry.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Attempt; Deadly weapon; Dwelling; Entry; Night; Physical injury.

§ 1162. Criminal trespass.

(a) Offense defined. A person commits criminal trespass if the person:

(1) Enters or remains in or upon any real property,

(2) Knowing that the person has no license or privilege to do so.

(b) Exception. It is not a criminal trespass to enter or remain upon premises which appear at the time to be open to the public, unless the person does any of the following:

(1) Defies a lawful order not to enter or remain upon such premises, and the owner of the premises or another authorized person personally communicated to the person that the lawful order exists.

(2) In a building partially open to the public, enters or remains in that part of the building which is not open to the public.

(c) Grading. Criminal trespass is graded as follows:

(1) A Class A misdemeanor, if the real property is a dwelling.

(2) A Class B misdemeanor, if the person intends to peer or peep into the window or door of an occupied dwelling.

(3) A Class D misdemeanor, if the real property is fenced or enclosed in a manner manifestly designed to exclude intruders.

(4) A violation in all other cases.

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

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

Chapter 12. Offenses against public administration.

Subchapter I. Bribery, improper influence, and official misconduct.

§ 1201. Bribery.

(a) Bribery, offense defined. A person commits an offense if the person:

(1) Knowingly offers, confers, or agrees to confer a personal benefit,

(2) That the person believes would influence the performance of an act related to the employment or function of any of the following:

a. A public servant.

b. A party officer.

c. A witness.

(3) The other person is not authorized by law to accept that personal benefit.

(b) Accepting a bribe, offense defined. A public servant, party officer, or witness commits an offense if that person does all of the following:

(1) Knowingly solicits, accepts, or agrees to accept a personal benefit from another person as consideration for influencing or agreeing to influence the performance of an act related to the person's employment or function.

(2) The person is not authorized by law to accept the personal benefit.

(c) Grading. Bribery is graded as follows:

(1) A Class A misdemeanor, if, in a prosecution under subsection (a) of this section, the defendant's conduct was a direct response to wrongdoing by the bribe recipient.

(2) A Class 8 felony in all other cases.

(d) Forfeiture of office. A public servant of this State or any of its political subdivisions who is convicted of violating any provision of this section forfeits the public servant's office or employment, regardless of whether the conviction is later vacated or reversed on appeal.

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

Party officer; Personal benefit; Public servant

§ 1202. Improper influence.

(a) Offense defined. A person commits an offense if the person uses coercion with intent to influence another person's decision, opinion, vote, or other exercise of discretion as a public servant, party officer, or voter.

(b) Defect in office no defense. It is not a defense to a prosecution under this section that the individual whom the person sought to influence was not qualified to act in the desired way, whether because the individual had not yet assumed office, lacked jurisdiction, or for any other reason.

(c) Grading. Improper influence is a Class 9 felony.

(d) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Party officer; Public servant.

(2) "Coercion" means any act that satisfies the definition of coercion in § 1063 of this title.

§ 1203. Official misconduct.

(a) Official misconduct; offense defined. A person commits an offense if the person is a public servant and, intending to obtain a personal benefit or to cause harm to another person, the person does any of the following:

(1) Performs an act the person knows is in excess of the person's authority.

(2) Knowingly refrains from performing a duty that is imposed by law or is clearly inherent in the nature of the office, even if the duty is not directly related to the person's official functions as a public servant.

(3) Performs official functions in a way intended to benefit the person's own property or financial interests.

(4) Knowingly performs official functions in a way that is intended to discriminate on the basis of race, creed, color, sex, age, disability, or national origin.

(b) Profiteering, offense defined. A person commits an offense if the person is a public servant and, in contemplation of official action taken by the person or a governmental entity with which the person is associated in the person's capacity as a public servant or in reliance on information to which the person has access in the person's official capacity as a public servant and that has not been made public, the person knowingly does any of the following:

(1) Acquires a pecuniary interest in any property, transaction, or enterprise that may be affected by the official action or information.

(2) Speculates or wagers on the basis of the official action or information.

(3) Aids another person to engage in an act prohibited by paragraph (b)(1) or (b)(2) of this section, intending to thereby gain a personal benefit.

(c) Grading.

(1) Official misconduct is a Class 8 felony.

(2) Profiteering is a Class A misdemeanor.

(d) Forfeiture of office. A defendant who is convicted of violating any provision of this section forfeits the defendant's office or employment, regardless of whether the conviction is later vacated or reversed on appeal.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Enterprise; Harm to another person; Personal benefit; Property; Public servant.

Subchapter II. Perjury and other official falsification offenses.

§ 1221. Perjury.

(a) Offense defined. A person commits an offense if the person:

(1) Makes a false statement of fact or affirms a false statement of fact previously made.

(2) That the person does not believe to be true.

(3) While under oath.

(b) Grading. Perjury is graded as follows:

(1) A Class 7 felony, if the false statement is an oral, testimonial statement in an official proceeding that is material to the proceeding.

(2) A Class 8 felony, if all of the following apply:

a. The false statement is made in a written instrument that would have no legal efficacy in a court of law absent the oath.

b. The written instrument described in paragraph (b)(1) of this section is delivered to another person with intent to deceive a public servant.

c. The false statement is material to the proceeding or matter.

(3) A Class A misdemeanor in all other cases.

(c) Retracted statement, defense. It is a defense to prosecution under this section that the person retracted the false statement in the course of the same proceeding in which it was made, and the retraction was made before all of the following:

(1) The false statement materially affected the proceeding or matter.

(2) It became manifest that the statement's falsity has been or would be exposed.

(d) No defense. In a prosecution under this section, it is not a defense that any of the following conditions exist:

(1) The person was not competent under the Rules of Evidence to make the allegedly false statement.

(2) The person mistakenly believed the false statement to be immaterial.

(3) The oath was administered or taken in an irregular manner.

(4) A written statement purporting to be made under oath was not in fact made under oath.

(5) The court in which the acts constituting the offense were committed lacked jurisdiction over the person of the defendant or over the subject matter.

(e) Evidentiary rules.

(1) Proof of falsity. If contradictory statements are made under oath in the same or in different proceedings or matters all of the following apply:

a. The prosecution need not specify which statement is false.

b. The falsity of either of the statements may be established by proof of the statements' irreconcilable inconsistency.

(2) Corroboration required. In any prosecution under this section, falsity of a statement may not be established solely by the uncorroborated testimony of only 1 witness.

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

Oath; Statement is material.

§ 1222. Written falsification under penalty.

(a) Offense defined. A person commits an offense if the person makes a false statement that the person does not believe to be true, in a written instrument bearing a notice, authorized by law, that false statements made therein are punishable.

(b) Corroboration required. In any prosecution under this section, falsity of a statement may not be established solely by the uncorroborated testimony of only 1 witness.

(c) Grading. Written falsification under penalty is a Class A misdemeanor.

§ 1223. Tampering with public records.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Knowingly removes, mutilates, destroys, conceals, makes a false entry in, or falsely alters a record or written instrument that meets any of the following criteria:

a. Belongs to or is received or kept by a governmental entity for information or record.

b. Another person is required by law to keep for government reference.

(2) Having a legal duty to do so, knowingly fails to make an entry in a record or written instrument described in paragraph (a)(1)a. or (a)(1)b. of this section.

(b) Grading. Tampering with public records is a Class A misdemeanor.

§ 1224. Criminal impersonation.

(a) Offense defined. A person commits an offense if the person falsely represents that the person is any of the following:

(1) A public servant.

(2) A peace officer, firefighter, emergency medical technician, paramedic, or fire police officer, and the person makes the representation with intent to facilitate the commission of or flight from an offense.

(b) Grading. Criminal impersonation is graded as follows:

(1) A Class A misdemeanor, if under paragraph (a)(1) of this section.

(2) A Class 6 felony, if under paragraph (a)(2) of this section and the offense described in paragraph

(a)(2) of this section meets any of the following criteria:

a. Results in physical injury to an individual.

b. Is a Class 1, 2, 3, 4, or 5 felony.

c. Is an offense under Subchapter III of Chapter 10 of this title.

(3) A Class 8 felony in all other cases.

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

Peace officer; Physical injury; Public servant; Sexual intercourse.

Subchapter III. Offenses involving obstruction of governmental operations; escape.

§ 1241. Obstructing justice.

(a) Offense defined. A person commits an offense if the person acts with intent to prevent, hinder, or delay the investigation, apprehension, prosecution, or defense of any person, and does any of the following:

(1) Provides what the person knows to be a false, misleading, or incomplete oral or written statement to a law enforcement officer or agency, and the statement is material to the investigation, apprehension, prosecution, or defense of the person.

(2) Harbors or conceals the person.

(3) Warns the person of impending apprehension.

(4) Provides the person with money, transportation, a weapon, a disguise, or other means of avoiding apprehension.

(5) Prevents a third person from aiding in the apprehension of the person, or lodging a criminal charge against the person.

(6) Not being a public servant, solicits, confers, or accepts a benefit in exchange for dropping, withholding, or refraining from initiating a criminal prosecution.

(7) With regard to physical evidence, does any of the following:

a. Destroys, alters, conceals, or falsifies physical evidence.

b. Suppresses use of physical evidence by force, intimidation, or deception.

b. Produces or offers false physical evidence in a proceeding.

(8) Alters, conceals, or falsifies information about an electronic or telephone communication, including its existence, place of origin or destination, or originating or receiving telephone number, address, or account.

(9) Fails to stop and await the arrival of law enforcement or emergency personnel following an automobile collision in which the person drove an involved vehicle and the collision resulted in the physical injury or death of a person.

(b) Grading. Obstructing justice is graded as follows:

(1) A Class 9 felony, if under paragraph (a)(7) of this section.

(2) A Class 8 felony, if under paragraph (a)(9) of this section and the collision causes death.

(3) A Class 9 felony, if under paragraph (a)(9) of this section and the collision causes physical injury.

(4) If paragraphs (b)(1) through (b)(3) do not apply, grading is as follows:

a. A Class 9 felony, if the offense under investigation or prosecution is a felony.

b. A Class A misdemeanor if the offense under investigation or prosecution is a misdemeanor.

(c) Restitution or indemnification, defense. In a prosecution for soliciting, conferring, or accepting a benefit in exchange for dropping, withholding, or refraining from initiating a criminal prosecution under paragraph (a)(6) of this section, it is a defense that the benefit did not exceed the amount that the person believed to be due to the person as restitution or indemnification for harm caused by the underlying offense.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Deception; Electronic communication; Law enforcement officer; Originating address or originating account; Physical evidence; Physical injury; Receiving address or receiving account; Statement is material.

§ 1242. Resisting or obstructing a law enforcement officer or other specified person.

(a) Offense defined. A person commits an offense if the person knowingly resists, obstructs, or interferes with the performance of an act within the course and scope of employment of a person that the person knows to be a law enforcement officer, firefighter, correctional officer, or emergency medical personnel.

(b) Grading. Resisting or obstructing a law enforcement officer is graded as follows:

(1) A Class 6 felony, if the offense conduct includes disarming a law enforcement officer of the law enforcement officer's weapon.

(2) A Class 9 felony, if the defendant uses force or violence upon, or causes physical injury to, a law enforcement officer while committing, attempting to commit, or fleeing from the offense.

(3) A Class A misdemeanor in all other cases.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Correctional officer; Deadly weapon; Law enforcement officer; Physical injury.

§ 1243. Obstructing administration of law or other government function.

(a) Offense defined. A person commits an offense if the person knowingly obstructs, impairs, or perverts the administration of law or other governmental function by physical interference or obstacle, breach of official duty, or any unlawful act.

(b) Grading. Obstructing administration of law or other government function is graded as follows:

(1) A Class 8 felony, if the offense conduct is obstructing in relation to any of the following:

a. Efforts of a public health official or agency to control a viral outbreak or other public health emergency.

b. Compliance with a duly served investigative demand of the Attorney General under section § 4136 of this title, in an investigation for violation of § 1441 of this title.

c. Intentionally evading or failing to collect or account for a tax imposed under Titles 4 or 30, other than § 3002 and Chapters 51 and 52 of Title 30.

(2) A Class 9 felony, if the offense conduct is related to entry into premises for an inspection authorized under Chapter 47 of Title 16.

(3) A Class A misdemeanor, if the offense conduct is a violation of a juror's official duty of secrecy or impartiality.

(4) A Class B misdemeanor in all other cases.

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

§ 1244. Refusing to aid a peace officer.

(a) Offense defined. A person commits an offense if, when commanded to do so, the person knowingly fails to provide reasonable aid to a person that the person knows to be a peace officer, while the peace officer is doing any of the following:

(1) Effecting a lawful arrest.

(2) Preventing the commission of an offense by another person.

(b) Grading. Refusing aid to a peace officer is a Class B misdemeanor.

(c) Limitation on civil liability. A person who complies with a peace officer's command to aid under subsection (a) of this section is not liable to a person for damages resulting from that aid.

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

Peace officer.

§ 1245. Escape.

(a) Offense defined. A person commits an offense if, knowing the person is not permitted to do so, the person departs from custody, commitment, restraint, or placement and the person is any of the following:

(1) Imprisoned in penal custody under a conviction or charge for an offense.

(2) Otherwise in lawful penal custody, or civilly committed.

(3) Restrained by a public servant pursuant to an arrest or court order.

(4) Placed in nonsecure facilities by the Division of Youth Rehabilitative Services.

(b) Grading. Escape is graded as follows:

(1) A Class 5 felony, if under paragraph (a)(1) of this section and the defendant causes physical injury to another person from the time of escape until the defendant has been returned to penal custody.

(2) A Class 6 felony, if under paragraph (a)(1) of this section and the defendant uses force or threat of force, or possesses a deadly weapon, during commission of the escape.

(3) A Class 7 felony, if under paragraph (a)(1) of this section but paragraphs (b)(1) and (b)(2) of this section do not apply.

(4) A Class 9 felony, if under paragraph (a)(2) of this section.

(5) A Class A misdemeanor, if under paragraphs (a)(3) or (a)(4) of this section.

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

Deadly weapon; Penal custody; Public servant.

§ 1246. Prohibited conduct related to official custody.

(a) Promoting prison contraband, offense defined. A person commits an offense if, except as authorized by law, the person does any of the following:

(1) Introduces into a detention facility what the person knows to be contraband.

(2) Possesses contraband with intent to deliver it a person confined in a detention facility.

(3) Being confined in a detention facility, the person makes, obtains, or possesses what the person knows to be contraband.

(b) Misuse of prisoner mail, offense defined. A person in penal custody or civil commitment commits an offense if the person does any of the following:

(1) Communicates by mail with a person who is not in penal custody or civil commitment in a manner the person knows is likely to cause inconvenience, annoyance, or alarm.

(2) Designates a written communication as legal mail, knowing that the communication is wholly unrelated to any legal matter.

(c) Grading.

(1) Promoting prison contraband is graded as follows:

a. A Class 8 felony, if the contraband is a deadly weapon.

b. A Class 9 felony, if the contraband is any of the following:

1. A cellular telephone or, except as specifically authorized by law, an electronic device.

2. A drug prohibited under Chapter 47 of Title 16.

3. Prescription medication.

c. A Class A misdemeanor, if the contraband is any of the following:

1. An intoxicating liquor.

2. A tobacco or nicotine product.

3. Money, without the knowledge and consent of the Department of Health and Social Services or the Department of Correction.

(2) Misuse of prisoner mail is a Class A misdemeanor.

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

Deadly weapon.

§ 1247. Intimidating, improperly influencing, or retaliating against a witness, juror, or victim.

(a) Offense defined. A person commits an offense if all of the following apply:

(1) The person has intent to do any of the following:

a. Influence the performance of a juror's duties.
b. Deter a party or witness from testifying freely, fully, or truthfully in an official proceeding.
c. Annoy, harass, intimidate, or victimize a current or former juror or witness because of the person's service as a juror or witness.

d. Prevent a victim or witness from doing any of the following:

1. Reporting a crime.

2. Assisting in the prosecution of a complaint, indictment, information, or probation or parole violation.

3. Arresting or seeking the arrest of a person in connection with a crime.

(2) The person does any of the following:

a. Causes or threatens physical injury to anyone.

b. Deceives, persuades, or commits an offense against the person or a third person.

c. Communicates, directly or indirectly, with a juror or witness, other than as authorized by law.

(b) Exception, juror deliberations. It is not an offense under this section for jurors in the same proceeding to communicate with each other with regard to matters admitted as evidence in the proceeding.

(c) Grading. Intimidating, improperly influencing, or retaliating against a witness, juror, or victim is graded as follows:

(1) A Class 6 felony, if under paragraph (a)(2)a. of this section.

(2) If under paragraph (a)(2)b. of this section, graded as follows:

a. A Class 6 felony if committed in furtherance of a conspiracy or for financial gain.

b. A Class 7 felony in all other cases.

(3) A Class A misdemeanor in all other cases.

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

Deceives; Juror; Physical injury; Witness.

§ 1248. Criminal contempt.

(a) Criminal contempt, offense defined. A person commits an offense if the person engages in any of the following conduct:

(1) Disorderly, contemptuous, or insolent behavior that is committed during the sitting of a court, in the court's immediate view and presence, and directly tending to interrupt the court's proceedings or impair the respect due to the court's authority.

(2) Breach of the peace, noise, or other disturbance directly tending to interrupt a court's proceedings.

(3) Persistent refusal to do any of the following:

a. Be sworn as a witness in any court proceeding.

b. Having been sworn in, answer a proper question.

(4) Publishing what the person knows to be a false or grossly inaccurate report of a court's proceedings.

(5) Persistent refusal to serve as a juror.

(6) Intentional, unexcused failure by a juror to attend a trial for which the person has been chosen to serve as a juror.

(7) Intentional failure to appear on the required date, after having been released from custody upon condition that the person will later appear personally in connection with a criminal proceeding.

(8) Knowing disobedience or resistance to the process, injunction, order, or other mandate of a court.

(b) Grading. Criminal contempt is graded as follows:

(1) A Class B misdemeanor, if under paragraph (a)(1) of this section.

(2) A Class A misdemeanor, if under paragraph (a)(2) through (a)(7) of this section.

(3) If under paragraph (a)(8) of this section, graded as follows:

a. A Class 9 felony, if the offense conduct is a violation of or failure to obey a protective order issued by a court of any jurisdiction in the United States or Canada, and the violation or failure meets either of the following conditions:

1. Results in physical injury to any person.

2. Involves the use or threatened use of a deadly weapon.

b. A Class A misdemeanor in all other cases.

(c) Summary punishment for simple contempt. A person who commits the offense under paragraph (a)(1) of this section may be convicted and sentenced, without further criminal proceedings, during or immediately after termination of the proceeding in which the conduct constituting the offense occurs.

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

Deadly weapon; Juror; Physical injury.

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

Chapter 13. Offenses against public health, order, and decency.

Subchapter I. Offenses against public order and safety.

§ 1301. Riot; disorderly conduct; failure to disperse.

(a) Disorderly conduct, offense defined. A person commits an offense if, with intent to cause or create a risk of public inconvenience, annoyance, or alarm, the person does any of the following:

(1) Engages in fighting, or in violent, tumultuous, or threatening behavior.

(2) Makes unreasonable noise or offensively coarse utterance, gesture, or display, or addresses abusive language to any person present.

(3) Disturbs any lawful assembly or meeting of persons without lawful authority.

(4) Creates a hazardous or physically offensive condition that serves no legitimate purpose.

(b) Failure to disperse, offense defined. A person commits an offense if all of the following apply:

(1) The person and at least 1 other person are participating in an offense under subsection (a) of this section.

(2) A peace officer or other public servant engaged in executing or enforcing the law orders the participants and others in the immediate vicinity.

(3) The defendant refuses or knowingly fails to obey the order.

(c) Grading.

(1) Riot. The offense under subsection (a) of this section is a Class 9 felony if the person participates in the offense with 2 or more other persons and any of the following apply:

a. The person acts with intent to commit or facilitate the commission of an offense.

b. The person acts with intent to prevent or coerce official action.

c. The person knows a firearm or other deadly weapon will be used.

(2) Disrupting a funeral. The offense under subsection (a) of this section is Class A misdemeanor if, within 300 feet of a building or other location where a funeral or memorial service is being conducted, or within 1,000 feet of a funeral procession or burial, the person does any of the following:

a. Intentionally disturbs or disrupts a funeral, memorial service, or funeral procession.

b. Directs abusive epithets or makes threatening gestures, knowing that the speech or conduct is likely to provoke a violent reaction.

(3) Failure to disperse. The offense under subsection (b) of this section is a Class C misdemeanor.

(4) Disorderly conduct. In all other cases, the offense under subsection (a) of this section is a Class D misdemeanor.

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

§ 1302. False public alarm.

(a) Offense defined. A person commits an offense if, knowing that a report, warning, or call is false or baseless, the person does any of the following:

(1) Initiates or circulates a report or warning of an impending occurrence of a fire, explosion, crime, catastrophe or other emergency, in any of the following ways:

a. Under circumstances where it is likely to cause evacuation of a building, place of assembly, or facility of public transport, or cause public inconvenience or alarm.

b. To any law enforcement officer, agency, or other public safety official.

(2) Calls or summons any fire-fighting apparatus, ambulance, or rescue truck.

(b) Grading. False public alarm is a Class A misdemeanor.

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

§ 1303. Harassment; stalking.

(a) Harassment, offense defined. A person commits an offense if the person, with intent to harass, annoy, or alarm another, does any of the following:

(1) Makes communications repeatedly, anonymously, or with offensively coarse language.

(2) Engages in alarming or distressing conduct that meets all of the following:

a. Serves no legitimate purpose.

b. Is in a manner likely to provoke a violent or disorderly response, or to cause a reasonable person to suffer fear, alarm, or distress.

(b)(1) Stalking, offense defined. A person commits an offense if the person knowingly follows, monitors, or communicates with another person, or interferes with the activities or the property of another person, and all of the following apply to the person's conduct:

a. Spans 3 or more separate incidents.

b. Is directed at a specific person.

c. Would cause a reasonable person in the victim's circumstances to fear physical injury to any person or suffer substantial mental anguish or distress, regardless of whether that suffering requires medical or other professional treatment or counseling.

(2) Picketing, defense. It is a defense to stalking that the person was engaged in lawful picketing.

(c) Grading.

(1) Harassment is a Class A misdemeanor.

(2) Stalking is graded as follows:

a. A Class 8 felony if any of the following apply:

1. The defendant is 21 years or older and the victim is less than 14 years old.

2. The defendant's conduct violates a court order prohibiting contact with the victim.

b. A Class 9 felony in all other cases.

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

Physical injury.

§ 1304. Public intoxication.

(a) Offense defined. A person commits an offense if all of the following are met:

(1) The person appears in a public place manifestly under the influence of alcohol, narcotics, or any other drug not administered or prescribed by a physician.

(2) The influence is of a degree that the person may be in danger or endanger other persons or property, or annoy persons in the vicinity.

(b) Grading. Public intoxication is a violation.

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

Public place.

§ 1305. Loitering.

(a) Offense defined. A person commits an offense if a person loiters, congregates with others, or prowls, under all of the following circumstances:

(1) In a place, at a time, or in a manner not usual for law-abiding individuals.

(2) Under circumstances that warrant alarm for the safety of persons or property in the vicinity.

(b) Requirement of request to identify and explain. Unless the person's flight or other circumstances make it impracticable, a peace officer shall, before any arrest for an offense under this section, afford the person an opportunity to dispel any alarm that would otherwise be warranted, by requesting identification and an explanation of the defendant's presence and conduct.

(c) Bar to conviction. A person may not be convicted of an offense under this section if the peace officer did not comply with subsection (b) of this section, or if it appears at trial that the person's explanation was true and, if the peace officer had believed the explanation at the time, would have dispelled the alarm.

(d) Victim of human trafficking, defense. It is a defense to prosecution under this section that the person committed the offense as a direct result of being a victim of human trafficking under § 1062 of this title.

(e) Grading. Loitering is a violation.

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

Loiters; Peace officer.

§ 1306. Obstructing public ways.

(a) Offense defined. A person commits an offense if, except as authorized by law, the person does any of the following:

(1) Recklessly renders any public passage unreasonably inconvenient or hazardous to use.

(2) Intentionally enters upon, tampers with, or obstructs a public utility right-of-way.

(b) Picketing, defense. It is a defense to the offense under paragraph (a)(1) of this section that the person was engaged in lawful picketing.

(c) Grading. Obstructing public ways is a Class D misdemeanor.

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

Public passage.

§ 1307. Desecration.

(a) Desecration, offense defined. A person commits an offense if, knowing it will outrage the sensibilities of persons likely to observe or discover the actions, the person intentionally defaces, damages, pollutes, or otherwise physically mistreats any of the following:

(1) A public monument or structure.

(2) A place of worship.

(3) An object of veneration by the public or a substantial segment thereof in a public place.

(4) A burial place.

(b) Grading. Desecration is a Class A misdemeanor.

Subchapter II. Public indecency, obscenity, and cruelty to animals; offenses.

§ 1321. Public indecency.

(a) Public sexual act, offense defined. A person commits an offense if all of the following are met:

(1) The person either:

a. Is in a place that is open to public view.

b. Knows that the person is being viewed by a child less than 16 years old.

(2) The person does either of the following:

a. Performs an act of sexual intercourse or sexual conduct.

b. Exposes the person's sex organs, anus, or breast with the intent to arouse or satisfy the sexual desire of the person or another person.

(b) Non-sexual indecency, offense defined. A person commits an offense if all the following are met:

(1) The person is in a place open to public view.

(2) The person does either of the following:

a. Exposes the person's sex organs, anus, or breast.

b. Urinates or defecates.

(c) Exception. It is not an offense under this section if the person is breast-feeding a child.

(d) Grading. Public indecency is graded as follows:

(1) A Class 9 felony, if under paragraph (a)(1)b. of this section, and the defendant stands in a position of trust, authority, or supervision over the child.

(2) A Class A misdemeanor in all other cases under paragraph (a)(1)b. of this section.

(3) A Class B misdemeanor in all other cases under subsection (a) of this section.

(4) A Class D misdemeanor, if under subsection (b) of this section.

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

Place open to public view; Sexual conduct; Sexual intercourse; Position of trust, authority, or supervision.

§ 1322. Prostitution; patronizing a prostitute.

(a) Offense defined. A person commits an offense if the person offers or accepts a fee for performing any act of sexual contact.

(b) Grading.

(1) Patronizing a victim of human trafficking. If the person patronizes a prostitute that the person knows is a victim of the offense under § 1062, the offense is graded as follows:

a. A Class 6 felony, if the human trafficking victim of the offense under § 1062 of this part is a child.

b. A Class 7 felony in all other cases.

(2) The offense is a Class B misdemeanor in all other cases.

(c) Victims of human trafficking, defense. It is a defense to prosecution under this section that the person committed the offense as a direct result of being a victim of human trafficking under § 1062 of this title.

(d) Screening for sexually transmitted diseases. A person convicted under this section must undergo testing for sexually transmitted diseases, as designated by the Department of Health and Social Services in its rules and regulations. The results of the testing may be released only to the person, the person's spouse, and the court issuing the order for testing.

(e) Definition and defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Child; Sexual contact.

(2) For purposes of this section, an "offer" or "acceptance" may be made to or through a third person not participating in the sexual contact.

§ 1323. Promoting or permitting prostitution.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Knowingly arranges a situation in which another person may engage in prostitution.

(2) Provides premises that the person knows will be used for prostitution.

(3) Accepts or receives anything of value from another person for acquiescing in or supporting prostitution activity.

(b) Exception for prostitutes and patrons. Subsection (a) of this section does not apply to patrons and prostitutes who commit an offense under § 1322 of this title.

(c) Grading. Promoting or permitting prostitution is graded as follows:

(1) A Class 4 felony, if the prostitution involved in the offense includes prostitution of a person less than 16 years old.

(2) A Class 6 felony, if the prostitution involved in the offense includes prostitution of a person less than 18 years old.

(3) A Class 8 felony if the person manages, controls, supervises, or owns a prostitution enterprise involving 2 or more prostitutes.

(4) A Class 9 felony in all other cases.

§ 1324. Dissemination and possession of obscene material and child pornography.

(a) Offenses defined.

(1) Dissemination or creation of child pornography. A person commits an offense if the person knowingly does any of the following:

a. Sells, delivers, provides, publishes, exhibits, or otherwise makes child pornography available to another person.

b. Creates or participates in the creation of child pornography.

(2) Possession of child pornography. A person commits an offense if the person possesses child pornography.

(3) Dissemination of obscene material. A person commits an offense if the person knowingly does any of the following:

a. Sells, delivers, provides, publishes, exhibits, or otherwise makes a representation or embodiment of obscene material available to another person.

b. Presents, directs, or produces an obscene play, dance, performance, or film, or participates directly in the portion that makes it obscene.

(4) Possession of obscene material for distribution. A person commits an offense if the person possesses any obscene material with intent to sell or otherwise commercially disseminate that material.

(5) Sexting among minors.

a. A person commits an offense if all of the following apply:

1. The person disseminates a visual depiction of child pornography to the person's peers.

2. The person and the individuals to whom the person disseminated the visual depiction are all 12 to 18 years old, or 19 years old and enrolled in high school, and are no more than 3 years apart in age.

3. The person or 1 of the individuals who received the visual depiction are depicted in the visual depiction.

4. The person reasonably believed each recipient would have consented to receiving the visual depiction if asked before the dissemination.

b. The dissemination of a visual depiction other than in the circumstances established by paragraph (a)(5)a. of this section produces liability only under § 1345 of this title.

(b) Grading. Dissemination and possession of obscene material and child pornography is graded as follows:

(1) If under paragraph (a)(1) of this section, as follows:

a. A Class 4 felony, if the offense is committed for financial gain.

b. A Class 6 felony in all other cases.

(2) If under paragraph (a)(2) of this section, as follows:

a. A Class 6 felony if the defendant possesses the child pornography with intent that it be sold or otherwise commercially disseminated.

b. a Class 8 felony in all other cases.

(3) If under paragraph (a)(3) of this section, as follows:

a. A Class 8 felony, if the defendant provided obscene material to a child.

b. A Class 9 felony in all other cases.

(4) If under paragraph (a)(4) of this section, a Class 9 felony.

(5) If under paragraph (a)(5)a. of this section, sexting among minors, a Class C misdemeanor.

(c) Business closure. Upon conviction under this section for obscenity or child pornography involving live conduct, the business or establishment that exhibited the conduct shall be closed by an order of the court, for a period of 6 months.

(d) Dissemination or possession for gain, permissive inference. The trier of fact may infer that a defendant who disseminates or possesses obscene material or child pornography for financial gain knowingly disseminates or possesses the material or pornography.

(e) Defenses.

(1) Dissemination of obscene materials in special circumstances, defense. It is a defense to prosecution for an offense under paragraphs (b)(3)b. or (b)(4) of this section that any of the following apply to the dissemination:

a. It was not for financial gain, and was made to a personal associate who was 18 years or older.

b. It was to an institution or individual having scientific or other special justification for possessing the material.

(2) Victims of human trafficking, defense. It is a defense to prosecution under this section that the defendant committed the offense as a direct result of being a victim of human trafficking under § 1062 of this title.

(3) Victims of child pornography, defense. It is a defense to prosecution under paragraph (a)(1)b. of this section for participating in the creation of child pornography that the defendant is a victim of the offense.

(f) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Child; Child pornography; Obscene.

§ 1325. Unauthorized combat event.

(a) Offense defined. A person commits an offense if the person promotes, arranges, advertises, conducts, or participates as a competitor in a combat event that the person knows is not authorized by law.

(b) Grading. Unauthorized combat event is a Class A misdemeanor.

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

§ 1326. Abuse of human remains or associated funerary objects.

(a) Offense defined. A person commits an offense if, except as authorized by law, the person does any of the following:

(1) Treats human remains in a way that would outrage ordinary family sensibilities, while reckless as to the outrageousness of the treatment.

(2) Knowingly acquires, sells, or transports for profit any of the following:

a. Funerary objects associated with interment.

b. Human remains removed from marked or unmarked burials.

(b) Grading. Abuse of human remains or associated funerary objects is graded as follows:

(1) A Class A misdemeanor, if under paragraph (a)(1) of this section.

(2) A Class B misdemeanor, if under paragraph (a)(2)a. of this section.

(3) A Class 9 felony, if under paragraph (a)(2)b. of this section.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Funerary object associated with interment; Human remains; Unmarked burial.

§ 1327. Cruelty to animals.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Subjects an animal to cruelty.

(2) Subjects an animal in the person's custody to cruelty by neglect.

(3) Kills or injures an animal belonging to another person without legal privilege, justification, or consent of the other person.

(4) Knowingly facilitates or promotes animal fighting or baiting.

(b) Exceptions to liability.

(1) Paragraphs (a)(1) and (a)(2) of this section do not apply to accepted veterinary practices and activities conducted for scientific research.

(2) This section does not apply to lawful hunting or trapping of animals.

(c) Grading. Cruelty to animals is graded as follows:

(1) A Class 8 felony, if under paragraph (a)(4) of this section.

(2) A Class 9 felony, if under paragraph (a)(3) of this section and the defendant intentionally kills or causes serious physical injury to the animal.

(3) A Class A misdemeanor in all other cases.

(d) Additional consequences of conviction.

(1) Restricted possession. A person convicted under this section is prohibited from owning or possessing an animal after conviction for the following time periods:

a. 15 years, if convicted under paragraph (c)(1) of this section.

b. 15 years, if convicted under paragraph (c)(2) of this section, excluding commercial animals.

c. 5 years, if convicted under paragraph (c)(3) of this section, excluding commercial animals.

(2) Forfeiture. A person convicted under this section forfeits all of the following:

a. Animals in the person's custody that are victims under this section or owned illegally under § 3035F of Title 16.

b. Equipment, devices, and proceeds involved in any animal fighting or baiting operation.

(3) Mandatory fines. A person convicted under this section must be fined at least 1 of the following:

a. \$5,000 for offenses committed under paragraphs (c)(1) or (c)(2) of this section.

b. \$1,000 for all other offenses.

(4) Counseling. The court may require a defendant convicted under paragraph (a)(4) of this section to attend and participate in an appropriate treatment program, obtain appropriate psychiatric or psychological counseling, or both. The person may be required to bear the costs of the treatment.

(e) Rescue from unsafe motor vehicle.

(1) Justification defense. The conduct of a law enforcement officer, animal control officer, animal cruelty investigator, or firefighter is justified when and to the extent that the conduct is immediately necessary to remove an unattended animal from a standing or parked motor vehicle if all of the following apply:

a. An animal is confined in a vehicle under conditions likely to cause suffering, physical injury, or death.

b. The person uses reasonable means to contact the owner of the animal.

c. The owner cannot be reached, the person leaves written notice on the motor vehicle, containing the person's name and office, and the address of the location where the animal can be claimed.

(2) Mistake as to justification. The justification defense under paragraph (e)(1) of this section is subject to the excuse defense for a mistake as to a justification in § 329 of this title.

(3) Excluded animals. The justification defense under paragraph (e)(1) of this section does not apply to the lawful transportation of horses, cattle, swine, sheep, poultry, or other agricultural animals in motor vehicles designed to transport those animals.

(f) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Commercial animals; Cruelty; Law enforcement officer; Serious physical injury.

Subchapter III. Invasion of privacy offenses.

§ 1341. Unlawful eavesdropping or surveillance.

(a) Offense defined. A person commits an offense if the person, except as authorized by law, knowingly and without consent does any of the following:

(1) Trespasses on real property with intent to subject anyone in a private place to eavesdropping or other surveillance.

(2) Installs in a private place any device for observing, photographing, recording, amplifying, or broadcasting sounds, images, or events occurring in that place.

(3) Installs or uses outside a private place any device for hearing, recording, amplifying, or broadcasting sounds originating in the private place that would not ordinarily be audible or comprehensible outside that place.

(4) Installs a location tracking device in or on a motor vehicle without the consent of the registered owner, lessor, or lessee of the vehicle.

(b) Grading. Unlawful eavesdropping or surveillance is a Class A misdemeanor.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Private place; Motor vehicle; Trespass on real property.

§ 1342. Voyeurism.

(a) Offense defined. A person commits an offense if the person knowingly and without consent photographs, videotapes, or otherwise records the image of another person under any of the following circumstances:

(1) The other person is in the process of getting dressed or undressed.

(2) Under or through the other person's clothes.

(3) The other person is nude, partially nude, or engaging in sexual conduct.

(b) When child's consent not required. Subsection (a) of this section does not apply to a recording that a parent makes of the parent's child, if the parent does not make the recording with intent to provide sexual gratification to any person.

(c) Grading. Voyeurism is a Class 9 felony.

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

Child; Sexual conduct.

§ 1343. Interception of private information.

(a) Offense defined. A person commits an offense if the person, except as authorized by law, does any of the following without consent:

(1) Knowingly intercepts any private electronic, written, or oral communication.

(2) Divulges the contents of a communication that meets any of the following:

a. The person knows was unlawfully intercepted under paragraph (a)(1) of this section.

b. The person learned about in the course of employment with an agency or communications common carrier engaged in transmitting the communication.

(b) Exception. It is not a violation of this section to overhear messages through a regularly installed instrument on a telephone party line, an extension, or any other regularly installed instrument or equipment.

(c) Grading. Interception of private information is a Class A misdemeanor.

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

Contents of a communication; Electronic communication; Intercepts; Private communication.

§ 1344. Unlawful use of information.

(a) Unlawful use or disclosure of information, offense defined. A person commits an offense if the person does any of the following:

(1) Discloses or uses information or a recording that the person knows was obtained in a manner prohibited by § 1341, § 1342, or § 1343 of this title.

(2) Discloses information that is required by law to be kept confidential.

(b) Misuse of computer system information, offense defined. A person commits an offense if the person does any of the following:

(1) Knowingly makes or causes to be made an unauthorized display, use, disclosure, or copy, in any form, of data residing in, communicated by, or produced by a computer system.

(2) Knowingly, and without authorization, alters, deletes, tampers with, damages, destroys, takes, or adds to data intended for use by a computer system.

(c) Misuse of electronic mail, offense defined. A defendant commits an offense if the defendant does any of the following:

(1) Knowingly, and without authorization, distributes or causes to be distributed unsolicited bulk commercial electronic mail to a receiving address or account under the control of any authorized user of a computer system.

(2) Knowingly fails to prevent commercial electronic mail from being sent to any receiving address or account under the control of any authorized user of a computer system after being properly requested to do so.

(d) Grading. Unlawful use of information is graded as follows:

(1) A Class A misdemeanor, if under subsection (a) of this section.

(2) A Class B misdemeanor, if under subsection (b) of this section.

(3) A Class C misdemeanor, if under subsection (c) of this section.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Commercial electronic mail; Computer system; Data; Electronic mail; Originating address or originating account; Receiving address or receiving account.

§ 1345. Unlawful dissemination of personal pornography.

(a) Offense defined. A person commits an offense if the person disseminates a visual depiction of another person under all of the following circumstances:

(1) The visual depiction was not made for commercial purposes.

(2) The visual depiction does any of the following:

a. Depicts the other person engaged in sexual conduct.

b. Reveals the other person's sex organs, breast, or anus.

(3) The person disseminates the visual depiction knowing that the person does not have the consent of the other person.

(b) Grading. Unlawful dissemination of personal property is a Class A misdemeanor.

(c) Person's participation, consent to possession immaterial. In a prosecution under this section, it is immaterial that the person does any of the following:

(1) Appears in the visual depiction with the victim.

(2) Possessed the visual depiction lawfully before its dissemination.

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

Sexual conduct.

§ 1346. Unlawful access to information.

(a) Offense defined. A person commits an offense if, knowing the person is not authorized to do so, the person accesses, or causes to be accessed, information, electronic programs, or data.

(b) Grading. Unlawful access to information is a Class C misdemeanor.

Subchapter IV. Offenses against children and the family.

§ 1361. Murder of a child by abuse or neglect.

(a) Offense defined. A person commits murder of a child by abuse or neglect when the person causes the death of a child, and both of the following apply:

(1) At the time of the offense, either of the following applies:

a. The person had assumed responsibility, whether temporary or permanent, for the care or supervision of the child.

b. The person had access to the child by past or present invitation, permission, or acquiescence of another person who had assumed responsibility as provided in paragraph (a)(1)a. of this section.

(2) Either of the following are true:

a. Death is caused through an act of abuse or neglect.

b. The person has engaged in a previous pattern of abuse or neglect of the victim.

(b) Grading. Murder of a child by abuse or neglect is graded as follows:

(1) A Class 5 felony if death is recklessly caused.

(2) A Class 6 felony if death is caused with criminal negligence.

(c) Limitation on indictment. A person may not be indicted nor may the State file an information or petition, based upon the same conduct and victim, with both an offense under this section and an offense under Subchapter I of Chapter 10 of this Title.

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

Abuse; Neglect; Previous pattern of abuse or neglect.

§ 1362. Continuous sexual abuse of a child.

(a) Offense defined. A person commits continuous sexual abuse of a child if all of the following apply:

(1) Three or more times, the person intentionally engages in conduct with a child constituting an offense under the following provisions:

a. Subchapter III of this Chapter.

b. § 1324 of this title.

(2) The offenses under paragraph (a)(1) of this section occur over a period of time longer than 3 months.

(3) The person resides in the same home with the child or has recurring access to the child.

(b) Grading. Continuous sexual abuse of a child is a Class 5 felony.

(c) Limitation on indictment. A person may not be indicted nor may the State file an information or petition based upon the same conduct and victim, with both an offense under this section and an offense under Subchapter III of Chapter 10 of this Title.

(d) Jury agreement. To convict a defendant of an offense under this section, the trier of fact, if a jury, need unanimously agree only that the requisite number of acts occurred, not on which acts constitute the requisite number.

§ 1363. Child abuse.

(a) Offense defined. A person commits child abuse when the person recklessly causes physical injury to a child, and all of the following apply:

(1) At the time of the offense, either of the following applies:

a. The person had assumed responsibility, whether temporary or permanent, for the care or supervision of the child.

b. The person had access to the child by past or present invitation, permission, or acquiescence of another person who had assumed responsibility as provided under paragraph (a)(1)a. of this section.

(2) Either of the following are true:

a. Physical injury is caused through an act of abuse or neglect.

b. The person has engaged in a previous pattern of abuse or neglect of the victim.

(b) Grading. Child abuse is graded as follows:

(1) A Class 6 felony, if the injury caused is serious physical injury.

(2) A Class 9 felony, if any of the following apply:

a. The victim is less than 4 years of age.

b. The victim has an impairment in his or her intellectual or physical capacity, as evidenced by a discernible inability to function within the normal range of performance and behavior with regard to age, development, and environment.

c. Physical injury is caused by means of a deadly weapon or dangerous instrument.

(3) A Class A misdemeanor in all other cases.

(c) Limitation on indictment. A person may not be indicted nor may the State file an information or petition, based upon the same conduct and victim, with both an offense under this section and an offense under Subchapter II of Chapter 10 of this Title.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Abuse; Dangerous instrument; Deadly weapon; Neglect; Physical injury; Previous pattern of abuse or neglect; Serious physical injury.

§ 1364. Endangering the welfare of a child.

(a) Offense defined. A person commits endangering the welfare of a child if any of the following apply:

(1) Being a parent, guardian, or any other person who has assumed responsibility for the care or supervision of a child, the person does either of the following:

a. Recklessly creates a substantial risk of injury to the physical or mental welfare of the child.

b. Recklessly engages in or fails to engage in any conduct, including failing to report a missing child, with the result that the child becomes a neglected or abused child.

(2) The person knowingly encourages, aids, or conspires with the child to run away from the home of the child's parents, guardian, or custodian.

(3) The person harbors a child the person knows has run away from home.

(4) All of the following apply:

a. The person commits an offense, an element or grade provision of which includes causing, risking, or threatening physical injury, engaging in sexual conduct, or use or possession of a deadly weapon.

b. The person knows that the offense under paragraph (a)(5)a. of this section was witnessed, either by sight or sound, by a child.

c. Either of the following is a member of the child witness' family:

1. The person.

2. The victim of the offense under paragraph (a)(5)a. of this section.

(5) The person does both of the following:

a. Operates a vehicle, airplane, or vessel while chemically impaired, in violation of § 1025 of this title.

b. Knowingly permits a child to be a passenger in or on the vehicle, airplane, or vessel.

(6) The person commits an offense contained in Subchapter II of Chapter 14 of this title in a dwelling, knowing that a child is present in the dwelling at the time of the offense.

(7) The person provides or permits a child to consume or inhale any Schedule I, II, III, IV, or V substance not prescribed to the child by a physician.

(b) Grading. Endangering the welfare of a child is graded as follows:

(1) A Class 7 felony, if the child dies while a victim of the offense.

(2) A Class 9 felony, if either of the following apply:

a. The child suffers serious physical injury while a victim of the offense.

b. The child, while a victim of the offense, also becomes the victim of an offense under Subchapter III of this Chapter.

(3) A Class A misdemeanor in all other cases.

(c) Treatment of a child by prayer: defense. In a prosecution under subsection (b)(3) of this section that is based upon an alleged failure or refusal to provide proper medical care or treatment to an ill child, it is a defense that all of the following apply:

(1) The person is a member or adherent of an organized church or religious group, the tenets of which prescribe prayer as the principal treatment for illness.

(2) The person treated or caused the ill child to be treated in accordance with those tenets.

(d) Limitation on indictment. A person may not be indicted nor may the State file an information or petition, based upon the same conduct and victim, with both an offense under this section and an offense under this Chapter 10 of this Title.

(e) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Chemically impaired; Child; Physical injury; Schedule I; Schedule II; Schedule III; Schedule IV; Schedule V; Serious physical injury.

(2) “Family” has the meaning given in § 901(12).

§ 1365. Incest.

(a) Offense defined. A person commits an offense if the person engages in sexual intercourse or oral or object penetration with an individual to whom the person knows the person is related by blood, marriage, or adoption, and stands in at least 1 of the following relationships, regardless of whether the person is the elder or younger party:

(1) Parent and child.

(2) Grandparent and grandchild.

(3) Sibling.

(4) Aunt or uncle and niece or nephew.

(b) Grading. Incest is a Class A misdemeanor.

(c) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Oral or object penetration; Sexual intercourse.

§ 1366. Bigamy.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Already having a spouse, marries another person.

(2) Being previously unmarried marries another person when the person has knowledge of circumstances that render the other person guilty of an offense under paragraph (a)(1) of this section.

(b) Absent spouse, defense. It is a defense to prosecution under this section that the prior spouse under paragraph (a)(1) of this section had been living apart from the person for a period of at least 7 consecutive years, during which time the person did not know the prior spouse to be alive.

(c) Grade. Bigamy is a Class 9 felony.

§ 1367. Child abandonment.

(a) Offense defined. A person commits an offense if the person is a parent, guardian, or other person legally charged with the care or custody of a child and leaves the child in any place, intending to permanently end the person's care or custody of the child.

(b) Abandonment of newborn at hospital, defense. It is a defense to prosecution under this section that the person surrendered care or custody of a baby, no more than 14 days old, under all of the following circumstances:

(1) Inside a hospital's emergency department.

(2) Directly to a hospital staff member.

(3) The baby was alive and unharmed at the time of surrender.

(c) Grading. Child abandonment is graded as follows:

(1) A Class 9 felony, if the child abandoned is less than 14 years old.

(2) A Class A misdemeanor, if the child abandoned is 14 years or older.

§ 1368. Interference with custody.

(a) Offense defined. A person commits an offense if, knowing that the person has no legal right to do so, the person takes or entices from another person's lawful custodian any of the following:

(1) A child who is less than 16 years old, under all of the following circumstances:

a. Intending to hold the child permanently or for a prolonged period.

b. The defendant is a relative of the child.

(2) A person entrusted by authority of law to the custody of another person or an institution.

(b) Grading. Interference with custody is graded as follows:

(1) A Class 9 felony, if under paragraph (a)(1) of this section and the person removes the child from this State.

(2) A Class A misdemeanor in all other cases.

§ 1369. Contributing to the delinquency of a minor.

(a) Offense defined. A person commits an offense if either of the following are true:

(1) Both of the following apply:

a. The person acts or fails to act in any way that the person knowingly causes a child to commit an offense under this part.

b. The person is at least 4 years older than the child.

(2) The person permits an individual the person knows to be a child to enter or remain in a place where any of the following activity is maintained or conducted:

a. Offenses contained in Subchapter II of Chapter 14 of this title.

b. Sexual conduct that constitutes an offense under this title.

c. Gambling that constitutes an offense under Subchapter V of Chapter 13 of this title.

d. Service of alcoholic beverages (unless the child is accompanied by a parent or guardian), and

both of the following apply:

1. The place is a business.

2. The person is the proprietor of the place.

(b) Grading. Contributing to the delinquency of a minor is graded as follows:

(1) A Class A misdemeanor, if under paragraph (a)(1) of this section.

(2) A Class B misdemeanor, if under paragraph (a)(2) of this section.

(c) Limitation on indictment. A person may not be indicted nor may the State file an information or petition, based upon the same conduct and victim, with both an offense under this section and an offense under Chapter 10 of this Title.

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

Child; Sexual conduct.

§ 1370. Persistent non-support.

(a) Offense defined. A person commits an offense if the person does any of the following:

(1) Fails to meet a court or administrative order of support for a period of at least 4 months.

(2) Refuses to provide food, clothing, medical care, or shelter for the person's dependent child, knowing that the dependent child is in need of such support, regardless of whether the dependent child is also receiving support from other sources.

(b) Grading. Persistent non-support is graded as follows:

(1) A Class 9 felony, if under paragraph (a)(1) of this section and any of the following apply:

a. The person has not made full and timely payment for a period of at least 8 months.

b. The person's support obligation is \$10,000 or more in arrears.

(2) A Class A misdemeanor in all other cases.

(3) A Class B misdemeanor, if under paragraph (a)(2) of this section.

(c) Fines applied to support child. Any money received in payment of a fine upon conviction under paragraph (a)(1) of this section must be applied in accordance with the support order. The court, in its discretion, may order that any money received in payment of a fine imposed upon conviction under paragraph (a)(2) of this section be paid for the support of the child entitled to it. Funds received and distributed under this subsection for either offense do not satisfy the fine owed to the court.

(d) Defenses.

(1) Full payment of obligation. In a prosecution under this section, it is a defense that the person has fully complied with the support order that formed the basis of the charged offense.

(2) Inability to pay. In a prosecution under this section, it is a defense that the person did not have the financial resources to pay or provide necessary support. But, the person's inability to pay must be the result of circumstances over which the person had no control, such as unemployment or underemployment that persist despite the person's diligent pursuit of reasonable opportunities to earn income.

(e) Evidentiary provisions.

(1) Sufficient evidence. Absent evidence to the contrary, payment records maintained by an administrative agency or court through which a support order is payable are sufficient evidence of the support paid or unpaid, and of the amount of any remaining support obligation.

(2) No spousal communication privilege. In a prosecution under this section, there is no privilege against disclosure of confidential communications between spouses, and either spouse is competent to testify against the other as to any relevant matter.

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

Subchapter V. Gambling offenses.

§ 1381. Unlawful gambling and betting practices.

(a) Unlawful gambling or betting, offense defined. A person commits an offense if, except as authorized by law, the person does any of the following:

(1) Sells a lottery ticket, except to raise funds for a charitable purpose.

(2) Receives or records a bet upon the result of a trial or contest.

(3) Bets upon the result of a trial or contest on behalf of another person.

(4) Uses a private wire to disseminate or receive information in furtherance of gambling.

(5) Possesses, buys, sells, or manages what the person knows to be a slot machine or other gambling device that is less than 25 years old.

(6) Benefits financially from investment, participation, or acquiescence in conduct, with knowledge of circumstances that render the conduct a violation of this subsection.

(7) Wagers money or property using dice.

(b) Providing premises for gambling, offense defined. A person commits an offense if, except as authorized by law, the person provides or maintains premises that the person knows will be used for any of the following purposes:

(1) Gambling activity.

(2) To violate any other provision of this section.

(c) Exception, operations controlled by the State. It is not a violation of this section to engage in conduct concerning gambling or lottery operations that are under the State's control.

(d) Grading.

(1) Unlawful gambling or betting is graded as follows:

a. If under paragraphs (a)(1) through (a)(6) of this section, as follows:

1. A Class 9 felony, if the trial or contest involved is animal fighting or baiting.

2. A Class A misdemeanor in all other cases.

b. A violation, if under paragraph (a)(7) of this section.

(2) Providing premises for gambling is a Class D misdemeanor.

(e) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Gambling device; Lottery ticket; Private wire; Trial or contest.

§ 1382. Cheating at games and contests.

(a) Cheating, offense defined. A person commits an offense if, for a game upon which a lawful wager may be placed, the person does any of the following:

(1) Alters the element of chance, method of selection, or criterion that determines any of the following:

a. The result of a game.

b. The amount of frequency of payment in a game, including intentionally taking advantage of a malfunctioning machine.

c. The value of a wagering instrument.

d. The value of a wagering credit.

(2) Uses a device, without the written consent of the Director of the State Lottery Office, that is intended to assist a person in doing any of the following:

a. Projecting the outcome of a table game or video lottery machine.

b. Keeping track of the cards played.

c. Analyzing the probability of the occurrence of an event relating to the game.

d. Analyzing the strategy for playing or wagering to be used in the game.

(b) Contest rigging, offense defined. A person commits an offense if the person does any of the following:

(1) Offers, confers, solicits, or accepts anything of value, with intent to influence the outcome of a trial or contest, or any game or event on which a wager may be placed.

(2) Places, cancels, or increases or decreases the amount of a wager on the basis of non-public information that a contest has been rigged, as provided in paragraph (b)(1) of this section.

(c) Unfair wagering, offense defined. A person commits an offense if the person places, cancels, or increases or decreases the amount of a wager on the basis of information regarding the outcome of a table game and that information is not available to other players.

(d) Grading.

(1) Cheating is a Class A misdemeanor.

(2) Contest rigging is a Class 9 felony.

(3) Unfair wagering is graded as follows:

a. A Class 6 felony, if the amount gained or loss avoided is \$1,000,000 or more.

b. A Class 7 felony, if the amount gained or loss avoided is \$100,000 or more.

c. A Class 8 felony, if the amount gained or loss avoided is \$25,000 or more.

d. A Class 9 felony, if the amount gained or loss avoided is \$1,500 or more.

e. A Class A misdemeanor, if the amount gained or loss avoided is \$1,000 or more.

f. A Class B misdemeanor, if the amount gained or loss avoided is \$100 or more.

g. A Class C misdemeanor, if the amount gained or loss avoided is less than \$100 and the person has been convicted of a prior offense of a similar nature.

h. A violation in all other cases.

i. Aggregation. When an offense under subsection (c) of this section is committed in a single scheme or continuous course of conduct, whether by 1 or several persons, the conduct may be considered a single offense and the amounts involved may be aggregated for grading purposes.

(e) Forfeiture. A person convicted under this section forfeits to the State any of the following that apply:

(1) A device, slug, or other material used in the commission of the offense.

(2) A material intended to be used to manufacture devices for cheating.

(3) A vehicle used to store the items described in paragraphs (e)(1) and (e)(2) of this section.

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

Table game; Video lottery machine.

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

Chapter 14. Crime control offenses.

Subchapter I. Offenses involving firearms and other deadly weapons.

§ 1401. Possessing a firearm or deadly weapon during commission of an offense; supplying a firearm for felonious possession.

(a) Possession during a felony, offense defined. A person commits an offense if, during the commission of a felony, the person possesses any of the following:

(1) A firearm.

(2) A deadly weapon.

(b) Supplying a firearm for use during certain offenses, offense defined. A person commits an offense if the person sells, gives, or otherwise supplies a firearm to another person knowing that the other person intends, while in possession of the firearm, to commit any of the following:

(1) A felony.

(2) A Class A misdemeanor.

(3) An offense under Chapter 14, Subchapter II of Chapter 14 of this title.

(c) Grading.

(1) Possession during a felony is graded as follows:

- a. A Class 4 felony, if under paragraph (a)(1) of this section.
- b. A Class 5 felony, if under paragraph (a)(2) of this section.

(2) Supplying a firearm for use during certain offenses is a Class 8 felony.

(d) Conviction for underlying felony, limitation. A defendant may not be convicted of an offense under subsection (a) of this section unless the defendant is convicted of the felony during which the defendant was alleged to have possessed the firearm or deadly weapon.

(e) Use or intent not required. A defendant may be convicted of an offense under subsection (a) of this section regardless of whether the firearm or deadly weapon is used or intended to be used to further the commission of the felony.

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

Deadly weapon; Firearm.

§ 1402. Dealing in unlawful weapons.

(a) Trafficking a firearm with an altered serial number, offense defined. A person commits an offense if the person transports, ships, or possesses a firearm manufactured after 1972, knowing that the importer's or manufacturer's serial number has been removed or altered in a manner that disguises or conceals the identity or origin of the firearm.

(b) Dealing in unlawful weapons, offense defined. A person commits an offense if, except as authorized by law, the person sells, buys, or possesses any of the following:

(1) A destructive weapon.

(2) A knife that meets any of the following:

- a. Is not detectable by a metal detector or magnetometer set at standard calibration.
- b. Has a blade that is any of the following:
 - 1. Released by a spring mechanism or gravity.
 - 2. Supported by a knuckle ring grip handle.

(3) A sharp, metal throwing star.

(4) A weapon that, by compressed air or spring, projects a pellet, slug, or bullet larger than a B.B. shot, or their pellets, slugs, or bullets.

(5) A pellet, slug, or bullet intended to be used by a weapon described in paragraph (b)(4) of this section.

(6) A bump stock or trigger crank device.

(c) Exception, supplying weapons to special parties. This section does not apply to weapons provided to any of the following:

(1) Law enforcement or military entities.

(2) Historical societies, museums, and institutional collections that are open to the public, if the weapons are stored safely and secured from unauthorized handling.

(d) Grading.

(1) Trafficking in a firearm with an altered serial number is a Class 7 felony.

(2) Dealing in unlawful weapons is graded as follows:

a. A Class 8 felony, if under paragraph (b)(1) of this section.

b. A Class 9 felony, if under paragraph (b)(2)a. of this section.

c. A Class B misdemeanor in all other cases.

(3) Adjustment for commission in a Safe School and Recreation Zone. The grade of an offense under this section may be adjusted upward as provided in § 1408 of this title.

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

Bump stock; Destructive weapon; Firearm; Trigger crank device.

§ 1403. Carrying a concealed deadly weapon or dangerous instrument.

(a) Offense defined. A person commits an offense if, except as authorized by law, the person possesses a weapon or instrument that meets all of the following:

(1) Is any of the following:

a. A deadly weapon.

b. A dangerous instrument, other than a disabling chemical spray.

(2) Is concealed.

(3) Is available and accessible for the person's immediate use.

(b) Grading. Carrying a concealed deadly weapon or dangerous instrument is graded as follows:

(1) If under paragraph (a)(1)a., as follows:

a. A Class 7 felony, if the deadly weapon is a firearm.

b. A Class 9 felony in all other cases.

(2) A Class A misdemeanor, if under paragraph (a)(1)b. of this section.

(3) Adjustment for commission in a Safe School and Recreation Zone. The grade of an offense under this section may be adjusted upward as provided in § 1408 of this title.

(c) Defense. It is a defense to prosecution under paragraph (a)(1)b. of this section that the person did all of the following:

(1) Not intend to cause or threaten physical injury to another person.

(2) Carried the concealed dangerous instrument for a specific lawful purpose.

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

Dangerous instrument; Deadly weapon; Physical injury.

§ 1404. Possessing or purchasing deadly weapons by persons prohibited.

(a) Offense defined. A person commits an offense if the person possesses, purchases, owns, or controls what the person knows to be a deadly weapon or ammunition for a firearm and any of the following apply to the person:

(1) Was previously convicted of any of the following:

a. A felony.

b. A crime involving violence that resulted in physical injury.

c. A misdemeanor offense under subsections 1422(a) or (b) of this title.

d. A misdemeanor domestic violence offense, meaning an offense that meets all of the following:

1. Involves threats, endangerment, physical injury, sexual contact, physical contact of an offensive or alarming nature, fear of imminent physical injury, or interference with custody.

2. The person was any of the following: a member of the victim's family; the victim's former spouse; a person with whom the victim either had a substantive dating relationship or cohabited at the time of, or within 3 years prior to, the offense; or a person with whom the victim has a child in common.

(2) Any of the following, unless the person can demonstrate that the person is no longer prohibited under 9904(h) of this title:

a. Has been involuntarily committed for a mental condition under Chapter 50 of Title 16.

b. For a crime of violence, has been found not guilty by reason of insanity or guilty but mentally ill, even if the person is a juvenile.

c. For a crime of violence, has been found mentally incompetent to stand trial, even if the person is a juvenile, unless there has been a subsequent finding that the person has become competent.

(3) Was adjudicated delinquent as a juvenile for conduct that would constitute a felony if committed by an adult. This prohibition applies only until the defendant is 25 years old.

(4) Is a child, and all of the following apply:

a. The deadly weapon is a handgun.

b. The person intends to use the handgun for an activity other than lawful hunting, instruction, sporting, or recreational activity while under the supervision of an adult.

(5) Is subject to a protection from abuse order, if the order is not any of the following:

a. An ex parte order.

b. A contested order issued solely upon § 1041(1)d., § 1041(1)e., or § 1041(1)h. of Title 10.

(6) Is a fugitive from justice and knows the person is alleged to have committed a felony.

(7) Is subject to a lethal violence protection order, issued under § 7704 of Title 10.

(8) Is the subject of an order of relinquishment issued under § 9907 of this title.

(b) Limitation on length of prohibition. Any person prohibited under subsection (a) of this section solely as the result of a prior misdemeanor conviction shall only be prohibited for 5 years following the date of conviction.

(c) Grading. Possessing or purchasing deadly weapons by persons prohibited is graded as follows:

(1) A Class 5 felony, if all of the following apply:

a. The offense conduct is under paragraph (a)(1)a. of this section.

b. The defendant was previously convicted of a felony for which an element of the offense or grade provision is defined to include causing physical injury, engaging in sexual conduct, or use of a deadly weapon.

c. The unlawfully possessed item is a destructive weapon or firearm.

(2) A Class 7 felony, if under paragraphs (a)(1) through (a)(6) of this section and the unlawfully possessed item is a destructive weapon, firearm, or ammunition for a firearm.

(3) A Class 9 felony, if paragraphs (c)(1) and (c)(2) of this section do not apply.

(4) Adjustment for commission in a Safe School and Recreation Zone. The grade of an offense under this section may be adjusted upward as provided in § 1408 of this title.

(d) Seizure and disposal.

(1) Law enforcement may seize and dispose of deadly weapons or ammunition possessed in violation of subsection (a) of this section, as provided in § 2311 of this title.

(2) Exception. Paragraph (d)(1) does not apply to an antique firearm that has not been restored to a firing condition and for which ammunition is no longer manufactured in the United States. As used in this section, “antique firearm” means a firearm manufactured before 1898.

(3) Burden of proving exception. The defendant who is a prohibited person has the burden of proving a firearm is an antique firearm subject to the exception under paragraph (d)(2) of this section.

(e) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Child; Deadly weapon; Firearm; Handgun; Physical injury; Sexual contact.

(2) “Family” has the meaning given in § 901(12) of Title 10.

(3) “Substantive dating relationship” has the meaning given in § 1041(2)b. of Title 10.

§ 1405. Providing weapons to disqualified persons.

(a) Providing deadly weapons to disqualified persons, offense defined. A person commits an offense if the person sells, gives, or transfers a deadly weapon or ammunition, or buys or obtains a deadly weapon or ammunition on behalf of a person the person knows to be any of the following:

(1) A person prohibited from ownership or possession under § 1404(a) of this title.

(2) Under the lawful age to purchase, own, or possess a deadly weapon.

(3) Intoxicated.

(4) Otherwise legally disqualified from purchasing, owning, or possessing the deadly weapon in this

State.

(b) Providing weapons to children without consent, offense defined. A person commits an offense if the person transfers to or obtains on behalf of a child who is less than 16 years old a B.B., air, or spear gun, or ammunition for those weapons, without the consent of the child’s parent or guardian.

(c) Grading.

(1) Providing weapons to disqualified persons is graded as follows:

a. A Class 9 felony, if under paragraph (a)(1) of this section.

b. If under paragraph (a)(2) of this section, as follows:

1. A Class 9 felony, if the recipient is a child, the weapon is a firearm, and the firearm is transferred without the consent of the child's parent or guardian.

2. A Class B misdemeanor, if the recipient is a person less than 21 years old and the weapon is a deadly weapon designed for the defense of one's person.

c. A Class B misdemeanor, if under paragraph (a)(3) of this section.

d. If under paragraph (a)(4) of this section, as follows:

1. A Class 9 felony, if the weapon is a firearm.

2. A Class B misdemeanor in all other cases.

(2) Providing weapons to children without consent is a Class C misdemeanor.

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

Child; Deadly weapon; Deadly weapon designed for the defense of one's person; Firearm.

§ 1406. Possessing a firearm while under the influence of drugs or alcohol.

(a) Offense defined. A person commits an offense if the person possesses a firearm in a public place while the person is chemically impaired.

(b) Inoperable firearm, defense. It is a defense to prosecution under this section that any of the following apply:

(1) The firearm was disassembled or stored in a manner to prevent its immediate use.

(2) The person did not possess ammunition for the firearm.

(c) Grading. Possessing a firearm while under the influence of drugs or alcohol is a Class A misdemeanor.

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

Chemically impaired; Firearm; Public place.

§ 1407. Offenses related to background checks for firearm sales.

(a) Sale without conducting required check, offense defined. A person commits an offense if the person sells or transfers a firearm to another person without first performing a criminal history background check, as required by §§ 9904 and 9905 of this title, to determine whether the sale or transfer would violate state or federal law.

(b) Misuse of criminal records, offense defined. A person commits an offense if all of the following apply:

(1) The person is a licensed dealer, importer, or manufacturer of firearms.

(2) The person requests a criminal history record check from the Federal Bureau of Investigation, National Instant Criminal Background Check System with intent to use the information for a purpose other than compliance with subsection (a) of this section and §§ 9904 and 9905 of this title.

(c) Grading. Sale without conducting required check and misuse of criminal records are each a Class A misdemeanor.

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

§ 1408. Grade adjustment for offenses committed in a Safe School and Recreation Zone.

(a) Adjustment defined. The grade of an offense under § 1402, § 1403, or § 1404 of this section is increased by 1 grade, unless the weapon was possessed for the purpose of engaging in any school-authorized activity, if both of the following are met:

(1) The weapon was possessed in one of the following circumstances:

a. In a motor vehicle, or in, on, or within 1,000 feet of a structure or real property, that is owned, operated, leased, or rented by a public or private school, including a vocational-technical school or a college or university.

b. In or on any structure that is utilized as a recreation center, athletic field, or sports stadium.

(2) The unadjusted grade of the offense is a Class 8 felony or lower.

(b) Private residence, defense. It is a defense to application of the grade adjustment in subsection (a) of this section that all of the following apply:

(1) The prohibited conduct took place entirely within a private residence.

(2) No child was present in the residence at any time during the commission of the offense.

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

Subchapter II. Drug and related offenses.

§ 1421. Definitions. Additional definitions relevant to this chapter are in § 4701 of Title 16.

§ 1422. Possession of controlled and noncontrolled substances.

(a) Possession of a controlled substance, offense defined. A person commits an offense if, except as authorized by law or as provided in subsection (b) of this section, the person knowingly possesses, uses, or consumes any of the following:

(1) A controlled substance.

(2) A counterfeit controlled substance.

(b) Possession of marijuana, offense defined. A person commits an offense if, except as authorized by law, the person knowingly possesses, uses, or consumes any of the following:

(1) If the person is 18 years or older, either more than 1 ounce of leaf marijuana or any quantity of marijuana other than leaf marijuana.

(2) If the person is less than 18 years old, any quantity of marijuana.

(c) Unlawful possession of noncontrolled prescription drugs, offense defined. A person commits an offense if the person knowingly possesses for personal use, uses, or consumes a drug that is not a controlled substance, but for which a prescription is required by law, without an authorized prescription.

(d) Grading.

(1) Possession of a controlled substance is graded as follows:

a. A Class 6 felony, if the offense involves a controlled substance in a Tier 3 quantity.

b. A Class 8 felony, if the offense involves a controlled substance in a Tier 2 quantity.

c. A Class 9 felony, if the offense involves a controlled substance in a Tier 1 quantity.

d. A Class B misdemeanor in all other cases.

(2) Possession of marijuana is graded as follows:

a. A Class C misdemeanor, if under paragraph (b)(1) of this section.

b. A Class D misdemeanor, if under paragraph (b)(2) of this section.

(3) Unlawful possession of a noncontrolled prescription drug is a Class D misdemeanor.

(4) Grade adjustment, protected school zone. The grade of the offense under paragraphs (d)(1)a. through (d)(1)c. is adjusted upward 1 grade if the offense was committed on, in, or within 300 feet of a structure or real property that is owned, operated, leased, or rented by a public or private kindergarten, elementary, secondary, or vocational-technical school. This grade adjustment does not apply to offenses committed in private places, as the term is defined in § 103 of this title.

(5) Knowledge of weight or quantity not an element. The defendant's culpability as to the precise weight or quantity of a substance is not a required element that the State must prove to determine the grade of an offense under subsection (d) of this section.

(e) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Authorized prescription; Controlled substance; Leaf marijuana; Private place; Tier 1; Tier 2; Tier 3.

(2) The following terms used in this section have the meaning given in § 4701 of Title 16: Counterfeit controlled substance; Prescription drug.

(3) "Marijuana" has the meaning given in § 4714 of Title 16.

§ 1423. Manufacture or delivery of controlled or noncontrolled substances.

(a) Manufacture or delivery of a controlled substance, offense defined. A person commits an offense if, except as authorized by law, the person manufactures, delivers, or possesses with intent to deliver to another person any of the following:

(1) A controlled substance.

(2) A counterfeit or purported controlled substance.

(b) Unlawful delivery of noncontrolled prescription drugs, offense defined. A person commits an offense if, except as authorized by law, the person knowingly delivers or possesses with intent to deliver to another person a drug that is not a controlled substance but for which a prescription is required by law.

(c) Grading.

(1) Manufacture or delivery of a controlled substance is graded as follows:

a. The manufacture or delivery of a controlled substance is 1 grade higher if the offense conduct is manufacturing or delivery than it would be for the same amount of the same substance if the offense conduct was possession with intent to deliver under paragraph (c)(1)b. of this section.

b. If the offense conduct is possession with intent to deliver, the following grading applies:

1. A Class 6 felony, if the offense involves a controlled substance in a Tier 3 quantity.

2. A Class 7 felony, if the offense involves a controlled substance in a Tier 2 quantity.

3. A Class 8 felony, if the offense involves a controlled substance in a Tier 1 quantity or less.

4. A Class 9 felony in all other cases.

(2) Unlawful delivery of a noncontrolled prescription drug is graded as follows:

a. A Class A misdemeanor, if the offense conduct was delivery.

b. A Class B misdemeanor, if the offense conduct was possession with intent to deliver to another person.

(3) Grade adjustment, protected school zone. The grade of an offense under this section is adjusted upward 1 grade if the offense was committed on, in, or within 300 feet of a structure or real property that is owned, operated, leased, or rented by a public or private kindergarten, elementary, secondary, or vocational-technical school. This grade adjustment does not apply to offenses committed in private places, as the term is defined in § 103 of this title.

(4) Knowledge of weight or quantity not an element. The person's culpability as to the precise weight or quantity of a substance is not a required element that the State must prove to determine the grade of an offense under subsection (c) of this section.

(d) Valid prescription within household, defense. It is a defense to prosecution under subsection (b) of this section that all of the following apply:

(1) The prescription drug was possessed by the person while transporting the drug to a member of the person's household who had a valid prescription for the drug.

(2) The prescription drug was in any of the following:

a. The original container in which it was dispensed or packaged.

b. A pillbox or other daily pill container.

(e) Remediation and cleanup costs. Any sentence for an offense under subsection (a) of this section for offense conduct involving manufacturing must include restitution for all reasonable costs, if any, associated with any of the following:

(1) Remediation of the site of manufacture.

(2) Cleanup of any substances, materials, or hazardous waste.

(3) Cleanup of any other site resulting from the manufacturing operation, including disposal of substances or materials.

(f) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Controlled substance; Deliver or delivery; Tier 1; Tier 2; Tier 3.

(2) The following terms used in this section have the meaning given in § 4701 of Title 16: Counterfeit controlled substance; Prescription drug; Purported controlled substance.

§ 1424. Drug paraphernalia offenses.

(a) Use of drug paraphernalia, offense defined. A person commits an offense if, except as authorized by law or provided in § 4774(b) of Title 16, the person uses or possesses with intent to use drug paraphernalia.

(b) Manufacture and sale of drug paraphernalia, offense defined. A person commits an offense if, except as authorized by law, the person does all of the following:

(1) Delivers, conveys, sells, or converts drug paraphernalia or possesses or manufactures drug paraphernalia with intent to deliver it.

(2) Is reckless as to whether it will be used as drug paraphernalia in violation of subsection (a) of this section.

(c) Advertising drug paraphernalia, offense defined. A person commits an offense if the person places an advertisement in a publication, being reckless as to whether the advertisement will promote the sale of drug paraphernalia.

(d) Paraphernalia for use of marijuana, limit on multiple charges. A person charged under § 1422(b) of this title may not also be charged under subsection (a) of this section for possession of drug paraphernalia pertaining to the use of marijuana.

(e) Grading. Offenses under this section are graded as follows:

(1) A Class B misdemeanor, if under subsection (a) of this section.

(2) A Class B misdemeanor, if under paragraph (b)(1) of this section and the offense conduct is possession or manufacturing with intent to deliver.

(3) A Class A misdemeanor, if under paragraph (b)(1) of this section and the offense conduct is delivery, conveyance, sale, or conversion.

(4) A Class D misdemeanor, if under subsection (c) of this section.

(5) Grade adjustment. The grade of an offense under subsection (b) of this section is increased by 1 grade if all of the following apply:

a. The defendant is 18 years or older.

b. The defendant sells or delivers drug paraphernalia to another person who is less than 18 years old.

(f) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Deliver or delivers; Drug paraphernalia;

(2) “Marijuana” has the meaning given in § 4714 of Title 16.

§ 1425. Prescription drug registrant offenses.

(a) Unlawfully distributing prescription drugs, offense defined. A person subject to Subchapter III of Chapter 47 of Title 16 commits an offense if, except as authorized by law, the person knowingly distributes or dispenses a controlled substance and any of the following apply:

(1) The drug is on Schedule II, III, or IV, and is distributed or dispensed without a practitioner’s written prescription.

(2) The person is refilling a prescription for a Schedule II substance.

(3) Unless renewed by the practitioner who prescribed it, the person is refilling a prescription for a Schedule III or IV substance that meets any of the following:

a. More than 6 months after the date of the prescription.

b. More than 5 times.

(4) The drug is on Schedule V, and the drug is distributed or dispensed without a legitimate medical purpose.

(5) The distribution or dispensation is not authorized by the person’s registration under § 4732, et seq., of Title 16.

(b) Administering performance enhancing steroids, offense defined. A person commits an offense if the person prescribes or administers to another person an anabolic steroid, with intent to increase human muscle weight or improve human performance in any form of exercise, sport, or game,

(c) Grading. Unlawfully distributing prescription drugs and administering performance enhancing steroid are each a Class 9 felony.

(d) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Controlled substance; Practitioner; Registrant; Schedule I; Schedule II; Schedule III; Schedule IV; Schedule V.

(2) “Anabolic steroid” has the meaning given in § 4718 of Title 16.

(3) “Prescription drug” has the meaning given in § 4701 of Title 16.

§ 1426. Unlawful possession of a prescription form.

(a) Offense defined. A person commits an offense if the person is not a practitioner but possesses a blank prescription form or pad.

(b) Grading. Unlawful possession of a prescription form is a Class 9 felony.

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

§ 1427. Internet pharmacy offenses

(a) Distributing or prescribing drugs through an internet pharmacy, offense defined. A person commits an offense if the person is either of the following:

(1) An internet pharmacy, or its owner or operator, and without an authorized prescription:

- a. Knowingly participates in the sale, distribution, dispensing, or delivery of a prescription drug.
- b. The drug was requested by a prescription drug order.
- c. The drug is to be delivered within the State.

(2) A practitioner who:

- a. Issues a prescription drug order without an authorized prescription.
- b. Through what the practitioner knows to be an internet pharmacy.
- c. The drug is to be delivered within the State.

(b) Patronizing an internet pharmacy, offense defined. A person commits an offense if, without an authorized prescription, the person purchases a prescription drug to be delivered within this State from what the person knows to be an internet pharmacy.

(c) Advertising an internet pharmacy, offense defined. An internet pharmacy, or its owner or operator, commits an offense if it does all of the following:

(1) Advertises, makes a sales presentation, or directly communicates to anyone within the State.

(2) Communicates that a prescription drug may be obtained through a web-based consultation, questionnaire, or medical history form that is submitted to the internet pharmacy through a website.

(d) Exception, Delaware delivery clearly excluded. Subsection (c) of this section does not apply to an internet pharmacy if the internet pharmacy's advertisement or website clearly and conspicuously asserts that it will not deliver or ship prescription drugs to any location within this State.

(e) Grading. Internet pharmacy offenses are graded as follows:

(1) If under subsection (a) of this section, as follows:

- a. A Class 4 felony, if the prescription drug causes the death of its intended user.
- b. A Class 6 felony, if the prescription drug causes serious physical injury to its intended user.
- c. A Class 7 felony in all other cases.

(2) A Class A misdemeanor, if under subsection (b) of this section.

(3) A Class 7 felony, if under subsection (c) of this section.

(f) Defined terms.

(1) The following terms used in this section have the meaning given in § 103 of this title: Authorized prescription; Internet pharmacy; Practitioner; Serious physical injury.

(2) The following terms used in this section have the meaning given in § 4701 of Title 16: Patient-practitioner relationship; Prescription drug.

§ 1428. Immunity for use of inculpatory evidence obtained in life-threatening emergency.

(a) Immunity defined. If law enforcement authorities discover inculpatory evidence only because an offender calls the authorities or official medical personnel to report what the offender reasonably believes to be an overdose or other life-threatening medical emergency, that evidence may not be used against the offender in a criminal prosecution.

(b) Applicable offenses, limitation. The immunity in subsection (a) of this section applies only to evidence of offenses defined in this subchapter.

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

§ 1429. Court having jurisdiction.

(a) Generally. Except as provided in subsection (b) of this section, all of the following apply:

(1) The Superior Court has original and exclusive jurisdiction over violations of this chapter by a person who is 18 years or older.

(2) The Family Court has original and exclusive jurisdiction over violations of this chapter by a person who is less than 18 years old.

(b) Exception. The Court of Common Pleas has original jurisdiction, concurrent with the Superior Court, over violations of the following sections if the person is 18 years or older:

(1) Section 1422(b) of this title.

(2) Section 1422(c) of this title.

(3) Section 1422(d)(1)d. of this title.

(4) Section 1422(d)(3) of this title.

(5) Section 1424 of this title.

Subchapter III. Offenses involving organized crime and racketeering.

§ 1441. Organized crime and racketeering.

(a) Offense defined. A person commits an offense if the person knowingly does any of the following:

(1) Conducts or participates in the affairs of an enterprise through a pattern of racketeering activity or collection of unlawful debt.

(2) Acquires or maintains, directly or indirectly, any interest in or control of any enterprise or property through a pattern of racketeering activity or proceeds derived therefrom.

(3) Uses or invests, directly or indirectly, proceeds derived from a pattern of racketeering activity in the acquisition of any interest in, establishment of, or operation of any enterprise or real property.

(b) Grading. Organized crime and racketeering is a Class 4 felony.

(c) Forfeiture. A person who commits an offense under subsection (a) of this section forfeits to the State any property or other benefit used in the course of, intended for use in the course of, or derived from conduct in violation of subsection (a) of this section, including any of the following that apply:

(1) Property constituting an interest in or means of control or influence over the enterprise involved in the violation of subsection (a) of this section.

(2) Property constituting proceeds derived from conduct in violation of subsection (a) of this section.

(3) Position, office, appointment, tenure, commission, or employment contract that the person acquired or maintained through the person's violation of subsection (a) of this section.

(4) Compensation, right, or benefit derived from an item obtained by violating paragraph (c)(3) of this section.

(d) Discretionary treble fines. Any defendant convicted of an offense in violation of subsection (a) of this section may be sentenced to pay a fine equal to the sum of all of the following:

(1) Up to 3 times the value gained or loss caused by the offense, whichever is greater.

(2) Court costs and reasonably incurred costs of investigation and prosecution.

(e) Renunciation.

(1) Defense for preventing commission of the offense. A defense to prosecution under subsection (a) of this section is available for a voluntary and complete renunciation preventing commission of the offense, under the same terms as the defense in § 506 of this title.

(2) Sentencing mitigation for unsuccessful attempt to prevent commission of the offense. If the defendant does not prevent an offense under paragraph (e)(1) of this section, but the defendant made a substantial effort to prevent commission of the offense, that fact must be taken into account as a mitigating factor during sentencing.

(f) Unconvictable confederate, change in identity no defense. In any prosecution under this section where it is alleged that the defendant acted as a member of a group or informal organization, all of the following apply:

(1) Section 504 of this title applies as to the other members.

(2) It is not a defense that the defendant is not a member due to a change in number or identity of persons in the group or organization, as long as two or more of the original members remain in the group.

(g) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Enterprise; Pattern of racketeering activity; Proceeds; Unlawful debt.

§ 1442. Gang participation.

(a) Gang participation, offense defined. A person commits an offense if all of the following apply to the person:

(1) The person engages in any conduct that benefits a criminal street gang.

(2) The person knows that its members engage in or have engaged in a pattern of criminal gang activity.

(3) The person knowingly promotes, furthers, or assists in any criminal conduct by members of that gang that would constitute a felony.

(b) Recruitment of juveniles: offense defined. A person commits an offense if the person knowingly solicits, invites, recruits, encourages, or otherwise causes a child to participate in or become a member of a criminal street gang.

(c) Grading.

(1) Gang participation is a Class 8 felony.

(2) Recruitment of juveniles is a Class 9 felony.

(d) Defined terms. The following terms used in this section have the meaning given in § 103 of this title: Child; Criminal street gang; Pattern of criminal gang activity.

§ 1443. Money laundering.

(a) Money laundering, offense defined. A person commits an offense if the person knowingly does any of the following:

(1) Conceals, possesses, transfers, transports, acquires or maintains an interest in the proceeds of criminal activity.

(2) Conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity.

(3) Invests, expends, receives, or offers to invest, expend, or receive the proceeds of criminal activity.

(4) Provides, holds, or invests funds that are intended to further the commission of criminal activity.

(5) Engages in a transaction involving the proceeds of criminal activity intended, in whole or in part, to avoid a currency transaction reporting requirement under the laws of this State, any other state, or the United States.

(b) Structuring, offense defined. A person commits an offense if, with intent to evade a transaction reporting requirement of this State or of the United States, the person does any of the following:

(1) Causes a financial institution, money transmitter, check casher, or any other individual or entity that is required by law to file a report regarding currency transactions or suspicious transactions to do any of the following:

a. Fail to file a report.

b. File a report that contains a material omission or misstatement.

(2) Conducts or assists in conducting 1 or more transactions in currency, in any amount and in any manner, at 1 or more financial institutions, money transmitters, check cashers, or other entities that are required by law to file a report regarding currency transactions or suspicious transactions.

(c) Grading.

(1) Money laundering is a Class 7 felony.

(2) Structuring is a Class 9 felony.

(d) Knowledge of specific criminal activity not required. Knowledge of the specific nature of the criminal activity giving rise to the proceeds is not required to establish culpability under this section.

(e) Defense. It is a defense to prosecution under this section that a licensed attorney received the funds as bona fide legal fees and, at the time of their receipt, the attorney did not have actual knowledge that the funds were derived from criminal activity.

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

Section 13. This Act is prospective. This Act takes effect 20 months after the date of its enactment. Prosecution for an offense committed before the effective date of this Act in which a conviction has been entered is governed by prior law. Enactment of this Act does not give rise to a cause of action or appeal or right of review of a conviction entered prior to the Act's effective date.

Section 14. Upon adoption of this Act, SENTAC shall consider updating its sentencing guidelines in accordance with the provisions of this Act. In connection with this updating, in view of the fact that the Act's grading table gives each grade of crime a specific, uniform sentencing range, SENTAC should consider whether to propose legislation to the General Assembly that will make the guidelines more binding in nature, and to provide the state or defendant with a limited ability to seek review if a sentence is not in accord with the guidelines.

SYNOPSIS

Delaware's existing Criminal Code was adopted in 1973 and was based on the Model Penal Code. Since that time, the Criminal Code has quadrupled in size and expanded to other parts of the Code without consideration to the general effects of the change on the Criminal Code's overall structure, its terminology, or its application, creating numerous inconsistencies, redundancies, ambiguities and contradictions. In 2014, the General Assembly established the Criminal Justice Improvement Committee to review opportunities for efficiencies in the Delaware Criminal Code, including identifying: "disproportionate, redundant, outdated, duplicative, or inefficient statutes" and "crimes that should or should not constitute potential jail time". The Criminal Justice Improvement Committee Working Group was created to accomplish the Criminal Justice Improvement Committee's stated goals and has worked diligently for the last three years, in concert with other criminal justice stakeholders, to restore the criminal code to a clear, readable, and proportional code. The recommendations found in their Final Report are the basis for this Act and its companion bill.

This Act is one of two bills that seek to bring back clarity and consistency to the Criminal Code. This Act repeals and replaces Title 11, Part I, Chapters 1 through 15 of the Delaware Criminal Code and replaces it with an improved code that is easy to understand, consolidates offenses and introduces rational and proportional sentencing structures. This Act, and its companion bill, will take effect 20 months from the date it is signed, to allow for a smooth integration of the improved code into existing structures, give public and private criminal justice stakeholders an opportunity to familiarize themselves with the improved code, and provide an opportunity to develop for the first time model jury instructions and sentencing guidelines. A Commentary, which explains how the current criminal code relates to the improved code, will be publicly available during this transition period. The 20 months will also give time to introduce technical corrections bills that will make changes to the Code necessitated by the improved code (e.g., update cross references to Title 11, Part I, found in other Titles), as well as incorporate legislative decisions passed by the 148th and 149th General Assembly that were not captured by the improved code.