

EXHIBIT

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**Table of Changes to the Improved Code Post Introduction SB 209 in Response to Concerns
of the Attorney General, Victims’ Advocates and State Agencies**

From the beginning of the legislatively mandated criminal code review and drafting process, the drafters have sought comments and concerns from all of the stakeholders, including the Delaware Department of Justice (DDOJ), the criminal defense bar, Victims’ Advocates, state agencies, and the general public. The draft Code has been publicly available since March 21, 2017 and the drafting group has continued to consider changes to the Code, including some understood to be of interest to the DDOJ.

The following changes were made since introduction of SB 209 in the spring of 2018.

Improved Code provision	Section Title	Concern	Action taken by the Improved Code Working Group in response to constituency’s comment
DDOJ & Victims’ Advocate Comments			
§ 103	Definitions.	Undefined term “force” creates ambiguities as used in rape statute (Section 1041).	Create a more normative definition of ‘force.’
§ 103	Definitions.	The Improved Code utilizes the definition of ‘abuse’ of a child found in Title 10 instead of Title 11. <i>[Initially raised by the Child Protection and Accountability Commission (CPAC).]</i>	Replace with definition of ‘abuse’ in 11 Del. C. § 1100(1).
§ 103	Definitions.	The definition of ‘child pornography’ only applies it to children under 16, whereas current law applies to children under 18. <i>[Initially raised by CPAC.]</i>	Change definition of ‘child pornography’ to apply to children under 18.
§ 305(a)(2)	Conduct of Persons with Special	An error during conversion of CJIC Final Report into bill text	Restore the limitation on use of

Improved Code provision	Section Title	Concern	Action taken by the Improved Code Working Group in response to constituency's comment
	Responsibility for Care, Discipline, or Safety of Others.	resulted in the removal of a limitation on the use of force by parents. <i>[Initially raised by DDOJ.]</i>	force by parents in current law.
§ 604(a)	General Adjustments to Offense Grade (Repeat felon).	The repeat felon grade adjustment in the Improved Code does not provide full coverage of 11 Del. C. § 777A. <i>[Initially raised by DDOJ and CPAC.]</i>	Add child sex offense recidivism grade adjustment, based upon a single prior.
§ 1041(b)	Rape; Sexual Assault. (Grading)	The grade of 'baseline' rape is reduced, compared to current law, which could harm the credibility of the Improved Code by creating unintended impression of not taking sexual offenses seriously. <i>[Initially raised by DDOJ and the Delaware Coalition Against Domestic Violence (DCADV).]</i>	Add 'forcible rape' category to distinguish from date rape and restore grade in current law.
§ 1044	Prohibited Conduct by a Person Convicted of a Sexual Offense Against a Child	The Improved Code does not take into account a recent change in law. <i>[Initially raised by CPAC.]</i>	Remove limitation based on age of prior victim.
§ 1248(b)(3)a.	Criminal Contempt. (Grading)	The Improved Code, for an aggravated grade of the offense, requires both physical injury and involvement of a deadly weapon, which are alternative sources of the aggravation in current law. <i>[Initially raised by victims' advocates.]</i>	Restore physical injury and weapons as independent aggravators for the increased grade of contempt.

Improved Code provision	Section Title	Concern	Action taken by the Improved Code Working Group in response to constituency's comment
§1404(a)(1)d.1.	Possessing or Purchasing Deadly Weapons by Persons Prohibited. (Offense defined)	The Improved Code, unlike current law, does not treat offensive touching (in this context) as domestic violence. <i>[Initially raised by victims' advocates.]</i>	Add language about offensive touching for inclusion in the domestic violence conduct.
§1404(a)(1)d.1.	Possessing or Purchasing Deadly Weapons by Persons Prohibited. (Offense defined)	The Improved Code, unlike current law, does not treat menacing conduct (in this context) as domestic violence. <i>[Initially raised by victims' advocates.]</i>	Add language about menacing for inclusion in the domestic violence conduct.
§1404(a)(1)d.2.	Possessing or Purchasing Deadly Weapons by Persons Prohibited. (Offense defined)	The Improved Code does not reflect a more recent change in law that amended enumerated domestic violence scenarios to include "substantive dating relationship." <i>[Initially raised by victims' advocates.]</i>	Add the "substantive dating relationship" into the enumerated domestic violence scenarios.
§1404(a)(1)d.2.	Possessing or Purchasing Deadly Weapons by Persons Prohibited. (Offense defined)	The Improved Code does not reflect a more recent change in law that amended enumerated domestic violence scenarios to include "cohabitation for last 3 years." <i>[Initially raised by victims' advocates.]</i>	Add "cohabitation for last 3 years" into the enumerated domestic violence scenarios.
n/a	Murder by abuse or neglect (current law)	The Improved Code eliminates "Murder by abuse or neglect" as an offense separate from homicide offenses in Chapter 10, Subchapter I of the Improved Code, incorporating it into those offenses instead.	Re-establish "Murder by abuse or neglect" as an independent offense against children.

Improved Code provision	Section Title	Concern	Action taken by the Improved Code Working Group in response to constituency's comment
		<i>[Initially raised by DDOJ, CPAC.]</i>	
n/a	Continuous sexual abuse of a child (current law)	The Improved Code eliminates “Continual sexual abuse of a child” as an offense separate from rape and sexual assault in Chapter 10, Subchapter III of the Improved Code. <i>[Initially raised by DDOJ, CPAC.]</i>	Re-establish “Continual sexual abuse of a child” as an independent offense against children.
n/a	Endangering the welfare of a child (current law)	The Improved Code eliminates portions of “Endangering the welfare of a child” altogether. <i>[Initially raised by DDOJ, CPAC, DCADV.]</i>	Restore the deleted portions of “Endangering the welfare of a child”
n/a	Endangering the welfare of a child (current law)	The Improved Code incorporates portions of “Endangering the welfare of a child” into other offenses such as reckless endangerment, no longer treating it as an independent offense. <i>[Initially raised by DDOJ, CPAC.]</i>	Re-establish “Endangering the welfare of a child” as an independent offense against children.
n/a	Child abuse in the third degree (current law)	The Improved Code eliminates “Child abuse in the third degree” as an offense separate from assault (§ 1022). <i>[Initially raised by DDOJ, CPAC.]</i>	Re-establish “Child abuse” as an independent offense.
n/a	Child abuse in the second degree (current law)	The Improved Code eliminates “Child abuse in the second degree” as an offense separate from assault (§ 1022). <i>[Initially raised by DDOJ, CPAC.]</i>	Re-establish “Child abuse” as an independent offense.

Improved Code provision	Section Title	Concern	Action taken by the Improved Code Working Group in response to constituency's comment
n/a	Child abuse in the first degree (current law)	The Improved Code eliminates "Child abuse in the first degree" as an offense separate from assault (§ 1022). <i>[Initially raised by DDOJ, CPAC.]</i>	Re-establish "Child abuse" as an independent offense.
State Agency Comments			
§ 1243(b)	Obstructing Administration of Law or Other Government Function. (Grading)	The Improved Code's relocation of criminal penalties for tax offenses to Title 11 arguably may result in reduction of some felonies to misdemeanors. <i>[Raised by Department of Revenue.]</i>	Add a felony grade to § 1243 for tax evasion/non-payment or non-collection of taxes.
n/a	n/a	The Improved Code does not provide full coverage of environmental felonies in Title 7. <i>[Raised by Department of Natural Resources and Environmental Control.]</i>	Add a new section for serious environmental crimes that would revamp the Improved Code's approach.