

CHAPTER 371
FORMERLY
HOUSE BILL NO. 416
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 6, 10, 11, 12, 16, 19, 21, 25, AND 28 OF THE DELAWARE CODE RELATING TO THE REMOVAL OF INSENSITIVE AND OFFENSIVE LANGUAGE.

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

Section 1. Amend § 2427B(b), Title 6 of the Delaware Code by making deletions as indicated by strike through and insertions as shown by underline as follows:

(b) If a court or tribunal of competent jurisdiction finds that any person has ~~willfully~~ willfully violated this chapter, the Attorney General, upon petition to the court or tribunal, shall recover from the person, on behalf of the State, in addition to all costs, a civil penalty of not more than \$10,000 per violation pursuant to § 2533 of this title. If the violation is against an ~~elderly or disabled person~~ elder person or person with a disability or an additional civil penalty of not more than \$10,000 per violation shall be recovered pursuant to § 2581 of this title. Each day that a ~~willful~~ willful violation continues shall be considered a separate violation.

Section 2. Amend § 2506B(b), Title 6 of the Delaware Code by making deletions as indicated by strike through and insertions as shown by underline as follows:

(b) If a court or tribunal of competent jurisdiction finds that any person has ~~willfully~~ willfully violated this chapter, the Attorney General, upon petition to the court or tribunal, shall recover from the person, on behalf of the State, in addition to all the costs, a civil penalty of not more than \$10,000 per violation pursuant to § 2513 of this title. If the violation is against a person age 65 or older or a ~~disabled person~~ person with a disability, an additional civil penalty of not more than \$10,000 per violation shall be recovered pursuant to § 2581 of this title. Each day that a ~~willful~~ willful violation continues shall be considered a separate violation.

Section 3. Amend § 2590(b), Title 6 of the Delaware Code by making deletions as indicated by strike through and insertions as shown by underline as follows:

(b) If a court or tribunal of competent jurisdiction finds that any person has willfully violated this subchapter, the Attorney General, upon petition to the court or tribunal, shall recover from the person, on behalf of the State, in addition to all costs, a civil penalty of not more than \$10,000 per violation pursuant to § 2513 of this title. If the violation is ~~against an elderly or disabled person~~ elder person or person with a disability an additional civil penalty of not more than \$10,000 per violation shall be recovered pursuant to § 2581 of this title. Each day that a willful violation continues shall be considered a separate violation.

Section 4. Amend § 4501, Title 6 of the Delaware Code by making deletions as indicated by strike through and insertions as shown by underline as follows:

§ 4501 Purpose and construction.

This chapter is intended to prevent, in places of public accommodations, practices of discrimination against any person because of race, age, marital status, creed, color, sex, handicap, sexual orientation, gender identity or national origin. This chapter shall be liberally construed to the end that the rights herein provided for all people, without regard to race, age, marital status, creed, color, sex, ~~handicap~~ physical disability, sexual orientation, gender identity or national origin, may be effectively safeguarded. Furthermore, in defining the scope or extent of any duty imposed by this chapter, higher or more comprehensive obligations established by otherwise applicable federal, state, or local enactments may be considered.

Section 5. Amend § 4502(7), Title 6 of the Delaware Code by making deletions as indicated by strike through and insertions as shown by underline as follows:

(7) "Disability" means a physical or mental impairment which substantially limits a person's major life activities, or being regarded as having such an impairment, but such terms do not include current, illegal use of a controlled substance as defined in Section 102 of the Controlled Substance Act (21 U.S.C. § 802) or Chapter 47 of Title 16 of this Code, Uniform Controlled Substance Act. Discrimination against a person with a disability includes discrimination against the use of a support animal because of a physical disability of the user. Support animal means

any animal individually trained to do work or perform tasks to meet the requirements of a ~~physically disabled~~ person with a physical disability, including, but not limited to, minimal protection work, rescue work, pulling a wheelchair or fetching dropped items.

Section 6. Amend § 1007A, Title 10 of the Delaware Code by making deletions as indicated by strike through and insertions as shown by underline as follows:

§ 1007A Determination of competency of child.

(a) *Definitions.* — For the purpose of this section, the following definitions shall apply:

(1) "Competency evaluator" shall mean an expert qualified by training and experience to conduct juvenile competency evaluations, familiar with juvenile competency standards, and familiar with juvenile treatment programs and services.

(2) "Not competent" shall mean a child who is unable to understand the nature of the proceedings against the child, or to give evidence in the child's own defense or to instruct counsel on the child's own behalf.

(b) *Procedure to determine competency; competency evaluation.* —

(1) The issue of whether a child within Family Court jurisdiction, and not subject to § 1010(a) or (c)(3) of this title, is competent to proceed to trial may be raised by any party by the filing of a written motion or may be raised by the Court *sua sponte*. The motion shall state with specificity the facts that support the request for a competency evaluation. Any issues related to competency that are raised post adjudication shall be raised and decided by the Court based on applicable Family Court Rules and case law. The issue of whether a child subject to § 1010(a) or (c)(3) of this title is competent to proceed shall be determined by the Superior Court consistent with the rules and procedures of that Court and any other applicable law.

(2) If the Court determines that there are facts that support the completion of a competency evaluation, the prosecution of the case shall be stayed and the Court shall order that a competency evaluation be performed by a competency evaluator.

(3) The competency evaluation shall be performed and submitted to the Court within 30 days of the date that the competency evaluation is ordered by the Court if the child is in secure or nonsecure detention, and within 60 days if the child is not detained. Pending completion of the competency evaluation and a final determination of competency by the Court, the child's bail, placement, and conditions of bail shall continue to be determined pursuant to § 1007 of this title, and the applicable bail guidelines. The Court may order the competency evaluation to be performed on an outpatient basis or may place the child in a secure or nonsecure facility in order to facilitate the completion of the evaluation after considering less restrictive alternatives pursuant to § 1007 of this title.

(4) The competency evaluation submitted by the competency evaluator to the Court shall:

a. Specifically address the child's ability to understand the nature of the proceedings against the child, the ability of the child to give evidence in the child's own behalf, and the ability of the child to instruct counsel on the child's own behalf; and

b. Note any mental ~~illnesses~~ disorders or incapacities, developmental disabilities, cognitive impairments, and/or chronological immaturity or any other factor affecting competency, and recommend appropriate treatment or services; and

c. Specify any conditions that will not result in the restoration or acquisition of competency even with treatment.

Statements made by the child as part of the competency evaluation may not later be admitted as evidence at trial.

(5) Upon completion of the competency evaluation:

a. The parties may stipulate that the child is either competent or not competent and submit a stipulation to the Court for approval; or

b. Either party may retain their own competency evaluator to perform an additional evaluation; or

c. Either party may request that the Court hold a competency hearing.

(c) *Court findings.* —

(1) If the Court rules after a stipulation or competency hearing that a child is competent, the prosecution of the case shall resume. If the Court rules that the child is not competent, the Court shall then make a finding of whether competency can be timely restored or acquired. If there is a reasonable expectation that competency can be timely restored or acquired, the Court shall order appropriate treatment or services based on the findings and recommendations contained in the competency evaluation. The underlying bases for a finding that a child is not competent may include, but are not limited to, significant mental ~~illness~~ disorder or incapacity, significant developmental ~~disability~~ delay, significant cognitive impairment, and/or chronological immaturity. A child's age alone may not serve as the basis for a finding that a child is not competent. The finding must be based on the individual child's capacities for competency.

(2) While the child undergoes treatment or services, bail, conditions of bail and placement shall continue to be determined pursuant to § 1007 of this title, and applicable bail guidelines. Prior to making a bail decision, the Court shall consider less restrictive alternatives pursuant to § 1007 of this title, and if the Court places or continues to place a child in secure detention, the Court shall state in writing the basis for its detention decision. The Court shall schedule review hearings to evaluate whether competency has been restored or acquired at least every 6 months. The Court may order further competency evaluations to assist the Court in determining whether competency has been restored or acquired. When the Court determines that competency has been restored or acquired, the prosecution of the case shall resume.

(3) If the Court finds that a child is not competent and is unable to have competency timely restored or acquired, the Court, after a hearing to consider the best interests of the child and the safety of the community, shall:

- a. Dismiss nonviolent misdemeanor charges within 6 to 12 months;
- b. Dismiss violent misdemeanor or nonviolent felony charges within 12 to 24 months;
- c. Dismiss violent felony charges at age 18, unless the child was under age 14 at the time of arrest for violent felonies in which case the Court shall consider dismissal of violent felonies within 18 to 36 months.

The Court shall hold review hearings at least every 6 months until the case is dismissed, and may continue to order appropriate services until the case is dismissed.

(d) *Limitation on competency finding.* — Any finding by the Court regarding the competency of a child is limited to the specific delinquency proceedings at issue when competency is raised, and that finding shall not be the basis for any determination of competency in another court, competency as a witness in any proceeding, or competency to be proceeded against in another delinquency proceedings or any other proceedings in this Court.

Section 7. Amend § 1009, Title 10 of the Delaware Code by making deletions as indicated by strike through and insertions as shown by underline as follows:

§ 1009 Adjudication; disposition following adjudication; commitment to custody of Department of Services for Children, Youth and Their Families; effect.

(a) Where the evidence supports such holding, the Court may declare a child to be dependent, neglected, abused, as those terms are defined by § 902 of Title 16, or delinquent. In declaring a child to be dependent, neglected or abused pursuant to this section, the Court shall give priority to ensuring the well-being and safety of the child.

(b) Following an adjudication by the Court in which it declares a child to be dependent or neglected, the Court may:

- (1) Defer proceedings pending further investigation, medical or other examinations, or where the interests of the child will thereby be served;
- (2) Allow a child to remain in his or her own home with or without court supervision;
- (3) Grant custody of a child to any person or agency where satisfactory arrangements can be made but, in the event the child is placed in a home of an "adult individual" who fails to meet the definition of a "relative" in § 901 of this title, § 351 of Title 31 shall apply;

(4) Refer the child to the Department of Services for Children, Youth and Their Families for protective supervision;

(5) Grant custody of a child to the Department of Services for Children, Youth and Their Families for foster home placement;

(6) Grant the care or custody of a child to any licensed child-placing agency in this State that will accept the child, provided satisfactory arrangements can be made;

(7) Grant the care or custody of a child to any division of the Department of Services for Children, Youth and Their Families provided by the State for the care of children;

(8) Grant the care or custody of a child to any private institution within or without the State that cares for children, provided satisfactory arrangements can be made;

(9) Grant the care or custody of a child to any religious child-caring agency or institution, preferably of the child's religious faith or that of the parents, or either of them, within or without the State provided satisfactory arrangements can be made;

(10) Commit a child with a mental ~~condition~~ disorder or incapacity, or child with an intellectual disability for observation or treatment to any appropriate institution within the State, or to any institution without the State provided satisfactory arrangements can be made;

(11) Order such other treatment, rehabilitation or care as in the opinion of the Department of Services for Children, Youth and Their Families would best serve the needs of the child and society.

(c) Following an adjudication in which the Court declares that a child is delinquent, it may:

(1) Defer proceedings pending further investigation, medical or other examinations, or where the interests of the child will thereby be served, and release the child upon the child's own recognizance or upon the recognizance of a custodian or near relative, or upon bond with surety, to appear whenever and wherever notified to do so, or where the required bond is not provided, detain the child in a facility of the Department of Services for Children, Youth and Their Families;

(2) Allow a child to remain in the child's own home with or without Court supervision;

(3) Place a child on probation;

(4) Fine a child;

(5) Order a child to make monetary restitution in whole or in part as the Court determines for out-of-pocket costs, losses or damages caused by the delinquent act of the child where the amount thereof can be ascertained;

(6) Award a judgment in favor of any municipal corporation, county, town, school district or agency of the State, or any person, partnership, corporation or association, or any religious organization whether incorporated or not, and against the parents or guardians of the delinquent child for the same or greater amount ordered against the delinquent child but not to exceed \$5,000, provided that the Court finds by a preponderance of the evidence presented that:

a. The parents or guardians knew of the child's delinquent nature; and

b. The parents or guardians failed to take reasonable measures to control the child;

(7) Require that any restitution ordered against the delinquent child precede the liability of the parents or guardians for the monetary damages caused by the child's delinquent act;

(8) Require, in the absence of objections by the victim of the delinquent act of the child, that any restitution ordered against the delinquent child may be discharged in an appropriate community service arrangement with the understanding that failure to complete the community service work in good faith shall result in the reversion of this obligation to the monetary basis originally ordered by the Court;

(9) Award custody of a child to the Department of Services for Children, Youth and Their Families;

(10) Commit a child with a mental ~~condition~~ disorder or incapacity, or child with an intellectual disability for observation or treatment to any appropriate institution within the State, or to any institution without the State provided satisfactory arrangements can be made;

(11) Grant the care or custody of a child to any private institution within or without the State that cares for children, provided satisfactory arrangements can be made;

(12) Order the Motor Vehicle Division of the Department of Transportation to:

a. Revoke or suspend the driving privileges or operator's license possessed by the child;

b. Postpone the child's eligibility to obtain driving privileges or an operator's license if the child does not possess such privilege or license; or

c. Enter immediately all traffic, alcohol and/or drug adjudications of any minor on a driving record created by the Division of Motor Vehicles notwithstanding the minor's driver's license status, age and/or eligibility for a driver's license in any case for a period not less than 3 months nor more than 4 years;

(13) Grant custody of a person who is charged with an act of delinquency prior to reaching the age of 18 years but becomes 18 years of age prior to disposition of the charge, to the Department of Services for Children, Youth and Their Families;

(14) Order the child to be placed under house arrest under the same requirements set forth in § 4332 and subchapter IX of Chapter 43 of Title 11;

(15) Order such other treatment, rehabilitation or care as in the opinion of the Department of Services for Children, Youth and Their Families would best serve the needs of the child and society.

(16) Following an adjudication in which the Court declares that a child is delinquent and sentences the child to participate in the Family Court Adjudicated Drug Court Program, the Court may impose such conditions upon the parent, guardian or custodian of the person adjudicated as the Court deems necessary to assist the person adjudicated in receiving all the treatment, rehabilitation or care ordered by the Court as best serving the needs of the child and society under this section or, in the opinion of the Court, as will enhance the ability of such parent, guardian or custodian in providing the child with adequate support, guidance and supervision necessary to meet the child's physical, mental or emotional health and well-being, provided that such parent, guardian or custodian has been previously served by summons in accordance with § 1006 of this title;

(17) When the Court sentences a child to participate in counseling, mental health treatment or to a Division of Prevention and Behavioral Health Services consultation or assessment as required, the Court shall be authorized, in addition to any other disposition authorized by this section, to order such child's parents, guardian or custodian to participate in counseling as determined by the Court or as recommended by the Division of Prevention and Behavioral Health Services. Such counseling shall be designed to assist in deterring future delinquent or unruly actions or other conduct or conditions which would be harmful to the child or society. If the child is court-ordered into a detention facility or residential treatment facility, the Court may order the parents, guardian or custodian to participate in any treatment or counseling program recommended by the facility;

(18) Order any and all registrations or relief therefrom as required under § 4123 of Title 11 where the juvenile has been adjudicated delinquent of an offense that would otherwise render the juvenile a sex offender under § 4121(a)(4) of Title 11.

The authority given the Court by paragraphs (c)(5), (6), (7) and (8) of this section shall be in addition to any other existing statutory or common law remedy.

(d) For the purposes of this section, the phrase "provided satisfactory arrangements can be made" shall mean that the Department of Services for Children, Youth and Their Families has approved payment for the placement of a child based upon a contract between an agency or institution and the Department or that such a placement can provide a child with the necessary and/or appropriate treatment and/or rehabilitation in the judgment of the Department of Services for Children, Youth and Their Families.

(e) Subject to the provisions governing amenability pursuant to § 1010 of this title, the Court shall commit a delinquent child to the custody of the Department of Services for Children, Youth and Their Families under such circumstances and for such periods of time as hereinafter provided:

(1) Any child who has been adjudicated delinquent by this Court of 1 or more offenses which would constitute a felony were the child charged as an adult under the laws of this State, and who shall thereafter within 12 months commit 1 or more offenses occurring subsequent to the said adjudication which offense or

offenses would constitute a felony were the child charged as an adult under the laws of this State, and thereafter be adjudged delinquent of said offense or offenses, is declared a child in need of mandated institutional treatment, and this Court shall commit the child so designated to the Department of Services for Children, Youth and Their Families for at least a 6-month period of institutional confinement;

(2) A child committed to the custody of the Department of Services for Children, Youth and Their Families pursuant to this subsection shall not be released from institutional confinement on pass, on extended leave or to aftercare during the first 6 months of said commitment unless the Director of Youth Rehabilitation Services, in the Director's discretion, determines that it is in the best interest of the child's treatment to participate in programs which may require the child to leave the institution; thereafter, a child committed to the Department of Services for Children, Youth and Their Families pursuant to this subsection shall not be released from institutional confinement on pass, on extended leave or to aftercare, unless the Judge of the Family Court who originally executed the commitment order or a Judge of the Family Court designated by the Chief Judge shall, upon a petition filed by the Department of Services for Children, Youth and Their Families (or its duly authorized representative), the child, the parent(s) or guardian of said child, or by the Court's own initiative, with notice to the Attorney General, determine by a preponderance of the evidence presented at a hearing that the child has so progressed in a course of mandated institutional treatment that release would best serve both the welfare of the public and the interest of the child or unless the Director of Youth Rehabilitation Services, in the Director's discretion, determines that it is in the best interest of the child's treatment to participate in programs which may require the child to leave the institution;

(3) Where a child has been declared in need of mandated institutional treatment in accordance with paragraphs (e)(1) and (2) of this section, and the child is subsequently charged with having committed 1 or more offenses which offense or offenses occurred subsequent to the child having been declared a child in need of mandated institutional treatment, the Court shall conduct a hearing to determine whether the child is amenable to the rehabilitative processes of the Court pursuant to § 1010(c) of this title. "Offense" in this paragraph shall mean all offenses which would constitute a felony were the child charged as an adult under the laws of this State, with the exception of a charge of escape pursuant to subpart E of subchapter VI of Chapter 5 of Title 11;

(4) Whenever a child appears before the Court on charges which would constitute a felony were the child charged as an adult under the laws of this State, said child and any parent, guardian or custodian of said child who is present shall be specifically advised of the operation of this subsection;

(5) Nothing hereinbefore provided shall be construed as prohibiting the Court, upon petition and recommendation of the Department of Services for Children, Youth and Their Families, from securing for any child otherwise subject to the mandatory commitment provisions of this subsection such care and treatment as it deems necessary for diagnosed mental ~~conditions~~ disorders or incapacities, or intellectual disabilities, provided that the provisions for such treatment shall not deter the Court from imposing such mandatory term of commitment as is applicable under this subsection unless the same shall be sooner suspended in accordance with paragraph (e)(6) of this section;

(6) As used in this subsection, "child" shall mean any juvenile who is charged with an act or course of conduct occurring on or after the child's 14th birthday which causes this subsection to be applicable;

(7) A copy of each and every order or disposition of the Court respecting a child committed pursuant to this subsection shall be made available to the victim or victims of the delinquent acts giving rise to the commitment upon written request to the Court therefor.

Section 8. Amend § 1031, Title 10 of the Delaware Code by making deletions as indicated by strike through and insertions as shown by underline as follows:

§ 1031 Disposition.

In any civil action within the jurisdiction of this Court and upon the petition of a person properly before it, the Court may:

(1) Award the custody or possession of a child to any party to the action, establish visitation rights, and, in a proper case, order payment of support for the child;

(2) Order a child's custodian to exercise such care and perform such acts as may be reasonably necessary to insure that the child shall obey the law and receive necessary care;

(3) Consent to a child's employment, or to enlistment into the armed forces, or to receiving medical care as may be required by law;

(4) Order a person under a duty to do so to pay through the Court or the Bureau of Child Support Enforcement or directly to the spouse/ex-spouse or to the custodian of the child reasonable support for the spouse and/or child. And in such cases as the Court may deem appropriate enter an order of final judgment as to any past due support which judgment shall not be subject to subsequent modification by the Court;

(5) In an action to prevent a family member from conduct that imperils the family relationship, order the defendant to desist from the acts complained of, or order individual or family counseling with the court staff or with any appropriate counseling agency, or enter such other order as may be required;

(6) May commit an adult with a mental ~~condition~~ disorder or incapacity, or intellectual disability for observation or treatment to any appropriate institution within the State, or to any institution without the State which will consent to receive the person.

(7) [Repealed.]

Section 9. Amend § 408(b), Title 11 of the Delaware Code by making deletions as indicated by strike though and insertions as shown by underline as follows:

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

Section 10. Amend § 9424(b), Title 11 of the Delaware Code by making deletions as indicated by strike though and insertions as shown by underline as follows:

(b) A victim or witness with a cognitive disability is entitled to be accompanied, in all proceedings, by a "friend" or other person in whom the victim or witness trusts, which person shall be permitted to advise the judge, when appropriate and as a friend of the court, regarding the ~~cognitively disabled person's~~ person with a cognitive disability and that person's ability to understand proceedings and questions.

Section 11. Amend § 3922, Title 12 of the Delaware Code by making deletion as indicated by strike though and insertions as shown by underline as follows:

(a) The Court shall grant to the guardian of the person such powers, rights and duties which are necessary to protect, manage and care for the ~~disabled~~ person with a disability. The Court may at any time change the powers of the guardian of the person.

(b) The guardian of the person may exercise the same powers, rights and duties respecting the care, maintenance and treatment of the ~~disabled~~ person with a disability that a parent has respecting the parent's own unemancipated minor child, except that the guardian of the person is not liable to third persons for acts of the

disabled person solely by reason of the guardianship relationship. Except as modified by the order of guardianship and without qualifying the foregoing, a guardian of the person has the following powers and duties:

(1) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ~~disabled~~ person with a disability, the guardian is entitled to custody of the ~~disabled~~ person with a disability and may establish the ~~disabled person's~~ place of abode for the person with a disability within or without this State. The guardian may not waive any right of the ~~disabled~~ person with a disability respecting involuntary commitment to any facility for the treatment of mental illness or deficiency.

(2) If entitled to custody of the ~~disabled~~ person with a disability, the guardian shall make provision for the care, comfort and maintenance of the ~~disabled~~ person with a disability and, if appropriate, arrange for the ~~disabled person's~~ training and education of the person with the disability. Without regard to custodial rights of the ~~disabled~~ person with a disability, the guardian shall take reasonable care of the ~~disabled person's~~ clothing, furniture, vehicle and other personal effects in the immediate possession of the ~~disabled~~ person with a disability and commence guardianship of the property proceedings if other property of the ~~disabled~~ person with a disability is in need of protection.

(3) The guardian may give such consent or approval as may be necessary to enable the ~~disabled~~ person with a disability to receive medical or other professional care, counsel, treatment or service and shall have power to authorize release of medical records. The guardian shall not unreasonably withhold such consent or approval nor withhold such consent or approval on account of personal beliefs held by the guardian or the ~~disabled~~ person with a disability, but shall take such action as the guardian objectively believes to be in the best interest of the ~~disabled~~ person with a disability.

(c) A guardian of the person of a ~~disabled~~ person with a disability for whom a guardian of the property also has been appointed shall control the custody and care of the ~~disabled~~ person with a disability and is entitled to receive reasonable compensation for the guardian's services and for room and board furnished to the ~~disabled~~ person with a disability as approved by the Court. Compensation of the public guardian shall be governed by § 3984 of this title. The guardian of the person may request the guardian of the property to make payment to third parties or institutions for the disabled person's care and maintenance.

(d) The guardian of the person shall not be required to expend the guardian's own money for the support or care of the ~~disabled~~ person with a disability.

Section 12. Amend § 1101(9), Title 13 of the Delaware Code by making deletions as indicated by strike through and insertions as shown by underline as follows:

(9) "Mentally incompetent" shall be interpreted as referring to a parent who is unable to discharge parental responsibilities by reason of ~~mental illness, psychopathology, mental retardation or mental deficiency~~ mental disorder or mental incapacity.

Section 13. Amend § 2506, Title 16 of the Delaware Code by making deletions as indicated by strike through and insertions as shown by underline as follows:

A guardian shall comply with the ~~adult disabled person's individual~~ instructions of the adult person with a disability and may not revoke the ~~adult disabled~~ person's advance health-care directive unless the appointing court expressly so authorizes. Nothing in this chapter shall limit the jurisdiction of the Court of Chancery over the person and property of a ~~disabled~~ person with a disability.

Section 14. Amend Chapter 7, Title 19 of the Delaware Code by making deletions as indicated by strike through and insertions as shown by underline as follows:

Subchapter III. ~~Handicapped Person Employment Protections~~ Persons With Disabilities Employment Protections

Section 15. Amend § 2334, Title 19 of the Delaware Code by making deletions as indicated by strike through and insertions as shown by underline as follows:

(a) Any person ~~who is totally disabled~~ with a total disability on or after May 27, 1971, or any surviving spouse or dependent who is receiving benefits under § 2330 of this title, on or after May 27, 1971, shall be entitled to an additional amount of compensation as calculated under subsections (b) and (c) of this section, provided that the

total amount to be received shall not exceed the maximum weekly benefit rate in § 2324 of this title effective on July 1, 1975, or the benefit derived from § 2330 of this title as of July 1, 1975.

(b) In any case where a ~~totally disabled~~ person with a total disability, or a surviving spouse or a dependent is presently receiving the maximum weekly income benefit rate applicable at the time such award was made, the supplemental allowance shall be an amount which when added to such award would equal the maximum weekly benefit rate effective on July 1, 1975, or the benefit derived from § 2330 of this title as of July 1, 1975.

(c) In any case where a ~~totally disabled~~ person with a total disability, or a surviving spouse or dependent is presently receiving less than the maximum weekly income benefit rate applicable at the time such award was made, the supplemental allowance shall be an amount equal to the difference between the amount the claimant is presently receiving and a percentage of the maximum weekly benefit rate effective on July 1, 1975, or the benefit derived from § 2330 of this title as of July 1, 1975, determined by multiplying it by a fraction, the numerator of which is the claimant's present award and the denominator of which is the maximum weekly rate applicable at the time such award was made.

Section 16. Amend § 2164, Title 21 of the Delaware Code by making deletions as indicated by strike though and insertions as shown by underline as follows:

Any motor vehicle owned by a ~~disabled~~ veteran with a disability who shall ever have been eligible for certain benefits under 38 U.S.C. § 1901 et seq. or Public Law 538, 93rd Congress shall be registered, but shall be exempt from the payment of registration fees; provided that such exemption shall be limited to 1 automobile per eligible veteran at any 1 time. The Secretary shall furnish, without cost, number and registration plates for all such vehicles of such design as will distinguish them from other plates for which fees are paid. Nothing herein contained shall be construed as exempting such vehicles from the requirement of inspection.

Section 17. Amend § 2707(b)(4), Title 21 of the Delaware Code by making deletions as indicated by strike though and insertions as shown by underline as follows:

(4) Person when in the opinion of the Department such person ~~has such~~ is a person with a physical or mental disability or disease as will serve to prevent such person from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways;

Section 18. Amend § 2707(b)(6), Title 21 of the Delaware Code by making deletions as indicated by strike though and insertions as shown by underlining as follows:

"I ____ (name of treating physician) hereby certify that I am the treating physician for ____ (name of person), that I have been the treating physician for him/her for a period of at least 3 months, that I am aware of his/her medical history, including his/her history with respect to diseases of the central nervous system, and that such person's ~~infirmity~~ physical or mental disability under sufficient control to permit him/her to operate a motor vehicle with safety to person and property."

Each person licensed to operate a motor vehicle on the basis of such certificate shall furnish the Department with a new certificate each year not later than the last day of the holder's birth month and not earlier than 45 days before said date. The certificate shall show that on the basis of an examination within said period a physician duly licensed to practice medicine and surgery has determined that the ~~infirmity~~ physical or mental disability remains under sufficient control to permit the person to operate a motor vehicle with safety to person and property. Except as provided below, if such certificate is not received by the Department, the Department shall suspend said license and shall notify its holder.

Section 19. Amend § 2710(b)(2), Title 21 of the Delaware Code by making deletions as indicated by strike though and insertions as shown by underline as follows:

(2) Passed a written test and road skills test administered by the Division or administered by a driver education teacher. Students who require specialized evaluation, training or equipment to operate a motor vehicle because they are persons with ~~of~~ a physical or mental disability will be identified by the driver education teacher and tested by the Division;

Section 20. Amend § 2713(a), Title 21 of the Delaware Code by making deletions as indicated by strike though and insertions as shown by underline as follows:

(a) The Department shall examine every applicant for an operator's license before issuing any such license, except as otherwise provided in subsections (b) and (c) of this section. The Department shall examine the applicant as to the applicant's physical and mental ~~qualifications~~ disabilities to operate a motor vehicle in such manner as not to jeopardize the safety of persons or property and as to whether any facts exist which would bar the issuance of a license under this chapter. Such examination shall not include investigation of any facts other than those directly pertaining to the ability of the applicant to operate a motor vehicle with safety, or other than those facts declared to be prerequisite to the issuance of a license under this chapter.

(b) The Department may in its discretion waive the examination of any person applying for the renewal of an operator's license issued under this chapter.

(c) The Department may in its discretion issue an operator's license under this chapter without examination to every person applying therefor who is of sufficient age, as required by § 2707 of this title, to receive the license applied for and who at the time of such application has a valid unrevoked license of like nature issued to such person under any previous law of this State providing for the licensing of operators or to any person who at the time of such application has a valid unrevoked license of like nature issued to such person in another state under a law requiring the licensing and examination of operators.

(d) Written and road skill examinations for students duly enrolled in a driver education course will be administered by driver education teachers certified by the Delaware Department of Education. Upon successful completion of the driver education course, the certified teacher must issue a "High School Driver Education Certificate" which will be accepted in lieu of the written and road skill examinations administered by the Division for a period of 6 months from the date of issue. No further testing by the Division is required unless the High School Driver Education Certificate has expired; in such event, full testing is required. Students identified as persons with a disability ~~disabled~~ will attend specialized training and be examined by the Division. All persons under age 18 who transfer their out-of-state license for a Delaware license must be given a written and road test by the Division. Any person who is suspended while operating a motor vehicle on a Level 1 Learner's Permit, Driver Education Learner's Permit or temporary instruction permit will be re-examined before reinstatement. Notwithstanding the preceding, the Division must administer written and road skills tests to applicants who are 18 years of age or older, except as otherwise provided in subsections (b) and (c) of this section.

Section 21. Amend § 2714, Title 21 of the Delaware Code by making deletions as indicated by strike though and insertions as shown by underline as follows:

(a) As a prerequisite to the continuation of the operator's right to drive on the highways, the Department shall cause a special examination to be made of every person involved in a second accident resulting in personal injury, death or property damage to an apparent extent of \$250 within any 24-month period, when such person has been adjudged responsible for causing such accidents by a court of competent jurisdiction, to determine whether such person is a person with ~~is a person who~~ ~~suffers from~~ a physical or mental ~~impediment to~~ disability which prevents the safe operation of a vehicle.

(b) The Department shall also cause to be examined any person whom the State Police Superintendent, State Police Troop Commanders or chief of police of any city, town or county in this State recommends for such examination.

(c) The Department may examine any person ~~whose~~ with mental or physical conditions which may interfere with safe operation of a motor vehicle when reported, in writing, to the Department by a physician, member of the immediate family, the court or other person acceptable to the Secretary of Transportation. This examination is to determine the person's physical and mental ~~qualifications~~ abilities to operate a motor vehicle in such manner so as not to jeopardize the safety of person or property and whether any facts exist which would bar the continued issuance of a license under this chapter. Such examination shall not include investigation of any facts other than those directly pertaining to the ability of the applicant to operate a motor vehicle safely or other facts declared to be prerequisite to the continued issuance of a license under this chapter. Evaluation requested per subsections (b) and (c) of this section are confidential records used to determine a driver's ability to safely operate a motor vehicle and shall not be released except by court order.

Section 22. Amend § 2725, Title 21 of the Delaware Code by making deletions as indicated by strike though and insertions as shown by underline as follows:

The Secretary shall have the authority to promulgate standards which may be applied by the Medical Advisory Board. Such standards shall also apply to the final determination of the Secretary upon the physical, visual or mental ~~qualifications~~ abilities of a driver or applicant.

Section 23. Amend § 2733(a)(3), Title 21 of the Delaware Code by making deletions as indicated by strike though and insertions as shown by underline as follows:

(3) Is incompetent to drive a motor vehicle or is ~~afflicted a person~~ with a mental or physical infirmities or disabilities rendering it unsafe for such person to drive a motor vehicle upon the highways;

Section 24. Amend § 2906(b)(2), Title 21 of the Delaware Code by making deletions as indicated by strike though and insertions as shown by underline as follows:

(2) Is ~~affected a person~~ with a mental or physical infirmities or disabilities rendering it unsafe for the insured to operate a motor vehicle upon the highways;

Section 25. Amend § 104, Title 25 of the Delaware Code by making deletions as indicated by strike though and insertions as shown by underline as follows:

§ 104. Trustee for ~~mentally ill~~ wife with a mental disability; barring of dower.

Any married man, seized of any real estate, whose wife is mentally ill, and who desires to sell and convey or to mortgage any such real estate, or any part thereof, may present his petition to the Court of Chancery, stating the facts. The Court may, if it considers it a proper case, make an order appointing a trustee for such ~~mentally ill~~ married woman with a mental disability to join in any deed or mortgage on her behalf with her husband, and to sign, seal and acknowledge the deed or mortgage as such trustee in the same manner as deeds and mortgages are by law acknowledged.

Section 26. Amend § 105, Title 25 of the Delaware Code by making deletions as indicated by strike though and insertions as shown by underline as follows:

§ 105. Trustee for ~~mentally ill~~ husband with a mental disability; barring of curtesy.

Any married woman, seized of any real estate in her own right, whose husband is mentally ill, and who desires to sell, convey or to mortgage any such real estate, or any part thereof, may present her petition to the Court of Chancery, stating the facts, and the Court may, if it considers it a proper case, make an order appointing a trustee for such mentally ill married man to join in any deed or mortgage in his behalf with his wife, and to sign, seal and acknowledge the same as such trustee in the same manner as deeds and mortgages are by law acknowledged.

Section 27. Amend § 106, Title 25 of the Delaware Code by making deletions as indicated by strike though and insertions as shown by underline as follows:

§ 106. Effect of deed executed by trustee for ~~mentally ill~~ spouse with a mental disability.

Any deed executed and acknowledged by a trustee for a ~~mentally ill~~ married man or woman with a mental disability, appointed pursuant to the provisions of § 104 or § 105 of this title, shall be as valid and effectual to bar and divest the mentally ill spouse's right of dower or curtesy, in case he or she survives, as if he or she had been legally capable and had in fact executed and acknowledged such deed. Any such deed, or the record thereof, shall be competent evidence in all the courts of this State.

Section 28. Amend § 741, Title 25 of the Delaware Code by making deletions as indicated by strike though and insertions as shown by underline as follows:

§ 741. Appointment of trustee for ~~mentally ill widow of joint owner's~~ widow with a mental disability.

If a parcener, tenant in common or joint tenant, or assignee of the interest, in real estate, dies leaving a ~~mentally ill~~ widow with a mental disability, or a widow becomes mentally ill before the assignment of dower and partition of the residue of the lands of the decedent, a trustee for the mentally ill widow may be appointed by the Court of Chancery and proceedings for partition may be had in the manner and form as prescribed by § 911 of Title 12 [repealed].

Section 29. Amend § 903(b), Title 28 of the Delaware Code by making deletions as indicated by strike though and insertions as shown by underline as follows:

(b) No person apparently under the influence of intoxicating liquor, ~~mentally ill~~ a person with a mental disability or otherwise incapacitated shall be allowed by such keeper to participate in the target shooting or other trials of skill by the use of firearms in such gallery, booth or other convenience.

Approved July 29, 2014