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**The Criminal Justice Improvement Committee of the General Assembly Announces Hearings to Consider Proposals to Improve the Consistency, Clarity, and Fairness of Delaware's Criminal Code and System of Pretrial Release**

**INTRODUCTION**

The General Assembly first established the Criminal Justice Improvement Committee (CJIC) in 2014 in epilogue language in the FY 2015 budget — and has re-enacted it each year since — to look at the Delaware Criminal Code, which has not been reviewed in a focused and systematic way since it was adopted in 1973, and Delaware's pretrial release system. According to the epilogue language:

***“The Committee shall suggest efficiencies, improvements and cost savings to the criminal justice system ... including but not limited to the following areas: statutes in the criminal code, identifying disproportionate, redundant, outdated, duplicative or inefficient statutes; crimes that should or should not constitute potential jail time;... bail and alternatives to incarceration including new technologies.”***

Consistent with longstanding Delaware tradition, the General Assembly named criminal justice stakeholders, including members of the Judiciary, to the CJIC, and the stakeholders agreed to support the General Assembly and the Executive Branch in accomplishing these objectives set by the epilogue language:

- Rationalize and improve the fairness, reduce inconsistencies and redundancies in, and increase the understandability of Delaware's Criminal Code, and;
- Reform Delaware's system of pretrial release to better ensure that dangerous arrestees are kept in jail while reducing the extent to which non-violent offenders are kept in jail or made poorer by the over-use of monetary bail when that is not necessary to protect the public.

During 2015 and 2016 substantial work was done by subcommittees to fulfill the mandate of the epilogue language in these two key areas. The proposed Improved Delaware Criminal Code reflects the preliminary input received from a substantial number of sources including law enforcement officers and victims' rights advocates. A draft of the Improved Delaware Criminal Code is being made available online to allow for a broad-based review. Public hearings will be held in each of Delaware's three counties in April to accept public input. At each of the public hearings a workshop will also be held on proposed pretrial modernization, another part of the epilogue mandate.

*“The mandate of the CJIC was to take steps to make our criminal justice system more efficient and fair, without compromising public safety. These initiatives — to have leading minds in criminal law take a thoughtful look at our Criminal Code and bail system — are timely, and address issues of deep concern to all who care about the safety of the public, and the fairness of our system of justice. By taking the extra time to have public hearings even before bill introduction, and by engaging with key constituencies all along the process, we hope to make sure the final bills that are introduced are as sound and well-reasoned as possible.”* – State Sen. Harris B. McDowell III, who is chairman of the CJIC.

*“I welcome the chance for us to work together in a non-partisan way to make our criminal justice system fairer, more efficient, and more just. Like all of us, I am committed to making sure we protect the public from crime, especially sex crimes and crimes of violence.”* – State Sen. Catherine Cloutier, who is a member of the CJIC.

*“I believe the Delaware Criminal Code should be a document that is clear, straightforward and simple to understand for everyone. It should not matter who you are – a police officer, attorney or member of the public – you should be able to read it and immediately know what it means. I applaud this effort to make this important part of the Delaware Code more accessible and understandable to everyone.”* – State Rep. J. J. Johnson, who is a member of the CJIC.

## **CODE IMPROVEMENT**

To accomplish the epilogue mandate to improve the Delaware Criminal Code, the General Assembly authorized the use of funding to support the CJIC in its mission and that funding was used to hire one of the nation’s leading experts on criminal law and criminal code drafting — Professor Paul H. Robinson, the Colin S. Diver Professor of Law at the University of Pennsylvania Law School. Professor Robinson served as an appointee of President Ronald Reagan on the U.S. Sentencing Commission and is a former federal prosecutor.

In addition, the CJIC enlisted a group of veteran Delaware attorneys and judges to assist in the process and that group in turn sought additional input from police and victims groups as part of a year-long effort. Professor Robinson also participated in a series of public meetings with the CJIC and the General Assembly’s Joint Finance Committee to lay out the process he was using to come up with a preliminary report designed to meet the mandate in the epilogue language and to update legislators on progress on the Improved Delaware Criminal Code.

The current Delaware Criminal Code was enacted in 1973 and was originally based on the Model Penal Code. Since then, hundreds of new crimes have been added and the Delaware Criminal Code has been expanded from less than 95 pages as originally enacted, to over 407 pages today with little attention to the general effects of the changes on the Delaware Criminal Code’s overall structure, its terminology, or its application. As a result, the current Delaware Criminal Code has numerous inconsistencies, redundancies, ambiguities, and contradictions. The mandate of the epilogue language that was first adopted in 2014, and has guided the project ever since, is reflected in a recent proposal of the Delaware Attorney General to simplify the drug provisions of the Code. In fact, the CJIC draft proposes a consolidation of the drug provisions into a single, coherent chapter. The Attorney General’s proposal to address long-identified issues of complexity and conflict in Delaware’s criminal drug laws uses the principles of the epilogue mandate and is consistent with the overall goal of the epilogue and code improvement project. The CJIC looks forward to working cooperatively with the Attorney General and other interested parties to include good ideas that go beyond the epilogue’s specific mandate into an improved Code. The lack of clarity in the Delaware Criminal Code makes it difficult for practitioners and the public to understand. In addition, the lack of a careful review of the Delaware Criminal Code results in a lack of proportionality in punishment for offenses and the existence of redundancy creates the potential for overcharging and a failure to have the most serious offense be the focus of cases.

*“We welcome working constructively and in good faith with the Attorney General on reforms that will make our criminal code fairer and easier to understand. Reforming the state’s confusing drug laws is an important piece of that, but it’s important that we ultimately take a much broader view of our*

*cumbersome criminal code through the CJIC to make our laws easier to understand for all Delawareans.”*  
– State Sen. McDowell.

Key goals of the improvement effort, mandated by the epilogue language, include:

- Accept the values and judgments expressed in the current Delaware Criminal Code, but incorporate them into a modern, readable criminal code format to produce a criminal code that is coherent, clear, rational, and non-duplicative. When possible, therefore, the Improved Delaware Criminal Code employs the current Delaware Criminal Code language and also uses the Model Penal Code, which was the source of the original 1973 Delaware Criminal Code, as an additional source;
- Make the Delaware Criminal Code simpler, more readable, and easily accessible to law enforcement and the public so that those who must obey the Delaware Criminal Code, and those who are required to enforce it, can understand the Delaware Criminal Code;
- Ensure that criminal offenses and legal rules are coherent and relate to one another in a consistent and rational manner;
- Reduce the word count of the Delaware Criminal Code. The proposed Improved Delaware Criminal Code therefore has approximately ¼ of the words in the current Delaware Criminal Code;
- Bring the nearly 100 felonies and over 100 misdemeanors scattered throughout the Delaware Code into one Criminal Code; and
- Group offenses of relative seriousness together for sentencing purposes in a rational way, improving on the current ad hoc approach to grading offenses.

The Improved Delaware Criminal Code places the highest priority on deterring violent crimes, sex crimes, and gun crimes and proposes a principled system for imposing minimum sentences focused on those crimes. The draft of the Improved Delaware Criminal Code is consistent with the epilogue’s mandate. It is not a “new” Criminal Code, rather it represents a restoration of the original, coherent Criminal Code enacted in 1973 that incorporates — in consistent, non-duplicative form — the policy judgments made since that Criminal Code was adopted. In doing so, the Improved Delaware Criminal Code is designed to meet the epilogue’s mandate to identify “***disproportionate, redundant, outdated, duplicative or inefficient statutes.***”

Although the Improved Delaware Criminal Code and supporting documents that have been made public and placed online represent thousands of hours of work by an experienced group of professionals with generations of criminal law experience as prosecutors, defense attorneys, and judges, it is a preliminary, not final, word. Input from the public will be considered before the final report on the Improved Delaware Criminal Code is sent to the CJIC for its consideration. Once the CJIC reviews and approves the final report on the Improved Delaware Criminal Code, legislation will be submitted to the General Assembly where it will follow the same procedure as any other package of legislation, including going through the usual committee hearing process, public debate, and votes by both houses of the General Assembly.

## **PRETRIAL MODERNIZATION**

Consistent with the epilogue mandate to look at bail and alternatives to it, the proposed bail reforms are designed to better protect the public while also reducing unnecessary detention of

defendants who do not pose a threat to the community and increasing fairness to defendants with limited economic resources.

As with the Improved Delaware Criminal Code, the preliminary bail reform plan that will be presented to the public has been developed by a working group of key criminal justice stakeholders, aided by a “Smart Pretrial Initiative” grant funded by the federal Bureau of Justice Assistance. The group also worked with the Delaware Access to Justice Commission’s Committee on Fairness in the Criminal Justice System that held public hearings on bail reform issues in the fall of 2015. The focus of the bail reform effort is to modernize Delaware’s pretrial release and detention system while maintaining the core purpose of detaining only those defendants who present a threat to the community — or where the court believes that no condition of release will reasonably ensure a defendant’s return.

Key elements of the plan include:

- A prompt first appearance;
- Presumption of release under the least restrictive conditions;
- An objective pretrial risk assessment;
- Expanded authority of pretrial services to seek modification of the conditions of release and conduct warrantless arrests for non-compliance;
- Automatic review of pretrial conditions for anyone detained after 72 hours who cannot meet the conditions of release;
- Automatic standing for the defendant, Attorney General or third party surety — or person/agency who the defendant has been released to — to request modifications of conditions; and
- Sanctions for non-compliance.

The goal of the workshops is to be clear about the proposed changes and ensure that all criminal justice stakeholders and the public are fully informed about the reform plan so they can provide informed feedback.

### **PUBLIC HEARINGS**

To best guarantee that the proposals to the CJIC on these important topics reflect community input, the public is therefore invited to attend the following public hearings:

- April 3, 2017 at 6 p.m. at Clayton Hall, University of Delaware, 100 Pencader Way, Newark, DE
- April 10, 2017 at 6 p.m. at the Martin Luther King Jr. Student Center at Delaware State University, 1200 N. DuPont Highway, Dover, DE
- April 13, 2017 at 6 p.m. at the University of Delaware’s Virden Retreat Center, 700 Pilottown Road, Lewes, DE

The CJIC thanks both the University of Delaware and Delaware State University for their commitment to the community, and these important criminal justice issues, by making meeting space available for these public hearings.

The portion of the program on Criminal Code reform will focus on public comments. Those interested in offering comment should pre-register and are asked to submit a copy of written thoughts five days before the initial hearing to [Criminal.Justice.Improvement.Comm@state.de.us](mailto:Criminal.Justice.Improvement.Comm@state.de.us). Speakers shall

be confined to five minutes so that as many interested commentators have a chance to speak in the time available. By this means the hope is to get the most meaningful and specific input to help in shaping the final report to the CJIC.

Because the pretrial modernization initiative is separate and apart from the Improved Delaware Criminal Code, the format and presentation will differ. The workshop will involve a presentation by those involved in the reform development, outlining the long-term direction of pretrial modernization and also highlighting some potential short-term measures. This will promote public understanding and allow for early feedback in response to the workshops.

To facilitate the April public hearings, CJIC Chairman McDowell has asked a distinguished group of citizens with public policy experience in criminal justice to conduct the hearings, and help preside at the workshop on bail reform, including retired New Castle County Police Chief Elmer Setting and former prosecutors Adam Balick and Ipek Medford among others. Members of the group that worked on the Improved Delaware Criminal Code will also be in attendance to hear any concerns or suggestions from the public.

*“As someone who has committed himself to protecting the public as a police officer, I welcome the chance to make our Criminal Code and bail process more effective. Police officers, prosecutors and the public deserve an understandable, up-to-date, and rational Criminal Code that puts the highest priority on deterring violent crimes, sex crimes, and gun crimes. As important, our system of pretrial detention should use the best practices. Very dangerous arrestees should not get out on the street, however wealthy they may be. At the same time, non-violent offenders should not linger in jail simply because they are poor. We should do better and if we work together in a constructive way, we can.”*  
– retired New Castle County Police Colonel Elmer Setting.

Detailed information about the Improved Delaware Criminal Code is available online on the website of the Delaware Controller General at:

<https://legis.delaware.gov/Committee/JointFinance/CJIC-Report/>

Documents now available online for public review include:

- Introduction: Outlines the history of the project and outlines the process that produced the Improved Delaware Criminal Code;
- Draft of the Improved Delaware Criminal Code;
- Summary Grading Table: Groups all offenses covered by the Improved Delaware Criminal Code;
- Conversion Tables: Cross references the current law and the Improved Delaware Criminal Code; and
- Commentary: Details how each section of the Improved Delaware Criminal Code works and identifies any suggested changes and the reasons behind the change.

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