

**PRELIMINARY REPORT  
TO THE  
DELAWARE GENERAL ASSEMBLY'S  
CRIMINAL JUSTICE IMPROVEMENT  
COMMITTEE**

**Volume 1**

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**DELAWARE GENERAL ASSEMBLY'S CRIMINAL  
JUSTICE IMPROVEMENT COMMITTEE CODE  
IMPROVEMENT PROJECT**

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## PREFACE

In 2014, the Delaware General Assembly adopted epilogue in its Budget Act for fiscal year 2015 that created the Criminal Justice Improvement Committee (“CJIC”). The CJIC was charged generally with seeking opportunities for efficiencies, cost savings, and pursuing other improvements in the criminal justice system. One specific area of the CJIC’s legislative mandate reads: “The Committee shall review opportunities for efficiencies in 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- statutes in the criminal code, identifying disproportionate, redundant, outdated, duplicative or inefficient statutes; .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;. . .”(“the Epilogue”).

After the Epilogue was reauthorized in 2015, this Code Improvement Project was initiated under the CJIC as a comprehensive response to its mandate. As a practical matter, it is impossible to determine if a criminal statute is “disproportionate, redundant, outdated, duplicative or inefficient” until it is compared to all other criminal statutes. Additionally, since the General Assembly adopted the Delaware Criminal Code of 1973, new insights have emerged regarding what a criminal code should address, and how it should do so. Moreover, the broader legal landscape has changed greatly. This Code Improvement Project was predicated on the belief that — as was the case in 1973, and may well be the case again in another forty or fifty years — it was necessary to take a step back and conduct a comprehensive review of the Delaware Criminal Code. The two volumes of this Preliminary Report are the fruits of that review.

Under the Epilogue’s legislative mandate, the Proposed Criminal Code seeks to replace the current code with a clear, concise, and comprehensive set of provisions. Specifically, the Proposed Code seeks to include necessary provisions not contained in the current code; to eliminate unnecessary or inconsistent provisions of the current code; to revise existing language and structure to make the law easier to understand and apply; and to ensure that criminal offenses and legal rules are cohesive and relate to one another in a consistent and rational manner. At the same time, the Proposed Code aims to preserve the substantive policy judgments reflected in the original code and its later amendments. When the process of clarifying and reconciling current provisions made it necessary to make substantive choices, we have sought to explain and justify the proposed changes with commentary designed to assist the enactors, and ultimately the users, of the Proposed Code.

In developing the Proposed Code, we were guided by five general drafting principles. First, we have made an effort to use clear, accessible language and organization. One of the critical functions of a criminal code is to provide notice to citizens of what conduct is prohibited. Clear and accessible writing enables provision of true notice while also ensuring that no offender escapes liability because of an incomplete or ambiguous offense definition. More straightforward code provisions also promote development of clearer jury instructions, making it easier for jurors to fulfill their critical role. Even for members of the criminal justice system, who work with the criminal code every day and must be intimately familiar with its rules, plain-language expression is essential.

Second, the Proposed Code endeavors to provide a comprehensive statement of rules. A criminal code must include all necessary rules governing liability. Comprehensiveness helps avoid inappropriate results. Courts, which decide individual cases and act independently of one another, cannot be as effective as a legislature in formulating coherent general doctrines that will work together as the provisions of a comprehensive code can and must. Moreover, an uncoded rule is more likely to be applied differently in similar cases than a codified rule, as the terms of the latter are fixed, explicit, and available to all officials at each stage in the process.

Third, we have aimed to consolidate offenses. Perhaps inevitably, four decades of piecemeal modification of the Criminal Code of 1973 have led to the addition of hundreds of new offenses, many of which cover the same conduct as previous offenses or appear in various other titles of the Delaware Code rather than in the criminal code. Consolidation ensures against the confusion that results when one encounters, and must make sense of, multiple provisions that overlap or contradict, and also against the mistakes that ensue when one fails to notice, or find, provisions that may apply to a given case. Consolidation also aids the task of proper grading, because it is nearly impossible to maintain consistent, proportional grading when offense definitions are based on immaterial or incomprehensible, distinctions.

Fourth, we have striven to grade offenses rationally and proportionally. One virtue of a Code Improvement Project, relative to the usual piecemeal legislative additions and alterations to the criminal code, is the opportunity it provides for a general review of the system of grading offenses, considering how all offenses relate to one another rather than considering individual offenses in a vacuum. For a system of criminal justice to be fair, liability must be assigned according to the relative seriousness of the offense(s) committed. We have sought to recognize all, and only, suitable distinctions among the relative severity of offenses and develop a scheme to grade each offense proportionally to its gravity in light of those distinctions.

Finally, the Proposed Code seeks to retain all (but only) reasonable policy decisions embodied in current law. Because substantive policy decisions about the rules of the criminal law reflect value judgments properly left to the General Assembly, the Proposed Code aims to follow the substance of current law wherever possible. In some places, however, current law contains multiple contradictory rules — and therefore no clear rule — on a subject. Other rules may have been sound when enacted, but no longer reflect current realities or sensibilities and require expansion, alteration, or deletion. In those situations where the existing legal rule seems clearly at odds with the Epilogue’s mandate of producing a rational, coherent criminal code, we have had little choice but to modify the existing rule, using supporting commentary to the Proposed Code to describe and justify the proposed change.

A few words are in order regarding issues that the Proposed Code does not address. The Proposed Code addresses substantive criminal law rules only. It excludes numerous provisions in the current code governing procedural, sentencing, and regulatory issues, retaining only the ones necessary to elaborate or explain the criminal code’s substantive prohibitions and rules. This does not mean, however, that the Proposed Code would eliminate those provisions. Rather, the Proposed Code was drafted with the understanding that such provisions would be retained, in Title 11 or other titles of the Delaware Code, by means of a “conforming amendments” bill to be enacted by the General Assembly contemporaneously with the new criminal code. It is our expectation that in the years ahead, subsequent reforms of Delaware’s procedural and regulatory law will organize these provisions differently or transfer them to other Titles of the Delaware Code. In many instances, the Code’s commentary provides recommendations that may assist these future reform efforts, by highlighting such provisions and explicitly stating that a particular current offense, procedural or sentencing rule, or civil or regulatory provision should be preserved outside the Proposed Code. Yet the commentary’s failure to include such a clear statement as to any particular provision — especially one that does not address an issue relating to substantive criminal law — should not be understood to indicate a recommendation that the provision in question should be eliminated. In the event that the General Assembly decides to adopt the Proposed Code, we have prepared more detailed instructions (excluded, due to considerations of length, from these volumes) concerning the necessary conforming amendments.

In other instances, language in the Proposed Code itself makes clear its intent to retain current law as to an issue. For example, the proposed provisions governing abortion (Section 1106) and driving under the influence (Section 1205) explicitly incorporate by reference the complicated regulatory schemes currently set forth in Subchapter IX of the Medical Practice Act and Section 4177 of Title 21,

respectively. Similarly, many of the proposed drug offenses (Chapter 5200) explicitly rely upon definitions contained in the Uniform Controlled Substances Act. Incorporating those rules and definitions by reference, but preserving their regulatory content outside Title 11, avoids cluttering the Code with technical regulatory provisions. At the same time, it is necessary to overtly incorporate the relevant offenses within the Proposed Code both in order to promote the comprehensiveness of the Code and to exclude them from the scope of the rule (stated in proposed Section 801) that non-Code offenses can be graded no higher than Class A misdemeanors.

As discussed above, we have sought to retain reasonable policy decisions embodied in current law where possible. In recognition that such value judgments are best left to the legislature, the Proposed Code includes footnotes identifying several substantive policy issues for the General Assembly to resolve. Each footnote presents the arguments on both sides of the issue.

In addition to such “pro-con footnotes,” the Preliminary Report seeks to facilitate the debate on Delaware’s criminal law, and assist the people of Delaware and various actors within its criminal justice system in several ways. In addition to the text of the Proposed Code, Volume 1 of the Preliminary Report contains a Summary Grading Table (that was previously provided to the working group members), which groups all offenses covered by the Proposed Code according to their grade, and assists in the evaluation the Proposed Code’s grading judgments. A just and fair penal code authorizes more serious punishment for more serious offenses. Thus the grade of each offense ought to be compared to the grade of each other offense in the Proposed Code and, all other things being equal, more serious offenses ought to be graded more seriously than less serious offenses. Because the Proposed Code attempts to be comprehensive, it contains a large number of offenses, making it a challenge to assure proportionality among all offenses. The Summary Grading Table facilitates this difficult but essential task.<sup>1</sup> In addition, Volume 1 contains two Conversion Tables. The first Conversion Table lists each Proposed Code provision and identifies the current law provision(s) that it replaces; the second Conversion Table lists each current law provision and identifies the Proposed Code provision(s) that address its content. These tables ease the comparison between current law and the Proposed Code.

Volume 2 of the Preliminary Report contains the official commentary, which describes how each section of the Proposed Code works. Where the Proposed Code suggests a change in current law, the commentary notes this fact and identifies the suggested change and the reasoning behind it.

Note also that presently, the Proposed Code (including its commentary and the conversion tables appearing at the end of Volume I of the Preliminary Report), may not reflect some of the most recent additions to Delaware law. While the current version of the Proposed Code is based upon the Delaware criminal code as it existed in September 2015, new criminal legislation may have been introduced since. As this code improvement project moves ahead, Delaware criminal law is likely to evolve even further. Therefore, near the very final stages of this project, Delaware criminal code will be reviewed for all additions made since September 2015, and those will be incorporated into the Proposed Code.

As a final matter, it is important to note that proposed Chapter 800 is not intended to address all issues (or indeed, any issues) regarding the sentencing and disposition of offenders. Rather, Chapter 800 deals only with those basic issues necessary to make clear the meaning of the Proposed Code’s general scheme of liability — for example, that offense grades define a certain hierarchy; and that the Code contemplates certain broad factors that will operate to aggravate an offense’s grade, and addresses those factors by imposing general aggravations rather than applying them to specific offenses. The Proposed

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<sup>1</sup> The Summary Grading Table lists all of the offenses in the code and provides a fair representation of the various sub-offenses contained within these offenses. This level of generality, optimizes the reader’s ability to evaluate the Proposed Code’s grading judgements. Importantly, the table does not contain all the possible variations of each offense, since such granularity would hinder, rather than facilitate the evaluation task.

Code's silence as to other, more complex sentencing issues does not indicate a lack of awareness or concern about such issues, but an understanding that they were beyond the scope of the present project. Moreover, the "authorized" terms of imprisonment and fines appearing in Chapter 800 are themselves tentative. The primary focus of our work has been to ensure that the grading of different offenses is rational and proportional, and not to determine the appropriate absolute severity of punishment attaching to a grade. Accordingly, the proposed offense grades are intended only to convey the relative seriousness of offenses, and not the sentencing consequences of a conviction for any offense. As to this point, we expect that in the near future the CJIC and the General Assembly may examine important issues such as whether to eliminate or limit mandatory minimum sentences, give more weight to SENTAC sentencing guidelines, or other important options relevant to sentencing. The grading table exercise reflected in this work should facilitate those discussions, but does not attempt to substitute for a full consideration of those vital issues.

## **HISTORY OF CRIMINAL JUSTICE IMPROVEMENT COMMITTEE’S CODE IMPROVEMENT PROJECT**

The current Delaware Criminal Code was developed beginning in 1967, in direct response to the American Law Institute publishing its landmark Model Penal Code in 1962. In the words of then Judge, later Justice, Joseph T. Walsh, Chairman of the Governor’s Committee for Revision of the Criminal Law: [t]he criminal law of Delaware consisted at that time of a large number of unconnected criminal statutes. The offenses were not codified, and the sections defining them were phrased in widely different styles of language. Penalties were inconsistent, language was archaic and worst of all, many offenses were left to be defined by the common law without any statutory assistance. General principles of criminal liability, such as definitions of the requisite states of mind for criminal guilt and defenses to criminal prosecution, were also left to common-law development.<sup>2</sup>

After eight public hearings and a four-year revision process, the current code was passed and received the Governor’s approval in 1972, and was enacted in 1973.

The Criminal Code of 1973 was short, clean, and comprehensive — a dramatic improvement over the law it replaced. In the years since 1973, however, numerous amendments have greatly reduced the utility and clarity of the original criminal code. The sheer volume of the code has increased from less than 95 pages as originally enacted, to over 407 pages today. Nearly all of these amendments and additions were made on an ad hoc basis and without a comprehensive review of the code as a whole. As a result, several fundamental problems plague the code, much as they plagued Delaware criminal law before 1973. Provisions overlap with or contradict other provisions. Offenses have become obsolete or out of touch with current societal norms. Penalties are disproportionate to the harm caused or in comparison with other provisions. Numerous major criminal offenses are defined in statutes outside the criminal code. Conversely, various procedural, sentencing, and regulatory provisions that properly belong elsewhere — in the Code of Criminal Procedure, or another title related to the provision’s subject matter — appear within the criminal code.

In 2014, the Delaware General Assembly passed a law creating the Criminal Justice Improvement Committee (“CJIC”) (FY 15 Budget Act of the 147th General Assembly (SB 255, Sect. 111 as amended by SB 266))<sup>3</sup>. Part of the mandate of that group was to focus on reforming the Delaware Criminal Code. To that end, the epilogue language required that the CJIC:

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<sup>2</sup> Frank B. Baldwin, III, DELAWARE CRIMINAL CODE WITH COMMENTARY iii (1973) (introductory material by Judge Walsh)

<sup>3</sup> Section 111 provides as follows:

“Recognizing funding and policy challenges in the criminal justice system, the General Assembly hereby establishes the Criminal Justice Improvement Committee. The Committee shall suggest efficiencies, improvements and cost savings to the criminal justice system. The Chair and the Co-Chair of the Joint Finance Committee shall appoint a Committee Chair. The Committee shall also include the following membership:

- The Attorney General or designees;
- The Chief Public Defender or designee;
- The Commissioner of Correction or designee;
- The Governor’s criminal justice policy advisor;
- A member of the Joint Finance Committee representing each caucus, as appointed by the Chair and Co-Chair of the Joint Finance Committee;
- Two representatives of the Judicial Branch, as appointed by the Chief Justice;
- A representative from the Delaware Association of Criminal Defense Lawyers;
- A representative from the Delaware Bar Association; and

“review opportunities for efficiencies in 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; . . .”

During the following year, discussions were had among members of the CJIC established by the epilogue as to how best to move the epilogue’s mandated mission forward. By mandate of the epilogue, the Chief Justice and his designee were required to serve on the CJIC. To aid the CJIC, the Chief Justice selected Superior Court Judge William C. Carpenter, Jr. as his designee, because Judge Carpenter is not only highly experienced as a criminal law judge and a former U.S. Attorney for the District of Delaware, but also the head of the General Assembly-mandated Delaware Sentencing Accountability Commission (SENTAC).<sup>4</sup>

In discussions with the General Assembly’s Joint Finance Committee (JFC), the Judiciary suggested that the code reform tasks in the epilogue be assigned to SENTAC, because that body was established by statute to create a coherent sentencing scheme under the existing code, was expert in the criminal law of Delaware, and contained key stakeholders such as the police, corrections officials, and prosecutors and defense attorneys. Ultimately, the General Assembly elected to continue with the mandate for code reform under the CJIC, and to continue with its existing membership.<sup>5</sup>

As it had in 2014, the General Assembly again directed the CJIC to “review opportunities for efficiencies in 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; . . .”

- 
- The Director of Substance Abuse and Mental Health or designee.

The Committee shall review opportunities for efficiencies in 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;
- Judicial access to adequate information prior to sentencing;
- Court decisions and rules related to Rule 61;
- The charging and plea bargaining process, including cases where charges may overlap;
- Bail and alternatives to incarceration including new technologies; and
- Action plans related to the identified areas outlined in the Sixth Amendment Center’s report, published in February 2013.

The Committee shall work in consultation with other governmental committee and bodies which have overlapping authority in the criminal justice areas that it will be reviewing, in order to support coordination, and avoid duplication, of efforts. Those bodies include, but are not limited to, the Delaware Sentencing Accountability Commission, Delaware Justice Reinvestment Oversight Group, and the Supreme Court’s Access to Justice Commission. In recognition that many important criminal justice issues fall within overlapping jurisdictions of various commissions, task forces, and other bodies overseeing criminal justice areas, and that this overlap creates a strain on scarce staff resources, risks inefficiency and potential inconsistency in policies, the Committee shall also recommend steps to reduce the number of bodies dealing with common criminal justices issues, so that fewer, but more effective, bodies develop and help implement criminal justices policies. The Committee shall recommend appropriate funding or policy changes by May 1, 2015.”

<sup>4</sup> 11 *Del. C.* § 6580.

<sup>5</sup> FY 16 Budget Act of the 148th General Assembly, HB 225, Sect. 112.

Using that authority, the Judiciary offered funding it received in the FY 2016 Budget Act of the 148th General Assembly (HS No. 1 for HB 225, Sect. 49) to support access to justice initiatives and hired Professor Paul Robinson, an internationally renowned expert in crafting modern criminal codes, to aid the legislatively established CJIC.<sup>6</sup>

During the CJIC's November 17, 2015 initial meeting, the committee discussed working with Professor Paul Robinson to guide an independent and comprehensive review of Delaware's criminal code to meet their goals specified in budget epilogue. A group of lawyers and judges involved in the Delaware criminal justice system was formed to assist with the project, which initially included: Judge William Carpenter, SENTAC Chair; Judge Ferris Wharton; Judge Charles Butler; Judge Paul Wallace; Lisa Minutola, Chief of Legal Services for the Office of Defense Services; Robert Goff, Office of Defense Services; Steve Wood, Deputy Attorney General; and Kathleen Jennings, Chief State Prosecutor. During the first portion of the drafting and revision process that followed, Steve Wood and Kathleen Jennings received all the materials distributed to the working group. But before the working group deliberations began, the Attorney General declined the invitation for his attorneys to participate in the process and eventually would not permit them to comment on the Report. As a result of this decision by the Attorney General, no one in the Department of Justice contributed to this Preliminary Report. Nonetheless, the Working Group's members included three former prosecutors with decades of prosecutorial experience.

On January 21, 2016, Professor Robinson appeared before the CJIC to present some preliminary work and answer questions about the Project's approach and process. The CJIC agreed that the Project should continue its work. On June 8, 2016 at the request of the CJIC Chair, Professor Robinson appeared before the full Joint Finance Committee to update members of the General Assembly about the Project's progress. In the interests of transparency, Professor Robinson and the Working Group has also invited commentary and questions from other stakeholders in the criminal justice system, to be incorporated before the Report is finalized including:

- leaders of the Delaware police unions,<sup>7</sup>
- police chiefs from across the state,<sup>8</sup> and
- victims' rights advocates.<sup>9</sup>

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<sup>6</sup> Section 49 provides:

"Notwithstanding anything contained in 12 *Del. C. c. 11 Subchapter IV*, or any other rule or law to the contrary, 50 percent of the funds held pursuant to former Superior Court Rule 16.1 shall be deposited in the General Fund and the remained authorized to be used, on a one-time basis as determined by the Chief Justice, for operation needs in Fiscal Year 2016 related to the work of SENTAC, the Access to Justice Commission, and the Criminal Justice Council for the Judiciary."

<sup>7</sup> On April 22, 2016, Professor Robinson, Mr. Kussmaul, and Chief Justice Strine met with: Thomas Brackin, President of the Delaware State Troopers Association; and Fred Calhoun, President of the Delaware State Lodge of the Fraternal Order of Police.

<sup>8</sup> On July 21, 2016, Professor Robinson and Mr. Kussmaul met with the following representatives from the Delaware Police Chiefs Council: Jeff Horvath, Executive Director of the Council; Wayne Kline, Chief of Enforcement for the Delaware Department of Natural Resources and Environmental Control; Paul Bernat, Chief of the Dover Police Department; R.L. Hughes, Chief of the Georgetown Police Department; John Horsman, Chief of the Delaware Capitol Police; and Peggy Bell, Executive Director of the Delaware Criminal Justice Information System. On August 15, 2016, Professor Robinson, Mr. Kussmaul, Chief Justice Strine, and Judges Carpenter and Wharton met with: Colonel Nathaniel McQueen, Jr., Chief of the Delaware State Police; Colonel Elmer M. Setting, Chief of the New Castle County Police Department; and Fred Calhoun, President of the Delaware State Lodge of the Fraternal Order of Police.

<sup>9</sup> By way of example, on August 30, 2016, Professor Robinson, Mr. Kussmaul, Mr. Rudyak, and Judge Wharton met with representatives from various victims' rights advocacy organizations.

We continue to solicit input from all who have interest in commenting. Additionally, a series of hearings will be held across the state during which public comment will be solicited and be incorporated into our Final Report to the CJIC.

## WHY AN IMPROVED CRIMINAL CODE?

### EXECUTIVE SUMMARY

In the forty years since the General Assembly adopted the Criminal Code of 1973, thousands of individual changes to the law have led to numerous inconsistencies, redundancies, ambiguities, and contradictions in the code. As was the case in 1973, the time is ripe to take a step back and conduct a more comprehensive review of the Delaware Criminal Code.

The Proposed Code seeks to replace the current code with a clear, concise, and comprehensive set of provisions. Specifically, the Proposed Code seeks to include necessary provisions not contained in the current code; to eliminate unnecessary or inconsistent provisions of the current code; to revise existing language and structure to make the code easier to understand and apply; and to ensure that the offenses and rules contained in the code are cohesive and relate to one another in a consistent and rational manner.

In developing the Proposed Code, we were guided by five general drafting principles, set forth below. The first three principles relate to the form of the Code; the final two principles relate to its content.

#### *1. Use clear, accessible language and organization*

One of the critical functions of a criminal code is to provide notice to citizens of what conduct is prohibited. Clear and accessible writing enables provision of true notice while also ensuring that no offender escapes liability because of an incomplete or ambiguous offense definition. More straightforward code provisions also promote development of clearer jury instructions, making it easier for jurors to fulfill their critical role. Even for members of the criminal justice system, who work with the code every day and must be intimately familiar with its rules, plain-language expression is essential. Current Delaware law, however, is often less clear than it could, and should, be.

- Various current provisions, such as “use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices,” use undefined terms whose meaning is not obvious, and frequently employ legal terms of art without explaining their meaning. In such cases, users of the criminal code (including judges, lawyers, law enforcement officials, and jury members) must guess at the General Assembly’s intended meaning.
- Current Delaware law contains numerous offenses that unnecessarily reiterate, or even undermine, General Part provisions. For example, many offenses are defined to prohibit certain conduct and “attempting” such conduct. This approach to defining offenses short-circuits the general rules for attempts set forth in the General Part, under which attempts are distinguished from completed crimes for grading purposes.
- Current law fails to properly categorize general defenses into justifications, excuses, and nonexculpatory defenses, or to consistently define who bears the burden of proving those different kinds of defenses, or by what standard. As a result, the burden is on the defendant to prove some excuse defenses by the preponderance of the evidence, such as the insanity defense, while setting only an evidentiary burden as to others, such as involuntary intoxication. Yet all excuses — and especially insanity and involuntary intoxication — are inherently similar, in that they prevent liability for an admitted violation of the law by a blameworthy defendant.

## *2. Provide a comprehensive statement of rules*

A criminal code must include all necessary rules governing liability. Comprehensiveness helps avoid inappropriate results. Courts, which decide individual cases and act independently of one another, cannot be as effective as a legislature in formulating coherent general doctrines that will work together as the provisions of a comprehensive code can and must. Moreover, an uncodified rule is more likely to be applied differently in similar cases than a codified rule, as the terms of the latter are fixed, explicit, and available to all officials at each stage in the process. A few examples of significant provisions current law omits follow:

- Current Title 11 contains no general provision dealing with de minimis infractions and customary license, which ought not result in criminal liability, instead leaving the decision to prosecute such cases up to the discretion of the State.
- Current Title 11 lacks general provisions explaining the practical effects of categorizing a defense as a justification, excuse, or nonexculpatory defense. As a result, it is unclear whether bystanders would be permitted to assist in conduct that is excused, or whether an aggressor would be permitted to resist justified force used in self-defense — both undesirable outcomes.
- Current Title 11 does not include a comprehensive offense for resisting or obstructing law enforcement officers, fire fighters, and emergency personnel. Instead, it contains a few specific offenses that deal with some, but by no means all, of the situations in which interference with first responders merits punishment. As a result, many blameworthy offenders are arbitrarily saved from prosecution. Current law also does not contain a comprehensive offense for obstructing administration of law, instead taking a similarly piecemeal approach.
- Current law fails to criminalize causing or risking catastrophe, a very serious offense contained in the overwhelming majority of U.S. criminal codes. This omission leaves terrorist-like attacks to be prosecuted using offenses with unsuitably low grades, such as criminal mischief or reckless endangerment.
- Current law fails to define an offense for reckless injuring that is separate from assault. Instead, all reckless, knowing, or intentional injuries are graded the same. As a result, intentionally and knowingly causing injury, which are materially more blameworthy acts, are not punished more seriously than recklessly causing injury.

## *3. Consolidate offenses*

The Criminal Code Improvement Project provides a valuable opportunity to consolidate multiple offenses that overlap, contradict, or narrowly focus on particular instances of a general category of improper conduct. Consolidation also aids the task of proper grading, because it is nearly impossible to maintain consistent, proportional grading when offense definitions are based on immaterial or incomprehensible, distinctions. The following are a few examples of the numerous problems that suggest enormous potential to consolidate offenses more effectively:

- The sheer verbiage of current law is one indication of its failure to consolidate similar offenses. To take just one example, the current criminal code uses 16,229 words to define its fraud offenses, while the Proposed Code requires only 2,654 words to do so. Overall, the Proposed Code's Special Part uses only 26.6 percent — roughly 1/4 — of the words in the current code's Special Part, plus other, non-criminal code statutory felonies.
- Current Delaware law defines numerous serious crimes outside the criminal code. Over one hundred misdemeanors and nearly one hundred felonies are scattered throughout the Delaware

Code, and more than fifty offenses appearing outside Title 11 — many of which overlap, or simply restate, prohibitions in current Title 11 — are graded as Class E felonies or higher.

- Current law frequently includes numerous narrow offenses in addition to, or instead of, a single, more general offense. In the area of theft, for example, in addition to the current general offense, there are separate offenses for stealing from a cemetery, shoplifting retail goods, or stealing a motor vehicle, prescription pad, rented property, livestock, computer services, or firearms, to name just a few. Even more exaggerated examples of needless multiplicity of offenses exist for such offense categories as property damage, assault, and perjury. In many cases, these multiple offenses will impose varying sentencing grades without any apparent basis for the variation.

#### *4. Grade offenses rationally and proportionally*

One virtue of a Code Improvement Project, relative to the usual piecemeal legislative additions and alterations to the criminal code, is the opportunity it provides for a general review of the system of grading offenses, considering how all offenses relate to one another rather than considering individual offenses in a vacuum. The necessarily ad hoc process that has generated current law makes consistent grading difficult, if not impossible. An overall review reveals a great variety of grading problems and inconsistencies, of which the following are merely a few examples:

- The current sexual assault provisions fail to take the offender's age into account, but the rape provisions do take it into account, in many different ways. But there is no clear reason why it would only matter for one provision, but not the other.
- Current law treats many forms of fraud as a single-grade misdemeanor, regardless of the amount of money involved in the fraud. Other forms of fraud provide a felony grade for offenses involving an amount above a certain threshold (usually \$1,500), while any amount below that threshold is a misdemeanor. As a result, for example, defrauding secured creditors in the amount of \$10 million is treated the same as defrauding them for \$100.
- Some unexplained grading anomalies reflect current law's lack of clarity and failure to consolidate similar offenses. For example, current law defines the offense of bribery as a Class E felony, but also defines a separate offense covering "unlawful gratuities" and grades that offense as a Class A misdemeanor. But, giving an unlawful gratuity is simply a specific form of bribery.
- Current law grades sexual harassment much less harshly than non-sexual harassment, despite the fact that the former can involve threatening to rape another person.
- Current law grades thefts involving more than \$100,000 the same as manslaughter and aggravated kidnapping, while grading petty thefts (for example, stealing a sandwich) the same as assault and sexual assault.
- Current law uses a single felony grade for damaging property; as a result, destroying a famous work of art valued at \$10 million would be subject to the same punishment as stealing \$1,500 or selling drug paraphernalia.

#### *5. Retain all (but only) reasonable policy decisions embodied in current law*

Because substantive policy decisions about the rules of the criminal law reflect value judgments properly left to the General Assembly, the Proposed Code seeks to follow the substance of current law wherever possible. In some places, however, current law contains multiple contradictory rules — and therefore no clear rule — on a subject. Some rules may have been sound when enacted, but no longer reflect current realities or sensibilities and require expansion, alteration, or deletion. For instance, Title 11

contains a number of outdated offenses that do not belong in a modern criminal code, such as the offenses of larceny of livestock, smoking on trolleys, and advertising marriage in another state. Maintenance of dead-letter statutes of this kind only tends to invite abuse and to undermine the authority of the criminal law as a reflection of the governed community's sensibilities.

## WHY AN IMPROVED CRIMINAL CODE?

### INTRODUCTION

It has been more than forty years since the General Assembly adopted the Criminal Code of 1973. In that time, the code has been expanded and amended in numerous ways. Those later alterations, however, have each sought to address the specific matter at hand, with little attention to the general effects of the change on the criminal code's overall structure, its terminology, or its application. Meanwhile, four decades have passed without an overarching review of the criminal code as a whole to determine what modifications should, or must, be made to reflect changing times, developing insights, and changes in the broader legal landscape. As a result, the current criminal code has numerous inconsistencies, redundancies, ambiguities, and contradictions. As was the case in 1973 — and may well be the case again in another forty or fifty years — the time is ripe to take a step back and conduct a more comprehensive review of the criminal code.

The Proposed Code attempts to eliminate these problems and replace the current code with a clear, concise, and comprehensive set of provisions. Specifically, the Proposed Code seeks to include necessary provisions not contained in the current code; to eliminate unnecessary or inconsistent provisions of the current code; to revise existing language and structure to make the code easier to understand and apply; and to ensure that the offenses and rules contained in the code are cohesive and relate to one another in a consistent and rational manner. At the same time, the Proposed Code aims to track the substantive policy judgments reflected in the original code and its later amendments. When the process of clarifying and reconciling current provisions made such substantive choices necessary, we have sought to explain and justify the proposed changes with commentary designed to assist the enactors, and ultimately the users, of the Proposed Code.

In developing the Proposed Code, we were guided by five general drafting principles, set forth below. The first three principles relate to the form of the Code. Experience shows that proper form can aid, and poor form can hinder, a code's ability to achieve its substantive functions. The final two principles concern the Code's content.

#### 1. USE CLEAR, ACCESSIBLE LANGUAGE AND ORGANIZATION

One of the critical functions of a criminal code is to provide notice to citizens of what conduct is prohibited. Indeed, the fundamental principle of legality — the requirement of a clear prior written prohibition as a prerequisite to criminal liability — underlies numerous constitutional and other core criminal-law rules, such as the constitutional prohibition against ex post facto laws and the constitutional invalidation of vague offenses. Providing notice also has obvious practical value, for citizens can hardly be expected to obey the law's commands if they are unaware of them, or cannot understand them. Accordingly, clear and accessible writing enables provision of true notice and ensures that no judgment is imposed that was not clearly intended and expressed by the General Assembly, and that no offender who violates the rules will escape liability because of an incomplete or ambiguous declaration of the law's commands.

The virtues of plain-language drafting extend beyond the direct imposition of liability. The criminal code serves functions beyond notifying the general public in advance of the law's commands of them. The code is also the ultimate basis of guidance for lay juries, who must decide after the fact whether a criminal offense has been committed in a particular situation. More straightforward code provisions promote development of clearer jury instructions, making it easier for jurors to fulfill their role. Even (perhaps especially) for members of the criminal justice system, who work with the code every

day, plain-language expression is essential. Law enforcement officers, for example, are charged with implementing the code's rules fully and fairly. Yet these officers are not lawyers. No less than the general populace, their ability to perform their legal role is enhanced by clarity in the criminal law's written expression.

Further explanation of this goal follows, along with a representative, but by no means exhaustive, collection of examples of current Delaware law's shortcomings in this area.<sup>10</sup>

### A. Clear Language

Several drafting methods promote the goal of clarity. First, effective communication calls for short, commonly used words, and avoidance of legal terms of art where possible. When such legal terms are used, they should be defined, and it should be apparent that the terms' use is to be guided by the definition and not left to unguided speculation. One difficulty with current law is that numerous important terms, many of which have no commonly understood meaning or are complex legal terms, are left undefined. In such cases, users of the criminal code (including judges, lawyers, law enforcement officials, and jury members) must guess at the General Assembly's intended meaning. To avoid this problem, the Proposed Code includes a provision at the end of each Section that lists all defined terms used in that Section.

Current law also sometimes impedes clear understanding by using undefined terms where similar defined terms exist. For example, current 11 Del. C. § 231 clearly defines the culpability levels of intent, knowledge, recklessness, and negligence. Nevertheless, numerous current Delaware provisions employ other culpability requirements, such as "having reason to believe,"<sup>11</sup> "reasonable ground to believe,"<sup>12</sup> "would lead a reasonable person to believe,"<sup>13</sup> "having reason to know,"<sup>14</sup> "should know,"<sup>15</sup> "reasonably should know,"<sup>16</sup> "should have known,"<sup>17</sup> "wil[l]fully,"<sup>18</sup> "fraudulently,"<sup>19</sup> "purposely,"<sup>20</sup> or a combination of the foregoing and others.<sup>21</sup> The Proposed Code rejects the use of such outmoded, and statutorily undefined,<sup>22</sup> culpability terms in defining offenses. Rather, the Proposed Code exclusively uses the

<sup>10</sup> For example, numerous other provisions use unclear language. *See, e.g.*, 11 Del. C. §§ 463, 616, 840, 850, 933, 1102, 1106, 1112A, 1112B, 1326, 1327, 1403, 1404, 4214.

<sup>11</sup> *See* 11 Del. C. § 850(a)(3)a.

<sup>12</sup> *See* 11 Del. C. §§ 802(b)(3), 811(c), 1002(2).

<sup>13</sup> *See* 11 Del. C. §§ 1114(d)(2), 1114A(d).

<sup>14</sup> *See* 11 Del. C. §§ 1339(a)(2), 1458(a)(1).

<sup>15</sup> *See* 11 Del. C. §§ 204(a)(5), 424(2), 464(d).

<sup>16</sup> *See* 11 Del. C. §§ 1303(a)(1); 16 Del. C. § 4774(e).

<sup>17</sup> *See* 11 Del. C. §§ 1326(d).

<sup>18</sup> *See* 7 Del. C. § 724(a); 11 Del. C. §§ 840(b); 850(d)(3)b., 1325; 12 Del. C. § 210; 14 Del. C. § 9302; 21 Del. C. § 6705.

<sup>19</sup> *See* 6 Del. C. § 4903A(b); 11 Del. C. § 841(b); 16 Del. C. § 4798(r); 21 Del. C. § 2751.

<sup>20</sup> *See* 11 Del. C. § 471(a).

<sup>21</sup> *See* 3 Del. C. §§ 1041 ("wilfully or maliciously"), 1045 ("wilfully, negligently or maliciously"); 7 Del. C. § 6013 ("wilfully or negligently"); 11 Del. C. §§ 903A (knowingly, wilfully, and with the intent to defraud"), 941(c) ("wilful and malicious"), 1448A ("wilfully and intentionally"); 16 Del. C. § 2209(b) ("wilful and wanton"); 21 Del. C. § 6701 ("wilfully or maliciously").

<sup>22</sup> "Wanton" conduct is only defined in case law. *See Eustic v. Rupert*, 460 A.2d 507, 509 (Del. 1983). "Fraudulently" is only defined in pattern jury instructions. *See, e.g.*, Delaware Criminal Pattern Jury Instructions 11.841(b) (current through 77 Del. Laws, June 30, 2010). Otherwise, there are no pattern jury instructions defining culpability levels other than intent, knowledge, recklessness, and criminal negligence — despite the fact that ordinary negligence is occasionally used in the current criminal code as a culpability level. *See* 11 Del. C. §§ 231(d), 628A(2), 629, 630(a)(2), 938(a), 1107, 1114(a), 1448(e)(2).

culpability levels of intent, knowledge, recklessness, and negligence, which are the nearly universal norm for modern criminal codes.

As an example of the type of legalese the Proposed Code seeks to avoid, current law defines the offense of “use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices” as follows:

(a) *Prohibited acts*--A person is guilty of a violation of this section if the person knowingly:

(1) Manufactures, assembles, distributes, possesses with intent to distribute, transfers, sells, promotes, offers or advertises for sale, use or distribution any unlawful telecommunication device or modifies, alters, programs or reprograms a telecommunication device:

a. For the unauthorized acquisition or theft of any telecommunication service or to receive, disrupt, transmit, decrypt, acquire or facilitate the receipt, disruption, transmission, decryption or acquisition of any telecommunication service without the express consent or express authorization of the telecommunication service provider; or

b. To conceal, or to assist another to conceal from any telecommunication service provider or from any lawful authority, the existence or place of origin or destination, or the originating and receiving telephone numbers, of any telecommunication under circumstances evincing an intent to use the same in the commission of any offense.

(2) Manufacturers, assembles, distributes, possesses with intent to distribute, transfers, sells, offers, promotes or advertises for sale, use or distribution any unlawful access device;

(3) Prepares, distributes, possesses with intent to distribute, sells, gives, transfers, offers, promotes or advertises for sale, use or distribution:

a. Plans or instructions for the manufacture or assembly of an unlawful telecommunication or access or device under circumstances evincing an intent to use or employ the unlawful telecommunication access device, or to allow the unlawful telecommunication or access device to be used, for a purpose prohibited by this section, or knowing or having reason to believe that the unlawful telecommunication or access device is intended to be so used, or that the plan or instruction is intended to be used for the manufacture of assembly of the unlawful telecommunication or access device; or

b. Material, including hardware, cables, tools, data, computer software or other information or equipment, knowing that the purchaser or a third person intends to use the material in the manufacture of an unlawful telecommunication or access device.<sup>23</sup>

On one hand, this offense uses many broad, yet undefined terms — such as “transmit,” “disrupt,” “facilitate,” “prepares,” and “promotes” — inhibiting this offense’s ability to communicate its prohibitions clearly to the public, to members of the criminal justice system, or perhaps even to experienced attorneys and judges. On the other hand, this offense also relies upon numerous verbose, offense-specific definitions — such as “manufacture or assembly of any unlawful access device,” “telecommunication service provider,” and “unlawful telecommunication device” — that, rather than increasing clarity, further obscure the criminal prohibition the offense intends to communicate. The

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<sup>23</sup> 11 Del. C. § 850.

Proposed Code defines a corresponding, but briefer and clearer, generalized offense to punish one who “obtains services that the person knows are available only for compensation.”<sup>24</sup>

Similarly, the current destruction of computer equipment provision imposes liability on one who “without authorization, intentionally or recklessly tampers with, takes, transfers, conceals, alters, damages or destroys any equipment used in a computer system or intentionally or recklessly causes any of the foregoing to occur.”<sup>25</sup> The current provision was designed to serve as a comprehensive catchall offense, but its vague and overlapping terms, and its confusing statement of required culpability and conduct, serve only to make its scope less clear. In fact, when the destruction of computer equipment provision’s language is analyzed and considered in light of other current code provisions, it becomes clear that the provision is redundant. The Proposed Code does not include a specific offense for “destruction of computer equipment,” in recognition that other general offenses (such as criminal damage or attempted criminal damage) already cover such conduct.<sup>26</sup>

In some cases, the current code’s language, though it may not represent the clearest or simplest method of expressing a rule, has been “defined” and clarified over time by judicial decisions. For this reason and for the mere sake of stability, we have sought to maintain the language of current law whenever that language would give a reader adequate notice of the provision’s intended meaning. Where modification of existing language is considered necessary, we have prepared commentary to explain the relation between the proposed language and existing statutory language, as explicated by current precedent.

## B. Clear Organization

A criminal code, and each of its provisions, must be effectively organized so that each component’s meaning and function are plain and all provisions are easily found. For example, it invites confusion when issues for which there are rules of general application are addressed a second time in specific offense provisions. Current Delaware law contains numerous offenses that unnecessarily reiterate, or even undermine, General Part provisions. For example, many offenses are defined to prohibit certain conduct and “attempting” such conduct.<sup>27</sup> This approach to defining offenses short-circuits the general rules for attempts set forth in current law, under which attempts are distinguished from completed crimes (though not for grading purposes).<sup>28</sup> Similarly, several current offenses are defined to include anyone who aids, solicits, or conspires with another in planning or committing the offense,<sup>29</sup> even though general rules covering accomplice liability, solicitations, and conspiracies are defined in the General Part or elsewhere in current law.<sup>30</sup> The Proposed Code ensures consistency by avoiding offense definitions that revisit, or revise, rules already included in its General Part.

Finally, a criminal code’s various rules should be classified sensibly, to ensure that meaningfully different rules are distinguished and similar rules are treated alike. For example, the Proposed Code’s

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<sup>24</sup> Section 2106(a)(1).

<sup>25</sup> 11 Del. C. § 936.

<sup>26</sup> *See, e.g.*, Section 2304 (criminal damage).

<sup>27</sup> *See, e.g.*, 11 Del. C. §§ 617(b)(1), 763(2), 778A(3), 906(3), 1105(a), 1112A(a)(1), 1112B(a)(1), 1257(a)(1), 1257(b), 1304(a), 1458(a), 1471, 3532; 16 Del. C. §§ 4744(e)(1), 4757(a), 4758(a), 4760A(a); 18 Del. C. § 4354(a); 21 Del. C. § 4112; 24 Del. C. § 1790(a); 31 Del. C. § 1003.

<sup>28</sup> *See* 11 Del. C. § 531.

<sup>29</sup> *See, e.g.*, 11 Del. C. §§ 617(b)(1), 913(a)(2), 1212(3), 1244(a)(6), 1249(b), 1471(f), 1503(d); 16 Del. C. §§ 2209(a), 4757(c).

<sup>30</sup> *See* 11 Del. C. §§ 271–73 (complicity), 501–03 (solicitation), 511–13 (conspiracy).

organization separates justifications, excuses, and nonexculpatory defenses.<sup>31</sup> Recognizing such distinctions is important because a defense's function as a justification, an excuse, or a nonexculpatory defense has significant legal implications.<sup>32</sup> Current Delaware law, however, is not organized to accurately distinguish between these three defense types.<sup>33</sup>

The failure to properly establish such distinctions has resulted in inconsistent rules, such as the rules involving the burdens of proof for general defenses. For example, some excuse defenses are classified as "affirmative defenses"<sup>34</sup> while others are classified simply as "defenses."<sup>35</sup> The defendant bears the burden of proving affirmative defenses by a preponderance of the evidence,<sup>36</sup> but bears only an evidentiary burden as to simple defenses.<sup>37</sup> Current law requires that the defendant prove the mental illness or psychiatric disorder defense by a preponderance of the evidence, but not the involuntary intoxication defense—two defenses that are inherently similar. The evidentiary rules for these defenses differ for no obvious reason.<sup>38</sup> Because excuse defenses are all the same in terms of their underlying principles and their central issue (the defendant's blameworthiness for an admitted violation), they should be treated similarly in terms of the burden of proof, as is done in the Proposed Code.<sup>39</sup>

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<sup>31</sup> Justification defenses, such as self-defense and use of force in defense of property, immunize conduct that avoids a harm or evil that is objectively worse than the offense itself. Excuse defenses, such as insanity and immaturity, operate to exculpate persons who cannot properly be held responsible for objectively harmful conduct. Finally, nonexculpatory defenses, such as entrapment and the statute-of-limitations defense, provide exemptions for liability because — even though the actor's conduct is objectively harmful and the actor is responsible for it — some alternative societal interest is deemed to be more important than the assessment of criminal liability.

<sup>32</sup> For example, a person enjoying a self-defense justification may be assisted by others, and may not legally be interfered with. On the other hand, an aggressor is entitled to resist a person who enjoys an excuse because he mistakenly believes himself to be acting in self-defense; such a person, even if excused, is not justified. Moreover, because justifications recognize conduct that is socially acceptable, and often desirable, it is sensible to require the prosecution to prove that conduct was not justified. Excuses and nonexculpatory defenses, in contrast, operate to prevent liability for harmful conduct that would ordinarily constitute an offense. Accordingly, and because the state-of-mind or other evidence relevant to an excuse or nonexculpatory defense is frequently within the control of the defendant, it is sensible to shift the burden of proof to the defendant for those defenses, as the Proposed Code does.

<sup>33</sup> By defining several justifications to protect one who "believes" himself to be justified, Title 11 improperly treats mistake as to a justification as though it were a justification. *See* 11 Del. C. §§ 462(b)(2), 464(a)–(c), 465(a), 466, 467, 468(2) & (4)–(7), 470(a). The Proposed Code categorizes this defense as an excuse, because it relates to the actor's mental state rather than to whether the act itself is objectively justified.

Current Delaware law also does not recognize excuses or nonexculpatory defenses as distinct classes of defenses. As a result, current law treats the statute-of-limitations defense as an element of the offense that must be proven accordingly, while organizing all general defenses together in the same chapter as justification defenses. *See* 11 Del. C. § 232 (limitations period as an element); *see generally* Chapter 4 (defenses to criminal liability) of Part I of Title 11.

<sup>34</sup> *See* 11 Del. C. §§ 401(mental illness or psychiatric disorder), 431 (duress).

<sup>35</sup> *See* 11 Del. C. §§ 423 (involuntary intoxication), 441 (ignorance or mistake of fact).

<sup>36</sup> 11 Del. C. § 304.

<sup>37</sup> 11 Del. C. § 303; *see also* *Hamilton v. State*, 343 A.2d 594, 596 (Del. 1975) ("[T]he importance of [§ 303(c)] is that it requires only that the defense raise a reasonable doubt in the minds of the jury, not that the jury be persuaded that the defense is more probably true than not.").

<sup>38</sup> Current Delaware law does not make it clear who bears the burden of persuasion for statutory defenses, or by what standard they must be proven or disproven. Section 106(b) avoids ambiguity by explicitly placing the burden of persuasion on the State and the defendant as appropriate.

<sup>39</sup> Rather than defining excuse defenses as affirmative defenses or simple defenses, proposed Section 401(d) places the burden of persuasion on the defendant to prove any excuse defense by a preponderance of the

Similarly, current law fails to articulate whether the State or the defendant bears the burden of proving or disproving several nonexculpatory defenses, and by what standard.<sup>40</sup> This omission is plainly inconsistent with the rule shifting the burden of proof to the defendant for the mental illness excuse. If such a burden-shifting rule is appropriate for an excuse defense — under which the defendant would be considered blameless in committing the offense — it should also apply to nonexculpatory defenses, which involve no claim of blamelessness. The Proposed Code employs such a rule.<sup>41</sup>

## 2. PROVIDE A COMPREHENSIVE STATEMENT OF RULES

It is critical not only that a criminal code say things clearly, but that it say everything that needs to be said. A criminal code must be comprehensive as well as comprehensible. Failure to provide all necessary provisions will inevitably lead to either or both of two results: (1) failures of justice, as the code's omissions and "loopholes" lead to liability where none is deserved or allow an offender to avoid deserved punishment; or (2) a de facto delegation of authority to the courts (or usurpation of authority by the courts), as judicial interpretations try to fill in the gaps left by the legislature. The costs of the first result are obvious. Yet the alternative of judicial intervention, however necessary to achieve sensible or just results in individual cases, may ultimately impose costs as well. The interests of advance notice (discussed above), democracy, and legal consistency and coherence suggest that the legislature, rather than the courts, must bear the primary responsibility for creating criminal law rules.

Insisting on comprehensiveness leads to several important benefits. First, comprehensiveness helps avoid inappropriate results. Courts, which decide individual cases and act independently of one another, cannot be as effective as a legislature in formulating coherent general doctrines that will work together as the provisions of a comprehensive code can and must. Second, an uncodified rule is more likely to be applied differently in similar cases than a codified rule, as the terms of the latter are fixed, explicit, and available to all officials at each stage in the process.

Further explanation of this goal follows, along with a representative, but by no means exhaustive, collection of examples of current Delaware law's shortcomings in this area.<sup>42</sup>

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evidence. More generally, the term "affirmative defense" has been dropped from the Proposed Code's language in favor of general formulas and more explicit language defining the burden of persuasion.

<sup>40</sup> See 11 Del. C. §§ 205 (defining statute of limitations as an element of the offense, and not as a defense at all), 207–10.

<sup>41</sup> Proposed Section 501(c) provides that, as with excuses, the defendant must prove a nonexculpatory defense by a preponderance of the evidence.

<sup>42</sup> For example, in the General Part, the Proposed Code introduces several other currently omitted provisions that govern important common issues and make clear the relationships between various parts of the Code. *See, e.g.*, Sections 104 (preserving civil remedies), 108(d) (defining "property"), 201 (making clear bases of liability), 202 (categorizing and defining offense elements), 207 (mental illness or disorder negating required culpability), 214(f)–(h) (defining different kinds of mistakes), 300 (clarifying that justification, excuse, and nonexculpatory defenses bar liability), 402 (specifying an excuse defense for involuntary acts and omissions), 406–08 (codifying mistake of law excuse defenses currently established only in case law), 502 (defining statute of limitations as an excuse defense, rather than as an element of an offense), 705 (defense to certain inchoate offenses for defendants who are victims or whose conduct is inevitably incident to the offense), 708 (general inchoate offense for possessing instruments of crime).

The proposed Special Part also includes several offenses not recognized in current law. *See, e.g.*, Sections 1203 (recklessly causing injury), 2108 (unauthorized distribution of protected works), 2203 (fraudulent treatment of public records), 2305 (causing or risking catastrophe; ecological catastrophe), 3302 (resisting or obstructing a law enforcement officer), 3303 (obstructing administration of law or other government function), 4305 (unlawful dissemination of personal pornography).

## A. General Part Rules

Current Title 11 contains no general provision dealing with technical violations that ought not result in criminal liability. Most jurisdictions, following the Model Penal Code on which Delaware's current Criminal Code is based,<sup>43</sup> contain a "safety net" provision that allows a defendant to avoid liability in proper situations, despite technically satisfying the objective elements of an offense. These are situations where: the defendant and "victim" had a customary practice that the victim suddenly decides to deny (for example, where using an understood shortcut across private property is charged as trespass); or the violation is so minor that it does not warrant the condemnation of criminal conviction (for example, a person shoplifts a pack of gum and is charged with theft); or the person's conduct technically satisfies the objective elements of an offense, but the conduct does not inflict the kind of harm contemplated by the General Assembly when creating the offense. To illustrate this third situation, consider Delaware's current laws dealing with child pornography.<sup>44</sup> Delaware takes the creation, distribution, and possession of child pornography very seriously and grades those offenses harshly. And rightly so—creating child pornography involves a deeply disturbing kind of victimization, and its consumption by Delaware citizens is morally degrading and unacceptable. But, in the age of the smartphone, teenagers have begun "sexting"—texting explicit images of themselves to their boyfriends or girlfriends. Sharing explicit images of oneself, when one is a minor, technically satisfies the elements of the creation and distribution of child pornography.

It seems obvious that the General Assembly, when prohibiting child pornography, did not intend to saddle teenagers with up to 25 years in prison for sexting.<sup>45</sup> But without a safety net provision, the only thing preventing the teenage "sext"-sender from being charged with a child pornography offense is prosecutorial discretion. Nothing would prevent an over-zealous prosecutor from throwing the book at a teenager for sexting. This fails to provide fair notice regarding the legality of sexting and results in arbitrary liability for serious felonies. Because of the importance of fair notice and predictable outcomes in criminal law, the Proposed Code includes a provision that provides a mechanism for avoiding liability in the situations described above.<sup>46</sup>

Current Title 11 contains no provisions explaining the practical effects of justification, excuse, and nonexculpatory defenses. The central distinction between the three groups of general defenses is that justified conduct—conduct technically satisfying an offense's objective elements, but is subject to a justification defense—is socially desirable conduct that citizens are encouraged to take when necessary. Therefore, it is also desirable that other people assist a person's justified conduct, and it is not desirable for the person against whom justified conduct is used to be allowed to resist it. For example, a person who is attacked is justified in using self-defense; other people are allowed to assist in defending the victim; and the attacker is not justified in resisting the victim's proper use of force. On the other hand, excuse defenses prevent liability for socially undesirable acts, but in situations where the defendant is nevertheless not blameworthy. In that case, it is not desirable for other people to assist (for example) a person who commits theft under duress, and the victim of such a theft must be allowed to resist it. The same is true for conduct subject to a nonexculpatory defense, which is both socially undesirable *and* blameworthy. But, without a clear categorization of general defenses into justifications, excuses, and nonexculpatory defenses—and without provisions explaining the less-than-intuitive consequences of those categorizations—inconsistent and improper liability can result for people who assist and resist

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<sup>43</sup> See Model Penal Code Section 2.12.

<sup>44</sup> 11 Del. C. §§ 1108–11.

<sup>45</sup> Sexual exploitation of a child is a Class B felony. See 11 Del. C. § 1108.

<sup>46</sup> See Section [209].

conduct subject to those defenses. Because consistency and predictability is an essential trait of a comprehensive criminal code, the Proposed Code both carefully organizes general defenses and provides thorough provisions explaining their effects.<sup>47</sup>

## B. Special Part Offenses

The current code sometimes fails to criminalize conduct that merits criminal liability. For example, Title 11 does not provide a comprehensive offense for resisting or obstructing law enforcement officers, fire fighters, and emergency personnel. Instead, Title 11 contains a few overly specific offenses that prohibit resisting arrest by using force or violence,<sup>48</sup> disarming a law enforcement officer,<sup>49</sup> or obstructing a firefighter from extinguishing a fire.<sup>50</sup> As a result, a person who interferes with the discharge of a law enforcement officer's duties unrelated to an arrest—or a firefighter's duties unrelated to extinguishing a fire (for example, rescuing someone trapped inside a burning building)—may entirely escape liability under current law. Additionally, interference with the duties of emergency medical personnel is not addressed at all in current law, despite its close relationship with law enforcement and fire fighters and the disastrous results of obstructing their efforts. The Proposed Code fills these unjustified gaps in liability by imposing liability for obstruction or interference with any duties of first responders.<sup>51</sup>

Similarly, Title 11 does not provide a comprehensive offense for obstructing administration of law and other government functions, instead taking a piecemeal approach across multiple titles that leaves unnecessary gaps in liability.<sup>52</sup> The Proposed Code joins the overwhelming majority of jurisdictions with modern criminal codes by creating a comprehensive offense that addresses any obstruction or interference with the administration of law.<sup>53</sup>

In other cases, the current code's failure to define suitable offenses means prosecution is only possible for less serious offenses, resulting in punishment that falls short of the relative gravity of the offense. For example, Title 11 fails to criminalize causing or risking a catastrophe, standard offenses adopted by many jurisdictions from the Model Penal Code.<sup>54</sup> Although these offenses overlap with assault, endangerment, and property damage offenses, their magnitude signals a different kind of harm—one to social stability and infrastructure that is more immediate in the wake of the September 11 attacks and the War on Terror than perhaps it was in 1973 when the current code was enacted. Knowingly causing a catastrophe would normally be graded the equivalent of a current Class A felony; recklessly causing a catastrophe would be a Class B felony; and recklessly creating a substantial risk of a catastrophe would be a Class E felony. Under current law, however the act of causing a catastrophe would count only as criminal mischief (at most, a Class G felony),<sup>55</sup> while risking catastrophe would not be an offense at all unless it involved a risk of physical injury.<sup>56</sup>

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<sup>47</sup> See proposed Sections 301, 401, and 501.

<sup>48</sup> 11 Del. C. § 1257.

<sup>49</sup> 11 Del. C. § 1458.

<sup>50</sup> 11 Del. C. § 1243.

<sup>51</sup> See proposed Section 3302.

<sup>52</sup> See 6 Del. C. § 5132 (hindering inspections by the Department of Agriculture); 11 Del. C. §§ .1248 (obstructing the control and suppression of rabies), 1267 (misconduct by a juror), 1273 (unlawful grand jury disclosure); 16 Del. C. § 4759 (obstructing inspection of a pharmacy under the Uniform Controlled Substances Act).

<sup>53</sup> See proposed Section 3303.

<sup>54</sup> See Model Penal Code Section 220.2.

<sup>55</sup> See 11 Del. C. § 811(b).

<sup>56</sup> See 11 Del. C. §§ 603–04 (defining reckless endangering).

Similarly, and unlike most jurisdictions, current Delaware law does not provide an offense for reckless injuring that is separate from assault. The basic form of assault in Title 11 is defined as “intentionally or recklessly” causing either physical injury or serious physical injury.<sup>57</sup> By implication, that definition also includes knowingly causing injury. As a result, a person who injures another person by accident, though recklessly, commits the same offense as both the person who is aware that his conduct is likely to result in injury, and the person who subjectively desires to cause injury. But, intentionally or knowingly causing injury is materially more blameworthy than doing so recklessly, and ought to be punished more severely. The Proposed Code avoids this problem by defining assault as an offense separate from, and graded more harshly than, reckless injuring.<sup>58</sup>

### 3. CONSOLIDATE OFFENSES

A third goal is consolidation of all criminal offenses. Perhaps inevitably, four decades of piecemeal modification of the 1973 Code have led to the addition of hundreds of new offenses, many of which cover the same conduct as previous offenses (but, in some cases, provide for conflicting levels of punishment) or appear in various other Titles of the Delaware Code rather than in the criminal code.

It is not only redundant, but potentially counterproductive or self-contradictory, to add extra offenses whose prohibitions are identical to an existing offense; or to add prohibitions against narrow, specific forms of conduct in addition to (or in lieu of) a more general prohibition against all such relevant conduct; or to scatter serious crimes throughout the State’s statutory code instead of ensuring that all relevant offenses appear within the criminal code, where their significance and relation to one another is clear. Consolidation ensures against the confusion that results when one encounters, and must make sense of, multiple provisions that overlap<sup>59</sup> or contradict, and also against the mistakes that ensue when one fails to notice, or find, provisions that may apply to a given case. Consolidation ensures the briefest, clearest statement of the criminal law’s rules, while also exposing and eliminating inadvertent omissions, duplications, and inconsistencies in the statutory scheme. The consolidation goal has two aspects. First, all criminal offenses must be defined within the criminal code itself, and not elsewhere. Second, superfluous specific offenses must be eliminated in favor of a reduced number of offenses that are defined as broadly as is feasible.

As to the first element, a statutory scheme in which a significant number of important offenses are defined outside of the criminal code will have at least three shortcomings. First, and most obviously, the likelihood of notice to the public diminishes as the dispersion of criminal provisions in the state’s laws increases. It is simply much easier for the layperson to educate herself about the state’s criminal law if that law can be found in one place. A second, and subtler, “notice” problem will affect the legislature itself. If crimes are spread throughout the state statutory code, the legislature will be less likely to view the criminal law as a consistent, unified scheme. A new offense may be placed outside the code, making it less likely that the legislature will consider how that offense fits within the existing matrix of criminal offenses. Additionally, the criminal code itself may be amended without consideration of the amendment’s impact on offenses outside the code. Third, the existence of criminal offenses outside the code will generate problems of statutory construction. For example, it may not be clear whether the legislature expected the criminal code’s “default” culpability provision to apply to offenses in other

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<sup>57</sup> See 11 Del. C. §§ 611(1), 612(a)(1).

<sup>58</sup> See proposed Sections 1202–03.

<sup>59</sup> According to interpretive canons, such overlapping provisions must be read so that none renders any other superfluous — a task which frequently requires courts to distort the meaning of one provision in order to accommodate another.

Titles. In short, the possibility of criminal offenses appearing outside the criminal code undermines the entire project of setting aside a separate criminal code within the overall state code scheme.

Current Delaware law defines numerous serious crimes outside the criminal code. Over one hundred misdemeanors and nearly one hundred felonies are scattered throughout the Delaware Code, and more than fifty offenses appearing outside Title 11 — many of which overlap, or simply restate, prohibitions in current Title 11 — are graded as Class E felonies or higher. For example, Chapter 10 of Title 31 (Welfare) defines several offenses “instituted to regulate abuses in the payment of funds under the State’s public assistance programs.”<sup>60</sup> These offenses — graded as high as Class C felonies — overlap substantially with several Title 11 offenses, such as (among others) theft by deception, bribery, solicitation, and tampering with public records.<sup>61</sup> Similarly, Chapter 67 of Title 21 (Motor Vehicles) defines several vehicle theft, fraud, unauthorized use, and criminal damage offenses that are principally aimed at “chop shops” in the business of receiving stolen vehicles. Most of these offenses are graded as Class E felonies — even though all of the relevant conduct (vehicle theft, receiving stolen vehicles, criminal mischief, unauthorized use of a vehicle) is covered *and graded differently* by provisions in Title 11.<sup>62</sup>

Within the criminal code itself, consolidation is no less important. Formulation of an offense in one provision, rather than many, reduces uncertainty as to the nature and scope of the banned conduct. A general prohibition avoids confusion and grading inconsistency. At the same time, it reduces the need for the legislature to enact additional prohibitions in the future, because a more general provision is more easily adapted to changing circumstances.

Current Delaware offenses often fail to realize this goal of consolidation within a single, general offense. This failure occurs in two ways. In some cases, Title 11 criminalizes specific forms of conduct in lieu of a broader prohibition against such conduct generally. For example, Title 11 contains a number of offenses prohibiting possession of instruments tailored for the commission of individual crimes, but none of them apply to more than a single target offense. Without a comprehensive general offense for possession of instruments of crime, the General Assembly must pass a new law for every situation that arises, leading to inconsistent punishment when some situations are inevitable missed.<sup>63</sup> Similarly, current Delaware law contains no general offense prohibiting the failure to make an entry in public records when such a duty is imposed by law, but instead contains various offenses prohibiting the failure to make required records in specific contexts.<sup>64</sup>

In other cases, Title 11 includes narrow, specific offenses in addition to a broader prohibition against such conduct generally. For example, although one provision in current Title 11 covers theft generally, a number of other provisions in Title 11 prohibit the same underlying conduct — theft by

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<sup>60</sup> 31 Del. C. § 1001.

<sup>61</sup> Compare 31 Del. C. § 1003 et seq. (public assistance fraud), with, e.g., 11 Del. C. §§ 843–44 (theft by false pretense or promise); 1201–03 (bribery and receiving a bribe); 501–03 (solicitation); 873 (tampering with public records).

<sup>62</sup> Compare, e.g., 21 Del. C. §§ 6701–10 (vehicle code provisions), with 11 Del. C. §§ 841(b) (defining offense of theft by taking); 851 (defining offense of receiving stolen property); 5/16-1(b) (grading theft offenses). Cf. 5/16-1(b)(2) (cross-referencing Vehicle Code provisions for purposes of recidivism aggravation for theft).

<sup>63</sup> See, e.g., 11 Del. C. §§ 812(b) (possession of graffiti implements), 828 (possession of burglar’s tools or instruments facilitating theft), 860 (possession of shoplifter’s tools or instruments facilitating theft), 862 (possession of forgery devices).

<sup>64</sup> See, e.g., 16 Del. C. § 4740(g) (knowing failure to keep records of sales of pseudoephedrine or ephedrine); 21 Del. C. § 4603 (knowing failure to submit a record of possession of a vehicle master key).

taking (or its attempt or conspiracy) — in the context of specific circumstances or forms of property.<sup>65</sup> The same situation exists for assault offenses<sup>66</sup> and property damage offenses.<sup>67</sup> Similarly, in addition to its general perjury offense,<sup>68</sup> current Delaware law contains numerous offenses criminalizing false statements made under oath or affirmation about particular matters, in particular documents, and in particular proceedings.<sup>69</sup>

One useful way to get a rudimentary sense of current law's failure to consolidate offenses is to assess its sheer verbiage. The Proposed Code manages to criminalize the same substantive conduct as current law while using far fewer offense definitions to do so. For example, the Proposed Code chapter on fraud offenses (Chapter 2200) uses only 16 percent of the words making up the corresponding offenses in current law (2,654 versus 16,229 words). Similarly, the chapter covering robbery and assault offenses (Chapter 1200) uses only 20 percent of the words in corresponding current law offenses (2,093 versus 10,545). Overall, the Special Part of the Proposed Code uses only 26.6 percent — or roughly one-quarter — of the words in the current offenses (29,413 versus 110,637). If anything, however, this figure understates the discrepancy, as many misdemeanors outside Title 11 have not been considered, and the provisions outside Title 11 frequently use one section to impose criminal liability for any violation of an entire set of regulations.

The above examples of current Delaware law's shortcomings in this area are representative, but by no means exhaustive.<sup>70</sup>

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<sup>65</sup> Compare 11 Del. C. § 841 (general theft offense), with, e.g., 813 (theft of property from a cemetery), 840 (shoplifting), 841A (theft of a motor vehicle), 841B (organized retail crime), 841C (theft of a prescription form or pad), 849 (theft of rented property), 859 (larceny of livestock), 933 (theft of computer services), 1451 (theft of a firearm).

<sup>66</sup> Compare 11 Del. C. §§ 611–13 (general assault offenses) with, e.g., 605–06 (abuse of a pregnant female), 607 (strangulation), 614 (abuse of a sports official), 628–29 (vehicular assault), 1254 (assault in a detention facility), 1339 (adulteration).

<sup>67</sup> Compare 11 Del. C. § 811 (general property damage offense), with, e.g., 3 Del. C. §§ 1041 (wilfully or maliciously starting fires), 1045 (cutting down trees in state forests); 11 Del. C. §§ 805 (cross or religious symbol burning), 812 (graffiti), 936 (destruction of computer equipment); 21 Del. C. §§ 6701 (injuring vehicle or obstructing its operation), 6703 (tampering with vehicle).

<sup>68</sup> See 11 Del. C. §§ 1221–23.

<sup>69</sup> These overlapping perjury offenses create unnecessary and undesirable confusion. For example, some offenses do not explicitly impose 11 Del. C. §§ 1222–23's requirement that a false statement be material, but then confusingly proclaim that those who commit them are liable for "perjury." See, e.g., 21 Del. C. §§ 2620 (false statements related to drivers' licensing), 2752 (false statements related to drivers' licensing), 3107 (false statements related to identification cards).

<sup>70</sup> Including the examples discussed in the text, there are at least 22 offenses outside Title 11 that are graded as Class A, Class B, or Class C felonies. See 16 Del. C. §§ 1136(a) (causing death by abuse, mistreatment, or neglect of a patient at a nursing or similar facility), 4744 (prohibited practices under the Safe Internet Pharmacy Act), 4752–53 (drug dealing—aggravated possession), 4757 (miscellaneous drug crimes), 4760A (operating or attempting to operate clandestine laboratories), 7113 (violation of any one of a group of regulations relating to explosive materials, resulting in injury or death); 31 Del. C. §§ 1007 (welfare fraud in amount of \$10,000 or more), 3913 (causing death by abuse, neglect, or mistreatment of an impaired adult).

In addition to the examples discussed in the text, the Proposed Code also introduces several other offenses generally criminalizing conduct that current Delaware law criminalizes only in particular contexts. Compare proposed Section 2108 (unauthorized distribution of protected works) with, e.g., 11 Del. C. §§ 858 (unlawful operation of a recording device), 920 (transfer of recorded sounds). Compare proposed Section 2202 (fraudulent tampering with records) with, e.g., 11 Del. C. §§ 840A(a) (fraudulent creation or alteration of retail sales receipts), 871 (falsifying business records), 876 (tampering with public records in the first degree), 877 (offering a false

#### 4. GRADE OFFENSES RATIONALLY AND PROPORTIONALLY

For a system of criminal justice to be fair, liability must be assigned according to the relative seriousness of the offense(s) committed. It is critical that a criminal code's system of grading offenses recognize all, and only, suitable distinctions among the relative severity of offenses and develop a scheme to grade each offense proportionally to its gravity in light of those distinctions.

In most cases, determinations of "seriousness" reflect value judgments as to which reasonable people might differ, and as to which the legislature (as the most direct political voice of the people) should have the ultimate authority. Accordingly, we have sought to defer to the grading determinations exemplified in existing Delaware law where possible. In some cases, however, broad examination of current grading determinations reveals logical inconsistencies that, it is presumed, the General Assembly would have sought to avoid had it been aware of them. Such inconsistencies may develop for several reasons. As new offenses are added to a criminal code, the General Assembly may neglect to consider how the grade of each new offense relates to the grades for other, preexisting offenses. As noted earlier, the sheer increase in the number of offenses, especially offenses outside the criminal code itself, makes it difficult to maintain consistency — assuming one even manages to locate and consider all relevant offenses. In any event, the shared experience of various jurisdictions is that over time, proportionality in the grading of offenses diminishes.

One of the virtues of a broad Code Improvement effort is the opportunity it provides to review the grading system as a whole, considering how all offenses relate to one another rather than considering individual offenses in a vacuum. Following such a review, we have altered the grades of certain offenses where doing so seems necessary to maintain any legitimate sense of proportionality. In addition, a "change" in grading in the Proposed Code has sometimes been necessitated by the consolidation of offenses. Because current law often contains multiple offenses that overlap and prohibit the same conduct (as discussed in Section 3 above), but might impose different grades for that conduct, it is simply impossible to follow "current law" on the matter, and it becomes necessary to choose a single, consistent grade for the prohibited conduct.

The task of grading offenses has three goals: each offense's grading scheme must recognize all relevant distinctions between degrees of the offense; that scheme must avoid introduction of irrelevant

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instrument for filing), 878 (issuing a false certificate), 909 (securing execution of documents by deception); 31 Del. C. § 1004 (tampering with documents to be filed with public assistance program).

Overlapping offenses are also a recurring problem in current law. Compare 11 Del. C. § 853 (unauthorized use of a vehicle) with 21 Del. C. § 6702 (driving vehicle without consent of owner). Compare 11 Del. C. § 843–44 (theft by false pretense or false promise) with, e.g., 6 Del. C. § 4903A (automobile repair fraud); 11 Del. C. §§ 840(a)(2) (charging retail goods to a fictitious person), 908 (unlawfully concealing a will), 913 (insurance fraud), 913A (health care fraud), 916 (home improvement fraud), 917 (new home construction fraud); 12 Del. C. § 210 (alteration, theft, or destruction of a will); 31 Del. C. § 1003 (welfare fraud). Compare 11 Del. C. § 845 (theft of services) with 11 Del. C. §§ 850 (use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices), 933 (theft of computer services). Compare 11 Del. C. § 861 (forgery) with, e.g., 21 Del. C. §§ 2316, 6705, and 6709 (forgery or fraudulent alteration of vehicle identification documents), 2751 and 2760 (forgery or fraudulent alteration of driver's licenses or identification cards). Compare 11 Del. C. §§ 881–82 (commercial bribery and bribe receiving) with, e.g., 31 Del. C. § 1005 (kickback schemes and solicitation related to welfare fraud). Compare 11 Del. C. §§ 821–23 (criminal trespass) with, e.g., 7 Del. C. § 714 (trespass while hunting); 11 Del. C. § 820 (trespass with intent to peer or peep into another's window). Compare 11 Del. C. §§ 1201 (bribing a public servant), 1203 (receiving a bribe as a public servant), 1209(4) (defining "public servant" to include jurors) with 11 Del. C. §§ 1264 (bribing a juror), 1265 (bribe receiving by a juror).

distinctions; and the overall grading scheme must maintain proportionality across offenses. We discuss each of these three goals in turn.

Further explanation of this goal follows, along with a representative, but by no means exhaustive, collection of examples of current Delaware law's shortcomings in this area.<sup>71</sup>

### A. Consistently Recognize Appropriate Distinctions

The Proposed Code seeks to ensure that the grading for each offense recognizes all relevant distinctions in the relative seriousness of various forms of an offense. In most cases, current law reflects such distinctions, and the proposed offenses' grading distinctions will tend to track existing distinctions. In a few cases, however, current law's grading for offenses seems too crude, failing to recognize legitimate distinctions of degree.

For example, the four degrees of rape in current law draw many useful distinctions between circumstances for grading purposes, including the relative ages of the victim and offender.<sup>72</sup> However, although the three degrees of unlawful sexual contact take the victim's age into account, the defendant's relative age is not considered.<sup>73</sup> Under this scheme, a person who sexually assaults a 12-year-old child is treated the same regardless of whether the offender is another 12-year-old, or an adult; but an adult rapist in the same situation would be treated more harshly than a child rapist — a sensible distinction.<sup>74</sup> The Proposed Code refines the grading of sexual assault by adjusting the grade of the offense based on the same factors as rape.<sup>75</sup>

Likewise, current law grades many forms of fraud as a single class of misdemeanor, regardless of the amount involved in the fraud.<sup>76</sup> Other forms of fraud are graded as either a Class G felony or Class A

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<sup>71</sup> To list just a few more examples, current law grades conspiracy and solicitation to commit Class B and unclassified misdemeanors more seriously than the target offense, but grades conspiracy and solicitation to commit Class A, B, C, and D felonies much less seriously than the target offense. *See* 11 Del. C. §§ 501–03 (solicitation), 511–13 (conspiracy). *Cf.* proposed Section 707 (grading all conspiracies and solicitations one grade lower than the target offense).

Current law grades various specific offenses for possessing instruments tailored for commission of other specific offenses as anything from an unclassified misdemeanor to a Class E felony. *See* 11 Del. C. §§ 850 (a)(1)a. & (b)(1) (possession of unlawful telecommunication devices for theft of telecommunication services, unclassified misdemeanor), 812(b) (possession of graffiti instruments, Class B misdemeanor), 1401 (possession of tickets for illegal lotteries, Class A misdemeanor), 862 (possession of forgery devices, Class G felony), 828 (possession of burglar's tools, Class F felony); 21 Del. C. § 4604 (illegal possession of motor vehicle master keys, Class E felony). *Cf.* proposed Section 708 (establishing a single offense for possessing instruments of crime, graded the same in all cases).

<sup>72</sup> *See* 11 Del. C. §§ 770–73.

<sup>73</sup> Compare *id.* with 11 Del. C. §§ 767–69.

<sup>74</sup> Compare 11 Del. C. §§ 771(a)(1) (providing a higher grade of rape where the victim is less than 14 years of age, and the offender is at least 19 years of age), 773(a)(5) (providing an even higher grade of rape where victim is less than 12 years of age, and the offender is at least 18 years of age) with 11 Del. C. § 769(a)(3) (providing a higher grade of unlawful sexual assault where the victim is less than 13 years of age, regardless of the offender's age). Note also that the relevant age of the victim — less than 12 or less than 13 years of age — varies between the two sets of offenses, but it is not clear that these different distinctions are meaningful, or that the General Assembly was aware of the apparent discrepancy.

<sup>75</sup> *See* proposed Section 1301(d) (grading sexual assault at three grades lower than it would be for rape under the same circumstances).

<sup>76</sup> *See* 11 Del. C. §§ 853(4) (defrauding creditors secured on an automobile), 891 (defrauding secured creditors), 892 (fraud in insolvency), 893 (interference with levied-upon property), 906 (deceptive business practices), 910 (debt adjusting).

misdemeanor, depending upon the amount involved.<sup>77</sup> Fraud is fundamentally a form of theft by deception, so it makes sense to grade frauds and thefts similarly. But, neither of these schemes reflects the more nuanced value-based grading for current theft offenses, which utilizes four different grades.<sup>78</sup> The Proposed Code—in addition to raising the number of value-based grades for theft from four to seven—grades all frauds and other property-based offenses using the same scheme.<sup>79</sup>

## **B. Avoid Irrelevant or Unclear Distinctions**

Another goal of the Proposed Code is to avoid the inconsistency that results when seemingly similar offenses are graded differently. This goal represents the other side of the offense-degree coin from the goal discussed immediately above: in addition to recognizing all relevant distinctions, the Code must refuse to recognize “distinctions” that do not or should not exist.

For example, current law defines the offense of bribery as a Class E felony, but also defines a separate offense to cover “unlawful gratuities” and grades that offense as a Class A misdemeanor.<sup>80</sup> Although current law defines an unlawful gratuity slightly differently than a bribe, it appears to be nothing more than a particular form of bribe, and there is no clear reason to suppose that it merits a different punishment from that for other forms of bribery. This offense is an example of a situation where, as discussed above, current law is internally inconsistent, or at least ambiguous, thereby complicating any effort to track to its stated policy judgments. The Proposed Code creates only one bribery offense and ordinarily grades it as the equivalent to a Class E felony.<sup>81</sup>

Similarly, current law grades harassment as a Class A misdemeanor, while grading sexual harassment as an “unclassified misdemeanor” (subject to a maximum sentence of 30 days’ imprisonment).<sup>82</sup> But, some of the conduct that constitutes sexual harassment—“threaten[ing] to engage in conduct likely to result in the commission of a sexual offense”—seems much more serious than an unclassified misdemeanor, being more similar to non-sexual harassment. The Proposed Code grades harassment and the quoted portion of sexual harassment the same.<sup>83</sup>

## **C. Maintain Proportionality Between Various Offenses**

The two goals discussed above relate to decisions about grading specific offenses or degrees of offenses. A third objective in grading criminal offenses is to ensure that grading remains rational when the grades of different offenses are compared with one another. In other words, a criminal code must maintain proportionality of grading across offenses and make certain that the relative level of liability for different offenses parallels the relative harm or wrong they reflect.

Although the Proposed Code has deferred, where possible, to the apparent legislative determinations regarding the relative harm of each offense that current grading levels reflect, in a few instances a comparison of different offenses reveals grading discrepancies contrary to any sense of proportionality. For example, consider current law’s grading of the theft offenses. The current scheme

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<sup>77</sup> See 11 Del. C. §§ 900 (issuing a bad check), 903 (unlawful use of payment card).

<sup>78</sup> See 11 Del. C. § 841(c).

<sup>79</sup> See proposed Sections 2101 (theft), 2204 (issuing a bad check), 2205 (unlawful use of a payment card), 2206 (deceptive business practices), 2207 (defrauding secured creditors), 2208 (fraud in insolvency), 2304 (criminal damage), 4502 (unfair wagering) and their corresponding commentaries.

<sup>80</sup> See 11 Del. C. §§ 1201–02, 1205–06.

<sup>81</sup> See proposed Section 3101 and corresponding commentary.

<sup>82</sup> See 11 Del. C. §§ 763, 1311.

<sup>83</sup> See proposed Sections 1305(b)(2)(A) and 4103(b)(2).

properly provides different grades depending on the amount stolen. A theft in valued from \$1,500 to \$50,000 is a Class G felony. However, a theft valued from \$50,000.01 to \$100,000 jumps up three grades to a Class D felony, and a theft valued higher than \$100,000 jumps up another two grades to a Class B felony.<sup>84</sup> As a result, taking \$100,000.01 in property is subject to the same punishment as manslaughter, assault by amputation, second degree rape, and kidnapping without releasing the victim alive and unharmed.<sup>85</sup> At the same time, theft of any amount less than \$1,500 is a Class A misdemeanor. As a result, stealing a sandwich is subject to the same punishment as unlawful sexual contact, simple assault, and highly sophisticated frauds like defrauding secured creditors and fraud in insolvency.<sup>86</sup> The Proposed Code makes theft grading more proportional compared to other offenses by creating additional grade thresholds and lowering the highest available grade of theft to the equivalent of a Class D felony.<sup>87</sup>

Similarly, the current code's general offense for property damage, criminal mischief, has only one felony grade: a Class G felony for \$5,000 or more in resulting damage.<sup>88</sup> As a result, intentionally destroying the Statue of Liberty (were it located in Delaware) would be subject to the same punishment as issuing a bad check in the amount of \$1,500, failure to await law enforcement's arrival following a motor vehicle accident, and selling drug paraphernalia.<sup>89</sup> The Proposed Code makes grading property damage offenses more proportional compared to other offenses by utilizing the same nuanced grading scheme it proposes to use for theft.<sup>90</sup>

Other examples of disproportionate grading are plentiful. For example, current law assigns higher grades to criminally negligent homicide and manslaughter than intentionally causing another person to commit suicide, despite the fact that the latter offense has essentially the same conduct and culpability requirements as first-degree murder.<sup>91</sup> The Proposed Code allows a defendant who causes another's suicide to be convicted of any homicide offense for which the defendant meets the proper culpability requirements.<sup>92</sup> Likewise, current law contains an offense for wearing body armor during commission of a felony that is graded the same as negligent homicide of a child by abuse or neglect, aggravated assault with a deadly weapon, and creating child pornography.<sup>93</sup> The body armor offense also creates liability in addition to the underlying felony that will, in most cases, be more severe than the underlying felony itself. The Proposed Code avoids both of these problems by converting the body armor-wearing provision into a

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<sup>84</sup> See 11 Del. C. § 841(c). In addition to the problems described in this paragraph, note also that a single dollar difference in value generates a four-fold increase in maximum punishment at each threshold. Creating irrational distinctions between different thefts leads to disproportional punishment. See Section 4.B above.

<sup>85</sup> See 11 Del. C. §§ 613(a)(2) (assault by amputation), 632 (manslaughter), 772 (rape in the second degree), 783A (kidnapping in the first degree).

<sup>86</sup> See 11 Del. C. §§ 611 (assault in the third degree), 767 (unlawful sexual contact in the third degree), 891 (defrauding secured creditors), 892 (fraud in insolvency).

<sup>87</sup> See proposed Section 2101 and corresponding commentary.

<sup>88</sup> See 11 Del. C. § 811(b)(1).

<sup>89</sup> See 11 Del. C. § 900 (issuing a bad check); 16 Del. C. § 4774(c) (manufacture and sale of drug paraphernalia); 21 Del. C. § 4202(b) (failure to await law enforcement following a motor vehicle accident).

<sup>90</sup> See proposed Section 2304(b) and corresponding commentary.

<sup>91</sup> Compare 11 Del. C. § 645 (grading promoting suicide as a Class F felony) with 11 Del. C. §§ 631 (grading criminally negligent homicide as a Class D felony), 632 (grading manslaughter as a Class B felony), (636 (first degree murder).

<sup>92</sup> See proposed Section 1105(c). Note, however, that due to the problems presented by proving causation in these cases, the proposed provision also requires that the defendant cause suicide "by force, threat, or coercion."

<sup>93</sup> Compare 11 Del. C. §§ 1449 (wearing body armor during commission of felony; class B felony) with 11 Del. C. §§ 613(a)(1) (assault with a deadly weapon or dangerous instrument), 633 (murder by abuse or neglect in the second degree), 1108 (sexual exploitation of a child).

general grade adjustment that increases the grade of the underlying felony, but does not result in conviction for a second, disproportionately graded offense.<sup>94</sup>

### **5. RETAIN ALL — BUT ONLY — RATIONAL, DEFENSIBLE POLICY DECISIONS EMBODIED IN CURRENT LAW**

Substantive policy decisions about the rules of the criminal law — such as what conduct should be criminalized and what adjudicative rules should govern the imposition of criminal liability<sup>95</sup> — reflect value judgments that are properly made by the General Assembly rather than a group of drafters. For this reason, the Proposed Code seeks to follow the substance of current law wherever possible.

In some places, however, current law contains multiple contradictory rules — and therefore no clear rule — on a subject. Other rules may have been sound when enacted, but no longer reflect current realities or sensibilities and require expansion, alteration, or deletion. In those situations where the existing legal rule seems clearly at odds with the goal of producing a rational, coherent criminal code, we have been forced to modify the existing rule, using supporting commentary to the Proposed Code to describe and justify the proposed change.

Further explanation of this goal follows, along with a representative, but by no means exhaustive, collection of examples of current Delaware law’s shortcomings in this area.<sup>96</sup>

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<sup>94</sup> See proposed Section 804(e).

<sup>95</sup> A third substantive category, offense grading, is discussed in Section 4 above.

<sup>96</sup> Included here are other examples of current policies that are difficult to reconcile with the existing statutory scheme. First, current Delaware law improperly uses ordinary, tort negligence as a basis of criminal liability. Criminal negligence and recklessness differ from tort negligence and recklessness by requiring that the risk the person takes, or the person’s failure to be aware of such a risk, be “a *gross deviation* from the standard of conduct that a reasonable person would observe in the situation.” See 11 Del. C. § 231(a) & (e) (emphasis added). Fundamentally, this heightened “gross deviation” standard is what justifies holding a person criminally liable for the accidental effects of that person’s conduct. But, in a few cases, Delaware currently makes tort negligence (which contains no heightened standard) the basis of criminal liability, including some serious felonies. See 11 Del. C. §§ 231(d) (defining “negligence” as a culpability requirement separate from criminal negligence), 628A(2) (second degree vehicular assault), 629 (first degree vehicular assault, Class F felony), 630(a)(2) (second degree vehicular homicide, Class D felony), 632(2) (manslaughter, Class B felony); 7 Del. C. § 6074(a) (negligent ocean dumping). Note that current law embraces tort negligence, but not tort recklessness, though there is no obvious reason why one should be incorporated, but not the other. The Proposed Code eliminates tort negligence as a culpable state of mind that can support criminal liability. See proposed Section 205(b) and corresponding commentary.

Second, the current scheme of inchoate offenses contains an ambiguity that makes it possible to improperly elevate their culpability requirements relative to completed offenses. The current formulation of attempt requires the defendant to “*intentionally* engage in conduct,” and conspiracy and solicitation each establish a general culpability requirement of intent. See 11 Del. C. §§ 501–03, 511–13, 531. But, none of these provisions are explicit about what the defendant’s culpability must be as to the result or circumstance elements of the completed offense. Reading the explicit “intent” requirements to apply to other elements of the target offense may cause improper results or confusion. For example, 11 Del. C. § 607(a)(1) requires that the defendant “knowingly . . . impede[] the breathing” of a strangulation victim. The strangler need only know that the victim’s breathing will be impeded as a result of his conduct. But, under the current inchoate offenses, the culpability requirement might be raised, and the person might need to intend that result before being subjected to inchoate liability. To avoid this problem, proposed Chapter 700 requires that for each inchoate offense, the person need act intentionally only with respect to the conduct that would bring about the underlying offense, but act with the culpability required by the underlying offense for all other elements. See proposed Sections 701 to 703 and their corresponding commentaries.

### A. Reserving the Most Serious Penalties for the Most Serious Killings

Current Delaware law provides several alternative definitions for murder in the first degree.<sup>97</sup> The main, classic definition of first-degree murder is intentionally causing the death of another person. This offense combines the most egregious harm—killing another human being—with the most culpable state of mind—subjective desire to kill. For that reason, first-degree murder is universally considered the most serious offense, and is why it is the only offense in Delaware eligible for capital punishment. However, the remaining alternative definitions of first-degree murder do not require the defendant to intentionally cause death. Instead, they require mere recklessness.<sup>98</sup> These definitions elevate killings that would otherwise be manslaughter to capital murder. This violates the general principle reflected throughout the current code that more culpable states of mind make an offender more blameworthy, and therefore deserving of greater punishment. Put simply, no matter how harmful a defendant’s conduct may be, recklessness is not blameworthy enough to merit capital punishment.

The current death penalty sentencing procedures for first-degree murder add another layer of inconsistency and disproportionality to this situation. Before a defendant can be sentenced to death, Delaware requires that a jury independently find the existence of an aggravating factor, enumerated in the procedures, unanimously and beyond a reasonable doubt.<sup>99</sup> But, if the offense is committed in one of the alternative, reckless ways, the required aggravating factor is automatically established, bypassing the jury’s usual finding.<sup>100</sup> This double counting produces an irrational result, making it more difficult to execute a person who deserves the death penalty for intentional killing, than a person who does not.

On the other hand, the kinds of reckless killings currently eligible for the death penalty are objectively more serious than ordinary manslaughter. The Proposed Code recognizes this distinction, but avoids the proportionality and consistency problems described above, in two ways. First, it retains the killing of police officers and emergency personnel in the line of duty as eligible for the death penalty, by elevating the culpability level for such killings to “knowing.” This higher level of culpability, combined with the especially condemnable nature of the conduct, warrants the grading of this conduct as the most serious offense in the Proposed Code, alongside intentional murder. Second, the Proposed Code still preserves all the alternative definitions of first-degree murder requiring recklessness, but treats them as

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<sup>97</sup> 11 Del. C. § 636(a) reads:

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

- (1) The person intentionally causes the death of another person;
- (2) While engaged in the commission of, or attempt to commit, or flight after committing or attempting to commit any felony, the person recklessly causes the death of another person.
- (3) The person intentionally causes another person to commit suicide by force or duress;
- (4) The person recklessly causes the death of a law-enforcement officer, corrections employee, fire fighter, paramedic, emergency medical technician, fire marshal or fire police officer while such officer is in the lawful performance of duties;
- (5) The person causes the death of another person by the use of or detonation of any bomb or similar destructive device;
- (6) The person causes the death of another person in order to avoid or prevent the lawful arrest of any person, or in the course of and in furtherance of the commission or attempted commission of escape in the second degree or escape after conviction.

<sup>98</sup> 11 Del. C. § 636(2) and (4) have explicit culpability requirements of recklessness. Subsections (5) and (6) do not contain explicit culpability requirements; but, under § 251(b), recklessness is read in as the lowest level of culpability that need be proven. Subsection (3)—intentionally causing another person to commit suicide by force or duress—is not considered here because the Proposed Code maintains this provision (and its eligibility for the death penalty) through a new offense for causing suicide. *See* proposed Section 1105(c).

<sup>99</sup> *See* 11 Del. C. § 4209(c)(3)b.1.

<sup>100</sup> *See* 11 Del. C. § 4209(e)(2).

forms of second-degree murder instead of first-degree murder.<sup>101</sup> Thus, the death penalty is reserved for the only conduct truly blameworthy enough to deserve it—intentionally killing another human being, or knowingly killing police officers and emergency personnel in the line of duty.<sup>102</sup>

Before closing, we note that members of the working group have, as one would think, diverse views about whether the death penalty is an appropriate punishment and some members of the group believe it should not be an available punishment. But, all understood that the decision of whether the death penalty should persist is one for the General Assembly, and the members have focused on the epilogue’s mandate of proportionality. With that in mind, we are aware that the issue of whether, and under what procedures, the death penalty shall be available is under active consideration by the General Assembly. We have grouped these two offenses as the most serious and deserving of whatever the harshest punishment the General Assembly determines is appropriate.

### **[B. Restoring Imputation of Recklessness for Voluntary Intoxication**

When the Criminal Code of 1973 was enacted, 11 Del. C. § 421 codified a rule that was already being followed by the Delaware courts regarding the effects of voluntary intoxication upon a defendant’s culpability. That rule provided:

- (1) Except as provided in subsection (2) of this section, voluntary intoxication is an affirmative defense in a prosecution for a criminal offense only if it negatives [sic] the element of specific intent required by the crime charged.
- (2) When recklessness is an element of an offense, and the defendant, as a result of voluntary intoxication, is unaware of a risk, his unawareness does not negative [sic] the mental state of recklessness if he would have been aware of the risk had he not been intoxicated.<sup>103</sup>

Other than confusedly relying upon the common law notion of specific intent, this newly codified rule was taken directly from Section 2.08(1)–(2) of the Model Penal Code, on which the 1973 Criminal Code was based. This rule of voluntary intoxication strikes a sensible balance between two competing concerns: on one hand, the new criminal code eschewed strict liability, requiring proof of a culpable state of mind that an intoxicated person may not be able to form; but on the other hand, a defendant’s unawareness of risk due to self-intoxication is the defendant’s own fault. The original § 421 recognized that although an intoxicated person may not be able to form the intent or have the knowledge required for some offenses, the defendant’s recklessness in becoming voluntarily intoxicated should be sufficient to convict a defendant for offenses requiring only recklessness.

But, within a few short years, the General Assembly replaced the original § 421 with the current provision, which provides that voluntary intoxication “is no defense to any criminal charge.”<sup>104</sup> As a result, “the State is not required to prove that a[ voluntarily] intoxicated defendant possessed a particular state of mind . . . .”<sup>105</sup> The General Assembly was no doubt concerned that opening the door to a statutory involuntary intoxication defense would result in defendants raising the issue of intoxication in every case. But as a result, the ultimate liability of some defendants rests entirely upon the discretion of the prosecutor bringing charges. For example, imagine a defendant who killed another person while drunk. The prosecutor charges the defendant with murder in the first degree, which requires that the defendant

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<sup>101</sup> See proposed Section 1102(a)(2)(B)–(a)(3).

<sup>102</sup> See proposed Section 1101.

<sup>103</sup> 11 Del. C. § 421 (1973).

<sup>104</sup> 11 Del. C. § 421 (1976).

<sup>105</sup> *Wyant v. State*, 519 A.2d 649, 655 (Del. 1986).

intend to cause the other person's death.<sup>106</sup> Because he was drunk at the time, the defendant was unable to form the required intent to cause death. But, the current version of § 421 prevents the defendant from raising the issue of intoxication to explain why he did not have culpability required for murder. Unable to make a colorable defense, the defendant is much more likely to be convicted of murder, in which case the defendant may be sentenced to death.<sup>107</sup> Under the original version of § 421, the defendant would still have been found guilty of manslaughter (a Class B felony), or perhaps even murder in the second degree (a Class A felony) — both very serious offenses, but each more proportionate to the defendant's reckless self-intoxication.<sup>108</sup>

Fundamentally, 11 Del. C. § 421 as it currently stands holds a defendant strictly liable for anything she does while voluntarily intoxicated, no matter how serious the offense may be. In contrast, the current criminal code establishes a principle of only imposing strict liability for violations (which are not subject to any term of imprisonment) and regulatory offenses — but only if “a legislative purpose to impose strict liability . . . plainly appears.”<sup>109</sup> This extremely limited role of strict liability is consistent with the code's general scheme of both requiring a culpable state of mind and imposing harsher penalties for more culpable states of mind;<sup>110</sup> but, it is incompatible with § 421.

To return to a consistent application of the current code's general principles, the Proposed Code reestablishes voluntary intoxication as a defense capable of negating intentional or knowing culpability, but imputing recklessness to such a defendant due to his fault in becoming intoxicated.<sup>111]</sup>

### C. Returning to the Classic Intent Requirement for Burglary

Burglary is a compound crime composed of two different offenses: a trespass, and any other offense committed during the trespass (usually theft). Before burglary was recognized as an offense, the State could convict a defendant of both offenses based on the two separate harms involved. Burglary exists as a separate offense for only one reason: to recognize an additional harm that occurs when a defendant's trespass is motivated by the desire to commit a further offense. As a result, a defendant need not actually succeed in committing the offense motivating the trespass to commit burglary: trespassing because of a preexisting intent is sufficient.<sup>112</sup>

In 2008, the General Assembly dramatically redefined the intent requirement for burglary, amending the offense definition so that “[t]he ‘intent to commit a crime therein’ may be formed . . . concurrent with the unlawful entry or . . . after the entry while the person remains unlawfully.”<sup>113</sup> As discussed above, however, forming intent before the trespass is the only harm that burglary uniquely addresses, thereby justifying its existence. Now, any offense committed during a trespass automatically generates liability for burglary, despite the State's ability to charge and convict the defendant of both that

<sup>106</sup> See 11 Del. C. § 636(a)(1).

<sup>107</sup> See 11 Del. C. §§ 636(b)(1), 4209.

<sup>108</sup> See 11 Del. C. §§ 632(1) (requiring recklessness for manslaughter), 635(1) (requiring recklessness and “a cruel, wicked and depraved indifference to human life” for murder in the second degree).

<sup>109</sup> 11 Del. C. § 251(c) (emphasis added).

<sup>110</sup> See 11 Del. C. § 251(a) (“No person may be found guilty of a criminal offense without proof that the person had the state of mind required by the law defining the offense . . .”). *Cf., e.g.*, 11 Del. C. § 631 with 11 Del. C. §§ 632, 635–636 (grading causing another person's death more harshly as the culpable state of mind as to causing death rises).

<sup>111</sup> See proposed Section 212.

<sup>112</sup> See 11 Del. C. § 824 (“A person is guilty of burglary . . . when the person knowingly enters or remains unlawfully in a building with intent to commit a crime therein.”)

<sup>113</sup> See 2008 Delaware Laws Ch. 267 (H.B. 208) (amending 11 Del. C. § 829 (definitions relating to criminal trespass, burglary and home invasion)).

offense and the trespass. In that case, the defendant is subject to liability for multiple offenses for causing the same harm.

This result is inconsistent with two basic principles of the current code that are also legislative mandates for this Code Improvement Project under the Epilogue: comprehensiveness and proportionality. The comprehensive definition of offenses allows each harm or injury caused by a defendant to be punished as a separate offense — but only *one* offense. Punishing one harm or injury with multiple offenses always results in disproportionate punishment. The Proposed Code returns to a consistent application of these principles in burglary prosecutions by undoing the recent, novel reinterpretation of its intent requirement.<sup>114</sup> Beyond burglary, the Proposed Code helps reinforce the principle of “one harm, one offense” by explicitly placing that limitation upon conviction for multiple offenses.<sup>115</sup>

#### **D. Revising the Mental Illness or Psychiatric Disorder Defense**

Since the 1973 Code was adopted, the General Assembly has adopted provisions that limit the scope of the mental illness or psychiatric disorder (“insanity”) defense, largely due to a perception that the insanity defense has been subject to abuse. But, various studies strongly suggest this assumption is empirically unsound.<sup>116</sup> Meanwhile, additional policy concerns call these limitations into question.

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<sup>114</sup> See proposed Section 2401 and corresponding commentary.

<sup>115</sup> See proposed Section 210(a)(1)(A)–(B).

<sup>116</sup> It has been well documented that the lay public has an exaggerated sense of how often the insanity plea is used as well as how often verdicts of “not guilty by reason of insanity” (NGRI) are granted. For example, people generally believe, wrongly, that the insanity defense is a common issue in criminal trials. One study found that people thought that thirty-eight percent of all defendants charged with a crime pleaded NGRI. See Valerie P. Hans, *An Analysis of Public Attitudes Toward the Insanity Defense*, 24 CRIMINOLOGY 393, 406 (1986); See also Eric Silver et al., *Demythologizing Inaccurate Perceptions of the Insanity Defense*, 18 LAW & HUM. BEHAV. 63, 67-68 (1994). In reality, an insanity plea is exceedingly rare, raised in only a fraction of a percent of felony cases. See, e.g., Lisa A. Callahan et al., *The Volume and Characteristics of Insanity Defense Pleas: An Eight-State Study*, 19 BULL. AM. ACAD. PSYCHIATRY & L. 331, 334 (1991). (Note that this is less than one percent of all felony cases, although the lay subjects estimated insanity pleas for 38% of all persons charged with any crime). See also Richard A. Pasewark & Hugh McGinley, *Insanity Plea: National Survey of Frequency and Success*, 13 J. PSYCHIATRY & L. 101 (1985) (reporting median rate of one plea per 873 reported crimes). Also contrary to popular belief, more than half of the few cases where an insanity plea is introduced involve nonviolent offenses. See HENRY J. STEADMAN ET AL., BEFORE AND AFTER HINCKLEY: EVALUATING INSANITY DEFENSE REFORM 111 (1993); See also Callahan et al., *supra*, at 336.

In addition, it has been reported that even in the rare cases in which the insanity defense is sought, it is usually not granted, yet the public perceives that it is commonly granted. See, e.g., Callahan et al., *supra*, at 334 (reporting average acquittal rate of 26% on NGRI pleas); Pasewark & McGinley, *supra*, at 106 (reporting success rate of 15% of pleas); Hans, *supra*, at 406 (reporting study indicating that public believes over 36% of all NGRI claims, constituting perceived 14% of all criminal cases, result in NGRI verdict); Mary Frain, *Professor Says Insanity Defense Seldom Works*, TELEGRAM & GAZETTE (Worcester, MA), Jan. 19, 1996, at B1 (quoting chair of psychiatry at the University of Massachusetts Medical Center as saying that general public believes the insanity defense is used in 20 to 50 percent of all criminal cases).

Claims that the defense is abused and employed to manipulate juries are also belied by the fact that most NGRI pleas are not contested, and the vast majority of NGRI verdicts — 93%, in one study — are reached through negotiated pleas or rendered by judges in bench trials, rather than by juries. See Michael L. Perlin, *A Law of Healing*, 68 U. CIN. L. REV. 407, 425 (2000) (“Nearly 90% of all insanity defense cases are ‘walkthroughs’ — stipulated on the papers.”); Callahan et al., *supra*, at 334. Another refutation of the abuse concern is the fact that most NGRI acquittees have significant histories of treatment for mental illness. See, e.g., Michael R. Hawkins &

For example, current law provides for a “guilty but mentally ill” verdict (“GBMI”) as a supposed compromise between a verdict of not guilty by reason of insanity (NGRI) and a conviction.<sup>117</sup> Although this verdict was meant to reduce NGRI acquittals, the number of NGRI verdicts in some states where such data has been collected actually increased after the GBMI verdict was enacted.<sup>118</sup> The GBMI verdict is troublesome because it has no legal significance,<sup>119</sup> yet distracts the jury into considering the technical clinical issue of whether an offender needs psychiatric treatment, although the determination of guilt should be the jury’s sole responsibility. Nevertheless, the GBMI is an established feature in current Delaware law. Moreover, supporters of GBMI maintain that this verdict option is beneficial to the defendant. The Proposed Code provides a compromise between these differing approaches on the GBMI verdict. It retains it as an alternative verdict, but specifies that this option will only be made available to the trier of fact if requested by the defendant.<sup>120</sup>

### E. Eliminating Archaic and/or Obsolete Offenses

Title 11 contains a number of outdated offenses that do not belong in a modern criminal code. The Proposed Code attempts to identify and eliminate these offenses. For example, the proposed Chapter covering theft offenses removes the current offense of larceny of livestock, transfer of recorded sounds, and operation of a recording device in a movie theater.<sup>121</sup> All evidence indicates that these offenses are currently unenforced, despite the fact that there is no special difficulty in identifying people who commit them. Such non-enforcement can only reflect a conscious decision that imposition of criminal liability for these offenses is improper, or at least a waste of State resources. Maintenance of dead-letter statutes of this kind only tends to invite abuse and to undermine the authority of the criminal law as a comprehensive and accurate reflection of the governed community’s sense of what behavior is sufficiently improper to merit imposition of punishment.<sup>122</sup>

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Richard A. Pasewark, *Characteristics of Persons Utilizing the Insanity Plea*, 53 PSYCHOL. REP. 191, 194 (1983); Steadman et al., *supra*, at 56.

These massive misconceptions regarding the practical significance of the insanity defense fuel the general sense that the insanity defense is being abused and that something must be done to limit the abuse. See Michael L. Perlin, *“The Borderline Which Separated You From Me”: The Insanity Defense, the Authoritarian Spirit, the Fear of Faking, and the Culture of Punishment*, 82 IOWA L. REV. 1375, 1375 & nn.5-6 (1997) (citing polls suggesting that “ninety percent [of Americans] believe that the insanity plea is overused”).

<sup>117</sup> See 11 Del. C. §§ 401(b), 408–09.

<sup>118</sup> See Christopher Slobogin, *The Guilty But Mentally Ill Verdict: An Idea Whose Time Should Not Have Come*, 53 GEO. WASH. L. REV. 494, 506–07 (1985).

<sup>119</sup> GBMI is not a “middle position” in terms of its consequences. It has the same effect as a guilty verdict, See 11 Del. C. § 408(c), even in terms of the defendant’s receiving a psychological evaluation, which is required for all convicts. See 11 Del. C. § 408(b); *cf.* 11 Del. C. § 6523 (requiring the Department of Corrections to make psychological “studies and investigations” of inmates “for the purpose of rehabilitation.”).

<sup>120</sup> See proposed Section 403 and corresponding commentary.

<sup>121</sup> See 11 Del. C. § 859.

<sup>122</sup> For other specific offenses eliminated by the Proposed Code, see, for example, 11 Del. C. §§ 614 (abuse of a sports official), 627 (prohibited acts as to substances releasing vapors or fumes), 823 (portion of criminal trespass in the first degree relating to “a building used to shelter, house, milk, raise, feed, breed, study or exhibit animals.”), 918 (ticket scalping), 1004 (advertising marriage in another state), 1325A (unlawful trade in dog or cat by-products), 1327 (maintaining a dangerous animal), 1330 (smoking on trolleys), 1365 (obscene literature harmful to minors), and 1366 (outdoor motion picture theaters). Where the conduct prohibited by these offenses is genuinely harmful and blameworthy, it should fall within the more general prohibitions of another proposed provision. For example, maintaining a dangerous animal is only an offense where the animal actually causes injury or death to a

### PREPARING FOR CHANGE

Change is scary and there is a natural human tendency to cling to what is known, even if what is known is less than ideal. However unwieldy and difficult to understand the current Delaware Code is, it is the current code and there is an understandable fear on the part of some that change will be difficult.

But, the reality is that every year new prosecutors, defense lawyers, police officers, correctional officers, and others have to learn the provisions of a cumbersome code. Judicial decisions continue to be written trying to make sense of a code that has not had a comprehensive examination since its enactment. And the reality is that the current code is so disjointed that even experienced practitioners cannot pretend that it is clear and do not pretend to claim that it is. In fact, one of Delaware's leading police chiefs refers to the current code as "Frankencode." Conversely, in tandem with its drafting principles, the Proposed Code draws on the language of the Model Penal Code in many areas where the current code could be improved upon in accordance with the epilogue's mandate. The Model Penal Code is a leading authority that all criminal law practitioners refer to regularly, and its language provided the foundation for the current code and has been the subject of numerous judicial decisions and helpful commentary. By hewing to the Model Penal Code's approach when appropriate, the Proposed Code further facilitates ease of use by Delaware prosecutors, defense attorneys, police, correctional officials, judges and the public.

To manage the change process, the draft proposes that the effective date of any code be a year after enactment. During that year, a law enforcement officer's guide to the new Code should be produced, and intensive training for prosecutors, defense attorneys, judges, and other criminal justice constituents should and will be conducted. Precisely because the Proposed Code is more rational, shorter, and clearer, it will in fact be easier for those who must use it to understand and apply it.

As important, work should be done during that year to make sure that model jury instructions are ready for use that track the new Code. The clarity of the Proposed Code is such that crafting reliable jury instructions, and keeping them current will be much easier.

Change is no doubt difficult, but necessary. Fear of change cannot justify adhering to a code that is impossible for any human being to understand, is fraught with inconsistencies and ambiguities, and is overly long and unduly complex. Rather, commitment to a just system of criminal justice and to helping those who labor in the trenches to make the rule of law come to life requires sensible reform, the enactment of a clear, rational, and easier-to-understand criminal code, and making sure that an educational plan is in place to help key players deal with the positive change that will be coming their way.

### CONCLUSION

The creation of the Delaware Criminal Code Improvement Project represents a rare and profound opportunity to eradicate the numerous inconsistencies and contradictions that currently plague Delaware criminal law. In nearly all cases, the needed corrections are significant, but should not be at all controversial, for it is usually possible to clean up the form and structure of the law without altering its fundamental goals or rules. The Proposed Code both simplifies and rationalizes the statutory criminal law of Delaware. It is rooted in the values and policy judgments of the present, but its language, organization, and comprehensive scope promise to better serve those interests in the future.

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person or other animal. Any of those cases could be prosecuted as a form of homicide, reckless injuring, or property damage, and one can imagine other proper offenses that could be charged due to maintaining a dangerous animal, such as reckless endangerment.

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**PART I: THE GENERAL PART****PRELIMINARY PROVISIONS****CHAPTER 100. PRELIMINARY PROVISIONS**

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**Section 101. Short Title and Effective Date**

(a) This Act shall be known and may be cited as the “Delaware Criminal Code of 2017.”

(b) This Code shall take effect on [A DATE ONE YEAR FROM ENACTMENT].

(c) Prosecutions for offenses committed before [ABOVE DATE] shall be generally governed by the prior law. But in any case pending on or commenced after [ABOVE DATE] involving an offense committed before that date, provisions of this Code that provide a defense or mitigation shall apply, with the defendant’s consent.

**Section 102. Principle of Construction; General Purposes**

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

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

(2) to give fair warning of the nature of the conduct prohibited and of the sentences authorized upon conviction,

(3) to define the act or omission and the accompanying culpability that constitute each offense, and

(4) to prescribe penalties that are proportionate to the seriousness of the offense.

(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.* No heading contained in this Code shall exclusively govern, limit, modify, or affect the scope, meaning, or intent of a provision. Nevertheless, headings may be used as an aid in interpreting the provisions of this Code

(d) *Partial Repeal.* Unless the repealing act expressly provides, the repeal of any provision of this Code shall not affect:

- (1) the validity of the remainder of this Code; or
- (2) any penalty, forfeiture, or liability incurred under the repealed provision; or
- (3) any prosecution or other legal proceeding in progress under the repealed provision.

### **Section 103. All Offenses Defined by Statute; Applicability**

(a) No conduct constitutes an offense unless it is made an offense by this Code or another statute of this State.

(b) The provisions of Part I of this Code are applicable to all offenses defined by this Code and by other statutes, unless this Code provides otherwise.

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

(d) The punishments prescribed by this Code, or by any other statute of this State, may be inflicted only after a judgment of conviction.

### **Section 104. Civil Remedies Preserved; No Merger with Civil Injury**

(a) This Code 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 Code or another statute provides otherwise, civil proceedings in a court or administrative agency do not affect criminal liability under this Code for the same conduct.

### **Section 105. State Criminal Jurisdiction**

(a) A person is subject to prosecution in this State for an offense that he or she commits, while either within or outside this State, by his or her own conduct or that of another for which the person is legally accountable, if:

- (1) the offense is committed either wholly or partly within this State; or
- (2) the conduct outside the State constitutes an attempt to commit an offense within this State; or
- (3) the conduct outside the State constitutes a conspiracy to commit an offense within this State, and an overt act in furtherance of the conspiracy occurs in this State; or
- (4) the conduct violates a law of this State that expressly prohibits conduct outside this State, and

(A) the conduct bears a reasonable relation to a legitimate interest of this State, and

(B) the person is reckless as to his or her conduct affecting that interest; or

(5) the conduct within this State 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 imposed by the law of this State.

(7) *Conduct Partly Within State.* Conduct is committed partly within this state if:

(A) conduct or a result that is an element of the offense occurs within this State; or

(B) (i) the offense definition includes:

(aa) telephone or electronic communication; or

(bb) digital information or recordings; and

(ii) the communication, information, or recording is stored on or received by a computer or facility located within this State.

(b) *Exception to Jurisdiction: Result of Lawful Conduct Outside State.* Unless the defendant recklessly caused the prohibited result while reckless as to that result occurring within this State, Subsection (a)(1) does not apply when:

(1) causing a particular result is an element of the offense, and

(2) the result is caused by conduct occurring outside this State, and

(3) the result is not prohibited by the jurisdiction where the conduct occurred.

(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.

## **Section 106. Burdens of Proof; Permissive Inferences**

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

(b) *Burden of Persuasion.*

(1) *Burden on the State.* The burden is on the State:

(A) to prove all elements of an offense, grade provision, and the absence of an exception to liability, as applicable, beyond a reasonable doubt,

(B) to disprove all justification defenses beyond a reasonable doubt, as provided in Section 301(f), unless this Code expressly provides otherwise, and

(C) to prove by a preponderance of the evidence all other facts required for liability, unless this Code expressly provides otherwise.

(2) *Burden on the Defendant.* Unless this Code expressly provides otherwise, the burden is on the defendant to prove all elements of a defense or

mitigation by a preponderance of the evidence, including excuse defenses, as provided in Section 401(d), and nonexculpatory defenses, as provided in Section 501(c).

(3) *Preponderance of the Evidence: Meaning.* An element is proved by a preponderance of the evidence if the evidence makes it more likely than not that the element existed at the required time.

(c) *Burden of Production.*

(1) *Burden on the State.*

(A) *Generally.* An offense shall be presented to the trier of fact only if:

(i) the State has presented sufficient evidence:

(aa) considered in the light most favorable to the State, and

(bb) considering all reasonable inferences that may be drawn from that evidence,

(ii) to allow a rational trier of fact to find that all required elements of the offense have been proven beyond a reasonable doubt.

(B) *Felony Murder.* In a prosecution for Murder under Section 1102(a)(3), the prosecution may meet its burden of production even if the only evidence of the underlying felony is the defendant's extrajudicial statement.

(2) *Burden on the Defendant.* Unless this Code expressly provides otherwise, an exception to liability, defense, or mitigation shall be presented to the trier of fact only if:

(A) there exists sufficient evidence:

(i) considered in the light most favorable to the defendant, and

(ii) considering all reasonable inferences that may be drawn from that evidence,

(B) to allow a rational trier of fact to find that all requirements of the exception, defense, or mitigation are proven by a preponderance of the evidence.

(d) *Effects of Permissive Inferences.* When this Code establishes a permissive inference as to any fact, it has 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, and

(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 – if duly proven – as sufficient evidence of the inferred fact.

### **Section 107. Words of Gender or Number**

Unless the context requires otherwise:

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

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

### **Section 108. Definitions; General Definitions**

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

(b) “Exception to Liability” means any provision of this Code 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.

(c) “General Defense” means the provisions of Chapters 300, 400, and 500.

(d) “Includes” or “including” means that the definition is not limited to the meaning given, but may be defined in a way not inconsistent with that meaning.

(e) When “means” is employed to define a word or term, the definition is limited to the meaning given.

(f) “Mitigation” means a provision in this Code stipulating the conditions for decreasing the punishment for an offense. A mitigation establishes a partial reduction of potential liability for an offense.

(g) “Person” means:

(1) a human being who has been born and is alive; or

(2) where appropriate, a public or private corporation, trust, firm, joint stock company, union, unincorporated association, partnership, government, or governmental instrumentality.

(h) “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.

### **Section 109. Definitions Index**

A word not defined in this Code has its commonly accepted meaning. Unless a particular context clearly requires a different meaning:

“Abortion” has the meaning given in Section 1107(a).

“Abuse of a child” has the meaning given in 10 Del. C. § 901(1).

- “Accomplice” has the meaning given in Section 5210(a).
- “Acquittal” has the meaning given in Section 509(a).
- “Adulterated” has the meaning given in Section 2213(a).
- “Agent of the organization” has the meaning given in Section 603(a).
- “Attempt” or “attempting” has the meaning given in Section 1107(b).
- “Authorized prescription” has the meaning given in Section 5210(b).
- “Catastrophe” has the meaning given in Section 2306(a).
- “Catastrophic agent” has the meaning given in Section 2306(b).
- “Chemically impaired” has the meaning given in Section 1210(a).
- “Child pornography” has the meaning given in Section 4208(a).
- “Circumstance element” has the meaning given in Section 214(a).
- “Co-conspirator” has the meaning given in Section 5210(c).
- “Coercion” has the meaning given in Section 1107(c).
- “Combat event” has the meaning given in Section 4208(b).
- “Commercial animals” has the meaning given in Section 4208(c).
- “Commercial electronic mail” has the meaning given in Section 4307(a).
- “Computer services” has the meaning given in Section 806(a).
- “Computer system” has the meaning given in Section 4307(b).
- “Conduct element” has the meaning given in Section 214(b).
- “Consequence” has the meaning given in Section 214(c).
- “Contents of a communication” has the meaning given in Section 4307(c).
- “Contraband” has the meaning given in Section 3309(a).
- “Controlled substance” has the meaning given in Section 5210(d).
- “Conviction” has the meaning given in Section 509(b).
- “Correctional officer” has the meaning given in Section 308(a).
- “Counterfeit mark” has the meaning given in Section 2213(b).
- “Criminal street gang” has the meaning given in Section 5304(a).
- “Cruelty” has the meaning given in Section 4208(d).
- “Damage” has the meaning given in Section 2306(c).
- “Dangerous instrument” has the meaning given in Section 5109(a).
- “Data” has the meaning given in Section 4307(d).
- “Deadly force” has the meaning given in Section 308(b).
- “Deadly weapon” has the meaning given in Section 5109(b).
- “Deadly weapon designed for the defense of one’s person” has the meaning given in Section 5109(c).
- “Dealer” has the meaning given in Section 2110(a).
- “Death” has the meaning given in Section
- “Deceiving,” “deceive,” or “deception” has the meaning given in Section 2110(b).
- “Defense” has the meaning given in Section 108(a).
- “Defraud” has the meaning given in Section 2213(c).
- “Deliver” or “delivery” has the meaning given in Section 5210(e).
- “Dependent child” has the meaning given in Section 4408.
- “Deprive” has the meaning given in Section 2110(c).

- “Destructive weapon” has the meaning given in Section 5109(d).
- “Drug paraphernalia” has the meaning given in Section 5210(f).
- “Dwelling” has the meaning given in Section 2403(a).
- “Ecological catastrophe” has the meaning given in Section 2306(d).
- “Electronic communication” has the meaning given in Section 4307(e).
- “Electronic mail” has the meaning given in Section 4307(f).
- “Enterprise” has the meaning given in Section 5304(b).
- “Excuse defense” has the meaning given in Section 410(a).
- “Exception to liability” has the meaning given in Section 108(b).
- “Entry” upon premises has the meaning given in Section 2403(b).
- “Firearm” has the meaning given in Section 5109(e).
- “Force” has the meaning given in Section 308(c).
- “Funerary object associated with interment” has the meaning given in Section 4208(e).
- “Gambling device” has the meaning given in Section 4503(a).
- “Gender identity” has the meaning given in Section 806(b).
- “General Defense” has the meaning given in Section 108(c).
- “Genitalia” has the meaning given in Section 1307(a).
- “Handgun” has the meaning given in Section 5109(f).
- “Harm to another person” has the meaning given in Section 3104(a).
- “High managerial agent” has the meaning given in Section 603(b).
- “Human remains” has the meaning given in Section 4108(f).
- “Improperly terminated” has the meaning given in Section 509(c).
- “Incendiary device” has the meaning given in Section 2306(e).
- “Inchoate offense” has the meaning given in Section 214(d).
- “Includes” or “including” has the meaning given in Section 108(d).
- “Intercepts” has the meaning given in Section 4307(g).
- “Internet pharmacy” has the meaning given in Section 5210(g).
- “Intoxication” has the meaning given in Section 214(e).
- “Involuntary intoxication” has the meaning given in Section 410(b).
- To “issue” a check has the meaning given in Section 2213(d).
- “Juror” has the meaning given in Section 3309(b).
- “Justification defense” has the meaning given in Section 308(d).
- “Law enforcement officer” has the meaning given in Section 3309(c).
- “Leaf marijuana” has the meaning given in Section 5210(h).
- “Loiters” has the meaning given in Section 4108(a).
- “Lottery ticket” has the meaning given in Section 4503(b).
- “Means” has the meaning given in Section 108(e).
- “Mental illness or serious mental disorder” has the meaning given in Section 410(c).
- “Mislabeled” has the meaning given in Section 2213(e).
- “Mitigation” has the meaning given in Section 108(f).
- “Motor vehicle” has the meaning given in Section 2110(d).

- “Neglect of a child” has the meaning given in 10 Del. C. § 901(18).
- “Negligent mistake” has the meaning given in Section 214(f).
- “Nonexculpatory defense” has the meaning given in Section 509(d).
- “Oath” has the meaning given in Section 3205(a).
- “Obscene” has the meaning given in Section 4208(g).
- “Obtain” has the meaning given in Section 2110(e).
- “Oral or object penetration” has the meaning given in Section 1307(b).
- “Organization” has the meaning given in Section 603(c).
- “Originating address” or “originating account” has the meaning given in Section 4307(h).
- “Overdose” has the meaning given in Section 5210(i).
- “Owner” has the meaning given in Section 2110(f).
- “Party officer” has the meaning given in Section 3104(b).
- To “pass” a check has the meaning given in Section 2213(f).
- “Pattern of criminal gang activity” has the meaning given in Section 5304(c).
- “Pattern of racketeering activity” has the meaning given in Section 5304(d).
- “Payment card” has the meaning given in Section 2213(g).
- “Peace officer” has the meaning given in Section 3309(d).
- “Penal custody” has the meaning given in Section 3309(e).
- “Person” has the meaning given in Section 108(g).
- “Personal benefit” has the meaning given in Section 3104(c).
- “Personal identifying information” has the meaning given in Section 2213(h).
- “Physical evidence” has the meaning given in Section 3309(f).
- “Physical injury” has the meaning given in Section 1210(b).
- “Place open to public view” has the meaning given in Section 4208(h).
- “Position of trust, authority, or supervision” has the meaning given in Section 1307(c).
- “Practitioner” has the meaning given in Section 2110(g).
- “Private communication” has the meaning given in Section 4307(i).
- “Private personal data” has the meaning given in Section 806(c).
- “Private place” has the meaning given in 4307(j).
- “Private wire” has the meaning given in Section 4503(c).
- “Proceeds” has the meaning given in Section 5304(e).
- “Property” has the meaning given in Section 108(h).
- “Property of another” has the meaning given in Section 2110(h).
- “Public passage” has the meaning given in Section 4108(b).
- “Public place” has the meaning given in Section 4108(c).
- “Public servant” has the meaning given in Section 3104(d).
- “Public service” has the meaning given in Section 2306(f).
- “Put forward” has the meaning given in Section 2213(i).
- “Real property” has the meaning given in Section 2403(c).
- “Reasonable mistake” has the meaning given in Section 214(g).
- “Receive” has the meaning given in Section 2110(i).

“Receiving address” or “receiving account” has the meaning given in Section 4307(k).

“Reckless mistake” has the meaning given in Section 214(h).

“Reencoder” has the meaning given in Section 2213(j).

“Registrant” has the meaning given in Section 5210(j).

“Relative” has the meaning given in Section 1404.

“Reside” has the meaning given in Section [1307(d)].

“Result element” has the meaning given in Section 214(i).

“Scanning device” has the meaning given in Section 2213(k).

“Security” has the meaning given in 6 Del. C. § 73-103(a)(20).

“Serious physical injury” has the meaning given in Section 1210(c).

“Services” has the meaning given in Section 2110(j).

“Sexual conduct” has the meaning given in Section 4208(i).

“Sexual contact” has the meaning given in Section 1307(e).

“Sexual intercourse” has the meaning given in Section 1307(f).

“Sexual orientation” has the meaning given in Section 806(d).

“Statement is material” has the meaning given in Section 3205(b).

“Stolen” has the meaning given in Section 2110(k).

“Substantive offense” has the meaning given in Section 214(j).

“Suicide” has the meaning given in Section 1107(d).

“Table game” has the meaning given in Section 4503(d).

“Therapeutic abortion” has the meaning given in Section 1107(e).

“Tier 1 quantity” has the meaning given in Section 5210(k).

“Tier 2 quantity” has the meaning given in Section 5210(l).

“Tier 3 quantity” has the meaning given in Section 5210(m).

“Tier 4 quantity” has the meaning given in Section 5210(n).

“Tier 5 quantity” has the meaning given in Section 5210(o).

“Trespass on real property” has the meaning given in Section 4307(m).

“Trial or contest” has the meaning given in Section 4503(e).

“Unjustified” conduct has the meaning given in Section 308(e).

“Unlawful debt” has the meaning given in Section 5304(f).

“Unmarked burial” has the meaning given in Section 4208(j).

“Value” has the meaning given in Section 2110(l).

“Vessel” has the meaning given in Section 308(f).

“Video lottery machine” has the meaning given in Section 4503(f).

“Voluntary act” has the meaning given in Section 214(k).

“Voluntary intoxication” has the meaning given in Section 214(l).

“Voluntary and complete renunciation” has the meaning given in Section 706(b).

“Vulnerable person” has the meaning given in Section 806(e).

“Witness” has the meaning given in Section 3309(g).

“Written instrument” has the meaning given in Section 806(f).

**REQUIREMENTS OF OFFENSE LIABILITY****CHAPTER 200. BASIC REQUIREMENTS OF OFFENSE LIABILITY**

- Section 201. Basis of Liability
- Section 202. Offense Elements Defined
- Section 203. Causal Relationship Between Conduct and Result
- Section 204. Requirement of a Voluntary Act; Omission Liability; Possession Liability
- Section 205. Culpability Requirements
- Section 206. Ignorance or Mistake Negating Required Culpability
- Section 207. Mental Illness or Disorder Negating Required Culpability
- Section 208. Consent
- Section 209. Customary License; De Minimis Infractions; Conduct Not Envisaged by General Assembly as Prohibited by the Offense
- Section 210. Conviction When the Defendant Satisfies the Requirements of More than One Offense or Grade
- Section 211. Accountability for the Conduct of Another
- Section 212. Voluntary Intoxication
- Section 213. Divergence Between Consequences Intended or Risked and Actual Consequences
- Section 214. Definitions

**Section 201. Basis of Liability**

Subject to the provisions of this Chapter, a person is liable for an offense if the person:

- (a) (1) satisfies all the objective and culpability elements of an offense, and does not satisfy the requirements of any exception to liability or defense; or
- (2) if an element of the offense is missing, it is imputed to the person by a provision of Section 211 through 214; and
- (b) does not satisfy the requirements of any defense provided in Chapters 300, 400, or 500 of this Code.

**Section 202. Offense Elements Defined**

- (a) The “elements” of an offense refer to:
  - (1) both:
    - (A) objective elements, meaning:
      - (i) conduct; or
      - (ii) attendant circumstances; or
      - (iii) the result of conduct; and
    - (B) culpability requirements, as defined in Section 205,
  - (2) that are contained in the offense definition or in the provisions establishing the offense grade or the severity of the punishment.

(b) *Defined Terms.*

- (1) “Circumstance element” has the meaning given in Section 214(a).
- (2) “Conduct element” has the meaning given in Section 214(b).
- (3) “Result element” has the meaning given in Section 214(i).

**Section 203. Causal Relationship Between Conduct and Result**

(a) *Generally.* Conduct is the cause of a result if:

- (1) the conduct is an antecedent but for which the result in question would not have occurred, and
- (2) the result is not too remote or accidental in its occurrence to have a just bearing on the actor’s liability or on the gravity of his or her offense, and
- (3) the relationship between the conduct and result satisfies any additional causal requirements imposed by the Code or by the law defining the offense.

(b) *Concurrent Sufficient Causes.* Where the conduct of two or more persons each causally contributes to a result, and each alone would have been sufficient to cause the result, the requirement of Subsection (a) is satisfied as to each person.

**Section 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 a voluntary act or a 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), if the person:

- (1) knowingly procured or received the thing possessed; or
- (2) was aware of his or her control over the thing possessed for a sufficient time to have been able to terminate possession.

(d) *Defined Term.* “Voluntary act” has the meaning given in Section 214(k).

**Section 205. Culpability Requirements**

(a) To be guilty of an offense, a person must have some level of culpability, as defined in Subsection (b), as to every objective element of the offense, except as provided in Subsection (e).

(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 to have another engage in the conduct;
- (B) as to a circumstance, if the person hopes or believes that there is a high probability the circumstance exists; and

(C) as to a result, if it is the person's conscious object to cause such result.

(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; and

(C) as to a result, if the person is practically certain that the conduct will cause the result.

(3) *Recklessly*. A person acts recklessly:

(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; and

(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) *Negligently*. A person acts negligently:

(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; and

(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. The 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, that requirement shall apply 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, a requirement of recklessness applies, except as provided in Subsection (e).

(e) *Strict Liability*. When no culpability requirement is specified with regard to an objective element, no culpability is required as to that element if:

- (1) the offense is a violation, unless the offense states a particular culpability requirement; or
- (2) the offense:
  - (A) is in a statute outside of this Code; and
  - (B) clearly indicates a legislative purpose to impose strict liability as to that objective element.

(f) *Culpability as to Criminality Not Required*. No level of culpability as to:
 

- (1) whether conduct constitutes an offense; or
- (2) the existence, meaning, or application of the law defining an offense;

 is required by an offense, unless the offense expressly provides that it is required.

(g) *Proof of Greater Culpability Satisfies Stated Requirement for Lower*. When, as to an objective element, the law requires:

- (1) 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) *Culpable State of Mind: Permissive Inference*. The finder of fact may infer from the facts of the case that a defendant had the culpable state of mind required for commission of an offense.

## **Section 206. Ignorance or Mistake Negating Required Culpability**

(a) Subject to the limitations of Section 213, a required culpable mental state is not satisfied if it is negated by a person's ignorance or mistake as to a matter of either fact or law.

(b) *Correspondence Between Mistake Defenses and Culpability Requirements*.

- (1) Any mistake as to an element of an offense, including a reckless mistake, will negate the existence of intention or knowledge as to that element.
- (2) A negligent mistake as to an element of an offense will negate the existence of intention, knowledge, or recklessness as to that element.
- (3) A reasonable mistake as to an element of an offense will negate intention, knowledge, recklessness, or 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 to the offense charged, the defense is not available if the defendant would be guilty of another offense of the same, or a higher, grade had the situation been as the person supposed.

(d) *Defined Terms*.

- (1) "Negligent mistake" has the meaning given in Section 214(f).
- (2) "Reasonable mistake" has the meaning given in Section 214(g).
- (3) "Reckless mistake" has the meaning given in Section 214(h).

**Section 207. Mental Illness or Disorder Negating Required Culpability**

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

**Section 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:

(1) is not serious physical injury; or

(2) is 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 by this Code or by the law defining the offense, consent by the victim is not a defense if:

(1) it is given by a person who is legally incompetent to authorize the conduct charged to constitute the offense; or

(2) it is given by a person who:

(A) because of youth, mental illness or disorder, or intoxication,

(B) is manifestly unable or known by the defendant to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

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

(4) it is induced by force, coercion, threats, or deception; or

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

**Section 209. Customary License; De Minimis Infractions; Conduct Not Envisaged by General Assembly as Prohibited by the Offense**

*Pre-Trial Dismissal.* The court shall dismiss a charged offense if, having regard to the nature of the conduct charged to constitute an offense and the nature of the attendant circumstances, it finds that the defendant's conduct:

(a) was within a customary license, neither expressly negated by the person whose interest was infringed nor inconsistent with the purpose of the law defining the offense;

(b) caused a harm or evil too trivial to warrant the condemnation of criminal conviction; or

(c) did not actually cause the harm or evil sought to be prohibited by the law defining the offense.<sup>1</sup>

### **Section 210. Conviction When the Defendant Satisfies the Requirements of More than One 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 he or she satisfies the requirements for liability, but the court shall not enter a judgment of conviction for more than one of any two offenses or grades of offenses if:

(1) they are based on the same conduct and:

(A) the harm or evil of one is:

(i) entirely accounted for by the other; or

(ii) of the same kind, but lesser degree, than that of the other;

or

(B) they differ only in that:

(i) one is defined to prohibit a designated kind of conduct generally, and the other to prohibit a specific instance of such conduct; or

(ii) one requires a lesser kind of culpability than the other; or

(C) they 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; or

(2) one offense consists only of an attempt or solicitation toward commission of:

(A) the other offense; or

(B) a substantive offense that is related to the other offense in the manner described in Subsection (a)(1); or

(3) each offense is an inchoate offense toward commission of a single substantive offense; or

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<sup>1</sup> **Issue:** Should this defense for de minimis infractions, customary license, and conduct not envisaged by the General Assembly as prohibited by the offense, be removed from the Proposed Code?

**Pro:** Delaware's criminal justice system is structured so that discretion lies with the Attorney General to decide when it is appropriate to charge someone with an offense. This defense second-guesses the Attorney General's decisions, undermining one of his traditional functions. There is no incentive for the Attorney General to charge offenses that would be covered by Section 209, as those cases are unlikely to result in conviction and would waste prosecutorial resources. Additionally, this defense is too broad, such that defendants will raise it in an overwhelming number of cases.

**Con:** This defense provides an important legislative safety valve to the definition of offenses. Offenses are defined as broadly as possible, to capture both the paradigmatic cases and as many variations upon them as possible. For example, a person who steals two pieces of gum from a drug store could be charged with theft because the definition of theft does not provide a floor for the value involved. This captures as many cases as possible, but leaves de minimis infractions, like stealing gum, subject to unwarranted punishment. This defense ensures that inappropriate liability is not imposed in cases like this. Furthermore, prosecutorial discretion, though important, is not perfect. Without this defense, nothing would prevent an overzealous prosecutor from making an example of the gum thief.

(4) the two differ only in that one is based upon the defendant's own conduct, and another is based upon the defendant's accountability, under Section 211, for another person's conduct; or

(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 two offenses merge for sentencing purposes.

(c) *Effect of Multiple Offenses Contained Within the Same Section*. If a person is convicted of any two offenses based upon the same conduct, and those offenses are contained within the same Section of this Code, that fact should be considered by the court as a factor weighing against entry of conviction for both offenses under Subsection (a)(1).

(d) *Entry of Judgment*. Where Subsection (a) 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*.

(1) "Inchoate offense" has the meaning given in Section 214(d).

(2) "Substantive offense" has the meaning given in Section 214(j).

### **Section 211. Accountability for the Conduct of Another**

(a) *Accountability*. A person is legally accountable for conduct of another person if:

(1) (A) having the culpability required by the offense,

(B) he or she:

(i) causes the other person to perform the conduct constituting the offense; or

(ii) intentionally:

(aa) aids, solicits, or conspires with the other person in the planning or commission of the offense; or

(bb) fails to make a proper effort to prevent the commission of the offense, having a legal duty to do so; or

(2) the statute defining the offense makes the person accountable.

(b) *Exception to Accountability*. Unless the statute defining the offense provides otherwise, a person is not so accountable for the conduct of another, notwithstanding Subsection (a), if:

(1) the person is a victim of the offense committed; or

(2) the person's conduct is inevitably incident to commission of the offense; or

(3) before commission of the offense, the person terminates his or her efforts to promote or facilitate its commission, and

(A) wholly deprives his or her prior efforts of their effectiveness; or

(B) gives timely warning to the proper law enforcement authorities;

or

(C) otherwise makes proper efforts to prevent the commission of the offense; or

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

(c) *Exemption 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 his or her 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 may be convicted upon proof that the objective elements of the offense are satisfied, even if the other person, claimed to have committed the offense:

(1) has not been prosecuted or convicted; or

(2) has been convicted of a different offense or degree of offense; or

(3) has been acquitted.

(e) *Convictions for Different Grades of an Offense.* A person who is legally accountable for the conduct of another may only be convicted of the grade of an offense that is consistent with:

(1) the person's own culpability, and

(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 under Subsection (a) if the other 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 in the planning or commission of an offense under Subsection (a) is guilty of an attempt to commit the offense, whether or not the offense is attempted or committed by the other person.

## Section 212. Voluntary Intoxication [TBD]<sup>2</sup>

## Section 213. Divergence Between Consequences Intended or Risked and Actual Consequences

(a) 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 risked by the person,

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<sup>2</sup> **Issue:** Should the Proposed Code carry forward 11 Del. C. § 421 providing that: "The fact that a criminal act was committed while the person committing such act was in a state of intoxication, or was committed because of such intoxication, is no defense to any criminal charge if the intoxication was voluntary."

Alternatively, Proposed Section 212 could be drafted as follows:

### "Section 212. Voluntary Intoxication

(a) *Generally.* Except as provided in Section 404 [involuntary intoxication defense], a person's intoxication at the time of committing an offense is not a defense unless it negates a required culpability element of the offense.

(b) *Imputation of Reckless Culpability.* When recklessness is a required element of the offense, if the person, due to voluntary intoxication, is unaware of a risk of which he or she would have been aware had the person had been sober, such unawareness is immaterial.

(c) *Defined Terms.*

(1) "Intoxication" has the meaning given in Section 214(e).

(2) "Voluntary intoxication" has the meaning given in Section 214(l)."

**Pro:** Delaware Criminal Code of 1972, based on the Model Penal Code, contained a voluntary intoxication provision that was substantially similar to Proposed Section 212 above. However, in 1976 the Delaware General Assembly modified Delaware Criminal Code leading to the current version of § 421 which provides that voluntary intoxication is no defense to any criminal charge. The current provision reflects a deliberate policy determination that intoxicated persons must be held strictly liable for any offense they commit while or because of their voluntary intoxication. Furthermore, certain kinds of criminal conduct (*e.g.*, domestic violence offenses) are often committed by voluntary intoxicated offenders. Current law effectively prevents the introduction of evidence on voluntary intoxication in these cases, and facilitates their efficient prosecution.

**Con:** Current law's § 421 is inconsistent with both generally accepted principles of liability and Delaware law's judicious use of strict liability only for *minor* offenses or particular circumstance elements in narrowly defined cases. It also leads to cases of serious injustice. For instance, § 421 would allow charging a defendant who killed another person while intoxicated with *aggravated murder*, even if the defendant was so cognitively dysfunctional that he simply did not know what he was doing – therefore lacking the intention or knowledge that are indispensable elements of this offense – and making him eligible for *capital punishment*. That is, current law would equate the person's culpability as to becoming intoxicated with the culpability to intentionally murder another human being, when these two are obviously dramatically different. The first, becoming intoxicated, is entirely lawful conduct, while the second, intentionally killing another human being, is the worst of condemnable conduct.

In contrast, Proposed Section 212 achieves the goals of § 421 while avoiding injustice. People can and often do recklessly, knowingly, or intentionally engage in criminal conduct (*e.g.*, domestic violence), while voluntary intoxicated. Like current law, Proposed Section 212 will not provide any defense for such culpable offenders, because their intoxication does not negate the required culpability for the offense. Proposed Section 212 would reach different results than current law only in the extreme cases when, due to a person's voluntary intoxication, that person never had and did not form the knowledge or intention that is a required element of an offense. Proposed Section 212 would treat such a defendant in a manner that is commensurable with his actual blameworthiness. In the killing case mentioned above, it would still impute recklessness to the defendant if, due to voluntary intoxication, the defendant would have been aware of the risk of causing death if sober. That is, Proposed Section 212 would allow charging the defendant with manslaughter (a Class 4 Felony with maximum authorized punishment of 25 years), but would avoid the injustice resulting from charging him with intentional murder.

(3) the required culpability nonetheless is established if the actual consequence differs from the consequence intended, contemplated, or risked only in that:

(A) a different person or different property is injured or affected; or

(B) the consequence intended, contemplated, or risked would have had an injury or harm that is as serious or more serious than the actual consequence.

(b) *Defined Term.* “Consequence” has the meaning given in Section 214(c).

#### **Section 214. Definitions**

(a) A “circumstance element” is any objective element that is not a conduct or result element.

(b) A “conduct element” is that part of an offense that requires a person’s act or failure to perform a legal duty.

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

(d) “Inchoate offense” means any offense defined in Chapter 700 of this Code.

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

(f) A “negligent mistake” is an erroneous belief that the actor is negligent in forming or holding.

(g) A “reasonable mistake” is an erroneous belief that the actor is non-negligent in forming or holding.

(h) A “reckless mistake” is an erroneous belief that the actor is reckless in forming or holding

(i) A “result element” is any change in the state of the world required to have been caused by the person’s conduct.

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

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

(l) “Voluntary intoxication” means intoxication:

(A) caused by substances that the person knowingly introduces into his or her own body,

(B) the tendency of which to cause intoxication the person knows or ought to know;

(C) unless the person introduces them:

(i) under medical advice; or

(ii) under circumstances that would afford a defense to prosecution for an offense.

**GENERAL DEFENSES****CHAPTER 300. JUSTIFICATION DEFENSES**

## Section 300. General Defenses

## Section 301. General Provisions Governing Justification Defenses

## Section 302. Choice of Evils

## Section 303. Execution of Public Duty

## Section 304. Law Enforcement Authority

## Section 305. Conduct of Persons with Special Responsibility for Care, Discipline, or Safety of Others

## Section 306. Defense of Person

## Section 307. Defense of Property

## Section 308. Definitions

**Section 300. General Defenses**

The defenses provided in Chapters 300, 400, and 500 bar conviction even if all elements of the offense charged have been satisfied.

**Section 301. General Provisions Governing Justification Defenses**

(a) *Superiority of More Specific Justifications.* The justifications provided in Section 302 (Lesser Evil) or Section 303 (Execution of Public Duty) are not available if the factual circumstances of a claimed justification are described in one of the other provisions of this Chapter.

(b) *Multiple Justifications.* Except as provided in Subsection (a), if a person's conduct satisfies the requirements of more than one justification defense, all of those justification defenses are available.

(c) *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.

(d) *Causing Justifying Circumstances.*

(1) *Not Automatic Bar to a Justification Defense.* Although a person causes the justifying circumstances, his or her offense conduct may be justified if it satisfies the requirements of a justification defense.

(2) *Liability for Culpably Causing Justifying Circumstances.* But the person's conduct in causing the justifying circumstances may be an offense if he or she causes the justifying circumstances with the culpability required by the offense.

(3) *Defense.* A person may have a general defense to liability under Subsection (d)(2) if the person satisfies the requirements of a defense for his or her conduct in causing the justifying circumstances.

(e) *Risk of Injury to Innocent Persons Not Justified.* A justification under this Chapter to use force upon another person does not extend to injury or risk of injury to innocent persons created by that use of force.

(f) *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.

(g) *Defined Term.* “Force” has the meaning given in Section 308(c).

### **Section 302. Choice of Evils**

*Defense Defined.* Conduct is justified if:

- (a) it is immediately necessary to avoid a harm or evil, and
- (b) the harm or evil to be avoided by the defendant’s conduct is greater than that sought to be prevented by the law defining the offense charged, and
- (c) a legislative purpose to exclude the justification claimed does not otherwise plainly appear.

### **Section 303. Execution of Public Duty**

(a) *Defense Defined.* Conduct is justified if it is required or authorized by:

- (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 his or her duties; or
- (2) the law governing the execution of legal process; or
- (3) the judgment or order of a competent court or tribunal; or
- (4) any other provision of law imposing a public duty.

(b) *Defective Jurisdiction or Process No Exception.* The justification under Subsection (a)(2) or (a)(3) is available even if, unknown to the defendant:

- (1) there is a defect in legal process; or
- (2) the court lacks jurisdiction.

(c) *Defined Term.* “Public servant” has the meaning given in Section 3104(d).

### **Section 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 any person whom the officer has summoned or directed to assist him or her, is justified if it is necessary to effect a lawful arrest or detention.

(2) *Limitation: Use of Force.* Use of force is not justified under Subsection (a)(1) unless the arrestee or detainee has been made aware of the purpose of the arrest or detention, unless it is unreasonable to do so.

(3) *Limitation: Use of Deadly Force.* In addition to the limitation in Subsection (a)(2), use of deadly force is justified under Subsection (a)(1) only if:

- (A) the force is necessary to prevent the arrest from being defeated by resistance or escape, and

(B) the force employed does not create a substantial risk of injury to innocent persons, and

(C) the person to be arrested has committed or attempted a felony involving actual or threatened physical injury, and

(D) unless the person is arrested without delay, the person to be arrested either:

(i) will create a substantial risk of serious physical injury or death; or

(ii) is not likely to ever be captured.

(4) *Invalid Warrant.* Conduct by a peace officer 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 his or her custody or presence is justified if:

(A) it is necessary to prevent the escape of the person from custody, and

(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 it is immediately necessary to prevent the escape from a correctional institution of a person lawfully detained in the institution.

(c) *Defined Terms.*

(1) “Correctional officer” has the meaning given in Section 308(a).

(2) “Deadly force” has the meaning given in Section 308(b).

(3) “Force” has the meaning given in Section 308(c).

(4) “Peace officer” has the meaning given in Section 3309(d).

(5) “Physical injury” has the meaning given in Section 1210(b).

(6) “Serious physical injury” has the meaning given in Section 1210(c).

(7) “Vessel” has the meaning given in Section 308(f).

### **Section 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:

(1) either:

(A) a:

(i) parent, guardian, or other person similarly responsible for the general care and supervision of a person less than 18 years of age, or the defendant is a person acting at the request of a person so responsible, and the force is necessary:

(aa) to safeguard or promote the welfare of the person;

or

- (bb) to further any of the purposes for which force may be used by any other actor specified in this Subsection; or
- (ii) guardian or other person similarly responsible for the general care and supervision of a person entrusted by authority of law to the custody of another person or to an institution, and the force used is necessary:
  - (aa) to safeguard or promote the welfare of the person;
  - or
  - (bb) if the person is in a hospital or other institution for care and custody, to maintain reasonable discipline in the institution; and
- (B) the force used does not:
  - (i) cause physical injury, mental distress, or unnecessary degradation; or
  - (ii) create a substantial risk of serious physical injury or death; or
- (2) a teacher or person otherwise entrusted with the care or supervision of a person less than 18 years of age for a special purpose, and the force used:
  - (A) is necessary to further that special purpose, including the maintenance of reasonable discipline in a school, class, or other group, and
  - (B) is consistent with the person's welfare, and
  - (C) does not:
    - (i) cause physical injury, mental distress, or unnecessary degradation; or
    - (ii) create a substantial risk of serious physical injury or death; or
- (3) a doctor or therapist, or a person assisting at the doctor or therapist's direction, and:
  - (A) the force is necessary to administer a recognized form of treatment that is adapted to promoting the physical or mental health of the patient, and
  - (B) the treatment is administered either:
    - (i) with the consent of the patient, or, if the patient is a person less than 18 years of age 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 patient's behalf; or
    - (ii) in an emergency, when no one competent to consent can be consulted and a reasonable person, wishing to safeguard the welfare of the patient, would consent; or
- (4) a correctional officer, and the force used is necessary to enforce the lawful rules or procedures of the institution; or

(5) 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:

- (A) interference with the operation of the carrier; or
- (B) obstruction of the execution of a lawful order; or

(6) 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:

- (A) is necessary for that purpose, and
- (B) does not create a substantial risk of causing death, physical injury, or extreme mental distress.

(b) *When Use of Deadly Force Not Justified.* While the use of deadly force is not justified under this Section, it may nevertheless be justified under Section 306 [defense of person].

(c) *Defined Terms.*

- (1) "Correctional officer" has the meaning given in Section 308(a).
- (2) "Deadly force" has the meaning given in Section 308(b).
- (3) "Force" has the meaning given in Section 308(c).
- (4) "Physical injury" has the meaning given in Section 1210(c).
- (5) "Serious physical injury" has the meaning given in Section 1210(d).
- (6) "Vessel" has the meaning given in Section 308(f).

### **Section 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.* The use of force in defense of another person under Subsection (a) is justified only if:

- (A) the person would have been justified in using the force if he or she had been the object of aggression, and
- (B) the other person would have been justified in using the force on his or her own behalf.

(2) *Resisting Arrest.* The use of force is not justified under Subsection (a) to resist, or assist another in resisting, an arrest that is being 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 person 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 person in danger, by:

- (i) retreating; or
- (ii) surrendering possession of a thing to a person asserting a claim of right to the thing; or
- (iii) complying with a demand that the defendant abstain from performing an act that the defendant is not legally obligated to perform.

(B) *Exceptions.*

(i) A person is not obligated to retreat in or from his or her dwelling or, if the person acts to protect another person, that person's dwelling.

(ii) A person is not obligated to retreat in or from his or her place of work or, if the person acts to protect another person, that person's place of work, unless the person was the initial aggressor.

(iii) The limitation in this Subsection does not apply to a peace officer justified in using deadly force under Section 304 [Law Enforcement Authority].

(d) *Use of Force to Prevent Suicide.* The use of force upon or toward another person is justified when and to the extent the force is immediately necessary to prevent the other person from committing suicide or inflicting serious physical injury upon himself or herself.

(e) *Defined Terms.*

- (1) "Dwelling" has the meaning given in Section 2403(a).
- (2) "Peace officer" has the meaning given in Section 3309(d).
- (3) "Serious physical injury" has the meaning given in Section 1210(d).
- (4) "Sexual intercourse" has the meaning given in Section 1306(e).
- (5) "Unjustified" conduct has the meaning given in Section 308(e).
- (6) "Vessel" has the meaning given in Section 308(f).

### **Section 307. Defense of Property**

(a) The use of force against an aggressor is justified when and to the extent that:

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

(2) the property is lawfully in the possession of the person, or another person on whose behalf the person acts, and

(3) before employing force, the person first requests that the aggressor cease trespassing upon or interfering with the property.

(b) *When Request to Cease Not Required.* Subsection (a)(3) is inapplicable if:

- (1) the request would be useless; or
- (2) the request would endanger the person or another person; or

(3) material harm would be done to the physical condition of the property to be protected before the person's request could be effectively made.

(c) *Justified Detention by Special Parties.* The conduct of a merchant or an operator of a lawful gambling facility, or an agent or employee of those persons, is justified if it is necessary to detain a person who has intentionally concealed unpurchased merchandise, committed theft, or cheated in a manner described in Section 4502, provided that:

(1) the detainer is 18 years of age or older, and

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

(d) *When Use of Deadly Force Not Justified.* While the use of deadly force is not justified under this Section, it may nevertheless be justified under Section 306 [defense of person].

(e) *No Civil Liability for Justified Conduct.* A person whose conduct is justified under this Section shall not, due to that conduct, be civilly liable to the person against whom the force is used.

(f) *Defined Terms.*

(1) "Deadly force" has the meaning given in Section 308(b).

(2) "Force" has the meaning given in Section 308(c).

(3) "Law enforcement officer" has the meaning given in Section 3309(c).

(4) "Property" has the meaning given in Section 108(h).

(5) "Real property" has the meaning given in Section 2403(c).

(6) "Unjustified" conduct has the meaning given in Section 308(e).

### **Section 308. Definitions**

(a) "Correctional officer" means a person employed to supervise and control persons incarcerated in, or in the custody of, a correctional institution or the Division of Youth Rehabilitative Services.

(b) "Deadly force":

(1) means force that the defendant intends to cause, or knows creates a substantial risk of causing, death or serious physical injury, and

(2) includes intentionally firing a firearm:

(A) in the direction of another person; or

(B) at a vehicle in which the defendant believes another person to be riding.

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

(d) A "justification defense" is any defense described in Chapter 300.

(e) "Unjustified" conduct is conduct that satisfies the objective elements of an offense, and is not justified by this Chapter.

(f) "Vessel" means any device in, upon, or by which a person may be transported upon water. But the term does not include devices moved solely by human power.

## CHAPTER 400. EXCUSE DEFENSES

- Section 401. General Provisions Governing Excuse Defenses
- Section 402. Involuntary Act; Involuntary Omission
- Section 403. Mental Illness
- Section 404. Involuntary Intoxication
- Section 405. Duress
- Section 406. Ignorance Due to Unavailable Law
- Section 407. Reliance Upon Official Misstatement of Law
- Section 408. Reasonable Mistake of Law Unavoidable by Due Diligence
- Section 409. Mistake as to a Justification
- Section 410. Definitions

### **Section 401. General Provisions Governing Excuse Defenses**

(a) *Conduct for Which a Person 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 is excused, is not excused for his or her assistance solely because the principal actor is excused.

(b) *Causing the Excusing Conditions Not Automatic Bar to Excuse Defense.*

(1) The fact that a person has caused the conditions giving rise to an excuse defense under this Chapter shall not prevent the person from being excused for his or her offense.

(2) *Liability for Culpably Causing Excusing Conditions.* Nevertheless, a person commits an offense if, acting with the culpability required by the offense, he or she causes the conditions that excuse the person or another person for engaging in the offense.

(3) *Defense to Causing Conditions.* A person may have a general defense to his or her conduct that gives rise to liability under Subsection (b)(2).

(c) *Mistake as to an Excuse is No Defense.* Except as otherwise provided by law, it is no defense that a person mistakenly believes that he or she satisfies the requirements of an excuse defense.

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

### **Section 402. Involuntary Act; Involuntary Omission**

(a) *Involuntary Act.* A person is excused for his or her 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 his or her 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.

### **Section 403. Mental Illness**

(a) *Excuse Defined.* A person is excused for his or her offense if, at the time of the offense:

- (1) the person suffers from a mental illness or serious mental disorder, and
- (2) as a result, the person:
  - (A) does not perceive the physical nature or foresee the physical consequences of his or her conduct; or
  - (B) lacks substantial capacity to appreciate the wrongfulness of his or her conduct.

(b) *Modified Verdict and Additional Procedures.* If a defendant is excused under Subsection (a), the trier of fact shall return a verdict of “not guilty by reason of insanity,” and the defendant is subject to the procedures set forth in [current 11 Del. C. § 403].

(c) *Guilty, But Mentally Ill.*

(1) *No Excuse.* A person is not excused for his or her offense, and the trier of fact may return a verdict of “guilty, but mentally ill,” if, at the time of the offense:

- (A) the defendant suffers from a mental illness or serious mental disorder, and
- (B) as a result, either:
  - (i) the defendant’s thinking, feeling, or behavior is substantially disturbed; or
  - (ii) 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 shall be given the verdict option described in this Subsection only upon the request of the defendant.<sup>3</sup>

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<sup>3</sup> **Issue:** Should the prosecution be able to demand that the trier of fact will be given the option to return a GBMI verdict even over the defendant’s objection?

**Pro:** The GBMI verdict should be made available to the jury, to avoid a false dichotomy that may be imposed upon it. Some defendants’ mental illnesses do not sufficiently affect their ability to obey the law. But, lacking a GBMI verdict option, a jury can either convict such a defendant that appears to be in need of a psychiatric treatment, rather than imprisonment, or find the defendant not guilty by reason of insanity, which results in the defendant improperly avoiding criminal punishment altogether. This system reaches capricious results, because the ultimate outcome hinges on jurors’ sympathies. GBMI provides a third option for jurors that more accurately and reliably ensures the correct outcome.

**Con:** The GBMI verdict may distract jurors from giving an insanity defense where it is deserved by misleading them into believing that the GBMI verdict takes account of the offender’s mental illness in a significant way, when in fact it does not. The availability of the GBMI verdict, playing upon the erroneous fear that dangerous, mentally ill offenders acquitted at trial under an insanity defense are simply released back into society without supervision or restraint, may present the jury with what falsely appears like a middle ground solution. Nevertheless, it is not impossible that a defendant may see value in pursuing such a verdict. Such alternative, however, should only be made available upon the defendant’s request.

(3) *Additional Procedures.* A person found “guilty, but mentally ill” is subject to the procedures set forth in [current 11 Del. C. §§ 408–09].

(d) *Defined Term.* “Mental illness or serious mental disorder” has the meaning given in Section 410(c).

#### **Section 404. Involuntary Intoxication**

(a) *Excuse Defined.* A person is excused for his or her offense if, at the time of the offense:

(1) the person is involuntarily intoxicated, and

(2) as a result, the person:

(A) does not perceive the physical nature or foresee the physical consequences of his or her conduct; or

(B) lacks substantial capacity to appreciate the wrongfulness of the person’s conduct; or

(C) lacks substantial capacity to choose whether to engage in or refrain from the conduct constituting the offense.

(b) *Causing Excusing Conditions.* Nothing in this Section shall be deemed to preclude liability under Section 401(b)(2).

(c) *Defined Term.* “Involuntary intoxication” has the meaning given in Section 410(b).

#### **Section 405. Duress**

*Excuse Defined.* A person is excused for his or her offense if, at the time of the offense:

(a) 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, and

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

#### **Section 406. Ignorance Due to Unavailable Law**

*Excuse Defined.* A person is excused for his or her offense if:

(a) 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 the reasonable person, and

(b) as a result, at the time of the offense, the person does not know his or her conduct is criminal.

#### **Section 407. Reliance Upon Official Misstatement of Law**

*Excuse Defined.* A person is excused for his or her offense if:

(a) he or she reasonably relies upon an official misstatement of law contained in:

(1) a statute or other enactment;

- (2) a judicial decision, opinion, or judgment;
  - (3) an administrative order; or
  - (4) 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; and
- (b) as a result, at the time of the offense, the person does not know his or her conduct is criminal.

#### **Section 408. Reasonable Mistake of Law Unavoidable by Due Diligence**

*Excuse Defined.* A person is excused for his or her offense if:

- (a) the person pursues with due diligence all reasonably viable means available to ascertain the meaning and application of the offense to his or her conduct, and
- (b) the person honestly and in good faith concludes that his or her conduct is lawful in circumstances where a law-abiding and prudent person would also so conclude, and
- (c) as a result, at the time of the offense, the person does not know his or her conduct is criminal.

#### **Section 409. Mistake as to a Justification**

(a) *Excuse Defined.* A person is excused for his or her offense if

- (1) under the circumstances as the person believes them to be, his or her conduct satisfies the requirements of a justification defense defined in Chapter 300, and
- (2) the person's mistake is:
  - (A) reasonable, or
  - (B) less culpable than the culpability required by:
    - (i) the result element of the offense charged; or
    - (ii) if no result element exists, the circumstance element most central to the offense charged.

(b) *Defined Terms.*

- (1) "Circumstance element" has the meaning given in Section 214(a).
- (2) "Reasonable mistake" has the meaning given in Section 214(g).
- (3) "Result element" has the meaning given in Section 214(i).

#### **Section 410. Definitions**

- (a) An "excuse defense" is any defense described in Chapter 400.
- (b) "Involuntary intoxication" means any intoxication that is not voluntary intoxication. "Voluntary intoxication" has the meaning given in Section 214(l).
- (c) "Mental illness or serious mental disorder":
  - (1) means either:

(A) mental illness, meaning any condition of the brain or nervous system recognized as a mental disease by a substantial part of the medical profession; or

(B) serious mental disorder, meaning any condition of the brain or nervous system recognized as defective, as compared with an average or normal condition, by a substantial part of the medical profession; and

(2) does not include:

(A) an abnormality manifested only by repeated criminal or otherwise antisocial conduct; or

(B) intoxication.

**CHAPTER 500. NONEXCULPATORY DEFENSES**

- Section 501. General Provisions Governing Nonexculpatory Defenses
- Section 502. Prosecution Barred if Not Commenced Within Time Limitation Period
- Section 503. Entrapment
- Section 504. Prior Prosecution for Same Offense as a Bar to Present Prosecution
- Section 505. Prior Prosecution for Different Offense as a Bar to Present Prosecution
- Section 506. Prior Prosecution by Another Jurisdiction as a Bar to Present Prosecution
- Section 507. Prosecution Not Barred Where Prior Prosecution Was Before a Court Lacking Jurisdiction, or Was Fraudulently Procured by Defendant, or Resulted in Conviction Held Invalid
- Section 508. Prosecutorial Grant of Immunity
- Section 509. Definitions

**Section 501. 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 Code, it is no defense that a person mistakenly believes he or she 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 defenses in this Chapter are to be determined by the court.

(e) *Defined Term.* “Nonexculpatory defense” has the meaning given in Section 509(d).

**Section 502. Prosecution Barred if Not Commenced Within Time Limitation Period**

(a) *Time Limitations.* A prosecution is barred unless commenced within the following time period from the time the offense is committed:

- (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;<sup>4</sup>

(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) has expired, a prosecution nevertheless may be commenced:

(1) within 2 years after the offense has been discovered or should reasonably have been discovered, but in no case shall this provision 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, within 2 years of the end of the time the defendant holds office;

(3) for any offense for which the alleged victim is less than 18 years of age, within 2 years of the alleged victim attaining the age of 18 years;

(4) for a prosecution based upon forensic DNA testing, within 10 years from the time the offense is committed.

(c) *Period of Limitation Tolloed.* The period of limitation does not run during any period 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; or

(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.

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<sup>4</sup> **Issue:** Should misdemeanor sexual offenses have an unlimited limitations period?

**Pro:** Current law allows prosecution for a misdemeanor sexual offense to be brought at any time. *See* 11 Del. C. § 205(e). Sexual offenses cause unique trauma that makes it difficult for victims to face their attackers and bring criminal charges, especially given the pain of reliving that trauma by testifying and being subjected to rigorous cross-examination. Victims of sexual offenses may require many years before they are prepared to undergo this process. They should not be prevented from seeking justice because of the time needed to heal first.

**Con:** Conceding that sexual offenses require unique treatment, the draft retains the unlimited limitation period for sexual felonies, and sets a 5-year limitation period for sexual misdemeanors. This compromise for misdemeanors is appropriate because misdemeanors as a class are categorically less serious than felony offenses. Very few sexual offenses are misdemeanors, because most sexual offenses are too serious to be graded that low. If an offense—even a sexual offense—is graded as a misdemeanor, its relative severity is too low to justify having a completely open-ended limitation period. No other misdemeanors are given longer than a 3-year limitation period in current law. Note that victims of sexual misdemeanors who are minors can still have the limitation period extended under Section 502(b)(3). The unlimited statute of limitations for more serious sex crimes obviously risks potential unfairness because evidence and memories of witnesses that might be favorable to the defendant will disappear and erode as time goes on. When the crimes are very serious, this danger of injustice is more justifiable. When, however, the crimes are less serious, subjecting defendants to a greater chance of erroneous conviction because of the loss of reliable evidence is difficult to justify. As it is, a five year statute of limitations is very long.

(d) *State's Burden to Prove Extension or Tolling.* In any prosecution in which Subsection (b) or (c) is sought to be invoked to avoid or extend the limitation period of Subsection (a), the state must prove its 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 either:

(1) when every element of the offense occurs; or

(2) if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the defendant's complicity 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 Term.* "Public servant" has the meaning given in Section 3104(d).

### **Section 503. Entrapment**

(a) *Defense Defined.* A person has a defense if:

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

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

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

(b) *Defense Unavailable for Causing or Threatening Physical Injury.* The defense afforded by Subsection (a) is unavailable when causing or threatening physical injury is an element of the offense charged.

(c) *Defined Terms.*

(1) "Law enforcement officer" has the meaning given in Section 3309(c).

(2) "Physical injury" has the meaning given in Section 1210(c).

### **Section 504. 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:

(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, which has not been set aside, reversed, or vacated, and that 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.*
  - (1) “Acquittal” has the meaning given in Section 509(a).
  - (2) “Conviction” has the meaning given in Section 509(b).
  - (3) “Improperly terminated” has the meaning given in Section 509(c).

### **Section 505. 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:

- (1) the prior prosecution resulted in either an acquittal that was not later set aside, or a conviction, and the present prosecution is for:
  - (A) any offense of which the defendant could have been convicted in the prior prosecution; or
  - (B) the same conduct, unless:
    - (i) 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; or
    - (ii) 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.*
  - (1) “Acquittal” has the meaning given in Section 509(a).
  - (2) “Conviction” has the meaning given in Section 509(b).
  - (3) “Improperly terminated” has the meaning given in Section 509(c).

### **Section 506. 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 one of those jurisdictions is a bar to the present prosecution in this State if:

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

(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; or

(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.*

(1) “Acquittal” has the meaning given in Section 509(a).

(2) “Conviction” has the meaning given in Section 509(b).

(3) “Improperly terminated” has the meaning given in Section 509(c).

**Section 507. 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 Sections 504 to 506 if:

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

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

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

(b) *Defined Term.* “Conviction” has the meaning given in Section 509(b).

**Section 508. Prosecutorial Grant of Immunity**

(a) *Defense Defined.* A person has a defense if he or she was granted immunity from prosecution by the Attorney General or his or her designee, or otherwise by operation of law, for:

(1) the offense being prosecuted; or

(2) a different offense, if the offense presently charged would have been barred under Section 506 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 may stipulate that immunity only applies to a specific offense. In that case, Subsection (a)(2) does not apply.

### **Section 509. Definitions**

(a) "Acquittal" means the prosecution resulted in a finding of not guilty by the trier of fact or in a determination that there was insufficient evidence to warrant a conviction. A finding of guilty of an included offense is an acquittal of the inclusive offense, even if the conviction is later set aside.

(b) "Conviction" means the prosecution resulted in:

(1) a judgment of conviction that has not been reversed or vacated; or

(2) a verdict of guilty that has not been set aside and is capable of supporting a judgment; or

(3) a plea of guilty or nolo contendere accepted by the court.

(c) A prosecution is "improperly terminated" if the termination is for reasons not amounting to an acquittal, and it takes place after the first witness is sworn but before the verdict. Termination under the following circumstances is not improper:

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

(2) The trial court declares a mistrial in accordance with law.

(d) A "nonexculpatory defense" is any defense, bar to prosecution, or bar to pleading, trial, or sentencing described in Chapter 500.

## LIABILITY OF ORGANIZATIONS

### CHAPTER 600. LIABILITY OF ORGANIZATIONS

Section 601. Criminal Liability of Organizations

Section 602. Criminal Liability of an Individual for Organizational Conduct

Section 603. Definitions

#### **Section 601. Criminal Liability of Organizations**

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

(1) consists of an omission to discharge a specific duty of affirmative performance imposed upon the organization by law; or

(2) is engaged in, authorized, solicited, requested, commanded, or recklessly tolerated by:

(A) the board of directors; or

(B) a high managerial agent acting within the scope of employment and on behalf of the organization; or

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

(A) the offense is a misdemeanor or a violation; or

(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 no 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.*

(1) "Agent of the organization" has the meaning given in Section 603(a).

(2) "High managerial agent" has the meaning given in Section 603(b).

(3) "Organization" has the meaning given in Section 603(c).

#### **Section 602. 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, provided that the agent is aware of a substantial risk that he or she 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 his or her 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.*

(1) "Organization" has the meaning given in Section 603(c).

(2) "High managerial agent" has the meaning given in Section 603(c).

### **Section 603. Definitions**

(a) "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 the organization.

(b) "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.

(c) "Organization" means any person other than an individual human being.

(d) "Person" has the meaning given in Section 108(g).

**INCHOATE OFFENSES****CHAPTER 700. INCHOATE OFFENSES**

Section 701. Criminal Attempt

Section 702. Criminal Solicitation

Section 703. Criminal Conspiracy

Section 704. Unconvictable Confederate No Defense

Section 705. Defense for Victims and for Conduct Inevitably Incident

Section 706. Defense for Renunciation Preventing Commission of the Offense

Section 707. Grading of Criminal Attempt, Solicitation, and Conspiracy

Section 708. Possessing Instruments of Crime

**Section 701. Criminal Attempt**

(a) *Offense Defined.* A person is guilty of attempt to commit an offense if:

- (1) acting with the culpability required for commission of the offense, and
- (2) intending to engage in the conduct that would constitute the offense under the circumstances as the person believes them to be,
- (3) the person takes a substantial step toward commission of the offense.

(b) *Conduct Constituting a Substantial Step.*

(1) Conduct shall not be held to constitute a substantial step toward commission of the offense under Subsection (a) unless it is strongly corroborative of the defendant's intention to engage in the offense conduct.

(2) The requirement of a substantial step in Subsection (a)(3) is satisfied if the person has completed, or believes he or she has completed:

- (A) the conduct constituting the offense; or
- (B) the last act needed to cause the result element of the offense.

(c) *Defined Term.* "Result element" has the meaning given in Section 216(i).

**Section 702. Criminal Solicitation**

(a) *Offense Defined.* A person is guilty of solicitation to commit an offense if:

- (1) acting with the culpability required for commission of the offense, and
- (2) intending to bring about the conduct that would constitute the offense under the circumstances as the person believes them to be,
- (3) the person intentionally commands, encourages, or requests another person to engage in:

- (A) the conduct; or
- (B) an attempt to commit the conduct.

(b) *Uncommunicated Solicitation.* It is immaterial under Subsection (a) that the person fails to communicate with the person he or she solicits to commit an offense, if the person's conduct is designed to effect the communication.

**Section 703. Criminal Conspiracy**

- (a) *Offense Defined.* A person is guilty of conspiracy to commit an offense if:
- (1) acting with the culpability required for commission of the offense, and
  - (2) intending to bring about the conduct that would constitute the offense under the circumstances as the person believes them to be,
  - (3) the person agrees with another person or persons that one or more of them will engage in:
    - (A) the conduct; or
    - (B) an attempt or solicitation to commit the conduct; and
  - (4) an overt act in support of the conspiracy is performed by:
    - (A) the defendant; or
    - (B) a person with whom the defendant conspired.

(b) *Knowledge of Co-Conspirator's Identity Not Required.* A defendant may be found to have conspired with a third person, even if the defendant is unaware of the third person's identity, if:

- (1) the defendant has conspired with another person to commit an offense, and
- (2) the defendant knows the other person has conspired with the third person to commit the same offense.

(c) *Joinder and Venue in Conspiracy Prosecutions.*

(1) *Joinder.* Subject to the provisions in Subsection (2), 2 or more persons charged with conspiracy to commit an offense may be prosecuted jointly if:

- (A) they are charged with conspiring with one another; or
- (B) the conspiracies alleged, whether they involve the same or different parties, are so related that they constitute different aspects of a scheme of organized criminal conduct.

(2) *Venue, Severance, and Fairness.* In any joint prosecution under Subsection (1):

- (A) no defendant shall be charged with conspiracy in any county other than:
  - (i) the one in which the defendant entered into the conspiracy;or
  - (ii) one in which an overt act under Subsection (a)(4) was performed; and
- (B) neither the criminal liability of any defendant, nor the admissibility against a defendant of evidence of acts or declarations of another, shall be enlarged by the joinder, and
- (C) the court may:
  - (i) order a severance or take a special verdict as to any defendant who requests it; or
  - (ii) take any other proper measures to protect the fairness of the trial;

if the court deems the action necessary or appropriate to promote the fair determination of guilt or innocence.

#### **Section 704. Unconvictable Confederate No Defense**

It is no defense for a person who solicits or conspires with another to commit an offense that the other person:

- (a) has not been prosecuted or convicted; or
- (b) has been convicted of a different offense or grade of offense; or
- (c) lacked the capacity to commit an offense; or
- (d) has been acquitted.

#### **Section 705. Defense for Victims and Conduct Inevitably Incident**

Unless otherwise provided by the Code or by the law defining the offense, it is a defense to soliciting or conspiring to commit an offense that:

- (a) the person is the victim of the offense; or
- (b) the offense is defined in such a way that the person's conduct is inevitably incident to its commission.

#### **Section 706. 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:

- (1) the defendant prevented the commission of the offense
- (2) under circumstances manifesting a voluntary and complete renunciation of his or her criminal purpose.

(b) *Voluntary and Complete Renunciation Defined.* A renunciation is not "voluntary and complete" within the meaning of Subsection (a) when it is motivated in whole or in part by:

- (1) a belief that circumstances exist that:
  - (A) increase the probability of detection or apprehension of the defendant or another participant in the criminal enterprise; or
  - (B) render accomplishment of the criminal purpose more difficult; or
- (2) a decision to:
  - (A) postpone the criminal conduct until another time; or
  - (B) transfer the criminal effort to:
    - (i) another victim; or
    - (ii) another but similar objective.

(c) *Burden of Persuasion on Defendant.* The defendant has the burden of persuasion for this defense and must prove the defense by a preponderance of the evidence.

#### **Section 707. Grading of Criminal Attempt, Solicitation, and Conspiracy**

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

**Section 708. Possessing Instruments of Crime**

(a) *Offense Defined.* A person commits an offense if:

(1) with intent to employ it criminally,

(2) he or she possesses anything:

(A) specially made or specially adapted for criminal use; or

(B) commonly used for criminal purposes and possessed by the person under circumstances consistent with unlawful intent.

(b) *Grading.* The offense is a Class A misdemeanor.

**OFFENSE GRADES AND THEIR IMPLICATIONS****CHAPTER 800. OFFENSE GRADES AND THEIR IMPLICATIONS**

Section 801. Offense Grades

Section 802. Authorized Terms of Imprisonment

Section 803. Authorized Fines; Restitution

Section 804. General Adjustments to Offense Grade

Section 805. Valuation of Property for the Purposes of Grading

Section 806. Definitions

**Section 801. Offense Grades**

(a) *Classified Offenses.* Each offense in this Code is classified as:

- (1) a Class 1 felony; or
- (2) a Class 2 felony; or
- (3) a Class 3 felony; or
- (4) a Class 4 felony; or
- (5) a Class 5 felony; or
- (6) a Class 6 felony; or
- (7) a Class 7 felony; or
- (8) a Class 8 felony; or
- (9) a Class A misdemeanor; or
- (10) a Class B misdemeanor; or
- (11) a Class C misdemeanor; or
- (12) a Class D misdemeanor;
- (13) a violation.

(b) *Unclassified Offenses.* An offense outside of the Code:

- (1) that provides a term of imprisonment of:
  - (A) more than 6 months is a Class A misdemeanor.
  - (B) 6 months or less but more than 3 months is a Class B misdemeanor.
  - (C) 3 months or less but more than 30 days is a Class C misdemeanor.
  - (D) 30 days or less is a Class D misdemeanor.
- (2) that otherwise declares itself to be:
  - (A) a felony shall be treated in all respects as though it were a Class A misdemeanor.
  - (B) a misdemeanor is a Class D misdemeanor.
- (3) that does not declare itself to be a felony or misdemeanor, and does not provide a sentence of imprisonment, is a Class D misdemeanor.

## Section 802. Authorized Terms of Imprisonment

- (a) Except as otherwise provided, the authorized term of imprisonment for:
- (1) a Class 1 felony is life, [and capital punishment is authorized];<sup>5</sup>
  - (2) a Class 2 felony is a maximum of life, but no less than [15] years;
  - (3) a Class 3 felony is no more than [35] years, and if:
    - (A) an element of the offense or grade provision includes causing physical injury, engaging in sexual conduct, or use of a deadly weapon, and
    - (B) the defendant knowingly commits the elements of the offense,
 then the authorized term is no less than [5] years;
  - (4) a Class 4 felony is no more than [25] years, and if:
    - (A) an element of the offense or grade provision includes causing physical injury, engaging in sexual conduct, or use of a deadly weapon, and
    - (B) the defendant knowingly commits the elements of the offense,
 then the authorized term is no less than [3] years;<sup>6</sup>
  - (5) a Class 5 felony is no more than [15] years;
  - (6) a Class 6 felony is no more than [8] years;
  - (7) a Class 7 felony is no more than [4] years;
  - (8) a Class 8 felony is no more than [2] years;
  - (9) a Class A misdemeanor is no more than [1] year;
  - (10) a Class B misdemeanor is no more than [6] months;
  - (11) a Class C misdemeanor is no more than [3] months;
  - (12) a Class D misdemeanor is no more than [30] days.
  - (13) No term of imprisonment is authorized for a violation.
- (b) *Defined Terms.*
- (1) “Deadly weapon” has the meaning given in Section 5109(b).
  - (2) “Physical injury” has the meaning given in Section 1210(b).
  - (3) “Sexual conduct” has the meaning given in Section 4208(i).

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<sup>5</sup> Members of the working group have, as one would think, diverse views about whether the death penalty is an appropriate punishment and some members of the group believe it should not be an available punishment. But, all understood that the decision of whether the death penalty should persist is one for the General Assembly, and the members have focused on the epilogue’s mandate of proportionality. With that in mind, we are aware that the issue of whether, and under what procedures, the death penalty shall be available is under active consideration by the General Assembly. We have grouped these two offenses as the most serious and deserving of whatever the harshest punishment the General Assembly determines is appropriate.

<sup>6</sup> **Issue:** Should the Proposed Code include mandatory minimum sentencing provisions?

**Pro:** Current law contains multiple disparate provisions utilizing mandatory minimums. Section 802 rationalizes current law by distilling the principles underlying these provisions and integrating them into a coherent scheme. Yet, it does not, and should not modify the general mechanism of mandatory minimums. The prevalence of mandatory minimums in current law clearly demonstrates General Assembly’s assessment that such mechanism is necessary, and should be retained.

**Con:** There is a considerable disagreement within the working group about the value of mandatory minimums. Because mandatory minimums’ rigidity might lead to the imposition of disproportional punishment, the General Assembly may want to consider moving away from mandatory minimums towards presumptive sentencing ranges. These ranges could be set as part of strong sentencing guidelines requiring the Judiciary to provide explanations upon any departure from such ranges.

**Section 803. Authorized Fines; Restitution**

(a) *Authorized Fines.* Except as otherwise provided, the maximum authorized fine for:

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

(b) *Fines for Organizations.* When imposed upon an organization, except as otherwise provided, the maximum authorized 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; or
- (2) three times the pecuniary loss or damage caused, or the gain derived; or
- (3) for:
  - (A) a felony, \$[1,000,000].
  - (B) a Class A misdemeanor that:
    - (i) results in physical injury, \$[250,000].
    - (ii) does not result in physical injury, \$[100,000].
  - (C) a Class B, C, or D misdemeanor that:
    - (i) results in physical injury, \$[75,000].
    - (ii) does not result in physical injury, \$[50,000].
  - (D) 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.*

- (1) “Physical injury” has the meaning given in Section 1210(c).
- (2) “Serious physical injury” has the meaning given in Section 1210(d).

**Section 804. General Adjustments to Offense Grade**

(a) *Repeat Felon.* The grade of a felony shall be increased by one grade if:

- (1) the defendant has previously been convicted of two felonies and has served time in prison for one of them during the past 10 years, and

(2) the grade of each of the prior felonies was equal to or greater than the grade of the present felony.

(b) *Vulnerable Victim*. The grade of an offense shall be increased by one grade if the victim is a vulnerable person.

(c) *Hate Crime*. The grade of an offense shall be increased by one grade if the defendant:

(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; or

(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 shall be increased by one grade if the defendant committed the offense:

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

(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 shall be increased by one grade if, during its commission, the defendant wears:

(1) a hood, mask, or other article with intent to obscure the person's identifying features; or

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

(f) *Limitations*.

(1) *Specific Provision Controls*. No grade adjustment in this Section applies if a relevant specific provision of the Code 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)–(e) are inapplicable if the unadjusted offense grade is a Class 1, 2, 3, or 4 felony.

(B) *No Adjustments to Certain Felonies*. No upward grade adjustment, whether contained in this Section or a specific offense provision, may be made to a Class 1 or 2 felony.

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

(g) *Defined Terms*.

(1) "Criminal street gang" has the meaning given in Section 5304(a).

(2) "Gender identity" has the meaning given in Section 806(b).

(3) "Sexual orientation" has the meaning given in Section 806(e).

(4) "Vulnerable person" has the meaning given in Section 806(f).

**Section 805. Valuation of Property for the Purposes of Grading**

(a) *Generally.* Except as provided under Subsection (b), whenever the value of property determines the grade of an offense, the value is:

- (1) the market value of the property at the time and place of the offense; or
- (2) if that amount cannot be ascertained with reasonable certainty, then the cost of replacing, reproducing, or recovering the property within a reasonable time after the offense.

(b) *Written Instruments.* Whenever the value of a written instrument determines the grade of an offense, and such instrument:

- (1) 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) 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.* When the value of property cannot be satisfactorily ascertained under Subsection (a) or (b), and the property is:

- (1) private personal data, its value is \$500.
- (2) electronic or computer equipment, or computer services, its value is \$250.
- (3) any other property, its value is less than \$100.

(d) *Aggregation for Theft and Related Offenses.* When theft, as defined in Section 2101, or any offense contained in Chapter 2200 [forgery and fraudulent practices], 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 aggregated for grading purposes.

(e) *Defined Terms.*

- (1) “Computer services” has the meaning given in Section 806(a).
- (2) “Owner” has the meaning given in Section 2110(f).
- (3) “Private personal data” has the meaning given in Section 806(c).
- (4) “Written instrument” has the meaning given in Section 806(f).

**Section 806. Definitions**

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

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

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

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

(e) “Vulnerable person” means:

(1) a person who, by reason of isolation, sickness, debilitation, mental illness or physical, mental, or cognitive disability, or being 62 years of age or older, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion, or exploitation; or

(2) any adult for whom a guardian of the person or property has been appointed; or

(3) an adult who is impaired, as defined in Section 3902(2) of Title 31; or

(4) a person with a disability, as defined in Section 3901(a)(2) of Title 12.

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

**PART II: THE SPECIAL PART****OFFENSES AGAINST THE PERSON****CHAPTER 1100. HOMICIDE OFFENSES**

- Section 1101. Aggravated Murder
- Section 1102. Murder
- Section 1103. Manslaughter
- Section 1104. Negligent Homicide
- Section 1105. Causing or Aiding Suicide
- Section 1106. Unlawful Abortion
- Section 1107. Definitions
- Section 1108. Procedures and Standards in Adjudication of Sentence for a Capital Offense

**Section 1101. Aggravated Murder**

(a) *Offense Defined.* A person commits an offense if he or she:

- (1) intentionally causes the death of another person; or
- (2) knowingly causes the death of a law enforcement officer, corrections employee, fire fighter, paramedic, emergency medical technician, fire marshal, or fire police officer, while the victim is engaged in the lawful performance of his or her duties;

(b) *Grading.* The offense is a Class 1 felony. The death penalty may be imposed, subject to the procedures and standards of Section 1108, but only if the offense was committed after the person reached 18 years of age.

**Section 1102. Murder**

(a) *Offense Defined.* A person commits an offense if he or she causes the death of another person:

- (1) knowingly; or
- (2) recklessly, and
  - (A) under circumstances manifesting an extreme indifference to the value of human life; or
  - (B) the victim is a law enforcement officer, corrections employee, fire fighter, paramedic, emergency medical technician, fire marshal, or fire police officer, while the victim is engaged in the lawful performance of his or her duties; or
  - (C) death is caused by the use or detonation of a bomb or similar destructive device; or

- (D) the offense is committed with intent to avoid or prevent the lawful arrest of any person; or
- (3) negligently, while committing, fleeing from, or attempting any felony, apart from the conduct causing death.
- (b) *Grading*. The offense is a Class 2 felony.
- (c) *Defined Terms*.
  - (1) “Attempt” or “attempting” has the meaning given in Section 1107(c).
  - (2) “Law enforcement officer” has the meaning given in Section 3309(d).

### **Section 1103. Manslaughter**

- (a) *Offense Defined*. A person commits an offense if the person:
  - (1) recklessly causes the death of another person; or
  - (2) causes the death of another person under circumstances that would be murder under Section 1101 or 1102, but is committed:
    - (A) under the influence of extreme mental or emotional disturbance
    - (B) for which there is a reasonable explanation, the reasonableness of which is to be determined:
      - (i) from the viewpoint of a reasonable person in the defendant’s situation,
      - (ii) under the circumstances as the defendant believed them to be.
- (b) *Provisions Relating to Murder Mitigation Under Subsection (a)(2)*.
  - (1) *Burden of Persuasion*. The defendant carries the burden of persuasion on the mitigation provided in Subsections (a)(2)(A) and (a)(2)(B), and must prove those elements by a preponderance of the evidence.
  - (2) *Knowingly Causing Mitigating Conditions*. The murder mitigation in Subsection (a)(2) is not available to a defendant who knowingly causes the conditions constituting the mitigation.
- (c) *Grading*. The offense is a Class 4 felony.

### **Section 1104. Negligent Homicide**

- (a) *Offense Defined*. A person commits an offense if the person negligently causes the death of another person.
- (b) *Grading*. The offense is:
  - (1) a Class 4 felony if death is:
    - (A) caused by use of a firearm
    - (B) that the defendant possessed in violation of Section 5104 [possessing a firearm by a prohibited person].
  - (2) a Class 5 felony if death is caused by the person’s abuse or neglect of a child less than 14 years of age.
  - (3) a Class 6 felony in all other cases.
- (c) *Defined Terms*.
  - (1) “Abuse of a child” has the meaning given in 10 Del. C. § 901(1).

(2) “Neglect of a child” has the meaning given in 10 Del. C. § 901(18).

### **Section 1105. Aiding Suicide; Committing Homicide by Causing Suicide**

(a) *Aiding Suicide: Offense Defined.* A person commits an offense if the person knowingly aids another in committing suicide.

(b) *Grading.* The offense is:

(1) a Class 6 felony if the suicide is committed.

(2) a Class 7 felony if the suicide is attempted.

(3) a Class 8 felony if the person attempts to aid another person in committing suicide, but the suicide is not attempted.

(c) *Committing Homicide by Causing Suicide.* A person may be convicted of an offense under Sections 1101 through 1104 for causing another person to commit suicide if, and only if, the person causes the suicide by force, threat, or coercion.

(d) *Defined Terms.*

(1) “Attempt” has the meaning given in Section 1107(b).

(2) “Coercion” has the meaning given in Section 1107(c).

(3) “Suicide” has the meaning given in Section 1107(d).

### **Section 1106. Unlawful Abortion**

(a) *Offense Defined.* A person commits an offense if the person:

(1) performs an abortion upon a woman or has an abortion performed upon herself, and

(2) the woman’s pregnancy is in fact terminated and does not result in a live birth, and

(3) the abortion is not a therapeutic abortion.

(b) *Instruments of Unlawful Abortion: Offense Defined.* A person commits an offense if the person:

(1) manufactures, sells, or delivers any instrument, article, medicine, drug, or substance,

(2) with intent that the item be used to perform an abortion in violation of Subsection (a).

(c) *Grading.*

(1) The offense under Subsection (a) is:

(A) a Class A misdemeanor if the person is a pregnant woman who has an abortion performed upon herself.

(B) a Class 8 felony in all other cases.

(2) The offense under Subsection (b) is a Class B misdemeanor.

(d) *Defined Terms.*

(1) “Abortion” has the meaning given in Section 1107(a).

(2) “Therapeutic abortion” given in Section 1107(e).

**Section 1107. Definitions**

- (a) “Abortion” means terminating the pregnancy of a woman known to be pregnant, intending that the fetus not live afterwards..
- (b) “Attempt” or “attempting” means any act that satisfies the definition of an attempt in Section 701.
- (c) “Coercion” means any act that satisfies the definition of coercion in Section 1404.
- (d) “Suicide” means intentionally causing one’s own death.
- (e) “Therapeutic abortion” means an abortion authorized by subchapter IX of Chapter 17 of Title 24.

**Section 1108. Procedures and Standards in Adjudication of Sentence for a Capital Offense**

**[This Section is reserved, awaiting action by the General Assembly, if any, in the wake of *Rauf v. State*, No. 39, 2016, 2016 WL 4224252 (Del. Aug. 2, 2016).]**

**CHAPTER 1200. ROBBERY, ASSAULT, ENDANGERMENT, AND THREAT OFFENSES**

Section 1201. Robbery and Carjacking

Section 1202. Assault

Section 1203. Reckless Injuring

Section 1204. Reckless Endangerment

Section 1205. Operating a Vehicle While Under the Influence of Drugs or Alcohol

Section 1206. Genital Mutilation of a Female Minor

Section 1207. Terroristic Threats and Hoaxes

Section 1208. Unlawfully Administering Drugs

Section 1209. Reckless Infliction of Mental or Emotional Harm

Section 1210. Definitions

**Section 1201. Robbery and Carjacking**

(a) *Offense Defined.* A person commits an offense if he or she:

(1) knowingly and unlawfully takes property from the person or presence of another,

(2) 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 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 of age or younger.

(B) a Class 5 felony if, while in possession or control of the vehicle, the person:

(i) commits or attempts to commit a felony that is Class 6 or greater; or

(ii) commits an offense under Section 1205 [driving under the influence]; or

(iii) commits an offense under Chapter 5200 [drugs].

(C) a Class 6 felony if, while in possession or control of the vehicle, the person:

(i) commits an offense under Section 1204 [reckless endangerment]; or

(ii) compels a lawful occupant of the vehicle to leave the vehicle; or

(D) a Class 7 felony in all other cases.

(2) *Aggravated Robbery.* The offense is a Class 4 felony if, in the course of attempting, committing, or flight from attempting or committing the offense, the person:

(A) causes physical injury to any person who is not a participant in the offense; or

(B) displays a deadly weapon or an object intended to appear to be a deadly weapon; or

(C) represents by word or conduct that he or she is in possession or control of a deadly weapon.

(3) *Robbery*. Otherwise, the offense is a Class 7 felony.

(c) *Defined Terms*.

(1) “Deadly weapon” has the meaning given in Section 5109(b).

(2) “Motor vehicle” has the meaning given in Section 2110(d).

(3) “Physical injury” has the meaning given in Section 1210(b).

(4) “Property” has the meaning given in Section 108(h).

(5) “Vessel” has the meaning given in Section 308(f).

## Section 1202. Assault

(a) *Offense Defined*. A person commits an offense if the person knowingly<sup>7</sup>:

(1) causes physical injury to another person; or

(2) makes physical contact of an offensive or alarming nature with another person.

(b) *Grading*.

(1) *Enhanced Aggravated Assault*. The offense is a Class 4 felony if the person knowingly:

(A) amputates or otherwise removes a part of the victim’s body; or

(B) causes serious physical injury to another person while engaged in commission of or flight from any felony; or

(C) causes serious physical injury by abuse or neglect of a child less than 14 years of age.

(2) *Aggravated Assault*. The offense is:

(A) a Class 5 felony if the person causes serious physical injury by means of a firearm or other deadly weapon.

(B) a Class 6 felony if the person:

(i) causes serious physical injury; or

(ii) causes physical injury to a pregnant female.

(3) *Assault*. Otherwise, the offense:

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<sup>7</sup> **Issue:** Should the “intentional” culpability requirement for assault in current law be used instead of “knowing”? Current assault statutes sometimes require intentional causation, and sometimes require only reckless causation. Proposed Section 1203 comprehensively deals with recklessly causing injury, so the only issue is whether knowing or intentional culpability is a more appropriate threshold for imposing greater criminal liability than Section 1203.

**Pro:** Assault is a serious offense that should not be charged lightly, and Delaware law has historically required intentional causation to support a conviction. Lowering the culpability requirement would result in more people being charged with and convicted of assault than under current law.

**Con:** The difference in blameworthiness between “knowing” and “intentional” causation is limited in this context. A person who knows her conduct is practically certain to cause physical injury—but chooses to act anyway—is not materially less blameworthy than the person who acts with an intention to cause the physical injury.

(A) under Subsection (a)(1) is:

(i) a Class 7 felony if:

(aa) the offense is committed by means of a firearm or other deadly weapon; or

(bb) 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; or

(ii) a Class A misdemeanor in all other cases.

(B) under Subsection (a)(2) is:

(i) a Class B misdemeanor if the defendant makes contact with the person using urine, feces, or vomit; or

(ii) a Class D misdemeanor in all other cases.

(4) *Special Victims: Grade Adjustment.* The grade of Assault or Aggravated Assault under Subsection (b)(2) or (b)(3) shall be increased by one grade<sup>8</sup> if the victim is:

(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; or

(B) any person, while that person is rendering emergency medical care; or

(C) a state employee or officer when that person is discharging a duty of employment or office; or

(D) a person under 6 years old, and the defendant is 18 years of age or older; or

(E) located in a detention facility, and the defendant is confined in that detention facility.

(c) *Defined Terms.*

(1) “Abuse of a child” has the meaning given in 10 Del. C. § 901(1).

(2) “Deadly weapon” has the meaning given in Section 5109(b).

(3) “Firearm” has the meaning given in Section 5109(e).

(4) “Law enforcement officer” has the meaning given in Section 3309(d).

(5) “Neglect of a child” has the meaning given in 10 Del. C. § 901(18).

(6) “Physical injury” has the meaning given in Section 1210(b).

(7) “Serious physical injury” has the meaning given in Section 1210(c).

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<sup>8</sup> **Issue:** Is an upward grade adjustment of a single grade sufficient where the special victim is a correctional officer?

**Pro:** The single grade adjustment is insufficient because it results in a lower grade than is provided under current law (Class B felony for causing serious physical injury; Class D felony for causing physical injury), and does not reflect the seriousness of the offense. Correctional officers are particularly vulnerable, given the circumstances in which they serve. Assaults of correctional officers cause harm not only to the victims themselves, but also to the public and inmate populations they serve.

**Con:** Assaults of correctional officers are more serious than other assaults, but they do not deserve multiple grade increases. Every grade increase doubles the maximum punishment available for the offense. The identity of these victims should be taken into account at sentencing, arguing for a sentence at the high end of available punishment, rather providing quadruple or octuple maximum punishment.

**Section 1203. Reckless Injuring**

(a) *Offense Defined.* A person commits an offense if he or she recklessly causes physical injury to another person.

(b) *Grading.* If the injury caused is:

(1) serious physical injury, the offense is:

(A) a Class 5 felony if:

(i) injury is caused by the person's abuse or neglect of a child less than 14 years of age; or

(ii) the offense results in the unlawful termination of the victim's pregnancy without the victim's consent; or

(B) a Class 7 felony in all other cases.

(2) physical injury, the offense is:

(A) a Class 8 felony if the victim is a child less than:

(i) 4 years of age; or

(ii) 14 years of age whose intellectual or physical capacity discernibly falls outside the normal range of performance and behavior with regard to age, development, and environment; or

(iii) 14 years of age, and physical injury is caused by a deadly weapon or dangerous instrument; or

(B) a Class B misdemeanor in all other cases.<sup>9</sup>

(c) *Defined Terms.*

(1) "Abuse of a child" has the meaning given in 10 Del. C. § 901(1).

(2) "Dangerous instrument" has the meaning given in Section 5109(a).

(3) "Deadly weapon" has the meaning given in Section 5109(b).

(4) "Neglect of a child" has the meaning given in 10 Del. C. § 901(18).

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<sup>9</sup> **Issue:** Should a general offense be established in Section 1203 for negligently causing injury? If so, the phrase "or negligently" would be added to Section 1203(a), and the following grading provision would be added to Section 1203(b):

(2) *Negligent Injuring.* If the injury was negligently caused, the offense is:

(A) a Class 7 felony if the injury is:

(i) serious physical injury

(ii) caused by use of a firearm

(iii) that the defendant possessed in violation of Section 5104 [possessing a firearm by a prohibited person].

(B) a Class A misdemeanor if the injury is:

(i) caused by a firearm or other deadly weapon; or

(ii) serious physical injury.

[(C) a Class B misdemeanor in all other cases.]

**Pro:** The negligent injury offense described above should be included, even without the bracketed language making it a general offense. It is reasonable to impose a greater duty of care upon persons who use inherently dangerous items, like firearms and vehicles.

**Con:** Negligence is too slight a culpability requirement to support creating such a broad offense with so little support in current law. Currently, Delaware does not generally punish negligently causing injury. The Delaware Code contains a few, specialized negligent-injury offenses involving vehicles or firearms. *See* 11 Del. C. §§ 611(2), 628, 628A(1), 629, 1448(e)(2). The Proposed Code has generally rejected this piecemeal approach. But instead of generalizing those special cases into a general rule, those special cases should be eliminated.

- (5) “Physical injury” has the meaning given in Section 1210(b).
- (6) “Serious physical injury” has the meaning given in Section 1210(c).

#### **Section 1204. Reckless Endangerment**

(a) *Offense Defined.* A person commits an offense if he or she engages in conduct by which the person creates a substantial risk of physical injury to another person.

(b) *Grading.* The offense is:

- (1) a Class 8 felony if the person creates a substantial risk of death or serious physical injury; or
- (2) a Class B misdemeanor in all other cases.

(c) *Treatment of a Child by Prayer: Defense.* In a prosecution under this Section that is based upon an alleged failure or refusal to provide proper medical care or treatment to an ill child less than 18 years of age, it is a defense that:

- (1) the accused is a member or adherent of an organized church or religious group,
- (2) the tenets of which prescribe prayer as the principal treatment for illness, and
- (3) the accused treated or caused the ill child to be treated in accordance with those tenets.

(d) *Defined Terms.*

- (1) “Physical injury” has the meaning given in Section 1210(b).
- (2) “Serious physical injury” has the meaning given in Section 1210(c).

#### **Section 1205. Operating a Vehicle While Under the Influence of Drugs or Alcohol**

(a) *Offense Defined.* A person commits an offense if he or she operates a motor vehicle, airplane, or vessel while chemically impaired.

(b) *Grading.* The offense is a Class B misdemeanor.

(c) *Additional Civil and Procedural Provisions.* Any person convicted of this offense is subject to civil consequences and procedures set forth in 21 Del. C. § 4177 [e.g., license revocation, installation of ignition interlock device, program of education or rehabilitation].

(d) *Prescription Drug Taken As Directed: Defense.* It is a defense to prosecution under this Section that the person’s chemical impairment was entirely due to consumption of a drug:

- (1) for which the person had an authorized prescription, and
- (2) according to the directions and terms of that prescription.

(e) *Defined Terms.*

- (1) “Authorized prescription” has the meaning given in Section 5210(b).
- (2) “Chemically impaired” has the meaning given in Section 1210(a).
- (3) “Motor vehicle” has the meaning given in Section 2110(d).
- (4) “Vessel” has the meaning given in Section 308(f).

**Section 1206. Genital Mutilation of a Female Minor**

(a) *Offense Defined.* A person commits an offense if he or she:

(1) knowingly circumcises, excises, or infibulates the whole or any part of the genitalia of a female under 18 years of age; or

(2) being a parent or guardian of a female under 18 years of age, allows the act to be performed.

(b) *Custom or Ritual No Defense.* It is no 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.* The offense is a Class 6 felony.

(d) *Defined Term.* “Genitalia” has the meaning given in Section 1307(a).

**Section 1207. Terroristic Threats; Menacing**

(a) *Offense Defined.* A person commits an offense if:

(1) he or she:

(A) being reckless as to causing another person to experience extreme fear or distress,

(B) threatens to commit any offense likely to result in death, or serious injury to person or property; or

(2) he or she intentionally places another person in fear of imminent physical injury.

(b) *Grading.* The offense:

(1) under Subsection (a)(1) is:

(A) a Class 8 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; or

(B) a Class A misdemeanor in all other cases.

(2) under Subsection (a)(2) is:

(A) a Class 8 felony if fear is created by:

(i) displaying a firearm or deadly weapon; or

(ii) causing the victim to believe that he or she is or has been exposed to a substance or device that could cause physical injury or death; or

(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.<sup>10</sup>

(C) a Class D misdemeanor in all other cases.

(c) *Defined Terms.*

(1) “Physical injury” has the meaning given in Section 1210(b).

(2) “Property” has the meaning given in Section 108(h).

(3) “Public servant” has the meaning given in Section 3104(d).

**Section 1208. Unlawfully Administering Drugs**

(a) *Offense Defined.* A person commits an offense if he or she:

(1) administers a drug to another person,

(2) without that person’s consent,

(3) thereby intentionally causing stupor, unconsciousness, or any other alteration of the person’s physical or mental condition.

(b) *Grading.* The offense is a Class 8 felony.

**Section 1209. Reckless Infliction of Severe Mental or Emotional Harm**

(a) *Abuse of Vulnerable Persons: Offense Defined.* A person commits an offense if:

(1) having a duty to provide medical or personal care or maintenance,

(2) he or she recklessly:

(A) causes severe mental or emotional harm to; or

(B) fails to provide the care or maintenance necessary for the safety and welfare of,

(3) a victim who:

(A) is a vulnerable person; or

(B) is a patient or resident of any facility where medical or personal care is provided

(b) *Hazing: Offense Defined.* A person commits an offense if he or she engages in conduct by which the person:

(1) recklessly creates a substantial risk of severe mental or emotional harm to another person,

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<sup>10</sup> **Issue:** Should the Proposed Code carry forward 11 Del. C. § 1301(1)g. in its current law form, rather than in the form that appears in Section 1207?

**Pro:** 11 Del. C. § 1301(1)g. more broadly protects any likely, imminent deprivations of constitutional rights, privileges, or immunities. Section 1207(b)(2)(B) is too narrow, because it relates only to fear of “imminent physical injury.” Discrete events intended to deprive individuals of constitutional rights, such as Ku Klux Klan rallies, are worthy of condemnation under Delaware law, even if federal statutes are available, and even if the offense would be very difficult to prove.

**Con:** By targeting more narrow behavior, Section 1207(b)(2)(B) can justify raising the grade of this offense. To the extent the current offense targets pure civil rights violations, federal statutes criminalizing actions intended to cause a federal constitutional deprivation are available. Criminalizing a single, highly specific instance of constitutional deprivation is inconsistent with the goals of the Code Improvement Project. The current draft couches these issues within a framework that the criminal code is already equipped to address: threats to do harm.

(2) as part of a program of initiate, admit, or renew membership of that person in any organization.

(c) *Grading*. The offense:

(1) under Subsection (a) is a Class A misdemeanor.

(2) under Subsection (b) is a Class B misdemeanor.

(d) *Defined Term*. “Vulnerable person” has the meaning given in Section 806(e).

### **Section 1210. Definitions**

(a) “Chemically impaired” means, except as authorized by law:

(1) to be:

(A) less able than a person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care,

(B) due to consumption of alcohol, a controlled substance, or another intoxicating substance, or a combination of them; or

(2) to have an alcohol concentration of .08 or more, meaning:

(A) an amount of alcohol in a sample of a person’s blood equivalent to .08 or more grams of alcohol per 100 milliliters of blood; or

(B) an amount of alcohol in a sample of a person’s breath equivalent to .08 grams per 210 liters of breath; or

(3) a person’s blood contains any amount of the following substances, or a preparation or mixture containing one of them:

(A) a Schedule I controlled substance under [16 Del. C. § 4714]; or

(B) cocaine, as described in [16 Del. C. § 4716(b)(4)]; or

(C) amphetamine, including its salts, optical isomers, and salt of its optical isomers, as described in [16 Del. C. § 4716(d)(1)]; or

(D) methamphetamine, including its salt, isomer or salt of an isomer thereof, as described in [16 Del. C. § 4716(d)(3)]; or

(E) phencyclidine, as described in [16 Del. C. § 4716(e)(5)]; or

(F) a designer drug, as defined in [16 Del. C. § 4701].

(b) “Physical injury” means impairment of physical condition or substantial pain, including physical harm that would normally cause substantial pain.

(c) “Serious physical injury” means physical injury that:

(1) creates a substantial risk of death; or

(2) causes serious and prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ; or

(3) causes the unlawful termination of a pregnancy without the consent of the pregnant female.

## CHAPTER 1300. SEXUAL OFFENSES

Section 1301. Rape and Sexual Assault

Section 1302. Prohibited Sexual Contact by Persons in Positions of Trust

Section 1303. Bestiality

Section 1304. Prohibited Conduct by a Person Convicted of a Sexual Offense Against a Child

Section 1305. Sexual Harassment

Section 1306. General Provisions Relating to this Chapter

Section 1307. Definitions

### Section 1301. Rape and Sexual Assault

(a) *Offense Defined.* A person commits an offense if he or she:

(1) causes another person to submit to or engage in sexual intercourse, oral or object penetration, or sexual contact with anyone, and

(2) (A) the person uses force, coercion, deception, or any other compulsion that would cause a reasonable person to submit under the circumstances; or

(B) the person knows that the victim is:

(i) unable to understand the nature of the act; or

(ii) unable to consent to the act; or

(iii) unconscious, asleep, or otherwise unaware of the act; or

(C) the person had 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; or

(D) the victim is:

(i) less than 16 years of age, and the person is more than four years older than the victim; or

(ii) less than 12 years of age.

(b) *Grading.*

(1) *Enhanced Aggravated Rape.* The offense under Subsection (a) is a Class 3 felony if the offense conduct is sexual intercourse, and:

(A) (i) the person:

(aa) causes serious physical injury to the victim; or

(bb) displays a deadly weapon or an object intended to appear to be a deadly weapon; or

(cc) represents by word or conduct that the person is in possession or control of a deadly weapon or dangerous instrument;

(ii) during:

- (aa) commission or attempted commission of the offense; or
- (bb) immediate flight from the offense; or
- (cc) an attempt to prevent the offense from being reported; or

(B) the offense is committed under Subsection (a)(2)(D)(ii), and the defendant is over 18 years of age; or

(C) the person acts with the active participation or assistance of one 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 under Subsection (a) is a Class 4 felony if the offense conduct is sexual intercourse, and:

(A) the person causes physical injury to the victim during:

(i) commission or attempted commission of the offense; or

(ii) flight from the offense; or

(iii) an attempt to prevent the offense from being reported; or

(B) the offense is committed under Subsection (a)(2)(D)(i), and the victim is under 14 years of age; or

(C) the person commits any other felony in the course of committing or fleeing from the offense.

(3) *Rape*. The offense under Subsection (a) is a Class 6 felony in all other cases where the offense conduct is sexual intercourse.

(c) *Oral or Object Penetration*. If the offense conduct is oral or object penetration, rather than sexual intercourse, the grade of the offense is one grade lower than that provided in Subsection (b) for similar circumstances.

(d) *Sexual Assault*. If the offense conduct is sexual contact, rather than sexual intercourse, the grade of the offense is three grades lower than that provided in Subsection (b) for similar circumstances.

(e) *Grade Adjustment: Sexual Abuse of a Child by a Person in a Position of Trust*. The grade of an offense under this Section shall be increased by one grade if:

(A) the person occupies a position of trust, authority, or supervision over the victim, and

(B) the victim is less than 16 years of age.

(f) *No Defense for Mistake as to Age Under 14*. Where an element of the offense or grading provision under this Section requires that the victim be less than 14 years of age, it is no defense that the person:

(1) did not know the victim's age to be less than 14; or

(2) reasonably believed the victim was 14 or more years of age.<sup>11</sup>

(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 that the defendant timely pay any child support for that child ordered by the Family Court.

(h) *Defined Terms.*

(1) "Attempt" or "attempting" has the meaning given in Section 1107(b).

(2) "Coercion" has the meaning given in Section 1107(c).

(3) "Dangerous instrument" has the meaning given in Section 5109(a).

(4) "Deadly weapon" has the meaning given in Section 5109(b).

(5) "Deceiving" or "deception" has the meaning given in Section 2103(b).

(6) "Oral or object penetration" has the meaning given in Section 1307(b).

(7) "Position of trust, authority, or supervision" has the meaning given in Section 1307(c).

(8) "Physical injury" has the meaning given in Section 1210(b).

(9) "Serious physical injury" has the meaning given in Section 1210(c).

(10) "Sexual contact" has the meaning given in Section 1307(e).

(11) "Sexual intercourse" has the meaning given in Section 1307(f).

### **Section 1302. Prohibited Sexual Contact by Persons in Positions of Trust**

(a) *Offense Defined.* A person commits an offense if he or she:

(1) engages in sexual contact with another person, and

(2) the victim is:

(A) in custody at a detention facility, and the person is an employee, volunteer, or other person working at the detention facility; or

(B) a child under 18 years of age, and the person is in a position of trust, authority, or supervision over that child; or

(C) 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 that facility.

(b) *Grading.* The offense is:

(1) a Class 5 felony if the offense conduct is sexual intercourse.

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<sup>11</sup> **Issue:** Should Section 1301 impose strict liability as to a victim being less than 16 years of age (as does current law) rather than 14 years of age?

**Pro:** Persons having sex with younger persons should bear the whole risk of their own mistakes. Imposing strict liability makes unavailable the often-abused argument that the defendant "did not know" or "reasonably believed" the victim was of an appropriate age. Sixteen is the age of sexual consent in Delaware, and the age for strict liability should be set to match that cut-off.

**Con:** Strict liability in this context is sensible where a defendant is unlikely to make a reasonable mistake as to age. But, reasonable mistakes are much more likely to occur at age 16 than 14. Many 16-year-olds look much older than they are, having reached puberty some years earlier. Few states have explicit strict liability provisions like Delaware's; and among those that do, 14 is roughly the average age at which strict liability is set. Note that proposed Section 1306(a) has been added to strike a balance with this change from current law. Under Section 1306(a), the prosecution need only prove that a defendant was negligent as to the victim being underage for any relevant age above 14.

(2) a Class 6 felony if the offense conduct is oral or object penetration.

(3) a Class 8 felony if the offense conduct is sexual contact.

(c) *Defined Terms.*

(1) “Facility” has the meaning given in 16 Del. C. § 1131(4), but does not include a detention facility.

(2) “Oral or object penetration” has the meaning given in Section 1307(b).

(3) “Position of trust, authority, or supervision” has the meaning given in Section 1307(c).

(4) “Sexual contact” has the meaning given in Section 1307(e).

### **Section 1303. Bestiality**

(a) *Offense Defined.* A person commits an offense if he or she intentionally:

(1) engages in sexual contact with the genitalia of an animal; or

(2) causes another person to engage in sexual contact with the genitalia of an animal with intent to gratify the person’s own sexual desire.

(b) *Grading.* The offense is a Class 6 felony.

(c) *Defined Term.* “Sexual contact” has the meaning given in Section 1307(e).

### **Section 1304. Prohibited Conduct by a Person Convicted of a Sexual Offense Against a Child**

(a) *Offense Defined.* A person commits an offense if:

(1) the person has been previously convicted of committing one of the offenses contained in this Chapter or the following Sections, or their equivalents in another jurisdiction, against a person less than 16 years of age:

(A) Section 4201 [public indecency];

(B) Section 4202(b)(1) [patronizing a victim of sexual servitude];

(C) Section 4203 [promoting or permitting prostitution];

(D) Section 4204(a)(1)–(2) or (b)(3)(A) [child pornography and obscenity];

(E) Section 4302 [voyeurism];

(F) Section 4401 [incest]; and

(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 of age.<sup>12</sup>

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<sup>12</sup> **Issue:** Should Section 1304 impose strict liability as to the defendant being within the prohibited area?

**Pro:** 11 Del. C. § 1112(c) provides that it is no defense to prosecution that the defendant “was unaware that the prohibited conduct took place on or within 500 feet of any school property.” This places the burden of discovering where schools are, as well as the whole risk of a mistake, on the defendant. This is appropriate because of the prior history of these defendants, and is necessary to deter them from preying upon children.

**Con:** Section 1304 should require recklessness by the defendant as to his location. Recklessness is the lowest level of culpability at which the defendant is aware of a risk that he is taking. Unless the defendant is aware of a risk his conduct creates, he cannot be deterred from engaging in that conduct. Therefore, using strict liability in this context does not make children safer, and only creates criminal liability for prior offenders who are in a prohibited place by mistake.

(b) *Grading*. The offense is a Class 8 felony.

(c) *Defined Terms*.

(1) “Dwelling” has the meaning given in Section 2403(a).

(2) “Loiters” has the meaning given in Section 4108(a).

(3) “Reside” has the meaning given in Section [1307(d)].

### **Section 1305. Sexual Harassment**

(a) *Offense Defined*. A person commits an offense if he or she:

(1) threatens to engage in conduct likely to result in the commission of a sexual offense against another; or

(2) (A) knowingly causes annoyance, offense, or alarm to another person

(B) by suggesting, soliciting, requesting, commanding, or otherwise attempting to induce another to engage in sexual contact with the person.

(b) *Grading*.

(1) The offense is a Class 8 felony if:

(A) the victim is a person less than 16 years of age, over whom the defendant stands in a position of trust, authority, or supervision, and

(B) the defendant is at least 4 years older than the victim.

(2) Otherwise, the offense:

(A) under Subsection (a)(1) is a Class A misdemeanor; or

(B) under Subsection (a)(2) is a Class D misdemeanor.<sup>13</sup>

(c) *Defined Terms*.

(1) “Position of trust, authority, or supervision” has the meaning given in Section 1307(c).

(2) “Sexual contact” has the meaning given in Section 1307(e).

### **Section 1306. General Provisions Relating to this Chapter**

(a) *Culpability as to Age*. Unless expressly provided otherwise, where an offense in this Chapter requires that the victim be under a specific age, it need be proven only that the defendant was negligent as to the victim being under that age.

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<sup>13</sup> **Issue:** Should the new grading for sexual harassment—grading threats as a Class A misdemeanor and all other conduct as a Class D misdemeanor—be retained?

**Pro:** 11 Del. C. § 763 grades sexual harassment of any kind as “an unclassified misdemeanor,” while ordinary harassment is graded as a Class A misdemeanor in 11 Del. C. § 1311. Sexual harassment where the defendant “threatens to engage in conduct likely to result in the commission of a sexual offense against another” is more serious than the other conduct set forth in § 763, and should be graded to at least be consistent with other forms of harassment.

**Con:** The threats described in 11 Del. C. § 763 are too far removed from the possible commission of a sexual offense to justify increasing the offense grade. The defendant need not threaten to actually commit an offense, but merely to “engage in conduct” that is “likely to result” in a sexual offense. A threat to commit an offense likely to result in death or serious physical injury is a Class A misdemeanor under the current terroristic threatening offense (11 Del. C. § 621). Sexual harassment is not similar enough to terroristic threatening to justify grading them the same.

(b) *Medical Treatment Exemption.* A medical examination or procedure is not an offense under this Chapter if:

- (1) with intent to provide diagnosis or treatment,
- (2) it is conducted by a licensed medical professional, parent, or guardian,
- (3) in a manner consistent with reasonable medical standards.

### **Section 1307. Definitions**

(a) “Genitalia” means:

- (1) a woman’s vagina, labia minora, labia majora, or clitoris; or
- (2) a man’s penis or scrotum.

(b) “Oral or object penetration” means:

- (1) placing any object, substance, or body part inside the anus or vagina of another person; or
- (2) the defendant placing an object inside another person’s mouth, intending the act to be sexual in nature.

(c) A person occupies a “position of trust, authority, or supervision” if:

- (1) the person has regular direct contact with one or more children because of his or her familial relationship, profession, employment, vocation, avocation, or volunteer service, and
- (2) in the course thereof assumes responsibility, whether temporary or permanent, for the care or supervision of one or more children.

[(d) “Reside” means to occupy a dwelling as one’s place of abode, whether permanently or temporarily.]

(e) “Sexual contact” means:

- (1) (A) any touching of any body part of another person, whether clothed or unclothed, by any body part, body fluid, or object; or  
(B) any undressing that reveals the breast, genitalia, or buttocks of another person; and
- (2) the touching or undressing is intended to be sexual in nature.

The term includes sexual intercourse and oral or object penetration.

(f) “Sexual intercourse” means:

- (1) any act of penetration, however slight, of the genitalia or anus of one person with the genitalia of another person; or
- (2) any oral contact with genitalia between the defendant and another person.
- (3) Evidence of emission of semen is not required to prove sexual intercourse occurred.

**CHAPTER 1400. KIDNAPPING, COERCION, RESTRAINT, AND RELATED OFFENSES**

Section 1401. Kidnapping and Unlawful Restraint

Section 1402. Human Trafficking

Section 1403. Coercion

Section 1404. Definitions

**Section 1401. Kidnapping and Unlawful Restraint**

(a) *Unlawful Restraint: Offense Defined.* Except as authorized by law, a person commits an offense if he or she knowingly and materially interferes with another person's liberty, without that person's consent, by:

- (1) moving the victim from one place to another; or
- (2) confining the victim.

(b) *Kidnapping: Offense Defined.* A person commits an offense if he or she commits unlawful restraint under Subsection (a), with the intent to:

- (1) hold the victim for ransom or reward; or
- (2) use the victim as a shield or hostage; or
- (3) facilitate the commission of any felony or flight thereafter; or
- (4) inflict physical injury upon the victim, or to violate or abuse the victim sexually; or
- (5) terrorize the victim or a third person; or
- (6) take or entice any victim less than 18 years of age from the custody of the victim's parent, guardian, or lawful custodian, and the person is not a relative of the victim.

(c) *Grading.* The offense:

- (1) under Subsection (a) is:
  - (A) a Class 8 felony if the defendant's conduct recklessly creates a substantial risk of serious physical injury to the victim; or
  - (B) a Class A misdemeanor in all other cases.
- (2) under Subsection (b) is:
  - (A) a Class 4 felony if the defendant does not voluntarily release the victim alive, unharmed, and in a safe place before trial; or
  - (B) a Class 5 felony in all other cases.

(d) *Relationship to Interference with Custody.* A person who does not satisfy the elements of Subsection (b)(6) because he or she is a relative of the victim may nevertheless be liable under Section 4404 [interference with custody].

(e) *Defined Term.* "Relative" has the meaning given in Section 1404.

**Section 1402. Human Trafficking**

(a) *Offense Defined.* A person commits an offense if he or she:

- (1) knowingly trades, barter, buys, or sells a person; or

(2) knowingly uses force, coercion, intimidation, or deception to compel a person to provide labor or services, including prostitution; or

(3) knowingly obtains, transports, harbors, isolates, or provides a person, or secures continued performance of the labor or services of a person:

(A) knowing that the person is being compelled to provide labor or services, as provided in Subsection (a)(2); or

(B) knowing that the person will have body parts removed for sale; or

(4) benefits financially from participation in a venture that the person knows has engaged in acts constituting the offense under Subsection (a)(3)(B).

(b) *Grading*. The offense:

(1) under Subsection (a)(3)(B) or (a)(4) is a Class 3 felony.

(2) under Subsection (a)(2) or (a)(3)(A) is a Class 4 felony.

(3) is a Class 6 felony in all other cases.

(4) *Grade Adjustments*. The grade of the offense shall be increased by one grade if:

(A) the victim is less than 18 years of age; or

(B) the defendant recruited, enticed, or obtained the victim from a shelter designed to serve:

(i) victims of human trafficking, domestic violence, or sexual assault; or

(ii) runaway youth, foster children, or homeless persons.

(c) *Exception: Payments Related to Adoption*. It is not a violation of Subsection (a)(1) to pay:

(1) reasonable medical expenses related to pregnancy; or

(2) reasonable room and board to providers of services;

in conjunction with placement of a child for adoption in accordance with 13 Del. C. § 904(a)(2).

(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:

(i) that was used or intended to be used to facilitate the commission of the offense; or

(ii) that constitutes or derives from proceeds that the defendant obtained, directly or indirectly, as a result of the offense.

(B) *Organizational Forfeiture*. An organization convicted under this Section may be ordered by the Court to forfeit:

(i) profits from activities in violation of this Section; or

(ii) state and local government contracts.

(2) *Restitution*.

(A) *Valuation*. In ordering restitution under Section 803(c) for a violation of this Section, the Court may order the greatest of:

(i) the gross income or value to the defendant of the victim's labor or services; or

(ii) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of either:

(aa) the Fair Labor Standards Act, 29 U.S.C. § 201 et seq.; or

(bb) Title 19 of the Delaware Code.

(B) *Victim Availability.*

(i) Restitution must be ordered for violations of this Section, even if the victim is unavailable to accept payment of restitution.

(ii) 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 Section 9016 [current title].

(e) *Motion to Vacate Sentence; Expungement.*

(1) *Motion to Vacate: Procedures and Presumptions.*

(A) A person 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:

(i) be in writing,

(ii) be sent to the Delaware Department of Justice,

(iii) be made 2 years after the person's last criminal conviction and within a reasonable period of time after the person ceases to be a victim of human trafficking, and

(iv) describe the evidence and provide copies of any official documents showing that the person is entitled to relief under this Subsection.

(C) The court shall hold a hearing on any motion that satisfies the requirements of Subsection (e)(1)(B), 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 person'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, shall create a presumption, subject to rebuttal, that the person committed the offense as a direct result of human trafficking.

(E) *Burden on Defendant.* The defendant must prove he or she is entitled to relief under this Subsection by a preponderance of the evidence.

(F) *Vacated Sentence Mandatory.* If the person meets his or her burden under Subsection (e)(1)(E), 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:

(A) A person seeking a vacated judgment of conviction under Subsection (e)(1) 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) “Coercion” has the meaning given in Section 1107(c).

(2) “Deception” has the meaning given in Section 2110(b).

### **Section 1403. Coercion**

(a) *Offense Defined.* A person commits an offense if, with intent to cause another to perform or to omit to perform any act, the person threatens to:

(1) cause physical injury to any person; or

(2) cause damage to property; or

(3) engage in other conduct constituting a crime; or

(4) accuse any person of an offense or cause criminal charges to be instituted against a person; or

(5) expose a secret or publicize an asserted fact, whether true or false, tending to subject a person to hatred, contempt, or ridicule; or

(6) testify or provide information or withhold testimony or information with respect to another’s legal claim or defense; or

(7) use or abuse the defendant’s position as a public servant by performing an act within or related to the defendant’s official duties, or by failing or refusing to perform an official duty so as to affect another person adversely; or

(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 Subsection (a)(4), it is an defense that:

(1) the defendant believed the threatened criminal charge to be true, and

(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) *Grading.* The offense is a Class A misdemeanor.

### **Section 1404. Definition**

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

## PROPERTY OFFENSES

### CHAPTER 2100. THEFT OFFENSES

- Section 2101. Consolidation of Theft Offenses
- Section 2102. Theft by Unlawful Taking or Disposition
- Section 2103. Theft by Deception
- Section 2104. Theft by Extortion
- Section 2105. Theft of Property Lost, Mislaid, or Delivered by Mistake
- Section 2106. Theft of Services
- Section 2107. Receiving Stolen Property
- Section 2108. Unauthorized Distribution of Protected Works
- Section 2109. Unauthorized Use of a Vehicle
- Section 2110. Definitions

#### **Section 2101. Consolidated Grading of Theft Offenses**

(a) *Consolidation.* Conduct prohibited by Sections 2102 through 2107 constitutes a single offense of theft. A prosecution for theft may be supported by evidence that it was committed in any manner described in Sections 2102 through 2107.

(b) *Grading.* Any offense defined in Sections 2102 through 2107 is:

- (1) a Class 5 felony if the value of the property is \$1,000,000 or more.
- (2) a Class 6 felony if the value of the property is \$100,000 or more.
- (3) a Class 7 felony if
  - (A) the value of the property is \$25,000 or more; or
  - (B) the property is a firearm.
- (4) a Class 8 felony if
  - (A) the value of the property is \$5,000 or more; or
  - (B) the property is a motor vehicle; or
  - (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 \$1,500 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 there has been a prior offense of a similar nature; and
- (8) otherwise a violation.

(c) *Extortion: Grade Adjustment.* The grade of the offense shall be increased by one grade when theft is committed in the manner described in Section 2104.

(d) *Claim of Right.* It is a defense to prosecution for theft that the person reasonably believed he or she had a right to use or possess the property.

(e) *Defined Terms.*

- (1) “Firearm” has the meaning given in Section 5109(e).
- (2) “Motor vehicle” has the meaning given in Section 2110(d).

- (3) “Practitioner” has the meaning given in Section 2110(g).
- (4) “Property” has the meaning given in Section 108(h).
- (5) “Value” has the meaning given in Section 2110(l).

### **Section 2102. Theft by Taking or Disposition**

(a) *Offense Defined.* A person commits theft if he or she:

(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 that:

(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 Subsection (a)(2).

(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 Subsection (a)(2).

(c) *Defined Terms.*

(1) “Deprive” has the meaning given in Section 2110(c).

(2) “Obtain” has the meaning given in Section 2110(e).

(3) “Owner” has the meaning given in Section 2110(f).

(4) “Property” has the meaning given in Section 108(h).

(5) “Property of another” has the meaning given in Section 2110(h).

### **Section 2103. Theft by Deception**

(a) *Offense Defined.* A person commits theft if he or she:

(1) intentionally obtains the property of another person

(2) by deceiving the other person or a third person.

(b) *Inferences.*

(1) *Permissive.* The finder of fact may infer the deception required in Subsection (a)(2) if the defendant leased or rented personal property of another, and the defendant:

(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; or

(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; or

(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.* Proper notice under Subsection (c)(1)(A) may be given by mailing 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) *Prohibited.*

(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.* But, that deception may be inferred if:

(i) the promise related to and was made in the course of business, and

(ii) the person who made the promise 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:

(1) accurately stated the defendant's name, address, and other material items of identification at the time of rental, and

(2) failed to receive the owner's notice due to no material fault of the defendant, and

(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.*

(1) "Deceiving" has the meaning given in Section 2110(b).

(2) "Property" has the meaning given in Section 108(h).

(3) "Property of another" has the meaning given in Section 2110(h).

## **Section 2104. Theft by Extortion**

(a) *Offense Defined.* A person commits theft if he or she intentionally deprives another of property by means of coercion that would constitute an offense under Section 1403.

(b) *Defense.* In a prosecution involving coercion under Subsection 1403(a)(4), it is a defense that:

(1) the defendant believed the threatened criminal charge to be true, and

(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) "Coercion" has the meaning given in Section 1107(c).

(2) "Property" has the meaning given in Section 108(h).

**Section 2105. Theft of Property Lost, Mislaid, or Delivered by Mistake**

(a) *Offense Defined.* A person commits theft if he or she:

(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) with the intent to deprive another of such property, and

(3) fails to take reasonable measures to return the property to its owner.

(b) *Defined Terms.*

(1) “Deprive” has the meaning given in Section 2110(c).

(2) “Property” has the meaning given in Section 108(h).

**Section 2106. Theft of Services**

(a) *Offense Defined.* A person commits theft if he or she:

(1) knowingly obtains without consent services that the person knows are available only for compensation

(2) by

(A) deception, threat, or false representation or statement; or

(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) In a prosecution based upon Subsection (a)(2)(B) involving:

(A) services that have been obtained from a public utility, and

(B) facilities or equipment owned or used by the public utility to provide those services,

the finder of fact may infer that the person to whom the services are being furnished created the condition violating Subsection (a)(2)(B) with the intent required in Subsection (a)(3).

(2) *Exception.* Subsection (b)(1) is inapplicable 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 Term.*

(1) “Obtain” has the meaning given in Section 2110(e).

(2) “Services” has the meaning given in Section 2110(j).

**Section 2107. 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 finder of fact may infer the knowledge required in Subsection (a)(2) in the case of:

(1) a person who

(A) acquires the property for consideration which the person knows is substantially below its reasonable value; or

(B) is found in possession or control of property whose affixed identification or serial number is altered, removed, defaced, or falsified; or

(2) 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 entity which owns the property.

(c) *Defined Terms.*

(1) "Dealer" has the meaning given in Section 2110(a).

(2) "Deprive" has the meaning given in Section 2110(c).

(3) "Property of another" has the meaning given in Section 2110(h).

(4) "Receive" has the meaning given in Section 2110(i).

(5) "Stolen" has the meaning given in Section 2110(k).

### **Section 2108. Unauthorized Distribution of Protected Works**

(a) *Offense Defined.* A person commits an offense if he or she:

(1) sells, gives, or otherwise makes available to another person 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 work.

(b) *Exception: Lawfully Obtained Originals.* Subsection (a) is inapplicable to original copies of protected works that the defendant obtained lawfully.

(c) *Grading.* If the protected work is distributed to:

(1) 1,000 or more recipients, the offense is a Class A misdemeanor.

(2) 100 or more recipients, the offense is a Class D misdemeanor.

(3) fewer than 100 recipients, the offense is a violation.

(d) *Defined Term.* "Protected work" has the meaning given in Section 2110( ).<sup>14</sup>

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<sup>14</sup> **Issue:** Should Delaware adopt Section 2108, Unauthorized Distribution of Protected Works, as a new offense?

**Pro:** Currently, Delaware only has a few scattered, highly specific offenses that indirectly criminalize infringements upon copyright. *See* 11 Del. C. §§ 858, 920. This piecemeal approach leads to disproportionate punishment of some persons infringing on copyright, but not others. Section 2108 will allow any unauthorized distribution to be punished criminally, regardless of the type of material involved. Note that the breadth of the offense is offset by the fact that it is only graded as a misdemeanor.

**Con:** There is insufficient support in current Delaware law to create a general offense punishing copyright violations criminally. Copyright violations are best left to civil litigation. Furthermore, due to the ease of sharing copyrighted materials on the Internet, this offense potentially exposes an enormous number of people to liability.

**Section 2109. Unauthorized Use of a Vehicle**

(a) *Offense Defined.* A person commits an offense if:

(1) the person knowingly operates another's motor vehicle, airplane, vessel, or other vehicle, without the owner's consent to do so; or

(2) having custody of another'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, 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; or

(3) having custody of another's vehicle under an agreement that it is to be returned to the owner at a specified time, the person 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.* The offense is a Class A misdemeanor.

(c) *Defined Terms.*

(1) "Motor vehicle" has the meaning given in Section 2110(d).

(2) "Vessel" has the meaning given in Section 308(f).

**Section 2110. Definitions**

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

(b) "Deceiving" means:

(1) creating or reinforcing a false impression as to any fact; or

(2) preventing another person from acquiring information that would adversely affect the other person's judgment of a transaction.

(c) "Deprive" means:

(1) to 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; or

(2) to dispose of property of another person so as to make it unlikely that the owner will recover it.

(d) "Motor vehicle" means an automobile, motorcycle, van, truck, trailer, semitrailer, truck tractor and semitrailer combination, or any other vehicle which is self-propelled, which is designed to be operated primarily on a roadway as defined in § 101 of Title 21, and in, upon or by which any person or property is or may be transported.

"Motor vehicle" as used in this Code shall not include any device that is included within the definitions of "moped", "off-highway (OHV)", "triped", "motorized scooter or skateboard", "motorized wheelchair" or "electric personal assistive mobility device" as defined in § 101 of Title 21.

(e) "Obtain" means:

(1) in relation to property, to bring about or receive a transfer or purported transfer of any interest in property; or

(2) in relation to labor or services, to secure performance of the labor or services.

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

(g) “Practitioner” means

(1) a physician, dentist, veterinarian, scientific investigator 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.

(2) a pharmacy, hospital or other institution 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.

(h) “Property of another” means property to which another person holds a greater claim of right, whether such a claim is temporary, permanent, or illegal. A legal person, such as the government or a corporation, may hold a claim of right. The owner of flowers, burial mounds, mementos, or any other property left by its owner in a cemetery for the purpose of honoring the dead retains a claim of right to that property.

(\_) “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.<sup>15</sup>

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

(j) For the purposes of this Chapter, “services” include: 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. “Computer services” has the meaning given in Section 806(a).

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

(l) “Value” of property is calculated as provided in Section 805.

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<sup>15</sup> **Note:** The addition of this definition depends upon whether Section 2108 is adopted as a new offense (see footnote 13, *supra*).

**CHAPTER 2200. FORGERY AND FRAUDULENT PRACTICES**

- Section 2201. Forgery and Counterfeiting
- Section 2202. Fraudulent Tampering with Records
- Section 2203. Fraudulent Treatment of Public Records
- Section 2204. Issuing a Bad Check
- Section 2205. Unlawful Use of a Payment Card
- Section 2206. Deceptive Business Practices
- Section 2207. Defrauding Secured Creditors
- Section 2208. Fraud in Insolvency
- Section 2209. Identity Theft
- Section 2210. Commercial Bribery
- Section 2211. Fraudulent Conveyance or Receipt of Public Lands
- Section 2212. Unauthorized Impersonation
- Section 2213. Definitions

**Section 2201. Forgery and Counterfeiting**

(a) *Offense Defined.* A person commits an offense if, with intent to defraud, deceive, or injure anyone, he or she:

- (1) alters any written instrument of another without that person's authority;  
or
- (2) makes, completes, executes, authenticates, issues, or transfers any written instrument so that it purports:
  - (A) to be the act of another who did not authorize that act; or
  - (B) to have been executed at a time or place, or in a numbered sequence, other than was in fact the case; or
  - (C) to be a copy of an original when no original existed; or
- (3) puts forward any written instrument that the person knows to be forged in a manner specified in Subsection (a)(1) or (a)(2); or
- (4) 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.

(b) *Grading.* The offense is:

- (1) a Class 7 felony if the written instrument is or purports to be:
  - (A) part of an issue of money, stamps, securities, or other valuable instruments issued by the government; or
  - (B) part of an issue of stock, bonds, or similar instruments representing interests in or claims against any property or enterprise.
- (2) a Class 8 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.

(3) a Class A misdemeanor in all other cases.

(c) *Defined Terms.*

- (1) “Counterfeit mark” has the meaning given in Section 2213(b).
- (2) “Defraud” has the meaning given in Section 2213(c).
- (3) “Put forward” has the meaning given in Section 2213(i).
- (4) “Security” has the meaning given in 6 Del. C. § 73-103(a)(20).
- (5) “Written instrument” has the meaning given in Section 806(f).

**Section 2202. Fraudulent Tampering with Records<sup>16</sup>**

(a) *Offense Defined.* A person commits an offense if, with intent to defraud anyone, he or she:

- (1) tampers with or fails to properly maintain public records, as would constitute an offense under Section 3203(a) [Tampering with Public Records]; or
- (2) issues, offers, or presents an instrument that contains false statements or false information.

(b) *Grading.* The offense is a Class 8 felony.

(c) *Defined Term.* “Defraud” has the meaning given in Section 2213(c).

**Section 2203. Fraudulent Treatment of Public Records**

(a) *Offense Defined.* A person commits an offense if, with intent to defraud anyone, he or she obtains, displays, possesses, or upon proper demand fails to surrender any document issued by a governmental entity.

(b) *Grading.* The offense is a Class A misdemeanor.

(c) *Defined Term.* “Defraud” has the meaning given in Section 2213(c).

**Section 2204. Issuing a Bad Check**

(a) *Offense Defined.* A person commits an offense if he or she issues or passes a check, knowing it will not be honored by the drawee.

(b) *Grading.* The value of the check shall be used to determine the grade of the offense, according to the grade values set forth in Section 2101(b) [consolidated grading of theft offenses].

(c) *Permissive Inference.* The trier of fact may infer that an issuer knew the check would not be honored, if:

- (1) the issuer had no account with the drawee at the time the check was issued; or

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<sup>16</sup> **Issue:** Should the defense to fraudulent tampering with records in 11 Del. C. § 872 for employees “merely execut[ing] the orders of an employer” be added to Section 2202? Note that whatever is done here should also be done for the similar defense to issuing a bad check in Section 2204, based upon 11 Del. C. § 902.

**Pro:** Employees occupy a greater position of vulnerability than their superiors, making it difficult to contradict the orders of their superiors. Employees should not be penalized for the fraudulent acts of their superiors, nor for failing to resist pressure to act as an agent in those situations.

**Con:** An employee acting under authority of a superior is unlikely to have the “*intent to defraud*” required by the offense definition, making an defense unnecessary. If the employee does have that intent, she is just as culpable as her employer and just as deserving of criminal liability.

(2) payment was refused by the drawee upon presentation, on or after the date written on the check, for lack of funds, and the issuer failed to make good within 10 days after receiving notice of that refusal.

(d) *Defined Terms.*

- (1) “Issues” has the meaning given in Section 2213(d).
- (2) “Passes” has the meaning given in Section 2213(f).
- (3) “Value” has the meaning given in Section 2110(l).

### **Section 2205. Unlawful Use of a Payment Card**

(a) *Offense Defined.* A person commits an offense if he or she uses a payment card with the intent to obtain property or services, knowing that:

- (1) the card is stolen, forged, or fictitious; or
- (2) the card has been revoked or cancelled; or
- (3) for any other reason, use of the card is not authorized by the issuer or cardholder.

(b) *Grading.*

(1) *Generally.* The value of the property or services obtained by use of the payment card shall be used to determine the grade of the offense, according to the grade values set forth in Section 2101(b) [consolidated grading of theft offenses].

(2) *Aggregation.* When the offense is committed in a single scheme or continuous course of conduct, whether involving one issuer or several issuers, the conduct may be considered a single offense, and the value of the property or services aggregated for grading purposes.

(c) *Defined Terms.*

- (1) “Payment card” has the meaning given in Section 2213(g).
- (2) “Services” has the meaning given in Section 2110(j).
- (3) “Stolen” has the meaning given in Section 2110(k).
- (4) “Value” has the meaning given in Section 2110(l).

### **Section 2206. Deceptive Business Practices**

(a) *Offense Defined.* A person commits an offense if he or she:

- (1) uses a weight, measure, or any other device for determining or recording the quality or quantity of a commodity to be sold, that the person knows to be false or misleading; or
- (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; or
- (3) takes what the person knows to be more than the represented quantity of any commodity or service; or
- (4) sells, or offers or exposes for sale, commodities the person knows to be adulterated or mislabeled; or
- (5) makes a statement the person knows to be false or misleading in any advertisement addressed to the public, or to a substantial segment of it, with the intent to promote the sale or increase the consumption of property or services; or

(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; or

(7) notifies any other person that the other person has won a prize, received an award or has been selected or is eligible to receive anything of value if the other person is required to respond through the use of a 900 service telephone number or similar pay-per-call service number.

(b) *Exception: Republication.* In any case under this Section involving false or misleading information, this Section is inapplicable to persons or entities that publish information originating from other sources without knowledge of its deceptive character.

(c) *Grading.* The amount of the victim's loss shall be used to determine the grade of the offense, according to the grade values set forth in Section 2101(b) [consolidated grading of theft offenses].

(d) *Defined Terms.*

(1) "Adulterated" has the meaning given in Section 2213(a).

(2) "Misabeled" has the meaning given in Section 2213(e).

(3) "Services" has the meaning given in Section 2110(j).

### **Section 2207. Defrauding Secured Creditors**

(a) *Offense Defined.* A person commits an offense if he or she:

(1) with intent to hinder enforcement of a security interest,

(2) destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to that security interest.

(b) *Grading.* The amount of the victim's loss shall be used to determine the grade of the offense, according to the grade values set forth in Section 2101(b) [consolidated grading of theft offenses].

### **Section 2208. Fraud in Insolvency**

(a) *Offense Defined.* A person commits an offense if:

(1) with intent to defraud any creditor, and

(2) 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,

(3) he or she:

(A) conveys, transfers, removes, conceals, destroys, encumbers, or otherwise disposes of any part of or any interest in the debtor's estate; or

(B) obtains any substantial part of or interest in the debtor's estate;

or

(C) 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; or

(D) 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*. The amount of the victim's loss shall be used to determine the grade of the offense, according to the grade values set forth in Section 2101(b) [consolidated grading of theft offenses].

(c) *Defined Terms*.

(1) "Defraud" has the meaning given in Section 2213(c).

(2) "Written instrument" has the meaning given in Section 806(f).

### **Section 2209. Identity Theft**

(a) *Offense Defined*. A person commits an offense if, with intent to defraud, he or she:

(1) obtains, sells, gives, or transfers personal identifying information belonging to or pertaining to another person without the consent of the other person; or

(2) possesses or uses a scanning device to obtain information encoded on a payment card; or

(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; or

(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:

(A) the information is necessary for the shipping, delivery or installation of consumer goods; or

(B) for special orders of consumer goods or services.

(b) *Grading*. The offense:

(1) under Subsections (a)(1)–(3) is a Class 7 felony.

(2) under Subsection (a)(4) is a Class D misdemeanor.

(c) *Defined Terms*.

(1) "Personal identifying information" has the meaning given in Section 2213(h).

(2) "Reencoder" has the meaning given in Section 2213(j).

(3) "Scanning device" has the meaning given in Section 2213(k).

(4) "Services" has the meaning given in Section 2110(j).

### **Section 2210. Commercial Bribery**

(a) *Offense Defined*. A person commits an offense if he or she:

(1) with the intent to:

(A) influence another in any respect to that person's acts, decisions, or duties; or

- (B) be influenced by another in any respect to the person's acts, decisions, or duties,
- (2) offers, confers, or agrees to confer; or solicits, accepts, or agrees to accept any benefit as consideration for violating or agreeing to violate a duty of fidelity of a:
  - (A) partner, agent or employee of another; or
  - (B) trustee, guardian, or other fiduciary; or
  - (C) lawyer, physician, accountant, appraiser, or other professional adviser; or
  - (D) officer, director, manager or other participant in the direction of the affairs of an incorporated or unincorporated association; or
  - (E) an official or participant in a sports contest; and
- (3) the recipient is not authorized by law to accept that benefit.
- (b) *Grading*. The offense is a Class A misdemeanor.

### **Section 2211. Fraudulent Conveyance or Receipt of Public Lands**

(a) *Offense Defined*. A person commits an offense if, with intent to defraud, he or she:

- (1) executes or receives any deed or other written instrument purporting to convey an interest in land,
- (2) any part of which is public lands of this State,
- (3) when the person had no legal or equitable interest in the land described in the instrument.

(b) *Grading*. The offense is a Class 8 felony.

(c) *Defined Terms*.

- (1) "Defraud" has the meaning given in Section 2213(c).
- (2) "Written instrument" has the meaning given in Section 806(f).

### **Section 2212. Unauthorized Impersonation**

(a) *Offense Defined*. A person commits an offense if:

- (1) the person represents that he or she is another person, real or fictitious, and acts in that capacity with intent to obtain a benefit, or to injure or defraud another person; or
- (2) the person falsely represents that he or she is a bail bond agent; or
- (3) he or she:
  - (A) having been involved in a motor vehicle accident resulting in serious physical injury or death to any person,
  - (B) falsely represents, as the case may be, that the person was or was not operating a motor vehicle involved in the accident.

(b) *Grading*. The offense:

- (1) under Subsection (a)(1) or (a)(2) is a Class A misdemeanor.
- (2) under Subsection (a)(3) is a Class 8 felony.

(c) *Defined Terms*.

- (1) “Motor vehicle” has the meaning given in Section 2110(d).
- (2) “Serious physical injury” has the meaning given in Section 1210(c).

### **Section 2213. Definitions**

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

(b) A “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.

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

(d) A person “issues” a check when:

- (1) as drawer of the check or as a person who signs in a capacity as representative or agent of the principal drawer or obligor,
- (2) the person delivers or causes the check to be delivered,
- (3) to a person who acquires a right against the drawer as to the check by reason of delivery.

(e) “Mislabeled” means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for such variance, or set by established commercial usage.

(f) A person “passes” a check when:

- (1) being a payee, holder, or bearer of a check that purports to have been drawn and issued by another,
- (2) the person delivers the check,
- (3) for a purpose other than collection to a third person who acquires a right as to the check by reason of delivery.

(g) “Payment card” means any instrument or device issued by an issuer for use of the cardholder in obtaining anything of value, either 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.

(h) “Personal identifying information” includes names, addresses, birth dates, Social Security numbers, driver's license numbers, telephone numbers, financial services account numbers, savings account numbers, checking account numbers, payment card numbers, identification documents or false identification documents, electronic identification numbers, educational records, health care records, financial records, credit records, employment records, e-mail addresses, computer system passwords, mother's maiden name or similar personal number, record or information.

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

(j) “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.

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

## CHAPTER 2300. ARSON AND OTHER PROPERTY DAMAGE OFFENSES

Section 2301. Arson

Section 2302. Endangering by Fire or Explosion

Section 2303. Unlawful Incendiary Devices

Section 2304. Criminal Damage

Section 2305. Causing or Risking Catastrophe; Ecological Catastrophe

Section 2306. Definitions

### Section 2301. 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<sup>17</sup> Causing Damage.* If the person knew the damage would result, the offense is:

(A) a Class 4 felony if the person knew another person was within the building at the time of the offense; or

(B) a Class 5 felony if the person was reckless as to the presence of another person within the building at the time of the offense; or

(C) a Class 6 felony in all other cases.

(2) *Recklessly Causing Damage.* If the person was reckless as to the resulting damage, the offense is a Class 8 felony.

(c) *Ownership Exemption.* Except under Subsection (b)(1)(A)–(B), a person does not commit an offense under Section 2301 if the building belongs solely to the person.

(d) *Defined Term.* “Owner” has the meaning given in Section 2102(b)(3).

### Section 2302. Endangering by Fire or Explosion

(a) *Offense Defined.* A person commits an offense if the person:

(1) intentionally starts a fire or causes an explosion, whether on the person’s own property or another’s, and

(2) thereby recklessly creates a risk of damaging another’s building or other real or personal property.

(b) *Grading.* The offense is a Class A misdemeanor.

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<sup>17</sup> **Issue:** Should this arson offense grading require the defendant to have “intentionally,” rather than “knowingly,” caused the damage?

**Pro:** Use of intentional culpability more closely follows current Delaware law and the blameworthiness judgments the General Assembly has already made regarding grading. Subjective intentionality is very serious, and the higher grade of the offense should correspond to that serious culpability.

**Con:** Currently, Delaware arson statutes sometimes punish a defendant the same whether the person caused damage recklessly, knowingly, or intentionally, and sometimes require only the highest culpability requirement—intent. But a person who sets a fire, knowing a building will be damaged as a result, is not significantly less blameworthy than a person who subjectively intends to damage the building. By contrast, a person who is merely aware of a risk of damaging the building is significantly less blameworthy. The draft should remain as it is, punishing intentionally and knowingly causing damage the same.

(c) *Defined Term.* “Property” has the meaning given in Section 108(h).

### **Section 2303. 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.* The offense is a Class 6 felony.

(c) *Defined Terms.*

(1) “Damage” has the meaning given in Section 2306(c).

(2) “Incendiary device” has the meaning given in Section 2306(e).

### **Section 2304. Criminal Damage**

(a) *Offense Defined.* A person commits an offense if the person:

(1) damages property of another; or

(2) tampers with property of another and thereby creates a risk of damage to property; or

(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, the offense is:

(A) a Class 6 felony if the pecuniary loss is \$1,000,000 or more; or

(B) a Class 7 felony if the pecuniary loss is \$100,000 or more; or

(C) a Class 8 felony if the pecuniary loss is \$25,000 or more; or

(D) a Class A misdemeanor if:

(i) the pecuniary loss is \$5,000 or more; or

(ii) the person intentionally causes a substantial interruption or impairment of a public service; or

(E) a Class B misdemeanor if the pecuniary loss is \$1,500 or more;

or

(F) a Class C misdemeanor if the pecuniary loss is \$100 or more; or

(G) a Class D misdemeanor if the pecuniary loss is less than \$100

and there has been a prior offense of a similar nature; and

(H) otherwise a violation.

(2) *Knowingly Causing Damage.* The grade of the offense under Subsection (b)(1)(A)–(G) shall be increased by one grade if the damage, loss, or risk is knowingly caused.

(c) *Defined Terms.*

(1) “Damage” has the meaning given in Section 2306(c).

(2) “Public service” has the meaning given in Section 2306(f).

(3) “Property of another” has the meaning given in Section 2102(b)(4).

**Section 2305. Causing or Risking Catastrophe; Ecological 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 by any other means of causing potentially widespread injury or damage.

(2) *Grading.* The offense is:

(A) a Class 2 felony if the catastrophe is knowingly caused.

(B) a Class 4 felony if the catastrophe is recklessly caused.

**(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 Subsection (a)(1).

(2) *Grading.* The offense is a Class 7 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 Subsection (a)(1).

(2) *Grading.* The offense is a Class 8 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 an offense if the person:

(A) knows that he or she is under an official, contractual, or other legal duty to take such measures; or

(B) did or assented to the act causing or threatening the catastrophe.

(2) *Grading.* The offense is a Class A misdemeanor.

**(e) *Ecological Catastrophe.*** A person commits an offense if the person engages in any of the acts described in Subsections (a)–(d), but in relation to an ecological catastrophe.

(1) *Grading.* The grade of the offense:

(A) for causing an ecological catastrophe is:

(i) a Class 6 felony if knowingly caused; or

(ii) a Class 7 felony if recklessly caused.

(B) for risking an ecological catastrophe is a Class B misdemeanor.

(C) for threatening to cause an ecological catastrophe is a Class C misdemeanor.

(D) for failure to prevent an ecological catastrophe is a Class D misdemeanor.

(2) *Fines.* Per day that activity causing or risking ecological catastrophe continues, the offense is subject to a maximum fine of twice that provided for the grade of the offense under Section 803(a).

**(f) *Limitation on Convictions for Multiple Related Offenses.*** Section 210 [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.

(g) *Definitions.*

- (1) “Catastrophe” has the meaning given in Section 2306(a).
- (2) “Catastrophic agent” has the meaning given in Section 2306(b).
- (3) “Ecological catastrophe” has the meaning given in Section 2306(d).
- (4) “Solid waste” has the meaning given in 7 Del. C. § 6302(12).

**Section 2306. Definitions**

(a) “Catastrophe” means:

- (1) serious physical injury to five or more persons; or
- (2) substantial damage to five or more buildings or habitable structures; or
- (3) substantial damage to a vital public facility that seriously impairs its usefulness or operation.

“Serious physical injury” has the meaning given in Section 1202(d)(2).

(b) A “catastrophic agent” means an explosive, an incendiary device, a timing or detonating mechanism for such device, poison or poisonous gas, a deadly biological or chemical contaminant or agent, or a radioactive substance.

(c) “Damage” to property means impairing its usefulness or value by any means, and includes deleting or altering computer programs or other electronically recorded data, or impairing access to computer services. “Computer services” has the meaning given in Section 805(d)(1).

(d) “Ecological catastrophe” means substantial damage to a marine environment within the State or any other ecological environment designated by law to be so protected.

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

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

**CHAPTER 2400. BURGLARY AND OTHER CRIMINAL TRESPASS OFFENSES**

Section 2401. Burglary and Home Invasion

Section 2402. Criminal Trespass

Section 2403. Definitions

**Section 2401. Burglary and Home Invasion**

(a) *Offense Defined.* A person commits an offense if the person:

- (1) with intent to commit an offense therein,
- (2) enters or remains in a building,
- (3) knowing that the person has no license or privilege to do so.

(b) *Grading.*

(1) *Home Invasion.* The offense is a Class 5 felony if:

- (A) the offense is committed in the dwelling of another, and
- (B) the dwelling is occupied, and
- (C) the offense intended under Subsection (a)(1) is robbery, aggravated or enhanced aggravated assault, homicide, rape, or kidnapping, and
- (D) the person attempts to complete that offense.

(2) *Aggravated Burglary.* If the offense is committed in the dwelling of another, it is:

- (A) a Class 6 felony if committed at night; or
- (B) a Class 7 felony in all other cases.

(3) *Burglary.* In all other cases, the offense is a Class 8 felony.

(4) *Grade Adjustment.* The grade of the offense shall be increased by one grade if, during commission of or flight from the offense, the defendant either:

- (A) is armed with explosives or a deadly weapon; or
- (B) causes physical injury to any person who is not a participant in the offense.

(c) *No Merger with Underlying Offense.* A person may be convicted of both an offense under Section 2401 and of committing or attempting to commit the offense that was the purpose of the person's unlawful entry.

(d) *Defined Terms.*

- (1) "Attempt" has the meaning given in Section 1107(b).
- (2) "Deadly weapon" has the meaning given in Section 5109(b).
- (3) "Dwelling" has the meaning given in Section 2403(a).
- (4) "Entry" has the meaning given in Section 2403(b).
- (5) "Physical injury" has the meaning given in Section 1210(b).

**Section 2402. Criminal Trespass**

(a) *Offense Defined.* A person commits an offense if the person:

- (1) enters or remains in or upon any real property,

- (2) knowing that he or she has no license or privilege to do so.
- (b) *Grading*. The offense is:
  - (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.
- (c) *Defined Terms*.
  - (1) “Dwelling” has the meaning given in Section 2403(a).
  - (2) “Real property” has the meaning given in Section 2403(c).

**Section 2403. Definitions**

- (a) “Dwelling” means a structure or vehicle in which a person usually lodges.
- (b) “Entry” is made upon premises when a person introduces any body part or any part of any instrument, by whatever means, into or upon the premises.
- (c) “Real property” means land or any permanent structures attached to land, including buildings.

**OFFENSES AGAINST PUBLIC ADMINISTRATION****CHAPTER 3100. BRIBERY, IMPROPER INFLUENCE, AND OFFICIAL MISCONDUCT**

Section 3101. Bribery

Section 3102. Improper Influence

Section 3103. Official Misconduct

Section 3104. Definitions

**Section 3101. 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 a:

(A) public servant; or

(B) party officer; or

(C) witness; and

(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 he or she:

(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 his or her employment or function; and

(2) he or she is not authorized by law to accept that personal benefit.

(c) *Grading.* The offense is:

(1) a Class A misdemeanor if, in a prosecution under Subsection (a), the defendant's conduct was a direct response to wrongdoing by the bribe recipient.

(2) a Class 7 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 person's office or employment, regardless of whether the conviction is later vacated or reversed on appeal.

(e) *Defined Terms.*

(1) "Party officer" has the meaning given in Section 3104(b).

(2) "Personal benefit" has the meaning given in Section 3104(c).

(3) "Public servant" has the meaning given in Section 3104(d).

**Section 3102. Improper Influence**

(a) *Offense Defined.* A person commits an offense if he or she 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 no defense to a prosecution under this Section that a person whom the actor sought to influence was not qualified to act in the desired way, whether because the person had not yet assumed office, lacked jurisdiction, or for any other reason.

(c) *Grading.* The offense is a Class 8 felony.

(d) *Defined Terms.*

(1) “Coercion” has the meaning given in Section 1107(c).

(2) “Party officer” has the meaning given in Section 3104(b).

(3) “Public servant” has the meaning given in Section 3104(d).

### **Section 3103. Official Misconduct**

(a) *Official Misconduct: Offense Defined.* A person commits an offense if he or she is a public servant, and, intending to obtain a personal benefit or to cause harm to another person, the person:

(1) performs an act the person knows is in excess of the person’s authority;

or

(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 public servant’s official functions; or

(3) performs official functions in a way intended to benefit the person’s own property or financial interests; or

(4) knowingly performs official functions in a way that is intended to discriminate on the basis of race, creed, color, sex, age, handicapped status, 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 by the public servant or by a governmental entity with which the public servant is associated, or in reliance on information to which the public servant has access in an official capacity and that has not been made public, the person knowingly:

(1) acquires a pecuniary interest in any property, transaction, or enterprise that may be affected by the official action or information; or

(2) speculates or wagers on the basis of the official action or information;

or

(3) aids another person to engage in an act prohibited by Subsection (b)(1) or (b)(2), intending to thereby gain a personal benefit.

(c) *Grading.* The offense:

(1) under Subsection (a) is a Class 7 felony.

(2) under Subsection (b) is a Class A misdemeanor.

(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 person’s office or employment, regardless of whether the conviction is later vacated or reversed on appeal.

(e) *Defined Terms.*

- (1) “Enterprise” has the meaning given in 5304(b).
- (2) “Harm to another person” has the meaning given in Section 3104(a).
- (3) “Personal benefit” has the meaning given in Section 3104(c).
- (4) “Property” has the meaning given in Section 108(h).
- (5) “Public servant” has the meaning given in Section 3104(d).

**Section 3104. Definitions**

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

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

(c) “Personal benefit” means:

- (1) any gain or advantage to the recipient personally; or
- (2) a gain or advantage conferred on the behalf of another person in whose welfare the person is interested.

(d) “Public servant” means:

- (1) any officer or employee of the State or any political subdivision thereof,  
and
- (2) persons who are candidates for office or who have been elected to office but who have not yet assumed office, and
- (3) includes jurors, and advisors and consultants performing governmental functions, but not witnesses.

**CHAPTER 3200. PERJURY AND OTHER OFFICIAL FALSIFICATION OFFENSES**

Section 3201. Perjury

Section 3202. Falsification Under Penalty

Section 3203. Tampering with Public Records

Section 3204. Criminal Impersonation

Section 3205. Definitions

**Section 3201. 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.* The offense is:

(1) a Class 6 felony if:

(A) the false statement is an oral, testimonial statement in an official proceeding, and

(B) the statement is material to the proceeding.

(2) a Class 7 felony if the false statement is:

(A) made in a written instrument that would have no legal efficacy in a court of law absent the oath,

(B) the written instrument is delivered to another person with intent to deceive a public servant, and

(C) the 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 defendant:

(1) retracted the false statement,

(2) in the course of the same proceeding in which it was made, and

(3) the retraction was made:

(A) before the false statement materially affected the proceeding or matter, and

(B) before 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 no defense that:

(1) the defendant was not competent under the Rules of Evidence to make the allegedly false statement; or

(2) the defendant mistakenly believed the false statement to be immaterial;

or

(3) the oath was administered or taken in an irregular manner; or

(4) a written statement purporting to be made under oath was not in fact made under oath; or

(5) the court in which the acts constituting the offense were committed lacked jurisdiction over the person of the defendant or over the subject matter.

(e) *Evidentiary Rules.*

(1) *Proof of Falsity.* Where contradictory statements are made under oath in the same or in different proceedings or matters:

(A) the prosecution need not specify which statement is false, and

(B) the falsity of one or the other of the statements may be established by proof of their 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 a single witness.

(f) *Defined Terms.*

(1) “Oath” has the meaning given in Section 3205(a).

(2) “Statement is material” has the meaning given in Section 3205(b).

### **Section 3202. Written Falsification Under Penalty**

(a) *Offense Defined.* A person commits an offense if the person:

(1) makes a false statement,

(2) that the person does not believe to be true,

(3) 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 a single witness.

(c) *Grading.* The offense is a Class A misdemeanor.

### **Section 3203. Tampering with Public Records**

(a) *Offense Defined.* A person commits an offense if:

(1) he or she:

(A) knowingly removes, mutilates, destroys, conceals, makes a false entry in, or falsely alters; or

(B) having a legal duty to do so, knowingly fails to make an entry in;

(2) any record or written instrument:

(A) belonging to, or received or kept by the government for information or record; or

(B) required by law to be kept by another for government reference.

(b) *Grading.* The offense is a Class A misdemeanor.

### **Section 3204. Criminal Impersonation**

(a) *Offense Defined.* A person commits an offense if he or she falsely represents himself or herself to be:

(1) a public servant; or  
(2) a peace officer, firefighter, emergency medical technician, paramedic, or fire police officer, and the representation is made with intent to facilitate the commission of or flight from an offense.

(b) *Grading.* The offense:

(1) under Subsection (a)(1) is a Class A misdemeanor.

(2) under Subsection (a)(2) is:

(A) a Class 5 felony if the offense facilitated:

(i) results in physical injury to anyone; or

(ii) is a Class 1, 2, 3, or 4 felony; or

(iii) an offense in Chapter 1300 [sexual offenses].

(B) a Class 7 felony in all other cases.

(c) *Defined Terms.*

(1) “Peace officer” has the meaning given in Section 3305(d).

(2) “Physical injury” has the meaning given in Section 1202(d)(1).

(3) “Public Servant” has the meaning given in Section 3104(d).

(4) “Sexual intercourse” has the meaning given in Section 1306(e).

### **Section 3205. Definitions**

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

(b) A “statement is material” when, regardless of its admissibility under the Delaware Uniform Rules of Evidence, it could have affected the course or outcome of the proceeding or investigation.

**CHAPTER 3300. OFFENSES INVOLVING OBSTRUCTION OF GOVERNMENTAL  
OPERATIONS; ESCAPE**

Section 3301. Obstructing Justice

Section 3302. Resisting or Obstructing a Law Enforcement Officer

Section 3303. Obstructing Administration of Law or Other Government Function

Section 3304. Refusing to Aid an Officer

Section 3305. Escape

Section 3306. Prohibited Conduct Related to Official Custody

Section 3307. Intimidating, Improperly Influencing, or Retaliating Against a Witness,  
Juror, or Victim

Section 3308. Criminal Contempt

Section 3309. Definitions

**Section 3301. Obstructing Justice**

(a) *Offense Defined.* A person commits an offense if:

(1) with intent to prevent, hinder, or delay the investigation, apprehension, prosecution, or defense of any person,

(2) he or she:

(A) provides what he or she 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; or

(B) harbors or conceals the person; or

(C) warns the person of impending apprehension; or

(D) provides the person with money, transportation, a weapon, a disguise, or other means of avoiding apprehension; or

(E) prevents a third person from aiding in the apprehension of the person, or lodging a criminal charge against the person; or

(F) not being a public servant, solicits, confers, or accepts a benefit in exchange for dropping, withholding, or refraining from initiating a criminal prosecution; or

(G) (i) destroys, alters, conceals, or falsifies physical evidence; or

(ii) suppresses use of physical evidence by force, intimidation, or deception; or

(iii) produces or offers false physical evidence in a proceeding; or

(H) alters, conceals, or falsifies information about an electronic or telephone communication, including its:

(i) existence,

(ii) place of origin or destination, or

(iii) originating or receiving telephone number, address, or account; or

(I) fails to stop and await the arrival of law enforcement or emergency personnel following an automobile collision:

- (i) in which the person drove an involved vehicle, and
- (ii) that resulted in the physical injury or death of any person.

(b) *Grading.*

(1) The offense under Subsection (a)(2)(G) is a Class 8 felony.

(2) The offense under Subsection (a)(2)(I) is:

(A) a Class 7 felony if the collision causes death; or

(B) a Class 8 felony if the collision causes physical injury.

(3) Otherwise, the offense is:

(A) a Class 8 felony if the offense under investigation or prosecution is a felony; or

(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 Subsection (a)(2)(F), it is a defense that the benefit did not exceed the amount that the accused believed to be due to him or her as restitution or indemnification for harm caused by the underlying offense.

(d) *Defined Terms.*

(1) “Deception” has the meaning given in Section 2110(b)

(2) “Electronic communication” has the meaning given in Section 4307(e).

(3) “Law enforcement officer” has the meaning given in Section 3309(c).

(4) “Originating address” or “originating account” has the meaning given in Section 4307(h).

(5) “Physical evidence” has the meaning given in Section 3309(f).

(6) “Physical injury” has the meaning given in Section 1210(b).

(7) “Receiving address” or “receiving account” has the meaning given in Section 4307(k).

(8) “Statement is material” has the meaning given in Section 3502(b).

**Section 3302. Resisting or Obstructing a Law Enforcement Officer**

(a) *Offense Defined.* A person commits an offense if he or she:

(1) knowingly resists, obstructs, or interferes with the performance of an act within the course and scope of employment

(2) of one known by the person to be a law enforcement officer, firefighter, correctional officer, or emergency medical personnel.<sup>18</sup>

(b) *Grading*. The offense is:

(1) a Class 5 felony if the offense conduct includes disarming a law enforcement officer of his or her weapon.

(2) a Class 8 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*.

(1) “Correctional officer” has the meaning given in Section 308(a).

(2) “Deadly weapon” has the meaning given in Section 5109(n).

(3) “Law enforcement officer” has the meaning given in Section 3309(b).

(4) “Physical injury” has the meaning given in Section 1210(b).

### **Section 3303. Obstructing Administration of Law or Other Government Function**

(a) *Offense Defined*. A person commits an offense if he or she:

(1) knowingly obstructs, impairs, or perverts the administration of law or other governmental function

(2) by physical interference or obstacle, breach of official duty, or any unlawful act.

(b) *Grading*. The offense is:

(1) a Class 7 felony if the offense conduct is obstructing the efforts of public health officials or agencies to control a viral outbreak or other public health emergency.

(2) a Class 8 felony if the offense conduct is obstructing entry into premises for an inspection authorized by 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 Term*. “Juror” has the meaning given in Section 3309(b).

### **Section 3304. Refusing to Aid an Officer**

(a) *Offense Defined*. A person commits an offense if, when commanded to do so, he or she:

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<sup>18</sup> **Issue:** Should emergency personnel be removed from the list of special persons covered by Section 3302?

**Pro:** Current law does not criminalize obstruction of emergency personnel. Section 3302 does broaden the class of persons whose official acts are protected beyond that of current law, but keeps the group very narrow, adding only correctional officers (a type of law enforcement officer) and fire fighters (due to the catastrophic effects of obstructing their efforts). Adding more classes beyond this narrow group could proliferate the number of groups, rendering useless the general obstruction offense in Section 3303.

**Con:** Adding emergency medical personnel is a natural extension of the protections already given to other first-responders in this Section. No other classes need be added beyond this.

- (1) knowingly fails to provide reasonable aid
- (2) to a person known by the defendant to be a peace officer
- (3) in:

- (A) effecting a lawful arrest, or
- (B) preventing the commission of an offense by another person.

(b) *Grading*. The offense 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) shall not be held liable to any person for damages resulting from that aid.

(d) *Defined Term*. "Peace officer" has the meaning given in Section 3309(d).

### **Section 3305. Escape**

(a) *Offense Defined*. A person commits an offense if:

(1) he or she is:

- (A) imprisoned in penal custody under a conviction or charge for an offense; or
- (B) otherwise in lawful penal custody, or civilly committed; or
- (C) restrained by a public servant pursuant to an arrest or court order; or
- (D) placed in nonsecure facilities by the Division of Youth Rehabilitative Services; and

(2) knowing the person is not permitted to do so, he or she departs from custody, commitment, restraint, or placement.

(b) *Grading*. The offense:

(1) under Subsection (a)(1)(A) for escape from penal custody is:

- (A) a Class 4 felony if the person causes physical injury to anyone from the time of escape until the person has been returned to penal custody.
- (B) a Class 5 felony if the person uses force or threat of force, or possesses a deadly weapon, during commission of the offense.
- (C) a Class 6 felony in all other cases.

(2) under Subsection (a)(1)(B) is a Class 8 felony.

(3) under Subsection (a)(1)(C) or (a)(1)(D) is a Class A misdemeanor.

(c) *Defined Terms*.

- (1) "Deadly weapon" has the meaning given in Section 5109(b).
- (2) "Penal custody" has the meaning given in Section 3309(e).
- (3) "Public servant" has the meaning given in Section 3104(d).

### **Section 3306. Prohibited Conduct Related to Official Custody**

(a) *Promoting Prison Contraband: Offense Defined*. A person commits an offense if, except as authorized by law, he or she:

(1) introduces what the person knows to be contraband into a detention facility; or

(2) possesses contraband with intent to deliver it a person confined in a detention facility; or

(3) being confined in a detention facility, 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 he or she:

(1) communicates by mail with a person not in custody in a manner the person knows is likely to cause inconvenience, annoyance, or alarm; or

(2) designates a written communication as legal mail, knowing that the communication is wholly unrelated to any legal matter.

(c) *Grading.* The offense is:

(1) a Class 7 felony under Subsection (a) if the contraband is a deadly weapon; or

(2) a Class 8 felony under Subsection (a) if the contraband is a mobile phone or other prohibited electronic device; or

(3) a Class A misdemeanor in all other cases.

(d) *Defined Terms.*

(1) “Contraband” has the meaning given in Section 3309(a).

(2) “Deadly weapon” has the meaning given in Section 5109(b).

### **Section 3307. Intimidating, Improperly Influencing, or Retaliating Against a Witness, Juror, or Victim**

(a) *Offense Defined.* A person commits an offense if:

(1) with intent to:

(A) influence the performance of a juror’s duties; or

(B) deter a party or witness from testifying freely, fully, or truthfully in an official proceeding; or

(C) annoy, harass, intimidate, or victimize a current or former juror or witness because of the victim’s service as a juror or witness; or

(D) prevent a victim or witness from:

(i) reporting a crime;

(ii) assisting in the prosecution of a complaint, indictment, information, or probation or parole violation; or

(iii) arresting or seeking the arrest of any person in connection with a crime;

(2) he or she:

(A) causes or threatens physical injury to anyone; or

(B) deceives, persuades, or commits an offense against the person or a third person; or

(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.* The offense:

(1) under Subsection (a)(2)(A) is a Class 5 felony.

(2) under Subsection (a)(2)(B) is:

(A) a Class 5 felony if committed:

(i) in furtherance of a conspiracy, or

(ii) for financial gain; or

(B) a Class 6 felony in all other cases.

(3) under Subsection (a)(2)(C) is a Class A misdemeanor.

(d) *Defined Terms.*

(1) “Deceives” has the meaning given in Section 2110(b).

(2) “Juror” has the meaning given in Section 3309(b).

(3) “Physical injury” has the meaning given in Section 1210(b).

(4) “Witness” has the meaning given in Section 3309(g).

### **Section 3308. Criminal Contempt**

(a) *Criminal Contempt: Offense Defined.* A person commits an offense if he or she engages in the following conduct:

(1) (A) disorderly, contemptuous, or insolent behavior,

(B) committed during the sitting of a court,

(C) in the court’s immediate view and presence, and

(D) directly tending to interrupt the court’s proceedings, or to impair the respect due to its authority; or

(2) breach of the peace, noise, or other disturbance directly tending to

interrupt a court’s proceedings; or

(3) persistent refusal:

(A) to be sworn as a witness in any court proceeding; or

(B) having been sworn in, to answer a proper question; or

(4) publishing what the person knows to be a false or grossly inaccurate report of a court’s proceedings; or

(5) persistent refusal to serve as a juror; or

(6) intentional, unexcused failure by a juror to attend a trial for which the person has been chosen to serve as a juror; or

(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; or

(8) knowing disobedience or resistance to the process, injunction, order, or other mandate of a court.

(b) *Grading.* The offense:

(1) under Subsection (a)(1) is a Class B misdemeanor.

(2) under Subsection (a)(2)–(7) is a Class A misdemeanor.

(3) under Subsection (a)(8) is

(A) a Class 8 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, and the violation or failure:

(i) results in physical injury to any person; or

(ii) 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 Subsection (a)(1) may be convicted and sentenced, without further criminal proceedings, during or immediately after termination of the proceeding in which the conduct constituting the offense occurred.

(d) *Defined Terms.*

(1) “Deadly weapon” has the meaning given in Section 5109(b)

(2) “Juror” has the meaning given in Section 3309(c).

(3) “Physical injury” has the meaning given in Section 1210(b).

### **Section 3309. Definitions**

(a) “Contraband” means:

(1) intoxicating liquor; or

(2) drug prohibited under [Chapter 47 of Title 16, current law]; or

(3) tobacco or nicotine products; or

(4) money, without the knowledge or consent of the Department of Health and Social Services; or

(5) any instrument that may be used to effect an escape; or

(6) mobile phone or other electronic device; or

(7) a deadly weapon or a part thereof.

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

(c) “Law enforcement officer” means a public servant who is authorized by law or by a government agency to engage in or supervise the prevention, detection, investigation, or prosecution of offenses.

(d) “Peace officer” means any person who, by virtue of his or her 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.

(e) “Penal custody” means custody in a detention facility or a facility of the Department of Corrections.

(f) “Physical evidence” means any object, document, record, or other physical item that is, or is about to be, used as evidence in an official proceeding.

(g) “Witness” means any person who:

(1) has knowledge of the existence or nonexistence of facts relating to any offense; or

(2) has testified or been served with a subpoena to testify under oath at an official proceeding; or  
(3) has reported an offense.

**OFFENSES AGAINST PUBLIC HEALTH, ORDER, AND DECENCY****CHAPTER 4100. OFFENSES AGAINST PUBLIC ORDER AND SAFETY**

Section 4101. Riot; Disorderly Conduct; Failure to Disperse

Section 4102. Public Alarms

Section 4103. Stalking

Section 4104. Public Intoxication

Section 4105. Loitering

Section 4106. Obstructing Public Ways

Section 4107. Desecration

Section 4108. Definitions

**Section 4101. 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, he or she:

(1) engages in fighting, or in violent, tumultuous, or threatening behavior;

or

(2) makes unreasonable noise or offensively coarse utterance, gesture, or display, or addresses abusive language to any person present; or

(3) disturbs any lawful assembly or meeting of persons without lawful authority; or

(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:

(1) he or she and at least one other person are participating in an offense under Subsection (a), and

(2) a peace officer or other public servant engaged in executing or enforcing the law orders the participants and others in the immediate vicinity to disperse, and

(3) the person refuses or knowingly fails to obey the order.

(c) *Grading.*

(1) *Riot.* The offense under Subsection (a) is a Class 8 felony if the person participates in it with two or more other persons:

(A) with intent to commit or facilitate the commission of an offense;

or

(B) with intent to prevent or coerce official action; or

(C) in which the person knows a firearm or other deadly weapon will be used.

(2) *Disrupting a Funeral.* The offense under Subsection (a) 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:

(A) intentionally disturbs or disrupts a funeral, memorial service, or funeral procession; or

(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) is a Class C misdemeanor.

(4) *Disorderly Conduct*. In all other cases, the offense under Subsection (a) is a Class D misdemeanor.

(d) *Defined Terms*.

(1) “Deadly weapon” has the meaning given in Section 5109(b).

(2) “Firearm” has the meaning given in Section 5109(e).

### **Section 4102. False Public Alarms**

(a) *Offense Defined*. A person commits an offense if, knowing that the report, warning, or call is false or baseless, he or she:

(1) initiates or circulates a report or warning of an impending occurrence of a fire, explosion, crime, catastrophe or other emergency:

(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; or

(B) to any law enforcement officer, agency, or other public safety official; or

(2) calls or summons any fire-fighting apparatus, ambulance, or rescue truck.

(b) *Grading*. The offense is a Class A misdemeanor.

(c) *Defined Term*. “Law enforcement officer” has the meaning given in Section 3309(c).

### **Section 4103. Stalking**

(a) *Harassment: Offense Defined*. A person commits an offense if he or she:

(1) with intent to harass, annoy, or alarm another:

(A) makes communications repeatedly, anonymously, or in offensively coarse language; or

(B) engages in any other alarming or distressing conduct that:

(i) serves no legitimate purpose, and

(ii) is in a manner likely to provoke a violent or disorderly response, or to cause a reasonable person to suffer fear, alarm, or distress. or;

(2) knowingly and repeatedly follows, monitors, or interferes with the activities or the property of another in a manner described in Subsection (b)(1)(A)(iii).

(3) *Picketing: Defense.* It is a defense to Harassment that the defendant was engaged in lawful picketing.

(b) *Grading.*

(1) *Stalking.*

(A) If the defendant's conduct offense under Subsection (a):

(i) spans three or more separate incidents,

(ii) is directed at a specific person, and

(iii) would cause a reasonable person in the victim's

circumstances to:

(aa) fear physical injury to any person; or

(bb) suffer other substantial mental anguish or distress, regardless of whether that suffering requires medical or other professional treatment or counseling;

(B) then the offense is:

(i) a Class 7 felony if:

(aa) the defendant is 21 years of age or older, and the victim is less than 14 years of age; or

(bb) the defendant's conduct violates a court order prohibiting contact with the victim; or

(ii) a Class 8 felony in all other cases.

(2) *Harassment.* In all other cases, the offense under Subsection (a) is a Class A misdemeanor.<sup>19</sup>

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<sup>19</sup> **Issue:** Should the offenses of Harassment and Stalking be defined in separate Sections of the Proposed Code.

**Pro:** Current law addresses harassment and stalking by two distinct provisions (11 Del. C. §§ 1311 and 1312). Such separate treatment properly highlights the substantially more serious nature of criminal conduct amounting to stalking, as compared to harassment. Stalking can, for instance, can be terribly frightening for victims because of its unrelenting and invasive nature. It is, therefore, always a felony. Harassment, on the other hand, is a less condemnable criminal behavior and is therefore graded as a misdemeanor. Consolidating the two provisions into one Section of the Proposed Code and treating stalking as a grading of harassment is confusing. Furthermore it may deemphasize the law's condemnation of stalking behavior.

**Con:** Consolidating various related forms of criminal conduct into a single comprehensive offense and using grading distinctions to account for differences between them whenever practicable is *the* standard drafting form of the Proposed Code (*see e.g.*, Section 2102 [Assault]; Section 2401 [Burglary and Home Invasion]; Section 3101 [Bribery]). There is nothing unique in the case of stalking from this perspective. The advantages of this drafting approach include creating a clear, concise, internally coherent and accessible criminal code. While this form of drafting is intentionally different from that of current law to overcome its many shortcomings, it also maintains all of its benefits. In the case of the stalking offense, nothing is lost due to the new form of drafting. Section 4103 still contains the word "stalking" both in its heading and in the specific grading provision referring to such course of conduct. "Stalking" can still be listed in an indictment and prosecuted. And there is still a dramatic grading difference between harassment (Class A misdemeanor) and "stalking" (Class 7 or 8 felony), highlighting the more condemnable nature of the latter. Carving out a separate stalking offense, would achieve nothing that is not already achieved by the Proposed Code. (Con't next page.)

(c) *Defined Term*. “Physical injury” has the meaning given in Section 1210(b).

#### **Section 4104. Public Intoxication**

(a) *Offense Defined*. A person commits an offense if he or she:

(1) appears in a public place manifestly under the influence of alcohol, narcotics, or any other drug not administered or prescribed by a physician,

(2) to the degree that the person may be in danger or endanger other persons or property, or annoy persons in the vicinity.

(b) *Grading*. The offense is a violation.

(c) *Defined Term*. “Public place” has the meaning given in Section 4108(c).

#### **Section 4105. Loitering**

(a) *Offense Defined*. A person commits an offense if he or she:

(1) loiters, congregates with others, or prowls,

(2) in a place, at a time, or in a manner not usual for law-abiding individuals, and

(3) under circumstances that warrant alarm for the safety of persons or property in the vicinity.

(b) *Requirement of Request to Identify and Explain*. Unless flight by the defendant or other circumstances make it impracticable, a peace officer shall, before any arrest for an offense under this Section, afford the defendant an opportunity to dispel any alarm that would otherwise be warranted, by requesting identification and an explanation of the person’s presence and conduct.

(c) *Bar to Conviction*. No person shall be convicted of an offense under this Section if the peace officer did not comply with Subsection (b), or if it appears at trial that the explanation given by the defendant was true and, if believed by the peace officer 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 defendant committed the offense as a direct result of being a victim of human trafficking under Section 1402.

(e) *Grading*. The offense is a violation.

(f) *Defined Terms*.

(1) “Loiters” has the meaning given in Section 4108(a).

(2) “Peace officer” has the meaning given in Section 3309(d).

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Yet, the costs of deviation from the Proposed Code’s drafting structure, are substantial, undermining the law’s succinctness, coherence, and accessibility, and creating additional dangers to its integrity in the long run. Presently, the Proposed Code follows a single sensible drafting format. However, deviating from that format by carving out stalking – without any special compelling justification, and without it achieving anything beyond what the Proposed Code already achieves – creates an alarming precedent and introduces a second drafting format into the Proposed Code. Despite that format’s inferiority for criminal law drafting, due to its familiarity and the existence of precedent, subsequent legislation is more likely to follow *it*, rather the standard format of the Proposed Code. This process will incrementally degrade the Proposed Code by further decreasing its clarity and comprehensiveness, and will facilitate the deterioration of the Delaware’s criminal law to a state of disarray similar to that of current law.

**Section 4106. Obstructing Public Ways**

(a) *Offense Defined.* A person commits an offense if, except as authorized by law, he or she:

(1) recklessly renders any public passage unreasonably inconvenient or hazardous to use; or

(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 Subsection (a)(1) that the defendant was engaged in lawful picketing.

(c) *Grading.* The offense is a Class D misdemeanor.

(d) *Defined Term.* “Public passage” has the meaning given in Section 4108(b).

**Section 4107. Desecration**

(a) *Offense Defined.* A person commits an offense if:

(1) knowing it will outrage the sensibilities of persons likely to observe or discover the actions,

(2) he or she intentionally defaces, damages, pollutes or otherwise physically mistreats any:

(A) public monument or structure, or place of worship; or

(B) other object of veneration by the public or a substantial segment thereof in a public place; or

(C) burial place.

(b) *Grading.* The offense is a Class A misdemeanor.

**Section 4108. Definitions**

(a) “Loiters” means to stand or sit idly without a legitimate reason for doing so.

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

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

## CHAPTER 4200. PUBLIC INDECENCY AND OBSCENITY OFFENSES

- Section 4201. Public Indecency
- Section 4202. Prostitution; Patronizing a Prostitute
- Section 4203. Promoting or Permitting Prostitution
- Section 4204. Distribution and Possession of Obscene Material and Child Pornography
- Section 4205. Unauthorized Combat Event
- Section 4206. Abuse of Human Remains or Associated Funerary Objects
- Section 4207. Cruelty to Animals
- Section 4208. Definitions

### Section 4201. Public Indecency

- (a) *Public Sexual Act: Offense Defined.* A person commits an offense if he or she:
  - (1) (A) is in a place open to public view; or
    - (B) knows he or she is being viewed by a child less than 16 years of age; and
  - (2) either:
    - (A) performs an act of sexual intercourse or sexual conduct; or
    - (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 he or she:
  - (1) is in a place open to public view, and
  - (2) either:
    - (A) exposes the person's sex organs, anus, or breast; or
    - (B) urinates or defecates.
- (c) *Exception.* Breast-feeding of an infant is not an offense under this Section.
- (d) *Grading.* The offense:
  - (1) under Subsection (a)(1)(B) is:
    - (A) a Class 8 felony if the person stands in a position of trust, authority, or supervision over the child; or
    - (B) a Class A misdemeanor in all other cases.
  - (2) under Subsection (a) is a Class B misdemeanor in all other cases.
  - (3) under Subsection (b) is a Class D misdemeanor.
- (e) *Defined Terms.*
  - (1) "Place open to public view" has the meaning given in Section 4208(h).
  - (2) "Sexual conduct" has the meaning given in Section 4208(i).
  - (3) "Sexual intercourse" has the meaning given in Section 1306(e).
  - (4) "Position of trust, authority, or supervision" has the meaning given in Section 1306(b)

**Section 4202. Prostitution; Patronizing a Prostitute**

(a) *Offense Defined.* A person commits an offense if he or she offers or accepts a fee for performing any act of sexual contact.

(b) *Grading.*

(1) *Patronizing a Victim of Sexual Servitude.* If the person patronizes a prostitute that he or she knows is a victim of the offense under Section 1402 [human trafficking], the offense is:

(A) a Class 5 felony if the prostitute is less than 18 years of age.

(B) a Class 6 felony in all other cases.

(2) The offense is a Class B misdemeanor in all other cases.<sup>20</sup>

(c) *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 Section 1402.

(d) *Screening for Sexually Transmitted Diseases.* Any 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 only be released to the defendant, the defendant's spouse, and the court issuing the order for testing.

(e) *Definition and Defined Term.*

(1) For the purposes of this Section, an "offer" or "acceptance" may be made to or through a third person not participating in the sexual contact.

(2) "Sexual contact" has the meaning given in Section 1306(d).

**Section 4203. Promoting or Permitting Prostitution**

(a) *Offense Defined.* A person commits an offense if he or she:

(1) knowingly arranges a situation in which a person may engage in prostitution; or

(2) provides premises that the person knows will be used for prostitution; or

(3) accepts or receives anything of value from another person for acquiescing in or supporting prostitution activity.

(b) *Exemption for Prostitutes and Patrons.* Subsection (a) is inapplicable to prostitutes and persons patronizing prostitutes, as defined by Section 4202.

(c) *Grading.* The offense is:

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<sup>20</sup> **Issue:** Should 11 Del. C. § 1343(c)–(d), authorizing seizure and forfeiture of vehicles used in connection with patronizing a prostitute, be added to Section 4203?

**Pro:** Vehicle forfeiture economically addresses the reality that demand for prostitution creates supply, and that the demand side faces fewer practical consequences for prostitution activity. It degrades neighborhoods to have open-air prostitution, which is encouraged by solicitation from automobiles. It may also be the case that a solicited act of prostitution takes place in the vehicle, making it the equivalent of a brothel. As a compromise, forfeiture could be added as a consequence of a second or later conviction, but not a first conviction.

**Con:** Forfeiture of a high-value asset is disproportionate to the grade of the offense for patronizing prostitution. The offense is a Class B misdemeanor in proposed Section 4203, and is only "a misdemeanor" in current law. *See* 11 Del. C. § 1343(b). The maximum authorized fine for a Class B misdemeanor in 11 Del. C. § 4206(b) is \$1,150, which is significantly less than the value of most automobiles. Furthermore, patronizing prostitution is one of only two non-felonies subject to forfeiture in Title 11.

(1) a Class 4 felony if the prostitution involved in the offense includes prostitution of a person less than 16 years of age.

(2) a Class 5 felony if the prostitution involved in the offense includes prostitution of a person less than 18 years of age.

(3) a Class 7 felony if the person manages, controls, supervises, or owns a prostitution enterprise involving two or more prostitutes.

(4) a Class 8 felony in all other cases.

## **Section 4204. 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 he or she knowingly:

(A) sells, delivers, provides, publishes, exhibits, or otherwise makes available to any person any child pornography; or

(B) creates or participates in the creation of child pornography.

(2) *Possession of Child Pornography.* A person commits an offense if he or she possesses child pornography.

(3) *Dissemination of Pornography.* A person commits an offense if he or she knowingly:

(A) sells, delivers, provides, publishes, exhibits, or otherwise makes available to any person any representation or embodiment of obscenity; or

(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 Pornography for Distribution.* A person commits an offense if he or she:

(A) possesses any obscene material,

(B) with intent to sell or otherwise commercially disseminate that material.

(b) *Grading.* The offense:

(1) under Subsection (a)(1) is:

(A) a Class 4 felony if the offense is committed for financial gain; or

(B) a Class 5 felony in all other cases.

(2) under Subsection (a)(2) is:

(A) a Class 5 felony if the child pornography is possessed with intent that it be sold or otherwise commercially disseminated.

(B) a Class 7 felony in all other cases.

(3) under Subsection (a)(3) is:

(A) a Class 7 felony if the person provided obscene material to a person less than 18 years of age.

(B) a Class 8 felony in all other cases.

(4) under Subsection (a)(4) is a Class 8 felony.

(5) *Sexting Among Minors*. The offense is a Class C misdemeanor if:

(A) it involves a visual depiction, exchanged between peers, that would otherwise be child pornography, and

(B) the parties are 12 to 18 years of age or 19 years of age and enrolled in high school, and are no more than 3 years apart in age, and

(C) the offense involves a depiction of one of the parties, and

(D) for an offense involving dissemination, the defendant reasonably believed that the recipient would have consented to receiving the material if asked before dissemination.

(E) Dissemination outside of the relationship described above may only produce liability under Section 4305 [Unlawful Dissemination of Personal Pornography]<sup>21</sup>

(c) *Business Closure*. Upon conviction under this Section for obscenity or child pornography involving live conduct, the business or establishment that exhibited such conduct shall be closed for a period of 6 months.

(d) *Dissemination or Possession for Gain: Permissive Inference*. The trier of fact may infer that a person 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 Obscenity in Special Circumstances: Defense*. It is a defense to prosecution for an offense under Subsection (b)(3)(B) or (b)(4) that the dissemination:

(A) was not for financial gain, and was made to a personal associate who was 18 years of age or older; or

(B) 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 Section 1402.

(3) *Victims of Child Pornography*. It is a defense to prosecution under Subsection (a)(1)(B) for participating in the creation of child pornography that the person is a victim of the offense.

(f) *Defined Terms*.

(1) “Obscene” has the meaning given in Section 4208(g).

(2) “Child pornography” has the meaning given in Section 4208(a).

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<sup>21</sup> **Issue:** Should Section 4204 contain this lower grade for cases of teenage “sexting”?

**Pro:** “Sexting” is a relatively recent phenomenon that technically satisfies the elements of child pornography offenses. But, where it involves consensual conduct between young persons in some kind of intimate relationship, sexting does not cause the sort of harm that the child pornography offenses exist to combat. Without this lower grade, sexting teenagers could be liable for very serious felonies. Note that most states are seeking to address this issue.

**Con:** No cases indicate that teens who engage in sexting are being charged with child pornography offenses. It is not necessary to complicate an already complicated area of law with these nuances.

**Section 4205. Unauthorized Combat Event**

(a) *Offense Defined.* A person commits an offense if he or she promotes, arranges, advertises, conducts, or participates as a competitor in a combat event that the person knows is unauthorized by law.

(b) *Grading.* The offense is a Class A misdemeanor.

(c) *Defined Term.* “Combat event” has the meaning given in Section 4208(b).

**Section 4206. Abuse of Human Remains or Associated Funerary Objects**

(a) *Offense Defined.* A person commits an offense if, except as authorized by law, he or she:

(1) treats human remains in a way that would outrage ordinary family sensibilities, while reckless as to the outrageousness of the treatment; or

(2) knowingly acquires, sells, or transports for profit:

(A) funerary objects associated with interment; or

(B) human remains removed from marked or unmarked burials.

(b) *Grading.* The offense:

(1) under Subsection (a)(1) is a Class A misdemeanor.

(2) under Subsection (a)(2)(A) is a Class B misdemeanor.

(3) under Subsection (a)(2)(B) is a Class 8 felony.

(c) *Defined Terms.*

(1) “Funerary object associated with interment” has the meaning given in Section 4208(e).

(2) “Human remains” has the meaning given in Section 4208(f).

(3) “Unmarked burial” has the meaning given in Section 4208(j).

**Section 4207. Cruelty to Animals**

(a) *Offense Defined.* A person commits an offense if he or she:

(1) subjects any animal to cruelty; or

(2) subjects, by neglect, any animal in the person’s custody to cruelty; or

(3) kills or injures any animal belonging to another without legal privilege, justification, or consent of the animal’s owner; or

(4) knowingly facilitates or promotes animal fighting or baiting.

(b) *Exceptions.*

(1) Subsections (a)(1) and (a)(2) are inapplicable to accepted veterinary practices and activities carried on for scientific research.

(2) This Section is inapplicable to lawful hunting or trapping of animals.

(c) *Grading.* The offense:

(1) under Subsection (a)(4) is a Class 7 felony.

(2) under Subsection (a)(3) is a Class 8 felony if the person 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 any animal after conviction for a period of:

(A) 15 years for offenses committed under Subsection (c)(1).

(B) 15 years for offenses committed under Subsection (c)(2), excluding commercial animals.

(C) 5 years for offenses committed under Subsection (c)(3), excluding commercial animals.

(2) *Forfeiture.* A person convicted under the Section forfeits:

(A) all animals in the person's custody that are victims under this Section, or that are owned illegally according to Chapter 79 of Title 3; and

(B) all 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:

(A) \$5,000 for offenses committed under Subsection (c)(1) or (c)(2).

(B) \$1,000 for all other offenses.

(4) *Counseling.* The court may require a person convicted under Subsection (a)(4) to attend and participate in an appropriate treatment program, or to 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:

(A) the conduct is immediately necessary to remove an unattended animal from a standing or parked motor vehicle, when

(B) the animal is confined in the vehicle under conditions likely to cause suffering, physical injury, or death,

(C) provided that:

(i) the person uses reasonable means to contact the owner of the animal, and

(ii) if 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 in Subsection (e)(1) is subject to the excuse defense for a mistake as to a justification in Section 410.

(3) *Excluded Animals.* The justification in this Subsection 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) *Definitions.*

(1) "Commercial animals" has the meaning given in Section 4208(c).

- (2) “Cruelty” has the meaning given in Section 4208(d).
- (3) “Law enforcement officer” has the meaning given in Section 3309(c).
- (4) “Serious physical injury” has the meaning given in Section 1210(c).

### **Section 4208. Definitions**

- (a) “Child pornography” means a visual depiction or depictions of a person or persons less than 16 years of age engaged in sexual conduct,
- (1) regardless of whether the depiction is actual or simulated, and
  - (2) even if the material has been created, adapted, modified, or edited to merely appear as though the person is engaged in sexual conduct.
- (b) “Combat event” means any match, contest, or event that features boxing, mixed martial arts, or any other combative sport.
- (c) “Commercial animals” means:
- (1) animals grown, raised, or produced within the State for resale, or for sale of a product thereof,
  - (2) where the person has all necessary licenses for that sale or resale, and
  - (3) the person receives at least 25 percent of the person’s annual gross income from that sale or resale.
- (d) “Cruelty” means any act or omission whereby unnecessary or unjustifiable physical pain, suffering, or death is caused or permitted.
- (e) “Funerary object associated with interment” means:
- (1) 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, and
  - (2) includes any gravestone, monument, tomb, or other structure in or directly associated with an existing burial site.
- (f) “Human remains” means any part of the body of a deceased human being in any stage of decomposition.
- (g) Any material or performance is “obscene,” whether a depiction is actual or simulated, if:
- (1) the average person, applying contemporary adult community standards, would find that, taken as a whole, it appeals to the prurient interest, and
  - (2) it depicts or describes, in a patently offensive way: ultimate sexual acts or sadomasochistic sexual acts, masturbation, excretory functions, or lewd exhibition of the genitals, and
  - (3) taken as a whole, it lacks serious literary, artistic, political, or scientific value.
- (h) “Place open to public view” means any place where people would not reasonably expect to see the conduct without their prior knowledge or consent.
- (i) “Sexual conduct” means any act designed to produce sexual gratification to any person. It is not limited to sexual intercourse.

(j) “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.

**CHAPTER 4300. INVASION OF PRIVACY OFFENSES**

- Section 4301. Unlawful Eavesdropping or Surveillance
- Section 4302. Voyeurism
- Section 4303. Interception of Private Information
- Section 4304. Unlawful Use of Information
- Section 4305. Unlawful Dissemination of Personal Pornography
- Section 4306. Unlawful Access to Information
- Section 4307. Definitions

**Section 4301. Unlawful Eavesdropping or Surveillance**

(a) *Offense Defined.* A person commits an offense if he or she, except as authorized by law, knowingly and without consent:

- (1) trespasses on real property with intent to subject anyone in a private place to eavesdropping or other surveillance; or
- (2) installs or uses in a private place, any device for observing, photographing, recording, amplifying, or broadcasting sounds, images, or events occurring in that place; or
- (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; or
- (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.* The offense is a Class A misdemeanor.

(c) *Defined Terms.*

- (1) "Private place" has the meaning given in Section 4307(j).
- (2) "Motor vehicle" has the meaning given in Section 2110(d).
- (3) "Trespass on real property" has the meaning given in Section 4307(l).

**Section 4302. Voyeurism**

(a) *Offense Defined.* A person commits an offense if he or she knowingly and without consent photographs, videotapes, or otherwise records the image of another person:

- (1) in the process of getting dressed or undressed; or
- (2) under or through the person's clothes; or
- (3) who is nude, partially nude, or engaging in sexual conduct.

(b) *Child's Consent Not Required.* Subsection (a) is inapplicable to a recording made by a parent of that parent's child who is less than 18 years of age, so long as the recording is not made with intent to provide sexual gratification to any person.

(c) *Grading.* The offense is a Class 8 felony.

(d) *Defined Term.* "Sexual conduct" has the meaning given in Section 4208(i).

**Section 4303. Interception of Private Information**

(a) *Offense Defined.* A person commits an offense if he or she, without consent:

(1) knowingly intercepts any private electronic, written, or oral communication; or

(2) divulges the contents of a communication that:

(A) the person knows was unlawfully intercepted under Subsection (a)(1); or

(B) the person learned about in the course of employment with an agency or communications common carrier engaged in transmitting the communication.

(b) *Grading.* The offense is a Class A misdemeanor.

(c) *Defined Terms.*

(1) “Contents of a communication” has the meaning given in Section 4307(c).

(2) “Electronic communication” has the meaning given in Section 4307(e).

(3) “Intercepts” has the meaning given in Section 4307(g).

(4) “Private communication” has the meaning given in Section 4307(i).

**Section 4304. Unlawful Use of Information**

(a) *Unlawful Use or Disclosure of Information: Offense Defined.* A person commits an offense if he or she:

(1) discloses or uses information or a recording that the person knows was obtained in a manner prohibited by Sections 4301, 4302, or 4303; or

(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:

(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; or

(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 person commits an offense if he or she:

(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; or

(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.* The offense:

(1) under Subsection (a) is a Class A misdemeanor.

(2) under Subsection (b) is a Class B misdemeanor.

(3) under Subsection (c) is a Class C misdemeanor.

(e) *Defined Terms.*

- (1) “Commercial electronic mail” has the meaning given in Section 4307(a).
- (2) “Computer system” has the meaning given in Section 4307(b).
- (3) “Data” has the meaning given in Section 4307(d).
- (4) “Electronic mail” has the meaning given in Section 4307(f).
- (5) “Originating address” or “originating account” has the meaning given in Section 4307(h).
- (6) “Receiving address” or “receiving account” has the meaning given in Section 4307(k).

**Section 4305. Unlawful Dissemination of Personal Pornography**

(a) *Offense Defined.* A person commits an offense if he or she:

(1) disseminates to anyone a visual depiction, not made for commercial purposes, of another person:

- (A) engaged in sexual conduct; or
- (B) revealing the person’s sex organs, breast, or anus;

(2) without the consent the person depicted.

(b) *Grading.* The offense is a Class A misdemeanor.

(c) *Defendant’s Participation, Consent to Possession Immaterial.* In a prosecution under this Section, it is immaterial that the defendant:

- (1) appears in the visual depiction with the victim; or
- (2) possessed the visual depiction lawfully before its dissemination.

(d) *Defined Term.* “Sexual conduct” has the meaning given in Section 4208(i).

**Section 4306. Unlawful Access to Information**

(a) *Offense Defined.* A person commits an offense if:

- (1) knowing the person is not authorized to do so,
- (2) he or she accesses, or causes to be accessed, information, electronic programs, or data.

(b) *Grading.* The offense is a Class C misdemeanor.

**Section 4307. Definitions**

(a) “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.

(b) “Computer system” means a computer, its software, related equipment, and communications facilities, if any.

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

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

(e) “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.

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

(g) “Intercepts,” when applied to a communication, means visual or aural acquisition, or the recording by any means, of all or part of the contents of the communication.

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

(i) “Private communication,” whether electronic, written, or oral, means communication made:

(1) with an expectation that such communication is not subject to interception, and

(2) under circumstances justifying that expectation.

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

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

(l) “Trespass on real property” means any act that satisfies the definition of a trespass in Section 2402(a).

**CHAPTER 4400. OFFENSES AGAINST THE FAMILY**

- Section 4401. Incest
- Section 4402. Bigamy
- Section 4403. Child Abandonment
- Section 4404. Interference with Custody
- Section 4405. Assisting a Runaway
- Section 4406. Contributing to the Delinquency of a Minor
- Section 4407. Persistent Non-Support
- Section 4408. Definition

**Section 4401. Incest**

- (a) *Offense Defined.* A person commits an offense if the person:
  - (1) engages in sexual intercourse or oral or object penetration
  - (2) with an individual to whom the person knows he or she:
    - (A) is related by blood, marriage, or adoption, and
    - (B) stands in one of the following relationships, regardless of whether the person is the elder or younger party:
      - (i) parent and child;
      - (ii) grandparent and grandchild;
      - (iii) sibling and sibling; or
      - (iv) niece or nephew and aunt or uncle.
- (b) *Grading.* The offense is a Class A misdemeanor.
- (c) *Defined Terms.*
  - (1) "Oral or object penetration" has the meaning given in Section 1306(a).
  - (2) "Sexual intercourse" has the meaning given in Section 1306(e).

**Section 4402. Bigamy**

- (a) *Offense Defined.* A person commits an offense if the person:
  - (1) already having a spouse, later marries another person; or
  - (2) being previously unmarried:
    - (A) marries another person,
    - (B) with knowledge of circumstances that render the other person guilty of an offense under Subsection (a)(1).
- (b) *Defense: Absent Spouse.* It is a defense to prosecution under this Section that the prior spouse had been living apart from the person for a period of 7 consecutive years, during which time the person did not know the prior spouse to be alive.
- (c) *Grade.* The offense is a Class 8 felony.

**Section 4403. Child Abandonment**

(a) *Offense Defined.* A person commits an offense if:

- (1) being a parent, guardian, or other person legally charged with the care or custody of a child,
- (2) the person leaves the child in any place,
- (3) intending to permanently end the person's care or custody.

(b) *Defense: Abandonment of Newborn at Hospital.* 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:

- (1) inside a hospital's emergency department,
- (2) directly to a staff member, and
- (3) the baby was alive and unharmed at the time of surrender.

(c) *Grading.* The offense is:

- (1) a Class 8 felony if the child is less than 14 years of age.
- (2) a Class A misdemeanor if the child is 14 years of age or older.

**Section 4404. 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 the victim's lawful custodian:

- (1) (A) a child less than 16 years old,  
(B) intending to hold the child permanently or for a prolonged period, and  
(C) the person is a relative of the child; or
- (2) a person entrusted by authority of law to the custody of another person or an institution.

(b) *Grading.* The offense is:

- (1) a Class 8 felony if the person, after commission of the offense under Subsection (a)(1), removes the child from this State.
- (2) a Class A misdemeanor in all other cases.

**Section 4405. Harboring or Assisting a Runaway**

(a) *Offense Defined.* A person commits an offense if, except as authorized by law, he or she:

- (1) knowingly encourages or aids a minor to run away from the minor's parents, guardian, or custodian; or
- (2) (A) without the consent of the minor's parents, guardian, or custodian, and without notifying local law enforcement authorities,  
(B) knowingly shelters the minor for more than 48 hours.

(b) *Grading.* The offense is a Class A misdemeanor.

**Section 4406. Contributing to the Delinquency of a Minor**

(a) *Offense Defined.* A person commits an offense if, being at least 4 years older than the influenced child, he or she:

(1) acts or fails to act in any way that knowingly causes a child less than 18 years of age to commit an offense; or

(2) (A) permits a child less than 18 years of age to enter or remain in a place where unlawful activity is taking place,

(B) knowing that doing so creates a risk that the child will commit an offense.

(b) *Grading*. The offense:

(1) under Subsection (a)(1) is a Class A misdemeanor.

(2) under Subsection (a)(2) is a Class B misdemeanor.

### **Section 4407. Persistent Non-Support**

(a) *Offense Defined*. A person commits an offense if he or she:

(1) (A) fails to meet the obligation of a court or administrative order of support,

(B) for a period of at least 4 months; or

(2) (A) refuses to provide food, clothing, medical care, or shelter for that person's dependent child,

(B) 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*.

(1) The offense under Subsection (a)(1) is:

(A) a Class 8 felony if:

(i) full and timely payment has not been made for a period of at least 8 months; or

(ii) the obligation is \$10,000 or more in arrears.

(B) a Class A misdemeanor in all other cases.

(2) The offense under Subsection (a)(2) is a Class B misdemeanor.

(c) *Fines Applied to Support Child*. Any money received in payment of a fine upon conviction under Subsection (a)(1) shall 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 Subsection (a)(2) be paid for the support of the child entitled to it. Funds received and distributed under this Subsection for either offense shall 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 defendant 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 defendant did not have the financial resources to pay or provide necessary support. But, the defendant's inability to pay must be the result of circumstances over which the defendant had no control, such as unemployment or

underemployment that persist despite the defendant diligently pursuing 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 Term.* “Dependent child” has the meaning given in Section 4408.

### **Section 4408. Definition**

“Dependent child” means:

- (1) a person less than 18 years of age; or
- (2) a person more than 18 years of age but less than 19 years of age who is enrolled in high school.

## CHAPTER 4500. GAMBLING OFFENSES

Section 4501. Unlawful Gambling and Betting Practices

Section 4502. Cheating and Related Practices

Section 4503. Definitions

### Section 4501. Unlawful Gambling and Betting Practices

(a) *Unlawful Gambling or Betting: Offense Defined.* A person commits an offense if, except as authorized by law, he or she:

- (1) sells a lottery ticket, except to raise funds for a charitable purpose; or
- (2) receives or records a bet upon the result of a trial or contest; or
- (3) bets upon the result of a trial or contest on behalf of any person; or
- (4) uses a private wire to disseminate or receive information in furtherance of gambling; or
- (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; or
- (6) benefits financially from investment, participation, or acquiescence in conduct, with knowledge of circumstances that render the conduct a violation of this Subsection; or
- (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, he or she provides or maintains premises that the person knows will be used:

- (1) for gambling activity; or
- (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.* The offense:

- (1) under Subsection (a)(1)–(6) is:
  - (A) a Class 8 felony if the trial or contest involved is animal fighting or baiting; or
  - (B) a Class A misdemeanor in all other cases; or
- (2) under Subsection (a)(7) is a violation; or
- (3) under Subsection (b) is a Class D misdemeanor.

(e) *Defined Terms.*

- (1) “Gambling device” has the meaning given in Section 4503(a).
- (2) “Lottery ticket” has the meaning given in Section 4503(b).
- (3) “Private wire” has the meaning given in Section 4503(c).
- (4) “Trial or contest” has the meaning given in Section 4503(e).

**Section 4502. 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, he or she:

- (1) alters the element of chance, method of selection, or criterion that determines:
  - (A) the result of a game; or
  - (B) the amount or frequency of payment in a game, including intentionally taking advantage of a malfunctioning machine; or
  - (C) the value of a wagering instrument; or
  - (D) the value of a wagering credit; or
- (2) uses a device, without the written consent of the Delaware Lottery Director, that is intended to assist anyone in:
  - (A) projecting the outcome of a table game or video lottery machine; or
  - (B) keeping track of the cards played; or
  - (C) analyzing the probability of the occurrence of an event relating to the game; or
  - (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 he or she:

- (1)
  - (A) offers, confers, solicits, or accepts anything of value
  - (B) with intent to influence the outcome of a trial or contest, or any game or event on which a wager may be placed; or
- (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 Subsection (b)(1).

(c) *Unfair Wagering: Offense Defined.* A person commits an offense if he or she:

- (1) places, cancels, or increases or decreases the amount of a wager,
- (2) on the basis of information regarding the outcome of a table game, and
- (3) that information is not available to other players.

(d) *Grading.* The offense:

- (1) under Subsection (a) is a Class A misdemeanor.
- (2) under Subsection (b) is a Class 8 felony.
- (3) under Subsection (c) is:
  - (A) a Class 5 felony if the amount gained or loss avoided is \$1,000,000 or more; or
  - (B) a Class 6 felony if the amount gained or loss avoided is \$100,000 or more; or
  - (C) a Class 7 felony if the amount gained or loss avoided is \$25,000 or more; or
  - (D) a Class 8 felony if the amount gained or loss avoided is \$5,000 or more; or

(E) a Class A misdemeanor if the amount gained or loss avoided is \$1,500 or more; or

(F) a Class B misdemeanor if the amount gained or loss avoided is \$100 or more; or

(G) a Class C misdemeanor if the amount gained or loss avoided is less than \$100 and there has been a prior offense of a similar nature; and

(H) otherwise a violation.

(I) *Aggregation.* When the offense under Subsection (c) is committed in a single scheme or continuous course of conduct, whether by one 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:

(1) any devices, slugs, or other materials used in the commission of the offense; or

(2) materials intended to be used to manufacture devices for cheating; or

(3) vehicles used to store those items.

(f) *Defined Terms.*

(1) “Table game” has the meaning given in Section 4503(d).

(2) “Video lottery machine” has the meaning given in Section 4503(f).

### **Section 4503. Definitions**

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

(b) “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.

(c) “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.

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

(e) “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. “Combat event” has the meaning given in Section 4208(b).

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

**CRIME CONTROL OFFENSES****CHAPTER 5100. OFFENSES INVOLVING FIREARMS AND OTHER DEADLY WEAPONS**

- Section 5101. Possessing a Firearm or Deadly Weapon During Commission of an Offense; Supplying a Firearm for Felonious Possession
- Section 5102. Dealing in Unlawful Weapons
- Section 5103. Carrying a Concealed Deadly Weapon or Dangerous Instrument
- Section 5104. Possessing or Purchasing Deadly Weapons by Persons Prohibited
- Section 5105. Providing Weapons to Disqualified Persons
- Section 5106. Possessing a Firearm While Under the Influence of Drugs or Alcohol
- Section 5107. Offenses Related to Background Checks for Firearm Sales
- Section 5108. Grade Adjustment for Offenses Committed in a Safe School and Recreation Zone
- Section 5109. Definitions

**Section 5101. 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 he or she possesses a firearm or deadly weapon during the commission of a felony

(b) *Supplying a Firearm for Use During Certain Offenses: Offense Defined.* A person commits an offense if he or she:

- (1) sells, gives, or otherwise supplies a firearm to another person,
- (2) knowing that the other person intends, while in possession of the firearm, to commit:

- (A) a felony; or
- (B) a Class A misdemeanor; or
- (C) an offense under Chapter 5200 [drugs].

(c) *Grading.* The offense:

- (1) under Subsection (a) is a Class 4 felony.
- (2) under Subsection (b) is a Class 7 felony.

(d) *Conviction for Underlying Felony: Limitation.* A defendant may not be convicted of an offense under Subsection (a) unless he or she 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) 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.*

- (1) “Deadly weapon” has the meaning given in Section 5109(b).
- (2) “Firearm” has the meaning given in Section 5109(e).

**Section 5102. Dealing in Unlawful Weapons**

(a) *Trafficking a Firearm with an Altered Serial Number: Offense Defined.* A person commits an offense if he or she:

- (1) transports, ships, or possesses a firearm manufactured after 1972,
- (2) 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, he or she sells, buys, or possesses:

- (1) a destructive weapon; or
- (2) a knife:
  - (A) that is not detectable by a metal detector or magnetometer set at standard calibration; or
  - (B) the blade of which is:
    - (i) released by a spring mechanism or gravity; or
    - (ii) supported by a knuckle ring grip handle; or
- (3) a sharp, metal throwing star; or
- (4) either:
  - (A) 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; or
  - (B) a pellet, slug, or bullet intended to be used by a weapon prohibited by Subsection (b)(4)(A).

(c) *Exception: Supplying Weapons to Special Parties.* This Section does not apply to weapons provided to:

- (1) law enforcement or military entities; or
- (2) historical societies, museums, and institutional collections that are open to the public, so long as the weapons are stored safely and secured from unauthorized handling.

(d) *Grading.* The offense:

- (1) under Subsection (a) is a Class 6 felony.
- (2) under Subsection (b)(1) is a Class 7 felony.
- (3) under Subsection (b)(2)(A) is a Class 8 felony.
- (4) is a Class B misdemeanor in all other cases.

(5) *Adjustment for Commission in a Safe School and Recreation Zone.* The grade of the offense may be adjusted upward as provided in Section 5108.

(e) *Defined Term.* "Destructive weapon" has the meaning given in Section 5109(d).

**Section 5103. Carrying a Concealed Deadly Weapon or Dangerous Instrument**

(a) *Offense Defined.* Except as authorized by law, a person commits an offense if he or she:

- (1) possesses:
  - (A) a deadly weapon; or

(B) a dangerous instrument, other than a disabling chemical spray;  
 (2) that is concealed, and  
 (3) the weapon or instrument is available and accessible for the person's immediate use.

(b) *Grading*. The offense:

(1) under Subsection (a)(1)(A) is:

(A) a Class 6 felony if the deadly weapon is a firearm; or

(B) a Class 8 felony in all other cases.

(2) under Subsection (a)(1)(B) is a Class A misdemeanor.

(3) *Adjustment for Commission in a Safe School and Recreation Zone*. The grade of the offense may be adjusted upward as provided in Section 5108.

(c) *Defense*. It is a defense to prosecution under Subsection (a)(1)(B) that the defendant:

(1) did not intend to cause or threaten physical injury to another person, and

(2) carried the concealed dangerous instrument for a specific lawful

purpose.

(d) *Defined Terms*.

(1) "Dangerous instrument" has the meaning given in Section 5109(a).

(2) "Deadly weapon" has the meaning given in Section 5109(b).

(3) "Physical injury" has the meaning given in Section 1210(b).

#### **Section 5104. Possessing or Purchasing Deadly Weapons by Persons Prohibited**

(a) *Offense Defined*. A person commits an offense if he or she possesses, purchases, owns, or controls what the person knows to be a deadly weapon or ammunition for a firearm, if the person:

(1) was previously convicted of:

(A) a felony; or

(B) a crime involving violence that resulted in physical injury; or

(C) an misdemeanor offense under Section 5201(a)–(b) [drug possession]; or

(D) a misdemeanor domestic violence offense, meaning an offense:

(i) involving threats, endangerment, physical injury, sexual contact, or interference with custody,

(ii) that was committed by:

(aa) a member of the victim's family; or

(bb) a former spouse of the victim; or

(cc) a person who cohabitated with the victim at the time of the offense; or

(dd) a person with a child in common with the victim;

(2) (A) has ever been committed to a hospital, mental institution, or sanitarium due to a mental disorder,

(B) unless the person can demonstrate under [§ 1448A of this title] that he or she is no longer prohibited;

- (3) (A) as a juvenile, was adjudicated delinquent for conduct that would constitute a felony if committed by an adult, but
    - (B) this prohibition only lasts until the person turns 25 years of age;
  - (4) is less than 18 years of age, if:
    - (A) the deadly weapon is a handgun, and
    - (B) the person intends to use it 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, so long as the order is not:
    - (A) ex parte; or
    - (B) a contested order issued solely upon 10 Del. C. § 1041(1)d., e., or h. [alarming conduct or trespassing];
  - (6) a fugitive from justice who knows he or she is a defendant alleged to have committed a felony.
- (b) *Limitation on Length of Prohibition.* Any person prohibited under Subsection (a) solely as the result of a prior misdemeanor conviction shall only be prohibited for 5 years following the date of that conviction.
- (c) *Grading.* The offense is:
- (1) a Class 6 felony under Subsection (a)(1)–(6) if the unlawfully possessed item is a destructive weapon, firearm or ammunition for a firearm.
  - (2) a Class 8 felony in all other cases.
  - (3) *Adjustment for Commission in a Safe School and Recreation Zone.* The grade of the offense may be adjusted upward as provided in Section 5108.
- (d) *Seizure and Disposal.*
- (1) Any deadly weapons or ammunition possessed in violation of Subsection (a) may be seized by law enforcement and disposed of, as provided in [§ 2311 of this title].
  - (2) *Exception.* Subsection (d)(1) does not apply to antique firearms, manufactured before 1898, that have not been restored to a firing condition, and for which ammunition is no longer manufactured in the United States.
  - (3) *Burden of Proving Exception.* The prohibited person has the burden of proving a firearm is an antique subject to the exception in Subsection (d)(2).
- (e) *Defined Terms.*
- (1) “Deadly weapon” has the meaning given in Section 5109(b).
  - (2) “Family” has the meaning given in 10 Del. C. § 901(12).
  - (3) “Firearm” has the meaning given in Section 5109(e).
  - (4) “Handgun” has the meaning given in Section 5109(f).
  - (5) “Physical injury” has the meaning given in Section 1210(b).
  - (6) “Sexual contact” has the meaning given in Section 1307(e).

### **Section 5105. Providing Weapons to Disqualified Persons**

(a) *Providing Deadly Weapons to Disqualified Persons: Offense Defined.* A person commits an offense if he or she:

- (1) either:
  - (A) sells, gives, or transfers a deadly weapon or ammunition to; or
  - (B) buys or obtains a deadly weapon or ammunition on behalf of,
- (2) a person he or she knows to be:
  - (A) a person prohibited from ownership or possession under Section 5104(a); or
  - (B) less than the lawful age of purchase, ownership, or possession;
 or
  - (C) intoxicated; or
  - (D) 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:

- (1) he or she:
  - (A) transfers a B.B., air, or spear gun, or ammunition for those weapons, to a child less than 16 years of age; or
  - (B) obtains such a weapon or ammunition on behalf of a child less than 16 years of age,
- (2) without the consent of the child's parent or guardian.

(c) *Grading.* The offense:

- (1) under Subsection (a)(2)(A) is a Class 8 felony.
- (2) under Subsection (a)(2)(B) is:
  - (A) a Class 8 felony if:
    - (i) the recipient is a child less than 18 years of age, and
    - (ii) the weapon is a firearm, and
    - (iii) the firearm is transferred without the consent of the child's parent or guardian.
  - (B) a Class B misdemeanor if:
    - (i) the recipient is a person less than 21 years of age, and
    - (ii) the weapon is a deadly weapon designed for the defense of one's person.
- (3) under Subsection (a)(2)(C) is a Class B misdemeanor.
- (4) under Subsection (a)(2)(D) is:
  - (A) a Class 8 felony if the weapon is a firearm; or
  - (B) a Class B misdemeanor in all other cases.
- (5) under Subsection (b) is a Class C misdemeanor.

(d) *Defined Terms.*

- (1) "Deadly weapon" has the meaning given in Section 5109(b).
- (2) "Deadly weapon designed for the defense of one's person" has the meaning given in Section 5109(c).
- (3) "Firearm" has the meaning given in Section 5109(e).

## **Section 5106. Possessing a Firearm While Under the Influence of Drugs or Alcohol**

- (a) *Offense Defined.* A person commits an offense if he or she:
- (1) possesses a firearm
  - (2) in a public place
  - (3) while chemically impaired.
- (b) *Inoperable Firearm: Defense.* It is a defense to prosecution under this Section that:
- (1) the firearm was disassembled or stored in a manner to prevent its immediate use; or
  - (2) the person did not possess ammunition for the firearm.
- (c) *Grading.* The offense is a Class A misdemeanor.
- (d) *Defined Terms.*
- (1) “Chemically impaired” has the meaning given in Section 1210(a).
  - (2) “Firearm” has the meaning given in Section 5109(e).
  - (3) “Public place” has the meaning given in Section 4108(c).

### **Section 5107. Offenses Related to Background Checks for Firearm Sales**

- (a) *Sale Without Conducting Required Check: Offense Defined.* A person commits an offense if he or she:
- (1) sells or transfers a firearm to another person
  - (2) without first performing a criminal history background check, as required by [11 Del. C. §§ 1448A and 1448B], to determine whether the sale or transfer would violate state or federal law.
- (b) *Misuse of Criminal Records: Offense Defined.* A licensed dealer, importer, or manufacturer of firearms commits an offense if he or she:
- (1) requests a criminal history record check from the Federal Bureau of Investigation, National Instant Criminal Background Check System,
  - (2) with intent to use the information for a purpose other than compliance with Subsection (a) and [11 Del. C. §§ 1448A and 1448B].
- (c) *Grading.* The offense is a Class A misdemeanor.
- (d) *Defined Term.* “Firearm” has the meaning given in Section 5109(e).

### **Section 5108. Grade Adjustment for Offenses Committed in a Safe School and Recreation Zone**

- (a) *Adjustment Defined.* The grade of an offense under Section 5102, 5103, or 5104 shall be increased by one grade if:
- (1) the offense is committed:
    - (A) (i) in, on, or within 1,000 feet of a structure or real property; or
    - (ii) in a motor vehicle; that is owned, operated, leased, or rented by a public or private school, including a vocational-technical school or a college or university; or
    - (B) in or on any structure that is utilized as a recreation center, athletic field, or sports stadium; and

(2) the unadjusted grade of the offense is a Class 7 felony or lower.

(b) *Private Residence: Defense.* It is a defense to application of the grade adjustment in Subsection (a) that:

(1) the prohibited conduct took place entirely within a private residence, and

(2) no person less than 18 years of age was present in the residence at any time during the commission of the offense.

(c) *Defined Term.* “Motor vehicle” has the meaning given in Section 2110(d).

### **Section 5109. Definitions**

(a) “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. The term includes disabling sprays, such as “pepper spray,” and electronic devices designed to incapacitate a person, such as “Tasers.”

(b) “Deadly weapon” includes firearms, [whether operable or inoperable,] and:

(1) a bomb, switchblade knife, any other knife (other than a folding knife, 3 inches or less in length, in its closed position), billy, blackjack, bludgeon, metal knuckles, slingshot, or razor; or

(2) any dangerous instrument, when it is used with intent to cause death or serious physical injury.

(c) “Deadly weapon designed for the defense of one’s person” includes a pistol, revolver, stiletto, and steel or brass knuckles. The term does not include toy pistols, pocketknives, knives used for sporting purposes or in domestic households, or surgical instruments.

(d) “Destructive weapon” means:

(1) a bomb or bomb shell; or

(2) a firearm silencer; or

(3) a shotgun:

(A) with 1 or more barrels less than 18 inches in length; or

(B) modified to have an overall length of less than 26 inches; or

(4) a machine gun, or any other weapon that is adaptable for use as a machine gun.

(e) “Firearm” means any weapon from which a bullet, projectile, or other object may be discharged by force of combustion, explosive, gas, and/or mechanical means,<sup>22</sup> regardless of whether the weapon is loaded [or stored in multiple pieces].<sup>23</sup> The term does not include a B.B. gun.

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

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<sup>22</sup> **Issue:** Should weapons discharged by “mechanical means” (such as bows) be removed from the definition of a “firearm” and added instead to the definition of a “deadly weapon”?

**Pro:** The sorts of violence associated with guns that justify penalizing their illegal possession and use so harshly simply do not occur with bows. Ordinary people do not intuitively consider bows to be “firearms”, making it likely that someone who is prohibited from possessing a firearm might break the law entirely innocently by possessing a bow. Although some mechanical “firearms” (such as compound bows) are certainly capable of inflicting serious physical injury or death, they require greater skill to do so than other sorts of firearms, making such results unlikely. They are also much larger than many guns, making them difficult to conceal.

**Con:** If a projectile weapon can cause death, it should be treated as a firearm. If a person is dangerous using a gun, the person is dangerous using a bow, no matter what other differences there may be between the weapons. Changing the definition of “firearm” exclude bows effectively lessens the punishments associated with illegal use of bows, which may encourage offenders to use bows instead of guns.

<sup>23</sup> **Issue:** Should the definition of a “firearm” exclude inoperable firearms, as the current draft does? If so, how should inoperable firearms be accounted for in the draft?

**Pro:** Inoperable firearms do not present the harms that justify punishing illegal use and possession of a firearm so harshly. Inoperable firearms may be used to scare or threaten others, but not to cause physical injury or death. Offenses that aggravate the grade of an offense based on display of what appears to be a firearm will cover these cases without defining “firearm” in a counterintuitive way. The current draft puts two suggested possible additions to the text in brackets to account for inoperable firearms, though perhaps only one or the other is necessary. First, inoperable firearms could be treated as deadly weapons, ensuring some punishment for their unlawful possession in most cases. Second, the definition of “firearm” can include firearms that are operable when assembled, but are stored in multiple pieces, closing the most worrisome loophole that could result from the draft as written.

**Con:** Current law treats inoperable firearms identically to operable firearms. Display and possession of inoperable firearms encourages gun violence, regardless of what a particular weapon might be capable of, and gun violence must be discouraged as strongly as possible under the law.

**CHAPTER 5200. DRUG AND RELATED OFFENSES**

- Section 5201. Possession of Controlled and Noncontrolled Substances
- Section 5202. Manufacture or Delivery of Controlled and Noncontrolled Substances
- Section 5203. Aggravating Factors Providing Grade Increase for Offenses in Sections 5201–02
- Section 5204. Drug Paraphernalia Offenses
- Section 5205. Prescription Drug Registrant Offenses
- Section 5206. Unlawful Possession of a Prescription Form
- Section 5207. Internet Pharmacy Offenses
- Section 5208. Immunity in Life-Threatening Emergency
- Section 5209. Court Having Jurisdiction
- Section 5210. Definitions

**Section 5201. 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), he or she:

- (1) knowingly possesses, uses, or consumes
- (2) either:
  - (A) a controlled substance; or
  - (B) a counterfeit controlled substance.

(b) *Possession of Marijuana: Offense Defined.* Except as authorized by law, a person commits an offense if he or she knowingly possesses, uses, or consumes:

- (1) being 18 years of age or older, either:
  - (A) more than 1 ounce of leaf marijuana; or
  - (B) any quantity of marijuana, other than leaf marijuana; or
- (2) any quantity of marijuana, and the person is less than 18 years of age.

(c) *Unlawful Possession of Noncontrolled Prescription Drugs: Offense Defined.* A person commits an offense if he or she:

- (1) knowingly possesses for personal use, uses, or consumes,
- (2) a drug that is not a controlled substance, but for which a prescription is required by law,
- (3) without an authorized prescription.

(d) *Grading.*

- (1) The offense under Subsection (a) is:
  - (A) a Class 4 felony if the offense involves a controlled substance in a Tier 5 quantity;
  - (B) a Class 5 felony if the offense involves a controlled substance in a Tier 4 quantity, except as defined in 16 Del. C. § 4751C(2)j. [prescription drugs];
  - (C) a Class 6 felony if the offense involves a controlled substance in a Tier 3 quantity;

(D) a Class 7 felony if the offense involves a controlled substance in a Tier 2 quantity, except as defined in 16 Del. C. § 4751C(4)j. [prescription drugs];

(E) a Class 8 felony if the offense involves a controlled substance in a Tier 1 quantity;

(F) a Class B misdemeanor in all other cases.

(2) The offense under Subsection (b) is a Class C misdemeanor.

(3) The offense under Subsection (c) is a Class D misdemeanor.

(4) *Grade Adjustments.* The grade of the offense:

(A) under Subsections (d)(1)(C)–(E) shall be adjusted upward up to two grades if aggravating factors under Section 5203 are present, one grade per factor; or

(B) under Subsections (d)(1)(B), (d)(1)(F), (d)(2), or (d)(3) shall be adjusted upward one grade if an aggravating factor under Section 5203 is present.

(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).

(e) *Defined Terms.*

(1) “Authorized prescription” has the meaning given in Section 5210(b).

(2) “Controlled substance” has the meaning given in Section 5210(c).

(3) “Counterfeit controlled substance” has the meaning given in 16 Del. C. § 4701(7).

(4) “Leaf marijuana” has the meaning given in Section 5210(g).

(5) “Marijuana” means a controlled substance or counterfeit controlled substance classified in 16 Del. C. § 4714(d)(19).

(6) “Prescription drug” has the meaning given in 16 Del. C. § 4701(38).

(7) “Tier 1” through “Tier 5” quantities have the meanings given in Section 5210 (k)–(o).

## **Section 5202. Manufacture or Delivery of Controlled and Noncontrolled Substances**

(a) *Manufacture or Delivery of a Controlled Substance: Offense Defined.* Except as authorized by law, a person commits an offense if he or she:

(1) either:

(A) manufactures or delivers; or

(B) possesses with intent to deliver to another person,

(2) a controlled substance, or a counterfeit or purported controlled substance.

(b) *Unlawful Delivery of Noncontrolled Prescription Drugs: Offense Defined.*

Except as authorized by law, a person commits an offense if he or she:

(1) knowingly:

(A) delivers; or

(B) possesses with intent to deliver to another person,  
(2) a drug that is not a controlled substance but for which a prescription is required by law.

(c) *Grading.*

(1) The offense:

(A) under Subsection (a)(1)(A) is one grade higher than it would be under Subsection (a)(1)(B) for the same amount of the same substance.

(B) under Subsection (a)(1)(B) is:

(i) a Class 5 felony if the offense involves a controlled substance in a Tier 4 quantity;

(ii) a Class 6 felony if the offense involves a controlled substance in a Tier 2 quantity;

(iii) a Class 7 felony if the offense involves a controlled substance in a Tier 1 quantity or less; or

(iv) a Class 8 felony in all other cases.

(2) The offense:

(A) under Subsection (b)(1)(A) is a Class A misdemeanor; or

(B) under Subsection (b)(1)(B) is a Class B misdemeanor.

(3) *Grade Adjustment.* The grade of the offense shall be adjusted upward one grade if an aggravating factor under Section 5203 is present, but in no case shall the grade of the offense be adjusted higher than a Class 4 felony.

(4) *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 (c).

(d) *Valid Prescription Within Household: Defense.* It is a defense to prosecution under Subsection (b) that:

(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, and

(2) the prescription drug was in:

(A) the original container in which it was dispensed or packaged; or

(B) a pillbox or other daily pill container.

(e) *Remediation and Cleanup Costs.* Any sentence for an offense under Subsection (a) for offense conduct involving manufacturing shall include restitution for all reasonable costs, if any, associated with:

(1) remediation of the site of manufacture,

(2) cleanup of any substances, materials, or hazardous waste, and

(3) cleanup of any other site resulting from the manufacturing operation, including disposal of substances or materials.

(f) *Defined Terms.*

(1) "Controlled substance" has the meaning given in Section 5210(c).

- (2) “Counterfeit controlled substance” has the meaning given in 16 Del. C. § 4701(7).
- (3) “Deliver” or “delivery” has the meaning given in Section 5210(d).
- (4) “Prescription drug” has the meaning given in 16 Del. C. § 4701(38).
- (5) “Purported controlled substance” has the meaning given in 16 Del. C. § 4701(43).
- (6) “Tier 1” through “Tier 5” quantities have the meanings given in Section 5210 (k)–(o).

**Section 5203. Aggravating Factors Providing Grade Increase for Offenses in Sections 5201–02**

(a) The offenses defined in Sections 5201 and 5202 shall have their grades increased as provided in those Sections if any of the following conditions are satisfied:

- (1) The offense was committed on, in, or—except for private places—within 300 feet of a structure or real property:
  - (A) owned, operated, leased, or rented by:
    - (i) a public or private kindergarten, elementary, secondary, or vocational-technical school; or
    - (ii) a church, synagogue, or other place of worship; or
  - (B) in a park or recreation area, including parkland.
- (2) The offense was committed inside a motor vehicle.
- (3) At the time of the offense:
  - (A) the defendant was at least 18 years of age, and
  - (B) the offense involved an accomplice, co-conspirator, or recipient of a controlled substance who was less than 18 years of age, and
  - (C) the defendant was at least 4 years older than the other person.

(b) *Defined Terms.*

- (1) “Accomplice” has the meaning given in Section 5210(a).
- (2) “Co-conspirator” has the meaning given in Section 5210(b).
- (3) “Controlled substance” has the meaning given in Section 5210(c).
- (4) “Motor vehicle” has the meaning given in Section 2110(d).
- (5) “Parkland” has the meaning given in 9 Del. C. § 8110(a)(2).
- (6) “Private place” has the meaning given in Section 4307(j).

**Section 5204. Drug Paraphernalia Offenses**

(a) *Use of Drug Paraphernalia: Offense Defined.* A person commits an offense if, except as authorized by law or provided in [16 Del. C. § 4774(b)], he or she 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:

- (1) he or she:
  - (A) delivers, conveys, sells, or converts drug paraphernalia; or

(B) possesses or manufactures drug paraphernalia with intent to deliver it;

(2) being reckless as to whether it will be used as drug paraphernalia in violation of Subsection (a).

(c) *Advertising Drug Paraphernalia: Offense Defined.* A person commits an offense if he or she:

(1) places an advertisement in a publication,

(2) 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 Section 5201(b) may not also be charged under Section 5204(a) for possession of drug paraphernalia pertaining to the use of marijuana.

(e) *Grading.* The offense:

(1) under Subsection (a) is a Class B misdemeanor; or

(2) under:

(A) Subsection (b)(1)(B) is a Class B misdemeanor; or

(B) Subsection (b) is a Class A misdemeanor in all other cases; or

(3) under Subsection (c) is a Class D misdemeanor.

(4) *Grade Adjustment.* The grade of the offense under Subsection (b) shall be increased by one grade if the defendant:

(A) is 18 years of age or older, and

(B) sells or delivers drug paraphernalia

(C) to a person less than 18 years of age.

(f) *Defined Terms.*

(1) “Deliver” or “delivers” has the meaning given in Section 5210(d).

(2) “Drug paraphernalia” has the meaning given in Section 5210(e).

(3) “Marijuana” means a controlled substance or counterfeit controlled substance classified in 16 Del. C. § 4714(d)(19).

### **Section 5205. Prescription Drug Registrant Offenses**

(a) *Unlawfully Distributing Prescription Drugs: Offense Defined.* Except as authorized by law, a person subject to subchapter III of Chapter 47 of Title 16 commits an offense if he or she knowingly distributes or dispenses a controlled substance:

(1) on Schedule II, III, or IV without the written prescription of a practitioner; or

(2) by refilling a prescription for a Schedule II substance; or

(3) unless renewed by the practitioner who prescribed it, by refilling a prescription for a Schedule III or IV substance:

(A) more than 6 months after the date of the prescription; or

(B) more than 5 times; or

(4) on Schedule V, without a legitimate medical purpose; or

(5) not authorized by the person’s registration under [16 Del. C. § 4732, et seq.]

(b) *Administering Performance Enhancing Steroids: Offense Defined.* A person commits an offense if:

- (1) with intent to increase human muscle weight or improve human performance in any form of exercise, sport, or game,
- (2) he or she prescribes or administers to another person an anabolic steroid.

(c) *Grading.* The offense is a Class 8 felony.

(d) *Defined Terms.*

- (1) “Anabolic steroid” has the meaning given in [16 Del. C. § 4718(f)].
- (2) “Controlled substance” has the meaning given in Section 5210(c).
- (3) “Practitioner” has the meaning given in Section 2110(g).
- (4) “Prescription drug” has the meaning given in 16 Del. C. § 4701(38).
- (5) “Registrant” has the meaning given in Section 5210(i).
- (6) A “Schedule” substance has the meaning given in [16 Del. C. § 4714 (Schedule I), 4716 (Schedule II), 4718 (Schedule III), 4720 (Schedule IV), or 4722 (Schedule V)].

### **Section 5206. Unlawful Possession of a Prescription Form**

(a) *Offense Defined.* A person commits an offense if he or she:

- (1) possesses a blank prescription form or pad, and
- (2) is not a practitioner.

(b) *Grading.* The offense is a Class 8 felony.

(c) *Defined Term.* “Practitioner” has the meaning given in Section 2110(g).

### **Section 5207. Internet Pharmacy Offenses**

(a) *Distributing or Prescribing Drugs Through an Internet Pharmacy: Offense Defined.* A person commits an offense if:

(1) the person is an internet pharmacy, or its owner or operator, and without an authorized prescription:

- (A) the person knowingly participates in the sale, distribution, dispensing, or delivery of a prescription drug
- (B) that was requested by a prescription drug order, and
- (C) the drug is to be delivered within the State; or

(2) the person is a practitioner, and:

- (A) the practitioner issues a prescription drug order without an authorized prescription,
- (B) through what the practitioner knows to be an internet pharmacy, and
- (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, he or she:

- (1) purchases a prescription drug to be delivered within this State,
- (2) 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:

- (1) advertises, makes a sales presentation, or directly communicates to anyone within the State,
- (2) that a prescription drug may be obtained:
  - (A) through a web-based consultation, questionnaire, or medical history form,
  - (B) submitted to the internet pharmacy through a website.

(d) *Exception: Delaware Delivery Clearly Excluded.* Subsection (c) is inapplicable to an internet pharmacy if its advertisement or website clearly and conspicuously asserts that it will not deliver or ship prescription drugs to any location within this State.

(e) *Grading.* The offense:

- (1) under Subsection (a) is:
  - (A) a Class 4 felony if the prescription drug causes the death of its intended user.
  - (B) a Class 5 felony if the prescription drug causes serious physical injury to its intended user.
  - (C) a Class 6 felony in all other cases.
- (2) under Subsection (b) is a Class A misdemeanor.
- (3) under Subsection (c) is a Class 6 felony.

(f) *Defined Terms.*

- (1) “Authorized prescription” has the meaning given in Section 5210(b).
- (2) “Internet pharmacy” has the meaning given in Section 5210(f).
- (3) “Patient-practitioner relationship” has the meaning given in [16 Del. C. § 4701(31)].
- (4) “Practitioner” has the meaning given in Section 2110(g).
- (5) “Prescription drug” has the meaning given in 16 Del. C. § 4701(38).
- (6) “Serious physical injury” has the meaning given in Section 1210(c).

### **Section 5208. 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 those 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) only applies to evidence of offenses defined in Chapter 5200.

(b) *Defined Term.* “Overdose” has the meaning given in Section 5210(h).

**Section 5209. Court Having Jurisdiction**

(a) *Generally.* Except as provided in Subsection (b):

(1) the Superior Court has original and exclusive jurisdiction over violations of this Chapter by persons 18 years of age or older, and

(2) the Family Court has original and exclusive jurisdiction over violations of this Chapter by persons less than 18 years of age.

(b) *Exception.* The Court of Common Pleas has original jurisdiction, concurrent with the Superior Court, over violations of the following Sections by persons 18 years of age or older:

(1) Section 5201(b) [possession of marijuana],

(2) Section 5201(c) [unlawful possession of noncontrolled prescription drugs],

(3) Section 5201(d)(1)(F) [possession of either a controlled substance in less than Tier 1 quantity, or a counterfeit controlled substance], and

(4) Section 5204 [drug paraphernalia offenses].

**Section 5210. Definitions**

The following terms have the definitions provided. Additional definitions relevant to this Chapter can be found in 16 Del. C. § 4701:

(a) “Accomplice” means a person who is legally accountable for the conduct of another, as provided in Section 211.

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

(c) “Co-conspirator” means a person involved with the defendant in a criminal conspiracy, as provided in Section 703.

(d) “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.

(e) “Deliver” or “delivery” means the actual or constructive transfer from one person to another, whether or not there is an agency relationship.

(f) “Drug paraphernalia” has the meaning given in [16 Del. C. § 4701(17)]. But it does not include items that are traditionally intended for use with tobacco products, such as pipes, paper, or accessories.

(g) “Internet pharmacy” means any person:

(1) maintaining a website that solicits or receives, or offers to solicit or receive, prescription drug orders

(2) to be dispensed and delivered to Delaware patients through the mail or other delivery service.

“Internet pharmacy” does not include a pharmacy that has been issued a valid permit or license by the Delaware State Board of Pharmacy.

(h) “Leaf marijuana” means the dried leaves and flowering tops of the plant *cannabis sativa* L.

(i) “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.

(j) “Registrant” means a person who has obtained registration to engage in activities related to prescription drugs under [16 Del. C. § 4732, et seq].

(k) “Tier 5 quantity” of a controlled substance means:

(1) 25 grams or more of cocaine or of any mixture containing cocaine, as described in [16 Del. C. § 4716(b)(4)]; or

(2) 5 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in [16 Del. C. § 4714], or of any mixture containing any such substance; or

(3) 5000 grams or more of marijuana, as described in [16 Del. C. § 4701(26)]; or

(4) 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 [16 Del. C. § 4716(d)(3)]; or

(5) 25 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in [16 Del. C. § 4716(d)(1)]; or

(6) 25 grams or more of phencyclidine, or of any mixture containing any such substance, as described in [16 Del. C. § 4716(e)(5)]; or

(7) 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 [16 Del. C. § 4714(d)(9)]; or

(8) 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of any substance as described in [16 Del. C. § 4714] that is not otherwise set forth in this definition, a designer drug as described in [16 Del. C. § 4701(9)], or of any mixture containing any such substance; or

(9) 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 [16 Del. C. § 4714(d)(21)].

(l) “Tier 4 quantity” of a controlled substance means:

(1) 20 grams or more of cocaine or of any mixture containing cocaine, as described in [16 Del. C. § 4716(b)(4)]; or

(2) 4 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in [16 Del. C. § 4714], or of any mixture containing any such substance; or

- (3) 4000 grams or more of marijuana, as described in [16 Del. C. § 4701(26)]; or
  - (4) 20 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 [16 Del. C. § 4716(d)(3)]; or
  - (5) 20 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in [16 Del. C. § 4716(d)(1)]; or
  - (6) 20 grams or more of phencyclidine, or of any mixture containing any such substance, as described in [16 Del. C. § 4716(e)(5)]; or
  - (7) 250 or more doses or, in a liquid form, 25 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in [16 Del. C. § 4714(d)(9)]; or
  - (8) 50 or more doses or 10 or more grams or 10 milliliters or more of any substance as described in [16 Del. C. § 4714] that is not otherwise set forth in this definition, a designer drug as described in [16 Del. C. § 4701(9)], or of any mixture containing any such substance; or
  - (9) 50 or more doses, or 10 or more grams, or 10 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 [16 Del. C. § 4714(d)(21)]; or
  - (10) 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.
- (m) “Tier 3 quantity” of a controlled substance means:
- (1) 15 grams or more of cocaine or of any mixture containing cocaine, as described in [16 Del. C. § 4716(b)(4)]; or
  - (2) 3 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in [16 Del. C. § 4714], or of any mixture containing any such substance; or
  - (3) 3000 grams or more of marijuana, as described in [16 Del. C. § 4701(26)]; or
  - (4) 15 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 [16 Del. C. § 4716(d)(3)]; or
  - (5) 15 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in [16 Del. C. § 4716(d)(1)]; or
  - (6) 15 grams or more of phencyclidine, or of any mixture containing any such substance, as described in [16 Del. C. § 4716(e)(5)]; or

(7) 100 or more doses or, in a liquid form, 25 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in [16 Del. C. § 4714(d)(9)]; or

(8) 37.5 or more doses, 7.5 or more grams, or 7.5 milliliters or more of any substance as described in [16 Del. C. § 4714] that is not otherwise set forth in this definition, a designer drug as described in [16 Del. C. § 4701(9)], or of any mixture containing any such substance; or

(9) 37.5 or more doses, 7.5 or more grams, or 7.5 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 [16 Del. C. § 4714(d)(21)].

(n) “Tier 2 quantity” of a controlled substance means:

(1) 10 grams or more of cocaine or of any mixture containing cocaine, as described in [16 Del. C. § 4716(b)(4)]; or

(2) 2 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in [16 Del. C. § 4714], or of any mixture containing any such substance; or

(3) 1500 grams or more of marijuana, as described in [16 Del. C. § 4701(26)]; or

(4) 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 [16 Del. C. § 4716(d)(3)]; or

(5) 10 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in [16 Del. C. § 4716(d)(1)]; or

(6) 10 grams or more of phencyclidine, or of any mixture containing any such substance, as described in [16 Del. C. § 4716(e)(5)]; or

(7) 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 [16 Del. C. § 4714(d)(9)]; or

(8) 25 or more doses, 5 or more grams, or 5 milliliters or more of any substance as described in [16 Del. C. § 4714] that is not otherwise set forth in this definition, a designer drug as described in [16 Del. C. § 4701(9)], or of any mixture containing any such substance; or

(9) 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 [16 Del. C. § 4714(d)(21)]; or

(10) 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.

(o) “Tier 1 quantity” of a controlled substance means:

- (1) 5 grams or more of cocaine or of any mixture containing cocaine, as described in [16 Del. C. § 4716(b)(4)]; or
- (2) 1 gram or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in [16 Del. C. § 4714], or of any mixture containing any such substance; or
- (3) 175 grams or more of marijuana, as described in [16 Del. C. § 4701(26)]; or
- (4) 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 [16 Del. C. § 4716(d)(3)]; or
- (5) 5 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in [16 Del. C. § 4716(d)(1)]; or
- (6) 5 grams or more of phencyclidine, or of any mixture containing any such substance, as described in [16 Del. C. § 4716(e)(5)]; or
- (7) 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 [16 Del. C. § 4714(d)(9)]; or
- (8) 12.5 or more doses, 2.5 or more grams, or 2.5 milliliters or more of any substance as described in [16 Del. C. § 4714] that is not otherwise set forth in this definition, a designer drug as described in [16 Del. C. § 4701(9)], or of any mixture containing any such substance; or
- (9) 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 [16 Del. C. § 4714(d)(21)].

**CHAPTER 5300. OFFENSES INVOLVING ORGANIZED CRIME AND RACKETEERING**

Section 5301. Organized Crime and Racketeering

Section 5302. Gang Participation

Section 5303. Money Laundering

Section 5404. Definitions

**Section 5301. Organized Crime and Racketeering**

(a) *Offense Defined.* A person commits an offense if he or she knowingly:

(1) conducts or participates in the affairs of an enterprise through a pattern of racketeering activity or collection of unlawful debt; or

(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; or

(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.* The offense is a Class 4 felony.

(c) *Forfeiture.* A person who commits an offense under Subsection (a) shall forfeit 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), including:

(1) any property constituting an interest in or means of control or influence over the enterprise involved in the violation of Subsection (a),

(2) any property constituting proceeds derived from conduct in violation of Subsection (a),

(3) any position, office, appointment, tenure, commission, or employment contract that the person acquired or maintained in violation of Subsection (a), and

(4) any compensation, right, or benefit derived from an item in Subsection (c)(3).

(d) *Discretionary Treble Fines.* Any person convicted of an offense in violation of Subsection (a) may be sentenced to pay a fine:

(1) up to three times the value gained or loss caused by the offense, whichever is greater, plus

(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) is available for a voluntary and complete renunciation preventing commission of the offense, under the same terms as the defense in Section 706 [renunciation defense for attempt, solicitation, and conspiracy].

(2) *Sentencing Mitigation for Unsuccessful Attempt to Prevent Commission of the Offense.* If the offense is not prevented under Subsection (e)(1), but the defendant made a substantial effort to prevent commission of the offense, that fact shall 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:

(1) Section 704 applies as to the other members, and

(2) it is no 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.*

(1) “Enterprise” has the meaning given in Section 5304(b).

(2) “Pattern of racketeering activity” has the meaning given in Section 5304(d).

(3) “Proceeds” has the meaning given in Section 5304(e).

(4) “Unlawful debt” has the meaning given in Section 5304(f).

(5) “Voluntary and complete renunciation” has the meaning given in Section 706(b).

### **Section 5302. Gang Participation**

(a) *Gang Participation: Offense Defined.* A person commits an offense if he or she:

(1) engages in any conduct that benefits a criminal street gang,

(2) knowing that its members engage in or have engaged in a pattern of criminal gang activity, and

(3) who 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 he or she knowingly solicits, invites, recruits, encourages, or otherwise causes a person less than 18 years of age to participate in or become a member of a criminal street gang.

(c) *Grading.* The offense:

(1) under Subsection (a) is a Class 7 felony.

(2) under Subsection (b) is a Class 8 felony.

(d) *Defined Terms.*

(1) “Criminal street gang” has the meaning given in Section 5304(a).

(2) “Pattern of criminal gang activity” has the meaning given in Section 5304(c).

### **Section 5303. Money Laundering**

(a) *Money Laundering: Offense Defined.* A person commits an offense if the person knowingly:

(1) conceals, possesses, transfers, transports, acquires or maintains an interest in the proceeds of criminal activity; or

(2) conducts, supervises, or facilitates a transaction involving the proceeds of criminal activity; or

(3) invests, expends, receives, or offers to invest, expend, or receive the proceeds of criminal activity; or

(4) provides, holds, or invests funds that are intended to further the commission of criminal activity; or

(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, he or she:

(1) causes a financial institution, money transmitter, check casher, or any other individual or entity required by law to file a report regarding currency transactions or suspicious transactions:

(A) to fail to file a report; or

(B) to file a report that contains a material omission or misstatement;  
or

(2) conducts or assists in conducting one or more transactions in currency, in any amount and in any manner, at one or more financial institutions, money transmitters, check cashers, or other entities required by law to file a report regarding currency transactions or suspicious transactions.

(c) *Grading.* The offense:

(1) under Subsection (a) is a Class 6 felony.

(2) under Subsection (b) is a Class 8 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 the funds were received as bona fide legal fees by a licensed attorney and at the time of their receipt, the attorney did not have actual knowledge that the funds were derived from criminal activity.

(f) *Defined Term.* “Proceeds” has the meaning given in Section 5304(e).

### **Section 5304. Definitions**

(a) “Criminal street gang” means any ongoing organization, association, or group of three or more persons, whether formal or informal, that has:

(1) a common name or common identifying sign or symbol,

(2) whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity, and

(3) has as one of its primary activities the commission of criminal offenses.

(b) “Enterprise” means:

(1) any sole proprietorship, partnership, corporation, trust, governmental, or other legal entity, and

(2) any union, association, or group of persons associated in fact, even if not a legal entity.

(c) “Pattern of criminal gang activity” means the commission of two or more incidents of conduct, the last of which occurred within three years of a prior offense, that constitute felony violations of offenses involving violence, coercion, sexual activity, controlled substances, property damage, or deadly weapons, and

(1) were committed on separate occasions; or

(2) were committed by two or more persons.

(d) “Pattern of racketeering activity” means the commission of two or more incidents of conduct, the last of which occurred within 10 years of a prior incident of conduct, that:

(1) are related to the affairs of the enterprise,

(2) are not so closely related to each other and connected in time and place that they constitute a single event, and

(3) constitute:

(A) any activity defined as “racketeering activity” under 18 U.S.C.A. § 1961(1)(A), (1)(B), (1)(C), or (1)(D); or

(B) a felony under this Code.

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

(f) “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.

**SUMMARY GRADING TABLE**

Class 1 Felony (Maximum Authorized Punishment – [Capital Punishment]; no less than life)	
<b><u>Offense Description</u></b>	<b><u>Section</u></b>
intentionally causing death of another person (murder in the first degree)	1101(b)
knowingly causing death of a law-enforcement officer in the line of duty (aggravated murder of law enforcement officer)	1101(b)
Class 2 Felonies (Maximum Authorized Term of Imprisonment – life; no less than [15] years)	
<b><u>Offense Description</u></b>	<b><u>Section</u></b>
recklessly causing death of another person with depraved indifference to human life (murder in the second degree)	1102(b)
knowingly causing the death of another person (murder in the second degree)	1102(b)
recklessly causing death of a law-enforcement officer in the line of duty (murder of law enforcement officer)	1102(b)
recklessly causing death by use or detonation of a bomb (murder by explosive)	1102(b)
recklessly causing death with intent to avoid or prevent arrest (evasive murder)	1102(b)
negligently causing death of another person while committing, fleeing from, or attempting any felony (felony murder)	1102(b)
providing a person less than 18 years of age, knowing the person's body parts will be removed for sale (trafficking in body parts of a minor)	1402(b)(4)(A)
benefitting financially from participation in a venture known to harvest the organs of a person less than 18 years of age for sale (benefitting from trafficking in body parts of a minor)	1402(b)(4)(A)
providing a person from a shelter, knowing the person's body parts will be removed for sale (trafficking in body parts of a sheltered person)	1402(b)(4)(B)
benefitting financially from participation in a venture known to harvest the organs of a victim taken from a shelter (benefitting from trafficking in body parts of sheltered persons)	1402(b)(4)(B)
knowingly causing a catastrophe	2305(a)(2)(A)

Class 3 Felonies (Maximum Authorized Term of Imprisonment – [35] years; in specified cases – no less than [5] years)	
<u>Offense Description</u>	<u>Section</u>
causing serious physical injury while coercing sexual intercourse (enhanced aggravated rape)	1301(b)(5)
using a deadly weapon while causing another person to have sexual intercourse through coercive circumstances (enhanced aggravated rape)	1301(b)(5)
coercing a person under 12 years of age to have sexual intercourse with a person at least 18 years of age (enhanced aggravated rape)	1301(b)(5)
causing another person to have sexual intercourse through coercive circumstances with at least two present participants (gang rape)	1301(b)(5)
providing a person, knowing the person's body parts will be removed for sale (trafficking in body parts)	1402(b)(1)
benefitting financially from participation in a venture known to harvest human organs for sale (benefitting from trafficking in body parts)	1402(b)(1)
knowingly compelling labor, services, or prostitution of a person less than 18 years of age (forced labor or sexual servitude of a minor)	1402(b)(4)(A)
knowingly providing a person less than 18 years of age for forced labor or sexual servitude	1402(b)(4)(A)
knowingly compelling labor, services, or prostitution of a person from a shelter (forced labor or sexual servitude of a sheltered person)	1402(b)(4)(B)
knowingly providing a person from a shelter for forced labor or sexual servitude	1402(b)(4)(B)

Class 4 Felonies (Maximum Authorized Term of Imprisonment – [25] years; in specified cases – no less than [3] years)	
<u>Offense Description</u>	<u>Section</u>
recklessly causing death of another person (manslaughter)	1103(c)
causing the death of another person that would be murder, except that the defendant committed the offense under the influence of extreme mental or emotional disturbance (manslaughter mitigation)	1103(c)
negligently causing the death of another person by use of a firearm possessed in violation of Section 5104 (negligent homicide by unlawful firearm)	1104(b)(1)
taking a vehicle from another by force, and on occupant of the vehicle is less than 14 years of age (carjacking involving a minor)	1201(b)(1)(A)

taking property from another by force, thereby causing physical injury to anyone (aggravated robbery)	1201(b)(2)(A)
taking property from another by force while displaying or representing that the person is in possession of a deadly weapon (aggravated robbery)	1201(b)(2)(B)–(C)
assault by which a person knowingly causes the loss of another person’s limb (enhanced aggravated assault)	1202(b)(1)(A)
knowingly causing serious physical injury to another during commission of or flight from a felony (assault in furtherance of a felony)	1202(b)(1)(B)
knowingly causing serious physical injury by abuse or neglect of a child less than 14 years of age (enhanced aggravated assault of a child)	1202(b)(1)(C)
causing serious physical injury while causing oral or object penetration to another person through coercive circumstances (enhanced aggravated penetration)	1301(b)(4)
using a deadly weapon while causing oral or object penetration to another person through coercive circumstances (enhanced aggravated penetration)	1301(b)(4)
oral or object penetration against a person under 12 years of age, caused by a person at least 18 years of age through coercive circumstances (enhanced aggravated penetration)	1301(b)(4)
oral or object penetration against another person, caused by at least two present participants through coercive circumstances (gang penetration)	1301(b)(4)
causing non-serious physical injury while causing another person to have sexual intercourse through coercive circumstances (aggravated rape)	1301(b)(5)
causing a person less than 14 years of age to have sexual intercourse with a person at least four years older through coercive circumstances (aggravated rape)	1301(b)(5)
causing another person to have sexual intercourse through coercive circumstances, in the course of committing another felony (aggravated rape)	1301(b)(5)
unlawful restraint for reward, etc.; victim not released alive, unharmed (aggravated kidnapping)	1401(c)(2)(A)
knowingly compelling labor, services, or prostitution (forced labor or sexual servitude)	1402(b)(2)
knowingly providing a person for forced labor or sexual servitude	1402(b)(2)
knowingly damaging a building by intentionally starting a fire or causing an explosion, knowing another person was within the building (enhanced aggravated arson)	2301(b)(1)(A)
recklessly causing a catastrophe	2305(a)(2)(B)
causing physical injury during escape from penal custody following a charge or conviction	3306(b)(1)(A)
knowingly promoting or profiting from prostitution of a person less than 16 years of age (aggravated prostitution of a minor)	4203(c)(1)
knowingly creating or disseminating child pornography for financial gain	4204(b)(1)(A)

possessing a firearm or deadly weapon during commission of a felony	5101(c)(1)
knowingly possessing a controlled substance in a Tier 5 quantity	5201(d)(1)(A)
manufacturing or delivering a controlled substance in a Tier 4 quantity	5202(c)(1)(A)
knowingly selling or delivering a prescription drug through an internet pharmacy to a Delaware resident or location, and the drug causes the death of its intended user (heinous distribution of drugs through an internet pharmacy)	5207(e)(1)(A)
knowingly issuing a prescription drug order through an internet pharmacy, for delivery in Delaware, and the drug causes the death of its intended user (heinous prescription of drugs through an internet pharmacy)	5207(e)(1)(A)
(1) participating in the affairs of an enterprise; (2) acquiring an interest in an enterprise or property; or (3) uses or invests proceeds derived; through a pattern of racketeering activity (racketeering)	5301(b)

**Class 5 Felonies**  
(Maximum Authorized Term of Imprisonment – [15] years)

<b><u>Offense Description</u></b>	<b><u>Section</u></b>
negligently causing death of a child under 14 years of age by abuse or neglect (homicide by abuse)	1104(b)(2)
taking a vehicle from another by force, in the course of committing: (1) a Class D felony or greater; (2) an offense involving driving under the influence; or (3) a drug offense (aggravated carjacking)	1201(b)(1)(B)
knowingly causing serious physical injury to another person by means of a firearm or deadly weapon (aggravated assault)	1202(b)(2)(A)
recklessly causing serious physical injury by abuse or neglect of a child less than 14 years of age (serious reckless injuring by abuse or neglect)	1203(b)(1)(A)(i)
recklessly causing unlawful termination of a pregnancy without the consent of the pregnant female (recklessly causing miscarriage)	1203(b)(1)(A)(ii)
causing non-serious physical injury while causing oral or object penetration to another person through coercive circumstances (aggravated penetration)	1301(b)(4)
oral or object penetration against a person less than 14 years of age, caused by a person at least four years older through coercive circumstances (aggravated penetration)	1301(b)(4)
committing any other felony in the course of causing oral or object penetration to another person through coercive circumstances (aggravated penetration)	1301(b)(4)
engaging in sexual intercourse in an enumerated prohibited relationship (enhanced aggravated prohibited sexual contact)	1302(b)(1)
unlawful restraint for reward, etc.; victim released alive, unharmed (kidnapping)	1401(c)(2)(B)

knowingly trading, bartering, buying, or selling a person less than 18 years of age (trafficking a minor)	1402(b)(4)(A)
knowingly trading, bartering, buying, or selling a person from a shelter (trafficking a sheltered person)	1402(b)(4)(B)
theft of \$1,000,000 or more	2101(b)(1)
issuing a bad check in an amount of \$1,000,000 or more, knowing it will not be honored by the drawee	2204(b)
using a payment card that is stolen, revoked, forged, or fictitious to obtain property or services valued at \$1,000,000 or more (unlawful use of payment card)	2205(b)(1)
committing deceptive business practices that cause a loss of \$1,000,000 or more	2206(c)
intentionally hindering enforcement of a security interest by destroying, removing, concealing, encumbering, transferring, or otherwise dealing with property subject to that security interest, causing a loss of \$1,000,000 or more (defrauding secured creditors)	2207(b)
intentionally defrauding a creditor during insolvency, causing a loss of \$1,000,000 or more	2208(b)
knowingly damaging a building by intentionally starting a fire or causing an explosion, while reckless as to the presence of other persons within (aggravated arson)	2301(b)(1)(B)
knowingly causing damage, loss of \$1,000,000 or more	2304(b)(2)
entering the dwelling of another with intent to commit an enumerated violent felony; attempt to commit violent felony (home invasion)	2401(b)(1)
falsely representing oneself to be a police officer or emergency personnel with intent to facilitate a serious offense (aggravated impersonation of law enforcement)	3204(b)(2)(A)
disarming a law enforcement officer, firefighter, or correctional officer (disarming a law enforcement officer)	3302(b)(1)
escape from penal custody following a charge or conviction by force or threat of force, or while in possession of a deadly weapon	3306(b)(1)(B)
intimidating, improperly influencing, or retaliating against a witness, juror, or victim by causing or threatening physical injury to anyone	3307(c)(1)
intimidating, improperly influencing, or retaliating against a witness, juror, or victim: (1) in furtherance of a conspiracy; or (2) for financial gain	3307(c)(2)(A)
offering a fee in exchange for performance of sexual conduct by a victim of sexual servitude less than 18 years of age (patronizing a minor victim of sexual servitude)	4202(b)(1)(A)
knowingly promoting or profiting from prostitution of a person less than 18 years of age (prostitution of a minor)	4203(c)(2)
knowingly creating or disseminating child pornography, but not for financial gain	4204(b)(1)(B)

possessing child pornography with intent to distribute it commercially (possessing child pornography for commercial distribution)	4204(b)(2)(A)
wagering on a table game on the basis of unlawful private information; gain (or loss avoided) of \$1,000,000 or more	4502(d)(3)(A)
knowingly possessing a controlled substance in a Tier 4 quantity	5201(d)(1)(B)
manufacturing or delivering a controlled substance in a Tier 2 quantity	5202(c)(1)(A)
possessing with intent to deliver a controlled substance in a Tier 4 quantity	5202(c)(1)(B)(i)
knowingly selling or delivering a prescription drug through an internet pharmacy to a Delaware resident or location, and the drug causes serious physical injury to its intended user (aggravated distribution of drugs through an internet pharmacy)	5207(e)(1)(B)
knowingly issuing a prescription drug order through an internet pharmacy, for delivery in Delaware, and the drug causes serious physical injury to its intended user (aggravated prescription of drugs through an internet pharmacy)	5207(e)(1)(B)

**Class 6 Felonies**  
(Maximum Authorized Term of Imprisonment – [8] years)

<b><u>Offense Description</u></b>	<b><u>Section</u></b>
negligently causing the death of another person (negligent homicide)	1104(b)(1)
knowingly aiding another person to commit suicide, and the suicide is committed	1105(b)(1)
taking a vehicle from another by force, and the person (1) uses the vehicle to commit reckless endangerment; or (2) compels a lawful occupant of the vehicle to leave the vehicle (carjacking)	1201(b)(1)(C)
knowingly causing serious physical injury to another person (aggravated assault)	1202(b)(2)(B)(i)
knowingly causing (non-serious) physical injury to a pregnant female (aggravated assault of a pregnant woman)	1202(b)(2)(B)(ii)
knowingly circumcising a female under 18 years of age, or, being the parent of the female minor, allowing the circumcision to be performed (genital mutilation of a minor female)	1206(c)
causing serious physical injury while causing sexual contact to another person through coercive circumstances (enhanced aggravated sexual assault)	1301(b)(1)(A)(i)(aa)
using a deadly weapon while causing sexual contact to another person through coercive circumstances (enhanced aggravated sexual assault)	1301(b)(1)(A)(i)(bb)-(cc)
sexual contact against a person under 12 years of age, caused by a person at least 18 years of age through coercive circumstances (enhanced aggravated sexual assault)	1301(b)(1)(B)

causing another person to have sexual intercourse through coercive circumstances (rape)	1301(b)(5)
engaging in oral or object penetration in an enumerated prohibited relationship (aggravated prohibited sexual contact)	1302(b)(2)
engaging in or causing another person to engage in sexual contact with the genitalia of an animal (bestiality)	1303(b)
knowingly trading, bartering, buying, or selling a person (human trafficking)	1402(b)(3)
theft of \$100,000 or more	2101(b)(2)
issuing a bad check in an amount of \$100,000 or more, knowing it will not be honored by the drawee	2204(b)
using a payment card that is stolen, revoked, forged, or fictitious to obtain property or services valued at \$100,000 or more (unlawful use of payment card)	2205(b)(1)
committing deceptive business practices that cause a loss of \$100,000 or more	2206(c)
intentionally hindering enforcement of a security interest by destroying, removing, concealing, encumbering, transferring, or otherwise dealing with property subject to that security interest, causing a loss of \$100,000 or more (defrauding secured creditors)	2207(b)
intentionally defrauding a creditor during insolvency, causing a loss of \$100,000 or more	2208(b)
knowingly damaging a building by intentionally starting a fire or causing an explosion (arson)	2301(b)(1)(C)
manufacturing or possessing an incendiary device with intent to injure or damage (unlawful incendiary devices)	2303(b)
knowingly causing damage, loss of \$100,000 or more	2304(b)(2)
recklessly causing damage, loss of \$1,000,000 or more	2304(b)(1)(A)
knowingly causing an ecological catastrophe	2305(e)(1)(A)(i)
entering the dwelling of another at night with intent to commit an offense therein (nocturnal aggravated burglary)	2401(b)(2)(A)
making a materially false statement under oath in an official proceeding (testimonial perjury)	3201(b)(1)
wearing body armor during commission of a felony	3303(b)(2)
escape from penal custody following a charge or conviction	3306(b)(1)(C)
intimidating, improperly influencing, or retaliating against a witness, juror, or victim by deception, persuasion, or commission of an offense	3308(c)(2)(B)
offering a fee in exchange for performance of sexual conduct by an adult victim of sexual servitude (patronizing a victim of sexual servitude)	4202(b)(1)(B)
wagering on a table game on the basis of unlawful private information; gain (or loss avoided) of \$100,000 or more	4502(d)(3)(B)

knowingly trafficking a firearm with an altered or removed serial number	5102(d)(1)
carrying a concealed firearm	5103(b)(1)(A)
possession of a destructive weapon, firearm or ammunition by a person prohibited	5104(c)(1)
knowingly possessing a controlled substance in a Tier 3 quantity	5201(d)(1)(C)
manufacturing or delivering a controlled substance in a Tier 1 quantity or less	5202(c)(1)(A)
possessing with intent to deliver a controlled substance in a Tier 2 quantity	5202(c)(1)(B)(ii)
knowingly selling or delivering a prescription drug through an internet pharmacy to a Delaware resident or location (distribution of drugs through an internet pharmacy)	5207(e)(1)(C)
knowingly issuing a prescription drug order through an internet pharmacy, for delivery in Delaware (prescription of drugs through an internet pharmacy)	5207(e)(1)(C)
advertising sale of prescription drugs through an internet pharmacy on the basis of a web-based consultation or questionnaire	5207(e)(3)
engaging in a transaction involving the proceeds of criminal activity (money laundering)	5303(d)(1)

**Class 7 Felonies**  
(Maximum Authorized Term of Imprisonment – [4] years)

<b><u>Offense Description</u></b>	<b><u>Section</u></b>
knowingly aiding another person to commit suicide, and the suicide is attempted	1105(b)(2)
taking property from another by force or threat of force (robbery)	1201(b)(3)
knowingly causing (non-serious) physical injury to another person by means of a firearm or deadly weapon (assault)	1202(b)(3)(A)(i)(aa)
knowingly causing the breathing or blood circulation of another person to be impeded by applying pressure to that person's throat (strangulation)	1202(b)(3)(A)(i)(bb)
recklessly causing serious physical injury to another person (aggravated reckless injuring)	1203(b)(1)(B)
causing non-serious physical injury while causing sexual contact to another person through coercive circumstances (aggravated sexual assault)	1301(b)(2)(A)
sexual contact against a person less than 14 years of age, caused by a person at least four years older through coercive circumstances (aggravated sexual assault)	1301(b)(2)(B)
causing sexual contact to another person through coercive circumstances, in the course of committing another felony (aggravated sexual assault)	1301(b)(2)(C)
causing oral or object penetration to another person through coercive circumstances (oral or object penetration)	1301(b)(4)

theft of \$25,000 or more	2101(b)(3)(A)
theft of a firearm	2101(b)(3)(B)
forging: (1) money, stamps, securities, or other valuable instruments issued by the government; or (2) stocks or bonds.	2201(b)(1)
issuing a bad check in an amount of \$25,000 or more, knowing it will not be honored by the drawee	2204(b)
using a payment card that is stolen, revoked, forged, or fictitious to obtain property or services valued at \$25,000 or more (unlawful use of payment card)	2205(b)(1)
committing deceptive business practices that cause a loss of \$25,000 or more	2206(c)
intentionally hindering enforcement of a security interest by destroying, removing, concealing, encumbering, transferring, or otherwise dealing with property subject to that security interest, causing a loss of \$25,000 or more (defrauding secured creditors)	2207(b)
intentionally defrauding a creditor during insolvency, causing a loss of \$25,000 or more	2208(b)
with intent to defraud, obtaining personal identifying information of another, or possessing devices for obtaining information encoded on payment cards (aggravated identity theft)	2209(b)(1)
knowingly causing damage, loss of \$25,000 or more	2304(b)(2)
recklessly causing damage, loss of \$100,000 or more	2304(b)(1)(B)
recklessly creating a risk of catastrophe (risking catastrophe)	2305(b)(2)
recklessly causing an ecological catastrophe	2305(e)(1)(A)(ii)
entering the dwelling of another with intent to commit an offense therein (aggravated burglary)	2401(b)(2)(B)
knowingly soliciting or accepting a bribe (receiving a bribe)	3101(c)(2)
knowingly offering or conferring a bribe (offering a bribe)	3101(c)(2)
intentionally obtaining a personal benefit or harming another person through acts in excess of authority, discrimination, or refusing to perform a duty (official misconduct)	3103(c)(1)
making a materially false statement under oath in a written instrument (written perjury)	3201(b)(2)
falsely representing oneself to be a police officer or emergency personnel with intent to facilitate an offense (impersonation of law enforcement)	3204(b)(2)(B)
failure to await arrival of law enforcement following a motor vehicle accident that resulted in death (aggravated flight from motor vehicle accident)	3301(b)(2)(A)
wearing a disguise during commission of a felony	3303(b)(1)

obstructing the control and suppression of rabies in a place and at a time when a state of emergency as to rabies has been declared pursuant to § 8211 of Title 3	3304(b)(1)
introducing contraband into a detention facility or, being detained in the facility, possessing contraband; and the contraband is a deadly weapon (enhanced aggravated promotion of prison contraband)	3306(c)(2)
knowingly promoting or profiting from prostitution of two or more persons, in a position of management or ownership (operating a prostitution enterprise)	4203(c)(3)
possessing child pornography	4204(b)(2)(B)
knowingly distributing obscene material to a person less than 18 years of age (distributing obscene material to a minor)	4204(b)(3)(A)
intentionally promoting or facilitating animal fighting or baiting (animal fighting)	4207(c)(1)
wagering on a table game on the basis of unlawful private information; gain (or loss avoided) of \$25,000 or more	4502(d)(3)(C)
knowingly selling or providing a firearm to a person who intends to commit a crime while in possession of the firearm (supplying firearm for felonious possession)	5101(c)(2)
selling, buying, or possessing a destructive weapon	5102(d)(2)
knowingly possessing a controlled substance in a Tier 2 quantity	5201(d)(1)(D)
manufacturing or delivering a counterfeit or purported controlled substance	5202(c)(1)(A)
possessing with intent to deliver a controlled substance in a Tier 1 quantity or less	5202(c)(1)(B)(iii)
delivering drug paraphernalia by an adult to a person less than 18 years of age (dealing drug paraphernalia to a minor)	5202(e)(2)(A)
participation in a criminal street gang	5302(c)(1)

**Class 8 Felonies**  
(Maximum Authorized Term of Imprisonment – [2] years)

<b><u>Offense Description</u></b>	<b><u>Section</u></b>
knowingly aiding another person to commit suicide, but the suicide is not attempted	1105(b)(3)
performing an unlawful abortion	1106(c)(1)(B)
recklessly causing (non-serious) physical injury to a child less than (1) 4 years of age (reckless injuring of a child); or (2) 14 years of age who has significant intellectual or developmental disabilities; or (3) 14 years of age, and injury is caused by a deadly weapon.	1203(b)(2)(A)
recklessly engaging in conduct creating a substantial risk of death to another person (aggravated reckless endangerment)	1204(b)(1)

threatening to commit a crime likely to result in death or serious injury to the person or property of a public servant (terroristic threats to a public servant)	1207(b)(1)(A)
intentionally placing another person in fear of imminent physical injury by displaying a firearm or deadly weapon (aggravated menacing)	1207(b)(2)(A)(i)
intentionally causing another person to believe he or she has been exposed to a substance or device that could cause physical injury or death (terroristic hoax)	1207(b)(2)(A)(ii)
intentionally altering another person's mental or physical condition by administering a drug without that person's consent (unlawfully administering drugs)	1208(b)
engaging in sexual contact in an enumerated prohibited relationship (prohibited sexual contact)	1302(b)(3)
residing or loitering on or within 500 feet of a school, having been previously convicted of a sexual offense against a minor (prohibited conduct by convicted child sex offenders)	1304(b)
threatening to commit a sexual offense against another person, or knowingly causing alarm to another person by suggesting or soliciting sexual contact, and the victim is a child over whom the defendant stands in a position of trust, authority, or supervision (aggravated sexual harassment)	1305(b)(1)
knowingly interfering with another person's liberty without consent, results in reckless endangerment (aggravated unlawful restraint)	1401(c)(1)(A)
theft of \$5,000 or more	2101(b)(4)(A)
theft of a motor vehicle	2101(b)(4)(B)
theft of a blank prescription pad	2101(b)(4)(C)
forging a deed, will, codicil, contract, or other instrument relating to a legal right or interest	2201(b)(2)
tampering with or failing to properly maintain records, with intent to defraud (fraudulent tampering with records)	2202(b)
issuing a bad check in an amount of \$5,000 or more, knowing it will not be honored by the drawee	2204(b)
using a payment card that is stolen, revoked, forged, or fictitious to obtain property or services valued at \$5,000 or more (unlawful use of payment card)	2205(b)(1)
committing deceptive business practices that cause a loss of \$5,000 or more	2206(c)
intentionally hindering enforcement of a security interest by destroying, removing, concealing, encumbering, transferring, or otherwise dealing with property subject to that security interest, causing a loss of \$5,000 or more (defrauding secured creditors)	2207(b)
intentionally defrauding a creditor during insolvency, causing a loss of \$5,000 or more	2208(b)
conveying public lands with intent to defraud	2211(b)

falsely identifying one's involvement in a motor vehicle accident that results in serious physical injury or death (unauthorized impersonation in a motor vehicle accident)	2212(b)(2)
recklessly damaging a building by intentionally starting a fire or causing an explosion (reckless arson)	2301(b)(2)
knowingly causing damage, loss of \$5,000 or more	2304(b)(2)
recklessly causing damage, loss of \$25,000 or more	2304(b)(1)(C)
threatening to cause a catastrophe	2305(c)(2)
entering a non-dwelling with intent to commit an offense therein (burglary)	2401(b)(3)
using coercion to influence a public servant, party officer, or voter (improper influence)	3102(c)
tampering with physical evidence with intent to interfere with the criminal justice process (obstructing justice by tampering with physical evidence)	3301(b)(1)
failure to await arrival of law enforcement following a motor vehicle accident that resulted in physical injury (flight from motor vehicle accident)	3301(b)(2)(B)
intentionally interfering with the investigation, discovery, apprehension, prosecution, or defense of a felony (aggravated obstruction of justice)	3301(b)(3)(A)
knowingly interfering with the performance of the duties of a law enforcement officer, firefighter, or correctional officer by force, violence, or physical injury (aggravated resisting or obstructing a law enforcement officer)	3302(b)(2)
obstructing entry into premises for an inspection authorized by Chapter 47 of Title 16	3304(b)(2)
escape from lawful penal custody or civil commitment	3306(b)(2)
introducing contraband into a detention facility or, being detained in the facility, possessing contraband; and the contraband is a mobile phone or other prohibited electronic device (aggravated promotion of prison contraband)	3307(c)(2)
knowing violation of a protective order that results in physical injury or involves use or threatened use of a deadly weapon (violating order of protection)	3309(b)(3)(A)
engaging in disorderly conduct with two or more other persons: (1) with intent to commit an offense; or (2) with intent to prevent or coerce official action; or (3) in which the person knows a firearm will be used (riot)	4101(c)(1)
knowingly and repeatedly following, monitoring, or interfering with the activities or the property of a specific other person in three or more instances, in a manner that would cause a reasonable person to fear for her safety or suffer significant mental distress (stalking)	4103(b)(1)(B)(ii)
performing an indecent act in a place open to public view, knowing one is viewed by a child under 16 years of age over whom one stands in a position of trust, authority, or supervision (indecent abuse of trust)	4201(c)(1)

knowingly promoting or profiting from prostitution (promoting prostitution)	4203(c)(4)
knowingly distributing obscene material	4204(b)(3)(B)
possessing obscene material with intent to distribute it commercially (possessing pornography for commercial distribution)	4204(b)(4)
knowingly dealing in human remains removed from an unmarked burial (dealing in human remains)	4206(b)(3)
intentionally killing or causing serious physical injury to another's animal (aggravated animal cruelty)	4207(c)(2)
knowingly recording a person in a state of undress (voyeurism)	4302(c)
marrying another person while already married, or knowingly marrying a person who is already married (bigamy)	4402(c)
intentionally abandoning a child under 14 years of age (child abandonment)	4403(c)(1)
knowingly taking or enticing a person less than 16 years of age or an incompetent person from his or her lawful custodian; then removing the person from the State (aggravated interference with custody)	4404(b)(1)
payment of support order delinquent for 8 months, or \$10,000 in arrears (aggravated persistent non-support)	4407(b)(1)(A)
unlawful gambling, betting, or receiving financial benefit from animal fighting or baiting (gambling on animal fighting)	4501(e)(1)(A)
paying something of value to influence the outcome of a trial or contest, or altering a wager on the basis of non-public information that a contest has been so influenced (contest rigging)	4502(d)(2)
wagering on a table game on the basis of unlawful private information; gain (or loss avoided) of \$5,000 or more	4502(d)(3)(D)
selling, buying, or possessing an undetectable knife	5102(d)(3)
carrying a concealed deadly weapon	5103(b)(1)(B)
possession of a deadly weapon by a person prohibited	5104(c)(2)
providing firearms to persons prohibited	5105(c)(1)
providing a sporting firearm or its ammunition to a child less than 18 years of age without consent of the child's parent or guardian	5105(c)(2)(A)
knowingly possessing a controlled substance in a Tier 1	5201(d)(1)(E)
possessing with intent to deliver a counterfeit or purported controlled substance	5202(c)(1)(B)(iv)

distributing or dispensing a controlled substance by person subject to subchapter III of Chapter 47 of Title 16, and: (1) the substance is in Schedule II, III, or IV, and it is distributed without the written prescription of a practitioner; or (2) it is a refill for a substance in Schedule II; or (3) it is a refill for a substance in Schedule III or IV, and the refill is 6 months past the date of the prescription, or more than the fifth refill; or (4) it is a Schedule V substance dispensed without a legitimate medical purpose; or (5) it is in excess of the authorization given by the person's registration.	5205(c)
administering or prescribing a performance-enhancing steroid	5205(c)
possessing a blank prescription form or pad by a non-practitioner	5206(b)
recruiting a person under 18 years of age to participate in or become a member of a criminal street gang (recruiting juveniles for a gang)	5302(c)(2)
evading transaction reporting requirements by (1) falsifying or failing to file a report; or (2) conducting multiple currency transactions (structuring)	5303(d)(2)

<b>Class A Misdemeanors</b> (Maximum Authorized Term of Imprisonment – [1] year)	
<b><u>Offense Description</u></b>	<b><u>Section</u></b>
having an unlawful abortion performed on oneself	1106(c)(1)(A)
knowingly causing (non-serious) physical injury to another person (assault)	1202(b)(3)(A)(ii)
threatening to commit a crime likely to result in death or serious injury to person or property (terroristic threats)	1207(b)(1)(B)
recklessly causing mental or emotion harm, or failing to provide care for an enumerated vulnerable person, by a person having a duty to provide medical or personal care (abuse of vulnerable persons)	1209(c)(1)
causing sexual contact to another person through coercive circumstances (sexual assault)	1301(b)(3)
threatening to commit a sexual offense against another person (aggravated sexual harassment)	1305(b)(2)(A)
knowingly interfering with another person's liberty without consent (unlawful restraint)	1401(c)(1)(B)
intentionally causing another to perform or omit to perform any act by threatening harm to the victim or a third person (coercion)	1403(c)
theft of \$1,500 or more	2101(b)(5)
unauthorized use of a vehicle	2109(b)
with intent to defraud, altering a written instrument of another without authority, or creating a false instrument purported to be of another (forgery)	2201(b)(3)

manufacturing, using, displaying, advertising, distributing, selling, or possessing with intent to sell or distribute any item or service bearing or identified by a counterfeit mark (trademark counterfeiting)	2201(b)(3)
fraudulently obtaining, displaying, or possessing an official document	2203(b)
issuing a check in an amount of \$1,500 or more, knowing it will not be honored by the drawee	2204(b)
using a payment card that is stolen, revoked, forged, or fictitious to obtain property or services valued at \$1,500 or more (unlawful use of payment card)	2205(b)(1)
committing deceptive business practices that cause a loss of \$1,500 or more	2206(c)
intentionally hindering enforcement of a security interest by destroying, removing, concealing, encumbering, transferring, or otherwise dealing with property subject to that security interest, causing a loss of \$100 or more (defrauding secured creditors)	2207(b)
intentionally defrauding a creditor during insolvency, causing a loss of \$1,500 or more	2208(b)
intentionally influencing a violation of fidelity in a commercial relationship by offering or accepting a benefit	2210(b)
impersonating another person with intent to defraud, or falsely representing oneself as a public servant or bail bond agent (unauthorized impersonation)	2212(b)(1)
recklessly creating a risk of damaging another's property by intentionally starting a fire or causing an explosion (endangering by fire or explosion)	2302(b)
knowingly causing damage, loss of \$1,500 or more	2304(b)(2)
recklessly causing damage, loss of \$5,000 or more	2304(b)(1)(D)(i)
	2304(b)(1)(D)(ii)
intentionally causing substantial interruption or impairment of a public service	
recklessly failing to prevent a catastrophe by one in a position to do so	2305(d)(2)
knowingly entering or remaining unlawfully in a dwelling (criminal trespass of dwelling)	2402(b)(1)
	3101(c)(1)
knowingly offering or conferring a bribe as a result of the recipient's wrongdoing	
knowingly speculating on or acquiring a pecuniary interest in property, a transaction, or an enterprise on the basis of non-public official information (profiteering)	3103(c)(2)
making an immaterially false statement under oath (false swearing)	3201(b)(3)
making a false written statement under penalty	3202(c)
knowingly making a false entry in, or failing to make an obligatory entry in, public records (tampering with public records)	3203(b)
falsely representing oneself to be a public servant (criminal impersonation)	3204(b)(1)
intentionally interfering with the investigation, discovery, apprehension, prosecution, or defense of a misdemeanor (obstruction of justice)	3301(b)(3)(B)

knowingly interfering with the performance of the duties of a law enforcement officer, firefighter, or correctional officer (resisting or obstructing a law enforcement officer)	3302(b)(3)
violation of a juror's duty of secrecy or impartiality	3304(b)(3)
escape from: (1) restraint due to arrest; or (2) nonsecure facilities of the Division of Youth Rehabilitative Services	3306(b)(3)
using prisoner mail to cause inconvenience, annoyance, or alarm, or designating prisoner mail as "legal mail" that is not legal mail (misuse of prisoner mail)	3307(c)(3)
introducing contraband into a detention facility or, being detained in the facility, possessing contraband (promoting prison contraband)	3307(c)(3)
unauthorized communication with a juror or witness	3308(c)(3)
breach of peace in court proceedings; persistent refusal to be sworn in as a witness or answer questions; publishing false reports of a court's proceedings; persistent refusal to serve as a juror; intentional failure by a juror to attend trial; intentional failure to appear in court following release from custody under condition of appearance (aggravated criminal contempt)	3309(b)(2)
knowing disobedience or resistance to the process, injunction, order, or other mandate of a court	3309(b)(3)(B)
intentionally disturbing or disrupting a funeral	4101(c)(2)
intentionally harassing, annoying, or causing alarm to another person by: (1) making repeated, inconvenient, anonymous communications; or (2) engaging in any conduct without legitimate purpose that is likely to provoke a violent or disorderly response, or cause a reasonable person to suffer fear, alarm, or distress (harassment)	4103(b)(2)
intentionally defacing a monument or other object of veneration, knowing it will outrage the sensibilities of persons likely to observe or discover it (desecration)	4107(b)
knowing it is false: (1) circulating a report of an emergency to law enforcement, or in circumstances likely to cause evacuation; or (2) calling or summoning emergency vehicles (false public alarms)	4102(b)
performing an indecent act in a place open to public view, knowing one is viewed by a child under 16 years of age (indecent exposure to a minor)	4201(c)(2)
knowingly promoting or participating in a combat event not authorized by law (unauthorized combat)	4205(b)
recklessly treating human remains in a way that would outrage ordinary family sensibilities (abuse of corpse)	4206(b)(1)
subjecting any animal to cruel mistreatment or neglect (animal cruelty)	4207(c)(3)
knowingly trespassing on real property with intent to subject anyone in a private place to eavesdropping or other surveillance	4301(b)
knowingly installing or using a recording device in a private place	4301(b)

knowingly installing or using a device to broadcast or amplify sounds outside a private place	4301(b)
knowingly installing a tracking device in a motor vehicle	4301(b)
knowingly intercepting or divulging contents of a communication (interception of private information)	4303(b)
knowingly using or disclosing improperly obtained information or recordings (unlawful use of information)	4304(d)(1)
recklessly humiliating or embarrassing another person by disseminating personal pornography without the person's consent (unlawful dissemination of personal pornography)	4305(b)
engaging in sexual conduct with a relative (incest)	4401(b)
intentionally abandoning a child 14 years of age or older (child abandonment)	4403(c)(2)
knowingly taking or enticing a person less than 16 years of age or an incompetent person from his or her lawful custodian (interference with custody)	4404(b)(2)
knowingly encouraging or aiding a minor to run away from her guardian (assisting a runaway)	4405(b)
knowingly causing a minor to commit an offense (contributing to the delinquency of a minor)	4406(b)(1)
payment of support order delinquent for 4 months (persistent non-support)	4407(b)(1)(B)
unlawful gambling or betting	4501(e)(1)(B)
altering the element of chance of a game involving lawful wagers; or using a device to assist one's chances of winning a lawful games of cards or chance (cheating)	4502(d)(1)
wagering on a table game on the basis of unlawful private information; gain (or loss avoided) of \$1,500 or more	4502(d)(3)(E)
carrying a concealed dangerous instrument, other than "pepper spray"	5103(b)(2)
possessing a firearm in a public place while chemically impaired	5106(c)
requesting a criminal history background check by a license firearms dealer, importer, or manufacturer, with intent to use the record for a purpose other than to determine the person's eligibility to possess a firearm	5107(c)
transferring a firearm to another person without performing a required criminal history background check	5107(c)
knowingly delivering a prescription drug that is not a controlled substance (dealing prescription drugs)	5202(c)(2)(A)
possessing or manufacturing drug paraphernalia with intent to deliver it, while reckless as to its ultimate use as drug paraphernalia	5204(e)(2)(A)
delivering drug paraphernalia while reckless as to its ultimate use as drug paraphernalia	5204(e)(2)(B)
knowingly purchasing a prescription drug through an internet pharmacy for delivery in Delaware without an authorized prescription	5207(e)(2)

<b>Class B Misdemeanors</b> (Maximum Authorized Term of Imprisonment – [6] months)	
<b><u>Offense Description</u></b>	<b><u>Section</u></b>
producing any instrument with intent that it be used in an unlawful abortion (instruments of unlawful abortion)	1106(c)(2)
knowing offensive touching with urine or feces, no injury (aggravated offensive touching)	1202(b)(3)(B)(i)
recklessly causing (non-serious) physical injury to another person (reckless injuring)	1203(b)(2)(B)
recklessly engaging in conduct creating a substantial risk of (non-serious) physical injury to another person (reckless endangerment)	1204(b)(2)
operating a vehicle while under the influence of alcohol or drugs (operating a vehicle while chemically impaired)	1205(b)
recklessly creating a substantial risk of mental or emotional harm to another person with intent to initiate that person into an organization (hazing)	1209(c)(2)
theft of \$100 or more	2101(b)(6)
issuing a check in an amount of \$100 or more, knowing it will not be honored by the drawee	2204(b)
using a payment card that is stolen, revoked, forged, or fictitious to obtain property or services valued at \$100 or more (unlawful use of payment card)	2205(b)(1)
committing deceptive business practices that cause a loss of \$100 or more	2206(c)
intentionally hindering enforcement of a security interest by destroying, removing, concealing, encumbering, transferring, or otherwise dealing with property subject to that security interest, causing a loss of \$100 or more (defrauding secured creditors)	2207(b)
intentionally defrauding a creditor during insolvency, causing a loss of \$100 or more	2208(b)
recklessly causing damage, loss of \$1,500 or more	2304(b)(1)(E)
recklessly creating a risk of an ecological catastrophe	2305(e)(1)(B)
knowingly entering or remaining upon real property with intent to peep into an occupied dwelling (peeping trespass)	2402(b)(2)
knowingly obstructing administration of law or other governmental function by physical interference or obstacle, breach of official duty, or any unlawful act (obstructing administration of law)	3304(b)(4)
knowing failure to provide reasonable aid to a peace officer in preventing an offense or effecting an arrest (refusing to aid an officer)	3305(b)
engaging disorderly, contemptuous, or insolent conduct during a court session (criminal contempt)	3309(b)(1)

performing an indecent act in a place open to public view (public indecency)	4201(c)(3)
offering a fee in exchange for performance of sexual conduct (patronizing a prostitute)	4202(b)(2)
accepting a fee in exchange for performance of sexual conduct (prostitution)	4202(b)(2)
knowingly dealing in funerary objects associated with interment	4206(b)(2)
knowingly displaying, disclosing, altering, or deleting computer data without authorization (misuse of computer system information)	4304(d)(2)
knowingly creating a risk that a minor will commit an offense (risking delinquency of a minor)	4406(b)(2)
knowingly refusing to provide for needs of one's minor child (non-support of child)	4407(b)(2)
wagering on a table game on the basis of unlawful private information; gain (or loss avoided) of \$100 or more	4502(d)(3)(F)
selling, buying, or possessing enumerated, unlawful weapons and ammunition	5102(d)(4)
providing a self-defense weapon to a person who is less than 21 years of age	5105(c)(2)(B)
providing a deadly weapon to an intoxicated person	5105(c)(3)
providing a deadly weapon to a person legally disqualified from possessing or owning one	5105(c)(4)(B)
knowingly possessing: (1) a controlled substance in less than a Tier 1 quantity; or (2) a counterfeit controlled substance	5201(d)(1)(F)
possessing with intent to deliver a prescription drug that is not a controlled substance	5202(c)(2)(B)
using, or possessing with intent to use, drug paraphernalia	5204(e)(1)

<b>Class C Misdemeanor</b>	
<b>(Maximum Authorized Term of Imprisonment – [3] months)</b>	

<b><u>Offense Description</u></b>	<b><u>Section</u></b>
theft of less than \$100	2101(b)(7)
issuing a check in an amount of less than \$100, knowing it will not be honored by the drawee	2204(b)
using a payment card that is stolen, revoked, forged, or fictitious to obtain property or services valued at less than \$100 (unlawful use of payment card)	2205(b)(1)
committing deceptive business practices that cause a loss of less than \$100	2206(c)

intentionally hindering enforcement of a security interest by destroying, removing, concealing, encumbering, transferring, or otherwise dealing with property subject to that security interest, causing a loss of less than \$100 (defrauding secured creditors)	2207(b)
intentionally defrauding a creditor during insolvency, causing a loss of less than \$100	2208(b)
recklessly causing damage, loss of \$100 or more	2304(b)(1)(F)
knowingly causing damage, loss of less than \$100	2304(b)(2)
threatening to cause an ecological catastrophe	2305(e)(1)(C)
consensually exchanging explicit images between school-age peers (sexting among minors)	4204(b)(5)
knowingly distributing or failing to stop distributing unsolicited bulk commercial electronic email (misuse of electronic mail)	4304(d)(3)
knowing accessing information without authorization	4306(b)
wagering on a table game on the basis of unlawful private information; gain (or loss avoided) of less than \$100	4502(d)(3)(G)
providing a B.B., air, or spear gun, or B.B. shot to a child less than 16 years of age without the consent of the child's parent or guardian	5105(c)(5)
knowingly possessing: (1) more than 1 ounce of leaf marijuana; or (2) any quantity of non-leaf marijuana; by a person 18 years of age or older (possession of marijuana)	5201(d)(2)
knowingly possessing marijuana by a person less than 18 years of age (possession of marijuana by a minor)	5201(d)(2)

**Class D Misdemeanor**  
(Maximum Authorized Term of Imprisonment – [30] days)

<b><u>Offense Description</u></b>	<b><u>Section</u></b>
knowing offensive touching, no injury (offensive touching)	1202(b)(3)(B)(ii)
knowingly placing another person in fear of imminent physical injury (menacing)	1207(b)(2)(B)
knowingly causing alarm to another person by suggesting or soliciting sexual contact (sexual harassment)	1305(b)(2)(B)
with intent to defraud, writing down the personal information of a payment card owner (identity theft)	2209(b)(2)
recklessly causing damage, loss of less than \$100	2304(b)(1)(G)
failing to prevent an ecological catastrophe by a person in a position to do so	2305(e)(1)(D)
knowingly entering or remaining unlawfully upon real property enclosed in a manner manifestly designed to exclude intruders (criminal trespass)	2402(b)(3)

intentionally causing or creating a risk of public inconvenience, annoyance, or alarm (disorderly conduct)	4101(c)(3)
refusing to obey the order of a peace officer to disperse by persons engaging in disorderly (failure to disperse)	4101(c)(3)
providing or maintaining premises that the person knows will be used for gambling activity	4501(e)(2)
knowingly possessing, without a prescription, a prescription drug that is not a controlled substance (unlawful possession of a prescription drug)	5201(d)(3)
placing an advertisement in a publication, reckless as to whether the advertisement promotes the sale of drug paraphernalia	5204(e)(3)

<b>Violations</b> (No Term of Imprisonment is Authorized)
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<b><u>Offense Description</u></b>	<b><u>Section</u></b>
theft of less than \$100 (first offense)	2101(b)(8)
recklessly causing damage, loss of less than \$100 (first offense)	2304(b)(1)(H)
knowingly entering or remaining unlawfully upon real property (minor criminal trespass)	2402(b)(4)
appearing in a public place while intoxicated to a degree that would endanger other persons or property (public intoxication)	4104(b)
loitering or prowling in a place, time, or manner not usual for law-abiding citizens, and under circumstances that warrant alarm for the safety of nearby persons or property (loitering)	4105(e)
intentionally tampering with or obstructing a public utility right-of-way (obstructing public ways)	4106(b)
recklessly rendering a public passage unreasonably inconvenient or hazardous to use (obstructing public ways)	4106(b)
wagering money on a game of dice (playing craps)	4501(e)(3)
wagering on a table game on the basis of unlawful private information; gain (or loss avoided) of less than \$100 (first offense)	502(d)(3)(H)

<b>General Adjustments to Grade</b>
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<b><u>Description</u></b>	<b><u>Section</u></b>
if the offense is committed by a repeat felon, increase the offense grade by 1	804(a)
if the victim of the offense is a vulnerable person, increase the offense grade by 1; only applies if the offense is a Class 5 felony or lower before adjustment	804(b)
if the offense is a hate crime, increase the offense grade by 1; only applies if the offense is a Class 5 felony or lower before adjustment	804(c)

if the offense is committed to benefit a criminal street gang, increase the offense grade by 1; only applies if the offense is a Class 5 felony or lower before adjustment	804(d)
if the offender wears a disguise or body armor during commission of a felony, increase the offense grade by 1; only applies if the offense is a Class 5 felony or lower before adjustment	804(e)

**CONVERSION TABLE BY CURRENT PROVISION**

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11	308	C.A.
11	401(a)	403(a)(1), (a)(2)(B), (b)

11	401(b)	403(c)
11	401(c)	410(c)
11	402	C.A.
11	403	C.A.
11	404(a)	C.A.
11	404(b)	C.A.
11	405	C.A.
11	406	C.A.
11	407	C.A.
11	408	C.A.
11	409	C.A.
11	421	212(a)-(b)
11	422	C.A.
11	423	401(d); 404; 410(b)
11	424	212; 214(e), (l)
11	431	401(d)
11	431(a)	405(a), (b); 501(c)
11	431(b)	401(b)(2); 503(b)
11	431(c)	C.A.
11	432(a)	503(a)
11	441(1)	206(a)
11	441(3)	C.A.
11	451	208(a)
11	451(1)	C.A.
11	452	208(b)
11	453	208(c)(1)-(c)(4)
11	454	C.A.
11	461	300; 308(d)
11	462(a)(1)-(3), (5)	303(a)(1)-(3)
11	462(a)(4)	303(a)(4)
11	462(b)(1)	303(b)
11	463	300; 301(a), (d); 302(1), (2), (3)
11	464(a)	302(1); 306(a); 409
11	464(b)	C.A.
11	464(c)	306(c)(1); 409
11	464(d)	301(c); 306(b)(2)
11	464(e)(1)	301(d)
11	464(e)(2)	306(c)(2)(A)

11	464(e)(2)a.-c.	306(c)(2)(B)
11	465(a)	301(c); 409
11	465(a)(1)-(2)	306(b)(1)
11	465(a)(3)	306(a)
11	465(b)	306(c)(2)(A)
11	465(c)	306(c)(2)(B)
11	466(a)	302(1)
11	466(a)-(b)	307(a)
11	466(a)-(c)	409
11	466(b)(1)-(3)	307(b)
11	466(c)	307(d)
11	466(d)	307(e)
11	467(a)	409
11	467(a)(1)	301(c); 302(1); 304(a)(1)
11	467(a)(2)	C.A.
11	467(b)(1)	304(a)(2)
11	467(b)(2)	304(a)(4)
11	467(c)	304(a)(3)
11	467(c)(1)	304(a)(3)(C)
11	467(c)(2)	304(a)(3)(B)
11	467(c)(3)	304(a)(3)(D)
11	467(c)-(f)	409
11	467(d)	304(b)
11	467(e)	306(d)
11	467(f)	304(a)(1); 409
11	468	305(a)
11	468(1)	305(a)(1)(A)(i)
11	468(1)b.	C.A.
11	468(1)c.	305(a)(1)(B)
11	468(2)	305(a)(1)(A)(ii)
11	468(2)a., (5)a., (6)a., (7)a.	409
11	468(2)b.	305(a)(1)(B)
11	468(3)	305(a)(1)(A)(iii)
11	468(3)b.	C.A.
11	468(3)c.	305(a)(1)(B)
11	468(4)	305(a)(2)
11	468(5)-(5)a.	305(a)(3)
11	468(5)b.	C.A.
11	468(5)c.	305(b)

11	468(6)-(6)a.	305(a)(4)
11	468(6)b.	305(b)
11	468(7)	305(a)(5)
11	469	409
11	470	409
11	470(b)	301(e)
11	471(a)	308(b)
11	471(c)	308(c)
11	475	501(c); 508
11	476	5301(f)
11	477	5301(e)
11	501	702(a); 707; 211
11	502	702(a); 707; 211
11	503	702(a); 707; 211
11	511	703(a); 707;
11	512	703(a); 707;
11	513	703(a); 707;
11	521(a)	707
11	521(b)	703(b)
11	521(c)	705
11	522	703(c)
11	523	704
11	531	701(a); 707
11	532	701(b)(1)
11	533	211(g)
11	541(a)-(b)	706(a)
11	541(c)	706(b)
11	542	C.A.
11	601	1202(a)(2), (b)(3)(B)
11	601(c)	1202(b)(4)(A)-(C)
11	602	1207(a)-(b)
11	602(a)	1207(a)(2); (b)(2)(C)
11	603	1204(b)
11	603(a)(1)	1203(a); 1204(a)
11	603(a)(2)	C.A.
11	604	1203(a); 1204(a), (b)
11	605	804(b); 1203(b)(1)(A)(ii)
11	606	804(b); 1202(b)(2)(B)(ii)
11	607	1202(a)(1)

11	607(a)(1)–(2)	1202(b)(3)(A)(i)(bb)
11	607(a)(3)	804(a)
11	607(a)(3)a.	1202(b)(2)(A)
11	607(a)(3)b.	1202(b)(2)(B)(i)
11	611(1)	1202(a)(1), (b)(3)(A)(ii); (b)(2)(B),
11	611(2)	[1203(b)(2)(B)(i)-(ii)]
11	612(a)	1202(a)(1)
11	612(a)(1)	1202(b)(2); 1203(b)(1)(B)
11	612(a)(2)	1202(b)(3)(A)(i)(aa), (b)(2)(A)(iii)
11	612(a)(3)-(4), (6), (8), (11)	1202(b)(4)(A)-(C)
11	612(a)(5)	C.A.
11	612(a)(9)	1202(b)(2)
11	612(a)(10)	1202(b)(4)(D)
11	613(a)	1202(a)(1)
11	613(a)(1)	1202(b)(2), (b)(2)(A)
11	613(a)(2)	1202(b)(1)
11	613(a)(3)	C.A.
11	613(a)(4)	1202(b)(1)
11	613(a)(5)-(6)	1202(b)(4)(A)-(C)
11	613(a)(7)	C.A.
11	613(a)(9)	C.A.
11	613(b)	C.A.
11	614	C.A.
11	616(a)(1)	5304(a)
11	616(a)(2)	5304(c)
11	616(b)	5302(a), (c)(1)
11	616(c)	804(d)
11	617(b)(1)	5302(b), (c)(2)
11	617(b)(2)	C.A.
11	621	1207(b); 4102
11	621(a)(1)	1207(a), (a)(1)(B)
11	621(a)(2)a.-c.	4102(a)(1)(A)
11	621(a)(3)	1207(a)
11	622	1207(a), (b)(2)(A)(ii)
11	625	1208(a)
11	626	1208(a)
11	627	C.A.

11	628	[1203(b)(2)(C)]
11	628A	[1203(b)(2)(B)(i)-(ii)]
11	629	1203
11	630(b)	802(a)
11	630(c)	C.A.
11	630A(b)	802(a)
11	630A(c)	C.A.
11	631	1104(a), (b)(3); 1106(c)
11	632	1103(c)
11	632(1)	1103(a)(1)
11	632(2)	C.A.
11	632(3)	1103(a)(2)
11	632(4)	C.A.
11	632(5)	1105(a), (b)(1)
11	633	1104(b)(2)
11	633(d)	802(a)
11	634	C.A.
11	635	1102(b)
11	635(1)	1102(a)(2)(A)
11	635(2)	1102(a)(3)
11	636(a)(1)	1101(a)(1)
11	636(a)(3)	1105(c)
11	636(a)(4)	1102(a)(2)(B)
11	636(a)(5)	1102(a)(2)(C)
11	636(a)(6)	1102(a)(2)(D)
11	636(b)(1)-(2)	1101(b)
11	641	1103(b)
11	645	1105(a), (b)(3)
11	651	1106(a), (c)
11	652	1106(a), (c)
11	653	1106(b)
11	654	1107(a)
11	761	1301(a)(2)(A)
11	761(b)	1307(f)(2)
11	761(c)	1307(f)(2)
11	761(d)	1307(c)
11	761(e)	1307(c)
11	761(f)	1307(e)
11	761(g)(1)	1307(f)(1), (f)(3)

11	761(g)(2)	1307(f)(2)
11	761(i)	1307(b)
11	761(j)(2)-(3)	1301(a)(2)(B)
11	761(j)(4)	1301(a)(2)(A)
11	761(j)(5)	1301(a)(2)(C)
11	761(j)-(k)	1301(a)(2)
11	761(k)	1301(a)(2)(D)
11	762(a)	1301(f); 1306(a)
11	762(c)	C.A.
11	763	1305(a), (b)(2)
11	764	4201(a), (b)
11	765	4201(a), (d)(1)(B)
11	766	4401
11	767	1301(a)(1), (d)
11	767(a)(1)	1301(b)(1)(A)(i)(bb)-(cc)
11	768	1301(a)(1), (d)
11	769	1301(a)(1), (d)
11	769(a)(1)	1301(b)(2)(A)
11	769(a)(3)	1301(a)(2)(D)(ii), (b)(1)(B)
11	770	1301(a)(1), (b)(3)
11	770(a)(3)	1301(c)
11	770(b)	1306(b)
11	771	1301(a)(1)
11	771(a)(1)	1301(a)(2)(D), (b)(2)(B)
11	771(a)(2)	1301(c)
11	771(a)(2)a.-b.	1301(b)(2)(A)
11	771(b)	1306(b)
11	771(c)	1301(g)
11	772	1301(a)(1)
11	772(a)	1301(b)(1)(A)(ii)
11	772(a)(2)	1301(c)
11	772(a)(2)a.	1301(b)(1)(A)(i)(aa)
11	772(a)(2)b.	1301(b)(2)(C)
11	772(a)(2)c.	1301(b)(1)(A)(i)(aa)

11	772(a)(2)d.-e.	1301(b)(1)(A)(i)(bb)-(cc)
11	772(a)(2)f.	1301(b)(1)(C)
11	772(a)(2)g.	1301(b)(1)(B)
11	772(c)	802(a)
11	773	1301(a)(1), (b)(5)
11	773(a)	1301(b)(1)(A)(ii)
11	773(a)(1)	1301(b)(1)(A)(i)(aa), (b)(2)(A)
11	773(a)(2)a.	1301(b)(2)(C)
11	773(a)(3)	1301(b)(1)(A)(i)(bb)-(cc)
11	773(a)(4)	1301(b)(1)(C)
11	773(a)(5)	1301(a)(2)(D)(ii), (b)(1)(B)
11	774	1301
11	775	1303
11	776	804(a)
11	777(a)	C.A.
11	777A	1304
11	778	1301(e)
11	778(3)-(4)	1302(a)(2)(B)
11	778(6)(b)	802(a)
11	778A(1)	1301(e)
11	778A(2)	4201(d)(1)(A)
11	778A(3)	1305(b)(1)
11	778A(4)b.	4201(d)(1)(A)
11	780(a)	1206(a)
11	780(b)	1206(c)
11	780(c)	1206(b)
11	780(d)	1306(b)
11	781	1401(a), (c)(1)
11	782	1401(a), (c)(1)
11	783	1401(b), (c)(2)
11	783A	1401(b), (c)(2)
11	784	1401(b)(6), (d)
11	785	4404(a)-(b)
11	786(b)	4404(a)(1)-(2); 1404
11	786(c)	1401(a)

11	787	1402(b)
11	787(b)	4203(c)(1)-(2)
11	787(b)(1)	1402(a)(3)(A)
11	787(b)(2)-(3)	1402(a)(2)
11	787(b)(3)a.1.	C.A.
11	787(b)(3)c.	C.A.
11	787(b)(4)	4202(b)(1)
11	787(b)(5)a.	1402(a)(3)(B)
11	787(b)(5)b.	1402(a)(4)
11	787(b)(6)a.	1402(b)(4)
11	787(b)(6)b.	C.A.
11	787(c)(2)	1402(d)(1)(B)
11	787(c)(2)a.	C.A.
11	787(d)	1402(d)(2)
11	787(e)(1)	1402(d)(1)(A)
11	787(e)(2)-(3)	C.A.
11	787(f)	C.A.
11	787(g)	C.A.
11	787(h)	4105(d); 4202(c); 4204(e)(2)
11	787(i)	C.A.
11	787(j)(2)-(4)	1402(e)
11	787(k)	C.A.
11	787(l)	C.A.
11	787(m)	C.A.
11	787(n)	C.A.
11	791	1403(a), (c)
11	792	1403(b)
11	801	2301(a), (b)(2)
11	801(b)	2301(c)
11	802	2301(a)
11	802(a)	2301(b)(1)(B)
11	802(b)(1)	2301(c)
11	802(b)(2)	C.A.
11	802(b)(3)	C.A.
11	803	2301(a), (b)(1)(A)
11	804	2302
11	804(b)	2304(b)
11	805	1207

11	811(a)	2304(a)
11	811(a)(3)	2306(c), (f)
11	811(b)	2304(b)
11	811(b)(1)	2306(f)
11	811(b)(3)	2304(b)(1)(G), (b)(2)
11	811(b)(4)	C.A.
11	811(c)	C.A.
11	812	210(a)(1)(B)(i)
11	812(a)(2)	2304(b)
11	812(b)	708
11	813	2102(a); 2110(h)
11	820	2402(a), (b)(2)
11	821	2402(a), (b)(4)
11	822	2402(a), (b)(3)
11	823	2402(a), (b)(1)
11	824	2401(a), (b)(3)
11	825	2401(a)
11	825(a)(1)	2401(b)(2)
11	825(a)(2)	2401(b)(4)
11	825(b)	802(a)
11	826	2401(a)
11	826(a)	2401(b)(4)
11	826(b)	802(a)
11	826A	2401(a), (b)(1)
11	826A(b)	802(a)
11	827	2401(c)
11	828	708
11	829(b)	2403(a)
11	829(c)	2403(b)
11	829(e)	C.A.
11	831(a)	1201(a), (b)(3)
11	832(a)	1201(a)
11	832(a)(1)	1201(b)(2)(A)
11	832(a)(2)	1201(b)(2)(B)-(C)
11	832(b)	802(a)
11	835(a)	1201(a)
11	835(b)(1)	1201(b)(1)(D)
11	835(b)(2)	1201(b)(1)(B)
11	835(c)	C.A.

11	835(d)	C.A.
11	836(a)	1201(a)
11	836(a)(1)-(3)	1201(b)(1)(B)
11	836(a)(4)	1201(b)(2)(B)-(C)
11	836(a)(5)	1201(b)(2)(A)
11	836(a)(6)	1201(b)(1)(A)
11	836(c)	C.A.
11	836(d)-(f)	C.A.
11	840	2101(b)(4)-(5), (b)(1)
11	840(a)(2)	2103
11	840(a)(4)-(5)	2102(b)(2)
11	840(c)	307(c)
11	840(d)	307(e)
11	840A(a)	2202(a)(2)
11	841	2102(a)
11	841(a)	2101(a)
11	841(b)	2110(h)
11	841(c)	800(e); 2101(b)
11	841(c)(1)-(2)	C.A.
11	841A	2101(b)(4)(B)
11	841A(b)	2110(d)
11	841B	C.A.
11	841B(c)	804(a)
11	841C	2101(b)(4)(C); 5206
11	841C(b)(1)	2110(g)
11	842	2105
11	843	2103(a); 2110(b)
11	844	2103(a), (b)(2)
11	845(a)	2106(a)
11	845(b)-(c)	2106(b)
11	846	2101(c); 2104(a)
11	847(a)	2101(d)
11	847(b)	2104(b)
11	848	C.A.
11	849(a)	C.A.
11	849(b)-(c)	2103(b)(1)
11	849(d)	C.A.
11	849(e)	2103(c)
11	850(a)(1)	708; 2106

11	850(a)(1)b.	3301(a)(2)(H)
11	850(b)-(e)	C.A.
11	851	804(a); 2107(a)
11	852	2107(b)
11	852A	804(a)
11	853	2109; 2207(b)
11	853(4)	2207(a)
11	854(a)	2209(a)(1)
11	854(b)	2209(a)(1)
11	854(c)	2213(h)
11	854(d)	2209(b)(1)
11	854A	C.A.
11	855(a)-(b)	2101(a)
11	855(c)	805(d)
11	856	C.A.
11	857(2)	2110(a)
11	857(3)	2110(c)
11	857(4)	2110(e)
11	857(5)	2110(f)
11	857(7)	2110(h)
11	857(8)	2110(j)
11	858	2108
11	858(d)-(e)	307(e)
11	858(f)	C.A.
11	859	C.A.
11	860	708
11	861(a)(1)	2201(a)(1)
11	861(a)(2)	2201(a)(2)
11	861(b)(1)	2201(b)(1)
11	861(b)(2)	2201(b)(2)
11	861(b)(3)	2201(b)(3)
11	862	708
11	863	806(f)
11	871	2202(a)(1)
11	872	2202(a)(1)
11	873	3203(a)-(b)
11	876	2202(a)(1)
11	877	2202(a)(2)
11	878	2202(a)(2)

11	881	2210(a)(1), (a)(2), (a)(3), (b)
11	882	2210(a)(2), (b)
11	891	2207(b)
11	892	2208
11	893	2207(a)-(b)
11	900	2204(b)
11	900(a)	2204(a), (c)
11	900(b)	C.A.
11	900A	C.A.
11	901(a)	2213(d)
11	901(b)	2213(f)
11	902	C.A.
11	903(a)(1)	2205(a)(1)
11	903(a)(1)(3)	2205(a)(2)
11	903(a)(2)	2205(a)(3)
11	903(a)(4)	2205(a)(3)
11	903(c)	2205(b)(1)
11	903(d)	2205(b)(2)
11	903(e)	C.A.
11	903A(a)	2209(a)(2)
11	903A(a)	2209(b)(1), (a)(3)
11	903A(e)(1)	2213(j)
11	903A(e)(2)	2213(k)
11	904	2213(g)
11	905	C.A.
11	906	2206(a)-(c)
11	906(4)	2213(a), (e)
11	907	2212(b)(1); 3204(b)(1)
11	907(1)	2212(a)(1)
11	907(2)	2212(a)(1)
11	907(3)	3204(a)(1)
11	907A	2212(a)(3), (b)(2)
11	907B	3204(a)(2)
11	907B(b)	3204(b)(2)
11	908	2103
11	909	2202(a)(2)
11	910	2207(a)
11	911	2211

11	912	2211
11	913	2103
11	913A	2103
11	914(b)	2209(a)(4)
11	914(c)	2209(b)(2)
11	915	2209(a)(4), (b)(2)
11	915(d)	2209(b)(2)
11	915A	2209(a)(4)
11	916	2103
11	917	2103
11	918	C.A.
11	920	2108
11	921	2108
11	922	2206(c)
11	923	C.A.
11	924	C.A.
11	924A	C.A.
11	925	C.A.
11	926(a)	2201(a)(4)
11	926(b)(1)	2213(b)
11	931	C.A.
11	931(2)	4307(a)
11	931(6)	806(a); 2110(j)
11	931(8)	4307(b), (h)
11	931(9)	4307(d)
11	931(10)	4307(f)
11	931(14)	806(c)
11	931(17)	4307(k)
11	932	4306(a)
11	933	2106(a)
11	934	2306(c)
11	935	4304(b)
11	936	C.A.
11	937	708; 4304(c)(1)
11	937(2)-(4)	3301(a)(2)(H)
11	938	4304(c)(2)
11	939	2101(b); 4304(d); 4306(b)
11	939(g)-(h)	805(c)(2)-(3)
11	940	C.A.

11	941	105(a)(7)(B)
11	951(a)	5303(a)
11	951(b)	5303(d)
11	951(c)(4)	5304(e)
11	951(d)	5303(e)
11	951(e)-(g)	5303(c)
11	951(f)(1)-(2)	5303(b)(1)
11	951(f)(3)	5303(b)(2)
11	1001	4402(a), (c)
11	1002(1)	C.A.
11	1002(2)	4402(b)
11	1002(3)-(4)	C.A.
11	1003	C.A.
11	1004	C.A.
11	1100(3)	4406(a)(1)
11	1100(9)	1203(b)(2)(A)(ii)
11	1100A	1402(a)(1), (b), (b)(3), (c)
11	1101	4403(a), (c)
11	1102(a)(2)	4406(a)(1)
11	1102(a)(3)	4405(a)
11	1102(a)(4)-(6)	C.A.
11	1102(b)	C.A.
11	1102(b)(4)	4405(b); 4406(b)(1)
11	1102(c)	C.A.
11	1102A	4403(b)
11	1103	1203(b)(2)(B)
11	1103A	1203(b)(2)(A)(i)
11	1103B	1202(b)(1)(C), (b)(1)(A)(i)
11	1104	1204(c)
11	1105	804(b)
11	1105(c)	800(e)
11	1106	4406(a)(2), (b)(2)
11	1107	C.A.
11	1108	4204(a)(1), (b)(1)
11	1109	4204(a)(1), (b)(1)
11	1109(3)	C.A.
11	1109(4)	105(a)(7)(B); 108
11	1110	804(a)
11	1111	4204(a)(2), (b)(2)

11	1112	1304
11	1112(b)(2)	1307(d)
11	1112A	C.A.
11	1112B	C.A.
11	1113(a)	4407(b)(2)
11	1113(a)-(b)	4407(a)
11	1113(b)	4407(b)(1)
11	1113(c)	4407(d)(1)
11	1113(d)	4407(d)(2)
11	1113(e)	4407(a)(2)(B)
11	1113(f)-(g)	4407(e)
11	1113(h)	104
11	1113(i)	4407(c)
11	1113(j)	C.A.
11	1113(k)(2)	4408
11	1114	C.A.
11	1114A	C.A.
11	1115–27	C.A.
11	1201	3101(a), (c)(2)
11	1202	3101(c)(1)
11	1203	3101(b), (c)(2)
11	1204	C.A.
11	1205	3101(a)
11	1206	3101(b)
11	1207	3102(a), (c)
11	1208	3102(b)
11	1209(1)	3104(a)
11	1209(2)	3104(b)
11	1209(3)	3104(c)
11	1209(4)	3104(d)
11	1211	3103(a), (c)
11	1212	3103(b), (c)
11	1221	3201(b)(3)
11	1222	3201(a)
11	1223	3201(a), (b)(1)
11	1224	3201(a), (b)(2)(B)
11	1225	3201(e)
11	1231	3201(c)
11	1232	3201(d)

11	1233	3202(a), (c)
11	1234	3201(e); 3202(b)
11	1235(a)	3205(b)
11	1235(b)	3205(a)
11	1235(c)	3201(b)(2)(A)
11	1235(f)	3201(b)(1)
11	1239(a)	804(e)
11	1240	1207(b)(1)(A)
11	1240(a)	1207(a)
11	1241	3304(a)-(b)
11	1242	3304(c)
11	1242(b)	C.A.
11	1243	3302(b)(3)
11	1244(a)(1)	3301(a)(2)(B)
11	1244(a)(2)	3301(a)(2)(C)
11	1244(a)(3)	3301(a)(2)(D)
11	1244(a)(4)	3301(a)(2)(E)
11	1244(a)(5)	3301(a)(2)(G)
11	1244(a)(6)	C.A.
11	1244(b)-(c)	3301(b)
11	1245	4102(b); 4103(a)
11	1245(1)	4102(a)(1), (a)(1)(A)
11	1245(2)	4102(a)(1)(B)
11	1245(4)	4102(a)(2)
11	1245A	3301(b)
11	1245A(a)	3301(a)(1)-(2)(A)
11	1245A(b)(1)	C.A.
11	1245A(b)(2)	3301(a)(2)(A0
11	1245A(b)(3)-(4)	C.A.
11	1246	3301(a)(2)(F)
11	1247	3301(c)
11	1248	3303(a)
11	1248(a)	3303(b)(1)
11	1248(b)	3303(b)(4)
11	1249	C.A.
11	1250	3302(a)(1)
11	1251	3305(a)(1)(C)-(D), (b)(3); 3309(e)

11	1252	3305(a)(1)(B), (b)(2); 3309(e)
11	1253	3305(a)(1)(A), (b)(1); 3309(e)
11	1254	1202(b)(4)(E); 802(a)
11	1256	3306(a), (c)
11	1257	3302(a)(1)
11	1257(a)	3302(b)(2)
11	1257(b)	3302(b)(3)
11	1257A	3302(a)(1)
11	1258(1)	3309(a)
11	1258(2)	3305(a)(1)(C)-(D)
11	1258(3)	3305(a)(1)(A)-(B)
11	1258(4)	3305(a)(2)
11	1259	1302(a)(2)(A)
11	1260	3306(b)-(c)
11	1261	3101(a)
11	1262	3101(b)
11	1263	3307(a)(2)(B), (c)
11	1263(1)	3307(a)(1)(A)-(B)
11	1263(2)	3307(a)(2)(A)-(B)
11	1263A	3307(c)
11	1263A(a)	3307(a)(1)(B)
11	1264	C.A.
11	1265	C.A.
11	1266	3307(c); 3309(b)
11	1266(1)	3307(a)(2)(C)
11	1266(2)	C.A.
11	1267	3303(a), (b)(3)
11	1268	3307(b)-(c)
11	1269	3301(a)(2)(G)
11	1271	3308(a)-(b)
11	1271A(c)	3308(b)
11	1271A(d)-(e)	C.A.
11	1272	3308(c)
11	1273	3303(a), (b)(4)
11	1274(3)	3309(f)
11	1301	4101(c)(3)-(4)
11	1301(1)a.	4101(a)(1)

11	1301(1)b.	4101(a)(2)
11	1301(1)c.	4101(a)(3)
11	1301(1)d.	4108(b)
11	1301(1)e.	C.A.
11	1301(1)f.	4101(a)(4)
11	1301(1)g.	1207(b)(2)(B)
11	1301(2)	4101(b)
11	1302	4101(c)(1)
11	1303	4101(c)(2)
11	1304	804(c)
11	1304(a)(1)-(2)	804(c)(1)
11	1304(a)(2)	804(c)(2); 806(b), (d)
11	1304(b)	804(c), (f)(2)(A)
11	1311(a)(1)-(3)	4103(a)(1)
11	1311(a)(4)	1305(a)
11	1311(b)	4103(b)(2)
11	1312	4103(a)(2), (b)(1)
11	1312(c)-(d)	C.A.
11	1312(e)	4103(a)(2)
11	1312(h)	C.A.
11	1312(i)	4103(a)(3)
11	1313	4102
11	1313(b)	3303(a)(1)
11	1315	4104
11	1316	C.A.
11	1320	4105(a), (e); 4108(a)
11	1321	4105(a), (e); 4108(a)
11	1321(6)	4105(b)-(c)
11	1322	1204
11	1322(1)	1204(b)(2)
11	1323	4106(a), (c)
11	1324	4106(b)-(c); 4108(b)
11	1325	4207(a)-(d)
11	1325(a)(3)	4208(d)
11	1325(b)(6)	4207(e)
11	1325(c)-(d)	4208(c)
11	1325A	C.A.
11	1326	4207(a)-(d)
11	1326(c)	4501(d)(1)(A)

11	1327	4207
11	1330	C.A.
11	1331	4107
11	1332	4206(a)(1)-(b)(1)
11	1333	4206(a)(2)(A), (b)(2)
11	1333(a)(1)	4208(e); 4301(a)(1)
11	1335(a)(2)	4301(a)(2)
11	1335(a)(3)	4301(a)(3)
11	1335(a)(4)	4303(a)
11	1335(a)(5)	4303(a)(2)
11	1335(a)(6)	4302(a)(1), (b)
11	1335(a)(7)	4302(a)(2)
11	1335(a)(8)	4301(a)(4)
11	1335(a)(9)	4302(a)(3); 4304(a); 4305
11	1335(a)(9)b.	4305
11	1335(c)	4301(b); 4302(c); 4303(b)
11	1337	4301(a)
11	1337(a)	4307(j)
11	1337(b)	4108(c)
11	1338	2303
11	1338(a)(1)	2306(e)
11	1338(c)	C.A.
11	1338(d)	C.A.
11	1339	1101; 1102; 1202(a)(1)
11	1341	4201(a), (d)(2)
11	1342(a)(1)	4202(a)
11	1342(b)(1)	C.A.
11	1343(a)	4202(a)
11	1343(b)	4202(b)(2)
11	1343(c)	C.A.
11	1343(d)	C.A.
11	1343(e)(1)	C.A.
11	1344	C.A.
11	1345	4202(d)
11	1351	4203(a), (c)(4)
11	1352	4203(a)
11	1352(1)	4203(c)(3)
11	1353	4203(a), (c)(4)
11	1354	C.A.

11	1355	4203(a)
11	1356(1)-(2)	4203(b)
11	1356(2)	4203(a)(3)
11	1356(4)	4208(i)
11	1356(a)-(b)	4203(a)
11	1361(1)-(3)	4204(a)(3)
11	1361(4)	4204(a)(4)
11	1361(a)(5)	C.A.
11	1361(b)	4204(b)(3)-(4), (c)
11	1361(c)	804(a)
11	1361(d)	C.A.
11	1362	4204(e)(1)
11	1363	4204(d)
11	1364	4208(g)
11	1365	C.A.
11	1366	C.A.
11	1367	4205; 4208(b)
11	1368	4205; 4208(b)
11	1401	4501(a)(1), (a)(6), (d)(1)(B)
11	1401(1)-(2)	4503(b)
11	1401(a)	708
11	1402	C.A.
11	1403	4501(a)(6), (d)(1)(B)
11	1403(1)	4503(e)
11	1403(2)	4501(b)
11	1403(3)	4501(a)(2)
11	1403(4)	4501(a)(3)
11	1404	804(a); 4501(b), (d)(2)
11	1405	4501(d)(1)(B)
11	1405(a)	4501(a)(5)
11	1406(a)(1)-(2)	4501(a)(5)
11	1406(c)	4501(a)(5)
11	1407	4501(a)(7), (d)(3)
11	1408	4501(a)(1)
11	1409	C.A.
11	1411	4501(a)(4), (d)(1)(B)
11	1412	C.A.
11	1413	4501(c)

11	1421	C.A.
11	1422	C.A.
11	1423	C.A.
11	1424	C.A.
11	1425	C.A.
11	1426	C.A.
11	1427	C.A.
11	1428	C.A.
11	1431	C.A.
11	1432(c)	4503(a)
11	1432(e)	4503(c)
11	1441	C.A.
11	1441A	C.A.
11	1441B	C.A.
11	1442	5103(a), (b)(1)
11	1443	5103(a), (c)
11	1443(d)	5103(b)(2)
11	1444(a)	5102(b)(1), (d)
11	1444(b)	5102(b), (d)(2)
11	1444(c)	5109(d)
11	1445(1)	5102(b)(4)
11	1445(2)	5105(b), (c)(5)
11	1445(3)	C.A.
11	1445(4)	5105(a); 5105(c)(2)(A)
11	1445(5)	5101(b)-(c)
11	1446	5102(b)(2)(B)(i)
11	1446A(a)	5102(b)(2)(A), (d)(3)
11	1446A(b)	C.A.
11	1446A(c)	5102(c)(1)
11	1446A(d)	5102(c)(2)
11	1447(a)	5101(a), (c)
11	1447(b)-(c)	C.A.
11	1447(d)	C.A.
11	1447(e)	C.A.
11	1447A(a)	5101(a), (c)
11	1447A(b)-(c)	802(a)
11	1447A(d)-(g)	C.A.
11	1448(5)	5109(f)
11	1448(a)(1)	5104(a)(1)(A)-(B)

11	1448(a)(2)	5104(a)(2)
11	1448(a)(3)	5104(a)(1)(C)
11	1448(a)(4)	5104(a)(3)
11	1448(a)(5)	5104(a)(4)
11	1448(a)(6)	5104(a)(5)
11	1448(a)(7)	5104(a)(1)(D)
11	1448(a)(8)	5104(a)(6)
11	1448(a)(9)	5104(a)(1)(A), (C)
11	1448(a)(10)	5104(d)
11	1448(c)	5104(c)(1)-(2)
11	1448(d)	5104(b)
11	1448(e)	802(a)
11	1448(e)(1)	5104(c)(1)
11	1448(e)(2)	1104(b)(1); [1203(b)(2)(A)]
11	1448(e)(3)-(4)	C.A.
11	1448(f)-(g)	C.A.
11	1448A(c)	C.A.
11	1448A(d)	C.A.
11	1448A(e)	5107(b)-(c)
11	1448A(f)	C.A.
11	1448A(g)	5107(a), (c)
11	1448A(k)	C.A.
11	1448A(l)	C.A.
11	1448B(c)	C.A.
11	1448B(e)	5107(a), (c)
11	1448B(f)	C.A.
11	1449	804(e)
11	1449(b)	C.A.
11	1449(c)	C.A.
11	1449(d)	C.A.
11	1449(e)	C.A.
11	1449(f)	C.A.
11	1449(g)	804(e)
11	1450	2101(b)(3)(B)
11	1451	2101(b)(3)(B)
11	1452	5102(b)(2)(B)(ii)
11	1453	5102(b)(3)
11	1454	5105(a), (c)(1)

11	1455	804(a); 5105(a), (c)(4)(A)
11	1456	C.A.
11	1457	5102(d)(5); 5103(b)(3); 5104(c)(3)
11	1457(b)	5108(a)(2)
11	1457(c)	5108(a)(1)
11	1457(d)-(f)	C.A.
11	1457(g)	5108(b)
11	1457(h)	C.A.
11	1458(a)(2)	3302(a)(2)
11	1458(b)	3302(b)(1)
11	1459	5102(a)
11	1459(c)	5102(d)(1)
11	1460(a)	5106(a)-(b)
11	1460(b)(1)	5106(b)
11	1460(b)(4)	C.A.
11	1460(c)	C.A.
11	1460(d)	5106(c)
11	1461	C.A.
11	1470(a)	4502(a)(1)
11	1470(d)	4503(d)
11	1470(e)	4503(f)
11	1471(a)	4502(a)(1)
11	1471(b)	C.A.
11	1471(c)	C.A.
11	1471(d)	4502(a)(1)
11	1471(e)	C.A.
11	1471(f)	4502(c)
11	1471(g)	C.A.
11	1471(h)	C.A.
11	1471(i)	4502(c)
11	1471(j)	4502(c)
11	1471(k)	4502(b)
11	1471(l)	4502(a)(2)
11	1472(a)	4502(d)(1)
11	1472(b)	4502(d)(3)
11	1472(c)	4502(d)(2)
11	1472(d)	4502(d)(3)(I)
11	1472(f)	4502(e)

11	1473	C.A.
11	1474	307(c)
11	1501	C.A.
11	1502(3)	5304(b)
11	1502(5)	5304(d)
11	1502(9)	5304(d)
11	1502(12)	5304(f)
11	1503(a)(1)	5301(a)(1)
11	1503(b)	5301(a)(2)
11	1503(c)	5301(a)(3)
11	1503(d)	C.A.
11	1504(a)	5301(b)
11	1504(b)	5301(c)
11	1504(b)(3)	C.A.
11	1504(b)(4)	C.A.
11	1504(c)	5301(d)
11	1505	C.A.
11	1506	C.A.
11	1507	C.A.
11	1508	C.A.
11	1509	C.A.
11	1510	C.A.
11	1511	C.A.
11	3531	3307(a)(1)(B), (c)
11	3531(3)	3309(g)
11	3532	3307(a)(1)(C)
11	3532(1)-(3)	3307(a)(1)(D)
11	3533(1)	3307(a)(2)(A)
11	3533(3)	C.A.
11	3534	C.A.
11	4201	801(a)
11	4201(b)	801(b)(2)(A)-(B)
11	4202	801(a)
11	4203	801(a), (b)(3)
11	4204(c)(9)	803(c)
11	4205(b)(1)	802(a)(2)
11	4205(b)(2)	802(a)(4)
11	4205(b)(3)	802(a)(5)
11	4205(b)(4)	802(a)(6)

11	4205(b)(5)	802(a)(7)
11	4205(b)(6)	802(g)
11	4205(k)	803(a)
11	4205A	802(a)
11	4206	803(a)
11	4206(a)	802(h)
11	4206(b)	802(i)
11	4206(c)	802(k)
11	4207	803(a)
11	4207(a)	802(l)
11	4208	803(b)
11	4209	[Reserved]
11	4209(e)	[Reserved]
11	4209(a)	802(a)(1)
11	4209(e)(1)j.	[Reserved]
11	4209(e)(1)l.	[Reserved]
11	4209(e)(1)q.-r.	[Reserved]
11	4209(e)(2)	[Reserved]
11	4209A	C.A.
11	4214	804(a)
12	210	2103
13	728	C.A.
14	9302	1209(b)-(c)
14	9303	1209(b)
16	1131(1)b.	1302(a)(2)(C)
16	1131(1)c.	1209(a)(2)(A)
16	1131(4)	1209(a)(3)
16	1136	1209(c)
16	1136(a)	1302(a)(2)(C)
16	1136(a)-(b)	1209(a)
16	2223	C.A.
16	4701	5209
16	4701(8)	5210(e)
16	4701(17)	5210(f)
16	4701(33)	5210(h)
16	4701(41)	5203(a)(1)
16	4701(42)	5203(a)(1)
16	4739	5205(a)
16	4740(g)	3203(a)(1)(B)

16	4743	5207; 5209
16	4743(2)	5207(a)(1)
16	4743(5)	5210(g)
16	4744	5207
16	4744(a)(1)	5207(a)(1); 5210(b)
16	4744(a)(2)	803(a); 5207(e)(1)
16	4744(b)(1)	5207(c)-(d)
16	4744(b)(2)	5207(e)(3)
16	4744(c)(1)	5207(a)(2); 5210(b)
16	4744(c)(2)	5207(a)(2)(B), (e)(1)
16	4744(d)	5207(a)(1)
16	4744(d)(2)	803(a)
16	4744(e)(1)	5207(b); 5210(b)
16	4744(e)(2)	5207(e)(1), (e)(2)
16	4744(f)	C.A.
16	4744(g)	C.A.
16	4744(h)	104
16	4751A	5203
16	4751A(1)a.-b.	5203(a)(1)
16	4751A(1)c.	5203(a)(2)
16	4751A(1)d.	5203(a)(3)
16	4751A(1)e.	C.A.
16	4751A(2)	C.A.
16	4751B	804(a)
16	4751C(1)	5210(k)
16	4751C(2)	5210(l)
16	4751C(3)	5210(m)
16	4751C(4)	5210(n)
16	4751C(5)	5210(o)
16	4751D	5201; 5202
16	4751D(a)	5201(d)(5); 5202(c)(4)
16	4752	5201(a), (d)(1); 5202(a), (c)(1)
16	4753	5201(a), (d)(1); 5202(a), (c)(1)
16	4754	5201(a), (d)(1); 5202(a), (c)(1)
16	4755	5201(a), (d)(1); 5202(a), (c)(1)

16	4756	5201(a), (d)(1); 5202(a), (c)(1)
16	4757	5205
16	4757(a)(1)	5205(a)
16	4757(a)(2)	C.A.
16	4757(a)(3)	C.A.
16	4757(a)(4)	C.A.
16	4757(a)(5)	C.A.
16	4757(a)(6)	C.A.
16	4757(a)(7)	5205(b)
16	4757(b)	5205(c)
16	4757(c)	C.A.
16	4758	5202(a), (c)(1)
16	4759	5205
16	4759(a)(1)	5205(a)
16	4759(a)(2)	5205(a)(5)
16	4759(a)(3)	C.A.
16	4759(a)(4)	3303(b)(2)
16	4759(b)	5205(c)
16	4760	C.A.
16	4760A(b)	5202(e)
16	4761(a)	5201(c), (d)(3); 5202(b)
16	4761(a)(2)	C.A.
16	4761(b)	5202(b)
16	4761(c)	5201(c); 5202(b), (c)(2)
16	4761(d)	5201(c)
16	4761(e)	5201(c); 5202(d)
16	4761(f)	C.A.
16	4762	211; 5201(a)
16	4763	5201(a)
16	4763(b)	5201(d)(1)(F)
16	4764	5201(d)(2)
16	4764(a)	5201(b)
16	4764(b)	5201(b)
16	4764(c)-(d)	C.A.
16	4765	C.A.
16	4766	210
16	4767	C.A.
16	4769	508(a); 5208

16	4769(a)(2)	5210(i)
16	4771	5204(e)
16	4771(a)	5204(a), (d)
16	4771(b)	5204(b)
16	4772	C.A.
16	4773(1)	5204(a)
16	4773(1)	5204(b)
16	4773(2)	5210(f)
16	4774	5204(e)
16	4774(a)	5204(a)
16	4774(c)-(d)	5204(b)
16	4774(d)	5204(e)(2)(A)
16	4774(e)	5204(c)
16	4795	5209
16	4798(r)	4304(a)(2)
16	4798(s)	C.A.
16	4798(t)	C.A.
16	4919A(s)	C.A.
16	4919A(v)	C.A.
16	5023	C.A.
16	7103	C.A.
16	7109(c)	3203
16	7113(2)-(4)	C.A.
18	4354	2212(b)(1)
18	4354(a)	2212(a)(2)
21	305(m)	C.A.
21	2610(g)	3203
21	2315	3203
21	2316	2201(a)
21	2613	C.A.
21	2620(a)-(b)	3203
21	2651(a)-(p)	2203
21	2751	2201(a)
21	2752	3203
21	2760	2201(a)
21	3107	3203
21	4103	804(a)
21	4103(b)	3302(b)(3)
21	4134	1203

21	4176A	C.A.
21	4177	1205(b)-(c); 1210(a)
21	4177(a)	1205(a); 1210(a)
21	4177(b)(1)-(b)(3)a.	C.A.
21	4177(b)(3)b.	1205(d)
21	4177(c)(1)	1210(a)(2)
21	4177(c)(7)	1210(a)(3)
21	4177(c)(8)	1210(a)
21	4177(c)(11)	1210(a)(1)
21	4177(d)	C.A.
21	4177A	5200
21	4177M	C.A.
21	4201	C.A.
21	4202(a)-(c)	3301(a)(2)(I)
21	4601	708
21	4603	3203(a)(1)(B)
21	4604(a)	708
21	4604(b)	C.A.
21	6701	C.A.
21	6702	802(j); 2109
21	6704	211; 2101(b)(4)(B)
21	6705	2201(a); 3203
21	6705(d)	2203
21	6708	708
21	6709	2201(a); 2203
21	6710	708
23	2301(f)	308(f)
23	2302(a)	1205(a)
23	2305	1205(b)
23	2305(1)-(4)	C.A.
24	901	5109(c)
24	902	C.A.
24	903	5105(a), (c)(2)(B), (c)(3)
24	904	C.A.
24	904A	C.A.
24	1790	1106(a)(2)
31	1003	C.A.
31	1004	2202(a)(1)
31	1005	2210(a)

31	2117	C.A.
31	3902(1)b.	1209(a)(2)(A)
31	3912	C.A.
31	3913	1209(c)
31	3913(a)	1209(a)
31	3913(b)	C.A.
31	3913(c)	1209(a)

**CONVERSION TABLE BY PROPOSED DRAFT**

<b><u>Draft Provision</u></b>	<b><u>D.E. Code Title</u></b>	<b><u>D.E. Code Provision</u></b>
101(a)	11	101
101(b)	11	102
101(c)	11	103
102(a)	11	201; 203
102(a)(1)	11	201(1); 201(5)
102(a)(2)	11	201(2)
102(a)(3)	11	201(3)
102(a)(4)	11	201(4)
102(b)	--	--
102(c)	--	--
102(d)(1)	--	--
102(d)(2)	11	211
102(d)(3)	11	211
103(a)	11	202(a)
103(b)	11	103(b)
103(c)	11	202(b)
103(d)	11	241
104	11	1113(h)
104	16	4744(h)
105	11	1109(4); 204(a)(1)
105(a)(1)	11	204(a)(1)
105(a)(2)	--	--
105(a)(3)	11	204(a)(2)
105(a)(4)	11	204(a)(5)
105(a)(5)	11	204(a)(3)
105(a)(6)	11	204(a)(4)
105(a)(7)(A)	11	204(a)(1)
105(a)(7)(B)	11	1109(4)
105(b)	11	204(b)
105(c)	11	204(c)
106(a)	--	--
106(b)	11	306(e)

106(b)(1)(A)	11	301(b)
106(b)(1)(B)	11	301(b); 303(c)
106(b)(1)(C)	11	232
106(b)(2)	11	304
106(b)(3)	11	304(c)
106(c)(1)(A)	11	301(a)
106(c)(1)(B)	11	301(c)
106(c)(2)	11	303(a)-(b); 304(a)-(b)
106(d)	11	306
107	11	223
108(d)	11	221(b)
108(e)	11	221(a)
108(g)	11	222(21)
109	11	221(c)
201	--	--
202(a)	11	232
202(b)	--	--
203(a)(1)	11	261
203(a)(2)	11	262(2); 263(2)
203(a)(3)	--	--
203(b)	--	--
204(a)	11	242
204(b)	--	--
204(c)	11	243
204(d)	11	243
205(a)	11	251(a)
205(b)	11	231
205(b)(1)(B)	11	255
205(b)(1)(D)	11	254
205(b)(2)(B)	11	255
205(b)(4)	11	231(a)
205(c)	11	252
205(d)	11	251(b)
205(e)	11	251(c)
205(f)	--	--
205(g)	11	253
205(h)	11	307
206(a)	11	441(1)

206(b)	--	--
206(c)	--	--
207	--	--
208(a)	11	451
208(b)	11	452
208(c)(1)-(c)(4)	11	453
208(c)(5)	--	--
209	--	--
210(a)	11	206(a)-(b)
210(a)(1)(A)	11	206(b)(1); 206(b)(3)
210(a)(1)(B)(i)	11	812
210(a)(1)(B)(ii)	11	206(b)(3)
210(a)(1)(C)	--	--
210(a)(2)(A)	11	206(a)(2)
210(a)(2)(B)	11	206(b)(2)
210(a)(3)	--	--
210(a)(4)	--	--
210(a)(5)	11	206(a)(3)
210 (b)	--	--
210(c)	--	--
210(d)	--	--
210	16	4766
211(a)(1)	11	271(1)-(2)
211(a)(1)(B)(ii)	11	271(2)
211(a)(2)	11	271(3)
211(b)	11	273
211(c)	11	272(3)
211(d)	11	272(1)-(2)
211(e)	11	274
211(f)	11	275
211(g)	11	533
211(h)	11	271(2)b.
212(a)-(b)	11	421
212(c)	--	--
212	11	424
213(a)	11	262
213(a)	11	263
213(b)	--	--
214(a)	--	--

214(b)	--	--
214(c)	--	--
214(d)	--	--
214(e)	11	424
214(f)	--	--
214(g)	--	--
214(h)	--	--
214(i)	--	--
214(j)	--	--
214(k)	11	243
214(l)	11	424
300	11	461; 463
301(a)	11	463
301(b)	--	--
301(c)	11	464(d); 467(a)(1); 465(a)
301(d)	11	463; 464(e)(1)
301(d)(3)	--	--
301(e)	11	470(b)
302(1)	11	463; 464(a); 466(a); 467(a)(1)
302(2)	11	463
302(3)	11	463
303(a)(1)-(3)	11	462(a)(1)-(3), (5)
303(a)(4)	11	462(a)(4)
303(b)	11	462(b)(1)
304(a)(1)	11	467(a)(1)
304(a)(2)	11	467(b)(1)
304(a)(3)	11	467(c)
304(a)(3)(A)	--	--
304(a)(3)(B)	11	467(c)(2)
304(a)(3)(C)	11	467(c)(1)
304(a)(3)(D)	11	467(c)(3)
304(a)(4)	11	467(b)(2)
304(b)	11	467(d)
305(a)	11	468
305(a)(1)(A)(i)	11	468(1)
305(a)(1)(A)(ii)	11	468(2)
305(a)(1)(A)(iii)	11	468(3)
305(a)(1)(B)	11	468(1)c.; 468(2)b.; 468(3)c.

305(a)(2)	11	468(4)
305(a)(3)	11	468(5)-(5)a.
305(a)(4)	11	468(6)-(6)a.
305(a)(5)	11	468(7)
305(b)	11	468(5)c.; 468(6)b.
306(a)	11	464(a); 465(a)(3)
306(b)(1)	11	465(a)(1)-(2)
306(b)(2)	11	464(d)
306(c)(1)	11	464(c)
306(c)(2)(A)	11	464(e)(2); 465(b)
306(c)(2)(B)	11	464(e)(2)a.-c.; 465(c)
306(d)	11	467(e)
307(a)	11	466(a)-(b)
307(b)	11	466(b)(1)-(3)
307(c)	11	840(c); 1474
307(d)	11	466(c)
307(e)	11	466(d); 840(d); 854(d)-(e)
308(a)	--	--
308(b)	11	471(a)
308(c)	11	471(c)
308(d)	11	461
308(e)	--	--
308(f)	23	2301(f)
401(a)	--	--
401(b)(2)	11	431(b)
401(c)	--	--
401(d)	11	431; 423
402(a)	11	243
402(b)(1)	11	242
402(b)(2)	--	--
403(a)(1)	11	401(a)
403(a)(2)(A)	--	--
403(a)(2)(B)	11	401(a)
403(b)	11	401(a)
403(c)	11	401(b)
403(d)	--	--
404	11	423
405(a)	11	431(a)
405(b)	--	431(a)

406	--	--
407	--	--
408	--	--
409	11	464(a), (c); 465(a); 466(a)-(c); 467(a), (c)-(f); 468(2)a., (5)a., (6)a., (7)a.; 469; 470
410(a)	--	--
410(b)	11	423
410(c)	11	222(18), (25); 401(c)
501(a)	--	--
501(b)	--	--
501(c)	11	432(a); 475
501(d)	--	--
502(a)	11	205
502(b)(1)	11	205(c)
502(b)(2)	11	205
502(b)(3)	11	205(e)
502(b)(4)	11	205
502(c)	11	205
502(d)	11	205(j)
502(e)	11	205
502(f)	11	205
502(g)	--	--
502(h)	--	--
503(a)	11	432(a)
503(b)	11	431(b)
503(c)	--	--
504	11	207
505	11	208
506	11	209
507	11	210
508	11	475
508(a)	16	4769
509(a)	11	207(1)
509(b)	11	207(3); 222(3)
509(c)	11	207(4)
509(d)	--	--
601(a)	11	281
601(b)	11	283

601(c)	--	--
602(a)	11	282
602(b)	--	--
602(c)	--	--
603	11	284
701(a)	11	531
701(b)(1)	11	532
701(b)(2)	--	--
702(a)	11	501; 502; 503
702(b)	--	--
703(a)	11	511; 512; 513; 522
703(b)	11	521(b)
703(c)	11	522
704	11	523
705	11	521(c)
706(a)	11	541(a)-(b)
706(b)	11	541(c)
707	11	501; 502; 503; 511; 512; 513; 521(a); 531
708	11	1401(a); 812(b); 828; 850(a)(1); 860; 862; 937
708	21	4601; 4604(a); 6708; 6710
801(a)	11	4201; 4202; 4203
801(b)(2)(A)	11	4201(b)
801(b)(2)(B)	11	4201(b)
801(b)(3)	11	4203
802(a)	11	630(b), 630A(b), 633(d), 772(c), 778(6)b., 825(b), 826(b), 826A(b), 832(b), 1254, 1447A(b)-(c), 1448(e), 4205A, 4209(a)
802(a)(1)	--	4209(a)
802(a)(2)	11	4205(b)(1)
802(a)(3)	11	--
802(a)(4)	11	4205(b)(2)
802(a)(5)	11	4205(b)(3)
802(a)(6)	11	4205(b)(4)
802(a)(7)	11	4205(b)(5)
802(a)(8)	11	4205(b)(6)
802(a)(9)	11	4206(a)

802(a)(10)	11	4206(b)
802(a)(11)	21	6702
802(a)(12)	11	4206(c)
802(a)(13)	11	4207(a)
803(a)	11	4205(k); 4206; 4207
803(a)	16	4744(a)(2), (d)(2)
803(b)	11	4208
803(c)	11	4204(c)(9)
803(d)	--	--
804(a)	11	4214; 607(a)(3), 776, 841B(c), 851, 852A, 1110, 1114A(c), 1249(d), 1361(c), 1404, 1455; 16 Del. C. § 4751B; 21 Del. C. § 4103
804(b)	11	1105; 605; 606
804(c)	11	1304; 1304(b)
804(c)(1)	11	1304(a)(1)-(2)
804(c)(2)	11	1304(a)(2)
804(d)	11	616(c)
804(e)	11	1239(a); 1449(g)
804(f)(2)(A)	11	1304(b)
804(g)	--	--
805(a)	11	224
805(b)	11	224
805(c)(1)	11	224(3)
805(c)(2)	11	939(g)-(h)
805(c)(3)	11	939(g)-(h)
805(d)	11	855(c)
806(a)	11	931(6)
806(b)	11	1304(a)(2)
806(c)	11	931(14)
806(d)	11	1304(a)(2)
806(e)	11	1105(c)
806(e)	11	841(c)
806(f)	11	863
1101(a)(1)	11	636(a)(1)
1101(a)(2)	--	--
1101(b)	11	636(b)(1)-(2)
1102(a)(1)	--	--
1102(a)(2)(A)	11	635(1)

1102(a)(2)(B)	11	636(a)(4)
1102(a)(2)(C)	11	636(a)(5)
1102(a)(2)(D)	11	636(a)(6)
1102(a)(3)	11	635(2)
1102(b)	11	635
1103(a)(1)	11	632(1)
1103(a)(2)	11	632(3)
1103(b)	11	641
1103(c)	11	632
1104(a)	11	631
1104(b)(1)	11	1448(e)(2)
1104(b)(2)	11	633
1104(b)(3)	11	631
1104(c)	--	--
1105(a)	11	632(5); 645
1105(b)(1)	11	632(5)
1105(b)(2)	--	--
1105(b)(3)	11	645
1105(c)	11	636(a)(3)
1106(a)	11	651; 652
1106(a)(2)	24	1790
1106(b)	11	653
1106(c)	11	651; 652; 631
1106(d)	--	--
1107(a)	11	654
1107(b)	--	--
1107(c)	--	--
1107(d)	--	--
1108	11	[Reserved]
1201(a)	11	831(a); 832(a); 835(a); 836(a)
1201(b)(1)(A)	11	836(a)(6)
1201(b)(1)(B)	11	836(a)(1)-(3)
1201(b)(1)(C)	11	835(b)(2)
1201(b)(1)(D)	11	835(b)(1)
1201(b)(2)(A)	11	832(a)(1); 836(a)(5)
1201(b)(2)(B)-(C)	11	832(a)(2); 836(a)(4)
1201(b)(3)	11	831(a)
1202(a)(1)	11	611(1); 612(a); 613(a); 607; 1339

1202(a)(2)	11	601
1202(b)(1)	11	613(a)(2), (4)
1202(b)(1)(C)	11	1103B
1202(b)(2)	11	612(a)(1), (9); 613(a)(1)
1202(b)(2)(A)	11	607(a)(3)a.; 613(a)(1)
1202(b)(2)(B)(i)	7	6013(c)-(e)
1202(b)(2)(B)(i)	11	607(a)(3)b.
1202(b)(2)(B)(ii)	11	606
1202(b)(3)(A)(i)(aa)	11	612(a)(2)
1202(b)(3)(A)(i)(bb)	11	607(a)(1)-(2)
1202(b)(3)(A)(ii)	11	611(1)
1202(b)(3)(B)	11	601
1202(b)(4)(A)-(C)	11	601(c); 612(a)(3)-(4), (6), (8), (11); 613(a)(5)-(6)
1202(b)(4)(D)	11	612(a)(10)
1202(b)(4)(E)	11	1254
1203(a)	11	603(a)(1); 604
1203(b)(1)(A)(i)	11	1103B
1203(b)(1)(A)(ii)	11	605
1203(b)(1)(B)	11	612(a)(1)
1203(b)(2)(A)(i)	11	1103A
1203(b)(2)(A)(ii)	11	1100(9)
1203(b)(2)(A)(iii)	11	612(a)(2)
1203(b)(2)(B)	11	611(1); 1103
1203	2	309
1203	11	629
1203	21	4134
[1203(b)(2)(A)]	11	1448(e)(2)
[1203(b)(2)(B)(i)-(ii)]	11	611(2); 628A
[1203(b)(2)(C)] <sup>24</sup>	11	628
1204	7	6309
1204	11	1322
1204(a)	11	603(a)(1); 604
1204(b)	11	603; 604
1204(b)(1)	7	6309(i)
1204(b)(2)	11	1322(1)
1204(c)	11	1104

<sup>24</sup> These bracketed provisions' inclusion in the Proposed Code depends upon resolution of an open issue: whether or not to include some form of negligent injuring offense.

1205(a)	21	4177(a)
1205(a)	23	2302(a)
1205(b)	21	4177
1205(b)	23	2305
1205(c)	21	4177
1205(d)	21	4177(b)(3)b.
1206(a)	11	780(a)
1206(b)	11	780(c)
1206(c)	11	780(b)
1207(a)	11	602; 621(a)(1); 621(a)(3); 622; 1240(a)
1207(a)(1)(A)	--	--
1207(a)(1)(B)	11	621(a)(1)
1207(a)(2)	11	602(a)
1207(b)	11	602; 621
1207(b)(1)(A)	11	1240
1207(b)(2)(A)(ii)	11	622
1207(b)(2)(B)	11	1301(1)g.
1207(b)(2)(C)	11	602(a)
1207	11	805
1208	11	625; 626
1209(a)	16	1136(a)-(b)
1209(a)	31	3913(a), (c)
1209(a)(2)(A)	16	1131(1)c.
1209(a)(2)(A)	31	3902(1)b.
1209(a)(3)	16	1131(4)
1209(b)	14	9302; 9303
1209(c)	14	9302
1209(c)	16	1136
1209(c)	31	3913
1210(a)	21	4177(a), (c)(1), (c)(7), (c)(8), (c)(11)
1210(b)	11	222(23)
1210(c)	11	222(26)
1301(a)(1)	11	767; 768; 769; 770; 771; 772; 773
1301(a)(2)	11	774; 761(j)-(k)
1301(a)(2)(A)	11	761; 761(j)(4)
1301(a)(2)(B)	11	761(j)(2)-(3)
1301(a)(2)(C)	11	761(j)(5)

1301(a)(2)(D)	11	761(k); 771(a)(1)
1301(a)(2)(D)(ii)	11	769(a)(3); 773(a)(5)
1301(b)(1)(A)(i)(aa)	11	772(a)(2)a., c.; 773(a)(1)
1301(b)(1)(A)(i)(bb)-(cc)	11	767(a)(1); 773(a)(3); 772(a)(2)d.-e.
1301(b)(1)(A)(ii)	11	773(a); 772(a)
1301(b)(1)(B)	11	769(a)(3); 772(a)(2)g.; 773(a)(5)
1301(b)(1)(C)	11	772(a)(2)f.; 773(a)(4)
1301(b)(2)(A)	11	769(a)(1); 771(a)(2)a.-b.; 773(a)(1)
1301(b)(2)(B)	11	771(a)(1)
1301(b)(2)(C)	11	772(a)(2)b.; 773(a)(2)a.
1301(b)(3)	11	770
1301(c)	11	770(a)(3); 771(a)(2); 772(a)(2)
1301(d)	11	767; 768; 769
1301(e)	11	778; 778A(1)
1301(f)	11	762(a)
1301(g)	11	771(c)
1302(a)(2)(A)	11	1259
1302(a)(2)(B)	11	778(3)-(4)
1302(a)(2)(C)	16	1131(1)b.; 1136(a)
1302(b)	--	--
1303	11	775
1304	11	1112; 777A
1305(a)	11	763; 1311(a)(4)
1305(b)(1)	11	778A(3)
1305(b)(2)	11	763
1306(a)	11	762(a)
1306(b)	11	761(d); 770(b); 771(b); 780(d)
1307(a)	--	--
1307(b)	11	761(i)
1307(c)	11	761(e)
1307(d)	11	1112(b)(2)
1307(e)	11	761(f)
1307(f)(1)	11	761(g)(1)
1307(f)(2)	11	761(b), (c), (g)(2)
1307(f)(3)	11	761(g)(1)

1401(a)	11	781; 782; 786(c)
1401(b)	11	783; 783A
1401(b)(6)	11	784
1401(c)(1)	11	781; 782
1401(c)(2)	11	783; 783A
1401(d)	11	784
1402(a)(1)	11	1100A
1402(a)(2)	11	787(b)(2)-(3)
1402(a)(3)(A)	11	787(b)(1)
1402(a)(3)(B)	11	787(b)(5)a.
1402(a)(4)	11	787(b)(5)b.
1402(b)	11	787; 1100A
1402(b)(3)	11	1100A
1402(b)(4)	11	787(b)(6)a.
1402(c)	11	1100A
1402(d)(1)(A)	11	787(e)(1)
1402(d)(1)(B)	11	787(c)(2)
1402(d)(2)	11	787(d)
1402(e)	11	787(j)(2)-(4)
1403(a)	11	791
1403(b)	11	792
1403(c)	11	791
1404	11	786(b)
2101(a)	11	841(a); 855(a)-(b)
2101(b)	11	841(c); 939
2101(b)(3)(B)	11	1450; 1451
2101(b)(4)-(5)	11	840
2101(b)(4)(B)	11	841A
2101(b)(4)(B)	21	6704
2101(b)(4)(C)	11	841C
2101(b)(6)	--	--
2101(b)(7)	--	--
2101(b)(8)	--	--
2101(c)	11	846
2101(d)	11	847(a)
2102(a)	11	841; 813
2102(b)(1)	11	840
2102(b)(2)	11	840(a)(4)-(5)

2103	11	840(a)(2); 913; 913A; 916; 917; 908
2103	6	4903A
2103	12	210
2103(a)	11	843; 844
2103(b)(1)	11	849(b)-(c)
2103(b)(2)	11	844
2103(c)	11	849(e)
2104(a)	11	846
2104(b)	11	847(b)
2105	11	842
2106(a)	11	845(a); 850(a)(1); 933
2106(b)	11	845(b)-(c)
2107(a)	11	851
2107(b)	11	852
2108	11	858; 920; 921
2109(	11	853
2109	21	6702
2110(a)	11	857(2)
2110(b)	11	843
2110(c)	11	857(3)
2110(d)	11	841A(b)
2110(e)	11	857(4)
2110(f)	11	857(5)
2110(g)	11	841C(b)(1)
2110(h)	11	857(7); 841(b); 813
2110(i)	--	--
2110(j)	11	857(8); 931(6)
2110(k)	--	--
2110(l)	11	805
2201(a)	21	2316; 6705; 6709; 2751; 2760
2201(a)(1)	11	861(a)(1)
2201(a)(2)	11	861(a)(2)
2201(a)(3)	--	--
2201(a)(4)	11	926(a)
2201(b)(1)	11	861(b)(1)
2201(b)(2)	11	861(b)(2)
2201(b)(3)	11	861(b)(3)
2201(c)	--	--

2202(a)(1)	11	871; 872; 876; 1004
2202(a)(2)	11	840A(a); 877; 878; 909
2202(b)	--	--
2203	21	2651(a)-(p); 6705(d); 6709
2204(a)	11	900(a)
2204(b)	11	900
2204(c)	11	900(a)
2205(a)(1)	11	903(a)(1)
2205(a)(2)	11	903(a)(1)(3)
2205(a)(3)	11	903(a)(2), (4)
2205(b)(1)	11	903(c)
2205(b)(2)	11	903(d)
2206(a)	11	906
2206(b)	11	906
2206(c)	11	906; 922
2206(d)	--	--
2207(a)	11	853(4); 893; 910
2207(b)	11	853; 891; 893
2208	11	892
2209(a)(1)	11	854(a), (b)
2209(a)(2)	11	903A(a)
2209(a)(3)	11	903A(b)
2209(a)(4)	11	915; 915A
2209(a)(4)	11	914(b)
2209(b)(1)	11	854(d); 903A(a), (b)
2209(b)(2)	11	914(c); 915(d); 915
2210(a)	31	1005
2210(a)(1)	11	881
2210(a)(2)	11	881; 882
2210(a)(3)	11	881
2210(b)	11	881; 882
2211	11	911; 912
2212(a)(1)	11	907(1), (2)
2212(a)(2)	18	4354(a)
2212(a)(3)	11	907A
2212(b)(1)	11	907
2212(b)(1)	18	4354
2212(b)(2)	11	907A
2213(a)	11	906(4)

2213(b)	11	926(b)(1)
2213(c)	11	222(6), (13)
2213(d)	11	901(a)
2213(e)	11	906(4)
2213(f)	11	901(b)
2213(g)	11	904
2213(h)	11	854(c)
2213(i)	--	--
2213(j)	11	903A(e)(1)
2213(k)	11	903A(e)(2)
2301(a)	11	801; 802; 803
2301(b)(1)(A)	11	803
2301(b)(1)(B)	11	802(a)
2301(b)(2)	11	801
2301(c)	11	801(b); 802(b)(1)
2302	11	804
2303	11	1338
2304(a)	11	811(a)
2304(b)	11	804(b); 811(b); 812(a)(2)
2304(b)(1)(G)	11	811(b)(3)
2304(b)(1)(H)	--	--
2304(b)(2)	11	811(b)(3)
2305(a)	--	--
2305(b)	--	--
2305(c)	--	--
2305(d)	--	--
2305(e)	7	6071; 6072; 6073; 6074; 6309(h)
2305(e)(2)	7	6074(b)
2305(f)	--	--
2306(a)	--	--
2306(b)	--	--
2306(c)	11	811(a)(3), 934
2306(d)	7	6071
2306(e)	11	1338(a)(1)
2306(f)	11	811(a)(3), (b)(1)
2401(a)	11	824; 825; 826; 826A
2401(b)(1)	11	826A
2401(b)(2)	11	825(a)(1)

2401(b)(3)	11	824
2401(b)(4)	11	826(a); 825(a)(2)
2401(c)	11	827
2402(a)	11	820; 821; 822; 823
2402(b)(1)	11	823
2402(b)(2)	11	820
2402(b)(3)	11	822
2402(b)(4)	11	821
2403(a)	11	829(b)
2403(b)	11	829(c)
2403(c)	--	--
3101(a)	11	1201; 1205; 1261
3101(b)	11	1203; 1206; 1262
3101(b)(1)(C)	11	
3101(c)(1)	11	1202
3101(c)(2)	11	1201; 1203
3101(d)	--	--
3102(a)	11	1207
3102(b)	11	1208
3102(c)	11	1207
3103(a)	11	1211
3103(b)	11	1212
3103(c)	11	1211; 1212
3103(d)	--	--
3104(a)	11	1209(1)
3104(b)	11	1209(2)
3104(c)	11	1209(3)
3104(d)	11	1209(4)
3201(a)	11	1222; 1223; 1224
3201(b)(1)	11	1223; 1235(f)
3201(b)(2)(A)	11	1235(c)
3201(b)(2)(B)	11	1224
3201(b)(3)	11	1221
3201(c)	11	1231
3201(d)	11	1232
3201(e)	11	1234; 1225
3202(a)	11	1233
3202(b)	11	1234
3202(c)	11	1233

3203	21	2315; 2610(g); 6705; 2620(a)-(b); 2752; 3107
3203	16	7109(c)
3203(a)	11	873
3203(a)(1)(B)	16	4740(g)
3203(a)(1)(B)	21	4603
3203(b)	11	873
3204(a)(1)	11	907(3)
3204(a)(2)	11	907B
3204(b)(1)	11	907
3204(b)(2)	11	907B(b)
3205(a)	11	1235(b)
3205(b)	11	1235(a)
3301(a)(1)	11	1245A(a)
3301(a)(2)(A)	11	1245A(a), (b)(2)
3301(a)(2)(B)	11	1244(a)(1)
3301(a)(2)(C)	11	1244(a)(2)
3301(a)(2)(D)	11	1244(a)(3)
3301(a)(2)(E)	11	1244(a)(4)
3301(a)(2)(F)	11	1246
3301(a)(2)(G)	11	1244(a)(5); 1269
3301(a)(2)(H)	11	850(a)(1)b.; 937(2)-(4)
3301(a)(2)(I)	21	4202(a)-(c)
3301(b)	11	1244(b)-(c); 1245A
3301(c)	11	1247
3302(a)(1)	11	1257; 1250; 1257A
3302(a)(2)	11	1458(a)(2)
3302(b)(1)	11	1458(b)
3302(b)(2)	11	1257(a)
3302(b)(3)	11	1243; 1257(b)
3302(b)(3)	21	4103(b)
3303(a)	11	1248; 1267; 1273
3303(a)(1)	11	1313(b)
3303(b)(1)	11	1248(a)
3303(b)(2)	16	4759(a)(4)
3303(b)(3)	11	1267
3303(b)(4)	6	5132
3303(b)(4)	11	1273; 1248(b)
3304(a)	11	1241

3304(b)	11	1241
3304(c)	11	1242
3305(a)(1)(A)	11	1253; 1258(3)
3305(a)(1)(B)	11	1252; 1258(3)
3305(a)(1)(C)–(D)	11	1251; 1258(2)
3305(a)(2)	11	1258(4)
3305(b)(1)	11	1253
3305(b)(2)	11	1252
3305(b)(3)	11	1251
3306(a)	11	1256
3306(b)	11	1260
3306(c)	11	1256; 1260
3307(a)(1)(A)	11	1263(1)
3307(a)(1)(B)	11	1263(1); 1263A(a); 3531
3307(a)(1)(C)	11	3532
3307(a)(1)(D)	11	3532(1)–(3)
3307(a)(2)(A)	11	1263(2); 3533(1)
3307(a)(2)(B)	11	1263; 1263(2)
3307(a)(2)(C)	11	1266(1)
3307(b)	11	1268
3307(c)	11	1263; 1263A; 1266; 1268; 3531
3308(a)	11	1271
3308(b)	11	1271; 1271A(c)
3308(c)	11	1272
3309(a)	11	1258(1)
3309(b)	11	1266
3309(c)	11	222(15)
3309(d)	--	--
3309(e)	11	1251, 1252, 1253
3309(f)	11	1274(3)
3309(g)	11	3531(3)
4101(a)(1)	11	1301(1)a.
4101(a)(2)	11	1301(1)b.
4101(a)(3)	11	1301(1)c.
4101(a)(4)	11	1301(1)f.
4101(b)	11	1301(2)
4101(c)(1)	11	1302
4101(c)(2)	11	1303

4101(c)(3)–(4)	11	1301
4102(a)(1)	11	1245(1)
4102(a)(1)(A)	11	1245(1); 621(a)(2)a.-c.
4102(a)(1)(B)	11	1245(2)
4102(a)(2)	11	1245(4)
4102(b)	11	1245
4103(a)(1)	11	1311(a)(1)-(3)
4103(a)(2)	11	1311(e)
4103(a)(3)	11	1312(i)
4103(b)(1)	11	1312
4103(b)(2)	11	1311(b)
4104	11	1315
4105(a)	11	1320; 1321
4105(b)–(c)	11	1321(6)
4105(d)	11	787(h)
4105(e)	11	1320; 1321
4106(a)	11	1323
4106(b)	11	1324
4106(c)	11	1323; 1324
4107	11	1331
4108(a)	11	1320; 1321
4108(b)	11	1324; 1301(1)d.
4108(c)	11	1337(b)
4201(a)	11	1341; 764; 765
4201(b)	11	764
4201(c)	--	--
4201(d)(1)(A)	11	778A(2), (4)b.
4201(d)(1)(B)	11	765
4201(d)(2)	11	1341
4202(a)	11	1342(a)(1); 1343(a)
4202(b)(1)	11	787(b)(4)
4202(b)(2)	11	1343(b)
4202(c)	11	787(h)
4202(d)	11	1345
4202(e)	--	--
4203(a)	11	1351; 1352; 1353; 1355; 1356(a)-(b)
4203(a)(3)	11	1356(2)
4203(b)	11	1356(1)-(2)

4203(c)(1)	11	787(b)
4203(c)(2)	11	787(b)
4203(c)(3)	11	1352(1)
4203(c)(4)	11	1351; 1353
4204(a)(1)	11	1108; 1109
4204(a)(2)	11	1111
4204(a)(3)	11	1361(1)-(3)
4204(a)(4)	11	1361(4)
4204(b)(1)	11	1108; 1109
4204(b)(2)	11	1111
4204(b)(3)-(4)	11	1361(b)
4204(b)(5)	--	--
4204(c)	11	1361(b)
4204(d)	11	1363
4204(e)(1)	11	1362
4204(e)(2)	11	787(h), (j)
4204(e)(3)	--	--
4205	11	1367; 1368
4206(a)(1)	7	5407(3)
4206(a)(1)	11	1332
4206(a)(2)(A)	11	1333
4206(a)(2)(B)	7	5407(1)-(2)
4206(b)(1)	7	5407(3)
4206(b)(1)	11	1332
4206(b)(2)	11	1333
4206(b)(3)	7	5407(1)-(2); 5409
4207(a)-(d)	11	1325; 1326
4207(e)	11	1325(b)(6)
4207	11	1327
4208(a)	--	--
4208(b)	11	1367; 1368
4208(c)	11	1325(c)-(d)
4208(d)	11	1325(a)(3)
4208(e)	11	1333(a)(1)
4208(f)	7	5402
4208(g)	11	1364
4208(h)	--	--
4208(i)	11	1356(4)
4208(j)	7	5402

4301(a)	11	1337
4301(a)(1)	11	1335(a)(1)
4301(a)(2)	11	1335(a)(2)
4301(a)(3)	11	1335(a)(3)
4301(a)(4)	11	1335(a)(8)
4301(b)	11	1335(c)
4302(a)(1)	11	1335(a)(6)
4302(a)(2)	11	1335(a)(7)
4302(a)(3)	11	1335(a)(9)
4302(b)	11	1335(a)(6)
4302(c)	11	1335(c)
4303(a)	11	1335(a)(4)
4303(a)(2)	11	1335(a)(5)
4303(b)	11	1335(c)
4304(a)	11	1335(a)(9)
4304(a)(2)	16	4798(r)
4304(b)	11	935
4304(c)(1)	11	937
4304(c)(2)	11	938
4304(d)	11	939
4305	11	1335(a)(9) & (a)(9)b.
4306(a)	11	932
4306(b)	11	939
4307(a)	11	931(2)
4307(b)	11	931(8)
4307(c)	--	--
4307(d)	11	931(9)
4307(e)	--	--
4307(f)	11	931(10)
4307(g)	--	--
4307(h)	11	931(8)
4307(i)	--	--
4307(j)	11	1337(a)
4307(k)	11	931(17)
4307(l)	--	--
4401	11	766
4402(a)	11	1001
4402(b)	11	1002(2)
4402(c)	11	1001

4403(a)	11	1101
4403(b)	11	1102A
4403(c)	11	1101
4404	11	785
4404(a)(1)–(2)	11	786(b)
4405(a)	11	1102(a)(3)
4405(b)	11	1102(b)(4)
4406(a)(1)	11	1102(a)(2); 1100(3)
4406(a)(2)	11	1106
4406(b)(1)	11	1102(b)(4)
4406(b)(2)	11	1106
4407(a)	11	1113(a)-(b)
4407(a)(2)(B)	11	1113(e)
4407(b)(1)	11	1113(b)
4407(b)(2)	11	1113(a)
4407(c)	11	1113(i)
4407(d)(1)	11	1113(c)
4407(d)(2)	11	1113(d)
4407(e)	11	1113(f)-(g)
4408	11	1113(k)(2)
4501(a)(1)	11	1401; 1408
4501(a)(2)	11	1403(3)
4501(a)(3)	11	1403(4)
4501(a)(4)	11	1411
4501(a)(5)	11	1405(a); 1406(a)(1)-(2), (c)
4501(a)(6)	11	1401; 1403
4501(a)(7)	11	1407
4501(b)	11	1404; 1403(2)
4501(c)	11	1413
4501(d)(1)(A)	11	1326(c)
4501(d)(1)(B)	11	1401; 1403; 1405; 1411
4501(d)(2)	11	1404
4501(d)(3)	11	1407
4502(a)(1)	11	1470(a); 1471(a), (d)
4502(a)(2)	11	1471(l)
4502(b)	11	1471(k)
4502(c)	11	1471(f), (i), (j)
4502(d)(1)	11	1472(a)
4502(d)(2)	11	1472(c)

4502(d)(3)	11	1472(b)
4502(d)(3)(I)	11	1472(d)
4502(e)	11	1472(f)
4503(a)	11	1432(c)
4503(b)	11	1401(1)-(2)
4503(c)	11	1432(e)
4503(d)	11	1470(d)
4503(e)	11	1403(1)
4503(f)	11	1470(e)
5101(a)	11	1447(a); 1447A(a)
5101(b)	11	1445(5)
5101(c)	11	1447(a); 1447A(a); 1445(5)
5101(d)-(e)	--	--
5102(a)	11	1459
5102(b)	11	1444(b)
5102(b)(1)	11	1444(a)
5102(b)(2)(A)	11	1446A(a)
5102(b)(2)(B)(i)	11	1446
5102(b)(2)(B)(ii)	11	1452
5102(b)(3)	11	1453
5102(b)(4)	11	1445(1)
5102(c)(1)	11	1446A(c)
5102(c)(2)	11	1446A(d)
5102(d)(1)	11	1459(c)
5102(d)(2)	11	1444(b)
5102(d)(3)	11	1446A(a)
5102(d)(4)	--	--
5102(d)(5)	11	1457
5103(a)	11	1442; 1443
5103(b)(1)	11	1442
5103(b)(2)	11	1443(d)
5103(b)(3)	11	1457
5103(c)	11	1443(b)
5104(a)(1)(A)	11	1448(a)(1), (a)(9)
5104(a)(1)(B)	11	1448(a)(1)
5104(a)(1)(C)	11	1448(a)(3), (a)(9)
5104(a)(1)(D)	11	1448(a)(7)
5104(a)(2)	11	1448(a)(2)
5104(a)(3)	11	1448(a)(4)

5104(a)(4)	11	1448(a)(5)
5104(a)(5)	11	1448(a)(6)
5104(a)(6)	11	1448(a)(8)
5104(b)	11	1448(d)
5104(c)(1)	11	1448(c), (e)(1)
5104(c)(2)	11	1448(c)
5104(c)(3)	11	1457
5104(d)	11	1448(a)(10)
5105(a)	11	1445(2), (4); 1454; 1455
5105(a)	24	903
5105(b)	11	1445(2)
5105(c)(1)	11	1454
5105(c)(2)(A)	11	1455(4)
5105(c)(2)(B)	24	903
5105(c)(3)	24	903
5105(c)(4)(A)	11	1455
5105(c)(4)(B)	--	--
5105(c)(5)	11	1445(2)
5106(a)	11	1460(a)
5106(b)	11	1460(a), (b)(1)
5106(c)	11	1460(d)
5107(a)	11	1448A(g); 1448B(e)
5107(b)	11	1448A(e)
5107(c)	11	1448A(e), (g); 1448B(e);
5108(a)(1)	11	1457(c)
5108(a)(2)	11	1457(b)
5108(b)	11	1457(g)
5109(a)	11	222(4)
5109(b)	11	222(5)
5109(c)	24	901
5109(d)	11	1444(a), (c)
5109(e)	11	222(12)
5109(f)	11	1448(5)
5201(a)	16	4752; 4753; 4754; 4755; 4756; 4763
5201(b)	16	4764(a), (b)
5201(c)	16	4761(a), (c), (d), (e)
5201(d)(1)	16	4752; 4753; 4754; 4755; 4756
5201(d)(1)(F)	16	4763(b)

5201(d)(2)	16	4764
5201(d)(3)	16	4761(a)
5201(d)(4)	--	--
5201(d)(5)	16	4751D(a)
5202(a)	16	4752; 4753; 4754; 4755; 4756; 4758
5202(b)	16	4761(a)-(c)
5202(c)(1)	16	4752; 4753; 4754; 4755; 4756; 4758
5202(c)(2)	16	4761(c)
5202(c)(3)	--	--
5202(c)(4)	16	4751D(a)
5202(d)	16	4761(e)
5202(e)	16	4760A(b)
5203(a)(1)	16	4751A(1)a.-b.; 4701(41); 4701(42)
5203(a)(2)	16	4751A(1)c.
5203(a)(3)	16	4751A(1)d.
5204(a)	16	4771(a); 4774(a); 4773(1)
5204(b)	16	4771(b); 4774(c)-(d); 4773(1)
5204(c)	16	4774(e)
5204(d)	16	4771(a)
5204(e)	16	4771; 4774
5204(e)(2)(A)	16	4774(d)
5205(a)	16	4739; 4757(a)(1); 4759(a)(1)
5205(a)(5)	16	4759(a)(2)
5205(b)	16	4757(a)(7)
5205(c)	16	4757(b); 4759(b)
5206	11	841C
5207(a)(1)	16	4744(a)(1); 4743(2); 4744(d)
5207(a)(2)	16	4744(c)(1)
5207(a)(2)(B)	16	4744(c)(2)
5207(b)	16	4744(e)(1)
5207(c)	16	4744(b)(1)
5207(d)	16	4744(b)(1)
5207(e)(1)	16	4744(a)(2), (c)(2), (e)(2)
5207(e)(2)	16	4744(e)(2)
5207(e)(3)	16	4744(b)(2)

5208	16	4769
5209	16	4795
5210(a)	11	271
5210(b)	16	4744(a)(1), (c)(1), (e)(1)
5210(c)	11	511; 512; 513; 522
5210(d)	11	222(2)
5210(e)	16	4701(8)
5210(f)	16	4701(17); 4773(2)
5210(g)	16	4743(5)
5210(h)	16	4701(33)
5210(i)	16	4769(a)(2)
5210(j)	--	--
5210(k)	16	4751C(1)
5210(l)	16	4751C(2)
5210(m)	16	4751C(3)
5210(n)	16	4751C(4)
5210(o)	16	4751C(5)
5301(a)(1)	11	1503(a)(1)
5301(a)(2)	11	1503(b)
5301(a)(3)	11	1503(c)
5301(b)	11	1504(a)
5301(c)	11	1504(b)
5301(d)	11	1504(c)
5301(e)	11	477
5301(f)	11	476
5302(a)	11	616(b)
5302(b)	11	617(b)(1)
5302(c)(1)	11	616(b)
5302(c)(2)	11	617(b)(1)
5303(a)	11	951(a)
5303(b)(1)	11	951(f)(1)-(2)
5303(b)(2)	11	951(f)(3)
5303(c)	11	951(e)-(g)
5303(d)	11	951(b)
5303(e)	11	951(d)
5304(a)	11	616(a)(1)
5304(b)	11	1502(3)
5304(c)	11	616(a)(2)
5304(d)	11	1502(5)

5304(d)	11	1502(9)
5304(e)	11	951(c)(4)
5304(f)	11	1502(12)