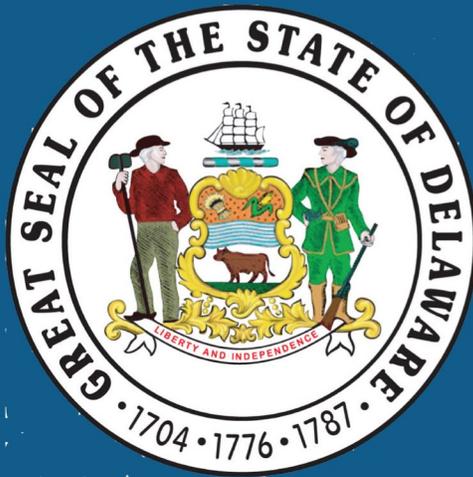


# DELAWARE STATE SENATE JUDICIAL COMMITTEE



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**+: Documentation was not provided from sponsor for these bills**



# THE DELAWARE JUDICIARY

The Implementation Of HB 204 Bail Reform Act and  
Interim Rule Of Criminal Procedure Pretrial Release

# Introduction

William Montgomery  
Supreme Court Administrator

John Grimm, Esq.  
Deputy State Court Administrator

Hon. W. Patrick Wood  
Justice of the Peace Court

# Bail Reform Act HB 204 SUMMARY

- The Act has the goal of
  - modernizing the pretrial process,
  - reducing reliance on monetary conditions,
  - improving the efficiency and outcomes for the criminal justice system, and
  - ensuring the safety of the community.
- The Act called the courts to adopt an empirically-based risk assessment tool to determine whether a defendant is likely to re-offend prior to trial or not come to court, and use that information to make individualized “assignments” of conditions of release. The tool we are using was custom developed using Delaware data and is called the DELPAT. It assigns a score and based on that score, conditions of release are recommended to the judge, but the judge retains discretion.
- The Act called to the courts to develop court rules to implement its provisions, including the consideration and use of the risk assessment tool, the right to a hearing for everyone detained for 72 hours, and additional obligations, powers of Pretrial Services (DOC).
- The Act required the courts to implement its provisions by January 1, 2019.

# Interim Special Rule of Criminal Procedure for Pretrial Release

- Due to the Jan 1 implementation date, the courts in the fall of 2018 adopted, with input from stakeholders, an Interim Rule with the understanding changes would be made to it from issues surfaced during the implementation period.
- The Rule provides for recommended responses to the DELPAT risk scores, which include ROR, release with conditions, release with supervised conditions or secured bail or a combination.
- The DELPAT is only considered when the person is charged with a non-violent crime. The Rule always gives judges total discretion to impose money bail for Signal Crimes, Domestic Violence crimes, and felony DUIs.
- And if the DELPAT is considered in the case of non-violent crimes, the judge can still impose money bail, if the judge records his or her reasons for doing so.

# Interim Rule Training I

## In Person Training

- October 17, 2018 (Kickoff Event)
  - Rehoboth Convention Center
- January 11, 2019 (CLE)
  - Leonard Williams Justice Center, Wilmington
- January 15, 2019 (CLE)
  - Sussex County Courthouse, Georgetown
- January 24, 2019 (CLE)
  - Kent County Courthouse, Dover
- January 25, 2019 (CLE)
  - Leonard Williams Justice Center, Wilmington

# Interim Rule Training I (cont.)

- Invitees to training:
  - Judges and Court Commissioners from all courts that deal with bail (Superior Court, Court of Common Pleas, Family Court, Justice of the Peace Court)
  - Court staff
  - Department of Justice
  - Office of Defense Services
  - Department of Correction
  - Private practice defense attorneys
  - Members of Law Enforcement

# Interim Rule Training II

## • COMPUTER BASED TRAINING

- We are working with a contractor - Bluewater Learning
- They are developing a computer-based training course that can be used by both judicial officers and staff
- Those taking the training will have the opportunity to either follow only the path that applies to them or review all content to get a deeper understanding
- The CBT will cover a very brief review of HB204, including the purpose and what the data analysis revealed (i.e. the 2 main failures of the current system) and the goals of the bill as well as a brief review of the interim special rule, the DELPAT, how the response matrix is used, the risk factors that are considered in the development of the scores, and the other factors that must be weighed along with the DELPAT score as dictated in the rule.

# Ongoing Consultation

- **Bi-weekly Implementation Update**

- A teleconference has been held every two weeks with stakeholders to discuss ongoing implementation and any issues that arise
- Participants on the teleconference include:
  - Court Administrators or staff attorneys for Superior Court, Court of Common Pleas, Family Court, Justice of the Peace Court
  - Department of Justice
  - Office of Defense Services
  - Department of Correction

## Ongoing Review and Adjustments

- Amendments will be made coming out of what's been learned by implementation of the Interim Rule
  - A memo is being prepared concerning issues that have arisen in the practical implementation of the Interim Rule and the Bail Reform Act, with recommendations on issues that may require changes to the rule.
  - The memo will then be presented to the Presiding Judges in for consideration and possible changes in the Interim Rule

# Discussion and Questions

**FOR IMMEDIATE RELEASE**  
**Dec. 17, 2018**

**Judiciary Adopts Interim Rule for Implementation of Fundamental Bail Reform**

In 2018, the General Assembly enacted legislation to reform the system under which courts subject defendants to pretrial conditions of release (House Bill 204 which is now the “Bail Reform Act” or “Act”). Under the Act, the Judiciary was required to come up with a uniform rule by January 1, 2019 to implement the Act’s requirements for bail reform. Working under this tight deadline, the Judiciary has crafted an interim rule, the Interim Special Rule of Criminal Procedure for Pretrial Release, to implement the Act.

“The interim rule is a product of a collaborative effort of all of the courts involved with making bail decisions,” said Superior Court President Judge Jan R. Jurden. “This is an important reform and we look forward to working with our system partners as we implement this improved approach to pretrial release.”

Codified in Chapter 21, Title 11 of the Delaware Code, the Bail Reform Act encourages the use of non-monetary conditions of release when those conditions reasonably assure the defendant’s appearance at court proceedings, public safety, and the integrity of the judicial process. In particular, the Act was intended to prevent defendants from being subjected to excessive financial conditions of release, traditionally referred to as money bail. By this means, the Act sought to reduce the

unnecessary pretrial incarceration of defendants who are not wealthy enough to pay money bail, as well as reduce the resulting loss in employment, the pressure to plead guilty, the economic toll on non-affluent defendants and their families, and other substantial harm that results from the excessive use of money bail.

To accomplish those goals, this rule requires courts to impose the least restrictive conditions necessary to reasonably assure the defendant's appearance in court, public safety, and the integrity of the judicial process.

The interim rule has commentary that more fully explains the purposes behind the Act and rule, and can be found at:

<https://courts.delaware.gov/rules/index.aspx#pretrial>.

To increase the reliability and equity of decisions about conditions of pretrial release, the Act and the rule require the use of an empirically developed pretrial assessment instrument. Consistent with that requirement, a diverse group of constituencies, with the aid of qualified academic and professional advisors, developed the Delaware Pretrial Assessment Tool, or "DELPAT." The DELPAT takes into account factors relevant to whether defendants (when compared to other defendants) are at greater risk of failing to appear at trial or endangering public safety. It is therefore designed to provide a reliable basis for setting conditions of release. The pretrial assessment took into consideration nationally available models and has been tested preliminarily for reliability and validity, and designed to ensure

that the assessment is not affected by bias based on race, gender, wealth, or other inappropriate grounds.

“The risk assessment instrument and the new court rule provide us with an evidence based method to make sound bail decisions in a systematic way,” said Chief Judge Alex J. Smalls of the Court of Common Pleas.

To further address the important risk of domestic violence, the Act and thus the rule, authorize the court to consider the results of a separate domestic violence assessment in cases where the State contends that the defendant has committed domestic or intimate partner violence and presents the results of that assessment to the court. A more complete summary of the role of the pretrial risk assessment and the domestic violence assessment in the process of setting conditions of release is available at the commentary to Rule 5.2.

Consistent with the requirements of the Act, the rule addresses the three categories of risk that pretrial conditions of release seek to address: i) the risk that the defendant will fail to appear; ii) the risk that the defendant will be a threat to public safety or a particular person; and iii) the risk that a defendant will obstruct justice.

As to the risk of non-appearance, the Judiciary is implementing an enhanced system of notifications to make sure that defendants are frequently reminded of court dates and, consistent with the intent of the Act, the rule discourages the use of

monetary conditions of release to address the risk of non-appearance in the current case. In general, to address the risk of non-appearance, the court shall follow the conditions of release indicated by the pretrial risk assessment (DELPAT). The imposition of more stringent conditions of release to address this risk may only be made upon special findings by the court. When, however, a defendant has been given a chance for conditions of release without monetary conditions and fails to appear in court, the rule gives the court discretion to impose monetary conditions of release as a consequence for the violation. A more complete summary of how the rule addresses the risk of non-appearance can be found at Rule 5.2(g) and its commentary.

As to the risk that a defendant will be a danger to public safety or a particular person, the rule identifies a number of very serious “signal crimes” (*e.g.*, homicide, violent crimes, sex crimes, gun crimes, domestic violence crimes, and high-level drug offenses). In these cases, the court need not give presumptive weight to the results of the risk assessment, but is given discretion to impose the conditions of release it deems reasonably necessary to assure public safety. In cases involving other charges, the court may also impose more stringent conditions of release than the risk assessment score suggests, by making special findings indicating the basis for imposing them. The rule also addresses the unique risk posed by recidivist drunk drivers, and gives the court discretion to address this risk. A more complete

summary of how the rule addresses the risk that a defendant will be a danger to public safety or a particular person is at Rule 5.2(h) and its commentary.

As to the risk that a defendant will obstruct justice by, for example, threatening a witness, the rule allows the State to make a specific showing and for the court to impose conditions of release necessary to address that misconduct. A more complete summary of how the rule addresses the risk that a defendant will obstruct justice can be found at Rule 5.2(i) and its commentary.

To ensure that defendants are treated fairly, the rule provides protections to ensure that a defendant's wealth will not be taken into account in determining whether to impose conditions of release, including monetary conditions of release. But for the same reason of fairness, the rule requires that the court must consider the defendant's resources in setting the amount of any monetary conditions of release and requires the court to develop a form for defendants to present that information.

As a further assurance of due process, the rule also provides procedures for defendants to seek review of the initial conditions of release imposed upon them, and for any party to a case to seek review if there has been a material change in circumstances.

Finally, the rule gives the court discretion to impose more stringent conditions of release if a defendant breaches the conditions initially imposed. The rule recognizes that although the Act is designed to give defendants more access to

pretrial release without onerous conditions, particularly monetary ones, in the first instance, a defendant who has been given that chance and breaches the conditions of release is in a categorically different position. Upon a violation of conditions of release, the court need not order a new pretrial assessment and has the discretion to order the conditions of release, including monetary conditions, it deems appropriate to address the breach.

Under the Act, the collection of data about the implementation of the risk assessment and how the courts have applied it is required. For that reason, the rule requires the reporting of key information necessary to enable the State to assess how the new approach dictated by the Act is working and to enable policymakers, including the Judiciary itself, to consider the need for improvements in approach.

“The Justice of the Peace Court is pleased that the Supreme Court has adopted a rule implementing pretrial reform that puts appropriate weight on an empirically derived assessment tool and yet preserves adequate judicial discretion so that individual cases can be judged individually,” said Chief Magistrate Alan Davis of the Justice of the Peace Court. “Both of these are hallmarks of a healthy pretrial system. I look forward to the implementation and monitoring of the system this creates so that it can be continually improved over time.”

Because the Act involves a fundamental change in how our State sets pretrial conditions of release, the various constituencies—police officers, prosecutors,

defense attorneys, correction personnel, judicial staff, and judges—who must implement the new system will learn by doing in the first stages of implementation. For that reason, the Judiciary has styled the rule as an interim one, signaling our commitment to review feedback on how the Act and rule are being implemented, and to consider alterations and improvement in approach based on experience. During this period of implementation, intensive efforts at training will be undertaken, which will build on prior efforts. The Judiciary recognizes that the implementation of a fundamental reform of this nature will require patience on the part of everyone involved during the early stages of the reform, and that includes the court being patient with its constituents as they adapt to this new rule.

“The Act presents a major opportunity to improve the quality of justice in our State, and the Judiciary applauds the efforts of all the stakeholders who have worked so hard to make this reform a reality,” said Supreme Court Chief Justice Leo E. Strine, Jr. “The rule represents a good faith effort to implement the Act in an efficient and equitable manner by the deadline the Act imposes. The Judiciary and its constituents must now pull together to make the Act and the rule work as well as possible, and to improve it further based on the experience we gain during the next year.”

**For more information, please contact:**

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## QUICK GUIDE TO THE INTERIM SPECIAL RULE OF CRIMINAL PROCEDURE FOR PRETRIAL RELEASE

This quick guide is intended to help courts, the State, and defendants navigate Delaware's new Interim Special Rule of Criminal Procedure for Pretrial Release (the "Rule"). This guide is not a substitute for reading the Rule, but rather an educational tool to help readers understand it.

Broadly speaking, the Rule is designed to encourage the use of non-monetary conditions of pretrial release when those conditions reasonably assure the defendant's appearance at court proceedings, public safety, and the integrity of the judicial process.

To accomplish those and other goals, the Rule provides for several steps for courts to follow when determining the defendant's conditions of release:

### **Step 1: Find the initial recommended response based on the defendant's pretrial assessment score.**

At initial appearance, an automated program will tabulate the defendant's pretrial assessment score, which the court should then locate in the pretrial assessment matrix (located in Schedule 5.2A). Different scores have different "colors" in the matrix, which are associated with different tiers of recommended conditions of release. The court must presumptively adhere to these recommended conditions.

- **Green** — Release the defendant on his or her own recognizance, subject only to the mandatory conditions of release (*i.e.*, show up at court when required and commit no new crimes) and a no-contact order if appropriate.
- **Blue** — Release the defendant subject to an unsecured conditions of release bond and any non-monetary conditions necessary to reasonably assure the defendant's appearance in court and public safety.
- **Orange** — Release the defendant subject to an unsecured conditions of release bond, any non-monetary conditions necessary to reasonably assure the defendant's appearance in court and public safety, and a requirement that the defendant report to Pretrial Services for supervision. Specific requirements apply when the court releases the defendant to Pretrial Services.

In domestic violence cases, the State may provide the court with information that a safety protocol has been triggered by an empirically developed lethality assessment

instrument designed to evaluate domestic violence risks. A triggering of the “referral protocol” indicates that a secured or cash-only bond, and ideally the latter, is recommended.

**Step 2: Determine whether any of the charges are listed among the “signal offenses.”**

Compare the charges against the defendant with the crimes listed in Schedule 5.2B. If any of the charges appear there, the court may, in its discretion, require any type of conditions of release bond (including a secured bond), even if the pretrial assessment would call for less intensive conditions of release. In setting the amount of any unsecured or secured bond, refer to the SENTAC bail guidelines.

**Step 3: If the defendant is charged with a DUI, apply the DUI-specific portion of the Rule.**

If the defendant has been charged with driving under the influence (DUI), and the defendant has been convicted of a DUI at least twice in the past, apply the DUI-specific provision (Rule 5.2(h)(2)(C)), which provides for either an unsecured conditions of release bond and appropriate non-monetary conditions that protect public safety or, if the defendant is not willing to take financial responsibility (herself or through a surety) for those conditions, a secured conditions of release bond.

**Step 4: Determine whether a downward departure is warranted.**

Upon request or on its own initiative, the court may adjust the defendant’s conditions of release downward from the initial recommended response, provided that the departure still reasonably assures the defendant’s appearance in court, public safety, and that the defendant does not obstruct justice. No special showing or special findings are necessary to do so.

**Step 5: If the State makes a special showing requesting more intensive conditions of release, evaluate the request, but give substantial weight to the conditions indicated by the defendant’s pretrial assessment score.**

If the State makes a special showing requesting more intensive conditions of release for some reason other than a signal offense or DUI, the court should evaluate the request according to the specific rubric set forth in Rule 5.2(g), (h), or (i). These subsections set forth different criteria depending on the risk alleged by the State (*i.e.*,

failure to appear, public safety, or obstruction of justice), which the court must follow in evaluating the State's request:

- For non-appearance risks, the court must find that the defendant poses a demonstrated and specific flight risk in the current case.
- For public safety risks, the court must find that releasing the defendant with less intensive conditions of release would pose a substantial danger to public safety.
- For obstruction of justice risks, the court must find that the defendant has in the current case threatened to, attempted to, or already obstructed justice.

In all three categories, the court must give substantial weight to the initial recommended response and make special findings, including factor-specific special findings, supporting its decision to depart from the initial recommended response. See Rule 5.2(a)(15) and (6) for definitions of “special findings” and “factor-specific special findings.”

Overall, departures from the indicated conditions of release under this step should be rare. Some examples of circumstances that may justify a departure with an appropriate evidentiary basis include:

- After learning that there is a warrant for her arrest, the defendant made plans to flee the state or the nation, as evidenced by something like the purchase of a one-way airplane ticket. Here, the defendant's risk of failing to appear would not be adequately captured by her pretrial assessment score.
- The defendant, a diagnosed pyromaniac, is charged with multiple counts of arson in the first degree, which is not one of the signal offenses enumerated in Schedule 5.2B. The State provides record evidence that the defendant told a witness in recent weeks that he has trouble controlling his urge to set other people's property on fire. Here, the defendant's risk to public safety would not be adequately captured by his pretrial assessment score.
- Two witnesses to the alleged crime tell the police that, after being released subject only to the mandatory conditions of release, the defendant appeared at their workplaces and offered them money to stay silent. The State presents this evidence to the court. Here, the defendant has attempted to obstruct justice, which is a basis for an upward departure under Rule 5.2(i) and is not captured by the defendant's pretrial assessment score.

The court must record its special findings in a written order and send a copy to its presiding judge in accordance with Rule 5.2(n).

## **Signal Offenses for Heightened Public Safety Risk in Pretrial Release Rule**

The Interim Special Rule of Criminal Procedure for Pretrial Release (also known as the bail reform rule) gives the court more discretion to impose more intensive conditions of release, such as cash bail, when the defendant is charged with any of a number of specific offenses that signal a heightened risk to public safety. These signal offenses include the following:

(1) Any Title 11 Class A felony.

(2) One of the following Title 11 Class B felonies:

§ 606: Abuse of a Pregnant Female in the First Degree.

§ 613: Assault in the First Degree.

§ 632: Manslaughter.

§ 633: Murder of a Child by Abuse or Neglect in the Second Degree.

§ 771(a)(2): Rape in the Third Degree.

§ 772: Rape in the Second Degree.

§ 777A(e)(2) or (e)(4): Sex Offender Unlawful Sexual Conduct Against a Child.

§ 778(2): Sexual Abuse of a Child by a Person in a Position of Trust, Authority, or Supervision in the First Degree.

§ 783A: Kidnapping in the First Degree.

§ 787(b)(1): Trafficking an Individual (Victim is a Minor).

§ 787(b)(2): Forced Labor (Victim is a Minor).

§ 787(b)(3): Sexual Servitude (Victim is a Minor).

§ 826(a)(2): Burglary in the First Degree, provided that the victim who suffers physical injury is 62 years of age or older.

§ 826A: Home Invasion.

§ 832: Robbery in the First Degree.

§ 836(a)(4) through (a)(6): Carjacking in the First Degree.

§ 1103B: Child Abuse in the First Degree.

§ 1108: Sexual Exploitation of a Child.

§ 1109: Unlawful Dealing in Child Pornography, provided that the defendant is eligible for sentencing under § 1110.

§ 1112A(h): Sexual Solicitation of a Child.

§ 1112B(g): Promoting Sexual Solicitation of a Child.

§ 1253: Escape After Conviction (Infliction of Injury Upon Another Person).

§ 1254(b): Assault in a Detention Facility (Causing Serious Injury).

§ 1304(b)(3): Hate Crimes, provided that the underlying offense alleges a Class C felony.

§ 1304(b)(4): Hate Crimes, provided that the underlying offense alleges a Class B felony.

§ 1447: Possession of a Deadly Weapon During Commission of a Felony.

§ 1447A: Possession of a Firearm During Commission of a Felony.

§ 1503: Racketeering.

§ 3533: Aggravated Act of Intimidation.

(3) Possession of a Firearm by Persons Prohibited under the following circumstances:

11 *Del. C.* §1448(a)(1), where either the defendant has a prior conviction for a violent felony or the defendant has been previously convicted of causing serious bodily injury to another.

11 *Del. C.* §1448(a)(3): Prior Controlled Dangerous Substance possession, use, or distribution conviction.

11 *Del. C.* §1448(a)(4): Juvenile adjudication for felony.

11 *Del. C.* §1448(a)(6): Protection from abuse order pending.

11 *Del. C.* §1448(a)(7): Conviction for domestic violence misdemeanor.

(4) Any violent felony as defined by 11 *Del. C.* §4201(c) allegedly committed while defendant is pending adjudication on a previously charged violent felony.

(5) Any violent felony as defined by 11 *Del. C.* §4201(c) allegedly committed against the petitioner with an active Protection from Abuse order against the defendant.

(6) Any violent felony as defined by 11 *Del. C.* § 4201(c) allegedly committed while the defendant is pending adjudication on a previously charged offense of domestic violence as defined by 11 *Del. C.* §1448(a)(7) allegedly committed against the same victim.

(7) Any offense of domestic violence as defined by 11 *Del. C.* §1448(a)(7) allegedly committed while defendant is pending adjudication on a previously charged violent felony as defined by 11 *Del. C.* § 4201(c) allegedly committed against the same victim.

(8) 11 *Del. C.* § 612: Assault in the second degree, provided that the defendant allegedly caused serious physical injury to the victim or caused physical injury to a peace officer as defined by 11 *Del. C.* § 1901.

(9) 11 *Del. C.* § 607: Strangulation.

(10) Any offense that alleges possession of a Tier 4 or Tier 5 quantity of a Schedule I or Schedule II narcotic.



## Senate Bill 36 Narrative

My concern about misleading testimony led me to circulate Senate Bill 36. Here is the synopsis of the bill:

“This Act adds testifying at a hearing held by a standing committee of the House of Representatives or Senate or joint committee of the General Assembly within the definition of ‘swears falsely,’ which applies to Delaware’s perjury laws. This addition means that false testimony to a standing or joint committee would subject a person to prosecution for perjury.

“This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.”

There are some very grave consequences when false information is presented during a legislative committee hearing. Consider the following:

“Perjury is the basest and meanest and most cowardly of crimes. What can it do? Perjury can change the common air that we breathe into the axe of an executioner.” Robert Green Ingersoll

In early March, Senate Bill 19, the Women’s Ultrasound Right to Know Act, and Senate Bill 21, the Pain-Capable Unborn Child Protection Act, were heard in the Senate Legislative Oversight and Sunset Committee.

The Ultrasound bill allows women to see the child growing inside of her before making an irreversible life and death decision about abortion. Almost 4 out of 5 babies can be saved by merely allowing mothers to see their babies growing inside. Following is support data from Steven H. Aden, Esq., chief legal officer and general counsel of the NIFLA:

“In 2013, the National Institute of Family and Life Advocates conducted a survey of its medical clinics. NIFLA asked the clinics to report the number of ultrasounds provided to abortion-at-risk patients and to tally the percentage of such patients who decided against abortion in favor of allowing their preborn children to live. The clinics reported 75,318 ultrasounds performed for pregnant patients identified as either abortion-minded or abortion-vulnerable. Of those mothers, 58,634 chose to allow their children to live, about 78%.” [1]

[1] Thomas A. Glessner, National Survey of Pro-life Pregnancy Centers Shows Major Influence of Ultrasound on a Mother’s Choice for Life, Christian News Wire (Mar. 3, 2015), <https://bit.ly/2tHbopX>.

When it comes to the issue of fetal pain, those on the side of abortion refer to an outdated study that in fact was the product of researchers connected to the abortion industry.

They quote from a Journal of the American Medical Association review from 2005 that claims pain sensation does not develop until 29-30 weeks gestation, and requires development of a functioning cortex in the brain.

That study, while widely quoted, was published by physicians with significant ties to the abortion lobby.

If Planned Parenthood says they do not know about the more recent studies, that should set off an alarm for those who use their clinics.

Science and medicine advance as empirical evidence is carefully examined and presented for peer review.

Medical professionals who do not keep up with these advancements are not acting in the best interests of their patients.

False testimony, intentional or not, can have serious negative consequences. Those testifying before a committee have a responsibility to make sure they have checked their facts.

Legislators must demand the most current and accurate information available when making decisions, particularly life and death decisions.

Respectfully submitted by state Senator Bryant L. Richardson

## **Senate Bill 36 Memo**

My concern about misleading testimony led me to circulate Senate Bill 36.

False testimony, intentional or not, can have serious negative consequences. Those testifying before a committee have a responsibility to make sure they have checked their facts.

Legislators must demand the most current and accurate information available when making decisions, particularly life and death decisions.

Respectfully submitted by state Senator Bryant L. Richardson

# **SENATE BILL 36**

*AN ACT TO AMEND TITLE 11 OF THE DELAWARE  
CODE RELATING TO PERJURY*

# Senate Bill 36 Synopsis

This Act adds testifying at a hearing held by a standing committee of the House of Representatives or Senate or joint committee of the General Assembly within the definition of “swears falsely,” which applies to Delaware’s perjury laws.

This addition means that false testimony to a standing or joint committee would subject a person to prosecution for perjury.

# What Prompted Senate Bill 36?

In a hearing on March 6, those on the side of abortion referred to an outdated study about fetal pain that in fact was the product of researchers connected to the abortion industry.

They quote from a Journal of the American Medical Association review from 2005 that claims pain sensation does not develop until 29-30 weeks gestation, and requires development of a functioning cortex in the brain.

That study, while widely quoted, was published by physicians with significant ties to the abortion lobby.

On March 6, I presented to the Legislative Oversight and Sunset Committee 60 more recent studies that contradict the 29-30 weeks gestation claim.

“Perjury is the basest and meanest and most cowardly of crimes. What can it do? Perjury can change the common air that we breathe into the axe of an executioner.”

- Robert Green Ingersoll

## **SENATE BILL 37**

### **AN ACT TO AMEND TITLE 4, TITLE 10, TITLE 11, AND TITLE 16 OF THE DELAWARE CODE RELATING EXPUNGEMENT OF RECORDS OF ADULT ARREST AND CONVICTION.**

In our modern society, a criminal record can limit a person's opportunities and the quality of life they can achieve for themselves and their families for years, and even decades, after that person has completed the terms of the criminal sentence imposed. Even the existence of an arrest record with no conviction can limit job opportunities, housing, access to higher education, credit, and access to jobs that require professional licensing.

The General Assembly has expanded the availability of expungement for juvenile adjudications of delinquency quite dramatically in recent years, in recognition that people can and do change and move beyond mistakes of their past. The intent of this Act is to extend that same recognition to some categories of adult records of arrest and conviction.

At present, Delaware allows adults to petition to have a record expunged in only 2 circumstances: (1) for an arrest that did not lead to conviction and (2) after a pardon is granted – but for certain misdemeanor offenses only.

Under this Act, a person may have a record expunged through a petition to the State Bureau of Identification (SBI) for (1) charges resolved in favor of the petitioner; (2) a record that includes violations only after the passage of 3 years; and (3) after 5 years for some misdemeanors. Excluded from this SBI-only expungement process are convictions for any misdemeanor crimes of domestic violence, misdemeanor crimes where the victim is a child or a vulnerable adult, and unlawful sexual contact in the third degree. Allowing expungements for arrests without convictions and minor, isolated convictions through an application to the SBI will ease the burden on the courts and the Board of Pardons.

This Act also provides that the court may grant a petition for expungement upon a showing of “manifest injustice” in the following situations: (1) 3 years have passed since the date of a single misdemeanor conviction; (2) a person has a single conviction in a felony case, and 7 years have passed from the date of conviction or release from incarceration, whichever is later; (3) 7 years have passed since conviction or release from incarceration on misdemeanor domestic violence or misdemeanor conviction with child or vulnerable adult victim. A felony conviction for any of the following crimes is not eligible for expungement through this court process: Title 11 violent felonies; 16 Del C. § 1136; 31 Del C § 3913; any “felony conviction involving physical or sexual assault crimes” as defined in the Beau Biden Child Protection Act. A conviction for unlawful sexual contact third degree

may not be expunged through the court-only process. The Department of Justice will have an opportunity to state its position on the expungement petition to the court, and is empowered to seek input from any victim in the case.

In all cases, the applicant for expungement must have no prior or subsequent convictions (other than traffic offenses, and underage alcohol or marijuana possession) in order to be eligible. Any person who applies for relief under this section, must essentially be a first offender in order to be eligible. A person is not allowed to apply for expungement under this process if an expungement has been granted within the last 10 years. Fines, fees, and restitution must be paid before an expungement may be granted; however, courts are empowered to waive outstanding fines or convert them to a civil judgement if they are unpaid for reasons other than willful noncompliance.

Most Title 21 (traffic offenses), including DUI, are ineligible for expungement under this Act. However, traffic offenses (other than DUIs) will also not operate as a bar to the expungement of other charges.

The Act also removes all limitations on the availability of court-ordered expungement after a pardon.

The Act strikes provisions in Title 10 relating to expungement of adult records in Family Court and consolidates them with the Title 11 expungement provisions. Conforming changes are made to cross-references in Title 4 and 16. Implementation of the Act is delayed for 180 days to allow State agencies to prepare necessary procedures and forms.

Finally, this Act is to be known as the Adult Expungement Reform Act.

## **EXPANDING AND REFORMING DELAWARE'S ADULT EXPUNGEMENT STATUTE**

### **WHY DO WE NEED THIS?**

People who have arrests and criminal convictions often suffer the consequences of involvement with the criminal justice system long after they have been acquitted of charges or served their sentences. The persistence of public criminal histories creates significant barriers for Delawareans who are trying to move on from their past, and harms society as a whole. A criminal history makes it harder to secure:

- a job
- stable housing
- credit
- education

Currently, Delaware only allows adults to seek an expungement in two narrow circumstances:

- (1) where the arrest or charges never led to a conviction; or
- (2) after a pardon is granted for certain misdemeanor convictions only.

### **WHAT DOES REFORM LOOK LIKE?**

Our proposal amends the Delaware Code to expand the availability of expungement for adults in several ways.

- *Mandatory Expungement* - expungement through a petition to the State Bureau of Identification (meaning the expungement must be granted if the petitioner meets the criteria) for the following scenarios:
  - (1) arrests with no conviction; or
  - (2) after 3 years for a single violation conviction; or
  - (3) after 5 years for a single misdemeanor conviction, with the exception of domestic violence convictions, and convictions where the victim is a child or vulnerable adult.

Allowing expungements for arrests without convictions and minor, isolated convictions through an application to the SBI, will ease the burden on the courts and the Delaware Board of Pardons.

- *Discretionary Expungement* – giving the courts the power to decide, after hearing from the Department of Justice and victims, if a petitioner deserves an expungement where:
  - (1) 3 years after a single misdemeanor conviction for those crimes not listed in Title 11, Chapter 43, § 4373 (endangering the welfare of a child, crimes against a vulnerable adult, domestic violence, etc); or
  - (2) 7 years after a single felony conviction (or 7 years since release from confinement, whichever is later) and the petitioner has maintained an otherwise clean record; or
  - (3) 7 years after a conviction of 1 or more misdemeanors listed in § 4373 (domestic violence, crime against child or vulnerable adult) relating to the same case.
  
- *Expungement after pardon* – any crime may be eligible for expungement after a pardon upon application to the court

Our proposed reform requires that people maintain a clean record for designated periods of time in order to be eligible. There is also a limit on applications. A person may not apply for an expungement if they had previously obtained an expungement for their adult record in the preceding 10 years. All fines, fees, and restitution must be paid prior to applying for expungement; except that if a person can make a showing that the failure to pay a fine is not due to willful noncompliance (i.e., they genuinely lack the ability to pay), a court may waive the fine when granting the expungement or convert it to a civil judgement.

### **OFFENSES NOT ELIGIBLE FOR EXPUNGEMENT WITHOUT A PARDON**

- DUI offenses
- Title 11 violent felonies and Title 16 and 31 felonies related to abuse of vulnerable adults
- Felony convictions involving physical or sexual assault crimes as that term is defined in the Beau Biden Child Protection Act
- Unlawful sexual contact 3rd

# Adult Expungement

*Senate Judicial Committee Hearing*

March 27, 2019

# Collateral Consequences

The American Bar Association has catalogued more than 500 ways that a criminal record continues to have legal consequences in Delaware long after any sentence has been served.

A recent study from Michigan shows that the ability to clear one's criminal record has a positive effect on wages and the rates of new criminal activity for those who get an expungement is very low.

## Expungement of Criminal Convictions: An Empirical Study

*[U of Michigan Law & Econ Research Paper No. 19-001](#)*

56 Pages • Posted: 18 Mar 2019

[J.J. Prescott](#)

University of Michigan Law School

[Sonja B. Starr](#)

University of Michigan Law School

Date Written: March 16, 2019

Delaware has made great strides in recent years in expanding the availability of expungement for juvenile records.

***It is time to do the same for adult records.***

# What Does This Bill Do?

Allows stream-lined expungement process for some single, isolated convictions after certain waiting periods. Eliminates limitations on the ability to apply for expungement after a pardon.

Clarifies and consolidates the adult expungement process into a single subchapter.

Allows for expungement through application to SBI of arrests resolved in a person's favor, single cases of violation convictions, and single cases of misdemeanor convictions (*with the exception of domestic violence and crimes involving a child or vulnerable adult victim*).



Allows application to the courts for expungement of some single, isolated felony convictions and single, isolated misdemeanors exempt from the SBI-only process. Must have a clean record for 7 years to apply. Title 11 violent felonies, and felonies involving "physical or sexual assault crimes" as defined under Beau Biden Protection Act, and felonies involving abuse of a patient or vulnerable adult are not eligible under this court-only process.

Allows any person who has received an unconditional pardon to apply to the court for a discretionary expungement.



## **SENATE BILL 38**

### **AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO VICTIM-OFFENDER MEDIATION.**

The Victim-Offender Mediation Committee (“Committee”) was established by the 138<sup>th</sup> General Assembly in 1996. This Committee includes the Department of Justice, the Office of Defense Services, the Criminal Justice Council, and the Judiciary. The Committee is responsible for selecting vendors that provide mediation services statewide to the Court of Common Pleas and to the Family Court, mostly in criminal matters that have been approved for mediation by the Department of Justice. This is a voluntary program – both sides have to agree to mediate – and a successful mediation means that there will be no trial.

Times have changed since the statute was first enacted however. Back in 1996, the Justice of the Peace Court was appointed as a committee member, not the Court of Common Pleas. Today, the program mostly serves litigants in the Court of Common Pleas, not the Justice of the Peace Court. The proposed bill, therefore, would change the Committee’s composition to reflect the agencies that should be making program decisions. The bill also changes the name of the program to recognize that there are other forms of alternative resolution available, not just mediation. This can allow the Committee to expand the program and utilize the alternative resolution model best suited to accommodate the particular needs of each case.

## **SENATE BILL 38**

### **AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO VICTIM-OFFENDER MEDIATION.**

#### What is the Victim-Offender Mediation Committee?

The Victim-Offender Mediation Committee (“Committee”) was established by the 138<sup>th</sup> General Assembly in 1996. The Committee includes the Department of Justice, the Office of Defense Services, the Criminal Justice Council, and the Judiciary. It is responsible for selecting vendors that provide mediation services statewide to the Court of Common Pleas and to the Family Court. Based on criteria developed by the Department of Justice and the Courts, litigants have an opportunity to voluntarily resolve predominantly criminal dispute through mediation, rather than going to trial. Of the 505 statewide cases that agreed to mediate their dispute in FY 18, 474 were successfully resolved.

#### Why are changes needed?

There have been no significant changes to the statute since 1996. The composition of the Committee and the nature of the services provided by vendors selected to provide victim-offender mediation services, however, has evolved since the program’s inception in 1996. For example, the Court of Common Pleas is the principal beneficiary of the program but is not a Committee member.

#### What does this bill do?

This Act updates the composition of the Committee; renames the Committee to acknowledge the broader scope of services that may be provided by vendors selected by the Committee to run alternative case resolution services; updates criteria used to select vendors and reporting requirements; and makes additional corrections to conform to the Delaware Legislative Drafting Manual.

# SENATE BILL 38

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE  
RELATING TO VICTIM-OFFENDER MEDIATION

## The Victim-Offender Mediation Committee Mediation Program

The Victim-Offender Mediation Committee (“Committee”) was established by the 138<sup>th</sup> General Assembly in 1996.



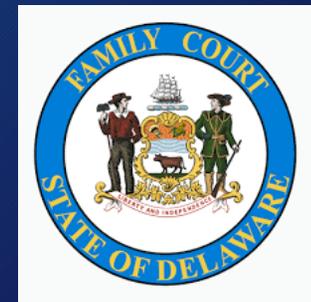
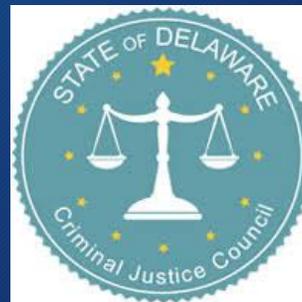
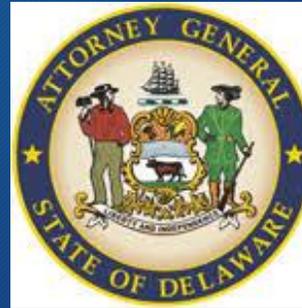
The Committee is responsible for selecting vendors that provide mediation services statewide to the Court of Common Pleas and to the Family Court, mostly in criminal matters.

The mediation is a voluntary program—both sides have to agree to mediate—and a successful mediation means that there will be no trial.

# The Victim-Offender Mediation Committee Composition

The Committee includes:

- The Attorney General
- The Chief Defender
- The Criminal Justice Council
- The Judiciary, including:
  - The Chief Magistrate
  - The Chief Judge of Family Court
  - State Court Administrator



## The Victim-Offender Mediation Committee: Proposed Amendments

The proposed bill would change the Committee's composition to reflect the agencies that should be making program decisions.

- Times have changed since the statute was first enacted. Back in 1996, the Justice of the Peace Court was appointed as a committee member—not the Court of Common Pleas. Today, the program primarily serves litigants in the Court of Common Pleas, not the Justice of the Peace Court.

The bill also changes the name of the program to recognize that there are other forms of alternative resolution available, not just mediation.

- This is to allow the Committee to expand the program and utilize the alternative resolution model best suited to accommodate the particular needs of each case.

## SENATE BILL 39

### AN ACT TO AMEND TITLE 10, TITLE 11, AND TITLE 21 OF THE DELAWARE CODE RELATING TO FINES, FEES, COSTS, PENALTIES AND FORFEITURES.

A national movement questioning the unintended impact fines and fees associated with the criminal justice system and the criminalization of non-payment of these debts is underway. Legislative mandates that courts impose costs without considering a defendant's ability to pay unintentionally deepen wealth inequality and perpetuate disparate racial impact. While practices of suspending driving privileges or issuing warrants for the arrest of people who fall behind on payments have costly consequences and may also run afoul of due process protections guaranteed by our state and federal constitutions.

Disparities in the imposition and collection of statewide court levied debt disproportionately impact the most financially and socially marginalized people in our communities. With fourteen percent of Delawareans living in poverty, these practices can send people spiraling into a vicious cycle of ongoing debt and poverty. In 2017, over 44,000 capias warrants for non-payment of court fines were issued in Delaware for **non-felony** cases. People of color were disproportionately impacted by this practice. While twenty-three percent of Delawareans self-identify as Black or African-American, over 55% of warrants issued for non-felony cases were issued to Black or African-American people. People impacted by this practice report feeling isolated; reluctant to report when they are victims of crime or seek medical treatment; unable to obtain employment because of the presence of the capias; restricted in their movement throughout the state due to the suspension of their license; and fearful knowing they are subject to search and arrest at any time. In the first six months of 2018, 2.2% of detained admissions to DOC were for people whose only crime was not paying their court debt on time.

This legislation will give courts greater discretion when imposing fines, fees, costs, and assessments and allow them to individualize the sanction. It will preclude the mandatory license suspension for those who fall behind on payments and require courts to provide the defendants with the opportunity to be heard prior to issuing a capias for failure to pay. It will provide avenues for defendants to seek reinstatement of the driving privileges and modification, waiver, suspension or cancellation of existing court debt. The bill creates a study group to make recommendations for improved fairness and transparency related to court generated revenue and imposes annual data reporting requirements related to the imposition, collection, and disbursement of court generated funds.

## **SENATE BILL 39**

### **AN ACT TO AMEND TITLE 10, TITLE 11, AND TITLE 21 OF THE DELAWARE CODE RELATING TO FINES, FEES, COSTS, PENALTIES AND FORFEITURES.**

#### What is the current context?

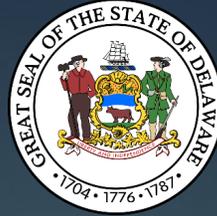
Legislative mandates that courts impose costs without considering a defendant's ability to pay unintentionally deepen wealth inequality and perpetuate disparate racial impact. While practices of suspending driving privileges or issuing warrants for the arrest of people who fall behind on payments have costly consequences and may also run afoul of due process protections guaranteed by our state and federal constitutions.

#### What is the Delaware landscape?

With fourteen percent of Delawareans living in poverty, these practices can send people spiraling into a vicious cycle of ongoing debt and poverty. In 2018, the courts generated over \$30,000,000 in revenue for the county, municipal, and state government, agencies, and ambulance services. Many of the costs levied are statutorily mandated and the courts have little to no discretion in their imposition. In 2017, over 44,000 capias warrants for non-payment of court fines were issued in Delaware for **non-felony** cases. People of color were disproportionately impacted by this practice. While twenty-three percent of Delawareans self-identify as Black or African-American, over 55% of warrants issued for non-felony cases were issued to Black or African-American people. In the first six months of 2018, 2.2% of detained admissions to DOC were for people whose only crime was not paying their court debt on time; over ¾ of those detained were held for less than 3 days, which is long enough to destabilize employment, housing, and child care.

#### What does this SB 39 do?

This legislation addresses this issue in three ways. First, it addresses the initial imposition of court debt by providing the court with the authority to waive, suspend, or modify payments of fines, fees, costs, and assessments that are otherwise deemed mandatory. It also permits, but does not require, the courts to consider the defendant's ability to pay when imposing financial sentences. It permits the court to waive, modify, or suspend those court costs imposed prior to the enactment of this act, and it prevents the courts from imposing any additional fees for interval payment plans, late payments, or the cancellation of capias warrants. It also requires courts to provide defendants, upon request, with aggregate balances and due dates across courts and counties. The bill also modifies the available sanctions for non-compliance by precluding the suspension of the defendants' driving privileges as punishment for non-payment and requiring courts across counties and jurisdictions to provide the defendants with the opportunity to be heard prior to issuing a capias for non-payment. The bill also provides that defendants whose privileges were suspended for failure to pay court debt may seek reinstatement of privileges at no cost to them and allows court debt (excluding restitution) that remains uncollected for 10 years following their imposition or the defendant's release from custody to be waived. Finally, the bill begins to identify the fiscal impact the waivers or modifications of court costs may cause by imposing annual data reporting requirements on law enforcement, government, and volunteer fire companies that receive distributions of court generated revenue to identify potential budgetary gaps and by creating a study group to review the impact these obligations have on defendants and survivors of crime and make recommendations that promote access, fairness, and transparency in the collection of court imposed costs. The bill also makes changes to wage garnishment section so the section is in compliance with federal guidelines and makes technical corrections to comply with Legislative Manual.



# SENATE BILL 39

## DELAWARE CENTER FOR JUSTICE, INC.

### Senate Judicial Committee

Sen. Darius Brown, Chair  
Sen. Bryan Townsend, Vice-chair  
Sen. Bruce Ennis  
Sen. Anthony Delcollo  
Sen. Dave Lawson

## Delaware Center for Justice The Spiral of Civic Debt

- 11 Del. C. §4101 requires courts to impose mandatory fees, costs, and assessments when sentencing defendants.
- Payment plans are available but if people fall behind on payments a *capias* is issued for their arrest.
- Some courts offer defendants a formal opportunity to be heard as to why the payment is late before the *capias* is issued. Some do not.
- Statute requires the court to report the names of those who make late payments to DMV for license suspension.



Fee, Cost, or Assessment	Amount	Mandatory or Discretionary
Videophone Fund	\$1.00	Mandatory Non-Waivable
DELJIS Fund	\$1.00	Mandatory Not Suspendable
Transportation Trust Fund	50% of fine levied	If fine or penalty is waived the court may also waive same percentage of assessment
Fund to Combat Violent Crimes	\$15.00	May be suspended only for 21 Del. C. 4129 (toll evasion)
Senior Trust Fund	\$100.00	Mandatory in Title 11 cases where victim is aged 62 or older
Volunteer Ambulance Company Fund	\$10.00	May be suspended only for 21 Del. C. 4129 (toll evasion) Has priority over all costs, fees, and assessments EXCEPT Court Security Fund and Victim Compensation Fund
Victims Compensation Fund	Greater of 18% of any fine, penalty or forfeiture imposed or \$10.00	Mandatory Not Suspendable
Court Security Fund	Not to Exceed \$35.00	Discretionary
ODS Administrative Fee	\$100.00	Mandatory if defendant is represented by ODS, even if defendant is not convicted.
Prosecution Costs	'costs of prosecution'	Discretionary

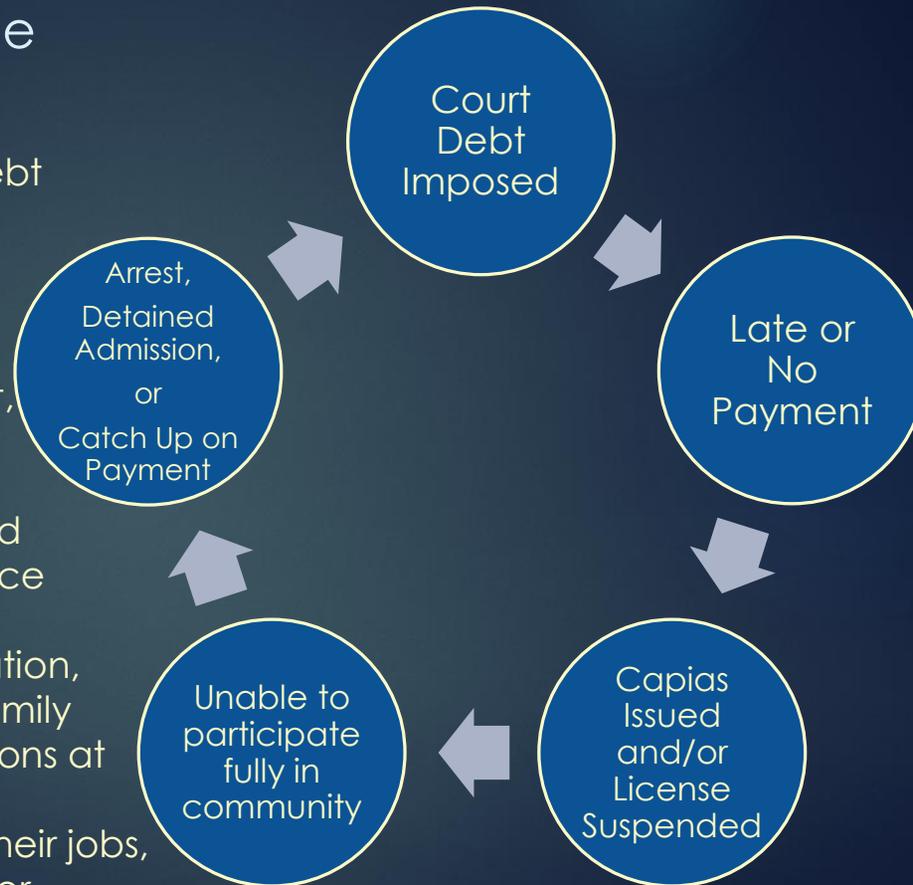


# Delaware Center for Justice

## The Spiral of Court Debt

People caught in the spiral of court debt report the following:

- Feeling afraid to leave their home,
- Reluctance in reporting when they are a victim of a crime,
- Refusing to seek medical treatment,
- Missing other court dates because they fear arrest,
- Being subject to search, seizure and sometimes harassment from some police officers at any time,
- Not being able to obtain identification, enter public buildings, visit friends or family who are incarcerated, or fulfill obligations at their child's school,
- Driving while suspended or losing their jobs,
- Struggling to obtain car insurance or paying higher rates following suspension.



Senate Judicial Committee



Delaware Center for Justice, Inc.  
The Human Costs of Court Debt

**I want my Senator or  
Representative to know that**

I am a mother a sister a relative,  
a good person, educated,  
that supports a family.

**One thing I wish people  
understood about what it's  
like to have a warrant is**

the problems it causes in every day life.  
just to cash checks, drive, get information  
show who you are. and live in  
constant fear.

**One thing I wish people  
understood about what it's  
like to have a warrant is**

That it feels like your life is  
on hold. you can not proceed, as far as getting  
a job/training, you have to hide, look over your shoulder,  
it adds to your stress

## Delaware Center for Justice

### How Big is this Problem?

In 2017, 44,889 capias warrants were issued for failure to pay court imposed costs for non-felony offenses.

Data Courtesy of DELJIS

Court Type	Number of Warrants Issued	Total Amount	Average Amount of Warrant
Alderman	2,520	\$ 932,958.15	\$ 370.22
CCP	23,095	\$ 9,220,542.64	\$ 399.24
Family	2,234	\$ 1,830,115.66	\$ 819.21
JP	17,040	\$ 3,213,747.95	\$ 188.60



## Delaware Center for Justice

Most were issued out of New Castle County, where 13.4% of all persons reside in poverty.

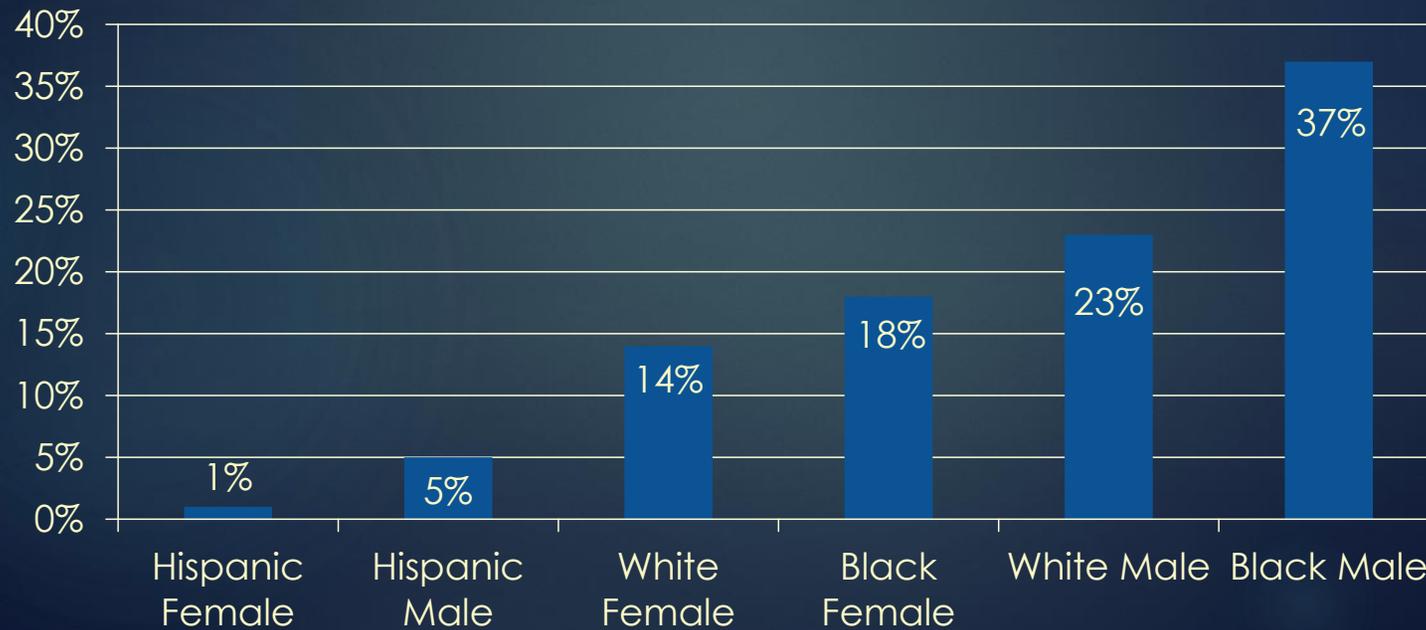
County	Number of Warrants Issued	Total Amounts	Average Amount of Warrant
Kent	8,688	\$3,047,439.84	\$300.76
New Castle	27,334	\$9,150,459.95	\$334.76
Sussex	8,867	\$2,999,464.01	\$338.27



# Delaware Center for Justice, Inc.

Although African-Americans comprise 23% of the statewide population, 55% of FTP Capias were issued for the arrest of African American people.

### Percent of Capias Issued By Race, Gender and Ethnicity



Senate Judicial Committee



# Delaware Center for Justice

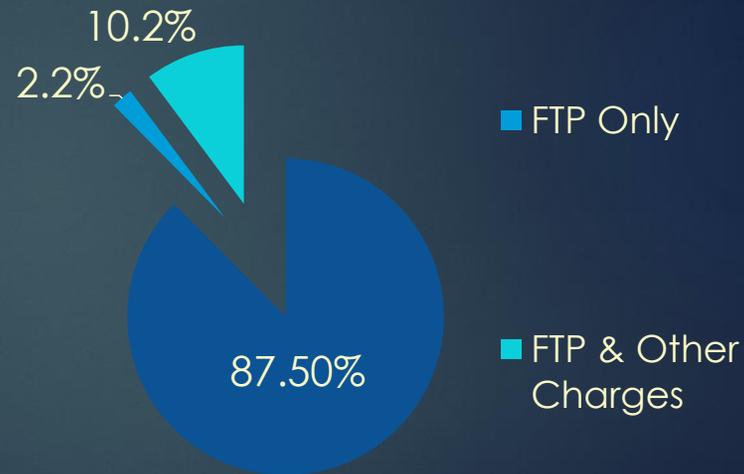
Data Courtesy of Department of Correction

Admissions to Level V Detention  
January 1, 2018 - June 30, 2018

Although 11 Del. C. §4105 (a) currently provides that,

“no person sentenced to pay a fine, costs, or restitution upon conviction of a crime shall be ordered to be imprisoned in default of the payment of such fine, costs, or restitution .”

During the first 6 months of 2018, **129** people were admitted to Level V for a capias issued for failure to pay and no other charge.



Senate Judicial Committee



# Delaware Center for Justice, Inc.

Although most FTP copias are issued from New Castle County CCP most detained admissions arise from Kent County CCP.

## FTP Only Admissions to Level V Detention January 1, 2018 - June 30, 2018

Data Courtesy of Department of Correction

FTP Only	New Castle	Kent	Sussex	Total	% Total
Alderman's	1	0	3	4	3.1%
JP	11	1	0	12	9.3%
CCP	12	45	32	89	69.0%
Family	4	7	6	17	13.2%
Superior	5	2	0	7	5.4%
<b>Total</b>	<b>33</b>	<b>55</b>	<b>41</b>	<b>129</b>	
<b>% Total</b>	<b>25.6%</b>	<b>42.6%</b>	<b>31.8%</b>		

Senate Judicial Committee



# Delaware Center for Justice, Inc. The Human Costs of Court Debt.

Most of the people detained in the first 6 months of 2018 for a failure to pay capias were released within 3 days.

When I think about going to prison because I didn't pay my fine I feel

*like I'm feel like a piece of  
Trash*

These relatively brief periods of detention are costly for both DOC and arrestees.

FTP Only				
Days Held	Female	Male	Total	% Total
#0-3	29	72	101	78.3%
#4-10	2	18	20	15.5%
#11-15	0	1	1	0.8%
#16-30	1	5	6	4.7%
#31-45	0	1	1	0.8%
<b>Total</b>	32	97	129	
<b>% Total</b>	24.80%	75.20%		



## Delaware Center for Justice

SB 39's proposed resolution

### To address Imposition of Debt:

- Provide the Court with the authority to waive, suspend, or modify payment of any fine, fee, cost, penalty, assessment including those otherwise deemed mandatory or not subject to waiver or suspension.
- Permit, but not require, the Court to consider the defendant's ability to pay the fines, fees, costs, or assessments prior to imposing sentence.
- Permit the Court on its own or upon the defendant's motion to modify, waive, or suspend fines, fees, costs, or assessments imposed prior to the enactment of this bill.
- Prevent the Court from imposing an additional fee for interval payments, late payments, or the cancelation of a *capias*.
- Require the Court to develop policies so that the courts may provide defendants with aggregate balances and payment due dates.



## Delaware Center for Justice

SB 39's proposed resolution

To address sanctions for non-compliance:

- Require Court to provide the defendant with an opportunity to be heard as to the reason for his failure to pay before issuing a *capias* for non-payment.
- Preclude suspension of driver licenses as punishment for non-payment of a fine, fee, cost, assessment, or restitution.
- Permit people whose licenses have been suspended as punishment for non-payment (and only for non-payment) to seek restoration of their driving privileges at no cost.
- Permit the waiver or cancellation of fines, fees, costs, and assessments that remain outstanding if they remain uncollected 10 years after their imposition or the defendant's release from a custodial sentence.

Senate Judicial Committee



## Delaware Center for Justice

SB 39's proposed resolution

To address fiscal impact :

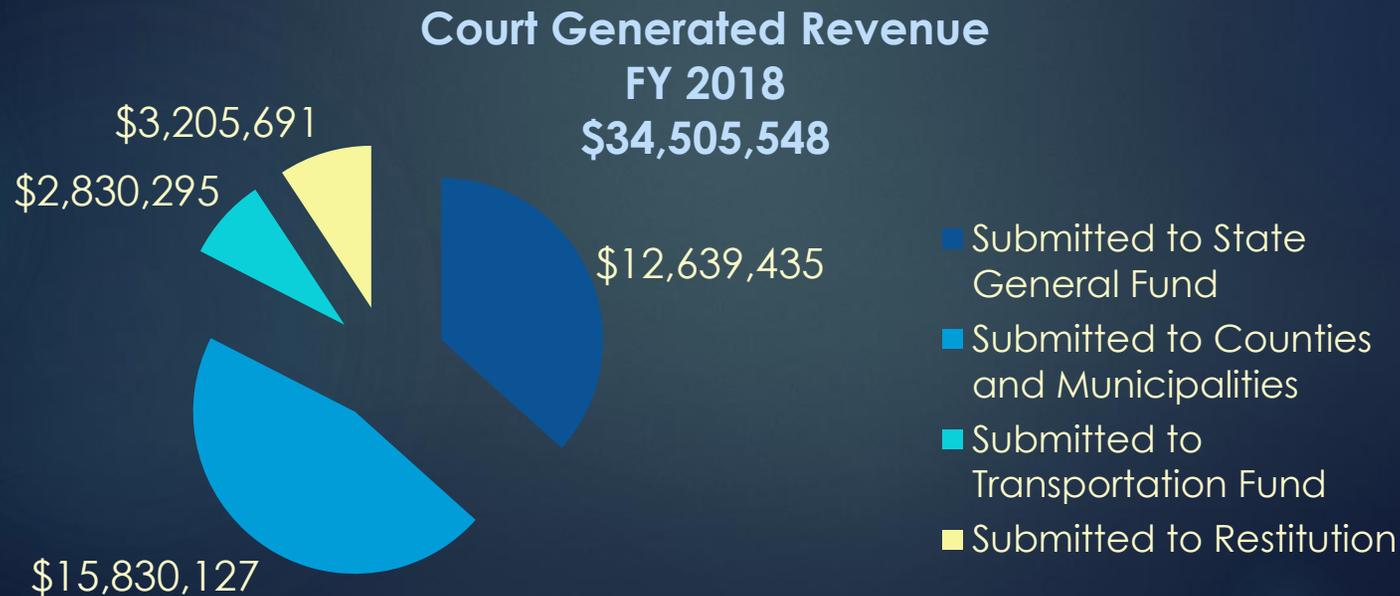
- Require annual reports from state, county, and municipal law enforcement agencies, governments, and volunteer ambulance companies detailing the total sum received from fines, fees, forfeitures, and court costs, disaggregated by level of offense and the percentage of the annual operating budget it represents.
- Require annual reports from the Court as to the total sum of money it receives as fines, fees, costs, assessments, and restitution and the disbursement of the moneys to each separate account designated by the State Treasurer.



## Delaware Center for Justice, Inc.

To address and anticipate fiscal impact:

- Establish a study group to review the impact court imposed financial obligations have on defendants and survivors of crime and make recommendations that promote access, fairness, and transparency in the collection of court imposed costs.



## Delaware Center for Justice, Inc.

Study Group must issue a report detailing the following:

1. Current Process used in each court in each county to assess, impose, and collect fines, fees, costs, assessments and restitution and recommendations, if any, for a more uniform and transparent process.
2. The current sums imposed and collected annually from 2016 through 2017 disaggregated by race, gender, and ethnicity, or the barriers in reporting data in this manner and recommendations for system improvements necessary to report this information in a timely and cost efficient manner.
3. Estimated fiscal impact if mandatory fines, fees, assessments, or costs were eliminated or barriers that exist to report on the impact.
4. Infrastructure changes required to consider a defendant's ability to pay in a formal hearing prior to imposing sentence.



## **SENATE BILL 41**

### **AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUVENILE DELINQUENCY.**

Senate Bill 41 is an effort to create a fairer criminal and juvenile justice system, by reversing the current practice of using the date of arrest, versus the date of offense, as the deciding factor in which court an offender has their case heard. The differences between the adult and juvenile justice systems are many and the stakes and collateral consequences are vast. In the below case, we see how this can come into play.

On July 2, 1992, the Delaware Supreme Court ruled that a person who commits a delinquent act before age 18, but is arrested after age 18, is automatically heard before the adult court of jurisdiction. The ruling was based on a case involving a young black male from Wilmington named Bernard Howard.

Mr. Howard was accused of selling cocaine to undercover police officers when he was 17. He was arrested and charged for this just over two weeks after his 18<sup>th</sup> birthday. Mr. Howard tried to dismiss the indictment on the grounds that the Family Court should have had exclusive jurisdiction – but was denied. The Delaware Supreme Court ruled in favor against him, subjecting Mr. Howard to an adult criminal conviction based on his date of arrest. In this case, Mr. Howard was saddled with the collateral consequences of an adult conviction for a crime he committed when he was a minor. The difference between him having a juvenile adjudication and an adult conviction was just over 14 days.

## **SENATE BILL 41**

### **AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUVENILE DELINQUENCY**

#### Why do we need this?

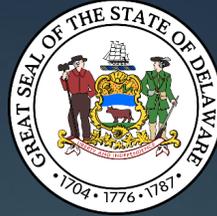
Senate Bill 41 is another step at creating a fairer criminal and juvenile justice system. We need this bill to ensure that youth who are alleged to commit an offense before their 18<sup>th</sup> birthday are still given the opportunity to have their case disposed of in a rehabilitative setting, rather than the adult criminal justice system. As we know from previous bills, such as the adult expungement bill, an adult criminal record is extremely hard to move beyond. This bill allows eligible youth to have a juvenile adjudication, rather than an adult conviction, in certain instances.

#### Why are changes needed?

Recent advances in understanding adolescent brain development has begun to change the way we think about holding youth accountable for their mistakes. Our current statute needs to be changed to reflect these advances and ensure that youth who make mistakes are not punished – by missing out on rehabilitative programming, and receiving harsher collateral consequences – simply because they were arrested after their 18<sup>th</sup> birthday for something they did as a minor.

#### What does this bill do?

This Act reverses procedure so that if the offense occurs before the age of 18 and the arrest is after a person's 18th birthday, but before their 21st birthday, the Family Court will have jurisdiction. However, this Act also makes clear that it does not preclude prosecuting a person to whom the Act applies as an adult, as permitted in Title 10. This also does not reverse law that determines that if a person was already deemed not amenable to Family Court, they must be prosecuted as an adult in the future.



# SENATE BILL 41

## Senate Judicial Committee

Sen. Darius Brown, Chair  
Sen. Bryan Townsend, Vice-chair  
Sen. Bruce Ennis  
Sen. Anthony Delcollo  
Sen. Dave Lawson

The Office of Defense Services

# Senate Bill 41 – Age of Offense vs. Age of arrest

- ▶ Vast differences between juvenile delinquency and adult criminal procedures
  - ▶ Juvenile justice system is focused on rehabilitation
  - ▶ Collateral consequences not as severe
- ▶ Goal - Offenses committed before an individual turns 18 are treated as delinquent acts and not criminal acts
  - ▶ The date of offense and not the date of arrest should be the deciding factor
  - ▶ Behavior committed as a child not an adult



The Office of Defense Services

# What does Senate Bill 41 do?

- ▶ Currently, if offense committed before age 18 but arrest occurs after age 18, adult court has jurisdiction. See *Howard v. State*, 612 A.2d 158 (Del. 1992)
- ▶ Age of offense and not age of arrest should determine jurisdiction
- ▶ Reverse procedure
  - ▶ Offense occurs before age 18
  - ▶ Arrest occurs between ages of 18-21
  - ▶ Family Court has jurisdiction
- ▶ Does not prohibit prosecution as an adult when permitted by Title 10
  - ▶ Amenability
  - ▶ Reverse amenability
  - ▶ Once an adult, always an adult

Senate Judicial Committee



The Office of Defense Services

# Why do we need it?

- ▶ Create a fairer juvenile justice system
  - ▶ Same process for similarly situated people
- ▶ Statistical Analysis Center data
  - ▶ Only a few applicable cases
- ▶ Consistent with federal law
- ▶ Consistent with DE Murder 1<sup>st</sup> statute
  - ▶ 11 Del. Code §4209A





**Senate Bill 47 – Revisions to Delaware Drug Laws**  
**Sponsored by Sen. Lockman & Rep. Lynn**

Delaware's existing criminal drug laws impose penalties that are generated by a complicated calculus of five different weight classes, six different "aggravating factors," and multiple types of "prior qualifying offenses." This bill revising Delaware drug laws in key ways: changing drug weight tiers from 5 tiers to 3, eliminating most aggravating factors, and eliminating prior conviction enhancements.

The result of these combination of factors in the law has been to create racial disparities. Recent data from Delaware's Statistical Analysis Center shows that from 2016 to 2018, black defendants were nearly three times more likely than white defendants to be charged with a felony drug offense. In all three counties, about two-thirds of all arrests for aggravated felony drug charges were black. Conversely, white defendants were significantly more likely than black defendants to face a misdemeanor as their highest charge. It is the AG's Office's opinion that the combination of factors in the drug law has contributed to this disparity, as police are applying the criminal charges as they exist when they have a case, and judges cannot properly differentiate between defendants with different circumstances.

The existing five weight classes are complicated and minor differences in amount of drugs can result in substantial difference in charge and penalty among defendants. SB 47 addresses by collapsing the five weight classes into three, and reduces felony level for possession cases where those charged are mostly individuals with substance abuse issues, not dealers.

Currently, the penalties for drug crimes may be aggravated – and minimum mandatory sentences may be triggered – when those crimes occur within 300 feet of a park or a place of worship. Because churches and parks are heavily concentrated in urban areas, these aggravating factors can create disproportionate penalties for residents of those areas. The proposed legislation would eliminate proximity to parks and places of worship as aggravating factors. SB 47 addresses by preserving an aggravating factor for those who violate Delaware's drug dealing laws within 300 feet of or on school property. This aggravator does not apply for drug possession, just drug dealing. Other geographic-based aggravators are eliminated, leaving discretion to a sentencing judge as to whether circumstances of a crime necessitate a higher sentence within the statutory range.

Existing law includes automatic sentence enhancements based on prior drug offenses, despite the recognition that those trying to recover from addiction may endure multiple offenses. SB 47 addresses by eliminating the mandatory enhancement and allow judges to use discretion during sentencing to determine when a repeat offender requires substantive additional penalty.

Finally, SB 47 also provides certainty in the application of a 2015 Delaware Superior Court opinion that approved of the use of "hypergeometric sampling" in making initial ("prima facie") determinations in criminal cases as to whether a quantity of drugs seized in a criminal case is, presumptively, all of the same type as a portion that was sampled. The bill also eliminates reference in the code to a boot camp diversion program that has not been operated for some time.

**Senate Bill 47 – Revisions to Delaware Drug Laws**  
**Sponsored by Sen. Lockman & Rep. Lynn**

**Why are changes to the drug laws needed?**

- Delaware’s existing criminal drug laws impose penalties that are generated by a complicated calculus of five different weight classes, six different “aggravating factors,” and multiple types of “prior qualifying offenses.”
- The result of these combination of factors in the law has been to create racial disparities. Recent data from Delaware’s Statistical Analysis Center shows that from 2016 to 2018, black defendants were nearly three times more likely than white defendants to be charged with a felony drug offense. In all three counties, about two-thirds of all arrests for aggravated felony drug charges were black. Conversely, white defendants were significantly more likely than black defendants to face a misdemeanor as their highest charge.
- It is the AG’s Office’s opinion that the combination of factors in the drug law has contributed to this disparity, as police are applying the criminal charges as they exist when they have a case, and judges cannot properly differentiate between defendants with different circumstances.

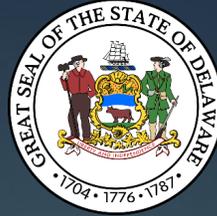
**What does the bill do?**

- **Issue:** Current five weight classes are complicated and minor differences in amount of drugs can result in substantial difference in charge and penalty among defendants.
  - SB 47 addresses by collapsing the five weight classes into three, and reduces felony level for possession cases where those charged are mostly individuals with substance abuse issues, not dealers:

<b>Tiers</b>	<b>Weights (g)</b>	<b>Drug Dealing</b>	<b>Possession</b>
Tier 1	C: $\geq 5$ H: $\geq 1$ M: $\geq 175$	D Felony	G Felony
Tier 2	C: $\geq 10$ H: $\geq 2$ M: $\geq 1500$	C Felony (B if in school zone)	E Felony
Tier 3	C: $\geq 25$ H: $\geq 5$ M: $\geq 5000$	B Felony	B Felony

- **Issue:** Currently, the penalties for drug crimes may be aggravated – and minimum mandatory sentences may be triggered – when those crimes occur within 300 feet of a park or a place of worship. Because churches and parks are heavily concentrated in urban areas, these aggravating factors can create disproportionate penalties for residents of those areas. The proposed legislation would eliminate proximity to parks and places of worship as aggravating factors.

- SB 47 addresses by preserving an aggravating factor for those who violate Delaware's drug dealing laws within 300 feet of or on school property. This aggravator does not apply for drug possession, just drug dealing. Other geographic-based aggravators are eliminated, leaving discretion to a sentencing judge as to whether circumstances of a crime necessitate a higher sentence within the statutory range.
- **Issue:** Currently law includes automatic sentence enhancements based on prior drug offenses, despite the recognition that those trying to recover from addiction may endure multiple offenses.
  - SB 47 addresses by eliminating the mandatory enhancement and allow judges to use discretion during sentencing to determine when a repeat offender requires substantive additional penalty.
- SB 47 also provides certainty in the application of a 2015 Delaware Superior Court opinion that approved of the use of "hypergeometric sampling" in making initial ("prima facie") determinations in criminal cases as to whether a quantity of drugs seized in a criminal case is, presumptively, all of the same type as a portion that was sampled.
- SB47 also eliminates reference in the code to a boot camp diversion program that has not been operated for some time.



# SENATE BILL 47

SEN. LOCKMAN

## Senate Judicial Committee

Sen. Darius Brown, Chair  
Sen. Bryan Townsend, Vice-chair  
Sen. Bruce Ennis  
Sen. Anthony Delcollo  
Sen. Dave Lawson

## Sen. Lockman Drug Code Rewrite

- ▶ Delaware's existing criminal drug laws impose penalties that are generated by a complicated calculus of five different weight classes, six different "aggravating factors," and multiple types of "prior qualifying offenses."
- ▶ The result of these combination of factors in the law has been to create racial disparities.
  - ▶ Recent data from Delaware's Statistical Analysis Center shows that from 2016 to 2018, black defendants were nearly three times more likely than white defendants to be charged with a felony drug offense. In all three counties, about two-thirds of all arrests for aggravated felony drug charges were black.
  - ▶ Conversely, white defendants were significantly more likely than black defendants to face a misdemeanor as their highest charge.
- ▶ This combination of factors in the drug law has contributed to the disparity, as police are applying the criminal charges as they exist when they have a case, and judges cannot properly differentiate between defendants with different circumstances.



# Sen. Lockman Drug Code Rewrite

## Title 16 Drug Charges in CY 2016- 2018 by Race

Counts of All Cases				% of Cases with Black Defendants				% of Cases with White Defendants			
Charge Grade	2016	2017	2018	Charge Grade	2016	2017	2018	Charge Grade	2016	2017	2018
FB	511	428	389	FB	73.6%	79.9%	75.6%	FB	26.4%	20.1%	23.4%
FC	470	425	448	FC	68.9%	76.9%	70.3%	FC	30.9%	23.1%	29.0%
FD	602	632	601	FD	70.3%	72.5%	74.4%	FD	29.4%	26.9%	25.0%
FE	29	40	36	FE	62.1%	75.0%	58.3%	FE	37.9%	25.0%	41.7%
FF	154	182	122	FF	40.3%	51.6%	66.4%	FF	59.1%	47.8%	30.3%
FG	4	8	2	FG	25.0%	37.5%	0.0%	FG	75.0%	62.5%	50.0%
MA	1,150	1,094	1,026	MA	30.2%	32.0%	35.7%	MA	69.3%	67.8%	64.1%
MB	2,572	2,165	1,922	MB	32.8%	32.1%	35.4%	MB	66.8%	67.5%	64.2%
M	396	562	545	M	56.3%	59.4%	63.9%	M	42.9%	39.7%	35.4%
C	2,887	3,646	4,026	C	50.2%	49.4%	51.3%	C	48.9%	49.4%	47.7%



## Sen. Lockman Drug Code Rewrite- Weight Classes

- ▶ Issue: Current five weight classes are complicated and minor differences in amount of drugs can result in substantial difference in charge and penalty among defendants.
  - ▶ **SB 47 collapses the five weight classes into three**, and reduces felony level for possession cases where those charged are mostly individuals with substance abuse issues, not dealers.
  - ▶ Tier 3 is now the largest quantity rather than Tier 5. The highest level maintains a Class B level penalty.



# Sen. Lockman Drug Code Rewrite- Weight Classes

Current Code

Tiers	Weights (g)	Drug Dealing	Possession
Tier 1	C: $\geq 5$ H: $\geq 1$ M: $\geq 175$	D Felony (no AF)	F Felony (no AF)
		C or B Felony (w/AF)	D or C Felony (w/AF)
Tier 2	C: $\geq 10$ H: $\geq 2$ M: $\geq 1500$	C Felony (no AF)	E Felony (no AF)
		B Felony (w/AF)	C or B Felony (w/AF)
Tier 3	C: $\geq 15$ H: $\geq 3$ M: $\geq 3000$	C Felony (no AF)	D Felony (no AF)
		B Felony (w/AF)	B Felony (w/AF)
Tier 4	C: $\geq 20$ H: $\geq 4$ M: $\geq 4000$	B Felony (no AF)	C Felony (no AF)
		B Felony (w/AF)	B Felony (w/AF)
Tier 5	C: $\geq 25$ H: $\geq 5$ M: $\geq 5000$	B Felony (no AF)	B Felony (no AF)
		B Felony (w/AF)	B Felony (w/AF)

SB 47 Proposal

Tiers	Weights (g)	Drug Dealing	Possession
Tier 1	C: $\geq 5$ H: $\geq 1$ M: $\geq 175$	D Felony	G Felony
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Tier 3	C: $\geq 25$ H: $\geq 5$ M: $\geq 5000$	B Felony	B Felony



# Sen. Lockman Drug Code Rewrite- Weight Classes

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Tier 1	C: ≥5 H: ≥1 M: ≥175	D Felony (no AF)	F Felony (no AF)
		C or B Felony (w/AF)	D or C Felony (w/AF)
Tier 2	C: ≥10 H: ≥2 M: ≥1500	C Felony (no AF)	E Felony (no AF)
		B Felony (w/AF)	C or B Felony (w/AF)
Tier 3	C: ≥15 H: ≥3 M: ≥3000	C Felony (no AF)	D Felony (no AF)
		B Felony (w/AF)	B Felony (w/AF)
Tier 4	C: ≥20 H: ≥4 M: ≥4000	B Felony (no AF)	C Felony (no AF)
		B Felony (w/AF)	B Felony (w/AF)
Tier 5	C: ≥25 H: ≥5 M: ≥5000	B Felony (no AF)	B Felony (no AF)
		B Felony (w/AF)	B Felony (w/AF)

SB 47 Proposal

Tiers	Weights (g)	Drug Dealing	Possession
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## Sen. Lockman Drug Code Rewrite- Aggravators

- ▶ **Issue:** Currently, the penalties for drug crimes may be aggravated – and minimum mandatory sentences may be triggered – when those crimes occur within 300 feet of a park or a place of worship. Because churches and parks are heavily concentrated in urban areas, these aggravating factors can create disproportionate penalties for residents of those areas.
  - ▶ **The proposed legislation would eliminate aggravating factors** including proximity to parks and places of worship.
  - ▶ SB 47 preserves an aggravating factor for those who violate Delaware's drug dealing laws within 300 feet of or on school property.
  - ▶ This aggravator does not apply for drug possession, just drug dealing. Other geographic-based aggravators are eliminated, leaving discretion to a sentencing judge as to whether circumstances of a crime necessitate a higher sentence within the statutory range.



## Sen. Lockman Drug Code Rewrite- Priors & Other Changes

- ▶ **Issue:** Currently law includes automatic sentence enhancements based on prior drug offenses, despite the recognition that those trying to recover from addiction may endure multiple offenses.
  - ▶ **SB 47 addresses by eliminating the mandatory enhancement** and allow judges to use discretion during sentencing to determine when a repeat offender requires substantive additional penalty.
- ▶ SB 47 also provides certainty in the application of a 2015 Delaware Superior Court opinion that approved of the use of “hypergeometric sampling” in making initial (“prima facie”) determinations in criminal cases as to whether a quantity of drugs seized in a criminal case is, presumptively, all of the same type as a portion that was sampled.
- ▶ SB47 also eliminates reference in the code to a boot camp diversion program that has not been operated for some time.



## **Senate Bill 60 Narrative**

Senate Bill 60 clarifies that children cannot be charged with prostitution in the state of Delaware. Under Delaware law currently, children can be prosecuted for the forced sale of their bodies. Child victims of human trafficking need counseling and services, not a criminal record. Arrest may not only further traumatize child victims, it may discourage victims from reaching out to seek rehabilitation and treatment.

The idea for this legislation comes from the September 2018 recommendations of the Human Trafficking Interagency Coordinating Council. This group of diverse stakeholders from various criminal justice and health-related entities came together to identify strategies for preventing human trafficking and supporting its victims. One of the multiple recommendations from the group was to clarify that in order to be charged with prostitution, a person must be 18 years old.

Unfortunately, in Delaware and throughout the country, children are frequently the victims of human trafficking. Most typically, these children are from particularly vulnerable groups, including children in foster care, LGBT youth, and children with disabilities. According to the FBI, 218 children were arrested for prostitution in 2017; thirty of those children were under the age of 15. Recognizing this problem, twenty states and DC prohibit the criminalization of minors for prostitution. Furthermore, under federal law, a child under 18 who is trafficked is considered a victim. SB 60 would put Delaware in line with many other states that recognize that children who are trafficked are victims and not criminals.

## **SENATE BILL 60 (Poore)**

### **AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CRIMES.**

**Synopsis:** This bill clarifies that in order to be found guilty of prostitution, a person must be 18 years or older.

#### **Origin:**

SB 60 comes from the recommendations of the Human Trafficking Interagency Coordinating Council's September 2018 recommendations. The Council was re-authorized in 2018 as a result of HB 164 and is comprised of representatives from state agencies (DHSS, DOL, Kids, DOJ, ODS), the Delaware Courts (Superior Court & Court of Common Pleas), law enforcement (Newark, DSP, and Dover), the Criminal Justice Council, and a Delaware hospital. The Council worked together to produce recommendations related to preventing human trafficking and serving the victims of human trafficking; SB 60 is directly connected to that mission.

#### **Why Delaware Needs SB 60**

- Any minor found to be engaging in prostitution has been exploited, whether the minor realizes it or not, and therefore should not be charged with prostitution.
- Sex traffickers purposely seek out children who are particularly vulnerable, as they are easier to manipulate. Common targets of traffickers include: children in foster care; undocumented immigrants; homeless youth and runaways; LGBT youth; children with disabilities; and children who have substance use disorder.
- In many cases, minor victims of sex trafficking cannot legally consent to sex in the first place, so any sexual act they engage in with a trafficker or client is a crime of which the minor is a victim
  - For example, children ages 12 to 15 cannot legally consent to sex with people who are more than four years older than them. If a person aged 20 or older were to have sex with a minor in this age range, that sex act would constitute a crime.
- Victims of human trafficking may be forced to commit crimes (other than prostitution) at the direction of the trafficker, such as: theft, drug sales, illegal peddling, and recruiting other victims.
- According to the FBI, in 2017 a total of 218 children under the age of 18 were arrested for prostitution in the United States. Of the 218 children arrested: 30 were younger than 15; and 7 were between the ages of 10 and 12.

#### **How Delaware Compares**

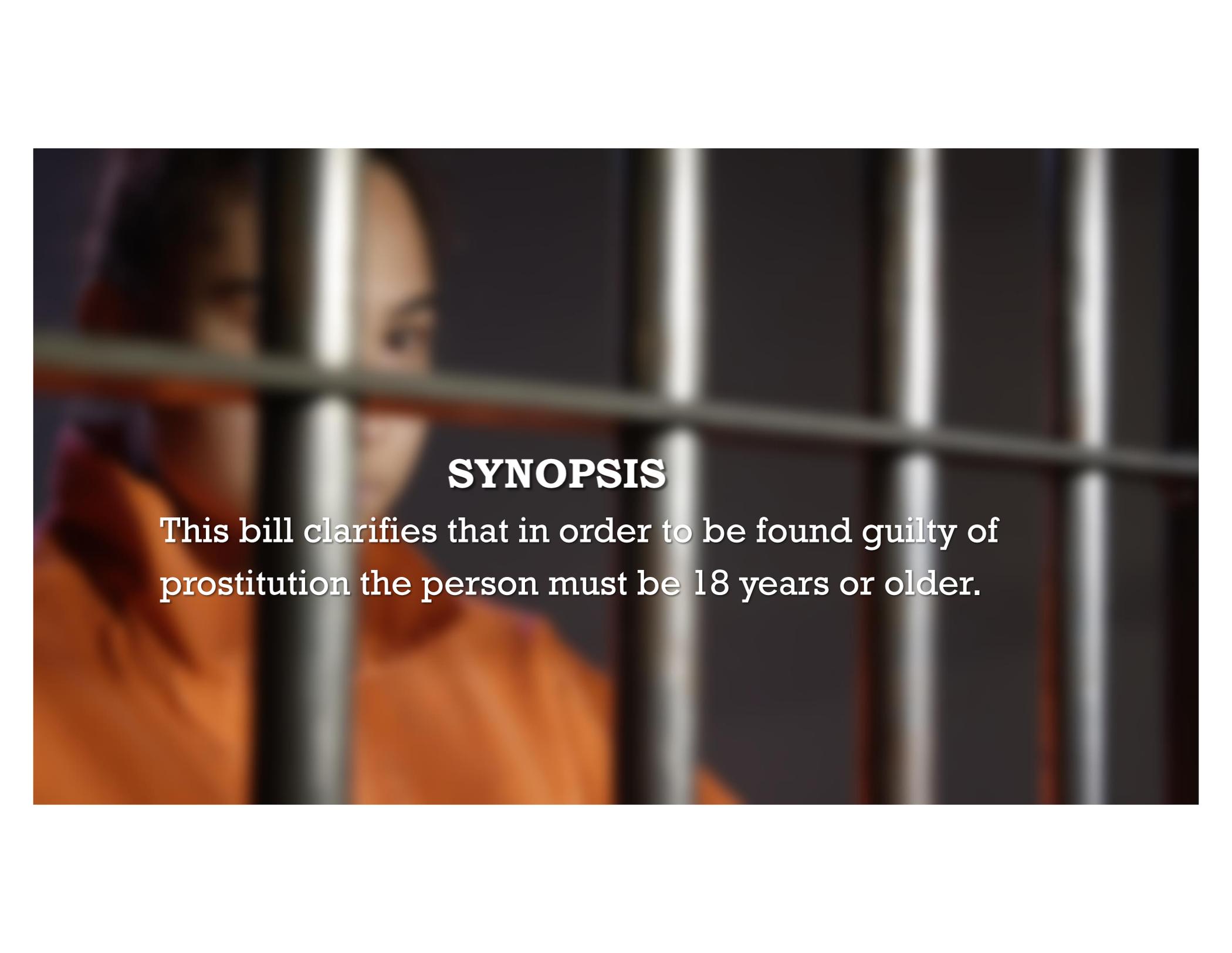
- Under federal law, a child under 18 induced into human trafficking is considered a victim.
- 20 states & DC prohibit the criminalization of minors for prostitution

# SENATE BILL 60 (POORE)

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING  
TO CRIMES.







## **SYNOPSIS**

This bill clarifies that in order to be found guilty of prostitution the person must be 18 years or older.

# **SB 60 COMES FROM THE RECOMMENDATIONS OF THE HUMAN TRAFFICKING INTERAGENCY COORDINATING COUNCIL**

Purpose of the 2018 Recommendations:

- To describe generally the current state of agency and system readiness
- To identify and serve victims of human trafficking
- To prevent human trafficking in Delaware
- To describe practical steps for improving readiness overall



# WHY DELAWARE NEEDS SB 60

- Children who experience human trafficking are victims
- Arrest and prosecution can further traumatize child victims of human trafficking
- Children may be **discouraged from seeking assistance and/or treatment**
- In many cases, minor victims of sex trafficking cannot legally consent to sex in the first place, so any sexual act they engage in with a trafficker or client is a crime of which the minor is a victim.



**Sex traffickers target vulnerable populations, including:**

- Children in foster care
- Homeless youth and runaways
- LGBT youth
- Undocumented immigrants

**Of the estimated 40.3 million victims of human trafficking in the world, 25% are children**

**In 2017, a total of 218 children under the age of 18 were arrested for prostitution in the United States.**

- 30 were younger than 15
- 7 were between the ages of 10 and 12.



# HUMAN TRAFFICKING IN DELAWARE

## Dover man gets 20 years for sex trafficking two teen girls

Josephine Peterson, The News Journal Published 5:32 p.m. ET April 13, 2018 | Updated 8:54 p.m. ET April 13, 2018

For the human trafficking of a 16-year-old girl, a 35-year-old Smyrna woman will go to prison--for 2 years

DJ McAnerly Mar 2, 2018 - 11:46 am

## Three facing up to life in prison for sex trafficking 15-year-old in Newark

By Josh Shannon jshannon@chespub.com Feb 22, 2019 0



# DELAWARE SHOULD FOLLOW THE LEAD OF 20 STATES & THE FEDERAL GOVERNMENT

- Under federal law, a child under 18 induced into human trafficking is considered a victim.
- 20 states & DC prohibit the criminalization of minors for prostitution



# QUESTIONS?



**SENATE BILL 67:**

**An Act To Amend Title 13 Of The Delaware Code Relating To Marriages**

*Sponsored by Senators Townsend, Cloutier & Pettyjohn and Reps. Viola & Ramone*

Prior to 1990, Delaware State Code required clergypersons who wished to solemnize marriages in the state to register with the State of Delaware through one of the three counties Clerks of the Peace. The Clerks were then responsible for filing the clergypersons' registration with the State Bureau of Vital Statistics. Due to a lack of administrative and maintenance support, the program discontinued.

The U.S. Department of Homeland Security (DHS) encourages states to better track and monitor individuals who perform wedding ceremonies within their state. The process of arranging and facilitating marriages is a key element in the complex web of human trafficking, and greater oversight of who is solemnizing marriages in the state is needed. Currently, Delaware law allows a "clergyperson or minister of any religion" to solemnize marriages, without prior registration with the state. As a result, the Clerks of the Peace for Delaware's three counties are seeking to re-establish a registry of clergypersons or ministers who wish to solemnize marriages in the State of Delaware.

SB 67 would create a simple and straightforward process for clergypersons to register with the Clerk of the Peace in their county, which would also allow them to solemnize marriages anywhere in the state upon their successful registration. A clergyperson would have to be registered with a Clerk prior to performing a wedding ceremony, so that they can enter their registration number on the Marriage License/Certificate of Marriage for each marriage they solemnize. An online listing of clergypersons registered to solemnize marriages in Delaware would be made available on the websites of the Clerks of the Peace. Lastly, this bill would allow the Clerks of the Peace to suspend or revoke a clergyperson's ability to perform future wedding ceremonies if they do not register before performing a ceremony.

## **SENATE BILL 67:**

An Act To Amend Title 13 Of The Delaware Code Relating To Marriages  
*Sponsored by Senators Townsend, Cloutier & Pettyjohn and Reps. Viola & Ramone*

### **Background:**

Prior to 1990, the Delaware State Code required clergypersons desiring to solemnize marriages to register with the State of Delaware. They did so by registering with any of Delaware's three Clerks of the Peace. The Clerks then filed the clergypersons registration with the State Bureau of Vital Statistics. This program discontinued due to a lack of administrative and maintenance support. Currently, state law allows any "clergyperson or minister of any religion" to solemnize marriages in the state, without prior registration.

### **Why changes are needed:**

The U.S. Department of Homeland Security encourages states to better track and monitor individuals who perform wedding ceremonies within their state. The process of arranging and facilitating marriages is a key element in the complex web of human trafficking. As a result, the Clerks of the Peace for Delaware's three counties are seeking to re-establish a registry of clergypersons or ministers who wish to solemnize marriages in the State of Delaware.

### **What the bill does:**

SB 67 reinstates the requirement that the Clerks of the Peace in each county maintain a registry of clergypersons or ministers who perform marriages in Delaware. Clergypersons or ministers of any religion desiring to perform wedding ceremonies must register with the Clerk of the Peace. Upon registering, he or she will receive an identification number that he or she must enter on the Certificate of Marriage for each wedding ceremony he or she performs. If the clergyperson or minister registers with the Clerk of the Peace in one county, he or she will be added to a statewide registry and will be able to perform weddings statewide. If a clergyperson or minister performs a wedding without being registered, the Clerk of the Peace can suspend or revoke that clergyperson or minister's ability to perform further weddings in Delaware.

**SB 67**  
**CLERGY REGISTRATION**  
**(A BIPARTISAN PROPOSAL)**

# SYNOPSIS

This Act reinstates the requirement that the Clerks of the Peace in each county maintain a registry of clergypersons or ministers who perform marriages in Delaware.

## **PRIOR TO 1990**

The State Code required clergypersons desiring to solemnize marriages to register with the State of Delaware. They did so by registering with any of Delaware's three Clerks of the Peace. The Clerks then filed the clergypersons registration with the State Bureau of Vital Statistics but the program was discontinued due to a lack of administrative and maintenance support.

**2018**

The U.S. Department of Homeland Security encourages states to better monitor individuals performing marriage ceremonies within their state. Thus, Delaware's three Clerks of the Peace propose the re-establishment of a registry of clergypersons desiring to solemnize marriages within The First State.

# 2019

Under the proposed registration guidelines in SB 67, Delaware clergypersons desiring to perform marriage ceremonies would register online with the Clerk of the Peace in the County where they reside. After doing so, they would be authorized to solemnize marriages anywhere in the State of Delaware. Those clergypersons would be assigned a registration number which would be entered on the Marriage License / Certificate of Marriage for each ceremony they perform.

## **NON-RESIDENT CLERGYPERSONS**

Non-resident clergypersons desiring to solemnize marriages in Delaware would register with the Clerk of the Peace in the County where the marriage ceremony will be performed.

## CLERGYPERSONS REGISTRATION

A compilation of clergypersons registered to solemnize marriages in Delaware would be made available to the public on the websites of the Clerks of the Peace.

Clergypersons would have to be registered with a Clerk of the Peace prior to performing a marriage ceremony. Otherwise, they would **not** be authorized to do so. The officiant's registration number would have to be entered on the Marriage License / Certificate of Marriage prior to the recording of a marriage.

## **SENATE BILL 85**

The six alderman's courts in Delaware hear a variety of cases within their jurisdiction. In FY 2018, the courts handled over 21,000 cases involving traffic, minor misdemeanors, and municipal code violations. There are times when hearing cases that the Alderman should not hear the case – due to a conflict of interest, language barrier, or other condition which may violate the Canons of Judicial Conduct. With certain violations, the Court is unable to transfer the cases due to Exclusive Jurisdiction.

Senate Bill 85 cures this issue by allowing the Alderman's or Mayor's Court to transfer to the Justice of the Peace court – and allows the Justice of the Peace Court to accept those cases.

## **SENATE BILL 85**

AN ACT TO AMEND TITLES 11 AND 21 OF THE DELAWARE CODE RELATING TO TRANSFER OF CASES BETWEEN ALDERMAN'S OR MAYOR'S COURTS AND THE JUSTICE OF THE PEACE COURT.

### What are Alderman's or Mayor's Courts?

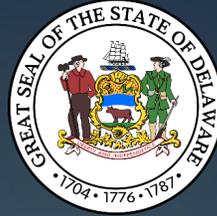
These courts are established by City or Town charters in order to hear most minor misdemeanor, traffic, and municipal ordinance cases.

### Why are changes needed?

There are times where, due to circumstances beyond the control of the Court, the case cannot be heard by the Alderman Court. The only remedy now is to dismiss the case.

### What does this bill do?

Senate Bill 85 enables the Alderman's or Mayor's court to administratively transfer the case to a Justice of the Peace court. This act also allows the Justice of the Peace court to accept those cases.



# SENATE BILL 85

SENATOR BRIAN PETTYJOHN

Presented to the  
Senate Judicial Committee

## Senate Bill 85

# Background on Alderman's Courts in Delaware

- ▶ Authorized in municipal charters
- ▶ Judges chosen per requirements enumerated within charter; recommended to and nominated by Governor, confirmed by Senate
- ▶ Jurisdiction limited to misdemeanors, traffic offenses, parking violations, minor civil matters, town ordinance violations
- ▶ Geographically limited to offenses committed within municipal boundaries
- ▶ 6 Active Alderman's Courts: Laurel, Rehoboth, Bethany, Dewey, Newark and Newport
- ▶ FY 2018 filings: 26,365; Dispositions 20,952
- ▶ Not part of the Delaware Judiciary
- ▶ Governed by the Delaware Judicial Canons
- ▶ Normally one Alderman; some courts have an assistant Alderman

## Senate Bill 85

### Exclusive Jurisdiction – Issue with hearing some cases

- ▶ Under current law, Alderman Courts have exclusive jurisdiction upon most criminal complaints occurring within the Court's jurisdiction where the maximum fine is less than \$100 and there is no provision for incarceration.
- ▶ There is no provision to transfer such cases to other courts if the Alderman is unable to hear the case due to a conflict, language barrier, or other concern where the Justice of the Peace Court would be better equipped to handle the case.

## Senate Bill 85 Solution to the Issue

- ▶ Senate Bill 85 allows the Court to transfer a case under exclusive jurisdiction to the Justice of the Peace Court
  - ▶ Justice of the Peace Court chosen as it closely resembles the jurisdiction and operation of the Alderman's or Mayor's Courts
- ▶ Transfer will be at the discretion of the Alderman's or Mayor's Court.
- ▶ Developed with the assistance of Chief Magistrate Davis
- ▶ Transfer volume expected to be very low

## MEMO

To: Senate Judicial Committee  
From: P. Clarkson Collins, Jr., Chair, DSBA Corporation Law Section  
Re: Proposed 2019 Amendments to DGCL and Delaware Alternative Entity Acts  
Date: May 10, 2019

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On April 4, 2019, the Corporation Law Section of the Delaware State Bar Association (DSBA) approved proposed amendments to the Delaware General Corporation Law (DGCL), the Delaware Limited Liability Company Act (the DLLCA), the Delaware Revised Uniform Limited Partnership Act (DRULPA) and the Delaware Revised Uniform Partnership Act (DRUPA) (collectively, the “Acts”). These proposed amendments have also been approved by the Executive Committee of the DSBA. This memo summarizes key provisions, as follows.

**1. Electronic Transactions and Signatures.** The proposed amendments to the Acts would establish safe-harbor methods to permit a wide variety of acts and transactions “contemplated or governed by” the Acts to be documented and executed electronically, including merger agreements, stockholders agreements, proxies, and LLC or partnership agreements.

The amendments would broadly define an electronic signature, and would permit any document contemplated or governed by the Acts to be documented, signed and delivered electronically, including by DocuSign® and similar electronic means. Further, unless otherwise provided in the entity’s organizational documents or agreed between the sender and recipient, an electronic transmission generally would be deemed delivered to a person for purposes of the Acts and the organizational documents when it enters an information processing system that the recipient has designated for the purpose of receiving electronic transmissions of the type delivered.

The safe-harbor provisions under the proposed amendments apply solely for purposes of determining whether an act or transaction has been documented, and whether a document has been signed and delivered in accordance with the Acts and the entity’s organizational documents. The safe harbor would not preempt any statute of frauds or other law that might require actions to be documented or documents to be signed and delivered in a specified manner.

The amendments are based, in part, on the Delaware Uniform Electronic Transactions Act (UETA), and clarify how UETA interacts with the Acts. UETA provides that it does not apply to transactions governed by the Acts. As a result, documents such as merger agreements, stockholders’ agreements, LLC agreements, partnership agreements and other documents governed by the Acts currently may not be executed in reliance on UETA. The intent of the amendments is to provide means for parties to create, execute and deliver such documents electronically, and to allow the Acts to govern the documentation of actions and the signature and delivery of documents to the fullest extent they are not preempted by the Electronic Signatures in Global and National Commerce Act.

A corporation, LLC, or limited or general partnership would be able to opt out of these provisions by expressly providing specific restrictions on documenting electronic transactions in its certificate of incorporation, bylaws, LLC agreement or partnership agreement.

The amendments specify certain documents that would not qualify for this safe harbor, but some of these excluded items are governed by separate provisions of the Acts that facilitate the use of electronic media or transmission, including documents filed with the secretary of state.

**2. Default Provisions for Delivery of Notice to Stockholders.** The proposed amendments to the DGCL also include changes to the statutory default provisions relating to delivery of stockholder notices. Under the amendments, a corporation would be permitted to send notices to a stockholder's valid email address, as it appears on the corporation's records, without first obtaining the consent of such stockholder, unless such stockholder specifically notifies the corporation in writing (including by electronic transmission) of its objection to receiving notices by email.

These statutory default notice provisions would apply to any notice required by the DGCL, the certificate of incorporation or the bylaws (including notice of appraisal rights), but do not alter any other notice requirements by which the corporation may be bound, including under securities laws. Also, under the amendments, a corporation could deliver stockholder notices electronically, even if its certificate of incorporation or bylaws requires that notice be delivered by U.S. mail or by courier, eliminating the need for corporations to amend their organizational documents in order to take advantage of the amendments.

Appraisal notices may be delivered electronically, including by email, under the proposed amendments, or by courier (or U.S. mail). Additionally, the proposed amendments would allow for the delivery of stockholder demands for appraisal to the corporation by electronic transmission, but only if the corporation designates in its notice of appraisal rights an email address or information processing system for receipt of electronic delivery of demands.

**3. Division of a Limited Partnership.** The proposed amendments to DRULPA would enable a limited partnership to divide, consistent with the 2018 amendments with respect to division of an LLC. Thus, a limited partnership would be able divide into two or more newly formed resulting limited partnerships with the dividing limited partnership continuing its existence or terminating, as the case may be. Divisions would enable a limited partnership to facilitate a spin-off or the sale of assets or a line of business.

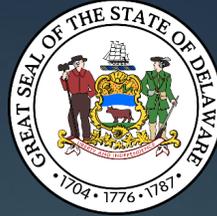
**4. Registered Series of a Limited Partnership.** Under the proposed amendments to DRULPA, a limited partnership would be permitted to form registered series, similar to the provisions adopted in 2018 to the DLLCA. The amendments would enable registered series of limited partnerships to obtain good standing certificates and merge, providing a more practical way to combine assets and liabilities of two series than presently available, and would permit an existing protected series to convert to a registered series.

**5. Resignation of a Registered Agent.** The proposed amendments would allow registered agents of a corporation, LLC, or limited or general partnership to resign without appointing a successor, including for entities whose certificate of incorporation, certificate of

formation or certificate of limited partnership has become void as a result of failure to pay franchise taxes or annual fees. Such resignation may be effected by filing a certificate of resignation with the secretary of state after 30 days' prior notice to the affected entity, which certificate must be accompanied by the last known information for a communications contact for the affected entity, which information must be provided to the secretary of state, but will not be deemed public or subject to FOIA requests.

\* \* \*

If adopted, the amendments would become effective August 1, 2019, except for the provisions relating to electronic delivery of appraisal notices and demands, which would become effective for merger agreements entered into on or after August 1, 2019.



# Proposed 2019 Amendments To DGCL and Delaware Alternative Entity Acts

## Senate Judicial Committee

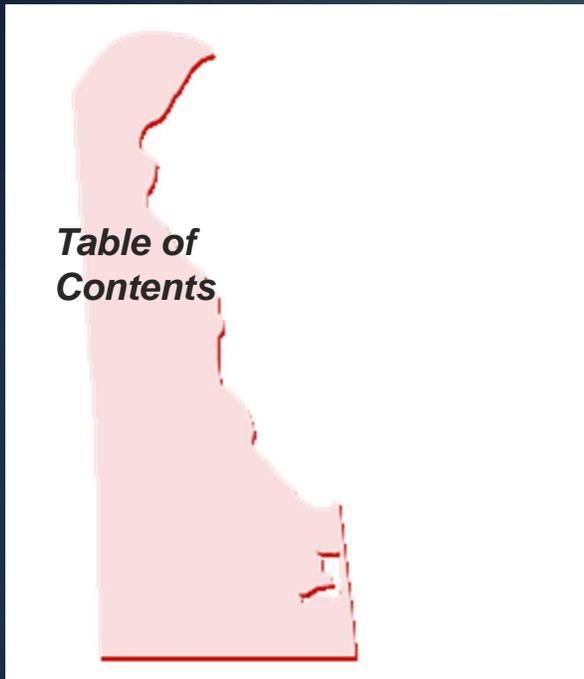
Sen. Darius Brown, Chair  
Sen. Bryan Townsend, Vice-chair  
Sen. Bruce Ennis  
Sen. Anthony Delcollo  
Sen. Dave Lawson

# Introduction

On April 4, 2019, the Corporation Law Section of the Delaware State Bar Association approved proposed amendments to the DGCL, the DLLCA, the Delaware Revised Uniform Limited Partnership Act (DRULPA) and the Delaware Revised Uniform Partnership Act (DRUPA). If adopted, the proposed 2019 amendments would become effective August 1, 2019 (except with respect to the amendments relating to appraisal notices and demands, which would become effective for merger agreements entered into on or after August 1, 2019)



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3. Resignation of Registered Agents
4. Division of Limited Partnerships
5. Registered Series of Limited Partnerships
6. Permissive LLC/LP Appraisal Rights for Divisions and Registered Series
7. Other Amendments to DRULPA



# Electronic Documentation and Signatures

- ▶ The proposed 2019 amendments to the DGCL, the DLLCA, DRUPA and DRULPA (collectively, the “**Acts**”) establish non-exclusive, safe harbor methods to reduce certain acts and transactions to a written or electronic document and to execute and deliver a document electronically.
- ▶ Electronic Documentation
  - ▶ The proposed amendments permit a wide variety of acts and transactions that are “contemplated or governed by” the Acts to be documented and transmitted electronically, including merger agreements, stockholders agreements, proxies, and LLC or partnership agreements.
  - ▶ Any act or transaction contemplated or governed by the Acts, or by the entity’s organizational documents, may be provided for in a “document,” and an electronic transmission shall be deemed the equivalent of a written document.
  - ▶ “Document” means (i) any tangible medium on which information is inscribed, and includes handwritten, typed, printed or similar instruments, and copies of such instruments and (ii) an electronic transmission.
- ▶ Electronic Signature
  - ▶ The proposed amendments broadly define an electronic signature as an electronic symbol or process that is attached to, or logically associated with, a document, and executed or adopted by a person with an intent to authenticate or adopt the document.
  - ▶ Any document contemplated or governed by the Acts would be permitted to be executed and delivered electronically, including by DocuSign® and similar electronic means.



# Electronic Transmission

## ▶ Delivery of an Electronic Transmission

- ▶ Unless otherwise provided in the entity's organizational documents or agreed between the sender and recipient, an electronic transmission is deemed to be “delivered” to a person for purposes of the proposed amendments and the organizational documents:
  - ▶ when it enters an information processing system that the recipient has designated for the purpose of receiving electronic transmissions of the type delivered
  - ▶ so long as the electronic transmission is in a form capable of being processed by that system, and such recipient is able to retrieve the electronic transmission.
- ▶ The recipient's designation of an information processing system is determined by the organizational documents or from the context and surrounding circumstances, including the parties' conduct.
- ▶ Notably, the amendments provide that an electronic transmission delivered in accordance with the above procedures is deemed delivered even if no person is aware of its receipt.



# Electronic Documentation and Signatures

- ▶ Interaction with Other Laws
  - ▶ Delaware Uniform Electronic Transactions Act (“**UETA**”)
    - ▶ UETA provides that it does not apply to transactions that are governed by the Acts. As a result, documents such as merger agreements, stockholders' agreements, LLC/LP Agreements and other documents governed by the Acts may not be executed in reliance on UETA.
  - ▶ Electronic Signatures in Global and National Commerce Act (the “**E-Sign Act**”)
    - ▶ It is unclear if the E-Sign Act preempts Delaware law.
    - ▶ The proposed amendments evidence an intent to allow the Acts to govern the documentation of actions, and the signature and delivery of documents, to the fullest extent the Acts are not preempted by the E-Sign Act.
- ▶ Statute of Frauds and Other Laws
  - ▶ The safe harbor would not preempt any statute of frauds or other law that might require actions to be documented or documents to be signed and delivered in a specified manner.
  - ▶ The safe harbor provisions under the proposed amendments apply solely for purposes of determining whether an act or transaction has been documented, and whether a document has been executed and delivered in accordance with the DGCL and the DLLCA and the entity's organizational documents.



# Opting Out and Exceptions for Electronic Documentation

## ▶ Opting Out

- ▶ A corporation, LLC or partnership would be able to opt out of these provisions by expressly providing specific restrictions on documenting electronic transactions in its certificate of incorporation, bylaws, LLC agreement or partnership agreement.
- ▶ The proposed amendments would permit certificate of incorporation and bylaw provisions restricting the use of electronic documentation and signature under new DGCL Section 116(a), but such restrictions must be expressly stated. A provision merely specifying that an act or transaction will be documented in writing, or that a document will be signed or delivered manually, would not prohibit the application of the provisions of the amendments permitting electronic documentation and signature.

## ▶ Exclusions

- ▶ Certain documents would not qualify for the safe harbor for electronic documentation including, among other things:
  - ▶ (i) documents filed with the Secretary of State, the Register in Chancery, or a court or other judicial or governmental body of Delaware; (ii) a document comprising part of the stock ledger; (iii) actions by written consent of directors, stockholders or incorporators (which may be delivered electronically under existing provisions of the DGCL); (iv) stock certificates and certificates evidencing limited liability company or partnership interests or other securities; and (v) waivers of notice.
- ▶ Many of these excluded items are governed by separate provisions that facilitate the use of electronic media or transmission, including, for example, documents filed with the Secretary of State and delivery of written consents and electronic notices.



# Default Provisions for Delivery of Notice to Stockholders

- ▶ The proposed amendments to the DGCL would change the statutory default provisions relating to delivery of stockholder notices.
  - ▶ A corporation would be permitted to send notices to a stockholder's valid email address, as it appears on the corporation's records, without first obtaining the consent of such stockholder, unless such stockholder specifically notifies the corporation in writing (including by electronic transmission) of its objection to receiving notices by email.
  - ▶ The proposed amendments provide that a corporation would be able to provide notice to stockholders by:
    - ▶ (i) U.S. mail, with time of notice being when the notice is placed in the mail;
    - ▶ (ii) courier service, with the time of notice being the earlier of when it is received by the stockholder or left at the stockholder's address; or
    - ▶ (iii) electronic mail, with time of notice being when it is directed to the stockholder's email address, as appearing on the corporation's books and records.



# Delivery of Notice to Stockholders and Appraisal Demands

- ▶ The default notice provisions would apply to any notice required by:
  - ▶ the DGCL;
  - ▶ the certificate of incorporation or the bylaws; and
  - ▶ notice of appraisal rights
- ▶ The proposed amendments do not alter any other notice requirements by which the corporation may be bound, including, for example, under securities laws.
- ▶ The proposed amendments permit a corporation to deliver stockholder notices electronically, even if its certificate of incorporation or bylaws requires that notice be delivered by U.S. mail or courier service, eliminating the need for corporations to amend their organizational documents in order to take advantage of the provisions of the amendments.
- ▶ Appraisal notices
  - ▶ A corporation may deliver appraisal notices to stockholders electronically, including by email, under the proposed amendments, or by courier (or U.S. mail).
- ▶ Stockholder demand for appraisal
  - ▶ Stockholders may deliver demands for appraisal rights electronically, under the proposed amendments, but only if the corporation expressly designates, in the notice of appraisal rights given by the corporation, an information processing system for receipt of electronic delivery of demands.
  - ▶ Among other things, the proposed amendments permit the corporation to so designate an email address for purposes of receiving stockholder appraisal demands.

*Senate Judicial Committee*



# Resignation of Registered Agents

- ▶ The proposed amendments would allow registered agents of a corporation, limited liability company or partnership to resign without appointing a successor
  - ▶ Resignation is permitted for entities whose certificate of incorporation, certificate of formation or certificate of limited partnership has become void as a result of failure to pay franchise taxes or annual fees
- ▶ A resignation may be effected by filing a certificate of resignation with the Secretary of State after the required 30-day prior notice to the affected entity
  - ▶ The certificate must be accompanied by the last known information for a communications contact for the affected entity
  - ▶ The last known information must be provided to the Secretary of State but will not be deemed public or subject to FOIA requests



# Division of Limited Partnerships

- ▶ The proposed amendments to DRULPA would enable a limited partnership to divide into two or more separate, resulting Delaware limited partnerships.
  - ▶ The limited partnership Division provision is consistent with the 2018 amendments with respect to division of a limited liability company.
- ▶ Under the proposed amendments, a limited partnership would be able to divide into two or more newly formed resulting limited partnerships, with the dividing limited partnership continuing its existence or terminating, as the case may be.
- ▶ Default approval requirement for limited partnership divisions (absent an approval requirement in the LP Agreement relating to divisions or mergers) specifies that division must be approved by all general partners and by limited partners holding more than 50% of the interest in the profits of the limited partnership owned by all limited partners.



# Registered Series of Limited Partnerships

- ▶ The proposed amendments would authorize the formation of a registered series of a limited partnership, similar to the 2018 amendments for LLCs (which becomes effective August 1, 2019).
  - ▶ Registered series are associations and are formed by the filing of a certificate of registered series and, therefore, have the attributes required to be "registered organizations" under the Uniform Commercial Code.
  - ▶ Registered series would have the same rights and powers and the same inter-series limitation on liability as protected series established under DRULPA.
  - ▶ Registered series would be able to obtain good standing certificates.
  - ▶ Proposed amendments would enable a registered series of a limited partnership to merge, providing a more practical way to combine the assets and liabilities of two series than presently available under applicable law.
  - ▶ The proposed amendments also provide that an existing protected series can convert to a registered series by filing a certificate of conversion and a certificate of registered series.
- ▶ Each registered series of a limited partnership will be required to have at least one general partner associated with such registered series.
- ▶ If the LP Agreement does not designate the general partner of a registered series, then all general partners of the limited partnership are deemed to be general partners of such registered series.



# Permissive LLC/LP Appraisal Rights for Divisions and Registered Series

- ▶ Division
  - ▶ The proposed 2019 Amendments permit (but do not require) an LLC/LP Agreement or Plan of Division to provide any class, group or series of members/partners or LLC/LP interests with contractual appraisal rights in connection with a division of an LLC/LP.
- ▶ Registered Series Mergers, Consolidations and Conversions
  - ▶ The proposed amendments also permit (but do not require) an LLC/LP Agreement or Plan of Merger for Registered Series to provide any class, group or series of members/partners or LLC/LP interests with contractual appraisal rights in connection with:
    - ▶ A merger or consolidation of a registered series of the LLC/LP;
    - ▶ A conversion of a protected series of the LLC/LP to a registered series of such LLC/LP; and
    - ▶ A conversion of a registered series of the LLC/LP to a protected series of such LLC/LP.



# Other Amendments to DRULPA

## ▶ Judicial Cancellation

- ▶ The proposed amendments would provide that, upon motion by the Attorney General, the Court of Chancery would be permitted to cancel the certificate of limited partnership of any limited partnership for abuse or misuse of its limited partnership powers, privileges or existence.
- ▶ The Court of Chancery also would have the power under the proposed amendments, by appointment of trustees, receivers or otherwise, to administer and wind up the affairs of any limited partnership whose certificate of limited partnership is canceled by the Court of Chancery under this section, and to make such orders and decrees with respect thereto as are just and equitable respecting its affairs and assets and the rights of its partners and creditors.

## ▶ Public Benefit Limited Partnerships

- ▶ The proposed amendments provide for the formation of statutory public benefit limited partnerships which, like public benefit corporations and LLCs, are intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner.
- ▶ Provisions are substantially the same as the 2018 amendments to the DLLCA.



## **COMPACT MAIN POINTS**

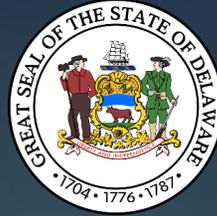
- **Benefit To Vulnerable Populations**
  - Delaware's inclusion into COMPACT as a signatory state allows Delaware to join 35 other states that utilizes FBI-CJIS' National Finger Print File. This access provides a more complete and accurate criminal history record that is in-turn provided for background checks on employees and volunteers caring for our children, our elderly and our disabled family members.
- **Benefits To Individual Privacy**
  - NFF (National Fingerprint File) Program's Decentralization enhances the protection of Personally Identifiable Identification Information. An NFF state provides its records for all purposes; thus, any request for an NFF state's maintained record (when a national fingerprint-based check is conducted), results in the NFF state's repository being queried directly for its CHRI. Increasing efficiency and accuracy through decentralized NFF Program enhances the protection of individual's privacy in the national background check as the access to this information is handled and reviewed by as few as two persons.
- **Benefits of record Control**
  - NFF state control record usage. An NFF participating state is queried directly for its record via III. The III record request identifies the purpose of always knowing when its records are being used and for what purpose.

- **Benefits to State Resources**

- NFF participation eliminates duplicate record maintenance. One of the biggest advantages of becoming an NFF state is the reduction of duplicative record maintenance. Once this decentralization occurs and the NFF state fully maintain their criminal history records, there is no need to duplicate records at the federal level. The state does not have to forward expungement notices and disposition information to the FBI. Once a record is initially indexed at the FBI, subsequent arrest submissions are not required. Reduction of these duplicative processes can effectively secure additional operational resources thus benefitting the state repository.

- **Benefits of Record Accuracy**

- Single source record maintenance enhances record completeness and accuracy. Prior to participating in the NFF Program, as fingerprint-based arrest records are added to its state repository, a copy of the fingerprint images and arrest record is forwarded to the FBI. Maintaining a duplicate record is necessary due to dual dissemination responsibilities at the state and national levels. To keep duplicate records synchronized, states must forward record modifications, expungement notifications and new disposition information to the FBI when records are updated at the state repository. Any time lapse between additional data being added at the state and federal level results in discrepancies in the records. When a state participates in the NFF program, the state is the sole disseminator of its CHRI and it is no longer necessary for the state to submit duplicate arrest records or expungement/disposition information to the SBI. Eliminating the process of duplicative data through participation in the NFF program provides benefit through the consistent release of accurate and up-to-date criminal history records



# SENATE BILL 97

DELAWARE STATE POLICE / STATE BUREAU OF IDENTIFICATION

## Senate Judicial Committee

Sen. Darius Brown, Chair  
Sen. Bryan Townsend, Vice-chair  
Sen. Bruce Ennis  
Sen. Anthony Delcollo  
Sen. Dave Lawson

DSP / SBI

# Compact Act

## NATIONAL CRIME PREVENTION & PRIVACY COMPACT



- **DSP's Mission:** To enhance the quality of life for all Delaware citizens and visitors by providing competent, compassionate and professional law enforcement services
- **Compact's Mission:** To enhance public safety through noncriminal justice background checks based on positive identification, while protecting individual privacy rights.
- **The Goal:** To make available the most complete and up-to-date records possible for non-criminal justice purposes.

*Senate Judicial Committee*



DSP / SBI

# History of Compact

- ▶ On October 9, 1998, President Clinton signed into law the National Crime Prevention and Privacy Compact (Compact) Act of 1998, establishing an infrastructure by which states can exchange criminal records for noncriminal justice purposes according to the laws of the requesting state and provide reciprocity among the states to share records without charging each other for the information.
- ▶ The Compact became effective April 28, 1999, after Montana and Georgia became the first two states to ratify it, respectively. To date, 35 states have ratified the Compact.
- ▶ States in our region that are currently ratified Compact states include:
  - ▶ Maryland, Virginia, West Virginia, New Jersey and South Carolina



DSP / SBI

# Benefits

- **Vulnerable population**

- Allows DE to join 35 other states that utilizes FBI –CJIS’s National Finger Print File
- Provides a more complete and accurate criminal history record check on employees and volunteers caring for our children, elderly and disabled family members

- **Individual Privacy**

- Enhances protection of personally Identifiable identification Information as fewer persons will be involved in the process
  - Inquires are routed directly to other signatory states who respond directly to the requesting agency
- States control the record usage – the record and the purpose of the record request are always known to the state being queried for CHRI
- The requirement of positive identification guards against the use of fraudulent identity documents by individuals attempting to conceal a criminal past

Senate Judicial Committee



# DSP / SBI

## Benefits Continued

- **Benefits of Record Accuracy**

- Currently, a copy of fingerprints, mugshots and arrest records are forwarded to the FBI for inclusion into their National Finger Print File (NFF)
- Duplicate records are necessary due to dual dissemination responsibilities: State and Federal levels
  - Keeping Duplicate records synchronized require states to forward modifications, expungement notifications and new disposition information as they are up-dated at SBI
- Any time lapse results in discrepancies
- Becoming a Compact allows the state to become the sole disseminator
  - Results: Consistent and timely release of accurate and up-to-date CHRI

DSP / SBI

# Monetary Concerns \$\$

- **Programming**

- Delaware already has the infrastructure to support Compact
  - No Fiscal considerations

- **Personnel**

- No new personnel need
- Compact participation allows repositories to streamline not increase operations by reducing redundant work and synchronizing records with FBI

# DSP / SBI Summary

- **Duty, Service and Delaware**
  - As stewards charged with positions of trust, we all have a duty to protect those that are unable to protect themselves
  - Compact provides the services needed to offer better security to our most vulnerable populations
  - Safety and security are the most basic of our duties; Delaware's citizenry will be proud to learn of your efforts in passing Compact into law

## **SENATE BILL 99**

### **AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUDICIAL PROCEDURE.**

This Act is modeled after American Laws for American Courts legislation that has passed in Tennessee, Louisiana, Arizona, Kansas, South Dakota, Alabama, and North Carolina. The Declaration of Independence announced the formation of a new country that would no longer find itself in the clutches of a foreign power. For over 2 centuries, hundreds of thousands of men and women have given their lives to protect America's sovereignty and freedom. America has unique values of liberty which do not exist in all foreign legal systems such as freedom of religion, speech, and press; due process; and the right to privacy. Unfortunately, because state legislatures have generally not been explicit about what their public policy is relative to foreign laws, the courts and the parties litigating in those courts are left to their own devices. State legislatures play a vital role in preserving fundamental constitutional rights and American values of liberty and freedom. No United States citizen or resident should be denied these guaranteed liberties, rights, and freedom.

## **SENATE BILL 99**

AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO JUDICIAL PROCEDURE.

### **What is the purpose of this Act?**

This Act is modeled after American Laws for American Courts legislation that has passed in Tennessee, Louisiana, Arizona, Kansas, South Dakota, Alabama, and North Carolina. The Declaration of Independence announced the formation of a new country that would no longer find itself in the clutches of a foreign power. For over 2 centuries, hundreds of thousands of men and women have given their lives to protect America's sovereignty and freedom. America has unique values of liberty, which do not exist in all foreign legal systems such as freedom of religion, speech, and press; due process; and the right to privacy. Unfortunately, because state legislatures have generally not been explicit about what their public policy is relative to foreign laws, the courts and the parties litigating in those courts are left to their own devices. State legislatures play a vital role in preserving fundamental constitutional rights and American values of liberty and freedom. No United States citizen or resident should be denied these guaranteed liberties, rights, and freedom.

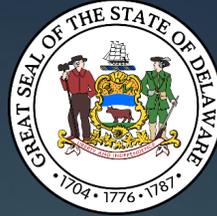
### **Why are changes needed?**

The United States is the longest standing Constitutional Republic in the world because of the unique values of liberty it represents. These values, such as freedom of Religion, Freedom of Speech, Freedom of Press, Due Process, Right of Privacy, and the Right to Keep and Bear Arms do not exist in all foreign legal systems. Yet, foreign laws and legal doctrine principles are more frequently finding their way into U.S. court cases. These foreign laws are repeatedly at odds with our principles of equal protection and due process.

We have seen the sovereignty of our Constitution questioned in recent years in cases before the United States Supreme Court where some Justices looked to international courts to interpret the U.S. Constitution. In the case of *Roper v. Simmons*, Justice Anthony Kennedy said he made his decision based on, "the overwhelming weight of international opinion." Yes, his argument was basically, "everyone else is doing it, so why can't we."

### **What does this bill do?**

This Act establishes public policy that protects our constitution and citizens from foreign law that may impede our fundamental rights.



# SENATE BILL 99

PRIME SPONSOR: SENATOR DAVID G. LAWSON

## Senate Judicial Committee

Sen. Darius Brown, Chair  
Sen. Bryan Townsend, Vice-chair  
Sen. Bruce Ennis  
Sen. Anthony Delcollo  
Sen. Dave Lawson

# SENATE BILL 99

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# SENATE BILL 99

## WHY ARE CHANGES NEEDED?

- ▶ The United States is the longest standing Constitutional Republic in the world because of the unique values of liberty it represents. These values, such as freedom of religion, speech and press, due process, and the right to privacy, do not exist in all foreign legal systems. Yet, foreign laws and legal doctrine principles are more frequently finding their way into U.S. court cases. These foreign laws are repeatedly at odds with our principles of equal protection and due process.
- ▶ We have seen the sovereignty of our Constitution questioned in recent years in cases before the United States Supreme Court where some Justices looked to international courts to interpret the U.S. Constitution. In the case of *Roper v. Simmons*, Justice Anthony Kennedy said he made his decision based on, “the overwhelming weight of international opinion.” Yes, his argument was basically, “everyone else is doing it, so why can’t we.”



# SENATE BILL 99

- ▶ This legislation establishes public policy that protects our constitution and citizens from foreign law that may impede our fundamental rights.
- ▶ **Why should we adopt this bill into law?** America has unique values of liberty that do not exist in foreign legal systems. Such as, but not limited to, Freedom of Religion, Freedom of Speech, Freedom of the Press, Due Process, Right of Privacy, and Right to Keep and Bear Arms.
- ▶ Foreign laws and legal doctrine principles are progressively finding their way into U.S. court cases.
- ▶ These foreign laws are frequently at odds with U.S. constitutional principles of equal protection and due process.
- ▶ American Laws for American Courts is an explicit application of what all state courts should adopt. No U.S. citizen or resident should be denied the liberties, rights, and privileges guaranteed in our constitutional republic. American Laws for American Courts is needed to protect women and children, which is identified by international human rights organizations as the primary victims of discriminatory foreign laws.
- ▶ This legislation has been passed in Tennessee, Louisiana, Arizona, Kansas, South Dakota, Alabama, and North Carolina.
- ▶ It is imperative that we safeguard our constitutions' fundamentals. In particular, individual guarantees in the Bill of Rights, the sovereignty of our Nation and its people, and the principles of the American laws, not foreign laws.



## **SENATE BILL 100**

### **AN ACT TO AMEND TITLE 11 RELATING TO UNLAWFULLY DEALING WITH A DANGEROUS WEAPON.**

This Act revises the shot and pellet size that is permitted for BB and air guns by increasing and defining the limit by an actual size. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

## **SENATE BILL 100**

### **AN ACT TO AMEND TITLE 11 RELATING TO UNLAWFULLY DEALING WITH A DANGEROUS WEAPON**

#### **What is the purpose of this Act?**

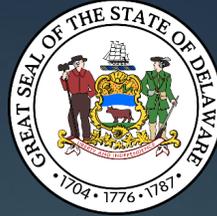
This Act revises the shot and pellet size that is permitted for BB and air guns by increasing and defining the limit by an actual size. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

#### **Why are changes needed?**

Currently, Delaware Code: 1445 Title 11 is in direct contradiction with what Delaware Hunting and Trapping Law permits. For example, the Delaware Code: 1445 Title 11 currently reads, “a person is guilty of unlawfully dealing with a dangerous weapon when: (1) The person possesses, sells or in any manner has control of: a. A weapon which by compressed air or by spring discharges or projects a pellet, slug or bullet, except a BB or air gun which does not discharge or project a pellet or slug larger than a BB shot (.177); or b. A pellet, slug or bullet, intending that it be used in any weapon prohibited by paragraph (1) a. of this section; or.” While the Delaware Hunting and Trapping Guide currently reads, “Gray Squirrel may be hunted with shotguns statewide, .17 through .22 cal. rimfire and pellet rifles and muzzleloading rifles up to .36 cal. south of the C&D Canal. Only shotguns may be used north of the C&D Canal. When a squirrel season overlaps with a deer firearms season, squirrel hunters must wear 400 square inches of hunter orange displayed on the head, chest and back.” Changing the wording of Delaware Code: 1445 Title 11 to “a. A weapon which by compressed air or by spring discharges or projects a pellet, slug or bullet, except a BB or air gun which does not discharge or project a ~~pellet or pellet,~~ BB shot, or slug larger than a BB shot; .25 caliber;” would correct the conflict between existing Delaware Statute and Delaware Hunting and Trapping Guide.

#### **What does this bill do?**

This Act corrects the contradiction between existing Delaware Statute and Delaware Hunting and Trapping Guide.



# SENATE BILL 100

PRIME SPONSOR: SENATOR DAVID G. LAWSON

## Senate Judicial Committee

Sen. Darius Brown, Chair  
Sen. Bryan Townsend, Vice-chair  
Sen. Bruce Ennis  
Sen. Anthony Delcollo  
Sen. Dave Lawson

# SENATE BILL 100

AN ACT TO AMEND TITLE 11 RELATING TO UNLAWFULLY DEALING WITH A DANGEROUS WEAPON.

- ▶ This Act revises the shot and pellet size that is permitted for BB and air guns by increasing and defining the limit by an actual size. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.



# SENATE BILL 100

## WHY ARE CHANGES NEEDED?

- ▶ Currently, Delaware Code: 1445 Title 11 is in direct contradiction with what Delaware Hunting and Trapping Law permits. For example, the Delaware Code: 1445 Title 11 currently reads, “a person is guilty of unlawfully dealing with a dangerous weapon when: (1) The person possesses, sells or in any manner has control of: a. A weapon which by compressed air or by spring discharges or projects a pellet, slug or bullet, except a BB or air gun which does not discharge or project a pellet or slug larger than a BB shot (.177); or b. A pellet, slug or bullet, intending that it be used in any weapon prohibited by paragraph (1) a. of this section; or.” While the Delaware Hunting and Trapping Guide currently reads, “Gray Squirrel may be hunted with shotguns statewide, .17 through .22 cal. rimfire and pellet rifles and muzzleloading rifles up to .36 cal. south of the C&D Canal. Only shotguns may be used north of the C&D Canal. When a squirrel season overlaps with a deer firearms season, squirrel hunters must wear 400 square inches of hunter orange displayed on the head, chest and back.” Changing the wording of Delaware Code: 1445 Title 11 to “a. A weapon which by compressed air or by spring discharges or projects a pellet, slug or bullet, except a BB or air gun which does not discharge or project a ~~pellet or pellet, BB shot, or slug larger than a BB shot;~~ .25 caliber;” would correct the conflict between existing Delaware Statute and Delaware Hunting and Trapping Guide.



# SENATE BILL 100

## WHAT DOES THIS BILL DO?

- ▶ This Act corrects the contradiction between existing Delaware Statute and Delaware Hunting and Trapping Guide.



AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO PROBATION  
BEFORE JUDGMENT

Probation before judgment is a disposition available to a court exercising criminal jurisdiction over a defendant. After accepting a guilty plea, with the consent of the defendant and the State, the Court may place the defendant on “probation before judgment”. By doing so, the judgment and any further proceedings are stayed. If the defendant meets the terms and conditions set forth during their period of probation, the judgment is dismissed. The Delaware Code sets forth the types of charges for which this is available, which is always subject to the discretion of the judge. Additionally, the code sets forth requirements that must be met for a person to be eligible to participate in probation before judgment.

As currently written, however, the code does not make clear whether a probation before judgment disposition may be applied to multiple charges arising from a single arrest or whether the 5 year look-back period for eligibility applies to all charges or only charges from a specific Delaware Code title. This amendment makes it clear that, if eligible, a defendant may be placed on probation before judgment for any charge arising from a single arrest. This has been a longstanding practice of the court and is consistent with public policy. Probation before judgment is a disposition that is utilized so that an individual is not hampered by a criminal conviction for making a bad decision; in short, it allows for a reset if an individual does not have a significant criminal history. For various reasons, individuals are often charged with more than one statutory violation as a result of a criminal offense. If this option were not available to individuals who garnered more than one charge during an arrest, it would thwart the policy behind the law.

Additionally, this amendment makes it clear that a defendant may be permitted to PBJ more than once in a five year period so long as the offenses are in different titles of the code. For example, a defendant who was granted PBJ in 2017 for speeding (title 21) would be eligible today for PBJ on a title 11 charge (bad check) or a title 4 charge (underage consumption). This application is consistent with public policy as different code titles are groupings of different categories of offense. Therefore, an earlier bad check charge would not prohibit PBJ under a new speeding charge because the offense types of so dissimilar.

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO PROBATION  
BEFORE JUDGMENT

What is probation before judgment?

Probation before judgment is a disposition available to a court exercising criminal jurisdiction over a defendant. After accepting a guilty plea, with the consent of the defendant and the State, the Court may place the defendant on “probation before judgment”. By doing so, the judgment and any further proceedings are stayed. If the defendant meets the terms and conditions set forth during their period of probation, the judgment is dismissed. The Delaware Code sets forth the types of charges for which this is available, which is always subject to the discretion of the judge. Additionally, the code sets forth requirements that must be met for a person to be eligible to participate in probation before judgment.

Why are changes needed?

As written, it is unclear whether probation before judgment may be applied to multiple charges arising from a single arrest. Additionally, it is unclear whether PBJ is available to a defendant who has received PBJ for any offense involving the same Code title within the previous 5 years.

What does this bill do?

This amendment makes clear that, if eligible, a defendant may be placed on probation before judgment for any charge arising from a single arrest. This amendment comports with the public policy underlying the ideology of probation before judgment and makes clear statutorily what has long been the practice of the court. Additionally, the amendment clarifies that the 5 year look-back provision applies to charges arising from the same title of the Delaware Code. For instance, a defendant who was granted PBJ in 2017 for speeding (title 21) would be eligible today for PBJ on a title 11 charge (bad check) or a title 4 charge (underage consumption).

# SENATE BILL 104

AN ACT TO AMEND TITLE 11 OF THE  
DELAWARE CODE RELATING TO  
PROBATION BEFORE JUDGMENT

## WHAT IS PROBATION BEFORE JUDGMENT (PBJ)?

- A disposition available to a court exercising criminal jurisdiction over a defendant.

Guilty plea entered

Judgment and proceedings  
are stayed

If terms and conditions are  
met during probation period,  
judgment is dismissed.

## PROBATION BEFORE JUDGMENT

Only available for certain types of charges.

Always given at the discretion of the judge.

Certain requirements must be met in order to be eligible, for example, certain previous offenses make a defendant ineligible.

## WHY ARE CHANGES NEEDED? WHAT DOES THIS BILL DO?

- As written, it is unclear whether probation before judgment may be applied to multiple charges arising from a single arrest or whether the 5 year look-back period for eligibility applies to all charges or only charges from the same Delaware Code title.
- This amendment does two things:
  - Makes clear that, if eligible, a defendant may be placed on probation before judgment for any charge arising from a single arrest. This amendment comports with the public policy underlying the ideology of probation before judgment and makes clear statutorily what has long been the practice of the court.
  - Makes clear that a defendant is eligible for PBJ more than once in a 5 year period as long as the new charge is from a different Delaware Code title than the previous charge. Because different titles categorize different types of offenses (traffic vs. criminal offenses), public policy is supported by offering a PBJ option for each.

## Senate Bill 107

### AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CIVIL PROCEDURES TO RELINQUISH FIREARMS OR AMMUNITION

During the last general session, 2 new laws were introduced with the purpose of providing a mechanism for a court to order the relinquishment of firearms by a person who demonstrates that they are a danger to themselves or others. One law was aimed at those individuals who were reported to law enforcement by a mental health provider. The other was designed to allow law enforcement to request an order upon report from a member of the public or the officer themselves. These civil proceedings may both begin in the Justice of the Peace Court with a request from a law enforcement officer for an order of relinquishment.

At the time that the laws were enacted, one law prescribed the standard of proof as probable cause and the other as a preponderance of the evidence. A probable cause standard is that which is traditionally used in criminal matters, such as warrant applications. As these are civil proceedings, a preponderance of the evidence standard is appropriate.

The change reflected in this bill will cause these two, highly similar, laws to mirror each other in terms of the standard of proof required. This provides a more reasonable and consistent standard for both the court and law enforcement.

## Senate Bill No. 107

### AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CIVIL PROCEDURES TO RELINQUISH FIREARMS OR AMMUNITION

#### What is the current standard of proof necessary to issue a civil gun relinquishment order in the Justice of the Peace Court?

The current standard of proof for a civil gun relinquishment order is probable cause that an individual is dangerous to others or themselves. Probable cause is a level of proof found in the Fourth Amendment of the Constitution (both Federal and Delaware) that must usually be met before law enforcement makes and arrest, conducts a search or is issued a warrant. Probable cause refers to a reasonable basis for believing that a crime may have been committed or that evidence exists in a place to be searched.

#### Why are changes needed?

Given the civil nature of a gun relinquishment proceeding, a probable cause standard that is typically used in criminal proceedings is not appropriate. A preponderance of the evidence standard is typically used in a civil proceeding. Additionally, the standard used for a Lethal Violence Protective Order, which is highly similar to a civil gun relinquishment order, is a preponderance of the evidence. Aligning the standard of proof in these matters is reasonable and fitting.

#### What does this bill do?

This bill changes the standard of proof for a civil gun relinquishment order from probable cause to a preponderance of evidence.

# SENATE BILL 107

AN ACT TO AMEND TITLE 11 OF THE  
DELAWARE CODE RELATING TO CIVIL  
PROCEDURES TO RELINQUISH FIREARMS  
OR AMMUNITION

## OVERVIEW OF CIVIL GUN RELINQUISHMENT LAWS

	<b>Lethal Violence Protective Order</b>	<b>Beau Biden Gun Violence Protection Act</b>
Standard of Proof	Preponderance of the Evidence	Probable Cause
Finding	Person poses a danger of causing physical injury to self or others by owning, controlling, purchasing, possessing, having access to or receiving a firearm.	An individual, who is the subject of a report from a mental health provider, is dangerous to others or self and in possession of firearms or ammunition.
Who Can Apply?	LEO in JP Court seeking emergency order Non LEO in Superior Court	Only LEO

## WHY DO WE NEED TO CHANGE THE STANDARD OF PROOF IN THE BEAU BIDEN GUN VIOLENCE PROTECTION ACT?

Given the civil nature of a gun relinquishment proceeding, a probable cause standard that is typically used in criminal proceedings is not appropriate.

A preponderance of the evidence standard is typically used in a civil proceeding.

Additionally, the standard used for a Lethal Violence Protective Order, which is highly similar to a civil gun relinquishment order, is a preponderance of the evidence.

Aligning the standard of proof in these matters is reasonable and fitting.

## **SENATE BILL 130 – RECORDING CUSTODIAL INTERROGATIONS NARRATIVE**

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO ELECTRONIC RECORDATION OF CUSTODIAL INTERROGATIONS.

According to the Innocence Project, many of the nation's 360 wrongfully convicted cases overturned by DNA testing have been largely due to a false confession. Many individuals are being wrongfully convicted on the basis of false confessions. Confessions made during custodial interrogations establish powerful evidence of guilt. It can be difficult to comprehend one's confession to a crime he or she did not commit. Wrongful convictions, in turn, can lead to innocent persons facing punishment, perhaps for decades, while the actual perpetrators are rendered freedom to continue roaming the streets and committing crimes.

Recording interrogations prevents false confessions from leading to wrongful convictions. Currently, half of the states in the United States, including the District of Columbia, require recording of certain custodial interrogations, whether through legislation or court rule. Additionally, federal law enforcement agencies, including the FBI, DEA and ATF, are required to record all custodial interrogations of individuals suspected of any federal crime. The following states require recording of custodial interrogations: Alaska, Colorado, Connecticut, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Texas, Utah, Vermont, and Wisconsin.

## MEMORANDUM

TO: Senator Darius J. Brown  
FROM: Caitlin Del Collo, Policy Analyst, 302-744-4056  
RE: Draft Bill Concerning Recording Custodial Interrogations  
DATE: January 24, 2019

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### Background

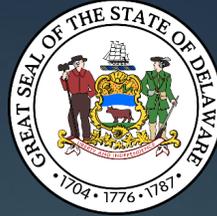
Confessions made during custodial interrogations constitute powerful evidence of guilt. Given the significant role that such evidence plays in convicting individuals of wrongdoing, it is appropriate to ensure that confessions and statements are made freely and honestly. According to the Innocence Project, many of the more than 350 wrongful convictions that have been overturned by DNA evidence in the United States involved some kind of false confession on the part of the suspect. While it is difficult to understand why a person would confess to a crime he or she did not commit, researchers have found that the following factors contribute to false confessions:

- real or *perceived* intimidation of the suspect by law enforcement officers;
- use of force by law enforcement during the interrogation, or the *perceived threat* of force;
- compromised reasoning ability on the part of the suspect, which could be due to exhaustion, stress, hunger, substance use, mental limitations, or limited education;
- the use of certain interrogation techniques, such as making untrue statements about the presence of incriminating evidence; and
- fear on the part of the suspect that a failure to confess will result in a harsher punishment.

The danger of false confessions is that they can lead to wrongful convictions. Wrongful convictions, in turn, can lead to innocent people being punished, perhaps for decades, while the actual perpetrators are free to continue committing crimes. All stakeholders, but especially law enforcement, should want to prevent false confessions from occurring, so as to ensure that the actual perpetrators are brought to justice. An important tool in preventing false confessions is to record custodial interrogations in their entirety.

Electronic recordings of custodial interrogations helps innocent suspects by: creating an objective record of the entire interrogation, including the interaction leading up to a confession; ensuring that the suspect's rights are protected throughout the interrogation process; and by deterring the use of improper or coercive techniques that might be used in the absence of a recording device. At the same time, electronic recordings of interrogations help law enforcement by:

- preventing disputes about how an officer conducted him or herself or treated a suspect;
- creating a record of statements made by the suspect, which makes it difficult for a defendant to change an account of events previously given to law enforcement;
- allowing officers to focus on the interview of the suspect, rather than being distracted by taking notes;
- capturing subtle details that would be lost absent a recording, which help officers better investigate the crime; and
- increasing public confidence in law enforcement.



# SENATE BILL 130

SENATOR DARIUS J. BROWN

## Senate Judicial Committee

Sen. Darius Brown, Chair  
Sen. Bryan Townsend, Vice-chair  
Sen. Bruce Ennis  
Sen. Anthony Delcollo  
Sen. Dave Lawson

## Senate Bill 130

# Background

- ▶ Confessions made during custodial interrogations constitute powerful evidence of guilt.
- ▶ According to the Innocence Project, many of the more than 360 wrongful convictions that have been overturned by DNA evidence in the United States involved some kind of false confession on the part of the suspect.
- ▶ Researchers have found that the following factors contribute to false confessions:
  - ▶ real or *perceived* intimidation of the suspect by law enforcement officers;
  - ▶ use of force by law enforcement during the interrogation, or the *perceived threat* of force;
  - ▶ compromised reasoning ability on the part of the suspect, which could be due to exhaustion, stress, hunger, substance use, mental limitations, or limited education;
  - ▶ the use of certain interrogation techniques, such as making untrue statements about the presence of incriminating evidence; and
  - ▶ fear on the part of the suspect that a failure to confess will result in a harsher punishment.



## Senate Bill 130

# Background Cont'd...

- ▶ The danger of false confessions is that they can lead to wrongful convictions.
- ▶ Electronic recordings of custodial interrogations helps innocent suspects by:
  - ▶ creating an objective record of the entire interrogation, including the interaction leading up to a confession;
  - ▶ ensuring that the suspect's rights are protected throughout the interrogation process;
  - ▶ and by deterring the use of improper or coercive techniques that might be used in the absence of a recording device.
- ▶ Electronic recordings of interrogations help law enforcement by:
  - ▶ preventing disputes about how an officer conducted him or herself or treated a suspect;
  - ▶ creating a record of statements made by the suspect, which makes it difficult for a defendant to change an account of events previously given to law enforcement;
  - ▶ allowing officers to focus on the interview of the suspect, rather than being distracted by taking notes;
  - ▶ capturing subtle details that would be lost absent a recording, which help officers better investigate the crime; and
  - ▶ increasing public confidence in law enforcement.

*Senate Judicial Committee*



Senate Bill 130

# States requiring recording of custodial interrogations

- ▶ Currently, half the states including the District of Columbia require recording of certain custodial interrogations either through legislation or court rule. Also, federal law enforcement agencies, including the FBI, DEA and ATF, are required to record all custodial interrogations of individuals suspected of any federal crime.
- ▶ States that require recording of custodial interrogations are: **Alaska, Colorado, Connecticut, Illinois, Indiana, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Texas, Utah, Vermont, and Wisconsin.**



Senate Bill 130

# Action in Delaware

- ▶ In 2018, the Delaware Police Chiefs' Council and the Delaware Attorney General's Office released a model policy directing Delaware law enforcement agencies to electronically record all custodial interrogations in their entirety.
- ▶ Senate Bill 130 codifies the current model policy. The policy recommends that video recordings be made for interrogations relating to all alleged criminal offenses, including misdemeanors and felonies, when the necessary equipment is available. In situations in which video recording equipment is unavailable, the policy recommends that audio recording be utilized.



**SENATE BILL 134 (Poore): AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATED TO COURTS AND JUDICIAL PROCEDURE.**

Narrative

SB 134 addresses two outdated legal provisions related to the goods and chattel sales in county sheriff's offices. The laws in question are over 150 years old. SB 134 makes updates to the code to reflect the modern world.

The first requires the county sheriff's offices to appraise goods that are being levied upon to pay debts. While the office does make an inventory, it is not equipped to appraise the various types of goods available for sale. Constables are not equipped to appraise all goods that exist in today's society. Essentially, today, they have to go online and estimate how much a good is worth. This provision is outdated and needs to be updated. SB 134 removes the appraisal requirement in the law.

The second provision relates to the question of liability to the sheriff. Currently, the sheriff in each county levies upon goods and chattels and leaves them in place. The judgment debtor must then make them available for the sale or risk a criminal misdemeanor charge. The question of a sheriff's liability has recently been raised, as a 1905 Treatise seems to obligate the Sheriff to safeguard the goods. Furthermore, the treatise holds a sheriff liable if they are not. For the Sheriff to safeguard the goods would require impounding all levied upon goods, greatly increasing the cost to conduct a goods and chattel sale. SB 134 clarifies that the burden on the judgment debtor, not the sheriff.

**SENATE BILL 134 (Poore)**  
AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATED TO  
COURTS AND JUDICIAL  
PROCEDURE.

**Why SB 134 is Needed:**

- Under current law, the county sheriff's offices are required to appraise goods that are being levied upon to pay debts.
- The sheriff's offices can also be held liable to pay the debts of a judgment debtor if they inadvertently neglect to make a return on a writ of execution.
- The appraisal provisions in Title 10 related to the county sheriff's offices are more than 150 years old and no longer reflect current realities.
- These provisions are outdated and impractical to implement, requiring legislative change.

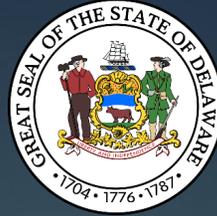
**Changes in the Bill:**

*Repeals appraisal provisions related to county sheriff's offices:*

- 10 Del.C. 5042 requires a sheriff, upon levying upon goods and chattels to make a return inventory and an appraisal of the same.
- While the sheriff's office does make an inventory, the office is not equipped to essentially go online and determine the value of the goods and chattels levied upon.
- This is an old law that should be updated for the modern world.

*Liability of the Sheriff:*

- Currently, the Sheriff in each county levies upon goods and chattels and leaves them in place. It is up to the judgment debtor to make them available for the sale or risk a criminal misdemeanor charge.
- It has been recently alleged that the Sheriff is personally liable if the goods and chattels that he has levied are not available for the sale. For the Sheriff to do so would require impounding all levied upon goods, greatly increasing the cost to conduct a goods and chattel sale.
- While there is no statute that contains specific language requiring a sheriff to make the goods available or risk personal liability, there is an old treatise in DE that was written in 1905, which seems to obligate the Sheriff to safeguard the goods.
- SB 134 clarifies that the burden on the judgment debtor, not the Sheriff.



# SENATE BILL #134

SENATOR NICOLE POORE

## Senate Judicial Committee

Sen. Darius Brown, Chair  
Sen. Bryan Townsend, Vice-chair  
Sen. Bruce Ennis  
Sen. Anthony Delcollo  
Sen. Dave Lawson

SB 134

## Why Legislation is Needed

- ▶ SB 134 addresses provisions related to the goods and chattel sales in county sheriff's offices.
- ▶ Two provisions are outdated and impractical to implement:
  - ▶ Requiring the county sheriff's offices to appraise goods that are being levied upon to pay debts.
  - ▶ Requiring the sheriff's office to pay the debt of a judgement debtor for an inadvertent mistake in handling the procedure to levy and sell.



SB 134

# Appraisal Provision

- ▶ Current law requires a sheriff, upon levying upon goods and chattels to make a return inventory and an appraisement of the same.
  - ▶ Law is over 150 years old.
- ▶ While the office does make an inventory, it is not equipped to appraise the various types of goods available for sale.
  - ▶ Constables are not equipped to appraise all goods.
  - ▶ Provision needs to be updated for the modern world.



SB 134

## Liability to the Sheriff

Currently, the Sheriff in each county levies upon goods and chattels and leaves them in place. The judgment debtor must them available for the sale or risk a criminal misdemeanor charge.

The question of liability to the Sheriff has recently been raised.

- ▶ A 1905 Treatise seems to obligate the Sheriff to safeguard the goods and is liable if they are not.
- ▶ For the Sheriff to do so would require impounding all levied upon goods, greatly increasing the cost to conduct a goods and chattel sale.

SB 134 clarifies that the burden on the judgment debtor, not the Sheriff.

## **SENATE BILL 137**

### **AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE UNLAWFUL POSSESSION, DISTRIBUTION, DELIVERY, OR SALE OF DRUG MASKING PRODUCTS**

This Act creates the crimes of unlawful possession of a drug masking product, punishable as a class A misdemeanor, and unlawful distribution, delivery, or sale of a drug masking product, punishable as a class E felony. Drug masking products are designed to be added to human urine or human hair to defraud alcohol or drug urine screening tests.

Currently 18 states currently ban the sale and use of products which are designed to be added to bodily fluids to defraud a drug screening test. This includes synthetic urine, which is meant to mimic the properties of human urine. Cutting down on the number of ways to defraud a drug test has benefit including reduced costs for drug testing, public safety so that testing of those in safety critical positions (truck drivers, heavy machinery operators, and others) is effective, and help in combating the opioid epidemic by identifying people who need drug treatment.

Note, an amendment will be added to drop to the possession of such substances to a Class B misdemeanor in order to not severely punish, yet hopefully deter, those with drug problems from attempting to defraud a drug test.

## **SENATE BILL 137**

### **AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE UNLAWFUL POSSESSION, DISTRIBUTION, DELIVERY, OR SALE OF DRUG MASKING PRODUCTS**

#### What are drug masking products?

Drug masking products are either things that are added to bodily fluids or synthetic urine which are meant to defraud a drug test. Synthetic urine is the main culprit and attempts to mimic the properties of human urine. They are generally available in head shops, online, and at some other retailers.

#### Why are these products an issue?

Many employers require drug testing as a condition of employment. This is particularly important for employers of safety critical positions. This could include truck drivers, heavy machinery operators, airline pilots, and other similar positions.

Drug testing is also an important tool in the opioid drug epidemic. But in order for it to be effective those drug tests must be reliable.

Lastly, courts frequently require drug tests as a part of a judicial proceeding including Family Court, and as condition of probation. Those tests must also be reliable.

#### What does this bill do?

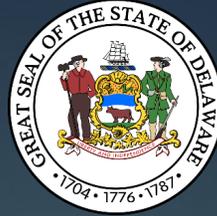
This act makes the possession of drug masking substances a Class A misdemeanor (an amendment would lower that to a Class B misdemeanor) and possession with intent to distribute a Class E felony. These penalties are in-line with current Delaware drug laws. The amendment is due to concerns by some legislators that the current bill treated those with drug problems too harshly. However, it is important to have the crime and some penalty to be an effective deterrent.

#### Isn't this more of the lab company's problem?

Yes, labs are constantly updating tests to keep up with the bad actors who manufacture these products. However, that can raise testing costs. Additionally, what generally happens is that the specimen is flagged for further testing. This causes additional costs to the health care system and additional time. It is important, from a public policy standpoint, that drug tests can be accurate, reliable, and consistent.

#### What are other states doing about this problem?

According to NCSL in 2018 18 states had laws like this (or sufficiently similar) on the books. Several other states considered the bill last year, and an additional several have legislation currently pending.



# SENATE BILL #137

BANNING DRUG MASKING SUBSTANCES  
PRIME SPONSORED BY SEN. ENNIS & REP. MITCHELL

## Senate Judicial Committee

Sen. Darius Brown, Chair  
Sen. Bryan Townsend, Vice-chair  
Sen. Bruce Ennis  
Sen. Anthony Delcollo  
Sen. Dave Lawson

## SB 137

### Expanded Synopsis

- ▶ This Act creates the crimes of unlawful possession of a drug masking product, punishable as a class A misdemeanor (amendment will change this to a class B misdemeanor), and unlawful distribution, delivery, or sale of a drug masking product, punishable as a class E felony. Drug masking products are designed to be added to human urine or human hair to defraud alcohol or drug urine screening tests. These penalties are in line with other drug crimes in the Delaware Code.
- ▶ Cutting down on the number of ways to defraud a drug test has benefit including reduced costs for drug testing, public safety so that testing of those in safety critical positions (truck drivers, heavy machinery operators, and others) is effective, and help in combating the opioid epidemic by identifying people who need drug treatment.



## SB 137

### States with similar legislation:

- ▶ Arkansas
- ▶ California (Pending)
- ▶ Indiana
- ▶ Illinois
- ▶ Louisiana
- ▶ Mississippi (Pending)
- ▶ Nebraska
- ▶ New Hampshire
- ▶ New Jersey
- ▶ North Carolina
- ▶ North Dakota
- ▶ Ohio (Pending)
- ▶ Oklahoma
- ▶ Oregon
- ▶ Pennsylvania
- ▶ Texas
- ▶ South Carolina
- ▶ Virginia
- ▶ Wyoming



# SB 137

## FAQs

### What are drug masking products?

- ▶ Drug masking products are either things that are added to bodily fluids or synthetic urine which are meant to defraud a drug test. Synthetic urine is the main culprit and attempts to mimic the properties of human urine. They are generally available in head shops, online, and at some other retailers.

### Why are these products an issue?

- ▶ Many employers require drug testing as a condition of employment. This is particularly important for employers of safety critical positions. This could include truck drivers, heavy machinery operators, airline pilots, and other similar positions.
- ▶ Courts frequently require drug tests as a part of a judicial proceeding including Family Court, and as condition of probation. Those tests must also be reliable.

### Isn't this more of the lab company's problem?

- ▶ Labs are constantly updating tests to keep up with the bad actors who manufacture these products. That can raise testing costs.
- ▶ Generally when a drug masking substance is used, the specimen is flagged for further testing. This causes additional costs to the health care system and additional time. It is important, from a public policy standpoint, that drug tests can be accurate, reliable, and consistent.

### How will this impact the state's response to the opioid epidemic and addiction in general?

- ▶ It is not the intention of the bill to severely punish those suffering from addiction, that's why the amendment is necessary, however, it is important to deter this behavior.
- ▶ Drug testing can be an important tool in combating drug abuse by identifying people and monitoring their addiction status. However, this can only be true if drug testing can be accurate, reliable, consistent.



## **SENATE BILL 155**

AN ACT TO AMEND THE DELAWARE CODE RELATING TO THE DELAWARE CRIMINAL CODE. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

### What is the definition of a firearm?

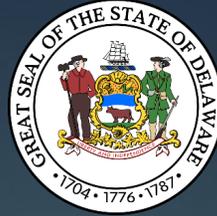
“Firearm” was defined in the Criminal Code for the first time in 1983 by Senate Bill No. 13, as amended, 132nd General Assembly, 64 Del. Laws, c. 17 (“Senate Bill No. 13”). Senate Bill No. 13 defined “firearm” to include “any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether operable or inoperable. It does not include a BB gun.” This definition is substantially the same as the definition for “firearm” in the Delaware Criminal Code today. During the Senate floor debate on Senate Bill No. 13, Senator Berndt noted the expansive nature of the definition due to the inclusion of “by . . . mechanical means,” which he noted meant that the definition would include cross bows and slingshots.

### Why are changes needed?

Because of Senate Bill No. 13’s placement of “firearm” in the general definition section for the Delaware Criminal Code, the definition applied throughout the Delaware Code. When the Delaware Criminal Code was adopted in 1972 there were 9 mentions of “firearm” in the Delaware Criminal Code. Today, there are 194 mentions of “firearm” in the Delaware Criminal Code (Part I of Title 11). As the number of mentions of “firearm” has increased, it has done so with the definition of “firearm” as a backdrop, meaning that these new mentions have intentionally or unintentionally adopted the definition of “firearm.” Research reveals no other state with a similar definition of “firearm” in its laws. While at least 2 states had previously had a similar definition, those definitions were removed by their legislatures in 2015. In 1 of those states, Michigan, legislative history indicates the definition was changed as part of the state’s efforts to align its definitions of firearms with the definition found in federal law governing the National Instant Criminal Background Check System (NICS), the system through which criminal history checks are performed. For purposes of NICS, firearm is defined to mean as follows: “(A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.” See 18 U.S.C. 921(a)(3).

### What does this bill do?

This Act narrows the meaning of “firearm” for purposes of the Delaware Criminal Code by aligning the definition of “firearm” with the definition in federal criminal background check law.



# SENATE BILL 155

WHAT DOES "FIREARM" MEAN FOR PURPOSES OF THE DELAWARE  
CRIMINAL CODE AND WHAT ARE THE CONSEQUENCES OF THIS MEANING  
FOR THE DELAWARE CRIMINAL CODE?

## Senate Judicial Committee

Sen. Darius Brown, Chair  
Sen. Bryan Townsend, Vice-chair  
Sen. Bruce Ennis  
Sen. Anthony Delcollo  
Sen. Dave Lawson

SPONSOR: Sen. Ennis & Sen. Pettyjohn & Rep. Spiegelman & Rep. Carson Reps. Briggs King, D. Short, Yearick

▶ **History of Delaware's "Firearm" Definition**

- ▶ The Definition of a firearm that we use today is from Senate Bill No. 13, as amended, 132nd General Assembly ("Senate Bill No. 13"). It states "firearm" to include "any weapon from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means, whether operable or inoperable. It does not include a BB.
- ▶ When Senate Bill No. 13 received its third reading in the Senate, Senator Berndt pointed out that the inclusion of "by . . . mechanical means" means that the definition would include cross bows and slingshots. This conclusion is supported by the ordinary meaning of "mechanical," "caused by, resulting from, or relating to a process that involves a purely physical rather than chemical change.



# Potential Unintended Consequences

- ▶ Senate Bill No. 13's "firearm" definition is broad and goes well beyond just a gun, § 1447A of Title 11 applies to crimes committed with things like a cross bow or a slingshot, as Senator Berndt pointed out.
- ▶ Delaware law would require a criminal history check for a weapon "from which a shot, projectile or other object may be discharged by force of combustion, explosive, gas and/or mechanical means" while NICS would only be used by those who import, manufacture, or deal in weapons "which will or is designed to or may readily be converted to expel a projectile by the action of an explosive."
- ▶ For example: Presently, HB 63 w/SA2 makes nail guns, automatic staplers, and pumpkin chunkin machines illegal for a person prohibited from accessing and must be stored unloaded. So a person prohibited must not have access to any of these items without breaking the law and those items must be stored unloaded.



# Comparison of other States

1. An Idaho statute making it unlawful for a person convicted of a felony to possess a firearm, whose definition of firearm mirrored Delaware's definition until 2015 when it was removed.<sup>15</sup>

2. A Michigan statute related to death or injuries from firearms, whose definition of firearm mirrored Delaware's definition until 2015<sup>16</sup> when it was amended to mirror the NICS definition as part of Michigan's effort to align its definitions of firearm with the federal definition.<sup>17</sup>

3. A Massachusetts law about hunting by minors that references a firearm "whether discharged by air, mechanical action, or otherwise."<sup>18</sup>

4. A California law defining a "less lethal weapon" states that the term does not include "a pistol, rifle, or shotgun that is a firearm having a barrel less than 0.18 inches in diameter and that is designed to expel a projectile by any mechanical means or by compressed air or gas."<sup>19</sup>

**No other state has the same "firearm" definition as Delaware.**



# Conclusion

- ▶ In conclusion, the Delaware Criminal Code definition of “firearm” created by Senate Bill No. 13 is, as noted by Senator Berndt when it was proposed, broad and applies to things that go beyond what is traditionally thought of as a firearm. No equivalent in the law of other states can be located, as the few states that had this language have removed it from their law. As a result,





**House Bill 5 with House Amendment 2 – Concurrent Sentencing**  
**Sponsored by Rep. Longhurst & Sen. Poore**

House Bill 5 is about concurrent and consecutive sentencing for criminal convictions. This bill restores judicial discretion in criminal sentencing, allowing judges to craft sentences that fit the facts and circumstances of each case before them. This change addresses the challenge of the stacking of mandatory minimum sentences on top of one another.

The Delaware Judiciary is among the finest in the country. With a robust nomination and screening process, we have a well-qualified, experienced, and intelligent judiciary able to use discretion responsibly. Judges are selected for their judgement- their ability to evaluate information and make reasoned decisions weighing competing interests. This bill gives our judiciary the opportunity to exercise that judgement in crafting appropriate criminal sentences.

It is important to be clear that the bill still allows for sentences to be given consecutively, but at the discretion of judges who are well-informed about the specifics of the case.

The bill, along with the attached House Amendment 2, does require sentences to be given consecutively for the most serious crimes. Crimes that require consecutive sentences:

- 606 Abuse of a pregnant female in the first degree
- 613 Assault in the first degree
- 635 Murder in the second degree
- 636 Murder in the first degree
- 772 Rape in the second degree
- 773 Rape in the first degree
- 777A Sex offender unlawful sexual contact against a child
- 778 (1), (2) or (3) Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree
- 783A Kidnapping in the first degree
- 1254 Assault in a detention facility
- 1447A Possession of a firearm during the commission of a felony if the firearm was used, displayed, or discharged during the commission of a Title 11 or Title 31 violent felony as set forth in Section 4201(c) of title 11.
- For each victim, where there are multiple victims of 632 Manslaughter

This legislation is consistent with other legislation and reforms in criminal justice seeking to reduce one-size-fits-all sentencing and allow for differentiation among offenders who may have substantially different circumstances and potential paths to rehabilitation.

An example of the effect of this legislation follows on the next page.



**House Bill 5 – Concurrent Sentencing**  
**Sponsored by Rep. Longhurst & Sen. Poore**

- House Bill 5 is about concurrent and consecutive sentencing for criminal convictions.
- Concurrent sentencing means that prison time for multiple sentences for more than one conviction in a case can be served at the same time. Consecutive sentencing means that you must serve the sentence one after another.
- While continuing to require that sentences be served consecutive for the most serious crimes (as indicated below), this bill provides more judicial discretion in some crimes that have been observed to result in disparately long sentences because of multiple charges with minimum mandatory sentences required to be served consecutively.
- **It is important to be clear that the bill still allows for any imposed sentences to be given consecutively, but at the discretion of judges who may consider the specifics of the case.**
- It is important to note that the most serious crimes already come with significant amounts of prison time. Therefore, sentences do not need to be stacked to ensure that someone receives an appropriate and adequate prison sentence. Class B felonies provide for sentences up to 25 years in prison, while Class A felonies come with a sentence of 15 years to life.
- The bill, along with the attached House Amendment 2, continues to require sentences to be imposed served consecutively for the following list of serious crimes:
  - 606 Abuse of a pregnant female in the first degree
  - 613 Assault in the first degree
  - 635 Murder in the second degree
  - 636 Murder in the first degree
  - 772 Rape in the second degree
  - 773 Rape in the first degree
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  - For each victim, where there are multiple victims 632 Manslaughter
- Crimes not on the above list will be able to sentenced concurrently at the judge's discretion.
- This legislation is consistent with other legislation and reforms in criminal justice seeking to reduce one-size-fits-all sentencing and allow for differentiation among offenders who may have substantially different circumstances and potential paths to rehabilitation.



# HOUSE BILL 5

SEN. POORE

## Senate Judicial Committee

Sen. Darius Brown, Chair

Sen. Bryan Townsend, Vice-chair

Sen. Bruce Ennis

Sen. Anthony Delcollo

Sen. Dave Lawson

## Sen. Poore Concurrent Sentencing

- ▶ House Bill 5 is about concurrent and consecutive sentencing for criminal convictions.
  - ▶ **Concurrent sentencing means that prison time for multiple sentences for more than one conviction in a case can be served at the same time. Consecutive sentencing means that you must serve the sentence one after another.**
- ▶ While continuing to require that sentences be served consecutively for the most serious crimes, this bill provides more **judicial discretion** in some crimes that have been observed to result in disparately long sentences because of multiple charges with minimum mandatory sentences required to be served consecutively.
- ▶ **It is important to be clear that the bill still allows for any imposed sentences to be given consecutively, but at the discretion of judges who may consider the specifics of the case.**



## Sen. Poore Concurrent Sentencing

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  - ▶ Class B felonies provide for sentences up to 25 years in prison.
  - ▶ Class A felonies come with a sentence of 15 years to life.
- ▶ Crimes not on the exempted list (see next slide) will be able to be sentenced concurrently at the judge's discretion.
- ▶ This legislation is consistent with other legislation and reforms in criminal justice seeking to reduce one-size-fits-all sentencing and allow for differentiation among offenders who may have substantially different circumstances and potential paths to rehabilitation.



## Sen. Poore Concurrent Sentencing

The bill, along with the attached House Amendment 2, continues to require sentences to be imposed served consecutively for the following list of serious crimes:

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- ▶ For each victim, where there are multiple victims, 632 Manslaughter



## **HOUSE BILL 30 w/ HOUSE AMENDMENT 1**

### **AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO UNMANNED AIRCRAFT SYSTEMS.**

An unmanned aircraft system includes an unmanned aerial vehicle (UAV), commonly known as a drone, a ground-based controller, and a system of communications between the two. Unmanned aircraft systems are capable of introducing contraband into detention facilities without undergoing correctional officer inspections.

Drones are a potential threat to detention facilities by creating the opportunity to deliver contraband undetected. A recent survey of State Correctional Administrators indicated 35% of respondents reported incidents of drones delivering contraband to their facilities in the previous 6 months. These incidents involved delivery of drugs, illegal substances, cell phones, and a hacksaw. There were also numerous additional reports of drone incursions without confirmed contraband drops.

In Delaware, drones were sighted flying over the James T. Vaughn Correctional Center in November 2018. Although these were the first reported sightings of drones over Delaware detention facilities we must prepare for future criminal incursions and prosecutions. Before drones, staff reduced contraband entry at the sally port and by searching inmates in booking and receiving during intake. Contraband was found and stopped before the general population could obtain it. The Department of Correction is adapting to this new threat and Delaware Code must also be updated to address this threat.

## **HOUSE BILL 30 w/ HOUSE AMENDMENT 1**

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO UNMANNED AIRCRAFT SYSTEMS.

### What is an Unmanned Aircraft System?

An unmanned aircraft system includes an unmanned aerial vehicle (UAV), commonly known as a drone, a ground-based controller, and a system of communications between the two.

### Why are changes needed?

Unmanned aircraft systems are capable of introducing contraband into detention facilities without undergoing Correctional Officer inspections. Drones were sighted flying over the James T. Vaughn Correctional Center in November 2018. Although these were the first reported sightings of drones over Delaware detention facilities we must prepare for future criminal incursions and prosecutions. Before drones, staff reduced contraband entry at the sally port and by searching inmates in booking and receiving during intake. Contraband was found and stopped before the general population could obtain it. The Department of Correction is adapting to this new threat and Delaware Code must also be updated to address this threat.

### What does this bill do?

This bill seeks to prohibit the use of unmanned aircraft systems (drones) to introduce contraband into detention facilities. This bill makes it a class F felony to deliver or attempt to deliver contraband by use of a drone. This amendment inserts "detention facility" on line 20 to clarify that this bill applies to the facilities of the Division of Youth Rehabilitative Services.

# SENATE BILL 30 w/ HOUSE AMENDMENT 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE  
RELATING TO UNMANNED AIRCRAFT SYSTEMS

# Unmanned Aircraft Systems

An unmanned aircraft system includes an unmanned aerial vehicle (UAV), commonly known as a drone, a ground-based controller, and a system of communications between the two.



Unmanned aircraft systems are capable of introducing contraband into detention facilities without undergoing Correctional Officer inspections.

Drones are a potential threat to detention facilities by creating the opportunity to deliver contraband undetected.

# Prison Contraband

- Interdiction of prison contraband is a high priority of the Department of Correction to ensure our correctional facilities are safe for both staff and offenders.
- Cargo carried by drones in other jurisdictions.
  - Deadly weapons
  - Illicit substances
  - Cell phones
  - Tobacco



## Drones Incidents

- The use of drones to smuggle contraband into detention facilities is a significant and growing threat nationwide.
- In a recent survey of State Correctional Administrators 35% of respondents reported incidents of drones delivering contraband to their facilities in the previous 6 months. These incidents involved delivery of drugs, illegal substances, cell phones, and a hacksaw. There were also numerous additional reports of drone incursions without confirmed contraband drops.
- In Delaware, drones were sighted flying over the James T. Vaughn Correctional Center in November 2018. Although these were the first reported sightings of drones over Delaware detention facilities we must prepare for future criminal incursions and prosecutions.

## Promoting prison contraband is a class A misdemeanor or class F felony.

- This bill enhances promoting prison contraband to a class F felony when an unmanned aircraft system is used to deliver or attempt to deliver contraband into a detention facility.
- The term on incarceration the court may impose for a class A misdemeanor is up to 1 year.
- The term on incarceration the court may impose for a class F felony is up to 3 years.

## **HOUSE BILL 74 W/ HA 1**

### **AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE DISSEMINATION OF PERSONAL INFORMATION.**

This bill enables the stakeholders behind a program called Take Care Delaware to pilot this trauma-informed approach in Smyrna School District this upcoming school year, with the goal of further rolling the program out as additional school districts complete the required training and form the partnerships necessary with their local law enforcement.

Smyrna School District, Delaware State Police and The Division of Prevention and Behavioral Health Services have been working together over the last year to build the framework for Take Care Delaware.

Take Care Delaware is based on the national “Handle With Care” model, which is active or in development in 29 different jurisdictions.

This legislation is supported by the Department of Services for Children, Youth & Their Families, the Department of Education, Delaware State Police, Smyrna School District, DSEA, the Delaware Association of School Administrators, and the Wilmington Community Advisory Council.

## **HOUSE BILL 74 w/ HA 1**

### **AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE DISSEMINATION OF PERSONAL INFORMATION.**

#### What is the Take Care Delaware Program?

Take Care Delaware is modeled off of the national Handle With Care Program that was started as a pilot program in West Virginia and has been implemented in 29 other jurisdictions and counting. Take Care Delaware is a partnership between law enforcement and school districts aimed at mitigating the impact of trauma on students.

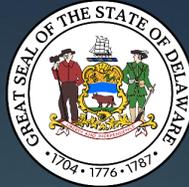
In Delaware, this program will start as a pilot in Smyrna School District. Over the past year, Smyrna School District representatives have been working with Delaware State Police, Smyrna PD, and the Kids Department's Division of Prevention and Behavioral Health to lay the groundwork for this program to begin in the fall of 2019. Training on trauma-informed practices and the implementation of the program has occurred at every school in Smyrna SD, and once the legislation passes, stakeholders will develop and sign an MOU that outlines their respective responsibilities.

#### How does the program work?

When a law enforcement officer responds to a call and there is a child present, the officer can take the child's name (for example, John Smith) and school and communicate it to their dispatch center, which will then send a confidential email to the child's school district Superintendent and Assistant Superintendent. Before school starts the next morning, the Superintendent will then speak with the student's school principal to let them know to "Take Care of John Smith." No other details are given, because no other details are known. The Superintendent and principal will engage the student's teacher to come up with a game plan for how best to support John Smith that day. Based on training that teachers will have already received before implementation of the program, they will know not to intervene, but to instead engage in "mindful observation" and maybe give John Smith an extra break during the day, let him go to the nurse if he seems tired, or excuse homework that is not finished from the night before.

#### Why is legislation needed?

This bill carves out a narrow exception to both the State Bureau of Identification's (SBI) dissemination statute and the Victim's Bill of Rights in Title 11. SBI's dissemination statute protects against the dissemination of criminal history record information to non-law enforcement agencies. The Victim's Bill of Rights protects the privacy of both victims and witnesses of criminal activity. While the child may not necessarily have been a victim of or a witness to a crime, the legislation allows a peace officer or an emergency care provider to alert a school district or charter school about the presence of a child at a traumatic event using just that child's name, with no further details.



# HOUSE BILL 74 w/HA1

TAKE CARE DELAWARE

(DSCYF, SMYRNA SCHOOL DISTRICT, DELAWARE STATE POLICE)

## Senate Judicial Committee

Sen. Darius Brown, Chair

Sen. Bryan Townsend, Vice-chair

Sen. Bruce Ennis

Sen. Anthony Delcollo

Sen. Dave Lawson

# Take Care Delaware

- ▶ Trauma-informed practices in schools can help mitigate the impact of trauma on students
- ▶ Take Care Delaware is a trauma-informed approach modeled off the national Handle With Care model, a partnership between law enforcement and school districts
- ▶ In Delaware, the program will begin as a pilot in Smyrna School District with Delaware State Police and Smyrna PD as participating law enforcement agencies



# How does it work?

- ▶ When an officer responds to a call where a child is present, they can take the child's name and school
- ▶ The law enforcement agency's dispatch will send a confidential email to the district superintendent with child's name, school, and "Take Care Delaware"
  - ▶ No other details are given, because no other details are known
- ▶ Before the next school day, the district superintendent, school principal, and the child's teacher will develop a "game plan" for supporting the child day
  - ▶ "Mindful observation" is key – no interviewing, maintain strict confidentiality
  - ▶ If the child demonstrates atypical behaviors (acting out, falling asleep in class), the teacher can help the child take a break, go to the nurse to rest, excuse homework that is not completed from the night before



# What does the legislation do?

- ▶ HB 74 w/ HA 1 carves out a narrow exception to SBI's dissemination definition and the Victim's Bill of Rights in Title 11
- ▶ The bill allows a peace officer or emergency care provider to alert a school district or charter school that a student was present at a traumatic event, using only the student's name
- ▶ The Take Care Delaware pilot program in Smyrna School District cannot be implemented until this legislation is signed into law



# Supporters of HB 74 w/ HA 1

- ▶ Department of Services for Children, Youth & Their Families,
- ▶ Delaware State Police
- ▶ Smyrna School District
- ▶ Department of Education
- ▶ Delaware State Education Association
- ▶ Delaware Association of School Administrators
- ▶ Wilmington Community Advisory Council



**House Bill 77 – Burglary Bill**  
**Sponsored by Rep. Bolden & Sen. Sokola**

This bill seeks to address **that individual sections of the criminal code are duplicative, sometimes resulting in multiple charges for the same crime.** By passing this bill, we would be allowing a single criminal act to be addressed with fewer or one charge, and will allow a judge to address the action through the sentencing range available on one charge, rather than stacking a number of minimum mandatory charges.

First, the bill consolidates the crime of home invasion with existing burglary statutes. The separate crime of Home Invasion (§826A) has been removed from the code and instead is embedded into the Burglary First Degree statute, now referred to as **Home Invasion Burglary First** on line 34. Because home invasion is the most serious in this class of crimes, the legislation maintains the 6 year minimum mandatory sentence and a maximum sentence of 25 years in prison for Home Invasion Burglary First – meaning a judge will be able to sentence anywhere within that range.

Second, the elements for Burglary First have been updated. Under current law, Burglary First Degree only applies when the burglary occurred at night and the defendant was either armed or caused physical injury to someone in the household. However, in this day and age, with retired seniors, stay-at-home parents, people working from home, children home after school, limiting this charge only to nighttime was an outdated concept. **Under HB 77, burglary of an occupied home at any time of day qualifies for Burglary First.**

The amendment returns the elements of being armed or causing physical injury to burglary first with the penalty of a two- year minimum mandatory sentence. Burglary of an occupied dwelling without those elements includes a one-year minimum mandatory sentence. The amendment also updates the definition of dwelling to clarify that it covers RVs, house boats or tiny houses with wheels based on a recent United States Supreme Court ruling.

Next, in line with other reforms being contemplated by the General Assembly, the bill removes the 1-year minimum mandatory sentence in Burglary Second, while preserving the current sentencing range of up to 8 years at Level V incarceration. This will give judges discretion to consider individual crimes, offenders and circumstances in arriving at the appropriate sentence.

This bill represents a view by the sponsors and the Delaware Attorney General that these changes will result in burglary cases that are simpler to charge and fairer in their conviction and sentencing results.

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# HOUSE BILL 77

REP. BOLDEN & SEN. SOKOLKA

## Senate Judicial Committee

Sen. Darius Brown, Chair  
Sen. Bryan Townsend, Vice-chair  
Sen. Bruce Ennis  
Sen. Anthony Delcollo  
Sen. Dave Lawson

## Sen. Sokola Burglary Bill

- ▶ This bill seeks to address **that individual sections of the criminal code are duplicative, sometimes resulting in multiple charges for the same crime.**
- ▶ By passing this bill, we would be allowing a single criminal act to be addressed with fewer or one charge, and will allow a judge to address the action through the sentencing range available on one charge, rather than stacking a number of minimum mandatory charges.
- ▶ The bill **consolidates the crime of home invasion with existing burglary statutes.**
  - ▶ The separate crime of Home Invasion (§826A) has been removed from the code and instead is embedded into the Burglary First Degree statute, now referred to as **Home Invasion Burglary First** on line 34.
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## Sen. Sokola Burglary Bill

- ▶ The elements for Burglary First have been updated.
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  - ▶ **Under HB 77, burglary of an occupied home at any time of day qualifies for Burglary First.**
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## Sen. Sokola Burglary Bill

- ▶ The amendment also updates the definition of dwelling to clarify that it covers RVs, house boats or tiny houses with wheels based on a recent United States Supreme Court ruling.
- ▶ Next, in line with other reforms being contemplated by the General Assembly, the bill removes the 1-year minimum mandatory sentence in Burglary Second, while preserving the current sentencing range of up to 8 years at Level V incarceration. This will give judges discretion to consider individual crimes, offenders and circumstances in arriving at the appropriate sentence.
- ▶ This bill represents a view by the sponsors and the Delaware Attorney General that these changes will result in burglary cases that are simpler to charge and fairer in their conviction and sentencing results.



**House Bill 78 – Robbery Bill**  
**Sponsored by Rep. Bolden & Sen. Sokola**

This bill seeks to address **that individual sections of the criminal code are duplicative, sometimes resulting in multiple charges for the same crime.** By passing this bill, we would be allowing a single criminal act to be addressed with fewer or one charge, and will allow a judge to address the action through the sentencing range available on one charge, rather than stacking a number of minimum mandatory charges.

HB 78 removes the separate crime of carjacking (§835, 836) and embeds it within the existing robbery statutes to remove duplication from the code. Robbery First Degree would now include the theft of a vehicle where there is physical injury or the use, a display or threat of a deadly weapon or death. Robbery First would continue to be a Class B felony with a 3-year minimum mandatory sentence and a maximum sentence of 25 years in prison.

Next, Robbery Second Degree would continue to be a Class E felony as it is now except it would become a Class D felony if the theft involves a vehicle and the elements of carjacking that pose additional risk to public safety.

The amendment was worked out by the House sponsor and the law enforcement community. It adds back the enhancement for seniors at age 65. In addition, it adds back the mandatory minimum for prior convictions. If a firearm was used or displayed in a robbery, the look back period for prior convictions is 7 years. If there was no firearm involved, the look back period is 2 years.

This bill represents a view by sponsors and the Delaware Attorney General that these changes will result in robbery cases that are simpler to charge and fairer in their conviction and sentencing results.

**House Bill 78 – Robbery Bill**  
**Sponsored by Rep. Bolden & Sen. Sokola**

- This bill seeks to address **that individual sections of the criminal code are duplicative, sometimes resulting in multiple charges for the same crime**. By passing this bill, we would be allowing a single criminal act to be addressed with fewer or one charge, and will allow a judge to address the action through the sentencing range available on one charge, rather than stacking a number of minimum mandatory charges.
- HB 78 removes the separate crime of carjacking (§835, 836) and embeds it within the existing robbery statutes to remove duplication from the code.
- Robbery First Degree would now include the theft of a vehicle where there is physical injury or the use, a display or threat of a deadly weapon or death.
- Robbery First would continue to be a Class B felony with a 3-year minimum mandatory sentence and a maximum sentence of 25 years in prison.
- Next, Robbery Second Degree would continue to be a Class E felony as it is now except it would become a Class D felony if the theft involves a vehicle and the elements of carjacking that pose additional risk to public safety.
- The amendment was worked out by the House sponsor and the law enforcement community. It adds back the enhancement for seniors at age 65. In addition, it adds back the mandatory minimum for prior convictions. If a firearm was used or displayed in a robbery, the look back period for prior convictions is 7 years. If there was no firearm involved, the look back period is 2 years.
- This bill represents a view by sponsors and the Delaware Attorney General that these changes will result in robbery cases that are simpler to charge and fairer in their conviction and sentencing results.



# HOUSE BILL 78

REP. BOLDEN & SEN. SOKOLKA

## Senate Judicial Committee

Sen. Darius Brown, Chair  
Sen. Bryan Townsend, Vice-chair  
Sen. Bruce Ennis  
Sen. Anthony Delcollo  
Sen. Dave Lawson

## Sen. Sokola Robbery Bill

- ▶ This bill seeks to address **that individual sections of the criminal code are duplicative, sometimes resulting in multiple charges for the same crime.**
- ▶ By passing this bill, we would be allowing a single criminal act to be addressed with fewer or one charge, and will allow a judge to address the action through the sentencing range available on one charge, rather than stacking a number of minimum mandatory charges.
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Senate Judicial Committee



## Sen. Sokola Robbery Bill

- ▶ Next, Robbery Second Degree would continue to be a Class E felony as it is now except it would become a Class D felony if the theft involves a vehicle and the elements of carjacking that pose additional risk to public safety.
- ▶ The amendment was worked out by the House sponsor and the law enforcement community.
  - ▶ It adds back the enhancement for seniors at age 65.
  - ▶ In addition, it adds back the mandatory minimum for prior convictions. If a firearm was used or displayed in a robbery, the look back period for prior convictions is 7 years. If there was no firearm involved, the look back period is 2 years.
- ▶ This bill represents a view by sponsors and the Delaware Attorney General that these changes will result in robbery cases that are simpler to charge and fairer in their conviction and sentencing results.



## **HOUSE BILL 102 w/ HA 1:**

### **AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CRIMES**

State Report Cards, Grading Criminal Record Relief Laws for Survivors of Human Trafficking report was released in March 2019. The report reflects on how many survivors of human trafficking exploited in the commercial sex industry or other labor sectors have been arrested for offenses stemming from their victimization. Resulting criminal records – both arrest and court documents – then follow survivors and create barriers that impact their independence, stability and safety. In 2010, New York became the first state to allow trafficking survivors to clear certain charges from their criminal records.

Human trafficking victims with criminal records who want to begin or continue their education at a college, university or a vocational school may not be accepted due to their criminal record. Those who are admitted may struggle with the financial burden of paying for their education because they may be disqualified from financial aid or private loans.

Many victims and survivors may not be able to acquire housing because private landlords have broad discretion to set their own screening of prospective tenants.

Criminal convictions commonly factor into best interest standard for purposes of child custody and visitation despite the circumstances of the crime.

The report speaks about the overburdened criminal legal system, failing to identify victims at the time of their arrest, and policing that disproportionately impacts marginalized communities means that we are still arresting and prosecuting people who should instead be offered safety and resources.

Victims and survivors of human trafficking sometimes have no voice, there are many wonderful, dedicated groups that work hard every day to make sure victims and survivors have a voice. But to be honest, most of our constituents probably will not be here today advocating for this bill, so we, this body will have to. We will have to be their voices advocating today, tomorrow and every day moving forward.

- HB 102 allows a person who is arrest or convicted of any crime, except a violent felony, which was a direct result of being a victim of human trafficking may file an application or for a pardon or expungement or make a motion to vacate judgment.
- HB 102 makes changes to the council by adding another member of the judicial branch and a representative of the DOE.
- HB 102 adds locations where a public awareness sign must be placed.
- These are recommendations from the Human Trafficking Interagency Coordinating Council which was authorized in HB 164 of the 149th General Assembly.

# HOUSE BILL 102 W/ HA 1 (K. WILLIAMS)

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING  
TO CRIMES.





## **SYNOPSIS**

- **Allows a person who is arrested or convicted of any crime, except a violent felony, which was a direct result of being a victim of human trafficking may file an application or for a pardon or expungement or make a motion to vacate judgment.**
- **Makes changes to the Human Trafficking Interagency coordinating by adding another member of the judicial branch and a representative of the Department of Education.**
- **Adds locations where a public awareness sign must be placed.**

# HB 102 COMES FROM THE RECOMMENDATIONS OF THE HUMAN TRAFFICKING INTERAGENCY COORDINATING COUNCIL

Purpose of the 2018 Recommendations:

- To describe generally the current state of agency and system readiness
- To identify and serve victims of human trafficking
- To prevent human trafficking in Delaware
- To describe practical steps for improving readiness overall



## **STATE REPORT CARDS, GRADING CRIMINAL RECORD RELIEF LAWS FOR SURVIVORS OF HUMAN TRAFFICKING REPORT (MARCH 2019)**

- Reflects on how many survivors of human trafficking exploited in the commercial sex industry or other labor sectors have been arrested for offenses stemming from their victimization.
- Resulting criminal records – both arrest and court documents – then follow survivors and create barriers that impact their independence, stability and safety.
- Speaks about the overburdened criminal legal system, failing to identify victims at the time of their arrest, and policing that disproportionately impacts marginalized communities means
- Bottom line: we are still arresting and prosecuting people who should instead be offered safety and resources.

**In 2010, New York became the first state to allow trafficking survivors to clear certain charges from their criminal records.**

# WHY DELAWARE NEEDS HB 102

- Human trafficking victims with criminal records may face difficulty continuing their education and may be disqualified from financial aid or private loans.
- Victims and survivors may not be able to acquire housing because private landlords have broad discretion to set their own screening of prospective tenants.
- Criminal convictions commonly factor into best interest standard for purposes of child custody and visitation



# QUESTIONS?



## **House Substitute 1 for House Bill 123**

### **AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO THE APPOINTMENT OF GUARDIANS AND THE OFFICE OF THE PUBLIC GUARDIAN.**

Rep. Seigfried and Sen. Poore are interested in addressing the problem where people stay in acute care much longer than they need to because they are unable to make the financial, and other arrangements, necessary to move to a more appropriate setting (such as applying for Medicaid). Other states have addressed this issue through their guardianship laws, but those approaches vary widely and need more study.

This Act allows the Public Guardian to act as a representative payee for Social Security benefits or as a VA fiduciary for Department of Veterans Affairs benefits. This Act also allows the Court to appoint a guardian with limited powers, to act as guardian for specific areas of decision-making or for a specific term.

By making these changes, this Act will allow the Public Guardian to serve in a more limited role where appropriate, and assist more Delawareans who need short-term assistance, such as to qualify for Medicaid in order to arrange for long-term care or to handle routine financial matters but not make decisions about the care of the person.

The ability to serve in a more limited role will increase the Public Guardian's capacity to assist people while the Non-Acute Patient Medical Guardianship Task Force (SCR 30) studies options and develops recommendations to improve non-acute patient transitions from acute care settings to more appropriate locations.

This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.

House Substitute No. 1 for House Bill No. 123 clarifies that limited guardianships can be ordered for specific purposes, the process for terminating a limited guardianship, and that the Public Guardian serves as a representative payee or VA Fiduciary of last resort.

## **House Substitute 1 for House Bill 123**

AN ACT TO AMEND TITLE 12 OF THE DELAWARE CODE RELATING TO THE APPOINTMENT OF GUARDIANS AND THE OFFICE OF THE PUBLIC GUARDIAN.

### What is the Office of the Public Guardian?

A guardian is a person or institution appointed by the Court of Chancery to manage the affairs of another, called the ward.

#### Types of Guardianship:

There are two types of guardianship: of the person, and of the property. A guardian of the person is given the authority to make personal decisions for the ward, like where he will live, and under what conditions, etc. A guardian of the property manages the finances of the ward.

The Court may appoint either type of guardian or both person and property, or two separate guardians may be appointed. An institution, such as a bank, may be appointed guardian of the property.

(Information from <https://courts.delaware.gov/publicguardian/>).

### What problem is being addressed?

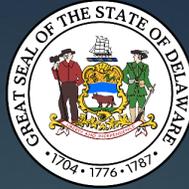
Rep. Seigfried/Sen. Poore are interested in addressing the problem where people stay in acute care facilities much longer than they need to because they are unable to make the financial, and other arrangements, necessary to move to a more appropriate setting (such as applying for Medicaid). Other states have addressed this issue through their guardianship laws, and provide this service in a much more efficient way.

### What does this bill do?

HS 1 for HB 123 specifically allows the Court of Chancery to order limited guardianships, such as for the purpose of arranging a person's transition to an appropriate home for long term care and/or limiting the guardianship to the financial aspects of the person's life, rather than ordering a full guardianship of the person. It also gives the Public Guardian explicit authority to serve as a Social Security Representative Payee or VA Fiduciary, without the need for a court order of guardianship.

These changes will allow the Public Guardian to be appointed to assist more people, for shorter periods of time and in a more limited role, and thus provide some relief to hospitals while the Task Force created by SCR 30 studies more comprehensive solutions.

While not the impetus for the legislation, these changes also create formal intermediate levels of guardianship or assistance, making it easier for the court to allow an individual to retain more autonomy, especially regarding decisions about their person if the person only needs assistance handling finances (and sometimes for a limited period of time).



# HS 1 for HB 123

[REP. SEIGFRIED AND SEN. POORE]

## Senate Judicial Committee

Sen. Darius Brown, Chair  
Sen. Bryan Townsend, Vice-chair  
Sen. Bruce Ennis  
Sen. Anthony Delcollo  
Sen. Dave Lawson

## Rep. Seigfried and Sen. Poore HS 1 for HB 123

- ▶ This Act allows the Public Guardian to act as a representative payee for Social Security benefits or as a VA fiduciary for Department of Veterans Affairs benefits. This Act also allows the Court to appoint a guardian with limited powers, to act as guardian for specific areas of decision-making or for a specific term.
- ▶ By making these changes, this Act will allow the Public Guardian to serve in a more limited role where appropriate, and assist more Delawareans who need short-term assistance, such as to qualify for Medicaid in order to arrange for long-term care or to handle routine financial matters but not make decisions about the care of the person.
- ▶ The ability to serve in a more limited role will increase the Public Guardian's capacity to assist people while the Non-Acute Patient Medical Guardianship Task Force studies options and develops recommendations to improve non-acute patient transitions from acute care settings to more appropriate locations.
- ▶ This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.
- ▶ House Substitute No. 1 for House Bill No. 123 clarifies that limited guardianships can be ordered for specific purposes, the process for terminating a limited guardianship, and that the Public Guardian serves as a representative payee or VA Fiduciary of last resort.



## Rep. Seigfried and Sen. Poore HS 1 for HB 123

- ▶ 5/2/19 Adopted in lieu of the original bill HB 123, and Assigned to Judiciary Committee in House.
- ▶ 5/8/19 Reported Out of Committee (Judiciary) in House with 8 On Its Merits
- ▶ 5/9/19 Passed By House. Votes: 39 YES 2 ABSENT
  
- ▶ Chancery Court, DSBA, DHSS, and CLASI have been involved in bill's creation and are good with current language.



## HB 142

### AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO THE DOMESTIC VIOLENCE COORDINATING COUNCIL.

In 1993, Delaware was the only state in the country that did not offer victims of domestic violence the ability to petition the court for a protection from abuse order. Although advocates had long been assisting victims through domestic violence shelter programs and services, significant gaps existed in Delaware's response to domestic violence.

In March 1993, Delaware sent a team of representatives to the National Council of Juvenile and Family Court Judges Conference in San Francisco, which focused on confronting family violence. During that conference the concept of Delaware's Domestic Violence Coordinating Council was developed. After returning from the conference, the team along with members of the Domestic Violence Task Force developed a report for the Delaware General Assembly, recommending, among other things, the creation of a statewide coordinating council.

In response to those recommendations, four pieces of legislation were passed in 1993 (**Title 13 Section 2101**), including Delaware's Protection From Abuse Statute and the statute establishing the Domestic Violence Coordinating Council. The first meeting of the State of Delaware – Domestic Violence Coordinating Council (DVCC) was held on September 15, 1993. In attendance at that meeting were the DVCC founding members; Honorable Vincent J. Poppiti, Honorable Liane Sorenson, Honorable Charles M. Oberly, Honorable Lawrence M. Sullivan, Honorable Karen Johnson, Thomas P. Gordon, Mary Davis, Dr. Anne Aldridge, Dr. Rhoslyn Bishoff, Cynthia Boehmer and Patti Blevins.

The founding members included representatives from the advocacy community, law enforcement, the state attorney general, the courts, cabinet members, state legislators, the state public defender's office, and the medical community. At our first meeting we reviewed agency purpose, formulated eight subcommittees, discussed By-laws and the members agreed that to be effective, we would need to reach out to agencies involved in the system response and invite them to join us at the table.

## **HB 142**

### **AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO THE DOMESTIC VIOLENCE COORDINATING COUNCIL.**

#### What is the Domestic Violence Coordinating Council?

The Domestic Violence Coordinating Council (DVCC) is a state agency legislatively created to improve Delaware's response to domestic violence and sexual assault. The DVCC brings together all stakeholders including service providers, policy-level officials and community partners to eradicate domestic violence. The DVCC is committed to leading the nation through innovative legislative action, community education and an outstanding coordinated system response to violence in families and the community.

#### Why are changes needed?

The DVCC believes it would be beneficial for the committee to add a licensed healthcare professional who is knowledgeable in the screening and identification of DV cases. They also believe that the term victim does include survivors, and believes the statute should reflect that.

#### What does this bill do?

This Act adds one more member, a licensed health care professional knowledgeable in the screening and identification of domestic violence cases appointed by the Council, to the Fatal Incident Review Team of the Domestic Violence Coordinating Council. The Act also updates language regarding victims of domestic violence to include survivors. This Act also makes technical corrections to conform existing law to the standards of the Delaware Legislative Drafting Manual.



# House Bill 142

AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO THE  
DOMESTIC VIOLENCE COORDINATING COUNCIL.



## The Domestic Violence Coordinating Council

- ▶ The Domestic Violence Coordinating Council (DVCC) is a state agency legislatively created to improve Delaware's response to domestic violence and sexual assault. The DVCC brings together all stakeholders including service providers, policy-level officials and community partners to eradicate domestic violence. The DVCC is committed to leading the nation through innovative legislative action, community education and an outstanding coordinated system response to violence in families and the community.

## The Domestic Violence Coordinating Council - Members

**Hon. Michael Newell**

Chief Judge, Family Court  
Chair

**Hon. Robert M. Coupe**

Secretary, Dept. of Safety & Homeland Security  
Vice Chair

**Hon. Catherine L. Cloutier**

Member, Senate

**Hon. Nicole Poore**

Member, Senate

**Rep. Krista Griffith**

Member, House of Representatives

**Rep. Michael Smith**

Member, House of Representatives

**Hon. Jan R. Jurden**

President Judge, Superior Court

**Hon. Carl C. Danberg**

Judge, Court of Common Pleas

**Hon. Kathy Jennings**

Delaware Attorney General

**Hon. Brendan J. O'Neill**

Chief Defender

**Hon. Robert M. Coupe**

Secretary, Dept. of Safety & Homeland Security

**Hon. Perry Phelps**

Commissioner, Dept. of Correction

**Hon. Josette Manning**

Secretary, Dept. of Children Youth & Family Services

**Dr. Margaret Chou**

Representative, Healthcare Community

**Diane Glenn**

At-Large Member

**Laura Graham, Esq.**

At-Large Member

**Ariana Langford**

At-Large Member

**Jennifer Naccarelli, Ph.D.**

At-Large Member

**Cpl./3 Adrienne Owen**

Representing, Law Enforcement

**Hon. Vincent J. Poppiti**

At-Large Member



## HB 142 Purpose

This Act adds one more member, a licensed health care professional knowledgeable in the screening and identification of domestic violence cases appointed by the Council, to the Fatal Incident Review Team of the Domestic Violence Coordinating Council. The Act also updates language regarding victims of domestic violence to include survivors.

## **House Bill 163 Narrative**

The purpose of HB163 is to eliminate the cost of the background check that is required of applicants who apply for the three standalone EMS companies in Delaware. The three companies are Mid-Sussex Rescue and two American Legion ambulance stations. By removing the cost of the background check, we hope to bolster the ranks of volunteers that work to serve the people of Delaware.

## **House Bill No. 163**

### **AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO EMS COMPANY VOLUNTEERS**

#### **What does this bill do?**

Currently, volunteers that apply to the three standalone EMS companies in Delaware (2 American Legion ambulance companies and Mid-Sussex Rescue) have to cover the cost of a background check done by State Bureau of Identification (SBI) out of pocket. The goal of this bill is to cover the cost of the background check, to ease the burden on those who want to

#### **Why are changes needed?**

This bill was proposed to help alleviate the burden of the cost of a background check on potential volunteers for the three standalone EMS companies in Delaware. The hope is that by removing this potential road block for applicants, Delaware can bolster its rank of volunteers.

# HOUSE BILL 163

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE  
RELATING TO EMS COMPANY VOLUNTEERS

## WHY?

- Purpose of the bill is to alleviate burden of cost of background check on potential volunteers for the three standalone EMS companies in Delaware
- The hope is that by removing the cost of a background check, that Delaware and the three standalone EMS companies can bolster their ranks
- In turn, by removing one potential barrier of the application process, we hope to increase our EMS volunteers

## AMENDMENT

- First amendment (HA1) was stricken, due to it being filed in the wrong Representative's name
- Second amendment (HA2) clarifies that only applicants applying for volunteer membership in a Delaware volunteer EMS company are exempt from paying the cost of a background check done by the State of Delaware Bureau of Identification.

## **HOUSE BILL 197**

### **AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO THE FAMILY COURT ADJUDICATED DRUG COURT PROGRAM.**

HB 197 is the result of a comprehensive review of the Family Court Adjudicated Drug Court Program conducted by the Family Court, the Department of Services for Children, Youth and Their Families, the Department of Justice, and the Office of Defense Services with the assistance of the National Council of Juvenile and Family Court Judges (“Review Team”).

The Review Team found that many youth who would have been eligible for the Family Court Adjudicated Drug Court Program are now benefitting from more recent juvenile justice reforms, including the increased use of diversion programs such as civil citation. In addition, current programming through the Division of Youth Rehabilitative Services, including its use of an assessment tool, allows the system to meet the individualized needs of each youth with a substance use disorder with the lightest touch, minimizing deeper involvement with the criminal justice system.

As a result of these juvenile justice reforms and the high level of individualized treatment and case management services youth are currently receiving inside and outside the juvenile justice system, the Review Team unanimously recommended repealing the Family Court Adjudicated Drug Court program. The recommended repeal is a continuation of the efforts to ensure that programs for justice involved youth are most responsive to the identified, individualized needs of each youth.

Repeal of the Family Court Adjudicated Drug Court Program is also supported by the Government Efficiency and Accountability Review Board as noted in its 2018 Annual Report.

## **HOUSE BILL 197**

### **AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE RELATING TO THE FAMILY COURT ADJUDICATED DRUG COURT PROGRAM.**

#### What is the Family Court Adjudicated Drug Court Program?

The Family Court Adjudicated Drug Court Program was established in 2002. The statutory program requires youth to enter a plea of delinquency in order to participate. The youth would be expected to follow a treatment plan and to attend frequent court hearings. As part of the State's evaluation of problem-solving courts, a comprehensive review of the program was conducted by the Family Court, the Department of Services for Children, Youth and Their Families, the Department of Justice, and the Office of Defense Services with the assistance of the National Council of Juvenile and Family Court Judges (the "Review Team").

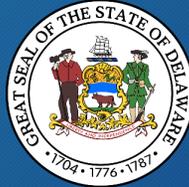
#### Why are changes needed?

As a result of recent juvenile justice reforms and the high level of individualized treatment and case management services youth are currently receiving inside and outside the juvenile justice system, the Review Team unanimously recommended repeal of the Family Court Adjudicated Drug Court Program.

The Review Team found that many of those youth who would be eligible for the Family Court Adjudicated Drug Court Program are now benefitting from the increased use of diversion programs, including the expanded use of civil citation. Youth involved in the civil citation program are able to avoid entering the juvenile justice system while simultaneously having any substance use disorders identified and addressed. Additionally, the Review Team found that the Division of Youth Rehabilitative Services' ("YRS") active case management practices allow YRS to be responsive to each child's treatment needs and to involve the Court as necessary.

#### What does this bill do?

This Act repeals the Family Court Adjudicated Drug Court Program and is a continuation of the efforts to ensure that programs for justice involved youth are most responsive to the identified, individualized needs of each youth.



# HOUSE BILL 197

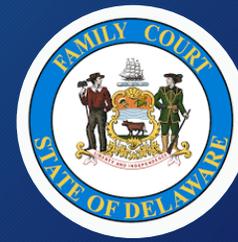
AN ACT TO AMEND TITLE 10 OF THE DELAWARE CODE  
RELATING TO THE FAMILY COURT ADJUDICATED DRUG  
COURT PROGRAM

## The Family Court Adjudicated Drug Court Program

The Family Court Adjudicated Drug Court Program was established in 2002. The statutory program requires youth to enter a plea of delinquency in order to participate. The youth would be expected to follow a treatment plan and to attend frequent court hearings.

A comprehensive review of the program was conducted by a Review Team, which included:

- The Family Court
- The Department of Services for Children, Youth and Their Families
- The Department of Justice
- The Office of Defense Services
- The National Council of Juvenile and Family Court Judges



## The Family Court Adjudicated Drug Court Program

### The Review Team found:

- Many eligible youth are currently benefitting from more recent juvenile justice reforms, including the increased use of diversion programs such as civil citation.
  - \* Through civil citation youth are able to avoid entering the juvenile justice system while simultaneously having any substance use disorders identified and addressed.
- Current DSCYF programming inside and outside the juvenile justice system is responsive to the individualized treatment and case management needs of each youth.

## The Family Court Adjudicated Drug Court Program: Proposed Amendments

The proposed bill would repeal the Family Court Adjudicated Drug Court Program.

- Repeal of the program was unanimously recommended by the Family Court, the Department of Services for Children, Youth and Their Families, the Department of Justice, and the Office of Defense Services.
- The repeal is a continuation of the ongoing efforts to ensure that programs for justice involved youth are most responsive to the identified, individualized needs of each youth.
- Repeal was also supported by the Government Efficiency and Accountability Review Board as noted in its 2018 Annual Report.

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