Office of the Registrar of Regulations,
Legislative Council,
State of Delaware

CHAPTER 224
FORMERLY
HOUSE BILL NO. 245
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE ADOPTION OF PEOPLE FIRST LANGUAGE IN AND THE REMOVAL OF INSENSITIVE AND OFFENSIVE LANGUAGE FROM THE CRIMINAL CODE.

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

Section 1. Amend § 222, Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

When used in this Criminal Code:

(1) "Building," in addition to its ordinary meaning, includes any structure, vehicle or watercraft. Where a building consists of 2 or more units separately secured or occupied, each unit shall be deemed a separate building.

(2) "Controlled substance" or "counterfeit substance" shall have the same meaning as used in Chapter 47 of Title 16.

(3) "Conviction" means a verdict of guilty by the trier of fact, whether judge or jury, or a plea of guilty or a plea of nolo contendere accepted by the court.

(4) "Dangerous instrument" means any instrument, article or substance which, under the circumstances in which it is used, attempted to be used or threatened to be used, is readily capable of causing death or serious physical injury, or any disabling chemical spray, as defined in paragraph (6) of this section or any electronic control devices including but not limited to a neuromuscular incapacitation device designed to incapacitate a person.

(5) "Deadly weapon" includes a "firearm", as defined in paragraph (12) of this section, a bomb, a knife of any sort (other than an ordinary pocketknife carried in a closed position), switchblade knife, billy, blackjack, bludgeon, metal knuckles, slingshot, razor, bicycle chain or ice pick or any "dangerous instrument", as defined in paragraph (4) of this section, which is used, or attempted to be used, to cause death or serious physical injury. For the purpose of this definition, an ordinary pocketknife shall be a folding knife having a blade not more than 3 inches in length.

(6) "Disabling chemical spray" includes mace, tear gas, pepper spray or any other mixture containing quantities thereof, or any other aerosol spray or any liquid, gaseous or solid substance capable of producing temporary physical discomfort, disability or injury through being vaporized or otherwise dispersed in the air, or any cannister, container or device designed or intended to carry, store or disperse such aerosol spray or such gas or solid.

(7) "Defraud" means to acquire a gain or advantage by fraud.

(8) "Drug" means any substance or preparation capable of producing any alteration of the physical, mental or emotional condition of a person.

(9) "Elderly person" means any person who is 62 years of age or older. Thus, the terms "elderly person" and "person who is 62 years of age or older" shall have the same meaning as used in this Code or in any action brought pursuant to this Code.

(10) "Electronic control device" is a device designed to incapacitate a person, including but not limited to a neuromuscular incapacitation device.

(11) "Female" means a person of the female sex.

(12) "Firearm" includes 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, loaded or unloaded. It does not include a BB gun.

(13) "Fraud" means an intentional perversion, misrepresentation or concealment of truth.

(14) "Law" includes statutes and ordinances. Unless the context otherwise clearly requires, "law" also includes settled principles of the common law of Delaware governing areas other than substantive criminal law.

(15) "Law-enforcement officer" includes police officers, the Attorney General and the Attorney General's deputies, sheriffs and their regular deputies agents of the State Division of Alcohol and Tobacco Enforcement, correctional officers, state fire marshals, municipal fire marshals that are graduates of a Delaware Police Academy which is accredited/authorized by the Council on Police Training, sworn members of the City of Wilmington Fire Department who have graduated from a Delaware Police Academy which is authorized/accredited by the Council on Police Training, environmental protection officers, enforcement agents of the Department of Natural Resources and Environmental Control, and constables.

(16) "Lawful" means in accordance with law or, where the context so requires, not prohibited by law.

(17) "Male" means a person of the male sex.

(18) "Mental illness" means any condition of the brain or nervous system recognized as a mental disease by a substantial part of the medical profession.

(19) "Narcotic drug" shall have the same definition as contained in § 4701(27) of Title 16.

(20) "Oath or affirmation," for the purpose of warrants, can be made via videophone, telephone, secure electronic means or in person.

(21) "Person" means a human being who has been born and is alive, and, where appropriate, a public or private corporation, a trust, a firm, a joint stock company, a union, an unincorporated association, a partnership, a government or a governmental instrumentality.

(22) "Physical force" means any application of force upon or toward the body of another person.

(23) "Physical injury" means impairment of physical condition or substantial pain.

(24) "Serious mental disorder" means any condition of the brain or nervous system recognized as defective, as compared with an average or normal condition, by a substantial part of the medical profession.

(25) "Serious physical injury" means physical injury which creates a substantial risk of death, or which causes serious and prolonged disfigurement, prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ, or which causes the unlawful termination of a pregnancy without the consent of the pregnant female.

(26) "Telephone," in addition to its ordinary meaning, includes any computer (as defined in § 931 of this title) or any other electronic device which is actually used to engage in a wire communication (as defined in § 2401(20) of this title) with any other telephone, computer or electronic device.

(27) "Therapeutic abortion" means an abortion performed pursuant to subchapter IX of Chapter 17 of Title 24.

(28) "Unlawful" means contrary to law or, where the context so requires, not permitted by law. It does not mean wrongful or immoral.

(29) "Vehicle" includes any means in or by which someone travels or something is carried or conveyed or a means of conveyance or transport, whether or not propelled by its own power.

Section 2. Amend § 401(a), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(a) In any prosecution for an offense, it is an affirmative defense that, at the time of the conduct charged, as a result of mental illness serious mental disorder, the accused lacked substantial capacity to appreciate the wrongfulness of the accused's conduct. If the defendant prevails in establishing the affirmative defense provided in this subsection, the trier of fact shall return a verdict of "not guilty by reason of insanity.

Section 3. Amend § 401(b), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(b) Where the trier of fact determines that, at the time of the conduct charged, a defendant suffered from a mental illness or serious mental disorder which substantially disturbed such person's thinking, feeling or behavior and/or that such mental illness or serious mental disorder left such person with insufficient willpower to choose whether the person would do the act or refrain from doing it, although physically capable, the trier of fact shall return a verdict of "guilty, but mentally ill.

Section 4. Amend § 402(b), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(b) A psychiatrist or other expert testifying at trial concerning the mental condition of the accused shall be permitted to make a statement as to the nature of the examination, the psychiatrist's or expert's diagnosis of the mental condition of the accused at the time of the commission of the offense charged and the psychiatrist's or expert's opinion as to the extent, if any, to which the capacity of the accused to appreciate the wrongfulness of the accused's conduct or to choose whether the accused would do the act or refrain from doing it or to have a particular state of mind which is an element of the offense charged was impaired as a result of mental illness or serious mental disorder at that time. The psychiatrist or expert shall be permitted to make any explanation reasonably serving to clarify the diagnosis and opinion and may be cross-examined as to any matter bearing on the psychiatrist's or expert's competence or credibility or the validity of the diagnosis or opinion.

Section 5. Amend § 404(a), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(a) Whenever the court is satisfied, after hearing, that an accused person, because of mental illness or serious mental disorder, is unable to understand the nature of the proceedings against the accused, or to give evidence in the accused's own defense or to instruct counsel on the accused's own behalf, the court may order the accused person to be confined and treated in the Delaware Psychiatric Center until the accused person is capable of standing trial. However, upon motion of the defendant, the court may conduct a hearing to determine whether the State can make out a prima facie case against the defendant, and if the State fails to present sufficient evidence to constitute a prima facie case, the court shall dismiss the charge. This dismissal shall have the same effect as a judgment of acquittal.

Section 6. Amend the catchline to § 405, Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

§ 405. Confinement in Delaware Psychiatric Center of persons developing mental illness after conviction but before sentencing; adjustment of sentences.

Section 7. Amend § 405(a), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(a) Whenever the court is satisfied that a prisoner has developed a mental illness after conviction but before sentencing so that the prisoner is unable understandingly to participate in the sentencing proceedings,

and if the court is satisfied that a sentence of imprisonment may be appropriate, the court may order the prisoner to be confined and treated in the Delaware Psychiatric Center until the prisoner is capable of participating in the sentencing proceedings.

Section 8. Amend § 406, Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(a) Whenever in any case it appears to the Superior Court, upon information received from the Department of Health and Social Services, that a prisoner confined with the Department has developed a mental illness after conviction and sentence, the Court may appoint 2 reputable practicing physicians to inquire of the mental condition of the prisoner and make report of their finding to the Court within 2 days from the date of their appointment, by writing under their hands and seals. Should the report of the physicians be that the prisoner has a mental illness, the prisoner shall at once be ordered by the Court transferred from the prison facility where the prisoner is confined to the Delaware Psychiatric Center.

(b) The expenses of the removal of such a person with a mental illness and of admission into such Psychiatric Center and maintenance therein up and until the time the person is discharged by the Court shall be borne by the State. If any such a person with a mental illness has any real or personal estate, the Department of Health and Social Services shall have for the expenses and charges so incurred the same remedy as is provided in § 5127 of Title 16.

Section 9. Amend § 408(a), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(a) Where a defendant's defense is based upon allegations which, if true, would be grounds for a verdict of "guilty, but mentally ill" or the defendant desires to enter a plea to that effect, no finding of "guilty, but mentally ill" shall be rendered until the trier of fact has examined all appropriate reports (including the presentence investigation); has held a hearing on the sole issue of the defendant's mental illness, at which either party may present evidence; and is satisfied that the defendant did in fact have a mental illness at the time of the offense to which the plea is entered. Where the trier of fact, after such hearing, is not satisfied that the defendant had a mental illness at the time of the offense, or determines that the facts do not support a "guilty, but mentally ill" plea, the trier of fact shall strike such plea, or permit such plea to be withdrawn by the defendant. A defendant whose plea is not accepted by the trier of fact shall be entitled to a jury trial, except that if a defendant subsequently waives the right to a jury trial, the judge who presided at the hearing on mental illness shall not preside at the trial.

Section 10. Amend § 422, Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

Evidence of voluntary intoxication shall not be admissible for the purpose of proving the existence of mental illness, mental defect, serious mental disorder or psychiatric disorder within the meaning of § 401 of this title.

Section 11. Amend § 453(2), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(2) It is given by a person who, because of youth, mental illness, mental condition, mental defect, serious mental disorder, psychiatric disorder or intoxication is manifestly unable or known by the defendant to be unable to make a reasonable judgment as to the nature or harmfulness of the conduct charged to constitute the offense; or

Section 12. Amend § 468(3), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(3) The defendant is the guardian or other person similarly responsible for the general care and supervision of a person who is incompetent, and:

a. The force is used for the purpose of safeguarding or promoting the welfare of the person who is incompetent, including the prevention of misconduct, or, when such person who is incompetent is in a hospital or other institution for care and custody, for the maintenance of reasonable discipline in such institution; and

b. The force used is reasonable and moderate; the size, age, condition of the person who is incompetent, location of the force and the strength and duration of the force shall be factors considered in determining whether the force used is reasonable and moderate; and

c. The force is not enumerated under paragraph (1)c.; and

d. The force is not proscribed as abuse or mistreatment under Chapter 11 of Title 16; or

Section 13. Amend § 468(4), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(4) The defendant is a doctor or other therapist or a person assisting at the doctor's or other therapist's direction, and:

a. The force is used for the purpose of administering a recognized form of treatment which the defendant believes to be adapted to promoting the physical or mental health of the patient; and

b. The treatment is administered with the consent of the patient or, if the patient is a minor or a person who is incompetent, with the consent of a parent, guardian or other person legally competent to consent in the patient's behalf, or the treatment is administered in an emergency when the defendant believes that no one competent to consent can be consulted and that a reasonable person, wishing to safeguard the welfare of the patient, would consent; or

Section 14. Amend the title to Subchapter V to Chapter 5 of Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

Subchapter V. Offenses Relating to Children and Vulnerable Adults.

Section 15. Amend §1105(e), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(e) No person shall be sentenced for both an underlying offense and a crime against a vulnerable adult. No person shall be sentenced for a violation of subsection (a) of this section if the underlying offense, as charged against the accused, has an element that the victim was 62 years of age or older or was an "adult who is impaired" as defined in § 3902(2) of Title 31.

Section 16. Amend the catchline to § 3516, Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

§ 3516. Hearsay exception for an adult who is impaired or patient or resident victim's out-of-court statement of abuse.

Section 17. Amend § 3516(a), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(a) An out-of-court statement made by an adult who is impaired, as defined in § 3902 of Title 31, or by a patient or resident of a state facility, as defined in § 1131 of Title 16, at the time of the proceeding concerning an act that is a material element of any of the following offenses:

(1) Abuse, neglect, exploitation or mistreatment of an adult who is impaired or a patient/resident, as set forth in § 3913 of Title 31 and § 1136 of Title 16 respectively; or

(2) Any felony set forth in this title which is defined as a violent felony pursuant to § 4201 of this title; or

(3) Any felony set forth in subparts D, E, H or I of subchapter III of Chapter 5 of this title, that is not otherwise admissible in evidence, is admissible in any judicial proceeding if the requirements of subsections (b) through (f) of this section are met.

Section 18. Amend § 3913(a), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(a) The result of any human immunodeficiency virus testing conducted pursuant to this subchapter shall only be made available by the Division of Public Health to the victim, or the parent or guardian of the victim who is a minor or has an intellectual disability or a mental incapacity, the defendant, the court issuing the order for testing, and any other person or agency pursuant to Chapters 12 and 12A of Title 16.

Section 19. Amend § 4201(c), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(c) The following felonies shall be designated as violent felonies:

Title 11, Section Crime

513 Conspiracy First Degree

602 Aggravated Menacing

604 Reckless Endangering First Degree

605 Abuse of a Pregnant Female in the Second Degree

606 Abuse of a Pregnant Female in the First Degree

612 Assault in the Second Degree

613 Assault in the First Degree

614 Assault on a Sports Official

615 Assault by Abuse

617 Criminal Youth Gangs

629 Vehicular Assault in the First Degree

630 Vehicular Homicide in the Second Degree

630A Vehicular Homicide in the First Degree

631 Criminally Negligent Homicide

632 Manslaughter

633 Murder by Abuse or Neglect in the Second Degree

634 Murder by Abuse or Neglect in the First Degree

635 Murder in the Second Degree

636 Murder in the First Degree

645 Promoting Suicide

768 Unlawful Sexual Contact in the Second Degree

769 Unlawful Sexual Contact in the First Degree

770 Former Unlawful Sexual Penetration in the Third Degree or Rape in the Fourth Degree

771 Former Unlawful Sexual Penetration in the Second Degree or Rape in the Third Degree

772 Former Unlawful Sexual Penetration in the First Degree or Rape in the Second Degree

773 Former Unlawful Sexual Intercourse in the Third Degree or Rape in the First Degree

774 Sexual Extortion

775 Bestiality

776 Continuous Sexual Abuse of Child

777 Dangerous Crime Against a Child

777A Sex Offender Unlawful Sexual Conduct Against a Child

778 Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the First Degree

778A Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the Second Degree

782 Unlawful Imprisonment in the First Degree

783 Kidnapping in the Second Degree

783A Kidnapping in the First Degree

802 Arson in the Second Degree

803 Arson in the First Degree

825 Burglary in the Second Degree

826 Burglary in the First Degree

831 Robbery in the Second Degree

832 Robbery in the First Degree

835 Carjacking in the Second Degree

836 Carjacking in the First Degree

846 Extortion

1108 Sexual Exploitation of a Child

1109 Unlawfully Dealing in Child Pornography

1112A Sexual Solicitation of a Child

1250 Assault in the First Degree Against a Law-Enforcement Animal

1253 Escape After Conviction

1254 Assault in a Detention Facility

1256 Promoting Prison Contraband (Deadly Weapon)

1302 Riot

1304 Hate Crimes

1312 Stalking

1338 Bombs, Incendiary Devices, Molotov Cocktails and Explosive Devices

1339 Adulteration (Causing Injury or Death)

1353 Promoting Prostitution in the First Degree

1442 Carrying a Concealed Deadly Weapon (Firearm Offense)

1444 Possessing a Destructive Weapon

1445 Unlawfully Dealing With a Dangerous Weapon

1447 Possessing a Deadly Weapon During the Commission of a Felony

1447A Possessing a Firearm during the Commission of a Felony

1448(e) Possession of a Deadly Weapon by Persons Prohibited (Firearm or Destructive Weapon Purchased, Owned, Possessed or Controlled by a Violent Felon).

1455 Engaging in a Firearms Transaction on Behalf of Another (Subsequent Offense)

1449 Wearing Body Armor During the Commission of a Felony

1503 Racketeering

3533 Aggravated Act of Intimidation

Title 16, Section Crime

1136 Abuse/Mistreatment/Neglect of a Patient

4751 Former Manufacture/Delivery/Possession With Intent to Deliver a Controlled or Counterfeit Controlled Substance, Manufacture or Delivery Causing Death

4752 Former Manufacture/Delivery/Possession With Intent to Deliver a Controlled or Counterfeit Controlled Substance

4752A Former Unlawful Delivery of a Noncontrolled Substance

4753A Former Trafficking in Marijuana, Cocaine, Illegal Drugs, Methamphetamine, LSD, Designer Drugs or MDMA

4752 Drug Dealing - Aggravated Possession; Class B Felony

4753 Drug Dealing - Aggravated Possession; Class C Felony

4754 Drug Dealing - Aggravated Possession; Class D Felony

4755 Aggravated Possession; Class E Felony

4756 Aggravated Possession; Class F Felony

4761 Former Distribution to Minors

4761(c) Illegal Delivery of Prescription Drugs and (d)

4774 Delivery of Drug Paraphernalia to a Minor

Title 31, Section Crime

3913 Abuse/Neglect/Exploit/Mistreat an Adult who is Impaired

Any attempt to commit any felony designated in this subsection as a violent felony shall also be designated as a violent felony.

Section 20. Amend § 4209(d)(3), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(3)a. Not later than 90 days before trial the defendant may file a motion with the Court alleging that the defendant had a serious intellectual developmental disorder at the time the crime was committed. Upon the filing of the motion, the Court shall order an evaluation of the defendant for the purpose of providing evidence of the following:

1. Whether the defendant has a significantly subaverage level of intellectual functioning;

2. Whether the defendant's adaptive behavior is substantially impaired; and

3. Whether the conditions described in paragraphs (d)(1) and (d)(2) of this section existed before the defendant became 18 years of age.

b. During the hearing authorized by subsections (b) and (c) of this section, the defendant and the State may present relevant and admissible evidence on the issue of the defendant's alleged serious intellectual developmental disorder, or in rebuttal thereof. The defendant shall have the burden of proof to demonstrate by clear and convincing evidence that the defendant had a serious intellectual developmental disorder at the time of the offense. Evidence presented during the hearing shall be considered by the jury in making its recommendation to the Court pursuant to paragraph (c)(3) of this section as to whether the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist. The jury shall not make any recommendation to the Court on the question of whether the defendant had a serious intellectual developmental disorder at the time the crime was committed.

c. If the defendant files a motion pursuant to this paragraph claiming he or she had a serious intellectual developmental disorder at the time the crime was committed, the Court, in determining the sentence to be imposed, shall make specific findings as to the existence of a serious intellectual developmental disorder at the time the crime was committed. If the Court finds that the defendant has established by clear and convincing evidence that the defendant had a serious intellectual developmental disorder at the time the crime was committed, notwithstanding any other provision of this section to the contrary, the Court shall impose a sentence of imprisonment for the remainder of the defendant's natural life without benefit of probation or parole or any other reduction. If the Court determines that the defendant has failed to establish by clear and convincing evidence that the defendant had a serious intellectual developmental disorder at the time the crime was committed, the Court shall proceed to determine the sentence to be imposed pursuant to the provisions of this subsection. Evidence on the question of the defendant's alleged serious intellectual developmental disorder presented during the hearing shall be considered by the Court in its determination pursuant to this section as to whether the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist.

d. When used in this paragraph:

1. "Adaptive behavior" means the effectiveness or degree to which the individual meets the standards of personal independence expected of the individual's age group, sociocultural background and community setting, as evidenced by significant limitations in not less than 2 of the following adaptive skill areas: communication, self-care, home living, social skills, use of community resources, self-direction, functional academic skills, work, leisure, health or safety;

2. "Serious intellectual developmental disorder" means that an individual has significantly subaverage intellectual functioning that exists concurrently with substantial deficits in adaptive behavior and both the

significantly subaverage intellectual functioning and the deficits in adaptive behavior were manifested before the individual became 18 years of age; and

3. "Significantly subaverage intellectual functioning" means an intelligent quotient of 70 or below obtained by assessment with 1 or more of the standardized, individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.

Section 21. Amend § 4209(e)(1)q., Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

q. The victim was particularly vulnerable due to a severe intellectual, mental or physical disability.

Section 22. Amend § 6525, Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

§ 6525. Treatment of inmates with mental illnesses and serious mental disorders; transfer.

(a) The Department shall establish resources and programs for the treatment persons with mental illnesses and serious mental disorders, either in a separate facility or as part of other institutions or facilities of the Department. The Department shall coordinate its work with any other state agency to reduce overlapping or duplication of functions and services.

(b) The Commissioner is empowered to transfer to other appropriate state institutions for care and treatment inmates who have been determined to have mental illnesses. Transfer may also be made to such facilities in other jurisdictions, or to municipal or private facilities, upon the consent of responsible administrators of such facilities. Such transfers shall occur only as set forth at § 5153 of Title 16. Inmates to be transferred as contemplated herein who have not reached the age of 18 years and have been found nonamenable to the processes of Family Court shall not be transferred to the Delaware Psychiatric Center. Nonamenable inmates under the age of 18 years shall be transferred to appropriate residential treatment facilities within the State of Delaware or in other states.

(c) When, in the judgment of the administrator of the institution to which an inmate has been transferred, the inmate has recovered from the condition which occasioned the transfer, the inmate shall be returned to the Department.

Section 23. Amend § 6571(e), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(e) “Institution” means any penal or correctional facility, including but not limited to a facility for persons with mental illness or serious mental disorders, in which inmates as defined in (d) above may lawfully be confined.

Section 24. Amend § 6703, Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

For purposes of this chapter, the words “violent crime” shall mean: abuse of an ~~infirm adult~~ adult who is impaired; abuse of a patient in a nursing facility; abuse of a patient causing injury; abuse of a patient causing death; adulteration causing death; adulteration causing injury; aggravated intimidation; arson in the first degree; arson in the second degree; assault in the first degree; assault in the second degree; assault in the third degree; assault in the first degree on K-9 dog causing, injury or death to the dog; assault on a K-9 dog with risk of injury to the dog; assault in a detention facility which causes injury; assault in a detention facility; assault on a sports official; bestiality; burglary in the first degree; carjacking; carrying a concealed deadly weapon (firearm offense); continuous sexual abuse of child; criminally negligent homicide; dealing with child pornography, second offense; possession of a destructive weapon; reckless endangering; escape after conviction; escape in the second degree; extortion; possession of an explosive device; unlawful imprisonment; incest; kidnapping in the first degree; kidnapping in the second degree; manslaughter; manufacture or use or possession of explosives or an incendiary device; murder in the first degree, murder in the second degree; organized crime and racketeering; possession of a deadly weapon during the commission of a felony; possession of a destructive weapon; possession of a firearm during the commission of a felony; promoting prison contraband (weapon); promoting prostitution in the first degree; racketeering; reckless endangering first degree; reckless endangering in the second degree; riot; robbery in the first degree; robbery in the second degree; continued sexual abuse of child; unlawful sexual contact in the first degree; unlawful sexual contact in the second degree; unlawful sexual contact in the third degree; sexual exploitation of a child; sexual extortion; rape in the first degree; rape in the second degree; rape in the third degree; rape in the fourth degree; unlawful sexual intercourse in the first degree; unlawful sexual intercourse in the second degree; unlawful sexual intercourse in the third degree; unlawful sexual penetration in the first degree; unlawful sexual penetration in the second degree; unlawful sexual penetration in the third degree; stalking; terroristic threatening; unlawful firearm transactions (second or subsequent offense); unlawful imprisonment in the first degree; unlawful transportation of a firearm to commit a felony; vehicular assault in the first degree; vehicular assault in the second degree; vehicular homicide in the first degree; vehicular homicide in the second degree; wearing body armor during felony.

Section 25. Amend § 8564(a), Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

(a) Definitions. -- As used in this section:

(1) "Adult abuse" means:

a. Physical abuse by unnecessarily inflicting pain or injury to an ~~infirm adult~~ adult who is impaired. This includes, but is not limited to, hitting, kicking, pinching, slapping, pulling hair or any sexual molestation. When any act constituting physical abuse has been proven, the infliction of pain shall be assumed.

b. Emotional abuse which includes, but is not limited to, ridiculing or demeaning an ~~infirm adult~~ adult who is impaired, making derogatory remarks to an infirm adult or cursing directed towards an ~~infirm adult~~ adult who is impaired, or threatening to inflict physical or emotional harm on an ~~infirm adult~~ adult who is impaired.

(2) “Adult who is impaired” means any person 18 years of age or older who, because of physical or mental disability, is substantially impaired in the ability to provide adequately for the person’s own care and custody or any person who is a patient or resident of a nursing facility and similar facility.

(3) "Child care facility" means any child care facility that is required to be licensed by the Department of Services for Children, Youth and Their Families.

(4) "Direct access" means the opportunity to have personal contact with persons receiving care during the course of one's assigned duties.

(5) “Financial exploitation” means the illegal or improper use or abuse of an adult who is impaired’s resources or financial rights by another person, whether for profit or other advantage.

(6) "Health care service provider" means any person or entity that provides services in a custodial or residential setting where health, nutritional or personal care is provided for persons receiving care, including, but not limited to, hospitals, home health care agencies, adult care facilities, temporary employment agencies and contractors that place employees or otherwise provide services in custodial or residential settings for persons receiving care, and hospice agencies. "Health care services provider" does not include any private individual who is seeking to hire a self-employed health caregiver in a private home.

(7) “Mistreatment” includes the inappropriate use of medications, isolation, or physical or chemical restraints on or of an ~~infirm adult~~ adult who is impaired.

(8) “Neglect” means:

a. Lack of attention to physical needs of the adult who is impaired including, but not limited to, toileting, bathing, meals and safety;

b. Failure to report the health problems or changes in health problems or changes in health condition of an adult who is impaired to an immediate supervisor or nurse;

c. Failure to carry out a prescribed treatment plan for an adult who is impaired; or

d. A knowing failure to provide adequate staffing which results in a medical emergency to any adult who is impaired where there has been documented history of at least 2 prior cited instances of such inadequate staffing levels in violation of staffing levels required by statute or regulations promulgated by the Department of Health and Social Services, all so as to evidence a willful pattern of such neglect.

(9) "Nursing facility" and "similar facility" means any facility required to be licensed under Chapter 11 of Title 16. This includes, but is not limited to, facilities commonly called nursing homes, assisted living facilities, intermediate care facilities for persons with ~~mental retardation~~ intellectual disabilities, neighborhood group homes, family care homes and rest residential care facilities. Also included are the Stockley Center, the Delaware Psychiatric Center and hospitals certified by the Department of Health and Social Services pursuant to § 5001 or § 5136 of Title 16.

(10) "Person receiving care" means a person who, because of that person's physical or mental condition, requires a level of care and services suitable to that person's needs to contribute to that person's health, comfort and welfare.

(11) "Person seeking employment" means any person applying for employment with or in a health care service provider, nursing facility or similar facility or child care facility where the employment may afford direct access, or a person applying for licensure to operate a child care facility. It shall also include a self-employed health caregiver who has direct access in any private home.

Approved April 19, 2012