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TITLE 11

Crimes and Criminal Procedure

Delaware Criminal Code

CHAPTER 5. SPECIFIC OFFENSES

Subchapter VII. Offenses Against Public Health, Order and Decency

§ 1301 Disorderly conduct; unclassified misdemeanor.

A person is guilty of disorderly conduct when:

- (1) The person intentionally causes public inconvenience, annoyance or alarm to any other person, or creates a risk thereof by:
 - a. Engaging in fighting or in violent, tumultuous or threatening behavior; or
 - b. Making an unreasonable noise or an offensively coarse utterance, gesture or display, or addressing abusive language to any person present; or
 - c. Disturbing any lawful assembly or meeting of persons without lawful authority; or
 - d. Obstructing vehicular or pedestrian traffic; or
 - e. Congregating with other persons in a public place and refusing to comply with a lawful order of the police to disperse; or
 - f. Creating a hazardous or physically offensive condition which serves no legitimate purpose; or

g. Congregating with other persons in a public place while wearing masks, hoods or other garments rendering their faces unrecognizable, for the purpose of and in a manner likely to imminently subject any person to the deprivation of any rights, privileges or immunities secured by the Constitution or laws of the United States of America.

(2) The person engages with at least 1 other person in a course of disorderly conduct as defined in paragraph (1) of this section which is likely to cause substantial harm or serious inconvenience, annoyance or alarm, and refuses or knowingly fails to obey an order to disperse made by a peace officer to the participants.

Disorderly conduct is an unclassified misdemeanor.

11 Del. C. 1953, § 1301; [58 Del. Laws, c. 497, § 1](#); [59 Del. Laws, c. 203, §§ 23, 24](#); [63 Del. Laws, c. 305, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1302 Riot; class F felony.

A person is guilty of riot when the person participates with 2 or more persons in a course of disorderly conduct:

- (1) With intent to commit or facilitate the commission of a felony or misdemeanor; or
- (2) With intent to prevent or coerce official action; or
- (3) When the accused or any other participant to the knowledge of the accused uses or plans to use a firearm or other deadly weapon.

Any other provision of this Criminal Code notwithstanding, whoever violates this section shall be guilty of a class F felony.

Any other provision of this Criminal Code or Title 10 notwithstanding, any person over 16 years old who violates this section shall be prosecuted as an adult.

11 Del. C. 1953, § 1302; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1303 Disorderly conduct; funeral or memorial service.

(a) A person shall not do any of the following within 300 feet of the building or other location where a funeral or memorial service is being conducted, or within 1,000 feet of a funeral procession or burial:

- (1) Direct abusive epithets or make any threatening gesture which the person knows or reasonably should know is likely to provoke a violent reaction by another.
- (2) Disturb or disrupt the funeral, memorial service, funeral procession, or burial by conduct intended to disturb or disrupt the funeral, memorial service, funeral procession or burial.

(b) This section applies to conduct within 1 hour preceding, during and within 2 hours after a funeral, memorial service, funeral procession or burial.

(c) A person who commits a violation of this section commits:

- (1) A class A misdemeanor for a first offense.
- (2) A class F felony for a second or subsequent offense.

(d) This section shall not preclude any county or municipality from legislating and enforcing its own more restrictive law in this regard.

[75 Del. Laws, c. 271, § 1](#);

§ 1304 Hate crimes; class A misdemeanor, class G felony, class F felony, class E felony, class D felony, class C felony, class B felony, class A felony.

(a) Any person who commits, or attempts to commit, any crime as defined by the laws of this State, and who intentionally:

(1) Commits said crime for the purpose of interfering with the victim's free exercise or enjoyment of any right, privilege or immunity protected by the First Amendment to the United States Constitution, or commits said crime because the victim has exercised or enjoyed said rights; or

(2) Selects the victim because of the victim's race, religion, color, disability, sexual orientation, gender identity, national origin or ancestry, shall be guilty of a hate crime. For purposes of this section, the term "sexual orientation" means heterosexuality, bisexuality, or homosexuality, and the term "gender identity" means a gender-related identity, appearance, expression or behavior of a person, regardless of the person's assigned sex at birth.

(b) Hate crimes shall be punished as follows:

(1) If the underlying offense is a violation or unclassified misdemeanor, the hate crime shall be a class A misdemeanor;

(2) If the underlying offense is a class A, B, or C misdemeanor, the hate crime shall be a class G felony;

(3) If the underlying offense is a class C, D, E, F, or G felony, the hate crime shall be 1 grade higher than the underlying offense;

(4) If the underlying offense is a class A or B felony, the hate crime shall be the same grade as the underlying offense, and the minimum sentence of imprisonment required for the underlying offense shall be doubled.

[70 Del. Laws. c. 138, § 1](#); [70 Del. Laws. c. 186, § 1](#); [71 Del. Laws. c. 175, §§ 1, 2](#); [79 Del. Laws. c. 47, § 15](#);

§§ 1305 -1310. [Reserved.]

§ 1311 Harassment; class A misdemeanor.

(a) A person is guilty of harassment when, with intent to harass, annoy or alarm another person:

(1) That person insults, taunts or challenges another person or engages in any other course of alarming or distressing conduct which serves no legitimate purpose and is in a manner which the person knows is likely to provoke a violent or disorderly response or cause a reasonable person to suffer fear, alarm, or distress;

(2) Communicates with a person by telephone, telegraph, mail or any other form of written or electronic communication in a manner which the person knows is likely to cause annoyance or alarm including, but not limited to, intrastate telephone calls initiated by vendors for the purpose of selling goods or services;

(3) Knowingly permits any telephone under that person's control to be used for a purpose prohibited by this section;

(4) In the course of a telephone call that person uses obscene language or language suggesting that the recipient of the call engage with that person or another person in sexual relations of any sort, knowing that the person is thereby likely to cause annoyance or alarm to the recipient of the call; or

(5) Makes repeated or anonymous telephone calls to another person whether or not conversation ensues, knowing that person is thereby likely to cause annoyance or alarm.

(b) Harassment is a class A misdemeanor.

§ 1312 Stalking; class G felony, class F felony, class C felony.

- (a) A person is guilty of stalking when the person knowingly engages in a course of conduct directed at a specific person and that conduct would cause a reasonable person to:
- (1) Fear physical injury to himself or herself or that of another person; or
 - (2) Suffer other significant mental anguish or distress that may, but does not necessarily, require medical or other professional treatment or counseling.
- (b) A violation of subsection (a) of this section is a class G felony.
- (c) Stalking is a class F felony if a person is guilty of stalking and 1 or more of the following exists:
- (1) The person is age 21 or older and the victim is under the age of 14; or
 - (2) The person violated any order prohibiting contact with the victim; or
 - (3) The victim is age 62 years of age or older; or
 - (4) The course of conduct includes a threat of death or threat of serious physical injury to the victim, or to another person; or
 - (5) The person causes physical injury to the victim.
- (d) Stalking is a class C felony if the person is guilty of stalking and 1 or more of the following exists:
- (1) The person possesses a deadly weapon during any act; or
 - (2) The person causes serious physical injury to the victim.
- (e) *Definitions.* — The following terms shall have the following meaning as used in this section:
- (1) "Course of conduct" means 3 or more separate incidents, including, but not limited to, acts in which the person directly, indirectly, or through third parties, by any action, method, device, or means, follows, monitors, observes, surveys, threatens, or communicates to or about another, or interferes with, jeopardizes, damages, or disrupts another's daily activities, property, employment, business, career, education, or medical care. A conviction is not required for any predicate act relied upon to establish a course of conduct. A conviction for any predicate act relied upon to establish a course of conduct does not preclude prosecution under this section. Prosecution under this section does not preclude prosecution under any other section of the Code.
 - (2) "A reasonable person" means a reasonable person in the victim's circumstances.
- (f) Notwithstanding any contrary provision of § 4205 of this title, any person who commits the crime of stalking by engaging in a course of conduct which includes any act or acts which have previously been prohibited by a then-existing court order or sentence shall receive a minimum sentence of 6 months incarceration at Level V. The first 6 months of said period of incarceration shall not be subject to suspension.
- (g) Notwithstanding any contrary provision of § 4205 of this title, any person who is convicted of stalking within 5 years of a prior conviction of stalking shall receive a minimum sentence of 1 year incarceration at Level V. The first year of said period of incarceration shall not be subject to suspension.
- (h) In any prosecution under this law, it shall not be a defense that the perpetrator was not given actual notice that the course of conduct was unwanted; or that the perpetrator did not intend to cause the victim fear or other emotional distress.

(i) In any prosecution under this section, it is an affirmative defense that the person charged was engaged in lawful picketing.

(j) This section shall not apply to conduct which occurs in furtherance of legitimate activities of law-enforcement, private investigators, security officers or private detectives as those activities are defined in Chapter 13 of Title 24.

[68 Del. Laws, c. 250, § 1](#); [70 Del. Laws, c. 186, § 1](#); [70 Del. Laws, c. 316, § 1](#); [74 Del. Laws, c. 116, §§ 1, 2](#); [76 Del. Laws, c. 343, § 4](#);

§ 1312A Stalking; class F felony.

Transferred to § 1312 of this title by 76 Del. Laws, c. 343, § 4, effective Oct. 14, 2008.

§ 1313 Malicious interference with emergency communications; class B misdemeanor.

(a) As used in this section:

(1) "Emergency communication" means any telephone call or any other form of communication made, transmitted or facilitated by radio, computer or any other electronic device which is intended by its maker to provide warning or information pertaining to any crime, fire, accident, disaster or risk of injury or damage to any person or property.

(2) "Emergency communications center" means any public or private facility or entity which accepts emergency communications for the purpose of notifying, dispatching, directing or coordinating law enforcement, fire, medical, paramedic, ambulance, utility or other public safety personnel.

(b) A person is guilty of malicious interference with emergency communications when the person:

(1) Intentionally prevents or hinders the initiation, making or completion of an emergency communication by another person; or

(2) Intentionally initiates or makes repeated nonemergency communications to any 911 or other emergency communications center, knowing it was thereby likely that the operations of such emergency communications center would be disrupted.

11 Del. C. 1953, § 1313; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [73 Del. Laws, c. 87, § 2](#);

§ 1314 [Reserved.]

§ 1315 Public intoxication; unclassified misdemeanor; violation.

A person is guilty of public intoxication when the person appears in a public place manifestly under the influence of alcohol or narcotics or any other drug not administered or prescribed to be taken by a physician, to the degree that the person may be in danger or endanger other persons or property, or annoy persons in the vicinity.

Public intoxication is a violation, unless the accused has been convicted of public intoxication twice before within 1 year, in which case the offense is an unclassified misdemeanor.

11 Del. C. 1953, § 1315; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1316 Registration of out-of-state liquor agents; violation.

(a) In order to promote and protect the public safety and the peace of the community, by reason of the presence of many persons engaged in the enforcement of the laws of other states, any agent, employee, or representative of another state shall register with the Delaware Alcoholic Beverage and Tobacco Enforcement not less than 30 days in advance of each entry into a county for the purpose of observing any alcoholic beverage sales.

(b) At the time of registration the person shall provide the following information:

- (1) A written statement setting forth the identity of the out-of-state official;
- (2) The purpose of the intended entry into the county;
- (3) The make, model and license number of each and every vehicle to be used in the conduct of any surveillance activity;
- (4) The specific establishments at which surveillance will be conducted; and
- (5) The specific times for surveillance of each establishment.

(c) Any person who registers shall be issued a certificate of registration which must be retained in the possession of the person during all investigative or surveillance activities.

(d) Any person who fails to register as required by this section, or who having registered violates any provision of this section, shall lose the right to register or the person's registration, as the case may be, for a period of 6 months.

(e) Any person who, during the period imposed by subsection (d) of this section, violates this section is guilty of a violation.

(f) Upon written request, the Delaware Alcoholic Beverage and Tobacco Enforcement shall release the information regarding agencies and officers who have registered under this section.

[69 Del. Laws, c. 275, § 1](#); [70 Del. Laws, c. 186, § 1](#); [75 Del. Laws, c. 74](#);

§§ 1317 -1319. [Reserved.]

§ 1320 Loitering on property of a state-supported school, college or university; violation.

A person is guilty of loitering on property of a state-supported school, college or university when the person loiters or remains in or about the buildings or grounds of a school, college or university supported in whole or in part with state funds, not having any reason or relationship involving custody of or responsibility for a pupil or student, or any other specific, legitimate reason for being there, and not having written permission from anyone authorized to grant the same.

Any law-enforcement officer, state official or employee, the owner or occupier of such lands or property, an agent or employee of such persons, or any other person or persons whom they may call to their assistance, may arrest such loiterer, either with or without warrant, either upon the premises or in immediate flight therefrom and, if with warrant, then at any place.

Loitering on property of a state-supported school, college or university is a violation.

11 Del. C. 1953, § 1320; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1321 Loitering; violation.

A person is guilty of loitering when:

- (1) The person fails or refuses to move on when lawfully ordered to do so by any police officer; or
- (2) The person stands, sits idling or loiters upon any pavement, sidewalk or crosswalk, or stands or sits in a group or congregates with others on any pavement, sidewalk, crosswalk or doorstep, in any street or way open to the public in this State so as to obstruct or hinder the free and convenient passage of persons walking, riding or driving over or along such pavement, walk, street or way, and fails to make way, remove or pass, after reasonable request from any person; or

(3) The person loiters or remains in or about a school building or grounds, not having reason or relationship involving custody of or responsibility for a pupil or any other specific or legitimate reason for being there, unless the person has written permission from the principal; or

(4) The person loiters, remains or wanders about in a public place for the purpose of begging; or

(5) The person loiters or remains in a public place for the purpose of engaging or soliciting another person to engage in sexual intercourse or deviate sexual intercourse; or

(6) The person loiters, congregates with others or prowls in a place at a time or in a manner not usual for law-abiding individuals under circumstances that warrant alarm for the safety of persons or property in the vicinity, especially in light of the crime rate in the relevant area. Unless flight by the accused or other circumstances make it impracticable, a peace officer shall, prior to any arrest for an offense under this paragraph, afford the accused an opportunity to dispel any alarm which would otherwise be warranted, by requesting identification and an explanation of the person's presence and conduct. No person shall be convicted of an offense under this paragraph if the peace officer did not comply with the preceding sentence, or if it appears that the explanation given by the accused was true and, if believed by the peace officer at the time, would have dispelled the alarm.

Loitering is a violation.

11 Del. C. 1953, § 1321; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 113, § 1](#); [70 Del. Laws, c. 186, § 1](#);

§ 1322 Criminal nuisance; unclassified misdemeanor.

A person is guilty of criminal nuisance when:

(1) By conduct either unlawful in itself or unreasonable under all the circumstances, the person knowingly or recklessly creates or maintains a condition which endangers the safety or health of others; or

(2) The person knowingly conducts or maintains any premises, place or resort where persons gather for purposes of engaging in unlawful conduct.

Criminal nuisance is an unclassified misdemeanor.

11 Del. C. 1953, § 1322; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1323 Obstructing public passages; violation.

A person is guilty of obstructing public passages when alone or with other persons and having no legal privilege to do so, the person intentionally or recklessly renders any public passage unreasonably inconvenient or hazardous to use, or the person wilfully enters upon or tampers with or obstructs any public utility right-of-way.

Obstructing a public passage is a violation.

11 Del. C. 1953, § 1323; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1324 Obstructing ingress to or egress from public buildings; unclassified misdemeanor.

A person is guilty of obstructing ingress to or egress from public buildings when the person knowingly prevents any person from passing through any entrance or exit to a public building, except that this section shall not apply to lawful picketing or to picketing for any lawful union objective.

Obstructing ingress to or egress from public buildings is an unclassified misdemeanor.

11 Del. C. 1953, § 1324; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1325 Cruelty to animals; class A misdemeanor; class F felony [Effective until final publication of the regulations pursuant to 79 Del. Laws, c. 375, § 5]

(a) For the purpose of this section, the following words and phrases shall include, but not be limited to, the meanings respectively ascribed to them as follows:

- (1) "Abandonment" includes completely forsaking or deserting an animal originally under one's custody without making reasonable arrangements for custody of that animal to be assumed by another person.
- (2) "Animal" shall not include fish, crustacea or molluska.
- (3) "Cruel" includes every act or omission to act whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.
- (4) "Cruel mistreatment" includes any treatment whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.
- (5) "Cruel neglect" includes neglect of an animal, which is under the care and control of the neglecter, whereby pain or suffering is caused to the animal or abandonment of any domesticated animal by its owner or custodian. By way of example, cruel neglect shall also include allowing an animal to live in unsanitary conditions, such as keeping an animal where the animal's own excrement is not removed from the animal's living area and/or other living conditions which are injurious to the animal's health.
- (6) "Cruelty to animals" includes mistreatment of any animal or neglect of any animal under the care and control of the neglecter, whereby unnecessary or unjustifiable physical pain or suffering is caused. By way of example this includes: Unjustifiable beating of an animal; overworking an animal; tormenting an animal; abandonment of an animal; tethering of dog for 18 hours or more in any 24-hour period, except on land owned or leased by the dog's owner that is not less than 10 acres; tethering any dog for any amount of time if the dog is under 4 months of age or is a nursing mother while the offspring are present, except on land owned or leased by the dog's owner that is not less than 10 acres; and failure to feed properly or give proper shelter or veterinary care to an animal.
- (7) "Custody" includes the responsibility for the welfare of an animal subject to one's care and control whether one owns it or not.
- (8) "Person" includes any individual, partnership, corporation or association living and/or doing business in the State.
- (9) "Proper feed" includes providing each animal with daily food and water of sufficient quality and quantity to prevent unnecessary or unjustifiable physical pain or suffering by the animal.
- (10) "Proper shelter" includes providing each animal with adequate shelter from the weather elements as required to prevent unnecessary or unjustifiable physical pain or suffering by the animal.
- (11) "Proper veterinary care" includes providing each animal with veterinary care sufficient to prevent unnecessary or unjustifiable physical pain or suffering by the animal.
- (12) "Serious injury" shall include any injury to any animal which creates a substantial risk of death, or which causes prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.
- (13) "Tethering" shall include fastening or restraining with a rope, chain, cord, or similar device creating a fixed radius; tethering does not include walking a dog on a leash, regardless of the dog's age.

(b) A person is guilty of cruelty to animals when the person intentionally or recklessly:

- (1) Subjects any animal to cruel mistreatment; or
- (2) Subjects any animal in the person's custody to cruel neglect; or

(3) Kills or injures any animal belonging to another person without legal privilege or consent of the owner; or

(4) Cruelly or unnecessarily kills or injures any animal whether belonging to the actor or another. This section does not apply to the killing of any animal normally or commonly raised as food for human consumption, provided that such killing is not cruel. A person acts unnecessarily if the act is not required to terminate an animal's suffering, to protect the life or property of the actor or another person or if other means of disposing of an animal exist which would not impair the health or well-being of that animal; or

(5) Confines an animal unattended in a standing or parked motor vehicle in which the temperature is either so high or so low as to endanger the health or safety of the animal. A law-enforcement officer, animal welfare officer, or firefighter who has probable cause to believe that an animal is confined in a motor vehicle under conditions that are likely to cause suffering, injury, or death to the animal may use reasonable force to remove the animal left in the vehicle in violation of this provision. A person removing an animal under this section shall use reasonable means to contact the owner. If the person is unable to contact the owner, the person may take the animal to an animal shelter and must leave written notice bearing his or her name and office, and the address of the location where the animal can be claimed. This provision shall not apply to the legal transportation of horses, cattle, swine, sheep, poultry, or other agricultural animals in motor vehicles designed to transport such animals. The owner of the vehicle from which the animal is rescued and the owner of the animal rescued are not liable for injuries suffered by the person rescuing the animal.

(6) Confines an animal unattended in a standing or parked motor vehicle in which the temperature is either so high or so low as to endanger the health or safety of the animal. A law-enforcement officer, animal welfare officer, or firefighter who has probable cause to believe that an animal is confined in a motor vehicle under conditions that are likely to cause suffering, injury, or death to the animal may use reasonable force to remove the animal left in the vehicle in violation of this provision. A person removing an animal under this section shall use reasonable means to contact the owner. If the person is unable to contact the owner, the person may take the animal to an animal shelter and must leave written notice bearing his or her name and office, and the address of the location where the animal can be claimed. This provision shall not apply to the legal transportation of horses, cattle, swine, sheep, poultry, or other agricultural animals in motor vehicles designed to transport such animals. The owner of the vehicle from which the animal is rescued and the owner of the animal rescued are not liable for injuries suffered by the person rescuing the animal.

Paragraphs (b)(1), (2) and (4) of this section are inapplicable to accepted veterinary practices and activities carried on for scientific research.

Cruelty to animals is a class A misdemeanor, unless the person intentionally kills or causes serious injury to any animal in violation of paragraph (b)(4) of this section or unless the animal is killed or seriously injured as a result of any action prohibited by paragraph (b)(5) of this section, in which case it is a class F felony.

(c) Any person convicted of a misdemeanor violation of this section shall be prohibited from owning or possessing any animal for 5 years after said conviction, except for animals grown, raised or produced within the State for resale, or for sale of a product thereof, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale. Any person convicted of a second or subsequent misdemeanor violation of this section shall be prohibited from owning or possessing any animal for 5 years after said conviction without exception.

A violation of this subsection is subject to a fine in the amount of \$1,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of § 3035F of Title 16.

(d) Any person convicted of a felony violation of this section shall be prohibited from owning or possessing any animal for 15 years after said conviction, except for animals grown, raised or produced within the State for resale, or for sale of a product thereof, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale. Any person convicted of a second or subsequent felony violation of this section shall be prohibited from owning or possessing any animal for 15 years after said conviction without exception.

A violation of this subsection is subject to a fine in the amount of \$5,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of § 3035F of Title 16.

(e) Any trained and certified animal welfare officer of the Department of Health and Social Service's Office of Animal Welfare or the Department of Agriculture may impound an animal owned or possessed in apparent violation of this section, consistent with § 3035F of Title 16.

(f) This section shall not apply to the lawful hunting or trapping of animals as provided by law.

(g) Notwithstanding any provision to the contrary, for a first offense misdemeanor violation of this section relating to animals left in motor vehicles or the tethering of dogs, a warning shall be issued.

(h) Exclusive jurisdiction of offenses under this section relating to animals left in motor vehicles or the tethering of dogs shall be in the Superior Court.

11 Del. C. 1953, § 1325; [58 Del. Laws. c. 497, § 1](#); [62 Del. Laws. c. 71, §§ 1, 2](#); [63 Del. Laws. c. 260, § 1](#); [64 Del. Laws. c. 196, §§ 1-3](#); [67 Del. Laws. c. 130, § 8](#); [69 Del. Laws. c. 280, §§ 1, 2](#); [70 Del. Laws. c. 60, § 1](#); [70 Del. Laws. c. 186, § 1](#); [72 Del. Laws. c. 75, § 1](#); [73 Del. Laws. c. 182, §§ 1, 2](#); [73 Del. Laws. c. 238, §§ 1, 2](#); [78 Del. Laws. c. 390, §§ 1, 2](#); [80 Del. Laws. c. 156, §§ 1, 2](#); [80 Del. Laws. c. 200, § 3](#); [80 Del. Laws. c. 248, § 2](#);

§ 1325 Cruelty to animals; class A misdemeanor; class F felony [Effective upon final publication of the regulations pursuant to 79 Del. Laws, c. 375, § 5]

(a) For the purpose of this section, the following words and phrases shall include, but not be limited to, the meanings respectively ascribed to them as follows:

(1) "Abandonment" includes completely forsaking or deserting an animal originally under one's custody without making reasonable arrangements for custody of that animal to be assumed by another person.

(2) "Animal" shall not include fish, crustacea or molluska.

(3) "Cruel" includes every act or omission to act whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.

(4) "Cruel mistreatment" includes any treatment whereby unnecessary or unjustifiable physical pain or suffering is caused or permitted.

(5) "Cruel neglect" includes neglect of an animal, which is under the care and control of the neglecter, whereby pain or suffering is caused to the animal or abandonment of any domesticated animal by its owner or custodian. By way of example, cruel neglect shall also include allowing an animal to live in unsanitary conditions, such as keeping an animal where the animal's own excrement is not removed from the animal's living area and/or other living conditions which are injurious to the animal's health.

(6) "Cruelty to animals" includes mistreatment of any animal or neglect of any animal under the care and control of the neglecter, whereby unnecessary or unjustifiable physical pain or suffering is caused. By way of example this includes: Unjustifiable beating of an animal; overworking an animal; tormenting an animal; abandonment of an animal; tethering of dog for 18 hours or more in any 24-hour period, except on land owned or leased by the dog's owner that is not less than 10 acres; tethering any dog for any amount of time if the dog is under 4 months of age or is a nursing mother while the offspring are present, except on land owned or leased by the dog's owner that is not less than 10 acres; and failure to feed properly or give proper shelter or veterinary care to an animal.

(7) "Custody" includes the responsibility for the welfare of an animal subject to one's care and control whether one owns it or not.

(8) "Person" includes any individual, partnership, corporation or association living and/or doing business in the State.

(9) "Proper feed" includes providing each animal with daily food and water of sufficient quality and quantity to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(10) "Proper shelter" includes providing each animal with adequate shelter from the weather elements as required to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(11) "Proper veterinary care" includes providing each animal with veterinary care sufficient to prevent unnecessary or unjustifiable physical pain or suffering by the animal.

(12) "Serious injury" shall include any injury to any animal which creates a substantial risk of death, or which causes prolonged impairment of health or prolonged loss or impairment of the function of any bodily organ.

(13) "Tethering" shall include fastening or restraining with a rope, chain, cord, or similar device creating a fixed radius; tethering does not include walking a dog on a leash, regardless of the dog's age.

(b) A person is guilty of cruelty to animals when the person intentionally or recklessly:

(1) Subjects any animal to cruel mistreatment; or

(2) Subjects any animal in the person's custody to cruel neglect; or

(3) Kills or injures any animal belonging to another person without legal privilege or consent of the owner; or

(4) Cruelly or unnecessarily kills or injures any animal whether belonging to the actor or another. This section does not apply to the killing of any animal normally or commonly raised as food for human consumption, provided that such killing is not cruel. A person acts unnecessarily if the act is not required to terminate an animal's suffering, to protect the life or property of the actor or another person or if other means of disposing of an animal exist which would not impair the health or well-being of that animal; or

(5) Captures, detains, transports, removes or delivers any animal known to be a domestic farm animal, pet or companion animal, or any other animal of scientific, environmental, economic or cultural value, under false pretenses to any public or private animal shelter, veterinary clinic or other facility, or otherwise causes the same through acts of deception or misrepresentation of the circumstances and disposition of any such animal; or

(6) Confines an animal unattended in a standing or parked motor vehicle in which the temperature is either so high or so low as to endanger the health or safety of the animal. A law-enforcement officer, animal welfare officer, or firefighter who has probable cause to believe that an animal is confined in a motor vehicle under conditions that are likely to cause suffering, injury, or death to the animal may use reasonable force to remove the animal left in the vehicle in violation of this provision. A person removing an animal under this section shall use reasonable means to contact the owner. If the person is unable to contact the owner, the person may take the animal to an animal shelter and must leave written notice bearing his or her name and office, and the address of the location where the animal can be claimed. This provision shall not apply to the legal transportation of horses, cattle, swine, sheep, poultry, or other agricultural animals in motor vehicles designed to transport such animals. The owner of the vehicle from which the animal is rescued and the owner of the animal rescued are not liable for injuries suffered by the person rescuing the animal.

Paragraphs (b)(1), (2) and (4) of this section are inapplicable to accepted veterinary practices and activities carried on for scientific research.

Cruelty to animals is a class A misdemeanor, unless the person intentionally kills or causes serious injury to any animal in violation of paragraph (b)(4) of this section or unless the animal is killed or seriously injured as a result of any action prohibited by paragraph (b)(5) of this section, in which case it is a class F felony.

(c) Any person convicted of a misdemeanor violation of this section shall be prohibited from owning or possessing any animal for 5 years after said conviction, except for animals grown, raised or produced within the State for resale, or for sale of a product thereof, where the person has all necessary licenses for such sale or

resale, and receives at least 25 percent of the person's annual gross income from such sale or resale. Any person convicted of a second or subsequent misdemeanor violation of this section shall be prohibited from owning or possessing any animal for 5 years after said conviction without exception.

A violation of this subsection is subject to a fine in the amount of \$1,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of § 3035F of Title 16.

(d) Any person convicted of a felony violation of this section shall be prohibited from owning or possessing any animal for 15 years after said conviction, except for animals grown, raised or produced within the State for resale, or for sale of a product thereof, where the person has all necessary licenses for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale. Any person convicted of a second or subsequent felony violation of this section shall be prohibited from owning or possessing any animal for 15 years after said conviction without exception.

A violation of this subsection is subject to a fine in the amount of \$5,000 in any court of competent jurisdiction and to forfeiture of any animal illegally owned in accordance with the provisions of § 3035F of Title 16.

(e) Any trained and certified animal welfare officer of the Department of Health and Social Service's Office of Animal Welfare or the Department of Agriculture may impound an animal owned or possessed in apparent violation of this section, consistent with § 3035F of Title 16.

(f) This section shall not apply to the lawful hunting or trapping of animals as provided by law.

(g) Notwithstanding any provision to the contrary, for a first offense misdemeanor violation of this section relating to animals left in motor vehicles or the tethering of dogs, a warning shall be issued.

(h) Exclusive jurisdiction of offenses under this section relating to animals left in motor vehicles or the tethering of dogs shall be in the Superior Court.

11 Del. C. 1953, § 1325; [58 Del. Laws, c. 497, § 1](#); [62 Del. Laws, c. 71, §§ 1, 2](#); [63 Del. Laws, c. 260, § 1](#); [64 Del. Laws, c. 196, §§ 1-3](#); [67 Del. Laws, c. 130, § 8](#); [69 Del. Laws, c. 280, §§ 1, 2](#); [70 Del. Laws, c. 60, § 1](#); [70 Del. Laws, c. 186, § 1](#); [72 Del. Laws, c. 75, § 1](#); [73 Del. Laws, c. 182, §§ 1, 2](#); [73 Del. Laws, c. 238, §§ 1, 2](#); [78 Del. Laws, c. 390, §§ 1, 2](#); [79 Del. Laws, c. 375, § 4](#); [80 Del. Laws, c. 156, §§ 1, 2](#); [80 Del. Laws, c. 200, § 3](#); [80 Del. Laws, c. 248, § 2](#);

§ 1325A The unlawful trade in dog or cat by-products; class B misdemeanor; class A misdemeanor, penalties.

(a)(1) A person is guilty of the unlawful trade in dog or cat by-products in the second degree if the person knowingly or recklessly sells, barter or offers for sale or barter, the fur or hair of a domestic dog or cat or any product made in whole or in part from the fur or hair of a domestic dog or cat.

(2) This subsection shall not apply to the sale or barter, or offering for sale or barter, of the fur or hair of a domestic dog or cat which has been cut at a commercial grooming establishment, or at a veterinary office or clinic, or for scientific research purposes.

(3) The unlawful trade in dog or cat by-products in the second degree is a class B misdemeanor.

(b)(1) A person is guilty of the unlawful trade in dog or cat by-products in the first degree if the person knowingly or recklessly sells, barter or offers for sale or barter, the flesh of a domestic dog or cat or any product made in whole or in part from the flesh of a domestic dog or cat.

(2) The unlawful trade in dog or cat by-products in the first degree is a class A misdemeanor.

(c) In addition to any other penalty provided by law, any person convicted of a violation of this section shall be:

(1) Prohibited from owning or possessing any domestic dog or cat for 15 years after said conviction, except for those grown, raised or produced within the State for resale, where the person has all necessary licenses

for such sale or resale, and receives at least 25 percent of the person's annual gross income from such sale or resale;

(2) Subject to a fine in the amount of \$2,500 in any court of competent jurisdiction; and

(3) Required to forfeit any domestic dog or cat illegally owned in accordance with the provisions of Chapter 79 of Title 3.

(d) For the purposes of this section, the term "domestic dog or cat" means a dog (*Canis familiaris*) or cat (*Felis catus* or *Felis domesticus*) that is generally recognized in the United States as being a household pet and shall not include coyote, fox, lynx, bobcat or any other wild or commercially raised canine or feline species the fur or hair of which is recognized for use in warm clothing and outer wear by the United States Department of Agriculture and which species is not recognized as an endangered or threatened species by the United States Fish and Wild Life Service or the Delaware Department of Natural Resources and Environmental Control.

[72 Del. Laws, c. 391, § 1.](#);

§ 1326 Animals; fighting and baiting prohibited; class E felony.

(a) A person who owns, possesses, keeps, trains, or uses a bull, bear, dog, cock, or other animal or fowl for the purpose of fighting or baiting; or a person who is a party to or who causes the fighting or baiting of a bull, bear, dog, cock, or other animal or fowl; or a person who rents or otherwise obtains the use of a building, shed, room, yard, ground, or premises for the purpose of fighting or baiting an animal or fowl; or a person who knowingly suffers or permits the use of a building, shed, room, yard, ground, or premises belonging to the person, or that is under the person's control, for any of the purposes described in this section, is guilty of a class E felony.

(b) A person who is present at a building, shed, room, yard, ground, or premises where preparations are being made for an exhibition prohibited by subsection (a) of this section, and who knows that the exhibition is taking place or is about to take place, is guilty of a class F felony.

(c) A person who gambles on the outcome of an exhibition prohibited by subsection (a) of this section is guilty of a class F felony.

(d) All animals, equipment, devices, and money involved in a violation of this section must be forfeited to the State. Animals so forfeited must be evaluated by a duly incorporated society for the prevention of cruelty to animals, an authorized state agency, or a duly incorporated humane society in charge of animals for eligibility for adoption. After evaluation, animals may also be transferred to a rescue organization. Animals forfeited may be adopted to individuals other than the convicted person or person dwelling in the same household, who conspired, aided or abetted in the unlawful act which was the basis of the conviction, or who knew or should have known of the unlawful act, or humanely disposed of according to the provisions of subchapter I of Chapter 30F of Title 16.

(e) Prosecution for any offense under this section may not be commenced after 5 years from the commission of the offense.

(f) A person convicted of a violation of this section is prohibited from owning or possessing any animal or fowl for 15 years after conviction.

(g) A fine issued as a result of a violation of this section may not be suspended.

(h) In addition to the penalties provided under this section, the court may require a person convicted of violating this section to attend and participate in an appropriate treatment program or to obtain appropriate psychiatric or psychological counseling, or both. The court may impose the costs of any treatment program or counseling upon the person convicted.

[66 Del. Laws, c. 369, § 2](#); [67 Del. Laws, c. 130, § 8](#); [67 Del. Laws, c. 350, §§ 34, 35](#); [70 Del. Laws, c. 186, § 1](#); [72 Del. Laws, c. 417, § 1](#); [73 Del. Laws, c. 238, §§ 3-5](#); [73 Del. Laws, c. 411, § 1](#); [76 Del. Laws, c. 259, §§ 1-3](#); [77 Del.](#)

§ 1327 Maintaining a dangerous animal; class E felony; class F felony; class A misdemeanor.

- (a) A person is guilty of maintaining a dangerous animal when such person knowingly or recklessly owns, controls or has custody over any dangerous animal which causes death, serious physical injury or physical injury to another person or which causes death or serious injury to another animal.
- (b) For the purposes of this section, "dangerous animal" means any dog or other animal which:
- (1) Had been declared dangerous or potentially dangerous by the Dog Control Panel pursuant to subchapter III of Chapter 17 of Title 7;
 - (2) Had been trained for animal fighting, or that has been used primarily or occasionally for animal fighting;
 - (3) Had been intentionally trained so as to increase its viciousness, dangerousness or potential for unprovoked attacks upon human beings or other animals; or
 - (4) Has an individualized and known propensity, tendency or disposition, specific to the individual dog, for viciousness, dangerousness or unprovoked attacks upon human beings or other animals.
- (c) Maintaining a dangerous animal shall be punished as follows:
- (1) When a dangerous animal causes the death of a person, maintaining a dangerous animal is a class E felony;
 - (2) When a dangerous animal causes serious physical injury to a person, maintaining a dangerous animal is a class F felony;
 - (3) When a dangerous animal causes physical injury to a person or when a dangerous animal causes death or physical injury to another animal, maintaining a dangerous animal is a class A misdemeanor.
- (d) This section shall not apply to any dog or other animal trained or owned or used by any law-enforcement agency or any person, company, agency or entity licensed pursuant to Chapter 13 of Title 24.
- (e) In any prosecution under this section it shall be an affirmative defense that at the time of the attack during which physical injury, serious physical injury or death was inflicted upon a person:
- (1) The victim of the attack was in the course of committing criminal trespass or any violent felony as set forth in this title or was attempting to commit criminal trespass or said violent felony;
 - (2) The victim had provoked the attack by committing cruelty to animals as defined in § 1325 of this title upon said dangerous animal or by inflicting physical injury upon said dangerous animal; or
 - (3) The owner or custodian of the dangerous animal was in full compliance with the applicable provisions of subchapter III of Chapter 17 of Title 7, including the requirements pertaining to confinement, restraint and muzzling.
- (f) In any prosecution under this section it shall be an affirmative defense that at the time of the attack during which physical injury or death was inflicted upon an animal:
- (1) The animal which was injured or killed had entered onto the real property of the owner or custodian of the dangerous animal without permission;
 - (2) The animal which was injured or killed had provoked the attack by menacing, biting or attacking the dangerous animal or its owner or custodian; or
 - (3) The owner or custodian of the dangerous animal was in full compliance with the applicable provisions of subchapter III of Chapter 17 of Title 7, including the requirements pertaining to confinement, restraint and

muzzling.

[73 Del. Laws. c. 411, § 2.](#);

§§ 1328 , 1329. [Reserved.]

§ 1330 Smoking on trolleys and buses.

(a) Whoever in any trackless trolley coach, or gasoline or diesel-engine-propelled bus being used as a public conveyance for carrying passengers within this State, smokes or carries a lighted cigarette, cigar or pipe shall be fined not less than \$5.00 nor more than \$25.

(b) Justices of the peace shall have jurisdiction of offenses under this section.

[60 Del. Laws. c. 66, § 1](#); [66 Del. Laws. c. 369, § 2](#); [73 Del. Laws. c. 411, § 2.](#);

§ 1331 Desecration; class A misdemeanor.

A person is guilty of desecration if the person intentionally defaces, damages, pollutes or otherwise physically mistreats any public monument or structure, any place of worship, the national flag or any other object of veneration by the public or a substantial segment thereof, in a public place and in a way in which the actor knows will outrage the sensibilities of persons likely to observe or discover the actions.

Desecration is a class A misdemeanor.

11 Del. C. 1953, § 1331; [58 Del. Laws. c. 497, § 1](#); [65 Del. Laws. c. 463, § 1](#); [67 Del. Laws. c. 130, § 8](#); [70 Del. Laws. c. 186, § 1.](#);

§ 1332 Abusing a corpse; class A misdemeanor.

A person is guilty of abusing a corpse when, except as authorized by law, the person treats a corpse in a way that a reasonable person knows would outrage ordinary family sensibilities.

Abusing a corpse is a class A misdemeanor.

11 Del. C. 1953, § 1332; [58 Del. Laws. c. 497, § 1](#); [67 Del. Laws. c. 130, § 8](#); [70 Del. Laws. c. 186, § 1.](#);

§ 1333 Trading in human remains and Associated Funerary Objects.

(a) As used in this section:

(1) "Associated funerary objects" means an item of human manufacture or use that is intentionally placed with human remains at the time of interment in a burial site or later as a part of a death rite or ceremony of a culture, religion or group. "Associated funerary object" includes any gravestone, monument, tomb or other structure in or directly associated with a burial site.

(b) A person is guilty of trading in human remains and associated funerary objects when the person knowingly sells, buys or transports for sale or profit, or offers to buy, sell or transport for sale or profit, within this State, any unlawfully removed human remains or any associated funerary objects.

(c) The provisions of this section shall not apply to:

(1) Any person acting in the course of medical, archaeological, educational or scientific study authorized by an accredited educational institution or governmental entity; or

(2) A licensed mortician or other professional who transports human remains in the course of carrying out the individual's professional duties and responsibilities.

(d) Nothing in this section shall be construed to interfere with the normal operation and maintenance of a public or private cemetery including correction of improper burial siting, and, with the consent of any person who would

qualify as an heir of the deceased, moving the remains within a public or private cemetery.

Trading in human remains and associated funerary objects is a class B misdemeanor.

[70 Del. Laws, c. 50, § 1.](#);

§ 1334 Unlawful use of an unmanned aircraft system; unclassified misdemeanor; class B misdemeanor; class A misdemeanor.

(a) *Definitions.* — The following terms shall have the following meanings as used in this section.

(1) "Critical infrastructure" means petroleum refineries, petroleum storage facilities, chemical storage facilities, chemical manufacturing facilities, fuel storage facilities, electric substations, power plants, electric generation facilities, military facilities, commercial port and harbor facilities, rail yard facilities, drinking water treatment or storage facilities, correctional facilities, government buildings, and public safety buildings or facilities.

(2) "First responder" means federal, state, and local law-enforcement officers, fire, and emergency medical services personnel, hazardous materials response team members, 9-1-1 dispatchers, or any individual who is responsible for the protection and preservation of life and is directed to respond to an incident that could result in death or serious injury.

(3) "Unmanned aircraft system" means a powered, aerial vehicle that:

- a. Does not carry a human operator;
- b. Uses aerodynamic forces to provide vehicle lift;
- c. Can fly autonomously or be piloted remotely; and
- d. Can be expendable or recoverable.

(b) *Prohibited acts.* — Except as provided in this section, no person shall knowingly operate, direct, or program an unmanned aircraft system to fly:

- (1) Over any sporting event, concert, automobile race, festival, or other event at which more than 1500 people are in attendance; or
- (2) Over any critical infrastructure; or
- (3) Over any incident where first responders are actively engaged in response or air, water, vehicular, ground or specialized transport.

(c) *Exemptions.* — The prohibitions set forth in subsection (b) of this section shall not apply to:

- (1) An unmanned aircraft system used for law-enforcement purposes; or
- (2) An unmanned aircraft system flying over property where written permission has been granted by the property owner or occupier; or
- (3) An unmanned aircraft system operated by an institution of higher education for educational purposes in compliance with Federal Aviation Administration regulations; or
- (4) An unmanned aircraft system that is being used for a commercial or other purpose if the operator is authorized by the Federal Aviation Administration.

(d) *Penalties.* — Unlawful use of an unmanned aircraft system is an unclassified misdemeanor for a first offense and a class B misdemeanor for a second or subsequent offense, except that in any case where physical injury to a person or damage to property occurs as a result of a violation of this section unlawful use of an unmanned aircraft system is a class A misdemeanor.

(e) *Preemption.* — Only the State may enact a law or take any other action to prohibit, restrict, or regulate the testing or operation of an unmanned aircraft systems in the State. This section preempts the authority of a county or municipality to prohibit, restrict, or regulate the testing or operating of unmanned aircraft systems and supersedes any existing law or ordinance of a county or municipality that prohibits, restricts, or regulates the testing or operating of unmanned aircraft systems.

[80 Del. Laws, c. 421, § 1.](#);

§ 1335 Violation of privacy; class A misdemeanor; class G felony.

(a) A person is guilty of violation of privacy when, except as authorized by law, the person:

(1) Trespasses on property intending to subject anyone to eavesdropping or other surveillance in a private place; or

(2) Installs in any private place, without consent of the person or persons entitled to privacy there, any device for observing, photographing, recording, amplifying or broadcasting sounds or events in that place; or

(3) Installs or uses outside a private place any device for hearing, recording, amplifying or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside, without the consent of the person or persons entitled to privacy there; or

(4) Intercepts without the consent of all parties thereto a message by telephone, telegraph, letter or other means of communicating privately, including private conversation; or

(5) Divulges without the consent of the sender and the receiver the existence or contents of any message by telephone, telegraph, letter or other means of communicating privately if the accused knows that the message was unlawfully intercepted or if the accused learned of the message in the course of employment with an agency engaged in transmitting it.

(6) Tape records, photographs, films, videotapes or otherwise reproduces the image of another person who is getting dressed or undressed or has that person's genitals, buttocks or her breasts exposed, without consent, in any place where persons normally disrobe including but not limited to a fitting room, dressing room, locker room or bathroom, where there is a reasonable expectation of privacy. This paragraph shall not apply to any acts done by a parent or guardian inside of that person's dwelling, or upon that person's real property, when a subject of victim of such acts is intended to be any child of such parent or guardian who has not yet reached that child's eighteenth birthday and whose primary residence is in or upon the dwelling or real property of the parent or guardian, unless the acts done by the parent or guardian are intended to produce sexual gratification for any person in which case this paragraph shall apply; or

(7) Secretly or surreptitiously videotapes, films, photographs or otherwise records another person under or through that person's clothing for the purpose of viewing the body of or the undergarments worn by that other person; or

(8) Knowingly installs an electronic or mechanical location tracking device in or on a motor vehicle without the consent of the registered owner, lessor or lessee of said vehicle. This paragraph shall not apply to the lawful use of an electronic tracking device by a law-enforcement officer, nor shall it apply to a parent or legal guardian who installs such a device for the purpose of tracking the location of a minor child thereof; or

(9) Knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates a visual depiction of a person who is nude, or who is engaging in sexual conduct, when the person knows or should have known that the reproduction, distribution, exhibition, publication, transmission, or other dissemination was without the consent of the person depicted and that the visual depiction was created or provided to the person under circumstances in which the person depicted has a reasonable expectation of privacy.

a. For the purposes of the introductory paragraph of this paragraph (a)(9), paragraphs (a)(9)b., and (a)(9)d. of this section:

1. "Nude" means any 1 or more of the following uncovered parts of the human body, or parts of the human body visible through less than opaque clothing:

- A. The genitals;
- B. The pubic area;
- C. The buttocks;
- D. Any portion of the female breast below the top of the areola.

2. "Personally identifiable information" means any information about a person that permits the physical or online identifying or contacting of a person. The term includes either a person's face or a person's first and last name or first initial and last name in combination with any 1 or more of the following:

- A. A home or other physical address, including street name and name of a city or town;
- B. An e-mail address;
- C. A telephone number;
- D. Geolocation data;
- E. Any other identifier that permits the physical or online identifying or contacting of a person.

3. "Sexual conduct" means actual or simulated:

- A. Sexual contact;
- B. Sexual intercourse;
- C. Sexual penetration;
- D. Masturbation;
- E. Bestiality;
- F. Sadism;
- G. Masochism; or
- H. Explicit representations of the defecation or urination functions.

4. "Sexual contact" means any touching by 1 person of the uncovered anus, breast, buttocks, or genitalia of another person or any touching of a person with the uncovered anus, breasts, buttocks or genitalia of another person.

5. "Sexual intercourse" means any act of physical union of the genitalia or anus of a person with the mouth, anus, or genitalia of another person.

6. "Sexual penetration" means the placement of an object inside the anus or vagina of a person or the placement of a sexual device inside the mouth of a person.

7. "Visual depiction" shall have the meaning as used in § 1100 of this title.

b. A person who has, within the context of a private or confidential relationship, consented to the capture or possession of a visual depiction of the person when nude or when engaging in sexual conduct retains a reasonable expectation of privacy with regard to the reproduction, distribution, exhibition, publication, transmission, or other dissemination of the visual depiction beyond that relationship.

c. For the purposes of this paragraph (a)(9), each of the following shall be an aggravating factor and shall be alleged in the charging information or indictment and constitute an element of the offense:

1. The actor knowingly obtains such visual depictions without the consent of the person depicted.

A. A violation of this paragraph (a)(9)c.1. occurs when a person commits a theft as provided for in § 841, § 842, § 843, or § 844 of this title or obtains such visual depictions by committing unauthorized access to a computer system as provided for in § 932 of this title or by unauthorized access to electronic mail or an electronic mail service provider as defined in § 931 of this title.

B. A violation of this paragraph (a)(9)c.1. consistent with § 932 of this title is subject to the venue provision in § 940 of this title.

2. The actor knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates such visual depictions for profit.

3. The actor knowingly maintains an Internet website, online service, online application, or mobile application for the purpose of reproducing, distributing, exhibiting, publishing, transmitting, or otherwise disseminating such visual depictions.

4. The actor knowingly reproduces, distributes, exhibits, publishes, transmits, or otherwise disseminates such visual depictions with the intent to harass, annoy, or alarm the person depicted and such conduct would cause a reasonable person to suffer significant mental anguish or distress.

5. The actor pairs such visual depiction with personally identifiable information of the person depicted.

d. For purposes of this paragraph (a)(9), the fact the actor committed this offense within 5 years of a prior conviction for a violation of this paragraph (a)(9) shall be an aggravating factor for sentencing purposes only and, therefore, this fact is not to be alleged in the charging information or indictment and does not constitute an element of the offense.

e. In addition to when the consent of the person depicted is given, the introductory paragraph of this paragraph (a)(9) and paragraph (a)(9)b. of this section do not apply to any of the following:

1. When the visual depiction is of an individual less than 18 years of age and does not violate § 1108, § 1109, or § 1111 of this title, or any similar provision of this title, and the reproduction, distribution, exhibition, publication, transmission, or other dissemination is not for commercial purposes.

2. When the visual depiction is reproduced, distributed, exhibited, published, transmitted, or otherwise disseminated in the course of lawful and common practices of a law-enforcement officer, the reporting of unlawful conduct, legal proceedings, and medical treatment procedures.

3. When the person depicted has consented to the reproduction, distribution, exhibition, transmission, or other dissemination of the visual depiction for commercial purposes.

4. When the person depicted has voluntarily appeared nude in public or voluntarily engages in sexual conduct in public.

5. When the reproduction, distribution, exhibition, publication, transmission, or other dissemination serves a legitimate public purpose.

f. Nothing within this paragraph (a)(9) shall be construed to impose liability on an interactive computer service, as defined in 47 U.S.C. § 230(f)(2), or an information service or telecommunications service, as defined in 47 U.S.C. § 153, for content provided by the actor or another person.

(b) This section does not apply to:

(1) Overhearing of messages through a regularly installed instrument on a telephone party line or an extension or any other regularly installed instrument or equipment; or

(2) Acts done by the telephone company or subscribers incident to the enforcement of telephone company regulations or subscriber rules relating to the use of facilities; or

(3) Acts done by personnel of any telephone or telegraph carrier in the performance of their duties in connection with the construction, maintenance or operation of a telephone or telegraph system; or

(4) The divulgence of the existence of any message in response to a subpoena issued by a court of competent jurisdiction or a governmental body having subpoena powers; or

(5) Acts done by police officers as provided in §§ 1336 [repealed] and 1431 of this title.

(c) Any violation of paragraph (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(8), or (a)(9) of this section shall be a class A misdemeanor. Any violation of paragraph (a)(6), (a)(7), (a)(9)c., or (a)(9)d. of this section shall be a class G felony.

11 Del. C. 1953, § 1335; [58 Del. Laws. c. 497, § 1](#); [67 Del. Laws. c. 130, § 8](#); [70 Del. Laws. c. 186, § 1](#); [72 Del. Laws. c. 180, §§ 1-3](#); [73 Del. Laws. c. 172, §§ 1, 2, 3](#); [75 Del. Laws. c. 341, §§ 1, 2](#); [79 Del. Laws. c. 415, § 1](#);

§ 1336 Wiretapping and electronic surveillance.

[Repealed by 72 Del. Laws. c. 232, effective July 23, 1999](#);

§ 1337 Definitions relating to riot, disorderly conduct and related offenses.

(a) "Private place" means a place where one may reasonably expect to be safe from casual or hostile intrusion or surveillance, but does not include a place to which the public or a substantial group thereof has access.

(b) "Public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement, parks, playgrounds, prisons and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

11 Del. C. 1953, § 1337; [58 Del. Laws. c. 497, § 1](#); [59 Del. Laws. c. 203, § 25](#);

§ 1338 Bombs, incendiary devices, Molotov cocktails and explosive devices; class D felony.

(a) For purposes of this section the following definitions shall be made applicable:

(1) "Incendiary device" means any item designed to ignite by hand, chemical reaction or by spontaneous combustion and is not designed for any lawful purpose or use whatsoever, or any lawful purpose or use has been or is terminated.

(2) "Molotov cocktail" means a makeshift incendiary bomb made of a breakable container filled with flammable liquid and provided with a wick composed of any substance capable of bringing flame into contact with the liquid.

(b) Whoever manufactures, transfers, uses, possesses or transports any bomb, incendiary device, Molotov cocktail or device designed to explode or produce uncontained combustion with intent to cause bodily harm or damage to any property or thing shall be guilty of a class D felony.

(c) Any other provision of this Criminal Code notwithstanding, any person over 16 years old who violates this section shall be prosecuted as an adult.

(d) In any prosecution under this section, it is prima facie evidence of intent to cause bodily harm or damage to any property or thing if the accused had possession of the device prescribed by this section.

11 Del. C. 1953, § 1338; [58 Del. Laws. c. 497, § 1](#); [67 Del. Laws. c. 130, § 8](#);

§ 1339 Adulteration; class G felony; class E felony; class A felony.

(a) A person is guilty of adulteration when:

(1) The person adulterates any substance with the intent to cause death, physical injury or illness of a person;

(2) The person distributes, disseminates, gives, sells or otherwise transfers an adulterated substance with the intent to cause death, physical injury or illness of a person knowing or having reason to know that the substance has been adulterated as defined in subsection (b) of this section.

(b) "Adulteration" means the intentional adding of any substance, which has the capacity either acting alone or in conjunction with the other substance to cause death, physical injury or illness by ingestion, injection, inhalation or absorption, to another substance having a customary or reasonably foreseeable human use.

(c) Adulteration is a class G felony unless the adulteration actually causes physical injury or illness in which case it is a class E felony, or causes death in which case it is a class A felony.

(d) This offense is a separate and distinct offense and shall not limit or restrict prosecution for murder or any other criminal offense.

[64 Del. Laws. c. 191, § 1](#); [67 Del. Laws. c. 130, § 8](#); [70 Del. Laws. c. 186, § 1](#);

§ 1340 Desecration of burial place.

A person is guilty of desecration of a burial place if the person intentionally defaces, damages, pollutes or otherwise physically mistreats any such burial place. Any person who desecrates a burial place is guilty of a class A misdemeanor and upon conviction shall be fined not less than \$1,000 nor more than \$10,000.

[65 Del. Laws. c. 463, § 2](#); [67 Del. Laws. c. 130, § 8](#); [70 Del. Laws. c. 186, § 1](#);

§ 1341 Lewdness; class B misdemeanor.

A person is guilty of lewdness when the person does any lewd act in any public place or any lewd act which the person knows is likely to be observed by others who would be affronted or alarmed.

Lewdness is a class B misdemeanor.

11 Del. C. 1953, § 1341; [58 Del. Laws. c. 497, § 1](#); [67 Del. Laws. c. 130, § 8](#); [70 Del. Laws. c. 186, § 1](#);

§ 1342 Prostitution; class B misdemeanor.

(a)(1) A person is guilty of prostitution when the person engages or agrees or offers to engage in sexual conduct with another person in return for a fee.

(2) Prostitution is a class B misdemeanor.

(b)(1) Any person found guilty of an act of prostitution when such crime has occurred on or within 1,000 feet of the property of any school, residence, church, synagogue or other place of worship shall be guilty of a class A misdemeanor. The minimum mandatory fine shall be \$500. This fine shall not be suspended.

(2) It shall not be a defense to prosecution for a violation of this section that the person was unaware that the prohibited conduct took place on or within 1,000 feet of any school property, residence, church, synagogue or other place of worship.

11 Del. C. 1953, § 1342; [58 Del. Laws. c. 497, § 1](#); [67 Del. Laws. c. 130, § 8](#); [70 Del. Laws. c. 186, § 1](#); [75 Del. Laws. c. 319, § 1](#);

§ 1343 Patronizing a prostitute prohibited.

(a) A person is guilty of patronizing a prostitute when:

(1) Pursuant to a prior agreement or understanding, the person pays a fee to another person as compensation for that person's having engaged in sexual conduct with the person; or

(2) The person pays or agrees to pay a fee to another person pursuant to an agreement or understanding that in return therefor that person or a third person will engage in sexual conduct with the person; or

(3) The person solicits or requests another person to engage in sexual conduct with the person in return for a fee.

(b) Patronizing a prostitute is a misdemeanor. The minimum mandatory fine shall be \$500. This fine shall not be suspended.

(c) Whenever any vehicle, as defined in § 2321 of this title, has been used in, or in connection with, the offense of patronizing a prostitute, it shall forthwith be seized and taken into custody by the peace officer or officers having knowledge of the facts of such use.

(d) Vehicle seizure shall apply in the case of a defendant who has a previous conviction for the same offense in the previous 5 years. For the purpose of this section, "prior offense" shall be defined as a conviction of § 1343 of this title.

(e)(1) Any person found guilty of patronizing a prostitute and such crime has occurred on or within 1,000 feet of the property of any school, residence, church, synagogue or other place of worship shall be guilty of a class A misdemeanor. The minimum mandatory fine shall be \$1,000. This fine shall not be suspended.

(2) It shall not be a defense to prosecution for a violation of this section that the person was unaware that the prohibited conduct took place on or within 1,000 feet of any school property, residence, church, synagogue or other place of worship.

11 Del. C. 1953, § 1343; [58 Del. Laws. c. 497, § 1](#); [67 Del. Laws. c. 130, § 8](#); [69 Del. Laws. c. 23, §§ 1, 2, 5, 6](#); [70 Del. Laws. c. 186, § 1](#); [75 Del. Laws. c. 319, § 2](#);

§ 1344 Prostitution and patronizing a prostitute; no defense.

In any prosecution for prostitution it is no defense that the persons were of the same sex, or that the person who received, agreed to receive or solicited a fee was a male and the person who paid, agreed or offered to pay the fee was a female.

11 Del. C. 1953, § 1344; [58 Del. Laws. c. 497, § 1](#); [70 Del. Laws. c. 186, § 1](#);

§ 1345 Screening for sexually transmissible diseases.

(a) Any person convicted under § 1342 or § 1343 of this title shall be ordered to undergo testing for sexually transmitted diseases, abbreviated "STD," as designated by the Department of Health and Social Services in its rules and regulations.

(b) The result of any STD test conducted pursuant to this subsection shall not be a public record for purposes of Chapter 100 of Title 29.

(c) The result of any STD testing conducted pursuant to this section shall only be released by the Division of Public Health to the defendant, the defendant's spouse and the court issuing the order for testing except as otherwise permitted under § 711 of Title 16.

(d) The cost of testing under this section shall be paid by the defendant tested unless the court has determined that the defendant is an indigent person.

(e) Filing of a notice of appeal shall not automatically stay an order that the defendant submit to STD testing.

[75 Del. Laws, c. 319, § 4.](#);

§§ 1346 -1350. [Reserved.]

§ 1351 Promoting prostitution in the third degree; class F felony.

A person is guilty of promoting prostitution in the third degree when the person knowingly advances or profits from prostitution.

Promoting prostitution in the third degree is a class F felony.

11 Del. C. 1953, § 1351; [58 Del. Laws, c. 497, § 1](#); [61 Del. Laws, c. 33, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1352 Promoting prostitution in the second degree; class E felony.

A person is guilty of promoting prostitution in the second degree when the person knowingly:

(1) Advances or profits from prostitution by managing, supervising, controlling or owning, either alone or in association with others, a house of prostitution or a prostitution business or enterprise involving prostitution activity by 2 or more prostitutes; or

(2) Advances or profits from prostitution of a person less than 18 years old.

Promoting prostitution in the second degree is a class E felony.

11 Del. C. 1953, § 1352; [58 Del. Laws, c. 497, § 1](#); [61 Del. Laws, c. 33, § 2](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1353 Promoting prostitution in the first degree; class C felony.

A person is guilty of promoting prostitution in the first degree when the person knowingly:

(1) Advances prostitution by compelling a person by force or intimidation to engage in prostitution or profits from such coercive conduct by another; or

(2) Advances or profits from prostitution of a person less than 16 years old.

Promoting prostitution in the first degree is a class C felony.

11 Del. C. 1953, § 1353; [58 Del. Laws, c. 497, § 1](#); [61 Del. Laws, c. 33, § 3](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1354 Promoting prostitution; attempt to promote prostitution; corroboration.

A person shall not be convicted of promoting prostitution or of an attempt to promote prostitution solely on the uncorroborated testimony of a person whose prostitution activity the person is alleged to have advanced or attempted to advance or from whose prostitution activity the person is alleged to have profited or attempted to profit.

11 Del. C. 1953, § 1354; [58 Del. Laws, c. 497, § 1](#); [70 Del. Laws, c. 186, § 1](#);

§ 1355 Permitting prostitution; class B misdemeanor.

A person is guilty of permitting prostitution when, having possession or control of premises which the person knows are being used for prostitution purposes, the person fails to halt or abate such use within a reasonable period of time.

Permitting prostitution is a class B misdemeanor.

§ 1356 Definitions relating to prostitution.

As used in §§ 1342-1355 of this title:

- (1) "*Advance prostitution.*" — A person advances prostitution when, acting other than as a prostitute or as a patron thereof, the person knowingly causes or aids a person to commit or engage in prostitution, procures or solicits patrons for prostitution, provides persons or premises for prostitution purposes, operates or assists in the operation of a house of prostitution or a prostitution enterprise or engages in any other conduct designed to institute, aid or facilitate an act or enterprise of prostitution.
- (2) "*Profit from prostitution.*" — A person profits from prostitution when, acting other than as a prostitute receiving compensation for personally rendered prostitution services, the person accepts or receives money or other property pursuant to an agreement or understanding with any person whereby the person participates or is to participate in the proceeds of prostitution activity.
- (3) "School" means any preschool, kindergarten, elementary school, secondary school, vocational technical school or any other institution which has as its primary purpose the education or instruction of children under 18 years of age.
- (4) "Sexual conduct" means any act designed to produce sexual gratification to either party. It is not limited to intercourse or deviate sexual intercourse.

§§ 1357 -1360. [Reserved.]

§ 1361 Obscenity; acts constituting; class E felony or class G felony; subsequent violations.

(a) A person is guilty of obscenity when the person knowingly:

- (1) Sells, delivers or provides any obscene picture, videotape, video game, writing, record, audio cassette tape, compact disc or other representation or embodiment of the obscene;
- (2) Presents or directs an obscene play, dance or performance or participates in that portion thereof which makes it obscene;
- (3) Publishes, exhibits or otherwise makes available any obscene material;
- (4) Possesses any obscene material for purposes of sale or other commercial dissemination; or
- (5) Permits a person under the age of 12 to be on the premises where material harmful to minors, as defined by § 1365 of this title, is either sold or made available for commercial distribution and which material is readily accessible to or easily viewed by such minors. Any material covered by this paragraph shall not be considered readily accessible to or easily viewed by minors if it has been placed or otherwise located 5 feet or more above the floor of the subject premises or if the material is concealed so that no more than the top 3 inches is visible to the passerby.

(b) Obscenity is a class E felony if a person sells, delivers or provides any obscene picture, videotape, video game, writing, record, audio cassette tape, compact disc or other representation or embodiment of the obscene to a person under the age of 18. In all other cases, obscenity is a class G felony. In addition to the above penalties, upon conviction of obscenity involving live conduct as defined in § 1364 of this title, the court shall order the business or establishment which presented, displayed or exhibited such conduct closed for a period of 6 months.

(c) Notwithstanding Chapter 42 of this title, the minimum sentence for a subsequent violation of this section occurring within 5 years of a former conviction shall be a fine in the amount of \$5,000, imprisonment for a

minimum period of 9 months, no portion which may be suspended or reduced, and probation for a period of 2 years; provided, however, that where the defendant is an organization, the fine shall be \$10,000. In addition to the above penalties, upon conviction of obscenity involving conduct as defined in § 1364 of this title, the court shall order the business or establishment which presented, displayed or exhibited such conduct closed for a period of 2 years.

(d) Where the criminality of conduct depends on a child being under the age of 12, paragraph (a)(5) of this section, or under the age of 18, subsection (b) of this section, it is no defense that the actor did not know the child's age.

11 Del. C. 1953, § 1361; [58 Del. Laws, c. 497, § 1](#); [60 Del. Laws, c. 445, § 1](#); [61 Del. Laws, c. 121, § 1](#); [63 Del. Laws, c. 111, §§ 1-3](#); [67 Del. Laws, c. 130, § 8](#); [67 Del. Laws, c. 350, §§ 11, 12](#); [70 Del. Laws, c. 186, § 1](#); [74 Del. Laws, c. 71, § 2](#); [74 Del. Laws, c. 380, §§ 1, 2](#);

§ 1362 Obscenity; defenses.

In any prosecution for obscenity it is an affirmative defense that dissemination was restricted to:

- (1) Institutions or persons having scientific, educational, governmental or other similar justification for possessing obscene material; or
- (2) Noncommercial dissemination to personal associates of the accused who are known by the accused not to object to the receipt of such material.

11 Del. C. 1953, § 1362; [58 Del. Laws, c. 497, § 1](#);

§ 1363 Obscenity; presumption.

A person who disseminates or possesses obscene material in the course of business is presumed to do so knowingly or recklessly.

11 Del. C. 1953, § 1363; [58 Del. Laws, c. 497, § 1](#); [70 Del. Laws, c. 186, § 1](#);

§ 1364 Definition of obscene.

Material or live conduct is obscene if:

- (1) The average person applying contemporary community standards would find the material or conduct, taken as a whole, appeals to the prurient interests; and
- (2) The material depicts or describes or the live conduct portrays:
 - a. Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated; or
 - b. Patently offensive representations or descriptions of masturbation, excretory functions, and/or lewd exhibitions of the genitals; and
- (3) The work or conduct taken as a whole lacks serious literary, artistic, political or scientific value.

11 Del. C. 1953, § 1364; [58 Del. Laws, c. 497, § 1](#); [59 Del. Laws, c. 236, § 1](#); [63 Del. Laws, c. 111, § 4](#);

§ 1365 Obscene literature harmful to minors; class A misdemeanor.

(a) Definitions as used in this section:

- (1) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominately appeals to the prurient, shameful or morbid interest of minors and is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

(2) "Known minor" is any person known, in fact, to be under the age of 18 years, or any person, in fact, under the age of 18 years unless a reasonable, bona fide attempt has been made to ascertain the age of that minor.

(3) "Knows" means:

- a. Knowledge that the character and content of any material described in paragraph (i)(1) of this section is harmful to minors; or
- b. Knowledge of facts that would lead a reasonable person to inquire whether the character and content of any material described in paragraph (i)(1) of this section is harmful to minors; or
- c. Knowledge or information that the material described herein has been adjudged to be harmful to minors in a proceeding instituted pursuant to subsection (b) or (i) of this section or is the subject of a pending proceeding instituted pursuant to subsection (b) or (i) of this section.

(4) "Minor" means any person under the age of 17 years.

(5) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple or the depiction of covered male genitals in a discernibly turgid state.

(6) "Sado-masochistic abuse" means flagellation or torture practiced by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(7) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's unclothed genitals or pubic area or a female person's breast.

(8) "Sexual excitement" means the condition of human male or female genitals in a state of sexual stimulation or arousal.

(b) Whenever the Attorney General of this State has reasonable cause to believe that any person is or may become engaged in any of the acts described in paragraph (i)(1), (i)(2) or (i)(4) of this section, the Attorney General shall institute an action in the Court of Chancery for the county where such act is or will be performed for adjudication of the question of whether such material is harmful to minors.

(c) The action authorized by subsection (b) of this section shall be commenced by the filing of a complaint to which shall be attached as an exhibit a true copy of the allegedly harmful material. The complaint shall:

- (1) Be directed against such material by name or description;
- (2) Allege that such material is harmful to minors;
- (3) Designate as respondents and list the names and addresses, if known, of any person in this State engaged or about to be engaged in any of the acts described in paragraph (i)(1), (i)(2) or (i)(4) of this section with respect to such material;
- (4) Seek an adjudication that such material is harmful to minors; and
- (5) Seek a permanent injunction against any respondent prohibiting the respondent from performing any of the acts described in paragraph (i)(1), (i)(2) or (i)(4) of this section.

(d) Upon the filing of the complaint described in subsection (c) of this section, the Attorney General shall present the same, together with the material attached thereto, as soon as practicable to the Court for its examination and reading. If after such examination and reading the Court finds no probable cause to believe such material to be harmful to minors, the Court shall cause an endorsement to that effect to be placed and

dated upon the complaint and shall thereupon dismiss the action. If after such examination and reading the Court finds probable cause to believe such material to be harmful to minors, the Court shall cause an endorsement to that effect to be placed and dated upon the complaint whereupon it shall be the responsibility of the Attorney General promptly to request the Register in Chancery to issue summons and to furnish to the Register in Chancery such number of copies of such complaint and endorsement as are needed for the service of summons. Service of such summons and endorsed complaint shall be made upon the respondents thereto in any manner provided by law.

(e) The author, publisher or any person interested in sending or causing to be sent, bringing or causing to be brought, into this State for sale or commercial distribution, or any person in this State preparing, selling, exhibiting or commercially distributing or possessing with intent to sell or commercially distribute or exhibit, the material exhibited to the endorsed complaint, may appear and may intervene in accordance with the Rules of the Court of Chancery. If no person appears and files an answer, or moves to intervene within the time set by the rule or by an order of the Court of Chancery, the Court may forthwith adjudge whether the material so exhibited to the endorsed complaint is harmful to minors and enter an appropriate final judgment.

(f)(1) The public policy of this State requires that all proceedings prescribed in this section, other than criminal actions under subsection (i) of this section, be heard and disposed of with the maximum promptness and dispatch commensurate with constitutional requirements, including due process, freedom of the press and freedom of speech.

(2) The Rules of the Court of Chancery shall be applicable, except as they may be modified by this section.

(3) Any party or intervenor shall be entitled, upon request, to a trial of any issue with an advisory jury and the Court, with the consent of all parties, may order a trial of any issue with a jury whose verdict shall have the same effect as in cases of law.

(4) In any action in which an injunction is sought under this section, any respondent or intervenor shall be entitled to a trial of the issues within 1 day, exclusive of Saturday, Sunday and holidays, after joinder of issue, and a decision shall be rendered by the Court or jury, as the case may be, within 2 days, exclusive of Saturday, Sunday and holidays, of the conclusion of the trial. If the issues are being tried before a jury and the jury shall not be able to render a decision within 2 days of the conclusion of the trial, then notwithstanding any other provision of this section, the jury shall be dismissed and a decision shall be rendered by the Court within 2 days of the conclusion of the trial.

(5) In the event that the Court or jury, as the case may be, finds the material exhibited to the complaint not to be harmful to minors, the Court shall enter judgment accordingly and shall dismiss the complaint.

(6) In the event that the Court or jury, as the case may be, finds the material exhibited to the complaint to be harmful to minors, the Court shall enter judgment to such effect and may, in such judgment or in subsequent orders of enforcement thereof, enter a permanent injunction against any respondent prohibiting the respondent from engaging in any of the acts described in paragraph (i)(1), (i)(2) or (i)(4) of this section.

(g) If the Court, pursuant to subsection (d) of this section, finds probable cause to believe the exhibited material to be harmful to minors, and so endorses the complaint, the Court may, upon the motion of the Attorney General and in accordance with the Chancery Court Rules, issue a temporary restraining order against any respondent prohibiting the respondent from selling, commercially distributing or giving away such material to minors or from permitting minors to inspect such material. No temporary restraining order shall be granted without notice to the respondents unless it clearly appears from specific facts shown by affidavit or by the verified complaint that 1 or more of the respondents are engaged in the sale of material harmful to minors and that immediate and irreparable injury to the morals and general welfare of minors in this State will result before notice can be served and a hearing had thereon. All proceedings for temporary restraining order and preliminary injunction shall be governed by the Rules of the Court of Chancery.

(h) Any respondent, or any officer, agent, servant, employee or attorney of such respondent, or any person in active concert or participation by contract or arrangement with such respondent, who receives actual notice, by personal service or otherwise, of any injunction or restraining order entered pursuant to subsection (f) or (g) of this section, and who shall disobey any of the provisions thereof, shall be guilty of contempt of court and upon conviction shall be guilty of a class A misdemeanor.

(i) Any person is guilty of a class A misdemeanor who:

(1) Exhibits for sale, sells, displays, transfers, gives gratis, loans, rents or advertises to a known minor any book, pamphlet, magazine or printed matter, however reproduced, or sound recording or picture, photograph, drawing, sculpture, motion picture film or similar visual representation that such person knows to be in whole or in part harmful to minors.

(2) Sells, gives gratis or transfers an admission ticket or pass to a known minor or admits a known minor to a premises whereon there is exhibited a motion picture, show or other presentation which, in whole or in part, such person knows to be harmful to minors.

(3) Misrepresents the person's age as 17 years or older for the purpose of evading the restrictions of this section.

(4) Exhibits for sale, sells, displays, gives gratis, transfers, loans or rents any matter enumerated in paragraph (i)(1) of this section that such person knows to be harmful to minors which does not prominently include in such advertisement the words "unlawful to persons under 17 years of age."

(j) No criminal proceeding shall be commenced against any person pursuant to paragraph (i)(1), (i)(2) or (i)(4) of this section unless, prior to the act which is the subject of such proceeding, such person:

(1) Had written notice from the Attorney General that the material which is the subject of such proceeding has been adjudged harmful to minors pursuant to subsection (b) or (i) of this section; or

(2) Has been subject to an order entered pursuant to subsection (b) of this section relating to the material which is the subject of such criminal proceeding, or any other material harmful to minors.

(k) No person shall be subject to prosecution pursuant to this section:

(1) For any sale to a minor where such person had reasonable cause to believe that the minor involved was 17 years old or more, and such minor exhibited to such person a draft card, driver's license, birth certificate or other official or apparently official document purporting to establish that such minor was 17 years old or more; or

(2) For any sale where a minor is accompanied by a parent or guardian, or accompanied by an adult and such person has no reason to suspect that the adult accompanying the minor is not the minor's parent or guardian; or

(3) Where such person is a bona fide school, museum or public library or is acting in an official capacity as an employee of such organization or as a retail outlet affiliated with and serving the educational purposes of such organization.

(l) In order to provide for the uniform application of this section to all minors within this State, it is intended that the sole and only regulation of the matters herein discussed shall be under this section and no municipality, county or other governmental unit within this State shall make any law, ordinance or regulation relating to the subject matter hereof as to minors. All such laws, ordinances and regulations, as they affect minors, whether enacted before or after this section shall become void, unenforceable and of no effect upon April 1, 1973; provided, however, that such prior laws, ordinances and regulations shall govern litigations commenced prior to April 1, 1973, and shall continue in effect solely for that purpose.

(m) This section may be known and cited as Delaware Law on the Protection of Minors From Harmful Materials, and may be referred to by that designation.

11 Del. C. 1953, § 1365; [58 Del. Laws. c. 497, § 1](#); [59 Del. Laws. c. 236, § 2](#); [67 Del. Laws. c. 130, § 8](#); [70 Del. Laws. c. 186, § 1](#);

§ 1366 Outdoor motion picture theaters.

(a) Whoever being the owner or operator of an outdoor motion picture theater exhibits or permits to be exhibited any film not suitable for minors or harmful to minors and which film can be viewed by such minors not in attendance at the said outdoor motion picture theater shall be guilty of a class A misdemeanor.

(b) Definitions as used in this section:

(1) "Code and Rating Administration of the Motion Picture Association of America" ratings are:

"G" — All ages admitted. General audiences;

"PG" — All ages admitted. Parental guidance suggested;

"R" — Restricted. Under 17 requires accompanying parent or adult guardian;

"X" — No one under 17 admitted.

(2) "Film" means any motion picture film or series of films, whether full length or short subject, but does not include newsreels portraying actual current events or pictorial news of the day.

(3) "Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement or sado-masochistic abuse which predominately appeals to the prurient, shameful or morbid interest of minors and is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors, and taken as a whole the work lacks serious literary, artistic, political or scientific value for minors.

(4) "Minor" means any person under the age of 17 years.

(5) "Not suitable for minors" means any film, reel or view which has a rating of "R" or "X" according to the Code and Rating Administration of the Motion Picture Association of America.

(6) "Nudity" means the showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple or the depiction of covered male genitals in a discernibly turgid state.

(7) "Sado-masochistic abuse" means flagellation or torture practiced by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

(8) "Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse or physical contact with a person's unclothed genitals or pubic area or a female person's breast.

(9) "Sexual excitement" means the condition of human male or female genitals in a state of sexual stimulation or arousal.

(10) "Suitable for minors" means any film, reel or view which has a rating of "G" or "PG" according to the Code and Rating Administration of the Motion Picture Association of America.

[59 Del. Laws. c. 258, § 1](#); [70 Del. Laws. c. 186, § 1](#);

§ 1367 Unauthorized promotion of boxing, mixed martial arts or of a combative sports entertainment or combative fighting match, contest, or event; class A misdemeanor.

(a) A person is guilty of the unauthorized promotion of boxing, mixed martial arts or of a combative sports entertainment or combative fighting match, contest, or event if the person promotes, arranges, advertises, or conducts a combative sports entertainment or combative fighting match, contest, or event in violation of Chapter 1 of Title 28.

(b) A charge of the unauthorized promotion of boxing, mixed martial arts or of a combative sports entertainment or combative fighting match, contest, or event shall not exclude prosecution for other offenses or violations of this Code.

(c) The unauthorized promotion of boxing, mixed martial arts or of a combative sports entertainment or combative fighting match, contest, or event is a class A misdemeanor.

[76 Del. Laws. c. 413. § 1.](#);

§ 1368 Unauthorized participation in a boxing, mixed martial arts or in a combative sports entertainment or combative fighting match, contest, or event; class A misdemeanor.

(a) A person is guilty of the unauthorized participation in a boxing, mixed martial arts or in a combative sports entertainment or combative fighting match, contest, or event if the person participates as a competitor in a boxing, mixed martial arts or in a combative sports entertainment or combative fighting match, contest, or event in violation of Chapter 1 of Title 28.

(b) A charge of the unauthorized participation in a boxing, mixed martial arts or in a combative sports entertainment or combative fighting match, contest, or event shall not exclude prosecution for other offenses or violations this Code.

(c) The unauthorized participation in a boxing, mixed martial arts or in a combative sports entertainment or combative fighting match, contest, or event is a class A misdemeanor.

[76 Del. Laws. c. 413. § 1.](#);

§§ 1369 -1400. [Reserved.]

§ 1401 Advancing gambling in the second degree; class A misdemeanor.

A person is guilty of advancing gambling in the second degree when:

(1) The person sells or disposes of, or has in the person's possession with intent to sell or dispose of, a lottery policy, certificate or any other thing by which the person or another person or persons promises or promise, guarantees or guarantee that any particular number, series of numbers, character, ticket or certificate shall, in the event or on the happening of any contingency in the nature of a lottery, entitle the purchaser or holder to receive money, property or evidence of debt; or

(2) The person uses or employs any other device by which such person, or any other person, promises or guarantees as provided in paragraph (1) of this section; or

(3) The person is concerned in interest in lottery policy writing, or in selling or disposing of any lottery policy, certificate, number or numbers or any other thing by which the person or another person or persons promises or promise, guarantees or guarantee that any particular number or numbers, character, ticket or certificate shall, in the event or on the happening of any contingency in the nature of a lottery, entitle the purchaser or holder to receive money, property or evidence of debt; or

(4) The person uses or employs any other device by which such person or any other person promises or guarantees as provided in paragraph (3) of this section.

Advancing gambling in the second degree is a class A misdemeanor.

11 Del. C. 1953, § 1401; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1402 Foreign lotteries; prima facie evidence; class A misdemeanor.

(a) A person is guilty of engaging in a foreign lottery when the person brings, sends or procures to be brought or sent into this State any scheme of any lottery or any drawing of any such scheme or any ticket or part of a ticket or certificate of or a substitute for any ticket or part of a ticket, and sells or offers for sale any such ticket or part of ticket or any certificate or substitute for a certificate, and circulates in any manner any scheme or any drawing.

(b) On the trial of any person under subsection (a) of this section any lottery scheme drawing, ticket, certificate of or a substitute for a ticket or parts of tickets, which shall be proved to have been by the accused brought or procured to be brought, or sent or procured to be sent into this State or printed or procured to be printed within this State, for the purpose of circulating the same by mail or otherwise, shall be prima facie evidence within the description of this section.

(c) Engaging in foreign lotteries is a class A misdemeanor.

11 Del. C. 1953, § 1402; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1403 Advancing gambling in the first degree; class A misdemeanor.

A person is guilty of advancing gambling in the first degree when:

(1) The person keeps, exhibits or uses, or is concerned in interest in keeping, exhibiting or using any book, device, apparatus or paraphernalia for the purpose of receiving, recording or registering bets or wagers upon the result of any trial or contest, wherever conducted, of skill, speed or power of endurance of human or beast; or

(2) Being the owner, lessee or occupant of a room, house, building, enclosure or place of any kind, the person keeps, exhibits, uses or employs therein or permits or allows to be kept, exhibited, used or employed therein, or is concerned in interest in keeping, exhibiting, using or employing therein any book, device, apparatus or paraphernalia for the purpose of receiving, recording or registering bets or wagers as provided in paragraph (1) of this section, or of forwarding in any manner money, thing or consideration of value for the purpose of being bet or wagered as provided in paragraph (1) of this section; or

(3) The person records or registers bets or wagers, or receives, contracts or agrees to receive money or anything of value for the purpose or with the intent to bet or wager personally or for another person as provided in paragraph (1) of this section; or

(4) The person directly or indirectly bets or wagers, or promises to bet or wager, money or anything of value as provided in paragraph (1) of this section.

This section does not apply to a bet or wager made on a horse race within the enclosure of any race meeting licensed and conducted under the laws of this State, and made by or through the means of a pari-mutuel or totalizator pool, the conduct of which is licensed by the Delaware Racing Commission or other state licensing agency. Such exception need not be negated in any indictment or information.

Advancing gambling in the first degree is a class A misdemeanor.

11 Del. C. 1953, § 1403; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1404 Providing premises for gambling; class A misdemeanor; unclassified misdemeanor.

A person is guilty of providing premises for gambling when:

- (1) The person lets, demises or transfers to another person any building, structure, room or rooms knowing that the same will be used for the purpose of committing any gambling offense; or
- (2) The person knowingly permits any house, structure, building, room or rooms of which the person has possession or control to be used for the purpose of committing any gambling offense; or
- (3) The person contributes to the support and maintenance of any house or place where gambling is carried on or conducted; or
- (4) The person keeps or maintains any house or place where gambling is carried on.

Providing premises for gambling or contributing thereto is an unclassified misdemeanor, unless the accused has been convicted, within the previous 5 years, of the same offense or of an offense under § 663 or § 665 of this title as the same existed prior to July 1, 1973, in which case it is a class A misdemeanor.

11 Del. C. 1953, § 1404; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1405 Possessing a gambling device; class A misdemeanor.

- (a) A person is guilty of possessing a gambling device when the person knowingly manufactures, sells, transports, keeps, exhibits, manages, places, possesses or conducts or negotiates any transaction affecting or designed to effect ownership, custody or use of a slot machine or any other gambling device.
- (b) Possessing a gambling device is a class A misdemeanor.
- (c) A person is not guilty of a violation of this section if the device or machine is either:
 - (1) An antique slot machine which is not used for gambling purposes; or
 - (2) Any slot machine or gambling device which is manufactured (including, without limitation, the retrofitting or alteration of a finished machine or device), assembled, transported, kept, exhibited, managed, placed or possessed by a person within this State or which is the subject of any negotiation which involves a transaction affecting or designed to affect the ownership, custody or use of such machine or device by such person in this State where:
 - a. Such person is duly licensed to conduct a manufacturing or other business in this State; and
 - b. Such person is registered in accordance with the federal Gambling Devices Act of 1962 as amended (15 U.S.C. § 1171 et seq.) and is in the business of designing, assembling, manufacturing, selling, supplying, repairing or retrofitting slot machines, gambling devices or component parts thereof exclusively for lawful possession and use.
- (d) For purposes of this section, a slot machine is an antique machine if such machine is at least 25 years old.
- (e) For purposes of this section, a "video lottery machine," as defined in § 4803 of Title 29, which is owned or leased by the State for use in the Delaware video lottery shall not constitute either a slot machine or a gaming device.

11 Del. C. 1953, § 1405; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [68 Del. Laws, c. 252, § 1](#); [69 Del. Laws, c. 375, § 1](#); [70 Del. Laws, c. 186, § 1](#); [70 Del. Laws, c. 421, §§ 1, 2](#); [77 Del. Laws, c. 219, § 4](#); [78 Del. Laws, c. 245, § 1](#);

§ 1406 Being concerned in interest in keeping any gambling device; class A misdemeanor.

- (a) A person is guilty of being concerned in interest in keeping any gambling device when:
 - (1) The person keeps or exhibits a gaming table, faro bank, sweat cloth, roulette table or other device under any denomination at which cards, dice or any other game of chance is played for money, or other thing of value or other gambling device of any kind whatsoever; or

(2) The person, with the intent that it shall be kept or exhibited for use by the public, buys, sells or distributes a gaming table, faro bank, sweat cloth or other gambling device; or

(3) The person is a partner or concerned in interest in the keeping or exhibiting of a gaming table, faro bank, sweat cloth or other gambling device.

(b) Being concerned in interest in keeping any gambling device is a class A misdemeanor.

(c) An antique slot machine, as defined in § 1405 of this title, is not a gambling device for purposes of this section.

11 Del. C. 1953, § 1406; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [68 Del. Laws, c. 252, § 2](#); [70 Del. Laws, c. 186, § 1](#);

§ 1407 Engaging in a crap game; violation.

A person is guilty of engaging in a crap game when the person takes part in or is knowingly present at the form of gambling commonly known as crap, in which money or other valuable things are played for by means of dice.

Engaging in a crap game is a violation.

11 Del. C. 1953, § 1407; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1408 Merchandising plans are not gambling.

Sections 1401-1405 of this title are inapplicable to any plan for stimulating public interest in, or sale of, merchandise, services or exhibitions unless the plan requires that the chance to win a prize be paid for in money or something of actual pecuniary value or that some items be bought or to any lottery under state control for the purpose of raising funds.

11 Del. C. 1953, § 1408; [58 Del. Laws, c. 497, § 1](#); [59 Del. Laws, c. 364, § 1](#);

§ 1409 Exemption of law-enforcement officer.

Nothing in subpart D of subchapter VII of this chapter shall apply to any law-enforcement officer or officer's agent while acting in the lawful performance of duty.

11 Del. C. 1953, § 1409; [58 Del. Laws, c. 497, § 1](#); [70 Del. Laws, c. 186, § 1](#);

§ 1410 [Reserved.]

§ 1411 Unlawfully disseminating gambling information; class A misdemeanor.

A person is guilty of unlawfully disseminating gambling information when:

(1) Being a public utility it knowingly furnishes to another person a private wire for use in disseminating information in furtherance of gambling or for gambling purposes; or

(2) The person knowingly uses a private wire in disseminating or receiving information in furtherance of gambling or for gambling purposes; or

(3) The person engages in the business of or receives compensation in any form for disseminating or receiving information in furtherance of gambling or for gambling purposes by means of a private wire or a call service.

Unlawfully disseminating gambling information is a class A misdemeanor.

11 Del. C. 1953, § 1411; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1412 Revocation of service contracts or denial of application for service; exemption from liability.

(a) The Attorney General, if the Attorney General has reasonable cause to believe that any service furnished by a public utility is being used or will be used to disseminate information in furtherance of gambling or for gambling purposes, may give notice to the person who has contracted with or is applying to the public utility for such service that the Attorney General intends to seek a court order that the service contract be revoked or the application for service be denied.

(b) The notice permitted in subsection (a) of this section shall be served personally upon the person who has contracted with or is applying to the public utility for the service. If personal service is not reasonably possible, the notice may be posted in a conspicuous place on the premises to which the service is furnished. The notice shall specify the time and place where the hearing will be held, and the court before which it will be held.

(c) A hearing shall be held in the Superior Court at the time specified in the notice. At the hearing, evidence bearing on the use of the public utility service in question may be presented by the State and by or on behalf of the person who has contracted for or is applying for the service.

(d) If the Court, after hearing, determines that there is probable cause to believe that the service furnished by the public utility is being used or will be used to disseminate information in furtherance of gambling or for gambling purposes, it shall order that the contract to furnish the service be revoked or that the application for service be denied.

(e) No public utility shall be held liable at law or in equity for revocation of a contract, or denying an application for service, when ordered to do so as provided by this section.

11 Del. C. 1953, § 1412; [58 Del. Laws, c. 497, § 1](#); [70 Del. Laws, c. 186, § 1](#);

§ 1413 Exemption for operations of lottery under State control.

The sale, lease, transport, ownership, possession, exhibition, manufacture, servicing, marketing or use of a video lottery machine, sports lottery machine, table game equipment or any equipment, supplies, information or data in connection with the operations of a lottery under State control (including the operations of a video lottery agent in accordance with Chapter 48 of Title 29) shall not be a violation of §§ 1401-1412 of this title.

[77 Del. Laws, c. 219, § 27](#);

§§ 1414 -1420. [Reserved.]

§ 1421 Obstructions; service of notice.

If the Attorney General finds that access to a building, apartment or place, which the Attorney General has reasonable cause to believe is resorted to for the purpose of gambling in violation of the laws of this State, is barred by an obstruction, the Attorney General shall cause to be served in the manner provided by law for service of civil summons upon the occupant or owner a notice to appear before the Superior Court and to show cause why the unusual obstructions should not be removed.

11 Del. C. 1953, § 1421; [58 Del. Laws, c. 497, § 1](#); [70 Del. Laws, c. 186, § 1](#);

§ 1422 Posting of notice.

If the occupant or owner cannot be found, the prescribed notice shall be posted upon the outside of the premises.

11 Del. C. 1953, § 1422; [58 Del. Laws, c. 497, § 1](#);

§ 1423 Contents of notice.

The notice which is served personally upon the occupant or owner or is posted upon the outside of the premises shall in all cases designate the name of the Court in which the rule will be heard, and shall further contain the time and the date upon which the rule will be brought on for hearing.

11 Del. C. 1953, § 1423; [58 Del. Laws, c. 497, § 1.](#);

§ 1424 Hearing.

At the time stated in the notice, a hearing shall be held in the Superior Court. At the hearing, evidence bearing on the matter may be presented by the State and by or on behalf of the person served with the notice or alleged to be the occupant or owner of the premises. The Court may grant a continuance if it is reasonably necessary in order that all relevant evidence may be heard.

11 Del. C. 1953, § 1424; [58 Del. Laws, c. 497, § 1.](#);

§ 1425 Findings of Court; order for removal.

If the Court, after a hearing upon the requisite matters, finds that there is reasonable cause to believe that the premises are resorted to for the purpose of gambling and that access is barred by an obstruction, the Court shall order the occupant or owner to remove the obstruction.

11 Del. C. 1953, § 1425; [58 Del. Laws, c. 497, § 1](#); [59 Del. Laws, c. 203, §§ 26, 31.](#);

§ 1426 Official removal upon noncompliance with removal order.

In the event that the obstructions are not removed within a period of 7 days after the order for removal, the Attorney General shall cause the obstructions to be removed from the premises or place.

11 Del. C. 1953, § 1426; [58 Del. Laws, c. 497, § 1.](#);

§ 1427 Collection of removal expenses; status of contractor; amount of lien.

The expenses of a removal under § 1426 of this title shall be collected by the Attorney General in the manner provided by law for the filing and collection of a mechanic's lien.

11 Del. C. 1953, § 1427; [58 Del. Laws, c. 497, § 1.](#);

§ 1428 Maintaining an obstruction; class A misdemeanor; a violation.

A person is guilty of maintaining an obstruction when, being the owner or occupant of a building or other place from which an obstruction has been removed as provided in §§ 1421-1427 of this title, the person again erects or permits the erection of an obstruction.

Maintaining an obstruction is a violation unless the accused has been convicted of the same offense within the previous 2 years, in which case it is a class A misdemeanor. The section does not limit the power of the State to seek the removal of the obstruction as provided in §§ 1421-1427 of this title.

11 Del. C. 1953, § 1428; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1.](#);

§§ 1429 , 1430. [Reserved.]

§ 1431 Telephone messages received or overheard by police as evidence.

In any prosecution for a gambling offense, evidence that a police officer, when making an arrest for a gambling offense, received or overheard telephone messages intended for the accused or an associate of the accused which tend to prove that gambling activity was being conducted is admissible. The gathering and disclosure of such evidence, including the contents of the telephone messages received or overheard, does not violate any law of this State.

11 Del. C. 1953, § 1431; [58 Del. Laws, c. 497, § 1.](#);

§ 1432 Gambling; definitions.

(a) "Call service" means the furnishing of information upon request therefor or by prearrangement over general telegraphic, telephonic or teletypewriter exchange or toll service.

(b) "Dissemination" means the act of transmitting, distributing, advising, spreading, communicating, conveying or making known.

(c) "Gambling device" means any device, machine, paraphernalia or equipment which is used or usable in the playing phases of any gambling activity, whether the activity consists of gambling between persons or gambling by a person involving the playing of a machine. Lottery tickets, policy slips and other items used in the playing phases of lottery and policy schemes are not gambling devices.

(d) "Gambling offense" means any offense defined in §§ 1401-1431 of this title.

(e) "Private wire" means service equipment, facilities, conduits, poles, wires, circuits, systems by means of which service is furnished for communication purposes, either through the medium of telephone, telegraph, Morse, teletypewriter, loudspeaker or any other means, or by which the voice or electrical impulses are sent over a wire, and which services are contracted for or leased for services between 2 or more points specifically designated, and are not connected to or available for general telegraphic, telephonic or teletypewriter exchange or toll service, and includes such services known as "special contract leased wire service," "leased line," "private line," "private system," "Morse line," "private wire," but does not include the usual and customary telephone or teletypewriter service by which the subscriber may be connected at each separate call to any other telephone or teletypewriter designated by the subscriber only through the general telephone or teletypewriter exchange system or toll service.

(f) "Public utility" means a person, partnership, association or corporation owning or operating in this State equipment or facilities for conveying or transmitting messages or communications by telephone or telegraph to the public for compensation.

(g) "Obstruction" means a door, window, shutter, screen bar or grating of unusual strength, or any unnecessary number of doors, windows or obstructions other than what is usual and ordinary in the normal or usual use of a building, apartment or place, by which access to any building, apartment or place is barred.

(h) "Slot machine" means a gambling device which, as a result of the insertion of a coin or other object, operates, either completely automatically or with the aid of a physical act by the player, in such manner that, depending upon elements of chance, it may eject something of value.

11 Del. C. 1953, § 1432; [58 Del. Laws. c. 497. § 1](#); [70 Del. Laws. c. 186. § 1.](#);

§§ 1433 -1440. [Reserved.]

§ 1441 License to carry concealed deadly weapons.

(a) A person of full age and good moral character desiring to be licensed to carry a concealed deadly weapon for personal protection or the protection of the person's property may be licensed to do so when the following conditions have been strictly complied with:

(1) The person shall make application therefor in writing and file the same with the Prothonotary of the proper county, at least 15 days before the then next term of the Superior Court, clearly stating that the person is of full age and that the person is desirous of being licensed to carry a concealed deadly weapon for personal protection or protection of the person's property, or both, and also stating the person's residence and occupation. The person shall submit together with such application all information necessary to conduct a criminal history background check. The Superior Court may conduct a criminal history background check pursuant to the procedures set forth in Chapter 85 of Title 11 for the purposes of licensing any person pursuant to this section.

(2) At the same time the person shall file, with the Prothonotary, a certificate of 5 respectable citizens of the county in which the applicant resides at the time of filing the application. The certificate shall clearly state that

the applicant is a person of full age, sobriety and good moral character, that the applicant bears a good reputation for peace and good order in the community in which the applicant resides, and that the carrying of a concealed deadly weapon by the applicant is necessary for the protection of the applicant or the applicant's property, or both. The certificate shall be signed with the proper signatures and in the proper handwriting of each such respectable citizen.

(3) Every such applicant shall file in the office of the Prothonotary of the proper county the application verified by oath or affirmation in writing taken before an officer authorized by the laws of this State to administer the same, and shall under such verification state that the applicant's certificate and recommendation were read to or by the signers thereof and that the signatures thereto are in the proper and genuine handwriting of each. Prior to the issuance of an initial license the person shall also file with the Prothonotary a notarized certificate signed by an instructor or authorized representative of a sponsoring agency, school, organization or institution certifying that the applicant: (i) has completed a firearms training course which contains at least the below-described minimum elements; and (ii) is sponsored by a federal, state, county or municipal law enforcement agency, a college, a nationally recognized organization that customarily offers firearms training, or a firearms training school with instructors certified by a nationally recognized organization that customarily offers firearms training. The firearms training course shall include the following elements:

- a. Instruction regarding knowledge and safe handling of firearms;
- b. Instruction regarding safe storage of firearms and child safety;
- c. Instruction regarding knowledge and safe handling of ammunition;
- d. Instruction regarding safe storage of ammunition and child safety;
- e. Instruction regarding safe firearms shooting fundamentals;
- f. Live fire shooting exercises conducted on a range, including the expenditure of a minimum of 100 rounds of ammunition;
- g. Identification of ways to develop and maintain firearm shooting skills;
- h. Instruction regarding federal and state laws pertaining to the lawful purchase, ownership, transportation, use and possession of firearms;
- i. Instruction regarding the laws of this State pertaining to the use of deadly force for self-defense; and
- j. Instruction regarding techniques for avoiding a criminal attack and how to manage a violent confrontation, including conflict resolution.

(4) At the time the application is filed, the applicant shall pay a fee of \$65 to the Prothonotary issuing the same.

(5) The license issued upon initial application shall be valid for 3 years. On or before the date of expiration of such initial license, the licensee, without further application, may renew the same for the further period of 5 years upon payment to the Prothonotary of a fee of \$65, and upon filing with said Prothonotary an affidavit setting forth that the carrying of a concealed deadly weapon by the licensee is necessary for personal protection or protection of the person's property, or both, and that the person possesses all the requirements for the issuance of a license and may make like renewal every 5 years thereafter; provided, however, that the Superior Court, upon good cause presented to it, may inquire into the renewal request and deny the same for good cause shown. No requirements in addition to those specified in this paragraph may be imposed for the renewal of a license.

(b) The Prothonotary of the county in which any applicant for a license files the same shall cause notice of every such application to be published once, at least 10 days before the next term of the Superior Court. The

publication shall be made in a newspaper of general circulation published in the county. In making such publication it shall be sufficient for the Prothonotary to do the same as a list in alphabetical form stating therein simply the name and residence of each applicant respectively.

(c) The Prothonotary of the county in which the application for license is made shall lay before the Superior Court, at its then next term, all applications for licenses, together with the certificate and recommendation accompanying the same, filed in the Prothonotary's office, on the first day of such application.

(d) The Court may or may not, in its discretion, approve any application, and in order to satisfy the Judges thereof fully in regard to the propriety of approving the same, may receive remonstrances and hear evidence and arguments for and against the same, and establish general rules for that purpose.

(e) If any application is approved, as provided in this section, the Court shall endorse the word "approved" thereon and sign the same with the date of approval. If not approved, the Court shall endorse the words "not approved" and sign the same. The Prothonotary, immediately after any such application has been so approved, shall notify the applicant of such approval, and following receipt of the notarized certification of satisfactory completion of the firearms training course requirement as set forth in paragraph (a)(3) of this section above shall issue a proper license, signed as other state licenses are, to the applicant for the purposes provided in this section and for a term to expire on June 1 next succeeding the date of such approval.

(f) The Secretary of State shall prepare blank forms of license to carry out the purposes of this section, and shall issue the same as required to the several Prothonotaries of the counties in this State. The Prothonotaries of all the counties shall affix to the license, before lamination, a photographic representation of the licensee.

(g) The provisions of this section do not apply to the carrying of the usual weapon by the police or other peace officers.

(h) Notwithstanding any provision to the contrary, anyone retired as a police officer, as "police officer" is defined by § 1911 of this title, who is retired after having served at least 20 years in any law-enforcement agency within this State, or who is retired and remains currently eligible for a duty-connected disability pension, may be licensed to carry a concealed deadly weapon for the protection of that retired police officer's person or property after that retired police officer's retirement, if the following conditions are strictly complied with:

(1) If that retired police officer applies for the license within 90 days of the date of that retired police officer's retirement, the retired police officer shall pay a fee of \$65 to the Prothonotary in the county where that retired police officer resides and present to the Prothonotary both:

a. A certification from the Attorney General's office, in a form prescribed by the Attorney General's office, verifying that the retired officer is in good standing with the law-enforcement agency from which the retired police officer is retired; and

b. A letter from the chief of the retired officer's agency verifying that the retired officer is in good standing with the law-enforcement agency from which the retired police officer is retired; or

(2) If that retired police officer applies for the license more than 90 days, but within 20 years, of the date of that retired police officer's retirement, the retired police officer shall pay a fee of \$65 to the Prothonotary in the county where the retired police officer resides and present to the Prothonotary certification forms from the Attorney General's office, or in a form prescribed by the Attorney General's office, that:

a. The retired officer is in good standing with the law-enforcement agency from which that retired police officer is retired;

b. The retired officer's criminal record has been reviewed and that the retired police officer has not been convicted of any crime greater than a violation since the date of the retired police officer's retirement; and

c. The retired officer has not been committed to a psychiatric facility since the date of the retired police officer's retirement.

(i) Notwithstanding anything contained in this section to the contrary, an adult person who, as a successful petitioner seeking relief pursuant to Part D, subchapter III of Chapter 9 of Title 10, has caused a protection from abuse order containing a firearms prohibition authorized by § 1045(a)(8) of Title 10 or a firearms prohibition pursuant to § 1448(a)(6) of this title to be entered against a person for alleged acts of domestic violence as defined in § 1041 of Title 10, shall be deemed to have shown the necessity for a license to carry a deadly weapon concealed for protection of themselves pursuant to this section. In such cases, all other requirements of subsection (a) of this section must still be satisfied.

(j) Notwithstanding any other provision of this Code to the contrary, the State of Delaware shall give full faith and credit and shall otherwise honor and give full force and effect to all licenses/permits issued to the citizens of other states where those issuing states also give full faith and credit and otherwise honor the licenses issued by the State of Delaware pursuant to this section and where those licenses/permits are issued by authority pursuant to state law and which afford a reasonably similar degree of protection as is provided by licensure in Delaware. For the purpose of this subsection "reasonably similar" does not preclude alternative or differing provisions nor a different source and process by which eligibility is determined. Notwithstanding the forgoing, if there is evidence of a pattern of issuing licenses/permits to convicted felons in another state, the Attorney General shall not include that state under the exception contained in this subsection even if the law of that state is determined to be "reasonably similar." The Attorney General shall communicate the provisions of this section to the Attorneys General of the several states and shall determine those states whose licensing/permit systems qualify for recognition under this section. The Attorney General shall publish on January 15 of each year a list of all States which have qualified for reciprocity under this subsection. Such list shall be valid for one year and any removal of a State from the list shall not occur without 1 year's notice of such impending removal. Such list shall be made readily available to all State and local law-enforcement agencies within the State as well as to all then-current holders of licenses issued by the State of Delaware pursuant to this section.

(k) The Attorney General shall have the discretion to issue, on a limited basis, a temporary license to carry concealed a deadly weapon to any individual who is not a resident of this State and whom the Attorney General determines has a short-term need to carry such a weapon within this State in conjunction with that individual's employment for the protection of person or property. Said temporary license shall automatically expire 30 days from the date of issuance and shall not be subject to renewal, and must be carried at all times while within the State. However, nothing contained herein shall prohibit the issuance of a second or subsequent temporary license. The Attorney General shall have the authority to promulgate and enforce such regulations as may be necessary for the administration of such temporary licenses. No individual shall be issued more than 3 temporary licenses.

(l) All applications for a temporary license to carry a concealed deadly weapon made pursuant to subsection (k) of this section shall be in writing and shall bear a notice stating that false statements therein are punishable by law.

(m) Notwithstanding any other law or regulation to the contrary, any license issued pursuant to this section shall be void, and is automatically repealed by operation of law, if the licensee is or becomes prohibited from owning, possessing or controlling a deadly weapon as specified in § 1448 of this title.

[11 Del. C. 1953, § 1441](#); [58 Del. Laws, c. 497, § 1](#); [60 Del. Laws, c. 419, §§ 1-3](#); [67 Del. Laws, c. 41, § 1](#); [67 Del. Laws, c. 260, § 1](#); [68 Del. Laws, c. 9, §§ 1, 2](#); [68 Del. Laws, c. 410, §§ 1-3](#); [69 Del. Laws, c. 299, § 1](#); [70 Del. Laws, c. 186, § 1](#); [70 Del. Laws, c. 343, § 1](#); [71 Del. Laws, c. 246, § 1](#); [71 Del. Laws, c. 252, § 1](#); [72 Del. Laws, c. 61, § 6](#); [73 Del. Laws, c. 7, § 1](#); [73 Del. Laws, c. 252, § 7](#); [74 Del. Laws, c. 140, §§ 1-3](#); [77 Del. Laws, c. 230, §§ 1-4](#);

§ 1441A State implementation of the federal Law Enforcement Officers Safety Act of 2004 (18 U.S.C. § 926B as amended in 2010 and 2013); carrying of concealed firearms by qualified law-enforcement officers.

(a) Notwithstanding any other provision of the law of any state or any political subdivision thereof, an individual who is a qualified law-enforcement officer and who is carrying the identification required by subsection (d) of this

section may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b) of this section.

(b) This section shall not be construed to supersede or limit the laws of any state that:

- (1) Permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or
- (2) Prohibit or restrict the possession of firearms on any state or local government property, installation, building, base, or park.

(c) As used in this section, the term "qualified law-enforcement officer" means an employee of a governmental agency who:

- (1) Is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under 10 U.S.C. § 807(b) (article 7(b) of the Uniform Code of Military Justice);
- (2) Is authorized by the agency to carry a firearm;
- (3) Is not the subject of any disciplinary action by the agency which could result in suspension or loss of police powers;
- (4) Meets standards, if any, established by the agency which require the employee to regularly qualify in the use of a firearm;
- (5) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and
- (6) Is not prohibited by federal law from receiving a firearm.

(d) The identification required by this subsection is the photographic identification issued by the governmental agency for which the individual is employed that identifies the employee as a police officer or law-enforcement officer of the agency.

(e) As used in this section, the term "firearm":

- (1) Except as provided in this subsection, has the same meaning as in 18 U.S.C. § 921;
- (2) Includes ammunition not expressly prohibited by federal law or subject to the provisions of the National Firearms Act [26 U.S.C. § 5801 et seq.]; and
- (3) Does not include:
 - a. Any machinegun (as defined in § 5845 of the National Firearms Act [26 U.S.C. § 5845]);
 - b. Any firearm silencer (as defined in 18 U.S.C. § 921); and
 - c. Any destructive device (as defined in 18 U.S.C. § 921).

(f) For the purposes of this section, a law-enforcement officer of the Amtrak Police Department, a law-enforcement officer of the Federal Reserve, or a law-enforcement or police officer of the executive branch of the federal government qualifies as an employee of a governmental agency who is authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and has statutory powers of arrest or apprehension under 10 U.S.C. § 807(b) (article 7(b) of the Uniform Code of Military Justice).

[76 Del. Laws. c. 320, § 1](#); [70 Del. Laws. c. 186, § 1](#); [80 Del. Laws. c. 181, § 1](#);

§ 1441B State implementation of the federal Law Enforcement Officers Safety Act of 2004 (18 U.S.C. § 926C as amended in 2010 and 2013); carrying of concealed firearms by qualified retired law-enforcement

officers.

(a) Notwithstanding any other provision of the law of any state or any political subdivision thereof, an individual who is a qualified retired law-enforcement officer and who is carrying the identification required by subsection (d) of this section may carry a concealed firearm that has been shipped or transported in interstate or foreign commerce, subject to subsection (b) of this section.

(b) This section shall not be construed to supersede or limit the laws of any state that:

(1) Permit private persons or entities to prohibit or restrict the possession of concealed firearms on their property; or

(2) Prohibit or restrict the possession of firearms on any state or local government property, installation, building, base, or park.

(c) As used in this section, the term "qualified retired law-enforcement officer" means an individual who:

(1) Separated from service in good standing from service with a public agency as a law-enforcement officer;

(2) Before such separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law, and had statutory powers of arrest or apprehension under 10 U.S.C. § 807(b) (article 7(b) of the Uniform Code of Military Justice);

(3)a. Before such separation, served as a law-enforcement officer for an aggregate of 10 years or more; or

b. Separated from service with such agency, after completing any applicable probationary period of such service, due to a service-connected disability, as determined by such agency;

(4) During the most recent 12-month period, has met, at the expense of the individual, the standards for qualification in firearms training for active law-enforcement officers, as determined by the former agency of the individual, the state in which the individual resides or, if the state has not established such standards, either a law-enforcement agency within the state in which the individual resides or the standards used by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state;

(5)a. Has not been officially found by a qualified medical professional employed by the agency to be unqualified for reasons relating to mental health and as a result of this finding will not be issued the photographic identification as described in paragraph (d)(1) of this section; or

b. Has not entered into an agreement with the agency from which the individual is separating from service in which that individual acknowledges he or she is not qualified under this section for reasons relating to mental health and for those reasons will not receive or accept the photographic identification as described in paragraph (d)(1) of this section;

(6) Is not under the influence of alcohol or another intoxicating or hallucinatory drug or substance; and

(7) Is not prohibited by federal law from receiving a firearm.

(d) The identification required by this subsection is:

(1) A photographic identification issued by the agency from which the individual separated from service as a law-enforcement officer that identifies the person as having been employed as a police officer or law-enforcement officer and indicates that the individual has, not less recently than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the agency to meet the active duty standards for qualification in firearms training as established by the agency to carry a firearm of the same type as the concealed firearm; or

(2)a. A photographic identification issued by the agency from which the individual separated from service as a law-enforcement officer that identifies the person as having been employed as a police officer or law-enforcement officer; and

b. A certification issued by the state in which the individual resides or by a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state that indicates that the individual has, not less than 1 year before the date the individual is carrying the concealed firearm, been tested or otherwise found by the state or a certified firearms instructor that is qualified to conduct a firearms qualification test for active duty officers within that state to have met:

1. The active duty standards for qualification in firearms training, as established by the state, to carry a firearm of the same type as the concealed firearm; or
2. If the state has not established such standards, standards set by any law-enforcement agency within that state to carry a firearm of the same type as the concealed firearm.

(e) As used in this section:

(1) The term "firearm":

- a. Except as provided in this paragraph, has the same meaning as in 18 U.S.C. § 921;
- b. Includes ammunition not expressly prohibited by federal law or subject to the provisions of the National Firearms Act [26 U.S.C. § 5801 et seq.]; and
- c. Does not include:
 1. Any machinegun (as defined in § 5845 of the National Firearms Act [26 U.S.C. § 5845]);
 2. Any firearm silencer (as defined in 18 U.S.C. § 921); and
 3. Any destructive device (as defined in 18 U.S.C. § 921); and

(2) The term "service with a public agency as a law-enforcement officer" includes service as a law-enforcement officer of the Amtrak Police Department, service as a law-enforcement officer of the Federal Reserve, or service as a law-enforcement or police officer of the executive branch of the federal government.

(3) The term "a firearm of the same type" means a revolver or a semi-automatic pistol.

[80 Del. Laws, c. 181, § 1](#); [70 Del. Laws, c. 186, § 1](#);

§ 1442 Carrying a concealed deadly weapon; class G felony; class D felony.

A person is guilty of carrying a concealed deadly weapon when the person carries concealed a deadly weapon upon or about the person without a license to do so as provided by § 1441 of this title.

Carrying a concealed deadly weapon is a class G felony, unless the deadly weapon is a firearm, in which case it is a class D felony.

It shall be a defense that the defendant has been issued an otherwise valid license to carry a concealed deadly weapon pursuant to terms of § 1441 of this title, where:

- (1) The license has expired,
- (2) The person had applied for renewal of said license within the allotted time frame prior to expiration of the license, and
- (3) The offense is alleged to have occurred while the application for renewal of said license was pending before the court.

11 Del. C. 1953, § 1442; [58 Del. Laws, c. 497, § 1](#); [59 Del. Laws, c. 547, § 13](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#); [77 Del. Laws, c. 313, §§ 1, 6](#);

§ 1443 Carrying a concealed dangerous instrument; class A misdemeanor.

- (a) A person is guilty of carrying a concealed dangerous instrument when the person carries concealed a dangerous instrument upon or about the person.
- (b) It shall be a defense that the defendant was carrying the concealed dangerous instrument for a specific lawful purpose and that the defendant had no intention of causing any physical injury or threatening the same.
- (c) For the purposes of this section, disabling chemical spray, as defined in § 222 of this title, shall not be considered to be a dangerous instrument.
- (d) Carrying a concealed dangerous instrument is a class A misdemeanor.

11 Del. C. 1953, § 1443; [58 Del. Laws, c. 497, § 1](#); [59 Del. Laws, c. 547, § 14](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#); [71 Del. Laws, c. 374, § 6](#);

§ 1444 Possessing a destructive weapon; class E felony.

- (a) A person is guilty of possessing a destructive weapon when the person sells, transfers, buys, receives or has possession of a bomb, bombshell, firearm silencer, sawed-off shotgun, machine gun or any other firearm or weapon which is adaptable for use as a machine gun.
- (b) Possessing a destructive weapon is a class E felony. This section does not apply to members of the military forces or to members of a police force in this State duly authorized to carry a weapon of the type described; nor shall the provisions contained herein apply to authorized and certified (by an accredited state enforcement agency) state and federal wildlife biologists possessing firearm silencers for the purposes of wildlife disease or wildlife population control, or persons possessing machine guns for scientific or experimental research and development purposes, which machine guns have been duly registered under the National Firearms Act of 1968 (26 U.S.C. § 5801 et seq.).
- (c) The term "shotgun" as used in this section means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger. The term "sawed-off shotgun" as used in this section means a shotgun having 1 or more barrels less than 18 inches in length or any weapon made from a shotgun (whether by alteration, modification or otherwise) if such weapon as modified has an overall length of less than 26 inches.

11 Del. C. 1953, § 1444; [58 Del. Laws, c. 497, § 1](#); [59 Del. Laws, c. 547, § 12](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#); [76 Del. Laws, c. 411, § 1](#);

§ 1445 Unlawfully dealing with a dangerous weapon; unclassified misdemeanor.

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; or
 - b. A pellet, slug or bullet, intending that it be used in any weapon prohibited by paragraph (1)a. of this section; or
- (2) The person sells, gives or otherwise transfers to a child under 16 years of age a BB or air gun or spear gun or BB shot, unless the person is that child's parent or guardian, or unless the person first receives the permission of said parent or guardian; or

- (3) Being a parent, the person permits the person's child under 16 years of age to have possession of a firearm or a BB or air gun or spear gun unless under the direct supervision of an adult; or
- (4) The person sells, gives or otherwise transfers to a child under 18 years of age a firearm or ammunition for a firearm, unless the person is that child's parent or guardian, or unless the person first receives the permission of said parent or guardian; or
- (5) The person sells, gives or otherwise transfers a firearm to any person knowing that said person intends to commit any felony, class A misdemeanor or drug related criminal offense while in possession of said firearm.

Unlawfully dealing with a firearm or dangerous weapon is an unclassified misdemeanor, unless the person is convicted under paragraph (4) of this section, in which case it is a class G felony, or unless the person is convicted under paragraph (5) of this section, in which case it is a class E felony.

11 Del. C. 1953, § 1445; [58 Del. Laws, c. 497, § 1](#); [64 Del. Laws, c. 44, § 1](#); [67 Del. Laws, c. 130, § 8](#); [69 Del. Laws, c. 312, §§ 1-3](#); [70 Del. Laws, c. 186, § 1](#);

§ 1446 Unlawfully dealing with a switchblade knife; unclassified misdemeanor.

A person is guilty of unlawfully dealing with a switchblade knife when the person sells, offers for sale or has in possession a knife, the blade of which is released by a spring mechanism or by gravity.

Unlawfully dealing with a switchblade knife is an unclassified misdemeanor.

11 Del. C. 1953, § 1446; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1446A Undetectable knives; commercial manufacture, import for commercial sale, or offers for commercial sale; or possession.

(a) Any person in this state who commercially manufactures or causes to be commercially manufactured, or who knowingly imports into the state for commercial sale, keeps for commercial sale, or offers or exposes for commercial sale, or who possesses any undetectable knife is guilty of a class G felony. As used in this section, an "undetectable knife" means any knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict serious physical injury or death that is commercially manufactured to be used as a weapon and is not detectable by a metal detector or magnetometer because there is no material permanently affixed that would be detectable by a metal detector or magnetometer, either handheld or otherwise, that is set at standard calibration.

(b) Notwithstanding any other provision of law, all knives or other instruments with or without a handguard that are capable of ready use as a stabbing weapon that may inflict serious physical injury or death that are commercially manufactured in this state that utilize materials that are not detectable by a metal detector or magnetometer, shall be manufactured to include permanently installed materials that will ensure they are detectable by a metal detector or magnetometer, either handheld or otherwise, that is set at standard calibration.

(c) This section shall not apply to the manufacture or importation of undetectable knives for sale to a law-enforcement or military entity nor shall this section apply to the subsequent sale of these knives to law enforcement or military entity.

(d) This section shall not apply to the manufacture or importation of undetectable knives for sale to federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that the undetectable knives are properly housed and secured from unauthorized handling, nor shall this section apply to the subsequent sale of the knives to these societies, museums, and collections.

[75 Del. Laws, c. 348, § 1](#);

§ 1447 Possession of a deadly weapon during commission of a felony; class B felony.

(a) A person who is in possession of a deadly weapon during the commission of a felony is guilty of possession of a deadly weapon during commission of a felony.

Possession of a deadly weapon during commission of a felony is a class B felony.

(b) Any sentence imposed for a violation of this section shall not be subject to suspension and no person convicted for a violation of this section shall be eligible for good time, parole or probation during the period of the sentence imposed.

(c) Any sentence imposed upon conviction for possession of a deadly weapon during the commission of a felony shall not run concurrently with any other sentence. In any instance where a person is convicted of a felony, together with a conviction for the possession of a deadly weapon during the commission of such felony, such person shall serve the sentence for the felony itself before beginning the sentence imposed for possession of a deadly weapon during such felony.

(d) Every person charged under this section over the age of 16 years shall be tried as an adult, notwithstanding any contrary provision of statutes governing the Family Court or any other state law.

(e) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted and during which the person possessed the deadly weapon is a lesser included felony of the one originally charged.

11 Del. C. 1953, § 1447; [58 Del. Laws, c. 497, § 1](#); [59 Del. Laws, c. 203, § 34](#); [59 Del. Laws, c. 547, § 15](#); [60 Del. Laws, c. 306, §§ 1, 2](#); [63 Del. Laws, c. 412, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#); [73 Del. Laws, c. 107, § 1](#);

§ 1447A Possession of a firearm during commission of a felony; class B felony.

(a) A person who is in possession of a firearm during the commission of a felony is guilty of possession of a firearm during the commission of a felony. Possession of a firearm during the commission of a felony is a class B felony.

(b) A person convicted under subsection (a) of this section shall receive a minimum sentence of 3 years at Level V, notwithstanding the provisions of § 4205(b)(2) of this title.

(c) A person convicted under subsection (a) of this section, and who has been at least twice previously convicted of a felony in this State or elsewhere, shall receive a minimum sentence of 5 years at Level V, notwithstanding the provisions of §§ 4205(b)(2) and 4215 of this title.

(d) Any sentence imposed for a violation of this section shall not be subject to suspension and no person convicted for a violation of this section shall be eligible for good time, parole or probation during the period of the sentence imposed.

(e) Any sentence imposed upon conviction for possession of a firearm during the commission of a felony shall not run concurrently with any other sentence. In any instance where a person is convicted of a felony together with a conviction for the possession of a firearm during the commission of such felony, such person shall serve the sentence for the felony itself before beginning the sentence imposed for possession of a firearm during such felony.

(f) Every person charged under this section over the age of 15 years shall be tried as an adult, notwithstanding any contrary provisions or statutes governing the Family Court or any other state law.

(g) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted and during which the person possessed the firearm is a lesser included felony of the one originally charged.

§ 1448 Possession and purchase of deadly weapons by persons prohibited; penalties [Effective until Jan. 1, 2017]

(a) Except as otherwise provided herein, the following persons are prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm within the State:

(1) Any person having been convicted in this State or elsewhere of a felony or a crime of violence involving physical injury to another, whether or not armed with or having in possession any weapon during the commission of such felony or crime of violence;

(2) Any person who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium, unless such person can demonstrate that he or she is no longer prohibited from possessing a firearm pursuant to § 1448A of this title;

(3) Any person who has been convicted for the unlawful use, possession or sale of a narcotic, dangerous drug or central nervous system depressant or stimulant as those terms were defined prior to the effective date of the Uniform Controlled Substances Act in June 1973 or of a narcotic drug or controlled substance as defined in Chapter 47 of Title 16;

(4) Any person who, as a juvenile, has been adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their twenty-fifth birthday;

(5) Any juvenile, if said deadly weapon is a handgun, unless said juvenile possesses said handgun for the purpose of engaging in lawful hunting, instruction, sporting or recreational activity while under the direct or indirect supervision of an adult. For the purpose of this subsection, a "handgun" shall be defined as any pistol, revolver or other firearm designed to be readily capable of being fired when held in 1 hand;

(6) Any person who is subject to a Family Court protection from abuse order (other than an ex parte order), but only for so long as that order remains in effect or is not vacated or otherwise terminated, except that this paragraph shall not apply to a contested order issued solely upon § 1041(1)d., e., or h. of Title 10, or any combination thereof;

(7) Any person who has been convicted in any court of any misdemeanor crime of domestic violence. For purposes of this paragraph, the term "misdemeanor crime of domestic violence" means any misdemeanor offense that:

a. Was committed by a member of the victim's family, as "family" is defined in § 901(12) of Title 10 (regardless, however, of the state of residence of the parties); by a former spouse of the victim; by a person who cohabitated with the victim at the time of the offense; or by a person with a child in common with the victim; and

b. Is an offense as defined under § 601, § 602, § 603, § 611, § 614, § 621, § 625, § 628A, § 763, § 765, § 766, § 767, § 781, § 785 or § 791 of this title, or any similar offense when committed or prosecuted in another jurisdiction; or

(8) Any person who, knowing that he or she is the defendant or co-defendant in any criminal case in which that person is alleged to have committed any felony under the laws of this State, the United States or any other state or territory of the United States, becomes a fugitive from justice by failing to appear for any scheduled court proceeding pertaining to such felony for which proper notice was provided or attempted. It is no defense to a prosecution under this paragraph that the person did not receive notice of the scheduled court proceeding.

(9) Any person, if the deadly weapon is a semi-automatic or automatic firearm, or a handgun, who, at the same time, possesses a controlled substance in violation of § 4763, or § 4764 of Title 16.

(10) Except for "antique firearms", any validly seized deadly weapons or ammunition from a person prohibited as a result of a felony conviction under Delaware law, federal law or the laws of any other state, or as otherwise prohibited under this subsection (a) of this section may be disposed of by the law enforcement agency holding the weapon or ammunition, pursuant to § 2311 of this title.

a. "Antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily restored to a firing condition.

b. A person prohibited under this section has the burden of proving that the subject firearm is an antique firearm as defined in paragraph (a)(10)a. of this section subject to an exemption under this section and § 2311 of this title.

(b) Any prohibited person as set forth in subsection (a) of this section who knowingly possesses, purchases, owns or controls a deadly weapon or ammunition for a firearm while so prohibited shall be guilty of possession of a deadly weapon or ammunition for a firearm by a person prohibited.

(c) Possession of a deadly weapon by a person prohibited is a class F felony, unless said deadly weapon is a firearm or ammunition for a firearm, and the violation is one of paragraphs (a)(1)-(8) of this section, in which case it is a class D felony, or unless the person is eligible for sentencing pursuant to subsection (e) of this section, in which case it is a class C felony. As used herein, the word "ammunition" shall mean 1 or more rounds of fixed ammunition designed for use in and capable of being fired from a pistol, revolver, shotgun or rifle but shall not mean inert rounds or expended shells, hulls or casings.

(d) Any person who is a prohibited person solely as the result of a conviction for an offense which is not a felony shall not be prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm if 5 years have elapsed from the date of conviction.

(e)(1) Notwithstanding any provision of this section or Code to the contrary, any person who is a prohibited person as described in this section and who knowingly possesses, purchases, owns or controls a firearm or destructive weapon while so prohibited shall receive a minimum sentence of:

- a. Three years at Level V, if the person has previously been convicted of a violent felony;
- b. Five years at Level V, if the person does so within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or
- c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

(2) Any person who is a prohibited person as described in this section because of a conviction for a violent felony and who, while in possession or control of a firearm in violation of this section, negligently causes serious physical injury to or the death of another person through the use of such firearm, shall be guilty of a class B felony and shall receive a minimum sentence of:

- a. Four years at Level V; or
- b. Six years at Level V, if the person causes such injury or death within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or
- c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

d. Nothing in this paragraph shall be deemed to be a related or included offense of any other provision of this Code. Nothing in this paragraph shall be deemed to preclude prosecution or sentencing under any other provision of this Code nor shall this paragraph be deemed to repeal any other provision of this Code.

(3) Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title. For the purposes of this subsection, "violent felony" means any felony so designated by § 4201(c) of this title, or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a violent felony by § 4201(c) of this title.

(4) Any sentence imposed for a violation of this subsection shall not be subject to suspension and no person convicted for a violation of this subsection shall be eligible for good time, parole or probation during the period of the sentence imposed.

(f)(1) Upon conviction, any person who is a prohibited person as described in paragraph (a)(5) of this section and who is 14 years of age or older shall, for a first offense, receive a minimum sentence of 6 months of Level V incarceration, and shall receive a minimum sentence of 1 year of Level V incarceration for a second and subsequent offense, which shall not be subject to suspension. Any sentence imposed pursuant to this subsection shall not be subject to §§ 4205(b) and 4215 of this title.

(2) The penalties prescribed by this subsection and subsection (g) of this section shall be imposed regardless of whether or not the juvenile is determined to be amenable to the rehabilitative process of the Family Court pursuant to § 1010(c) of Title 10 or any successor statute.

(g) In addition to the penalties set forth in subsection (f) of this section herein, a person who is a prohibited person as described in paragraph (a)(5) of this section and who is 14 years of age or older shall, upon conviction of a first offense, be required to view a film and/or slide presentation depicting the damage and destruction inflicted upon the human body by a projectile fired from a gun, and shall be required to meet with, separately or as part of a group, a victim of a violent crime, or with the family of a deceased victim of a violent crime. The Division of Youth Rehabilitative Service, with the cooperation of the Division of Forensic Science and the Violent Crimes Compensation Board, shall be responsible for the implementation of this subsection.

11 Del. C. 1953, § 1448; [58 Del. Laws, c. 497, § 1](#); [67 Del. Laws, c. 130, § 8](#); [68 Del. Laws, c. 422, § 1](#); [69 Del. Laws, c. 313, §§ 1, 2](#); [69 Del. Laws, c. 441, § 1](#); [70 Del. Laws, c. 186, § 1](#); [71 Del. Laws, c. 230, §§ 1-5](#); [71 Del. Laws, c. 358, §§ 1, 2](#); [72 Del. Laws, c. 61, §§ 1, 2](#); [74 Del. Laws, c. 106, § 7](#); [75 Del. Laws, c. 78, § 1](#); [76 Del. Laws, c. 99, § 1](#); [76 Del. Laws, c. 101, §§ 1-5](#); [78 Del. Laws, c. 13, §§ 5, 6](#); [78 Del. Laws, c. 135, §§ 6-8](#); [78 Del. Laws, c. 137, § 5](#); [78 Del. Laws, c. 168, § 6](#); [79 Del. Laws, c. 124, §§ 1, 2](#); [79 Del. Laws, c. 188, § 1](#); [79 Del. Laws, c. 265, § 10](#);

§ 1448 Possession and purchase of deadly weapons by persons prohibited; penalties [Effective Jan. 1, 2017]

(a) Except as otherwise provided herein, the following persons are prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm within the State:

(1) Any person having been convicted in this State or elsewhere of a felony or a crime of violence involving physical injury to another, whether or not armed with or having in possession any weapon during the commission of such felony or crime of violence;

(2) Any person who has ever been committed for a mental disorder to any hospital, mental institution or sanitarium, unless such person can demonstrate that he or she is no longer prohibited from possessing a firearm pursuant to § 1448A of this title;

(3) Any person who has been convicted for the unlawful use, possession or sale of a narcotic, dangerous drug or central nervous system depressant or stimulant as those terms were defined prior to the effective

date of the Uniform Controlled Substances Act in June 1973 or of a narcotic drug or controlled substance as defined in Chapter 47 of Title 16;

(4) Any person who, as a juvenile, has been adjudicated as delinquent for conduct which, if committed by an adult, would constitute a felony, unless and until that person has reached their twenty-fifth birthday;

(5) Any juvenile, if said deadly weapon is a handgun, unless said juvenile possesses said handgun for the purpose of engaging in lawful hunting, instruction, sporting or recreational activity while under the direct or indirect supervision of an adult. For the purpose of this subsection, a "handgun" shall be defined as any pistol, revolver or other firearm designed to be readily capable of being fired when held in 1 hand;

(6) Any person who is subject to a Family Court protection from abuse order (other than an ex parte order), but only for so long as that order remains in effect or is not vacated or otherwise terminated, except that this paragraph shall not apply to a contested order issued solely upon § 1041(1)d., e., or h. of Title 10, or any combination thereof;

(7) Any person who has been convicted in any court of any misdemeanor crime of domestic violence. For purposes of this paragraph, the term "misdemeanor crime of domestic violence" means any misdemeanor offense that:

a. Was committed by a member of the victim's family, as "family" is defined in § 901 of Title 10 (regardless, however, of the state of residence of the parties); by a former spouse of the victim; by a person who cohabited with the victim at the time of or within 3 years prior to the offense; by a person with a child in common with the victim; or by a person with whom the victim had a substantive dating relationship, as defined in § 1041 of Title 10, at the time of or within 3 years prior to the offense; and

b. Is an offense as defined under § 601, § 602, § 603, § 611, § 614, § 621, § 625, § 628A, § 763, § 765, § 766, § 767, § 781, § 785 or § 791 of this title, or any similar offense when committed or prosecuted in another jurisdiction; or

(8) Any person who, knowing that he or she is the defendant or co-defendant in any criminal case in which that person is alleged to have committed any felony under the laws of this State, the United States or any other state or territory of the United States, becomes a fugitive from justice by failing to appear for any scheduled court proceeding pertaining to such felony for which proper notice was provided or attempted. It is no defense to a prosecution under this paragraph that the person did not receive notice of the scheduled court proceeding.

(9) Any person, if the deadly weapon is a semi-automatic or automatic firearm, or a handgun, who, at the same time, possesses a controlled substance in violation of § 4763, or § 4764 of Title 16.

(10) Except for "antique firearms", any validly seized deadly weapons or ammunition from a person prohibited as a result of a felony conviction under Delaware law, federal law or the laws of any other state, or as otherwise prohibited under this subsection (a) of this section may be disposed of by the law enforcement agency holding the weapon or ammunition, pursuant to § 2311 of this title.

a. "Antique firearm" means any firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily restored to a firing condition.

b. A person prohibited under this section has the burden of proving that the subject firearm is an antique firearm as defined in paragraph (a)(10)a. of this section subject to an exemption under this section and § 2311 of this title.

(b) Any prohibited person as set forth in subsection (a) of this section who knowingly possesses, purchases, owns or controls a deadly weapon or ammunition for a firearm while so prohibited shall be guilty of possession

of a deadly weapon or ammunition for a firearm by a person prohibited.

(c) Possession of a deadly weapon by a person prohibited is a class F felony, unless said deadly weapon is a firearm or ammunition for a firearm, and the violation is one of paragraphs (a)(1)-(8) of this section, in which case it is a class D felony, or unless the person is eligible for sentencing pursuant to subsection (e) of this section, in which case it is a class C felony. As used herein, the word "ammunition" shall mean 1 or more rounds of fixed ammunition designed for use in and capable of being fired from a pistol, revolver, shotgun or rifle but shall not mean inert rounds or expended shells, hulls or casings.

(d) Any person who is a prohibited person solely as the result of a conviction for an offense which is not a felony shall not be prohibited from purchasing, owning, possessing or controlling a deadly weapon or ammunition for a firearm if 5 years have elapsed from the date of conviction.

(e)(1) Notwithstanding any provision of this section or Code to the contrary, any person who is a prohibited person as described in this section and who knowingly possesses, purchases, owns or controls a firearm or destructive weapon while so prohibited shall receive a minimum sentence of:

- a. Three years at Level V, if the person has previously been convicted of a violent felony;
- b. Five years at Level V, if the person does so within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or
- c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.

(2) Any person who is a prohibited person as described in this section because of a conviction for a violent felony and who, while in possession or control of a firearm in violation of this section, negligently causes serious physical injury to or the death of another person through the use of such firearm, shall be guilty of a class B felony and shall receive a minimum sentence of:

- a. Four years at Level V; or
- b. Six years at Level V, if the person causes such injury or death within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or
- c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.
- d. Nothing in this paragraph shall be deemed to be a related or included offense of any other provision of this Code. Nothing in this paragraph shall be deemed to preclude prosecution or sentencing under any other provision of this Code nor shall this paragraph be deemed to repeal any other provision of this Code.

(3) Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title. For the purposes of this subsection, "violent felony" means any felony so designated by § 4201(c) of this title, or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a violent felony by § 4201(c) of this title.

(4) Any sentence imposed for a violation of this subsection shall not be subject to suspension and no person convicted for a violation of this subsection shall be eligible for good time, parole or probation during the period of the sentence imposed.

(f)(1) Upon conviction, any person who is a prohibited person as described in paragraph (a)(5) of this section and who is 14 years of age or older shall, for a first offense, receive a minimum sentence of 6 months of Level

V incarceration, and shall receive a minimum sentence of 1 year of Level V incarceration for a second and subsequent offense, which shall not be subject to suspension. Any sentence imposed pursuant to this subsection shall not be subject to §§ 4205(b) and 4215 of this title.

(2) The penalties prescribed by this subsection and subsection (g) of this section shall be imposed regardless of whether or not the juvenile is determined to be amenable to the rehabilitative process of the Family Court pursuant to § 1010(c) of Title 10 or any successor statute.

(g) In addition to the penalties set forth in subsection (f) of this section herein, a person who is a prohibited person as described in paragraph (a)(5) of this section and who is 14 years of age or older shall, upon conviction of a first offense, be required to view a film and/or slide presentation depicting the damage and destruction inflicted upon the human body by a projectile fired from a gun, and shall be required to meet with, separately or as part of a group, a victim of a violent crime, or with the family of a deceased victim of a violent crime. The Division of Youth Rehabilitative Service, with the cooperation of the Division of Forensic Science and the Violent Crimes Compensation Board, shall be responsible for the implementation of this subsection.

[11 Del. C. 1953, § 1448](#); [58 Del. Laws. c. 497, § 1](#); [67 Del. Laws. c. 130, § 8](#); [68 Del. Laws. c. 422, § 1](#); [69 Del. Laws. c. 313, §§ 1, 2](#); [69 Del. Laws. c. 441, § 1](#); [70 Del. Laws. c. 186, § 1](#); [71 Del. Laws. c. 230, §§ 1-5](#); [71 Del. Laws. c. 358, §§ 1, 2](#); [72 Del. Laws. c. 61, §§ 1, 2](#); [74 Del. Laws. c. 106, § 7](#); [75 Del. Laws. c. 78, § 1](#); [76 Del. Laws. c. 99, § 1](#); [76 Del. Laws. c. 101, §§ 1-5](#); [78 Del. Laws. c. 13, §§ 5, 6](#); [78 Del. Laws. c. 135, §§ 6-8](#); [78 Del. Laws. c. 137, § 5](#); [78 Del. Laws. c. 168, § 6](#); [79 Del. Laws. c. 124, §§ 1, 2](#); [79 Del. Laws. c. 188, § 1](#); [79 Del. Laws. c. 265, § 10](#); [80 Del. Laws. c. 190, § 2](#);

§ 1448A Criminal history record checks for sales of firearms.

(a) No licensed importer, licensed manufacturer or licensed dealer shall sell, transfer or deliver from inventory any firearm, as defined in § 222 of this title, to any other person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, without conducting a criminal history background check in accordance with regulations promulgated by the United States Department of Justice pursuant to the National Instant Criminal Background Check System ("NICS"), 28 C.F.R. §§ 25.1-25.11, as the same may be amended from time to time, to determine whether the transfer of a firearm to any person who is not licensed under 18 U.S.C. § 923 would be in violation of federal or state law.

(b) No licensed importer, licensed manufacturer or licensed dealer shall sell, transfer or deliver from inventory any firearm, as defined in § 222 of this title, to any other person, other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, unless and until being informed that it may "proceed" with the sale, transfer or delivery from inventory of a firearm by the Federal Bureau of Investigation (FBI), NICS Section pursuant to the request for a criminal history record check required by subsection (a) of this section or 25 days have elapsed from the date of the request for a background check and a denial has not occurred.

(c) Any person who is denied the right to receive or purchase a firearm in connection with subsection (a) of this section or § 1448B(a) of this title may request from the Federal Bureau of Investigation a written explanation for such denial; an appeal of the denial based on the accuracy of the record upon which the denial is based; and/or that erroneous information on the NICS system be corrected and that the person's rights to possess a firearm be restored. All requests pursuant to this subsection (c) shall be made in accordance with applicable federal laws and regulations, including without limitation 28 C.F.R. § 25.10. In connection herewith, at the request of a denied person, the Federal Firearms Licensed (FFL) dealer and SBI shall provide to the denied person such information as may be required by federal law or regulation in order for such person to appeal or seek additional information hereunder.

(d) Compliance with the provisions of this section shall be a complete defense to any claim or cause of action under the laws of this State for liability for damages arising from the importation or manufacture of any firearm which has been shipped or transported in interstate or foreign commerce. In addition, compliance with the provisions of this section or § 1448B of this title, as the case may be, shall be a complete defense to any claim or cause of action under the laws of this State for liability for damages allegedly arising from the actions of the

transferee subsequent to the date of said compliance wherein the claim for damages is factually connected to said compliant transfer.

(e) The provisions of this section shall not apply to:

(1) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;

(2) Any replica of any firearm described in paragraph (e)(1) of this section if such replica:

a. Is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition; or

b. Uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;

(3) Any shotgun, which is defined as a firearm designed or intended to be fired from the shoulder and designed or made to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger;

(4) The return, by a licensed pawnbroker, of a firearm to the person from whom it was received;

(5) Transactions in which the potential buyer or transferee holds a valid concealed deadly weapons license pursuant to §§ 1441, 1441A and 1441B of this title; and

(6) Transactions involving a "law-enforcement officer" as defined by § 222 of this title.

(f) Any licensed dealer, licensed manufacturer, licensed importer or employee thereof who wilfully and intentionally requests a criminal history record check from the Federal Bureau of Investigation, NICS for any purpose other than compliance with subsection (a) of this section or § 1448B(a) of this title, or wilfully and intentionally disseminates any criminal history record information to any person other than the subject of such information or discloses to any person the unique identification number shall be guilty of a class A misdemeanor. The Superior Court shall have exclusive jurisdiction for all offenses under this subsection.

(g) Any person who, in connection with the purchase, transfer, or attempted purchase or transfer of a firearm pursuant to subsection (a) of this section or § 1448B(a) of this title, wilfully and intentionally makes any materially false oral or written statement or wilfully and intentionally furnishes or exhibits any false identification intended or likely to deceive the licensee shall be guilty of a class G felony.

(h) Any licensed dealer, licensed manufacturer, licensed importer or employee thereof who wilfully and intentionally sells or delivers a firearm in violation of this section shall be guilty of a class A misdemeanor. Second or subsequent offenses by an individual shall be a class G felony.

(i) The SBI shall provide to the judiciary committees of the Senate and House of Representatives an annual report including the number of inquiries made pursuant to this section and § 1448B of this title for the prior calendar year. Such report shall include, but not be limited to, the number of inquiries received from licensees, the number of inquiries resulting in a determination that the potential buyer or transferee was prohibited from receipt or possession of a firearm pursuant to §§ 1448 and 1448B of this title or federal law.

(j) Notwithstanding Chapter 89 of this title, Chapter 10 of Title 29, and other Delaware laws, the SBI is authorized and directed to release records and data required by this section and by § 1448B of this title. The SBI shall not release or disclose criminal records or data except as specified in this section and in § 1448B of this title.

(k) No records, data, information or reports containing the name, address, date of birth or other identifying data of either the transferor or transferee or which contain the make, model, caliber, serial number or other identifying data of any firearm which are required, authorized or maintained pursuant to this section, § 1448B of

this title or by Chapter 9 of Title 24, shall be subject to disclosure or release pursuant to the Freedom of Information Act, Chapter 100 of Title 29.

(l) *Relief from Disabilities Program.* — A person who is subject to the disabilities of 18 U.S.C. § 922(d)(4) and (g)(4) or of § 1448(a)(2) of this title because of an adjudication or commitment under the laws of this State may petition for relief from a firearms prohibition from the Relief from Disabilities Board. The Relief from Disabilities Board shall be comprised of 3 members, with the chairperson appointed by and serving at the pleasure of the Secretary of Safety and Homeland Security, and 2 members appointed by and serving at the pleasure of the Secretary of the Department of Health and Social Services, 1 of whom shall be a licensed psychiatrist.

(1) The Board shall consider the petition for relief in accordance with the following:

a. The Board shall give the petitioner the opportunity to present evidence to the Board in a closed and confidential hearing on the record; and

b. A record of the hearing shall be maintained by the Board for purposes of appellate review.

(2) In determining whether to grant relief, the Board shall consider evidence regarding the following:

a. The circumstances regarding the firearms disabilities pursuant to § 1448(a)(2) of this title and 18 U.S.C. § 922(d)(4) and (g)(4);

b. The petitioner's record, which must include, at a minimum, the petitioner's mental health record, including a certificate of a medical doctor or psychiatrist licensed in this State that the person is no longer suffering from a mental disorder which interferes or handicaps the person from handling deadly weapons;

c. Criminal history records; and

d. The petitioner's reputation as evidenced through character witness statements, testimony, or other character evidence.

(3) The Board shall have the authority to require that the petitioner undergo a clinical evaluation and risk assessment, which it may also consider as evidence in determining whether to approve or deny the petition for relief.

(4) After a hearing on the record, the Board shall grant relief if it finds, by a preponderance of the evidence, that:

a. The petitioner will not be likely to act in a manner dangerous to public safety; and

b. Granting the relief will not be contrary to the public interest.

(5) The Board shall issue its decision in writing explaining the reasons for a denial or grant of relief.

(6) Any person whose petition for relief has been denied by the Relief from Disabilities Board shall have a right to a de novo judicial review in the Superior Court. The Superior Court shall consider the record of the Board hearing on the petition for relief, the decision of the Board, and, at the Court's discretion, any additional evidence it deems necessary to conduct its review.

(7) Upon notice that a petition for relief has been granted, the Department of Safety and Homeland Security shall, as soon as practicable:

a. Cause the petitioner's record to be updated, corrected, modified, or removed from any database maintained and made available to NICS to reflect that the petitioner is no longer subject to a firearms prohibition as it relates to § 1448(a)(2) of this title and 18 U.S.C. § 922(d)(4) and (g)(4); and

b. Notify the Attorney General of the United States that the petitioner is no longer subject to a firearms prohibition pursuant to § 1448(a)(2) of this title and 18 U.S.C. § 922(d)(4) and (g)(4).

(m) The Department of Safety and Homeland Security shall adopt regulations relating to compliance with NICS, including without limitation issues relating to the transmission of data, the transfer of existing data in the existing state criminal background check database and the relief from disabilities process set forth in subsection (k) of this section. In preparing such regulations, the Department shall consult with the Department of Health and Social Services, the courts, the Department of Children, Youth and Their Families, the Department of State and such other entities as may be necessary or advisable. Such regulations shall include provisions to ensure the identity, confidentiality and security of all records and data provided pursuant to this section.

[67 Del. Laws, c. 414, § 1](#); [69 Del. Laws, c. 224, § 3](#); [69 Del. Laws, c. 293, §§ 1-5](#); [70 Del. Laws, c. 20, § 1](#); [70 Del. Laws, c. 186, § 1](#); [77 Del. Laws, c. 104, § 1](#); [78 Del. Laws, c. 137, §§ 6-13](#); [79 Del. Laws, c. 20, §§ 2-7](#); [80 Del. Laws, c. 273, § 1](#);

§ 1448B Criminal history record checks for sales of firearms — Unlicensed persons.

(a) No unlicensed person shall sell or transfer any firearm, as defined in § 222 of this title, to any other unlicensed person without having conducted a criminal history background check through a licensed firearms dealer in accordance with § 1448A of this title and § 904A of Title 24, as the same may be amended from time to time, to determine whether the sale or transfer would be in violation of federal or state law, and until the licensed firearms dealer has been informed that the sale or transfer of the firearm may "proceed" by the Federal Bureau of Investigation, NICS Section or 25 days have elapsed from the date of the request for a background check and a denial has not occurred.

(b) For purposes of this section:

(1) "Licensed dealer" means any person licensed as a deadly weapons dealer pursuant to Chapter 9 of Title 24 and 18 U.S.C. § 921 et seq.

(2) "Transfer" means assigning, pledging, leasing, loaning, giving away, or otherwise disposing of, but does not include:

a. The loan of a firearm for any lawful purpose, for a period of 14 days or less, by the owner of said firearm to a person known personally to him or her;

b. A temporary transfer for any lawful purpose that occurs while in the continuous presence of the owner of the firearm, provided that such temporary transfer shall not exceed 24 hours in duration;

c. The transfer of a firearm for repair, service or modification to a licensed gunsmith or other person lawfully engaged in such activities as a regular course of trade or business; or

d. A transfer that occurs by operation of law or because of the death of a person for whom the prospective transferor is an executor or administrator of an estate or a trustee of a trust created in a will.

(3) "Unlicensed person" means any person who is not a licensed importer, licensed manufacturer or licensed dealer.

(c) The provisions of this section shall not apply to:

(1) Transactions in which the potential purchaser or transferee is a parent, mother-in-law, father-in-law, stepparent, legal guardian, grandparent, child, daughter-in-law, son-in-law, stepchild, grandchild, sibling, sister-in-law, brother-in-law, spouse, or civil union partner of the seller or transferor;

(2) Any firearm (including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system) manufactured in or before 1898;

(3) Any replica of any firearm described in paragraph (c)(2) of this section if such replica:

a. Is not designed or redesigned to use rimfire or conventional centerfire fixed ammunition; or

b. Uses rimfire or conventional centerfire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade;

(4) Any muzzle-loading firearm designed for hunting or competitive shooting not requiring a criminal background check pursuant to federal law;

(5) Transactions in which the potential purchaser or transferee is a qualified active duty law-enforcement officer or a qualified retired law-enforcement officer, as such terms are defined in § 1441A of this title;

(6) Transactions in which the potential purchaser or transferee holds a current and valid concealed carry permit issued by the Superior Court of the State of Delaware pursuant to § 1441 of this title.

(7) Transactions in which the prospective buyer or transferee is a bona fide member or adherent of an organized church or religious group, the tenets of which prohibit photographic identification; provided, however, that no unlicensed person shall sell or transfer any firearm to any such person without having conducted a criminal history background check in accordance with subsection (f) of this section hereunder to determine whether the sale or transfer would be in violation of federal or state law;

(8) Transactions involving the sale or transfer of a curio or relic to a licensed collector, as such terms are defined in 27 C.F.R. 478.11, as the same may be amended from time to time;

(9) Transactions involving the sale or transfer of a firearm to an authorized representative of the State or any subdivision thereof as part of an authorized voluntary gun buyback program.

(d) Notwithstanding anything to the contrary herein, no fee for a criminal history background check may be charged for the return of a firearm to its owner that has been repaired, serviced or modified by a licensed gunsmith or other person lawfully engaged in such activities as a regular course of trade or business.

(e) Any person who knowingly sells or transfers a firearm in violation of this section shall be guilty of a class A misdemeanor. Any subsequent offense shall be a class G felony. The Superior Court shall have exclusive jurisdiction for all offenses under this section.

(f) The State Bureau of Investigation (the "Bureau") shall facilitate the sale or transfer of any firearm in which the prospective buyer is a bona fide member or adherent of an organized church or religious group, the tenets of which prohibit photographic identification, pursuant to the following procedure. For purposes of this subsection, the terms "prospective buyer" and "prospective seller" shall include prospective transferors and prospective transferees, respectively.

(1) The prospective buyer and seller shall jointly appear at the State Bureau of Investigation during regular hours of business, and shall inform the Bureau of their desire to avail themselves of the procedure set forth herein. The actual cost of the criminal history background check shall be paid by either the prospective buyer or prospective seller.

(2) The prospective buyer shall be required to submit fingerprints and other necessary information in order to obtain a report of the individual's entire criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). In addition, the prospective buyer shall submit to the Bureau a signed affidavit stating that photographic identification conflicts with the tenets of an organized church or religious group of which the prospective buyer is a bona fide member.

(3) In the event that said background check reveals that the prospective buyer is prohibited from possessing, purchasing or owning a firearm, the Bureau shall so inform both parties of that fact and the transfer shall not take place.

(4) The Bureau shall maintain a record of all background checks under this section to the same extent as is required of licensed dealers pursuant to Chapter 9 of Title 24.

(5) The Bureau is hereby authorized to promulgate such reasonable forms and regulations as may be necessary or desirable to effectuate the provisions of this subsection.

[79 Del. Laws, c. 20, § 1](#); [70 Del. Laws, c. 186, § 1](#); [80 Del. Laws, c. 273, § 2](#);

§ 1449 Wearing body armor during commission of felony; class B felony.

- (a) A person who wears body armor during the commission of a felony is guilty of wearing body armor during the commission of a felony.
- (b) Notwithstanding § 4205 of this title, the minimum sentence for violation of this section shall be not less than 3 years which minimum sentence shall not be subject to suspension and no person convicted for a violation of this section shall be eligible for parole or probation during such 3 years.
- (c) Any sentence imposed upon conviction for wearing body armor during the commission of a felony shall not run concurrently with any other sentence. In any instance where a person is convicted of a felony, together with the conviction for wearing body armor during the commission of a felony, such person shall serve the sentence for the felony itself before beginning the sentence imposed for wearing body armor during the commission of such felony.
- (d) Every person charged under this section over the age of 16 years shall be tried as an adult, notwithstanding any contrary provision of statutes governing the Family Court or any other state law.
- (e) As used in this section, the term "body armor" means any material designed to provide bullet penetration resistance.
- (f) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted and during which the person wore body armor is a lesser included felony of the one originally charged.
- (g) Wearing body armor during the commission of a felony is a class B felony.

[63 Del. Laws, c. 368, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1450 Receiving a stolen firearm; class F felony.

A person is guilty of receiving a stolen firearm if the person intentionally receives, retains or disposes of a firearm of another person with intent to deprive the owner of it or to appropriate it, knowing that it has been acquired under circumstances amounting to theft, or believing that it has been so acquired. Receiving a stolen firearm is a class F felony. Knowledge that a firearm has been acquired under circumstances amounting to theft may be presumed in the case of a person who acquires it for a consideration which the person knows is substantially below its reasonable value.

[64 Del. Laws, c. 38, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1451 Theft of a firearm; class F felony.

- (a) A person is guilty of theft of a firearm when the person takes, exercises control over or obtains a firearm of another person intending to deprive the other person of it or appropriate it.
- (b) Theft of a firearm is a class F felony.

[64 Del. Laws, c. 37, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1452 Unlawfully dealing with knuckles-combination knife; class B misdemeanor.

A person is guilty of unlawfully dealing with a knuckles-combination knife when the person sells, offers for sale or has in possession a knife, the blade of which is supported by a knuckle ring grip handle.

Unlawfully dealing with a knuckles-combination knife is a class B misdemeanor.

[65 Del. Laws, c. 465, § 1](#); [67 Del. Laws, c. 130, § 8](#); [70 Del. Laws, c. 186, § 1](#);

§ 1453 Unlawfully dealing with martial arts throwing star; class B misdemeanor.

A person is guilty of unlawfully dealing with a martial arts throwing star when the person sells, offers for sale or has in possession a sharp metal throwing star.

Unlawfully dealing with a martial arts throwing star is a class B misdemeanor.

[65 Del. Laws, c. 465, § 1](#); [67 Del. Laws, c. 130, § 8](#);

§ 1454 Giving a firearm to person prohibited; class F felony.

A person is guilty of giving a firearm to certain persons prohibited when the person sells, transfers, gives, lends or otherwise furnishes a firearm to a person knowing that said person is a person prohibited as is defined in § 1448 of this title.

Giving a firearm to certain persons prohibited is a class F felony.

[68 Del. Laws, c. 47, § 1](#); [70 Del. Laws, c. 186, § 1](#);

§ 1455 Engaging in a firearms transaction on behalf of another; class F felony; class C felony.

A person is guilty of engaging in a firearms transaction on behalf of another when the person purchases or obtains a firearm on behalf of a person not qualified to legally purchase, own or possess a firearm in this State or for the purpose of selling, giving or otherwise transferring a firearm to a person not legally qualified to purchase, own or possess a firearm in this State.

Engaging in a firearms transaction on behalf of another is a class F felony for the first offense, and a class C felony for each subsequent like offense.

[69 Del. Laws, c. 220, § 1](#); [70 Del. Laws, c. 186, § 1](#);

§ 1456 Unlawfully permitting a minor access to a firearm; class A misdemeanor.

(a) A person is guilty of unlawfully permitting a minor access to a firearm when the person intentionally or recklessly stores or leaves a loaded firearm within the reach or easy access of a minor and where the minor obtains the firearm and uses it to inflict serious physical injury or death upon the minor or any other person.

(b) It shall be an affirmative defense to a prosecution under this section if:

- (1) The firearm was stored in a locked box or container or in a location which a reasonable person would have believed to be secure from access to a minor; or
- (2) The minor obtains the firearm as the result of an unlawful entry by any person; or
- (3) The serious physical injuries or death to the minor or any other person results from a target or sport shooting accident or hunting accident.

(c) Unlawfully permitting a minor access to a firearm is a class A misdemeanor.

[69 Del. Laws, c. 360, § 1](#); [70 Del. Laws, c. 186, § 1](#);

§ 1457 Possession of a weapon in a Safe School and Recreation Zone; class D, E, or F felony; class A or B misdemeanor.

(a) Any person who commits any of the offenses described in subsection (b) of this section, or any juvenile who possesses a firearm or other deadly weapon, and does so while in or on a "Safe School and Recreation Zone"

shall be guilty of the crime of possession of a weapon in a Safe School and Recreation Zone.

(b) The underlying offenses in Title 11 shall be:

- (1) *Section 1442.* — Carrying a concealed deadly weapon; class G felony; class D felony.
- (2) *Section 1444.* — Possessing a destructive weapon; class E felony.
- (3) *Section 1446.* — Unlawfully dealing with a switchblade knife; unclassified misdemeanor.
- (4) *Section 1448.* — Possession and purchase of deadly weapons by persons prohibited; class F felony.
- (5) *Section 1452.* — Unlawfully dealing with knuckles-combination knife; class B misdemeanor.
- (6) *Section 1453.* — Unlawfully dealing with martial arts throwing star; class B misdemeanor.

(c) For the purpose of this section, "Safe School and Recreation Zone" shall mean:

- (1) Any building, structure, athletic field, sports stadium or real property owned, operated, leased or rented by any public or private school including, but not limited to, any kindergarten, elementary, secondary or vocational-technical school or any college or university, within 1,000 feet thereof; or
- (2) Any motor vehicle owned, operated, leased or rented by any public or private school including, but not limited to, any kindergarten, elementary, secondary, or vocational-technical school or any college or university; or
- (3) Any building or structure owned, operated, leased or rented by any county or municipality, or by the State, or by any board, agency, commission, department, corporation or other entity thereof, or by any private organization, which is utilized as a recreation center, athletic field or sports stadium.

(d) Nothing in this section shall be construed to preclude or otherwise limit a prosecution of or conviction for a violation of this chapter or any other provision of law. A person may be convicted both of the crime of possession of a weapon in a Safe School and Recreation Zone and of the underlying offense as defined elsewhere by the laws of the State.

(e) It shall not be a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place on or in a Safe School and Recreation Zone.

(f) It shall be an affirmative defense to a prosecution for a violation of this section that the weapon was possessed pursuant to an authorized course of school instruction, or for the purpose of engaging in any school-authorized sporting or recreational activity. The affirmative defense established in this section shall be proved by a preponderance of the evidence. Nothing herein shall be construed to establish an affirmative defense with respect to a prosecution for any offense defined in any other section of this chapter.

(g) It is an affirmative defense to prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, and that no person under the age of 18 was present in such private residence at any time during the commission of the offense. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. Nothing herein shall be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

(h) This section shall not apply to any law-enforcement or police officer, or to any security officer as defined in Chapter 13 of Title 24.

(i) For purposes of this section only, "deadly weapon" shall include any object described in § 222(5) or (12) of this title or BB guns.

(j) The penalty for possession of a weapon in a Safe School and Recreation Zone shall be:

- (1) If the underlying offense is a class B misdemeanor, the crime shall be a class A misdemeanor;
- (2) If the underlying offense is an unclassified misdemeanor, the crime shall be a class B misdemeanor;
- (3) If the underlying offense is a class E, F, or G felony, the crime shall be one grade higher than the underlying offense.
- (4) If the underlying offense is a class D felony, the crime shall also be a class D felony.
- (5) In the event that an elementary or secondary school student possesses a firearm or other deadly weapon in a Safe School and Recreation Zone in addition to any other penalties contained in this section, the student shall be expelled by the local school board or charter school board of directors for a period of not less than 180 days unless otherwise provided for in federal or state law. The local school board or charter school board of directors may, on a case by case basis, modify the terms of the expulsion.

[70 Del. Laws. c. 213, § 1](#); [74 Del. Laws. c. 131, §§ 1-4](#); [76 Del. Laws. c. 326, § 1](#); [77 Del. Laws. c. 64, §§ 1, 2](#); [77 Del. Laws. c. 313, §§ 4, 5](#);

§ 1458 Removing a firearm from the possession of a law-enforcement officer; class C felony.

(a) A person shall not knowingly or recklessly remove or attempt to remove a firearm, disabling chemical spray, baton or other deadly weapon from the possession of another person or deprive the other person of its use if:

- (1) The person has knowledge or reason to know that the other person is employed as:
 - a. A law-enforcement officer including, but not limited to, all those defined as "police officer" in § 1911(a) of this title, who is authorized by law to make arrests;
 - b. A sheriff, deputy sheriff, constable, judicial assistant, court bailiff or other court security officer or court bailiff;
 - c. An employee of the Department of Correction, the Division of Parole and Probation or the Department of Youth Rehabilitative Services;
 - d. A special investigator or state detective with the Delaware Department of Justice, Office of the Attorney General; or
 - e. An armored car guard licensed pursuant to § 1317 or § 1320 of Title 24; and

(2) The other person is lawfully acting within the course and scope of that other person's employment.

(b) A person who violates this section is guilty of a class C felony.

[71 Del. Laws. c. 62, § 1](#); [70 Del. Laws. c. 186, § 1](#); [71 Del. Laws. c. 374, § 7](#);

§ 1459 Possession of a weapon with a removed, obliterated or altered serial number.

(a) No person shall knowingly transport, ship, possess or receive any firearm with the knowledge that the importer's or manufacturer's serial number has been removed, obliterated or altered in a manner that has disguised or concealed the identity or origin of the firearm.

(b) This section shall not apply to a firearm manufactured prior to 1973.

(c) Possessing, transporting, shipping or receiving a firearm with a removed, obliterated or altered serial number pursuant to this section is a class D felony.

[71 Del. Laws. c. 251, § 1](#);

§ 1460 Possession of firearm while under the influence.

(a) A person is guilty of possession of a firearm while under the influence of alcohol or drugs when the person possesses a firearm in a public place while under the influence of alcohol or drugs. It shall be an affirmative defense to prosecution under this section that, the firearm was not readily operable, or that the person was not in possession of ammunition for the firearm. The Superior Court shall have original and exclusive jurisdiction over a violation of this section.

(b) For purposes of this section, the following definitions shall apply:

(1) "Not readily operable" means that the firearm is disassembled, broken down, or stored in a manner to prevent its immediate use.

(2) "Possess," "possession" or "possesses" means that the person has the item under his or her dominion and authority, and that said item is at the relevant time physically available and accessible to the person.

(3) "Public place" means a place to which the public or a substantial group of persons has access and includes highways, transportation facilities, schools, places of amusement, parks, playgrounds, restaurants, bars, taverns, and hallways, lobbies and other portions of apartment houses and hotels not constituting rooms or apartments designed for actual residence.

(4) "Under the influence of alcohol or drugs" means:

a. Having an amount of alcohol in a sample of the person's blood equivalent to .08 or more grams of alcohol per hundred milliliters of blood, or an amount of alcohol in a sample of breath equivalent to .08 or more grams per 210 liters of breath. A person shall be guilty, without regard to the person's alcohol concentration at the time of possession of a firearm in violation thereof, if such person's alcohol concentration is .08 or more within 4 hours after the person was found to be in possession of a firearm, and that alcohol concentration is the result of an amount of alcohol present in, or consumed by such person when that person was in possession of a firearm; or

b. Being manifestly under the influence of alcohol or any illicit or recreational drug, as defined in § 4177(c) of Title 21, or any other drug not administered or prescribed to be taken by a physician, to the degree that the person may be in danger or endanger other persons or property, or annoy persons in the vicinity,

provided that no person shall be "under the influence of alcohol or drugs" for purposes of this section when the person has not used or consumed an illicit or recreational drug prior to or during an alleged violation, but has only used or consumed such drug after the person has allegedly violated this section and only such use or consumption after such alleged violation caused the person's blood to contain an amount of alcohol or drug or an amount of a substance or compound that is the result of the use or consumption of the drug within 4 hours after the time of the alleged violation thereof.

(c) A law-enforcement officer who has probable cause to believe that a person has violated this section may, with or without the consent of the person, take reasonable steps to conduct chemical testing to determine the person's alcohol concentration or the presence of illicit or recreational drugs. A person's refusal to submit to chemical testing shall be admissible in any trial arising from a violation of this section.

(d)(1) Except as provided in paragraph (d)(2) of this section, possession of a firearm while under the influence is a class A misdemeanor.

(2) Possession of a firearm while under the influence is a class G felony if the conviction is for an offense that was committed after a previous conviction for possession of a firearm while under the influence.

[78 Del. Laws. c. 136, § 1](#); [70 Del. Laws. c. 186, § 1](#); [79 Del. Laws. c. 396, § 2](#);

§ 1461 Report of loss, theft of firearm.

(a) Any owner of a firearm, defined in § 222 of this title, shall report the loss or theft of the firearm within 7 days after the discovery of the loss or theft to either:

- (1) The law-enforcement agency having jurisdiction over the location where the loss or theft of the firearm occurred; or
- (2) Any State Police troop.

(b) Whoever is convicted of a violation of this section shall:

- (1) For the first offense, be guilty of a violation and be subject to a civil penalty of not less than \$75 nor more than \$100.
- (2) For a second offense committed at any time after the sentencing or adjudication of a first offense, be guilty of a violation and be subject to a civil penalty of not less than \$100 nor more than \$250.
- (3) For a third or subsequent offense committed at any time after the sentencing or adjudication of a second offense, be guilty of a class G felony.

[79 Del. Laws, c. 41, § 1.](#);

§§ 1462 -1469. [Reserved.]

§ 1470 Definitions.

(a) "Cheat" means to alter the element of chance, method of selection, or criteria which determines:

- (1) The result of the game;
- (2) The amount or frequency of payment in a game, including intentionally taking advantage of a malfunctioning machine;
- (3) The value of a wagering instrument; or
- (4) The value of a wagering credit.

(b) "Cheating device" means any physical, mechanical, electromechanical, electronic, photographic, or computerized device used in such a manner as to cheat, deceive or defraud a video lottery machine or a table game. This includes, but is not limited to, slugs, plastic, tape, string or dental floss which is placed inside a coin or bill acceptor or any other opening in a video lottery machine in a manner to simulate coin or currency acceptance, and is thereafter withdrawn, or forged or stolen keys used to gain access to a machine to remove its contents, or game cards or dice that have been marked, loaded or tampered with.

(c) "Paraphernalia for the manufacturing of cheating devices" means the equipment, products or materials that are intended for use or designed for use in manufacturing, producing, fabricating, preparing, testing, analyzing, packaging, storing or concealing a counterfeit facsimile of the chips, tokens, debit instruments or other wagering devices approved by the State Lottery Office or lawful coin or currency of the United States of America. This term includes, but is not limited to, lead or lead alloy molds, forms, or similar equipment capable of producing a likeness of a gaming token or United States coin or currency; melting pots or other receptacles; torches; tongs, trimming tools or other similar equipment; and equipment that can be used to manufacture facsimiles of debit instruments or wagering instruments approved by the State Lottery Office.

(d) "Table game" shall mean any game played with cards, dice or any mechanical, electromechanical or electronic device or machine (excluding video lottery machines) for money, credit or any representative of value, including, but not limited to, baccarat, blackjack, twenty-one, poker, craps, roulette, keno, bingo, wheel of fortune or any variation of these games, whether or not similar in design or operation.

(e) "Video lottery machine" shall mean any machine in which bills, coins or tokens are deposited in order to play in a game of chance in which the results, including options to the player, are randomly and immediately determined by the machine. A machine may use spinning reels or video displays or both, and may or may not dispense coins or tokens directly to winning players. A machine shall be considered a video lottery machine notwithstanding the use of an electronic credit system making the deposit of bills, coins or tokens unnecessary.

[73 Del. Laws, c. 232, § 1](#); [77 Del. Laws, c. 221, §§ 1, 2](#);

§ 1471 Prohibited acts.

(a) It shall be unlawful for any person to use a cheating device in a video lottery machine or at a table game or to have possession of such a device in a video lottery facility, including its parking areas and/or adjacent facilities.

(b) It shall be unlawful for any person to possess, use or have paraphernalia for manufacturing cheating devices.

(c) It shall be unlawful for any person to cheat in order to collect or take or attempt to cheat in order to collect or take money or anything of value, for themselves or for another, in or from a video lottery machine or a table game in a video lottery facility, including its parking areas and/or adjacent facilities.

(d) It shall be unlawful for any person to manipulate or alter, with the intent to cheat, any physical, mechanical, electromechanical, electronic, or computerized component of a video lottery machine or of a table game, contrary to the designed and normal operational purpose for the component, including, but not limited to, varying the pull of the handle of a video lottery machine, knowing that the manipulation can or could affect the outcome of the game.

(e) It shall be unlawful for any person to use, sell or possess counterfeit slugs, counterfeit tokens, counterfeit gaming chips, counterfeit debit instruments or other counterfeit wagering instruments or any other counterfeit device resembling tokens, gaming chips, debit or other wagering instruments approved by the State Lottery Office for use in a video lottery machine or at a table game in a video lottery facility, including its parking areas and/or adjacent facilities.

(f) It shall be unlawful for any person to place, increase or decrease a wager or to determine the course of play after acquiring knowledge, not available to all players, of the outcome of a table game or any event that affects the outcome of the game or which is the subject of the wager or to aid anyone in acquiring such knowledge for the purpose of placing, increasing or decreasing a wager or determining the course of play contingent upon that event or outcome.

(g) It shall be unlawful for any person to claim, collect or take, or attempt to claim, collect or take, money or anything of value in or from a video lottery machine or a table game, with intent to defraud, without having made a wager contingent thereon, or to claim, collect or take an amount greater than the amount won.

(h) It shall be unlawful for any employee or agent of a video lottery facility to knowingly fail to collect a losing wager or pay an amount greater on any wager than required under the rules of a table game.

(i) It shall be unlawful for any person to place or increase a wager or attempt to place or increase a wager after acquiring knowledge of the outcome of the table game or other event which is the subject of the wager.

(j) It shall be unlawful for any person to reduce the amount wagered or remove or cancel the wager or to attempt to reduce the amount wagered or remove or cancel the wager after acquiring knowledge of the outcome of the table game or other event which is the subject of the wager.

(k) It shall be unlawful for any person to directly or indirectly offer, confer or agree to confer to another, or solicit, accept or agree to accept from another, anything of value to anyone, for the purpose of influencing the outcome of a race, sporting event, contest or table game upon which a wager may be made, or to place, increase or decrease a wager after acquiring knowledge, not available to the general public, that anyone has

been offered, promised or given anything of value for the purpose of influencing the outcome of the race, sporting event, contest or game upon which the wager is placed, increased or decreased.

(l) It shall be unlawful for any person at a video lottery facility, including its parking areas and/or adjacent facilities, without the written consent of the Delaware Lottery Director to use, or possess with the intent to use, any electronic, electrical or mechanical device that is designed, constructed or programmed to assist the user or another person:

- (1) In projecting the outcome of a table game or video lottery machine;
- (2) In keeping track of the cards played;
- (3) In analyzing the probability of the occurrence of an event relating to the game; or
- (4) In analyzing the strategy for playing or wagering to be used in the game.

[73 Del. Laws, c. 232, § 1](#); [77 Del. Laws, c. 221, § 3](#);

§ 1472 Penalties.

(a) Any person convicted of conduct constituting a violation of § 1471(a), (b), (d), (e) or (l) of this title shall be guilty of a class A misdemeanor for a first offense and a class G felony for a second or subsequent conviction in this State or a state with a comparable criminal code section within 3 years of a first offense.

(b) Any person convicted of conduct constituting a violation of § 1471(c), (f), (g), (h), (i), or (j) of this title shall be guilty of:

- (1) A class A misdemeanor if the amount involved is less than \$1,500 or;
- (2) A class G felony if the amount involved is \$1,500 or more but not greater than \$50,000;
- (3) A class E felony if the amount involved is more than \$50,000 but less than \$100,000;
- (4) A class C felony if the amount involved is \$100,000 or more.

(c) Any person convicted of conduct constituting a violation of § 1471(k) of this title shall be guilty of a class G felony.

(d) Amounts involved pursuant to 1 scheme or course of conduct, whether from the same person or several persons, may be aggregated in determining the grade of the crime.

(e) Upon conviction, the sentencing judge shall require full restitution to the victim for any monetary losses suffered and shall consider the imposition of community service and/or an appropriate curfew for a minor.

(f) Any cheating devices, slugs, paraphernalia for the manufacturing of cheating devices or related materials used by the person shall be forfeited to the Delaware State Police, including vehicles used to store such devices or paraphernalia. The Courts of the Justices of the Peace shall have concurrent jurisdiction with the Court of Common Pleas for misdemeanor offenses under this subpart and the Superior Court shall have exclusive jurisdiction for felony offenses under this subchapter.

[73 Del. Laws, c. 232, § 1](#); [77 Del. Laws, c. 221, § 4](#);

§ 1473 Preclusions.

Nothing in this subchapter shall be construed as to prohibit the prosecution for an offense in this subchapter and any other provision of Delaware law.

[73 Del. Laws, c. 232, § 1](#);

§ 1474 Detention and questioning of person suspected of violating § 1471 of this title; limitations on liability; posting of notice.

(a) Any video lottery agent, licensee, or that video lottery agent's or licensee's officers, employees or agents may question any person at the video lottery agent's or licensee's video lottery facility suspected of violating any of the provisions of § 1471 of this title. No video lottery agent or any of that video lottery agent's officers, employees or agents is criminally or civilly liable:

(1) On account of any such questioning; or

(2) For reporting to the Delaware Lottery, Division of Gaming Enforcement or appropriate law-enforcement authorities the person suspected of the violation.

(b) Any video lottery agent or any of its officers, employees or agents who has probable cause for believing that there has been a violation of § 1471 of this title in a video lottery facility, including its parking areas and/or adjacent facilities, by any person may take that person into custody and detain that person in the video lottery facility in a reasonable manner and for a reasonable length of time while awaiting the arrival of law-enforcement officials, who shall be summoned without delay. Such a taking into custody and detention does not render the video lottery agent or that video lottery agent's officers, employees or agents criminally or civilly liable unless it is established by clear and convincing evidence that the taking into custody and detention are unreasonable under all the circumstances.

(c) No video lottery agent or its officers, employees or agents is entitled to the immunity from liability provided for in subsection (b) of this section unless there is displayed in a conspicuous place in the video lottery facility a notice in boldface type clearly legible and in substantially this form:

"Any video lottery agent, or any of that video lottery agent's officers, employees or agents who has probable cause for believing that any person has violated any provision of § 1471 of Title 11 may detain that person in this facility."

[77 Del. Laws, c. 221, § 5](#); [70 Del. Laws, c. 186, § 1](#);



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