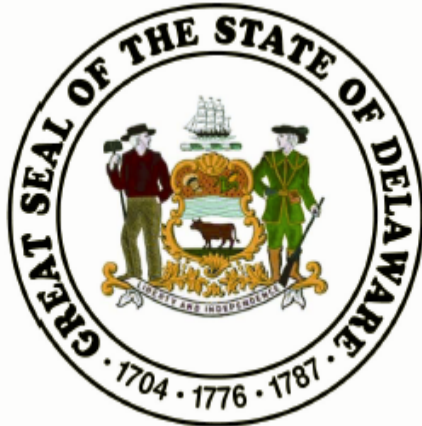


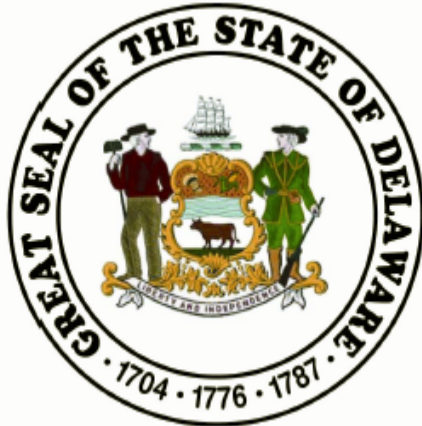
SENTAC



**Delaware Sentencing
Accountability Commission
Benchmark
2018***

***INCLUDES RELEVANT LEGISLATION OF
THE FIRST SESSION OF THE 149th
GENERAL ASSEMBLY**

SENTAC



Delaware Sentencing Accountability Commission Benchmark 2018*

***INCLUDES RELEVANT LEGISLATION OF
THE FIRST SESSION OF THE 149th
GENERAL ASSEMBLY**

SUMMARY OF PRESUMPTIVE SENTENCES			
Crime Classification	Presumptive Sentence	Statutory	Page Ref.
Felonies			
Class A (Other than Murder)	15 yrs @ Level V	15 yrs. to Life	28
Class B	2 to 5 yrs (1st 2 yrs @ Level V)	2 to 25 yrs	31
Class C (Violent)	Up to 30 m @ Level V	up to 15 yrs	37
Class C (Nonviolent)	Up to 1 yr @ Level V	up to 15 yrs	41
Class D (Violent)	Up to 2 yrs @ Level V	up to 8 yrs	43
Class D (Nonviolent)	Up to 12 m @ Level II or III	up to 8 yrs	47
Class E (Violent)	Up to 15 m @ Level V	up to 5 yrs	49
Class E (Nonviolent)	Up to 12 m @ Level II	up to 5 yrs	53
Class F (Violent)	Up to 9 m @ Level V	up to 3 yrs	57
Class F (Nonviolent)	Up to 12 m for Title 11; Up to 18 m for Title 16 @ Level II	up to 3 yrs	60
Class G (Violent)	Up to 6 m @ Level V Title 16, §§4767,4768: 3-9 m @ Level V	up to 2 yrs	64
Class G (Nonviolent)	Up to 12 m @ Level II	up to 2 yrs	67
Misdemeanors			
Class A (Violent) MA1	Up to 12 m @ Level II	up to 1 yr	72
Class A (Escape) MA2	Up to 3 m @ Level IV	up to 1 yr	74
Class A (Property) MA3	Up to 12 m @ Level I	up to 1 yr	75
Class A (Order/Decency) MA4	Up to 12 m @ Level I	up to 1 yr	77
Class A (Controlled Substance)	16-4764: FOP Minimum 12 m @ Level I (7/12/05) 1st Offense 12m @ Level II	up to 1 yr	80
Class B	Fine, Costs & Restitution	up to 6 m.	81
Unclassified	Fine, Costs & Restitution	up to 30 d	83
Violations	Fine, Costs & Restitution	\$0 to \$345	85
Habitual Criminal	Up to Life	Up to Life	143
Violation of Probation	1 Level Higher	1 Level Higher	156

SUMMARY OF ACCEPTANCE OF RESPONSIBILITY GUIDELINES			
Crime Classification	Presumptive Sentence	Acceptance of Responsibility Guideline	Page
Felonies			
Class C (violent)	Up to 30 mos. @ Level V	Up to 22 mos. @ Level V	37
Class C (non-violent)	Up to 1 yr. @ Level V	Up to 9 mos. @ Level V	41
Class D (violent)	Up to 2 yrs. @ Level V	Up to 18 mos. @ Level V	43
Class D (non-violent)	Up to 12 mos. @ II or III	Up to 9 mos. @ II or III	47
Class E (violent)	Up to 15 mos. @ Level V	Up to 11 mos. @ Level V	49
Class E (non-violent)	Up to 12 mos. @ Level II	Up to 9 mos. @ Level II	53
Class F (violent)	Up to 9 mos. @ Level V	Up to 7 mos. @ Level V	57
Class F (non-violent)	Up to 12 mos. @ L II for T 11 Up to 18 mos. @ L II T 16	Up to 9 mos. @ L II for T 11 Up to 14 mos. @ L II for T 16	60
Class G (violent)	Up to 6 mos. @ Level V	Up to 4 mos. at Level V	64
Class G (non-violent)	Up to 12 mos. @ Level II	Up to 9 mos. @ Level II	67
Misdemeanors			
Class A (violent)	Up to 12 mos. @ Level II	Up to 9 mos. @ Level II	72
Class A (escape)	Up to 3 mos. @ Level IV	Up to 2 mos. @ Level IV	74
Class A (property)	Up to 12 mos. @ Level I	Up to 9 mos. @ Level I	75

SUMMARY OF PRESUMPTIVE SENTENCES

Class A (order/decency)	Up to 12 mos. @ Level I	Up to 9 mos. @ Level I	77
Class A (con. sub.)	Up to 12 mos. @ Level II	Up to 9 mos. @ Level II	80

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state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a Title 11 offense identified in Section 4201(c) of this title.

Please familiarize yourself with the above policies and follow them, insofar as possible, in each and every case. If questions should arise, contact either a member of the Commission or the SENTAC staff, Romie Griesmer, at (302) 577-8962 or Rosemarie.Griesmer@state.de.us .

MEMBERS OF THE SENTENCING ACCOUNTABILITY COMMISSION

Description of Commissioner Position	Commission Member:
Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years;	Chair: Honorable William C. Carpenter, Jr.
Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years;	Honorable T. Henley Graves
Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years;	Honorable Alan G. Davis
Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years;	Honorable Kenneth S. Clark Jr.
The Attorney General or the Attorney General's designee;	Honorable Matthew Denn
The Public Defender or the Public Defender's designee;	Honorable Brendan J. O'Neill
The Commissioner of Corrections or the Commissioner of Corrections' designee;	Honorable Perry Phelps
Members-at-large, each of whom shall, by training or experience, possess a knowledge of Delaware sentencing practices 1 by the Pres. Pro Tempore of the Senate	Timothy G. Willard Esq.
Members-at-large, each of whom shall, by training or experience, possess a knowledge of Delaware sentencing practices, 2 to be appointed by the Governor	Vacant
Members-at-large, each of whom shall, by training or experience, possess a knowledge of Delaware sentencing practices, 1 by the Speaker of the House	Colonel Nathaniel McQueen
Members-at-large, each of whom shall, by training or experience, possess a knowledge of Delaware sentencing practices, 2 to be appointed by the Governor.	James D. Wilson Jr., Ed. D.

Class F Felony (Violent)

I.) (FFV)

Sentence Range (Violent Category): FFV	
Statutory Range	0 to 3 years @ Level V
Presumptive Sentence	Up to 9 m. @ Level V
Acceptance of Responsibility	Up to 7 months at Level V
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> • (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-617(b)(2)	<u>Criminal Youth Gang: Recruitment/Retention:Violence or Threat (7/10/06)</u>
11-629	<u>Vehicular Assault 1st Degree</u> DUI & criminally negligent driving: Serious Injury
11-645	<u>Promoting Suicide</u>
11-768	<u>Unlawful Sexual Contact 2nd Degree</u> Vt<16 y.o.a.
11-777A(e)(2)	<u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u>
11-778A(2)	<u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree: (see note)</u>
11-1105	<u>Crime Against a Vulnerable Adult (see note)</u>
11-1256	<u>Promoting Prison Contraband</u> Deadly Weapon, cellular phone, prohibited electronic device, illegal narcotic or look-a-like, prescription medication, or item that could be used to facilitate escape
11-1302	<u>Riot</u>
11-1304(b)(3)	<u>Hate Crime (Underlying Offense: Class G Felony)</u>
11-1312	<u>Stalking (see note)</u> Causing Fear/Defendant=21+ y.o.a. & Vt= <14 y.o.a., def. viol. N.c. ord. w/vic, or vic >62, or thrt of death/serious phys. inj. to vic. or another person, serious phys. inj. to vic.
16-4761(d)	<u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u> Any person who delivers or intends to deliver prescription drug and there is an aggravator

Title 21 and Title 23 Offenses

These offenses are not covered by Truth in Sentencing but are provided as a reference for commonly prosecuted motor vehicle offenses.

Crimes In Category

21-2742	<u>Driving In Violation of Conditional License</u>
21-2810	<u>Driving After Judgment Prohibited (See note)</u>
21-4103(b)	<u>Flee or Attempt to Elude (See Note)</u>
21-4112A(c)	<u>Unlawful Sale Traffic Control Signal Preemption Devices (See Note)</u>
21-4175	<u>Reckless Driving (See Note)</u>
21-4175A	<u>Aggressive Driving (See Note pg)</u>
21-4176	<u>Careless or Inattentive Driving (See Note)</u>
21-4176A	<u>Operation of Vehicle Causing Death (See Note)</u>
21-4176E	<u>Operation of Vehicle Causing Serious Physical Injury to Vulnerable User</u>
21-4177 et seq.	<u>Driving a Vehicle While Under the Influence (See Note for 4177 (d) and 4177A)</u>
21-4201 et seq.	<u>Leaving the Scene of an Accident (See Note)</u>
21-4202	<u>Leaving the Scene of an Accident (Injury/Death) (See Note)</u>
23-2302	<u>Operation of a Vessel or Boat While Under the Influence (See Note)</u>

21-2742	<u>Driving In Violation of Conditional License</u> Unclassified Misdemeanor. Fine \$28.75- \$230.	
21-2810	<u>Driving After Judgment Prohibited</u>	
	Statutory Sentence	<ul style="list-style-type: none"> Habitual Offender: (1) 1st Conviction- Mandatory Imprisonment from 90d. up to 30m. & Fine up to \$1,150; (2) Prior Conviction- Mandatory Imprisonment from 180d. up to 5 yrs. & Fine up to \$2,300. Mandatory Imprisonment not subject to suspension
	Presumptive Sentence	(1) 1st Conviction: 3m. @ Level V (2) Prior Conviction: 6m. @ Level V
21-4103(b)	<u>Flee or Attempt to Elude</u> Class G Felony. 1st Conv: Min.Man. fine of \$575 which may not be suspended. Subsequent Conv.: Min.Man. fine of \$1150 which may not be suspended.	
21-4112A(c)	<u>Unlawful Sale Traffic Control Signal Preemption Devices</u> Class A Misdemeanor	
21-4134(d)	<u>Operation of vehicles upon approach of authorized emergency vehicles</u> Class F Felony	
21-4175	<u>Reckless Driving</u> Mandatory Minimum Sentences: <ul style="list-style-type: none"> 1st Offense: 10 – 30d. @ Level V; Fine= \$100–\$300 Prior Conviction w/in 3 yrs.: 30 – 60d.@ Level V; Fine= \$300–1,000. Sentence may not be suspended. If charge is result of DUI reduction: Completion of course required under §4177D and payments of its attendant fees are mandated. The court must notate the 	

	record that the conviction was alcohol-related and, as result, shall be reflected upon Defendant's motor vehicle record.
21-4175A	<p><u>Aggressive Driving</u> Mandatory Minimum Sentences</p> <ul style="list-style-type: none"> • 1st Offense: 10-30d. @ Level V; Fine= \$100–\$300 • Prior Conviction w/in 3 yrs.:30-60d.@ Level V; Fine= \$300–1,000. Sentence may not be suspended. • Driving privileges suspended for 30d. • Comp. of Behav. Mod. course and pmt. of its attendant fees are mandated.
21-4176	<p><u>Careless or Inattentive Driving</u> Mandatory Minimum Sentences:</p> <ul style="list-style-type: none"> • 1st Offense: Fine= \$25–\$75 • Prior Conviction w/in 3 yrs: Fine=\$50–\$95
21-4176A	<p><u>Operation of Vehicle Causing Death</u></p> <ul style="list-style-type: none"> • Maximum penalty 1st Conviction: up to 30 m. imprisonment &/or \$1,150 Fine • Prior Conviction: up to 60 m. imprisonment &/or \$2,300 Fine
21-4176E	<p><u>Operation of Vehicle Causing Serious Injury to Vulnerable User</u></p> <ul style="list-style-type: none"> • Violation • Fine \$550, Suspension up to 1 year, Traffic Safety Course, 10-100 hours community service • Court may impose, but suspend up to \$500 of the fine and the imposition of the suspension on the condition that the person complete the requirements the remaining conditions; and the Court set a hearing date within one year from the date of sentencing. At that Hearing, the court shall: <ul style="list-style-type: none"> A. If the person has successfully completed the remaining requirements, dismiss the additional penalties suspended. B. If the person has not successfully completed the remaining requirements, either <ul style="list-style-type: none"> i. grant the person an extension based on good cause shown, or ii. impose the penalties suspended.
21-4177(d)(15)	<p><u>Driving Vehicle While Under the Influence</u></p> <ul style="list-style-type: none"> • Notwithstanding any law to the contrary, the phrase "all crimes" as used in the Truth in Sentencing Act of 1989 shall include felonies under this section of the Delaware Code, and any amendments thereto.

21-4177(d)	<p><u>Driving Vehicle While Under the Influence(Effective July 1, 2012)</u></p> <ul style="list-style-type: none"> • 1st Offense: (1) up to 12m @ Level V; (2) Fine= \$500-\$1,500;(3) Completion of alcohol evaluation and program (4177)(d)(12)(f) not to exceed a total of 15m & to
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Exceptional Sentences:

Habitual Criminal

§ 4214 Habitual criminal; life sentence

(a) Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title, or any person who has been 3 times convicted of any felony under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony is declared to be an habitual criminal. The court, upon the State's petition, shall impose the applicable minimum sentence pursuant to (b), (c) or (d) of this section and may, in its discretion, impose a sentence of up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment. Under no circumstances may the sentence imposed pursuant to this section be less than the minimum sentence provided for by the felony prompting the person's designation as a habitual offender.

(b) Any person who has been 3 times convicted of a felony under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony, which is the person's first Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title, shall receive a minimum sentence of one-half of the statutory maximum penalty provided elsewhere in this title, unless the maximum statutory penalty is life in which case the minimum sentence shall be 30 years, for the subsequent felony which forms the basis of the States petition to have the person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(c) Any person who has been 2 times convicted of a felony under the laws of this State, and/or any other state, United States or any territory of the United States, and 1 time convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title

under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent Title 11 violent felony, or attempt to commit such a violent felony, as defined by § 4201(c) of this title, shall receive a minimum sentence of the statutory maximum penalty provided elsewhere in this title for the 4th or subsequent felony which forms the basis of the State's petition to have the person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(d) Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a 3rd or subsequent felony which is a Title 11 violent felony, or an attempt to commit such a violent felony, as defined in § 4201(c), shall receive a minimum sentence of the statutory maximum statutory penalty provided elsewhere in this title for the 3rd or subsequent Title 11 violent felony which forms the basis of the State's petition to have the person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(e) Notwithstanding any provision of this title to the contrary, any minimum sentence required to be imposed pursuant to (b), (c), or (d) of this section shall not be subject to suspension by the court, and shall be served in its entirety at full custodial Level V institutional setting without the benefit of probation or parole, except that any such sentence shall be subject to the provisions of §§ 4205(h), 4381 and 4382 of this title. For purposes of the computation of good time under § 4381 of this title, a life sentence imposed pursuant only to § 4214 of this title shall equate to a sentence of 45 years.

(f) Notwithstanding any statute, court rule or regulation to the contrary, beginning January 1, 2017, any person sentenced as an habitual criminal to a minimum sentence of not less than the statutory maximum penalty for a violent felony pursuant to 4214(a) of this title, or a life sentence pursuant to 4214(b) of this title prior to July 19, 2016, shall be eligible to petition the Superior Court for sentence modification after the person has served a sentence of incarceration equal to any applicable mandatory sentence otherwise required by this section or the statutes describing said

offense or offenses, whichever is greater. Absent extraordinary circumstances, the petitioner may only file one application for sentence modification under this section. A Superior Court Judge upon consideration of a petition filed pursuant to this subsection may modify, reduce or suspend such petitioner's sentence, excepting any minimum or mandatory sentence required by this section or the statutes describing said offense or offenses. If a Superior Court judge modifies such petitioner's sentence, the judge may impose a suspended sentence that includes a probationary term. Nothing in this section, however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section. For the purposes of this subsection, the "applicable mandatory sentence" shall be calculated by reference to the penalties prescribed for the relevant offense or offenses by this Code as of the date of enactment of this section, unless said offense has been repealed, in which case the penalties prescribed by this Code at the time of the Act repealing said offense shall be controlling. The Superior Court shall establish rules to implement this subsection which are consistent with the statute, and those rules shall also provide that all petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a Title 16 offense are heard first, followed by all petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a crime against property, followed by all other petitions. The rules shall also provide for an initial review, including review of a formal response by the Department of Justice after consulting with the victim(s), of sentence modification petitions involving crimes against persons or property, for the purpose of ensuring that victims are not inconvenienced by petitions that should be denied based upon the documents submitted; in cases not denied in this manner, all victims shall be given an opportunity to be heard. The Superior Court's review of any petitions filed pursuant to this paragraph shall include a review of the applicant's prior criminal history, including arrests and convictions, a review of the applicant's conduct while incarcerated, and available evidence as to the likelihood that the applicant will reoffend if released, including a formal, recent risk assessment. The Superior Court shall articulate on the record the results of its review and its rationale for granting or denying a petition. In all cases where sentence modifications are granted, modified sentences should provide for step-down provisions to ensure successful reintegration of persons into the community. By January 1, 2017, the Department of Correction shall notify any criminal defendant whose Level V sentence was imposed under a statutory sentencing

regimen which was subsequently changed in a manner that reduced the sentence applicable to the defendant's convictions, including any criminal defendant who received a minimum mandatory sentence that no longer exists by virtue of the enactment of Chapter 28, Volume 80 of the Laws of Delaware. The Department of Correction shall similarly notify the attorney of record, and if the attorney of record is unavailable to receive notice, the Office of Defense Services.

**SUPERIOR COURT OF DELAWARE
SPECIAL RULE OF PROCEDURE 2017-1
FOR REVIEW OF
A REQUEST TO MODIFY A HABITUAL OFFENDER SENTENCE**

(a) Scope of rule.

(1) Nature of proceeding. This rule governs the procedure on a petition by a person in custody and serving the Level V term of a sentence of this court imposed under 11 *Del. C.* § 4214 prior to July 19, 2016, when the petition seeks exercise of the court's jurisdiction to modify that sentence pursuant to 11 *Del. C.* § 4214(f) as enacted by 80 Del. Laws ch. 321 (2016) and clarified by 81 Del. Laws ch. 6 (2017).

(2) Exclusiveness of remedy. A petition under this rule shall be limited to a request for modification of a sentence pursuant to 11 *Del. C.* § 4214(f) when that sentence was imposed under the provisions of 11 *Del. C.* § 4214 extant prior to July 19, 2016, and when that sentence comprised a minimum sentence of not less than the statutory maximum penalty for a violent felony imposed under then-extant 11 *Del. C.* § 4214(a) or a life sentence under then-extant 11 *Del. C.* § 4214(b). The remedy afforded by this rule may not be sought by a motion for post-conviction relief or in any manner other than as provided herein. The availability of relief under this rule, however, shall not be construed to limit the court's ability to modify a sentence pursuant to Superior Court Criminal Rule 35 or 11 *Del. C.* § 4217 where the requirements thereof are met.

(b) Appointment of counsel.

The Office of Defense Services shall represent the petitioner in

proceedings under this rule unless the petitioner privately retains an attorney. It shall be the duty of the assigned or retained attorney to prepare and present a petition and other filings that comply with the provisions of this rule and 11 Del. C. § 4214(f). Upon entry of a final order, the assigned or retained attorney's continuing duty shall be as provided in Supreme Court Rule 26.

(c) Initial Review and Certificate of Eligibility.

(1) Certificate of Eligibility required. Unless a judge of this court issues a certificate of eligibility, a petition seeking exercise of the court's jurisdiction to modify a sentence pursuant to 11 Del. C. § 4214(f), as enacted by 80 Del. Laws ch. 321 (2016) and clarified by 81 Del. Laws ch. 6 (2017), shall not be filed with the court.

(2) Request for certificate of eligibility to be filed by attorney of record. A request for a certificate of eligibility to file a petition to modify a sentence pursuant to 11 Del. C. § 4214(f) may only be filed under these rules by the petitioner's attorney of record, who has been privately retained by the petitioner or assigned by the Office of Defense Services. The court will not consider a pro se request for a certificate of eligibility or any other pro se filing under this rule unless the petitioner has been granted permission to proceed pro se.

(3) Content of request for certificate of eligibility. The request for certificate of eligibility shall:

- (i) specify the date on which the petitioner will meet or has met the time-served eligibility requirements set forth in 11 Del. C. § 4214(f) and all grounds for the belief that the petitioner will meet or has met the time-served eligibility requirements on that date; and
- (ii) include as an attachment thereto any notification of time-served eligibility from the Department of Correction provided for by 11 Del. C. § 4214(f) that has been received by the petitioner or the attorney; and
- (iii) be supported by specific averments that the attorney has conducted a diligent review of the petitioner's sentencing history and that there is a good faith basis to believe that:
 - a. the petitioner is serving a sentence imposed under the provisions of 11 Del. C. § 4214 extant prior to July

19, 2016, and that sentence consists of a minimum sentence of not less than the statutory maximum penalty for a violent felony imposed under previous 11 Del. C. § 4214(a) or a life sentence under previous 11 Del. C. § 4214(b); and

b. the petitioner meets the time-served eligibility requirements set forth in 11 Del. C. § 4214(f); and

c. a petition may be heard because the felony establishing the petitioner as a habitual offender is one for which review is then-permitted as provided for in 11 Del. C. § 4214(f) and subdivision (d)(11) of this rule.

(4) *Place and time of filing request for certificate of eligibility.* A request for a certificate of eligibility shall be filed in the office of the Prothonotary in the county in which the judgment of sentence was entered and shall be served upon the office of the Attorney General in the county of application. A request for a certificate of eligibility shall be filed no earlier than 120 days prior to the date on which the petitioner meets the time-served eligibility requirements set forth in 11 Del. C. § 4214(f).

(5) *Response to request for certificate of eligibility.* The Attorney General shall file a written response to the request for certificate of eligibility within 30 days of the filing of the request. The response to the request for a certificate of eligibility shall be supported by specific averments that the Attorney General has conducted a diligent review of the petitioner's sentencing history and that there is a good faith basis to believe that:

(i) the petitioner either is or is not serving a sentence imposed under the provisions of 11 Del. C. § 4214 extant prior to July 19, 2016, that consists of a minimum sentence of not less than the statutory maximum penalty for a violent felony imposed under previous 11 Del. C. § 4214(a) or a life sentence under previous 11 Del. C. § 4214(b); and

(ii) the petitioner either does meet or does not meet the time-served eligibility requirements set forth in 11 Del. C. § 4214(f); and

(iii) a petition may or may not be heard because the felony establishing the petitioner as a habitual offender is one for

which review is then-permitted as provided for in 11 Del. C. § 4214(f) and subdivision (d)(11) of this rule.

(6) *Disposition of request for certificate of eligibility.* A request for a certificate of eligibility may be considered without presentation, hearing, or argument unless otherwise ordered by the court. The court shall set forth on the record the reasons for granting or denying the request for a certificate of eligibility.

(7) *Provision of materials to petitioner upon the grant of a certificate of eligibility.* If, but only if, the court grants a certificate of eligibility to file a petition to modify a sentence pursuant to 11 Del. C. § 4214(f), the Department of Correction and the Department of Justice shall, consistent with a memorandum of understanding entered for the express purpose of facilitating the lawful and efficient transfer of materials and information required for consideration of a petition under 11 Del. C. § 4214(f) and this rule, provide to the petitioner's attorney of record, who has been privately retained by the petitioner or assigned by the Office of Defense Services, access to such materials and information.

(d) *Petition for modification of sentence imposed under provisions of 11 Del. C. § 4214 extant prior to July 19, 2016.*

(1) *Form of petition.* An application under this rule shall be made by a petition for sentence modification.

(2) *Filing of petition.* Consistent with the provisions of 11 Del. C. § 4214(f), no petition shall be filed under these rules except by the petitioner's attorney of record, who has been privately retained by the petitioner or assigned by the Office of Defense Services. The court will not consider a pro se petition or any other pro se filing under this rule unless the petitioner has been granted permission to proceed pro se.

(3) *Content of petition.* The petition shall:

- (i) specify all grounds for sentence modification that are available to the petitioner under 11 Del. C. § 4214(f);
- (ii) set forth in summary form the facts supporting each of the grounds thus specified;
- (iii) set forth a complete accounting of the petitioner's prior

criminal history, including all arrests and convictions;

- (iv) set forth a complete history of the petitioner's conduct while incarcerated as derived from the materials and information provided by the Department of Correction under subdivision (c)(7) of this rule;
- (v) provide all available evidence as to the likelihood that the petitioner will not reoffend if released;
- (vi) provide the results of a formal risk assessment conducted by the Department of Correction no more than three years prior to the filing of the petition; and
- (vii) provide any other facts or circumstances that should be considered by the court when determining whether sentence modification is appropriate.

(4) *Multiple judgments of sentence.* If judgments of sentence under the prior provisions of 11 *Del. C.* § 4214 were entered on more than one offense at the same time because of joinder of offenses in one indictment, in one plea of guilt, or in one trial, the petitioner may seek modification of each such judgment of sentence in the petition. If other judgments of sentence were entered on one or more offenses at the same time and in the same sentencing order as a judgment of sentence under the prior provisions of 11 *Del. C.* § 4214 because of joinder of offenses in one indictment, in one plea of guilt, or in one trial, the Court may, notwithstanding any contrary provision of Superior Court Criminal Rule 35 or 11 *Del. C.* § 4217, consider modification of each such judgment of sentence to which 11 *Del. C.* § 4214 was not applied. Judgments entered at different times shall not be challenged in one petition but only by separate petitions.

(5) *Time of filing.* No petition shall be filed prior to January 1, 2017. A petition may not be filed until a judge of this court issues a certificate of eligibility under subdivision (c) of this rule. The court will consider a repetitive petition under this rule only in extraordinary circumstances.

(6) *Place of filing.* A petition shall be filed in the office of the Prothonotary in the county in which the judgment of sentence was entered and shall be served upon the office of the Attorney General in the county of application.

(7) Response to the petition. The Attorney General shall file a written response to the petition at a time specified by the court. That written response shall:

- (i) specify all grounds for the Attorney General's support of or opposition to the petition;
- (ii) set forth in summary form the facts supporting or basis for objecting to each of the grounds thus specified;
- (iii) verify, and supplement when necessary, the petitioner's prior criminal history, including all arrests and convictions;
- (iv) verify the history of the petitioner's conduct while incarcerated;
- (v) provide all available evidence as to the likelihood that the petitioner will reoffend if released;
- (vi) provide the Attorney General's position regarding the results of the formal risk assessment conducted and filed with the petition; and
- (vii) be supported by specific averments that the Attorney General has conducted a diligent review of the matter and that, if the petition involves a crime against a person or property the Attorney General has consulted with the victim as provided for in 11 Del. C. § 4214(f).

The court shall not act upon the petition without first providing the Attorney General with an opportunity to be heard on the matter. A petition for modification of sentence under this rule may be considered without presentation, hearing, or argument unless otherwise ordered by the court. In no case, however, shall the petition be considered in a manner inconsistent with the provisions of 11 Del. C. § 4214(f) and this rule. In any case in which presentation, hearing or argument is had on the petition, a victim shall be given an opportunity to provide a victim impact statement in a manner consistent with the provisions of 11 Del. C. §§ 4331(d), (e), and (f).

(8) Summary dismissal. If it plainly appears from the petition and the record of prior proceedings in the case that the petitioner is not entitled to

relief or that the requirements of this rule have not been met, the court may enter an order for the petition's summary dismissal and cause the petitioner's attorney and the petitioner to be notified.

(9) *Disposition of petition.* The court may in its sole discretion grant or deny the petition for modification of sentence. Notwithstanding the provisions of 11 *Del. C.* § 4214 or § 4217, any court rule or any other provision of law to the contrary, the court upon consideration of a petition properly filed pursuant to this rule may modify, reduce, or suspend the petitioner's sentence imposed. In no instance, however, may the court modify, reduce, or suspend any portion of any applicable mandatory sentence as defined by 11 *Del. C.* § 4214(f). If the court modifies, reduces or suspends the petitioner's sentence, the court shall include a transition period of custodial supervision at either Level IV, III or II as provided for by 11 *Del. C.* § 4204(l). Nothing in this rule or in 11 *Del. C.* § 4214 shall require the court to grant sentence modification to a petitioner.

(10) *Record of disposition.* Whenever the court disposes of a petition, the

court shall set forth on the record the results of its review and its reasons for granting or denying the petition.

(11) *Sequence of consideration of petitions.* To the extent possible, consistent with the provisions of 11 *Del. C.* § 4214(f), all petitions filed under this rule where the felony establishing an inmate as a habitual offender was a Title 16 offense shall be heard first, followed by all petitions filed where the felony establishing an inmate as a habitual offender was a crime against property, followed by all other petitions.

Effective November 8, 2017 (To be cited as "Del. Super. Ct. Spec. R. 2017-1 " and must be applied to all 11 *Del. C.* § 4217(f) sentence modification requests pending or filed on or after November 8, 2017.)

§ 4218 Probation before judgment.

(a) Subject to the limitations set forth in this section, for a violation or misdemeanor offense under Title 4, 7, or 11, or for any violation or misdemeanor offense under Title 21 which is designated as a motor vehicle offense subject to voluntary assessment by § 709 of Title 21, or a violation of § 2702 of Title 14, or for violations of § 4166(d) of Title 21, or for violations of § 4172 of Title 21, or for a violation of a county or municipal code, or for a misdemeanor offense under § 4764, § 4771 or § 4774 of Title 16, a court exercising criminal jurisdiction after accepting a guilty plea or nolo contendere plea may, with the consent of the defendant and the State, stay the entry of judgment, defer further proceedings, and place the defendant on "probation before judgment" subject to such reasonable terms and conditions as may be appropriate. The terms and conditions of any probation before judgment shall include the following requirements: (i) the defendant shall provide the court with that defendant's current address; (ii) the defendant shall promptly provide the court with written notice of any change of address; and (iii) the defendant shall appear if summoned at any hearing convened for the purpose of determining whether the defendant has violated or fulfilled the terms and conditions of probation before judgment. The terms and conditions may include any or all of the following:

- (1) Ordering the defendant to pay a pecuniary penalty;
- (2) Ordering the defendant to pay court costs to the State;
- (3) Ordering the defendant to pay restitution;
- (4) Ordering the defendant to perform community service;
- (5) Ordering the defendant to refrain from contact with certain persons; and

(6) Ordering the defendant to conduct themselves in a specified manner. The length of the period of probation before judgment shall be fixed by the court, but in no event shall the total period of probation before judgment exceed the maximum term of commitment provided by law for the offense or 1 year, whichever is greater.

(b) This section may not be substituted for:

- (1) Section 1024 of Title 10. First offenders domestic violence diversion program;
- (2) Section 900A of this title. Conditional discharge for issuing a bad check as first offense; or
- (3) Section 4177B of Title 21. First offenders; election in lieu of trial.

(c) (1) Notwithstanding any provision of this section to the contrary, no person shall be admitted to probation before judgment if: a. The person is currently serving a sentence of incarceration, probation, parole or early release of any type imposed for another offense; b. The person is charged with any offense set forth in this title, and has previously been convicted of any violent felony; c. The person is charged with any offense set forth in this title, and has previously been convicted of any nonviolent felony within 10 years of the date of the commission of the alleged offense; d. The person is charged with any offense set forth in this title, and has previously been convicted of any misdemeanor offense within 5 years of the date of the commission of the alleged offense; e. The person is charged with any offense set forth in Title 4 or 7, and has been previously convicted of any offense set forth in Title 4 or 7 within 5 years of the date of the commission of the alleged offense; f. The person is currently charged with any offense set forth in § 709 of Title 21, and has been previously convicted of any offense set forth in Title 21 within 5 years of the date of the commission of the alleged offense; g. The person is currently charged with a violation of § 2702 of Title 14 and has been previously convicted of a violation of 2702 of Title 14 within 5 years of the date of the alleged offense; or Title 11 - Crimes and Criminal Procedure Page 255 h. The person is charged with a violation of a county or municipal code provision and has previously been convicted of a violation of another county or municipal code provision within 5 years of the date of the commission of the alleged offense. i. The person is charged with an offense involving a motor vehicle and holds a commercial driver license (CDL).

(2) For the purposes of this subsection, the following shall also constitute a previous conviction: a. A conviction under the laws of another state, the United States, or any territory of the United States of any offense which is the same as, or equivalent to, any offense specified in paragraph (c)(1) of this section; b. An adjudication of delinquency; or c. Any adjudication, resolution, disposition or program set forth in § 4177B(e)(1) of Title 21.

(d) This section shall not be available to any person who has previously been admitted to probation before judgment for any offense within 5 years of the current offense.

(e) Nothing in this section shall be construed to permit probation before judgment for a violation of a county or municipal code that would not be permitted for the corresponding state code offense.

(f) Upon a violation of a term or condition of the Court's order of probation before judgment, the Court may enter judgment and proceed with disposition of the person as if the person had not been placed on probation before judgment.

(g) Upon fulfillment of the terms and conditions of probation before judgment, the Court shall enter an order discharging the person from probation. The burden shall be upon the defendant to demonstrate that the terms and conditions of probation have been fulfilled. The discharge is the final disposition of the matter. Discharge of a person under this section shall be without judgment of conviction and is not a conviction for purposes of any disqualification or disability imposed by law because of conviction of a crime.

(h) Notwithstanding any provision of this section to the contrary, the court shall not admit a defendant to probation before judgment nor otherwise apply any provision of this section unless the defendant first gives written consent to the court permitting any hearing or proceeding pursuant to this section to occur in the defendant's absence if:

(1) Timely notice of the hearing or proceeding is sent or delivered to the address provided by the defendant pursuant to subsection (a) of this section; and

(2) The defendant fails to appear at said proceeding. In the event that a defendant fails to appear at any hearing or proceeding pursuant to this section, the court may proceed in the defendant's absence if it first finds that timely notice of the hearing or proceeding was sent or delivered to the address provided by the defendant pursuant to subsection (a) of this section. Nothing in this subsection shall limit the power of the Court to hold a hearing to determine whether a defendant is in violation of the terms of that defendant's probation. (i) Notwithstanding the provisions of subsection (a) of this section to the contrary, in any case in which the Delaware Department of Justice does not intend to enter its appearance, the consent of the State shall not be required prior to placing a defendant on "probation before judgment." Notwithstanding the foregoing, except for the offenses under Title 21 to which this section applies, the Attorney General or other prosecuting authority may advise the court of aggravating circumstances in opposition to placing a defendant on "probation before judgment."

VIOLATION OF PROBATION SENTENCING POLICY

When a violation of probation hearing is held and determination is made that the offender is guilty of the violation and probation is to be revoked, it is presumed that the offender may move up only one SENTAC level from his/her current level.

AGGRAVATING CIRCUMSTANCES

An offender may have his/her level of supervision raised more than one level if any of the following aggravating circumstances exists:

- A. Conviction of a new offense which was a felony, a violent misdemeanor, or an offense requiring a mandatory sentence.
- B. The violation is a violation of a special treatment condition , e.g., offender willfully refuses to attend the ordered program and, as a result of such refusal, poses a substantial threat to the community or himself. Confinement in this instance should be short-term and could consist of either a Level IV (quasi-incarceration) or a Level V (incarceration), situation until treatment is arranged.
- C. The offender has demonstrated willful failure to make court-ordered payments, and no other alternatives are possible, or those alternatives would depreciate the seriousness of the offense.
- D. The offender is found to be in possession of a weapon, leading to the violation, and the offender has a past history of violence, drug trafficking or weapons violations.
- E. The behavior of the offender represents an immediate threat to the community or an identified victim.
- F. The behavior of the offender is repetitive and flagrantly defies the authority of the court.

Length of Level V Sentences - SENTAC Standard

When a period of incarceration is determined to be the sanction of choice for a violation of probation, a Level V sanction should be in accordance with the current SENTAC standard presumptive sentence for the original crime for which the probation is being served. If the presumptive sentence is less than level V, the sentence for violation of probation should be UP TO 25% of the statutory maximum.

Effective June 30, 1990, all Violation of Probation sentences must be designated as to whether they are "Truth in Sentencing" or "Non TIS" sentences. A defendant who had an original non-TIS sentence and is violated may not be given a TIS sentence for the violation, unless he specifically agrees thereto, and the sentence is given in relation to TIS guidelines. Designation is imperative so that DOC can maintain proper records on the time to be served, goodtime credits, and parole eligibility.

1. Sentencing orders (and worksheet forms) should refer to all violations as "Violation of Level ____ ", where the blank contains the current level designation.

2. In addition to the above designation, all violation orders, regardless of specific format, should contain the following information:
 - Client name, Effective date of sentence, Original offense, Type of action: i.e. terminated, continued, modified, or revoked as defined above. New sentence Level(s) and time(s), TIS or NON-TIS status, Aggravating factor(s): if necessary due to a two- level (or more) increase, or a longer than standard sentence length at Level V.

Glossary of Violation of Probation Terms:

Continuation

An order may be entered continuing a probationer on probation where there has been a finding of a violation of probation or a finding that there has been no established violation of probation, and the same conditions remain in place after the finding is entered.

Discharge as Unimproved

An order may be entered discharging a probationer as unimproved upon recommendation of the probation officer or at the discretion of the Court, when the Court determines that continued supervision of the probationer is unlikely to have a beneficial effect, even though one or more terms of the probation order have not been fulfilled.

Modification

An order modifying probation may be ordered when the Court finds that a violation has occurred and the probationer should be kept at the same level or placed at a lower level with additional, more restrictive requirements or altered requirements to more realistically assist the management of the supervision of the probationer.

Probation

As referenced in this section, shall be any sentence of supervision at a level less than incarceration at Level V which is imposed in lieu of, or in addition to, any sentence to said Level V as a result of conviction for any criminal offense.

Repetitive Behavior

The offender persists, after notice, in actions which constitute a pattern of behavior which repeats a past record of non-amenability to community sanctions.

Revocation

An order revoking probation may be entered when it is the intention of the Court to raise the level of intensity of supervision after finding that probation has been violated.

Substantial Risk

The threat of repetitive violations or causing physical injury to self or others is high.

Willful Failure to Pay

A failure to pay a monetary obligation despite the availability of resources with which to pay the obligation, or the refusal to take steps to obtain the resources to pay the obligation.

THE MATERIALS IN THE FOLLOWING SECTIONS ARE NOT SENTAC POLICY BUT ARE PROVIDED FOR THE CONVENIENCE OF USERS

WORK RELEASE POLICY (Department of Correction/Bureau of Prisons)

A program permitting an inmate of proper custody status to work in the community at paid employment. The inmate is still assigned to a Halfway House/Work Release Center when not working or participating in extracurricular programs. Inmates meeting the following standards may be given consideration.

Inmates within 36 months to short-time release date and 9 months to parole eligibility. (Non- TIS offenders only.)

Inmates convicted of a violent crime against person(s) and served more than a year at Level V must have a mental evaluation prior to being considered for the program.

MDT must review and recommend placement.

Inmates with minor open charges can be approved and will be expected to clear the charges; i.e., motor vehicle offenses.

Inmates serving a sentence for a third DUI offense occurring within 5 years from a prior offense are not eligible for work release during the first 3 months of the sentence imposed.

Inmates serving a sentence for a fourth or subsequent offense occurring any time after 3 prior offenses are not eligible for work release during the first 6 months of the original sentence imposed.

Truth In Sentencing Inmates

1. Sentenced to one year or more under Truth in Sentencing if they are in the last 180 days of their sentence.
2. Truth in Sentencing inmates sentenced to less than 1 year provided, however, the first 5 days be served at Level V, may be classified to work release, unless the court states otherwise.

Inmates serving a Level V sentence with a Level IV sentence to follow.

Inmates must not have had any Class I or major conduct offenses within the last 6 months prior to consideration.

Inmates in the following categories **will not** be given consideration in this program due to either statutory or departmental/bureau policy.

1. Class A Felons, those committed as a Habitual Criminal or those previously convicted of two or more offenses listed herein on page 8 or 9 until within six months of the date of release from custody.
2. Any offender convicted of a sex offense, including but not limited to offenders convicted of any of the following offenses: Unlawful sexual contact in the First or Second Degree, Unlawful sexual penetration in the First, Second, or Third Degree, Unlawful sexual intercourse in the First, Second,

or Third Degree, Sexual Extortion, Continuous sexual abuse of a child, Dangerous crimes against a child, Sexual exploitation of a child, Unlawfully dealing in material depicting a child in a prohibited sexual act, or Subsequent convictions of Sec. 1108 or Sec. 1109.

3. Inmates with detainer, unless the detaining authority has given specific written approval for work release.
4. Inmates serving a sentence under 4204K, unless the sentencing judge specifies that work release is allowed.
5. Inmates convicted of escape after conviction or escape 2nd and are never eligible for work release.

Inmates serving minimum mandatory sentences for trafficking are not eligible until the mandatory portion of their sentence is completed. Those serving minimum mandatory sentences for other offenses are eligible after serving 50%t of the minimum mandatory, unless minimum term is set by statute. (Non TIS offenders only.)

Conditions of Supervision

1. You must not commit a new criminal offense or moving motor vehicle offense during the supervision period.
2. You must report any new arrest, conviction, or police contact within 72 hours to your Supervising Officer.
3. You must report to your Supervising Officer at such times and places as directed, and permit the Probation/Parole Officer to enter your home and/or visit places of employment.
4. You must have authorization from your Supervising Officer to leave the State of Delaware or your approved state of residence.
5. You must report any changes of residence and/or employment within 72 hours to you Supervising Officer.
6. You must have written approval from your Supervising Officer to own, possess, or be in control of any firearm or deadly weapon. (NOTE: Del. Code Title 11, Section 1448 prohibits purchase, possession, ownership, or control of any deadly weapon by persons convicted of a felony, crime of violence, drug offense, or commitment for a mental disorder.)
7. You are not to possess or consume a controlled substance or other dangerous drugs unless prescribed lawfully. You are subject to random testing as directed by your Supervising Officer.
8. You must pay a supervision fee as required by State Law in accordance with a schedule as established by the Department of Correction.
9. You must comply with any Special Conditions imposed at any time by your Supervising Officer, the Court and/or the Board of Parole.
10. You must not quit a job, training program, or school without prior approval of your Supervising Officer.
11. You must be employed full-time or active in job training or school on a full-time basis. If not, you must attend a Job Search Program or perform Community Service on a schedule established by the Supervising Officer.
12. You must participate in 0-35 hours of community service each week as directed by your Supervising Officer.
13. You must abide by a curfew established by your Supervising Officer.

Sex Offender Additional Standard Conditions of Supervision

The following additional standard conditions of probation may be required by the Department of Correction in the supervision of defendants who have been convicted of a sex offense or those whose criminal record reflects a prior conviction of such offenses. The Commission expects the Department of Correction to review the needs of each individual defendant and impose only those additional conditions needed to appropriately supervise the defendant.

1. Participate in sex offender assessment, evaluation, and treatment as determined by the Department of Correction. The offenders will be financially responsible for all examinations and treatment unless the Department of Correction finds the offender is financially unable to pay.
2. Prohibit access or possession of sexually explicit and/or obscene material unless approved by the Probation Officer.
3. Comply with all statutory requirements imposed upon individuals convicted of a sex offense including but not limited to compliance with 11 Del. Code Section 8510 requiring the submission of photographs, fingerprints and identification, sex offender registration (11 Del. Code Section 4120), community notification (11 Del. Code Section 4121), and DNA collection (29 Del. Code Section 4713) and limitations regarding contact with school zones (11 Del. Code Section 1112).
4. Prohibit contact or residing with children under the age of 18 unless approved by the Probation Officer.
5. Prohibit access, possession or control over or use of a computer device, modem or network interface device. Any device or storage medium of an offender whose use has been approved by the

Department of Correction is subject to random examination by the Probation Officer to determine compliance with this requirement. Using a computer modem or network interface device for any purpose which might further sexual activity is strictly prohibited. If violation of this provision is found, the Department of Correction may seize the computer, related equipment and storage devices.

6. To require submission to polygraph testing to assist in the treatment and supervision of the offender. The failure of a polygraph test alone may not be a basis to violate the offender's probation.
7. Require no contact with the victim of the crime unless otherwise approved by the Probation Officer.

(a) SEX OFFENDER REGISTRATION PROVISIONS

Please review Title 11 Section 4121 for the complete Sex Offender information-

. (f)(1) Any person designated, as a sex offender pursuant to this section shall comply with the registration provisions of Section 4120 of this title as follows:

- a. For life, if the sex offender is designated to Assessment Tier III, or if the person is designated to Assessment Tier I or II, and has previously been convicted of any of the offenses specified in subparagraphs (a)(4)a., c. or d. of this section; or
- b. For 25 years following the sex offender's release from Level V custody, or for 25 years following the effective date of any sentence to be served at Level IV or below, if the person is designated to Risk Assessment Tier II, and is not otherwise required to register for life pursuant to this subsection, except that any time spent at any subsequent period of Level V custody shall not be counted against such 25 year period.
- c. For 15 years following the sex offender's release from Level V custody, or for 15 years following the effective date of any sentence to be served at Level IV or below, if the person is designated to Assessment Tier I, and is not otherwise required to register for life pursuant to this subsection period of Level V custody shall not be counted against such 15 year period.

(2) Notwithstanding any provision in this section to the contrary:

- a. Any sex offender designated to Assessment Tier III may petition to the Superior Court for redesignation to Assessment Tier II if 25 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and the offender has successfully completed an appropriate sex offender treatment program certified by the State, and has not been convicted of any crime (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole, or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 25 years have elapsed from the date of the subsequent conviction or finding of a violation, during which time no additional convictions or findings of violation can have occurred. Notwithstanding any provision of this section or Section 4120 of this title to the contrary, any sex offender who is redesignated from Assessment Tier III to Assessment Tier II shall continue to comply with the registration and re-registration requirements imposed by Section 4120(g) upon Tier III offenders for life. Any re-designation from Assessment Tier III to Assessment Tier II shall not release the offender from the requirement of lifetime registration or address verification every 90 days pursuant to Section 4120 (g)(1)(a) of this title and subsection (f)(1) of this section.
- b. Any sex offender designated to Assessment Tier II may petition the Superior Court for redesignation to Assessment Tier I if the victim was not a child under 18 years of age and 10 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no level IV or V sentence was imposed, and the offender has successfully completed an appropriate sex offender treatment program certified by the State and has not been convicted of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 10 years have elapsed from the date of the subsequent conviction or finding of violation, during which time no additional convictions or findings of violation can or have occurred.

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- c. Any sex offender designated to Assessment Tier I may petition the Superior Court for relief from designation as a sex offender, and from all obligations imposed pursuant to this section and Section 4120 of this title, if 10 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and if the offender has successfully completed an appropriate sex offender treatment program certified by the State and has not been convicted of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole, or conditional release to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 10 years have elapsed from the date of the subsequent conviction or finding of violation, during which time no additional convictions or findings of violation can or have occurred.
 - d. The Superior Court shall not grant a petition for redesignation or relief filed pursuant to this subsection unless:
 - a. The sex offender establishes, by a preponderance of the evidence, that the public safety no longer requires preservation of the original designation; and
 - b. The Court provides the Attorney General with notice of the petition and with reasonable period of time to be heard upon the matter.

When considering a petition for redesignation, the Court shall weigh all the relevant evidence, which bears upon the character and propensities of the offender, and the facts and circumstances of his or her prior offenses. The Court may in its discretion hold a hearing on the petition. If the Court grants the petition, it shall promptly enter the information concerning the redesignation into the DELJIS system.

Delaware State Police Bureau of Identification closest to your location.

- A. The Delaware State Police shall provide sex offenders a written notice of when to return.
- B. Listed below are the time limits for Sex Offender registration-

Tier Level 1 – Once a year in person

Tier Level 2 – Twice a year in person (every 6 months)

Tier Level 3 - Four times a year, quarterly, in person

Note: **Reporting times are based on the offender's date of initial registration.**

Homeless Sex Offender reporting Requirements

Tier Level 1 – Report in person every 90 days for verification

Tier Level 2 – Report in person every 30 days for verification

Tier Level 3 – Report in person every 7 days for verification

Reporting locations are as follows- Offenders must report to State Bureau of Identification Dover, or State Bureau of Identification Northern location which is Delaware State Police Troop # 2, or Sussex County, Thurman Adams State Service Center, 546 S. Bedford Street, Room 202, Georgetown DE.. Hours of operation for the Georgetown location are Monday-Thursday 8:30AM-3:30PM. No appointment necessary.

- C. Once the court has found a person guilty of a Megan's Law felony offense, Title 11 Section 4120 of the Delaware Code, the offenders Driver's License must be relinquished to the applicable court. The court will issue a temporary operator's license, directing that person to report to the Division of Motor Vehicle for a replacement Driver's License with the code under restrictions: "Y" indicating sex offender. The person will pay \$5.00 to the Division of Motor Vehicles for the replacement license. The Division of Motor Vehicles will receive an automated notification generated by CJIS advising that the offender will be appearing to have another photo taken and a new restriction coded operator's license issued. Note, upon a person being removed from the registration requirement, the Division of Motor Vehicle shall issue a license without the sex offender code printed at no charge. The sentencing court shall forward to the Division all licenses that it receives, along with a copy of the Sentencing Order.

Note: This section was passed to bring Delaware into compliance with Title 42 United States Code, Section 14071, The Jacob Wetterling Crimes Against Children and Sexually Violent Offender registration program by September 13, 1997 compliance deadline.

SEX OFFENDER TIER III ASSESSMENT

1. Automatic designation to Tier III

- a. DE110773 Rape First Degree
DE110772 Rape Second Degree
DE110771 Rape Third (if involved a child under 12, or offense involved force or threat of Physical Violence)
DE110769 Unlawful Sexual Contact First Degree
DE110772 Unlawful Sexual Penetration First Degree (repealed in 1998)
DE110771 Unlawful Sexual Penetration Second Degree (repealed in 1998)
DE110775 Unlawful Sexual Intercourse Second Degree (repealed in 1998)
DE110774 Unlawful Sexual Intercourse First Degree (repealed in 1998)
DE110778 Continuous Sexual Abuse of a Child
DE111108 Sexual Exploitation of a Child
- b. DE1107830004 Kidnapping First Degree*
DE110783A004 Kidnapping Second Degree*

***If the purpose of the crime was to facilitate the commission of any offense designated as a sexual offense where the defendant is not a parent, step parent or guardian of the victim.**

- c. Any attempt to commit the previous offenses
DE110531
- d. Any equivalent offense in any other state or US Territory.
- e. **Upon motion of the State, any person convicted of a felony, if the victim had not yet reached his or her 16ⁿ birthday AND if the sentencing court determines by a preponderance of the evidence, after it weighs all relevant evidence which bears upon the particular facts and circumstances of the offense and the character and propensities of the offender, that public safety will be enhanced.**

DE110761 (currently definitions only) Sexual Assault 7/1/73-7/9/86
DE110762 (currently provisions applic. to sex offenses) Sexual Miscond. 7/1/73- 7/9/86
DE110764 Indecent Exposure Second Degree – If Second Conviction within 5yrs
DE110765 Indecent Exposure First Degree
DE110766 Incest
DE110767 Unlawful Sexual Contact Third Degree
DE110768 Unlawful Sexual Contact Second
DE110770 Rape Fourth Degree
DE110771 Rape Third Degree
DE110776 Sexual Extortion
DE110777 Bestiality
DE110779 Dangerous Crime Against a Child
DE111108 Sexual Exploitation of a Child
DE111109 Unlawfully Dealing in Child Pornography

DE111110 Subsequent Conviction of 1108 or 1109
DE111111 Possession of Child Pornography
DE111112A Sexual Solicitation of a Child

SEX OFFENDER TIER II ASSESSMENT

1. Automatic Designation to Tier II

- a. DE110771 Rape Third Degree (if does NOT involve a child under 12, or offense involved force or threat of Physical Violence)
DE110770 Rape Fourth Degree
DE110770 Unlawful Sexual Penetration Third Degree (repealed in 1998)
DE110773 Unlawful Sexual Intercourse Third Degree (repealed in 1998)
DE110768 Unlawful Sexual Contact Second Degree
DE110776 Sexual Extortion
DE110777 Bestiality
DE110779 Dangerous Crime Against a Child
DE111109 Unlawfully Dealing in Child Pornography
DE111111 Possession of Child Pornography
DE111112A Sexual Solicitation of a Child
DE110762 (Currently Provisions applic. to sex offenses) Sexual Miscond. 7/1/73- 7/9/86
DE111361 Providing Obscene Materials to Minors
- b. Any attempt to commit the previous offenses
DE110531
- c. Any equivalent offense in any other state or U.S. Territory
- d. **Upon motion of the State, a person convicted of any sexual offense, if the sentencing court determines by a preponderance of the evidence, after it weighs all relevant evidence, which bears upon the particular facts and circumstances or details of the commission of the offense and the character and propensities of the offender, that public safety will be enhanced.**

DE110761 (currently definitions only) Sexual Assault DE110762 (currently provisions applic. to sex offenses) Sexual Miscond. 7/1/73-7/9/86
DE110764 Indecent Exposure Second Degree – If Second Conviction within 5 yrs
DE110765 Indecent Exposure First Degree
DE110766 Incest
DE110767 Unlawful Sexual Contact Third Degree
DE111108 Sexual Exploitation of a Child
DE111110 Subsequent Conviction of 1108 or 1109
DE111111 Possession of Child Pornography
DE111321(5) Loitering in Public Place to Solicit
DE111352(2) Promotes/Profits from Prostitution of a Person under 18 years
DE111353(3) Promotes/Profits from Prostitution of a Person under 16 years

SEX OFFENDER TIER I ASSESSMENT

Any sex offender not otherwise designated to Assessment Tier II or III:

- a. DE110764 Indecent Exposure Second Degree – If Second Conviction within 5 yrs
- DE110765 Indecent Exposure First Degree
- DE110766 Incest
- DE110767 Unlawful Sexual Contact Third Degree
- DE110780 Female Genital Mutilation
- DE111100 Dealing in Children
- DE111112 Sexual Offender who Resides or Loiters within 500 feet of school
- DE111335(a)(6) or (7) Violation of Privacy

Conviction for a second Tier 3 or Tier 2 offense will be designated Tier 3.

Conviction for a subsequent Tier 1 offense occurs within 5 years of previous conviction, sex offender will be placed in Tier 2 when convicted again.

Also all sex offenders will be raised to Level Tier 3 once they are wanted persons. They will also be reduced back to their original Tier Level Assessment once the Warrant/Capias has been cleared.

- The entire Sex Offender Training Manual can be found at:

<http://server.deljis.state.de.us>

Click on the Training heading and scroll down to the DELJIS Sex Offender Training Manual

BAIL

THE BAIL GUIDELINES AND POLICY STATEMENTS ARE THOSE OF THE JUSTICE OF THE PEACE COURTS AND NOT THE SENTENCING ACCOUNTABILITY COMMISSION. THEY ARE PROVIDED HERE AS A CONVENIENCE FOR USERS.

Recognizing that the setting of bail is an important and delicate exercise of judicial discretion, but that such discretion is restrained by both constitutional and statutory limitations, a “totality of the circumstances test” is adopted as bail policy to assist Delaware judicial officers in making logical, appropriate, bail setting decisions. This policy has been adopted for the following reasons:

- Presumptive bail under Delaware law is to release upon a defendant’s own recognizance or upon an unsecured appearance bond.
- Delaware law requires judicial officers to consider **all** legally relevant circumstances and criteria in reaching a bail decision.
- Delaware law requires the Court to employ an objective risk assessment instrument to gauge a person’s risk of flight and re-arrest.
- Departure from presumptive release upon OR or unsecured bail is permissible **only** if a totality of the circumstances analysis determines that secured bail is necessary to (a) ensure the defendant’s appearance to answer charges and/or (b) to ensure the safety of any victims or witnesses or the community.
- In considering and weighing legally relevant factors, the judicial officer must balance the rights of the defendant:
 - to be presumed innocent,
 - to be at liberty while awaiting trial,
 - to develop a defense,
 - to provide financial and other support for family, and
 - to preclude pressure to resolve the case to escape confinement with the State’s interests:
 - to ensure the defendant appears to answer to criminal charges,
 - to protect victims, witnesses, and the community, and
 - to ensure the proper administration of justice.
- A totality of the circumstances analysis requires a judicial officer to focus on **all** the factors legally relevant to a bail decision, not on a single factor, such as nature of the charged offense.
- A totality of the circumstances analysis requires and permits a judicial officer to make, “...a balanced assessment of the relative weights” of all the various factors legally relevant to a bail decision.²³
- A totality of the circumstances analysis gives a judicial officer broad, comprehensive discretion to fit bail to each case as the factors of each case warrant.

²³ *Illinois v. Gates*, 462 U.S. 213, 234 (1983).

THE BAIL DECISION – APPROPRIATE STEPS

1. REVIEW

Review the charging document and/or case file; criminal, traffic, capias and/or payment history information relating to the defendant and the offense; the Recommended Monetary Ranges; and any Special Case Procedures.

2. COMPLETE RISK ASSESSMENT INSTRUMENT IF APPLICABLE TO CHARGES

- a. The Risk Assessment Instrument will be used for all initial charges for the following case types: Felony, Misdemeanor A, Title 16, DUI and any alcohol related charges and any domestic violence charges.
- b. The Risk Assessment Instrument will also be completed in any case where the defendant is detained, regardless of the charge.
- c. Complete the scoring of the Risk Assessment Instrument.

3. WEIGH AND ANALYZE FOR FINAL DECISION

- a. Consider the score of the Risk Assessment Instrument, if applicable. There exists a presumption that defendant's falling into the "high risk" category will be detained and that defendant's falling into the "low risk" will not be detained. If these presumptions are overridden, this override must be recorded on the Risk Assessment Instrument.
- b. Using the same approach, determine bail amount for each charge. Also consider that the total bail amount for the entire case should be reasonable under all the circumstances; and that bail amount for each charge should be within the Recommended Monetary Range for the offense classification **unless** exceptional, articulable factors exist. If the bail amount is outside the Range, record additional justification.

4. SELECT AND RECORD BAIL CONDITIONS

- a. Bail conditions should be reasonably related to the instant offense or the underlying circumstances of the offense.
- b. May be used as an alternative to secured bail, where appropriate.
- c. Record all conditions.

THE BAIL DECISION – BASIC CONSIDERATIONS

- **PRESUMPTION:** Judges are required to release defendants on their own recognizance **OR** on unsecured bail **unless** factors to the contrary (“aggravating factors”) exist. Judges **MUST** record the reasons for secured or cash bail.
 - **Exception:** Capital crimes. 11 *Del. C.* §§ 2101 and 2105(a).²⁴
 - **When Using the Risk Assessment Instrument:** There exists a presumption that defendant’s falling into the “high risk” category will be detained and that defendant’s falling into “low risk” will not be detained. If these presumptions are overridden, this override must be recorded on the Risk Assessment Instrument.
- **BAIL TYPE:** Shall be based on a totality-of-the-circumstances analysis of all mitigating and aggravating factors.
 - **Bail type** should not be based solely on the nature of the charge(s).
 - **Secured Bail** may be considered reasonable only if aggravating factors exist. Establish and record all applicable factors.
 - **Cash Bail** is a more restrictive type of secured bail. Therefore, cash bail should be carefully considered and reserved for the most serious or unusual circumstances, the presence of which must be recorded.
 - **Mixed Bail Types:** Avoid setting secured and unsecured/OR bail on the same case. Bail for non-incarcerable offenses may be set at \$1 secured each **IF** the overall case **bail type** is secured.
- **BAIL AMOUNT:** Shall be based on a totality-of-the-circumstances (TOTC) analysis of all aggravating and mitigating factors.
 - The accompanying monetary ranges are recommendations for bail amount based on the **nature** of the offense as indicated by the *Delaware Code* offense classification. “Nature of offense” is only one of many relevant bail factors and shall not be the sole basis for the bail decision. Use these ranges in conjunction with other relevant bail factors.
 - The vast majority of bail decisions should fall within the recommended monetary ranges. Reasons for departing from the ranges must be documented.
 - Bail **amounts** shall be set *by charge*. While bail is set by charge, the total amount for bail for the case must be reasonable under all the circumstances.

²⁴ At publication (06-30-2010), only Murder in the First Degree, 11 *Del. C.* § 636, is a capital offense in Delaware.

RECOMMENDED MONETARY RANGES

Offense Class	Bail Guideline	Penalty-Custody	Penalty-Fine	Notes
FELONIES				
Murder 1 11 <i>Del. C.</i> § 636	Hold Without Bail* (11 <i>Del. C.</i> § 2103)	Death or Natural Life	no cap	Capital Offense Non-Bailable
Felony Class A	\$40,000 to \$100,000	M/M 15 years to Life	no cap	
Felony Class B	\$20,000 to \$60,000	M/M 2 to 25 years	no cap	
Felony Class C	\$5,000 to \$20,000	0-15 years	no cap	
Felony Class D	\$2,500 to \$10,000	0-8 years	no cap	
Felony Class E	\$1000 to \$6,000	0-5 years	no cap	
Felony Class F	\$500 to \$3,000	0-3 years	no cap	
Felony Class G	\$500 to \$2,000	0-2 years	no cap	
MISDEMEANORS and VIOLATIONS				
Misdemeanor Class A	OR to \$1,000	0-1 year	0-\$2300	
Misdemeanor Class B	OR to \$200	0-6 months	0-\$1150	
Misdemeanor (unclassified)	OR to \$100	0-30 days	0-\$575	
Violation – 1 st	OR to \$50	0-1 year probation LI	0-\$345	Subsequent violations are within a 5-year period.
Violation – 2 nd	OR to \$100	0-1 year probation LI	0-\$690	
Violation – 3 rd	OR to \$200	0-1 year probation LI	0-\$1150	

See special case procedures and considerations for issues related to special case types.

*Only Murder 1 under 11 *Del. C.* § 636(a)(1) through (6) is a capital offense as of this publication. Murder 1 does not include Attempted Murder.

SPECIAL CASE PROCEDURES & CONSIDERATIONS

The following represents a concise, but not comprehensive, outline of circumstances and case types requiring consideration of factors that may not have been appropriate to consider at the time the case bail was set initially, or factors that, due to the nature of the case, may require exceptionally close examination.

Revocation of Bail Following a Violent Felony

- If a defendant is alleged to have committed a violent felony while released on recognizance or bond from a previous violent felony, the original recognizance or bond must be revoked (11 Del.C. 2116(c)).

Capiases/Warrants & Rule 9 Warrants

- Failure to Appear: Original case bail; bail recommendation of issuing court; known practices of issuing court (for instance, Superior Court FTA Trial Capias may contain a high cash bail recommendation based on that Court's rigorous trial-setting practices and notice to defendants); FTA capias history; history of escape or resisting arrest convictions.
- Failure to Pay: Amount owed; history of FTP capias on the case; whether Work Referral or Wage Assignment has been ordered but not defendant failed to follow order; history of FTP capias on all cases; amounts owed to all courts at time of arrest on FTP capias.
- Rule 9 Warrants: Treat similar to new charges with bail set for first time, absent any recommendation from Superior Court.

Domestic Violence - PFA Violations

- Intimate Partners: (Husband/Wife; Ex-Spouses; Boyfriend/Girlfriend and ex; Same-sex relationships) – Use DV Lethality Screening Tool to assess risk – Do not underestimate results; recent separation of parties increases risk dramatically—loss of control may trigger violence.
- Other Family Members: Threats of violence or suicide; prior incidents of violence and escalating violence; sexual assault; whether instant offense involves injury; access to weapons; substance abuse; mental health issues; employment issues.
- PFA Violations: History of violations and violation of no contact orders (breach of release).

Drugs

- Offense occurred in Protected Area or in an area used as a Base of Operations
- Force or high-speed flight via motor vehicle was used to escape apprehension
- History includes prior Title 16 convictions and/or violent offenses
- Instant Offense carries mandatory penalty and/or quantity of drug indicates serious drug dealing;
- Minors are involved in offense as accomplices or as targeted customer; or offense involves death or injury to user/customer

Fugitives

- Nature of offense alleged to have been committed in foreign jurisdiction & bail guideline for comparable Delaware offense
- Circumstances of defendant's apprehension

Motor Vehicle & DUI

- DUI: Classification of offense as felony or misdemeanor – based on defendant's conviction history; alleged BAC at time of offense; circumstances of defendant's apprehension (accident, risky driving, injury or death to others, property damage); history of defendant's compliance with substance abuse treatment and/or rehabilitation previously ordered by court; indications of long-term substance abuse – Use mandatory bail condition if required [11 *Del. C.* § 2108(c)].

-
- Motor Vehicle: Imperative to remember that secured bail may not be ordered as initial bail for non-jailable offenses.

Sexual Offenses

- Child Victim: Require that the defendant have no contact with children except upon good cause shown and as provided by the Court [mandatory bail condition as required by 11 *Del. C.* § 2108(b)].
- Registered Sex Offenders: Require the defendant to register if defendant is charged with failing to register as a sex offender [mandatory bail condition as required by 11 *Del. C.* § 4120(4)].

Truancy

Adult Offender:

- Original Truancy charge: Truancy charges are criminal offenses if adult offender and may be treated as such for bail purposes.
- FTA Capias/FTP Capias/Contempt of Court: Set unsecured or secured based on circumstances

Juvenile Offender:

- Original Truancy charge: Truancy charges are civil offenses if juvenile offender; all restrictions on incarcerating juveniles pursuant to 10 *Del. C.* § 1007 apply to such cases.
- FTA Capias: Secured bail may only be set if the conditions imposed by 10 *Del. C.* § 1007 are met.
- FTP Capias: A capias may not be issued for a juvenile for FTP. Such a capias may be issued for the juvenile's parent or other responsible who co-signed any payment agreement. Thus, if presented with a FTP capias issued on a juvenile, set unsecured bail.
- Contempt of Court: If based on the underlying truancy matter, bail may be secured or unsecured depending on the circumstances and only if the conditions imposed by 10 *Del. C.* § 1007 are met.

Violation of Probation – Contempt of Court – Breach of Release

- If returned to other than issuing court, give great deference to recommendation of issuing court.
- VOP: Consider any facts available showing VOP is substantive or for collection of monies owed only. Consult probation officer if available. Review underlying offense and original sentence imposed. Consider prior VOPs on same or other cases.
- COC (often issued for FTP matters): Consider amount of monies owed, defendant financial resources, age of case, payments made to date if any, and history of prior FTP capiases on instant case and other cases.
- Breach of Release: Consider type of breach involved – breach of no-contact order, and nature of alleged unlawful contact are generally the most serious, although bail conditions can be breached in other ways than violation of a no-contact order.

Weapons Charges

- Take special notice of any prior act of violence or weapons charge.
- Determine if the defendant has a history of mental illness or is otherwise a person prohibited.
- Consider the underlying circumstances surrounding the use, display or threat to use the weapon and the impact on public or victim's safety.
- Even if release is unlikely as a result of the bail decision, consider whether a condition of bond requiring relinquishment of weapons is an appropriate under the circumstances.

LEGISLATIVE UPDATE

Compilation of changes affecting the Benchbook from the First Session of the 149th General Assembly listed by Title. The changes herein listed have also been included under the Classifications and Notations and take into account all House and Senate amendments and substitutions.

CHAPTER 168
FORMERLY
HOUSE BILL NO. 123
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE CRIME OF PROMOTING PRISON CONTRABAND

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

Section 1. Amend § 1256, Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1256. Promoting prison contraband; class F felony; class A misdemeanor.

A person is guilty of promoting prison contraband when:

- (1) The person knowingly and unlawfully introduces any contraband into a detention facility; or
- (2) The person possesses with intent to deliver any contraband to any person confined within a detention facility; or
- (3) Being a person confined in a detention facility, the person knowingly and unlawfully makes, obtains or possesses any contraband.

Promoting prison contraband is a class A misdemeanor except that if the prison contraband is a deadly weapon ~~or any mobile phone, cellular telephone, or other prohibited electronic device of any kind~~ any prohibited electronic device not specifically authorized or approved by the Commissioner or designee, any illegal narcotic or look-a-like substance, any prescription medication, or any item or article that could be used to facilitate an escape, it is a class F felony.

Approved September 8, 2017

CHAPTER 6
FORMERLY
HOUSE BILL NO. 18

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

WHEREAS, the General Assembly enacted legislation in 2016 (Senate Substitute 1 for Senate Bill 163) that was designed to ensure fairness in the minimum mandatory sentences associated with the state's habitual offender statute; and

WHEREAS, questions have arisen regarding the legislature's intent to focus upon the minimum mandatory sentences imposed by the habitual offender statute, as opposed to those sentences where sentencing judges have complete discretion with respect to sentencing; and

WHEREAS, the General Assembly also wishes to clarify that in enacting S.S. 1 for S.B. 163, it did not intend to reduce any specific minimum mandatory sentences that already exist for specific crimes.

NOW, THEREFORE:

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

Section 1. Amend § 4214(a), Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4214. Habitual criminal; life sentence.

(a) Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title, or any person who has been 3 times convicted of any felony under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony is declared to be an habitual criminal. The court, upon the State's petition, shall impose the applicable minimum sentence pursuant to subsection (b), (c) or (d) of this section and may, in its discretion, impose a sentence of up to life imprisonment, unless the felony conviction allows and results in the imposition of capital

punishment. Under no circumstances may the sentence imposed pursuant to this section be less than the minimum sentence provided for by the felony prompting the person's designation as a habitual offender.

Section 2. Amend § 4214(e), Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

(e) Notwithstanding any provision of this title to the contrary, any minimum sentence required to be imposed pursuant to subsection (b), (c), or (d) of this section shall not be subject to suspension by the court, and shall be served in its entirety at full custodial Level V institutional setting without the benefit of probation or parole, except that any such sentence shall be subject to the provisions of §§ 4205(h), 4381 and 4382 of this title. For purposes of the computation of good time under § 4381 of this title, a life sentence imposed pursuant only to this section shall equate to a sentence of 45 years.

Section 3. Amend § 4214(f), Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

(f) Notwithstanding any statute, court rule or regulation to the contrary, beginning January 1, 2017, any person sentenced as an habitual criminal to a minimum sentence of not less than the statutory maximum penalty for a violent felony pursuant to 4214(a) of this title, or a life sentence pursuant to 4214(b) of this title prior to July 19, 2016, shall be eligible to petition the Superior Court for sentence modification after the person has served a sentence of incarceration equal to any applicable mandatory sentence otherwise required by this section or the statutes describing said offense or offenses, whichever is greater. Absent extraordinary circumstances, the petitioner may only file 1 application for sentence modification under this section. A Superior Court Judge upon consideration of a petition filed pursuant to this subsection may modify, reduce or suspend such petitioner's sentence, excepting any minimum or mandatory sentence required by this section or the statutes describing said offense or offenses. If a Superior Court Judge modifies such petitioner's sentence, the Judge may impose a suspended sentence that includes a probationary term. Nothing in this section, however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section. For the purposes of this subsection, the "applicable mandatory sentence" shall be calculated by reference to the penalties prescribed for the relevant offense or offenses by this Code as of July 19, 2016, unless said offense has been repealed, in which case the penalties prescribed by this Code at the time of the act repealing said offense shall be controlling. The Superior Court shall establish rules to implement this subsection which are consistent with the statute, and those rules shall also provide that all petitions filed pursuant to this

subsection where the felony establishing an inmate as a habitual offender was a Title 16 offense are heard first, followed by all petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a crime against property, followed by all other petitions. The rules shall also provide for an initial review, including review of a formal response by the Department of Justice after consulting with the victim or victims, of sentence modification petitions involving crimes against persons or property, for the purpose of ensuring that victims are not inconvenienced by petitions that should be denied based upon the documents submitted; in cases not denied in this manner, all victims shall be given an opportunity to be heard. The Superior Court's review of any petitions filed pursuant to this

subsection shall include a review of the applicant's prior criminal history, including arrests and convictions, a review of the applicant's conduct while incarcerated, and available evidence as to the likelihood that the applicant will reoffend if released, including a formal, recent risk assessment. The Superior Court shall articulate on the record the results of its review and its rationale for granting or denying a petition. In all cases where sentence modifications are granted, modified sentences should provide for step-down provisions to ensure successful reintegration of persons into the community. By January 1, 2017, the Department of Correction shall notify any criminal defendant whose Level V sentence was imposed under a statutory sentencing regimen which was subsequently changed in a manner that reduced the sentence applicable to the defendant's convictions, including any criminal defendant who received a minimum mandatory sentence that no longer exists by virtue of the enactment of 80 Del. Laws, c. 28. The Department of Correction shall similarly notify the attorney of record, and if the attorney of record is unavailable to receive notice, the Office of Defense Services.

Approved April 13, 2017

CHAPTER 155
FORMERLY
HOUSE BILL NO. 206

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO DRIVER'S LICENSE REVOCATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 2742, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(i) If a person's driver's license is revoked pursuant to subsections (b) or (c) of this section and the person has not yet been adjudicated guilty and sentenced to the charge of Driving Under the Influence, the Justice of the Peace Court may request in writing that the Division of Motor Vehicles issue a conditional license to the revoked driver as a condition of pretrial release pursuant to Sections 2108 or 2112 of Title 11 if the person is subject to continuous sobriety monitoring.

(1) When the Division of Motor Vehicles receives a request from the Justice of the Peace Court to issue a conditional license to a revoked driver, the Division may issue a conditional license during the period of revocation provided the person's driver's license is not suspended, revoked, denied, or otherwise unavailable for any other violation of the law of any jurisdiction that would prohibit the issuance of the conditional license unless it is determined by the Secretary of Transportation or the Secretary's designee that the individual is eligible for reinstatement. This conditional license only permits the driver to operate a motor vehicle to travel to and from work, school, medical appointments, any Court, or any appointments related to the driver's continuous sobriety monitoring.

(2) If at any point the revoked driver ceases to be subject to continuous sobriety monitoring, the Justice of the Peace Court must promptly notify the Division of Motor Vehicles of the change in the revoked driver's status. The Division of Motor Vehicles must direct such person to surrender said conditional license to the Division of Motor Vehicles and the Division of Motor Vehicles will restore the full revocation of the driver's license for the remainder of the term of the revocation.

(3) If at any point the Justice of the Peace Court determines, in its discretion, that the revoked driver is no longer entitled to a conditional license, the Justice of the Peace Court must promptly notify the Division of Motor Vehicles of that determination. The Division of Motor Vehicles must direct such

person to surrender said conditional license to the Division of Motor Vehicles and must restore the full revocation of the driver's license for the remainder of the term of the revocation.

(4) Any person whose driver's license has been revoked and to whom a conditional license has been issued under this chapter, and who drives any motor vehicle upon the highways of this State contrary to the conditions placed upon such conditional license during the period of such conditional license, is guilty of an unclassified misdemeanor, and, upon conviction thereof, shall be fined not less than \$28.75 or more than \$230. The Division, upon receiving a record of conviction of any person operating a motor vehicle in violation of the conditions imposed upon said conditional license, must forthwith direct such person to surrender said conditional license to the Division of Motor Vehicles and must notify the Justice of the Peace Court of the cancellation of the conditional license.

Section 2. This Act takes effect following the date of publication in the Register of Regulations of a notice that

both of the following have occurred:

(1) The creation of a continuous sobriety monitoring program

(2) The Office of Highway Safety has provided notice to the Registrar of Regulations that the contingency in paragraph (1) has been fulfilled.

Approved August 30, 2017

CHAPTER 195
FORMERLY
SENATE BILL NO. 78
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO RULES OF THE ROAD.

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

Section 1. Amend Subchapter IX, Chapter 41, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4176E. Operation of a vehicle causing serious physical injury to a vulnerable user.

(a) As used in this section, “vulnerable user” means any of the following:

(1) A pedestrian that is lawfully on or within a highway, crosswalk, improved or unimproved shoulder of a highway, or sidewalk.

(2) An individual actively engaged in work upon a highway, in work upon utility facilities upon or along a highway, or in the provision of emergency services upon, within, or adjacent to a highway.

(3) An individual riding an animal or driving an animal-drawn carriage, or a passenger of the individual, lawfully on or within a highway or improved or unimproved shoulder of a highway.

(4) An individual operating or a passenger on or in any of the following, when any of the following is lawfully on or within a highway, crosswalk, improved or unimproved shoulder of a highway, or sidewalk:

a. A farm tractor or similar vehicle designed primarily for farm use.

b. A skateboard.

c. Roller skates.

d. In-line skates.

e. A scooter.

f. A moped.

g. A bicycle or a device that is an extension of a bicycle, such as an extend-a-bike, a bicycle trailer, or a child’s bicycle seat.

h. A motorcycle.

i. A nonmotorized or motorized wheelchair.

j. An electric personal assistive mobility device.

(b) A person is guilty of operation of a vehicle causing serious physical injury to a vulnerable user when, in the course of driving or operating a motor vehicle or OHV in violation of any provision of this chapter other than § 4177 of this title, the person's driving or operation of the vehicle or OHV causes serious physical injury, as defined in § 222 of Title 11, to a vulnerable user.

(c) The Superior Court has original and exclusive jurisdiction over a violation of this section by a person 18 years of age or older. Notwithstanding any provision of law to the contrary, an offense which is within the original or exclusive jurisdiction of another court and which may be joined properly with a violation of this section is deemed to be within the original and exclusive jurisdiction of the Superior Court.

(d) A person who violates this section is guilty of a violation. Unless suspended under subsection (e) of this section, the Superior Court must impose upon a person convicted under this section all of the following:

(1) A fine of \$550.

(2) A suspension of the person's license or driving privileges, or both, for up to 1 year.

(3) A requirement that the person complete a traffic safety course approved by the Division of Motor Vehicles.

(4) A requirement that the person perform not less than 10, nor more than 100, hours of community service which must include activities related to driver improvement and providing public education on traffic safety.

(e) The Superior Court may suspend up to \$500 of the fine and the imposition of the suspension of the person's license or driving privileges, or both. Any sentence suspended under this subsection must be suspended on the condition that the person completes the remaining provisions of the sentence. If any sentence is suspended, the Superior Court shall set a hearing date at a time within 1 year of the date of sentencing. At that hearing, the Superior Court shall do one of the following:

(1) If the person has successfully completed the requirements described in paragraphs (d)(3) and (d)(4) of this section, dismiss the penalties suspended under this subsection.

(2) If the person has not successfully completed the requirements described in paragraphs (d)(3) and (d)(4) of this section do one of the following:

a. Grant the person an extension based on good cause shown. The Court may not grant more than 1 extension for good cause shown.

b. Impose those portions of the sentence suspended under subsection (e) of this section.

(f) Nothing in this section is deemed to preclude prosecution under any other provision of this chapter.

Section 2. Amend § 4176, Title 21 of the Delaware Code by making by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4176. Careless or inattentive driving.

~~(d)(1) In addition to any other penalty imposed for an offense committed under this section, if the finder of fact determines that the commission of that offense contributed to the serious physical injury of a vulnerable user lawfully in the public right of way, the court shall:~~

~~a. Impose a sentence that requires the person convicted of the offense to:~~

- ~~1. Complete a traffic safety course approved by the Delaware Division of Motor Vehicles;~~
- ~~2. Perform up to 100 hours of community service, which must include activities related to driver improvement and providing public education on traffic safety;~~

~~b. Impose, but suspend on the condition that the person complete the requirements of paragraph (d)(1)a. of this section,~~

- ~~1. A fine of not more than \$550; and~~
- ~~2. A suspension of driving privileges as provided in § 2733(a)(2) of this title; and~~
- ~~3. Set a hearing date up to 1 year from the date of sentencing. At that hearing, the court shall:~~

~~A. If the person has successfully completed the requirements described in paragraph (d)(1)a. of this section, dismiss the penalties imposed under paragraphs (d)(1)b.1. and 2. of this section.~~

~~B. If the person has not successfully completed the requirements described in paragraph (d)(1)a. of this section, either: I. Grant the person an extension based on good cause shown, or II. Impose the penalties under paragraphs (d)(1)b.1. and 2. of this section.~~

~~(2) The police officer issuing the citation for an offense under this section shall note on the citation if the cited offense contributed to the serious physical injury of a vulnerable user of the public right of way. If so noted, the person receiving the citation shall not be permitted to use the voluntary assessment process otherwise permitted under § 709 of this title.~~

~~(3) As used herein, "vulnerable user of a public right of way" means:~~

~~a. A pedestrian, including those persons actually engaged in work upon a highway, or in work upon utility facilities along a highway, or engaged in the provision of emergency services within the right of way; or~~

~~b. A person riding an animal; or~~

~~c. A person operating any of the following on a public right of way, crosswalk, or shoulder of the highway:~~

~~1. A farm tractor or similar vehicle designed primarily for farm use;~~

~~2. A skateboard;~~

~~3. Roller skates;~~

~~4. In-line skates;~~

~~5. A scooter;~~

~~6. A moped;~~

~~7. A bicycle; or~~

~~8. A motorcycle.~~

Approved October 5, 2017