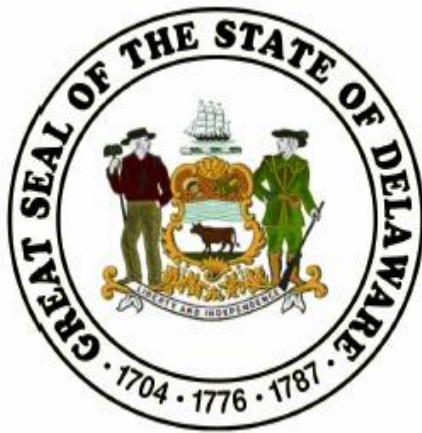


SENTAC



Delaware Sentencing Accountability Commission Benchbook 2020*

***INCLUDES RELEVANT LEGISLATION
OF THE FIRST SESSION OF THE
150th 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 substances)	1 st 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
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Violation of Probation	1 Level Higher	1 Level Higher	156

SUMMARY OF ACCEPTANCE OF RESPONSIBILITY GUIDELINES			
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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			
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Class A (escape)	Up to 3 mos. @ Level IV	Up to 2 mos. @ Level IV	74
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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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INTRODUCTION

The Delaware Sentencing Accountability Commission (hereinafter referred to as "SENTAC") was created under Title 11, §6580 of the Delaware Code. The overall purpose of the creation of the Commission was to establish a system that emphasizes accountability of the offender to the criminal justice system and accountability of the criminal justice system to the public. In fulfillment of that purpose, the Commission created the sentencing guidelines embodied in this Benchbook. Said guidelines were approved of and implemented by Administrative Directive Seventy-Six of the Supreme Court of Delaware.¹ The guidelines are designed to ensure certainty and consistency of punishment commensurate with the seriousness of the offense and with due regard for resource availability and cost. However, it should be noted that Delaware's sentencing guidelines are voluntary, non-binding, and as such, in the absence of constitutional violations, are not generally subject to appeal.²

This Benchbook is designed to assist sentencing judges, prosecutors and defense attorneys in the formulation of sentences that are consistent with the goals of sentencing reform promulgated by SENTAC. Contained within are recommended sentencing ranges and statutory mandates for each offense. The overall sentencing philosophy of the General Assembly and SENTAC is that offenders should be sentenced to the least restrictive and most cost-effective sanction possible given the severity of the offense, the criminal history of the offender and the focus, which is, above all, to protect the public's safety. Other goals in order of priority include: (1) Incapacitation of the violence-prone offender; (2) restoration of the victim as nearly as possible to the victim's pre-offense status, and (3) rehabilitation of the offender. (64 Del. Laws, c. 402 § 1)

This Benchbook is revised annually to reflect legislative changes since the passage of the Truth in Sentencing Act of 1989.

How to Use This Book

The Table of Contents appears in the front of the book and will serve to guide you to the basic categories within this book. Appearing directly after the Table of Contents is an alphabetical listing of the offenses, their classifications and the corresponding page numbers. Prior to the actual specific categories is a summary of the broad offense categories and their general respective presumptive sentences. Following that you will find the recommended sentences and sentencing mandates for each particular crime in the offense category itself. The general offense categories have been listed in the Table of Contents.

In general, presumptive sentences are based on the classification of the offense, and whether it is violent or non-violent in nature. The majority of crimes have been divided into violent and non-violent categories based upon legislative determination (Title 11, §4201(c)). The recommended penalties for violent crimes are more severe than those prescribed for non-violent crimes in the same class. All Class A Felonies have been designated as violent. All other felony classifications have been separated into violent and non-violent offenses. Whenever appropriate,

¹ Sept. 15th, 1987

² *Siple v State*, 701 A.2d 79, 82-83 (Del. 1997)

sentences should reflect the objective of rehabilitation by including specific conditions of probation designed to aid in the treatment and/or vocational training of the offender.

Class A Misdemeanors have been divided into five general categories by SENTAC: Violent MA1, Escape MA2, Property MA3, Order & Decency MA4, and Controlled Substances MA5. The presumptive sentencing pages for misdemeanors share the same format as the felony offenses. Please note that some sentences require a period of time at one level to be followed by a period of time at another level. (For example: the presumptive sentence for the second conviction of a class A violent misdemeanor is up to 6 months at Level III AND up to 6 months at Level II.) The maximum fine is also included for misdemeanor offenses.

The recommended sentencing range for a particular crime classification, when aggravating or mitigating factors are not present, can be found at the beginning of the crime category. Crimes are listed in order of statute number with respect to title and section numbers, appearing as they would in the Delaware Code. When a particular offense requires specific treatment as mandated by the legislature a notation will be attached to said offense and supplementary notations will follow at the end of a given category. The presumptive sentencing range for a first conviction generally represents 25% of the statutory maximum; while serious aggravating factors may increase the penalty up to 100% of the statutory maximum. However, examples of common aggravated sentences as a result of prior criminal history, excessive cruelty or commission of the offense while under the control of the Department of Correction are contained in the box following the listing of statutes included within the offense category.

Within the Table of Contents you will find a Summary of Drug Offenses that gathers all of the drug offenses in one section of the book for ease of reference. The drug offenses are also listed in their respective offense level classifications. In addition, there is a listing of Aggravating and Mitigating Factors. You will also find the topic "Exceptional Sentences" and under that category are considerations that would take a sentence out of the normal range. Those topics include: (A) Special categories of (1) Domestic Violence and (2) Escape, (3) Juveniles Being Sentenced As Adults; and (B) Habitual Criminal sentences.

Aggravating and mitigating factors are to be used to explain a sentence imposed either above or below the presumptive sentence. Other factors, which do not appear on this list, may be utilized at the discretion of the sentencing judge. Although the increased or decreased penalties for most aggravating/mitigating circumstances are not specified, the "up to 25%" increase/decrease guide should be utilized whenever suitable.

When an offender is sentenced on multiple charges, only the primary charge should carry an enhanced penalty based on prior criminal history. All other charges should receive penalties consistent with or lower than the presumptive sentence for the offense, unless aggravated by some factor specific to the individual charge. In this way, judges can impose serious penalties when necessary and construct meaningful probation sentences to follow incarceration. It should be noted that all sentences that impose a period of incarceration of one or more years at Level V, require that the court must include as part of its sentence a six-month "Reintegration Period" at Custodial Supervision Level IV (quasi-incarceration), III, or II.³

³ Title 11, §4204 (l)

Following the Exceptional Sentences category are recommendations on the sentences appropriate for Violations of Probation. The reporting of these proceedings, along with aggravating factors, should follow the same procedures as for new offenses.

General Sentencing Information:

Levels of Supervision:

There are five levels of supervision in the Delaware criminal justice system as defined according to Title 11, §4204 and SENTAC policy.⁴ They are as follows:

Level I	<i>Unsupervised:</i> Fine or Administrative Supervision, i.e. criminal record checks, checks to determine compliance with program completion, certification of payment of financial obligations, etc.
Level II	<i>Field supervision:</i> 1 to 50 hours of supervision per month. This may be accomplished by office visits or field visits and/or the imposition of special conditions such as payment of a fine.
Level III	<i>Intensive supervision:</i> 1 hr./day and no more than 56 hrs./wk. Level is supervised by officers carrying limited caseloads to allow sufficient time for full follow up. It may include sentencing options such as community service, payment of a fine, day reporting, curfews, etc.
Level IV	<i>Quasi-Incarceration or Partial Confinement:</i> Offender is placed under house arrest with electronic monitoring, a halfway house, a restitution center, a residential treatment facility, &/or a reentry program. As a result, supervision should amount to approximately 9 or more hours daily.
Level V	<i>Incarceration or Full Confinement:</i> Commitment to the Department of Correction for a period of incarceration with or without the imposition of a fine as provided by law.

Probationary Sentences:

A. Maximum Probationary Sentences:

1. The period of probation for violent felonies⁵ is limited to 24 months.⁶
2. The period of probation for Title 16 felonies⁷ is limited to 18 months.⁸
3. The period of probation for all other offenses is limited to 1 year.⁹

B. Multiple Sentences:

In most cases, if an offender is serving more than one sentence as a result of convictions in more than one case, the offender shall not serve a consecutive period of probation or

⁴ *Master Plan for Effective Sentencing Reform in Delaware*, SENTAC (May 1, 1986).

⁵ Title 11, §4201(c)

⁶ Title 11, §4333 (b)(1)

⁷ Title 16 (Health and Safety)

⁸ Title 11, §4333 (b)(2)

⁹ Title 11, §4333 (b)(3)

suspension in excess of the above time limitations. Instead, such probation shall be deemed to run concurrently with the previously imposed sentence of probation. However, the limitations of this section shall not apply to a sentence imposed for a conviction involving an offense committed while the offender was on probation or suspension of sentence.¹⁰

C. Exceptions to the General Rules

- 1.) The above limits do not apply to sex offenses¹¹ if the sentencing court determines on the record that a longer period of probation will reduce the likelihood of re-offending.¹²
- 2.) The above limits shall not apply to Title 11 violent felonies¹³ if the sentencing court determines on the record that public safety will be enhanced as a result.¹⁴
- 3.) Limits may be exceeded if additional time is necessary in order to collect restitution, but must be served at Accountability Level I.¹⁵
- 4.) Limits may be exceeded by up to 90 days if more substance abuse treatment time is needed.¹⁶
- 5.) Total probation time cannot exceed maximum commitment time, or one year, whichever is greater.¹⁷
- 6.) Limits do not apply to the Title 11, §4204(l) sentences which provide for a six-month transition period from Level V incarceration to a lower level of supervision. The six-month transition period may be in excess of the maximum statutory sentence of imprisonment.¹⁸
- 7.) Portions of a sentence designated to be served at Accountability Level IV (quasi-incarceration) are not considered a "period of probation or suspension of sentence" as used in this section.¹⁹

¹⁰ Title 11, §4333 (c)

¹¹ Title 11, §761: 763 Sexual harassment, 764 Indecent Exposure 2d°, 765 Indecent Exposure 1st°, 766 Incest, 767 Unlawful Sexual Contact 3rd°, 768 Unlawful Sexual Contact 2d°, 769 Unlawful Sexual Contact 1st°, 770-773 Rape, 776 Sexual Extortion, 777 Bestiality, 778 Continuous Sexual Abuse of a Child, 779 Dangerous Crime Against a Child, 780 Female Genital Mutilation, 1108 Sexual Exploitation of a Child, 1109 Unlawful Dealing in Child Pornography, 1110 Subsequent Convictions of 1108 and 1109, 1111 Possession of Child Pornography, 1112 Sexual Offenders/Prohibitions from School Grounds, 1112A Sexual Solicitation of a Child

¹² Title 11, §4333 (d)(1)

¹³ Title 11, §4201 (c)

¹⁴ Title 11, §4333 (d)(2)

¹⁵ Title 11, §4333 (d)(3)

¹⁶ Title 11, §4333 (e)

¹⁷ Title 11, §4333 (f)

¹⁸ Title 11, §4333 (g)(1)

¹⁹ Title 11, §4333 (g)(2)

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- 8.) Ex Post Facto Considerations. The above sections, A, B and C (1-4), are inapplicable to sentences imposed prior to June 1, 2003 unless an application has been made to the Court by the Department of Correction for sentence modification based upon good cause and an order is entered to that effect.²⁰

A Word of Caution:

Please remember that under the Truth in Sentencing Act, there is no parole, and all Level V sentences will be served with only very limited good time possibilities. This means that instead of serving from 25% to 50% of the sentence, a minimum of 75% will be served prior to release.

It should be noted that, absent extraordinary reasons, any Level IV (quasi-incarceration) sentence should only be imposed as an alternative to incarceration. Any person sentenced to Level IV (quasi-incarceration) should be held at Level V until space is available. If an individual can be held at Level III while awaiting Level IV (quasi-incarceration), please consider whether a Level III sentence might not be more appropriate.

SENTAC STATEMENT OF POLICY

1. The purposes of the Sentencing Standards are as follows: (a) To incapacitate, through incarceration, the violence prone offender and (b) To avoid, in so far as possible, the incarceration of the non-violent offender for the purposes of:
 - Enabling the offender to make any ordered restitution in a more timely manner.
 - Enabling participation in programs aimed at rehabilitation of the offender.
 - Conserving the limited incarceration facilities for use by violent felons.
2. For the purposes of sentencing, a violence-prone offender is defined as one for whom the current most serious offense is a crime included in the current list of violent crimes. (See definition sheets)
3. For the purposes of sentencing, only those offenses adjudicated at age 14 or older shall be counted in prior history.
4. For the purposes of sentencing, a conviction-free period of ten (10) years after final release from incarceration, or from date of sentence if only probation at levels I thru IV was ordered, shall be sufficient to "wash" the criminal history prior to that date. Felony A and Felony B crimes are excluded from this policy and should always be considered at time of sentencing.
5. In an instance where an offender, who is awaiting sentencing after conviction, is brought before the court and convicted of additional charges, the sentencing order may include all the offenses in a single order. The earlier unsentenced offenses shall not be considered in the prior history of the later offenses unless the later offenses occurred in the period after conviction on the earlier offenses.

²⁰ Title 11, §4333 (j)

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6. When it can be determined that two or more prior convictions were the result of a single incident, only one conviction per incident shall be considered for criminal history purposes in reaching a decision on the appropriate guideline. (Example: Conviction on same date of Robbery 2 and Possession of Deadly Weapon During Commission of Felony = 1 prior violent Felony.)

In addition to its normal definition, convictions for a single incident shall include all convictions resulting from a single indictment or information.

7. When sentencing on multiple charges, prior criminal history should be considered only in determining the guideline for the "lead" or most serious offense. Sentences for other current charges shall be calculated based on zero criminal history.
 - a. Whenever a defendant is sentenced on multiple offenses to probation, the level of probation should be the same for all concurrent sentences. Senate Bill 50, codified as 11 Delaware Code Section 4333(c) makes with narrow exceptions, all periods of probation concurrent. Section 4333(b) also, with exceptions, places limits on the length of probation. If an offender is sentenced to different levels of probation, Probation and Parole places him or her in the highest level of probation imposed and that classification applies to all sentences imposed even at different levels. Title 11 Section 4333(i) empowers the Department of Correction to evaluate offenders after 60 days from the date of sentence. Such evaluation is to determine the appropriate level of probation within Level 3, 2, or 1.

This new policy does not apply to Level 1 – Restitution Only.
8. When sentencing on multiple charges and the lead offense is a violent felony, time for other current violent felonies will be added to Level V time.
9. When considering multiple charges, a violent felony shall be considered to be the most serious offense, for sentence calculation purposes, even though non-violent felonies of higher classification are present.
10. When ordering a sentence, the Judge will order the offender to a specific initial level of supervision (Assessment of Risk). The judge may recommend a specific treatment program. The DOC will make every effort to assign the offender, or procure admittance into, the recommended program, or equivalent, as slots become available.
11. In those cases where the Court would consider a level IV alternative to Level V incarceration and no vacancy exists, the judge should sentence the offender to Level IV, with the proviso that the offender be held at Levels V, IV, and III at the discretion of the Court until a Level IV facility becomes available.
12. All probation sentences handed down at one time (levels I, II, and III) should in the normal case be imposed to run concurrently.
13. Traffic offenses as listed in Del.C, Title 21, with the exception of section 2810, Driving after Judgment Prohibited, will not currently come under the purview of the Sentencing Standards. However, in the interest of conserving expensive and limited prison space for the violent and proven inalcitrant offender, it is strongly recommended that Title 21 offenders not be given a sentence to Level V incarceration unless they have previously been sentenced to, and failed at, supervision in Level III and Level IV, or unless incarceration is mandated by law.
14. Repetitive criminal history, as an aggravating factor, is defined as conviction or adjudication for the same or similar offense on two or more previous occasions. This policy is subject to

the limitations outlined in Policy Nos. 3 and 4, and to the limitations outlined in the various misdemeanor presumptive sentencing standards.

15. Excessive cruelty, as an aggravating factor, is defined as those facts surrounding the commission of a violent felony, which demonstrate such a callousness and cruelty towards the victim of the offense as to shock the conscience of the court.
16. Aggravating factors for the use of Level V as sanction for the non-violent categories of misdemeanor should be limited to objective factors, such as: Vulnerability of victim due to age or impairment Lack of Amenability – If offender is or was already at or above the presumptive Level of Supervision.
17. When an offender is released from incarceration by any means (good time credits, conditional release, etc.) the release will be to the highest level specified by the court, or by statute, for any unserved sentence, or portion thereof. If no level has been specified, release will be to Level II by default.
18. The supervisory levels (Level IV [Quasi-Incarceration]; Level III [Intensive Supervision]; etc.) refer to the perceived risk and resultant control to be exercised over the individual. An offender may, as a result of evaluation, be assigned to any type of treatment program without affecting the supervision level. Therefore, a change in supervisory level does not require a change in treatment program.
19. For purposes of determining conformance to standard, the final sentence, after any suspensions, is the determinant factor. For example, if a given sentence is 2 years at Level V suspended for 2 years at Level II, the Level II sentence is the portion which will actually be served and, therefore, the portion which will be considered as conforming (or not conforming) to the standard.
20. In those instances involving non-violent felonies, where a decision to incarcerate, with appropriate aggravating factors, has been made, the sentence should be UP TO, but NOT IN EXCESS of, 25% of the statutory maximum for the crime.
21. In those instances involving misdemeanors, where, due to stated aggravating factors, a decision has been reached that a sentence to incarcerate is unavoidable; the sentence should not exceed the "recommended maximum" as noted in the standards.
22. In instances when a non-TIS sentence to Level V is followed by a sentence to Level IV and/or Level III supervision, the Board of Parole may grant parole as follows:
 - a. Parole to the highest level specified by the original sentencing order. Should a violation occur during the parole period, the offender would be returned before the Board of Parole for violation of parole. Upon successful completion of the required period, the Department may, if appropriate, move the offender pursuant to Policy No. 26, if such a move is not in conflict with the Board of Parole Order. (Revised 9/22/98)
 - b. Offenders released upon reaching their short-time release date (conditional release) shall be released to serve the balance of the Level V sentence (i.e. conditional release supervision period) to the next highest level specified by the original court order or other subsequent sentencing order. If appropriate, the Department may move the offender pursuant to Policy No. 26, if such a move is not in conflict with the Board of Parole Order.
 - c. If a paroled or mandatory-released offender is serving a court-ordered Level IV or III sentence and the unexpired portion of the Level V sentence is less than one (1)

year, the Board of Parole, upon application by the Department of Correction, may issue an order discharging the offender from the balance of the Level V sentence, once an equivalent period has been successfully served at Level IV or III.

23. In those cases where an offender is subject to sentences for more than one offense, and when the combined sentence to intermediate sanction at level IV is in excess of one year, including any work release time on a sentence of incarceration, the Department of Correction shall, absent specific objections from the judge(s), be permitted to move the offender, after one year, to a lower level of supervision, providing the offender has met, and continues to meet, the regulations and any special conditions placed upon him/her by the courts. Any lapse in meeting those conditions shall be grounds for a return to completion of the Level IV sentence without recourse to the courts. In like manner, combined sentences to Level III in excess of twelve months shall be subject to movement to a lower level. Such movements, both up and down, will have no effect on the overall length of sentence, except when a formal violation report is filed with the court.
24. Any person failing to return to a Level IV facility shall be deemed to be on escape status. The facility shall cause a warrant to be issued charging the offender with Escape After Conviction and identifying him as a Level IV escapee. Any such person arrested on the warrant shall be returned to the original sentencing court for both a violation hearing and the new charge.
25. Where a defendant is directly sentenced to Level IV Work Release Center, residential treatment, or home confinement and has awaited placement pending slot availability at Level V for a period of 90 days or one half of the Level IV sentence (whichever is less), the Department of Correction shall make appropriate sentence modification recommendations to the sentencing Judge.
26. Level IV, work release center or halfway house, is deemed quasi-incarceration. A defendant serving a sentence at Level IV, work release or halfway house, i.e., quasi-incarceration, is entitled to earn "good time credits" pursuant to 11 Del. C s4381(b) and (c).
27. It is further the policy of SENTAC that individuals sentenced to Level IV (any variation), who must serve a term at Level V awaiting placement at Level IV, shall, during the time served with good conduct at Level V, be awarded good time pursuant to 11 Del. C. S4381(b)(2).
28. Any person arrested on a charge of escape from any Correctional facility, including both Level V and Level IV facilities, should be returned by the court to a Level V secured facility pending such hearings as may ensue from the charge.
29. With regard to sentences of incarceration conditioned by section 4204(k) of Title 11, as amended in 1997, it shall be understood that such sentences are to be served in their entirety at level V, and that there shall be no diminution of such sentence by any of the normally available early release devices, including (but not limited to) good time credits, furlough, work release or community transition. Because such sentences add significant complexity to the management of the population of incarcerated offenders, and, if used indiscriminately, would substantially increase the prison population, Section 4204(k) should be used by judges only in exceptional circumstances.
30. Since imposition of a sentence pursuant to 11 Del C., sec 4204(k) is, in effect, a departure from the presumptive sentencing guidelines; the reason for use of Sec 4204(k) must be stated on the record and included in the sentencing order. When Section 4204(k) is used with a sentence for an escape-related offense, the reasons for its use are self-explanatory and need not be stated on the record or sentencing order.

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31. For any Title 16 offense in which no fine is imposed, the Court shall consider imposing a SARTEP (Substance Abuse, Rehabilitation, Treatment, Education and Prevention Fund) civil penalty not to exceed \$300.
 32. There is a significant cost benefit to the Court, police agencies, attorneys, Department of Correction, the victim and the public in general when a defendant resolves a case early in the criminal process and admits his or her involvement. As such, the Commission, in recognition of these efficiencies, reduces the guideline sentence by 25% when a defendant pleads guilty to the offense and resolves the matter 30 days prior to the scheduled trial. This guideline will only apply when there has been an admission of guilt and is not applicable to Robinson or nolo contendere pleas.
 33. Per the passage of House Bill 5 (150th Delaware General Assembly), which amends Title 11 Section 3901 (d) The court shall direct whether the sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently or consecutively with any other sentence of confinement on such criminal defendant. Notwithstanding the foregoing, no sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently with any other sentence of confinement imposed on such criminal defendant for any conviction of the following crimes:

Title 11 Section	Crime
606	Abuse of a pregnant female in the first degree
613	Assault in the First Degree
636	Murder in the first degree
635	Murder in the second degree
772	Rape in the second degree
773	Rape in the first degree
777A	Sex offender unlawful sexual conduct against a child
778(1), (2), or (3)	Sexual Abuse of a Child by a Person of Trust, Authority, or Supervision in the First Degree
783A	Kidnapping in the first degree
1254	Assault in a detention facility
1447A	Possession of a firearm during the commission of a felony if the firearm was used, displayed, or discharged during the commission of a Title 11 or Title 31 violent felony as set forth in sec. 4201(c) of this title.
632	Manslaughter where there are multiple victims (any sentence for each v shall be consec. to one another

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@delaware.gov.

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 Ferris W. Wharton
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 Kathleen Jennings
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 Claire DeMatteis
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	Jeffrey Horvath
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 A Felony (Violent)

(FAV):

Sentence Range (Violent Category) FAV (Exclusive of 1st Degree Murder (11-4209))	
Statutory Range	15 yrs to life (First 15 yrs @ Level V may not be suspended. 11-4205(d))
Presumptive Sentence	15 yrs @ 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:

11-634	<u>Child Murder by Abuse/Neglect 1st Degree</u> (a) Reckless: Death of Vt<14 y.oa. by (1) abuse/ neglect/ (2) previous pattern
11-635	<u>Murder 2nd Degree (see note)</u> (1) Reckless:Cruel,Wicked,DepravedIndiff/ (2) Neg: Comm.Fel
11-636	<u>Murder1st Degree (see note)</u> (a)(1)Intentional/ (2)Reckless:Comm.Fel/ (3)Causes Suicide by Force/ (4)Reckless: Death LEO, CO, FF/ (5)Death Detonation/ (6)Prevent Arrest
11-773	<u>Rape 1st Degree (see note)</u> (a)(1)W/out Consent & SeriousInjury/ (2)Comm.Crime/ (3)DeadlyW/ (4)Principle-Accomp/ (5)Vt<12,D>18/ (6)Vt<16 & D=Trust
11-777A(e)(5)	<u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u>
11-778(1)	<u>Sexual Abuse of a Child by a person in a position of trust, authority, or supervision in the first degree (see note)</u>
11-787(b)(1)	<u>Trafficking of Persons and Involuntary Servitude (see note)</u>
11-787(b)(2)	<u>Trafficking of Persons and Involuntary Servitude (see note)</u>
11-787(b)(3)	<u>Trafficking of Persons and Involuntary Servitude (see note)</u>
11-1304	<u>Hate Crime (Underlying Offense: Class A Felony) (see note)</u>
11-1339	<u>Adulteration: Death</u>
16-1136(a)	<u>Abuse/Neglect of Patient: Death</u>
31-3913(c)	<u>Abuse/Neglect of Infirm Adult: Death</u>

Sentences For Prior Criminal History Categories	
Offense committed while on release or pending trial or sentencing	15 to 25 yrs @ Level V
Two or more prior felonies	15 to 25 yrs @ Level V
One prior violent Felony	15 to 25 yrs @ Level V
Two or more prior violent Felonies	15 to Life @ Level V
Excessive Cruelty	15 to Life @ Level V

Supplemental Notations for Class A Felonies

11-4381(a) Probation is not available for offenders sentenced to life.
All sentences for over 1 year at Level V require a six-month reintegration at Levels IV (quasi-incarceration), III, OR II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for the rehabilitation fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-635	<p>Murder 2nd Degree. Reclassified in 6/2003</p> <p>Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement</p>
11-636	<p>Murder 1st Degree</p> <ul style="list-style-type: none"> • 4209(a) Punished by death (presently ruled unconstitutional) or by imprisonment for the remainder of the person's natural life, without benefit of probation or parole, or any other reduction. • If the defendant had not reached 18th birthday when the offense was committed, spec. attention should be given to 11 Del Code, sect. 4209A & sect. 4217(f). • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement
11-773	<p>Rape 1st Degree</p> <ul style="list-style-type: none"> • (c) A person convicted under this section shall be sentenced to life without benefit of probation, parole or other reduction if: (1) vt<16+serious injury, (2) permanent disfigures or disables (3) 3 or more vts or (4) prior conviction of unlawful sexual intercourse 1st degree, rape 1st or 2nd degree or equivalent offense • 11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) If the vt is <14 yoa, then the min. man. is 25 yrs to life at Level V upon state application • Upon state application AG may invoke additional 5 years at level V if v < 7 (Jessica's Law) • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement
11-	Sex Offender Unlawful Sexual Conduct Against a Child

<p>777A(e)(5)</p>	<ul style="list-style-type: none"> • (e)(5) If the underlying sexual offense is a class A or B felony, the crime of sex offender unlawful sexual conduct against a child shall be the same grade as the underlying offense, and the minimum sentence of imprisonment required for the underlying offense shall be doubled. • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement • 11-4205A: (1) If prior conviction for Class A or B felonious sex offense (or similar from another state) or (2) If the victim is < 14 years of age, then the min. man. Is 25 years at Level V up to life upon state application • Upon state application AG may invoke additional 5 years at level V if v < 7 (Jessica’s law)
<p>11-778(1)</p>	<p><u>Sexual Abuse of a Child by a person in a position of trust, authority, or supervision</u></p> <p>b. Notwithstanding any law to the contrary, a person convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in this subsection shall be sentenced to life imprisonment without benefit of probation, parole or any other reduction if:</p> <ul style="list-style-type: none"> • 1. at the time of the offense the person inflicts serious physical injury on the victim; or • 2. the person intentionally causes serious and prolonged disfigurement to the victim permanently, or intentionally destroys, amputates or permanently disables a member of the victim’s body; or • 3. the person is convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in this subsection against 3 or more separate victims; or • 4. the person has previously been convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree, unlawful sexual intercourse in the first degree, rape in the second degree or rape in the first degree, or any equivalent offense under the laws of this State, any other state or the United States. • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement • 11-4205A: (1) If prior conviction for Class A or B felonious sex offense (or similar from another state) or (2) If the victim is < 14 years of age, then the min. man. is 25 years at Level V to life upon state application • Upon state application AG may invoke additional 5 years at level V if v < 7 (Jessica’s law)
<p>11-787(b)(1)</p>	<p><u>Trafficking an individual- Victim is a minor AND Aggravating Circumstance present.</u></p> <p>An aggravating circumstance during the commission of an offense under paragraph (b)(1)-(3) occurs when:</p> <ul style="list-style-type: none"> • a. the person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless;; or • b. the person used or threatened use of force against, abduction of, serious harm to, or a physical restraint of the victim

11-787(b)(2)	<p><u>Forced Labor-Victim is a minor AND Aggravating Circumstance present.</u> Aggravating Circumstance: An aggravating circumstance during the commission of an offense under paragraph (b)(1)-(3) occurs when:</p> <ul style="list-style-type: none"> • a. the person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless, or • b. the person used or threatened use of force against, abduction of, serious harm to, or physical restraint of the victim
11-787(b)(3)	<p><u>Sexual Servitude-Victim is a minor AND Aggravating Circumstance present.</u> Aggravating Circumstance: An aggravating circumstance during the commission of an offense under paragraph (b)(1)-(3) occurs when:</p> <ul style="list-style-type: none"> • a. the person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of sexual assault, runaway youth, foster children, or the homeless, or • b. the person used or threatened use of force against, abduction of serious harm to, or physical restraint of the victim
11-1304(b)(4)	<p><u>Hate Crime (Underlying Offense: Class A Felony)</u> If the underlying offense is a Class A Felony, the minimum sentence of incarceration shall be doubled.</p>

Class B Felony (Violent)

I.) (FBV)

Sentence Range (Violent Category) FBV	
Statutory Range	2 to 25 yrs (First 2 yrs @ Level V may not be suspended. 11-4205(d))
Presumptive Sentence	2 – 5 yrs @ 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

11-606	<u>Abuse of Pregnant Female 1st Degree (see note)</u> Intentionally causes termination through violence without consent
11-613	<u>Assault 1st Degree (see note)</u> (a)(1) Intentional: Serious Injury & DW/ (2)Perm.Disfiguremt/ (4)Comm.Fel+SeriousInjury/ (5)Serious Injury: LEO, FF, (6) Medical Personnel, (7)>62y.o.a (a)(3) Recklessly: Serious Injury/ (4)Comm.Fel+SeriousInjury
11-632	<u>Manslaughter (see note)</u> (1)Recklessly: Death/ (2)Intent=Serious Injury: Death/ (3)Intentionally: Death but Extreme Emotion (4)Non-therapeutic Abortion: Death/ (5)Intentionally Causes Suicide
11-633	<u>Child Murder by Abuse/Neglect 2nd Degree</u> (a)Negligently: Death of Vt<14 y.o.a. by (1)abuse, neglect/ (b)previous pattern
11-771	<u>Rape 3rd Degree (see note)</u> (a)(1) Intercourse: vt<16 & D>10 yrs older/ vt<14 & D=19+ y.o.a. (a)(2) Penetration: (a) w/out consent; Comm.fel; SeriousInjury/ (b) vt<16,Comm.Fel.; injury (a)(3) Intercourse or penetration, V>16, V<18, defendant at least 4 yrs older than v and in a position of trust, authority, or supervision over the child, or is an invitee of a person who stands in a position of trust, authority or supervision over the child.
11-772	<u>Rape 2nd Degree (See note)</u>
11-776	<u>Continuous Sexual Abuse of Child (See note)</u>
11-777	<u>Dangerous Crime Against Child (see note)</u>
11-777A(e)(2),(e)(4), (e)(5)	<u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u>
11-778(2)	<u>Sexual Abuse of a Child by a person in a position of trust authority or supervision in the first degree (see note)</u>

11-778(3)	<u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the 1st degree (see note)</u>
11-783A	<u>Kidnapping 1st Degree (see note)</u> Unlawful restraint w/out voluntary release of vt unharmed prior to trial to: (1) hold vt for ransom/ (2) use vt as hostage/ (3) Comm.fel/ (4) injure or sexually abuse vt/ (5) terrorize vt or 3d party/ (6) take child<16
11-787(b)(1)	<u>Trafficking an individual (victim is a minor) (see note)</u>
11-787(b)(2)	<u>Forced labor (victim is a minor) (see note)</u>
11-787(b)(3)	<u>Sexual servitude (victim is a minor) (see note)</u>
11-826(a)	<u>Burglary 1st Degree (see note)</u> Occupied dwelling + (1) armed/ (2) causes injury to nonparticipant
11-826(b)	<u>Home Invasion Burglary 1st Degree (see note)</u> Burglary 1 st + attempts/commits Robbery 1 st / 2 nd , Assault 1 st / 2 nd , Murder 1 st / 2 nd , Manslaughter, Rape, or Kidnapping 1 st / 2 nd
11-832	<u>Robbery 1st Degree (see note)</u> (a)(1)injury to nonparticip/ (2) DW or threat of/ (3)armed & use or threat/ (4)vt>65/ (5) threatens death upon another while committing Robbery 2 nd . Deg.
11-1108	<u>Sexual Exploitation of Child (see note)</u>
11-1109	<u>Dealing in Child Pornography</u>
11-1110	<u>Unlawful Dealing Child Pornography (2nd offense of 11- 1109)</u>
11-1112A (h)	<u>Sexual Solicitation of a Child</u>
11-1112B(g)	<u>Promoting Sexual Solicitation of a Child</u>
11-1253	<u>Escape After Conviction (injury)(Special Esc. Cat. May Apply)(see note)</u>
11-1254(b)	<u>Assault in Detention Facility w/Serious Injury (see note)</u>
11-1304(b)(3)	<u>Hate Crime (Underlying Offense: Class C Felony)</u>
11-1304(b)(4)	<u>Hate Crime (Underlying Offense: Class B Felony) (see note)</u>
11-1447	<u>Possession of Deadly Weapon during Commission of a Felony (see note)</u>
11-1447A	<u>Possession of Firearm during Commission of a Felony (see note)</u>
11-1448(e)(2)	<u>Poss/Purchase Firearm/Destructive Weapon by Prohibited Person w/Prior Conviction of Violent Felony (see note)</u>
11-1449	<u>Wearing Body Armor during Commission of a Felony (see note)</u>
11-1503	<u>Racketeering (see note)</u>
11-3533	<u>Aggravated Act of Intimidation (see note)</u>
16-4752	<u>Drug dealing or possession</u>
16-4752B	<u>Drug Dealing (Resulting in Death)</u>

Supplemental Notations For Class B Felony (Violent):

If crime is a secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims' fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund

Restitution shall be ordered for losses to victim. (Title 11, §4106)
 Costs of prosecution may be ordered. (Title 11, §4204(i))

11-606	<u>Abuse of a pregnant female in the first degree</u> Per Title 11 Section 3901 (d) No sentence of confinement may run concurrently with any other sentence of confinement
11-613	<u>Assault 1st Degree.</u> Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement
11-632	<u>Manslaughter.</u> Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement where there are multiple victims.
11-771	<u>Rape 3rd Degree</u> <ul style="list-style-type: none"> • (c) If a child is born as a result of offense and remains in the custody of the vt or vt's family, timely child support payments ordered by Family Ct shall be a condition of probation • 11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) If the vt is <14 yoa, then the min. man. is 25 years at Level V up to life upon state application • Upon state application under 11-771(a)(2) Upon state application AG may invoke 5 additional years at level V if v < 7 (Jessica's law)
11-772	<u>Rape 2nd Degree</u> <ul style="list-style-type: none"> • (c) Minimum mandatory sentence: 10 yrs at Level V but see below. • 11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) If the vt is <14 yoa, then the min. man. is 25 years at Level V up to life upon state application • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement • Upon state application AG may invoke additional 5 years at level V if v < 7 (Jessica's law)
11-776	<u>Continuous Sexual Abuse of a Child</u> <ul style="list-style-type: none"> • 11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) if the vt is < 14 yoa, then the min. man. is 25 years at Level V upon state application • Upon state application AG may invoke additional 5 years at level V if v < 7 (Jessica's law)
11-777	<u>Dangerous Crime Against Child</u> <ul style="list-style-type: none"> • (b) Mandatory Minimum for 2nd offense= life imprisonment. • (c) Defendants sentenced pursuant to this statute shall be not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis until sentence is served. • 11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) If the vt is <14 yoa, then the min. man. is 25 years at Level V up to life upon state application • Upon state application AG may invoke additional 5 years at level V if v < 7 (Jessica'sL)
11-777A	<u>Sex Offender Unlawful Sexual Conduct Against a Child</u> <ul style="list-style-type: none"> • (e)(2) If the underlying sexual offense is a Class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony; • (e)(4) If the underlying sexual offense is a class C, D, E, F, or G felony and the

	<p>victim is under eighteen years of age and has a cognitive disability, the crime of sex offender unlawful sexual conduct against a child shall be a class B felony;</p> <ul style="list-style-type: none"> • (e)(5) If the underlying sexual offense is a Class A, or B felony, the crime of sex offender unlawful sexual conduct against a child shall be the same grade as the underlying offense, and the minimum sentence of imprisonment required for the underlying offense shall be doubled. • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement. • 11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) if the victim is <14 years of age, then the min. man.is 25 years at Level V up to life upon state application • Upon state application AG may invoke additional 5 years at level V if v < 7 (Jessica's law)
11-778(2)	<p><u>Sexual Abuse of a Child by a person in a position of trust, authority, or supervision</u></p> <ul style="list-style-type: none"> • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement • 11-4205A: (1) If prior conviction for Class A or B felonious sex offense (or similar from another state) or (2) If the victim is <14 years of age, then the min. man. Is 25 years at Level V to life upon state application • The minimum sentence for a person convicted of sexual abuse of a child by a person in a position of trust authority or supervision in the first degree as set forth in subsection (b) of this section shall be 10 years at Level V • Upon state application AG may invoke additional 5 years at level V if v < 7 (Jessica's law)
11-778(3)	<ul style="list-style-type: none"> • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement
11-783A	<p><u>Kidnapping in the first degree</u></p> <ul style="list-style-type: none"> • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement • (a)(4) upon state application AG may invoke minimum mandatory 10 years at level V if v < 7 (Jessica's law)
11-787(b) (1)	<p><u>Trafficking an individual –Victim is a minor OR Aggravating Circumstance present.</u></p> <p>Aggravating Circumstance: An aggravating circumstance during the commission of an offense under paragraph (b)(1)-(3) occurs when:</p> <ul style="list-style-type: none"> • a. the person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless; or • b. the person used or threatened use of force against, abduction of, serious harm to or physical restraint of the victim <p>If BOTH minor victim and aggravating circumstance, it is a Class A Felony</p>
11-787(b) (2)	<p><u>Forced labor Victim is a minor OR Aggravating Circumstance present.</u></p> <p>Aggravating Circumstance: An aggravating circumstance during the commission of an offense under paragraph (b)(1)-(3) occurs when:</p> <ul style="list-style-type: none"> • the person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless, or • b. the person used or threatened use of force against, abduction of, serious harm to, or physical restraint of the victim

	If BOTH minor victim and aggravating circumstance, it is a Class A Felony
11-787(b) (3)	<p><u>Sexual servitude Victim is a minor or Aggravating Circumstance present.</u> Aggravating Circumstance: An aggravating circumstance during the commission of an offense under paragraph (b)(1)-(3) occurs when:</p> <ul style="list-style-type: none"> • a. the person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless, or • b. the person used or threatened use of force against, abduction of, serious harm to, or physical restraint of the victim <p>If BOTH minor victim and aggravating circumstance, it is a Class A Felony</p>
11-826(d)	<p><u>Burglary 1st Degree</u> (armed or physical injury)</p> <ul style="list-style-type: none"> • (c) Minimum Mandatory Sentences: 1 yr at Level V (f) Sentencing provisions equally applicable to Attempt
11-826(b)	<p><u>Burglary 1st Degree Home Invasion</u></p> <ul style="list-style-type: none"> • (e) Minimum sentence of 6 years at Level V. • (f) Sentencing provisions apply equally to attempt.
11-832	<p><u>Robbery 1st Degree</u></p> <ul style="list-style-type: none"> • (b) Min. Mand. sentence of (1) 3 yrs at Level V or (2) 5 yrs at Level V if: D convicted or finished incarceration or confinement of Robbery 1st in last 2 yrs/ or D convicted or finished incarceration or confinement of Robbery 1st in last 7 yrs, new offense is under 832(a)(3) & new offense involves a firearm. • (c) Sentencing provisions equally applicable to Attempt. • Original jurisdiction over juveniles charged with Robbery 1st shifted to Superior Court with reverse amenability available. 6 months mandatory commitment for Robbery 1st involving weapons or serious physical injury or for PFDCF in Family Court.
11-1108	<p><u>Sexual Exploitation of Child</u> Any person convicted of a 2nd or subseq. Viol. shall be sentenced to life.(Title 11, §1110)</p>
11-1253	<p><u>Escape After Conviction</u> Any sentence imposed shall not run concurrently with any other sentence.</p>
11-1254(b)	<p><u>Assault in Detention Facility w/Serious Injury</u></p> <ul style="list-style-type: none"> • Minimum Mandatory Sentence: 3 yrs at Level V to begin immediately upon sentencing. • Such sentence shall not be susp. nor shall the Defendant be eligible for parole or prob. • Original sentence causing confinement temporarily suspended and continues only after the sentence for this conviction has been completed. • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement
11-1304(b)(4)	<p><u>Hate Crime (Underlying Offense: Class B Felony)</u> If the underlying offense is a Class B Felony, the minimum sentence of incarceration shall be doubled.</p>
11-1447(d)	<p><u>Possession of Deadly Weapon during Commission of a Felony</u></p> <ul style="list-style-type: none"> • (d) Juveniles over the age of 16 shall be tried as an adult, with reverse amenability available.
11-1447A	<p><u>Possession of Firearm during Commission of a Felony</u></p> <ul style="list-style-type: none"> • (b) Minimum Mandatory Sentence= 3 years at Level V

	<ul style="list-style-type: none"> • (c) If conviction represents 3rd felony conviction= minimum mandatory sentence= 5 years at Level V • (d) Juveniles > 16 (+ finding of proof positive/presumption great following a hearing in Superior Court that the accused used, displayed, or discharged firearm during a Title 11/31 violent felony) shall be tried as an adult. AG may elect to proceed in Family Court. • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement if firearm used/displayed/discharged during violent felony under Title 11 or Title 31.
11-1448(e)(2)	<p><u>Poss/Purchase Firearm/Destructive Device by Prohibited Person w/Prior Conviction of Violent Felony</u></p> <ul style="list-style-type: none"> • Mandatory Minimum Sentence-(e)(2): a. 4 years at Level V; or • b. 6 years at Level V, if the person causes such injury or death within 10 years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or • C. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony. • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement
11-1449	<p><u>Wearing Body armor during Commission of a Felony</u></p> <ul style="list-style-type: none"> • Minimum Mandatory Sentence= 3 years at Level V which shall not be subject to suspension, parole or probation • Any sentence shall not run concurrently. • The sentence imposed shall be served following the imposition of a sentence for the conviction of the felony offense • Juveniles over the age of 16 shall be tried as an adult, with reverse amenability available •
11-1503	<p><u>Racketeering</u></p> <ul style="list-style-type: none"> • 1504(a): Minimum fine= \$25,000 • 1504(b): Mandatory forfeiture of property; Superior Ct shall authorize seizure by AG • 1504(c): In lieu of fine, Defendant may be ordered to pay 3x gross value gained or gross loss caused, whichever is greater, together with investigation, prosecution and court costs reasonably incurred.
11-3533	<p><u>Aggravated Act of Intimidation</u></p> <p>Per 11-3534 a person attempting to commit 11-3533 is guilty of the offense without regard to the success or failure of the attempt.</p>
16-4752	<p><u>Drug dealing or possession</u></p> <p>(1) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 3 quantity;</p> <p>(2) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 2 quantity, and there is an aggravating factor;</p> <p>(3) Possesses a controlled substance in a Tier 3 quantity;</p>

Class B Felony (Nonviolent)

II.) (FBNV)

Statutory Range	2 to 25 yrs (First 2 yrs @ Level V may not be suspended. 11-4205(d))
Presumptive Sentence	2-5 yrs @ Level 5
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

11-841(3)(b)	Theft (> \$100,000) (see note)
11-913A(c)(3)	Health Care Fraud (Intended loss > \$100,000/ Provider) (see note)
11-916(d)(3)b	Home Improvement Fraud (loss > = \$100,000)
11-917(d)(3)	New Home Construction Fraud (Loss > = \$100,000)
11-1103B	Child Abuse in the First Degree
31-610(a)(3)	Traffic in Food Stamps (Firearms/Ammunition/Cont. Substances) (see note)

Sentences For Prior Criminal History Categories

Offense committed while on release or pending trial/sentencing	Up to 10 yrs at Level V
Two or more prior felonies	Up to 10 yrs at Level V
One prior violent Felony	Up to 10 yrs at Level V
Two or more prior Violent Felonies	Up to 25 yrs at Level V
Excessive Cruelty	Up to 25 yrs at Level V

Supplemental notations for Class B Felony (Non-violent)

11-841(3)(b)	Theft (> \$100,000) 841 (d): Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.
11-913A(c)(3)	Health Care Fraud (Intended loss > \$100,000/ provider 913 (c)(4) Fine may be up to 5x pecuniary benefit sought or obtained.
31-610(a)(3)	Trafficking in Food Stamps (Firearms/Ammunition/Controlled Substances) May be suspended from the Food Stamp Program for 18 months more than suspension mandated by the Federal Food Stamp Act

Class C Felony (Violent)

I.) (FCV)

Sentence Range (Violent Category) FCV	
Statutory Range	0 to 15 years @ Level V
Presumptive Sentence	Up to 30 months @ Level V
Acceptance of Responsibility	Up to 22 months @ 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

11-605	<u>Abuse of Pregnant Female 2nd Degree</u> Recklessly causes termination through violence without consent
11-612 (11)	<u>Assault 2nd Degree</u> The person recklessly or intentionally causes physical injury to a law enforcement officer, security officer, fire policeman, fire fighter, paramedic, or emergency medical technician in the lawful performance of their duties by means of an electronic control device shall be a class c felony.
11-630A	<u>Vehicular Homicide in the First Degree (see note)</u> DUI & Criminally Negligent Driving: death
11-770	<u>Rape 4th Degree</u> (a)(1) vt<16/ (2) vt<18 & D=30+, unless married/ (3)penetration (a)w/out consent or (b) vt<16/ vt>16 but< 18 & D= trust
11-777A(e)(1), (e)(2), (e)(3)	<u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u>
11-778(f)(4)	<u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree: (see note)</u>
11-783	<u>Kidnapping 2nd Degree (see note)</u> Unlawful restraint w/ voluntary release of vt unharmed prior to trial to: (1) hold vt for ransom/ (2) use vt as hostage/ (3) Comm.fel/ (4) injure or sexually abuse vt/ (5) terrorize vt or 3d party/ (6) take child<16
11-787(b)(1)	<u>Trafficking an individual (No Aggravating Circumstance victim is an adult) and no Aggrav. Circ. (see note)</u>
11-787(b)(2)	<u>Forced Labor (No Aggravating Circumstance and victim is an adult) (see note)</u>
11-787(b)(3)	<u>Sexual Servitude (No Aggravating Circumstance and victim is an adult (see note)</u>
11-787(b)(4)	<u>Patronizing a victim of sexual servitude (see note)</u>
11-803	<u>Arson 1st Degree</u> Intentionally damage bldg by fire/explosion w/knowledge that bldg is either: (1) occupied or (2) it is within reason that it would have been

11-826	<u>Burglary 1st Degree (see note)</u> (a) Occupied dwelling
11-1105	<u>Crime Against a Vulnerable Adult (see note)</u>
11-1112A	<u>Sexual Solicitation of a Child</u>
11-1112B(f)	<u>Promoting Sexual Solicitation of a Child</u>
11-1253	<u>Escape After Conviction (Special Escape Category May Apply)(see note)</u> Force/Threat/Deadly Weapon
11-1304(b)(3)	<u>Hate Crime (Underlying offense: Class D Felony)</u>
11-1312	<u>Stalking w/ Deadly Weapon (see note)</u>
11-1353	<u>Promoting Prostitution 1st Degree</u> (1) Compels or profits by force or intimidation/ (2) Profits by prostitute < 16 y.o.a
11-1448(e)(1)	<u>Poss/Purchase Firearm/Destructive Weapon by Prohibited Person w/Prior Conviction of Violent Felony (see note)</u>
11-1455	<u>Engaging in Firearm Transaction on Behalf of Another (Prior Conviction)</u>
16-1136(a)	<u>Abuse/Neglect of patient in Facility</u> (serious physical injury, sexual penetration, sexual intercourse)
16-4753(a)(1)	<u>Drug dealing</u> Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 2 quantity.
31-3913(b)	<u>Exploitation of Infirm Adult (>\$50,000/Prior Conviction)</u>

Sentences For Prior Criminal History Categories

While on release or pending trial or sentencing	Up to 5 years @Level V
Two or more prior felonies	Up to 5 years @ Level V
One prior Violent felony	Up to 5 years @ Level V
Two or more prior violent felonies	Up to 10 years @ Level V
Excessive cruelty	Up to 10 years @ Level V

Supplemental Notations for Class C Violent Felonies

If crime is secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims' fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
11-616(c)(3) Gang Participation: Conviction for a Class C Felony as a result of gang participation shall be sentenced as a Class B Felony under Title 11, §4205.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-630A	<u>Vehicular Homicide 1st Degree</u> <ul style="list-style-type: none"> (b) Minimum mandatory sentence = 2 years which shall not be subject to suspension, probation, parole, furlough, work release or supervised custody for the first 18 m. Every person >16 y.o.a., shall be treated as an adult, subject to reverse amenability provisions, except that mandatory minimum sentences in (b) shall not apply. Incarceration, if ordered, shall be initially served in juvenile facility until 18 y.o.a and then shall continue in an adult facility.
11-777A(e)(1), (e)(2), (e)(3)	<u>Sex Offender Unlawful Sexual Conduct Against a Child</u> <ul style="list-style-type: none"> (e)(1) If the underlying sexual offense is a misdemeanor, the crime of sex offender sexual conduct against a child shall be a class G felony except where the child against whom a sexual offense is committed is a child younger than 12 years

	<p>of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class C felony.</p> <ul style="list-style-type: none"> • (e)(2) If the underlying sexual offense is a Class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony. • (e)(3) If the underlying sexual offense is a misdemeanor and the victim is under 18 years of age and has a cognitive disability, the crime of sex offender unlawful sexual conduct against a child is a Class C felony. • 11-4205A: (1) If prior conviction for Class A or B felonious sex offense (or similar from another state) or (2) If the victim is <14 years of age, then the min. man. Is 25 years at Level V up to life upon state application • Upon state application AG may invoke additional 5 years at level V if v < 7 (Jessica's law)
11-778(f)(4)	<p><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision</u></p> <ul style="list-style-type: none"> • as set forth in subsection (d) (intentionally engages in sexual intercourse or sexual penetration with a child and the Victim >16 <18) of this section is a class C felony.
11-783(4)	<p><u>Kidnapping 2nd Degree</u></p> <ul style="list-style-type: none"> • upon state application AG can invoke 5 year min mand at level V if v < 7 (Jessica's law)
11-787(b) (1)	<p><u>Trafficking an individual</u></p> <p>If either minor victim or aggravating circumstance, it is a Class B Felony</p> <p>Aggravating Circumstance: An aggravating circumstance during the commission of an offense under paragraph (b)(1)-(3) occurs when:</p> <ul style="list-style-type: none"> • a. the person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless; or • b. the person used or threatened use of force against, abduction of, serious harm to or physical restraint of the victim
11-787(b) (2)	<p><u>Forced labor</u></p> <p>If either minor victim or aggravating circumstance, it is a Class B Felony</p> <p>Aggravating Circumstance: An aggravating circumstance during the commission of an offense under paragraph (b)(1)-(3) occurs when:</p> <ul style="list-style-type: none"> • the person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless, or • b. the person used or threatened use of force against, abduction of, serious harm to, or physical restraint of the victim
11-787(b) (3)	<p><u>Sexual servitude (No Aggravating Circumstance and victim is an adult)</u></p> <p>If either minor victim or aggravating circumstance, it is a Class B Felony</p> <p>Aggravating Circumstance: An aggravating circumstance during the commission of an offense under paragraph (b)(1)-(3) occurs when:</p> <ul style="list-style-type: none"> • a. the person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless, or • b. the person used or threatened use of force against, abduction of, serious harm to, or physical restraint of the victim

	If an aggravating circumstance occurred, the classification of the offense under paragraph (b) (1)-(3) is elevated one felony grade higher than the underlying offense.
11-787 (b)(4)	<u>Patronizing a victim of sexual servitude-Victim is a minor</u>
11-826	<u>Burglary 1st Degree</u> Minimum Mandatory Sentences: <ul style="list-style-type: none"> • (c) 1 yr at Level V • (e) For Home Invasion Burglary 1st Degree: 6 yrs @ Level V • (f) Sentencing provisions equally applicable to Attempt
11-1105	<u>Crime Against a Vulnerable Adult</u> For this offense to be a class C felony, the underlying offense must be a class D felony. See page 114 for listing of qualifying underlying offenses for this statute. "Vulnerable Adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation, the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.
11-1253	<u>Escape After Conviction</u> Any sentence imposed shall not run concurrently with any other sentence.
11-1312	<u>Stalking w/ Deadly Weapon</u> <ul style="list-style-type: none"> • (6) If act(s) has been previously prohibited by court order or sentence, minimum mandatory sentence = 6 m. at Level V; the first 6 m. of sentence shall not be subject to suspension • (7) If convicted of stalking w/in 5 yrs of prior stalking conviction, minimum mandatory sentence = 1 yr at Level V; the first year of sentence shall not be subject to suspension
11-1448 (e)(1)	<u>Poss/Purchase Firearm/Destructive Device by Prohibited Person w/Prior Conviction of Violent Felony</u> Mandatory Minimum Sentence- (e)(1)a: 3 yrs at Level V if previously convicted of a violent felony or (e)(1)b.: 5 yrs at Level V if offense occurs within 10 yrs of the conviction or incarceration for any violent felony, whichever is later or (e)(1)c.: 10 yrs at Level V if the person has been convicted on 2 or more separate occasions of any violent felony. The provisions of §4215 (Previous Conviction Enhancement) shall not be applicable. <ul style="list-style-type: none"> • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement

Class C Felony (Nonviolent)

II.) (FCN)

Sentence Range (Nonviolent Category) FCN	
Statutory Range	0 to 15 years @ Level V
Presumptive Sentence	Up to 1 year at Level 5
Presumptive Sentence DUI	2.5 yr. minimum term of imprisonment. (see note)
Acceptance Responsibility	of Up to 9 months @ 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

11-503	<u>Criminal Solicitation 1st Degree</u> Solicit to commit Class A Felony + Solicited <18 & D>18/Solicited<15 & D= 3+ yrs older
11-907B(b)	<u>Criminal Impersonation of a Police Officer w/Injury or Felonies</u> (see note)
11-1458	<u>Removing Firearm from a Law Enforcement Officer</u>
11-1471(c)(f)(g)(h)(i)(j)	<u>Video Lottery Cheat Device >\$99,999.99</u>
16-2513(b)	<u>Conceal/Destroy/Falsify/Forge Document Which Results in False Authorization of Maintenance Medical Treatment for Life Prolongation</u>
16-4757(c)(1)	<u>Solicitation of Multiple Prescription Drug Crimes</u> A person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30 day period to violate any provision or subsection of 4757(a).
16-4760A	<u>Operate or Attempt to Operate a Clandestine Laboratory</u>
21-4177(d)	<u>Drive Vehicle While Under the Influence (7th or any subsequent offense)</u> (see note)
31-1003	<u>Benefit by False Representation >\$10,000</u> (see note)
31-1004(2)	<u>Falsify Reimbursement Report >\$10,000</u> (see note)
31-1006	<u>Unlawful Conversion of Benefits >\$10,000</u> (see note)

Sentences For Prior Criminal History Categories	
Repetitive Criminal History	Up to 24 months @ Level V
Lack of amenability to lesser sanctions	Up to 24 months @ Level V

Supplemental Notations for Class C Nonviolent Felonies

If crime is a secondary offense, use non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
11-616(c)(3) Gang Participation: Conviction for a Class C Felony as a result of gang participation shall be sentenced as a Class B Felony under Title 11, §4205.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-907B(b)	<p><u>Criminal Impersonation of a Police Officer w/Injury or Felonies</u> During the commission of the offense: (1) causes injury to a nonparticipant or (2) commits a Class A or Class B Felony or any sexual offense as defined in Title 11, §761(d)</p>
21-4177(d)	<p><u>Drive Vehicle While Under the Influence (7th or any subsequent offense)(TIS)</u></p> <ul style="list-style-type: none"> • 7th or any subsequent offense: (Class C Felony) (1) 5y-15y at Level V, at least half of any minimum sentence shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to one-half of any minimum sentence set forth in this section, provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section; (2) Fined not more than \$15,000; (3) Completion of alcohol abstinence of not less than 90 days of sobriety as measured by a transdermal continuous monitoring device or through periodic breath or urine analysis. In addition to such monitoring the offender shall participate in periodic, random breath or urine analysis during the entire period of supervision; (4) 60m revocation; (5) An intensive inpatient or outpatient treatment program of not less than 3 months; (6) Ignition Interlock Device shall be installed on all vehicles registered to the Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period.
31-1003 31-1004(2) 31-1006	<p><u>Benefit by False Representation</u> <u>Falsify Reimbursement Report</u> <u>Unlawful Conversion of Benefits</u></p> <ul style="list-style-type: none"> • 31-1007(d): Every provider convicted under this chapter shall make full restitution of money, goods or services or of the value of same plus interest at the rate of 1.5% per month for the period from the date upon which payment was made to the date upon which repayment is made to the State • 31-1007(e): Provider shall not be eligible for participation in Delaware Public Assistance Program, subject to certain exceptions.

Class D Felony (Violent)

I.) (FDV)

Sentence Range (Violent Category) FDV	
Statutory Range	0 to 8 years @ Level V
Presumptive Sentence	Up to 2 years @ Level V
Acceptance of Responsibility	Up to 18 months @ 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:

11-607(a)(3)	Strangulation (see note)
11-612	Assault 2nd Degree (a) Intentionally: (1) Serious Injury/ (2) Injury w/DW/ (3) Injures LEO, FF, CO/ (4) Medical personnel/ (5) Physical injury to an operator of an ambulance, a rescue squad member, paramedic, licensed medical doctor, Licensed Practical Nurse or Registered Nurse while the nurse is performing a work related duty. (6) Vt > 62/ (7) Assaults LEO w/spray/ (8) Uses spray commit crime/ (9) Injures State Employee/ (10) Injures Pregnant Female/ (11) Person 18 yoa or older Injures Vt < 6 y.o.a. (a) Recklessly: (1) Serious Injury/ (2) Injury w/DW/ (5) Vt > 62/ (9) Injures Pregnant Female/ (10) Injures Vt < 6 y.o.a.
11-630	Vehicular Homicide 2nd Degree (see note) (a)(1) Criminally negligent driving: death/ (2) DUI + Negligent driving: death
11-631	Criminally Negligent Homicide
11-769	Unlawful Sexual Contact 1st Degree
11-775	Bestiality
11-777A(e)(2)	Sex Offender Unlawful Sexual Conduct Against a Child (see note)
11-778(5)	Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree: (see note)
11-778A(1)	Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree: (see note)
11-787(b)(4)	Patronizing a victim of sexual servitude (adult victim)
11-802	Arson 2nd Degree Intentionally damage unoccupied bldg by fire/explosion
11-825	Burglary 2nd Degree (see note) (a) Dwelling/ (b) Bldg + DW or Injury to nonparticipant
11-835 (d)	Robbery 2nd Degree Motor Vehicle + (1) Class A-D Felony, (2) DUI, (3) Drug Offense, or (4) Substantial risk of physical injury.
11-846	Extortion (Vt > 62 y.o.a.)
11-1105	Crime Against a Vulnerable Adult (see note)
11-1250(c)	Assault 1st Degree on Law Enforcement Animal Intentionally or Recklessly causes Death or Serious Injury

11-1253	Escape After Conviction (Special Escape Category May Apply)(see note)
11-1254(a)	Assault in Detention Facility: Injury (see note)
11-1254(c)	Assault in Detention Facility: Bodily Emissions (see note)
11-1304(b)(3)	Hate Crime (Underlying Offense: Class E Felony)
11-1338	Mfr/Transfer/Use/Poss/Transport Bomb/Incendiary Device/ Molotov Cocktail/Explosive (see note)
11-1442	Carrying Concealed Deadly Weapon (Firearm) (see note)
11-1459	Possession of a Firearm with Altered Serial Number
16-4754	Drug dealing Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance
31-3913(b)	Exploitation of Infirm Adult (\$10,000 – \$50,000)
31-3913(c)	Abuse of Infirm Adult: Bodily Harm

Sentences For Prior Criminal History Categories	
While on release or pending trial or sentencing	Up to 4 yrs @ Level V
Two or more prior felonies	Up to 4 yrs @ Level V
One Prior violent felony	Up to 4 yrs @ Level V
Two or more prior violent felonies	Up to 8 yrs @ Level
Excessive Cruelty	Up to 8 yrs @ Level V

Supplemental Notations for Class D Violent Felonies

If crime is a secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
11-616(c)(2) Gang Participation: Conviction for a Class D Felony as a result of gang participation shall be sentenced as a Class C Felony under Title 11, §4205.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-607(a)(3)	Strangulation <ul style="list-style-type: none"> If person used or attempted to use a deadly weapon or dangerous instrument while committing the offense; or The person caused serious physical injury to the other person while committing the offense; or The person has previously been convicted of strangulation
11-630	Vehicular Homicide 2nd Degree <ul style="list-style-type: none"> (b) Mandatory minimum sentence for violation of (a)(2) DUI: 1 yr. which shall not be subject to suspension, probation, parole, furlough, work release or supervised custody during the 1st year. (c) Persons 16 y.o.a. or older, shall be treated as an adult except that mandatory minimum sentence shall not apply & any period of incarceration shall be served at a juvenile facility until 18 y.o.a. at which time the person shall be transferred to an adult facility to continue their sentence
11-769	Unlawful Sexual Contact 1st Degree <ul style="list-style-type: none"> upon state application AG may invoke mand min 5 years if v < 7 (Jessica's law)
11-777A(e)(2)	Sex Offender Unlawful Sexual Conduct Against a Child <ul style="list-style-type: none"> (e)(2) If the underlying sexual offense is a Class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade

	<p>higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony.</p> <ul style="list-style-type: none"> • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement • 11-4205A: (1) If prior conviction for Class A or B felonious sex offense (or similar from another state) or (2) If the victim is <14 years of age, then the min. man. Is 25 years at Level V up to life upon state application. • Upon state application AG may invoke additional 5 years at level V if v < 7 (Jessica's law)
11-778(f)(5)	<p><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree</u> as set forth in subsection (e)(engages in an act of sexual extortion as defined in Section 774 of this chapter, and the victim is <16) is a class D Felony.</p>
11-778A(1)	<p><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree</u> as set forth in subsection (a)(intentionally has sexual contact with a child <16 or causes the child to have sexual contact with the person or a third person and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child) is a class D felony.</p>
11-1105	<p><u>Crime Against a Vulnerable Adult</u> For this offense to be a class D felony, the underlying offense must be a class E felony. See page 114 for listing of qualifying underlying offenses for this statute. "Vulnerable Adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation, the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.</p>
11-1253	<p><u>Escape After Conviction</u> Any sentence imposed shall not run concurrently with any other sentence.</p>
11-1254(a)	<p><u>Assault in Detention Facility: Injury</u></p> <ul style="list-style-type: none"> • Minimum Mandatory Sentence: 2 years at Level V to begin immediately upon sentencing. • Such sentence shall not be suspended nor shall the Defendant be eligible for parole or probation. Original sentence causing confinement temporarily suspended and continues only after the sentence for this conviction has been completed • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement
11-1254(c)	<p><u>Assault in Detention Facility: Bodily Emissions</u></p> <ul style="list-style-type: none"> • Minimum Mandatory Sentence: 1 yr at Level V to begin immediately upon sentencing. • Such sentence shall not be suspended nor shall the Defendant be eligible for parole or probation. • Original sentence causing confinement temporarily suspended and continues only after the sentence for this conviction has been completed. • The Defendant shall be tested for communicable diseases and the costs assessed as costs upon conviction. Results are to be communicated to the AG, the Victim, the Defendant and the medical care provider for D.O.C. • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement

11-1338	<u>Mfr/Transfer/Use/Poss/Transport Bomb/Incendiary Device/ Molotov Cocktail/Explosive</u> Any person over 16 y.o.a. who violates this section shall be charged as an adult.
11-1442	<u>Carrying Concealed Deadly Weapon (Prior conviction < 5 yrs)</u> <ul style="list-style-type: none">• Weapon is a firearm

Class D Felony (Nonviolent)

II.) (FDN)

Sentence Range (Nonviolent Category) FDN	
Statutory Range	0 to 8 years @ Level V
Presumptive Sentence	Up to 12 months @ Level II or III
Presumptive Sentence DUI	2 year minimum term of imprisonment (see note)
Acceptance of Responsibility	Up to 9 months at Level II or III
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:

11-841(c)(3)(a)	<u>Theft (\$50,000-\$99,999) (see note)</u>
11-850(b)(3)	<u>Unlawful Telecommunication Device (>2 prior convictions/ 50+ devices) (see note)</u>
11-854	<u>Identity Theft (see note)</u>
11-913A(c)(2)	<u>Health Care Fraud (see note)</u> Intended loss = \$50,000-\$99,999/ Pattern of claims when offender is provider
11-916(d)(3)a	<u>Home Improvement Fraud (\$100K > loss >= \$50K)</u>
11-917(d)(2)	<u>New Home Construction Fraud Loss = \$50,000-\$99,999</u>
11-932	<u>Unauthorized Computer Access (>\$10,000) (see note)</u>
11-933	<u>Theft Computer Services (>\$10,000) (see note)</u>
11-934	<u>Interruption Computer Services (>\$10,000) (see note)</u>
11-935	<u>Misuse Computer System Information (>\$10,000) (see note)</u>
11-936	<u>Destruction Computer Equipment (>\$10,000) (see note)</u>
11-937	<u>Unauthorized Electronic Mail (>\$10,000) (see note)</u>
11-938	<u>Fail to Cease Electronic Communication (>\$10,000) (see note)</u>
11-939	<u>Computer Offense Penalties (>\$10,000) (see note)</u>
11-951	<u>Money Laundering</u>
11-1223	<u>Perjury 1st Degree</u> Material, False Testimony
11-1448(c)(1 of a1-a8)	<u>Poss/Purchase Firearm/Ammunition by Prohibited Person</u>
11-1448(a)(5)	<u>Poss/Purchase Firearm/Ammunition by Prohibited Person (see note)</u>
11-1457(j)(3)	<u>Poss. Weapon in Safe School/Recreation Zone (Underlying Offense: Class E Fel.) (see note)</u>
11-1457(j)(4)	<u>Poss. Of a Weapon in a Safe School and Recreation Zone ; Class D Felony (see note)</u>
11-3532	<u>Act of Intimidation (see note)</u>
11-9616A	<u>Public Posting Individual's Confidential Information (see note)</u>

21-4177(d)	Drive Vehicle While Under the Influence (6th offense) (see note)
29-4713(d)	Tamper w/Biological Sample

Sentences For Prior Criminal History Categories	
Repetitive Criminal History	Up to 24 months @ Level V
Lack of amenability to lesser sanctions	Up to 24 months @ Level V

Supplemental Notations for Class D Nonviolent Felonies:

If crime is a secondary offense, use non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
11-616(c)(2) Gang Participation: Conviction for a Class D Felony as a result of gang participation shall be sentenced as a Class C Felony under Title 11, §4205.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-841(c)(3)(a)	Theft (\$50,000-\$99,999) Full restitution required for victim’s monetary losses. Consider community service &/or curfew for a juvenile defendant.
11-850(b)(3)	Unlawful Telecommunication Device (>2 prior convictions/ 50+ devices) <ul style="list-style-type: none"> • (b)(4) A prior conviction shall consist of convictions upon separate indictments or criminal complaints • (b)(7) All fines shall be imposed for each unlawful telecommunication or access device • (b)(8) Restitution shall be ordered in the manner prescribed by §4106 • (b)(9) The court may order forfeiture of unlawful device(s)
11-854	Identity Theft Restitution shall be ordered for monetary loss including documented loss of wages and reasonable attorney’s fees
11-913A(c)(2)	Health Care Fraud 913A(c)(4) Fine may be up to 5x pecuniary benefit sought or obtained.
11-932 11-933 11-934 11-935 11-936 11-937 11-938 11-939	Unauthorized Computer Access Theft Computer Services Interruption Computer Services Misuse Computer System Information Destruction Computer Equipment Unauthorized Electronic Mail Fail to Cease Electronic Communication Computer Offense Penalties <ul style="list-style-type: none"> • (f) In lieu of fine, Court may order Defendant to pay an amount up to double the proceeds from the offense. Record shall reflect findings as to the proceeds gained. • (g) Amounts may be aggregated to determine degree of crime. • (h) Value shall be (1) market value at time of offense or (2) cost of replacement. If value cannot be established, it shall be \$250 or (i) in the case of private personal data, \$500.
11-1448(a)(5)	Poss/Purchase Firearm/Ammunition by Prohibited Person

	<ul style="list-style-type: none"> • (f)(1) Any juvenile 14 y.o.a or older convicted under (a)(5) shall for a 1st offense, receive a minimum sentence of 6 m. at Level V, or, for a 2nd or subsequent offense, 1 yr of Level V, which shall not be suspended. §§4205(b) and 4215 shall not be applicable to this subsection. • (g) In addition, said juvenile shall be ordered after a first conviction to view a film/slide presentation related to the damage and injury caused by a gun and must meet with a victim of or family of a deceased victim of violent crime.
11-1457(j)(3)	<p><u>Poss. Weapon in Safe School/Recreation Zone</u> (Underlying Offense: Class E Fel.) (j)(3) If the underlying offense is a class d or e felony the crime shall be a class d felony. (j)(5) An elementary or secondary school student shall be expelled for 180d.</p>
11-1457(j)(4)	<p><u>Poss. Weapon in Safe School/Recreation Zone</u> (jj)(4) Underlying Offense is a Class D felony (j)(5) An elementary or secondary school student shall be expelled for 180 days</p>
11-3532	<p><u>Act of Intimidation</u> Per 11-3534 a person attempting to commit 11-3532 is guilty of the offense without regard to the success or failure of the attempt</p>
11-9616A	<p><u>Public posting or displaying program participants actual address, telephone number, or image on the internet</u> Violation results in serious physical injury to the program participant or a member of program participant's household</p>
21-4177(d)	<p><u>Drive Vehicle While Under the Influence (6th offense)(TIS)</u></p> <ul style="list-style-type: none"> • 6th Offense: (Class D Felony) (1) 4y-8y at Level 5, at least half of any minimum sentence shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to one-half of any minimum sentence set forth in this section provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section; (2) Fined not more than \$10,000; (3) Completion of alcohol abstinence program of not less than 90 days of sobriety as measured by a transdermal continuous alcohol monitoring device or through periodic breath or urine analysis. In addition to such monitoring the offender shall participate in periodic, random breath or urine analysis during the entire period of supervision; (4) 60m DL revocation; (5) An intensive inpatient or outpatient treatment program for a period of not less than 3 months; (6) Ignition Interlock Device shall be installed on all vehicles registered to the Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period.

Class E Felony (Violent)

I.) (FEV)

Sentence Range (Violent Category): FEV	
Statutory Range	0 to 5 years @ Level V
Presumptive Sentence	Up to 15 m. @ Level V
Acceptance of Responsibility	Up to 11 months @ 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:

11-513	<u>Conspiracy 1st Degree</u> Conspires to Commit Class A Felony
11-602(b)	<u>Aggravated Menacing (Display Deadly Weapon)</u>
11-604	<u>Reckless Endangering 1st Degree</u> Conduct likely to cause death
11-607(a)(1)	<u>Strangulation</u>
11-774	<u>Sexual Extortion</u>
11-777A(e)(2)	<u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u>
11-831(a)	<u>Robbery 2nd Degree</u> (a)Theft w/force to (1) overcome resistance/(2)compel owner's cooperation
11-846	<u>Extortion</u>
11-1105	<u>Crime Against a Vulnerable Adult (see note)</u>
11-1304(b)(3)	<u>Hate Crime (Underlying Offense: Class F Felony)</u>
11-1339	<u>Adulteration (Injury/Illness)</u>
11-1444	<u>Possess Destructive Weapon (see note)</u>
11-1445(5)	<u>Unlawful Dealing with Dangerous Weapon</u> Enabling Felony/Class A Misdemeanor/Drug Crime
11-4752(a)(2)	<u>Drug dealing or possession</u>
11-1455	<u>Engaging In Firearm Transaction on Behalf of Another (1st Offense)</u>
16-4774(d)	<u>Delivery Drug Paraphernalia to Minor</u>
31-3913(b)	<u>Exploitation of Infirm Adult (>\$5,000/<\$10,000)</u>

Sentences For Prior Criminal History Categories	
While on release or pending trial or sentencing	Up to 30 m. @ Level V
Two or more prior felonies	Up to 30 m. @ Level V
One prior violent felony	Up to 30 m. @ Level V
Two or more prior violent felonies	Up to 5 yrs @ Level V

Supplemental Notations For Class E Violent Felonies:

If crime is a secondary offense, use non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
11-616(c)(3) Gang Participation: Conviction for a Class C Felony as a result of gang participation shall be sentenced as a Class B Felony under Title 11, §4205.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

<p>11-777A(e)(2)</p>	<p><u>Sex Offender Unlawful Sexual Conduct Against a Child</u></p> <ul style="list-style-type: none"> • (e)(2) If the underlying sexual offense is a Class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony. • 11-4205A: (1) If prior conviction for Class A or B felonious sex offense (or similar from another state) or (2) If the victim is < 14 years of age, then the min. man. Is 25 years at Level V up to life upon state application • Upon state application AG may invoke additional 5 years at level V if v < 7 (Jessica’s law)
<p>11-1105</p>	<p><u>Crime Against a Vulnerable Adult</u></p> <p>For this offense to be a class E felony the underlying offense must be a class F felony. See page 114 for listing of qualifying underlying offenses for this statute. “Vulnerable Adult” means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation, the term “vulnerable adult” includes any adult for whom a guardian or the person or property has been appointed.</p>
<p>11-1444</p>	<p><u>Possess Destructive Weapon</u></p> <ul style="list-style-type: none"> • 11-1457(b)(1&2)&(j)(4): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class D Violent Felony. • 11-1457(j)(5):If the Defendant is an elementary or secondary school student, in addition to other penalties, the student shall be expelled for not less than 180 d. • (a)(6) if possession only and first offense, then Class B Misdemeanor

Class E Felony (Nonviolent)

II.) (FEN)

Sentence Range (Nonviolent Category) FEN	
Statutory Range	0 to 5 years @ Level V
Presumptive Sentence	Up to 12 m. @ Level II
Presumptive Sentence 4 th DUI	6 month minimum term of imprisonment (see note)
Presumptive Sentence 5 th DUI	1.5 year minimum term of imprisonment (see note)
Acceptance of Responsibility	Up to 9 months @ Level II
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:

11-503	<u>Criminal Solicitation 1st Degree</u> Solicit to commit Class A Felony
11-621(a)(2)a	<u>Terroristic Threat</u> Knowing that the statement or statements are likely to cause evacuation of a building, place of assembly, or facility of public transportation (see note)
11-780	<u>Female Genital Mutilation</u>
11-841B(c)	<u>Theft: Organized Retail Crime; class A misd; class E felony (see note)</u>
11-876	<u>Tamper w/ Public Record 1st Degree</u> With Intent to Defraud
11-907B	<u>Criminal Impersonation Police Officer</u>
11-926(d)(3)	<u>Trademark Counterfeiting (2+Conv/Mfr/>1,000/>\$10,000+) (7/7/05)</u>
11-932	<u>Unauthorized Computer Access (\$5,000–\$9,999) (see note)</u>
11-933	<u>Theft Computer Services (\$5,000–\$9,999) (see note)</u>
11-934	<u>Interruption Computer Services (\$5,000–\$9,999) (see note)</u>
11-935	<u>Misuse Computer System Information (\$5,000–\$9,999) (see note)</u>
11-936	<u>Destruction Computer Equipment (\$5,000–\$9,999) (see note)</u>
11-937	<u>Unauthorized Electronic Mail (\$5,000–\$9,999) (see note)</u>
11-938	<u>Fail to Cease Electronic Communication (\$5,000–\$9,999) (see note)</u>
11-939	<u>Computer Offense Penalties (\$5,000–\$9,999) (see note)</u>
11-1100	<u>Dealing in Children</u>
11-1101	<u>Abandonment of Child (<than 14 yrs of age)</u>
11-1102(b)(1)	<u>Endanger Welfare of Child: Death</u>
11-1201	<u>Bribery of a Public Servant</u>
11-1203	<u>Receiving a Bribe by a Public Servant</u>
11-1239	<u>Wearing Disguise during Felony</u>

11-1248	<u>Obstruct Rabies Control during Emergency</u>
11-1261	<u>Bribery of a Witness</u>
11-1262	<u>Receiving a Bribe by a Witness</u>
11-1263	<u>Tamper with a Witness</u>
11-1263A(a)(2)	<u>Interfere with Child Witness</u> Fail to Produce
11-1263A(a)(3)(b)	<u>Interfere with Child Witness</u> Bribes Another: Fail to Produce
11-1263A(a)(4)(b)	<u>Interfere with Child Witness</u> Threaten Another: Fail to Produce
11-1264	<u>Bribery of a Juror</u>
11-1265	<u>Receiving a Bribe by a Juror</u>
11-1326(a)	<u>Animals; fighting and baiting (see note)</u>
11-1327(c)(1)	<u>Dangerous Animal: Death of Person</u>
11-1352	<u>Promoting Prostitution 2nd Degree</u> (1)Manages or Owns Business w/2+ prostitutes/ (2)Profits by prostitute < 18 y.o.a
11-1361	<u>Providing Obscenity to Minor (see note)</u>
11-1457(j)(3)	<u>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class F Felony) (see note)</u>
11-1471(c)(f)(g)(h)(i)(j)	<u>Video Lottery Cheat Device >50,000<100,000</u>
16-4753(a)(2)	<u>Drug possession</u> Possession of a controlled substance in a Tier 2 quantity
16-4758	<u>Unlawful dealing in a counterfeit or purported controlled substance</u>
21-4177(d)	<u>Driving Vehicle While Under the Influence (4th offense) (see note)</u>
21-4177(d)	<u>Driving Vehicle While Under the Influence (5th offense) (see note)</u>
31-610(a)(1)	<u>Transfer/Alter/Possess Food Stamps (\$500>) (see note)</u>
31-1003	<u>False Representation for Benefits (\$500–\$9,999) (see note)</u>
31-1004(2)	<u>Falsify Reimbursement Report (\$500–\$9,999) (see note)</u>
31-1004(3)	<u>Misrepresentation to Qualify as Provider (see note)</u>
31-1004(4)	<u>Misrepresentation as to Operation of Provider/Facility (see note)</u>
31-1005	<u>Kickback Schemes (see note)</u>
31-1006	<u>Unlawful Conversion of Benefits (\$500–\$9,999) (see note)</u>

Sentences For Prior Criminal History Categories	
Repetitive Criminal History	Up to 15 m. @ Level V
Lack of amenability to lesser sanctions	Up to 15 m. @ Level V

Supplemental Notations for Class E Nonviolent Felonies:

If crime is a secondary offense, use non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
11-616(c)(3) Gang Participation: Conviction for a Class C Felony as a result of gang participation shall be sentenced as a Class B Felony under Title 11, §4205.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-621(a)(2)a	<p>Terroristic Threat</p> <p>1. Pay a fine of not less than \$1,000 nor more than \$2,500 which fine cannot be suspended</p> <p>2. Be sentenced to perform a minimum of 100 hours of community service</p>
11-841B(c)	<p>Theft: Organized Retail Crime; class A misdemeanor; class E felony</p> <p>In addition to the provisions of Section 841(c) and (d) of this chapter, if a defendant has two or more times been convicted of Theft: Organized Retail Crime, the offense of Theft: Organized Retail Crime is a class E felony.</p>
<p>11-932</p> <p>11-933</p> <p>11-934</p> <p>11-935</p> <p>11-936</p> <p>11-937</p> <p>11-938</p> <p>11-939</p>	<p>Unauthorized Computer Access</p> <p>Theft Computer Services</p> <p>Interruption Computer Services</p> <p>Misuse Computer System Information</p> <p>Destruction Computer Equipment</p> <p>Unauthorized Electronic Mail</p> <p>Fail to Cease Electronic Communication</p> <p>Computer Offense Penalties</p> <ul style="list-style-type: none"> (f) In lieu of fine, Court may order Defendant to pay an amount up to double the proceeds from the offense. Record shall reflect findings as to the proceeds gained. (g) Amounts may be aggregated to determine degree of crime. (h) Value shall be (1) market value at time of offense or (2) cost of replacement. If value cannot be established, it shall be \$250 or (i) in the case of private personal data, \$500.
11-1326(a)	<p>Animals; fighting and baiting</p> <ul style="list-style-type: none"> All animals, equipment, devices, and money involved in a violation of this section must be forfeited to the State. Animals so forfeited must be disposed of in a humane manner. A person convicted of a violation of this section is prohibited from owning or possessing any animal or fowl for 15 years after conviction.
11-1361	<p>Providing Obscenity to Minor</p> <ul style="list-style-type: none"> If the obscenity involved live conduct, the business or establishment shall be closed for 6 m. (c) Minimum mandatory sentence for 2nd or subsequent conviction within 5 yrs.: (1) \$5,000 fine (\$10,000 if the Defendant is an organization), (2) imprisonment for a minimum of 9 m. which shall not be suspended or reduced, (3) probation for 2 yrs. and (4) the establishment shall be closed for 2 yrs.
11-1457 (j)(3)	<p>Poss. Weapon in Safe School/Recreation Zone</p> <p>(j)(5) An elem. or secondary school student shall be expelled for 180 days</p>
21-4177 (d)	<p>Driving Vehicle While Under the Influence (4th Offense)(TIS)</p>

	<ul style="list-style-type: none"> • 4th Offense: (Class E Felony) (1) 2y-5y at Level V, first 6 months shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind; Sentencing court may suspend up to 18 months of any minimum sentence, provided, however, that any sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol treatment program as set forth in 4177(d)(9); (2) Fined not more than \$7,000; (3) Completion of alcohol abstinence program of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device or through periodic breath or urine analysis. In addition to such monitoring the offender shall participate in random breath or urine analysis during the entire period of supervision; (4) 60m revocation; (5) An intensive inpatient or outpatient drug and alcohol treatment program for a period of not less than 3 months; (6) Ignition Interlock Device shall be installed on all vehicles registered to the Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period.
21-4177(d)	<p><u>Driving Vehicle While Under the Influence (5th Offense)(TIS)</u></p> <ul style="list-style-type: none"> • 5th Offense: (Class E Felony) (1) 3y-5y at Level V, at least one-half of any minimum sentence shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to one-half of any minimum sentence set forth in this section provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section; (2) Fined not more than \$10,000; (3) Completion of alcohol abstinence program of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device or through periodic breath or urine analysis. In addition to such monitoring the offender shall participate in periodic, random breath or urine analysis during the entire period of supervision; (4) 60m revocation; (5) An intensive inpatient or outpatient treatment program for a period of not less than 3 months; (6) Ignition Interlock Device shall be installed on all vehicles registered to the Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period.

31-610(a)(1)	<p><u>Transfer/Alter/Possess Food Stamps (\$500>)</u> May be suspended from the Food Stamp Program for 18 months more than suspension mandated by the Federal Food Stamp Act</p>
31-1003 31-1004(2) 31-1004(3) 31-1004(4) 31-1005 31-1006	<p><u>Benefit by False Representation</u> <u>Falsify Reimbursement Report</u> <u>Misrepresentation to Qualify as Provider</u> <u>Misrepresentation as to Operation of Provider/Facility</u> <u>Kickback Schemes</u> <u>Unlawful Conversion of Benefits</u></p> <ul style="list-style-type: none"> • 31-1007(d): Every provider convicted under this chapter shall make full restitution of money, goods or services or of the value of same plus interest at the rate of 1.5% per month for the period from the date upon which payment was made to the date upon which repayment is made to the State • 31-1007(e): Provider shall not be eligible for participation in Delaware Public Assistance Program, subject to certain exceptions.

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> where the contraband is a deadly weapon, cellular phone, prohibited electronic device, illegal narcotic or look-a-like, prescription medication, or item that could be used to facilitate escape, or where an unmanned aircraft system is used/attempt to deliver contraband
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>Delivery of Noncontrolled Prescription Drugs</u> Any person who delivers or intends to deliver prescription drug and there is an aggravator

Sentences for Prior Criminal History Categories	
While on release or pending trial or sentencing	Up to 18 Months @ Level V
Two or more prior felonies	Up to 18 months @ Level V
One prior violent felony	Up to 18 Months @ Level V
Two or more prior violent felonies	Up to 36 Months @ Level V

Supplemental Notations for Class F Violent Felonies:

If crime is a secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-777A(e)(2)	<p><u>Sex Offender Unlawful Sexual Conduct Against a Child</u></p> <ul style="list-style-type: none"> • (e)(2) If the underlying sexual offense is a Class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony. • 11-4205A: (1) If prior conviction for Class A or B felonious sex offense (or similar from another state) or (2) If the victim is <14 years of age, then the min. man. Is 25 years at Level V to life upon state application • Upon state application AG may invoke additional 5 years at level 5 if v < 7 (Jessica's law)
11-778A(d)(2)	<p><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree;</u></p> <p>as set forth in subsection (b)(1)(Is a male who intentionally exposes his genitals or buttocks to a child who <16 under circumstances in which he knows his conduct is likely to cause annoyance, affront, offense or alarm when the person is at least 4 years older than the child and he stands in a position of trust, authority or supervision over the child or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child): or (2)(Is a female who intentionally exposes her genitals, breast or buttocks to a child <16 under circumstances in which she knows her conduct is likely to cause annoyance, affront, offense or alarm when the person is at least 4 years older than the child and she stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.) is a class F felony.</p>
11-1105	<p><u>Crime Against a Vulnerable Adult</u></p> <p>For this offense to be a class F felony, the underlying offense must be a class G felony. See page 114 for listing of qualifying underlying offenses for this statute.</p> <p>"Vulnerable Adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.</p>
11-1312	<p><u>Stalking</u></p> <ul style="list-style-type: none"> • (6) If act(s) has been prev. prohibit. by crt order or sentence, min. mand. Sent. = 6 m. at Lev. V; the first 6 m. of sentence shall not be subject to suspension • (7) If convicted of stalking w/in 5 yrs of prior stalking conviction, minimum mandatory sentence = 1 yr at Level V; the first year of sentence shall not be subject to suspension

Class F Felony (Nonviolent)

II.) (FFN)

Sentence Range (Nonviolent Category) FFN	
Statutory Range	0 to 3 years @ Level V
Presumptive Sentence	Up to 12 m. for Title 11 offenses; up to 18 months for Title 16 offenses @ Level II
Acceptance of Responsibility	Up to 9 months @ Level II for Title 11 offenses Up to 14 months @ Level II for Title 16 offenses
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:

11-502	<u>Criminal Solicitation 2nd Degree (see note)</u> Solicit to commit Felony
11-616(b)	<u>Gang Participation</u>
11-621(a)(2)b	<u>Terroristic Threat (see note)</u> False Stmt likely to: (a)evacuation/ (b)serious inconvenience/ (c)terror + School or Care Facility
11-621(a)(2)c	<u>Terroristic Threat</u>
11-621(a)(3)	<u>Terroristic Threat (see note)</u> Intent to Cause Belief of Substance Exposure: Death/Serious Injury
11-622	<u>Hoax Device</u>
11-651	<u>Abortion</u>
11-780A	<u>Sexual Intercourse w/Person in Custody</u>
11-824	<u>Burglary 3rd Degree</u> Building
11-828	<u>Possess Burglary Tools</u>
11-840A	<u>Use of Illegitimate Sales Receipt/UPC Label (15+ Receipts/ UPC Labels/ \$1,500+)</u>
11-841(c)(2)	<u>Theft (see note)</u> \$1500+ and V= 62+ y.o.a./Impaired/Disabled
11-841C(b)	<u>Theft: Theft of a blank prescription form or pad</u>
11-850(b)(2)	<u>Unlawful Telecommunication Device (Previous Conviction/ 10-49 Devices)</u>
11-860	<u>Possess Shoplifters Tools</u>
11-861(b)(1)	<u>Forgery 1st Degree (see note)</u> Money/Stamps/Stocks/Bonds etc.
11-903	<u>Unlawful Use Credit Card</u> Vt= 62+ y.o.a & >\$1,500
11-916(d)(2)	<u>Home Improvement Fraud</u> (v >= 62/impaired/disabled & \$50K > loss > = \$1500)
11-922(c)	<u>Improper Labeling (PriorConv 100>) (see note)</u>
11-1101	<u>Abandonment of Child (14 yrs of age or older)</u>

11-1111	<u>Possession of Child Pornography</u>
11-1112(a)(2)	<u>Sex Offender (Loiter w/in 500 ft School)</u>
11-1222	<u>Perjury 2nd Degree</u> Written, Material False Stmt Intended to Mislead Public Servant
11-1263A(a)(1)	<u>Interfere with Child Witness</u> Complainant removed from jurisdiction
11-1263A(a)(3)(a)	<u>Interfere with Child Witness</u> Bribe to cause Complainant's removal from jurisdiction
11-1263A(a)(4)(a)	<u>Interfere with Child Witness</u> Threat to cause Complainant's removal from jurisdiction
11-1271A(b)(c)	<u>Crim. Contempt Dom Violence Pro. Order (PFA) (see note)</u>
11-1303(3)(b)	<u>Disorderly Conduct: Funeral/Memorial Service (Prior Conv)</u>
11-1325	<u>Cruelty to Animals (see note)</u> Cruelly or Unnecessarily kills or seriously injures under (b)(4) or (5)
11-1326(b)(c)	<u>Fighting/Baiting Animals (see note)</u>
11-1327(c)(2)	<u>Dangerous Animal: Serious Injury to Person</u>
11-1351	<u>Promoting Prostitution 3rd Degree</u> Profit from prostitution
11-1448(f)(1)(a)(5)	<u>Poss/Purchase Deadly Weapon (Other than Destructive Weapon/Firearm/Ammunition) by Prohibited Person (see note)</u>
11-1450	<u>Receiving Stolen Firearm</u>
11-1451	<u>Theft of firearm</u>
11-1454	<u>Giving Firearm to Person Prohibited</u>
11-1457(j)(3)	<u>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class G Felony) (see note)</u>
16-107(e)3	<u>Neglect of Duty (see note)</u>
16-4757(b)	<u>Miscellaneous Drug Crimes (see note)</u>
16-4759(b)(1,2,4)	<u>Registrant Crimes</u> Violates (a)(1),)a)(2), or (a)(4)
16-4760	<u>Maintaining a Drug Property</u>
18-4354	<u>Unlawfully Acting as a Bail Bond Agent</u>
21-4134(d)	<u>Operation of vehicles on approach of authorized emergency vehicles</u>

Standard Sentences for Prior Criminal History Categories	
Repetitive criminal history	Up to 9 m. @ Level V
Lack of amenability at lesser sanctions	Up to 9 m. @ Level V

Supplemental Notations for Class F Nonviolent Felony:

If crime is a secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-502	<u>Criminal Solicitation 2nd Degree</u> Class F Felony unless the solicitor is 18 y.o.a. or older and the solicited is >18 y.o.a. or unless the solicitor is more than 3 yrs older than the solicited, who is less than 15 y.o.a. in which case, this crime is a Class D Felony.
11-621(a)(2)b	<u>Terroristic Threat</u> <ul style="list-style-type: none"> • (c)(1) Mandatory fine: \$1,000–\$2,500 which cannot be suspended and a minimum of 100 hrs community service • If the defendant is 17 y.o.a. or > & it is a first offense = Class A Misd
11-621(a)(3)	<u>Terroristic Threat</u> (d) Mandatory fine: \$2,000 which shall not be suspended
11-841(c)(2)	<u>Theft</u> Full restitution required for victim’s monetary losses. Consider community service &/or curfew for a juvenile defendant.
11-850(b)(2)	<u>Unlawful Telecommunication Device</u> <ul style="list-style-type: none"> • (b)(4) A prior conviction shall consist of convictions upon separate indictments or criminal complaints (b)(7) All fines shall be imposed for each unlawful telecommunication or access device • (b)(8) Restitution shall be ordered in the manner prescribed by §4106 • (b)(9) The court may order forfeiture of unlawful device(s)
11-861	<u>Forgery 1st Degree</u> (c) Restitution for resultant losses to all parties.
11-922(c)	<u>Improper Labeling (PriorConv 100 >)</u> 11-924A: Court must order the forfeiture & destruction or other disposition of (1) all articles on which the conviction is based and (2) all implements, devices, materials & equipment used or intended to be used in the mfr of the recordings on which the conviction is based.
11-1271A(b)(c)	<u>Criminal Contempt of a Domestic Violence Protection Order (PFA)</u> <ul style="list-style-type: none"> • (b) Unless any of the elements set forth in subsection (c) of this section are met, in which case the offense shall be a class F felony. • (c) A person is guilty of felony criminal contempt of a domestic violence protection order if: <ol style="list-style-type: none"> 1. Such contempt resulted in physical injury; or 2. Such contempt involved use/threat use/weapon
11-1325	<u>Cruelty to Animals</u> (d) The Defendant shall not own or possess any animal for 15 yrs following conviction (but see exceptions). Violation of this condition is punishable by a mandatory \$5,000 fine and forfeiture of the animal.
11-1326(b)(c)	<u>Fighting/Baiting Animals</u> <ul style="list-style-type: none"> • (c) All animals, equipment, and money shall be forfeited to the State. Animals shall be humanely disposed of. • (e) The Defendant shall not own or possess any animal for 15 yrs following conviction.

<p>11-1448(f)(1)(a)(5)</p>	<p><u>Poss/Purchase Deadly Weapon by Prohibited Person</u></p> <ul style="list-style-type: none"> • Poss Destructive Weapon (No Prior Conviction) should be filed under §1338 • (f)(1) Any juvenile 14 y.o.a or older convicted under (a)(5) shall for a 1st offense, receive a minimum sentence of 6 m. at Level V, or, for a 2nd or subsequent offense, 1 yr of Level V, which shall not be suspended. §§4205(b) and 4215 shall not be applicable to this subsection. • (g) In addition, said juvenile shall be ordered after a first conviction to view a film/slide presentation related to the damage and injury caused by a gun and must meet with a victim of or family of a deceased victim of violent crime.
<p>11-1457</p>	<p><u>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class G Felony)</u></p> <ul style="list-style-type: none"> • 11-1457(b)(4)&(j)(3): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class E Felony. • 11-1457(j)(5): If the Defendant is an elementary or secondary school student, in addition to other penalties, the student shall be expelled for not less than 180 d..
<p>16-107(e)(3)</p>	<p><u>Neglect of Duty:</u> Term of imprisonment not to exceed 3 years.</p>

<p>16-4757(b)</p>	<p><u>Miscellaneous Drug Crimes 16-4757(a)</u></p> <p>(1) To distribute as a registrant controlled substance classified in Schedule I or II except pursuant to an order form as required by Section 4738 of this chapter;</p> <p>(2) To use in the course of manufacture, distribution, prescribing, dispensing, or research of a controlled substance, a registration number which is fictitious, revoked, suspended, expired or issued to another person;</p> <p>(3) To acquire or obtain or attempt to acquire or obtain, possession of a controlled substance or prescription drug by misrepresentation, fraud, forgery, deception or subterfuge;</p> <p>(4) To furnish false or fraudulent material information in or omit any material information from, any application, report or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter;</p> <p>(5) To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance;</p> <p>(6) To acquire or attempt to or obtain possession of a controlled substance by theft;</p> <p>(7) To prescribe, or administer to another, any anabolic steroid, as defined in Section 4718(f) of this title, for the purposes of increasing human muscle weight or improving human performance in any form of exercise, sport, or game.</p>
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Class G Felony (Violent)

I.) (FGV)

Sentence Range (Violent Category) FGV	
Statutory Range	0 to 2 years @ Level V
Presumptive Sentence	Up to 6 m. @ Level V For 16-4767 & 16-4768: 3 to 9 m. @ Level V
Acceptance of Responsibility	Up to 4 months @ 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:

11-614	<u>Abuse of Sports Official (Prior Conv) (see note)</u>
11-617(b)(1)	<u>Criminal Youth Gang: Recruitment (7/10/06)</u>
11-777A(e)(1)	<u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u>
11-778A(3)	<u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree (see note)</u>
11-780B	<u>Unlawful sexual contact with person in custody</u>
11-782	<u>Unlawful Imprisonment 1st Degree</u> Risk of Serious Injury
11-1105	<u>Crime Against a Vulnerable Adult (see note)</u>
11-1257(a)	<u>Resisting Arrest with Force or Violence</u>
11-1304(b)(2)	<u>Hate Crime (Underlying Offense: Class A, B or C Misdemeanor)</u>
11-1312(a)	<u>Stalking</u>
11-1445(4)	<u>Unlawfully Dealing with a Dangerous Weapon</u>
16-1136(a)	<u>Abuse/Neglect of Patient: Sexual Contact</u>
16-1136(b)	<u>Exploit Patient's Resources (\$1000+)</u>
16-4761(c)	<u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u> Any person who violates subsection (a) of this section and delivers, or intends to deliver the prescription drug to another
16-4774(b)	<u>Drug paraphernalia</u> Manufacture and sale
31-3913(b)	<u>Exploitation of Infirm Adult (\$500- \$4,999)</u>

Sentences for Prior Criminal History Categories	
While on release or pending trial or sentence	Up to 12 months @ Level V
Two or more prior felonies	Up to 12 months @ Level V
One prior violent felony	Up to 12 months @ Level V
Two or more prior violent felonies	Up to 24 months @ Level V

Supplemental Notations for Class G Violent Felony:

If crime is a secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All criminal fines require 18% surcharge for Victims fund
All Drug crimes require additional 15% surcharge for rehabilitation fund
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-614	<u>Abuse of Sports Official (Prior Conv)</u> Mandatory Penalty: fine=>\$1,000/<\$2,350 & prohibition from participation/attending an organized sporting event for >3 m./<12 m.
11-777A(e)(1)	<u>Sex Offender Unlawful Sexual Conduct Against a Child</u> <ul style="list-style-type: none"> • (e)(1) If the underlying sexual offense is a misdemeanor, the crime of sex offender sexual conduct against a child shall be a class G felony except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class C felony. • 11-4205A: (1) If prior conviction for Class A or B felonious sex offense (or similar from another state) or (2) If the victim is < 14 years of age, then the min. man. Is 25 years at Level V to life upon state application • Upon state application AG may invoke additional 5 years at level V if v < 7 (Jessica’s law)
11-778A(d)(3)	<u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree</u> as set forth in subsection (c)(Suggests, solicits, requests, commands, importunes or otherwise attempts to induce a child <16 to have sexual contact or sexual intercourse or unlawful sexual penetration with the person or a third person, knowing that the person is thereby likely to cause annoyance, affront, offense or alarm to the child or another when the person is at least 4 years older than the child and the person stands in a position of trust authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.) is a class G felony.
11-1105	<u>Crime Against a Vulnerable Adult</u> For this offense to be a class G felony, the underlying offense must be a class A misdemeanor. See page 114 for listing of qualifying underlying offenses for this statute. “Vulnerable Adult” means a person 18 years of age or older, who by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation the term “vulnerable adult includes any adult for whom a guardian or the person or property has been appointed.

Class G Felony (Nonviolent)

II.) (FGN)

Sentence Range (Nonviolent Category) FGN	
Statutory Range	0 to 2 years @ Level V
Presumptive Sentence	Up to 12 m. @ Level II
Presumptive Sentence DUI	3 month minimum term of imprisonment (see note)
Acceptance of Responsibility	Up to 9 months @ Level II
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:

11-512	<u>Conspiracy 2nd Degree</u> Conspires to commit Felony
11-621(a)(1)	<u>Terroristic Threat (Vt= 62+ y.o.a.) (see note)</u>
11-621(a)(2)b, or c	<u>Terroristic Threat (see note)</u> False statement likely to cause (b) serious inconvenience/ (c) terror
11-626	<u>Unlawful Administration Controlled Substance/Narcotic</u>
11-780B	<u>Unlawful Sexual Contact with Person in Custody</u>
11-785	<u>Interfere w/Custody</u> Removal from State
11-801	<u>Arson 3rd Degree</u> Recklessly damage unoccupied bldg by fire/explosion
11-804	<u>Reckless Burning (\$1500+ Damage)</u>
11-811(b)(1)	<u>Criminal Mischief (\$5000+ Loss/Substantial Interruption) (see note)</u>
11-812(a)(2)	<u>Graffiti and Possession of Graffiti Implements (\$1500+ damage) (see note)</u>
11-840	<u>Shoplift (\$1500+)</u>
11-841	<u>Theft (see note) \$1500+, or V= 62+ y.o.a./Impaired/Disabled</u>
11-841A	<u>Theft: Motor Vehicle</u>
11-841C(a)	<u>Possession of a blank prescription form or pad</u>
11-848	<u>Misapplication of Property (\$1500+)</u>
11-849	<u>Theft of Rental Property (\$1500+)</u>
11-851	<u>Receive Stolen Property (\$1500+/2 prior convictions)</u>
11-852A	<u>Selling Stolen Property; class G felony (see note)</u>
11-859	<u>Larceny of Livestock (see note)</u>
11-861(b)(2)	<u>Forgery 2nd Degree (see note)</u> Deed/Will/Commercial Instrument/Public Record/Tokens/Prescriptions
11-862	<u>Possess Forgery Devices</u>
11-878	<u>Issue False Certificate</u>
11-900	<u>Issue Bad Check (\$1500+)</u>

11-903	<u>Unlawful Use Credit Card</u> Vt= 62+ y.o.a or >\$1,000
11-907A	<u>Criminal Impersonation (Accident Related) (see note)</u>
11-908	<u>Unlawful Concealing Will</u>
11-911	<u>Fraudulent Conveyance of Public Lands</u>
11-912	<u>Fraudulent Receipt of Public Lands</u>
11-913	<u>Insurance Fraud</u>
11-913A	<u>Health Care Fraud (see note)</u>
11-916(d)(1)	<u>Home Improvement Fraud</u> (\$50k >= loss > \$1500 or, v >= 62/impaired/disabled & loss < \$1500)
11-917(d)(1)	<u>New Home Construction Fraud (\$1,500–\$49,999)</u>
11-920	<u>Transfer of Recorded Sounds</u>
11-922(b)	<u>Improper Labeling (1st Offense 100 >) (see note)</u>
11-926(d)(2)	<u>Trademark Counterfeiting(PriorConv/100-999/\$2,000–\$9,999) (7/7/05)</u>
11-932	<u>Unauthorized Computer Access (\$500–\$999) (see note)</u>
11-933	<u>Theft Computer Services (\$500–\$999) (see note)</u>
11-934	<u>Interruption Computer Services (\$500–\$999) (see note)</u>
11-935	<u>Misuse Computer System Information (\$500–\$999) (see note)</u>
11-936	<u>Destruction Computer Equipment (\$500–\$999) (see note)</u>
11-937	<u>Unauthorized Electronic Mail (\$500–\$999) (see note)</u>
11-938	<u>Fail Cease Electronic Communication (\$500–\$999) (see note)</u>
11-939	<u>Computer Offense Penalties (\$500–\$999) (see note)</u>
11-951(f)	<u>Money Laundering</u>
11-1001	<u>Bigamy</u>
11-1102(b)(2)	<u>Endanger Welfare of Child: Serious Injury</u>
11-1102(b)(3)	<u>Endanger Welfare of Child: Sex Offense</u>
11-1112(a)(1)	<u>Sex Offender (Residing w/in 500 ft of School)</u>
11-1103A	<u>Child Abuse in the Second Degree</u>
11-1113	<u>Aggravated Criminal Non-Support (see note)</u> Prior Conviction/ Delinquent as to Full Amt/ \$10,000+
11-1114A(c)	<u>Tongue Splitting (Prior conviction)</u>
11-1206	<u>Receiving Unlawful Gratuity (value > \$1,000)</u>
11-1240	<u>Terroristic Threat to Public Officials/Servants</u>
11-1244(b)	<u>Hinder Prosecution of a Felony</u>
11-1245	<u>False Report Incident/Child Abduction (Prior Conv) (see note)</u>
11-1249	<u>Abetting Driver's License Violation (Prior Conviction/Death)</u>
11-1252	<u>Escape 2nd Degree</u> (Spec. Esc. Cat. May Apply) Esc. From detention facil. Or cust. Of DHSS or DOC
11-1257A	<u>Use Animal to Avoid Capture</u> Prevent Prosecution/Injures L.E.O
11-1259	<u>Sexual Relations in Detention Facility</u>
11-1260	<u>Misuse of Prisoner Mail (Prior Conviction)</u>
11-1263A(a)(1)	<u>Interfere with Child Witness</u> Removal from Jurisdiction
11-1263A(a)(3)(a)	<u>Interfere with Child Witness</u> Bribes to Cause Removal from Jurisdiction
11-1263A(a)(4)(a)	<u>Interfere with Child Witness</u> Threatens to Cause Removal from Jurisdiction
11-1269	<u>Tampering with Physical Evidence</u>
11-1312	<u>Aggravated Harassment</u> Only applies to offenses prior to 11/1/08; statute repealed, now only Harassment

11-1312	<u>Stalking (see note)</u>
11-1326(b)	<u>g Animals (see note)</u> Knowledge and Presence during Preparation
11-1335(a)(6)-(7)-(9)(c)& (9)(d)	<u>Violation of Privacy</u> Prurient Recording w/out Consent
11-1339	<u>Adulteration</u>
11-1361	<u>Obscenity (see note)</u>
11-1442	<u>Carry Concealed Deadly Weapon (see note)</u>
11-1446A	<u>Undetectable Knives (Mfr/Import/Sell/Possess) (6/30/06)</u>
11-1448A(f)	<u>Firearm Sale Violation: False Statement/Information</u>
11-1448A(e)	<u>Firearm Sale Violation (Second Offense)</u>
11-1461	<u>Report of Loss, Theft of Firearm (3rd or subsequent offense)</u>
11-1471(a)(b)(d)(e)(l)	<u>Video Lottery Cheat Device</u> (Prior Conviction w/in 3 yrs)
11-1471(c)(f)(g)(h)(i)(j)	<u>Video Lottery Cheat Device >\$1500<\$50000</u>
11-2109(c)(1)	<u>Breach of Conditions of Bail (see note)</u>
11-2113(c)(1)	<u>Breach of Release Conditions (Felony/Prior Conviction Crime) (see note)</u>
11-4120(k)	<u>Sex Offender (Fail to Register)</u>
11-4121(t)	<u>Sex Offender (Fail to Comply with Registration Mandates)</u>
11-8562(b)	<u>Provide False Child Abuser Information</u>
11-9616A	<u>Public posting or displaying program participant's actual address, telephone number, or image on the internet</u> Violation results in physical injury to the program participant or a member of the program participant's household
16-3111(a)	<u>Crimes Regarding Vital Records (see note)</u>
16-4756	<u>Drug Possession</u> A person who possesses a controlled substance in a Tier 1 quantity
16-4762(d)	<u>Hypodermic syringe or needle; delivering or possessing; disposal</u>
16-4774(c)	<u>Manufacture and sale paraphernalia</u>
21-4177(d)	<u>Driving While Under the Influence (3rd offense) (see note)</u>
31-309(c)	<u>Background Checks for child serving entities</u>
31-311(c)	<u>Personal History Disclosure</u>

Sentences For Prior Criminal History Categories	
Repetitive Criminal History	Up to 6 m. @ Level V
Lack of Amenability to Lesser Sanctions	Up to 6 m. @ Level V

Supplemental Notations for Class G Nonviolent Felony:

If crime is a secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-621(a)(1) 11-621(a)(2)b or c	<u>Terroristic Threat (Vt= 62+ y.o.a.)</u> <u>Terroristic Threat</u> <ul style="list-style-type: none"> (c)(1) Mandatory fine: \$1,000–\$2,500 which cannot be suspended and a minimum of 100 hrs community service If the defendant is 17 y.o.a. or younger, the offense is a Class A Misdemeanor If the place at which the risk of evacuation, serious inconvenience or terror is created is a daycare facility, nursery or preschool, kindergarten, elementary, secondary or vocational-technical school, or any long-term care facility in which elderly persons are housed, it is a class F felony.
11-811(b)(4)	<u>Criminal Mischief</u> <ul style="list-style-type: none"> If the act is committed along a Delaware byway, as defined in 17 Del. C. Section 101(a)(9), the court shall impose a minimum mandatory fine of at least \$500.
11-812(a)(2)	<u>Graffiti and Possession of Graffiti Implements</u> The penalty for graffiti shall include a minimum fine of not less than \$1,000 which shall not be subject to suspension, restitution for damages to the property and 250 hours of community service, at least half of which shall be served removing graffiti on public property. The minimum fine and community service hours shall be doubled for a second or subsequent conviction of an act of graffiti. The minimum fine shall also be doubled, and may not be suspended, for a first, second, or subsequent conviction of an act of graffiti which is performed on or along a Delaware byway, as defined in 17 Del. C. Section 101(a)(9).
11-841	<u>Theft</u> (d): Full restitution required for victim’s monetary losses. Consider community service &/or curfew for a juvenile defendant.
11-852A	<u>Selling Stolen Property</u> value of the resold property is \$1,000 or more, or unless the seller has been convicted 2 or more times of Selling Stolen Property
11-859	<u>Larceny of Livestock</u> Minimum sentence of imprisonment, if any, not subject to suspension,, probation or parole during 1st 6 m.
11-861(b)(2)	<u>Forgery 2nd Degree</u> (c) Restitution for resultant losses to all parties.
11-907A	<u>Criminal Impersonation (Accident Related)</u> (1) If Defendant pretended to be someone other than the driver, upon conviction, driving privileges are to be suspended by DMV for 2 yrs.
11-913A	<u>Health Care Fraud</u> 913(c)(4): Fine may be up to 5x pecuniary benefit sought or obtained.
11-922(b)	<u>Improper Labeling (1st Offense 100 >)</u> 11-924A: Court must order the forfeiture & destruction or other disposition of (1) all articles on which the conviction is based and (2) all implements, devices, materials & equipment used or intended to be used in the mfr of the recordings on which the conviction is based.

<p>11-932 11-933 11-934 11-935 11-936 11-937 11-938 11-939</p>	<p><u>Unauthorized Computer Access</u> <u>Theft Computer Services</u> <u>Interruption Computer Services</u> <u>Misuse Computer System Information</u> <u>Destruction Computer Equipment</u> <u>Unauthorized Electronic Mail</u> <u>Fail to Cease Electronic Communication</u> <u>Computer Offense Penalties</u></p> <ul style="list-style-type: none"> • (f) In lieu of fine, Court may order Defendant to pay an amount up to double the proceeds from the offense. Record shall reflect findings as to the proceeds gained. • (g) Amounts may be aggregated to determine degree of crime. • (h) Value shall be (1) market value at time of offense or (2) cost of replacement. If value cannot be established, it shall be \$250 or (i) in the case of private personal data, \$500.
11-1113	<p><u>Aggravated Criminal Non-Support</u></p> <ul style="list-style-type: none"> • Court may ("shall" in the event support order entered) order any fine to be paid for the support of the entitled person • (j) Restitution shall be ordered in the amount of the total accrued arrearages
11-1245	<p><u>False Report Incident/Child Abduction (Prior Conviction)</u> Minimum Mandatory sentence: Fine= \$500 or for (3)(d): \$1,000, which cannot be suspended + 100 hrs community service + reimbursement to the State/government agency for costs of investigation and/or response</p>
11-1312	<p><u>Stalking</u></p> <ul style="list-style-type: none"> • (6) If act or acts include conduct which has previously been prohibited by a then-existing court order or sentence shall receive a minimum sentence of 6 months incarceration at Level V which shall not be subject to suspension. • (7) Any person who is convicted of stalking within 5 years of a prior conviction of stalking shall receive a minimum sentence of 1 year incarceration at Level V which shall not be subject to suspension.
11-1326	<p><u>Fighting/Baiting Animals. (c)</u> All animals, equipment, devices, and money shall be forfeited to the State. Forfeited animals shall be disposed of humanely.</p>
11-1361	<p><u>Obscenity</u></p> <ul style="list-style-type: none"> • If the obscenity involved live conduct, the business or establishment shall be closed for 6 m. • (c) Minimum mandatory sentence for 2nd or subsequent conviction within 5 yrs.: (1) \$5,000 fine (\$10,000 if the Defendant is an organization), (2) imprisonment for a minimum of 9 m. which shall not be suspended or reduced, (3) probation for 2 yrs. and (4) the establishment shall be closed for 2 yrs.
11-1442	<p><u>Carrying Concealed Deadly Weapon</u></p> <ul style="list-style-type: none"> • 11-1457(b)(1)&(j)(3): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class F NonViolent Felony. • 11-1457(j)(4):If the Defendant is an elementary or secondary school student, in addition to other penalties, the student shall be expelled for not less than 180 d.
11-2109(c)(1)	<p><u>Breach of Conditions of Bail</u> Maximum Penalty: Imprisonment not to exceed 5 years and/or a fine of \$5,000.00</p>
11-2113(c)(1)	<p><u>Breach of Release Conditions</u> (Felony/Prior Conviction Crime). Maximum Penalty: Imprisonment not to exceed 5 years and/or a fine of \$5,000.00.</p>
16-3111(a)	<p><u>Crimes Regarding Vital Records</u> Maximum Penalty: Imprisonment= 5 yrs or less; Fine= \$10,000</p>

21-4177(d)	<p><u>Driving While Under the Influence (3rd offense)(TIS)</u></p> <ul style="list-style-type: none">• 3rd Offense: (Class G Felony) (1) 1y-2y @ Level V, first 3m shall not be suspended but shall be served at Level V and shall not be subject to any early release, furlough, or reduction of any kind; Sentencing court may suspend up to 9 months of any minimum sentence, provided however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program as set forth in 4177(d)(9);(2) Fined not more than \$5,000; (3) Completion of alcohol abstinence program of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device or through periodic breath or urine analysis. In addition to such monitoring the offender shall participate in random breath or urine analysis during the entire period of supervision; (4) 24m DL revocation, if B.A.C.L.is .15-.19, 30m, if B.A.L. > .19, 36m; (5) An intensive inpatient or outpatient drug and alcohol treatment program of not less than 3 months; (6) Ignition Interlock Device shall be installed on all vehicles registered to the Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period.
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Class A Misdemeanors

I.) Violent (MA1)

Sentence Range (Violent Category) MA1	
Statutory Range	0 to 1 yr @ Level V and up to \$2,300 Fine
Presumptive Sentence	1st offense: Up to 12 m. @ Level II 2nd offense w/in 2 yrs: Up to 6 m. @ Level III & Up to 6 m. @ Level II 3rd offense w/in 5 yrs: Up to 3 m. @ Level V & Up to 9 m @ Level II
Acceptance of Responsibility	Up to 9 months @ Level II

Crimes in Category

11-603	<u>Reckless Endangering 2nd Degree</u> (Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of Contents
11-611	<u>Assault 3rd Degree</u> (Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of Contents
11-614	<u>Abuse of Sports Official (1st Offense)</u>
11-621(a)(1)	<u>Terroristic Threatening</u> (Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of Contents Fine minimum of \$1,000 up to \$2,000 which cannot be suspended. Sentenced to a minimum of 100 hrs. community service
11-621(a)(2)	<u>Terroristic Threat</u> First offense where person is 17 years old or younger Fine minimum of \$1,000 up to \$2,000 which cannot be suspended Also perform a minimum of 100 hrs. of community service
11-766	<u>Incest</u> (Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of Contents
11-767	<u>Unlawful Sexual Contact 3rd Degree</u> (SpecialDVCategory May Apply)Refer to Exceptional Sentence Listing in Table of Contents
11-1103	<u>Child Abuse in the Third Degree</u>
11-1105	<u>Crime Against a Vulnerable Adult (see note)</u>
11-1250(b)	<u>Assault 2d Degree Against Law enforcement Animal</u> Reckless: Risk of injury
11-1271A	<u>Criminal Contempt: DV Protective Order</u> (SpecialDVCategory May Apply) (see note)Refer to Exceptional Sentence Listing in Table of Contents
11-1304(b)(1)	<u>Hate Crime</u> (Underlying Offense: Violation or Unclassified Misdemeanor)
11-1443	<u>Carrying Concealed Dangerous Instrument</u>
16-1136(a)	<u>Abuse/Neglect of Patient in Residential Facility</u>
31-3913(a)	<u>Abuse/Neglect of Infirm Adult</u>

Supplemental Notations Violent Class A Misdemeanors:

All Criminal fines require 18% surcharge for Victims fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-1105	<p><u>Crime Against a Vulnerable Adult</u> For this offense to be a class A misdemeanor the underlying offense must be a class B misdemeanor. See page 114 for listing of qualifying underlying offenses for this statute. "Vulnerable Adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.</p>
11-1271A	<p><u>Criminal Contempt of a Dom Viol Protection Order</u> Class A Misd, Class F felony</p> <ul style="list-style-type: none"> • (c) Mandatory minimum sentence of 15 days imprisonment if contempt resulted in: (1) injury, (2) threat of Deadly Weapon or (3) 2 prior convictions this section • (d) Minimum sentence shall not be subject to suspension, probation, parole, furlough, or suspended custody

Class A Misdemeanors

II.) Escape (MA2)

Sentence Range (Escape Category) MA2	
Statutory Sentence	0 to 1 yr @ Level V and up to \$2,300 fine
Presumptive Sentence	Up to 3 m. in quasi-incarceration (Level IV) Recommended Maximum: Up to 1 m. @ Level V
Acceptance of Responsibility	Up to 2 months @ Level IV

Crimes in Category

11-1251	<p><u>Escape 3rd Degree</u> (Special Escape Category May Apply) Escape from custody including nonsecure facilities of DYRS</p>
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Supplemental Notations for Class A Misdemeanors (Escape):

All Criminal fines require 18% surcharge for Victims fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

Class A Misdemeanors

III.) Property (MA3)

Sentence Range (Property Category) MA3	
Statutory Sentence	0 to 1 yr @ Level V and up to \$2,300 fine
Presumptive Sentence	1st Offense: Up to 12 m. @ Level I 2nd w/in 18 m: Up to 6 m. @ Level II 3rd w/in 3 yrs: Up to 3 m. @ Level IV (quasi-incarceration) & 0 to 9m. @ Level II Recommended Maximum: 15 days @ Level V
Acceptance of Responsibility	Up to 9 months @ Level I

Crimes in Category

11-804	<u>Reckless Burning/Exploding (< \$1500)</u>
11-805	<u>Cross or Religious Symbol Burning</u>
11-811(b)(2)(4)	<u>Criminal Mischief (>\$1000-<\$5000) (see note)</u>
11-812(a)(2)	<u>Graffiti and Possession of Graffiti Implements (<\$1500 damage) (see note)</u>
11-813	<u>Theft of Property from a Cemetery</u>
11-823	<u>Criminal Trespass 1st Degree</u> Dwelling/Animal Shelter, i.e. barn, stable
11-840	<u>Shoplifting (<\$1500)</u>
11-840A	<u>Use of Illegitimate Sales Receipt/UPC Label (<1500)</u>
11-841	<u>Theft (<\$1500 and v<62, not Impaired/Disabled) (see note)</u>
11-841B	<u>Theft: Organized Retail Crime (V<62, not infirm, value < \$1,000)</u>
11-848	<u>Misapplication of Property (< \$1500)</u>
11-849	<u>Theft of Rental Property (< \$1500)</u>
11-851	<u>Receiving Stolen Property (< \$1500)</u>
11-852A	<u>Selling Stolen Property (<\$1000)</u>
11-853	<u>Unauthorized Use of a Vehicle</u>
11-858(a)(2)	<u>Unlawful Operation Recording Device (Motion Picture) (see note)</u>
11-861(b)(3)	<u>Forgery 3rd Degree (see note)</u>
11-891	<u>Defrauding Secured Creditors</u>
11-892	<u>Fraud in Insolvency</u>
11-900	<u>Issue Bad Check (< \$1500)</u>
11-903	<u>Unlawful Use Credit Card (< \$1500)</u>
11-906	<u>Deceptive Business Practices</u>
11-916(d)(1)	<u>Home Improvement Fraud</u> (loss < \$1500, v < 62/not impaired/not disabled)
11-917(d)	<u>New Home Construction Fraud (<\$1,500)</u>
11-918	<u>Ticket Scalping (Prior Conviction)</u>
11-926(d)(1)	<u>Trademark Counterfeiting</u> (No priors/<100 items/<\$2,000) (7/7/05)
11-932	<u>Unauthorized Computer Access (<\$500) (see note)</u>
11-933	<u>Theft Computer Services (<\$500) (see note)</u>
11-934	<u>Interruption Computer Services (<\$500) (see note)</u>
11-935	<u>Misuse Computer System Information (<\$500) (see note)</u>
11-936	<u>Destruction Computer Equipment (<\$500) (see note)</u>
11-937	<u>Unauthorized Electronic Mail (<\$500) (see note)</u>
11-938	<u>Fail Cease Electronic Communication (<\$500) (see note)</u>
11-939	<u>Computer Offenses Penalties (<\$500) (see note)</u>

11-9616A	<u>Public posting or displaying program participant's actual address, telephone number, or image on the internet</u>
16-1136(b)	<u>Exploit Patient's Resources (<\$1000)</u>
31-1003	<u>False Statement to Obtain Benefits (<\$500) (see note)</u>
31-1004(1)	<u>False Benefit Reimbursement Statement (<\$500) (see note)</u>
31-1006	<u>Unlawful Conversion of Benefits (<\$500) (see note)</u>
31-3913(b)	<u>Exploitation of Infirm Adult (<\$500)</u>

Supplemental Notations for Class A Misdemeanors: Property

All Criminal fines require 18% surcharge for Victims fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-811(b) (2)(4)	<p><u>Criminal Mischief</u></p> <ul style="list-style-type: none"> (4) If the act is committed along a Delaware byway, as defined in 17 Del. C. Section 109(a)(9), the court shall impose a minimum mandatory fine of at least \$500.
11-812(a)(2)	<p><u>Graffiti and Possession of Graffiti implements</u></p> <p>The penalty for graffiti shall include a minimum fine of not less than \$1,000 which shall not be subject to suspension, restitution for damages to the property and 250 hours of community service, at least half of which shall be served removing graffiti on public property. The minimum fine and community service hours shall be doubled for a second or subsequent conviction of an act of graffiti.</p> <p>The minimum fine shall also be doubled, and may not be suspended, for a first, second, or subsequent conviction of an act of graffiti which is performed on or along a Delaware byway, as defined in 17 Del. C. Section 101(a)(9).</p>
11-841	<p><u>Theft</u></p> <p>(d): Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.</p>
11-858(a)(2)	<p><u>Unlawful Operation Recording Device (Motion Picture)</u></p> <p>Notwithstanding any law to the contrary, may include a max. fine of \$50,000</p>
11-861(b)(3)	<p><u>Forgery 3rd Degree</u></p> <p>(b) Restitution for resultant losses to all parties.</p>
11-932 11-933 11-934 11-935 11-936 11-937 11-938 11-939	<p><u>Unauthorized Computer Access</u></p> <p><u>Theft Computer Services</u></p> <p><u>Interruption Computer Services</u></p> <p><u>Misuse Computer System Information</u></p> <p><u>Destruction Computer Equipment</u></p> <p><u>Unauthorized Electronic Mail</u></p> <p><u>Fail to Cease Electronic Communication</u></p> <p><u>Computer Offense Penalties</u></p> <ul style="list-style-type: none"> (f) In lieu of fine, Court may order Defendant to pay an amount up to double the proceeds from the offense. Record shall reflect findings as to the proceeds gained. (g) Amounts may be aggregated to determine degree of crime. (h) Value shall be (1) market value at time of offense or (2) cost of replacement. If value cannot be established, it shall be \$250 or (i) in the case of private personal data, \$500.

31-1003 31-1004(1) 31-1006	<u>False Statement to Obtain Benefits</u> <u>False Benefit Reimbursement Statement</u> <u>Unlawful Conversion of Benefits</u> <ul style="list-style-type: none">• 31-1007(d): Every provider convicted under this chapter shall make full restitution of money, goods or services or of the value of same plus interest at the rate of 1.5% per month for the period from the date upon which payment was made to the date upon which repayment is made to the State• 31-1007(e): Provider shall not be eligible for participation in Delaware Public Assistance Program, subject to certain exceptions.
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Class A Misdemeanors

IV.) Order & Decency (MA4)

Sentence Range (Order & Decency Category) MA4	
Statutory Sentence	0 to 1 yr @ Level V and up to \$2,300 fine
Presumptive Sentence	1st Offense: Up to 12 m. @ Level I 2nd w/in 18 m.: Up to 12m. @ Level II 3rd w/in 3 yrs.: Up to 6m. @ Level III & 0 to 6m. @ Level II Recommended Maximum Up to 15d. @ Level V
Acceptance of Responsibility	Up to 9 months @ Level I
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

11-501	<u>Criminal Solicitation 3rd Degree</u> Solicit to commit misdemeanor
11-511	<u>Conspiracy 3rd Degree</u> Conspires to commit misdemeanor
11-601(a)(1)	<u>Offensive Touching</u> Vt= LEO, FF, CO, Medical personnel
11-601(a)(2)	<u>Offensive Touching (see note)</u> Bodily Emissions
11-625	<u>Unlawfully Administer Drugs</u>
11-628A	<u>Vehicular Assault 2nd Degree</u> (1) Criminal negligence: serious injury/ (2) DUI: injury
11-652	<u>Self Abortion</u>
11-765	<u>Indecent Exposure 1st Degree</u> Vt= <16 y.o.a.
11-781	<u>Unlawful Imprisonment 2nd Degree</u> (Special DVCategory May Apply) Knowingly restrain Refer to Exceptional Sentence Listing in Table of Contents
11-785	<u>Interference with Custody</u> (Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of Contents
11-791	<u>Coercion</u> (Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of Contents
11-871	<u>Falsifying Business Records</u>
11-873	<u>Tampering w/ Public Records 2nd Degree</u>
11-877	<u>Offering False Instrument for Filing</u>
11-881	<u>Bribery</u>
11-882	<u>Receiving a Bribe</u>

11-893	<u>Interference Levied-Upon Property</u>
11-907	<u>Criminal Impersonation</u>
11-907C	<u>Criminal Impersonation of a member or veteran of U.S. Armed Forces</u> (See note)
11-909	<u>Execution of Document by Deception</u>
11-918	<u>Ticket Scalping</u>
11-921	<u>Sale Transferred Recorded Sound</u>
11-1102	<u>Endanger Welfare of Child</u> (Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of Contents
11-1105	<u>Endanger Welfare of Incompetent</u>
11-1113(a)	<u>Aggravated Criminal Non-support (Prior Conviction)</u> (see note)
11-1114	<u>Body Piercing & Tattoos</u> (Prior Conviction)
11-1114A(a)	<u>Tongue Splitting 1st Degree</u>
11-1205	<u>Give Unlawful Gratuity</u>
11-1206	<u>Receive Unlawful Gratuity (value < \$1,000)</u>
11-1207	<u>Improper Influence</u>
11-1211	<u>Official Misconduct</u>
11-1212	<u>Profiteering</u>
11-1221	<u>Perjury 3rd Degree</u> False statement under oath
11-1233	<u>Make False Written Statement</u>
11-1243	<u>Obstructing Firefighting</u>
11-1244	<u>Hinder Prosecution of Misdemeanor</u>
11-1245	<u>False Report Incident/Child Abduction</u> (see note)
11-1246	<u>Compound a Crime</u>
11-1249	<u>Abetting Violation of Driver's License</u>
11-1256	<u>Promoting Prison Contraband</u>
11-1257(b)	<u>Resist Arrest Without Violence</u>
11-1257A	<u>Use of Animal to Avoid Capture</u>
11-1260	<u>Misuse of Prisoner Mail</u>
11-1266	<u>Tampering w/Juror</u>
11-1267	<u>Misconduct by Juror</u>
11-1271(2-8)	<u>Criminal Contempt</u> (2)Breach of peace/ (3) Intentional disobedience/ (4)Refusal of Oath/to Answer/ (5)Publish false proceedings/ (6)Refuse Jury Service/ (7)Juror fail to attend trial/ (8)Defendant's failure to appear for criminal proceedings
11-1303(3)(a)	<u>Disorderly Conduct: Funeral/Memorial Service</u>
11-1311	<u>Harassment</u> (Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of Contents
11-1325	<u>Cruelty to Animals</u> (see note)
11-1325A(b)	<u>Trade in Dog/Cat By-Products (Flesh)</u> (see note)
11-1327	<u>Dangerous Animal</u> Injury to Person/Serious Injury or Death Animal
11-1331	<u>Desecration</u>
11-1332	<u>Abusing a Corpse</u>
11-1334	<u>Unlawful Use of an Unmanned Aircraft System</u> Physical injury to person and/or damage to property

11-1335(a)(1–5, 8)	<u>Violation of Privacy</u> (1)Trespass to eavesdrop/ (2) Installs recording device in private place/ (3)Installs/uses recording device outside private place/ (4) Intercepts/ (5) Divulges private communication/ (8) Installs in MV electronic/mechanical tracking device
11-1340	<u>Desecration of Burial Place (see note)</u>
11-1365	<u>Obscene Literature Harmful to Minors</u>
11-1401	<u>Advancing Gambling 2nd Degree</u> Unlawful(ly) (1)Sell/dispose/PWI lottery policy or similar/ (2)Device to do same/ (3)Interest in lottery policy writing or in selling/disposing policy or similar/ (4)Device to do same
11-1402	<u>Foreign Lotteries</u>
11-1403	<u>Advancing Gambling 1st Degree</u> Unlawful(ly) (1)Keeping "books"/ (2)Owner/occupant property for purpose of bookkeeping/ (3)Recording bets/ (4)Place bets
11-1404	<u>Providing Premises for Gambling (Prior Conviction w/in 5 yrs)</u>
11-1405	<u>Possession Gambling Device</u>
11-1406	<u>Interest in Keeping Gambling Device</u>
11-1411	<u>Unlawful Dissemination Gambling Information</u>
11-1428	<u>Maintaining an Obstruction (Prior Conviction w/in 2 yrs)</u>
11-1448A(e)	<u>Improper Request/Dissemination Criminal History Check</u>
11-1448A(f)	<u>Firearm Sale Violation</u>
11-1456	<u>Unsafe Storage of Firearm</u> unauth p commits/attempts crime, uses to inflict serious physical injury/death, or transfers/attempts to another unauth p
11-1457(j)(1)	<u>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class B Misdemeanor) (see note)</u>
11-1471(a)(b)(d)(e)(l)	<u>Video Lottery Cheat Device</u> (first offense)
11- 1471(c)(f)(g)(h)(i)(j)	<u>Video Lottery Cheat Device <1500</u>
11-8522	<u>Refusal to Permit Photo or Fingerprints</u>
11-8523(a)	<u>Refusal/Neglect/Hinder Report</u>
11-8523(d)	<u>Unlawful Use of Criminal History Record Information</u>
11-8562(a)	<u>Fail to Obtain Child Sex Abuser Information</u>
16-1136(c)	<u>Fail to Correct Abuse/Neglect of Patient in Residential Facility</u>
29-4713(k)(1)	<u>Unlawful Dissemination of DNA Database Information</u>
29-4830(f)(1)(f)(2)	<u>Standards of Licensing</u>
29-4831(a)(b)	<u>Prohibition on employment of persons or service agencies w/o a license</u>
29-4836(a)(b)	<u>Penalties for wagering by excluded persons</u>
31-610(a)(2)	<u>Transfer/Alter/Possess Food Stamps (<\$500) (see note)</u>
31-310(a)	<u>Background Checks for Child Serving Entities</u>

Supplemental Notations for Class A Misdemeanors (Order & Decency):

All Criminal fines require 18% surcharge for Victims fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-601(a)(2)	<u>Offensive Touching</u> (b) The Defendant shall be tested for communicable diseases, the costs of which are to be assessed as costs of conviction. The results are to be provided to the AG, the victim, the Defendant and the D.O.C. medical provider
11-907(C)	<u>Criminal Impersonation of a member or veteran of the U.S. Armed Forces</u> <ul style="list-style-type: none"> • Minimum fine of not less than \$1,000.00 which shall not be suspended
11-1113(a)	<u>Aggravated Criminal Non-support (Prior Conviction)</u> <ul style="list-style-type: none"> • Court may ("shall" in the event support order entered) order any fine to be paid for the support of the entitled person • (j) Restitution shall be ordered in the amount of the total accrued arrearages
11-1245	<u>False Report Incident/Child Abduction</u> Minimum Mandatory sentence: Fine= \$500 or for (3)(d): \$1,000, which cannot be suspended + 100 hrs community service + reimbursement to the State/government agency for costs of investigation and/or response
11-1325	<u>Cruelty to Animals</u> (c) The Defendant shall not own or possess any animal for 5 yrs following conviction (but see exceptions). Violation of this condition is punishable by a mandatory \$1,000 fine and forfeiture of the animal.
11-1325A	<u>Trade in Dog/Cat By-Products</u> (c) Defendant shall: (1) be prohibited from possessing dog/cat for 15 yrs after conviction (but see exceptions),(2) pay a fine of \$2,500 and (3) forfeit any dog/cat.
11-1340	<u>Desecration of Burial Place</u> Mandatory Minimum Fine= >\$1,000 up to \$10,000.
11-1457	<u>Possession Weapon in Safe School/Recreation Zone</u> (Underlying Offense: Class B Misdemeanor). (j)(4) An elementary or secondary school student shall be expelled for 180d.
31-610(a)(2)	<u>Transfer/Alter/Possess Food Stamps (<\$500)</u> <ul style="list-style-type: none"> • May be suspended from the Food Stamp Program for 18 months more than suspension mandated by the Federal Food Stamp Act

Class A Misdemeanors

V.) Controlled Substances (MA5)

Sentence Range (Controlled Substance Category) MA5	
Statutory Sentence	0 to 1 yr @ Level V and up to \$2,300 fine
Presumptive Sentence	1st Offense w/16-4764 First Offender Program: Minimum 12 m. @ Level I (7/12/05) 1st Offense: 12 m. @ Level II 2nd Offense w/in 2 Years: 6 m. @ Level III & 6m. @ Level II 3rd Offense w/in 3 Years: 6 m. @ Level V
Acceptance of Responsibility	Up to 9 months @ Level II

Crimes in Category

16-4740	<u>Sale of Pseudoephedrine/Ephedrine</u>
16-4759(b)	<u>Registrant Crimes</u> Violates (a)(3)

Supplemental Notations for Class A Misdemeanors (Controlled Substances):

All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Any violations of Title 16, §§4751-4761: 16-4763(c) If Defendant moved to this State in order to commit offense penalty shall be increased by 1 yr at Level V
Any offenses under Title 16, Chapter 47: 16-4763(d) Substance Abuse Treatment: Upon request of D.O.C. the Defendant may be placed during last 180 d. of Level V sentence in quasi-incarceration @ Level IV
Costs of prosecution may be ordered. (Title 11, §4204(i))

Class B Misdemeanors

Sentence Range (Class B Misdemeanors) MB	
Statutory Sentence	0 to 6m. @ Level V and up to \$1,150 fine
Presumptive Sentence	1st &/or 2nd offense: Fine, Costs, Restitution Only 3rd Offense w/in 2 yrs: up to 6m. @ Level I or II

Crimes in Category

11-628	<u>Vehicular Assault 3rd Degree (see note)</u> Criminal negligence: physical injury
11-653	<u>Issuing Abortion Articles</u>
11-812(b)(1)	<u>Possession of Graffiti Implements (see note)</u>
11-820	<u>Trespass with Intent to Peep</u>
11-858(a)(2)	<u>Unlawful Operation Recording Device (Still Photograph)</u>
11-910	<u>Debt Adjusting</u>
11-918	<u>Ticket Scalping</u>
11-1106	<u>Unlawful Dealing with Child</u>
11-1113(a)	<u>Criminal Non-support (see note)</u>
11-1114	<u>Body Piercing & Tattoos</u>
11-1114A(b)	<u>Tongue Splitting 2nd Degree</u> Performed by doctor/dentist and recipient is: (1)under the influence/ (2)minor w/out legal guardian's consent
11-1241	<u>Refusing to Aid Police Officer</u>
11-1248	<u>Obstructing Control of Rabies</u>
11-1271(1)	<u>Criminal Contempt</u> Disorderly Behavior
11-1273	<u>Unlawful Grand Jury Disclosure</u>
11-1313	<u>Malicious Interference with Emergency Communications</u>
11-1325A(a)	<u>Trade in Dog/Cat Byproducts (Fur/Hair)</u>
11-1333	<u>Trading in Human Remains/Funerary Objects</u>
11-1334	<u>Unlawful Use of Unmanned Aircraft System</u> (second or subsequent offense)
11-1341	<u>Lewdness</u>
11-1342	<u>Prostitution</u>
11-1355	<u>Permitting Prostitution</u>
11-1444(a)(6)	<u>Possession of Destructive Weapon</u> (if possession only of bump stock/trigger crank and 1 st offense)
11-1452	<u>Unlawful Dealing with Knuckles-Combination Knife (see note)</u>
11-1453	<u>Unlawful Dealing with Martial Arts Throwing Star (see note)</u>
11-1456	<u>Unsafe Storage of Firearm</u> (not enhanced)
11-1457(j)(2)	<u>Poss. Weapon in Safe School/Recreation Zone</u> (Underlying Offense: Unclassified Misdemeanor)(see note)
16-4761(b)	<u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u> Any person who violates subsection (a) of this section and there is an aggravator
16-4763	<u>Possession of Controlled Substances or Counterfeit Controlled Substances</u>
16-4764(a)	<u>Possession of Marijuana</u> aggravating factor (school zone or interference with police) other than a personal use quantity

16-4770(b)(1)	<u>Unlawful Possession of Drug Masking Product</u>
16-4774(a)	<u>Drug Paraphernalia</u>

Supplemental Notations Class B Misdemeanors:

All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-812 (b)(1)	<p><u>Possession of Graffiti Implements</u> Min. fine of not less than \$500 which shall not be subject to suspension, restitution for damages to property and 100 hours of community service, at least half of which shall be served removing graffiti on public property. The minimum fine and community service hours shall be doubled for a second or subsequent conviction of possession of graffiti implements. The minimum fine shall also be doubled, and may not be suspended, for a first, second, or subsequent conviction of an act of graffiti which is performed along a Delaware byway, as defined in 17 Del. C. Section 101(a)(9).</p>
11-1113	<p><u>Criminal Non-support</u></p> <ul style="list-style-type: none"> • Court may (“shall” in the event support order entered) order any fine to be paid for the support of the entitled person • (j) Restitution shall be ordered in the amount of the total accrued arrearages
11-1452 11-1453	<p><u>Unlawful Dealing with Knuckles-Combination Knife</u> <u>Unlawful Dealing with Martial Arts Throwing Star</u></p> <ul style="list-style-type: none"> • 11-1457(b)(5&6)&(j)(1): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class A Misdemeanor. • 11-1457(j)(4):If the Defendant is an elementary or secondary school student, in addition to other penalties, the student shall be expelled for not less than 180 d.
11-1457	<p><u>Poss. Weapon in Safe School/ Recreation Zone</u> (Underlying Offense: Unclass Misdemeanor) (j)(4) An elementary or secondary school student shall be expelled for 180d.</p>

Unclassified Misdemeanors

Sentence Range (Unclassified Misdemeanors) UM	
Statutory Sentence	Up to 30d. @ Level V and up to \$575 fine
Presumptive Sentence	1st or 2nd offense: Fine, Costs, Restitution Only 3rd Offense w/in 2 yrs:0 to 6m. @ Level I or II

Crimes in Category

11-601	<u>Offensive Touching</u> (Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of Contents
11-602	<u>Menacing</u> (Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of Contents
11-627	<u>Substances Releasing Vapors or Fumes</u>
11-763	<u>Sexual Harassment</u> (Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of Contents
11-764	<u>Indecent Exposure 2nd Degree</u>
11-811(b)(3)(4)	<u>Criminal Mischief (<\$1000) (see note)</u>
11-822	<u>Criminal Trespass 2nd Degree</u> Building/ Real Property + Fenced/ Enclosed
11-850(b)(1)	<u>Unlawful Telecommunication Device (see note)</u>
11-914	<u>Unlawful Use of Consumer Identification Information</u>
11-915	<u>Unlawful Use of Credit Card Information</u>
11-915A	<u>Unlawful Printing Credit Card Receipt</u>
11-922	<u>Improper Labeling (<100) (see note) (7/10/06)</u>
11-925	<u>Video Privacy Protection</u>
11-1107	<u>Endangering Children</u>
11-1250(a)	<u>Harassment of Law Enforcement Animal</u>
11-1301	<u>Disorderly Conduct</u> (Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of Contents
11-1315	<u>Public Intoxication</u> (3rd Offense w/in 1 Year)
11-1322	<u>Criminal Nuisance</u>
11-1324	<u>Obstructing Ingress/Egress at Public Building</u>
11-1334	<u>Unlawful Use of Unmanned Aircraft System</u> 1 st Offense without physical injury to person/damage to property
11-1343	<u>Patronizing a Prostitute (see note)</u>
11-1404	<u>Providing Premises for Gambling</u>
11-1445 (1-3)	<u>Unlawful Dealing with Dangerous Weapon</u> (1) Possess/Sell BB/Air gun or ammunition for same/ (2)Unlawfully transfer to u/16 a BB/Air gun/ (3)Parent permits u/16 to have FA, BB/ Air/ Spear gun unsupervised
11-1446	<u>Unlawful Dealing with Switchblade (see note)</u>
11-1907(c)	<u>Fail to Answer Summons (see note)</u>
11-2109(c)(2)	<u>Breach of Conditions of Bail (see note)</u>
11-2113	<u>Breach Conditions of Release (Misdemeanor) (see note)</u>
11-6562A	<u>Furnishing Contraband</u>
16-2513(a)	<u>Threat/Coerce/Intimidate to W/D Medical Treatment (see note)</u>
16-3111(b)	<u>Violations Concerning Vital Statistics Records (see note)</u>

16-4761(a)	<u>Illegal Possession of Noncontrolled Prescription Drugs</u>
16-4764(b)	<u>Possession of Marijuana</u> <ul style="list-style-type: none"> • Quantity other than personal use 16-4714(d)(19); • Fine not more than \$575 and imprisonment not more than 3 months or both
16-4764(c)(3)	<u>Possession of Marijuana</u> <ul style="list-style-type: none"> • less than 21 years of age • Possess/Private use/consumption • a personal use quantity third or subsequent offense
16-4764 (d)	<ul style="list-style-type: none"> • <u>Possession of Marijuana</u> • Personal use/consumption in a personal use quantity of controlled/counterfeit substance • In an area accessible to the public or in a moving vehicle • Fined not more than \$200, imprisoned not more than 5 days or both
16-4774(e)	<u>Advertisement and Promotion of Drug Paraphernalia</u>
16-6611(b)	<u>Violation of Fire Regulations (see note)</u>
29-4810	<u>Underage Gambling (see note)</u>

Supplemental Notations Unclassified Misdemeanors:

All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-811(b)(3)(4)	<p><u>Criminal Mischief</u></p> <ul style="list-style-type: none"> • (4) If the act is committed along a Delaware byway, as defined in 17 Del. C. Section 101(a)(9), the court shall impose a minimum mandatory fine of at least \$500.
11-850(b)(1)	<p><u>Unlawful Telecommunication Device</u></p> <ul style="list-style-type: none"> • Punishable by up to 1 yr at Level V; Fine up to \$10,000 • (b)(7) All fines shall be imposed for each unlawful telecommunication or access device • (b)(8) Restitution shall be ordered in the manner prescribed by §4106 • (b)(9) The court may order forfeiture of unlawful device(s)
11-922	<p><u>Improper Labeling (<100)</u></p> <p>11-924A: Court must order the forfeiture & destruction or other disposition of (1) all articles on which the conviction is based and (2) all implements, devices, materials & equipment used or intended to be used in the mfr of the recordings on which the conviction is based.</p>
11-1343	<p><u>Patronizing a Prostitute</u></p> <ul style="list-style-type: none"> • (b) Minimum Mandatory Fine= \$500, which shall not be suspended • (c)/(d) For a prior conviction w/in 5 yrs, any vehicle used in connection shall be seized
11-1446	<p><u>Unlawful Dealing with Switchblade</u></p> <ul style="list-style-type: none"> • 11-1457(b)(3)&(j)(2): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class B Misdemeanor. • 11-1457(j)(4): If the Defendant is an elementary or secondary school student, in addition to other penalties, the student shall be expelled for not less than 180 d.
11-1907	<p><u>Fail to Answer Summons</u></p> <p>Maximum penalty: 30 d. imprisonment &/or \$100 fine.</p>
11-2109(c)(2)	<p><u>Breach of Conditions of Bail</u></p> <p>Maximum penalty: Imprisonment not to exceed 1 year or a fine of \$500.00 or both.</p>
11-2113	<p><u>Breach Conditions of Release (Misdemeanor)</u></p> <p>Maximum penalty: Not to exceed 1 yr. imprisonment &/or \$500 fine.</p>
16-2513(a)	<p><u>Threat/Coerce/Intimidate to W/D Medical Treatment</u></p> <p>Mandatory penalty: >\$500/<\$1,000 fine; >30 d. /<90 d. imprisonment</p>
16-3111(b)	<p><u>Violations Concerning Vital Statistics Records</u></p> <p>Maximum penalty: Fine up to \$1,000; Imprisonment up to 1 yr.</p>
16-6611(b)	<p><u>Violation of Fire Regulations</u></p> <ul style="list-style-type: none"> • Reckless violation-Maximum penalty: up to 10 d. imprisonment &/or up to \$100 fine. • Each & every day the violation continues after notification shall be deemed a separate offense
29-4810(a)	<p><u>Underage Gambling</u></p> <ul style="list-style-type: none"> • JP Court has jurisdiction for adults; Family Court has jurisdiction <18; • 5 hours of counseling must be completed

Violations

Sentence Range (Violations) V	
Statutory Sentence	1st offense: Up to \$345 2nd offense (same violation): Up to \$690 3rd offense (same viol. W/in 5 yrs): Up to \$1150
Presumptive Sentence	1st or 2nd offense: Fine, Costs, Restitution Only 3rd Offense w/in 2 yrs: Up to 6m. @ Level I

Crimes in Category

11-821	<u>Criminal Trespass 3rd Degree</u>
11-1116	<u>Tobacco Sale Violations: Sell/Distribute to u/21 (see note)</u>
11-1117	<u>Tobacco Sale Violations: Fail to Post Notice to u/21 (see note)</u>
11-1118	<u>Tobacco Sale Violations: Dist Samples/Coupons to u/21 (see note)</u>
11-1119	<u>Tobacco Sale Violations: Dist by Vending Machine (see note)</u>
11-1120	<u>Tobacco Sale Violations: Sell from Unlawful Package (see note)</u>
11-1315	<u>Public Intoxication</u>
11-1316	<u>Out-of-State Liquor Agent Registration (see note)</u>
11-1320	<u>Loitering on State-Supported School Property</u>
11-1321	<u>Loitering</u>
11-1323	<u>Obstructing Public Passages</u>
11-1330	<u>Smoking on Bus or Trolley</u>
11-1407	<u>Engaging in Crap Game</u>
11-1428	<u>Maintaining an Obstruction</u>
11-1461	<u>Report of Loss, Theft of Firearm</u>

Supplemental Notations for Violations:

All Criminal fines require 18% surcharge for Victims fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-1116, 111811120 (penalties §11-1121)	<ul style="list-style-type: none"> Tobacco Sale Violations to p < 21 yoap > 18 civil penalty, p < 18 violation Mandatory Fines: 1st offense= \$250, 2nd offense= \$500, 3rd and subsequent offenses= \$1,000 Prior conviction w/in 12 m.: Defendant's license to sell tobacco may be suspended for up to 6m. w/out refund of registration fees
11-1316	<u>Out-of-State Liquor Agent Registration</u> Violations shall result in the loss of the right to register or registration for period of 6m.
11-1461	<u>Report of Loss, Theft of Firearm</u> <ul style="list-style-type: none"> For the first offense be guilty of a violation and be subject to a civil penalty of not less than \$75.00 nor more than \$100.00. For a second offense committed at any time after the sentencing or adjudication of a first offense, be guilty of a violation and be subject to a civil penalty of not less than \$100.00 nor more than \$250.00.

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)</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. 	

<p>21-4175A</p>	<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.
<p>21-4176</p>	<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
<p>21-4176A</p>	<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
<p>21-4176E</p>	<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.
<p>21-4177(d)(15)</p>	<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.
<p>21-4177(d)</p>	<p><u>Driving Vehicle While Under the Influence</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 not to exceed a total of 15m & to pay a fee not to exceed the maximum fine; (4) 12m DL revocation; if BAC .15-.19 Revocation 18m; if BAC >.19 Revocation 24m • 2nd Offense: Occurring within 10 years of prior offense: (1)60d-18m @ Level V, minimum sentence may not be suspended; The sentencing Court may suspend the minimum sentence set forth in this subsection upon the condition that the offender shall successfully complete the Court of Common Pleas Driving Under the Influence Treatment Program. (2) Fine = \$750-\$2,500;(3) Completion of alcohol evaluation and program (4177)(d)(12)(f);(4) 18m DL revocation; if BAC is .15-.19 Revocation 24m; if BAC >.19 Revocation 30m.(5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period; • If BAC > .14: p may not operate mv without ignition interlock device (4177C) • P < 17 yoa for first offense additional fine \$500 - \$1,500 and a min 40 hours of community service in a program benefiting children; for each subsequent like offense, additional fine \$750 - \$2,500 and a min 80 hours of community service in a program benefiting children. 4177(d)(10)

<p>21-4177L</p>	<p>Driving by persons under the age of 21 after consumption of alcohol; penalties</p> <p>(a) Whoever, being under the age of 21 years, drives, operates or has actual physical control of a vehicle, an off-highway vehicle or a moped while consuming or after having consumed alcoholic liquor shall have that person's driver's license and/or privileges revoked for a period of 2 months for the first offense and not less than 6 months nor more than 12 months for each subsequent offense. If the underage person does not have a driver's license and/or privileges, the person shall be fined \$200 for the first offense and not less than \$400 nor more than \$1,000 for each subsequent offense.</p>
<p>21-4201</p>	<p><u>Leaving the Scene of an Accident</u> Mandatory Minimum Sentence: (1) 60d.-6m. imprisonment; (2) Fine \$230-\$1,150; (3) 6m. driver's license revocation.</p>
<p>21-4202</p>	<p><u>Leaving the Scene of an Accident (Injury/Death)</u> Mandatory Minimum Sentences:</p> <ul style="list-style-type: none"> • (b) Injury (unclassified misdemeanor): (1) 1-2 yrs. imprisonment; (2) Fine= \$1,000-\$2,000; (3) 1 yr. driver's license suspension • (c) Death (class E felony): (1) 1 yr. minimum imprisonment of which the first 6m. may not be suspended; (2) 2 yr. driver's license suspension
<p>23-2302</p>	<p><u>Operation of a Vessel or Boat While Under the Influence</u> Mandatory Minimums:</p> <ul style="list-style-type: none"> • (1) 1st Offense: (1) 60d.-6m. @ Level V &/or (2) Fine= \$200-\$1,000 • (2) 2nd Offense w/in 5 yrs: (1) 60d.-18m. @ Level V and (2) Fine= \$500-\$2,000; minimum sentence may not be suspended and (3) completion of a program of education or rehabilitation which may include inpatient program and followed by such other programs as established by the training facility, not to exceed a total of 15 months, and pay a fee not to exceed the maximum fine (see subsection 8) • (3) 3rd Offense w/in 5 yrs: (Class G Felony): (1) 1-2 yrs. @ Level V (first 3m. must be @ Level V and shall not be subject to suspension, early release, furlough or reduction of any kind) and (2) Fine= \$1,000-\$3,000 and (3) completion of a program of education or rehabilitation which may include inpatient program and followed by such other programs as established by the training facility, not to exceed a total of 15 months, and pay a fee not to exceed the maximum fine (see subsection 8) • (4) 4th or Subsequent Offense: (Class E Felony): (1) 2-5 yrs. @ Level V (first 6m. must be @ Level V and shall not be subject to suspension, early release, furlough or reduction of any kind) and (2) Fine: \$2,000-\$6,000 and (3) completion of a program of education or rehabilitation which may include inpatient program and followed by such other programs as established by the training facility, not to exceed a total of 15 months, and pay a fee not to exceed the maximum fine (see subsection 8) • (5)(a) Aggravating factor-If a juvenile <17 y.o.a. was on board, then: <ul style="list-style-type: none"> • 1st Offense: Additional fine= \$200-\$1,000 and 40 hrs. community service • Subsequent Offense: Additional fine= \$500-\$2,000 and 80 hrs. community service

Summary of Drug Offenses- Class B Felonies

Class B Felony (Violent)

Sentence Range (Violent Category) FBV	
Statutory Range	2 to 25 Years (First 2 yrs @ Level V may not be suspended. 11-4205(d))
Presumptive Sentence	2 – 5 yrs;
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> • (b)(1) 2 years for violent felonies; (b)(2) 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:

16-4752	<p><u>Drug dealing or possession</u></p> <p>(1) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 3 quantity;</p> <p>(2) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 2 quantity, and there is an aggravating factor;</p> <p>(3) Possesses a controlled substance in a Tier 3 quantity;</p>
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Summary of Drug Offenses- Class C Felonies

Class C Felony (Violent)

Sentence Range (Violent Category) FCV	
Statutory Range	0 to 15 years @ Level V
Presumptive Sentence	Up to 30 months @ Level V
Acceptance of Responsibility	Up to 22 mos. @ Level V
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> • (b)(1) 2 years for violent felonies; (b)(2) 1 year for all • (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:

16-4753(a)(1)	<p><u>Drug dealing</u> Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 2 quantity</p>
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Class C Felony (Non-violent)

Sentence Range (Nonviolent Category) FCN	
Statutory Range	0 to 15 years @ Level V
Presumptive Sentence	Up to 1 yr @ Level V
Acceptance of Responsibility	Up to 9 months @ 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.

16-4757(c)(1)	<p><u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes</u> (1) A person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30 day period to violate any provision or subsection of 4757(a).</p>
16-4760A	<u>Operate or Attempt to Operate a Clandestine Laboratory</u>

Summary of Drug Offenses- Class D Felonies

Class D Felony (Violent)

Sentence Range (Violent Category) FDV	
Statutory Range	0 to 8 years @ Level V
Presumptive Sentence	Up to 2 years @ Level V
Acceptance of Responsibility	Up to 18 mos. @ 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:

16-4754	Drug dealing Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance
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Class D Felony (Non-violent)

Sentence Range (Nonviolent Category) FDN	
Statutory Range	0 to 8 years @ Level V
Presumptive Sentence	Up to 12 months @ Level II or III
Presumptive Sentence DUI	2 year minimum term of imprisonment can be suspended pursuant to Title 21 Section (d)9 with a treatment program at Level 4 or Level 5 for a long term treatment program
Acceptance of Responsibility	Up to 9 months at Level II or III
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.

Summary of Drug Offenses- Class E Felonies

Class E Felony (Violent)

Sentence Range (Violent Category): FEV	
Statutory Range	0 to 5 years @ Level V
Presumptive Sentence	Up to 15 m. @ Level V
Acceptance of Responsibility	Up to 11 mos. @ 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:

16-4770(b)(2)	<u>Drug Masking Product (PWID)</u>
16-4774(d)	<u>Delivery Drug Paraphernalia to Minor</u>

Class E Felony (Nonviolent)

Sentence Range (Nonviolent Category) FEN	
Statutory Range	0 to 5 years @ Level V
Presumptive Sentence	Up to 12 m. @ Level II
Acceptance of Responsibility	Up to 9 mos. @ Level II
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:

16-4753(a)(2)	<u>Possession</u> in a Tier 2 quantity
16-4755	[Repealed]
16-4758	<u>Unlawfully dealing in a counterfeit or purported controlled substance</u>

Summary of Drug Offenses- Class F Felonies

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:

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
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Summary of Drug Offenses- Class F Felonies

Class F Felony (Nonviolent)

Sentence Range (Nonviolent Category) FFN	
Statutory Range	0 to 3 years @ Level V
Presumptive Sentence	Up to 12 m. for Title 11 offenses; up to 18 months for Title 16 offenses @ Level II
Acceptance of Responsibility	Up to 9 mos. @ Level II for Title 11 offenses Up to 14 mos. @ Level II for Title 16 offenses
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:

16-4757(b)	<p><u>Miscellaneous Drug Crimes</u></p> <p>(1)To distribute as a registrant controlled substance classified in Schedule I or II except pursuant to an order form as required by Section 4738 of this chapter;</p> <p>(2)To use in the course of manufacture, distribution, prescribing, dispensing, or research of a controlled substance, a registration number which is fictitious, revoked, suspended, expired or issued to another person;</p> <p>(3)To acquire or obtain or attempt to acquire or obtain, possession of a controlled substance or prescription drug by misrepresentation, fraud, forgery, deception or subterfuge;</p> <p>(4)To furnish false or fraudulent material information in or omit any material information from, any application, report or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter;</p> <p>(5)To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance;</p> <p>(6)To acquire or attempt to or obtain possession of a controlled substance by theft;</p> <p>(7)To prescribe, or administer to another, any anabolic steroid, as defined in Section 4718(f) of this title, for the purposes of increasing human muscle weight or improving human performance in any form of exercise, sport, or game.</p>
16-4759(b)(1,2,4)	<p><u>Registrant Crimes</u></p> <p>Violates (a)(1), (a)(2), or (a)(4)</p>
16-4760	<p><u>Maintaining a Drug Property</u></p>

Summary of Drug Offenses- Class G Felonies

Class G Felony (Violent)

Sentence Range (Violent Category) FGV	
Statutory Range	0 to 2 years @ Level V
Presumptive Sentence	Up to 6 m. @ Level V. For 16-4767 & 16-4768: 3 - 9 m. @ Level V.
Acceptance of Responsibility	Up to 4 mos. @ 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:

16-4761(c)	<u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u> Any person who violates subsection (a) of this section and delivers, or intends to deliver the prescription drug to another
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Supplemental Notations:

Class G Felony (Nonviolent)

Sentence Range (Nonviolent Category) FGN	
Statutory Range	0 to 2 years @ Level V
Presumptive Sentence	Up to 12 m. @ Level II
Acceptance of Responsibility	Up to 9 mos. @ Level II
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:

16-4756	<u>Drug Possession</u> A person who possesses a controlled substance in a Tier 1 quantity
16-4762(d)	<u>Hypodermic syringe or needle; delivering or possessing; disposal</u>
16-4774(c)	<u>Drug paraphernalia</u> Manufacture and sale

Summary of Drug Offenses- Misdemeanors

Class A Misdemeanor

Sentence Range (Controlled Substance Category) MA5	
Statutory Sentence	0 to 1 yr @ Level V and up to \$2,300 fine
Presumptive Sentence	1st Offense w/16-4764 First Offender Program Minimum 18 m. @ Level I(7/12/05) 1st Offense 12 m. @ Level II 2nd Offense w/in 2 Years: 6 m. @ Level III & 6m. @ Level II 3rd Offense w/in 3 Years: 6 m. @ Level V
Acceptance of Responsibility	Up to 9 mos @ Level II

Crimes in Category:

16-4740	<u>Sale of Pseudoephedrine/Ephedrine</u>
16-4759(b)	<u>Registrant Crimes</u> Violates (a)(3)
16-4763(a)	[Repealed]

Class B Misdemeanor

Sentence Range (Class B Misdemeanors) MB	
Statutory Sentence	0 to 6m. @ Level V and up to \$1,150 fine
Presumptive Sentence	1st &/or 2nd offense: Fine, Costs, Restitution Only 3rd Offense w/in 2 yrs: up to 6m. @ Level I or II

Crimes in Category:

16-4761(b)	<u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u> Any person who violates subsection (a) of this section and there is an aggravator
16-4763(b)	<u>Possession of Controlled Substances or Counterfeit Controlled Substances</u> Violates 4763(a)
16-4764(a)	[Repealed]
16-4770(b)(1)	<u>Possession of Drug Masking Product</u>
16-4774(a)	<u>Drug Paraphernalia</u>

Summary of Drug Offenses- Misdemeanors:

Unclassified Misdemeanors

Sentence Range (Unclassified Misdemeanors) UM	
Statutory Sentence	Up to 30d. @ Level V and up to \$575 fine
Presumptive Sentence	1st or 2nd offense: Fine, Costs, Restitution Only 3rd Offense w/in 2 yrs:0 to 6m. @ Level I or II

Crimes in Category

16-4761(a)	<u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u>
16-4764(b), (c), (d)	<u>Possession of Marijuana [Repealed]</u> (b) possess/use/consume more than personal use quantity – up to \$575, 3 months Level V, or both (c) 18-21 possess or private use/consumption a personal use quantity, third or subsequent offense –\$100 fine (d) personal use quantity, use or consume in area accessible to public or moving vehicle – up to \$200 fine, 5 days Level V or both
16-4774(d)	<u>Advertisement of Drug Paraphernalia</u>

Civil Violations

(not criminal offenses subject to TIS; included for informational purposes)

Crimes in Category

16-4761(a)	<u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u>
16-4774(b)	<u>Possession of Drug Paraphernalia for Personal Use Quantity Marijuana</u> <ul style="list-style-type: none"> • Up to \$100 civil penalty • Note: can receive civil penalty only for paraphernalia <i>or</i> for marijuana

Controlled Substances Act

Overview

Below are several tables that graphically relate charges under the revised drug offense scheme:

1. Quantity thresholds by substance and tier;
2. Applicable aggravating factors;
3. Possession offenses by quantity tier;
4. Marijuana possession;
5. Drug dealing and manufacturing offenses by quantity tier;
6. Title 16 offenses by section number;
7. Applicable penalties by offense classification.

CONTROLLED SUBSTANCE QUANTITY TIERS (16 DEL. C. § 4751C)

SUBSTANCE	TIER 1:	TIER 2:	TIER 3:
Cocaine	≥5g	≥10g	≥ 25g
Morphine / Opium / Heroin	≥1g	≥2g	≥ 5g
Marijuana	≥175g	≥1,500g	≥ 5,000g
Methamphetamine	≥5g	≥10g	≥ 25g
Amphetamine	≥5g	≥10g	≥ 25g
PCP	≥5g	≥10g	≥ 25g
LSD	≥2.5 ml or ≥25 doses	≥5 ml or ≥50 doses	≥ 50ml or ≥ 500 doses
Designer Drug	≥2.5 ml or ≥2.5g or ≥12.5 doses	≥5 ml or ≥5g or ≥25 doses	≥ 12.5ml or ≥ 12.5g or ≥62.5 doses
Ecstasy (MDMA)	≥2.5 ml or ≥2.5g or ≥12.5 doses	≥5 ml or ≥5g or ≥25 doses	≥ 12.5ml or ≥ 12.5g or ≥62.5 doses
Prescription Drug: Narcotic Schedule II or III	≥3g or ≥30 doses	≥ 6g or ≥ 60 doses	N/A

"Dose" is defined by 16 DEL. C. § 4701(14) (2011).

AGGRAVATING FACTORS (16 DEL. C. § 4751A)

a)	Offense committed within a protected school zone
e)	Defendant, during or immediately following the commission of any offense in this Title, intentionally <ul style="list-style-type: none">○ Prevented or attempted to prevent officer from making an arrest by use of violence or force; or○ Fled in a vehicle from a law enforcement officer, thereby creating a substantial risk of physical injury to other persons○ Cannot use and charge with Resisting Arrest

PWI OFFENSES BY QUANTITY TIER

<u>QUANTITY (TIER):</u>	<u>NO PRIOR CONVICTIONS:</u>
Tier 1	Class D Felony § 4754(a)
Tier 2	Class C Felony 4753(a)(1)
Tier 3	Class B Felony§ 4752(a)(1)
Tier 2 + aggravating factor	Class B Felony § 4752(a)(3)

MARIJUANA POSSESSION OFFENSES

<u>QUANTITY</u>	<u>ACTION</u>	<u>CONDITION</u>	<u>STATUTORY REFERENCE AND PENALTY</u>
Personal Use	Use or Consume	Private	Civ. Penalty up to \$100 (4764(c)(1), (2)) ²¹
Personal Use	Use or consume	Area Accessible to Public ²² or Moving Vehicle	Uncl. Misd. (4764(d)) (up to \$200, 5 days or both)
More than personal use	Possess, use or consume		Uncl. Misd. (4764(b)) (up to \$575, 3 mos, or both)

²¹ If < 21 yoa, 2d violation \$200-\$500 fine, 3d violation unclassified M and \$100 fine.

²² Areas accessible to the public include “sidewalks, streets, alleys, parking lots, parks, playgrounds, stores, restaurants, and any other areas to which the general public is invited,” outdoor locations within 10 feet of such areas, and outdoor locations within “10 feet from the entrances, exits, windows that open, or ventilation intakes of any public or private building.” 16 *Del. C.* § 4764(d).

TITLE 16 OFFENSES BY SECTION NO.

<u>16 DEL. C. §:</u>	<u>OFFENSE:</u>	<u>NO PRIOR CONVICTION:</u>
4752	(a)(1): Del/ Mfg./PWI Tier 3	Class B Felony
	(a)(2): Poss. Tier 3	Class B Felony
	(a)(3): Del/Mfg./PWI Tier 2 +Aggravator	Class B Felony
4753	(a)(1): Del./Mfg./PWI Tier 2	Class C Felony
	(a)(2): Poss. Tier 2	Class E Felony
4754	(a): Del./Mfg./PWI	Class D Felony
4756	Possession Tier 1	Class G Felony
4761(d)	Del./PWI of Non-Ctl. Prescription Drug + Aggravating Factor	Class F Felony
4763	(b): Poss./ Consume Ctrl. Substance Not Marijuana	Class B Misdemeanor
4774	(a): Use / Possession with / Intent to Use Drug Paraphernalia other than with marijuana	Class B Misdemeanor
	(b): Use / Possession with / Intent to Use Drug Paraphernalia for Personal Use Quantity Marijuana	\$100 Civil Penalty

PENALTIES BY OFFENSE CLASSIFICATION

	<u>OFFENSE CLASSIFICATION</u>	<u>PENALTIES</u>
Felonies	Class B	2 to ≤ 25 years @ Level 5
	Class C	≤ 15 years @ Level 5
	Class D	≤ 8 years @ Level 5
	Class E	≤ 5 years @ Level 5
	Class F	≤ 3 years @ Level 5
	Class G	≤ 2 years @ Level 5
Misdemeanors	Class A	≤ 1 year @ Level 5 and ≤ \$ 2,300 fine
	Class B	≤ 6 months @ Level 5 and ≤ \$1,150 fine
	Unclassified	≤ 30 days @ Level 5 and ≤ \$575 fine; unless otherwise defined by statute (e.g., §§ 4764(b), (c), & (d))

SENTAC CONTROLLED SUBSTANCE "SUPER WEIGHTS"			
<u>SUBSTANCE</u>	<u>4-10 YEARS</u>	<u>6-12 YEARS</u>	<u>8-15 YEARS</u>
Cocaine	≥100g	≥250g	≥500g
Morphine / Opium / Heroin	≥20g	≥50g	≥100g
Marijuana	≥15,000g (33 lbs.)	≥37,500g (83 lbs.)	≥75,000g (165 lbs.)
Methamphetamine	≥100g	≥250g	≥500g
Amphetamine	≥100g	≥250g	≥500g
PCP	≥100g	≥250g	≥500g
LSD	≥50 ml or ≥500 doses	≥125ml or ≥1,250 doses	≥250 ml or ≥ 2,500 doses
Designer Drug	≥50 ml or ≥50 g or ≥250 doses	≥125ml or ≥125g or ≥625 doses	≥250 ml or ≥250g or ≥1,250 doses
Ecstasy (MDMA)	≥50 ml or ≥50 g or ≥250 doses	≥125ml or ≥125G or ≥625 doses	≥250 ml or ≥250g or ≥1,250 doses
Prescription Drug: Narcotic Schedule II or III	≥30g or ≥300 doses	≥75g or ≥750 doses	≥150g or ≥1,500 doses

- "Dose" is defined by 16 DEL. C. § 4701(14) (2011).

AGGRAVATING AND MITIGATING FACTORS

The standard sentence range is presumed to be appropriate for the typical criminal case. The court may impose a sentence outside the standard sentence range for that offense if it finds that there are substantial and compelling reasons justifying an exceptional sentence.

The following aggravating and mitigating circumstances for exceptional sentences are provided as examples and are not intended to be exclusive reasons for departure. An aggravating or mitigating circumstance, whether listed below or not, shall only apply if it does not reflect the statutory language defining the current offense, or constitute an element thereof.

When an exceptional sentence is decreed, the governing factor(s) leading to the exceptional sentence must be stated for the record, and should be identified in the sentencing order or on the sentencing worksheet.

Aggravating Factors:

- A1 Excessive Cruelty
- A2 Prior Violent Criminal Conduct
- A3 Repetitive Criminal Conduct
- A4 Need for Correctional Treatment
- A5 Undue Depreciation of Offense
- A6 Major Economic Offense or Series of Offenses
- A7 Prior Abuse of Victim
- A8 Custody Status at Time of Offense
- A9 Lack of Remorse
- A10 Betrayal of Public Trust
- A11 Supervision to Monitor Restitution
- A12 Lack of Amenability
- A13 Vulnerability of Victim
- A14 Statutory Aggravation
- A15 Statutory Habitual Offender
- A16 Child Domestic Violence Victim
- A17 Offense Against a Child
- A18 Sentenced to Time Already Served Only

Mitigating Factors:

- M1 Victim Involvement
- M2 Voluntary Redress or Treatment
- M3 Under Duress or Compulsion
- M4 Inducement By Others
- M5 Physical/Mental Impairment
- M6 Concern for Victim by Non-Principal
- M7 No Prior Convictions
- M8 Treatment Need exceeds Need for Punishment
- M9 Could Lose Employment
- M10 Statutory Mitigation
- M11 Assistance to Prosecution
- M12 Mental Retardation
- M13 Other

Description of AGGRAVATING FACTORS For Exceptional Sentences

Violent Felonies Only:

EXCESSIVE CRUELTY

- a. Those facts surrounding the commission of a violent felony which demonstrate such a callousness and cruelty towards the victim as to shock the conscience of the Court.
- b. Allowable Penalty: Up to the statutory maximum for the instant offense.

PRIOR VIOLENT CRIMINAL CONDUCT

- a. Defendant has demonstrated, by his prior criminal history, a propensity for violent criminal conduct. (SEE POLICY NO. 4)
- b. Recommended Penalties:
 1. With two or more prior, separate violent felonies --Up to the statutory maximum.
 2. With one prior violent felony -- up to 50% of the statutory maximum.

Summary: Standard Prior History Categories for Violent Felonies

Category	Factor	Fel A	Fel B	Fel C	Fel D	Fel E	Fel F	Fel G
A	One or less prior felonies	Presumptive Sentence						
B	While on release or pending trial/sentencing	Level V for up to the time shown below:						
		25 yrs	10 yrs	5 yrs	4 yrs	2.5 yrs	1.5 yrs	1 yr
C	Two or more prior felonies	25 yrs	10 yrs	5 yrs	4 yrs	2.5 yrs	1.5 yrs	1 yr
D	One prior violent felony	25 yrs	10 yrs	5 yrs	4 yrs	2.5 yrs	1.5 yrs	1 yr
E	Two or more prior violent felonies	Life	25 yrs	15 yrs	8 yrs	5 yrs	3 yrs	2 yrs
F	Excessive Cruelty	Life	25 yrs	15 yrs	8 yrs	5 yrs	3 yrs	2 yrs

If violent crime is a secondary offense, use up to the presumptive sentence.

Aggravated Prior History Sentences at Level V for Nonviolent Felonies

H	Repetitive criminal history	NA	NA	24 months	Up this number of months:			
					24	15	9	6
J	Lack of amenability to lesser sanctions	NA	NA	24 months	Up to this number of months:			
					24	15	9	6

If nonviolent crime is a secondary offense, use the nonaggravated presumptive sentence.

Any Offense:

REPETITIVE CRIMINAL CONDUCT

Definition: Repetitive Criminal Conduct is conviction or adjudication for the same or similar offense on two or more previous, separate occasions. (SEE POLICY NO. 14)

NEED FOR CORRECTIONAL TREATMENT

The defendant is in need of correctional treatment which can be most effectively provided if he is placed in total confinement.

UNDUE DEPRECIATION OF OFFENSE

It would unduly depreciate the seriousness of the offense to impose a sentence of other than total confinement.

MAJOR ECONOMIC OFFENSE OR SERIES OF OFFENSES:

Identified by a consideration of any of the following factors:

- a. The offense involved multiple victims or multiple incidents per victim;
- b. The offense involved attempted or actual monetary loss substantially greater than typical for the offense;
- c. The offense involved a high degree of sophistication or planning, or occurred over a lengthy period of time;
- d. The defendant used his/her position of trust, confidence or fiduciary responsibility to facilitate the offense.

PRIOR ABUSE OF VICTIM:

On prior occasions, the defendant has harassed, threatened, or physically abused the victim of the current offense.

CUSTODY STATUS AT TIME OF OFFENSE:

The offender was on bail, early release from incarceration, or was serving a sentence in other than Level V at the time the offense was committed.

LACK OF REMORSE

The offender has demonstrated a total lack of remorse or acceptance of responsibility with regard to the offense.

BETRAYAL OF PUBLIC TRUST

The offender, in attempting to gain, or while holding, public office by appointment or election, betrayed the Public Trust by his or her unlawful conduct.

SUPERVISION TO MONITOR RESTITUTION

A long period of supervision is necessary to monitor the offender's restitution responsibilities. Penalty Note: Applicable to sentences involving less than Level V time only.

LACK OF AMENABILITY

The defendant has demonstrated a lack of amenability to lesser restrictive sanctions through violation of a prior period of probation, or a failure to meet the conditions of a prior or current period of probation.

VULNERABILITY OF VICTIM

The Defendant knew, or should have known, that the victim of the offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.

STATUTORY AGGRAVATION

The current offense carries with it a statutory minimum mandatory period of incarceration which exceeds the sentencing guidelines.

STATUTORY HABITUAL OFFENDER

The Court, on motion, determined the defendant to be an habitual offender under the provisions of 11 Del.C., s4214, thus calling for a sentence of incarceration which exceeds the sentencing guidelines.

CHILD DOMESTIC VIOLENCE VICTIM

The person who is a victim in domestic violence is a child.

OFFENSE AGAINST A CHILD

The victim in the offense was a child under 16 years old.

CRIMES COMMITTED AGAINST PERSONS 62 YEARS OF AGE OR OLDER

An additional penalty of \$100.00 shall be imposed on all crimes committed against persons 62 years of age or older. The penalty assessment shall be placed in a special fund called the Senior Trust Fund.

Description of MITIGATING FACTORS for Exceptional Sentences

VICTIM INVOLVEMENT:

To a significant degree, the victim was an initiator, willing participant, aggressor, or instigator of the incident.

VOLUNTARY REDRESS OR TREATMENT:

Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained, or, before detection, he voluntarily sought professional help for drug/alcohol treatment, or for any other recognized compulsive behavioral disorders related to the offense.

UNDER DURESS OR COMPULSION:

The defendant committed the crime under duress, coercion, emotional distress, threat or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

INDUCEMENT BY OTHERS:

The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

PHYSICAL/MENTAL IMPAIRMENT:

The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants (drugs or alcohol) does not fall within the purview of this circumstance.

CONCERN FOR VICTIM BY NON-PRINCIPAL:

The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

NO PRIOR CONVICTIONS

TREATMENT NEED EXCEEDS NEED FOR PUNISHMENT:

The offender is in greater need of an available treatment program than of punishment through incarceration.

COULD LOSE EMPLOYMENT:

The offender is gainfully employed and will more than likely lose his/her job if the sentencing standard is imposed.

STATUTORY MITIGATION

ASSISTANCE TO PROSECUTION:

Defendant rendered substantial assistance to Authorities in the investigation and/or prosecution of this or other crimes.

MENTAL RETARDATION

- a. Defendant is "significantly sub average in general intellectual function" (usually interpreted as an IQ score of 70 or less); AND
- b. "has deficits in adaptive behavior" (has insufficient life skills to get along without constant assistance from others); AND
- c. "manifested the above handicaps during the developmental period". (usually interpreted as having experienced the onset of handicap at the age of 21 or younger).

QUALIFYING UNDERLYING OFFENSES FOR TITLE 11 SECTION 1105: Crime Against a Vulnerable Adult:

Title 11:

Section 601.	Offensive touching
Section 602(a)	Menacing
Section 602(b)	Aggravated Menacing
Section 603	Reckless endangering in the second degree
Section 604	Reckless endangering in the first degree
Section 605	Abuse of a pregnant female in the second degree
Section 606	Abuse of a pregnant female in the first degree
Section 611	Assault in the third degree
Section 612	Assault in the second degree
Section 621	Terroristic threatening
Section 622	Hoax device
Section 625	Unlawfully administering drugs
Section 626	Unlawfully administering controlled substance or narcotic drugs
Section 645	Promoting suicide
Section 763	Sexual harassment
Section 764	Indecent exposure in the second degree
Section 766	Incest
Section 767	Unlawful sexual contact in the third degree
Section 769	Unlawful sexual contact in the first degree
Section 770	Rape in the fourth degree
Section 776	Sexual extortion
Section 780	Female genital mutilation
Section 781	Unlawful imprisonment in the second degree
Section 782	Unlawful imprisonment in the first degree
Section 783	Kidnapping in the second degree
Section 791	Acts constituting coercion
Section 803	Criminal mischief
Section 825	Burglary in the second degree
Section 831	Robbery in the second degree
Section 841	Theft, except subsection (c)(3)b.
Section 841A	Theft of a motor vehicle
Section 842	Theft; lost or mislaid property
Section 843	Theft; false pretense
Section 844	Theft; false promise
Section 846	Extortion
Section 848	Misapplication of property
Section 853	Unauthorized use of a vehicle
Section 854	Identity theft
Section 861	Forgery
Section 903	Unlawful use of credit card
Section 909	Securing execution of documents by deception
Section 914	Use of consumer identification information
Section 916	Home improvement fraud
Section 917	New home construction fraud, except (d)(3)
Section 1001	Bigamy
Section 1311	Harassment
Section 1312	Stalking, except (d)(1) and (d)(2)
Section 1335	Violation of privacy

Section 1339	Adulteration
Section 1451	Theft of a firearm

Title 6:

Section 7322	Securities fraud
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SUBSTANTIAL ASSISTANCE

Title 11 Section 4220. Modification, suspension or reduction of sentence for substantial assistance.

(a) The Attorney General may move the sentencing court to modify, reduce or suspend the sentence of any person who is convicted of any crime or offense specified in this Code, and who provides substantial assistance in the identification, arrest or prosecution of any other person for a crime or offense specified in this Code, in the laws of the United States, or any other state or territory of the United States.

(c) The provisions of Sections 4204(d) or 4217 of this Title, any court rule or any other provision of law to the contrary notwithstanding, a judge of the Court that is imposing or that has imposed a sentence, upon hearing a motion filed pursuant to subsection (a) of this section, may modify, reduce or suspend that sentence, including any minimum mandatory, or a portion thereof, if the Court finds that the person rendered such substantial assistance.

SERIOUS MEDICAL ILLNESS, INJURY, OR INFIRMITY

Title 11 Section 4221. Modification, deferral, suspension or reduction of sentence for serious medical illness, injury, or infirmity.

Notwithstanding any provision of law to the contrary, a Court may modify, defer, suspend or reduce a minimum or mandatory sentence of one year or less, or a portion thereof, required, where the court finds by clear and convincing evidence, or by stipulation of the State, that the person to be sentenced suffers from a serious medical illness, injury or infirmity with continuing treatment needs which make incarceration inappropriate and that such person does not constitute a substantial risk to the community.

EXCEPTIONAL SENTENCES

Special Categories:

Domestic Violence

The particular nature of criminal charges involving domestic violence may be considered as deserving of aggravated punishment, for example, those cases where there have been repeated incidences prior to the first formal charge in Court, and those cases where children are the witnesses or victims of domestic violence. If aggravating circumstances are present, the following recommendations are presented below. If the guidelines in this category are used, the sentencing order/worksheet must identify the charge as "Domestic Violence Involved".

Class A Misdemeanors

Statutory Range - 0 To 1 Years

11-603	Reckless Endangering 2nd Degree
11-611	Assault 3rd Degree
11-621	Terroristic Threatening
11-766	Incest
11-767	Unlawful Sexual Contact 3rd Degree
11-781	Unlawful Imprisonment 2nd Degree
11-785	Interference with Custody
11-791	Coercion
11-1102	Endangering Welfare of Child
11-1271A	Criminal Contempt: DV Protection Order
11-1311	Harassment

Presumptive Sentence	Level	Time
1st Offense	V	Up To 1 Month
2nd Offense w/in 2 years	V	Up to 2 Months
3rd Offense w/in 5 years	V	Up To 3 Months

Unclassified Misdemeanors

Statutory Range - 0 to 30 days

11-601	Offensive Touching	Presumptive Sentence	Level	Time
11-602	Menacing			
11-763	Sexual Harassment			
11-1301	Disorderly Conduct			
		Any offense	V	Up To 1 month

Enhanced Penalties applicable when:

Children are present during the crime OR are victims of the offense against a co-defendant if a conspirator was under the age of 14 and the codefendant was 4 or more years older than the child at the time of the crime. (Enhanced penalty for ANY crime)

Enhanced Presumptive Sentence:	Level	Time
Any Non-Violent Felony G	II	12 months or more
Misdemeanor Class A or B:		
1st Offense	V	1 to 2 months
2nd Offense in 2 years	V	2 to 3 months
3rd Offense in 5 years	V	3 or more months
Any Unclassified Misdemeanor	V	1 or more months

Special Categories:

Escape

Due to the peculiar nature of escape charges, which may be considered as deserving aggravated punishment even though they are primarily non-violent in nature, the following recommendations are presented:

11-1251	Escape 3rd Degree	0 to 1 m @ Level V
11-1252	Escape 2nd Degree	0 to 3 m @ Level V
11-1253	Escape After Conviction (Class D Felony Violent)	0 to 2 yrs @ Level V
11-1253	Escape After Conviction (Force/Threat/DW)(Class C Fel Violent)	1 to 3 yrs @ Level V
11-1253	Escape After Conviction (Injury)(Class B Felony Violent)	2 to 5 yrs @ Level V

ESCAPE FROM LEVEL IV FACILITY

(Applies to all Half-Way House and Residential Treatment facilities)

1st offense	Level V for 30 days (Title 11, §4204(k))
2nd offense	Level V for 90 days (Title 11, §4204(k))
3rd & subsequent offense	Level V for 180 days (Title 11, §4204(k))

Presumptive penalty for a first escape from Home Confinement is a lateral assignment to a Half-way House facility.

Sentencing Orders and worksheets should reflect the status as a Level IV Escape.

Policy 31: Any person arrested on a charge of escape from any Correctional facility, including both Level V and Level IV facilities, should be returned by the court to a Level V secured facility pending such hearings as may ensue from the charge. Persons charged with such escapes should not be released on bond.

Juvenile Offenders Being Sentenced as Adults

A juvenile offender for purposes of SENTAC is a person who was under the age of 18 at the time of the commission of the offense and who is thereafter prosecuted and convicted as an adult in either Superior Court or the Court of Common Pleas.

Sentencing judges should consider each juvenile offender's chronological age and the existence or non-existence of the following factors. These factors may provide for a departure from the standard sentencing range.

Individualized Sentencing Factors for Juvenile Offenders:

Age and developmental attributes

The juvenile offender's chronological age and developmental attributes including immaturity, impetuosity, and failure to appreciate risks and consequences;

Family and home environment

The effects the juvenile offender's family and home environment have produced;

Familial or Peer Pressure

The juvenile offender committed the crime under, or was otherwise unable to extricate his- or herself from, the negative influence of familial or peer pressure;

Mental health and medical history

The juvenile offender's mental health and medical history including any diagnoses or treatments;

Academic history and learning capacity

The juvenile offender's academic history and learning capacity including any special education records, psychoeducational testing results and remedial services provided;

Circumstances of the offense / Juvenile's Participation

The circumstances of the offense, including the extent of the juvenile offender's participation, his or her behavior during the criminal episode, whether the juvenile offender was instrumental in planning the offense, and the sophistication of the offense;

Level of sophistication

The juvenile offender's sophistication, or lack of sophistication in dealing with the criminal justice system;

Rehabilitation

The juvenile offender's potential for rehabilitation;

Other factors

Any other factor related to the juvenile offender's chronological age, immaturity, impetuosity, ability to assess risk, or anything about the offense itself that could be relevant in determining the appropriate sentence.

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 subsection (a) of this section, or a life sentence pursuant to subsection (b) of this section 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. Nothing in the rules or this subsection shall prohibit the Superior Court from hearing any petition without regard to this preferred sequence when the Department of Justice, through the personal authorization of the Attorney General, Chief Deputy Attorney General, State Prosecutor, or the Chief Prosecutor of a particular county, in response to a request authorized by the Chief Defender, Chief Deputy Defender, or Chief Conflicts Counsel, or private counsel if a petitioner is not represented by the Office of Defense Services, consents to the hearing of that petition and the Superior Court determines it is in the interest of justice to do so. 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.

**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.

- 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 16^h 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.deljjs.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 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 150th 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 66
FORMERLY
HOUSE BILL NO. 5
AS AMENDED BY
HOUSE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO
IMPRISONMENT. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE
STATE OF DELAWARE:

Section 1. Amend Chapter 39, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3901 Fixing term of imprisonment; credits.

(d) The court shall direct whether the sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently or consecutively with any other sentence of confinement imposed on such criminal defendant. Notwithstanding the foregoing, no sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently with any other sentence of confinement imposed on such criminal defendant for any conviction of the following crimes:

<u>Title 11, Section</u>	<u>Crime</u>
606	Abuse of a pregnant female in the first degree
613	Assault in the first degree 632
613	Manslaughter
635	Murder in the second degree
636	Murder in the first degree 772
	Rape in the second degree 773
	Rape in the first degree

777A	Sex offender unlawful sexual conduct against a child
778(1), (2) or (3)	Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree
783	Kidnapping in the second degree
783A	Kidnapping in the first degree
803	Arson in the first degree
825	Burglary in the second degree
826	Burglary in the first degree
826A	Home invasion
832	Robbery in the first degree
836	Carjacking in the first degree
1254	Assault in a detention facility
1447A	Possession of a firearm during the commission of a felony or for any sentence for possession of a firearm by a person prohibited where the criminal defendant was previously convicted of a Title 11 violent felony.
1447A	<u>Possession of a firearm during the commission of a felony if the firearm was used, displayed, or discharged during the commission of a Title 11 or Title 31 violent felony as set forth in § 4201(c) of this title.</u>

Notwithstanding the foregoing, where there are multiple victims, any sentence for each victim shall be consecutive to one another for the following crimes:

<u>Title 11, Section.</u>	<u>Crime</u>
<u>632</u>	<u>Manslaughter</u>

~~(e) For purposes of this section, "Title 11 violent felony" means any Title 11 offense identified in § 4201(e) of this title, or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a Title 11 offense identified in § 4201(e) of this title.~~

Section 2. Amend Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

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

possession of a deadly weapon during commission of a felony.

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

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

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

~~(d)~~(b) Every person charged under this section over the age of 16 years may be tried as an adult pursuant to §§ 1010 and 1011 of Title 10, notwithstanding any contrary provision of statutes governing the Family Court or any other state law.

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

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

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

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

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

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

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

~~(f)~~(d) Every person charged under this section over the age of 16 years who, following an evidentiary hearing where the Superior Court finds proof positive or presumption great that the accused used, displayed, or discharged a firearm during the commission of a Title 11 or a Title 31 violent felony as set forth in § 4201(c) of this title, shall be tried as an adult, notwithstanding any contrary provisions or statutes governing the Family Court or any other state law. The provisions of this section notwithstanding, the Attorney General may elect to proceed in Family Court.

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

Approved June 25, 2019

CHAPTER 190
FORMERLY
HOUSE BILL NO. 30
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO UNMANNED AIRCRAFT SYSTEMS. 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) 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, cellular telephone, or 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.~~

(b) Promoting prison contraband is a class A misdemeanor. However, promoting prison contraband is a class F felony if any of the following applies:

- (1) The prison contraband is a deadly weapon, cellular telephone, or any prohibited electronic device not specifically authorized or approved by the Commissioner or designee, any illegal narcotic or look-a-like substance, or any prescription medication, or any item or article that could be used to facilitate an escape.
- (2) An unmanned aircraft system is used to deliver or attempt to deliver any of the following into a detention facility
 - a. contraband, as defined by § 1258 of this title.
 - b. any of the contraband listed in paragraph (b)(1) of this section.

Section 2. Amend § 1334, Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

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

(d) *Penalties.* — ~~Unlawful~~ Except as set forth in § 1256 of this title, unlawful use of an unmanned aircraft system is an unclassified misdemeanor for a first offense and a class B misdemeanor for a second or subsequent offense, except that in any case where physical injury to a person or damage to property occurs as a result of a violation of this section unlawful use of an unmanned aircraft system is a class A misdemeanor.

Approved August 8, 2019

CHAPTER 35
FORMERLY
HOUSE BILL NO. 63
AS AMENDED BY
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO SAFE STORAGE OF FIREARMS. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 1456, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1456. ~~Unlawfully permitting a minor access to a firearm~~Unsafe storage of a firearm; class A or B misdemeanor.

(a)(1) A person is guilty of ~~unlawfully permitting a minor access to unsafe storage of~~ a firearm when the person intentionally or recklessly stores or leaves a loaded firearm within the reach or easy access of a ~~minor~~an unauthorized person, and where the minor ~~the unauthorized person~~ obtains the ~~firearm and uses it to inflict serious physical injury or death upon the minor or any other person.~~firearm, and all of the following do apply:

a. The firearm was not stored in a locked box or container.

b. The firearm was not disabled with a tamper-resistant trigger lock which was properly engaged so as to render the firearm inoperable by a person other than the owner or other lawfully-authorized user.

c. The firearm was not stored in a location that a reasonable person would have believed to be secure from access by an unauthorized person.

d. The unauthorized person did not obtain the firearm as the result of an unlawful entry by any person.

(2) For the purposes of this section:

a. “Unauthorized person” means a child or person prohibited by state or federal law from

owning or possessing a firearm.

b. “Stores or leaves” does not mean when the firearm is carried by or under the control of the owner or other lawfully-authorized user.

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

~~(1) The firearm was stored in a locked box or container or in a location which a reasonable person would have believed to be secure from access to a minor; or~~

~~(2) The minor obtains the firearm as the result of an unlawful entry by any person; or~~

~~(3) The serious physical injuries or death to the minor or any other person results from a target or sport shooting accident or hunting accident. [Repealed.]~~

~~(c)(1) Unlawfully permitting a minor access to a firearm~~ Unsafe storage of a firearm is a class A ~~misdemeanor~~ B misdemeanor if paragraphs (c)(2)a., b., or c. of this section do not apply.

(2) Unsafe storage of a firearm is a class A misdemeanor if the unauthorized person does any of the following: a. Commits or attempts to commit a crime with the firearm.

b. Uses the firearm to inflict serious physical injury or death upon any person, including the unauthorized person.

c. Transfers or attempts to transfer the firearm to another unauthorized person.

(d) The Superior Court has jurisdiction over an offense under this section.

(e) It is not an offense under this section if the firearm was manufactured in or before the year 1899 or is a replica of such firearm if the replica is not designed or redesigned for using rimfire or conventional centerfire fixed ammunition.

Approved June 6, 2019

CHAPTER 215
FORMERLY
HOUSE BILL NO. 77
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO BURGLARY. BE IT
ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 824 Burglary in the third degree; class F felony.

A person is guilty of burglary in the third degree when the person knowingly enters or remains unlawfully in a building with intent to commit a crime therein.

Burglary in the third degree is a class F felony.

§ 825 Burglary in the second degree; class D felony.

(a) A person is guilty of burglary in the second degree when the person knowingly enters or remains unlawfully in a dwelling with intent to commit a crime therein.

(b) A person is guilty of burglary in the second degree when the person knowingly enters or remains unlawfully in a building with intent to commit a crime therein and where the person is armed with explosives or a deadly weapon or where the person causes physical injury to any other person who is not a participant in the crime.

Burglary in the second degree is class D felony.

~~(1) In a dwelling with intent to commit a crime therein; or~~

~~(2) In a building and when, in effecting entry or while in the building or in immediate flight therefrom, the person or another participant in the crime:~~

~~a. Is armed with explosives or a deadly weapon; or~~

~~b. Causes physical injury to any person who is not a participant in the crime.~~

~~Burglary in the second degree is class D felony, except where the person who suffers physical injury is a person 62 years of age or older in which case any violation of this section shall be a class C felony.~~

~~(b) Notwithstanding any provision of this section or Code to the contrary, any person convicted of burglary in the second degree shall receive a minimum sentence of:~~

~~(1) One year at Level V; or~~

~~(2) Three years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for burglary first or second degree or if the conviction is for an offense that was committed within 5 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for burglary first or second degree conviction.~~

~~Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title.~~

~~(c) The sentencing provisions of subsection (b) of this section apply to attempted burglary in the second degree as well as burglary in the second degree.~~

§ 826 Burglary in the first degree; class C or B felony.

(a) A person is guilty of burglary in the first degree when the person knowingly enters or remains unlawfully in an occupied dwelling with the intent to commit a crime therein.

(b) A person is guilty of Home Invasion Burglary First Degree if the elements of § 826(a) are met and in effecting entry or when in the dwelling or immediate flight therefrom, the person or another participant in the crime engages in the commission of, or attempts to commit, any of the following felonies:

(1) Robbery in the first or second degree;

(2) Assault in the first or second degree;

(3) Murder in the first or second degree;

(4) Manslaughter;

(5) Rape in any degree;

(6) Kidnapping in the first or second degree

(c) Burglary in the first degree is a class C felony. A person convicted of Burglary in the first degree shall receive a minimum sentence of 1 year at Level V.

(d) Notwithstanding any provision of this section or Code to the contrary, where a person is convicted of Burglary

in the first degree pursuant to § 826(a) and who either (1) is armed with explosives or a deadly weapon; or (2) causes physical injury to any person who is not a participant in the crime, Burglary in the first degree is a class B felony.

(e) Notwithstanding any provision of this section or Code to the contrary, any person convicted of Home Invasion Burglary first degree as defined in §826(b), shall receive a minimum sentence of 6 years at Level V.

(f) The sentencing provisions applicable to §826 apply to the attempted burglary in the first degree as well as attempted home invasion burglary in the first degree.

(g) It is no defense that the accused did not know that the dwelling was occupied at the time of entry.

~~(a) A person is guilty of burglary in the first degree when the person knowingly enters or remains unlawfully in a dwelling at night with intent to commit a crime therein, and when, in effecting entry or when in the dwelling or in immediate flight therefrom, the person or another participant in the crime:~~

~~(1) Is armed with explosives or a deadly weapon; or~~

~~(2) Causes physical injury to any person who is not a participant in the crime.~~

~~Burglary in the first degree is a class C felony, except where the person who suffers physical injury is a person 62 years of age or older in which case any violation of this section shall be a class B felony.~~

~~(b) Notwithstanding any provision of this section or Code to the contrary, any person convicted of burglary in the first degree shall receive a minimum sentence of:~~

~~(1) Two years at Level V; or~~

~~(2) Four years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for burglary first or second degree or if the conviction is for an offense that was committed within 5 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for burglary first or second degree conviction.~~

~~Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title.~~

~~(c) The sentencing provisions of subsection (b) of this section apply to attempted burglary in the first degree as well as burglary in the first degree.~~

~~§ 826A Home invasion; class B felony.~~

~~(a) A person is guilty of home invasion when the person knowingly enters or remains unlawfully in a~~

dwelling with intent to commit a violent felony therein, and:

- ~~(1) That dwelling is occupied by another person who is not a participant in the crime; and~~
- ~~(2) When, in effecting entry or when in the dwelling or in immediate flight therefrom, the person or another participant in the crime engages in the commission of, or attempts to commit, any of the following felonies:
 - ~~a. Robbery in any degree;~~
 - ~~b. Assault in the first or second degree;~~
 - ~~c. Murder in any degree;~~
 - ~~d. Manslaughter;~~
 - ~~e. Rape in any degree;~~
 - ~~f. Kidnapping in any degree; and~~~~

~~(3) When, in effecting entry or when in the dwelling or in immediate flight therefrom, the person or another participant in the crime:~~

- ~~a. Is armed with explosives or a deadly weapon; or~~
- ~~b. Causes physical injury to any person who is not a participant in the crime. Home invasion is a class B felony.~~

~~(b)(1) Notwithstanding any provision of this section or Code to the contrary, any person convicted of home invasion shall receive a minimum sentence of:~~

- ~~a. Six years at Level V; or~~
- ~~b. Eight years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for home invasion or burglary first or second degree or if the conviction is for an offense that was committed within 5 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for home invasion or burglary first or second degree conviction.~~

~~(2) Notwithstanding the provisions of paragraph (b)(1) of this section or any provision of this section or Code to the contrary, any person convicted of home invasion where the other person present in the dwelling, who is not another participant in the crime, is a person 62 years of age or older shall receive a minimum sentence of:~~

- ~~a. Seven years at Level V; or~~
- ~~b. Nine years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for home invasion or burglary first or second degree or if the conviction is for an~~

~~offense that was committed within 5 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for home invasion or burglary first or second degree conviction.~~

~~Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title.~~
~~(c) The sentencing provisions of subsection (b) of this section apply to attempted home invasion as well as home invasion.~~

§ 827 Multiple offenses.

A person may be convicted both of burglary ~~or home invasion~~ and of the offense which it was the purpose of the person's unlawful entry to commit or for an attempt to commit that offense. A person may be convicted of home invasion burglary first degree and any of the underlying offenses designated in § 826(b).

§ 828 Possession of burglar's tools or instruments facilitating theft; class F felony.

(a) A person is guilty of possession of burglar's tools or instruments facilitating theft when, under circumstances evidencing an intent to use or knowledge that some other person intends to use the same in the commission of an offense of such character, the person possesses any tool, instrument, or other thing adapted, designed, or commonly used for committing or facilitating:

- (1) Offenses involving unlawful entry into or upon premises,
- (2) Offenses involving the unlocking, overriding, or disabling of a security device without authorization,
- (3) Offenses involving forcible breaking or opening of safes, vending machines, automatic teller machines, lock boxes, gates, doors or any container or depositories of property, or
- (4) The offense of identity theft, such as a credit card, driver license or other document issued in a name other than the name of the person who possesses the document.

(b) Possession of burglar's tools or instruments facilitating theft is a class F felony.

§ 829 Definitions relating to criminal trespass, burglary and home invasion.

(a) "Burglar's tool or instruments" includes the term "bump key" which is a type of key used for a specific lock picking technique called lock bumping.

(b) "Dwelling" means a building which is usually occupied by a person lodging therein at night including a building that has been adapted or is customarily used for overnight accommodation.

(c) "Occupied Dwelling" means a dwelling, and a person is lawfully present on the property at the time of the offense.

(ed) A person "enters" upon premises when the person introduces any body part or any part of any instrument, by whatever means, into or upon the premises.

(de) A person "enters or remains unlawfully" in or upon premises when the person is not licensed or privileged to do so. A person who, regardless of intent, enters or remains upon premises which appear at the time to be open to the public does so with license and privilege unless the person defies a lawful order not to enter or remain, personally communicated by the owner of the premises or another authorized person. A license or privilege to enter or remain in a building which is only partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public.

(ef) The "intent to commit a crime therein" may be formed prior to the unlawful entry, be concurrent with the unlawful entry or such intent may be formed after the entry while the person remains unlawfully.

(g) "Night" means a period between 30 minutes after sunset and 30 minutes before sunrise.

(gh) "Premises" include the term "building" as defined in § 222 of this title, and any real property.

(hi) "Security device" includes any lock, whether mechanical or electronic; or any warning device designed to alert a person or the general public of a possible attempt to gain unlawful entry into or upon premises or a possible attempt to unlock, bypass or otherwise disable a lock.

(ik) A person possesses burglar tools or instruments facilitating theft "under circumstances evincing an intent to use or knowledge that some other person intends to use" such when the person possesses the tools or instruments at a time and a place proximate to the commission or attempt to commit a trespass, burglary, home invasion, or theft-related offense or otherwise under circumstances not manifestly appropriate for what lawful uses the tools or instruments may have.

Approved September 16, 2019

CHAPTER 216
FORMERLY
HOUSE BILL NO. 78
AS AMENDED BY
HOUSE AMENDMENT NO. 1

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

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

Section 1. Amend Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 831 Robbery in the second degree; class E or D felony.

(a) A person is guilty of robbery in the second degree when, in the course of committing theft, the person uses or threatens the immediate use of force upon another person with intent to:

(1) Prevent or overcome resistance to the taking of the property or to the retention thereof immediately after the taking; or

(2) Compel the owner of the property or another person to deliver up the property or to engage in other conduct which aids in the commission of the theft.

(b) Except as provided in paragraph (d) of this section, Robbery second degree is a class E felony.

(c)(b) In addition to its ordinary meaning, the phrase "in the course of committing theft" includes any act which occurs in an attempt to commit theft or in immediate flight after the attempt or commission of the theft.

(d) Robbery in the second degree is a class D felony when, in the course of committing an offense under subsection (a) of this section, the person takes possession of a motor vehicle, and while in possession or control of such vehicle, the person does any of the following:

(1) Commits or attempts to commit a class D or greater felony.

(2) Drives or operates the vehicle in violation of § 4177 of Title 21.

(3) Commits any offense set forth in Chapter 47 of Title 16.

(4)Engages in conduct which causes or creates a substantial risk of physical injury to another person.

(e)Definitions relating to § 831(d).

(1) "Another person" means and includes the owner of the motor vehicle or any operator, occupant, passenger of the motor vehicle or any other person who has an interest in the use of the motor vehicle which the offender is not privileged to infringe.

(2) "Motor vehicle" or "vehicle," means its ordinary meaning and includes any watercraft.

§ 832 Robbery in the first degree ~~is~~; class B felony.

(a) A person is guilty of robbery in the first degree when the person commits the crime of robbery in the second degree and when, in the course of the commission of the crime or of immediate flight therefrom, the person or another participant in the crime:

- (1) Causes physical injury to any person who is not a participant in the crime; or
- (2) Displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon; or
- (3) Is armed with and uses or threatens the use of a dangerous instrument; or
- (4) Commits said crime against a person who is ~~62-65~~ years of age or older; or
- (5) Threatens death upon another.

Robbery in the first degree is a class B felony.

(b) Notwithstanding any provisions of this section or Code to the contrary, any person convicted of robbery in the first degree shall receive a minimum sentence of:

- (1) Three years at Level V; or
- (2) Five years at Level V if the conviction was either of the following:
 - a. ~~as for~~ an offense committed pursuant to §832(a)(3) and the deadly weapon was a firearm, and was committed within ~~10-7~~ years of the date of a previous conviction for robbery in the first degree or if the conviction is for an offense that was committed within ~~10-7~~ years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for robbery in the first degree, whichever is the later date.

-
- b. For an offense committed within 2 years of the date of a previous conviction for robbery in the first degree or if the conviction is for an offense that was committed within 2 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for robbery in the first degree, whichever is the later date.

~~Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title.~~

(c) The sentencing provisions of this section apply to attempted robbery in the first degree as well as robbery in the first degree.

~~§§ 833, 834. [Reserved.]~~

~~§ 835 Carjacking in the second degree; class E felony; class D felony.~~

~~(a) A person is guilty of carjacking in the second degree when that person knowingly and unlawfully takes possession or control of a motor vehicle from another person or from the immediate presence of another person by coercion, duress or otherwise without the permission of the other person.~~

~~(b)(1) Except as provided in paragraph (b)(2) of this section, carjacking in the second degree is a class E felony.~~

~~(2) Carjacking in the second degree is a class D felony if the elements of subsection (a) of this section are met and if, while in possession or control of the vehicle, the person:~~

~~a. Recklessly engages in conduct which creates a substantial risk of death or serious physical injury to another person; or~~

~~b. Compels a lawful occupant of the vehicle to leave the vehicle; or~~

~~c. Causes the vehicle to be operated recklessly.~~

~~(e) It is no defense to a prosecution under this section that the offender did not physically drive or operate the motor vehicle, nor is it a defense under this section that the offender did not intend to permanently deprive the owner or another person of the use of the vehicle.~~

~~(d) This section is not a related or included offense of § 831 or § 832 of this title. Nothing in this section shall be deemed to preclude prosecution under any other provision of this Code.~~

~~§ 836 Carjacking in the first degree; class C felony; class B felony.~~

-
- ~~(a) A person is guilty of carjacking in the first degree when the person knowingly and unlawfully takes possession or control of a motor vehicle from another person or from the immediate presence of another person by coercion, duress or otherwise without the permission of the other person, and:~~
- ~~(1) While in possession or control of such vehicle the person commits or attempts to commit a class D or greater felony; or~~
- ~~(2) While in possession or control of such vehicle the person drives or operates the vehicle in violation of § 4177 of Title 21; or~~
- ~~(3) While in possession or control of such vehicle the person commits any offense set forth in Chapter 47 of Title 16; or~~
- ~~(4) While in possession or control of such vehicle or while in the course of taking or attempting to take possession or control of such vehicle the person displays what appears to be a deadly weapon or represents by word or conduct that the person is in possession or control of a deadly weapon.~~
- ~~(5) While in possession or control of such vehicle the person causes physical injury to another person; or~~
- ~~(6) The person from whom possession or control of the vehicle is taken, or an occupant or passenger of such vehicle, is 62 years of age or older or 14 years of age or younger.~~
- ~~(b) Carjacking in the first degree as defined in paragraphs (a)(1), (a)(2) and (a)(3) of this section is a class C felony. Carjacking in the first degree as defined in paragraphs (a)(4), (a)(5) and (a)(6) of this section is a class B felony.~~
- ~~(c) It is no defense to a prosecution under this section that the offender did not physically drive or operate the motor vehicle, nor is it a defense under this section that the offender did not intend to permanently deprive the owner or another person of the use of the vehicle.~~
- ~~(d) It is no defense to a prosecution under paragraph (a)(6) of this section, that the accused did not know the age of the person from whom possession or control of the vehicle is taken, or an occupant or passenger of such vehicle, or that the accused reasonably believed such person to be under the age of 62 or over the age of 14.~~
- ~~(e) For the purpose of any prosecution under paragraph (a)(5) of this section, it is unnecessary to prove the accused's state of mind with regard to causation of physical injury, notwithstanding the provisions of § 251 or § 252 of this title or any other statute to the contrary.~~
- ~~(f) This section is not a related or included offense of § 831 or § 832 of this title. Nothing in this section shall be deemed to preclude prosecution under any other provision of this Code.~~

~~§ 837 Definitions relating to carjacking.~~

~~(a) "Another person" includes the owner of the vehicle or any operator, occupant, passenger of the vehicle or any other person who has an interest in the use of the vehicle which the offender is not privileged to infringe.~~

~~(b) "Motor vehicle" or "vehicle," in addition to its ordinary meaning, includes any watercraft.~~

Approved September 16, 2019

CHAPTER 182
FORMERLY
SENATE BILL NO. 45
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO
MARIJUANA. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE
STATE OF DELAWARE:

Section 1. Amend § 4764, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4764. Possession of marijuana; class B misdemeanor, unclassified misdemeanor, or civil violation [For application of this section, see 80 Del. Laws, c. 38, § 6]

- (a) ~~Any person under the age of 18 who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor.~~ Any person 18 years of age or older who knowingly or intentionally uses, consumes, or possesses other than a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor.
- (b) ~~Any person under the age of 18 who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$100.~~ Any person 18 years of age or older who knowingly or intentionally uses, consumes, or possesses other than a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$575, imprisoned not more than 3 months, or both.
- (c)(1) ~~Any person 21 years of age or older~~ who knowingly or intentionally possesses a personal use quantity

of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, ~~shall~~must be assessed a civil penalty of \$100 in addition to such routine assessments necessary for the administration of civil violations and the marijuana ~~shall~~must be forfeited.

(2) Private use or consumption by a person 21 years of age or older of a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title shall is likewise be punishable by a civil penalty under this subsection.

(3) Any person 18 years of age or older, but under 21 years of age, Notwithstanding paragraph (c)(1) or (c)(2) of this subsection, any person under 21 years of age who commits any of the acts described in this subsection shall a violation of this subsection must be assessed a civil penalty of \$100 for the first offense a first violation of this subsection and a civil penalty of not less than \$200 nor more than \$500 for a second violation of this subsection and shall be is guilty of an unclassified misdemeanor and must be fined \$100 for a second third or subsequent offense. violation of this subsection.

(4) Unpaid fines shall double if not paid within 90 days of final adjudication of the violation a violation of this subsection.

(d) Any person ~~18 years of age or older~~ who knowingly or intentionally uses or consumes up to a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title in an area accessible to the public or in a moving vehicle, except as otherwise authorized by this chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$200, imprisoned not more than 5 days, or both. For purposes of this section "area accessible to the public" means any of the following:

(1) Sidewalks, streets, alleys, parking lots, parks, playgrounds, stores, restaurants, and any other areas to which the general public is invited.

(2) Any outdoor location within a distance of 10 feet from a sidewalk, street, alley, parking lot, park, playground, store, restaurant, or any other area to which the general public is invited.

(3) Any outdoor location within a distance of 10 feet from the entrances, exits, windows that open, or ventilation intakes of any public or private building.

(e) Information concerning a civil offense classified in subsection (c) of this section shall not appear on a person's certified criminal record.

(f) Nothing contained herein shall be construed to repeal or modify any law concerning the medical use of marijuana or tetrahydrocannabinol in any other form, such as Marinol, or the possession of more than 1 ounce of marijuana, or selling, manufacturing, or trafficking in marijuana.

(g) Nothing contained herein shall be construed to repeal or modify existing laws, ordinances or bylaws, regulations, personnel practices, or policies concerning the operation of motor vehicles or other actions taken while under the influence of marijuana.

(h) Nothing contained herein shall be construed to repeal or modify any law or procedure regarding search and seizure.

(i) Any person who was convicted of a single criminal offense under subsection (c) of this ~~section~~ section, as it is in effect on or before [the effective date of this Act], and who was under the age of 21 at the time of the offense may, upon reaching the age of 21, apply for an expungement of the record of the conviction and any indicia of arrest to the court in which the person was convicted. For violations of a criminal offense under subsection (c) of this section, as it is in effect on or before [the effective date of this Act], an order granting such expungement shall issue upon proof that the person has reached the age of 21, unless the person has failed to comply with the sentencing order or the person has another charge under this section which remains outstanding. Upon issuance of the order of expungement, the records of the conviction and any indicia of arrest shall be dealt with in accordance with the procedures specified in §§ 4373(c), 4374 and 4375 of Title 11. Nothing in this section shall prohibit the Family Court from expunging a record of conviction as otherwise provided by law. The application for or granting of a pardon pursuant to §§ 4361 through 4363 of Title 11 shall not prohibit an expungement under this section. All sentencing orders for violations of a criminal offense under subsection (c) of this section-section, as it is in effect on or before [the effective date of this Act], by persons under the age of 21 at the time of the offense shall state that the record of the conviction may be expunged upon reaching

the age of 21 and thereafter. The civil filing fee shall apply to applications for expungement plus a \$100 fee payable to the State Bureau of Identification for administrative costs.

(j) Notwithstanding any provision of law to the contrary, any person who prior to December 18, 2015, was convicted of a single offense arising from an original charge under this section or any predecessor statute, law or ordinance prohibiting the possession, use or consumption of marijuana or any controlled substance or counterfeit controlled substance classified in § 4714(d)(19) of this title shall be eligible for mandatory expungement of the records of the conviction and all indicia of arrest pursuant to the provisions of § 4373 of Title 11, provided the applicant is otherwise eligible for mandatory expungement as specified therein. Upon issuance of the order of expungement, the records of the conviction and any indicia of arrest shall be dealt with in accordance with the procedures specified in §§ 4373, 4376, and 4377 of Title 11.

Approved July 31, 2019

CHAPTER 217
FORMERLY
SENATE BILL NO. 47
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 11 AND 16 OF THE DELAWARE CODE RELATING TO CONTROLLED SUBSTANCES.

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

Section 1. Amend § 4701, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(45) ~~“Protected park, recreation area, church, synagogue or other place of worship” means:~~

a. ~~Any building, structure, athletic playing field, playground, or other land contained on the property of any park or recreation area owned, operated or utilized by any county or municipality, or by the State, or by any board, commission, department, agency, corporation or organization thereof, or in any "parkland" as defined in §~~

~~8110(a)(2) of Title 9 or any church, synagogue or other place of worship; or~~

b. ~~Any area accessible to the public located within 300 feet of the property of any park or recreation area owned, operated or utilized by any county or municipality, or by the State, or by any board, commission, department, agency, corporation or organization thereof, or in any "parkland" as defined in § 8110(a)(2) of Title 9 or any church, synagogue or place of worship, or any parked vehicle located within 300 feet of the property of any park or recreation area owned, operated or utilized by any county or municipality, or by the State, or by any board, commission, department, agency, corporation or organization thereof, or in any "parkland" as defined in §~~

~~8110(a)(2) of Title 9 or any church, synagogue or place of worship.~~

~~For the purposes of this section an "area accessible to the public" shall include: sidewalk; streets; parking lots; parks; playgrounds; stores and restaurants; and any other outdoor locations such as front porches or~~

front yards.

(46) “Protected school zone” means either of the following:

a. Any building, structure, athletic playing field, playground, or other land contained on the property of a public or private kindergarten, elementary, secondary, or vocational-technical ~~school;~~ or school. Any area accessible to the public located within 300 feet of the property of a public or private kindergarten, elementary, secondary, or vocational-technical school, or any parked vehicle located within 300 feet of the property of a public or private kindergarten, elementary, secondary, or vocational-technical school.

For the purposes of this section, an “area accessible to the public” ~~shall include;~~ includes: sidewalks; streets; parking lots; parks; playgrounds; stores and restaurants; and any other outdoor locations such as front porches or front yards.

Section 2. Amend § 4751A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4751A. Aggravating factors related to drug offenses.

For the purposes of this subchapter:

(1) Each of the following ~~shall be~~ is an “aggravating factor” within the meaning of the offenses in this subchapter:

- a. The offense was committed within a protected school zone, as defined in § 4701 of this ~~title;~~ title.
- b. ~~The offense was committed within a protected park or recreation area, or church, synagogue or other place of worship, as defined in § 4701 of this title;~~
- c. ~~The offense occurred in a vehicle, as defined in § 4701 of this title;~~
- d. ~~The defendant was an adult, that is, a person who had reached his or her eighteenth birthday, and the offense involved a juvenile, that is, a person who had not reached his or her eighteenth birthday, as a co-conspirator or accomplice, or as the intended or actual recipient of the controlled substances, and the defendant was more than 4 years older than the juvenile; and~~

e. The defendant, during or immediately following the commission of any offense in this ~~title~~:
did one of the following:

1. Intentionally prevented or attempted to prevent a law-enforcement officer, as defined in § 222(15) of Title 11, from effecting an arrest or detention of the defendant by use of force or violence towards the law- enforcement ~~officer~~; or officer.

2. Intentionally fled in a vehicle from a law-enforcement officer, as defined in § 222(15) of Title 11, while the law-enforcement officer was effecting an arrest or detention of the defendant, thereby creating a substantial risk of physical injury to other persons.

~~(2) When the aggravating factors "protected school zone" and "protected park, recreation area, church, synagogue or other place of worship" of paragraphs (1)a. and (1)b. of this section are both present, both may be alleged and proven, but they shall only count as 1 aggravating factor in determining which offense the defendant committed.~~

When a defendant is alleged to have committed an offense under this subchapter with an aggravating factor under paragraph (1)e.1. of this section, the defendant may be charged with resisting arrest under § 1257 or the offense to which the aggravating factor applies, but not both.

~~(3) In any offense in which 1 or more aggravating factors set forth in this section are present, the factor or factors shall be alleged in the charging information or indictment, and constitute an element of the offense. When there are more aggravating factors present than are required to prove the offense, all may be alleged and proven. For an aggravating factor under paragraph (1)a. of this section to be charged, a defendant must commit the conduct of an offense under this subchapter in a protected school zone. The aggravating factor under paragraph (1)a. of this section may not be charged if a defendant commits the conduct of an offense under this subchapter outside a protected school zone but is arrested in a protected~~
school zone.

Section 3. Amend § 4751B, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4751B. Prior qualifying Title 16 convictions. ~~For the purposes of this subchapter:~~

(1) ~~A "prior qualifying Title 16 conviction" means any prior adult felony conviction for a Title 16 offense where the conviction was 1 of former § 4751, § 4752, or § 4753A of this title, or any other former section of this title that was, at the time of conviction, a class C or higher felony; or where the conviction was 1 of § 4752, § 4753, § 4754, § 4755, or § 4756 of this title, or any other felony conviction specified in the controlled substances law of any other state, local jurisdiction, the United States, any territory of the United States, any federal or military reservation, or the District of Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new offense occurs within 5 years of the date of conviction for the earlier offense or the date of termination of all periods of incarceration or confinement imposed pursuant to the conviction, whichever is the later date. For purposes of §§ 4761(a) and (b), 4763 and 4764 of this title, a "prior qualifying Title 16 conviction" means any prior adult conviction, including both felony and misdemeanor, under this title, if the new offense occurs within 5 years of the date of conviction for the earlier offense, or the date of termination of all periods of incarceration or confinement imposed pursuant to the conviction, whichever is the later date.~~

(2) ~~"Two prior qualifying Title 16 convictions" means 1 "prior qualifying Title 16 conviction", as defined in paragraph (1) of this section, and an additional prior adult felony conviction or a juvenile adjudication for a Title 16 offense, where the conviction or juvenile adjudication was 1 of former § 4751, § 4752, or § 4753A of this title, or any other former section of this title that was at the time of conviction or juvenile adjudication a class C or higher felony, or where the conviction or adjudication was 1 of § 4752, § 4753, § 4754, § 4755, or § 4756 of this title a felony conviction or adjudication under this title relating to controlled substances, or any other felony conviction or juvenile adjudication specified in the controlled substances law of any other state, local jurisdiction, the United States, any federal or military reservation, or the District of Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new offense occurs within 10 years of the date of conviction or juvenile adjudication for the additional prior adult felony conviction or juvenile adjudication or the date of termination of all periods of incarceration or confinement imposed pursuant to the earlier conviction or juvenile adjudication, whichever is the later date, and the sentence or disposition following an adjudication of delinquency for the additional prior adult felony conviction or juvenile adjudication was imposed before the offense which is the basis for the~~

~~prior qualifying Title 16 conviction was committed. For a juvenile adjudication to count as the additional prior adult felony conviction or juvenile adjudication, the juvenile must have reached his or her sixteenth birthday by the date the criminal act was committed which forms the basis for the juvenile adjudication.~~

~~(3) In any offense involving a "prior qualifying Title 16 conviction" or "2 prior qualifying Title 16 convictions", the prior qualifying Title 16 conviction or convictions, including any juvenile adjudication, shall be proved in accordance with § 4215 of Title 11.~~

~~(4) Penalties. —~~

~~a. In any case in which a defendant has a "prior qualifying Title 16 conviction", the defendant shall be sentenced as follows:~~

~~1. A defendant convicted of § 4753(1) of this title shall be sentenced as though the defendant was convicted of § 4752(2) of this title.~~

~~2. A defendant convicted of § 4753(4) of this title shall be sentenced as though the defendant was convicted of § 4752(5) of this title.~~

~~3. A defendant convicted of § 4754(1) of this title shall be sentenced as though the defendant was convicted of § 4753(2) of this title.~~

~~4. A defendant convicted of § 4754(2) of this title shall be sentenced as though the defendant was convicted of § 4752(4) of this title.~~

~~5. A defendant convicted of § 4754(3) of this title shall be sentenced as though the defendant was convicted of § 4753(5) of this title.~~

~~6. A defendant convicted of § 4755 of this title shall be sentenced as though the defendant was convicted of § 4753(4) of this title.~~

~~7. A defendant convicted of § 4756 of this title shall be sentenced as though the defendant was convicted of § 4754(3) of this title.~~

~~8. A defendant convicted of § 4757(c)(1) of this title shall be sentenced as though the defendant was convicted of § 4757(c)(2) of this title.~~

~~9. A defendant convicted of § 4761(a) of this title shall be sentenced as though the defendant was convicted of § 4761(b) of this title.~~

~~10. A defendant convicted of § 4761(c) of this title shall be sentenced as though the defendant was convicted of § 4761(d) of this title.~~

~~11. A defendant convicted of § 4763(b) of this title shall be sentenced as though the defendant was convicted of § 4763(c) of this title.~~

~~12. A defendant convicted of § 4764(b) of this title shall be sentenced as though the defendant was convicted of § 4764(a) of this title.~~

~~b. In any case in which a defendant has "2 prior qualifying Title 16 convictions", the defendant shall be sentenced as follows:~~

~~1. A defendant convicted of § 4754(1) of this title shall be sentenced as though the defendant was convicted of § 4752 of this title.~~

~~2. A defendant convicted of § 4755 of this title shall be sentenced as though the defendant was convicted of § 4752(5) of this title.~~

~~3. A defendant convicted of § 4756 of this title shall be sentenced as though the defendant was convicted of § 4753(5) of this title. [Repealed.]~~

Section 4. Amend § 4751C, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4751C. Quantity tiers related to drug offenses For the purposes of this subchapter:

(1) "~~Tier 5~~Tier 3 Controlled Substances Quantity" means:

a. 25 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 5 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 5000 grams or more of marijuana, as described in § 4701(27) of this title;

d. 25 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 25 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 25 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 500 or more doses or, in a liquid form, 50 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance; or

i. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of 3,4-

methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.

(2) ~~"Tier 4 Controlled Substances Quantity" means:~~

- ~~a. 20 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;~~
- ~~b. 4 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;~~
- ~~c. 4000 grams or more of marijuana, as described in § 4701(27) of this title;~~
- ~~d. 20 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;~~
- ~~e. 20 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;~~
- ~~f. 20 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;~~
- ~~g. 250 or more doses or, in a liquid form, 25 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;~~
- ~~h. 50 or more doses or 10 or more grams or 10 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance;~~
- ~~i. 50 or more doses or 10 or more grams or 10 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title; or~~

j. ~~60 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 6 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.~~

(3) ~~"Tier 3 Controlled Substances Quantity" means:~~

- a. ~~15 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;~~
- b. ~~3 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;~~
- c. ~~3000 grams or more of marijuana, as described in § 4701(27) of this title;~~
- d. ~~15 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;~~
- e. ~~15 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;~~
- f. ~~15 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;~~
- g. ~~100 or more doses or, in a liquid form, 10 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;~~
- h. ~~37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance; or~~
- i. ~~37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.~~

(4) (2) "Tier 2 Controlled Substances Quantity" means:

a. 10 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 2 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 1500 grams or more of marijuana, as described in § 4701(27) of this title;

d. 10 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 10 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 10 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 50 or more doses or, in a liquid form, 5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 25 or more doses or 5 or more grams or 5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance;

i. 25 or more doses or 5 or more grams or 5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title; or

j. ~~30 or more~~ 60 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or ~~3 grams~~ 6 grams or more of any

mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.

(5) (3)"Tier 1 Controlled Substances Quantity" means:

a. 5 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 1 gram or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 175 grams or more of marijuana, as described in § 4701(27) of this title;

d. 5 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 5 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 5 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 25 or more doses or, in a liquid form, 2.5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance; or

i. 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this

title.

- j. 30 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 3 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.

Section 5. Amend § 4751D, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4751D. Knowledge of weight or quantity not an element of the offense; proof of weight or quantity

(a) In any prosecution under this subchapter, in which the weight or quantity of a controlled substance is an element of the offense, the State need not prove that the defendant had any knowledge as to the weight or quantity of the substance possessed. The State need only prove that the defendant knew that the substance was possessed; and, that the substance was that which is alleged, and that the substance weighed a certain amount or was in a certain quantity.

(b) In any prosecution under this subchapter, in which the quantity of a controlled substance is an element of the offense, and the controlled substance is alleged to be a "prescription drug" as defined in § 4701 of this title, and the alleged prescription drug consists of multiple doses that appear to be substantially identical, evidence that a chemist or other qualified witness properly tested one dose, and found the presence of a controlled substance, shall be prima facie evidence that the "substantially identical doses" each contained the controlled substance that is a prescription drug for purposes of determining whether the State has proven the number of doses constituting the Tier quantities set forth in ~~§ 4751C(2)j. or (4)j. of this title~~ § 4751C(2)j. or (3)j. of this title. Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting evidence offered pursuant to this subsection.

- (c) The identity or composition of a controlled substance, or a mixture containing a controlled substance, may be established by utilizing a hypergeometric sampling plan or other scientifically accepted methodology.

Section 6. Amend § 4752, Title 16 of the Delaware Code by making deletions as shown by strikethrough

and insertions as shown by underline as follows:

§ 4752. ~~Drug dealing—Aggravated possession~~ Drug dealing or possession; class B felony.

~~Except as authorized by this chapter, any person who:~~

- ~~(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 4 quantity;~~
- ~~(2) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 2 quantity, and there is an aggravating factor;~~
- ~~(3) Possesses a controlled substance in a Tier 5 quantity;~~
- ~~(4) Possesses a controlled substance in a Tier 3 quantity, and there is an aggravating factor; or~~
- ~~(5) Possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a. i., of this title. And there are 2 aggravating factors, shall be guilty of a class B felony.~~

(a) Except as authorized by this chapter, it is unlawful for any person to do any of the following:

- (1) Manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance in a Tier 3 quantity.
- (2) Possess a controlled substance in a Tier 3 quantity.
- (3) Manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance in a Tier 2 quantity and an aggravating factor applies.

(b) Violation of subsection (a) of this section is a class B felony.

Section 7. Amend § 4753, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4753. ~~Drug dealing—Aggravated possession; class C felony~~ Drug dealing or possession; class C or E felony.

~~Except as authorized by this chapter, any person who:~~

- ~~(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 2 quantity;~~
- ~~(2) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled~~

~~substance, and there is an aggravating factor;~~

~~(3) Possesses a controlled substance in a Tier 4 quantity as defined in any of § 4751C(2)a. i. of this title;~~

~~(4) Possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a. i. of this title; and there is an aggravating factor; or~~

~~(5) Possesses a controlled substance in a Tier 1 quantity, and there are 2 aggravating factors, shall be guilty of a class C felony.~~

(a) Except as authorized by this chapter, it is unlawful for any person to do any of the following:

(1) Manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance in a Tier 2 quantity.

(2) Possess a controlled substance in a Tier 2 quantity.

(b)(1) Violation of subsection (a)(1) of this section is a class C felony.

(2) Violation of subsection (a)(2) of this section is a class E felony

Section 8. Amend § 4754, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4754. Drug dealing—~~Aggravated possession~~; class D felony.

~~Except as authorized by this chapter, any person who:~~

~~(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance;~~

~~(2) Possesses a controlled substance in a Tier 3 quantity; or~~

~~(3) Possesses a controlled substance in a Tier 1 quantity, and there is an aggravating factor,~~

~~shall be guilty of a class D felony.~~

(a) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance.

(b) Violation of subsection (a) of this section is a class D felony.

Section 9. Amend § 4755, Title 16 of the Delaware Code by making deletions as shown by strikethrough

and insertions as shown by underline as follows:

§ 4755. Aggravated possession; class E felony.

~~Except as authorized by this chapter, any person who possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a. i. of this title, shall be guilty of a class E felony. [Repealed.]~~

Section 10. Amend § 4756, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4756. ~~Aggravated possession; class F felony~~ Drug possession; class G or F felony.

~~Except as authorized by this chapter, any person who possesses a controlled substance in a Tier 1 quantity shall be guilty of a class F felony.~~

(a) Except as authorized by this chapter, it is unlawful for any person to possess a controlled substance in a Tier 1 quantity.

(b) Violation of subsection (a) of this section is a class G felony.

Section 11. Amend § 4757, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4757. Miscellaneous drug crimes; class C or F felony.

(a) It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by § 4738 of this chapter;

(2) To use in the course of the manufacture, distribution, prescribing, dispensing or research of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, expired or issued to another person;

(3) To acquire or obtain or attempt to acquire or obtain, possession of a controlled substance or prescription drug by misrepresentation, fraud, forgery, deception or subterfuge;

(4) To furnish false or fraudulent material information in or omit any material information from, any application, report or other document required to be kept or filed under this chapter, or any

record required to be kept by this chapter;

(5) To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance;

(6) To acquire or attempt to or obtain possession of a controlled substance by theft; or

(7) To prescribe, or administer to another, any anabolic steroid, as defined in § 4718(f) of this title, for the purposes of increasing human muscle weight or improving human performance in any form of exercise, sport, or game.

(b) Any person who violates paragraphs (a)(1) through (a)(7) of this section upon conviction shall be guilty of a class F felony.

(c) Solicitation of multiple prescription drug crimes; penalties. —

(1) Any person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30-day period to violate any provision of subsection (a) of this section shall be guilty of a class C felony.

~~(2) Any person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30-day period to violate any provision of subsection (a) of this section, and there is an aggravating factor in connection with at least 1 of the times shall be guilty of a class B felony. [Repealed.]~~

~~(3) Paragraphs (c)(1) and (2) Paragraph (c)(1) of this section shall constitute an offense if any of the defendant's conduct or any of the violations of subsection (a) of this section occur within Delaware, or as otherwise provided pursuant to § 204 of Title 11.~~

Section 12. Amend § 4761, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4761. Illegal possession and delivery of noncontrolled prescription drugs.

(a) Any person who knowingly or intentionally possesses, uses or consumes any prescription drug

that is not a controlled substance but for which a prescription is required shall be guilty of an unclassified misdemeanor, unless:

(1) The possession, use or consumption of such substance was by a person who obtained the substance directly from, or pursuant to, a valid prescription or order of a licensed practitioner;

(2) The possession or transfer of such substance was for medical or scientific use or purpose by persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:

a. Pharmacists.

b. Practitioners.

c. Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

d. Hospitals that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

e. Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

f. Common carriers.

g. Manufacturers, wholesalers, and distributors.

h. Law-enforcement officers for bona fide law-enforcement purposes in the course of an active criminal investigation.

(3) The possession or transfer is otherwise authorized by this chapter.

~~(b) Any person who violates subsection (a) of this section, and there is an aggravating factor, shall be guilty of a class B misdemeanor. [Repealed.]~~

~~(c) Any person who violates subsection (a) of this section, and delivers, or intends to deliver the prescription drug to another, shall be guilty of a class G felony. A violation of subsection (a) of~~

this section by a person who delivers or intends to deliver the prescription drug to another is a class G felony.

(d) ~~Any person who violates subsection (b) of this section, and delivers, or intends to deliver the prescription drug to another, shall be guilty of a class F felony.~~ A violation of subsection (a) of this section by a person who delivers or intends to deliver the prescription drug to another and an aggravating factor applies, is a class F felony.

(e) Affirmative defenses. —

(1) In any prosecution under this section, it is an affirmative defense that the prescription drug was possessed by the person while transporting the prescription drug to a member of the person's household who possessed a valid prescription for the drug, and the prescription was in the original container in which it was dispensed or packaged, a pill box, or other daily pill container.

(2) In any prosecution under this section, it is an affirmative defense that the prescription drug was possessed or consumed within the residence of the person, that a member of the person's household possessed a valid prescription for the drug, that the possession or consumption by the person was for the purpose of treating an illness and that the drug in question was approved for the specific illness.

(f) Proof. — In any prosecution under this section, proof that a substance is a particular prescription drug may be inferred from its labeling and any representations on the substance. Proof by testimony from a scientist is not required.

Section 13. Amend § 4763, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4763. Possession of controlled substances or counterfeit controlled substances; class ~~A or B~~ misdemeanor.

(c) ~~Any person who violates subsection (a) of this section, and there is an aggravating factor, shall be guilty of a class A misdemeanor.~~ [Repealed.]

Section 14. Amend § 4764, Title 16 of the Delaware Code by making deletions as shown by strikethrough

and insertions as shown by underline as follows:

§ 4764. Possession of marijuana; class B misdemeanor, unclassified misdemeanor, or civil violation [For application of this section, see 80 Del. Laws, c. 38, § 6]

- (a) ~~Any person under the age of 18 who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor. Any person 18 years of age or older who knowingly or intentionally uses, consumes, or possesses other than a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor.~~ [Repealed.]

Section 15. Amend § 4766, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4766. Conviction of lesser offense.

~~In any prosecution for any violation of the following sections of this chapter, the defendant may be convicted under any 1 of the following respective sections of this chapter in accordance with the table set forth below establishing lesser included offenses:~~

- (1) ~~The lesser included offenses under § 4752 are §§ 4753, 4754, 4755, 4756, 4758, 4763, and 4764 of this title.~~
- (2) ~~The lesser included offenses under § 4753 are §§ 4754, 4755, 4756, 4758, 4763, and 4764 of this title.~~
- (3) ~~The lesser included offenses under § 4754 are §§ 4755, 4756, 4758, 4763, and 4764 of this title.~~
- (4) ~~The lesser included offenses under § 4755 are §§ 4756, 4763, and 4764 of this title.~~
- (5) ~~The lesser included offenses under § 4756 are §§ 4763 and 4764 of this title.~~ [Repealed.]

Section 16. Amend § 4767, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4767. First offenders controlled substances diversion program.

(a) Any person who:

(1) Has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state thereof relating to narcotic drugs, marijuana, or stimulant, depressant, hallucinogenic drug or other substance who is charged through information or indictment with possession or consumption of a controlled substance under § 4763 or § 4764 or § 4761(a) or (b) of this title; and

(2) Has not previously been afforded first offender treatment under this section or its predecessor, may qualify for the first offense election at the time of the person's arraignment, except that no person shall qualify for such first offense election where the offense charged under § 4763, § 4764 ~~or § 4761(a) or (b)~~, or § 4761(a) of this title arises

from the same transaction, factual setting or circumstances as those contained in any indictment returned against the defendant alleging violation of any provisions contained within ~~§ 4752, § 4753, or § 4754 of this title~~ § 4752 or § 4753 of this title.

Section 17. Amend § 4771, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4771. Drug paraphernalia [For application of this section, see 80 Del. Laws, c. 38, § 6]

(a) It is unlawful for any person to use, or possess with intent to use, drug paraphernalia as defined in § 4701(17) of this title. Except that any person charged under ~~§ 4764 (a), (b), or (d) of this title~~ § 4764(b) or (d) of this title, or assessed a civil penalty under § 4764(c) of this title, shall not also be charged with this offense if in possession of drug paraphernalia pertaining to the use of marijuana.

Section 18. Amend § 4795, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4795. Jurisdiction [For application of this section, see 80 Del. Laws, c. 38, § 6]

(b) The provisions of subsection (a) of this section or any other law to the contrary notwithstanding, the Court of Common Pleas shall have original jurisdiction over any violation of the following by persons 18 years of age or older:

(1) ~~Section 4761(a) and (b) of this title~~ Section 4761(a) of this title.

(2) Section 4763 of this title.

(3) ~~Section 4764(a), (b), and (d) of this title~~ Section 4764(b) and (d) of this title.

(4) Section 4771 of this title, except where jurisdiction over the civil penalty resides in the Justice of the Peace Court pursuant to subsection (c) of this section.

Section 19. Amend § 616, Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 616. Gang participation.

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

(1) "Criminal street gang" means any ongoing organization, association, or group of 3 or more persons, whether formal or informal, having as 1 of its primary activities the commission of 1 or more of the criminal acts enumerated in paragraph (a)(2) of this section, having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(2) "Pattern of criminal gang activity" means the commission of attempted commission of, conspiracy to commit, solicitation of, or conviction of 2 or more of the following criminal offenses, provided that at least 1 of these offenses occurred after July 1, 2003, and that the last of those offenses occurred within 3 years after a prior offense, and provided that the offenses were committed on separate occasions, or by 2 or more persons:

a. Assault, as defined in § 612 or § 613 of this title.

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- b. Any criminal acts causing death as defined in §§ 632—636 of this title.
 - c. Any criminal acts relating to sexual offenses defined in §§ 768—780 of this title.
 - d. Any criminal offenses relating to unlawful imprisonment or kidnapping which are defined in §§ 782— 783A of this title.
 - e. Any criminal acts of arson as defined in §§ 801—803 of this title.
 - f. Any criminal acts relating to burglary which are defined in §§ 824—826A of this title.
 - g. Any criminal acts relating to robbery which are defined in §§ 831 and 832 of this title.
 - h. Any criminal acts relating to theft or extortion which are defined in § 841, § 849 or § 851 of this title, provided that such acts meet the requirements of felony offenses under said sections.
 - i. Any criminal acts relating to riot, unlawful disruption, hate crimes, stalking or bombs which are defined in § 1302, former § 1303 [repealed], § 1304, § 1312A or § 1338 of this title, provided that such acts meet the requirements of felony offenses under said sections.
 - j. Any criminal acts involving deadly weapons or dangerous instruments which are defined in § 1442, § 1444, §§1447—1448, § 1449, § 1450, § 1451, § 1454 or § 1455 of this title.
 - k. Any criminal acts involving controlled substances which are defined by §§ 4752, 4753, ~~4754, 4755,~~

4756, or 4757(c) of Title 16.

Section 20. Amend § 6712, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6712. First offender boot camp diversion program.

~~(a) Subject to the provisions of this section and notwithstanding any other law, rule or regulation to the contrary, any person convicted upon a plea of guilty or otherwise convicted of any of the offenses set forth in subsection (b) of this section may petition the court to defer further sentencing proceedings, and to divert the offender to the boot camp program. In addition, the Department of Correction may petition the court on behalf of any person in its custody who has been convicted of an offense set forth in subsection (b) of this section, for a sentence modification~~

~~suspending the remainder of the offender's Level V sentence, and diverting such person to the boot camp diversion program ("modify and divert"). The Attorney General shall receive prior notice of all such applications and be provided an opportunity to be heard. Any offender diverted pursuant to this subsection shall be subject to the terms and conditions of this section. No person shall be eligible for boot camp pursuant to this section if the Attorney General's Office, upon written motion, opposes such boot camp diversion pursuant to paragraph (c)(2) of this section.~~

~~(b) Subject to the provisions of this section, certain persons convicted of the following offenses shall be potentially eligible for diversion to the boot camp inmate training program:~~

~~(1) Any offense in Title 16 relating to manufacture, delivery, or possession of controlled substances or prescription drugs, but not including §§ 4752-4756 of Title 16, except as set forth below; or~~

~~(2) Drug dealing or aggravated possession as set forth in §§ 4752-4756 of Title 16, but only if the weight of the illegal substance possessed is less than the minimum required for a Tier 3 Controlled Substances Quantity, as defined in § 4751C(3) of Title 16; or~~

~~(3) Burglary in the second degree, as set forth in § 825 of this title, but only if the defendant has not previously been convicted of burglary in the second degree or burglary in the first degree, as set forth in § 826 of this title.~~

~~(c) Notwithstanding any other provision of this section, no person shall be diverted to the boot camp program pursuant to this section or to otherwise utilize the provisions of this section, if:~~

~~(1) Such person has previously been incarcerated as an adult pursuant to a sentence imposed for a criminal conviction for any offenses set forth in Title 11 or 16, or any equivalent offense set forth under the laws of this State, any other state, or the United States or any territory thereof, and was previously sentenced to a term of more than 1 year of Level V incarceration, which was not suspended.~~

~~(2) The Attorney General's Office, upon written motion, opposes the Diversion. Such motion shall clearly articulate the specific reasons for such opposition.~~

~~(3) The Attorney General's Office offers the Boot Camp Diversion Program as part of a proposed plea agreement, the appellant rejects the offer, and the appellant is subsequently convicted after trial.~~

~~(d) Subject to the provisions of this section, and notwithstanding any other law, rule or regulation to~~

~~the contrary, if the sentencing court chooses to grant the petition to defer or to modify and divert, as set forth in subsection (a) of this section, the sentencing court shall enter a judgment of conviction; and shall then defer sentencing, or modify the imposition of the remainder of any Level V sentence, including any Level V sentence otherwise required by § 4752 of Title 16, or by § 825, § 826 or § 4205 of this title or by any other law. The court shall then remand the offender to the custody of the Department of Correction upon the condition that the offender shall complete a program of supervision which shall include:~~

- ~~(1) Placement in a boot camp facility with a substance abuse treatment program for a period of not less than 6 months, to be followed by supervision at Level IV or III, or both, for a period of 1 and 1/2 years;~~
- ~~(2) A requirement that, while at supervision Level IV or III, the offender comply with the terms of a curfew, said terms to be imposed by either the sentencing court or the Department of Correction. The terms of said curfew may include mandated compliance with certain geographical limitations, prohibitions or restrictions;~~
- ~~(3) A requirement that, while at supervision Level IV or III, the offender participate in substance abuse treatment which shall include periodic, random urine surveillance during the entire period of supervision at Level IV or III, or both;~~
- ~~(4) Payment of the costs of prosecution, and payment of a \$500 civil penalty to the Substance Abuse Rehabilitation, Education and Prevention Fund; and~~
- ~~(5) Any other terms or provisions deemed appropriate by the sentencing court or the Department of Correction.~~

~~(e) Whenever the court defers or modifies a sentence pursuant to this section, it shall inform the offender of the sentence to be imposed or reinstated in the event that the offender fails to comply with any of the terms of supervision or probation imposed pursuant to this section. Such term of imprisonment shall not be less than any applicable sentence mandated for the offense or offenses of which the offender was convicted, as set forth in § 4752 of Title 16, or § 825, § 826 or § 4205 of this title. Failure of the court to comply with this subsection shall not preclude the sentencing court from complying with any of the other provisions of this section.~~

~~(f) Whenever the court defers further sentencing proceedings pursuant to this section, it shall have the authority to remand the offender to the custody of the Department of Correction at Accountability Level III, IV or V until such offender is placed in a boot camp facility.~~

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- ~~(g) The Department of Correction shall closely monitor all participants in this program, and shall ensure that those program participants at supervision Level IV or III shall be monitored by officers specifically assigned to such duties. The Department of Correction shall at all times have on duty no fewer than 8 probation officers (2 for each county and 2 for the City of Wilmington) who shall promptly respond to police agencies as requested for the purpose of taking custody of any person who is believed to have violated the terms or conditions of that person's program of supervision or probation at the boot camp, or at Level IV or III. Pursuant to Chapter 43 of this title such probation officer shall promptly file a probation violation report setting forth the nature and circumstances of the alleged violation with the appropriate court.~~
- ~~(h) Upon receipt of an allegation that an offender has violated the terms of that offender's supervision, the sentencing court shall cause the offender to be brought before it without unnecessary delay. Upon a finding that the offender has violated any of the terms or conditions of supervision or probation at the boot camp or at Level IV or Level III, the court shall proceed to sentencing on all charges for which sentencing was originally deferred pursuant to this section, and shall impose not less than the full applicable Level V sentence mandated for the offense or offenses of which the offender was convicted, as set forth in § 4752 of Title 16, or § 825, § 826 or § 4205 of this title. If the offender had already been sentenced and the sentence was modified pursuant to this section, the offender shall serve the remainder of that original sentence. No credit time shall be given for any time spent in boot camp, Level IV or Level III. Failure of the sentencing court to comply with the sentencing provisions of this subsection shall constitute an illegal sentence within the meaning of Chapter 99 of Title 10.~~
- ~~(i) Upon conclusion of the period of supervision and probation imposed pursuant to this section, the court may find that the offender has successfully completed the program, and, if it does, it shall discharge the offender from probation.~~
- ~~(j) Prior to the release of any offender from the boot camp to supervision Level IV or III, the Department of Correction shall enter into the DELJIS criminal history system information identifying the offender as a first offender drug felon. [Repealed.]~~

Section 21. This Act takes effect 90 days after its enactment into law.

Approved September 16, 2019

CHAPTER 146
FORMERLY
SENATE BILL NO. 137
AS AMENDED BY
SENATE AMENDMENT NO. 1

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

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 Subchapter IV, Chapter 47, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4770. Unlawful possession, distribution, delivery, or sale of drug masking products; class B misdemeanor or class E felony.

(a) For purposes of this section:

(1) “Drug masking product” means a substance, including synthetic urine, designed to be added to human urine or to human hair for the purpose of defrauding an alcohol or drug urine screening test.

(2) “Synthetic urine” means a substance that is designed to simulate the composition, chemical properties, physical appearance, or physical properties of human urine.

(b) It is unlawful for any person to do any of the following:

(1) Possess a drug masking product.

(2) Distribute, deliver, or sell a drug masking product or to possess a drug masking product with the intent to distribute, deliver, or sell the drug masking product.

(c)(1) Violation of paragraph (b)(1) of this section is a class B misdemeanor.

(3) Violation of paragraph (b)(2) of this section is a class E felony.

Approved July 23, 2019

CHAPTER 10
FORMERLY
SENATE SUBSTITUTE NO. 1
FOR SENATE BILL NO. 25

AN ACT TO AMEND TITLE 11, TITLE 16, AND TITLE 30 OF THE DELAWARE CODE RELATING TO DELIVERY AND SALES OF TOBACCO PRODUCTS.

NOW, THEREFORE:

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

Section 1. Amend § 1115, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1115. Definitions.

(4) "Proof of age" means a driver's license or other government-issued identification with a photograph of the individual affixed thereon that indicates that the individual is ~~18~~21 years old or older.

(9)a. "Tobacco product" means any product that ~~contains tobacco, including, but not limited to, is made from or derived from tobacco or that contains nicotine, including:~~ cigarettes, cigars, pipe tobacco, snuff hookah tobacco, chewing tobacco, snuff, snus, or smokeless tobacco and is intended for human consumption or use by any means including smoking, heating, chewing, absorbing, dissolving, inhaling, or ingesting.

b. "Tobacco product" also means a component or accessory used in the consumption of a tobacco product, including filters, rolling papers, and pipes.

c. "Tobacco product" does not mean a drug, device, or combination product authorized for sale by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 USCS §§ 301 et seq.).

(11)a. "Tobacco substitute" means ~~any~~an electronic smoking device employing a mechanical heating element, battery, or ~~circuit, regardless of shape or size, that can be used to deliver nicotine into the body through inhalation and that has not been approved by the United States Food and Drug Administration for tobacco cessation or other medical purposes, or any noncombustible product containing nicotine intended for use in such a device that has not been approved by the United States Food and Drug Administration for tobacco cessation or other medical purposes.~~circuit to produce aerosol or vapor for inhalation into the body of an individual.

b. "Tobacco substitute" also means liquid used in a device under paragraph (11)a. of this section,

including liquids that contain nicotine and liquids that do not contain nicotine.

c. “Tobacco substitute” does not mean a drug, device, or combination product authorized for sale by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 USCS §§ 301 et seq.).

Section 2. Amend § 1116, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1116. Sale or distribution of tobacco products or tobacco substitutes to ~~minors.~~ individuals under the age of 21 years.

(a) It shall be unlawful for any person to sell or distribute any tobacco product or tobacco substitute to ~~another person~~ an individual who has not attained the age of ~~18-21~~ 21 years or to purchase any tobacco product or tobacco substitute on behalf of ~~another such person, except that this section shall not apply to the parent or guardian of another such person.~~ an individual under 21 years of age.

(c) A person engaged in the sale or distribution of tobacco products or tobacco substitutes shall demand proof of age from a prospective purchaser or recipient of such products who is under ~~27-30~~ 30 years of age.

Section 3. Amend § 1117, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1117. Notice.

A person engaged in the sale or distribution of tobacco products or tobacco substitutes shall post conspicuously at each point of purchase and each tobacco vending machine a notice stating that selling tobacco products or tobacco substitutes to anyone under ~~18-21~~ 21 years of age is illegal, that the purchase of tobacco products or tobacco substitutes by anyone under ~~18-21~~ 21 years of age is illegal and that a violator is subject to fines. The notice shall also state that all persons selling tobacco products or tobacco substitutes are required, under law, to check the proof of age of any purchaser of tobacco products or tobacco substitutes under the age of ~~27-30~~ 30 years. The notice shall include a toll-free telephone number to the Department of Safety and Homeland Security for persons to report unlawful sales of tobacco products or tobacco substitutes. The owners of an establishment who fail to post a notice in compliance with this section shall be subject to a fine of \$100.

Section 4. Amend § 1118, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1118. Distribution of ~~samples to minors.~~ samples or coupons.

(a) It shall be unlawful for any person to distribute tobacco product or tobacco substitute samples or coupons for subsequent receipt of free or discounted tobacco products or tobacco substitutes to ~~another person~~ an individual who has not attained the age of ~~18~~ 21 years.

Section 5. Amend § 1119, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1119. Distribution of ~~cigarettes~~ tobacco products or tobacco substitutes through vending machines.

(a) It shall be unlawful for any person to distribute or permit the distribution of tobacco products or tobacco substitutes through the operation of a vending machine in a public place, except as provided in subsection (b) of this section.

(b) Pursuant to subsection (a) of this section, a person may distribute or permit the distribution of tobacco products or tobacco substitutes through the operation of a vending machine in a taproom, tavern, tobacco shop or in premises in which ~~a person~~ an individual who has not attained the age of ~~18~~ 21 years is prohibited by law from entering. A tobacco vending machine must be operated a minimum of 25 feet from any entrance to the premises and must be directly visible to the owner or supervisor of the premises.

(c) It shall be unlawful for any person who owns, operates or manages a business establishment where tobacco products or tobacco substitutes are offered for sale over the counter at retail to maintain such products in any display accessible to customers that is not under the control of a cashier or other employee. This prohibition shall not apply to business establishments to which ~~persons~~ individuals under the age of ~~18~~ 21 are not admitted unless accompanied by an adult, tobacco vending machines as permitted under subsection (b) of this section, or tobacco stores. As used in this subsection, "under the control" means customers cannot readily access the tobacco products or tobacco substitutes without the assistance of a cashier or other employee. A display that holds tobacco products or tobacco substitutes behind locked doors shall be ~~constructed~~ construed as under the control of a cashier or other employee.

Section 6. Amend § 1121, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1121. Penalties.

(a)(1) Notwithstanding any other provision of Delaware law, a person who violates § 1116, § 1118, ~~§ 1119~~ § 1119, or § 1120 of this title ~~shall be~~ regarding an individual who is under 18 years old is guilty of a violation

and ~~shall be~~ is fined \$250 for the first ~~offense~~ offense, \$500 for the second ~~offense~~ offense, and \$1,000 for the third and all subsequent offenses.

(2) Notwithstanding any other provision of Delaware law, a person who violates § 1116, § 1118, § 1119, or § 1120 of this title regarding an individual who is at least age 18 years old but less than 21 years old is subject to a civil penalty as follows:

a. For a first occurrence, fined \$250.

b. For a second occurrence, fined \$500.

c. For a third or subsequent occurrence, fined \$1,000.

(3)a. Notwithstanding any other provision of Delaware law, a person who violates § 1116, § 1118, § 1119, or

§ 1120 of this title is subject to a civil penalty for selling or distributing any of the following:

1. A tobacco substitute that does not contain nicotine.

2. A tobacco product under paragraph § 1115(9)b. of this title.

b. The civil penalty under paragraph (3)a. of this section is as follows:

1. For a first occurrence, fined \$250.

2. For a second occurrence, fined \$500.

3. For a third or subsequent occurrence, fined \$1,000.

(b) Additionally, and notwithstanding any other provision of Delaware law, in imposing a penalty for a second, ~~third~~ third, or other subsequent offense under this subpart, the court may order the Department of Finance to suspend the defendant's license for sale of tobacco products, issued ~~pursuant to~~ under § 5307 of Title 30, for a period not to exceed 6 months. Upon the suspension of such license, the court shall advise the Department of Finance of the suspension in writing. The holder of the license shall surrender the license to the Department of Finance and no refund of fees ~~shall~~ will be paid. For purposes of this subpart, a subsequent offense is one that occurs within 12 months of a prior like offense.

Section 7. Amend § 1122, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1122. Affirmative defense.

In any prosecution for an offense under this subpart, it shall be an affirmative defense that the purchaser or recipient of tobacco products or tobacco substitutes who had not reached the age of ~~18~~21 years presented to the accused proof of age which set forth information that would lead a reasonable person to believe that such individual was ~~18~~21 years of age or older.

Section 8. Amend § 1123, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1123. Liability of employer.

(a) If a sale or distribution of any tobacco product or tobacco substitute or coupon is made in violation of § 1116, § 1118, ~~§ 1119 or~~ § 1119, or § 1120 of this title, the owner, proprietor, franchisee, store manager or other person in charge of the establishment where the violation occurred shall be guilty of the violation and shall be subject to the fine only if the retail licensee has received written notice of the provisions of §§ 1116 through 1121 of this title by the Department of Safety and Homeland Security. For purposes of determining the liability of a person who owns or controls franchises or business operations in multiple locations, for a second or subsequent violation of this subpart, each individual franchise or business location shall be deemed a separate establishment.

(b) Notwithstanding any other provision of this subpart, in any prosecution for a violation of §§ 1116, ~~1118 and 1118~~, or 1120 of this title, the owner, proprietor, franchisee, store manager or other person in charge of the establishment where the alleged violation occurred shall have an affirmative defense if such person or entity can establish that prior to the date of the violation the person or entity:

- (1) ~~Had adopted~~ Adopted and enforced a written policy against selling tobacco products or tobacco substitutes to persons under ~~18~~21 years of age;
- (2) ~~Had informed~~ Informed its employees of the applicable laws regarding the sale of tobacco products or tobacco substitutes to persons under ~~18~~21 years of age;
- (3) Required employees to sign a form indicating that they have been informed of and understand the written policy required herein;
- (4) Required employees to verify the age of tobacco product or tobacco substitute customers by means of photographic identification; and
- (5) ~~Had established~~ Established and enforced disciplinary sanctions for noncompliance.

(c) The affirmative defense established in subsection (b) of this section may be used by an owner, proprietor, franchisee, store ~~manager~~ manager, or other person in charge of the establishment no more

than ~~twice~~ 1 time at each location within any ~~12-month~~ 36 month period.

Section 9. Amend § 1124, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1124. ~~Purchase or receipt of tobacco products or tobacco substitutes by minors.~~ [Reserved.]

~~(a) It shall be unlawful for any person who has not attained the age of 18 years to purchase a tobacco product or tobacco substitute, to accept receipt of a sample, to exchange a coupon for a tobacco product or tobacco substitute, or to present or offer to another person a purported proof of age which is false, fraudulent or not actually that person's own proof of age, for the purpose of purchasing or receiving any tobacco product or tobacco substitute or redeeming a coupon for a tobacco product or tobacco substitute.~~

~~(b) A person who violates subsection (a) of this section shall be adjudged delinquent and shall for a first adjudication be fined \$50 or ordered to perform 25 hours of community service work, and for a second adjudication and for all subsequent adjudications be fined \$50 and ordered to perform 50 hours of community service work. A subsequent adjudication of delinquency is one that occurs within 12 months of a prior like offense.~~

Section 10. Amend § 1125, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1125. Unannounced inspections; reporting; enforcement.

~~(b) Persons~~ An individual under the age of ~~18-21~~ may be enlisted by the Department of Safety and Homeland Security or its delegates to test compliance with and enforcement of §§ ~~1116-1120 and 1124~~ §§ 1116 through 1120 and § 1124 of this title, provided however, that ~~such persons~~ the individual may be used only under the direct supervision of the Department of ~~Public Safety,~~ Safety and Homeland Security, its employees or delegates and only where written parental consent has been ~~provided.~~ provided for an individual under the age of 18.

~~(c) Participation in the inspection and enforcement activities of this section by a person~~ an individual under ~~18-21~~ years of age shall not constitute a violation of this subpart for the ~~person~~ individual under ~~18-21~~ years of age, and the ~~person~~ individual under ~~18-21~~ years of age is immune from prosecution thereunder, or under any other provision of law prohibiting the purchase of these products by a ~~person~~ an individual under

~~18-21~~ years of age.

(d) The Department of Safety and Homeland Security shall adopt and publish guidelines for the use of ~~persons~~ individuals under ~~18-21~~ years of age in inspections conducted ~~pursuant to~~ under this section.

Section 11. Amend § 2908, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2908. Vapor establishments.

(b) Any vapor establishment permitted to have emissions produced by electronic smoking devices in such vapor establishment pursuant to this section, and which permits such emissions, shall prohibit anyone under the age of ~~18-21~~ from entering and shall display a sign at all entrances stating that no one under the age of ~~18-21~~ is allowed in such vapor establishment.

(c)(1) An employee who is under the age of 21 and who is employed by a vapor establishment on [the effective date of this Act] may continue as an employee of that vapor establishment, if the vapor establishment provides the Division of Alcohol and Tobacco Enforcement with all of the following information:

a. The employee's name.

b. The employee's date of birth.

c. The employer's name.

d. Proof that the employee was employed by the vapor establishment on [the effective date of this Act] by providing any of the following:

1. A paystub.

2. An Internal Revenue Service W-2 tax form.

3. A State UC-8A Quarterly Report.

4. Other documentation of monetary pay to an employee by an employer in return for work performed.

(2) The information required under paragraph (c)(1) of this section must be received by the Division of Alcohol and Tobacco Enforcement no later than 30 days from [the effective date of this Act].

(3) The Division of Alcohol and Tobacco Enforcement shall retain the information provided under this subsection for 3 years.

Section 12. Amend § 5361, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating Delaware Code provisions and internal references accordingly:

§ 5361. Definitions.

For purposes of this subchapter:

- (1) "Adult" means a person who is at least the legal minimum purchase age.
- (3) "Delivery sale" means any sale of any tobacco product or tobacco substitute to a consumer in this State where either:
 - b. The tobacco products or tobacco substitutes are delivered by use of the mails or of a delivery service. A sale of any tobacco product or tobacco substitute shall be a delivery sale regardless of whether the seller is located within or without this State. A sale of any tobacco product or tobacco substitute not for personal consumption to a person who is a distributor or a retail dealer shall not be a delivery sale.
- (6) "Legal minimum purchase age" is the minimum age at which an individual may legally purchase any tobacco product or tobacco substitute in this State. ~~State under § 1124 of Title 11.~~
- (11) ~~"Tobacco products" means 1 or more cigarettes, herbal cigarettes, bidis, chewing tobacco, powdered tobacco, snuff or any other, noncigar or nonpipe tobacco product.~~ "Tobacco product" means as defined under paragraph § 1115(9)a. of Title 11.
- () "Tobacco substitute" means as defined under § 1115 of Title 11."

Section 13. Amend § 5362, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5362. Requirements for delivery sales.

- (a) No person shall make a delivery sale of any tobacco product or tobacco substitute to any individual who is under the legal minimum purchase age in this State.
- (b) Each person accepting a purchase order for a delivery sale shall comply with:
- (6) All other laws of this State generally applicable to sales of any tobacco product or tobacco substitute that occur entirely within this State, including, but not limited to, those laws imposing:

Section 14. Amend § 5363, Title 30 of the Delaware Code by making deletions as shown by strike through

and insertions as shown by underline as follows:

§ 5363. Age verification requirements.

(a) No person shall mail, ship or otherwise deliver any tobacco product or tobacco substitute in connection with a delivery sale unless prior to the ~~1st~~first delivery sale to such consumer:

(1) Receives both a copy of a valid form of government identification showing date of birth to verify the purchaser is age ~~18~~21 years or over and an attestation from the purchaser certifying that the information on the government identification truly and correctly identifies the purchaser and the purchaser's current address. Such attestation shall also confirm:

- a. That the prospective consumer understands that signing another person's name to such certification is illegal;
- b. That the sale of tobacco products, including cigarettes, or tobacco substitutes to individuals under the legal minimum purchase age is illegal; and
- c. That the purchase of tobacco products, including cigarettes, or tobacco substitutes by individuals under the legal minimum purchase age is illegal under the laws of this State;

(2) Delivers the tobacco product or tobacco substitute to the address of the purchaser given on the valid form of government identification and by a postal or package delivery service method that either limits delivery to that purchaser and requires the purchaser to sign personally to receive the delivery or requires a signature of an adult at the purchaser's address to deliver the package;

(4) In the case of an order for any tobacco product or tobacco substitute pursuant to an advertisement on the Internet, receives payment for the delivery sale from the prospective consumer by a credit or debit card that has been issued in such consumer's name.

(c) Any wholesale or retail seller of cigars or pipe tobacco shall affirm that the purchaser of said product is ~~18~~21 years of age or older before the time of sale.

Section 15. Amend § 5364, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5364. Disclosure requirements.

The notice required under § 5363(a)(3) of this title shall include:

- (1) A prominent and clearly legible statement that any tobacco product or tobacco substitute sales to consumers below the legal minimum purchase age are illegal;

Section 16. Amend § 5365, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5365. Shipping requirements.

(a) Each person who mails, ships or otherwise delivers ~~any a tobacco product~~ product, as defined under § 5301 of this title, in connection with a delivery sale shall become affixing agents as defined ~~by~~ under § 5301 of this title and shall be eligible to receive commissions ~~pursuant to~~ under § 5318 of this ~~title and further shall~~ title. Each person who mails, ships or otherwise delivers a tobacco product or tobacco substitute, as defined under § 5361 of this title, must do all of the following:

- (1) Include as part of the bill of lading or other shipping documents a clear and conspicuous statement providing as follows: "Any Tobacco ~~Product:~~ Product or Tobacco Substitute: Delaware Law Prohibits Shipping to Individuals Under ~~18,~~ 21, and Requires the Payment of all Applicable Taxes";

- (2) Use a method of mailing, shipping or delivery that obligates the delivery service to require:

- a. The consumer placing the purchase order for the delivery sale or another adult of legal minimum purchase age residing at the consumer's address, to sign to accept delivery of the shipping container; and

- b. Proof, in the form of a valid, government-issued identification bearing a photograph of the individual who signs to accept delivery of the shipping container, demonstrating that the individual is either the addressee or another adult of legal minimum purchase age residing at the consumer's address. However, proof of the legal minimum purchase age shall be required only if such individual appears to be under ~~27~~ 30 years of age; and

(3) Provide to the delivery service retained for such delivery sale evidence of full compliance with § 5367 of this title.

(b) If the person accepting a purchase order for a delivery sale delivers the any tobacco product or tobacco substitute without using a delivery service, such person shall comply with all requirements of this subchapter applicable to a delivery service and shall be in violation of the provisions of this subchapter if he or she fails to comply with any such requirement.

Section 17. Amend § 5366, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5366. Registration and reporting requirements.

(a) Prior to making delivery sales or mailing, shipping or otherwise delivering any tobacco ~~product~~ product, as defined under § 5301 of this title, in connection with any such sales, every person shall file with the Department a statement setting forth such person's name, trade name and the address of such person's principal place of business and any other place of business.

(b) Not later than the tenth day of each calendar month, each person that has made a delivery sale or mailed, shipped or otherwise delivered any tobacco ~~product~~ product, as defined under § 5301 of this title, in connection with any such sale during the previous calendar month shall file with the Department a memorandum or a copy of the invoice that provides for each and every such delivery sale:

(2) The brand or brands of the any tobacco ~~product~~ product, as defined under § 5301 of this title, that were sold in such delivery sale; and

Section 18. Amend § 5368, Title 30 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 5368. Penalties.

(a) Except as otherwise provided in this section, a first violation of any provision of this subchapter shall be punishable by a fine of \$1,000 or 5 times the retail value of the any tobacco product or

tobacco substitute involved, whichever is greater. A second or subsequent violation of any provision of this subchapter shall be punishable by a fine of \$5,000 or 5 times the retail value of the ~~cigarettes-tobacco~~ products or tobacco substitutes involved, whichever is greater.

Section 19. This Act takes effect 90 days after its enactment into law.

Approved April 17, 2019