

SENTAC



Delaware Sentencing Accountability Commission Benchbook 2015*

***INCLUDES RELEVANT LEGISLATION OF
THE 147th GENERAL ASSEMBLY**

| SUMMARY OF PRESUMPTIVE SENTENCES | | | |
|---|--|------------------|------------------|
| Crime Classification | Presumptive Sentence | Statutory | Page Ref. |
| Felonies | | | |
| Class A (Other than Murder) | 15 yrs @ Level V | 15 yrs. to Life | 28 |
| Class B | 2 to 5 yrs (1st 2 yrs @ Level V) | 2 to 25 yrs | 31 |
| Class C (Violent) | Up to 30 m @ Level V | up to 15 yrs | 37 |
| Class C (Nonviolent) | Up to 1 yr @ Level V | up to 15 yrs | 41 |
| Class D (Violent) | Up to 2 yrs @ Level V | up to 8 yrs | 43 |
| Class D (Nonviolent) | Up to 12 m @ Level II or III | up to 8 yrs | 47 |
| Class E (Violent) | Up to 15 m @ Level V | up to 5 yrs | 49 |
| Class E (Nonviolent) | Up to 12 m @ Level II | up to 5 yrs | 53 |
| Class F (Violent) | Up to 9 m @ Level V | up to 3 yrs | 57 |
| Class F (Nonviolent) | Up to 12 m for Title 11; Up to 18 m for Title 16 @ Level II | up to 3 yrs | 60 |
| Class G (Violent) | Up to 6 m @ Level V Title 16, §§4767,4768: 3-9 m @ Level V | up to 2 yrs | 64 |
| Class G (Nonviolent) | Up to 12 m @ Level II | up to 2 yrs | 67 |
| Misdemeanors | | | |
| Class A (Violent) MA1 | Up to 12 m @ Level II | up to 1 yr | 72 |
| Class A (Escape) MA2 | Up to 3 m @ Level IV | up to 1 yr | 74 |
| Class A (Property) MA3 | Up to 12 m @ Level I | up to 1 yr | 75 |
| Class A (Order/Decency) MA4 | Up to 12 m @ Level I | up to 1 yr | 77 |
| Class A (Controlled Substance) | 16-4764: FOP Minimum 12 m @ Level I (7/12/05) 1st Offense 12m @ Level II | up to 1 yr | 80 |
| Class B | Fine, Costs & Restitution | up to 6 m. | 81 |
| Unclassified | Fine, Costs & Restitution | up to 30 d | 83 |
| Violations | Fine, Costs & Restitution | \$0 to \$345 | 85 |
| Habitual Criminal | Up to Life | Up to Life | 119 |
| Violation of Probation | 1 Level Higher | 1 Level Higher | 121 |

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

| SUMMARY OF PRESUMPTIVE SENTENCES | | | |
|---|--------------------------|-------------------------|----|
| Class A (property) | Up to 12 mos. @ Level I | Up to 9 mos. @ Level I | 75 |
| 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 |

TABLE OF CONTENTS

| | |
|--|------------|
| INDEX OF OFFENSES | 5 |
| INTRODUCTION | 22 |
| SENTAC STATEMENT OF POLICY | 27 |
| MEMBERS OF THE SENTAC ACCOUNTABILITY COMMISSION | 32 |
| SUMMARY OF PRESUMPTIVE SENTENCES | |
| CLASS A FELONY | 33 |
| CLASS B FELONY (VIOLENT) | 37 |
| CLASS B FELONY (NON-VIOLENT) | 44 |
| CLASS C FELONY (VIOLENT) | 45 |
| CLASS C FELONY (NON-VIOLENT) | 50 |
| CLASS D FELONY (VIOLENT) | 52 |
| CLASS D FELONY (NON-VIOLENT) | 56 |
| CLASS E FELONY (VIOLENT) | 59 |
| CLASS E FELONY (NON-VIOLENT) | 61 |
| CLASS F FELONY (VIOLENT) | 65 |
| CLASS F FELONY (NON-VIOLENT) | 67 |
| CLASS G FELONY (VIOLENT) | 72 |
| CLASS G FELONY (NON-VIOLENT) | 74 |
| CLASS A MISDEMEANORS | |
| I.) Violent (MA1) | 79 |
| II.) Escape (MA2) | 81 |
| III.) Property (MA3) | 82 |
| IV.) Order & Decency (MA4) | 85 |
| V.) Controlled Substances (MA5) | 89 |
| CLASS B MISDEMEANORS | 90 |
| UNCLASSIFIED MISDEMEANORS | 92 |
| VIOLATIONS | 95 |
| TITLE 21 AND TITLE 23 OFFENSES | 96 |
| SUMMARY OF DRUG OFFENSES | 108 |
| AGGRAVATING AND MITIGATING FACTORS | 127 |
| QUALIFYING UNDERLYING OFFENSES FOR TITLE 11 SECTION 1105 | 132 |
| SUBSTANTIAL ASSISTANCE | 133 |
| MODIFICATION DUE TO SERIOUS MEDICAL ILLNESS, INJURY, OR INFIRMITY | 133 |
| EXCEPTIONAL SENTENCES | 134 |
| SPECIAL CATEGORIES: | |
| Domestic Violence | 134 |
| Escape | 136 |
| Juveniles Being Sentenced as Adults | 137 |
| HABITUAL CRIMINAL | 138 |
| VIOLATION OF PROBATION SENTENCING POLICY | 140 |
| MATERIALS PROVIDED FOR CONVENIENCE OF USERS | |
| WORK RELEASE POLICY | 142 |
| PROBATION CONDITIONS OF SUPERVISION | 144 |
| LEGISLATIVE UPDATE | 146 |
| SEX OFFENDER REGISTRATION PROVISIONS | 206 |
| DELJIS SEX OFFENDER MANUAL TIER ASSESSMENTS | 207 |
| BAIL GUIDELINES | 210 |

INDEX OF OFFENSES

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUE</i> | <i>PAGE</i> |
|--|--------------------------------|---------------|-------------|
| Abandonment of Child (14 yrs of age or older) | Class F Felony (Nonviolent) | 11-1101 | 68 |
| Abandonment of Child (<than 14 yrs of age) | Class E Felony (Nonviolent) | 11-1101 | 61 |
| Abetting Driver's License Violation (Prior Conviction/Death) | Class G Felony (Nonviolent) | 11-1249 | 75 |
| Abetting Violation of Driver's License | Class A Misdemeanors | 11-1249 | 86 |
| Abortion | Class F Felony (Nonviolent) | 11-651 | 67 |
| Abuse of Infirm Adult: Bodily Harm | Class D Felony (Violent) | 31-3913(c) | 53 |
| Abuse of Pregnant Female 1st Degree | Class B Felony | 11-606 | 37 |
| Abuse of Pregnant Female 2nd Degree | Class C Felony (Violent) | 11-605 | 45 |
| Abuse of Sports Official (1st Offense) | Class A Misdemeanors | 11-614 | 79 |
| Abuse of Sports Official (Prior Conv) | Class G Felony (Violent) | 11-614 | 72 |
| Abuse/Neglect of Infirm Adult | Class A Misdemeanors | 31-3913(a) | 79 |
| Abuse/Neglect of Infirm Adult: Death | Class A Felony | 31-3913(c) | 33 |
| Abuse/Neglect of patient in Facility | Class C Felony (Violent) | 16-1136(a) | 46 |
| Abuse/Neglect of Patient in Residential Facility | Class A Misdemeanors | 16-1136(a) | 79 |
| Abuse/Neglect of Patient: Death | Class A Felony | 16-1136(a) | 33 |
| Abuse/Neglect of Patient: Sexual Contact | Class G Felony (Violent) | 16-1136(a) | 72 |
| Abusing a Corpse | Class A Misdemeanors | 11-1332 | 86 |
| Act of Intimidation | Class D Felony (NV) | 11-3532 | 56 |
| Adulteration | Class G Felony (Nonviolent) | 11-1339 | 76 |
| Adulteration (Injury/Illness) | Class E Felony (Violent) | 11-1339 | 59 |
| Adulteration: Death | Class A Felony | 11-1339 | 33 |
| Advancing Gambling 1st Degree | Class A Misdemeanors | 11-1403 | 87 |
| Advancing Gambling 2nd Degree | Class A Misdemeanors | 11-1401 | 87 |
| Advertisement of Drug Paraphernalia | Unclassified Misdemeanors | 16-4774 (d) | 93 |
| Aggravated Criminal Non-Support | Class G Felony (Nonviolent) | 11-1113 | 75 |
| Aggravated Criminal Non-support (Prior Conviction) | Class A Misdemeanors | 11-1113(a) | 86 |
| Aggravated Harassment | Class G Felony (Nonviolent) | 11-1312 | 76 |
| Aggravated Intimidation of Witness &/or Victim | Class D Felony (Violent) | 11-3533 | 38 |
| Aggravated Menacing (Display Deadly Weapon) | Class E Felony (Violent) | 11-602(b) | 59 |
| Aggravated possession | Class E Felony (Violent) | 16-4755 | 59 |
| Aggravated Possession | Class F Felony (Violent) | 16-4756 | 65 |
| Aggressive Driving | Title 21 and Title 23 Offenses | 21-4175A | 96 |
| Allow Unlawful Access to Firearm by Minor | Class A Misdemeanors | 11-1456 | 87 |
| Animals; fighting and baiting | Class E Felony (Nonviolent) | 11-1326(a) | 62 |
| Arson 1st Degree | Class C Felony (Violent) | 11-803 | 45 |
| Arson 2nd Degree | Class D Felony (Violent) | 11-802 | 52 |
| Arson 3rd Degree | Class G Felony (Nonviolent) | 11-801 | 74 |
| Assault 1st Degree on Law Enforcement Animal | Class D Felony (Violent) | 11-1250(c) | 53 |

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUTE</i> | <i>PAGE</i> |
|--|--------------------------------|-----------------|-------------|
| Assault 1st Degree. Reclassified in 6/2003 | Class B Felony | 11-613 | 37 |
| Assault 2d Degree Against Law enforcement Animal | Class A Misdemeanors | 11-1250(b) | 79 |
| Assault 2nd Degree | Class C Felony (Violent) | 11-612 (11) | 45 |
| Assault 2nd Degree | Class D Felony (Violent) | 11-612 | 52 |
| Assault 3rd Degree | Class A Misdemeanors | 11-611 | 79 |
| Assault in Detention Facility w/Serious Injury | Class B Felony | 11-1254(b) | 38 |
| Assault in Detention Facility: Bodily Emissions | Class D Felony (Violent) | 11-1254(c) | 53 |
| Assault in Detention Facility: Injury | Class D Felony (Violent) | 11-1254(a) | 53 |
| Benefit by False Representation | Class E Felony (Nonviolent) | 31-1003 | 65 |
| Benefit by False Representation >\$10,000 | Class C Felony (Nonviolent) | 31-1003 | 50 |
| Bestiality | Class D Felony (Violent) | 11-775 | 52 |
| Bigamy | Class G Felony (Nonviolent) | 11-1001 | 75 |
| Body Piercing & Tattoos | Class A Misdemeanors | 11-1114 | 86 |
| Body Piercing & Tattoos | Class B Misdemeanors | 11-1114 | 90 |
| Breach Conditions of Release (Misdemeanor) | Unclassified Misdemeanors | 11-2113 | 93 |
| Breach of Conditions of Bail | Class G Felony (Nonviolent) | 11-2109(c)(1) | 76 |
| Breach of Conditions of Bail | Unclassified Misdemeanors | 11-2109(c)(2) | 93 |
| Breach of Release Conditions (Felony/Prior Conviction Crime) | Class G Felony (Nonviolent) | 11-2113(c)(1) | 76 |
| Bribery | Class A Misdemeanors | 11-881 | 86 |
| Bribery of a Juror | Class E Felony (Nonviolent) | 11-1264 | 62 |
| Bribery of a Public Servant | Class E Felony (Nonviolent) | 11-1201 | 61 |
| Bribery of a Witness | Class E Felony (Nonviolent) | 11-1261 | 61 |
| Burglary 1st Degree | Class C Felony (Violent) | 11-826 | 46 |
| Burglary 1st Degree (Vt> 62 y.o.a.) | Class B Felony | 11-826(a)(2) | 38 |
| Burglary 2nd Degree | Class D Felony (Violent) | 11-825 | 53 |
| Burglary 2nd Degree (Vt> 62 y.o.a.) | Class C Felony (Violent) | 11-825 | 46 |
| Burglary 3rd Degree | Class F Felony (Nonviolent) | 11-824 | 67 |
| Careless or Inattentive Driving | Title 21 and Title 23 Offenses | 21-4176 | 96 |
| Carjacking 1st Degree | Class B Felony | 11-836(a)(4-6) | 38 |
| Carjacking 1st Degree | Class C Felony (Violent) | 11-836(a)(1- 3) | 46 |
| Carjacking 2nd Degree | Class D Felony (Violent) | 11-835(b)(2) | 53 |
| Carjacking 2nd Degree | Class E Felony (Violent) | 11-835 | 59 |
| Carry Concealed Deadly Weapon | Class G Felony (Nonviolent) | 11-1442 | 76 |
| Carrying Concealed Dangerous Instrument | Class A Misdemeanors | 11-1443 | 79 |
| Carrying Concealed Deadly Weapon (Firearm) | Class D Felony (Violent) | 11-1442 | 53 |
| Child Abuse in the First Degree | Class B Felony | 11-1103B | 44 |
| Child Abuse in the Second Degree | Class G Felony (Nonviolent) | 11-1103A | 75 |
| Child Abuse in the Third Degree | Class A Misdemeanors | 11-1103 | 79 |
| Child Murder by Abuse/Neglect 1st Degree | Class A Felony | 11-634 | 33 |
| Child Murder by Abuse/Neglect 2nd Degree | Class B Felony | 11-633 | 37 |
| Coercion | Class A Misdemeanors | 11-791 | 85 |
| Compound a Crime | Class A Misdemeanors | 11-1246 | 86 |

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUTE</i> | <i>PAGE</i> |
|--|-----------------------------|-----------------|-------------|
| Computer Offense Penalties (\$5,000-\$9,999) | Class E Felony (Nonviolent) | 11-939 | 61 |
| Computer Offense Penalties (\$500-\$999) | Class G Felony (Nonviolent) | 11-939 | 75 |
| Computer Offense Penalties (>\$10,000) | Class D Felony (Nonviolent) | 11-939 | 56 |
| Computer Offenses Penalties (<\$500) | Class A Misdemeanors | 11-939 | 83 |
| Conceal/Destroy/Falsify/Forge Document Which Results in False Authorization of Maintenance Medical Treatment for Life Prolongation | Class C Felony (Nonviolent) | 16-2513(b) | 50 |
| Conspiracy 1st Degree | Class E Felony (Violent) | 11-513 | 59 |
| Conspiracy 2nd Degree | Class G Felony (Nonviolent) | 11-512 | 74 |
| Conspiracy 3rd Degree | Class A Misdemeanors | 11-511 | 85 |
| Continuous Sexual Abuse of Child (7/26/06) | Class B Felony | 11-776 | 37 |
| Crime Against a Vulnerable Adult | Class C Felony (Violent) | 11-1105 | 46 |
| Crime Against a Vulnerable Adult | Class D Felony (Violent) | 11-1105 | 53 |
| Crime Against a Vulnerable Adult | Class E Felony (Violent) | 11-1105 | 59 |
| Crime Against a Vulnerable Adult | Class F Felony (Violent) | 11-1105 | 65 |
| Crime Against a Vulnerable Adult | Class G Felony (Violent) | 11-1105 | 72 |
| Crime Against a Vulnerable Adult | Class A Misdemeanors | 11-1105 | 79 |
| Crimes Regarding Vital Records | Class G Felony (Nonviolent) | 16-3111(a) | 76 |
| Criminal Contempt | Class A Misdemeanors | 11-1271(2-8) | 86 |
| Criminal Contempt | Class B Misdemeanors | 11-1271(1) | 90 |
| Criminal Contempt of a Domestic Violence Protection Order (PFA) | Class F Felony (Nonviolent) | 11-1271A(b)(c) | 68 |
| Criminal Contempt: DV Protective Order | Class A Misdemeanors | 11-1271A | 79 |
| Criminal Impersonation | Class A Misdemeanors | 11-907 | 86 |
| Criminal Impersonation (Accident Related) | Class G Felony (Nonviolent) | 11-907A | 75 |
| Criminal Impersonation of a Police Officer w/Injury or Felonies | Class C Felony (Nonviolent) | 11-907B(b) | 50 |
| Criminal Impersonation Police Officer | Class E Felony (Nonviolent) | 11-907B | 61 |
| Criminal Mischief (\$5000+ Loss/Substantial Interruption) | Class G Felony (Nonviolent) | 11-811(b)(1) | 74 |
| Criminal Mischief (<\$1000) | Unclassified Misdemeanors | 11-811(b)(3)(4) | 92 |
| Criminal Mischief (>\$1000-<\$5000) | Class A Misdemeanors | 11-811(b)(2)(4) | 82 |
| Criminal Non-support | Class B Misdemeanors | 11-1113(a) | 90 |
| Criminal Nuisance | Unclassified Misdemeanors | 11-1322 | 92 |
| Criminal Solicitation 1st Degree | Class C Felony (Nonviolent) | 11-503 | 50 |
| Criminal Solicitation 1st Degree | Class E Felony (Nonviolent) | 11-503 | 61 |
| Criminal Solicitation 2nd Degree | Class F Felony (Nonviolent) | 11-502 | 67 |
| Criminal Solicitation 3rd Degree | Class A Misdemeanors | 11-501 | 85 |
| Criminal Trespass 1st Degree | Class A Misdemeanors | 11-823 | 82 |
| Criminal Trespass 2nd Degree | Unclassified Misdemeanors | 11-822 | 92 |
| Criminal Trespass 3rd Degree | Violations | 11-821 | 95 |
| Criminal Youth Gang: Recruitment (7/10/06) | Class G Felony (Violent) | 11-617(b)(1) | 72 |
| Criminal Youth Gang: Recruitment/Retention:Violence or Threat (7/10/06) | Class F Felony (Violent) | 11-617(b)(2) | 65 |
| Criminally Negligent Homicide | Class D Felony (Violent) | 11-631 | 52 |
| Cross or Religious Symbol Burning | Class A Misdemeanors | 11-805 | 82 |

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUTE</i> | <i>PAGE</i> |
|--|--------------------------------|-----------------|-------------|
| Cruelty to Animals | Class F Felony (Nonviolent) | 11-1325 | 68 |
| Cruelty to Animals | Class A Misdemeanors | 11-1325 | 86 |
| Dangerous Animal | Class A Misdemeanors | 11-1327 | 86 |
| Dangerous Animal: Death of Person | Class E Felony (Nonviolent) | 11-1327(c)(1) | 62 |
| Dangerous Animal: Serious Injury to Person | Class F Felony (Nonviolent) | 11-1327(c)(2) | 68 |
| Dangerous Crime Against Child (7/26/06) | Class B Felony | 11-777 | 37 |
| Dealing in Child Pornography | Class B Felony | 11-1109 | 38 |
| Dealing in Children | Class E Felony (Nonviolent) | 11-1100 | 61 |
| Debt Adjusting | Class B Misdemeanors | 11-910 | 90 |
| Deceptive Business Practices | Class A Misdemeanors | 11-906 | 82 |
| Defrauding Secured Creditors | Class A Misdemeanors | 11-891 | 82 |
| Delivery Drug Paraphernalia to Minor | Class E Felony (Violent) | 16-4774(c) | 59 |
| Desecration | Class A Misdemeanors | 11-1331 | 86 |
| Desecration of Burial Place | Class A Misdemeanors | 11-1340 | 87 |
| Destruction Computer Equipment (\$5,000-\$9,999) | Class E Felony (Nonviolent) | 11-936 | 61 |
| Destruction Computer Equipment (\$500-\$999) | Class G Felony (Nonviolent) | 11-936 | 75 |
| Destruction Computer Equipment (<\$500) | Class A Misdemeanors | 11-936 | 83 |
| Destruction Computer Equipment (>\$10,000) | Class D Felony (Nonviolent) | 11-936 | 56 |
| Disorderly Conduct | Unclassified Misdemeanors | 11-1301 | 92 |
| Disorderly Conduct: Funeral/Memorial Service (Prior Conv) (6/1/06) | Class F Felony (Nonviolent) | 11-1303(3)(b) | 68 |
| Disorderly Conduct: y/Funeral/Memorial Service (6/1/06) | Class A Misdemeanors | 11-1303(3)(a) | 86 |
| Driving a Vehicle While Under the Influence | Title 21 and Title 23 Offenses | 21-4177 et seq. | 96 |
| Driving After Judgment Prohibited | Title 21 and Title 23 Offenses | 21-2810 | 96 |
| Drug dealing - Aggravated possession | Class B Felony | 16-4752 | 38 |
| Drug dealing - Aggravated Possession; | Class C Felony (Violent) | 16-4753 | 46 |
| Drug dealing - Aggravated possession; | Class D Felony (Violent) | 16-4754 | 53 |
| Drug Paraphernalia (Delivery to minor) | Class E Felony (violent) | 16-4774 (c) | 59 |
| Drug paraphernalia (Manufacture or sale) | Class G Felony (NV) | 16-4774(b) | 72 |
| Drug Paraphernalia (Possession) | Class B Misdemeanor (NV) | 16-4774(a) | 89 |
| Endanger Welfare of Child | Class A Misdemeanors | 11-1102 | 86 |
| Endanger Welfare of Child: Death | Class E Felony (Nonviolent) | 11-1102(b)(1) | 61 |
| Endanger Welfare of Child: Serious Injury | Class G Felony (Nonviolent) | 11-1102(b)(2) | 75 |
| Endanger Welfare of Child: Sex Offense | Class G Felony (Nonviolent) | 11-1102(b)(3) | 75 |
| Endanger Welfare of Incompetent | Class A Misdemeanors | 11-1105 | 86 |
| Endangering Children | Unclassified Misdemeanors | 11-1107 | 92 |
| Engaging in Crap Game | Violations | 11-1407 | 95 |
| Escape 2nd Degree | Class G Felony (Nonviolent) | 11-1252 | 75 |
| Escape 3rd Degree | Class A Misdemeanors | 11-1251 | 81 |
| Escape After Conviction | Class D Felony (Violent) | 11-1253 | 53 |
| Escape After Conviction (injury)(Special Esc. Cat. May Apply) | Class B Felony | 11-1253 | 38 |
| Escape After Conviction (Special Escape Category May Apply) | Class C Felony (Violent) | 11-1253 | 46 |
| Execution of Document by Deception | Class A Misdemeanors | 11-909 | 86 |

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUTE</i> | <i>PAGE</i> |
|--|--------------------------------|----------------|-------------|
| Exploit Patient's Resources (\$1000+) | Class G Felony (Violent) | 16-1136(b) | 72 |
| Exploit Patient's Resources (<\$1000) | Class A Misdemeanors | 16-1136(b) | 83 |
| Exploitation of Infirm Adult (\$10,000 - \$50,000) | Class D Felony (Violent) | 31-3913(b) | 53 |
| Exploitation of Infirm Adult (\$500- \$4,999) | Class G Felony (Violent) | 31-3913(b) | 72 |
| Exploitation of Infirm Adult (<\$500) | Class A Misdemeanors | 31-3913(b) | 83 |
| Exploitation of Infirm Adult (>\$5,000/<\$10,000) | Class E Felony (Violent) | 31-3913(b) | 59 |
| Exploitation of Infirm Adult (>\$50,000/Prior Conviction) | Class C Felony (Violent) | 31-3913(b) | 46 |
| Extortion | Class E Felony (Violent) | 11-846 | 59 |
| Extortion (Vt>62 y.o.a.) | Class D Felony (Violent) | 11-846 | 53 |
| Fail Cease Electronic Communication (\$500-\$999) | Class G Felony (Nonviolent) | 11-938 | 75 |
| Fail Cease Electronic Communication (<\$500) | Class A Misdemeanors | 11-938 | 83 |
| Fail to Answer Summons | Unclassified Misdemeanors | 11-1907(c) | 93 |
| Fail to Cease Electronic Communication (\$5,000-\$9,999) | Class E Felony (Nonviolent) | 11-938 | 61 |
| Fail to Cease Electronic Communication (>\$10,000) | Class D Felony (Nonviolent) | 11-938 | 56 |
| Fail to Correct Abuse/Neglect of Patient in Residential Facility | Class A Misdemeanors | 16-1136(c) | 87 |
| Fail to Obtain Child Sex Abuser Information | Class A Misdemeanors | 11-8562(a) | 87 |
| False Benefit Reimbursement Statement (<\$500) | Class A Misdemeanors | 31-1004(1) | 83 |
| False Report Incident/Child Abduction (6/30/05) | Class A Misdemeanors | 11-1245 | 86 |
| False Report Incident/Child Abduction (Prior Conv) (6/30/05) | Class G Felony (Nonviolent) | 11-1245 | 75 |
| False Representation for Benefits (\$500-\$9,999) | Class E Felony (Nonviolent) | 31-1003 | 62 |
| False Statement to Obtain Benefits (<\$500) | Class A Misdemeanors | 31-1003 | 83 |
| Falsify Reimbursement Report (\$500-\$9,999) | Class E Felony (Nonviolent) | 31-1004(2) | 62 |
| Falsify Reimbursement Report >\$10,000 | Class C Felony (Nonviolent) | 31-1004(2) | 50 |
| Falsifying Business Records | Class A Misdemeanors | 11-871 | 86 |
| Female Genital Mutilation | Class E Felony (Nonviolent) | 11-780 | 61 |
| Fighting/Baiting Animals | Class F Felony (Nonviolent) | 11-1326(b)(c) | 68 |
| Fighting/Baiting Animals. (c) | Class G Felony (Nonviolent) | 11-1326 | 76 |
| Firearm Sale Violation | Class A Misdemeanors | 11-1448A(f) | 87 |
| Firearm Sale Violation (Second Offense) | Class G Felony (Nonviolent) | 11-1448A(e) | 76 |
| Firearm Sale Violation: False Statement/Information | Class G Felony (Nonviolent) | 11-1448A(f) | 76 |
| Firearm Transaction on Behalf of Another (1st Offense) | Class F Felony (Nonviolent) | 11-1455 | 68 |
| Firearm Transaction on Behalf of Another (Prior Conviction) | Class C Felony (Violent) | 11-1455 | 46 |
| Flee or Attempt to Elude | Title 21 and Title 23 Offenses | 21-4103(b) | 96 |
| Forced labor | Class C Felony (Violent) | 11-787(b) (2) | 45 |

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUTE</i> | <i>PAGE</i> |
|---|-----------------------------|----------------|-------------|
| Forced labor (victim is a minor) | Class B Felony | 11-787(b)(2) | 38 |
| Foreign Lotteries | Class A Misdemeanors | 11-1402 | 87 |
| Forgery 1st Degree | Class F Felony (Nonviolent) | 11-861(b)(1) | 68 |
| Forgery 2nd Degree | Class G Felony (Nonviolent) | 11-861(b)(2) | 75 |
| Forgery 3rd Degree | Class A Misdemeanors | 11-861(b)(3) | 82 |
| Fraud in Insolvency | Class A Misdemeanors | 11-892 | 82 |
| Fraudulent Conveyance of Public Lands | Class G Felony (Nonviolent) | 11-911 | 75 |
| Fraudulent Receipt of Public Lands | Class G Felony (Nonviolent) | 11-912 | 75 |
| Furnishing Contraband | Unclassified Misdemeanors | 11-6562A | 93 |
| Give Unlawful Gratuity | Class A Misdemeanors | 11-1205 | 86 |
| Giving Firearm to Person Prohibited | Class F Felony (Nonviolent) | 11-1454 | 68 |
| Graffiti and Possession of Graffiti Implements (\$1500+ damage) | Class G Felony (Nonviolent) | 11-812(a)(2) | 74 |
| Graffiti and Possession of Graffiti Implements (<\$1500 damage) | Class A Misdemeanors | 11-812(a)(2) | 82 |
| Harassment | Class A Misdemeanors | 11-1311 | 86 |
| Harassment of Law Enforcement Animal | Unclassified Misdemeanors | 11-1250(a) | 92 |
| Hate Crime | Class A Misdemeanors | 11-1304(b)(1) | 79 |
| Hate Crime (Underlying Offense: Class A Felony) | Class A Felony | 11-1304(b)(4) | 33 |
| Hate Crime (Underlying Offense: Class A, B or C Misdemeanor) | Class G Felony (Violent) | 11-1304(b)(2) | 72 |
| Hate Crime (Underlying Offense: Class B Felony) | Class B Felony | 11-1304(b)(4) | 38 |
| Hate Crime (Underlying Offense: Class C Felony) | Class B Felony | 11-1304(b)(3) | 38 |
| Hate Crime (Underlying offense: Class D Felony) | Class C Felony (Violent) | 11-1304(b)(3) | 46 |
| Hate Crime (Underlying Offense: Class E Felony) | Class D Felony (Violent) | 11-1304(b)(3) | 53 |
| Hate Crime (Underlying Offense: Class F Felony) | Class E Felony (Violent) | 11-1304(b)(3) | 59 |
| Hate Crime (Underlying Offense: Class G Felony) | Class F Felony (Violent) | 11-1304(b)(3) | 65 |
| Health Care Fraud | Class D Felony (Nonviolent) | 11-913A(c)(2) | 56 |
| Health Care Fraud | Class G Felony (Nonviolent) | 11-913A | 75 |
| Health Care Fraud (Intended loss > \$100,000/ Provider) | Class B Felony | 11-913A(c)(3) | 44 |
| Hinder Prosecution of a Felony | Class G Felony (Nonviolent) | 11-1244(b) | 75 |
| Hinder Prosecution of Misdemeanor | Class A Misdemeanors | 11-1244 | 86 |
| Hoax Device | Class F Felony (Nonviolent) | 11-622 | 67 |
| Home Improvement Fraud | Class G Felony (Nonviolent) | 11-916 | 75 |
| Home Improvement Fraud (< \$1500) | Class A Misdemeanors | 11-916 | 82 |
| Home Invasion | Class B Felony | 11-826A | 38 |
| Hypodermic syringe or needle; delivering or possessing; disposal | Class G Felony (Nonviolent) | 16-4762(d) | 76 |
| Identity Theft | Class D Felony (Nonviolent) | 11-854 | 56 |
| Illegal Possession and Delivery of Noncontrolled Prescription Drugs | Class F Felony (Violent) | 16-4761(d) | 65 |

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUTE</i> | <i>PAGE</i> |
|---|------------------------------|-------------------|-------------|
| Illegal Possession and Delivery of Noncontrolled Prescription Drugs | Class G Felony (Violent) | 16-4761(c) | 72 |
| Illegal Possession and Delivery of Noncontrolled Prescription Drugs | Class B Misdemeanors | 16-4761(b) | 90 |
| Illegal Possession and Delivery of Noncontrolled Prescription Drugs | Unclassified Misdemeanors | 16-4761(a) | 93 |
| Improper Influence | Class A Misdemeanors | 11-1207 | 86 |
| Improper Labeling (<100) (7/10/06) | Unclassified Misdemeanors | 11-922 | 92 |
| Improper Labeling (1st Offense 100 >) (7/10/06) | Class G Felony (Nonviolent) | 11-922(b) | 75 |
| Improper Labeling (PriorConv 100>) (7/10/06) | Class F Felony (Nonviolent) | 11-922(c) | 68 |
| Improper Request/Dissemination Criminal History Check | Class A Misdemeanors | 11-1448A(e) | 87 |
| Incest | Class A Misdemeanors | 11-766 | 79 |
| Indecent Exposure 1st Degree | Class A Misdemeanors | 11-765 | 85 |
| Indecent Exposure 2nd Degree | Unclassified Misdemeanors | 11-764 | 92 |
| Insurance Fraud | Class G Felony (Nonviolent) | 11-913 | 75 |
| Interest in Keeping Gambling Device | Class A Misdemeanors | 11-1406 | 87 |
| Interfere w/Custody | Class G Felony (Nonviolent) | 11-785 | 74 |
| Interfere with Child Witness | Class E Felony (Nonviolent) | 11-1263A(a)(2) | 62 |
| Interfere with Child Witness | Class E Felony (Nonviolent) | 11-1263A(a)(3)(b) | 62 |
| Interfere with Child Witness | Class E Felony (Nonviolent) | 11-1263A(a)(4)(b) | 62 |
| Interfere with Child Witness | Class F Felony (Nonviolent) | 11-1263A(a)(1) | 68 |
| Interfere with Child Witness | Class F Felony (Nonviolent) | 11-1263A(a)(3)(a) | 68 |
| Interfere with Child Witness | Class F Felony (Nonviolent) | 11-1263A(a)(4)(a) | 68 |
| Interfere with Child Witness | Class G Felony (Nonviolent) | 11-1263A(a)(1) | 76 |
| Interfere with Child Witness | Class G Felony (Nonviolent) | 11-1263A(a)(3)(a) | 76 |
| Interfere with Child Witness | Class G Felony (Nonviolent) | 11-1263A(a)(4)(a) | 76 |
| Interference Levied Upon Property | Class A Misdemeanors | 11-893 | 86 |
| Interference with Custody | Class A Misdemeanors | 11-785 | 85 |
| Interruption Computer Services (\$5,000-\$9,999) | Class E Felony (Nonviolent) | 11-934 | 61 |
| Interruption Computer Services (\$500-\$999) | Class G Felony (Nonviolent) | 11-934 | 75 |
| Interruption Computer Services (<\$500) | Class A Misdemeanors | 11-934 | 83 |
| Interruption Computer Services (>\$10,000) | Class D Felony (Nonviolent) | 11-934 | 56 |
| Intimidation of a Witness &/or Victim | Class ED Felony (Nonviolent) | 11-3532 | 56 |
| Issue Bad Check (\$1500+) | Class G Felony (Nonviolent) | 11-900 | 75 |
| Issue Bad Check (< \$1500) | Class A Misdemeanors | 11-900 | 82 |
| Issue False Certificate | Class G Felony (Nonviolent) | 11-878 | 75 |
| Issuing Abortion Articles | Class B Misdemeanors | 11-653 | 90 |
| Kickback Schemes | Class E Felony (Nonviolent) | 31-1005 | 62 |

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUTE</i> | <i>PAGE</i> |
|--|--------------------------------|-----------------|-------------|
| Kidnapping 1st Degree | Class B Felony | 11-783A | 38 |
| Kidnapping 2nd Degree | Class C Felony (Violent) | 11-783 | 45 |
| Larceny of Livestock | Class G Felony (Nonviolent) | 11-859 | 75 |
| Leaving the Scene of an Accident | Title 21 and Title 23 Offenses | 21-4201 et seq. | 96 |
| Leaving the Scene of an Accident (Injury/Death) | Title 21 and Title 23 Offenses | 21-4202 | 96 |
| Lewdness | Class B Misdemeanors | 11-1341 | 90 |
| Loitering | Violations | 11-1321 | 95 |
| Loitering on State.Supported School Property | Violations | 11-1320 | 95 |
| Lottery Sales to persons prohibited | Unclassified Misdemeanors | 29-4810 | 93 |
| Maintaining a Drug Property | Class F Felony (Nonviolent) | 16-4760 | 68 |
| Maintaining an Obstruction | Violations | 11-1428 | 95 |
| Maintaining an Obstruction (Prior Conviction w/in 2 yrs) | Class A Misdemeanors | 11-1428 | 87 |
| Make False Written Statement | Class A Misdemeanors | 11-1233 | 86 |
| Malicious Interference with Emergency Communications | Class B Misdemeanors | 11-1313 | 90 |
| Manslaughter | Class B Felony | 11-632 | 37 |
| Menacing | Unclassified Misdemeanors | 11-602 | 92 |
| Mfr/Transfer/Use/Poss/Transport Bomb/Incendiary Device/ Molotov Cocktail/Explosive | Class D Felony (Violent) | 11-1338 | 53 |
| Misapplication of Property (\$1500+) | Class G Felony (Nonviolent) | 11-848 | 74 |
| Misapplication of Property (< \$1500) | Class A Misdemeanors | 11-848 | 82 |
| Misc. Drug Crimes, Solic. of Multiple Prescrip. Drug Crimes | Class B Felony | 16-4757(c)(2) | 38 |
| Miscellaneous Drug Crimes | Class F Felony (Nonviolent) | 16-4757(b) | 68 |
| Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes | Class C Felony (Violent) | 16-4757(c)(1) | 46 |
| Misconduct by Juror | Class A Misdemeanors | 11-1267 | 86 |
| Misrepresentation as to Operation of Provider/Facility | Class E Felony (Nonviolent) | 31-1004(4) | 62 |
| Misrepresentation to Qualify as Provider | Class E Felony (Nonviolent) | 31-1004(3) | 62 |
| Misuse Computer System Information (\$5,000-\$9,999) | Class E Felony (Nonviolent) | 11-935 | 61 |
| Misuse Computer System Information (\$500-\$999) | Class G Felony (Nonviolent) | 11-935 | 75 |
| Misuse Computer System Information (<\$500) | Class A Misdemeanors | 11-935 | 83 |
| Misuse Computer System Information (>\$10,000) | Class D Felony (Nonviolent) | 11-935 | 56 |
| Misuse of Prisoner Mail | Class A Misdemeanors | 11-1260 | 86 |
| Misuse of Prisoner Mail (Prior Conviction) | Class G Felony (Nonviolent) | 11-1260 | 76 |
| Money Laundering | Class D Felony (Nonviolent) | 11-951 | 56 |
| Money Laundering | Class G Felony (Nonviolent) | 11-951(f) | 75 |
| Murder 2nd Degree | Class A Felony | 11-635 | 33 |
| Murder 1st Degree | Class A Felony | 11-636 | 33 |

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUTE</i> | <i>PAGE</i> |
|---|--------------------------------|------------------------|-------------|
| Neglect of Duty | Class F Felony (Nonviolent) | 16-107(e)3 | 68 |
| New Home Construction Fraud (\$1,500-\$49,999) | Class G Felony (Nonviolent) | 11-917(d)(1) | 75 |
| New Home Construction Fraud (<\$1,500) | Class A Misdemeanors | 11-917(d) | 82 |
| New Home Construction Fraud (Loss > \$100,000) | Class B Felony | 11-917(d)(3) | 44 |
| New Home Construction Fraud Loss = \$50,000-\$99,999 | Class D Felony (Nonviolent) | 11-917(d)(2) | 56 |
| Obscene Literature Harmful to Minors | Class A Misdemeanors | 11-1365 | 87 |
| Obscenity | Class G Felony (Nonviolent) | 11-1361 | 76 |
| Obstruct Rabies Control during Emergency | Class E Felony (Nonviolent) | 11-1248 | 61 |
| Obstructing Control of Rabies | Class B Misdemeanors | 11-1248 | 90 |
| Obstructing Firefighting | Class A Misdemeanors | 11-1243 | 86 |
| Obstructing Ingress/Egress at Public Building | Unclassified Misdemeanors | 11-1324 | 92 |
| Obstructing Public Passages | Violations | 11-1323 | 95 |
| Offensive Touching | Class A Misdemeanors | 11-601(a)(1) | 85 |
| Offensive Touching | Unclassified Misdemeanors | 11-601 | 92 |
| Offensive Touching | Class A Misdemeanors | 11-601(a)(2) | 85 |
| Offering False Instrument for Filing | Class A Misdemeanors | 11-877 | 86 |
| Official Misconduct | Class A Misdemeanors | 11-1211 | 86 |
| Operate or Attempt to Operate a Clandestine Laboratory | Class C Felony (Nonviolent) | 16-4760A | 50 |
| Operation of a Vessel or Boat While Under the Influence | Title 21 and Title 23 Offenses | 23-2302 | 96 |
| Operation of Vehicle Causing Death | Title 21 and Title 23 Offenses | 21-4176A | 96 |
| Operation of vehicles on approach of authorized emergency vehicles | Class F Felony (Nonviolent) | 21-4134(d) | 68 |
| Out-of-State Liquor Agent Registration | Violations | 11-1316 | 95 |
| Patronizing a Prostitute | Unclassified Misdemeanors | 11-1343 | 92 |
| Patronizing a victim of sexual servitude (adult victim) | Class D Felony (Violent) | 11-787(b)(4) | 52 |
| Patronizing a victim of sexual servitude (victim is a minor) | Class C Felony (Violent) | 11-787(b)(4) | 45 |
| Penalties for wagering by excluded persons | Class A Misdemeanors | 29-4836(a)(b) | 87 |
| Perjury 1st Degree | Class D Felony (Nonviolent) | 11-1223 | 56 |
| Perjury 2nd Degree | Class F Felony (Nonviolent) | 11-1222 | 68 |
| Perjury 3rd Degree | Class A Misdemeanors | 11-1221 | 86 |
| Permitting Prostitution | Class B Misdemeanors | 11-1355 | 90 |
| Poss. Weapon in Safe School/Recreation Zone | Class B Misdemeanors | 11-1457(j)(2) | 90 |
| Poss. Weapon in Safe School/Recreation Zone (Underlying Offense: Class E Fel.) | Class D Felony (Nonviolent) | 11-1457(j)(3) | 56 |
| Poss/Purchase Deadly Weapon (Other than Destructive Weapon/Firearm/Ammunition) by Prohibited Person | Class F Felony (Nonviolent) | 11-1448(f)(1)(a)(5) | 68 |
| Poss/Purchase Firearm/Ammunition by Prohibited Person | Class D Felony (Nonviolent) | 11-1448(c)(1 of a1-a8) | 56 |

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUTE</i> | <i>PAGE</i> |
|--|-----------------------------|----------------|-------------|
| Poss/Purchase Firearm/Ammunition by Prohibited Person | Class D Felony (Nonviolent) | 11-1448(a)(5) | 56 |
| Poss/Purchase Firearm/Destructive Weapon by Prohibited Person w/Prior Conviction of Violent Felony | Class B Felony | 11-1448(e)(2) | 38 |
| Poss/Purchase Firearm/Destructive Weapon by Prohibited Person w/Prior Conviction of Violent Felony | Class C Felony (Violent) | 11-1448(e)(1) | 46 |
| Possess Burglary Tools | Class F Felony (Nonviolent) | 11-828 | 67 |
| Possess Destructive Weapon | Class E Felony (Violent) | 11-1444 | 59 |
| Possess Forgery Devices | Class G Felony (Nonviolent) | 11-862 | 75 |
| Possess Shoplifters Tools | Class F Felony (Nonviolent) | 11-860 | 67 |
| Possession Gambling Device | Class A Misdemeanors | 11-1405 | 87 |
| Possession of a blank prescription form or pad | Class G Felony (Nonviolent) | 11-841C(a) | 74 |
| Possession of a Firearm with Altered Serial Number | Class D Felony (Violent) | 11-1459 | 53 |
| Possession of Child Pornography | Class F Felony (Nonviolent) | 11-1111 | 68 |
| Possession of Controlled Substances or Counterfeit Controlled Substances | Class A Misdemeanors | 16-4763(a) | 89 |
| Possession of Controlled Substances or Counterfeit Controlled Substances | Class B Misdemeanors | 16-4763(b) | 90 |
| Possession of Deadly Weapon during Commission of a Felony | Class B Felony | 11-1447 | 38 |
| Possession of Firearm during Commission of a Felony | Class B Felony | 11-1447A | 38 |
| Possession of Graffiti Implements | Class B Misdemeanors | 11-812(b)(1) | 90 |
| Possession of Marijuana | Class B Misdemeanors | 16-4764(a) | 90 |
| Possession of Marijuana | Unclassified Misdemeanors | 16-4764(b) | 93 |
| Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class B Misdemeanor) | Class A Misdemeanors | 11-1457(j)(1) | 87 |
| Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class F Felony) | Class E Felony (Nonviolent) | 11-1457(j)(3) | 62 |
| Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class G Felony) | Class F Felony (Nonviolent) | 11-1457(j)(3) | 68 |
| Profiteering | Class A Misdemeanors | 11-1212 | 86 |
| Prohibition on employment of persons or service agencies w/o a license | Class A Misdemeanors | 29-4831(a)(b) | 87 |
| Promote Prison Contraband | Class A Misdemeanors | 11-1256 | 86 |
| Promoting Prison Contraband | Class F Felony (Violent) | 11-1256 | 65 |
| Promoting Prostitution 1st Degree | Class C Felony (Violent) | 11-1353 | 46 |
| Promoting Prostitution 2nd Degree | Class E Felony (Nonviolent) | 11-1352 | 62 |
| Promoting Prostitution 3rd Degree | Class F Felony (Nonviolent) | 11-1351 | 68 |
| Promoting Sexual Solicitation of a Child | Class B Felony | 11-1112B(g) | 44 |
| Promoting Sexual Solicitation of a Child | Class C Felony (Violent) | 11-1112B | 46 |
| Promoting Suicide | Class F Felony (Violent) | 11-645 | 65 |
| Prostitution | Class B Misdemeanors | 11-1342 | 90 |

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUTE</i> | <i>PAGE</i> |
|---|--------------------------------|----------------------|-------------|
| Provide False Child Abuser Information | Class G Felony (Nonviolent) | 11-8562(b) | 76 |
| Providing Obscenity to Minor | Class E Felony (Nonviolent) | 11-1361 | 62 |
| Providing Premises for Gambling | Unclassified Misdemeanors | 11-1404 | 92 |
| Providing Premises for Gambling (Prior Conviction w/in 5 yrs) | Class A Misdemeanors | 11-1404 | 87 |
| Public Intoxication | Unclassified Misdemeanors | 11-1315 | 92 |
| Public Intoxication | Violations | 11-1315 | 95 |
| Racketeering | Class B Felony | 11-1503 | 38 |
| Rape 1st Degree | Class A Felony | 11-773 | 33 |
| Rape 2nd Degree (7/26/06) | Class B Felony | 11-772 | 37 |
| Rape 3rd Degree | Class B Felony | 11-771, 11-771(a)(2) | 37 |
| Rape 4th Degree | Class C Felony (Violent) | 11-770 | 45 |
| Receive Stolen Property (\$1500+/2 prior convictions) | Class G Felony (Nonviolent) | 11-851 | 75 |
| Receive Unlawful Gratuity (value < \$1,000) | Class A Misdemeanors | 11-1206 | 86 |
| Receiving a Bribe | Class A Misdemeanors | 11-882 | 86 |
| Receiving a Bribe by a Juror | Class E Felony (Nonviolent) | 11-1265 | 62 |
| Receiving a Bribe by a Public Servant | Class E Felony (Nonviolent) | 11-1203 | 61 |
| Receiving a Bribe by a Witness | Class E Felony (Nonviolent) | 11-1262 | 61 |
| Receiving Stolen Firearm | Class F Felony (Nonviolent) | 11-1450 | 68 |
| Receiving Stolen Property (< \$1500) | Class A Misdemeanors | 11-851 | 82 |
| Receiving Unlawful Gratuity (value > \$1,000) | Class G Felony (Nonviolent) | 11-1206 | 75 |
| Reckless Burning (\$1500+ Damage) | Class G Felony (Nonviolent) | 11-804 | 74 |
| Reckless Burning/Exploding (< \$1500) | Class A Misdemeanors | 11-804 | 82 |
| Reckless Driving | Title 21 and Title 23 Offenses | 21-4175 | 96 |
| Reckless Endangering 1st Degree | Class E Felony (Violent) | 11-604 | 59 |
| Reckless Endangering 2nd Degree | Class A Misdemeanors | 11-603 | 79 |
| Refusal to Permit Photo or Fingerprints | Class A Misdemeanors | 11-8522 | 87 |
| Refusal/Neglect/Hinder Report | Class A Misdemeanors | 11-8523(a) | 87 |
| Refusing to Aid Police Officer | Class B Misdemeanors | 11-1241 | 90 |
| Registrant Crimes | Class F Felony (Nonviolent) | 16-4759(b)(1,2,4) | 68 |
| Registrant Crimes | Class A Misdemeanors | 16-4759(b) | 89 |
| Removing Firearm from a Law Enforcement Officer | Class C Felony (Nonviolent) | 11-1458 | 50 |
| Report of Loss, Theft of Firearm | Violations | 11-1461 | 95 |
| Report of Loss, Theft of Firearm (3rd or subsequent offense) | Class G Felony (Nonviolent) | 11-1461 | 76 |
| Resist Arrest Without Violence | Class A Misdemeanors | 11-1257(b) | 86 |
| Resisting Arrest With Violence (6/27/06) | Class G Felony (Nonviolent) | 11-1257(a) | 75 |
| Riot | Class F Felony (Violent) | 11-1302 | 65 |
| Robbery 1st Degree | Class B Felony | 11-832 | 38 |
| Robbery 2nd Degree | Class E Felony (Violent) | 11-831 | 59 |
| Sale of Pseudoephedrine/Ephedrine (6/14/05) | Class A Misdemeanors | 16-4740 | 89 |
| Sale Transferred Recorded Sound | Class A Misdemeanors | 11-921 | 86 |
| Self Abortion | Class A Misdemeanors | 11-652 | 85 |

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUTE</i> | <i>PAGE</i> |
|--|-----------------------------|----------------------|-------------|
| Selling Stolen Property (<\$1000) | Class A Misdemeanors | 11-852A | 82 |
| Selling Stolen Property; class G felony | Class G Felony (Nonviolent) | 11-852A | 75 |
| Sex Offender (Fail to Comply with Registration Mandates) | Class G Felony (Nonviolent) | 11-4121(t) | 76 |
| Sex Offender (Fail to Register) | Class G Felony (Nonviolent) | 11-4120(k) | 76 |
| Sex Offender (Loiter w/in 500 ft School) | Class F Felony (Nonviolent) | 11-1112(a)(2) | 68 |
| Sex Offender (Residing w/in 500 ft of School) | Class G Felony (Nonviolent) | 11-1112(a)(1) | 75 |
| Sex Offender Unlawful Sexual Conduct Against a Child | Class A Felony | 11-777A(e)(5) | 33 |
| Sex Offender Unlawful Sexual Conduct Against a Child | Class B Felony | 11-777A(e)(2),(e)(3) | 37 |
| Sex Offender Unlawful Sexual Conduct Against a Child | Class C Felony (Violent) | 11-777A(e)(2) | 45 |
| Sex Offender Unlawful Sexual Conduct Against a Child | Class D Felony (Violent) | 11-777A(e)(2) | 52 |
| Sex Offender Unlawful Sexual Conduct Against a Child | Class E Felony (Violent) | 11-777A(e)(2) | 59 |
| Sex Offender Unlawful Sexual Conduct Against a Child | Class F Felony (Violent) | 11-777A(e)(2) | 65 |
| Sex Offender Unlawful Sexual Conduct Against a Child | Class G Felony (Violent) | 11-777A(e)(2) | 72 |
| Sex Offender Unlawful Sexual Conduct Against a Child | Class A Misdemeanors | 11-777A(e)(1) | 79 |
| Sexual Abuse of a Child by a person in a position of trust authority or supervision in the first degree | Class B Felony | 11-778(2) | 38 |
| Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the 1st degree | Class B Felony | 11-778(3) | 38 |
| Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first 16-4760 | Class C Felony (Violent) | 11-778(f)(4) | 45 |
| Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree: | Class D Felony (Violent) | 11-778(f)(5) | 52 |
| Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree | Class G Felony (Violent) | 11-778A(3) | 72 |
| Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree: | Class D Felony (Violent) | 11-778A(1) | 52 |
| Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree; | Class F Felony (Violent) | 11-778A(d)(2) | 65 |
| Sexual Abuse of a Child by a person in a position of trust, authority, or supervision in the first degree: | Class A Felony | 11-778(f)(1) | 33 |
| Sexual Exploitation of Child | Class B Felony | 11-1108 | 38 |
| Sexual Extortion | Class E Felony (Violent) | 11-774 | 59 |

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUTE</i> | <i>PAGE</i> |
|---|-----------------------------|---------------------|-------------|
| Sexual Harassment | Unclassified Misdemeanors | 11-763 | 92 |
| Sexual Relations in Detention Facility | Class G Felony (Nonviolent) | 11-1259 | 75 |
| Sexual servitude | Class C Felony (Violent) | 11-787(b) (3) | 45 |
| Sexual servitude (victim is a minor) | Class B Felony | 11-787(b)(3) | 38 |
| Sexual Solicitation of a Child | Class B Felony | 11-1112A (h) | 38 |
| Sexual Solicitation of a Child | Class C Felony (Violent) | 11-1112A | 46 |
| Shoplift (\$1500+) | Class G Felony (Nonviolent) | 11-840 | 74 |
| Shoplifting (<\$1500) | Class A Misdemeanors | 11-840 | 82 |
| Smoking on Bus or Trolley | Violations | 11-1330 | 95 |
| Stalking | Class G Felony (Violent) | 11-1312(a) | 72 |
| Stalking | Class F Felony (Violent) | 11-1312 | 65 |
| Stalking w/ Deadly Weapon | Class C Felony (Violent) | 11-1312 | 46 |
| Standards of Licensing | Class A Misdemeanors | 29-4830(f)(1)(f)(2) | 87 |
| Strangulation | Class E Felony (Violent) | 11-607(1) | 59 |
| Strangulation | Class D Felony (Violent) | 11-607(3) | 52 |
| Substances Releasing Vapors or Fumes | Unclassified Misdemeanors | 11-627 | 92 |
| Tamper w/ Public Record 1st Degree | Class E Felony (Nonviolent) | 11-876 | 61 |
| Tamper w/Biological Sample | Class D Felony (Nonviolent) | 29-4713(d) | 56 |
| Tamper with a Witness | Class E Felony (Nonviolent) | 11-1263 | 61 |
| Tampering w/ Public Records 2nd Degree | Class A Misdemeanors | 11-873 | 86 |
| Tampering w/Juror | Class A Misdemeanors | 11-1266 | 86 |
| Tampering with Physical Evidence | Class G Felony (Nonviolent) | 11-1269 | 76 |
| Terroristic Threat | Class F Felony (Nonviolent) | 11-621(a)(2) | 67 |
| Terroristic Threat | Class F Felony (Nonviolent) | 11-621(a)(3) | 67 |
| Terroristic Threat | Class G Felony (Nonviolent) | 11-621(a)(2) | 74 |
| Terroristic Threat (Vt= 62+ y.o.a.) | Class G Felony (Nonviolent) | 11-621(a)(1) | 74 |
| Terroristic Threat to Public Officials/Servants | Class G Felony (Nonviolent) | 11-1240 | 75 |
| Terroristic Threatening | Class A Misdemeanors | 11-621(a)(1) | 79 |
| Theft | Class F Felony (Nonviolent) | 11-841(c)(2) | 67 |
| Theft \$1500+ | Class G Felony (Nonviolent) | 11-841 | 74 |
| Theft (\$50,000-\$99,999) | Class D Felony (Nonviolent) | 11-841(c)(3)(a) | 56 |
| Theft (<\$1500) | Class A Misdemeanors | 11-841 | 82 |
| Theft (> \$100,000) | Class B Felony | 11-841(3)(b) | 44 |
| Theft Computer Services (\$5,000-\$9,999) | Class E Felony (Nonviolent) | 11-933 | 61 |
| Theft Computer Services (\$500-\$999) | Class G Felony (Nonviolent) | 11-933 | 75 |
| Theft Computer Services (<\$500) | Class A Misdemeanors | 11-933 | 83 |
| Theft Computer Services (>\$10,000) | Class D Felony (Nonviolent) | 11-933 | 56 |
| Theft of firearm | Class F Felony (Nonviolent) | 11-1451 | 68 |
| Theft of Property from a Cemetery | Class A Misdemeanors | 11-813 | 82 |
| Theft of Rental Property (\$1500+) | Class G Felony (Nonviolent) | 11-849 | 74 |
| Theft of Rental Property (< \$1500) | Class A Misdemeanors | 11-849 | 82 |
| Theft: Motor Vehicle (6/20/06) | Class G Felony (Nonviolent) | 11-841A | 74 |
| Theft: Organized Retail Crime (V<62, not infirm, value < \$1,000) | Class A Misdemeanors | 11-841B | 82 |

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUTE</i> | <i>PAGE</i> |
|--|-----------------------------|-----------------------------------|-------------|
| Theft: Organized Retail Crime; class A misd; class E felony | Class E Felony (Nonviolent) | 11-841B(c) | 61 |
| Theft: Theft of a blank prescription form or pad | Class F Felony (Nonviolent) | 11-841C(b) | 67 |
| Threat/Coerce/Intimidate to W/D Medical Treatment | Unclassified Misdemeanors | 16-2513(a) | 93 |
| Ticket Scalping | Class A Misdemeanors | 11-918 | 86 |
| Ticket Scalping | Class B Misdemeanors | 11-918 | 90 |
| Ticket Scalping (Prior Conviction) | Class A Misdemeanors | 11-918 | 82 |
| Tobacco Sale Violations | Violations | 11-1116-11120 (penalties 11-1121) | 95 |
| Tobacco Sale Violations: Dist by Vending Machine | Violations | 11-1119 | 95 |
| Tobacco Sale Violations: Dist Samples/Coupons to u/18 | Violations | 11-1118 | 95 |
| Tobacco Sale Violations: Fail to Post Notice to u/18 | Violations | 11-1117 | 95 |
| Tobacco Sale Violations: Sell from Unlawful Package | Violations | 11-1120 | 95 |
| Tobacco Sale Violations: Sell/Distribute to u/18 | Violations | 11-1116 | 95 |
| Tongue Splitting (Prior conviction) | Class G Felony (Nonviolent) | 11-1114A(c) | 75 |
| Tongue Splitting 1st Degree | Class A Misdemeanors | 11-1114A(a) | 86 |
| Tongue Splitting 2nd Degree | Class B Misdemeanors | 11-1114A(b) | 90 |
| Trade in Dog/Cat By-Products (Flesh) | Class A Misdemeanors | 11-1325A(b) | 86 |
| Trade in Dog/Cat Byproducts (Fur/Hair) | Class B Misdemeanors | 11-1325A(a) | 90 |
| Trademark Counterfeiting | Class A Misdemeanors | 11-926(d)(1) | 82 |
| Trademark Counterfeiting (2+Conv/Mfr/>1,000/>\$10,000+) (7/7/05) | Class E Felony (Nonviolent) | 11-926(d)(3) | 61 |
| Trademark Counterfeiting(PriorConv/100-999/\$2,000-\$9,999) (7/7/05) | Class G Felony (Nonviolent) | 11-926(d)(2) | 75 |
| Trading in Human Remains/Funerary Objects | Class B Misdemeanors | 11-1333 | 90 |
| Traffick in Food Stamps (Firearms/Ammunition/Cont. Substances) | Class B Felony | 31-610(a)(3) | 44 |
| Trafficking an individual Vict. Adult & no Agg. Circ. | Class C Felony (Violent) | 11-787(b) (1) | 45 |
| Trafficking an Individual Forced Labor (Vict. Adult, & no Agg. Circ. | Class C Felony (V) | 11-787(b)(2) | 45 |
| Trafficking an Individual Sexual Servitude (Vict. Adult & no Agg. Circ.) | Class C Felony (V) | 11-787(b)(3) | 45 |
| Trafficking an individual (Vict. <18 or Agg. Circ. | Class B Felony (V) | 11-787(b)(1) | 38 |
| Trafficking an Individual Forced Labor (Vict. <18 or Agg. Circ.) | Class B Felony (V) | 11-787(b)(2) | 38 |
| Trafficking an Individual Sexual Servitude (Vict. < 18, or Agg. Circ.) | Class B Felony (V) | 11-787(b)(3) | 38 |
| Trafficking an Individual Vict. <18, & Agg. Circ. | Class A Felony (V) | 11-787(b)(1) | 33 |

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUTE</i> | <i>PAGE</i> |
|---|-----------------------------|----------------|-------------|
| Trafficking an Individual Forced Labor Vict. <18 & Agg. Circ. | Class A Felony (V) | 11-787(b)(2) | 33 |
| Trafficking an Individual Sexual Servitude Vict. <18 & Agg. Circ. | Class A Felony (V) | 11-787(b)(3) | 33 |
| Transfer of Recorded Sounds | Class G Felony (Nonviolent) | 11-920 | 75 |
| Transfer/Alter/Possess Food Stamps (\$500>) | Class E Felony (Nonviolent) | 31-610(a)(1) | 62 |
| Transfer/Alter/Possess Food Stamps (<\$500) | Class A Misdemeanors | 31-610(a)(2) | 87 |
| Trespass with Intent to Peep | Class B Misdemeanors | 11-820 | 90 |
| Unauthorized Computer Access (\$5,000-\$9,999) | Class E Felony (Nonviolent) | 11-932 | 61 |
| Unauthorized Computer Access (\$500-\$999) | Class G Felony (Nonviolent) | 11-932 | 75 |
| Unauthorized Computer Access (<\$500) | Class A Misdemeanors | 11-932 | 83 |
| Unauthorized Computer Access (>\$10,000) | Class D Felony (Nonviolent) | 11-932 | 56 |
| Unauthorized Electronic Mail (\$5,000-\$9,999) | Class E Felony (Nonviolent) | 11-937 | 61 |
| Unauthorized Electronic Mail (\$500-\$999) | Class G Felony (Nonviolent) | 11-937 | 75 |
| Unauthorized Electronic Mail (<\$500) | Class A Misdemeanors | 11-937 | 83 |
| Unauthorized Electronic Mail (>\$10,000) | Class D Felony (Nonviolent) | 11-937 | 56 |
| Unauthorized Use of a Vehicle | Class A Misdemeanors | 11-853 | 82 |
| Undetectable Knives (Mfr/Import/Sell/Possess) (6/30/06) | Class G Felony (Nonviolent) | 11-1446A | 76 |
| Unlawful Administration Controlled Substance/Narcotic | Class G Felony (Nonviolent) | 11-626 | 74 |
| Unlawful Concealing Will | Class G Felony (Nonviolent) | 11-908 | 75 |
| Unlawful Conversion of Benefits (\$500-\$9,999) | Class E Felony (Nonviolent) | 31-1006 | 62 |
| Unlawful Conversion of Benefits (<\$500) | Class A Misdemeanors | 31-1006 | 83 |
| Unlawful Conversion of Benefits >\$10,000 | Class C Felony (Nonviolent) | 31-1006 | 50 |
| Unlawful Dealing Child Pornography (2nd offense of 11. 1109) | Class B Felony | 11-1110 | 38 |
| Unlawful dealing in a counterfeit or purported controlled substance | Class E Felony (Nonviolent) | 16-4758 | 62 |
| Unlawful Dealing with Child | Class B Misdemeanors | 11-1106 | 90 |
| Unlawful Dealing with Dangerous Weapon | Class E Felony (Violent) | 11-1445(5) | 59 |
| Unlawful Dealing with Dangerous Weapon | Unclassified Misdemeanors | 11-1445 (1-3) | 92 |
| Unlawful Dealing with Knuckles-Combination Knife | Class B Misdemeanors | 11-1452 | 90 |
| Unlawful Dealing with Martial Arts Throwing Star | Class B Misdemeanors | 11-1453 | 90 |
| Unlawful Dealing with Switchblade | Unclassified Misdemeanors | 11-1446 | 92 |
| Unlawful Dissemination Gambling Information | Class A Misdemeanors | 11-1411 | 87 |
| Unlawful Dissemination of DNA Database Information | Class A Misdemeanors | 29-4713(k)(1) | 87 |
| Unlawful Grand Jury Disclosure | Class B Misdemeanors | 11-1273 | 90 |
| Unlawful Imprisonment 1st Degree | Class G Felony (Violent) | 11-782 | 72 |

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUTE</i> | <i>PAGE</i> |
|--|--------------------------------|---------------------------|-------------|
| Unlawful Imprisonment 2nd Degree | Class A Misdemeanors | 11-781 | 85 |
| Unlawful Operation Recording Device (Motion Picture) (6/28/06) | Class A Misdemeanors | 11-858(a)(2) | 82 |
| Unlawful Operation Recording Device (Still Photograph) (6/28/06) | Class B Misdemeanors | 11-858(a)(2) | 90 |
| Unlawful Printing Credit Card Receipt | Unclassified Misdemeanors | 11-915A | 92 |
| Unlawful Sale Traffic Control Signal Preemption Devices | Title 21 and Title 23 Offenses | 21-4112A(c) | 96 |
| Unlawful Sexual Contact 1st Degree | Class D Felony (Violent) | 11-769 | 52 |
| Unlawful Sexual Contact 2nd Degree | Class F Felony (Violent) | 11-768 | 65 |
| Unlawful Sexual Contact 3rd Degree | Class A Misdemeanors | 11-767 | 79 |
| Unlawful Telecommunication Device | Unclassified Misdemeanors | 11-850(b)(1) | 92 |
| Unlawful Telecommunication Device (>2 prior convictions/ 50+ devices) | Class D Felony (Nonviolent) | 11-850(b)(3) | 56 |
| Unlawful Telecommunication Device (Previous Conviction/ 10-49 Devices) | Class F Felony (Nonviolent) | 11-850(b)(2) | 67 |
| Unlawful Use Credit Card | Class F Felony (Nonviolent) | 11-903 | 68 |
| Unlawful Use Credit Card | Class G Felony (Nonviolent) | 11-903 | 75 |
| Unlawful Use Credit Card (< \$1500) | Class A Misdemeanors | 11-903 | 82 |
| Unlawful Use of Consumer Identification Information | Unclassified Misdemeanors | 11-914 | 92 |
| Unlawful Use of Credit Card Information | Unclassified Misdemeanors | 11-915 | 92 |
| Unlawful Use of Criminal History Record Information | Class A Misdemeanors | 11-8523(d) | 87 |
| Unlawfully Acting as a Bail Bond Agent | Class F Felony (Nonviolent) | 18-4354 | 68 |
| Unlawfully Administer Drugs | Class A Misdemeanors | 11-625 | 85 |
| Unlawfully Dealing with a Dangerous Weapon | Class G Felony (Violent) | 11-1445(4) | 72 |
| Use Animal to Avoid Capture | Class G Felony (Nonviolent) | 11-1257A | 75 |
| Use of Animal to Avoid Capture | Class A Misdemeanors | 11-1257A | 86 |
| Use of Illegitimate Sales Receipt/UPC Label (<1500) | Class A Misdemeanors | 11-840A | 82 |
| Use of Illegitimate Sales Receipt/UPC Label (15+ Receipts/ UPC Labels/ \$1,500+) | Class F Felony (Nonviolent) | 11-840A | 67 |
| Vehicular Assault 1st Degree | Class F Felony (Violent) | 11-629 | 65 |
| Vehicular Assault 2nd Degree | Class A Misdemeanors | 11-628A | 85 |
| Vehicular Assault 3rd Degree | Class B Misdemeanors | 11-628 | 90 |
| Vehicular Homicide 2nd Degree | Class D Felony (Violent) | 11-630 | 52 |
| Vehicular Homicide in the First Degree | Class C Felony (Violent) | 11-630A | 45 |
| Video Lottery Cheat Device | Class G Felony (Nonviolent) | 11-1471(a)(b)(d)(e)(l) | 76 |
| Video Lottery Cheat Device | Class A Misdemeanors | 11-1471(a)(b)(d)(e)(l) | 87 |
| Video Lottery Cheat Device <1500 | Class A Misdemeanors | 11-1471(c)(f)(g)(h)(i)(j) | 87 |

| <i>CRIME</i> | <i>CLASS</i> | <i>STATUTE</i> | <i>PAGE</i> |
|---|-----------------------------|-----------------------------------|-------------|
| Video Lottery Cheat Device >\$1500<\$50000 | Class G Felony (Nonviolent) | 11- 1471(c)(f)(g)(h)(i)(j) | 76 |
| Video Lottery Cheat Device >\$99,999.99 | Class C Felony (Nonviolent) | 11- 1471(c)(f)(g)(h)(i)(j) | 50 |
| Video Lottery Cheat Device >50,000<100,000 | Class E Felony (Nonviolent) | 11- 1471(c)(f)(g)(h)(i)(j) | 62 |
| Video Privacy Protection | Unclassified Misdemeanors | 11-925 | 92 |
| Violation of Fire Regulations | Unclassified Misdemeanors | 16-6611(b) | 93 |
| Violation of Privacy | Class G Felony (Nonviolent) | 11-1335(a)(6)- (7) | 76 |
| Violation of Privacy (6/30/06) | Class A Misdemeanors | 11-1335(a)(1-5, 8) | 87 |
| Violations Concerning Vital Statistics Records | Unclassified Misdemeanors | 16-3111(b) | 93 |
| Wearing Body Armor during Commission of a Felony | Class B Felony | 11-1449 | 38 |
| Wearing Disguise during Felony | Class E Felony (Nonviolent) | 11-1239 | 61 |

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, sentences should reflect the objective of rehabilitation

¹ Sept. 15th, 1987

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

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 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

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

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
- 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

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)

²⁰ Title 11, §4333 (j)

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 56% 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.
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 incalcitrant 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.

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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.
 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 312 (147th 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 |
|---------------------|---|
| 803 | Arson in the First Degree |
| 826 | Burglary in the first degree |
| 825 | Burglary in the second degree |
| 826A | Home Invasion |
| 636 | Murder in the first degree |
| 635 | Murder in the second degree |
| 632 | Manslaughter |
| 783 | Kidnapping in the second degree |
| 783A | Kidnapping in the first degree |
| 606 | Abuse of a pregnant female in the first degree |
| 613 | Assault in the First Degree |
| 832 | Robbery in the first degree |
| 836 | Carjacking 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 of Trust, Authority, or Supervision 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.

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

Please familiarize yourself with the above policies and follow them, insofar as possible, in each and every case. If questions should arise, contact either a member of the Commission or the SENTAC staff, Ron Keen, at (302) 577-8728 or Ronald.Keen@state.de.us .

MEMBERS OF THE SENTENCING ACCOUNTABILITY COMMISSION

| Description of Commissioner Position | Commission Member: |
|---|---|
| Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years; | Chair: Honorable William C. Carpenter, Jr. |
| Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years; | Honorable T. Henley Graves |
| Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years; | Honorable Alan G. Davis |
| Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years; | Honorable Kenneth S. Clark Jr. |
| The Attorney General or the Attorney General's designee; | Honorable Joseph R. Biden III |
| 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 Robert Coupe |
| 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 | Drewry N. Fennell 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 | Martin W. Johnson, III Chief Delaware Police Chief's Council |
| 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:

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|----------------------|---|
| 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>Murder 1st 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

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| 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)) |

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| 11-635 | <u>Murder 2nd Degree. Reclassified in 6/2003</u> Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement |
| 11-636 | <u>Murder 1st Degree</u> <ul style="list-style-type: none"> • 4209(a) Punished by death 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). • 4209(d)(1): The following sentence was added in regard to sentencing by the court: The jury's recommendation concerning whether the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist shall be given such consideration as deemed appropriate by the Court in light of the particular circumstances or details of the commission of the offense and the character and propensities of the offender as found to exist by the Court. The jury's recommendation shall not be binding upon the Court. • 4209(d)(4): After the Court determines the sentence to be imposed, it shall set forth in writing the findings upon which its sentence is based. If a jury is impaneled, and if the Court's decision as to whether the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist differs from the jury's recommended finding, the Court shall also state with specificity the reasons for its decision not to accept the jury's recommendation. • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement |

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| <p>11-773</p> | <p><u>Rape 1st Degree</u></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 at Lev V up to life (7/26/06) • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement |
| <p>11-777A(e)(5)</p> | <p><u>Sex Offender Unlawful Sexual Conduct Against a Child</u></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 |
| <p>11-778(f)(1)</p> | <p><u>Sexual Abuse of a Child by a person in a position of trust, authority, or supervision in the first degree:</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 |

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| <p>11-787(b)(1)</p> | <p><u>Trafficking an individual- Victim is a minor AND Aggravating Circumstance present.</u> 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 |
| <p>11-787(b)(2)</p> | <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 |
| <p>11-787(b)(3)</p> | <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 |
| <p>11-1304(b)(4)</p> | <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

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| 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) (7/26/06)</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) (7/26/06)</u> |
| 11-777 | <u>Dangerous Crime Against Child (see note) (7/26/06)</u> |
| 11-777A(e)(2),(e)(3) | <u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u> |

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|----------------|---|
| 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> 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. |
| 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> As set forth in subsection (3) of this section is a class B felony. |
| 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)(2) | <u>Burglary 1st Degree (Vt> 62 y.o.a.) (see note)</u> (a) Dwelling at night (1) armed/ (2) causes injury to nonparticipant |
| 11-826A | <u>Home Invasion (see note)</u> |
| 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>62) |
| 11-836(a)(4-6) | <u>Carjacking 1st Degree(see note)</u> (a)(4)DW or threat/ (5)Injury/ (6)Vt>62 or <14 y.o.a |
| 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> |
| 11-1253 | <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 – Aggravated possession</u> |
| 16-4757(c)(2) | <u>Misc. Drug Crimes, Solic. of Multiple Prescrip. Drug Crimes (see note)</u> |

Supplemental Notations For Class B Felony (Violent):

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| 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)) |

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| 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. Reclassified in 6/2003</u> Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement |
| 11-632 | <u>Manslaughter. Reclassified in 6/2003</u> Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement |
| 11-771 11-771(a)(2) | <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 (7/26/06) |
| 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(7/26/06) • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement |
| 11-776 | <u>Continuous Sexual Abuse of Child</u> 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 (7/26/06) |
| 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 (7/26/06) |
| 11-777A(e)(2), (e)(3) | <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)(3) 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 |
| 11-778(2) | Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement |
| 11-778(3) | Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement |

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| 11-783A | <p><u>Kidnapping in the first degree</u> Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement</p> | | | | | | | | | | | | |
| 11-787(b) (1) | <p><u>Trafficking an individual –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> | | | | | | | | | | | | |
| 11-787(b) (2) | <p><u>Forced labor 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"> • 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) (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(a)(2) | <p><u>Burglary 1st Degree (Vt> 62 y.o.a.)</u></p> <ul style="list-style-type: none"> • (b) Minimum Mandatory Sentences: (b)(1) 2 yrs at Level V or (b)(2) 4 yrs at Level V if within 5 yrs of the date of a previous conviction for Burglary of the 1st or 2nd degree, or the date of release from said conviction. The provisions of §4215 (Previous Conviction Enhancement) shall not be applicable. • (c) Sentencing provisions equally applicable to Attempt <table border="0" style="margin-left: 20px;"> <tr> <td>First Conviction</td> <td>24 m. to 48 m. @ Level V</td> </tr> <tr> <td>On release pending trial/sentence</td> <td>36 m. to 60 m. @ Level V</td> </tr> <tr> <td>2 or more Prior Felonies</td> <td>48 m. to 96 m. @ Level V</td> </tr> <tr> <td>1 Prior Violent Felony</td> <td>48 m. to 96 m. @ Level V</td> </tr> <tr> <td>2 or more Prior Violent Felonies</td> <td>60 m. to 120 m. @ Level V</td> </tr> <tr> <td>Excessive Cruelty</td> <td>60 m. to 120 m. @ Level V</td> </tr> </table> <p>Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement</p> | First Conviction | 24 m. to 48 m. @ Level V | On release pending trial/sentence | 36 m. to 60 m. @ Level V | 2 or more Prior Felonies | 48 m. to 96 m. @ Level V | 1 Prior Violent Felony | 48 m. to 96 m. @ Level V | 2 or more Prior Violent Felonies | 60 m. to 120 m. @ Level V | Excessive Cruelty | 60 m. to 120 m. @ Level V |
| First Conviction | 24 m. to 48 m. @ Level V | | | | | | | | | | | | |
| On release pending trial/sentence | 36 m. to 60 m. @ Level V | | | | | | | | | | | | |
| 2 or more Prior Felonies | 48 m. to 96 m. @ Level V | | | | | | | | | | | | |
| 1 Prior Violent Felony | 48 m. to 96 m. @ Level V | | | | | | | | | | | | |
| 2 or more Prior Violent Felonies | 60 m. to 120 m. @ Level V | | | | | | | | | | | | |
| Excessive Cruelty | 60 m. to 120 m. @ Level V | | | | | | | | | | | | |

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| 11-826A | <p><u>Home Invasion</u></p> <ul style="list-style-type: none"> • (b)(1)a. Minimum sentence of 6 years at Level V. • (b)(1)b. 8 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 burg. 1st or 2nd 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 1st or burg. 2nd degree. • (b)(2) Notwithstanding the provisions of par. (b)(1) 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 a participant in the crime, is a person 62 yoa or older shall receive a minimum sentence of: <ul style="list-style-type: none"> a. 7 years at Level V; or b. 9 yrs at Lev. V, if the conviction is for an offense that was committed within 5 yrs of the date of a prev. conviction for home invasion or burg. 1st or 2nd degree or if the conviction is for an offense that was committed within 5 yrs of the date of termination of all periods of incarceration or confinement imposed pursuant to a prev. conv. for home invasion or burg. 1st or 2nd deg. conv. • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement |
| 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 the conviction is for an offense that was committed within 10 years of the date of a prev. conviction or termination of the date of confinement from such prev. conviction, whichever date is later. Sentence not subject to terms of §4215 (Prev. Conv. Enhancement) • (c) Sentencing provisions equally applicable to Attempt. • Original jurisdiction over juveniles charged with Robbery 1st shifted to Superior Court with reverse amenability available. 1 year mandatory commitment for Robbery 1st involving weapons or serious physical injury or for PFDCF in Family Court. • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement |
| 11-836(a)(4-6) | Per Title 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement |
| 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> |

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| 11-1447 | <p><u>Possession of Deadly Weapon during Commission of a Felony</u></p> <ul style="list-style-type: none"> • (b) Any sentence imposed shall not be subject to suspension, good time, parole or probation. • (c) Any sentence imposed shall not run concurrently. The sentence imposed shall be served following the imposition of a sentence for the conviction of the felony offense. • (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 • (c) If conviction represents 3rd felony conviction= minimum mandatory sentence= 5 years at Level V • (d) Any sentence imposed shall not be subject to suspension, good time, parole or probation. • (f) Juveniles > 15 shall be tried as an adult, with reverse amenability available • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement |
| 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. |

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| 11-3533 | <u>Aggravated Act of Intimidation</u> 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. |
| 16-4752 | <u>Drug dealing – Aggravated possession</u> (1) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 4 quantity; (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; (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 Section 4751C(4)a.-i., of this title and there are two aggravating factors. |

Class B Felony (Nonviolent)

II.) (FBNV)

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| 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

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| 11-841(3)(b) | <u>Theft (> \$100,000) (see note)</u> |
| 11-913A(c)(3) | <u>Health Care Fraud</u> (Intended loss > \$100,000/ Provider (see note)) |
| 11-917(d)(3) | <u>New Home Construction Fraud (Loss > \$100,000)</u> |
| 11-1103B | <u>Child Abuse in the First Degree</u> |
| 11-1112B(g) | <u>Promoting Sexual Solicitation of a Child</u> |
| 31-610(a)(3) | <u>Traffick in Food Stamps (Firearms/Ammunition/Cont. Substances) (see note)</u> |

Sentences For Prior Criminal History Categories

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| 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)

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| 11-841(3)(b) | <p><u>Theft (> \$100,000)</u></p> <p>841 (d): Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.</p> |
| 11-913A(c)(3) | <p><u>Health Care Fraud</u> (Intended loss > \$100,000/ provider</p> <p>913 (c)(4) Fine may be up to 5x pecuniary benefit sought or obtained.</p> |
| 16-4757(c)(2) | <p><u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes:</u></p> <p>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 of subsection (a) of 4757 and there is an aggravating factor in connection with at least one of the times.</p> |
| 31-610(a)(3) | <p><u>Trafficking in Food Stamps (Firearms/Ammunition/Controlled Substances)</u></p> <p>May be suspended from the Food Stamp Program for 18 months more than suspension mandated by the Federal Food Stamp Act</p> |

Class C Felony (Violent)

I.) (FCV)

| Sentence Range (Violent Category) FCV | |
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| 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

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| 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)(2) | <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 (see note)</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 |

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| 11-825 | <u>Burglary 2nd Degree (Vt > 62 y.o.a.) (see note)</u> (a)(1) Dwelling/ (a)(2) Bldg + (a) DW or (b) Injury to nonparticipant |
| 11-826 | <u>Burglary 1st Degree (see note)</u> (a) Dwelling at night (1) armed/ (2) causes injury to nonparticipant |
| 11-836(a)(1- 3) | <u>Carjacking 1st Degree</u> (a)(1) Class D Felony or higher/ (2) DUI/ (3) Drug Offense |
| 11-1105 | <u>Crime Against a Vulnerable Adult (see note)</u> |
| 11-1112A | <u>Sexual Solicitation of a Child</u> |
| 11-1112B | <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>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 | <u>Drug dealing – Aggravated Possession; (see note)</u> |
| 16-4757(c)(1) | <u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes (see note)</u> |
| 31-3913(b) | <u>Exploitation of Infirm Adult (>\$50,000/Prior Conviction)</u> |

| Sentences For Prior Criminal History Categories | |
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| 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

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| 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)) |

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| 11-630A | <p><u>Vehicular Homicide 1st Degree</u></p> <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)(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. |
| 11-778(f)(4) | <p><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first 16-4760</u></p> <p>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.</p> |
| 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 <p>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.</p> |

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| 11-787 (b)(4) | <u>Patronizing a victim of sexual servitude-Victim is a minor</u> | | | | | | | | | | | | |
| 11-803 | <u>Arson in the first degree</u> | | | | | | | | | | | | |
| | Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement | | | | | | | | | | | | |
| 11-825 | <u>Burglary 2nd Degree (Vt > 62 y.o.a.)</u> | | | | | | | | | | | | |
| | <ul style="list-style-type: none"> • (b) Minimum Mandatory Sentences: (1) 1 yr. at Level V or (2) 3 yrs at Level V if within 5 yrs of the date of a previous conviction for Burglary of the 1st or 2nd degree, or the date of release from said conviction. The provisions of §4215 (Previous Conviction Enhancement) shall not be applicable. • (c) Sentencing provisions equally applicable to Attempt <table border="0" style="margin-left: 20px;"> <tr> <td>First Conviction</td> <td>12 m. to 36 m. @ Level V</td> </tr> <tr> <td>On release pending trial/sentence</td> <td>18 m. to 36 m. @ Level V</td> </tr> <tr> <td>2 or more Prior Felonies</td> <td>36 m. to 72 m. @ Level V</td> </tr> <tr> <td>1 Prior Violent Felony</td> <td>36 m. to 72 m. @ Level V</td> </tr> <tr> <td>2 or more Prior Violent Felonies</td> <td>48 m. to 96 m. @ Level V</td> </tr> <tr> <td>Excessive Cruelty</td> <td>48 m. to 96 m. @ Level V</td> </tr> </table> <p>Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement</p> | First Conviction | 12 m. to 36 m. @ Level V | On release pending trial/sentence | 18 m. to 36 m. @ Level V | 2 or more Prior Felonies | 36 m. to 72 m. @ Level V | 1 Prior Violent Felony | 36 m. to 72 m. @ Level V | 2 or more Prior Violent Felonies | 48 m. to 96 m. @ Level V | Excessive Cruelty | 48 m. to 96 m. @ Level V |
| First Conviction | 12 m. to 36 m. @ Level V | | | | | | | | | | | | |
| On release pending trial/sentence | 18 m. to 36 m. @ Level V | | | | | | | | | | | | |
| 2 or more Prior Felonies | 36 m. to 72 m. @ Level V | | | | | | | | | | | | |
| 1 Prior Violent Felony | 36 m. to 72 m. @ Level V | | | | | | | | | | | | |
| 2 or more Prior Violent Felonies | 48 m. to 96 m. @ Level V | | | | | | | | | | | | |
| Excessive Cruelty | 48 m. to 96 m. @ Level V | | | | | | | | | | | | |
| 11-826 | <u>Burglary 1st Degree</u> | | | | | | | | | | | | |
| | <ul style="list-style-type: none"> • (b) Minimum Mandatory Sentences: (b)(1) 2 yrs at Level V or (b)(2) 4 yrs at Level V if within 5 yrs of the date of a previous conviction for Burglary of the 1st or 2nd degree, or the date of release from said conviction. The provisions of §4215 (Previous Conviction Enhancement) shall not be applicable. • (c) Sentencing provisions equally applicable to Attempt • Presumptive sentences: <table border="0" style="margin-left: 20px;"> <tr> <td>First Conviction</td> <td>24 m. to 48 m. @ Level V</td> </tr> <tr> <td>On release pending trial/sentence</td> <td>36 m. to 60 m. @ Level V</td> </tr> <tr> <td>2 or more Prior Felonies</td> <td>48 m. to 96 m. @ Level V</td> </tr> <tr> <td>1 Prior Violent Felony</td> <td>48 m. to 96 m. @ Level V</td> </tr> <tr> <td>2 or more Prior Violent Felonies</td> <td>60 m. to 120 m. @ Level V</td> </tr> <tr> <td>Excessive Cruelty</td> <td>60 m. to 120 m. @ Level V</td> </tr> </table> <p>Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement</p> | First Conviction | 24 m. to 48 m. @ Level V | On release pending trial/sentence | 36 m. to 60 m. @ Level V | 2 or more Prior Felonies | 48 m. to 96 m. @ Level V | 1 Prior Violent Felony | 48 m. to 96 m. @ Level V | 2 or more Prior Violent Felonies | 60 m. to 120 m. @ Level V | Excessive Cruelty | 60 m. to 120 m. @ Level V |
| First Conviction | 24 m. to 48 m. @ Level V | | | | | | | | | | | | |
| On release pending trial/sentence | 36 m. to 60 m. @ Level V | | | | | | | | | | | | |
| 2 or more Prior Felonies | 48 m. to 96 m. @ Level V | | | | | | | | | | | | |
| 1 Prior Violent Felony | 48 m. to 96 m. @ Level V | | | | | | | | | | | | |
| 2 or more Prior Violent Felonies | 60 m. to 120 m. @ Level V | | | | | | | | | | | | |
| Excessive Cruelty | 60 m. to 120 m. @ Level V | | | | | | | | | | | | |
| 11-1105 | <u>Crime Against a Vulnerable Adult</u> | | | | | | | | | | | | |
| | <p>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.</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> | | | | | | | | | | | | |
| 11-1253 | <u>Escape After Conviction</u> | | | | | | | | | | | | |
| | Any sentence imposed shall not run concurrently with any other sentence. | | | | | | | | | | | | |

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| 11-1312 | <p><u>Stalking w/ Deadly Weapon</u></p> <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) | <p><u>Poss/Purchase Firearm/Destructive Device by Prohibited Person w/Prior Conviction of Violent Felony</u></p> <p>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.</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 |
| 16-4753 | <p><u>Drug dealing – Aggravated Possession:</u></p> <p>(1) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 2 quantity;</p> <p>(2) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance, and there is an aggravating factor;</p> <p>(3) Possesses a controlled substance in a Tier 4 quantity as defined in any of Section 4751C(2)a.-i. of this title;</p> <p>(4) Possesses a controlled substance in a Tier 2 quantity, as defined in any of Section 4751C(4)a.-i. of this title; and there is an aggravating factor; or</p> <p>(5) Possesses a controlled substance in a Tier 1 quantity, and there are 2 aggravating factors;</p> |
| 16-4757(c)(1) | <p><u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes</u></p> <p>(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> |

Class C Felony (Nonviolent)

II.) (FCN)

| 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. |

Crimes in Category

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|----------------------------------|--|
| 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 (see note)</u> |
| 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> |
| 16-4760A | <u>Operate or Attempt to Operate a Clandestine Laboratory</u> |
| 31-1003 | <u>Benefit by False Representation >\$10,000 (see note)</u> |
| 31-1004(2) | <u>Falsify Reimbursement Report >\$10,000 (see note)</u> |
| 31-1006 | <u>Unlawful Conversion of Benefits >\$10,000 (see note)</u> |

| 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

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| 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)) |

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|---|--|
| 11-907B(b) | Criminal Impersonation of a Police Officer w/Injury or Felonies 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) |
| 31-1003 31-1004(2) 31-1006 | Benefit by False Representation Falsify Reimbursement Report Unlawful Conversion of Benefits <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:

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|----------------------|---|
| 11-607(3) | <u>Strangulation (see note)</u> |
| 11-612 | <u>Assault 2nd Degree</u> (a)Intentionally: (1) Serious Injury/ (2)Injury w/DW/ (3) Injures LEO, FF, CO/ (4) Medical personnel/ (5) Vt>62/ (6)Assaults LEO w/spray/ (7)Uses spray commit crime/ Injures State Employee/ (9) Injures Pregnant Female/ (10) 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 | <u>Vehicular Homicide 2nd Degree (see note)</u> (a)(1) Criminally negligent driving: death/ (2) DUI + Negligent driving:death |
| 11-631 | <u>Criminally Negligent Homicide</u> |
| 11-769 | <u>Unlawful Sexual Contact 1st Degree</u> Causing physical injury/using deadly weapon or threat of |
| 11-775 | <u>Bestiality</u> |
| 11-777A(e)(2) | <u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u> |
| 11-778(5) | <u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree: (see note)</u> |
| 11-778A(1) | <u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree: (see note)</u> |
| 11-787(b)(4) | <u>Patronizing a victim of sexual servitude (adult victim)</u> |
| 11-802 | <u>Arson 2nd Degree</u> Intentionally damage unoccupied bldg by fire/explosion |

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| 11-825 | <u>Burglary 2nd Degree (see note)</u> (a)(1) Dwelling/ (a)(2) Bldg + (a) DW or (b) Injury to nonparticipant |
| 11-835(b)(2) | <u>Carjacking 2nd Degree</u> (a)Risk of Death or Serious Injury/(b)Compels Lawful Occupant to Leave/(c) Reckless Operation |
| 11-846 | <u>Extortion (Vt>62 y.o.a.)</u> |
| 11-1105 | <u>Crime Against a Vulnerable Adult (see note)</u> |
| 11-1250(c) | <u>Assault 1st Degree on Law Enforcement Animal</u> Intentionally or Recklessly causes Death or Serious Injury |
| 11-1253 | <u>Escape After Conviction</u> (Special Escape Category May Apply)(see note) |
| 11-1254(a) | <u>Assault in Detention Facility: Injury (see note)</u> |
| 11-1254(c) | <u>Assault in Detention Facility: Bodily Emissions (see note)</u> |
| 11-1304(b)(3) | <u>Hate Crime (Underlying Offense: Class E Felony)</u> |
| 11-1338 | <u>Mfr/Transfer/Use/Poss/Transport Bomb/Incendiary Device/ Molotov Cocktail/Explosive (see note)</u> |
| 11-1442 | <u>Carrying Concealed Deadly Weapon (Firearm) (see note)</u> |
| 11-1459 | <u>Possession of a Firearm with Altered Serial Number</u> |
| 16-4754 | <u>Drug dealing – Aggravated possession; (see note)</u> |
| 31-3913(b) | <u>Exploitation of Infirm Adult (\$10,000 – \$50,000)</u> |
| 31-3913(c) | <u>Abuse of Infirm Adult: Bodily Harm</u> |

| 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

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| 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)) |

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| 11-607(3) | <u>Strangulation</u> <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 |
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|------------------------------------|--|----------------|----------------------|-----------------------------------|----------------------|----------------------------|----------------------|--------------------------|----------------------|------------------------------------|----------------------|-------------------|----------------------|
| <p>11-630</p> | <p><u>Vehicular Homicide 2nd Degree</u></p> <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 | | | | | | | | | | | | |
| <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. • Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement | | | | | | | | | | | | |
| <p>11-778(f)(5)</p> | <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> | | | | | | | | | | | | |
| <p>11-778A(1)</p> | <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> | | | | | | | | | | | | |
| <p>11-825</p> | <p><u>Burglary 2nd 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 • Minimum Mandatory Sentences: (b)(1) 1 yr at Level V or (b)(2) 3 yrs at Level V if within 5 yrs of the date of a previous conviction for Burglary of the 1st or 2nd degree, or the date of release from said conviction. The provisions of §4215 (Previous Conviction Enhancement) shall not be applicable. • (c) Sentencing provisions equally applicable to Attempt • Minimum Presumptive Sentences: <table border="1" data-bbox="477 1402 1377 1608"> <tr> <td>1st Conviction</td> <td>12 to 36 m @ Level V</td> </tr> <tr> <td>While on Release or pending Trial</td> <td>18 to 36 m @ Level V</td> </tr> <tr> <td>Two or more prior felonies</td> <td>36 to 72 m @ Level V</td> </tr> <tr> <td>One Prior Violent Felony</td> <td>36 to 72 m @ Level V</td> </tr> <tr> <td>Two or more prior violent felonies</td> <td>48 to 96 m @ Level V</td> </tr> <tr> <td>Excessive cruelty</td> <td>48 to 96 m @ Level V</td> </tr> </table> | 1st Conviction | 12 to 36 m @ Level V | While on Release or pending Trial | 18 to 36 m @ Level V | Two or more prior felonies | 36 to 72 m @ Level V | One Prior Violent Felony | 36 to 72 m @ Level V | Two or more prior violent felonies | 48 to 96 m @ Level V | Excessive cruelty | 48 to 96 m @ Level V |
| 1st Conviction | 12 to 36 m @ Level V | | | | | | | | | | | | |
| While on Release or pending Trial | 18 to 36 m @ Level V | | | | | | | | | | | | |
| Two or more prior felonies | 36 to 72 m @ Level V | | | | | | | | | | | | |
| One Prior Violent Felony | 36 to 72 m @ Level V | | | | | | | | | | | | |
| Two or more prior violent felonies | 48 to 96 m @ Level V | | | | | | | | | | | | |
| Excessive cruelty | 48 to 96 m @ Level V | | | | | | | | | | | | |
| <p>11-1105</p> | <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> | | | | | | | | | | | | |

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|-------------------|---|
| 11-1253 | <u>Escape After Conviction</u> Any sentence imposed shall not run concurrently with any other sentence. |
| 11-1254(a) | <u>Assault in Detention Facility: Injury</u> <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) | <u>Assault in Detention Facility: Bodily Emissions</u> <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 |
| 16-4754 | <u>Drug dealing – Aggravated possession</u> <ol style="list-style-type: none"> (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 |

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 |
| 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 |
| 11-917(d)(2) | <u>New Home Construction Fraud</u> Loss = \$50,000-\$99,999 |
| 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> |
| 11-3532 | <u>Act of Intimidation (see note)</u> |
| 29-4713(d) | <u>Tamper w/Biological Sample</u> |

| 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:

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|--|
| 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)) |

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| 11-841(c)(3)(a) | <u>Theft (\$50,000-\$99,999)</u> Full restitution required for victim’s monetary losses. Consider community service &/or curfew for a juvenile defendant. |
| 11-850(b)(3) | <u>Unlawful Telecommunication Device (>2 prior convictions/ 50+ devices)</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) |
| 11-854 | <u>Identity Theft</u> Restitution shall be ordered for monetary loss including documented loss of wages and reasonable attorney’s fees |
| 11-913A(c)(2) | <u>Health Care Fraud</u> 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 | <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> <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. |

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| 11-1448(a)(5) | <p><u>Poss/Purchase Firearm/Ammunition by Prohibited Person</u></p> <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 | <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> |
| 11-3532 | <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> |

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:

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| 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(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 | <u>Robbery 2nd Degree</u> (a)Theft w/force to (1) overcome resistance/(2)compel owner's cooperation |
| 11-835 | <u>Carjacking 2nd Degree</u> Intentional Theft Occupied Motor Vehicle by Coercion/Duress |
| 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 |
| 16-4755 | <u>Aggravated possession</u> Possession of a controlled substance in a Tier 2 quantity as defined in 4751C(4)a.-i. |
| 16-4774(c) | <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:

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| 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)) |

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|----------------------|---|
| 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. |
| 11-1105 | <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.</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> |
| 11-1444 | <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. |

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 |
| 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:

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|----------------------|--|
| 11-503 | <u>Criminal Solicitation 1st Degree</u> Solicit to commit Class A Felony |
| 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> |

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|----------------------------------|--|
| 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> |
| 16-4758 | <u>Unlawful dealing in a counterfeit or purported controlled substance</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:

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| 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)) |

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| 11-841B(c) | <p><u>Theft: Organized Retail Crime; class A misdemeanor; class E felony</u> 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 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. |
| 11-1326(a) | <p><u>Animals; fighting and baiting</u></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><u>Providing Obscenity to Minor</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. |

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| 11-1457 | <u>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class F Felony)</u> (j)(4) An elementary or secondary school student shall be expelled for 180d. |
| 31-610(a)(1) | <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 |
| 31-1003 31-1004(2) 31-1004(3) 31-1004(4) 31-1005 31-1006 | <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> <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:

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| 11-617(b)(2) | <u>Criminal Youth Gang: Recruitment/Retention:Violence or Threat (7/10/06)</u> |
| 11-629 | <u>Vehicular Assault 1st Degree</u> DUI & criminally negligent driving: Serious Injury |
| 11-645 | <u>Promoting Suicide</u> |
| 11-768 | <u>Unlawful Sexual Contact 2nd Degree</u> Vt<16 y.o.a. |
| 11-777A(e)(2) | <u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u> |
| 11-778A(2) | <u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree: (see note)</u> |
| 11-1105 | <u>Crime Against a Vulnerable Adult (see note)</u> |
| 11-1256 | <u>Promoting Prison Contraband</u> Deadly Weapon, mobile phone, cellular phone or other prohibited electronic device |
| 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. |
| 16-4756 | <u>Aggravated Possession</u> A person who possesses a controlled substance in a Tier 1 quantity |
| 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 |

| 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:

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| 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. |
| 11-778A(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. "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:

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|---------------------|---|
| 11-502 | <u>Criminal Solicitation 2nd Degree (see note)</u> Solicit to commit Felony |
| 11-621(a)(2) | <u>Terroristic Threat (see note)</u> False Stmt likely to: (a)evacuation/ (b)serious inconvenience/ (c)terror + School or Care Facility |
| 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> |
| 11-824 | <u>Burglary 3rd Degree (see note)</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+/vt= 62+ y.o.a./Infirm/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> |

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|---------------------|---|
| 11-861(b)(1) | Forgery 1st Degree (see note) Money/Stamps/Stocks/Bonds etc. |
| 11-903 | Unlawful Use Credit Card Vt= 62+ y.o.a & >\$1,500 |
| 11-922(c) | Improper Labeling (PriorConv 100>) (see note) (7/10/06) |
| 11-1101 | Abandonment of Child (14 yrs of age or older) |
| 11-1111 | Possession of Child Pornography |
| 11-1112(a)(2) | Sex Offender (Loiter w/in 500 ft School) |
| 11-1222 | Perjury 2nd Degree Written, Material False Stmt Intended to Mislead Public Servant |
| 11-1263A(a)(1) | Interfere with Child Witness Complainant removed from jurisdiction |
| 11-1263A(a)(3)(a) | Interfere with Child Witness Bribe to cause Complainant's removal from jurisdiction |
| 11-1263A(a)(4)(a) | Interfere with Child Witness Threat to cause Complainant's removal from jurisdiction |
| 11-1271A(b)(c) | Crim. Contempt Dom Violence Pro. Order (PFA) (see note) |
| 11-1303(3)(b) | Disorderly Conduct: Funeral/Memorial Service (Prior Conv) (6/1/06) |
| 11-1325 | Cruelty to Animals (see note) Cruelly or Unnecessarily kills or seriously injures under (b)(4) or (5) |
| 11-1326(b)(c) | Fighting/Baiting Animals (see note) |
| 11-1327(c)(2) | Dangerous Animal: Serious Injury to Person |
| 11-1351 | Promoting Prostitution 3rd Degree Profit from prostitution |
| 11-1448(f)(1)(a)(5) | Poss/Purchase Deadly Weapon (Other than Destructive Weapon/Firearm/Ammunition) by Prohibited Person (see note) |
| 11-1450 | Receiving Stolen Firearm |
| 11-1451 | Theft of firearm |
| 11-1454 | Giving Firearm to Person Prohibited |
| 11-1455 | Firearm Transaction on Behalf of Another (1st Offense) |
| 11-1457(j)(3) | Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class G Felony) (see note) |
| 16-107(e)3 | Neglect of Duty (see note) |
| 16-4757(b) | Miscellaneous Drug Crimes (see note) |
| 16-4759(b)(1,2,4) | Registrant Crimes Violates (a)(1),)a)(2), or (a)(4) |
| 16-4760 | Maintaining a Drug Property |
| 18-4354 | Unlawfully Acting as a Bail Bond Agent |
| 21-4134(d) | Operation of vehicles on approach of authorized emergency vehicles |

| 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:

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| 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)) |

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| 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) | <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 |
| 11-824 | <u>Burglary 3rd Degree</u> Presumptive sentences: First Conviction – Quasi Incarceration (Level IV) for 3 Mo. Repetitive Criminal History – Level V for 3 to 12 Mo. Lack of amenability to Lesser Sanction – Level V for 3 to 12 Mo. |
| 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. |

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| 11-1271A(b)(c) | <p><u>Criminal Contempt of a Domestic Violence Protection Order (PFA)</u></p> <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 | <p><u>Cruelty to Animals</u></p> <p>(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.</p> |
| 11-1326(b)(c) | <p><u>Fighting/Baiting Animals</u></p> <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. |
| 11-1448(f)(1)(a)(5) | <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. |
| 11-1457 | <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)(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. • (j)(4) An elementary or secondary school student shall be expelled for 180d. |
| 16-107(e)(3) | <p><u>Neglect of Duty:</u></p> <p>Term of imprisonment not to exceed 3 years.</p> |

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| 16-4757(b) | <u>Miscellaneous Drug Crimes 16-4757(a)</u> (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; (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; (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; (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. |
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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:

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| 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)(2) | <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> |
| 11-782 | <u>Unlawful Imprisonment 1st Degree</u> Risk of Serious Injury |
| 11-1105 | <u>Crime Against a Vulnerable Adult (see note)</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:

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| 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)) |

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| 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)(2) | <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 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. |
| 11-778A(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 | |
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| Statutory Range | 0 to 2 years @ Level V |
| Presumptive Sentence | Up to 12 m. @ Level II |
| 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:

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| 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) | <u>Terroristic Threat (see note)</u> False Stmt likely to cause: (a) evacuation/ (b) serious inconvenience/ (c) terror |
| 11-626 | <u>Unlawful Administration Controlled Substance/Narcotic</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+</u> |
| 11-841A | <u>Theft: Motor Vehicle (6/20/06)</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> |

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| 11-851 | Receive Stolen Property (\$1500+ /2 prior convictions) |
| 11-852A | Selling Stolen Property; class G felony (see note) |
| 11-859 | Larceny of Livestock (see note) |
| 11-861(b)(2) | Forgery 2nd Degree (see note) Deed/Will/Commercial Instrument/Public Record/Tokens/Prescriptions |
| 11-862 | Possess Forgery Devices |
| 11-878 | Issue False Certificate |
| 11-900 | Issue Bad Check (\$1500+) |
| 11-903 | Unlawful Use Credit Card Vt= 62+ y.o.a or >\$1,000 |
| 11-907A | Criminal Impersonation (Accident Related) (see note) |
| 11-908 | Unlawful Concealing Will |
| 11-911 | Fraudulent Conveyance of Public Lands |
| 11-912 | Fraudulent Receipt of Public Lands |
| 11-913 | Insurance Fraud |
| 11-913A | Health Care Fraud (see note) |
| 11-916 | Home Improvement Fraud \$1500+/vt=62+y.o.a./Prior Conviction |
| 11-917(d)(1) | New Home Construction Fraud (\$1,500–\$49,999) |
| 11-920 | Transfer of Recorded Sounds |
| 11-922(b) | Improper Labeling (1st Offense 100 >) (see note) (7/10/06) |
| 11-926(d)(2) | Trademark Counterfeiting(PriorConv/100-999/\$2,000–\$9,999) (7/7/05) |
| 11-932 | Unauthorized Computer Access (\$500–\$999) (see note) |
| 11-933 | Theft Computer Services (\$500–\$999) (see note) |
| 11-934 | Interruption Computer Services (\$500–\$999) (see note) |
| 11-935 | Misuse Computer System Information (\$500–\$999) (see note) |
| 11-936 | Destruction Computer Equipment (\$500–\$999) (see note) |
| 11-937 | Unauthorized Electronic Mail (\$500–\$999) (see note) |
| 11-938 | Fail Cease Electronic Communication (\$500–\$999) (see note) |
| 11-939 | Computer Offense Penalties (\$500–\$999) (see note) |
| 11-951(f) | Money Laundering |
| 11-1001 | Bigamy |
| 11-1102(b)(2) | Endanger Welfare of Child: Serious Injury |
| 11-1102(b)(3) | Endanger Welfare of Child: Sex Offense |
| 11-1112(a)(1) | Sex Offender (Residing w/in 500 ft of School) |
| 11-1103A | Child Abuse in the Second Degree |
| 11-1113 | Aggravated Criminal Non-Support (see note) Prior Conviction/ Delinquent as to Full Amt/ \$10,000+ |
| 11-1114A(c) | Tongue Splitting (Prior conviction) |
| 11-1206 | Receiving Unlawful Gratuity (value > \$1,000) |
| 11-1240 | Terroristic Threat to Public Officials/Servants |
| 11-1244(b) | Hinder Prosecution of a Felony |
| 11-1245 | False Report Incident/Child Abduction (Prior Conv) (see note) (6/30/05) |
| 11-1249 | Abetting Driver's License Violation (Prior Conviction/Death) |
| 11-1252 | Escape 2nd Degree (Spec. Esc. Cat. May Apply) Esc. From detention facil. Or cust. Of DHSS or DOC |
| 11-1257(a) | Resisting Arrest With Violence (6/27/06) |
| 11-1257A | Use Animal to Avoid Capture Prevent Prosecution/Injures L.E.O |
| 11-1259 | Sexual Relations in Detention Facility |

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| 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>Fighting/Baiting 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> |
| 16-3111(a) | <u>Crimes Regarding Vital Records (see note)</u> |
| 16-4762(d) | <u>Hypodermic syringe or needle; delivering or possessing; disposal</u> |

| Sentences For Prior Criminal History Categories | |
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| 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:

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| 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)) |

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| <p>11-621(a)(1) 11-621(a)(2)</p> | <p><u>Terroristic Threat (Vt= 62+ y.o.a.)</u> <u>Terroristic Threat</u></p> <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 |
| <p>11-811(b)(4)</p> | <p><u>Criminal Mischief</u></p> <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. |

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| <p>11-812(a)(2)</p> | <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> |
| <p>11-841</p> | <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> |
| <p>11-852A</p> | <p><u>Selling Stolen Property</u></p> <p>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</p> |
| <p>11-859</p> | <p><u>Larceny of Livestock</u></p> <p>Minimum sentence of imprisonment, if any, not subject to suspension,, probation or parole during 1st 6 m.</p> |
| <p>11-861(b)(2)</p> | <p><u>Forgery 2nd Degree</u></p> <p>(c) Restitution for resultant losses to all parties.</p> |
| <p>11-907A</p> | <p><u>Criminal Impersonation (Accident Related)</u></p> <p>(1) If Defendant pretended to be someone other than the driver, upon conviction, driving privileges are to be suspended by DMV for 2 yrs.</p> |
| <p>11-913A</p> | <p><u>Health Care Fraud</u></p> <p>913(c)(4): Fine may be up to 5x pecuniary benefit sought or obtained.</p> |
| <p>11-922(b)</p> | <p><u>Improper Labeling (1st Offense 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> |

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| <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> |

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 Pg. 134 |
| 11-611 | <u>Assault 3rd Degree</u> (Special DV Category May Apply) Refer to Pg. 134 |
| 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 Pg. 134 |
| 11-766 | <u>Incest</u> (Special DV Category May Apply) Refer to Pg. 134 |
| 11-767 | <u>Unlawful Sexual Contact 3rd Degree</u> (SpecialDVCategory May Apply) Refer to Pg. 134 |
| 11-777A(e)(1) | <u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u> |
| 11-777A(e)(3) | <u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u> |
| 11-1105 | <u>Crime Against a Vulnerable Adult (see note)</u> |
| 11-1103 | <u>Child Abuse in the Third Degree</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 Pg. 134 |
| 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:

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| 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)) |

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|----------------------|---|
| 11-777A(e)(1) | <p><u>Sex Offender Unlawful Sexual Conduct Against a Child</u></p> <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. |
| 11-777A(e)(3) | <p><u>Sex Offender Unlawful Sexual Conduct Against a Child</u></p> <ul style="list-style-type: none"> (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. |
| 11-1105 | <p><u>Crime Against a Vulnerable Adult</u></p> <p>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></p> <p>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 | Escape 3rd Degree (Special Escape Category May Apply) Escape from custody including nonsecure facilities of DYRS |
|----------------|---|

Supplemental Notations for Class A Misdemeanors (Escape):

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| 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) (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) (6/28/06)</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 | <u>Home Improvement Fraud (< \$1500)</u> |
| 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) |

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| 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> |
| 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

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| 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)) |

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| 11-811(b) (2)(4) | <u>Criminal Mischief</u> <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) | <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. |
| 11-858(a)(2) | <u>Unlawful Operation Recording Device (Motion Picture)</u> Notwithstanding any law to the contrary, may include a max. fine of \$50,000 |
| 11-861(b)(3) | <u>Forgery 3rd Degree</u> (c) Restitution for resultant losses to all parties. |

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| <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. |
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| <p>31-1003 31-1004(1) 31-1006</p> | <p><u>False Statement to Obtain Benefits</u> <u>False Benefit Reimbursement Statement</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. |
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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

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|---------------------|---|
| 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 Pg. 134 |
| 11-785 | <u>Interference with Custody</u> (Special DV Category May Apply) Refer to Pg. 134 |
| 11-791 | <u>Coercion</u> (Special DV Category May Apply) Refer to pg. 134 |

| | |
|---------------|---|
| 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> |
| 11-909 | <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 Pg. 134 |
| 11-1105 | <u>Endanger Welfare of Incompetent</u> |
| 11-1113(a) | <u>Aggravated Criminal Non-support (Prior Conviction) (see note)</u> |
| 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 (see note) (6/30/05)</u> |
| 11-1246 | <u>Compound a Crime</u> |
| 11-1249 | <u>Abetting Violation of Driver's License</u> |
| 11-1256 | <u>Promote 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: y/Funeral/Memorial Service (6/1/06)</u> |
| 11-1311 | <u>Harassment</u> (Special DV Category May Apply) Refer to page 134 |
| 11-1325 | <u>Cruelty to Animals (see note)</u> |
| 11-1325A(b) | <u>Trade in Dog/Cat By-Products (Flesh) (see note)</u> |
| 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> |

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|----------------------------------|--|
| 11-1335(a)(1-5, 8) | <u>Violation of Privacy (6/30/06)</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>Allow Unlawful Access to Firearm by Minor</u> |
| 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> |

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

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| 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)) |

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|---------------------|--|
| 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 |
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|---------------------|--|
| 11-1113(a) | <p><u>Aggravated Criminal Non-support (Prior Conviction)</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</u></p> <p>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> |
| 11-1325 | <p><u>Cruelty to Animals</u></p> <p>(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.</p> |
| 11-1325A | <p><u>Trade in Dog/Cat By-Products</u></p> <p>(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.</p> |
| 11-1340 | <p><u>Desecration of Burial Place</u></p> <p>Mandatory Minimum Fine= >\$1,000 up to \$10,000.</p> |
| 11-1457 | <p><u>Possession Weapon in Safe School/Recreation Zone</u></p> <p>(Underlying Offense: Class B Misdemeanor).</p> <p>(j)(4) An elementary or secondary school student shall be expelled for 180d.</p> |
| 31-610(a)(2) | <p><u>Transfer/Alter/Possess Food Stamps (<\$500)</u></p> <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 (6/14/05)</u> |
| 16-4759(b) | <u>Registrant Crimes</u> Violates (a)(3) |
| 16-4763(a) | <u>Possession of Controlled Substances or Counterfeit Controlled Substances</u> Is an aggravating factor |
| 16-4774(a) | <u>Possession of Drug Paraphernalia</u> |

Supplemental Notations for Class A Misdemeanors (Controlled Substances):

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| 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) (6/28/06)</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> |
| 11-1341 | <u>Lewdness</u> |
| 11-1342 | <u>Prostitution</u> |
| 11-1355 | <u>Permitting Prostitution</u> |
| 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> |
| 11-1457(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(b) | <u>Possession of Controlled Substances or Counterfeit Controlled Substances</u> Violates 4763(a) |
| 16-4764(a) | <u>Possession of Marijuana</u> Is an aggravating factor |
| 16-4774(a) | <u>Drug Paraphernalia</u> Possession |

Supplemental Notations Class B Misdemeanors:

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| 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)) |

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| 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 | |
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| 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

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| 11-601 | <u>Offensive Touching</u> (Special DV Category May Apply) Refer to Pg. 134 |
| 11-602 | <u>Menacing</u> (Special DV Category May Apply) Refer to Pg. 134 |
| 11-627 | <u>Substances Releasing Vapors or Fumes</u> |
| 11-763 | <u>Sexual Harassment</u> (Special DV Category May Apply) Refer to Pg. 134 |
| 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 Pg. 134 |
| 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> |
| 11-1343 | <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> |

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| 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 and Delivery of Noncontrolled Prescription Drugs</u> |
| 16-4764(b) | <u>Possession of Marijuana</u> Fine not more than \$575 and imprisonment not more than 3 months |
| 16-4774 (d) | <u>Advertisement of Drug Paraphernalia</u> |
| 16-6611(b) | <u>Violation of Fire Regulations (see note)</u> |
| 29-4810 | <u>Lottery Sales to persons prohibited</u> |

Supplemental Notations Unclassified Misdemeanors:

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| 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)) |

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| 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 |

Violations

| Sentence Range (Violations) V | |
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| 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

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| 11-821 | <u>Criminal Trespass 3rd Degree</u> |
| 11-1116 | <u>Tobacco Sale Violations: Sell/Distribute to u/18 (see note)</u> |
| 11-1117 | <u>Tobacco Sale Violations: Fail to Post Notice to u/18 (see note)</u> |
| 11-1118 | <u>Tobacco Sale Violations: Dist Samples/Coupons to u/18 (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:

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| 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)) |

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| 11-1116-11120 (penalties §11-1121) | <u>Tobacco Sale Violations</u> <ul style="list-style-type: none"> 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

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| 21-2810 | <u>Driving After Judgment Prohibited (See Note)</u> |
| 21-4103(b) | <u>Flee or Attempt to Elude (See Note)</u> |
| 21-4112A(c) | <u>Unlawful Sale Traffic Control Signal Preemption Devices (See Note)</u> |
| 21-4175 | <u>Reckless Driving (See Note)</u> |
| 21-4175A | <u>Aggressive Driving (See Note pg)</u> |
| 21-4176 | <u>Careless or Inattentive Driving (See Note)</u> |
| 21-4176A | <u>Operation of Vehicle Causing Death (See Note)</u> |
| 21-4177 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> |

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| 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. | |

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| 21-4175A | <p><u>Aggressive Driving</u> Mandatory Minimum Sentences</p> <ul style="list-style-type: none"> • 1st Offense: 10-30d. @ Level V; Fine= \$100–\$300 • Prior Conviction w/in 3 yrs.:30-60d.@ Level V; Fine= \$300–1,000. Sentence may not be suspended. • Driving privileges suspended for 30d. • Comp. of Behav. Mod. course and pmt. of its attendant fees are mandated. |
| 21-4176 | <p><u>Careless or Inattentive Driving</u> Mandatory Minimum Sentences:</p> <ul style="list-style-type: none"> • 1st Offense: Fine= \$25–\$75 • Prior Conviction w/in 3 yrs: Fine=\$50–\$95 • (d)(1) In addition to any other penalty if the court determines that the commission of that offense contributed to the serious physical injury of a vulnerable user of a public right of way, the court shall: <ol style="list-style-type: none"> a. Impose a sentence that requires the convicted person to: <ol style="list-style-type: none"> 1. complete a traffic safety course approved by DMV 2. Perform up to 100 hours of community service which much include activities related to driver improvement and providing public education on traffic safety; b. Impose, but suspend on the condition that the person complete the requirements of (d)(1)a, <ol style="list-style-type: none"> 1. A fine of not more than \$550 2. A suspension of driving privileges as provided in Section 2733(a)(2) of this; and 3. Set a hearing date up to one year from the date of sentencing. At that Hearing, the court shall: <ol style="list-style-type: none"> A. If the person has successfully completed the requirements described in paragraph (d)(1)(a) of this section, dismiss the penalties imposed under (d)(1)b. 1. and 2 of this section. B. If the person has not successfully completed the requirements Described in (d)(1)(a) of this section, either <ol style="list-style-type: none"> I. grant the person an extension based on good cause shown, or II. impose the penalties under (d)(1)b. 1. and 2. of this section. |
| 21-4176A | <p><u>Operation of Vehicle Causing Death</u></p> <ul style="list-style-type: none"> • Maximum penalty 1st Conviction: up to 30 m. imprisonment &/or \$1,150 Fine • Prior Conviction: up to 60 m. imprisonment &/or \$2,300 Fine |

21-4177(d)

Driving Vehicle While Under the Influence(Effective July 1, 2012)

- **1st Offense:** (1) up to 12m @ Level V; (2) Fine= \$500-\$1,500;(3) Completion of alcohol evaluation and program (4177)(d)(12)(f) not to exceed a total of 15m & to 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;
- **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.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.
- **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.
- **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.

- **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.
- **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.

4177(d)(10) In addition to the penalties otherwise authorized by this subsection, any person convicted of a violation of subsection (a) of this section, committed while a person who has not yet reached the person's seventeenth birthday is on or within the vehicle shall:

a. For the first offense, be fined an additional minimum of \$500 and not more than an additional \$1,500 and sentenced to perform a minimum of 40 hours of community service in a program benefiting children.

b. For each subsequent like offense, be fined an additional minimum of

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| <p>4177(d)</p> | <p>\$750 and not more than an additional \$2,500 and sentenced to perform a minimum of 80 hours of community service in a program benefiting children.</p> <p>4177L Driving by persons under the age of 21 after consumption of alcohol; penalties [Effective July 1, 2012]</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><u>4177(d) Driving a vehicle while under the influence or with a prohibited alcohol or drug content; (Effective until fulfillment of 79 Del. Laws, c. 396, section 5)</u></p> <p>(d) Whoever is convicted of a violation of subsection (a) of this section shall:</p> <p>(1) For the first offense, be fined not less than \$500 nor more than \$1,500 or imprisoned not more than 12 months or both. Any period of imprisonment imposed under this paragraph may be suspended.</p> <p>(2) For a second offense occurring at any time within 10 years of a prior offense, be fined not less than \$750 nor more than \$2,500 and imprisoned not less than 60 days nor more than 18 months. The minimum sentence for a person sentenced under this paragraph 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.</p> <p>(3) For a third offense occurring at any time after 2 prior offenses, be guilty of a class G felony, be fined not more than \$5,000 and be imprisoned not less than 1 year nor more than 2 years. The provisions of § 4205(b)(7) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 months of the sentence 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. The sentencing court may suspend up to 9 months of any minimum sentence set forth in this paragraph 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.</p> <p>(4) For a fourth offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not more than \$7,000, and imprisoned not less than 2 years nor more than 5 years. The provisions of § 4205(b)(5) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6 months of the sentence 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. The sentencing court may suspend up to 18 months of any minimum sentence set forth in this paragraph provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program</p> |
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| | <p>and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section.</p> <p>(5) For a fifth offense occurring any time after 4 prior offenses, be guilty of a class E felony, be fined not more than \$10,000 and imprisoned not less than 3 years nor more than 5 years.</p> <p>(6) For a sixth offense occurring any time after 5 prior offenses, be guilty of a class D felony, be fined not more than \$10,000 and imprisoned not less than 4 years nor more than 8 years.</p> <p>(7) For a seventh offense occurring any time after 6 prior offenses, or for any subsequent offense, be guilty of a class C felony, be fined not more than \$15,000 and imprisoned not less than 5 years nor greater than 15 years.</p> <p>(8) For the fifth, sixth, seventh offense or greater, the provisions of § 4205(b) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, at least 1/2 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 1/2 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. No conviction for a violation of this section, for which a sentence is imposed pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section, shall be considered a predicate felony for conviction or sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.</p> <p>(9) Any minimum sentence suspended pursuant to paragraph (d)(3), (d)(4), or (d)(8) of this section shall be upon the condition that the offender shall complete a program of supervision which shall include:</p> <ul style="list-style-type: none"> a. A drug and alcohol abstinence program requiring that the offender maintain a period of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device. In addition to such device, the offender shall participate in periodic, random breath or urine analysis during the entire period of supervision. b. An intensive inpatient or outpatient drug and alcohol treatment program for a period of not less than 3 months. Such treatment and counseling may be completed while an offender is serving a Level V or Level IV sentence. c. Any other terms or provisions deemed appropriate by the sentencing court or the Department of Correction. <p>(10) In addition to the penalties otherwise authorized by this subsection, any person convicted of a violation of subsection (a) of this section, committed while a person who has not yet reached the person's seventeenth birthday is on or within the vehicle shall:</p> <ul style="list-style-type: none"> a. For the first offense, be fined an additional minimum of \$500 and not more than an additional \$1,500 and sentenced to perform a minimum of 40 hours of community service in a program benefiting children. b. For each subsequent like offense, be fined an additional minimum of \$750 |
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| <p>4177(d)</p> | <p>and not more than an additional \$2,500 and sentenced to perform a minimum of 80 hours of community service in a program benefiting children.</p> <p>c. Violation of this paragraph shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of subsection (a) of this section. Nothing in this paragraph shall prevent conviction for a violation of both subsection (a) of this section and any offense as defined elsewhere by the laws of this State.</p> <p>d. Violation of or sentencing pursuant to this paragraph shall not be considered as evidence of either comparative or contributory negligence in any civil suit or insurance claim, nor shall a violation of or sentencing pursuant to this paragraph be admissible as evidence in the trial of any civil action.</p> <p>(11) A person who has been convicted of prior or previous offenses of this section, as defined in § 4177B(e) of this title, need not be charged as a subsequent offender in the complaint, information or indictment against the person in order to render the person liable for the punishment imposed by this section on a person with prior or previous offenses under this section. However, if at any time after conviction and before sentence, it shall appear to the Attorney General or to the sentencing court that by reason of such conviction and prior or previous convictions, a person should be subjected to paragraph (d)(3), (d)(4), (d)(5), (d)(6) or (d)(7) of this section, the Attorney General shall file a motion to have the defendant sentenced pursuant to those provisions. If it shall appear to the satisfaction of the court at a hearing on the motion that the defendant falls within paragraph (d)(3), (d)(4), (d)(5), (d)(6) or (d)(7) of this section, the court shall enter an order declaring the offense for which the defendant is being sentenced to be a felony and shall impose a sentence accordingly.</p> <p>(12) The Court of Common Pleas and Justice of the Peace Courts shall not have jurisdiction over offenses which must be sentenced pursuant to paragraph (d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8) or (d)(9) of this section</p> <p><u>4177 Driving a vehicle while under the influence or with a prohibited alcohol or drug content; evidence; arrests; and penalties [Effective upon fulfillment of 79 Del. Laws, c. 396, § 5]</u></p> <p>(d) Whoever is convicted of a violation of subsection (a) of this section shall:</p> <p>(1) For the first offense, be fined not less than \$500 nor more than \$1,500 or imprisoned not more than 12 months or both. Any period of imprisonment imposed under this paragraph may be suspended.</p> <p>(2) For a second offense occurring at any time within 10 years of a prior offense, be fined not less than \$750 nor more than \$2,500 and imprisoned not less than 60 days nor more than 18 months. The minimum sentence for a person sentenced under this paragraph 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.</p> <p>(3) For a third offense occurring at any time after 2 prior offenses, be guilty of a class G felony, be fined not more than \$5,000 and be imprisoned not less than 1</p> |
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| | <p>year nor more than 2 years. The provisions of § 4205(b)(7) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 months of the sentence 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. The sentencing court may suspend up to 9 months of any minimum sentence set forth in this paragraph 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.</p> <p>(4) For a fourth offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not more than \$7,000, and imprisoned not less than 2 years nor more than 5 years. The provisions of § 4205(b)(5) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6 months of the sentence 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. The sentencing court may suspend up to 18 months of any minimum sentence set forth in this paragraph 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.</p> <p>(5) For a fifth offense occurring any time after 4 prior offenses, be guilty of a class E felony, be fined not more than \$10,000 and imprisoned not less than 3 years nor more than 5 years.</p> <p>(6) For a sixth offense occurring any time after 5 prior offenses, be guilty of a class D felony, be fined not more than \$10,000 and imprisoned not less than 4 years nor more than 8 years.</p> <p>(7) For a seventh offense occurring any time after 6 prior offenses, or for any subsequent offense, be guilty of a class C felony, be fined not more than \$15,000 and imprisoned not less than 5 years nor greater than 15 years.</p> <p>(8) For the fifth, sixth, seventh offense or greater, the provisions of § 4205(b) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, at least 1/2 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 1/2 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. No conviction for a violation of this section, for which a sentence is imposed pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section, shall be considered a predicate felony for conviction or sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.</p> <p>(9) Any minimum sentence suspended pursuant to paragraph (d)(3), (d)(4), or (d)(8) of this section shall be upon the condition that the offender shall complete a program of supervision which shall include:</p> <ol style="list-style-type: none"> a. A drug and alcohol abstinence program requiring that the offender maintain a period of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device or through periodic breath or |
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| | <p>urine analysis. In addition to such monitoring, the offender shall participate in periodic, random breath or urine analysis during the entire period of supervision.</p> <p>b. An intensive inpatient or outpatient drug and alcohol treatment program for a period of not less than 3 months. Such treatment and counseling may be completed while an offender is serving a Level V or Level IV sentence.</p> <p>c. Any other terms or provisions deemed appropriate by the sentencing court or the Department of Correction.</p> <p>(10) In addition to the penalties otherwise authorized by this subsection, any person convicted of a violation of subsection (a) of this section, committed while a person who has not yet reached the person's seventeenth birthday is on or within the vehicle shall:</p> <p>a. For the first offense, be fined an additional minimum of \$500 and not more than an additional \$1,500 and sentenced to perform a minimum of 40 hours of community service in a program benefiting children.</p> <p>b. For each subsequent like offense, be fined an additional minimum of \$750 and not more than an additional \$2,500 and sentenced to perform a minimum of 80 hours of community service in a program benefiting children.</p> <p>c. Violation of this paragraph shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of subsection (a) of this section. Nothing in this paragraph shall prevent conviction for a violation of both subsection (a) of this section and any offense as defined elsewhere by the laws of this State.</p> <p>d. Violation of or sentencing pursuant to this paragraph shall not be considered as evidence of either comparative or contributory negligence in any civil suit or insurance claim, nor shall a violation of or sentencing pursuant to this paragraph be admissible as evidence in the trial of any civil action.</p> <p>(11) A person who has been convicted of prior or previous offenses of this section, as defined in § 4177B(e) of this title, need not be charged as a subsequent offender in the complaint, information or indictment against the person in order to render the person liable for the punishment imposed by this section on a person with prior or previous offenses under this section. However, if at any time after conviction and before sentence, it shall appear to the Attorney General or to the sentencing court that by reason of such conviction and prior or previous convictions, a person should be subjected to paragraph (d)(3), (d)(4), (d)(5), (d)(6) or (d)(7) of this section, the Attorney General shall file a motion to have the defendant sentenced pursuant to those provisions. If it shall appear to the satisfaction of the court at a hearing on the motion that the defendant falls within paragraph (d)(3), (d)(4), (d)(5), (d)(6) or (d)(7) of this section, the court shall enter an order declaring the offense for which the defendant is being sentenced to be a felony and shall impose a sentence accordingly.</p> <p>(12) The Court of Common Pleas and Justice of the Peace Courts shall not have jurisdiction over offenses which must be sentenced pursuant to paragraph (d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8) or (d)(9) of this section.</p> |
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| <p>4177A</p> | <p><u>4177A Revocation of license for violation of § 4177 of this title [Effective until fulfillment of 79 Del. Laws, c. 396, § 5]</u></p> <p>(a) The Secretary shall forthwith revoke the driver's license and/or driving privileges of any person convicted of a violation of § 4177 of this title or any offense under the laws of any state or of the United States or local jurisdiction or the District of Columbia which prohibits driving under the influence of drugs. Such revocation shall be for a period of:</p> <p>(1) <i>First offense.</i> — 12 months; except that if the offender's blood alcohol concentration was between .15-.19 the revocation period shall be 18 months, or if the offender's blood alcohol concentration was .20 or greater or the offender refused a chemical test, the period of revocation shall be 24 months.</p> <p>(2) <i>Second offense.</i> — 18 months; except that if the offender's blood alcohol concentration was between .15-.19 the revocation period shall be 24 months, or if the offender's blood alcohol concentration was .20 or greater, or the offender has refused a chemical test, the revocation period shall be 30 months.</p> <p>(3) <i>Third offense.</i> — 24 months; except that if the offender's blood alcohol concentration was between .15-.19 the revocation period shall be 30 months, or if the offender's blood alcohol concentration was .20 or greater, or the offender has refused a chemical test, revocation period shall be 36 months.</p> <p>(4) <i>Fourth or further subsequent offenses.</i> — 60 months regardless of the blood alcohol concentration.</p> <p>(b) Any person sentenced under § 4177(d) of this title shall have the person's driver's license and/or driving privileges revoked by the Secretary until the person has satisfactorily completed a program established pursuant to § 4177D of this title; provided however, that successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program shall satisfy this requirement.</p> <p>(c) The Secretary shall have power and authority to refuse to issue a driver's license to any individual whose driver's license or driving privilege was revoked pursuant to this section until such person has satisfied the Secretary that the person has been of good behavior for the entire period of the revocation and until the person has complied with all applicable provisions of this section. If the Secretary refuses to issue a driver's license after the period of revocation has ended and after all fines and/or fees are paid, the applicant may appeal to the Superior Court of the county of residence</p> |
| <p>4177A</p> | <p><u>4177A Revocation of license for violation of § 4177 [Effective upon fulfillment of 79 Del. Laws, c. 396, § 5]</u></p> <p>(a) The Secretary shall forthwith revoke the driver's license and/or driving privileges of any person convicted of a violation of § 4177 of this title or any offense under the laws of any state or of the United States or local jurisdiction or the District of Columbia which prohibits driving under the influence of alcohol or drugs. Such revocation shall be for a period of:</p> |

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| | <p>(1) <i>First offense.</i> — 12 months; except that if the offender's blood alcohol concentration was between .15-.19 the revocation period shall be 18 months, or if the offender's blood alcohol concentration was .20 or greater or the offender refused a chemical test, the period of revocation shall be 24 months.</p> <p>(2) <i>Second offense.</i> — 18 months; except that if the offender's blood alcohol concentration was between .15-.19 the revocation period shall be 24 months, or if the offender's blood alcohol concentration was .20 or greater, or the offender has refused a chemical test, the revocation period shall be 30 months.</p> <p>(3) <i>Third offense.</i> — 24 months; except that if the offender's blood alcohol concentration was between .15-.19 the revocation period shall be 30 months, or if the offender's blood alcohol concentration was .20 or greater, or the offender has refused a chemical test, the revocation period shall be 36 months.</p> <p>(4) <i>Fourth or further subsequent offenses.</i> — 60 months regardless of the blood alcohol concentration.</p> <p>(b) Any person sentenced under § 4177(d) of this title shall have the person's driver's license and/or driving privileges revoked by the Secretary until the person has satisfactorily completed a program established pursuant to 4177D of this title and complied with the ignition interlock device requirements set forth in §§ 4177C and 4177G of this title; provided however, that successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program shall satisfy this requirement.</p> <p>(c) The Secretary shall have power and authority to refuse to issue a driver's license to any individual whose driver's license or driving privilege was revoked pursuant to this section until such person has satisfied the Secretary that the person has been of good behavior for the entire period of the revocation and until the person has complied with all applicable provisions of this section. If the Secretary refuses to issue a driver's license after the period of revocation has ended and after all fines and/or fees are paid, the applicant may appeal to the Superior Court of the county of residence.</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 |

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| <p>23-2302</p> | <p><u>Operation of a Vessel or Boat While Under the Influence</u></p> <p>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 |
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Summary of Drug Offenses- Class B Felonies

Class B Felony (Violent)

| Sentence Range (Violent Category) FBV | |
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| 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:

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| 16-4752 | <u>Drug dealing – Aggravated possession (see note)</u> |
| 16-4757(c)(2) | <u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes (see note)</u> |

Supplemental Notations:

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| 16-4752 | <p><u>Drug dealing-Aggravated Possession</u></p> <p>(1) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 4 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 5 quantity;</p> <p>(4) Possesses a controlled substance in a Tier 3 quantity, and there is an aggravating factor; or</p> <p>(5) Possesses a controlled substance in a Tier 2 quantity as defined in any of Section 4751C(4)a.-i., of this title and there are two aggravating factors.</p> |
| 16-4757(c)(2) | <p><u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes:</u></p> <ul style="list-style-type: none"> • 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 of subsection (a) of 4757 and there is an aggravating factor in connection with at least one of the times. |

Summary of Drug Offenses- Class C Felonies

Class C Felony (Violent)

| Sentence Range (Violent Category) FCV | |
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| 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:

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| 16-4753 | Drug dealing – Aggravated Possession; (see note) |
| 16-4757(c)(1) | Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes (see note) |

Supplemental Notations:

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| 16-4753 | <p><u>Drug Dealing-Aggravated Possession</u></p> <p>(1) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 2 quantity;</p> <p>(2) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance, and there is an aggravating factor;</p> <p>(3) Possesses a controlled substance in a Tier 4 quantity as defined in any of Section 4751C(2)a.-i. of this title;</p> <p>(4) Possesses a controlled substance in a Tier 2 quantity, as defined in any of Section 4751C(4)a.-i. of this title; and there is an aggravating factor; or</p> <p>(5) Possesses a controlled substance in a Tier 1 quantity, and there are 2 aggravating factors;</p> |
| 16-4757(c)(1) | <p><u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes</u></p> <p>(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> |

Class C Felony (Non-violent)

| Sentence Range (Nonviolent Category) FCN | |
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| 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. |

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| 16-4760A | <u>Operate or Attempt to Operate a Clandestine Laboratory</u> |
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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:

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| 16-4754 | Drug dealing – Aggravated possession; (see note) |
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Supplemental Notations:

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| 16-4754 | <p><u>Drug dealing – Aggravated possession</u></p> <p>(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance;</p> <p>(2) Possesses a controlled substance in a Tier 3 quantity; or</p> <p>(3) Possesses a controlled substance in a Tier 1 quantity, and there is an aggravating factor</p> |
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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:

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| 16-4755 | <u>Aggravated Possession</u> Possession of a controlled substance in a Tier 2 quantity as defined in 4751C(4)a.-i. |
| 16-4774(c) | <u>Delivery Drug Paraphernalia to Minor</u> |

Supplemental Notations:

Summary of Drug Offenses- Class E Felonies

Class E Felony (Nonviolent)

| Sentence Range (Nonviolent Category) FEN | |
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| 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:

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| 16-4758 | <u>Unlawfully dealing in a counterfeit or purported controlled substance</u> |
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Supplemental Notations:

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:

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|-------------------|---|
| 16-4756 | <u>Aggravated Possession</u> A person who possesses a controlled substance in a Tier 1 quantity |
| 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 |

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) | Miscellaneous Drug Crimes (see note) |
| 16-4759(b)(1,2,4) | Registrant Crimes Violates (a)(1), (a)(2), or (a)(4) |
| 16-4760 | Maintaining a Drug Property |

Supplemental Notations:

| | |
|-------------------|---|
| 16-4757(b) | <p>Miscellaneous Drug Crimes 16-4757(a)</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> |
|-------------------|---|

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 |
| 16-4774(b) | <u>Drug paraphernalia</u> Manufacture and sale |

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:

| | |
|-------------------|--|
| 16-4762(d) | <u>Hypodermic syringe or needle; delivering or possessing; disposal</u> |
|-------------------|--|

Supplemental Notations:

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) | <u>Possession of Controlled Substances or Counterfeit Controlled Substances</u> Is an aggravating factor |

Supplemental Notations:

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) | <u>Possession of Marijuana</u> Is an aggravating factor |
| 16-4774(a) | <u>Drug Paraphernalia</u> Possession |

Supplemental Notations:

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) | <u>Possession of Marijuana</u> Fine not more than \$575 and imprisonment not more than 3 months |
| 16-4774 (d) | <u>Advertisement of Drug Paraphernalia</u> |

Supplemental Notations:

Revisions to Controlled Substances Act

Guide to HB-19 (revised October 4, 2011)

Overview

Contents of this Guide to HB-19:

Below are several tables that graphically relate charges under the revised drug offense regime. In order of appearance, they include:

1. Quantity thresholds by substance and tier;
2. Applicable aggravating factors;
3. Qualifying prior convictions;
4. Simple and aggravated possession offenses by quantity tier;
5. Drug dealing and manufacturing offenses by quantity tier;
6. Revised 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: | TIER 4: | TIER 5: |
|---|---|---------------------------------------|---|--|--|
| Cocaine | ≥5g | ≥10g | ≥15g | ≥20g | ≥ 25g |
| Morphine / Opium / Heroin | ≥1g | ≥2g | ≥3g | ≥4g | ≥ 5g |
| Marijuana | ≥175g | ≥1,500g | ≥3,000g | ≥4,000g | ≥ 5,000g |
| Methamphetamine | ≥5g | ≥10g | ≥15g | ≥20g | ≥ 25g |
| Amphetamine | ≥5g | ≥10g | ≥15g | ≥20g | ≥ 25g |
| PCP | ≥5g | ≥10g | ≥15g | ≥20g | ≥ 25g |
| LSD | ≥2.5 ml or ≥25 doses | ≥5 ml or ≥50 doses | ≥10 ml or ≥100 doses | ≥25 ml or ≥250 doses | ≥ 50ml or ≥ 500 doses |
| Designer Drug | ≥2.5 ml or ≥2.5g or ≥12.5 doses | ≥5 ml or ≥5g or ≥25 doses | ≥7.5 ml or ≥7.5g or ≥37.5 doses | ≥10 ml or ≥10 g or ≥50 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 | ≥7.5 ml or ≥7.5g or ≥37.5 doses | ≥10 ml or ≥10g or ≥50 doses | ≥ 12.5ml or ≥ 12.5g or ≥62.5 doses |
| Prescription Drug: Narcotic Schedule | N/A | ≥3g or | N/A | ≥ 6g or | N/A |

| SUBSTANCE | TIER 1: | TIER 2: | TIER 3: | TIER 4: | TIER 5: |
|------------------|----------------|----------------|----------------|----------------|----------------|
| II or III | | ≥30 doses | | ≥ 60 doses | |

"Dose" is defined by 16 DEL. C. § 4701(14) (2011). **AGGRAVATING FACTORS** (16 DEL. C. § 4751A)

| | |
|----|---|
| a) | Offense committed within a protected school zone |
| b) | Offense committed within a protected park or place of worship zone |
| c) | Offense occurred in a vehicle |
| d) | Defendant was an adult and: <ul style="list-style-type: none"> • The Offense involved a juvenile as <ul style="list-style-type: none"> ○ A co-conspirator or accomplice, or ○ As the intended or actual recipient of the controlled substances; • And the defendant was more than four years older than the juvenile |
| e) | <ul style="list-style-type: none"> • 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 |

- If both "Protected School Zone" and "Protected Park or Place of Worship Zone" are present as Aggravating Factors, then both may be alleged and proven, but together they count only as one.

QUALIFYING PRIOR CONVICTIONS (16 DEL. C. § 4751B)

IF CHARGED WITH A FELONY:

| One Qualifying Prior: | Two or More Qualifying Priors: |
|--|---|
| 1) "Within previous 5 years from date of offense, Defendant has: | Has One Qualifying Prior (see left); AND |
| <ul style="list-style-type: none"> • Adult felony conviction under former Title 16 sections 4751, 4752, or 4753A; OR • Adult felony conviction under any former Title 16 section that was a Class C Felony or higher; OR • Conviction under current Title 16 sections 4752, 4753, 4754, 4755, or 4756; OR • Conviction under controlled substance law of any other U.S. jurisdiction that is same as or equivalent to any offense under Delaware law. | Within previous 10 years has an additional adult felony conviction or juvenile adjudication for: <ul style="list-style-type: none"> • Former Title 16 sections 4751, 4752, or 4753A; OR • Any former Title 16 section that was a Class C Felony or higher; OR • Current Title 16 sections 4752, 4753, 4754, 4755, or 4756; OR • Controlled substance law of any other U.S. jurisdiction that is same as or equivalent to any offense under Delaware law. |

Note: if charged with a misdemeanor, one qualifying prior is as above, but also includes any convictions under sections 4761(a), 4761(b), 4763, or 4764, if within previous five years.

SIMPLE & AGGRAVATED POSSESSION:

| QUANTITY (TIER): | CONTROLLED SUBSTANCE | AGGRAVATING FACTORS: | NO PRIOR CONVICTIONS: | ONE PRIOR: | TWO OR MORE PRIORS: |
|--------------------------|-----------------------------|-----------------------------|---|--|--|
| No Tier Quantity Alleged | Marijuana | 0 | Unclass. Misd. ≤ \$575 & Imprisoned ≤ 3 months §4764(b) | Class B Misd. §4764(a) § 4751B(4)(a)(12) | Class B Misd. §4764(a) § 4751B(4)(a)(12) |
| | | ≥ 1 | Class B Misd. § 4764(a) | Class B Misd. § 4764(a) | Class B Misd. § 4764(a) |
| | Not Marijuana | 0 | Class B Misd. § 4763(b) | Class A Misd. §4763(c) § 4751B(4)(a)(11) | Class A Misd. §4763(c) § 4751B(4)(a)(11) |
| | | ≥ 1 | Class A Misd. § 4763(c) | Class A Misd. § 4763(c) | Class A Misd. § 4763(c) |
| Tier 1 | All Substances | 0 | Class F Felony § 4756 | Class D Felony § 4754(3) (§4751B(4)(a)(7)) | Class C Felony § 4753(5) (§4751B(4)(b)(3)) |
| | | 1 | Class D Felony § 4754(3) | Class C Felony §4753(5) (§4751B(4)(a)(5)) | Class C Felony §4753(5) (§4751B(4)(a)(5)) |
| | | ≥ 2 | Class C Felony § 4753(5) | Class C Felony § 4753(5) | Class C Felony § 4753(5) |
| Tier 2 | All Substances | 0 | Class E Felony § 4755 | Class C Felony § 4753(4) (§4751B(4)(a)(6)) | Class B Felony §4752(5) (§4751B(4)(b)(2)) |
| | | 1 | Class C Felony § 4753(4) | Class B Felony §4752(5) (§4751B(4)(a)(2)) | Class B Felony §4752(5) (§4751B(4)(a)(2)) |
| | | ≥ 2 | Class B Felony § 4752(5) | Class B Felony § 4752(5) | Class B Felony § 4752(5) |
| Tier 3 | All Substances | 0 | Class D Felony § 4754(2) | Class B Felony §4752(4) (§4751B(4)(a)(4)) | Class B Felony §4752(4) (§4751B(4)(a)(4)) |
| Tier 3 or Tier 4 | All Substances | ≥ 1 | Class B Felony § 4752(4) | Class B Felony § 4752(4) | Class B Felony § 4752(4) |
| Tier 4 | All Substances | 0 | Class C Felony § 4753(3) | Class C Felony § 4753(3) | Class C Felony § 4753(3) |
| Tier 5 | All Substances | ≥ 0 | Class B Felony § 4752(3) | Class B Felony § 4752(3) | Class B Felony § 4752(3) |

**DRUG DEALING / MANUFACTURING
(OR POSSESSION W/INTENT FOR EITHER)**

| QUANTITY (TIER): | CONTROLLED SUBSTANCE | AGGRAVATING FACTORS: | NO PRIOR CONVICTIONS: | ONE PRIOR: | TWO OR MORE PRIORS: |
|------------------------------------|-----------------------------|-----------------------------|------------------------------|--|---|
| No Tier Quantity Alleged or Tier 1 | All Substances | 0 | Class D Felony § 4754(1) | Class C Felony § 4753(2), (4751B(4)(a)(3)) | Class B Felony § 4752 & (4751B(4)(b))1) |
| | | ≥ 1 | Class C Felony § 4753(2) | Class C Felony §4753(2) | Class C Felony § 4753(2) |
| Tier 2 or Tier 3 | All Substances | 0 | Class C Felony § 4753(1) | Class B Felony §4752(2)& 4751B(4)(a)(1)) | Class B Felony §4752(2)& (4751B(4)(a)(1)) |
| | | ≥ 1 | Class B Felony § 4752(2) | Class B Felony §4752(2) | Class B Felony §4752(2) |
| Tier 4 or Tier 5 | All Substances | ≥ 0 | Class B Felony § 4752(1) | Class B Felony §4752(1) | Class B Felony §4752(1) |

REVISED TITLE 16 OFFENSES BY SECTION NUMBER

| 16 DEL. C. §: | OFFENSE: | NO PRIOR CONVICTIONS: | ONE PRIOR: | TWO OR MORE PRIORS: |
|----------------------|--|------------------------------|-------------------|----------------------------|
| 4752 | (1): Deliver / Mfg. Tier 4 or Tier 5 | Class B Felony | Class B Fel. | Class B Felony |
| | (2): Deliver / Mfg. Tier 2 or Tier 3 + Aggravator | Class B Felony | Class B Fel. | Class B Felony |
| | (3): Poss. Tier 5 | Class B Felony | Class B Fel. | Class B Felony |
| | (4): Poss. Tier 3 or Tier 4 + Aggravator | Class B Felony | Class B Fel. | Class B Felony |
| | (5): Poss. Tier 2 + 2x Aggravators | Class B Felony | Class B Fel. | Class B Felony |
| 4753 | (1): Deliver / Mfg. Tier 2 or Tier 3 | Class C Felony | Class B Felony | Class B Felony |
| | (2): Deliver / Mfg. No Tier or Tier 1 + Aggravator | Class C Felony | Class C Felony | Class C Felony |
| | (3): Poss. Tier 4 | Class C Felony | Class C Felony | Class C Felony |
| | (4): Poss. Tier 2 + Aggravator | Class C Felony | Class B | Class B Felony |

| <u>16 DEL.</u> <u>C. §:</u> | <u>OFFENSE:</u> | <u>NO PRIOR CONVICTIONS:</u> | <u>ONE PRIOR:</u> | <u>TWO OR MORE PRIORS:</u> |
|--|--|-------------------------------------|--------------------------|-----------------------------------|
| | | | Felony | |
| | (5): Poss. Tier 1 + 2x Aggravators | Class C Felony | Class C Felony | Class C Felony |
| 4754 | (1): Deliv. / Mfg. No Tier or Tier 1 | Class D Felony | Class C Fel. | Class B Felony |
| | (2): Poss. Tier 3 | Class D Felony | Class B Felony | Class B Felony |
| | (3): Poss. Tier 1 + Aggravator | Class D Felony | Class C Felony | Class C Felony |
| 4755 | Poss. Tier 2 | Class E Felony | Class C Felony | Class B Felony |
| 4756 | Poss. Tier 1 | Class F Felony | Class D Felony | Class C Felony |
| 4757 | (a)(3) Unlawfully Obtaining Poss. of a Controlled Substance or Prescription Drug | Class F Felony | Class F Felony | Class F Felony |
| | (a)(6) Unlawfully Obtaining Possession of a Controlled Substance or Prescription Drug by Theft | Class F Felony | Class F Felony | Class F Felony |
| | (a)(7): Admin. of Steroids for Performance | Class F Felony | Class F Felony | Class F Felony |
| | (c)(1): Solicitation of Multiple Prescription Drug Crimes | Class C Felony | Class B Felony | Class B Felony |
| | (c)(2): Solicitation of Multiple Prescription Drug Crimes + Aggravator | Class B Felony | Class B Felony | Class B Felony |
| 4758 | (a): Deliver / Mfg. Counterfeit or Purported Ctrl. Sub. | Class E Felony | Class E Felony | Class E Felony |
| 4760 | Maint. a Drug Property | Class F Felony | Class F Fel. | Class F Fel. |
| 4761 | (a): Illegal Poss. of Non-Ctrl. Prescription Drug | Unclass. Misd. | Class B Misd. | Class B Misd. |
| | (b): Illegal Poss. of Non-Ctrl. Prescription Drug + Aggravator | Class B Misd. | Class B Misd. | Class B Misd. |
| | (c): Illegal Poss. & Deliver of Non-Ctrl. Prescription Drug | Class G Felony | Class F Felony | Class F Felony |
| | (d): Illegal Poss. & Deliver of Non-Ctrl. Prescription Drug + Aggravator | Class F Felony | Class F Felony | Class F Felony |

| 16 DEL. C. §: | OFFENSE: | NO PRIOR CONVICTIONS: | ONE PRIOR: | TWO OR MORE PRIORS: |
|----------------------|--|---|-------------------|----------------------------|
| 4763 | (b): Poss. / Consume Ctrl. Sub. Not Marijuana | Class B Misd. | Class A Misd. | Class A Misd. |
| | (c): Poss. / Consume Ctrl. Sub. Not Marijuana + Aggravator | Class A Misd. | Class A Misd. | Class A Misd. |
| 4764 | (a): Poss. / Consume Marijuana + Aggravator | Class B Misd. | Class B Misd. | Class B Misd. |
| | (b): Poss. / Consume Marijuana | Unclass Misd.; Fine ≤ \$575 & Imprisoned ≤ 3 months | Class B Misd. | Class B Misd. |
| 4774 | (a): Use / Poss. w/Intent to Use Drug Paraphernalia | Class B Misd. | Class B Misd. | Class B Misd. |

PENALTIES BY OFFENSE CLASSIFICATION

| | Offense Classification: | Penalties: |
|----------------------|--|---|
| Felonies | Class B | 2 to ≤ 25 years @ Lvl. 5 |
| | Class C | ≤ 15 years @ Lvl. 5 |
| | Class D | ≤ 8 years @ Lvl. 5 |
| | Class E | ≤ 5 years @ Lvl. 5 |
| | Class F | ≤ 3 years @ Lvl. 5 |
| | Class G | ≤ 2 years @ Lvl. 5 |
| Misdemeanors | Class A | ≤ 1 year @ Lvl. 5 and ≤ \$2,300 fine |
| | Class B | ≤ 6 months @ Lvl. 5 and ≤ \$1,150 fine |
| | Unclassified | ≤ 30 days @ Lvl. 5 and ≤ \$575 fine; unless otherwise defined by statute (e.g. § 4764(b)) |
| Additional Penalties | All Violations of 16 DEL. C. §§ 4752-4764 (2011) | 6 mo. license suspension |

| 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. 16)

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 835 | Carjacking 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 |
|--------------|------------------|

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 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 Any offense | Level V | Time Up To 1 month |
| 11-602 | Menacing | | | |
| 11-763 | Sexual Harassment | | | |
| 11-1301 | Disorderly Conduct | | | |

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 |

EXCEPTIONAL SENTENCES

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(a)- 3 Prior Felony Convictions

- If an offender has been convicted three times of a felony, other than those mentioned in subsection (b), and is thereafter convicted of a subsequent felony, that offender is declared to be an habitual criminal.
- The Court May, In Its Discretion, Sentence the Offender to any sentence up to life imprisonment.
- The Court Shall Sentence the Offender to a minimum sentence of the statutory maximum for the fourth or subsequent felony when it is a Title 11 Violent Felony as defined in §4201.
- A life sentence under this section shall be served in its entirety at a full custodial Level V institutional setting and is not subject to Suspension, Probation, Parole, Earned Good Time or any other reduction.
- A sentence for less than life under this section shall be served in its entirety at a full custodial Level V institutional setting and is not subject to Suspension, Probation, or Parole except the provisions contained within §§4205(h)21, 4217,22 438123 and 438224 of this title.

§4214(b)- 2 Prior Specifically Enumerated Felony Convictions

- If an offender has been convicted two times of a specifically enumerated felony or its equivalent or an attempt of the same, and who shall be subsequently convicted of another of the enumerated felonies, that offender is declared to be an habitual criminal.
- The Court Shall Sentence the Offender to Life unless the sentence of Death has been imposed.
- A life sentence under this section shall be served in its entirety at a full custodial Level V institutional setting without benefit of Probation, Parole, Earned Good Time or any other reduction.
- A life sentence under this section shall not be subject to the Probation or Parole provisions of Chapter 43 of this Title.

| | |
|--------|---|
| 11-606 | Abuse of a Pregnant Female 1 st Degree |
| 11-613 | Assault 1 st Degree |
| 11-615 | Assault by Abuse |

²¹ Title 11, §4205(h): D.O.C. may house inmates at a Level IV halfway house or work-release for the last 180d. of sentence.

²² Title 11, §4217: D.O.C. may apply to Parole Board who may approve and thereafter apply to Court for modification based on good cause, i.e. exceptional rehabilitation, serious illness or overcrowding.

²³ Title 11, §4381: Earned good time.

²⁴ Title 11, §4382: Forfeiture of good time.

| | |
|-----------------|--|
| 11-632 | Manslaughter |
| 11-635 | Murder 2 nd Degree |
| 11-636 | Murder 1st Degree |
| 11-1447A | Possession of a Firearm During the Commission of a Felony |
| 11-763 | Rape 2nd Degree |
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| 11-764 | Rape 1st Degree |
| 11-766 | Sodomy 1st Degree |
| 11-771 | Rape 3rd Degree |
| 11-772 | Rape 2nd Degree |
| 11-773 | Rape 1st Degree |
| 11-778(a)(b)(c) | Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree |
| 11-783 | Kidnapping 2nd Degree |
| 11-783A | Kidnapping 1st Degree |
| 11-803 | Arson 1st Degree |
| 11-825 | Burglary 2nd Degree |
| 11-826 | Burglary 1st Degree |
| 11-832 | Robbery 1st Degree |
| 11-836 | Carjacking 1st Degree |
| 16-4751 | Manufacture/Deliver/PWID Narcotic |
| 16-4752 | Manufacture/Deliver/PWID Nonnarcotic Controlled Substance |
| 16-4752A | Unlawful Delivery/Attempt Noncontrolled Substance |
| 16-4753A | Trafficking in Marijuana, Cocaine, Illegal Drugs or Methamphetamine |

- (c) A person who was convicted prior to July 1, 1973 of any of the hereinafter enumerated crimes shall be considered an habitual criminal as described in subsection (b) and shall be sentenced accordingly:

| | |
|-----------------------------------|------------------------------------|
| Arson 1st Degree | Kidnapping |
| Burglary 1st Degree | Abducting Child Under 12 y.o.a. |
| Burglary 2nd Degree | Kidnapping Child Under 15 y.o.a. |
| Murder 1st Degree | Maiming by Lying in Wait |
| Murder 2nd Degree | Rape |
| Manslaughter (except involuntary) | Assault w/Intent to Commit Rape |
| Manslaughter by Motor Vehicle | Robbery |
| Assault w/Intent to Murder | Assault w/Intent to Commit Robbery |
| Poisoning w/Intent to Murder | |

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.

LEGISLATIVE UPDATE

Compilation of changes affecting the Benchbook from the 147th 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.

HB 256 – Titles 11

CHAPTER 262
FORMERLY
HOUSE BILL NO. 256
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE OFFENSES OF SEXUAL SOLICITATION OF A CHILD AND PROMOTING SEXUAL SOLICITATION OF A CHILD.

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

Section 1. Amend Chapter 5, Title 11 of the Delaware Code as follows:

§1112A. Sexual solicitation of a child; class C felony; class B felony.

(a) A person is guilty of sexual solicitation of a child if the person, being 18 years of age or older, intentionally or knowingly:

(1) Solicits, requests, commands, importunes or otherwise attempts to cause any child to engage in a prohibited sexual act; or

(2) Uses a computer, cellular telephone or other electronic device to communicate with another person, including a child, to solicit, request, command, importune, entice, encourage or otherwise attempt to cause a child to engage in a prohibited sexual act.

(b) For purposes of this section, “child” means:

(1) An individual who is younger than 18 years of age; or

(2) An individual who represents himself or herself to be younger than 18 years of age; or

(3) An individual whom the person committing the offense believes to be younger than 18 years of age.

(c) For the purposes of this section, conduct occurring outside the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or in the instance of any manner of electronic communication or other communication that does not occur in person, the offense is committed in this state if such communication either originated in this state or is received in this state.

(d) For the purposes of this section, and notwithstanding any section of this title to the contrary, it is a defense to prosecution that at the time the conduct described in subsection (a) occurred the person was married to the child.

(e) For the purposes of this section, it is not a defense to prosecution that at the time the conduct described in subsection (a) occurred:

(1) The solicited prohibited sexual act did not occur; or

(2) The person was engaged in a fantasy or role playing at the time of the commission of the

offense.

(f) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(g) Sexual solicitation of a child is a Class C felony, except as provided in subsection (h).

(h) Sexual solicitation of a child is a Class B felony if the defendant meets in person or attempts to meet in person with the child for the purpose of engaging in a prohibited sexual act.

§1112B. Promoting sexual solicitation of a child.

(a) A person is guilty of promoting sexual solicitation of a child if the person, being 18 years of age or older, intentionally or knowingly:

(1) Promotes, entices, offers, encourages, solicits or otherwise attempts to cause any child to engage in a prohibited sexual act; or

(2) Uses a computer, cellular telephone, or other electronic device to communicate with another person to solicit, request, command, importune, entice, encourage or otherwise attempt to cause that person to engage in a prohibited sexual act with a child.

(b) For purposes of this section, “child” means:

(1) An individual who is younger than 18 years of age; or

(2) An individual who represents himself or herself to be younger than 18 years of age; or

(3) An individual whom the person committing the offense believes to be younger than 18 years of age.

(c) For the purposes of this section, conduct occurring outside the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or in the instance of any manner of electronic communication or other communication that does not occur in person, the offense is committed in this state if such communication either originated in this state or is received in this state.

(d) For the purposes of this section, it is not a defense to prosecution that at the time the conduct described in subsection (a) occurred:

(1) The solicited prohibited sexual act did not occur; or

(2) The person was engaged in a fantasy or role playing at the time of the commission of the offense.

(e) Nothing in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

(f) Promoting sexual solicitation is a Class C felony except as provided in subsection (g).

(g) Promoting sexual solicitation of a child is a Class B felony if the defendant meets in person or attempts to meet in person with another person and a child, or otherwise produces or delivers a child to another person, for the purpose of the person engaging in a prohibited sex act with the child.

Section 2. Severability. – If any provision of these sections or the application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of these sections which can be given effect without the invalid provision or application, and to this end the provisions of these sections are severable.

Section 3. Effective date. – This act shall become effective immediately upon enactment.
Approved June 24, 2014

CHAPTER 265
FORMERLY
SENATE BILL NO. 241
AS AMENDED BY
SENATE AMENDMENT NOS. 2 & 3

AN ACT TO AMEND TITLES 10, 11, 13, 16, 21, 23, AND 29 OF THE DELAWARE CODE RELATING TO THE OFFICE OF THE CHIEF MEDICAL EXAMINER AND THE DIVISION OF FORENSIC SCIENCE.

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

Section 1. Amend Chapter 47, Title 29 of the Delaware Code as follows:

CHAPTER 47. FORENSIC SCIENCE

§ 4701 Division of Forensic Science established; Purpose.

The purpose of this chapter is to establish a Division of Forensic Science to provide leadership and coordination in the exercise of forensic sciences. In furtherance of that purpose, there is created the Division of Forensic Science under the supervision and control of the Director of the Division of Forensic Science. The Division of Forensic Science is established and operational within the Department of Safety and Homeland Security. The Division of Forensic Science shall have all the powers, duties, and functions heretofore vested in the Office of the Chief Medical Examiner, its personnel, and the Forensic Science Laboratory. The Office of the Chief Medical Examiner is hereby abolished.

§ 4702 Rules and regulations.

The Department of Safety and Homeland Security may adopt and promulgate rules and regulations to carry into effect this chapter.

§ 4703 Appointment of professional and other personnel.

(a) The Director of the Division of Forensic Science shall appoint, with the approval of the Secretary of the Department of Safety and Homeland Security, a Chief Medical Examiner, who shall be a board certified pathologist, with preference given to applicants with training and experience in the field of forensic pathology. The Chief Medical Examiner shall serve at the pleasure of the Director of the Division of Forensic Science and shall be subject to removal with or without cause by the Director of the Division of Forensic Science or the Secretary of the Department of Safety and Homeland Security.

(b) The Director of the Division of Forensic Science may appoint, with the approval of the Department of Safety and Homeland Security Assistant Medical Examiners who shall be physicians with 2 years or more of training or experience in pathology, necessary numbers of Deputy Medical Examiners who shall be practicing physicians and a Toxicologist who shall have a Ph.D. degree in toxicology or pharmacology or a master's degree in toxicology or pharmacology with a minimum of 3 years of experience in analytical toxicology, at such compensation as shall be determined by the Department of Safety and Homeland Security. The Director of the Division of Forensic Science may also appoint, in accordance with the state merit system regulations, technical, clerical and other personnel, as may be necessary for proper administration of the Division.

(c) The Director of the Division of Forensic Science may employ, with the approval of the Department of Safety and Homeland Security, physicians on a contract basis for part-time services, as may be required. Except as otherwise provided, all professional, technical and clerical personnel appointed in accordance with this section are directly responsible to the Director of the Division of Forensic Science and are subject to removal by the Director of the Division of Forensic Science or the Secretary of the Department of Safety and Homeland Security for cause, in accordance with any state merit system regulations applicable to the position.

(d) The Director of the Division of Forensic Science or his or her designee may conduct pre-employment drug testing of any contractor or prospective employee accepting a position with the Division, random drug testing of employees, and testing upon reasonable suspicion that an employee is impaired by an illegal drug. The timing, procedures, and specific controlled substances of any drug testing shall be conducted in accordance with policies or regulations adopted by the Division. The Division is further authorized to conduct pre-employment criminal background checks of any contractor or prospective employee accepting a position with the Division, and such persons are subject to criminal background checks from time to time while working in or for the Division.

(e) The Director of the Division of Forensic Science and Chief Medical Examiner shall be subject to the same Department of Safety and Homeland Security policies and procedures with respect to overtime, vacation and leave time, and compensatory time as other Department of Safety and Homeland Security division directors. The Director of the Division of Forensic Science, Chief Medical Examiner, Assistant Medical Examiners, Deputy Medical Examiners, Forensic Toxicologists, and Forensic Chemists shall not be permitted to maintain or engage in employment, or to work as an independent contractor, outside of the Division of Forensic Science without prior written approval of the Secretary. Such prior written approval must be issued for each employer or contract for private outside employment.

§ 4704 Duties of Medical Examiners.

(a) The Chief Medical Examiner, the Assistant Medical Examiners and the Deputy Medical Examiners shall perform all the medical and other functions now formerly devolving upon the coroners, deputy coroners and coroners' physicians in the counties of this State and in the City of Wilmington and duties imposed upon them by this chapter.

(b) The Chief Medical Examiner shall comply with the orders and directions of the Department of Safety and Homeland Security.

§ 4705 Office and equipment.

The Division of Forensic Science shall be maintained in a suitable place or places which shall be designated by the Secretary of the Department of Safety and Homeland Security. The Department of Safety and Homeland Security shall provide or arrange for proper and necessary equipment for use of the staff of the Division of Forensic Science.

§ 4706 Investigation of deaths.

(a) When any person shall die in this State, as a result of violence, by suicide or by casualty if such occurred not longer than 1 year and 1 day prior to death, while under anesthesia, by abortion or suspected abortion,

by poison or suspicion of poison or suddenly when in apparent health or when unattended by a physician or in any prison or penal institution or when in police custody or from a disease resulting from employment including disease related to injury or from an undiagnosed cause which may be related to a disease constituting a threat to public health or in any suspicious or unusual manner or if there is any unclaimed body or if any body is to be cremated, it shall be the duty of the person having knowledge of such death or of the person issuing a permit for cremation under § 3162 of Title 16 immediately to notify the Chief Medical Examiner, an Assistant Medical Examiner or a Deputy Medical Examiner, as the case may be, who in turn shall notify the Attorney General of the known facts concerning the time, place, manner and circumstances of such death. Any person who shall willfully neglect or refuse to report such death or who shall refuse to make available prior medical or other information pertinent to the death investigation or who, without an order from the Division of Forensic Science, shall willfully touch, remove or disturb the clothing or any article upon or near the body shall upon conviction be subject to imprisonment for not more than 1 year or pay a fine of not more than \$1,000, or both.

(b) Immediately upon receipt of such notification, the Medical Examiner shall take charge of the dead body if either the Medical Examiner or the Attorney General shall deem it necessary. The Division of Forensic Science shall promptly notify a relative or close acquaintance of the deceased, if known, of such action.

(c) The Medical Examiner shall fully investigate the essential facts concerning the medical causes of death and may take the names and addresses of as many witnesses as may be practicable to obtain and shall reduce such facts as the Medical Examiner may deem necessary to writing and file the same in the Division of Forensic Science.

(d) The Medical Examiner or a duly authorized investigator, in the absence of the next of kin, shall take possession of the personal property found on the deceased and make an exact inventory thereof on the Medical Examiner's report. If necessary an attending police officer may take temporary possession of such property in behalf of the Medical Examiner or an authorized investigator.

(e) The Medical Examiner shall take possession of any object or articles which, in the Medical Examiner's opinion, may be useful in establishing the identity of the deceased person or the cause of death and deliver them to the Attorney General. The balance of the personal property of the deceased remaining in the possession of the Medical Examiner shall be released to the next of kin of the deceased or the personal representative of the deceased.

§ 4707 Postmortem examination; autopsy reports.

(a) When the cause of death shall have been established within reasonable medical certainty by a Medical Examiner, the Medical Examiner shall prepare a written report and file it in the Division of Forensic Science within 30 days after an investigation of such death.

(b) If, however, in the opinion of the Medical Examiner an autopsy is necessary in the public interest or as shall be requested by the Attorney General, the same shall be performed by the Chief Medical Examiner, an Assistant Medical Examiner or by such other competent pathologists as may be designated by the Chief Medical Examiner. No person who authorizes or performs an autopsy pursuant to this chapter shall be liable in any civil action for damages.

(c) A detailed report of the findings written during the progress of the autopsy, related laboratory analysis

and the conclusions drawn therefrom shall be filed in the Division of Forensic Science.

(d) Promptly upon the conclusion of the postmortem examination, the body of the decedent shall be released to such person as shall be designated by a member of the decedent's immediate family, preferably the next of kin or by an appropriate representative of the decedent's estate.

(e) Upon written request the next of kin of the deceased shall receive a copy of the postmortem examination report, the autopsy report and the laboratory reports, unless there shall be a criminal prosecution pending in which case no such reports shall be released until the criminal prosecution shall have been finally concluded. The charge for completion of an insurance form for proof of death shall be \$5.

§ 4708 Forensic Sciences Laboratory.

The Forensic Sciences Laboratory is established and operational within the Division of Forensic Science. The Director of the Division of Forensic Science functions as the Director of the Forensic Sciences Laboratory.

§ 4709 Power to administer oaths and issue subpoenas.

The Director of the Division of Forensic Science, the Chief Medical Examiner, the Assistant Medical Examiners and the Deputy Medical Examiners, in the course of investigation of a death, may administer oaths and affirmations and take affidavits and make examinations as to any matter within the jurisdiction of their respective offices, but the Chief Medical Examiner, the Assistant Medical Examiners and the Deputy Medical Examiners may not summon a jury of inquisition. The Chief Medical Examiner, or in the Chief Medical Examiner's absence, Assistant Medical Examiners or Deputy Medical Examiners, shall have the power to issue subpoenas.

§ 4710 Records and reports; evidence.

(a) The Chief Medical Examiner is to keep full and complete records of in the Division of Forensic Science pertaining to the investigation of deaths and postmortem examinations. Such records shall be properly indexed, giving the name, if known, of every deceased person investigated, the place where the body was found, the date and the cause of death and all other available information relating thereto. The original report of Medical Examiners and the detailed findings of the autopsy and subsequent laboratory examinations, if any, shall be attached to the record of each case.

(b) The Chief Medical Examiner shall deliver to the Attorney General copies of all records relating to every death in which, in the judgment of the investigating Medical Examiner, further investigation may be deemed advisable.

(c) The Attorney General may obtain from the Division of Forensic Science copies of all records or other information which the Attorney General may deem necessary.

(d) The records of the Division of Forensic Science prepared by the Director of the Division of Forensic Science or by anyone under the Director's direction or supervision or a true copy thereof certified by the Director or the Chief Medical Examiner shall be received as competent evidence in any court in this State of the matters and facts therein contained.

§ 4711 Disposition of unclaimed body or remains of indigent person.

(a) In any case where there is an unclaimed body or there are remains of indigent persons and it is incumbent on the State or any political subdivision thereof to bury such person found dead, the Chief Medical Examiner or a duly authorized representative shall notify the Division of Social Services of the Department of Health and Social Services to arrange for the burial unless the case falls within the category described in subsection (b) of this section.

(b) When there is a written consent of the next of kin or other legally responsible party, the remains of an indigent person may be cremated or donated for scientific research.

§ 4712 Authority to provide corneas to eye banks.

(a) Upon request of an approved eye bank on behalf of a patient in need of corneal tissue for a transplant, a Medical Examiner is authorized to provide the cornea under the following conditions:

(1) A decedent who may provide a suitable cornea for transplant is under the jurisdiction of the Medical Examiner;

(2) An autopsy will be required;

(3) No objection by the decedent or next of kin is known by the Medical Examiner prior to the removal of the cornea by a representative of an approved eye bank; and

(4) Removal of the cornea for transplant will not interfere with the subsequent course of a postmortem examination or alter the postmortem facial appearance.

(b) For the purposes of this section, the following terms shall have the following meanings:

(1) "Approved eye bank," includes the Medical Eye Bank of Delaware and the Eye Foundation of Delaware Valley;

(2) "Next of kin" means:

a. A spouse;

b. If no spouse, the decedent's adult children;

c. If no spouse or adult children, the decedent's parents;

d. If no spouse, adult children or parents, the person who is legally entitled to claim the decedent's remains for final disposition.

(c) The Medical Examiner or an approved eye bank, while acting in compliance with this section, shall not be liable to the next of kin of a decedent, whose corneal tissue is removed and donated pursuant to this section, for any civil damages.

§ 4713 DNA analysis and data bank.

(a) In any criminal proceeding, DNA (deoxyribonucleic acid) testing shall be deemed to be a reliable scientific technique, and the evidence of a DNA profile comparison shall be admitted to prove or disprove the identity of any person. This section shall not otherwise limit the introduction of any relevant evidence bearing upon any question at issue before the court. The court shall, regardless of the results of the DNA analysis, if any, consider such other relevant evidence of the identity of the person as shall be admissible in evidence.

(b) (1) Any person convicted on or after June 16, 1994, of any offense or attempted offense defined in subchapter II, subpart D or subchapter V of Chapter 5, Title 11 or who is in the custody of the Department of Correction after June 16, 1994, as a result of a conviction on one of the above offenses shall have a biological sample taken by the Department of Correction for DNA (deoxyribonucleic acid) law-enforcement identification purposes and inclusion in law-enforcement identification databases. Any person convicted on or after June 16, 1994, who is not sentenced to a term of confinement shall provide a biological sample as a condition of such sentence at a time and place specified by the sentencing court.

(2) Any person convicted after July 1, 2003, of any offense that is defined and classified as a felony under Title 11 shall have a biological sample taken by the Department of Correction for DNA (deoxyribonucleic acid) law-enforcement identification purposes and inclusion in law-enforcement identification databases. Any person convicted after July 1, 2003, of such felony offense and who is not sentenced to a term of confinement shall provide a biological sample as a condition of such sentence at a time and place specified by the sentencing court.

(c) The biological samples shall be obtained in a medically approved manner by a physician, registered nurse, licensed practical nurse, phlebotomist, medical technologist or other qualified personnel approved by the Director of the Division of Forensic Science, and packaged and submitted in containers provided or approved by the Division of Forensic Science in accordance with administrative regulations promulgated by the Division of Forensic Science. No civil liability shall attach to any person authorized to obtain a biological sample as provided by this section as a result of obtaining a biological sample from any person, provided the biological sample was obtained according to generally accepted medical procedures.

(d) Any person who tampers or attempts to tamper with any biological sample or the container collected pursuant to subsection (b) or (c) without lawful authority shall be guilty of a Class D felony.

(e) A centralized database of DNA (deoxyribonucleic acid) identification records for convicted criminals shall be established in the Division of Forensic. The established system shall be compatible with the procedures set forth in a national DNA identification index to ensure data exchange on a national level.

(f) The purpose of the centralized DNA database is to assist federal, state and local criminal justice and law enforcement agencies within and outside the State in the identification, detection or exclusion of individuals who are subjects of the investigation or prosecution of sex-related crimes, violent crimes or other crimes and the identification of missing and unidentified persons.

(g) The Division of Forensic Science shall receive, analyze and classify biological samples in compliance with subsections (b) and (c) of this section, and shall record the DNA results in a centralized database for identification and statistical purposes. Except as specifically provided in this section, the results of the analysis shall be securely stored and shall remain confidential.

(h) Records produced from the biological samples shall be used only for law enforcement purposes and shall be exempt from the provisions of the Freedom of Information Act [Chapter 100 of this title].

(i) A person whose DNA profile has been included in the data bank pursuant to this section may petition Superior Court for expungement on the grounds that the conviction on which the authority for including the DNA profile was based has been reversed or the case dismissed. The Division of Forensic Science, shall expunge all

identifiable information in the data bank pertaining to the person and destroy all biological samples from the person upon receipt of a certified court order.

(j) The Division of Forensic Science shall promulgate administrative regulations necessary to carry out the provisions of the DNA database identification system to include procedures for the collection of biological samples and the database system usage and integrity.

(k) Upon completion of the analysis required by this section, the Division of Forensic Science, shall forward to the State Bureau of Identification the name and other identifying information required by the State Bureau of Identification of each individual for whom a DNA identification record is developed. Upon receipt of such information the State Bureau of Identification shall make a notation of the existence of such DNA identification record in the criminal history record information file for such individual maintained pursuant to Chapter 85 of Title 11. Such information shall be available to all requesting criminal justice agencies in the same manner and under the same conditions as all other criminal record information maintained by the State Bureau of Identification.

(l) Any person who disseminates, receives or otherwise uses or attempts to use information in the database, knowing that such dissemination, receipt or use is for a purpose other than authorized by law, shall be guilty of a Class A misdemeanor.

(m) For purposes of this section "biological sample" shall mean a blood sample or a buccal swab. § 4714 Commission on Forensic Science

(a) The Commission on Forensic Science, hereinafter in this chapter referred to as the Commission, is hereby established. The Commission shall provide oversight and guidance to foster professionalism within, and the development and growth of, the Division of Forensic Science. The Commission shall consist of ten members. The Commissioners shall be the Secretary of the Department of Health and Social Service, the Secretary of the Department of Safety and Homeland Security, the Attorney General, or the Attorney General's designee, the Public Defender or the Public Defender's designee, a member of the Delaware State Senate appointed by the President Pro Tempore, a member of the Delaware House of Representatives appointed by the Speaker, a member appointed by the Delaware Police Chiefs Council, a member of the Delaware State Troopers Association or the Fraternal Order of Police with formal training in forensic science appointed by the Secretary of the Department of Safety and Homeland Security with the concurrence of the Governor, and two members, appointed by the Governor, who have expertise in forensic science.

(b) For administrative and budgetary purposes, the Commission will be placed within the Department of Safety and Homeland Security, Office of the Secretary.

(c) The Director of the Division of Forensic Science shall create an audit process to include evidence accountability, requisite certifications, and security. The Director of the Division of Forensic Science shall file a report on this audit to the Commission and Governor once a year.

(d) The Commission shall undertake the following tasks:

(1) Evaluate and monitor the needs of the Division to ensure that it is able to provide accurate, timely, and responsive forensic sciences services to all members of the criminal justice community;

(2) Evaluate and monitor the needs of the Division as may help preserve the independence of judgment and the integrity of all scientific undertakings by the Division and its personnel;

(3) Evaluate and monitor the human resources needs and the personnel and hiring practices of the Division;

(4) Receive and consider input from all stakeholders in the criminal justice community, including, without limitation, prosecutors, defense attorneys, the courts, law enforcement, victims' advocates, the Domestic Violence Coordinating Council, the Child Death, Near Death and Stillborn Commission, and other interested persons or parties;

(5) Evaluate and monitor the quality assurance structure and processes, including chain of custody practices for drug evidence;

(6) Evaluate and monitor professional competency and accreditation requirements and staff management policies;

(7) Review and comment upon all rules and regulations promulgated pursuant to § 4702 of this title; and

(8) Suggest and support the implementation of improvements to the operations of the Division or its communications and cooperation with other agencies of state and local government.

Section 2. Amend § 7903, Title 29 of the Delaware Code as follows:

§ 7903 Powers, duties and functions of the Secretary.

The Secretary may:

(1) Supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees;

(2) Appoint and fix the salary, with the written approval of the Governor, of the Deputy Secretary and the following division directors and office heads, who may be removed from office by the Secretary with the written approval of the Governor, and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary:

a. A Director of the Division of Public Health, who shall be known as the Director of Public Health, and who shall be a licensed physician who shall have had at least 1 year of postgraduate training in public health, or in lieu thereof at least 5 years of experience as a full-time health official;

b. A Director of the Division of Substance Abuse and Mental Health, who shall be known as the Director of Mental Health, and who shall be qualified by appropriate formal education in a field such as psychiatric medicine, psychiatric nursing, clinical psychology or psychiatric social work directly related to the care and treatment of persons with mental or emotional conditions, by direct experience in the care and treatment of persons with mental or emotional conditions and by demonstrated administrative competence;

c. A Director of the Division of Social Services, who shall be known as the Director of Social Services, and who shall be qualified by education, ability and experience in the administration of social work or services;

d. An administrator and head of the Division of Business Administration and General Services

who shall be known as the Chief of Business Administration and General Services and who shall be a person qualified by training and experience to perform the duties of the division;

e. An administrator and head of the Division of Planning, Research and Evaluation who shall be known as the Chief of Planning, Research and Evaluation and who shall be a person qualified by training and experience to perform the duties of the division;

f. A Director of the Division of Child Support Enforcement, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

g. A Director of the Division of Services for Aging and Adults with Physical Disabilities, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

h. A Director of the Division of State Service Centers, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

i. A Director of the Division of Long-Term Care Residents Protection, who shall be someone qualified by training, education, experience or ability to perform the duties of Director;

(3) Appoint such additional personnel as may be necessary for the administration and operation of the Department within such limitations as may be imposed by law;

(4) Establish a Division of Business Administration and General Services in order to administer and coordinate the record keeping, transportation, fiscal affairs, data processing, statistics, accounting, personnel and such other general services for the Department as the Secretary may deem necessary for the proper, efficient and economical operation of the Department and to coordinate such general services and business administration with other departments, agencies and offices of the government of this State;

(5) Establish a Division of Planning, Research and Evaluation in order to provide for and carry out the future comprehensive planning of the programs, policies and operations of the Department and the evaluation, necessary research, data collection and analysis of the programs, policies and operations of the Department;

(6) Establish, consolidate, abolish, transfer or combine the powers, duties and functions of the divisions, subdivisions and offices within the Department as the Secretary, with the written approval of the Governor, may deem necessary, providing that all powers, duties and functions required by law shall be provided for and maintained;

(7) Make and enter into any and all contracts, agreements or stipulations, and retain, employ and contract for the services of private and public consultants, research and technical personnel and to procure by contract consulting, research, technical and other services and facilities, whenever the same shall be deemed by the Secretary necessary or desirable, in the performance of the functions of the Department and whenever funds shall be available for such purpose. All necessary legal services shall be provided pursuant to Chapter 25 of this title;

(8) Delegate any of the Secretary's powers, duties or functions to a director of a division, except the Secretary's power to remove employees of the Department or to fix their compensation;

(9) Establish and promulgate such rules and regulations governing the administration and operation of the Department as may be deemed necessary by the Secretary and which are not inconsistent with the laws of this State;

a. The Secretary shall, in cooperation with the appropriate division directors and office heads, adopt regulations which require dementia specific training each year for persons who are certified, licensed, or registered by the State, and/or who are partially or fully funded by the State, to provide direct healthcare services to persons diagnosed as having Alzheimer's disease or other forms of dementia. The mandatory training must include the following topics:

1. Communicating with persons diagnosed as having Alzheimer's disease or other forms of dementia;
2. The psychological, social, and physical needs of those persons; and
3. Safety measures which need to be taken with those persons.

The mandatory training required under this paragraph applies only to those healthcare providers who must participate in continuing education programs;

b. The provisions of paragraph (10)a. of this section do not apply to persons certified to practice medicine under the Medical Practice Act, Chapter 17 of Title 24 or first responders including police officers, firefighters and emergency medical technicians.

(10) Maintain such facilities throughout the State as may be required for the effective and efficient operation of the Department;

(11) Adopt an official seal or seals for the Department;

(12) The Secretary in cooperation with the division directors shall prepare a proposed budget for the operation of the Department to be submitted for the consideration of the Governor and the General Assembly. The Department shall be operated within the limitations of the annual appropriation and any other funds appropriated by the General Assembly. Special funds may be used in accordance with approved programs, grants and appropriations;

(13) The Secretary shall be the successor to the State Board of Health exercising the powers and duties granted the Board by Title 16 or § 7904 of this title, which are not inconsistent with the laws of this State;

(14) The Secretary is empowered to administer a state revolving loan program in accordance with requirements set forth in the Federal Safe Drinking Water Act.

a. Delaware Safe Drinking Water Revolving Fund. - There is hereby established a "Delaware Safe Drinking Water Revolving Fund" as contemplated by and to be administered pursuant to the Federal Safe Drinking Water Act. All federal capitalization grants received pursuant to the Federal Safe Drinking Water Act, all required matching state funds, and all loan repayments received by the State pursuant to any loan agreement made under the Delaware Safe Drinking Water Revolving Fund shall be credited to the Delaware Safe Drinking Water Revolving Fund. In addition, all proceeds of obligations issued by the State and supported by a pledge or other interest in the funds in the Delaware Safe Drinking Water Revolving Fund shall be held in or for such fund. The Delaware Safe Drinking Water Revolving Fund shall be deemed to be a special fund and shall be approved by the Governor for the following purposes:

1. To accept and retain the funds and revenues specified herein;
2. To make loans to eligible persons for qualifying purposes under the Federal Safe Drinking Water Act;

3. To buy or refinance debt obligations of eligible persons for qualifying purposes under the Federal Safe Drinking Water Act;

4. To guarantee or purchase insurance for obligations of eligible persons for qualifying purposes under the Safe Drinking Water Act;

5. To be a source of revenue or security for the payment of principal and interest on revenue bonds of the State if the proceeds of the sale of such bonds will be deposited in the Delaware Safe Drinking Water Revolving Fund;

6. To earn interest on amounts on deposit in such fund;

7. To establish all necessary interest bearing accounts for deposit of loan repayments;

8. To finance the reasonable costs incurred by the State in the administration of the Delaware Safe Drinking Water Revolving Fund as permitted under the Federal Safe Drinking Water Act; and

9. To accomplish any other allowable purpose under the Federal Safe Drinking Water Act.

The Department is designated as the administering agency of the Delaware Safe Drinking Water Revolving Fund and shall have such power necessary to administer such fund including, but not limited to, the power to enter into capitalization grant agreements with the Environmental Protection Agency, the power to accept capitalization grant awards made under the Federal Safe Drinking Water Act and the power to make loans in accordance with the requirements of the Federal Safe Drinking Water Act, and Chapter 61 of this title, or any successor statute. The Department shall coordinate implementation of the Delaware Safe Drinking Water Revolving Fund with the Delaware Department of Natural Resources and Environmental Control which shall be responsible for financial administration of the loan portion of the Drinking Water State Revolving Fund. The Department shall take all actions necessary to secure for the State the benefits of the Federal Safe Drinking Water Act.

b. Standards and procedures. — Before making any loan from the Delaware Safe Drinking Water Revolving Fund, the Department shall specify:

1. Standards for the eligibility of borrowers and the type of projects to be financed with loans;

2. Procedures for the preparation, review and approval of the "project priority" list, which must contain those projects for which financial assistance is sought;

3. Procedures for submitting applications for financial assistance and procedures for Department approval of such applications;

4. Procedures for completing an environmental review of projects otherwise qualifying under this paragraph which shall be sufficiently consistent with the provisions for environmental review established under applicable state and federal requirements;

5. Conditions for financial assistance; and

6. Other relevant criteria, standards and procedures.

Standards and procedures specified under this paragraph shall provide for final recommendations by the Water Infrastructure Advisory Council of any loan from the Delaware Safe Drinking Water Revolving Fund and the "project priority" list as required by Chapter 61 of this title, or any successor statute.

Section 3. Amend § 7916, Title 29 of the Delaware Code as follows:

§ 7916 Office of Medical Examiner.

The Office of Medical Examiner is established having the power to perform and shall be responsible for the performance of all powers, duties and functions heretofore vested in the Board of Postmortem Examiners for the State of Delaware pursuant to Chapter 47 of this title.

Section 4. Amend § 7922, Title 29 of the Delaware Code as follows:

§ 7922 Exemptions.

The following positions set forth in this section shall be exempt from Chapter 59 of this title:

- (1) Secretary of Health and Social Services;
- (2) Director of Public Health;
- (3) Director of the Division of Substance Abuse and Mental Health;
- (4) Director of Social Services;
- (5) Chief of Business Administration and General Services;
- (6) Chief of Planning, Research and Evaluation;
- (7) Director of Developmental Disabilities Services;
- (8) Director of Child Support Enforcement;
- (9) Director of the Division of Services for Aging and Adults with Physical Disabilities;
- (10) Director of State Service Centers;
- (11) Director of Long-Term Care Resident Protection; and
- (12) Deputy Secretary of the Department of Health and Social Services.

Section 5. Amend § 7923, Title 29 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 7923 Assumption of functions of prior agencies.

The Department, through appropriate divisions, subdivisions and offices, shall have the power to perform and shall be responsible for the performance of all the powers, duties and functions vested by law in the State Board of Health, the Board of Trustees of the Delaware Hospital for the Chronically Ill, the Hospital Advisory Council, the Department of Mental Health, the Board of Trustees of the Department of Mental Health, the Department of Public Welfare, the Board of Welfare, the Commission for the Blind, and the Commission for the Aging immediately prior to June 12, 1970, and which are not otherwise specifically transferred to the Department by this chapter.

Section 6. Amend § 8203, Title 29 of the Delaware Code as follows:

§ 8203 Powers, duties and functions of the Director.

The Secretary may:

- (1) Supervise, direct and account for the administration and operation of the Department, its divisions, subdivisions, offices, functions and employees;

(2) Appoint, and fix the salary of, with the written approval of the Governor, the following division directors who may be removed from office by the Secretary with the written approval of the Governor and who shall have such powers, duties and functions in the administration and operation of the Department as may be assigned by the Secretary:

a. A Secretary of the Division of State Police who shall be known as the Superintendent of State Police and shall hold the rank of Colonel. The Superintendent of State Police shall be qualified by training and experience to perform the duties of the office. The Superintendent of State Police shall be chosen from among the ranks of the State Police and shall have been promoted through the normal promotional policies of the State Police;

b. A director of the Delaware Emergency Management Agency who shall be known as the "Director of the Delaware Emergency Management Agency", and who shall be qualified by training and experience to perform the duties of the office;

c. A Director of the Division of Alcohol and Tobacco Enforcement who shall be known as the Director of Alcohol and Tobacco Enforcement, and who shall be qualified by training and experience to perform the duties of the office;

d. A director of the Division of Capitol Police who shall be known as the Chief of Capitol Police, which position shall remain a merit position. The Chief of Capitol Police shall be qualified by training and experience to perform the duties of the office. The Chief of Capitol Police shall be chosen from among the ranks of the Capitol Police and through the normal promotional policies of the Capitol Police.

e. A director of the Division of Communications who shall be known as the "Director of the Division of Communications", and who shall be qualified by training and experience to perform the duties of the office;

f. A director of the Office of Highway Safety who shall be known as the "Director of the Office of Highway Safety", which position shall remain a merit position. The Director of the Office of Highway Safety shall be qualified by training and experience to perform the duties of the office;

g. A director of the State Council for Persons with Disabilities, who shall be known as the "Director of the State Council for Persons with Disabilities", which position shall remain a merit position, and who shall be qualified by training and experience to perform the duties of the office;

h. A director of the Division of Gaming Enforcement who shall be known as the "Director of the Division of Gaming Enforcement" and who shall be qualified by training and experience to perform the duties of the office.; and

i. A director of the Division of Forensic Science who shall be known as the "Director of the Division of Forensic Science" and who shall be qualified by training, experience, education, or ability in the areas of administration and forensic science to perform the duties of Director.

Section 7. Amend § 8214, Title 29 of the Delaware Code as follows:

§ 8214 Exemptions.

The following positions set forth in this chapter shall be exempt from Chapter 59 of this title:

(1) Secretary of Public Safety;

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- (2) Superintendent of State Police;
 - (3) Director of Civil Defense;
 - (4) Director of Alcohol and Tobacco Enforcement;
 - (5) Director of the Division of Forensic Science; and
 - (6) Chief Medical Examiner.

Section 8. Amend Chapter 82, Title 29 of the Delaware Code as follows:

§ 8238 Division of Forensic Science

The Division of Forensic Science is established and shall be responsible for the performance of all the powers, duties and functions heretofore vested in the Office of the Chief Medical Examiner and duties of the medical examiners and Forensic Science Laboratory, as set forth in Title 29, Chapter 47.

Section 9. Amend § 4330, Title 10 of the Delaware Code as follows:

§ 4330 Chemical test report.

For the purpose of establishing that physical evidence in a criminal or civil proceeding constitutes a particular controlled substance defined under Chapter 47 of Title 16, a report signed by the forensic toxicologist or forensic chemist who performed the test or tests as to its nature is prima facie evidence that the material delivered was properly tested under procedures approved by the Division of Forensic Science, that those procedures are legally reliable, that the material was delivered by the officer or person stated in the report and that the material was or contained the substance therein stated, without the necessity of the forensic toxicologist or forensic chemist personally appearing in court, provided the report identifies the forensic toxicologist or forensic chemist as an individual certified by the Division of Forensic Science, the Delaware State Police or any county or municipal police department employing analysts of controlled substances, as qualified under standards approved by the Division of Forensic Science to analyze those substances, states that the forensic toxicologist or forensic chemist made an analysis of the material under the procedures approved by the Division of Forensic Science and also states that the substance, in the forensic toxicologist's or forensic chemist's opinion, is or contains the particular controlled substance specified. Nothing in this section precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in or the presumption raised by the report.

Section 10. Amend § 1448(g), Title 11 of the Delaware Code as follows:

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

Section 11. Amend § 8515, Title 11 of the Delaware Code as follows:

§ 8515. Furnishing information of injured or deceased persons.

If a law-enforcement officer or the Division of Forensic Science transmits to the Bureau the identification data of any unidentified deceased or injured person or any person suffering from loss of memory, the Bureau shall furnish to such officer or the Division any information available pertaining to the identification of such person.

Section 12. Amend § 8701, Title 11 of the Delaware as follows:

§ 8701. Created; composition; compensation.

(a) There is hereby created the Criminal Justice Council.

(b) The Council shall consist of 29 members as follows:

(1) The Chief Justice of the Supreme Court, or the Chief Justice's designee;

(2) The President Judge of Superior Court, or the President Judge's designee;

(3) The Chief Judge of Family Court, or the Chief Judge's designee;

(4) The Chief Magistrate of the Justice of the Peace Courts, or the Chief Magistrate's designee;

(5) The Attorney General, or the Attorney General's designee;

(6) The Public Defender, or the Public Defender's designee;

(7) The Commissioner of the Department of Correction, or the Commissioner's designee;

(8) The Chief of the Bureau of Prisons of the Department of Correction, or the Bureau Chief's designee;

(9) The Director of the Division of Youth Rehabilitation, or the Director's designee;

(10) The Chairperson of the Board of Parole, or the Chairperson's designee;

(11) The Superintendent of the State Police, or the Superintendent's designee;

(12) The Chief of the New Castle County Police Department, or the Chief's designee;

(13) The Chief of the Wilmington Police Department, or the Chief's designee;

(14) The Chairperson of the Delaware Police Chiefs' Council, or the Chairperson's designee;

(15) The Director of the Division of Forensic Science, or the Director's designee;

(16) The Secretary of Health and Social Services, or the Secretary's designee;

(17) The Secretary of Labor, or the Secretary's designee;

(18) The United States Attorney for the District of Delaware, or the United States Attorney's designee;

(19) The Secretary of Education, or the Secretary's designee;

(20) Five at-large members who shall serve at the pleasure of the Governor for a term of 5 years each;

(21) The Secretary of the Department of Technology and Information, or the Secretary's designee;

(22) The Chief Judge of the Court of Common Pleas, or the Chief Judge's designee;

(23) The Secretary of the Department of Services for Children, Youth and their Families, or the Secretary's designee;

(24) The Secretary of Public Safety, or the Secretary's designee; and

(25) A sitting judge of the United States District Court for the District of Delaware as designated by the Chief Judge of the United States District Court for the District of Delaware.

(c) The terms of those members who serve by virtue of the office they hold shall be concurrent with service in the office from which they derive their membership.

(d) Commission members shall serve without salary, but shall be entitled to reimbursement for travel and other necessary expenses incurred in the performance of official duties.

Section 13. Amend § 2105(a), Title 13 of the Delaware Code as follows:

§ 2105. Fatal incident reviews.

(a) The Council shall have the power to investigate and review, through a review panel, the facts and circumstances of all deaths and near deaths that occur in Delaware as a result of domestic violence. "Near death" means a victim in serious or critical condition as certified by a physician. This review shall include both homicides and suicides resulting from domestic violence. The Division of Forensic Science shall submit to the Council a monthly report within 30 days of the last day of the previous month, of all the homicides and suicides that occurred in Delaware. Reviews may also include cases where the victim suffered a substantial risk of serious physical injury or death. The review of deaths or near deaths involving criminal investigations will be delayed for at least 6 months, and will under no circumstances begin until authorized by the Attorney General's office. Any case involving the death of a minor (any child under the age of 18) related to domestic violence will be reviewed jointly by the appropriate regional panel of the Child Death, Near Death and Stillborn Commission and the domestic violence fatal incident review panel. The death of a minor will only be reviewed by the domestic violence fatal incident review panel where the minor's parents or guardians were involved in an abusive relationship and the minor's death is directly related to that abuse.

Section 14. Amend § 3123, Title 16 of the Delaware Code as follows:

§ 3123. Registration of deaths.

(a) A certificate of death for each death which occurs in this State shall be filed with the Office of Vital Statistics, or as otherwise directed by the State Registrar, within 3 days after death and prior to final disposition, and shall be registered if it has been completed and filed in accordance with this section.

(1) If the place of death is unknown but the dead body is found in this State, the certificate of death shall be completed and filed in accordance with this section. The place where the body is found shall be shown as the place of death. If the date of death is unknown, it may be determined by approximation.

(2) When death occurs in a moving conveyance in the United States and the body is first removed from the conveyance in this State, the death shall be registered in this State and the place where it is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this State, the death shall be registered in this State but the certificate shall show the actual place of death insofar as can be determined.

(b) The funeral director who assumes custody of the dead body shall file the certificate of death. The funeral director shall obtain the personal data from the next-of-kin or best qualified person or source available and shall obtain the medical certification from the attending physician or Medical Examiner.

(c) The medical certification shall be completed, signed and returned to the funeral director within 48 hours after death by the attending physician, except when an official death investigation is required by the Division of Forensic Science. In the absence of the attending physician the certificate may be completed and signed by the attending physician's designated physician or the chief medical officer of the institution in which death occurred provided such individual has knowledge about the medical history of the case.

(d) When an official death investigation is required pursuant to § 4706(a) of Title 29, the Medical Examiner shall determine the manner and cause of death and shall complete and sign the medical certification.

(e) If the cause of death cannot be determined within 48 hours after death, the attending physician or medical examiner shall file with the Office of Vital Statistics a pending certificate of death and a toxicology study shall be performed. If a cause of death cannot be determined after the toxicology study is performed, the remains and all reports and/or studies shall be turned over to the Division of Forensic Science for review. When the cause of death is determined a revised certification of death shall be issued and presented to the funeral director or the funeral director's agent, who in turn shall file the certificate with the Office of Vital Statistics.

(f) When a death is presumed to have occurred within this State but the body cannot be located, a death certificate may be prepared by the State Registrar upon receipt of a court order which shall include the finding of facts required to complete the death certificate. Such a death certificate shall be marked "By Court Order" and shall show on its face the date of registration and shall identify the court and the date of decree.

Section 15. Amend § 3124, Title 16 of the Delaware Code as follows:

§ 3124. Registration of spontaneous fetal death.

Each spontaneous fetal death of 350 grams or more, or in the absence of weight, of 20 completed week's gestation or more, calculated from the date the last normal menstrual period began to the date of delivery, which occurs in this State shall be reported within 3 days after delivery to the Office of Vital Statistics by filing a fetal death certificate. Induced terminations of pregnancy shall not be reported as spontaneous fetal deaths.

(1) When a fetal death occurs in an institution, the person in charge of the institution or a designated representative shall prepare and file a Certificate of Fetal Death.

(2) When a fetal death occurs outside an institution, the physician in attendance at or immediately after delivery shall prepare and file a Certificate of Fetal Death. No person other than a physician may sign a Certificate of Fetal Death.

(3) When a fetal death occurs without medical attendance at or shortly after the delivery, or when a fetal death occurs in a moving conveyance and the fetus is first removed from the conveyance in this State or when a fetal death occurs in this State and the place of fetal death is unknown, an investigation by the Division of Forensic Science shall be conducted to determine the cause and manner of the fetal death.

Section 16. Amend § 4177(h), Title 21 of the Delaware Code as follows:

(h) (1) For the purpose of introducing evidence of a person's alcohol concentration or the presence or concentration of any drug pursuant to this section, a report signed by the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist who performed the test or tests as to its nature is prima facie evidence,

without the necessity of the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist personally appearing in court:

a. That the blood delivered was properly tested under procedures approved by the Division of Forensic Science or the Delaware State Police Crime Laboratory;

b. That those procedures are legally reliable;

c. That the blood was delivered by the officer or persons stated in the report; and,

d. That the blood contained the alcohol, drugs or both therein stated.

(2) Any report introduced under paragraph (h)(1) of this section must:

a. Identify the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist as an individual certified by the Division of Forensic Science, the Delaware State Police Crime Laboratory or any county or municipal police department employing scientific analysis of blood, as qualified under standards approved by the Division of Forensic Science, or the Delaware State Police Crime Laboratory to analyze the blood;

b. State that the person made an analysis of the blood under the procedures approved by the Division of Forensic Science or the Delaware State Police Crime Laboratory; and,

c. State that the blood, in that person's opinion, contains the resulting alcohol concentration or the presence or concentration of any drug within the meaning of this section.

Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the report entered pursuant to paragraphs (h)(1) and (2) of this section.

(3) For purposes of establishing the chain of physical custody or control of evidence defined in this section which is necessary to admit such evidence in any proceeding, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery stated, without the necessity of a personal appearance in court by the person signing the statement, in accordance with the same procedures outlined in § 4331(3) of Title 10.

(4) In a criminal proceeding, the prosecution shall, upon written demand of a defendant filed in the proceedings at least 15 days prior to the trial, require the presence of the Forensic Toxicologist, Forensic Chemist, State Police Forensic Analytical Chemist, or any person necessary to establish the chain of custody as a witness in the proceeding. The chain of custody or control of evidence defined in this section is established when there is evidence sufficient to eliminate any reasonable probability that such evidence has been tampered with, altered or misidentified.

(i) In addition to any other powers of arrest, any law-enforcement officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section, regardless of whether the alleged violation was committed in the presence of such officer. This authority to arrest extends to any hospital or other medical treatment facility located beyond the territorial limits of the officer's jurisdiction provided there is probable cause to believe that the violation of this section occurred within the officer's jurisdiction. This authority to arrest also extends to any place where the person is found within 4 hours of the alleged

driving of a vehicle if there is reason to believe the person has fled the scene of an accident in which that person was involved, and provided there is probable cause to believe that the violation of this section occurred within the officer's jurisdiction.

(j) Any court in which a conviction of or guilty plea to a driving under the influence offense shall include the blood alcohol concentration of the defendant (if any is on record) when forwarding notice of said conviction or guilty plea to the Division of Motor Vehicles.

Section 17. Amend § 2301, Title 23 of the Delaware Code as follows:

§ 2301. Definitions.

(a) "Alcohol concentration of 0.08 or more" shall mean:

(1) An amount of alcohol in a sample of a person's blood equivalent to 0.08 or more grams of alcohol per 100 milliliters of blood; or

(2) An amount of alcohol in a sample of a person's breath equivalent to 0.08 or more grams per 210 liters of breath.

(b) "Chemical test" or "test" shall include any form or method of analysis of a person's blood, breath or urine for the purposes of determining alcohol concentration or the presence of drugs which is approved for use by the Division of Forensic Science, the Delaware State Police Crime Laboratory, any state or federal law-enforcement agency, or any hospital or medical laboratory. It shall not, however, include a preliminary screening test of breath performed in order to estimate the alcohol concentration of a person at the scene of a stop or other initial encounter between a law-enforcement officer and the person.

(c) "Operating a vessel or vessel operation" shall include driving, operating or having actual physical control of a vessel or boat.

(d) "Prior or previous offense" shall mean:

(1) A conviction pursuant to this chapter, or a similar statute of any state, local jurisdiction or the District of Columbia, within 5 years immediately preceding the date of the present offense; or

(2) A conviction, under a criminal statute encompassing death or injury caused to another person by the person's operation of a vessel, where operating a vessel under the influence or with a prohibited alcohol concentration was an element of the offense.

For the purpose of computing the periods of time set out in § 2305 of this title, the period shall run from the date of the commission of the prior or previous offense to the date of the commission of the charged offense. In any proceeding under § 2305 of this title, a person may not challenge the validity of any prior or previous conviction unless that person first successfully challenges the prior or previous conviction in the court in which the conviction arose and provides written notice of the challenge in the present proceeding to the prosecution at least 20 days before trial.

(e) "Underway" shall be defined as any vessel which is not at anchor or made fast ashore.

(f) "Vessel" shall mean every device in, upon or by which any person may be transported upon the water excepting devices moved by human power.

(g) "While under the influence" shall mean that the person is, because of alcohol or drugs or a combination of both, less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the operation of a vessel or boat.

Section 18. Amend § 2303, Title 23 of the Delaware as follows:

§ 2303. Consent to submit to chemical test.

(a) Any person who motors, sails, rows, commands, operates or has actual physical control of a vessel or boat underway on the waters of this State shall be deemed to have given consent, subject to this section and § 2302 of this title, to a chemical test or tests of the person's blood, breath and/or urine for the purpose of determining the presence of alcohol or a drug or drugs. The testing may be required of a person when an officer has probable cause to believe the person is in violation of § 2302 of this title or a local ordinance substantially conforming thereto.

(b) At the time that a chemical test specimen is required, the person may be informed that if testing is refused, the person shall be prohibited from operating a vessel upon Delaware's waters for a period of 1 year.

(c) If there are reasonable grounds to believe that there is impairment by a drug or drugs which are not readily subject to detection by a breath test, a blood and/or urine test may be required even after a breath test has been administered.

(d) Alternative tests; physical incapacity. -- If for any reason a person is physically unable to supply enough breath or complete the chemical test, the person shall submit to other chemical tests as designated by the officer, subject to the requirements of subsection (a) of this section. Any person who is unconscious or who is otherwise in a condition rendering the person incapable of refusal shall be deemed to not have withdrawn the consent provided in this section and any test may be performed as provided in subsection (a) of this section.

(e) Refusal to submit as admissible evidence. -- Upon any trial of any action or proceeding arising out of the acts alleged to have been committed by any person while in violation of § 2302 of this title, the court may admit evidence of the refusal of such person to submit to a chemical test of the person's breath, blood or urine.

(f) Admissibility in evidence of results of chemical test . -- For purposes of a conviction premised upon § 2302(a) of this title or any proceeding pursuant to this code in which an issue is whether a person was operating a vessel while under the influence, evidence establishing the presence and concentration of alcohol or drugs in the person's blood, breath or urine shall be relevant and admissible. Such evidence may include the results from tests of samples of the person's blood, breath or urine taken within 4 hours of operating the vessel or at some later time. In any proceeding, the resulting alcohol or drug concentration reported when a test, as defined in § 2301(b) of this title, is performed shall be deemed to be the actual alcohol or drug concentration in the person's blood, breath or urine without regard to any margin of error or tolerance factor inherent in such tests.

(g) Evidence of an alcohol concentration of 0.05 or less in a person's blood, breath or urine sample taken within 4 hours of operating a vessel and tested as defined in § 2301(b) of this title is prima facie evidence that the person was not under the influence of alcohol within the meaning of this chapter. Evidence of an alcohol concentration of more than 0.05 but less than 0.08 in a person's blood, breath or urine sample taken within 4 hours of operating a vessel and tested as defined in § 2301(b) of this title shall not give rise to any presumption that the person was or was not under the influence of alcohol, but such fact may be considered with other competent

evidence in determining whether the person was under the influence of alcohol.

(h) Evidence obtained through a preliminary screening test of a person's breath in order to estimate the alcohol concentration of the person at the scene of a stop or other initial encounter between a law-enforcement officer and the person shall be admissible in any proceeding to determine whether probable cause existed to believe that a violation of this Code has occurred. However, such evidence shall not be admissible in the determination of guilt under this section.

(i) Nothing in this section shall preclude conviction of an offense defined in this chapter based solely on admissible evidence other than the results of a chemical test of a person's blood, breath or urine to determine the concentration or presence of alcohol or drugs.

(j) A jury shall be instructed by the court in accordance with the applicable provisions of this section in any proceeding pursuant to this chapter in which an issue is whether a person was operating a vessel while under the influence.

(k) For the purpose of introducing evidence of a person's alcohol concentration pursuant to this section, a report signed by the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist who performed the test or tests as to its nature is prima facie evidence, without the necessity of the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist personally appearing in court:

(1) That the blood delivered was properly tested under procedures approved by the Division of Forensic Science or the Delaware State Police Crime Laboratory;

(2) That those procedures are legally reliable;

(3) That the blood was delivered by the officer or persons stated in the report; and

(4) That the blood contained the alcohol therein stated.

(l) (1) Any report introduced under subsection (k) of this section must:

a. Identify the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist as an individual certified by the Division of Forensic Science, the Delaware State Police Crime Laboratory or any county or municipal police department employing scientific analysis of blood, as qualified under standards approved by the Division of Forensic Science or the Delaware State Police Crime Laboratory to analyze the blood;

b. State that the person made the analysis of the blood under the procedures approved by the Division of Forensic Science or the Delaware State Police Crime Laboratory; and

c. State that the blood, in the person's opinion, contains the resulting alcohol concentration within the meaning of this chapter.

Nothing in this section precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the report entered pursuant to subsections (k) and (l) of this section.

(2) For purposes of establishing the chain of physical custody or control of evidence defined in this section which is necessary to admit such evidence in any proceeding, a statement signed by each successive

person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery stated, without the necessity of a personal appearance in court by the person signing the statement, in accordance with the same procedures outlined in § 4331(3) of Title 10.

(3) In a criminal proceeding, the prosecution shall, upon written demand of a defendant filed in the proceedings at least 15 days prior to the trial, require the presence of the Forensic Toxicologist, Forensic Chemist, State Police Forensic Analytical Chemist or any person necessary to establish the chain of custody as a witness in the proceeding. The chain of custody or control of evidence defined in this section is established when there is evidence sufficient to eliminate any reasonable probability that such evidence has been tampered with, altered or misidentified.

(m) The informing or failure to inform the accused concerning the implied consent provision shall not affect the admissibility of such results in any prosecution for a violation of § 2302(a) of this title.

(n) The doctor-patient privilege shall not apply to the disclosure to law-enforcement personnel nor the admissibility into evidence in any criminal proceeding of the results of a chemical test of a person's blood, breath or urine for the purpose of determining the alcohol or drug content of the person's blood irrespective of whether such test was done at the request of a treating physician, other medical personnel or a peace officer.

Section 19. Amend § 10002(1)(15), Title 29 of the Delaware Code as follows:

(15) Any photographs, video recordings or audio recordings of a postmortem examination in the possession of the Division of Forensic Science;

Section 20. On or before January 31, 2015, the Commission on Forensic Science will evaluate the structure of the Division of Forensic Science, including whether there are efficiencies or operational improvements gained by consolidating other forensic sciences with the Division of Forensic Science, whether death investigations should be moved from the Division of Forensic Science, or whether there are any other restructurings that would improve the provision of forensic science services in this State, and shall issue a report on this evaluation to the Governor and the General Assembly.

Section 21. This Act shall take effect on July 1, 2014 or 10 days following its enactment into law, whichever is later.

Section 22. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Approved June 24, 2014

SB 197 – Title 11

CHAPTER 276
FORMERLY
SENATE BILL NO. 197
AS AMENDED BY
SENATE AMENDMENT NO. 2

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO TRAFFICKING OF INDIVIDUALS, FORCED LABOR AND SEXUAL SERVITUDE.

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

Section 1. Amend § 787, Title 11 of the Delaware Code as follows and redesignating accordingly:

§ 787 Trafficking an individual, forced labor and sexual servitude; class D felony; class C felony; class B felony; class A felony.

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

“Adult” has the meaning ascribed in Section 302 of Title 1 of the Delaware Code;

“Coercion” means:

a. the use or threat of force against, abduction of, serious harm to, or physical restraint of an individual;

b. the use of a plan, pattern, or statement with intent to cause an individual to believe that failure to perform an act will result in the use of force against, abduction of, serious harm to, or physical restraint of an individual;

c. the abuse or threatened abuse of law or legal process;

d. controlling or threatening to control an individual’s access to a controlled substance enumerated in Sections 4714, 4716, 4718, 4720 or 4722 of Title 16 of the Delaware Code;

e. the destruction of, taking of, or the threat to destroy or take an individual’s identification document or other property;

f. use of debt bondage;

g. the use of an individual’s physical, cognitive disability or mental impairment, where such impairment has substantial adverse effects on the individual’s cognitive or volitional functions; or

h. the commission of civil or criminal fraud;

“Commercial sexual activity” means any sexual activity for which anything of value is given, promised to, or received by any person;

“Debt bondage” means inducing an individual to provide:

a. commercial sexual activity in payment toward or satisfaction of a real or purported debt; or

b. labor or services in payment toward or satisfaction of a real or purported debt if:

1. the reasonable value of the labor or services is not applied toward the liquidation of the debt; or

2. the length of the labor or services is not limited and the nature of the labor or services is not defined;

“Forced labor or services” means labor, as defined this section, or services, as defined in this section, that are performed or provided by another person and are obtained or maintained through coercion as enumerated in paragraph (b)(1) of this section;

“Human trafficking” means the commission of any of the offenses created in subsection (b) of this section;

“Identification document” means a passport, driver’s license, immigration document, travel document, or other government-issued identification document, including a document issued by a foreign government, whether actual or purported;

“Labor or services” means activity having economic or financial value, including commercial sexual activity. Nothing in this definition should be construed to legitimize or legalize prostitution;

“Minor” has the meaning ascribed in Section 302 of Title 1 of the Delaware Code;

“Serious harm” means harm, whether physical or nonphysical, including psychological, economic, or reputational, to an individual which would compel a reasonable individual of the same background and in the same circumstances to perform or continue to perform labor or services or sexual activity to avoid incurring the harm;

“Sexual activity” means any of the sex-related acts enumerated in Section 761 of this Title, or in Sections 1342, 1351, 1352(1), 1353(1), 1354 or 1355 of this Title or sexually-explicit performances;

“Sexually explicit performance” means a live public act or show, production of pornography, or the digital transfer of any of such, intended to arouse or satisfy the sexual desires or appeal to the prurient interest of viewers;

“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by state; and

“Victim” means a person who is subjected to the practices set forth in subsection (b) of this section or to conduct that would have constituted a violation of subsection (b) of this section had this act been in effect when the conduct occurred, regardless of whether a perpetrator is identified, apprehended, prosecuted or convicted.

(b) Prohibited activities. --

(1) Trafficking an individual – A person is guilty of trafficking an individual if the person knowingly recruits, transports, harbors, receives, provides, obtains, isolates, maintains, or entices an individual in furtherance of forced labor in violation of paragraph (b)(2) of this section or sexual servitude in violation of paragraph (b)(3) of this section. Trafficking an individual is a Class C felony unless the individual is a minor, in which case it is a Class B felony.

(2) Forced labor – A person is guilty of forced labor if the person knowingly uses coercion to compel an individual to provide labor or services, except where such conduct is permissible under

federal law or law of this state other than this act. Forced labor is a Class C felony unless the individual is a minor, in which case it is a Class B felony.

(3) Sexual servitude:

a. A person commits the offense of sexual servitude if the person knowingly:

1. maintains or makes available a minor for the purpose of engaging the minor in commercial sexual activity; or
2. uses coercion or deception to compel an adult to engage in commercial sexual activity.

b. Sexual servitude is a Class C felony unless the individual is a minor, in which case it is a Class B felony.

c. It is not a defense in a prosecution under subsection a.1. that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

(4) Patronizing a victim of sexual servitude – A person is guilty of patronizing a victim of sexual servitude if the person knowingly gives, agrees to give, or offers to give anything of value so that the person may engage in commercial sexual activity with another person and the person knows that the other person is a victim of sexual servitude. Patronizing a victim of sexual servitude is a Class D felony unless the victim of sexual servitude is a minor, in which case it is a Class C felony. It is not a defense in a prosecution when the victim of sexual servitude is a minor that the minor consented to engage in commercial sexual activity or that the defendant believed the minor was an adult.

(5) Trafficking of persons for use of body parts. – A person is guilty of trafficking of persons for use of body parts when a person knowingly:

a. Recruits, entices, harbors, provides or obtains by any means, another person, intending or knowing that the person will have body parts removed for sale; or

b. Benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of this section. Such person shall be guilty of a class A felony. Nothing contained herein shall be construed as prohibiting the donation of an organ by an individual at a licensed medical facility after giving an informed voluntary consent.

(6) Aggravating Circumstance. – An aggravating circumstance during the commission of an offense under paragraph (b)(1)-(3) occurs when:

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 by one felony grade higher than the underlying offense.

(c) Organizational liability. –

(1) An organization may be prosecuted for an offense under this section pursuant to 11 Del. C. § 281 (Criminal liability of organizations).

(2) The court may consider the severity of an organization's offense under this section and order penalties in addition to those otherwise provided for the offense, including:

- a. a fine of not more than \$25,000.00 per offense;
- b. disgorgement of profit from illegal activity in violation of this section;

and

- c. debarment from state and local government contracts.

(d) Restitution is mandatory under this section. –

(1) In addition to any other amount of loss identified, the court shall order restitution, including the greater of:

- a. The gross income or value to the defendant of the victim's labor or services; or
- b. The value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) [29 U.S.C. § 201 et seq.] or of Title 19, whichever is greater.

(2) The Court shall order restitution under this paragraph (d) even if the victim is unavailable to accept payment of restitution.

(3) If the victim is unavailable for 5 years from the date of the restitution order, the restitution ordered under this paragraph (d) must be paid to the Victim Compensation Fund established under Section 9016 of this Title.

(e) Forfeiture.

(1) On motion, the court shall order a person convicted of an offense under subsection (b)(1)-(3) of this section to forfeit any interest in real or personal property that was used or intended to be used to commit or facilitate the commission of the offense or that constitutes or derives from proceeds that the person obtained, directly or indirectly, as a result of the offense.

(2) In any proceeding against real or personal property under this section, the owner may assert a defense, and has the burden of establishing, by a preponderance of the evidence, that the forfeiture is manifestly disproportional to the seriousness of the offense.

(3) Proceeds from the public sale or auction of property forfeited under this subsection must be distributed in the manner otherwise provided for the distribution of proceeds of judicial sales.

(f) Admissibility of certain evidence. –

(1) In a prosecution or civil action for damages under this section, evidence of a specific instance of the alleged victim's past sexual behavior, or reputation or opinion evidence of past sexual behavior of the alleged victim, is not admissible unless the evidence is:

- a. admitted in accordance with Sections 3508 and 3509 of this Title; or
- b. offered by the prosecution in a criminal case to prove a pattern of trafficking by the defendant.

(g) Special provisions regarding a minor. –

(1) A minor who has engaged in commercial sexual activity is presumed to be a neglected or abused child under 10 *Del. C.* §§ 901 et seq. Whenever a police officer has probable cause to believe that a minor has engaged in commercial sexual activity, the police officer shall make an immediate report to the Department of Services for Children, Youth and Their Families pursuant to 16 *Del. C.* §§ 901 et seq.

(2) A party to a juvenile delinquency proceeding in which a minor is charged with prostitution or loitering, or an attorney guardian ad litem or court appointed special advocate appointed in a proceeding under 10 *Del. C.* §§ 901 et seq., may file a motion on behalf of a minor in a juvenile delinquency proceeding seeking to stay the juvenile delinquency proceedings. Such motion may be opposed by the Attorney General. The Family Court may consider such a motion and, in its discretion, may stay the juvenile delinquency proceeding indefinitely. Upon such motion, the Department of Services for Children, Youth and Their Families and/or the Family Court may identify and order available specialized services for the minor that, in the opinion of the Department of Services for Children, Youth and Their Families or Family Court, are best suited to the needs of the juvenile. So long as the minor substantially complies with the requirement of services identified by the Department of Services for Children, Youth and Their Families and/or ordered by the Family Court, the Attorney General shall, upon motion, nolle prosequi the stayed charges no earlier than 1 year after the stay was imposed. Upon motion of the Attorney General that the minor has not substantially complied with the requirement of services identified by the Department of Services for Children, Youth and Their Families and/or ordered by the Family Court, the Family Court shall lift the stay for further proceedings in accordance with the regular course of such proceedings.

(h) Defense to charge of prostitution or loitering. – An individual charged with prostitution or loitering committed as a direct result of being a victim of human trafficking may assert as an affirmative defense that the individual is a victim of human trafficking.

(i) Civil action. –

(1) A victim may bring a civil action against a person that commits an offense under subsection (b) of this section for compensatory damages, punitive damages, injunctive relief, and any other appropriate relief.

(2) In an action under this subsection, the court shall award a prevailing victim reasonable attorney's fees and costs, including reasonable fees for expert witnesses.

(3) An action under this subsection must be commenced not later than 5 years after the later of the date on which the victim:

- a. was freed from the human trafficking situation; or
- b. attained 18 years of age.

(4) Damages awarded to the victim under this subsection for an item must be offset by any restitution paid to the victim pursuant to subsection (d) for the same item.

(5) This subsection does not preclude any other remedy available to the victim under federal law or law of this state other than this section.

(j) Application for pardon and petition to expunge; motion to vacate conviction and expunge record.

(1) Notwithstanding any provision of Title 11, Chapter 43 or any other law to the contrary, a person convicted of prostitution, loitering or obscenity committed as a direct result of being a victim of human trafficking may file an application for a pardon pursuant to Article VII of the Delaware Constitution and 11 *Del. C.* §§ 4361, et seq. and may file a petition requesting expungement of such criminal record pursuant to 11 *Del. C.* §§ 4371, et seq.

(2) A person convicted of prostitution, loitering or obscenity as a direct result of being a victim of human trafficking may file a motion in the court in which the conviction was obtained to vacate the judgment of conviction. A motion filed under this paragraph must:

- a. Be in writing;
- b. Be sent to the Delaware Department of Justice;
- c. Be made 2 years after the person's last criminal conviction and within a reasonable period of time after the person ceases to be a victim of trafficking in persons; and
- d. Describe the evidence and provide copies of any official documents showing that the person is entitled to relief under this paragraph.

If the motion satisfies the foregoing requirements, the court shall hold a hearing on a motion, provided that the court may dismiss a motion without a hearing if the court finds that the motion fails to assert grounds on which relief may be granted. Official documentation of the person's status as a victim of this section, "trafficking in persons," or "a severe form of trafficking" from a federal, state, or local government agency shall create a presumption that the person's participation in the offense of prostitution, loitering or obscenity was a direct result of having been a victim of human trafficking, but shall not be required for the court to grant a petition under this paragraph. If the petitioner can show to the satisfaction of the court that he or she is entitled to relief in a proceeding under this paragraph, the court shall grant the motion and, pursuant to this paragraph, enter an order vacating the judgment of conviction and dismissing the accusatory pleading, and may take such additional action as is appropriate in the circumstances or as justice requires.

(3) Notwithstanding any provision of Title 11, Chapter 43 or any other law to the contrary, any person filing a motion under paragraph (j)(2) in Superior Court or Family Court may also seek in

that motion expungement of the criminal record related to such conviction. If the court grants the motion to vacate the conviction under paragraph (j)(2) and the movant also requested expungement, the court's order shall require expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this paragraph and, notwithstanding any limitations to the contrary, that the provisions of 11 *Del. C.* §§ 4374(f), 4376 and 4377 apply to such order.

(4) Notwithstanding any provision of Title 11, Chapter 43 or any other law to the contrary, any person filing in Court of Common Pleas a motion under paragraph (j)(2) may, upon the Court of Common Pleas' entry of an order granting the motion to vacate, file a petition in the Superior Court seeking expungement of the criminal record related to such conviction and attaching to the petition a certified copy of the Court of Common Pleas' order granting the motion to vacate. Upon finding that the Court of Common Pleas entered an order under paragraph (j)(2), the Superior Court shall enter an order requiring expungement of the police and court records relating to the charge and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this paragraph and, notwithstanding any limitations to the contrary, that the provisions of 11 *Del. C.* §§ 4374(f), 4376 and 4377 apply to such order.

(k) Human trafficking coordinating council. – The General Assembly hereby creates a permanent Human Trafficking Coordinating Council.

- (1) The Council shall consist of the following members or their designee:
- a. The President Judge of the Superior Court;
 - b. The Chief Judge of the Family Court;
 - c. The Chief Judge of the Court of Common Pleas;
 - d. The Chief Magistrate of the Justice of the Peace Court;
 - e. The Attorney General;
 - f. The Public Defender;
 - g. The Secretary of the Department of Safety and Homeland Security;
 - h. A representative of the law-enforcement community appointed by the Secretary of the Department of Safety and Homeland Security;
 - i. The Secretary of the Department of Education;
 - j. The Secretary of the Department of Services for Children, Youth and Their Families;
 - k. The Secretary of the Department of Health and Social Services;
 - l. The Secretary of the Department of Labor;
 - m. A representative of the health care community designated by the Board of Medical Licensure and Discipline;
 - n. The Commissioner of the Department of Correction; and
 - o. Three at-large members representing victims of human trafficking or

whose expertise would benefit the council who elected by the Council at the first meeting of each calendar year.

(2) The Council shall:

- a. develop a comprehensive plan to provide victims of human trafficking with services;
- b. effectuate coordination between agencies, departments and the courts with victims of human trafficking;
- c. collect and evaluate data on human trafficking in this state;
- d. promote public awareness about human trafficking, victim remedies and services, and trafficking prevention;
- e. create a public-awareness sign that contains the state and National Human Trafficking Resource Center hotline information;
- f. coordinate training on human trafficking prevention and victim services for state and local employees who may have recurring contact with victims or perpetrators; and
- h. conduct other appropriate activities.

(3) Meetings; quorum; officers; committees; procedure.

- a. The Council shall meet at least 4 times per year. Seven members shall constitute a quorum.
- b. The Chairperson shall have the duty to convene and preside over meetings of the Council and prepare an agenda for meetings.
- c. The Attorney General shall convene the initial meeting of the Council. At the initial meeting of the Council a Chairperson and Vice Chairperson shall be elected by the Council members. Thereafter, in December of each year, the Council shall elect a Chairperson and Vice Chairperson. The Vice Chairperson's duty shall be to act as chairperson in the absence of the Chairperson.
- d. The Council shall establish committees composed of Council members and other knowledgeable individuals, as it deems advisable, to assist in planning, policy, goal and priority recommendations and developing implementation plans to achieve the purposes of the Council.
- e. The Council shall submit a written report of its activities and recommendations to the Governor, General Assembly and the Chief Justice of the Supreme Court at least once every year on or before September 15.

(l) Display of public awareness sign; penalty for failure to display.

(1) The Delaware Department of Transportation shall display a public-awareness sign required by this section in every transportation station, rest area, and welcome center in the state which is open to the public.

(2) A public awareness sign created under paragraph (k)(2)e. shall be displayed at the following locations in a place that is clearly conspicuous and visible to employees:

- a. an adult entertainment facility;
- b. an entity found to be maintaining a criminal nuisance involving

prostitution under Section 7104 of Title 10 of the Delaware Code;

- c. a job recruitment center;
- d. a hospital; and
- e. an emergency care provider.

(3) The Delaware Department of Labor shall impose a fine of \$300 per violation on an employer that knowingly fails to comply with paragraph (k)(2)e. The fine is the exclusive remedy for failure to comply.

(m) Eligibility for services. –

(1) A victim of human trafficking is eligible for a benefit or service, which is available through the state and identified in the plan developed under paragraph (k)(2)a, including compensation under Section 9009 of this Title, regardless of immigration status.

(2) A minor engaged in commercial sexual activity is eligible for a benefit or service, which is available through the state and identified in the plan developed under paragraph (k)(2)a, regardless of immigration status.

(3) As soon as practicable after a first encounter with an individual who reasonably appears to a police officer to be a victim or a minor engaged in commercial sexual activity, the police officer shall notify the appropriate state or local agency, as identified in the plan developed under paragraph (k)(2)a, that the individual may be eligible for a benefit or service under this section.

(n) Law enforcement agency protocol. –

(1) On request from an individual who a police officer or prosecutor reasonably believes is a victim who is or has been subjected to a severe form of trafficking or criminal offense required for the individual to qualify for a nonimmigrant T or U visa under 8 U.S.C. Section 1101(a)(15)(T), as amended from time to time, or 8 U.S.C. Section 1101(a)(15)(U), as amended from time to time, or for continued presence, under 22 U.S.C. Section 7105(c)(3), as amended from time to time, the police officer or prosecutor, as soon as practicable after receiving the request, shall request that a certifying official in his law enforcement agency complete, sign, and give to the individual the Form I-914B or Form I-918B provided by the United States Citizenship and Immigration Services on its Internet website, and ask a federal law enforcement officer to request continued presence.

(2) If the law enforcement agency having responsibility under paragraph (n)(1) determines that an individual does not meet the requirements for such agency to comply with paragraph (n)(1), that agency shall inform the individual of the reason and that the individual may make another request under paragraph (n)(1) and submit additional evidence satisfying the requirements.

(o) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

Section 2. Amend § 9002(5), Title 11 by making deletions as shown by strike through and insertions as shown by underline as follows::

(5) “Crime” for purposes of this chapter shall mean:

- h. Any act of human trafficking as defined in § 787 of this title.

Section 3. Amend § 4201(c) of Title 11 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4201. Transition provisions.

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

Title 11, Section Crime

787 Trafficking of an Individual, Forced Labor and Sexual Servitude

Section 4. Amend § 205(e), Title 11 by making deletions as shown by strike through and insertions as shown by underline as follows:

(e) Notwithstanding the period prescribed by subsection (b) of this section, a prosecution for any crime that is delineated in § 787 of this title and in which the victim is a minor, Subpart D of Subchapter II of Chapter 5 of this

title, or is otherwise defined as a “sexual offense” by § 761 of this title except §§ 763, 764 or 765 of this title, or any attempt to commit said crimes, may be commenced at any time. No prosecution under this subsection shall be based upon the memory of the victim that has been recovered through psychotherapy unless there is some evidence of the corpus delicti independent of such repressed memory. This subsection applies to all causes of action arising before, on or after July 15, 1992, and to the extent consistent with this subsection, it shall revive causes of action that would otherwise be barred by this section.

Section 5. Amend § 4121(a)(4), Title 11 by making deletions as shown by strike through and insertions as shown by underline as follows:

(4) “Sex offender” means any person who is, or has been:

a. Convicted of any of the offenses specified in §§ 765 through 780, § 787(b)(3), § 787(b)(4), § 1100A, §§ 1108 through 1112A, § 1335(a)(6), § 1335(a)(7), § 1352(2), § 1353(2) or § 1361(b) of this title, or of any attempt or conspiracy to commit any of the aforementioned offenses; or

Section 6. Amend § 9401(2), Title 11 by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9401. Transition provisions.

(2) “Crime” means an act or omission committed by a person, whether or not competent or an adult, which, if committed by a competent adult, is punishable by incarceration and which violates 1 or more of the following sections of this title:

OFFENSES AGAINST THE PERSON

787 Trafficking of an Individual, Forced Labor and Sexual Servitude

Section 7. Amend Chapter 24 of Title 11 by making deletions as shown by strike-through and making insertions as shown by underline as follows:

§ 2402 Interception of communications generally; divulging contents of communications, violations of chapter.

(c) Lawful acts. — It is lawful:

(3) For an investigative or law-enforcement officer acting in a criminal investigation or any other person acting at the prior direction and under the supervision of an investigative or law-enforcement officer in such investigation pursuant to a court order issued by the Superior Court pursuant to § 2407 of this title to intercept a wire, oral or electronic communication in order to provide evidence of the commission of the offenses including racketeering, murder, kidnapping, human trafficking, gambling, robbery, bribery, extortion, dealing in narcotic drugs or dangerous drugs, dealing in central nervous system depressant or stimulant drugs, controlled substances or counterfeit controlled substances, prison escape, jury tampering, stalking, any felony involving risk of physical injury to a victim or any conspiracy or solicitation to commit any of the foregoing offenses or which may provide evidence aiding in the apprehension of the perpetrator of any of the foregoing offenses.

§ 2405 Authorities permitted to apply for order authorizing interception.

The Attorney General, Chief Deputy Attorney General, State Prosecutor or Chief Prosecutor of any county may apply to a judge authorized to receive intercept applications and the judge, in accordance with § 2407 of this title, may grant an order authorizing the interception by investigative or law-enforcement officers of wire, oral or electronic communications when the interception may provide evidence:

(1) Of the commission of the offense of racketeering, murder, kidnapping, human trafficking, gambling, robbery, bribery, extortion, dealing in narcotic drugs or dangerous drugs, dealing in central nervous system depressant or stimulant drugs, dealing in controlled substances or counterfeit controlled substances, prison escape, jury tampering, or stalking;

Section 8. Amend Chapter 5 of Title 11 by making deletions as shown by strike-through and insertions as shown by underline as follows:

§ 1502 Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(9) "Racketeering" shall mean to engage in, to attempt to engage in, to conspire to engage in or to solicit, coerce or intimidate another person to engage in:

a. Any activity defined as "racketeering activity" under 18 U.S.C. § 1961(1)(A), (1)(B), (1)(C) or (1)(D); or

b. Any activity constituting any felony which is chargeable under the Delaware Code or any activity constituting a misdemeanor under the following provisions of the Delaware Code:

10. Chapter 5 of Title 11 relating to tampering with jurors, evidence and witnesses;

11. Chapter 51 of Title 30 relating to motor fuel tax offenses; or

12. Chapter 5 of Title 11 relating to human trafficking.

Section 9. Severability. – If any provision of this section or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

Approved June 30, 2014

HB 312 – Title 11

CHAPTER 297
FORMERLY
HOUSE BILL NO. 312
AS AMENDED BY
HOUSE AMENDMENT NO. 2

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

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

Section 1. Amend Title 11, § 3901(d) of the Delaware Code 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:

Title 11, Section Crime

803 Arson in the first degree

826 Burglary in the first degree

825 Burglary in the second degree

826A Home Invasion

636 Murder in the first degree

635 Murder in the second degree

632 Manslaughter

783 Kidnapping in the second degree

783A Kidnapping in the first degree

606 Abuse of a pregnant female in the first degree

613 Assault in the first degree

832 Robbery in the first degree

836 Carjacking 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

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.

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

Approved July 09, 2014

SB 260 – Title 21

CHAPTER 378
FORMERLY
SENATE BILL NO. 260

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE TO ALLOW FOR PARTICIPATION IN A DRIVING UNDER THE INFLUENCE TREATMENT PROGRAM BY DUI OFFENDERS.

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

Section 1. Amend § 4177C, Title 21 of the Delaware Code as follows:

§ 4177C Conditional licenses; reinstatement of license.

(i) Notwithstanding any other provision to contrary, any person charged with a driving under the influence offense who has been permitted to participate in the Court of Common Pleas Driving Under the Influence Treatment Program, and is enrolled in a program of rehabilitation and treatment, pursuant to 4177(f) or 4177D of this Title, supervised by that Court shall be eligible to have a conditional license in accordance with this subsection. A person may enter the Treatment Program without seeking a conditional license. If the person chooses to obtain a conditional license, or has any registered vehicles, the person shall be required to have an ignition interlock device installed on all vehicles registered in that person's name. Alternatively, the person has the option to have the device installed on a vehicle or vehicles owned by another person, with the permission of that person, if there are no vehicles registered in the name of the offender. The ignition interlock device shall be immediately installed on eligible vehicles following the effective date of entry into the Driving Under the Influence Treatment Program. The ignition interlock device shall remain installed on the vehicle or vehicles for a minimum period of 12 months from the effective date of revocation or longer if the Court directs. That offender may be eligible to apply for an ignition interlock device license under the following terms:

- (1) At least 30 days have elapsed since the effective date of the revocation;
- (2) All licenses have been surrendered to the Division of Motor Vehicles prior to issuance of the IID (Ignition Interlock Device) license; and
- (3) The participant is not in violation of any terms of the Court of Common Pleas DUI Treatment Program.

(j) Notwithstanding §§ 4177A and 4177B of this title, any person who has successfully completed and graduated from the Court of Common Pleas Driving Under the Influence Treatment Program, shall be permitted to apply for reinstatement of their driver's license and/or driving privilege under the following terms:

- (1) Payment of all fees under the schedule adopted by the Secretary;
- (2) Payment of all Court fines, costs and fees; and
- (3) At least 10 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued or since the day driving privileges were revoked if no conditional license was sought.

Section 2. Amend § 4177A(b), Title 21 of the Delaware Code as follows:

§ 4177A Revocation of license for violation of § 4177.

(b) Any person sentenced under § 4177(d) of this title shall have the person's driver's license and/or driving privileges revoked by the Secretary until the person has satisfactorily completed a program established pursuant to § 4177D of this title; provided however, that successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program shall satisfy this requirement.

Section 3. Amend § 4177(f), Title 21 of the Delaware Code as follows:

§ 4177 Driving a vehicle while under the influence or with a prohibited alcohol or drug content; evidence; arrests; and penalties.

(f) In addition to any penalty for a violation of subsection (a) of this section, the court shall order the person to complete an alcohol evaluation and to complete a program of education or rehabilitation pursuant to § 4177D of this title which may include inpatient treatment and be followed by such other programs as established by the treatment facility, not to exceed a total of 15 months and to pay a fee not to exceed the maximum fine; provided however, that successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program shall satisfy this requirement.

Section 4. Amend § 4177D, Title 21 of the Delaware Code as follows:

§ 4177D Courses of instruction; rehabilitation programs.

The Secretary of Safety and Homeland Security, through the Office of Highway Safety shall establish courses of instruction and programs of rehabilitation for persons whose drivers' licenses have been revoked for operating a vehicle while under the influence of intoxicating liquor or drugs. The Secretary of Safety and Homeland Security shall administer such courses and programs and adopt rules and regulations therefor, and shall establish a schedule of fees for enrollment in such courses and programs which shall not exceed the maximum fine imposed for the offense as set forth in § 4177 of this title. Successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program shall be considered equivalent to a course of instruction and/or rehabilitation approved under this section.

Section 5. Amend § 4177(d) (2), Title 21 of the Delaware Code as follows:

§ 4177 Driving a vehicle while under the influence or with a prohibited alcohol or drug content; evidence; arrests; and penalties.

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

(2) For a second offense occurring at any time within 10 years of a prior offense, be fined not less than \$750 nor more than \$2,500 and imprisoned not less than 60 days nor more than 18 months. The minimum sentence for a person sentenced under this paragraph 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.

Section 6. Amend § 2732(a)(3), Title 21 as follows:

§ 2732 Mandatory revocation or suspension of license.

(a) The Department shall forthwith revoke the license or driving privileges or both of any person upon receiving a record of the conviction, or adjudication of delinquency by Family Court for acts which would constitute such an offense if committed by an adult, of such person of any of the following crimes:

(3) Driving a vehicle while under the influence of intoxicating liquor or narcotic drug; provided that upon successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program the revocation may be rescinded;

Section 7. This Act shall become effective on August 15, 2014.

Approved July 31, 2014

HS 1 for HB 212 – Titles 11, 21

CHAPTER 396
FORMERLY
HOUSE SUBSTITUTE NO. 1 FOR
HOUSE BILL NO. 212
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO DRIVER'S LICENSES,
DRIVING UNDER THE INFLUENCE AND IGNITION INTERLOCK DEVICE REQUIREMENTS.

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

Section 1. Amend § 2742, Title 21 of the Delaware Code as follows:

(d) No revocation under subsection (b) or (c) of this section is effective until the Secretary or a police officer or other person acting on the Secretary's behalf notifies the person of the revocation and allows the person a 15-day period to request of the Secretary in writing a hearing as herein provided. If no request is filed in writing with the Division of Motor Vehicles within the 15-day period, the order of revocation becomes effective. If a request for a hearing is filed, a revocation is not effective until the final decision of the hearing officer resulting in a decision adverse to the person.

Section 2. Amend Subchapter IX, Chapter 41, Title 21 of the Delaware Code by making such insertions as shown by underlining and deletions as shown by strikethrough follows:

§ 4177 Driving a vehicle while under the influence or with a prohibited alcohol or drug content; evidence; arrests; and penalties.

(a) No person shall drive a vehicle:

(1) When the person is under the influence of alcohol;
(2) When the person is under the influence of any drug;
(3) When the person is under the influence of a combination of alcohol and any drug;
(4) When the person's alcohol concentration is .08 or more; or
(5) When the person's alcohol concentration is, within 4 hours after the time of driving .08 or more. Notwithstanding any other provision of the law to the contrary, a person is guilty under this subsection, without regard to the person's alcohol concentration at the time of driving, if the person's alcohol concentration is, within 4 hours after the time of driving .08 or more and that alcohol concentration is the result of an amount of alcohol present in, or consumed by the person when that person was driving;

(6) When the person's blood contains, within 4 hours of driving, any amount of an illicit or recreational drug that is the result of the unlawful use or consumption of such illicit or recreational drug or any amount of a substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug prior to or during driving.

(b) In a prosecution for a violation of subsection (a) of this section:

(1) Except as provided in paragraph (b)(3)b. of this section, the fact that any person charged with

violating this section is, or has been, legally entitled to use alcohol or a drug shall not constitute a defense.

(2) a. No person shall be guilty under paragraph (a)(5) of this section when the person has not consumed alcohol prior to or during driving but has only consumed alcohol after the person has ceased driving and only such consumption after driving caused the person to have an alcohol concentration of .08 or more within 4 hours after the time of driving.

b. No person shall be guilty under paragraph (a)(5) of this section when the person's alcohol concentration was .08 or more at the time of testing only as a result of the consumption of a sufficient quantity of alcohol that occurred after the person ceased driving and before any sampling which raised the person's alcohol concentration to .08 or more within 4 hours after the time of driving.

(3) a. No person shall be guilty under paragraph (a)(6) of this section when the person has not used or consumed an illicit or recreational drug prior to or during driving but has only used or consumed such drug after the person has ceased driving and only such use or consumption after driving caused the person's blood to contain an amount of the drug or an amount of a substance or compound that is the result of the use or consumption of the drug within 4 hours after the time of driving.

b. No person shall be guilty under paragraph (a)(6) of this section when the person has used or consumed the drug or drugs detected according to the directions and terms of a lawfully obtained prescription for such drug or drugs.

c. Nothing in this subsection nor any other provision of this chapter shall be deemed to preclude prosecution under paragraph (a)(2) or (a)(3) of this section.

(4) The charging document may allege a violation of subsection (a) of this section without specifying any particular paragraph of subsection (a) of this section and the prosecution may seek conviction under any of the paragraphs of subsection (a) of this section.

(c) For purposes of subchapter III of Chapter 27 of this title and this subchapter, the following definitions shall apply:

(1) "Alcohol concentration of .08 or more" shall mean:

a. An amount of alcohol in a sample of a person's blood equivalent to .08 or more grams of alcohol per 100 milliliters of blood; or

b. An amount of alcohol in a sample of a person's breath equivalent to .08 or more grams per 210 liters of breath.

(2) "Alcohol concentration of .15 or more" shall mean:

a. An amount of alcohol in a sample of a person's blood equivalent to .15 or more grams of alcohol per 100 milliliters of blood; or

b. An amount of alcohol in a sample of a person's breath equivalent to .15 or more grams per 210 liters of breath.

(3) "Alcohol concentration of .20 or more" shall mean:

a. An amount of alcohol in a sample of a person's blood equivalent to .20 or more grams of alcohol per 100 milliliters of blood; or

b. An amount of alcohol in a sample of a person's breath equivalent to .20 or more grams per 210 liters of breath.

(4) "Chemical test" or "test" shall include any form or method of analysis of a person's blood, breath or urine for the purposes of determining alcohol concentration or the presence of drugs which is approved for use by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, the Delaware State Police Crime Laboratory, any state or federal law-enforcement agency, or any hospital or medical laboratory. It shall not, however, include a preliminary screening test of breath performed in order to estimate the alcohol concentration of a person at the scene of a stop or other initial encounter between an officer and the person.

(5) "Drive" shall include driving, operating, or having actual physical control of a vehicle.

(6) "Drug" shall include any substance or preparation defined as such by Title 11 or Title 16 or which has been placed in the schedules of controlled substances pursuant to Chapter 47 of Title 16. "Drug" shall also include any substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, exhilaration, stupefaction or lethargy or for the purpose of dulling the brain or nervous system.

(7) "Illicit or recreational drug" as that phrase is used in paragraph (a)(6) of this section means any substance or preparation that is:

a. Any material, compound, combination, mixture, synthetic substitute or preparation which is enumerated as a Schedule I controlled substance under § 4714 of Title 16; or

b. Cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of Title 16; or

c. 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 Title 16; or

d. 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 Title 16; or

e. Phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of Title 16; or

f. A designer drug as defined in § 4701 of Title 16; or

g. A substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, stupefaction or lethargy or for the purpose of dulling the brain or nervous system.

(8) "Unlawful use or consumption" as that phrase is used in paragraph (a)(6) of this section means that the person used or consumed a drug without legal authority to do so as provided by Delaware law. This Code describes the procedure by which a person may lawfully obtain, use or consume certain drugs. In a prosecution brought under paragraph (a)(6) of this section, the State need not present evidence of a lack of such legal authority. In a prosecution brought under paragraph (a)(6) of this section, if a person claims that such person lawfully used or consumed a drug, it is that person's burden to show that person has complied with and satisfied the provisions of this Code regarding obtaining, using or consumption of the drug detected.

(9) "Substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug" as that phrase is used in paragraph (a)(6) of this section shall not include any substance or compound that is solely an inactive ingredient or inactive metabolite of such drug.

(10) "Vehicle" shall include any vehicle as defined in § 101(80) of this title, any off-highway vehicle as defined in § 101(39) of this title and any moped as defined in § 101(31) of this title.

(11) "While under the influence" shall mean that the person is, because of alcohol or drugs or a combination of both, less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of a vehicle.

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

(1) For the first offense, be fined not less than \$500 nor more than \$1,500 or imprisoned not more than 12 months or both. Any period of imprisonment imposed under this paragraph may be suspended.

(2) For a second offense occurring at any time within 10 years of a prior offense, be fined not less than \$750 nor more than \$2,500 and imprisoned not less than 60 days nor more than 18 months. The minimum sentence for a person sentenced under this paragraph may not be suspended.

(3) For a third offense occurring at any time after 2 prior offenses, be guilty of a class G felony, be fined not more than \$5,000 and be imprisoned not less than 1 year nor more than 2 years. The provisions of § 4205(b)(7) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 months of the sentence 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. The sentencing court may suspend up to 9 months of any minimum sentence set forth in this paragraph 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.

(4) For a fourth offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not more than \$7,000, and imprisoned not less than 2 years nor more than 5 years. The provisions of § 4205(b)(5) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6 months of the sentence 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. The sentencing court may suspend up to 18 months of any minimum sentence set forth in this paragraph 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.

(5) For a fifth offense occurring any time after 4 prior offenses, be guilty of a class E felony, be fined not more than \$10,000 and imprisoned not less than 3 years nor more than 5 years.

(6) For a sixth offense occurring any time after 5 prior offenses, be guilty of a class D felony, be fined not more than \$10,000 and imprisoned not less than 4 years nor more than 8 years.

(7) For a seventh offense occurring any time after 6 prior offenses, or for any subsequent offense, be guilty of a class C felony, be fined not more than \$15,000 and imprisoned not less than 5 years nor greater than 15 years.

(8) For the fifth, sixth, seventh offense or greater, the provisions of § 4205(b) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, at least 1/2 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 1/2 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. No conviction for a violation of this section, for which a sentence is imposed pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section, shall be considered a predicate felony for conviction or sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.

(9) Any minimum sentence suspended pursuant to paragraph (d)(3), (d)(4), or (d)(8) of this section shall be upon the condition that the offender shall complete a program of supervision which shall include:

a. A drug and alcohol abstinence program requiring that the offender maintain a period 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.

b. An intensive inpatient or outpatient drug and alcohol treatment program for a period of not less than 3 months. Such treatment and counseling may be completed while an offender is serving a Level V or Level IV sentence.

c. Any other terms or provisions deemed appropriate by the sentencing court or the Department of Correction.

(10) In addition to the penalties otherwise authorized by this subsection, any person convicted of a violation of subsection (a) of this section, committed while a person who has not yet reached the person's seventeenth birthday is on or within the vehicle shall:

a. For the first offense, be fined an additional minimum of \$500 and not more than an additional \$1,500 and sentenced to perform a minimum of 40 hours of community service in a program benefiting children.

b. For each subsequent like offense, be fined an additional minimum of \$750 and not more than an additional \$2,500 and sentenced to perform a minimum of 80 hours of community service in a program benefiting children.

c. Violation of this paragraph shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of subsection (a) of this section. Nothing in this paragraph shall prevent conviction for a violation of both subsection (a) of this section and any offense as defined elsewhere by the laws of this State.

d. Violation of or sentencing pursuant to this paragraph shall not be considered as evidence of either comparative or contributory negligence in any civil suit or insurance claim, nor shall a violation of or sentencing pursuant to this paragraph be admissible as evidence in the trial of any civil action.

(11) A person who has been convicted of prior or previous offenses of this section, as defined in § 4177B(e) of this title, need not be charged as a subsequent offender in the complaint, information or indictment against the person in order to render the person liable for the punishment imposed by this section on a person with prior or previous offenses under this section. However, if at any time after conviction and before sentence, it shall appear to the Attorney General or to the sentencing court that by reason of such conviction and prior or previous convictions, a person should be subjected to paragraph (d)(3), (d)(4), (d)(5), (d)(6) or (d)(7) of this section, the Attorney General shall file a motion to have the defendant sentenced pursuant to those provisions. If it shall appear to the satisfaction of the court at a hearing on the motion that the defendant falls within paragraph (d)(3), (d)(4),

(d)(5), (d)(6) or (d)(7) of this section, the court shall enter an order declaring the offense for which the defendant is being sentenced to be a felony and shall impose a sentence accordingly.

(12) If a person enters a guilty plea in a court of competent jurisdiction to a violation of subsection (a) of this section, such action shall constitute a waiver of the right to an administrative hearing as provided for in §2742 of this title and shall act to withdraw any request previously made therefor.

(e) In addition to any penalty for a violation of subsection (a) of this section, the court shall prohibit the person convicted from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device; the terms of installation of the device and licensing of the individual to drive shall be as set forth in § 4177C and § 4177E of this title. A person who is prohibited from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device under this title at the time of an offense under subsection (a) of this section shall, in addition to any other penalties provided under law, pay a fine of \$2,000 and be imprisoned for 60 days.

§ 4177A. Revocation of license for violation of § 4177.

(a) The Secretary shall forthwith revoke the driver's license and/or driving privileges of any person convicted of a violation of § 4177 of this title or any offense under the laws of any state or of the United States or local jurisdiction or the District of Columbia which prohibits driving under the influence of alcohol or drugs. Such revocation shall be for a period of:

(1) First offense -- 12 months; except that if the offender's blood alcohol concentration was between .15 -- .19 the revocation period shall be 18 months, or if the offender's blood alcohol concentration was .20 or greater or the offender refused a chemical test, the period of revocation shall be 24 months.

(2) Second offense -- 18 months; except that if the offender's blood alcohol concentration was between .15-.19 the revocation period shall be 24 months, or if the offender's blood alcohol concentration was .20 or greater, or the offender has refused a chemical test, the revocation period shall be 30 months.

(3) Third offense -- 24 months; except that if the offender's blood alcohol concentration was between .15-.19 the revocation period shall be 30 months, or if the offender's blood alcohol concentration was .20 or greater, or the offender has refused a chemical test, the revocation period shall be 36 months.

(4) Fourth or further subsequent offenses -- 60 months regardless of the blood alcohol concentration.

(b) Any person sentenced under subsection (d) of § 4177 of this title shall have the person's driver's license and/or driving privileges revoked by the Secretary until the person has satisfactorily completed a program established pursuant to § 4177D of this title and complied with the ignition interlock device requirements set forth in §§ 4177C and 4177E of this title.

(c) The Secretary shall have power and authority to refuse to issue a driver's license to any individual whose driver's license or driving privilege was revoked pursuant to this section until such person has satisfied the Secretary that the person has been of good behavior for the entire period of the revocation and until the person has complied with all applicable provisions of this section. If the Secretary refuses to issue a driver's license after the period of revocation has ended and after all fines and/or fees are paid, the applicant may appeal to the Superior Court of the county of residence.

§ 4177B. First offenders; election in lieu of trial.

(a) Any person who:

(1) Has never had a previous or prior conviction or offense as defined in paragraph (e)(1) of this section;

(2) Had not accumulated 3 or more moving violations within 2 years of the date of the offense in question on the person's driving record according to the records of the Division of Motor Vehicles of the person's state of residence; and

(3) Was not, with respect to the offense in question, involved in an accident resulting in injury to any person other than the person's own self; and

(4) Did not have an alleged alcohol concentration of .15 or more at the time of driving or within 4 hours of driving;

(5) Was not driving without a valid license or under a suspended or revoked license at the time of the offense in question; and

(6) Is not subject to the enhanced penalties of § 4177(d)(10) of this title for carrying a child on or within that person's vehicle while driving under the influence;

may qualify for the first offense election at the time of arraignment. The court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and shall place the accused on probation upon terms and conditions, including enrollment in a course of instruction or program of rehabilitation established pursuant to § 4177D of this title. If the accused elects to apply, the application shall constitute a waiver of the right to speedy trial. If the person elects not to apply, or if is not accepted, the person shall promptly be arraigned for a

violation of § 4177 of this title. If a person applies for or accepts the first offense election under this section, such act shall constitute agreement to pay the costs of prosecution for the case, and the court shall assess such costs and impose them as a condition of probation. If a person accepts the first offense election under this section, such action shall constitute a waiver of the right to an administrative hearing as provided for in § 2742 of this title and shall act to withdraw any request previously made therefor. For the purposes of this section, costs of prosecution shall be \$250 and any additional costs as established by the appropriate court schedules; and

(b) If a term or condition of probation is violated, including failure to appear for evaluation at an assigned evaluating agency, the person shall be brought before the court, or if the person fails to appear before the court, in either case, upon a determination by the court that the terms have been violated, the court shall enter an adjudication of guilt and proceed as otherwise provided under § 4177 of this title.

(c) Upon fulfillment of the terms and conditions of probation, including satisfactory completion of the course of instruction and/or program of rehabilitation, and payment of all fees, the court shall discharge the person and the proceedings against the person and shall simultaneously with said discharge and dismissal submit to the Division of Motor Vehicles a written report specifying the name of the person and the nature of the proceedings against the person which report shall be retained by the Division of Motor Vehicles for further proceedings, if required.

(d) The driver's license and/or driving privileges of a person applying for enrollment in an education or rehabilitation program pursuant to subsection (a) of this section shall forthwith be revoked by the Secretary for a period of 1 year. If the person is accepted into the education or rehabilitation program the period of revocation shall be for 1 year from the date of the initial revocation. If the person is not accepted for enrollment, or if the person is found by the court to be in violation of the terms of enrollment, the revocation under this section shall continue until sentence is imposed. This revocation shall not be concurrent with or part of any period of revocation established under any other provisions of this subchapter and shall be effective as of the date of sentencing for a period of 1 year.

(e) (1) Prior or previous conviction or offense. -- For purposes of §§ 2742, 4177 and 4177B of this title the provisions of § 4215A of Title 11 shall not be applicable but instead the following shall constitute a prior or previous conviction or offense:

a. A conviction or other adjudication of guilt or delinquency pursuant to § 4175(b) or § 4177 of this title, or a similar statute of any state or local jurisdiction, any federal or military reservation or the District of Columbia;

b. A conviction or other adjudication of guilt or delinquency under a criminal statute encompassing death or injury caused to another person by the person's driving where driving under the influence or with a prohibited alcohol concentration was an element of the offense, whether such conviction was pursuant to a provision of this Code or the law of any state, local jurisdiction, any federal or military reservation or the District of Columbia;

c. Participation in a course of instruction or program of rehabilitation or education pursuant

to § 4175(b), § 4177 or § 4177B of this title, or a similar statute of any state, local jurisdiction, any federal or military

reservation or the District of Columbia, regardless of the existence or validity of any accompanying attendant plea or adjudication of guilt;

d. A conditional adjudication of guilt, any court order, or any agreement sanctioned by a court requiring or permitting a person to apply for, enroll in or otherwise accept first offender treatment or any other diversionary program under this section or a similar statute of any state, local jurisdiction, any federal or military reservation or the District of Columbia.

(2) Time limitations. -- For the purpose of determining the applicability of enhanced penalties pursuant to § 4177 of this title, the time limitations on use of prior or previous convictions or offenses as defined by this subsection shall be:

a. For sentencing pursuant to § 4177(d)(2) of this title, the second offense must have occurred within 10 years of a prior offense;

b. For sentencing pursuant to § 4177(d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8) or (d)(9) of this title there shall be no time limitation and all prior or previous convictions or offenses as defined in paragraph (e)(1) of this section shall be considered for sentencing.

c. For any subsection that does not have a time limitation prescribed, all prior or previous convictions or offenses as defined in paragraph (e)(1) of this section shall be considered.

(3) Computation of time limitations. -- For the purpose of computing the periods of time set out in § 2742, § 4177 or § 4177B of this title, the period shall run from the date of the commission of the prior or previous offense to the date of the commission of the charged offense. However, in any case in which the prior offense is defined in subparagraph (1)c. or (1)d. of this subsection, the date of the driving incident which caused the adjudication or program participation shall be the date of the prior or previous offense.

(4) Separate and distinct offenses. -- For the purpose of determining the applicability of enhanced penalties pursuant to § 4177 of this title, prior or previous convictions or offenses used to determine eligibility for such enhanced penalties must be separate and distinct offenses; that is, each must be successive to the other with some period of time having elapsed between sentencing or adjudication for an earlier offense or conviction and the commission of the offense resulting in a subsequent conviction.

(5) Challenges to use of prior offenses. -- In any proceeding under § 2742, § 4177 or § 4177B of this title, a person may not challenge the validity of any prior or previous conviction, unless that person first successfully challenges the prior or previous conviction in the court in which the conviction arose and provides written notice of the specific nature of the challenge in the present proceeding to the prosecution at least 20 days before trial.

(f) The Attorney General may move the sentencing court to apply this section to any person who would otherwise be disqualified from consideration under this section because of the applicability of:

(1) Paragraph (a)(1) of this section, if any prior offense as defined in subsection (e) of this section is not within 10 years of the offense for which the person is being sentenced; or

(2) Paragraphs (a)(2), (a)(3), (a)(4), (a)(5) and (a)(6) of this section.

In the event of such a motion by the Attorney General, the court may in its discretion apply the terms of this section to that person.

§ 4177C. Ignition interlock licenses; reinstatement of license.

(a) Any person who has entered a first offense election pursuant to §4177B of this Title shall be immediately eligible to apply for an ignition interlock device license under the following terms:

(1) All licenses have been surrendered to the Division of Motor Vehicles prior to issuance of the IID [ignition interlock device] license.

(2) The person has installed an ignition interlock device on a minimum of 1 vehicle owned or operated by the individual or may have the device installed on a vehicle owned by another person if there are no vehicles owned by the offender.

(b) Any person who, as a first offender is sentenced pursuant to § 4177(d) of this title and is enrolled in a course of instruction and/or program of rehabilitation pursuant to § 4177D of this title shall be eligible to apply for an ignition interlock device license under the following terms:

(1) a. At least 30 days has elapsed since the effective date of the revocation if the person's blood alcohol concentration was below .15; or

b. At least 45 days has elapsed since the effective date of the revocation if the person's blood alcohol concentration was .15 or greater.

(2) All licenses have been surrendered to the Division of Motor Vehicles prior to issuance of the IID license.

(3) The person has installed an ignition interlock device on a minimum of 1 vehicle owned or operated by the individual or may have the device installed on a vehicle owned by another person if there are no vehicles owned by the offender.

(c) Any person who, as a second or subsequent offender is sentenced pursuant to § 4177(d) of this title, shall be eligible to apply for an IID license under the following terms:

(1) a. For a person sentenced as a second offender pursuant to §4177(d) of this title, at least 60 days have elapsed since the effective date of the revocation;

b. For a person sentenced as a third offender pursuant to §4177(d) of this title, at least 90 days have elapsed since the effective date of the revocation;

c. For a person sentenced as a fourth or subsequent offender pursuant to §4177(d) of this title, at least 6 months have elapsed since the effective date of the revocation.

(2) The person is enrolled in or has satisfactorily completed a course of instruction and/or program of rehabilitation pursuant to § 4177D of this title.

(3) All licenses have been surrendered to the Division of Motor Vehicles prior to issuance of the IID license.

(4) The person has installed an ignition interlock device on all vehicles owned or operated by the individual or may have the device installed on a vehicle owned by another if there are no vehicles owned by the offender.

(d) Reinstatement of License. Notwithstanding §§ 4177A and 4177B of this title, any person who has satisfactorily completed a course and/or program established pursuant to § 4177D of this title, shall be permitted to apply for reinstatement of their driver's license and/or driving privilege under the following terms:

(1) Payment of all fees under the schedule adopted by the Secretary;

(2) For a person who elected to enroll in a course of instruction or program of rehabilitation pursuant to § 4177B of this title, at least 4 months have elapsed since the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(3) For a person sentenced for a first offense pursuant to § 4177 of this title, whose blood alcohol concentration was below .15, at least 12 months have elapsed since the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(4) For a person sentenced for a first offense pursuant to § 4177 of this title, whose blood alcohol concentration was .15 to .19, at least 17 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(5) For a person sentenced for a first offense pursuant to § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 23 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(6) For a person sentenced for a second offense pursuant to § 4177 of this title, at least 16 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(7) For a person sentenced for a second offense pursuant to § 4177 of this title, whose blood alcohol concentration was .15 to .19, at least 22 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(8) For a person sentenced for a second offense pursuant to § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 28 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(9) For a person sentenced for a third offense pursuant to § 4177 of this title, at least 21 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(10) For a person sentenced for a third offense pursuant to § 4177 of this title, whose blood alcohol concentration was .15 to .19, at least 27 months have elapsed since the day the ignition interlock device was

installed on the vehicle or vehicles and the ignition interlock license was issued.

(11) For a person sentenced for a third offense pursuant to § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 33 months have elapsed since the day the ignition interlock was installed on the vehicle or vehicles and the ignition interlock license was issued.

(12) For a person sentenced for a fourth or further subsequent offense pursuant to § 4177 of this title, at least 54 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued.

(h) Notwithstanding any other provision to the contrary, any person whose alcohol concentration is less than .08 (1) who is convicted of a first offense pursuant to § 4177 of this title, (2) who makes a first offense election pursuant to § 4177B of this title, or (3) whose license is revoked for a first offense pursuant to Chapter 27 of this title, where it is not established that the person was under the influence of any other intoxicating substance, shall be granted a conditional license immediately upon application, and shall not be required to complete a course of instruction established under § 4177D of this title. Nothing in this subsection shall be read to imply that an individual with an alcohol concentration of less than .08 is under the influence of alcohol.

§ 4177E. Ignition Interlock Device Program.

(a) Participation. -- All persons convicted of an offense must participate in the Ignition Interlock Device Program as specified herein.

(b) Definitions. -- For the purpose of this section:

(1) "Ignition interlock device" (IID) or "approved device" shall mean ignition equipment approved by the Director of the Division of Motor Vehicles pursuant to this section, designed to prevent a motor vehicle from being operated by a person who has consumed alcoholic beverages.

(2) "Service provider" means a legal entity which the Director of the Division of Motor Vehicles finds complies with the requirements of this section and approves to install IIDs on participants' motor vehicles.

(3) "Offense" means a first offenders election pursuant to § 4177B of this title or a conviction pursuant to § 4177 of this title.

(4) "Offender" means a person who has accepted a first offender election pursuant to § 4177B or been convicted of violating § 4177 of this title.

(5) "Lockout" means any time an offender attempts to use a motor vehicle equipped with an IID and any percentage of alcoholic beverages is measured on said device.

(c) IID Standards. -- The Division of Motor Vehicles shall establish the required calibration setting and shall provide standards for the certification, installation, setting, repair and removal of the IIDs.

(d) Requirements. --

(1) Every offender shall be subject to the ignition interlock requirements of this section and §4177C during any period of revocation imposed for an offense. If at any time before the end of the revocation period, the person registers a motor vehicle(s) in the person's name, that person shall immediately install an ignition interlock device in such vehicle(s).

(2) Except as otherwise provided in §4177C of this title for first offenders, a person covered under

paragraph (d)(1) of this section must have the ignition interlock device installed in all motor vehicles that the person owns or operates, or both, for the required minimum periods as specified in § 4177C(d) of this title prior to the reinstatement of that person's driver's license.

(3) An offender's driving record maintained by the Division of Motor Vehicles shall indicate any revocation period to be served under the IID program. The Division of Motor Vehicles shall issue an IID license to an otherwise eligible participant. Each of the IID license, the registration of the vehicle on which the IID is installed and the participant's driving record maintained by the Division of Motor Vehicles shall indicate that the participant shall not operate any motor vehicle except when such vehicle is equipped with an Ignition Interlock Device.

(e) Installment payment of costs; indigent program. -- The Division of Motor Vehicles shall establish a payment plan for all persons obtaining an IID under this section. The plan shall be administered by the service provider(s) and the person obtaining the IID shall make all payments under the plan to the service provider(s). The Division shall further develop and implement an indigent plan for impoverished persons, which shall be available on a lottery basis. For every 20 devices installed at regular prices, at least 1 device shall be provided at approximately half price under this program.

(f) IID license. --

(1) All persons convicted of an offense shall be eligible for an IID license as set forth in § 4177C of this Title if the following conditions are met:

- a. The offender must be a Delaware resident;
- b. The offender has had an IID installed on a minimum of one vehicle owned or operated, or both, by the individual; provided, however, that a person convicted of a second, third, fourth or greater offense pursuant to §4177 of this title must have an IID installed on each of the motor vehicles owned or operated, or both, by the individual. subsection (d) of this section;
- c. The offender's driving privileges or license must not be currently suspended, revoked, denied or unavailable for any other violations of the law of any jurisdiction that would prohibit the issuance of the IID, unless it is determined by the Secretary of Transportation or the Secretary's designee that the individual is eligible for reinstatement;
- d. The offender's driving privilege or license must not be revoked pursuant to § 1009 of Title 10 or a like provision of another jurisdiction;
- e. The offender must install an IID in all motor vehicles that person will operate;
- f. The offender must either own the motor vehicle in which the IID is to be installed or file the notarized approval of installation by the motor vehicle owner with the Division of Motor Vehicles;
- g. offender must provide proof of insurance for the vehicle on which the IID will or has been installed. The proof of insurance must verify that the offender is permitted to drive the specific motor vehicle in question regardless of ownership of the vehicle;
- h. The offender shall meet any other eligibility criteria established by § 4177C of this Title or by regulations of the Division of Motor Vehicles.

(2) An offender shall lose the privilege of having an IID license for failure to comply with any of

the following:

a. The offender shall abide by the terms of the subsequent offender's lease with the service provider as approved by the Division of Motor Vehicles;

b. The offender shall comply with the Division of Motor Vehicles regulations concerning offender IID license restrictions;

c. The offender shall not attempt, nor allow or cause an attempt to bypass, tamper with, disable or remove the IID or its wires in connection;

d. The offender shall not attempt to operate a motor vehicle without possessing registration and an IID license which complies with this section;

e. The offender shall not violate any section of this title relating to the use, possession or consumption of alcohol or intoxicating substances;

f. The offender shall accumulate no more than 5 points per year;

g. The offender shall continue to meet all eligibility criteria identified in paragraph (1) of this subsection;

h. The offender shall provide proof to the Division of Motor Vehicles that an approved IID has been installed prior to being issued an IID license;

i. The offender shall not fail or refuse to take random tests at such times and by such means as the Division of Motor Vehicle requires;

j. The offender shall keep scheduled appointments with the Division and the service provider; and

k. The offender shall be required to report to the service provider on a bimonthly basis for service of the approved IID.

Section 3. The Division of Motor Vehicles may promulgate any regulations necessary to implement the provisions of this Act.

Section 4. In no case shall the repeal or amendment of any statute or statutory provision by this Act have the effect of releasing or extinguishing any penalty, forfeiture or liability incurred under such statute or statutory provision, and such statute or statutory provision shall be treated as remaining in full force and effect for the purpose of sustaining any proper action or prosecution for enforcement of such penalty, forfeiture or liability. Any action, case, prosecution trial or other legal proceeding in progress under or pursuant to any statute or statutory provision repealed or amended by this Act shall be preserved and shall not become illegal or terminated irrespective of the stage of such proceedings. For the purpose of such proceedings, the prior law shall remain in full force and effect.

Section 5. The provisions of this Act shall take effect 180 days after enactment, which shall be contingent and occur upon appropriation by the General Assembly or receipt by incentive grant of any funds to implement its provisions.

Approved August 06, 2014

CHAPTER 415
FORMERLY
HOUSE BILL NO. 260
AS AMENDED BY
HOUSE AMENDMENT NO. 2

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

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 § 1335, Title 11 of the Delaware Code as follows:

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

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

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

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

a. For the purposes of paragraphs (a)(9), (a)(9)b., and (a)(9)d.:

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

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

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

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

3. 'Sexual contact' means any touching by one person of the uncovered anus, breast, buttocks, or genitalia of another person or any touching of a person with the uncovered anus, breasts, buttocks or genitalia of another person.

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

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

6. 'Sexual conduct' means actual or simulated:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved August 12, 2014

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 mail a non-forwardable letter to the last known address of the person. Mailing address will be done in batch and sent 30 days prior to the re-registration date.
- B. For example, if registration date is March 15, a letter will be mailed out in February stating you must respond prior to March 31st that year. 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. Currently we have no reporting location in Sussex County.

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

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

SEX OFFENDER TIER III ASSESSMENT

1. Automatic designation to Tier III

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

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

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

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

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

SEX OFFENDER TIER II ASSESSMENT

1. Automatic Designation to Tier II

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

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

SEX OFFENDER TIER I ASSESSMENT

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

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

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

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

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

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

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

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

BAIL

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

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

- Presumptive bail under Delaware law is to release upon a defendant’s own recognizance or upon an unsecured appearance bond.
- Delaware law requires judicial officers to consider **all** legally relevant circumstances and criteria in reaching a bail decision.
- Delaware law requires the Court to employ an objective risk assessment instrument to gauge a person’s risk of flight and re-arrest.
- Departure from presumptive release upon OR or unsecured bail is permissible **only** if a totality of the circumstances analysis determines that secured bail is necessary to (a) ensure the defendant’s appearance to answer charges and/or (b) to ensure the safety of any victims or witnesses or the community.
- In considering and weighing legally relevant factors, the judicial officer must balance the rights of the defendant:
 - to be presumed innocent,
 - to be at liberty while awaiting trial,
 - to develop a defense,
 - to provide financial and other support for family, and
 - to preclude pressure to resolve the case to escape confinement with the State’s interests:
 - to ensure the defendant appears to answer to criminal charges,
 - to protect victims, witnesses, and the community, and
 - to ensure the proper administration of justice.
- A totality of the circumstances analysis requires a judicial officer to focus on **all** the factors legally relevant to a bail decision, not on a single factor, such as nature of the charged offense.
- A totality of the circumstances analysis requires and permits a judicial officer to make, “...a balanced assessment of the relative weights” of all the various factors legally relevant to a bail decision.²⁵
- 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.

²⁵ *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).²⁶
 - **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.

²⁶ 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 capiases on the case; whether Work Referral or Wage Assignment has been ordered but not defendant failed to follow order; history of FTP capiases on all cases; amounts owed to all courts at time of arrest on FTP capiases.
- 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)].

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- Motor Vehicle: Imperative to remember that secured bail may not be ordered as initial bail for non-jailable offenses. A driver's license may be used as a form of secured bail provided defendant is given a receipt.

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.