

# **SENTAC**



**Delaware Sentencing  
Accountability Commission  
Benchmark  
2014\***

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

<b>SUMMARY OF PRESUMPTIVE SENTENCES</b>			
<b>Crime Classification</b>	<b>Presumptive Sentence</b>	<b>Statutory</b>	<b>Page Ref.</b>
<b>Felonies</b>			
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
<b>Misdemeanors</b>			
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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
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<b>SUMMARY OF ACCEPTANCE OF RESPONSIBILITY GUIDELINES</b>			
<b>Crime Classification</b>	<b>Presumptive Sentence</b>	<b>Acceptance of Responsibility Guideline</b>	<b>Page</b>
<b>Felonies</b>			
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Class D (violent)	Up to 2 yrs. @ Level V	Up to 18 mos. @ Level V	43
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Class E (violent)	Up to 15 mos. @ Level V	Up to 11 mos. @ Level V	49
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## INTRODUCTION

The Delaware Sentencing Accountability Commission (hereinafter referred to as "SENTAC") was created under Title 11, §6580 of the Delaware Code. The overall purpose of the creation of the Commission was to establish a system that emphasizes accountability of the offender to the criminal justice system and accountability of the criminal justice system to the public. In fulfillment of that purpose, the Commission created the sentencing guidelines embodied in this Benchbook. Said guidelines were approved of and implemented by Administrative Directive Seventy-Six of the Supreme Court of Delaware.<sup>1</sup> 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.<sup>2</sup>

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 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

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<sup>1</sup> Sept. 15<sup>th</sup>, 1987

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

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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.<sup>3</sup>

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.

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<sup>3</sup> Title 11, §4204 (l)



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## **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.<sup>4</sup> They are as follows:

<b>Level I</b>	<b><i>Unsupervised:</i></b> Fine or Administrative Supervision, i.e. criminal record checks, checks to determine compliance with program completion, certification of payment of financial obligations, etc.
<b>Level II</b>	<b><i>Field supervision:</i></b> 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.
<b>Level III</b>	<b><i>Intensive supervision:</i></b> 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.
<b>Level IV</b>	<b><i>Quasi-Incarceration or Partial Confinement:</i></b> 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.
<b>Level V</b>	<b><i>Incarceration or Full Confinement:</i></b> 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 felonies<sup>5</sup> is limited to 24 months.<sup>6</sup>
2. The period of probation for Title 16 felonies<sup>7</sup> is limited to 18 months.<sup>8</sup>
3. The period of probation for all other offenses is limited to 1 year.<sup>9</sup>

### **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 not apply to a sentence

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

<sup>5</sup> Title 11, §4201(c)

<sup>6</sup> Title 11, §4333 (b)(1)

<sup>7</sup> Title 16 (Health and Safety)

<sup>8</sup> Title 11, §4333 (b)(2)

<sup>9</sup> Title 11, §4333 (b)(3)

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imposed for a conviction involving an offense committed while the offender was on probation or suspension of sentence.<sup>10</sup>

### **C. Exceptions to the General Rules**

- 1.) The above limits do not apply to sex offenses<sup>11</sup> if the sentencing court determines on the record that a longer period of probation will reduce the likelihood of re-offending.<sup>12</sup>
- 2.) The above limits shall not apply to Title 11 violent felonies<sup>13</sup> if the sentencing court determines on the record that public safety will be enhanced as a result.<sup>14</sup>
- 3.) Limits may be exceeded if additional time is necessary in order to collect restitution, but must be served at Accountability Level I.<sup>15</sup>
- 4.) Limits may be exceeded by up to 90 days if more substance abuse treatment time is needed.<sup>16</sup>
- 5.) Total probation time cannot exceed maximum commitment time, or one year, whichever is greater.<sup>17</sup>
- 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.<sup>18</sup>
- 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.<sup>19</sup>
- 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.<sup>20</sup>

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<sup>10</sup> Title 11, §4333 (c)

<sup>11</sup> 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

<sup>12</sup> Title 11, §4333 (d)(1)

<sup>13</sup> Title 11, §4201 (c)

<sup>14</sup> Title 11, §4333 (d)(2)

<sup>15</sup> Title 11, §4333 (d)(3)

<sup>16</sup> Title 11, §4333 (e)

<sup>17</sup> Title 11, §4333 (f)

<sup>18</sup> Title 11, §4333 (g)(1)

<sup>19</sup> Title 11, §4333 (g)(2)

<sup>20</sup> Title 11, §4333 (j)

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## **A Word of Caution:**

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

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

## **SENTAC STATEMENT OF POLICY**

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

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offenders after 60 days from the date of sentence. Such evaluation is to determine the appropriate level of probation within Level 3, 2, or 1.

This new policy does not apply to Level 1 – Restitution Only.

8. When sentencing on multiple charges and the lead offense is a violent felony, time for other current violent felonies will be added to Level V time.
9. When considering multiple charges, a violent felony shall be considered to be the most serious offense, for sentence calculation purposes, even though non-violent felonies of higher classification are present.
10. When ordering a sentence, the Judge will order the offender to a specific initial level of supervision (Assessment of Risk). The judge may recommend a specific treatment program. The DOC will make every effort to assign the offender, or procure admittance into, the recommended program, or equivalent, as slots become available.
11. In those cases where the Court would consider a level IV alternative to Level V incarceration and no vacancy exists, the judge should sentence the offender to Level IV, with the proviso that the offender be held at Levels V, IV, and III at the discretion of the Court until a Level IV facility becomes available.
12. All probation sentences handed down at one time (levels I, II, and III) should in the normal case be imposed to run concurrently.
13. Traffic offenses as listed in Del.C, Title 21, with the exception of section 2810, Driving after Judgment Prohibited, will not currently come under the purview of the Sentencing Standards. However, in the interest of conserving expensive and limited prison space for the violent and proven inalcitrant offender, it is strongly recommended that Title 21 offenders not be given a sentence to Level V incarceration unless they have previously been sentenced to, and failed at, supervision in Level III and Level IV, or unless incarceration is mandated by law.
14. Repetitive criminal history, as an aggravating factor, is defined as conviction or adjudication for the same or similar offense on two or more previous occasions. This policy is subject to the limitations outlined in Policy Nos. 3 and 4, and to the limitations outlined in the various misdemeanor presumptive sentencing standards.
15. Excessive cruelty, as an aggravating factor, is defined as those facts surrounding the commission of a violent felony, which demonstrate such a callousness and cruelty towards the victim of the offense as to shock the conscience of the court.
16. Aggravating factors for the use of Level V as sanction for the non-violent categories of misdemeanor should be limited to objective factors, such as: Vulnerability of victim due to age or impairment Lack of Amenability – If offender is or was already at or above the presumptive Level of Supervision.
17. When an offender is released from incarceration by any means (good time credits, conditional release, etc.) the release will be to the highest level specified by the court, or by statute, for any unserved sentence, or portion thereof. If no level has been specified, release will be to Level II by default.
18. The supervisory levels (Level IV [Quasi-Incarceration]; Level III [Intensive Supervision]; etc.) refer to the perceived risk and resultant control to be exercised over the individual. An offender may, as a result of evaluation, be assigned to any type of treatment program without affecting the supervision level. Therefore, a change in supervisory level does not require a change in treatment program.
19. For purposes of determining conformance to standard, the final sentence, after any suspensions, is the determinant factor. For example, if a given sentence is 2 years at Level V suspended for 2 years at Level II, the Level II sentence is the portion which will actually be served and, therefore, the portion which will be considered as conforming (or not conforming) to the standard.

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20. In those instances involving non-violent felonies, where a decision to incarcerate, with appropriate aggravating factors, has been made, the sentence should be UP TO, but NOT IN EXCESS of, 25% of the statutory maximum for the crime.
  21. In those instances involving misdemeanors, where, due to stated aggravating factors, a decision has been reached that a sentence to incarcerate is unavoidable; the sentence should not exceed the "recommended maximum" as noted in the standards.
  22. In instances when a non-TIS sentence to Level V is followed by a sentence to Level IV and/or Level III supervision, the Board of Parole may grant parole as follows:
    - a. Parole to the highest level specified by the original sentencing order. Should a violation occur during the parole period, the offender would be returned before the Board of Parole for violation of parole. Upon successful completion of the required period, the Department may, if appropriate, move the offender pursuant to Policy No. 26, if such a move is not in conflict with the Board of Parole Order. (Revised 9/22/98)
    - b. Offenders released upon reaching their short-time release date (conditional release) shall be released to serve the balance of the Level V sentence (i.e. conditional release supervision period) to the next highest level specified by the original court order or other subsequent sentencing order. If appropriate, the Department may move the offender pursuant to Policy No. 26, if such a move is not in conflict with the Board of Parole Order.
    - c. If a paroled or mandatory-released offender is serving a court-ordered Level IV or III sentence and the unexpired portion of the Level V sentence is less than one (1) year, the Board of Parole, upon application by the Department of Correction, may issue an order discharging the offender from the balance of the Level V sentence, once an equivalent period has been successfully served at Level IV or III.
  23. In those cases where an offender is subject to sentences for more than one offense, and when the combined sentence to intermediate sanction at level IV is in excess of one year, including any work release time on a sentence of incarceration, the Department of Correction shall, absent specific objections from the judge(s), be permitted to move the offender, after one year, to a lower level of supervision, providing the offender has met, and continues to meet, the regulations and any special conditions placed upon him/her by the courts. Any lapse in meeting those conditions shall be grounds for a return to completion of the Level IV sentence without recourse to the courts. In like manner, combined sentences to Level III in excess of twelve months shall be subject to movement to a lower level. Such movements, both up and down, will have no effect on the overall length of sentence, except when a formal violation report is filed with the court.
  24. Any person failing to return to a Level IV facility shall be deemed to be on escape status. The facility shall cause a warrant to be issued charging the offender with Escape After Conviction and identifying him as a Level IV escapee. Any such person arrested on the warrant shall be returned to the original sentencing court for both a violation hearing and the new charge.
  25. Where a defendant is directly sentenced to Level IV Work Release Center, residential treatment, or home confinement and has awaited placement pending slot availability at Level V for a period of 90 days or one half of the Level IV sentence (whichever is less), the Department of Correction shall make appropriate sentence modification recommendations to the sentencing Judge.
  26. Level IV, work release center or halfway house, is deemed quasi-incarceration. A defendant serving a sentence at Level IV, work release or halfway house, i.e., quasi-incarceration, is entitled to earn "good time credits" pursuant to 11 Del. C s4381(b) and (c).

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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.

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](mailto: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;	<b>Chair: Honorable William C. Carpenter, Jr.</b>
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;	<b>Honorable T. Henley Graves</b>
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;	<b>Honorable Alan G. Davis</b>
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;	<b>Honorable Kenneth S. Clark Jr.</b>
The Attorney General or the Attorney General's designee;	<b>Honorable Joseph R. Biden III</b>
The Public Defender or the Public Defender's designee;	<b>Honorable Brendan J. O'Neill</b>
The Commissioner of Corrections or the Commissioner of Corrections' designee;	<b>Honorable Robert Coupe</b>
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	<b>Drewry N. Fennell Esq.</b>
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	<b>Martin W. Johnson, III Chief Delaware Police Chief's Council</b>
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	<b>Colonel Nathaniel McQueen</b>
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.	<b>James D. Wilson Jr., Ed. D.</b>

## **Class A Felony**

### **Violent (FAV):**

<b>Sentence Range (Violent Category) FAV (Exclusive of 1st Degree Murder (11-4209))</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

### **Crimes in Category:**

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



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

### Supplemental Notations for Class A Felonies

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

<b>11-635</b>	<b><u>Murder 2nd Degree. Reclassified in 6/2003</u></b>
<b>11-636</b>	<p><b><u>Murder 1st Degree</u></b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• If the defendant had not reached 18<sup>th</sup> birthday when the offense was committed, spec. attention should be given to 11 Del Code, sect. 4209A &amp; sect. 4217(f).</li> <li>• 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.</li> <li>• 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.</li> </ul>
<b>11-773</b>	<p><b><u>Rape 1st Degree</u></b></p> <ul style="list-style-type: none"> <li>• (c) A person convicted under this section shall be sentenced to life without benefit of probation, parole or other reduction if: (1) vt&lt;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</li> <li>• 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 &lt;14 yoa, then the min. man. is 25 yrs at Lev V up to life (7/26/06)</li> </ul>
<b>11-777A(e)(5)</b>	<p><b><u>Sex Offender Unlawful Sexual Conduct Against a Child</u></b></p> <ul style="list-style-type: none"> <li>• (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.</li> </ul>

<p><b>11-778(f)(1)</b></p>	<p><b><u>Sexual Abuse of a Child by a person in a position of trust, authority, or supervision in the first degree:</u></b></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"> <li>• 1. at the time of the offense the person inflicts serious physical injury on the victim; or</li> <li>• 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</li> <li>• 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</li> <li>• 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.</li> </ul>
<p><b>11-787 b(2)(C), b(4), c</b></p>	<p><b><u>Trafficking of Persons and Involuntary Servitude</u></b></p> <ul style="list-style-type: none"> <li>• (b)(2)(C) Sexual servitude of a minor in which overt force or threat was involved is a Class A felony.</li> <li>• (b)(4) 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 (i) 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 (ii) 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.</li> <li>• (c) Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution, including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or of Title 19 of the Delaware Code, whichever is greater.</li> </ul>
<p><b>11-1304(b)(4)</b></p>	<p><b><u>Hate Crime (Underlying Offense: Class A Felony)</u></b></p> <p>If the underlying offense is a Class A Felony, the minimum sentence of incarceration shall be doubled.</p>

## **Class B Felony**

### **I.) Violent (FBV)**

<b>Sentence Range (Violent Category) FBV</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

### **Crimes in Category**

<b>11-606</b>	<b><u>Abuse of Pregnant Female 1st Degree</u></b> Intentionally causes termination through violence without consent
<b>11-613</b>	<b><u>Assault 1st Degree (see note)</u></b> (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
<b>11-632</b>	<b><u>Manslaughter (see note)</u></b> (1)Recklessly: Death/ (2)Intent=Serious Injury: Death/ (3)Intentionally: Death but Extreme Emotion (4)Non-therapeutic Abortion: Death/ (5)Intentionally Causes Suicide
<b>11-633</b>	<b><u>Child Murder by Abuse/Neglect 2nd Degree</u></b> (a)Negligently: Death of Vt<14 y.o.a. by (1)abuse, neglect/ (b)previous pattern
<b>11-771</b>	<b><u>Rape 3rd Degree (see note) (7/26/06)</u></b> (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.

<b>11-772</b>	<b>Rape 2nd Degree (see note) (7/26/06)</b> (a)(1)Intercourse w/out consent/ (2)Penetration: (a) w/out consent & serious injury/ (b) w/out consent & Comm.Crime/ (c)vt<16 & Serious Injury/ (d) w/out consent & DW or threat/ (e)vt<16 & DW or threat/ (f) w/out consent & Principle-accomp/ (g)vt<12 & D+18+/ (h) vt < 16 & D= trust
<b>11-776</b>	<b>Continuous Sexual Abuse of Child (see note) (7/26/06)</b>
<b>11-777</b>	<b>Dangerous Crime Against Child (see note) (7/26/06)</b>
<b>11-777A(e)(2),(e)(3)</b>	<b>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</b>
<b>11-778(2)</b>	<b>Sexual Abuse of a Child by a person in a position of trust authority or supervision in the first degree</b> 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.
<b>11-778(3)</b>	<b>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the 1st deg:</b> As set forth in subsection (3) of this section is a class B felony.
<b>11-783A</b>	<b>Kidnapping 1st Degree</b> 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
<b>11-826(a)(2)</b>	<b>Burglary 1st Degree (Vt&gt; 62 y.o.a.) (see note)</b> (a) Dwelling at night (1) armed/ (2) causes injury to nonparticipant
<b>11-826A</b>	<b>Home Invasion (see note)</b>
<b>11-832</b>	<b>Robbery 1st Degree (see note)</b> (a)(1)injury to nonparticip/ (2) DW or threat of/ (3)armed & use or threat/ (4)vt>62
<b>11-836(a)(4-6)</b>	<b>Carjacking 1st Degree</b> (a)(4)DW or threat/ (5)Injury/ (6)Vt>62 or <14 y.o.a
<b>11-1108</b>	<b>Sexual Exploitation of Child (see note)</b>
<b>11-1109</b>	<b>Dealing in Child Pornography</b>
<b>11-1110</b>	<b>Unlawful Dealing Child Pornography (2nd offense of 11- 1109)</b>
<b>11-1253</b>	<b>Escape After Conviction (injury)(Special Esc. Cat. May Apply)(see note)</b>
<b>11-1254(b)</b>	<b>Assault in Detention Facility w/Serious Injury (see note)</b>
<b>11-1304(b)(3)</b>	<b>Hate Crime (Underlying Offense: Class C Felony)</b>
<b>11-1304(b)(4)</b>	<b>Hate Crime (Underlying Offense: Class B Felony) (see note)</b>
<b>11-1447</b>	<b>Possession of Deadly Weapon during Commission of a Felony (see note)</b>
<b>11-1447A</b>	<b>Possession of Firearm during Commission of a Felony (see note)</b>
<b>11-1448(e)(2)</b>	<b>Poss/Purchase Firearm/Destructive Weapon by Prohibited Person w/Prior Conviction of Violent Felony (see note)</b>
<b>11-1449</b>	<b>Wearing Body Armor during Commission of a Felony (see note)</b>
<b>11-1503</b>	<b>Racketeering (see note)</b>
<b>16-4752</b>	<b>Drug dealing – Aggravated possession</b>
<b>16-4757(c)(2)</b>	<b>Misc. Drug Crimes, Solic. of Multiple Prescrip. Drug Crimes (see note)</b>

**Supplemental Notations For Class B Felony (Violent):**

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

<b>11-613</b>	<b><u>Assault 1st Degree. Reclassified in 6/2003</u></b>
<b>11-632</b>	<b><u>Manslaughter. Reclassified in 6/2003</u></b>
<b>11-771</b> <b>11-771(a)(2)</b>	<b><u>Rape 3rd Degree</u></b> <ul style="list-style-type: none"> <li>• (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</li> <li>• 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 &lt;14 yoa, then the min. man. is 25 years at Level V up to life (7/26/06)</li> </ul>
<b>11-772</b>	<b><u>Rape 2nd Degree</u></b> <ul style="list-style-type: none"> <li>• (c) Minimum mandatory sentence: 10 yrs at Level V but see below.</li> <li>• 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 &lt;14 yoa, then the min. man. is 25 years at Level V up to life(7/26/06)</li> </ul>
<b>11-776</b>	<b><u>Continuous Sexual Abuse of Child</u></b> 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)
<b>11-777</b>	<b><u>Dangerous Crime Against Child</u></b> <ul style="list-style-type: none"> <li>• (b) Mandatory Minimum for 2nd offense= life imprisonment.</li> <li>• (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.</li> <li>• 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 &lt;14 yoa, then the min. man. is 25 years at Level V up to life (7/26/06)</li> </ul>
<b>11-777A(e)(2), (e)(3)</b>	<b><u>Sex Offender Unlawful Sexual Conduct Against a Child</u></b> <ul style="list-style-type: none"> <li>• (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.</li> <li>• (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.</li> </ul>

<b>11-826(a)(2)</b>	<p><b><u>Burglary 1st Degree (Vt&gt; 62 y.o.a.)</u></b></p> <ul style="list-style-type: none"> <li>• (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.</li> <li>• (c) Sentencing provisions equally applicable to Attempt</li> </ul> <table border="0" style="width: 100%;"> <tr> <td style="width: 60%;">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>	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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Excessive Cruelty	60 m. to 120 m. @ Level V												
<b>11-826A</b>	<p><b><u>Home Invasion</u></b></p> <ul style="list-style-type: none"> <li>• (b)(1)a. Minimum sentence of 6 years at Level V.</li> <li>• (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. 1<sup>st</sup> or 2<sup>nd</sup> 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.</li> <li>• (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"> <li>a. 7 years at Level V; or</li> <li>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. 1<sup>st</sup> or 2<sup>nd</sup> 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.</li> </ul> </li> </ul>												
<b>11-832</b>	<p><b><u>Robbery 1st Degree</u></b></p> <ul style="list-style-type: none"> <li>• (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)</li> <li>• (c) Sentencing provisions equally applicable to Attempt.</li> <li>• 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.</li> </ul>												
<b>11-1108</b>	<p><b><u>Sexual Exploitation of Child</u></b> Any person convicted of a 2nd or subseq. Viol. shall be sentenced to life.(Title 11, §1110)</p>												
<b>11-1253</b>	<p><b><u>Escape After Conviction</u></b> Any sentence imposed shall not run concurrently with any other sentence.</p>												
<b>11-1254(b)</b>	<p><b><u>Assault in Detention Facility w/Serious Injury</u></b></p> <ul style="list-style-type: none"> <li>• Minimum Mandatory Sentence: 3 yrs at Level V to begin immediately upon sentencing.</li> <li>• Such sentence shall not be susp. nor shall the Defendant be eligible for parole or prob.</li> <li>• Original sentence causing confinement temporarily suspended and continues only after the sentence for this conviction has been completed.</li> </ul>												

<b>11-1304(b)(4)</b>	<b><u>Hate Crime (Underlying Offense: Class B Felony)</u></b> If the underlying offense is a Class B Felony, the minimum sentence of incarceration shall be doubled.
<b>11-1447</b>	<b><u>Possession of Deadly Weapon during Commission of a Felony</u></b> <ul style="list-style-type: none"> <li>• (b) Any sentence imposed shall not be subject to suspension, good time, parole or probation.</li> <li>• (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.</li> <li>• (d) Juveniles over the age of 16 shall be tried as an adult, with reverse amenability available.</li> </ul>
<b>11-1447A</b>	<b><u>Possession of Firearm during Commission of a Felony</u></b> <ul style="list-style-type: none"> <li>• (b) Minimum Mandatory Sentence= 3 years at Level V</li> <li>• (c) If conviction represents 3rd felony conviction= minimum mandatory sentence= 5 years at Level V</li> <li>• (d) Any sentence imposed shall not be subject to suspension, good time, parole or probation.</li> <li>• (f) Juveniles &gt; 15 shall be tried as an adult, with reverse amenability available</li> </ul>
<b>11-1448(e)(2)</b>	<b><u>Poss/Purchase Firearm/Destructive Device by Prohibited Person w/Prior Conviction of Violent Felony</u></b> <ul style="list-style-type: none"> <li>• Mandatory Minimum Sentence-(e)(2): a. 4 years at Level V; or</li> <li>• 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</li> <li>• c. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.</li> </ul>
<b>11-1449</b>	<b><u>Wearing Body armor during Commission of a Felony</u></b> <ul style="list-style-type: none"> <li>• Minimum Mandatory Sentence= 3 years at Level V which shall not be subject to suspension, parole or probation</li> <li>• Any sentence shall not run concurrently.</li> <li>• The sentence imposed shall be served following the imposition of a sentence for the conviction of the felony offense</li> <li>• Juveniles over the age of 16 shall be tried as an adult, with reverse amenability available</li> </ul>
<b>11-1503</b>	<b><u>Racketeering</u></b> <ul style="list-style-type: none"> <li>• 1504(a): Minimum fine= \$25,000</li> <li>• 1504(b): Mandatory forfeiture of property; Superior Ct shall authorize seizure by AG</li> <li>• 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.</li> </ul>
<b>16-4752</b>	<b><u>Drug dealing – Aggravated possession</u></b> <ol style="list-style-type: none"> <li>(1) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 4 quantity;</li> <li>(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;</li> <li>(3) Possesses a controlled substance in a Tier 5 quantity;</li> <li>(4) Possesses a controlled substance in a Tier 3 quantity, and there is an aggravating factor; or</li> <li>(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.</li> </ol>

## II.) Nonviolent (FBNV)

Statutory Range	2 to 25 yrs (First 2 yrs @ Level V may not be suspended. 11-4205(d))
Presumptive Sentence	2-5 yrs @ Level 5
Probation or Suspension of Sentence (11-4333)	<ul style="list-style-type: none"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

### Crimes in Category

<b>11-787 b(1)(A), b(1)(B), b(2)(B), b(3), c</b>	<b><u>Trafficking of persons and involuntary servitude (see note)</u></b>
<b>11-841(3)(b)</b>	<b><u>Theft (&gt; \$100,000) (see note)</u></b>
<b>11-913A(c)(3)</b>	<b><u>Health Care Fraud (Intended loss &gt; \$100,000/ Provider (see note)</u></b>
<b>11-917(d)(3)</b>	<b><u>New Home Construction Fraud (Loss &gt; \$100,000)</u></b>
<b>11-1103B</b>	<b><u>Child Abuse in the First Degree</u></b>
<b>31-610(a)(3)</b>	<b><u>Traffick in Food Stamps (Firearms/Ammunition/Cont. Substances) (see note)</u></b>

### Sentences For Prior Criminal History Categories

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

### Supplemental notations for Class B Felony (Non-violent)

<b>11-787(b)(1)(A), 11-787(b)(1)(B), 11-787(b)(2)(B), 11-787(b)(3) 11-787(c)</b>	<b><u>Trafficking of persons and involuntary servitude</u></b> <ul style="list-style-type: none"> <li>• (b)(1)(A) by causing or threatening to cause physical harm to any person which is a class B felony;</li> <li>• (b)(1)(B) by physically restraining or threatening to physically restrain another person which is a class B felony;</li> <li>• (b)(2)(B) sexual servitude of a minor in which the minor had not attained the age of 14 years and which did not involve overt force or threat is a class B felony;</li> <li>• (b)(3) Trafficking of persons for forced labor or services. A person is guilty of trafficking of persons for forced labor or services when a person knowingly (i) recruits, entices, harbors, transports, provides or obtains by any means, another person, intending or knowing that the person will be subjected to forced labor or services; or (ii) 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. Trafficking of persons for forced labor or services is a class B felony.</li> <li>• (c) Restitution is mand. under this Sect. In addition to any other amount of loss identified, the court shall order restit, including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the min. wage and overtime provisions of the Fair Labor Standards Act (FLSA) or of Tit. 19 of the Del. Code, whichever is greater.</li> </ul>
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<b>11-841(3)(b)</b>	<b><u>Theft (&gt; \$100,000)</u></b> 841 (d): Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.
<b>11-913A(c)(3)</b>	<b><u>Health Care Fraud</u></b> (Intended loss > \$100,000/ provider 913 (c)(4) Fine may be up to 5x pecuniary benefit sought or obtained.
<b>16-4757(c)(2)</b>	<b><u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes:</u></b> 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.
<b>31-610(a)(3)</b>	<b><u>Trafficking in Food Stamps (Firearms/Ammunition/Controlled Substances)</u></b> May be suspended from the Food Stamp Program for 18 months more than suspension mandated by the Federal Food Stamp Act

## **Class C Felony (Violent)**

### **I.) (FCV)**

<b>Sentence Range (Violent Category) FCV</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

## Crimes in Category

<b>11-605</b>	<b><u>Abuse of Pregnant Female 2nd Degree</u></b> Recklessly causes termination through violence without consent
<b>11-612 (11)</b>	<b><u>Assault 2nd Degree</u></b> 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.
<b>11-630A</b>	<b><u>Vehicular Homicide in the First Degree (see note)</u></b> DUI & Criminally Negligent Driving: death
<b>11-770</b>	<b><u>Rape 4th Degree</u></b> (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
<b>11-777A(e)(2)</b>	<b><u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u></b>
<b>11-778(f)(4)</b>	<b><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree: (see note)</u></b>
<b>11-783</b>	<b><u>Kidnapping 2nd Degree</u></b> 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
<b>11-803</b>	<b><u>Arson 1st Degree</u></b> 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
<b>11-825</b>	<b><u>Burglary 2nd Degree (Vt&gt; 62 y.o.a.) (see note)</u></b> (a)(1) Dwelling/ (a)(2) Bldg + (a) DW or (b) Injury to nonparticipant
<b>11-826</b>	<b><u>Burglary 1st Degree (see note)</u></b> (a) Dwelling at night (1) armed/ (2) causes injury to nonparticipant
<b>11-836(a)(1- 3)</b>	<b><u>Carjacking 1st Degree</u></b> (a)(1) Class D Felony or higher/ (2) DUI/ (3) Drug Offense

<b>11-1105</b>	<b><u>Crime Against a Vulnerable Adult (see note)</u></b>
<b>11-1112A</b>	<b><u>Child Sex Solicitation</u></b>
<b>11-1253</b>	<b><u>Escape After Conviction (Special Escape Category May Apply)(see note)</u></b> Force/Threat/Deadly Weapon
<b>11-1304(b)(3)</b>	<b><u>Hate Crime (Underlying offense: Class D Felony)</u></b>
<b>11-1312</b>	<b><u>Stalking w/ Deadly Weapon (see note)</u></b>
<b>11-1353</b>	<b><u>Promoting Prostitution 1st Degree</u></b> (1) Compels or profits by force or intimidation/ (2) Profits by prostitute < 16 y.o.a
<b>11-1448(e)(1)</b>	<b><u>Poss/Purchase Firearm/Destructive Weapon by Prohibited Person w/Prior Conviction of Violent Felony (see note)</u></b>
<b>11-1455</b>	<b><u>Firearm Transaction on Behalf of Another (Prior Conviction)</u></b>
<b>16-1136(a)</b>	<b><u>Abuse/Neglect of patient in Facility</u></b> (serious physical injury, sexual penetration, sexual intercourse)
<b>16-4753</b>	<b><u>Drug dealing – Aggravated Possession; (see note)</u></b>
<b>16-4757(c)(1)</b>	<b><u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes (see note)</u></b>
<b>31-3913(b)</b>	<b><u>Exploitation of Infirm Adult (&gt;\$50,000/Prior Conviction)</u></b>

#### **Sentences For Prior Criminal History Categories**

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

#### **Supplemental Notations for Class C Violent Felonies**

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

<b>11-630A</b>	<b><u>Vehicular Homicide 1st Degree</u></b> <ul style="list-style-type: none"> <li>(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.</li> <li>Every person &gt;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.</li> </ul>
<b>11-777A(e)(2)</b>	<b><u>Sex Offender Unlawful Sexual Conduct Against a Child</u></b> <ul style="list-style-type: none"> <li>(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.</li> </ul>

11-778(f)(4)	<p><b><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first 16-4760</u></b>  as set forth in subsection (d) (intentionally engages in sexual intercourse or sexual penetration with a child and the Victim &gt;16 &lt;18) of this section is a class C felony.</p>												
11-825	<p><b><u>Burglary 2nd Degree (Vt&gt; 62 y.o.a.)</u></b></p> <ul style="list-style-type: none"> <li>(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.</li> <li>(c) Sentencing provisions equally applicable to Attempt</li> </ul> <table border="0"> <tr> <td><b>First Conviction</b></td> <td>12 m. to 36 m. @ Level V</td> </tr> <tr> <td><b>On release pending trial/sentence</b></td> <td>18 m. to 36 m. @ Level V</td> </tr> <tr> <td><b>2 or more Prior Felonies</b></td> <td>36 m. to 72 m. @ Level V</td> </tr> <tr> <td><b>1 Prior Violent Felony</b></td> <td>36 m. to 72 m. @ Level V</td> </tr> <tr> <td><b>2 or more Prior Violent Felonies</b></td> <td>48 m. to 96 m. @ Level V</td> </tr> <tr> <td><b>Excessive Cruelty</b></td> <td>48 m. to 96 m. @ Level V</td> </tr> </table>	<b>First Conviction</b>	12 m. to 36 m. @ Level V	<b>On release pending trial/sentence</b>	18 m. to 36 m. @ Level V	<b>2 or more Prior Felonies</b>	36 m. to 72 m. @ Level V	<b>1 Prior Violent Felony</b>	36 m. to 72 m. @ Level V	<b>2 or more Prior Violent Felonies</b>	48 m. to 96 m. @ Level V	<b>Excessive Cruelty</b>	48 m. to 96 m. @ Level V
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<b>Excessive Cruelty</b>	48 m. to 96 m. @ Level V												
11-826	<p><b><u>Burglary 1st Degree</u></b></p> <ul style="list-style-type: none"> <li>(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.</li> <li>(c) Sentencing provisions equally applicable to Attempt</li> <li>Presumptive sentences:</li> </ul> <table border="0"> <tr> <td><b>First Conviction</b></td> <td>24 m. to 48 m. @ Level V</td> </tr> <tr> <td><b>On release pending trial/sentence</b></td> <td>36 m. to 60 m. @ Level V</td> </tr> <tr> <td><b>2 or more Prior Felonies</b></td> <td>48 m. to 96 m. @ Level V</td> </tr> <tr> <td><b>1 Prior Violent Felony</b></td> <td>48 m. to 96 m. @ Level V</td> </tr> <tr> <td><b>2 or more Prior Violent Felonies</b></td> <td>60 m. to 120 m. @ Level V</td> </tr> <tr> <td><b>Excessive Cruelty</b></td> <td>60 m. to 120 m. @ Level V</td> </tr> </table>	<b>First Conviction</b>	24 m. to 48 m. @ Level V	<b>On release pending trial/sentence</b>	36 m. to 60 m. @ Level V	<b>2 or more Prior Felonies</b>	48 m. to 96 m. @ Level V	<b>1 Prior Violent Felony</b>	48 m. to 96 m. @ Level V	<b>2 or more Prior Violent Felonies</b>	60 m. to 120 m. @ Level V	<b>Excessive Cruelty</b>	60 m. to 120 m. @ Level V
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<b>Excessive Cruelty</b>	60 m. to 120 m. @ Level V												
11-1105	<p><b><u>Crime Against a Vulnerable Adult</u></b>  For this offense to be a class C felony, the underlying offense must be a class D felony. See page 114 for listing of qualifying underlying offenses for this statute.  “Vulnerable Adult” means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation, the term “vulnerable adult” includes any adult for whom a guardian or the person or property has been appointed.</p>												
11-1253	<p><b><u>Escape After Conviction</u></b>  Any sentence imposed shall not run concurrently with any other sentence.</p>												
11-1312	<p><b><u>Stalking w/ Deadly Weapon</u></b></p> <ul style="list-style-type: none"> <li>(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</li> <li>(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</li> </ul>												

<b>11-1448 (e)(1)</b>	<p><b><u>Poss/Purchase Firearm/Destructive Device by Prohibited Person w/Prior Conviction of Violent Felony</u></b>  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>
<b>16-4753</b>	<p><b><u>Drug dealing – Aggravated Possession;</u></b>  (1) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 2 quantity;  (2) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance, and there is an aggravating factor;  (3) Possesses a controlled substance in a Tier 4 quantity as defined in any of Section 4751C(2)a.-i. of this title;  (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  (5) Possesses a controlled substance in a Tier 1 quantity, and there are 2 aggravating factors;</p>
<b>16-4757(c)(1)</b>	<p><b><u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes</u></b>  (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)**

<b>Sentence Range (Nonviolent Category) FCN</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

### **Crimes in Category**

<b>11-503</b>	<b><u>Criminal Solicitation 1st Degree</u></b> Solicit to commit Class A Felony + Solicited <18 & D>18/Solicited<15 & D= 3+ yrs older
<b>11-787(b)(1)(C) (b)(2)(A)</b>	<b><u>Trafficking of persons and involuntary servitude (see note)</u></b>
<b>11-907B(b)</b>	<b><u>Criminal Impersonation of a Police Officer w/Injury or Felonies (see note)</u></b>
<b>11-1458</b>	<b><u>Removing Firearm from a Law Enforcement Officer</u></b>
<b>11-1471(c)(f)(g)(h)(i)(j)</b>	<b><u>Video Lottery Cheat Device &gt;\$99,999.99</u></b>
<b>16-2513(b)</b>	<b><u>Conceal/Destroy/Falsify/Forge Document Which Results in False Authorization of Maintenance Medical Treatment for Life Prolongation</u></b>
<b>16-4760A</b>	<b><u>Operate or Attempt to Operate a Clandestine Laboratory</u></b>
<b>31-1003</b>	<b><u>Benefit by False Representation &gt;\$10,000 (see note)</u></b>
<b>31-1004(2)</b>	<b><u>Falsify Reimbursement Report &gt;\$10,000 (see note)</u></b>
<b>31-1006</b>	<b><u>Unlawful Conversion of Benefits &gt;\$10,000 (see note)</u></b>

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

### Supplemental Notations for Class C Nonviolent Felonies

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

<b>11-787</b> <b>(b)(1)(C)</b> <b>(b)(2)(A)</b>	<u><b>Trafficking of persons and involuntary servitude</b></u> <ul style="list-style-type: none"> <li>• (b)(1)(C) by abusing or threatening to abuse the law or legal process which is a class C felony;</li> <li>• (b)(2)(A) sexual servitude of a minor in which the minor was between the ages of 14 and 18 years and which did not involve overt force or threat is a class C felony.</li> <li>• (c) Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution, including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or of Title 19 of the Delaware Code, whichever is greater.</li> </ul>
<b>11-907B(b)</b>	<u><b>Criminal Impersonation of a Police Officer w/Injury or Felonies</b></u> During the commission of the offense: (1) causes injury to a nonparticipant or (2) commits a Class A or Class B Felony or any sexual offense as defined in Title 11, §761(d)
<b>31-1003</b> <b>31-1004(2)</b> <b>31-1006</b>	<u><b>Benefit by False Representation</b></u> <u><b>Falsify Reimbursement Report</b></u> <u><b>Unlawful Conversion of Benefits</b></u> <ul style="list-style-type: none"> <li>• 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</li> <li>• 31-1007(e): Provider shall not be eligible for participation in Delaware Public Assistance Program, subject to certain exceptions.</li> </ul>

## **Class D Felony (Violent)**

### **I.) (FDV)**

<b>Sentence Range (Violent Category) FDV</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### **Crimes in Category:**

<b>11-607(3)</b>	<b><u>Strangulation (see note)</u></b>
<b>11-612</b>	<b><u>Assault 2nd Degree</u></b> (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.
<b>11-630</b>	<b><u>Vehicular Homicide 2<sup>nd</sup> Degree (see note)</u></b> (a)(1) Criminally negligent driving: death/ (2) DUI + Negligent driving:death
<b>11-631</b>	<b><u>Criminally Negligent Homicide</u></b>
<b>11-769</b>	<b><u>Unlawful Sexual Contact 1st Degree</u></b> Causing physical injury/using deadly weapon or threat of
<b>11-775</b>	<b><u>Bestiality</u></b>
<b>11-777A(e)(2)</b>	<b><u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u></b>
<b>11-778(5)</b>	<b><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree: (see note)</u></b>
<b>11-778A(1)</b>	<b><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree: (see note)</u></b>
<b>11-802</b>	<b><u>Arson 2nd Degree</u></b> Intentionally damage unoccupied bldg by fire/explosion



<b>11-825</b>	<b><u>Burglary 2nd Degree (see note)</u></b> (a)(1) Dwelling/ (a)(2) Bldg + (a) DW or (b) Injury to nonparticipant
<b>11-835(b)(2)</b>	<b><u>Carjacking 2nd Degree</u></b> (a)Risk of Death or Serious Injury/(b)Compels Lawful Occupant to Leave/(c) Reckless Operation
<b>11-846</b>	<b><u>Extortion (Vt&gt;62 y.o.a.)</u></b>
<b>11-1105</b>	<b><u>Crime Against a Vulnerable Adult (see note)</u></b>
<b>11-1250(c)</b>	<b><u>Assault 1st Degree on Law Enforcement Animal</u></b> Intentionally or Recklessly causes Death or Serious Injury
<b>11-1253</b>	<b><u>Escape After Conviction</u></b> (Special Escape Category May Apply)(see note)
<b>11-1254(a)</b>	<b><u>Assault in Detention Facility: Injury (see note)</u></b>
<b>11-1254(c)</b>	<b><u>Assault in Detention Facility: Bodily Emissions (see note)</u></b>
<b>11-1304(b)(3)</b>	<b><u>Hate Crime (Underlying Offense: Class E Felony)</u></b>
<b>11-1338</b>	<b><u>Mfr/Transfer/Use/Poss/Transport Bomb/Incendiary Device/ Molotov Cocktail/Explosive (see note)</u></b>
<b>11-1442</b>	<b><u>Carrying Concealed Deadly Weapon (Firearm) (see note)</u></b>
<b>11-1459</b>	<b><u>Possession of a Firearm with Altered Serial Number</u></b>
<b>11-3533</b>	<b><u>Aggravated Intimidation of Witness &amp;/or Victim (see note)</u></b>
<b>16-4754</b>	<b><u>Drug dealing – Aggravated possession; (see note)</u></b>
<b>31-3913(b)</b>	<b><u>Exploitation of Infirm Adult (\$10,000 – \$50,000)</u></b>
<b>31-3913(c)</b>	<b><u>Abuse of Infirm Adult: Bodily Harm</u></b>

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

### Supplemental Notations for Class D Violent Felonies

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

<b>11-607(3)</b>	<b><u>Strangulation</u></b> <ul style="list-style-type: none"> <li>• If person used or attempted to use a deadly weapon or dangerous instrument while committing the offense; or</li> <li>• The person caused serious physical injury to the other person while committing the offense; or</li> <li>• The person has previously been convicted of strangulation</li> </ul>
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11-630	<p><b><u>Vehicular Homicide 2nd Degree</u></b></p> <ul style="list-style-type: none"> <li>(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.</li> <li>(c) Persons 16 y.o.a. or older, shall be treated as an adult except that mandatory minimum sentence shall not apply &amp; 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</li> </ul>												
11-777A(e)(2)	<p><b><u>Sex Offender Unlawful Sexual Conduct Against a Child</u></b></p> <ul style="list-style-type: none"> <li>(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.</li> </ul>												
11-778(f)(5)	<p><b><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree</u></b></p> <p>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 &lt;16) is a class D Felony.</p>												
11-778A(1)	<p><b><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree</u></b></p> <p>as set forth in subsection (a)(intentionally has sexual contact with a child &lt;16 or causes the child to have sexual contact with the person or a third person and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child) is a class D felony.</p>												
11-825	<p><b><u>Burglary 2nd Degree</u></b></p> <ul style="list-style-type: none"> <li>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.</li> <li>(c) Sentencing provisions equally applicable to Attempt</li> <li>Minimum Presumptive Sentences:</li> </ul> <table border="1" data-bbox="480 1230 1377 1430"> <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
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Two or more prior violent felonies	48 to 96 m @ Level V												
Excessive cruelty	48 to 96 m @ Level V												
11-1105	<p><b><u>Crime Against a Vulnerable Adult</u></b></p> <p>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.</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	<p><b><u>Escape After Conviction</u></b></p> <p>Any sentence imposed shall not run concurrently with any other sentence.</p>												

<b>11-1254(a)</b>	<p><b><u>Assault in Detention Facility: Injury</u></b></p> <ul style="list-style-type: none"> <li>• Minimum Mandatory Sentence: 2 years at Level V to begin immediately upon sentencing.</li> <li>• 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</li> </ul>
<b>11-1254(c)</b>	<p><b><u>Assault in Detention Facility: Bodily Emissions</u></b></p> <ul style="list-style-type: none"> <li>• Minimum Mandatory Sentence: 1 yr at Level V to begin immediately upon sentencing.</li> <li>• Such sentence shall not be suspended nor shall the Defendant be eligible for parole or probation.</li> <li>• Original sentence causing confinement temporarily suspended and continues only after the sentence for this conviction has been completed.</li> <li>• 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.</li> </ul>
<b>11-1338</b>	<p><b><u>Mfr/Transfer/Use/Poss/Transport Bomb/Incendiary Device/ Molotov Cocktail/Explosive</u></b> Any person over 16 y.o.a. who violates this section shall be charged as an adult.</p>
<b>11-1442</b>	<p><b><u>Carrying Concealed Deadly Weapon (Prior conviction &lt; 5 yrs)</u></b></p> <ul style="list-style-type: none"> <li>• Weapon is a firearm</li> </ul>
<b>11-3533</b>	<p><b><u>Aggravated Intimidation of Witness &amp;/or Victim</u></b> 11-3534: Sentencing provisions equally applicable to Attempt</p>
<b>16-4754</b>	<p><b><u>Drug dealing – Aggravated possession</u></b></p> <ol style="list-style-type: none"> <li>(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance;</li> <li>(2) Possesses a controlled substance in a Tier 3 quantity; or</li> <li>(3) Possesses a controlled substance in a Tier 1 quantity, and there is an aggravating factor</li> </ol>

## **Class D Felony (Nonviolent)**

### **II.) (FDN)**

<b>Sentence Range (Nonviolent Category) FDN</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### **Crimes in Category:**

<b>11-841(c)(3)(a)</b>	<b><u>Theft (\$50,000-\$99,999) (see note)</u></b>
<b>11-850(b)(3)</b>	<b><u>Unlawful Telecommunication Device (&gt;2 prior convictions/ 50+ devices) (see note)</u></b>
<b>11-854</b>	<b><u>Identity Theft (see note)</u></b>
<b>11-913A(c)(2)</b>	<b><u>Health Care Fraud (see note)</u></b> Intended loss = \$50,000-\$99,999/ Pattern of claims when offender is provider
<b>11-917(d)(2)</b>	<b><u>New Home Construction Fraud</u></b> Loss = \$50,000-\$99,999
<b>11-932</b>	<b><u>Unauthorized Computer Access (&gt;\$10,000) (see note)</u></b>
<b>11-933</b>	<b><u>Theft Computer Services (&gt;\$10,000) (see note)</u></b>
<b>11-934</b>	<b><u>Interruption Computer Services (&gt;\$10,000) (see note)</u></b>
<b>11-935</b>	<b><u>Misuse Computer System Information (&gt;\$10,000) (see note)</u></b>
<b>11-936</b>	<b><u>Destruction Computer Equipment (&gt;\$10,000) (see note)</u></b>
<b>11-937</b>	<b><u>Unauthorized Electronic Mail (&gt;\$10,000) (see note)</u></b>
<b>11-938</b>	<b><u>Fail to Cease Electronic Communication (&gt;\$10,000) (see note)</u></b>
<b>11-939</b>	<b><u>Computer Offense Penalties (&gt;\$10,000) (see note)</u></b>
<b>11-951</b>	<b><u>Money Laundering</u></b>
<b>11-1223</b>	<b><u>Perjury 1st Degree</u></b> Material, False Testimony

<b>11-1448(c)(1 of a1-a8)</b>	<b><u>Poss/Purchase Firearm/Ammunition by Prohibited Person</u></b>
<b>11-1448(a)(5)</b>	<b><u>Poss/Purchase Firearm/Ammunition by Prohibited Person (see note)</u></b>
<b>11-1457(j)(3)</b>	<b><u>Poss. Weapon in Safe School/Recreation Zone (Underlying Offense: Class E Fel.) (see note)</u></b>

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

**Supplemental Notations for Class D Nonviolent Felonies:**

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

<b>11-841(c)(3)(a)</b>	<b><u>Theft (\$50,000-\$99,999)</u></b> Full restitution required for victim’s monetary losses. Consider community service &/or curfew for a juvenile defendant.
<b>11-850(b)(3)</b>	<b><u>Unlawful Telecommunication Device (&gt;2 prior convictions/ 50+ devices)</u></b> <ul style="list-style-type: none"> <li>• (b)(4) A prior conviction shall consist of convictions upon separate indictments or criminal complaints</li> <li>• (b)(7) All fines shall be imposed for each unlawful telecommunication or access device</li> <li>• (b)(8) Restitution shall be ordered in the manner prescribed by §4106</li> <li>• (b)(9) The court may order forfeiture of unlawful device(s)</li> </ul>
<b>11-854</b>	<b><u>Identity Theft</u></b> Restitution shall be ordered for monetary loss including documented loss of wages and reasonable attorney’s fees
<b>11-913A(c)(2)</b>	<b><u>Health Care Fraud</u></b> 913A(c)(4) Fine may be up to 5x pecuniary benefit sought or obtained.
<b>11-932</b> <b>11-933</b> <b>11-934</b> <b>11-935</b> <b>11-936</b> <b>11-937</b> <b>11-938</b> <b>11-939</b>	<b><u>Unauthorized Computer Access</u></b> <b><u>Theft Computer Services</u></b> <b><u>Interruption Computer Services</u></b> <b><u>Misuse Computer System Information</u></b> <b><u>Destruction Computer Equipment</u></b> <b><u>Unauthorized Electronic Mail</u></b> <b><u>Fail to Cease Electronic Communication</u></b> <b><u>Computer Offense Penalties</u></b> <ul style="list-style-type: none"> <li>• (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.</li> <li>• (g) Amounts may be aggregated to determine degree of crime.</li> <li>• (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.</li> </ul>

<b>11-1448(a)(5)</b>	<p><b><u>Poss/Purchase Firearm/Ammunition by Prohibited Person</u></b></p> <ul style="list-style-type: none"> <li>• (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.</li> <li>• (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.</li> </ul>
<b>11-1457</b>	<p><b><u>Poss. Weapon in Safe School/Recreation Zone</u></b>  (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>

## **Class E Felony (Violent)**

### **I.) (FEV)**

<b>Sentence Range (Violent Category): FEV</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### **Crimes in Category:**

<b>11-513</b>	<b><u>Conspiracy 1st Degree</u></b> Conspires to Commit Class A Felony
<b>11-602(b)</b>	<b><u>Aggravated Menacing (Display Deadly Weapon)</u></b>
<b>11-604</b>	<b><u>Reckless Endangering 1st Degree</u></b> Conduct likely to cause death
<b>11-607(1)</b>	<b><u>Strangulation</u></b>
<b>11-774</b>	<b><u>Sexual Extortion</u></b>
<b>11-777A(e)(2)</b>	<b><u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u></b>
<b>11-831</b>	<b><u>Robbery 2nd Degree</u></b> (a)Theft w/force to (1) overcome resistance/(2)compel owner's cooperation
<b>11-835</b>	<b><u>Carjacking 2nd Degree</u></b> Intentional Theft Occupied Motor Vehicle by Coercion/Duress
<b>11-846</b>	<b><u>Extortion</u></b>
<b>11-1105</b>	<b><u>Crime Against a Vulnerable Adult (see note)</u></b>
<b>11-1304(b)(3)</b>	<b><u>Hate Crime (Underlying Offense: Class F Felony)</u></b>
<b>11-1339</b>	<b><u>Adulteration (Injury/Illness)</u></b>
<b>11-1444</b>	<b><u>Possess Destructive Weapon (see note)</u></b>
<b>11-1445(5)</b>	<b><u>Unlawful Dealing with Dangerous Weapon</u></b> Enabling Felony/Class A Misdemeanor/Drug Crime

<b>16-4755</b>	<b><u>Aggravated possession</u></b> Possession of a controlled substance in a Tier 2 quantity as defined in 4751C(4)a.-i.
<b>16-4774(c)</b>	<b><u>Delivery Drug Paraphernalia to Minor</u></b>
<b>31-3913(b)</b>	<b><u>Exploitation of Infirm Adult (&gt;\$5,000/&lt;\$10,000)</u></b>

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

**Supplemental Notations For Class E Violent Felonies:**

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

<b>11-777A(e)(2)</b>	<b><u>Sex Offender Unlawful Sexual Conduct Against a Child</u></b> <ul style="list-style-type: none"> <li>(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.</li> </ul>
<b>11-1105</b>	<b><u>Crime Against a Vulnerable Adult</u></b> For this offense to be a class E felony the underlying offense must be a class F felony. See page 114 for listing of qualifying underlying offenses for this statute. "Vulnerable Adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation, the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.
<b>11-1444</b>	<b><u>Possess Destructive Weapon</u></b> <ul style="list-style-type: none"> <li>11-1457(b)(1&amp;2)&amp;(j)(4): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class D Violent Felony.</li> <li>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.</li> </ul>



## **Class E Felony (Nonviolent)**

### **II.) (FEN)**

<b>Sentence Range (Nonviolent Category) FEN</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### **Crimes in Category:**

<b>11-503</b>	<b><u>Criminal Solicitation 1st Degree</u></b> Solicit to commit Class A Felony
<b>11-780</b>	<b><u>Female Genital Mutilation</u></b>
<b>11-787(b)(1)(D),c</b>	<b><u>Trafficking of persons and involuntary servitude (see note)</u></b>
<b>11-841B(c)</b>	<b><u>Theft: Organized Retail Crime; class A misd; class E felony (see note)</u></b>
<b>11-876</b>	<b><u>Tamper w/ Public Record 1st Degree</u></b> With Intent to Defraud
<b>11-907B</b>	<b><u>Criminal Impersonation Police Officer</u></b>
<b>11-926(d)(3)</b>	<b><u>Trademark Counterfeiting (2+Conv/Mfr/&gt;1,000/&gt;\$10,000+) (7/7/05)</u></b>
<b>11-932</b>	<b><u>Unauthorized Computer Access (\$5,000–\$9,999) (see note)</u></b>
<b>11-933</b>	<b><u>Theft Computer Services (\$5,000–\$9,999) (see note)</u></b>
<b>11-934</b>	<b><u>Interruption Computer Services (\$5,000–\$9,999) (see note)</u></b>
<b>11-935</b>	<b><u>Misuse Computer System Information (\$5,000–\$9,999) (see note)</u></b>
<b>11-936</b>	<b><u>Destruction Computer Equipment (\$5,000–\$9,999) (see note)</u></b>
<b>11-937</b>	<b><u>Unauthorized Electronic Mail (\$5,000–\$9,999) (see note)</u></b>
<b>11-938</b>	<b><u>Fail to Cease Electronic Communication (\$5,000–\$9,999) (see note)</u></b>
<b>11-939</b>	<b><u>Computer Offense Penalties (\$5,000–\$9,999) (see note)</u></b>
<b>11-1100</b>	<b><u>Dealing in Children</u></b>
<b>11-1101</b>	<b><u>Abandonment of Child (&lt;than 14 yrs of age)</u></b>
<b>11-1102(b)(1)</b>	<b><u>Endanger Welfare of Child: Death</u></b>

<b>11-1201</b>	<b><u>Bribery of a Public Servant</u></b>
<b>11-1203</b>	<b><u>Receiving a Bribe by a Public Servant</u></b>
<b>11-1239</b>	<b><u>Wearing Disguise during Felony</u></b>
<b>11-1248</b>	<b><u>Obstruct Rabies Control during Emergency</u></b>
<b>11-1261</b>	<b><u>Bribery of a Witness</u></b>
<b>11-1262</b>	<b><u>Receiving a Bribe by a Witness</u></b>
<b>11-1263</b>	<b><u>Tamper with a Witness</u></b>

<b>11-1263A(a)(2)</b>	<b><u>Interfere with Child Witness</u></b> Fail to Produce
<b>11-1263A(a)(3)(b)</b>	<b><u>Interfere with Child Witness</u></b> Bribes Another: Fail to Produce
<b>11-1263A(a)(4)(b)</b>	<b><u>Interfere with Child Witness</u></b> Threaten Another: Fail to Produce
<b>11-1264</b>	<b><u>Bribery of a Juror</u></b>
<b>11-1265</b>	<b><u>Receiving a Bribe by a Juror</u></b>
<b>11-1326(a)</b>	<b><u>Animals; fighting and baiting (see note)</u></b>
<b>11-1327(c)(1)</b>	<b><u>Dangerous Animal: Death of Person</u></b>
<b>11-1352</b>	<b><u>Promoting Prostitution 2nd Degree</u></b> (1)Manages or Owns Business w/2+ prostitutes/ (2)Profits by prostitute < 18 y.o.a
<b>11-1361</b>	<b><u>Providing Obscenity to Minor (see note)</u></b>
<b>11-1457(j)(3)</b>	<b><u>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class F Felony) (see note)</u></b>
<b>11-1471(c)(f)(g)(h)(i)(j)</b>	<b><u>Video Lottery Cheat Device &gt;50,000&lt;100,000</u></b>
<b>11-3532</b>	<b><u>Intimidation of a Witness &amp;/or Victim</u></b>
<b>16-4758</b>	<b><u>Unlawful dealing in a counterfeit or purported controlled substance</u></b>
<b>31-610(a)(1)</b>	<b><u>Transfer/Alter/Possess Food Stamps (\$500&gt;) (see note)</u></b>
<b>31-1003</b>	<b><u>False Representation for Benefits (\$500–\$9,999) (see note)</u></b>
<b>31-1004(2)</b>	<b><u>Falsify Reimbursement Report (\$500–\$9,999) (see note)</u></b>
<b>31-1004(3)</b>	<b><u>Misrepresentation to Qualify as Provider (see note)</u></b>
<b>31-1004(4)</b>	<b><u>Misrepresentation as to Operation of Provider/Facility (see note)</u></b>
<b>31-1005</b>	<b><u>Kickback Schemes (see note)</u></b>
<b>31-1006</b>	<b><u>Unlawful Conversion of Benefits (\$500–\$9,999) (see note)</u></b>

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

**Supplemental Notations for Class E Nonviolent Felonies:**

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

<b>11-787 (b) (1) (D), c</b>	<p><b><u>Trafficking of persons and involuntary servitude</u></b></p> <ul style="list-style-type: none"> <li>• (b)(1)(D) by knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document of another person which is a class E felony;</li> <li>• (c) Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution, including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or of Title 19 of the Delaware Code, whichever is greater.</li> </ul>
<b>11-841B(c)</b>	<p><b><u>Theft: Organized Retail Crime; class A misdemeanor; class E felony</u></b></p> <p>In addition to the provisions of Section 841(c) and (d) of this chapter, if a defendant has two or more times been convicted of Theft: Organized Retail Crime, the offense of Theft: Organized Retail Crime is a class E felony.</p>
<b>11-932</b> <b>11-933</b> <b>11-934</b> <b>11-935</b> <b>11-936</b> <b>11-937</b> <b>11-938</b> <b>11-939</b>	<p><b><u>Unauthorized Computer Access</u></b>  <b><u>Theft Computer Services</u></b>  <b><u>Interruption Computer Services</u></b>  <b><u>Misuse Computer System Information</u></b>  <b><u>Destruction Computer Equipment</u></b>  <b><u>Unauthorized Electronic Mail</u></b>  <b><u>Fail to Cease Electronic Communication</u></b>  <b><u>Computer Offense Penalties</u></b></p> <ul style="list-style-type: none"> <li>• (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.</li> <li>• (g) Amounts may be aggregated to determine degree of crime.</li> <li>• (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.</li> </ul>
<b>11-1326(a)</b>	<p><b><u>Animals; fighting and baiting</u></b></p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• A person convicted of a violation of this section is prohibited from owning or possessing any animal or fowl for 15 years after conviction.</li> </ul>
<b>11-1361</b>	<p><b><u>Providing Obscenity to Minor</u></b></p> <ul style="list-style-type: none"> <li>• If the obscenity involved live conduct, the business or establishment shall be closed for 6 m.</li> <li>• (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.</li> </ul>
<b>11-1457</b>	<p><b><u>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class F Felony)</u></b></p> <p>(j)(4) An elementary or secondary school student shall be expelled for 180d.</p>

<b>31-610(a)(1)</b>	<b><u>Transfer/Alter/Possess Food Stamps (\$500&gt;)</u></b> May be suspended from the Food Stamp Program for 18 months more than suspension mandated by the Federal Food Stamp Act
<b>31-1003</b> <b>31-1004(2)</b> <b>31-1004(3)</b> <b>31-1004(4)</b> <b>31-1005</b> <b>31-1006</b>	<b><u>Benefit by False Representation</u></b> <b><u>Falsify Reimbursement Report</u></b> <b><u>Misrepresentation to Qualify as Provider</u></b> <b><u>Misrepresentation as to Operation of Provider/Facility</u></b> <b><u>Kickback Schemes</u></b> <b><u>Unlawful Conversion of Benefits</u></b> <ul style="list-style-type: none"> <li>• 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</li> <li>• 31-1007(e): Provider shall not be eligible for participation in Delaware Public Assistance Program, subject to certain exceptions.</li> </ul>

## **Class F Felony (Violent)**

### **I.) (FFV)**

<b>Sentence Range (Violent Category): FFV</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### **Crimes in Category:**

<b>11-617(b)(2)</b>	<b><u>Criminal Youth Gang: Recruitment/Retention:Violence or Threat (7/10/06)</u></b>
<b>11-629</b>	<b><u>Vehicular Assault 1st Degree</u></b> DUI & criminally negligent driving: Serious Injury
<b>11-645</b>	<b><u>Promoting Suicide</u></b>
<b>11-768</b>	<b><u>Unlawful Sexual Contact 2nd Degree</u></b> Vt<16 y.o.a.
<b>11-777A(e)(2)</b>	<b><u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u></b>
<b>11-778A(2)</b>	<b><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree: (see note)</u></b>
<b>11-1105</b>	<b><u>Crime Against a Vulnerable Adult (see note)</u></b>
<b>11-1256</b>	<b><u>Promoting Prison Contraband</u></b> Deadly Weapon, mobile phone, cellular phone or other prohibited electronic device
<b>11-1302</b>	<b><u>Riot</u></b>
<b>11-1304(b)(3)</b>	<b><u>Hate Crime (Underlying Offense: Class G Felony)</u></b>
<b>11-1312</b>	<b><u>Stalking (see note)</u></b> 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.

<b>16-4756</b>	<b><u>Aggravated Possession</u></b> A person who possesses a controlled substance in a Tier 1 quantity
<b>16-4761(d)</b>	<b><u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u></b> Any person who delivers or intends to deliver prescription drug and there is an aggravator

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

**Supplemental Notations for Class F Violent Felonies:**

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

<b>11-777A(e)(2)</b>	<b><u>Sex Offender Unlawful Sexual Conduct Against a Child</u></b> <ul style="list-style-type: none"> <li>(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.</li> </ul>
<b>11-778A(d)(2)</b>	<b><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree;</u></b> 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.
<b>11-1105</b>	<b><u>Crime Against a Vulnerable Adult</u></b> 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.
<b>11-1312</b>	<b><u>Stalking</u></b> <ul style="list-style-type: none"> <li>(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</li> <li>(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</li> </ul>

## **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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### **Crimes in Category:**

<b>11-502</b>	<b><u>Criminal Solicitation 2nd Degree (see note)</u></b> Solicit to commit Felony
<b>11-621(a)(2)</b>	<b><u>Terroristic Threat (see note)</u></b> False Stmt likely to: (a)evacuation/ (b)serious inconvenience/ (c)terror + School or Care Facility
<b>11-621(a)(3)</b>	<b><u>Terroristic Threat (see note)</u></b> Intent to Cause Belief of Substance Exposure: Death/Serious Injury
<b>11-622</b>	<b><u>Hoax Device</u></b>
<b>11-651</b>	<b><u>Abortion</u></b>
<b>11-787(b)(1)(E) c</b>	<b><u>Trafficking of persons and involuntary servitude (see note)</u></b>
<b>11-824</b>	<b><u>Burglary 3rd Degree (see note)</u></b> Building
<b>11-828</b>	<b><u>Possess Burglary Tools</u></b>
<b>11-840A</b>	<b><u>Use of Illegitimate Sales Receipt/UPC Label (15+ Receipts/ UPC Labels/ \$1,500+)</u></b>
<b>11-841(c)(2)</b>	<b><u>Theft (see note)</u></b> \$1500+/-vt= 62+ y.o.a./Infirm/Disabled
<b>11-841C(b)</b>	<b><u>Theft: Theft of a blank prescription form or pad</u></b>

11-850(b)(2)	<b>Unlawful Telecommunication Device (Previous Conviction/ 10-49 Devices)</b>
11-860	<b>Possess Shoplifters Tools</b>
11-861(b)(1)	<b>Forgery 1st Degree (see note)</b> Money/Stamps/Stocks/Bonds etc.
11-903	<b>Unlawful Use Credit Card</b> Vt= 62+ y.o.a & >\$1,500
11-922(c)	<b>Improper Labeling (PriorConv 100&gt;) (see note) (7/10/06)</b>
11-1101	<b>Abandonment of Child ( 14 yrs of age or older)</b>
11-1111	<b>Possession of Child Pornography</b>
11-1112(a)(2)	<b>Sex Offender (Loiter w/in 500 ft School)</b>
11-1222	<b>Perjury 2nd Degree</b> Written, Material False Stmt Intended to Mislead Public Servant
11-1263A(a)(1)	<b>Interfere with Child Witness</b> Complainant removed from jurisdiction
11-1263A(a)(3)(a)	<b>Interfere with Child Witness</b> Bribe to cause Complainant's removal from jurisdiction
11-1263A(a)(4)(a)	<b>Interfere with Child Witness</b> Threat to cause Complainant's removal from jurisdiction
11-1271A(b)(c)	<b>Crim. Contempt Dom Violence Pro. Order (PFA) (see note)</b>
11-1303(3)(b)	<b>Disorderly Conduct: Funeral/Memorial Service (Prior Conv) (6/1/06)</b>
11-1325	<b>Cruelty to Animals (see note)</b> Cruelly or Unnecessarily kills or seriously injures under (b)(4) or (5)
11-1326(b)(c)	<b>Fighting/Baiting Animals (see note)</b>
11-1327(c)(2)	<b>Dangerous Animal: Serious Injury to Person</b>
11-1351	<b>Promoting Prostitution 3rd Degree</b> Profit from prostitution
11-1448	<b>Poss/Purchase Deadly Weapon (Other than Destructive Weapon/ Firearm/Ammunition) by Prohibited Person</b>
11-1448(f)(1)(a)(5)	<b>Poss/Purchase Deadly Weapon (Other than Destructive Weapon/Firearm/Ammunition) by Prohibited Person (see note)</b>
11-1450	<b>Receiving Stolen Firearm</b>
11-1451	<b>Theft of firearm</b>
11-1454	<b>Giving Firearm to Person Prohibited</b>
11-1455	<b>Firearm Transaction on Behalf of Another (1st Offense)</b>
11-1457(j)(3)	<b>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class G Felony) (see note)</b>
16-107(e)3	<b>Neglect of Duty (see note)</b>
16-4757(b)	<b>Miscellaneous Drug Crimes (see note)</b>
16-4759(b)(1,2,4)	<b>Registrant Crimes</b> Violates (a)(1), )a)(2), or (a)(4)
16-4760	<b>Maintaining a Drug Property</b>
18-4354	<b>Unlawfully Acting as a Bail Bond Agent</b>
21-4134(d)	<b>Operation of vehicles on approach of authorized emergency vehicles</b>

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



**Supplemental Notations for Class F Nonviolent Felony:**

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

<b>11-502</b>	<b><u>Criminal Solicitation 2nd Degree</u></b> 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.
<b>11-621(a)(2)</b>	<b><u>Terroristic Threat</u></b> <ul style="list-style-type: none"> <li>• (c)(1) Mandatory fine: \$1,000–\$2,500 which cannot be suspended and a minimum of 100 hrs community service</li> <li>• If the defendant is 17 y.o.a. or &gt; &amp; it is a first offense = Class A Misd</li> </ul>
<b>11-621(a)(3)</b>	<b><u>Terroristic Threat</u></b> (d) Mandatory fine: \$2,000 which shall not be suspended
<b>11-787(b)(1)(E), c</b>	<b><u>Trafficking of persons and involuntary servitude</u></b> <ul style="list-style-type: none"> <li>• (b)(1)(E) by using blackmail, or using or threatening to cause financial harm to, or by using financial control over any person which is a class F felony.</li> <li>• (c) Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution, including the greater of (1) the gross income or value to the defendant of the victim’s labor or services or (2) the value of the victim’s labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or of Title 19 of the Delaware Code, whichever is greater.</li> </ul>
<b>11-824</b>	<b><u>Burglary 3rd Degree</u></b> 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.
<b>11-841(c)(2)</b>	<b><u>Theft</u></b> Full restitution required for victim’s monetary losses. Consider community service &/or curfew for a juvenile defendant.
<b>11-850(b)(2)</b>	<b><u>Unlawful Telecommunication Device</u></b> <ul style="list-style-type: none"> <li>• (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</li> <li>• (b)(8) Restitution shall be ordered in the manner prescribed by §4106</li> <li>• (b)(9) The court may order forfeiture of unlawful device(s)</li> </ul>
<b>11-861</b>	<b><u>Forgery 1st Degree</u></b> (c) Restitution for resultant losses to all parties.
<b>11-922(c)</b>	<b><u>Improper Labeling (PriorConv 100 &gt;)</u></b> 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.

<b>11-1271A(b)(c)</b>	<p><b><u>Criminal Contempt of a Domestic Violence Protection Order (PFA)</u></b></p> <ul style="list-style-type: none"> <li>• (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.</li> <li>• (c) A person is guilty of felony criminal contempt of a domestic violence protection order if:             <ol style="list-style-type: none"> <li>1. Such contempt resulted in physical injury; or</li> <li>2. Such contempt involved use/threat use/weapon</li> </ol> </li> </ul>
<b>11-1325</b>	<p><b><u>Cruelty to Animals</u></b></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>
<b>11-1326(b)(c)</b>	<p><b><u>Fighting/Baiting Animals</u></b></p> <ul style="list-style-type: none"> <li>• (c) All animals, equipment, and money shall be forfeited to the State. Animals shall be humanely disposed of.</li> <li>• (e) The Defendant shall not own or possess any animal for 15 yrs following conviction.</li> </ul>
<b>11-1448(f)(1)(a)(5)</b>	<p><b><u>Poss/Purchase Deadly Weapon by Prohibited Person</u></b></p> <ul style="list-style-type: none"> <li>• Poss Destructive Weapon (No Prior Conviction) should be filed under §1338</li> <li>• (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.</li> <li>• (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 or family of a deceased victim of violent crime.</li> </ul>
<b>11-1457</b>	<p><b><u>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class G Felony)</u></b></p> <ul style="list-style-type: none"> <li>• 11-1457(b)(4)&amp;(j)(3): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class E Felony.</li> <li>• 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.</li> <li>• (j)(4) An elementary or secondary school student shall be expelled for 180d.</li> </ul>
<b>16-107(e)(3)</b>	<p><b><u>Neglect of Duty:</u></b></p> <p>Term of imprisonment not to exceed 3 years.</p>

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<b>16-4757(b)</b>	<b><u>Miscellaneous Drug Crimes 16-4757(a)</u></b> (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)**

<b>Sentence Range (Violent Category) FGV</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### **Crimes in Category:**

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

<b>31-3913(b)</b>	<b>Exploitation of Infirm Adult (\$500- \$4,999)</b>
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<b>Sentences for Prior Criminal History Categories</b>	
While on release or pending trial or sentence	Up to 12 months @ Level V
Two or more prior felonies	Up to 12 months @ Level V
One prior violent felony	Up to 12 months @ Level V
Two or more prior violent felonies	Up to 24 months @ Level V

**Supplemental Notations for Class G Violent Felony:**

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

<b>11-614</b>	<b>Abuse of Sports Official (Prior Conv)</b> Mandatory Penalty: fine=>\$1,000/<\$2,350 & prohibition from participation/attending an organized sporting event for >3 m./<12 m.
<b>11-777A(e)(2)</b>	<b>Sex Offender Unlawful Sexual Conduct Against a Child</b> <ul style="list-style-type: none"> <li>(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.</li> </ul>
<b>11-778A(d)(3)</b>	<b>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree</b> 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.
<b>11-1105</b>	<b>Crime Against a Vulnerable Adult</b> 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)**

<b>Sentence Range (Nonviolent Category) FGN</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### **Crimes in Category:**

<b>11-512</b>	<b><u>Conspiracy 2nd Degree</u></b> Conspires to commit Felony
<b>11-621(a)(1)</b>	<b><u>Terroristic Threat (Vt= 62+ y.o.a.) (see note)</u></b>
<b>11-621(a)(2)</b>	<b><u>Terroristic Threat (see note)</u></b> False Stmt likely to cause: (a) evacuation/ (b) serious inconvenience/ (c) terror
<b>11-626</b>	<b><u>Unlawful Administration Controlled Substance/Narcotic</u></b>
<b>11-785</b>	<b><u>Interfere w/Custody</u></b> Removal from State
<b>11-801</b>	<b><u>Arson 3rd Degree</u></b> Recklessly damage unoccupied bldg by fire/explosion
<b>11-804</b>	<b><u>Reckless Burning (\$1500+ Damage)</u></b>
<b>11-811(b)(1)</b>	<b><u>Criminal Mischief (\$5000+ Loss/Substantial Interruption) (see note)</u></b>
<b>11-812(a)(2)</b>	<b><u>Graffiti and Possession of Graffiti Implements (\$1500+ damage) (see note)</u></b>
<b>11-840</b>	<b><u>Shoplift (\$1500+)</u></b>
<b>11-841</b>	<b><u>Theft (see note) \$1500+</u></b>
<b>11-841A</b>	<b><u>Theft: Motor Vehicle (6/20/06)</u></b>
<b>11-841C(a)</b>	<b><u>Possession of a blank prescription form or pad</u></b>
<b>11-848</b>	<b><u>Misapplication of Property (\$1500+)</u></b>

<b>11-849</b>	<b><u>Theft of Rental Property (\$1500+)</u></b>
<b>11-851</b>	<b><u>Receive Stolen Property (\$1500+ / 2 prior convictions)</u></b>
<b>11-852A</b>	<b><u>Selling Stolen Property; class G felony (see note)</u></b>
<b>11-859</b>	<b><u>Larceny of Livestock (see note)</u></b>
<b>11-861(b)(2)</b>	<b><u>Forgery 2nd Degree (see note)</u></b> Deed/Will/Commercial Instrument/Public Record/Tokens/Prescriptions
<b>11-862</b>	<b><u>Possess Forgery Devices</u></b>
<b>11-878</b>	<b><u>Issue False Certificate</u></b>
<b>11-900</b>	<b><u>Issue Bad Check (\$1500+)</u></b>
<b>11-903</b>	<b><u>Unlawful Use Credit Card</u></b> Vt= 62+ y.o.a or >\$1,000
<b>11-907A</b>	<b><u>Criminal Impersonation (Accident Related) (see note)</u></b>
<b>11-908</b>	<b><u>Unlawful Concealing Will</u></b>
<b>11-911</b>	<b><u>Fraudulent Conveyance of Public Lands</u></b>
<b>11-912</b>	<b><u>Fraudulent Receipt of Public Lands</u></b>
<b>11-913</b>	<b><u>Insurance Fraud</u></b>
<b>11-913A</b>	<b><u>Health Care Fraud (see note)</u></b>
<b>11-916</b>	<b><u>Home Improvement Fraud</u></b> \$1500+/vt=62+y.o.a./Prior Conviction
<b>11-917(d)(1)</b>	<b><u>New Home Construction Fraud (\$1,500–\$49,999)</u></b>
<b>11-920</b>	<b><u>Transfer of Recorded Sounds</u></b>
<b>11-922(b)</b>	<b><u>Improper Labeling (1st Offense 100 &gt;) (see note) (7/10/06)</u></b>
<b>11-926(d)(2)</b>	<b><u>Trademark Counterfeiting(PriorConv/100-999/\$2,000–\$9,999) (7/7/05)</u></b>
<b>11-932</b>	<b><u>Unauthorized Computer Access (\$500–\$999) (see note)</u></b>
<b>11-933</b>	<b><u>Theft Computer Services (\$500–\$999) (see note)</u></b>
<b>11-934</b>	<b><u>Interruption Computer Services (\$500–\$999) (see note)</u></b>
<b>11-935</b>	<b><u>Misuse Computer System Information (\$500–\$999) (see note)</u></b>
<b>11-936</b>	<b><u>Destruction Computer Equipment (\$500–\$999) (see note)</u></b>
<b>11-937</b>	<b><u>Unauthorized Electronic Mail (\$500–\$999) (see note)</u></b>
<b>11-938</b>	<b><u>Fail Cease Electronic Communication (\$500–\$999) (see note)</u></b>
<b>11-939</b>	<b><u>Computer Offense Penalties (\$500–\$999) (see note)</u></b>
<b>11-951(f)</b>	<b><u>Money Laundering</u></b>
<b>11-1001</b>	<b><u>Bigamy</u></b>
<b>11-1102(b)(2)</b>	<b><u>Endanger Welfare of Child: Serious Injury</u></b>
<b>11-1102(b)(3)</b>	<b><u>Endanger Welfare of Child: Sex Offense</u></b>
<b>11-1112(a)(1)</b>	<b><u>Sex Offender (Residing w/in 500 ft of School)</u></b>
<b>11-1103A</b>	<b><u>Child Abuse in the Second Degree</u></b>
<b>11-1113</b>	<b><u>Aggravated Criminal Non-Support (see note)</u></b> Prior Conviction/ Delinquent as to Full Amt/ \$10,000+
<b>11-1114A(c)</b>	<b><u>Tongue Splitting (Prior conviction)</u></b>
<b>11-1206</b>	<b><u>Receiving Unlawful Gratuity (value &gt; \$1,000)</u></b>
<b>11-1240</b>	<b><u>Terroristic Threat to Public Officials/Servants</u></b>
<b>11-1244(b)</b>	<b><u>Hinder Prosecution of a Felony</u></b>
<b>11-1245</b>	<b><u>False Report Incident/Child Abduction (Prior Conv) (see note) (6/30/05)</u></b>
<b>11-1249</b>	<b><u>Abetting Driver's License Violation (Prior Conviction/Death)</u></b>
<b>11-1252</b>	<b><u>Escape 2nd Degree</u></b> (Spec. Esc. Cat. May Apply) Esc. From detention facil. Or cust. Of DHSS or DOC
<b>11-1257(a)</b>	<b><u>Resisting Arrest With Violence (6/27/06)</u></b>
<b>11-1257A</b>	<b><u>Use Animal to Avoid Capture</u></b> Prevent Prosecution/Injures L.E.O
<b>11-1259</b>	<b><u>Sexual Relations in Detention Facility</u></b>
<b>11-1260</b>	<b><u>Misuse of Prisoner Mail (Prior Conviction)</u></b>

<b>11-1263A(a)(1)</b>	<b><u>Interfere with Child Witness</u></b> Removal from Jurisdiction
<b>11-1263A(a)(3)(a)</b>	<b><u>Interfere with Child Witness</u></b> Bribes to Cause Removal from Jurisdiction
<b>11-1263A(a)(4)(a)</b>	<b><u>Interfere with Child Witness</u></b> Threatens to Cause Removal from Jurisdiction
<b>11-1269</b>	<b><u>Tampering with Physical Evidence</u></b>
<b>11-1312</b>	<b><u>Aggravated Harassment</u></b> Only applies to offenses prior to 11/1/08; statute repealed, now only Harassment
<b>11-1312</b>	<b><u>Stalking (see note)</u></b>
<b>11-1326(b)</b>	<b><u>Fighting/Baiting Animals (see note)</u></b> Knowledge and Presence during Preparation
<b>11-1335(a)(6)-(7)</b>	<b><u>Violation of Privacy</u></b> Prurient Recording w/out Consent
<b>11-1339</b>	<b><u>Adulteration</u></b>
<b>11-1361</b>	<b><u>Obscenity (see note)</u></b>
<b>11-1442</b>	<b><u>Carry Concealed Deadly Weapon</u></b>
<b>11-1446A</b>	<b><u>Undetectable Knives (Mfr/Import/Sell/Possess) (6/30/06)</u></b>
<b>11-1448A(f)</b>	<b><u>Firearm Sale Violation: False Statement/Information</u></b>
<b>11-1448A(e)</b>	<b><u>Firearm Sale Violation (Second Offense)</u></b>
<b>11-1461</b>	<b><u>Report of Loss, Theft of Firearm (3<sup>rd</sup> or subsequent offense)</u></b>
<b>11-1471(a)(b)(d)(e)(l)</b>	<b><u>Video Lottery Cheat Device</u></b> (Prior Conviction w/in 3 yrs)
<b>11-1471(c)(f)(g)(h)(i)(j)</b>	<b><u>Video Lottery Cheat Device &gt;\$1500&lt;\$50000</u></b>
<b>11-2109(c)(1)</b>	<b><u>Breach of Conditions of Bail (see note)</u></b>
<b>11-2113(c)(1)</b>	<b><u>Breach of Release Conditions (Felony/Prior Conviction Crime)(see note)</u></b>
<b>11-4120(k)</b>	<b><u>Sex Offender (Fail to Register)</u></b>
<b>11-4121(t)</b>	<b><u>Sex Offender (Fail to Comply with Registration Mandates)</u></b>
<b>11-8562(b)</b>	<b><u>Provide False Child Abuser Information</u></b>
<b>16-3111(a)</b>	<b><u>Crimes Regarding Vital Records (see note)</u></b>
<b>16-4762(d)</b>	<b><u>Hypodermic syringe or needle; delivering or possessing; disposal</u></b>

#### **Sentences For Prior Criminal History Categories**

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

#### **Supplemental Notations for Class G Nonviolent Felony:**

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

<b>11-621(a)(1)</b> <b>11-621(a)(2)</b>	<b><u>Terroristic Threat (Vt= 62+ y.o.a.)</u></b> <b><u>Terroristic Threat</u></b> <ul style="list-style-type: none"> <li>(c)(1) Mandatory fine: \$1,000–\$2,500 which cannot be suspended and a minimum of 100 hrs community service</li> <li>If the defendant is 17 y.o.a. or younger, the offense is a Class A Misdemeanor</li> </ul>
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11-811(b)(4)	<p><b><u>Criminal Mischief</u></b></p> <ul style="list-style-type: none"> <li>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.</li> </ul>
11-812(a)(2)	<p><b><u>Graffiti and Possession of Graffiti Implements</u></b></p> <p>The penalty for graffiti shall include a minimum fine of not less than \$1,000 which shall not be subject to suspension, restitution for damages to the property and 250 hours of community service, at least half of which shall be served removing graffiti on public property. The minimum fine and community service hours shall be doubled for a second or subsequent conviction of an act of graffiti.</p> <p>The minimum fine shall also be doubled, and may not be suspended, for a first, second, or subsequent conviction of an act of graffiti which is performed on or along a Delaware byway, as defined in 17 Del. C. Section 101(a)(9).</p>
11-841	<p><b><u>Theft</u></b></p> <p>(d): Full restitution required for victim’s monetary losses. Consider community service &amp;/or curfew for a juvenile defendant.</p>
11-852A	<p><b><u>Selling Stolen Property</u></b></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>
11-859	<p><b><u>Larceny of Livestock</u></b></p> <p>Minimum sentence of imprisonment, if any, not subject to suspension,, probation or parole during 1st 6 m.</p>
11-861(b)(2)	<p><b><u>Forgery 2nd Degree</u></b></p> <p>(c) Restitution for resultant losses to all parties.</p>
11-907A	<p><b><u>Criminal Impersonation (Accident Related)</u></b></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>
11-913A	<p><b><u>Health Care Fraud</u></b></p> <p>913(c)(4): Fine may be up to 5x pecuniary benefit sought or obtained.</p>
11-922(b)	<p><b><u>Improper Labeling (1st Offense 100 &gt;)</u></b></p> <p>11-924A: Court must order the forfeiture &amp; destruction or other disposition of (1) all articles on which the conviction is based and (2) all implements, devices, materials &amp; equipment used or intended to be used in the mfr of the recordings on which the conviction is based.</p>
<p>11-932 11-933 11-934 11-935 11-936 11-937 11-938 11-939</p>	<p><b><u>Unauthorized Computer Access</u></b></p> <p><b><u>Theft Computer Services</u></b></p> <p><b><u>Interruption Computer Services</u></b></p> <p><b><u>Misuse Computer System Information</u></b></p> <p><b><u>Destruction Computer Equipment</u></b></p> <p><b><u>Unauthorized Electronic Mail</u></b></p> <p><b><u>Fail to Cease Electronic Communication</u></b></p> <p><b><u>Computer Offense Penalties</u></b></p> <ul style="list-style-type: none"> <li>(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.</li> <li>(g) Amounts may be aggregated to determine degree of crime.</li> <li>(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.</li> </ul>
11-1113	<p><b><u>Aggravated Criminal Non-Support</u></b></p> <ul style="list-style-type: none"> <li>Court may (“shall” in the event support order entered) order any fine to be paid for the support of the entitled person</li> <li>(j) Restitution shall be ordered in the amount of the total accrued arrearages</li> </ul>

<b>11-1245</b>	<b><u>False Report Incident/Child Abduction (Prior Conviction)</u></b> 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
<b>11-1312</b>	<b><u>Stalking</u></b> <ul style="list-style-type: none"> <li>• (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.</li> <li>• (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.</li> </ul>
<b>11-1326</b>	<b><u>Fighting/Baiting Animals. (c)</u></b> All animals, equipment, devices, and money shall be forfeited to the State. Forfeited animals shall be disposed of humanely.
<b>11-1361</b>	<b><u>Obscenity</u></b> <ul style="list-style-type: none"> <li>• If the obscenity involved live conduct, the business or establishment shall be closed for 6 m.</li> <li>• (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.</li> </ul>
<b>11-1442</b>	<b><u>Carrying Concealed Deadly Weapon (1st conviction)</u></b> <ul style="list-style-type: none"> <li>• 11-1457(b)(1)&amp;(j)(3): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class F NonViolent Felony.</li> <li>• 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.</li> </ul>
<b>11-1472</b>	<b><u>Video Lottery Cheat Device</u></b> Any instrumental materials shall be forfeited to the Delaware State Police, including but not limited to vehicles used for storage.
<b>11-2109(c)(1)</b>	<b><u>Breach of Conditions of Bail</u></b> Maximum Penalty: Imprisonment not to exceed 5 years and/or a fine of \$5,000.00
<b>11-2113(c)(1)</b>	<b><u>Breach of Release Conditions</u></b> (Felony/Prior Conviction Crime). Maximum Penalty: Imprisonment not to exceed 5 years and/or a fine of \$5,000.00.
<b>16-3111(a)</b>	<b><u>Crimes Regarding Vital Records</u></b> Maximum Penalty: Imprisonment= 5 yrs or less; Fine= \$10,000

## **Class A Misdemeanors**

### **I.) Violent (MA1)**

<b>Sentence Range (Violent Category) MA1</b>	
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**

<b>11-603</b>	<b><u>Reckless Endangering 2nd Degree</u></b> (Special DV Category May Apply) Refer to Pg. 105
<b>11-611</b>	<b><u>Assault 3rd Degree</u></b> (Special DV Category May Apply) Refer to Pg. 105
<b>11-614</b>	<b><u>Abuse of Sports Official (1st Offense)</u></b> Refer to Pg. 105
<b>11-621(a)(1)</b>	<b><u>Terroristic Threatening</u></b> (Special DV Category May Apply) Refer to Pg. 105
<b>11-766</b>	<b><u>Incest</u></b> (Special DV Category May Apply) Refer to Pg. 105
<b>11-767</b>	<b><u>Unlawful Sexual Contact 3rd Degree</u></b> (SpecialDVCategory May Apply) Refer to Pg. 105
<b>11-777A(e)(1)</b>	<b><u>Sex Offender Unlawful Sexual Conduct Against a Child (see note)</u></b>
<b>11-1105</b>	<b><u>Crime Against a Vulnerable Adult (see note)</u></b>
<b>11-1103</b>	<b><u>Child Abuse in the Third Degree</u></b>
<b>11-1250(b)</b>	<b><u>Assault 2d Degree Against Law enforcement Animal</u></b> Reckless: Risk of injury
<b>11-1271A</b>	<b><u>Criminal Contempt: DV Protective Order</u></b> (SpecialDVCategory May Apply) (see note) Refer to Pg. 105
<b>11-1304(b)(1)</b>	<b><u>Hate Crime</u></b> (Underlying Offense: Violation or Unclassified Misdemeanor)
<b>11-1443</b>	<b><u>Carrying Concealed Dangerous Instrument</u></b>
<b>16-1136(a)</b>	<b><u>Abuse/Neglect of Patient in Residential Facility</u></b>
<b>31-3913(a)</b>	<b><u>Abuse/Neglect of Infirm Adult</u></b>

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**Supplemental Notations Violent Class A Misdemeanors:**

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

<b>11-777A(e)(1)</b>	<b><u>Sex Offender Unlawful Sexual Conduct Against a Child</u></b> <ul style="list-style-type: none"><li>• (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.</li></ul>
<b>11-1105</b>	<b><u>Crime Against a Vulnerable Adult</u></b> <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>
<b>11-1271A</b>	<b><u>Criminal Contempt of a Dom Viol Protection Order</u></b> <p>Class A Misd, Class F felony</p> <ul style="list-style-type: none"><li>• (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</li><li>• (d) Minimum sentence shall not be subject to suspension, probation, parole, furlough, or suspended custody</li></ul>

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## **Class A Misdemeanors**

### **II.) Escape (MA2)**

<b>Sentence Range (Escape Category) MA2</b>	
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**

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

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

## **Class A Misdemeanors**

### **III.) Property (MA3)**

<b>Sentence Range (Property Category) MA3</b>	
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**

<b>11-804</b>	<b><u>Reckless Burning/Exploding (&lt; \$1500)</u></b>
<b>11-805</b>	<b><u>Cross or Religious Symbol Burning</u></b>
<b>11-811(b)(2)(4)</b>	<b><u>Criminal Mischief (&gt;\$1000-&lt;\$5000) (see note)</u></b>
<b>11-812(a)(2)</b>	<b><u>Graffiti and Possession of Graffiti Implements (&lt;\$1500 damage) (see note)</u></b>
<b>11-813</b>	<b><u>Theft of Property from a Cemetery</u></b>
<b>11-823</b>	<b><u>Criminal Trespass 1st Degree</u></b> Dwelling/Animal Shelter, i.e. barn, stable
<b>11-840</b>	<b><u>Shoplifting (&lt;\$1500)</u></b>
<b>11-840A</b>	<b><u>Use of Illegitimate Sales Receipt/UPC Label (&lt;1500)</u></b>
<b>11-841</b>	<b><u>Theft (&lt;\$1500) (see note)</u></b>
<b>11-841B</b>	<b><u>Theft: Organized Retail Crime (V&lt;62, not infirm, value &lt; \$1,000)</u></b>
<b>11-848</b>	<b><u>Misapplication of Property (&lt; \$1500)</u></b>
<b>11-849</b>	<b><u>Theft of Rental Property (&lt; \$1500)</u></b>
<b>11-851</b>	<b><u>Receiving Stolen Property (&lt; \$1500)</u></b>
<b>11-852A</b>	<b><u>Selling Stolen Property (&lt;\$1000)</u></b>
<b>11-853</b>	<b><u>Unauthorized Use of a Vehicle</u></b>
<b>11-858(a)(2)</b>	<b><u>Unlawful Operation Recording Device (Motion Picture) (see note) (6/28/06)</u></b>
<b>11-861(b)(3)</b>	<b><u>Forgery 3rd Degree (see note)</u></b>
<b>11-891</b>	<b><u>Defrauding Secured Creditors</u></b>
<b>11-892</b>	<b><u>Fraud in Insolvency</u></b>
<b>11-900</b>	<b><u>Issue Bad Check (&lt; \$1500)</u></b>
<b>11-903</b>	<b><u>Unlawful Use Credit Card (&lt; \$1500)</u></b>
<b>11-906</b>	<b><u>Deceptive Business Practices</u></b>
<b>11-916</b>	<b><u>Home Improvement Fraud (&lt; \$1500)</u></b>
<b>11-917(d)</b>	<b><u>New Home Construction Fraud (&lt;\$1,500)</u></b>
<b>11-918</b>	<b><u>Ticket Scalping (Prior Conviction)</u></b>

<b>11-926(d)(1)</b>	<b>Trademark Counterfeiting</b> (No priors/<100 items/<\$2,000) (7/7/05)
<b>11-932</b>	<b>Unauthorized Computer Access (&lt;\$500) (see note)</b>
<b>11-933</b>	<b>Theft Computer Services (&lt;\$500) (see note)</b>
<b>11-934</b>	<b>Interruption Computer Services (&lt;\$500) (see note)</b>
<b>11-935</b>	<b>Misuse Computer System Information (&lt;\$500) (see note)</b>
<b>11-936</b>	<b>Destruction Computer Equipment (&lt;\$500) (see note)</b>
<b>11-937</b>	<b>Unauthorized Electronic Mail (&lt;\$500) (see note)</b>
<b>11-938</b>	<b>Fail Cease Electronic Communication (&lt;\$500) (see note)</b>
<b>11-939</b>	<b>Computer Offenses Penalties (&lt;\$500) (see note)</b>
<b>16-1136(b)</b>	<b>Exploit Patient's Resources (&lt;\$1000)</b>
<b>31-1003</b>	<b>False Statement to Obtain Benefits (&lt;\$500) (see note)</b>
<b>31-1004(1)</b>	<b>False Benefit Reimbursement Statement (&lt;\$500) (see note)</b>
<b>31-1006</b>	<b>Unlawful Conversion of Benefits (&lt;\$500) (see note)</b>
<b>31-3913(b)</b>	<b>Exploitation of Infirm Adult (&lt;\$500)</b>

### Supplemental Notations for Class A Misdemeanors: Property

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

<b>11-811(b)(2)(4)</b>	<b>Criminal Mischief</b> <ul style="list-style-type: none"> <li>(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.</li> </ul>
<b>11-812(a)(2)</b>	<b>Graffiti and Possession of Graffiti implements</b> 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).
<b>11-841</b>	<b>Theft</b> (d): Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.
<b>11-858(a)(2)</b>	<b>Unlawful Operation Recording Device (Motion Picture)</b> Notwithstanding any law to the contrary, may include a max. fine of \$50,000
<b>11-861(b)(3)</b>	<b>Forgery 3rd Degree</b> (c) Restitution for resultant losses to all parties.

<p>11-932 11-933 11-934 11-935 11-936 11-937 11-938 11-939</p>	<p><b><u>Unauthorized Computer Access</u></b>  <b><u>Theft Computer Services</u></b>  <b><u>Interruption Computer Services</u></b>  <b><u>Misuse Computer System Information</u></b>  <b><u>Destruction Computer Equipment</u></b>  <b><u>Unauthorized Electronic Mail</u></b>  <b><u>Fail to Cease Electronic Communication</u></b>  <b><u>Computer Offense Penalties</u></b></p> <ul style="list-style-type: none"> <li>• (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.</li> <li>• (g) Amounts may be aggregated to determine degree of crime.</li> <li>• (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.</li> </ul>
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<p>31-1003 31-1004(1) 31-1006</p>	<p><b><u>False Statement to Obtain Benefits</u></b>  <b><u>False Benefit Reimbursement Statement</u></b>  <b><u>Unlawful Conversion of Benefits</u></b></p> <ul style="list-style-type: none"> <li>• 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</li> <li>• 31-1007(e): Provider shall not be eligible for participation in Delaware Public Assistance Program, subject to certain exceptions.</li> </ul>
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## **Class A Misdemeanors**

### **IV.) Order & Decency (MA4)**

<b>Sentence Range (Order &amp; Decency Category) MA4</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

### **Crimes in Category**

<b>11-501</b>	<b><u>Criminal Solicitation 3rd Degree</u></b> Solicit to commit misdemeanor
<b>11-511</b>	<b><u>Conspiracy 3rd Degree</u></b> Conspires to commit misdemeanor
<b>11-601(a)(1)</b>	<b><u>Offensive Touching</u></b> Vt= LEO, FF, CO, Medical personnel
<b>11-601(a)(2)</b>	<b><u>Offensive Touching (see note)</u></b> Bodily Emissions
<b>11-625</b>	<b><u>Unlawfully Administer Drugs</u></b>
<b>11-628A</b>	<b><u>Vehicular Assault 2<sup>nd</sup> Degree</u></b> (1) Criminal negligence: serious injury/ (2) DUI: injury
<b>11-652</b>	<b><u>Self Abortion</u></b>
<b>11-765</b>	<b><u>Indecent Exposure 1st Degree</u></b> Vt= <16 y.o.a.
<b>11-781</b>	<b><u>Unlawful Imprisonment 2nd Degree</u></b> (Special DVCategory May Apply) Knowingly restrain Refer to Pg. 105

11-785	<b><u>Interference with Custody</u></b> (Special DV Category May Apply) Refer to Pg. 105
11-791	<b><u>Coercion</u></b> (Special DV Category May Apply)
11-871	<b><u>Falsifying Business Records</u></b>
11-873	<b><u>Tampering w/ Public Records 2nd Degree</u></b>
11-877	<b><u>Offering False Instrument for Filing</u></b>
11-881	<b><u>Bribery</u></b>
11-882	<b><u>Receiving a Bribe</u></b>
11-893	<b><u>Interference Levied-Upon Property</u></b>
11-907	<b><u>Criminal Impersonation</u></b>
11-909	<b><u>Execution of Document by Deception</u></b>
11-918	<b><u>Ticket Scalping</u></b>
11-921	<b><u>Sale Transferred Recorded Sound</u></b>
11-1102	<b><u>Endanger Welfare of Child</u></b> (Special DV Category May Apply) Refer to Pg. 105
11-1105	<b><u>Endanger Welfare of Incompetent</u></b>
11-1113(a)	<b><u>Aggravated Criminal Non-support (Prior Conviction) (see note)</u></b>
11-1114	<b><u>Body Piercing &amp; Tattoos</u></b> (Prior Conviction)
11-1114A(a)	<b><u>Tongue Splitting 1st Degree</u></b>
11-1205	<b><u>Give Unlawful Gratuity</u></b>
11-1206	<b><u>Receive Unlawful Gratuity (value &lt; \$1,000)</u></b>
11-1207	<b><u>Improper Influence</u></b>
11-1211	<b><u>Official Misconduct</u></b>
11-1212	<b><u>Profiteering</u></b>
11-1221	<b><u>Perjury 3rd Degree</u></b> False statement under oath
11-1233	<b><u>Make False Written Statement</u></b>
11-1243	<b><u>Obstructing Firefighting</u></b>
11-1244	<b><u>Hinder Prosecution of Misdemeanor</u></b>
11-1245	<b><u>False Report Incident/Child Abduction (see note) (6/30/05)</u></b>
11-1246	<b><u>Compound a Crime</u></b>
11-1249	<b><u>Abetting Violation of Driver's License</u></b>
11-1256	<b><u>Promote Prison Contraband</u></b>
11-1257(b)	<b><u>Resist Arrest Without Violence</u></b>
11-1257A	<b><u>Use of Animal to Avoid Capture</u></b>
11-1260	<b><u>Misuse of Prisoner Mail</u></b>
11-1266	<b><u>Tampering w/Juror</u></b>
11-1267	<b><u>Misconduct by Juror</u></b>
11-1271(2-8)	<b><u>Criminal Contempt</u></b> (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)	<b><u>Disorderly Conduct: y/Funeral/Memorial Service (6/1/06)</u></b>
11-1311	<b><u>Harassment</u></b>
11-1325	<b><u>Cruelty to Animals (see note)</u></b>
11-1325A(b)	<b><u>Trade in Dog/Cat By-Products (Flesh) (see note)</u></b>
11-1327	<b><u>Dangerous Animal</u></b> Injury to Person/Serious Injury or Death Animal
11-1331	<b><u>Desecration</u></b>
11-1332	<b><u>Abusing a Corpse</u></b>

<b>11-1335(a)(1-5, 8)</b>	<b><u>Violation of Privacy (6/30/06)</u></b> (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
<b>11-1340</b>	<b><u>Desecration of Burial Place (see note)</u></b>
<b>11-1365</b>	<b><u>Obscene Literature Harmful to Minors</u></b>
<b>11-1401</b>	<b><u>Advancing Gambling 2nd Degree</u></b> 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
<b>11-1402</b>	<b><u>Foreign Lotteries</u></b>
<b>11-1403</b>	<b><u>Advancing Gambling 1st Degree</u></b> Unlawful(ly) (1)Keeping "books"/ (2)Owner/occupant property for purpose of bookkeeping/ (3)Recording bets/ (4)Place bets
<b>11-1404</b>	<b><u>Providing Premises for Gambling (Prior Conviction w/in 5 yrs)</u></b>
<b>11-1405</b>	<b><u>Possession Gambling Device</u></b>
<b>11-1406</b>	<b><u>Interest in Keeping Gambling Device</u></b>
<b>11-1411</b>	<b><u>Unlawful Dissemination Gambling Information</u></b>
<b>11-1428</b>	<b><u>Maintaining an Obstruction (Prior Conviction w/in 2 yrs)</u></b>
<b>11-1448A(e)</b>	<b><u>Improper Request/Dissemination Criminal History Check</u></b>
<b>11-1448A(f)</b>	<b><u>Firearm Sale Violation</u></b>
<b>11-1456</b>	<b><u>Allow Unlawful Access to Firearm by Minor</u></b>
<b>11-1457(j)(1)</b>	<b><u>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class B Misdemeanor) (see note)</u></b>
<b>11-1471(a)(b)(d)(e)(l)</b>	<b><u>Video Lottery Cheat Device</u></b> (first offense)
<b>11- 1471(c)(f)(g)(h)(i)(j)</b>	<b><u>Video Lottery Cheat Device &lt;1500</u></b>
<b>11-8522</b>	<b><u>Refusal to Permit Photo or Fingerprints</u></b>
<b>11-8523(a)</b>	<b><u>Refusal/Neglect/Hinder Report</u></b>
<b>11-8523(d)</b>	<b><u>Unlawful Use of Criminal History Record Information</u></b>
<b>11-8562(a)</b>	<b><u>Fail to Obtain Child Sex Abuser Information</u></b>
<b>16-1136(c)</b>	<b><u>Fail to Correct Abuse/Neglect of Patient in Residential Facility</u></b>
<b>29-4830(f)(1)(f)(2)</b>	<b><u>Standards of Licensing</u></b>
<b>29-4831(a)(b)</b>	<b><u>Prohibition on employment of persons or service agencies w/o a license</u></b>
<b>29-4836(a)(b)</b>	<b><u>Penalties for wagering by excluded persons</u></b>
<b>31-610(a)(2)</b>	<b><u>Transfer/Alter/Possess Food Stamps (&lt;\$500) (see note)</u></b>

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

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

<b>11-601(a)(2)</b>	<b><u>Offensive Touching</u></b> (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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<b>11-1113(a)</b>	<p><b><u>Aggravated Criminal Non-support (Prior Conviction)</u></b></p> <ul style="list-style-type: none"> <li>• Court may ("shall" in the event support order entered) order any fine to be paid for the support of the entitled person</li> <li>• (j) Restitution shall be ordered in the amount of the total accrued arrearages</li> </ul>
<b>11-1245</b>	<p><b><u>False Report Incident/Child Abduction</u></b>  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>
<b>11-1325</b>	<p><b><u>Cruelty to Animals</u></b>  (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>
<b>11-1325A</b>	<p><b><u>Trade in Dog/Cat By-Products</u></b>  (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>
<b>11-1340</b>	<p><b><u>Desecration of Burial Place</u></b>  Mandatory Minimum Fine= &gt;\$1,000 up to \$10,000.</p>
<b>11-1457</b>	<p><b><u>Possession Weapon in Safe School/Recreation Zone</u></b>  (Underlying Offense: Class B Misdemeanor).  (j)(4) An elementary or secondary school student shall be expelled for 180d.</p>
<b>31-610(a)(2)</b>	<p><b><u>Transfer/Alter/Possess Food Stamps (&lt;\$500)</u></b></p> <ul style="list-style-type: none"> <li>• May be suspended from the Food Stamp Program for 18 months more than suspension mandated by the Federal Food Stamp Act</li> </ul>

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## **Class A Misdemeanors**

### **V.) Controlled Substances (MA5)**

<b>Sentence Range (Controlled Substance Category) MA5</b>	
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**

<b>16-4740</b>	<b><u>Sale of Pseudoephedrine/Ephedrine (6/14/05)</u></b>
<b>16-4759(b)</b>	<b><u>Registrant Crimes</u></b> Violates (a)(3)
<b>16-4763(a)</b>	<b><u>Possession of Controlled Substances or Counterfeit Controlled Substances</u></b> Is an aggravating factor

#### **Supplemental Notations for Class A Misdemeanors (Controlled Substances):**

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

## **Class B Misdemeanors**

<b>Sentence Range (Class B Misdemeanors) MB</b>	
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**

<b>11-628</b>	<b><u>Vehicular Assault 3rd Degree (see note)</u></b> Criminal negligence: physical injury
<b>11-653</b>	<b><u>Issuing Abortion Articles</u></b>
<b>11-812(b)(1)</b>	<b><u>Possession of Graffiti Implements (see note)</u></b>
<b>11-820</b>	<b><u>Trespass with Intent to Peep</u></b>
<b>11-858(a)(2)</b>	<b><u>Unlawful Operation Recording Device (Still Photograph) (6/28/06)</u></b>
<b>11-910</b>	<b><u>Debt Adjusting</u></b>
<b>11-918</b>	<b><u>Ticket Scalping</u></b>
<b>11-1106</b>	<b><u>Unlawful Dealing with Child</u></b>
<b>11-1113(a)</b>	<b><u>Criminal Non-support (see note)</u></b>
<b>11-1114</b>	<b><u>Body Piercing &amp; Tattoos</u></b>
<b>11-1114A(b)</b>	<b><u>Tongue Splitting 2nd Degree</u></b> Performed by doctor/dentist and recipient is: (1)under the influence/ (2)minor w/out legal guardian's consent
<b>11-1241</b>	<b><u>Refusing to Aid Police Officer</u></b>
<b>11-1248</b>	<b><u>Obstructing Control of Rabies</u></b>
<b>11-1271(1)</b>	<b><u>Criminal Contempt</u></b> Disorderly Behavior
<b>11-1273</b>	<b><u>Unlawful Grand Jury Disclosure</u></b>
<b>11-1313</b>	<b><u>Malicious Interference with Emergency Communications</u></b>
<b>11-1325A(a)</b>	<b><u>Trade in Dog/Cat Byproducts (Fur/Hair)</u></b>
<b>11-1333</b>	<b><u>Trading in Human Remains/Funerary Objects</u></b>
<b>11-1341</b>	<b><u>Lewdness</u></b>
<b>11-1342</b>	<b><u>Prostitution</u></b>
<b>11-1355</b>	<b><u>Permitting Prostitution</u></b>
<b>11-1452</b>	<b><u>Unlawful Dealing with Knuckles-Combination Knife (see note)</u></b>
<b>11-1453</b>	<b><u>Unlawful Dealing with Martial Arts Throwing Star (see note)</u></b>
<b>11-1457(j)(2)</b>	<b><u>Poss. Weapon in Safe School/Recreation Zone</u></b> (Underlying Offense: Unclassified Misdemeanor)(see note)
<b>16-4761(b)</b>	<b><u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u></b> Any person who violates subsection (a) of this section and there is an aggravator

<b>16-4763(b)</b>	<b><u>Possession of Controlled Substances or Counterfeit Controlled Substances</u></b> Violates 4763(a)
<b>16-4764(a)</b>	<b><u>Possession of Marijuana</u></b> Is an aggravating factor
<b>16-4774(a)</b>	<b><u>Drug Paraphernalia</u></b> Possession

**Supplemental Notations Class B Misdemeanors:**

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

<b>11-812 (b)(1)</b>	<b><u>Possession of Graffiti Implements</u></b> 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).
<b>11-1113</b>	<b><u>Criminal Non-support</u></b> <ul style="list-style-type: none"> <li>• Court may ("shall" in the event support order entered) order any fine to be paid for the support of the entitled person</li> <li>• (j) Restitution shall be ordered in the amount of the total accrued arrearages</li> </ul>
<b>11-1452</b> <b>11-1453</b>	<b><u>Unlawful Dealing with Knuckles-Combination Knife</u></b> <b><u>Unlawful Dealing with Martial Arts Throwing Star</u></b> <ul style="list-style-type: none"> <li>• 11-1457(b)(5&amp;6)&amp;(j)(1): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class A Misdemeanor.</li> <li>• 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.</li> </ul>
<b>11-1457</b>	<b><u>Poss. Weapon in Safe School/Recreation Zone</u></b> (Underlying Offense: Unclass Misdemeanor) (j)(4) An elementary or secondary school student shall be expelled for 180d.

## **Unclassified Misdemeanors**

<b>Sentence Range (Unclassified Misdemeanors) UM</b>	
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**

<b>11-601</b>	<b><u>Offensive Touching</u></b> (Special DV Category May Apply) Refer to Pg. 105
<b>11-602</b>	<b><u>Menacing</u></b> (Special DV Category May Apply) Refer to Pg. 105
<b>11-627</b>	<b><u>Substances Releasing Vapors or Fumes</u></b>
<b>11-763</b>	<b><u>Sexual Harassment</u></b> (Special DV Category May Apply) Refer to Pg. 105
<b>11-764</b>	<b><u>Indecent Exposure 2nd Degree</u></b>
<b>11-811(b)(3)(4)</b>	<b><u>Criminal Mischief (&lt;\$1000) (see note)</u></b>
<b>11-822</b>	<b><u>Criminal Trespass 2nd Degree</u></b> Building/ Real Property + Fenced/ Enclosed
<b>11-850(b)(1)</b>	<b><u>Unlawful Telecommunication Device (see note)</u></b>
<b>11-914</b>	<b><u>Unlawful Use of Consumer Identification Information</u></b>
<b>11-915</b>	<b><u>Unlawful Use of Credit Card Information</u></b>
<b>11-915A</b>	<b><u>Unlawful Printing Credit Card Receipt</u></b>
<b>11-922</b>	<b><u>Improper Labeling (&lt;100) (see note) (7/10/06)</u></b>
<b>11-925</b>	<b><u>Video Privacy Protection</u></b>
<b>11-1107</b>	<b><u>Endangering Children</u></b>
<b>11-1250(a)</b>	<b><u>Harassment of Law Enforcement Animal</u></b>
<b>11-1301</b>	<b><u>Disorderly Conduct</u></b> (Special DV Category May Apply) Refer to Pg. 105
<b>11-1315</b>	<b><u>Public Intoxication</u></b> (3rd Offense w/in 1 Year)
<b>11-1322</b>	<b><u>Criminal Nuisance</u></b>
<b>11-1324</b>	<b><u>Obstructing Ingress/Egress at Public Building</u></b>
<b>11-1343</b>	<b><u>Patronizing a Prostitute (see note)</u></b>
<b>11-1404</b>	<b><u>Providing Premises for Gambling</u></b>
<b>11-1445 (1-3)</b>	<b><u>Unlawful Dealing with Dangerous Weapon</u></b> (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
<b>11-1446</b>	<b><u>Unlawful Dealing with Switchblade (see note)</u></b>



<b>11-1907(c)</b>	<b><u>Fail to Answer Summons (see note)</u></b>
<b>11-2109(c)(2)</b>	<b><u>Breach of Conditions of Bail (see note)</u></b>
<b>11-2113</b>	<b><u>Breach Conditions of Release (Misdemeanor) (see note)</u></b>
<b>11-6562A</b>	<b><u>Furnishing Contraband</u></b>
<b>16-2513(a)</b>	<b><u>Threat/Coerce/Intimidate to W/D Medical Treatment (see note)</u></b>
<b>16-3111(b)</b>	<b><u>Violations Concerning Vital Statistics Records (see note)</u></b>
<b>16-4761(a)</b>	<b><u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u></b>
<b>16-4764(b)</b>	<b><u>Possession of Marijuana</u></b> Fine not more than \$575 and imprisonment not more than 3 months
<b>16-4774 (d)</b>	<b><u>Advertisement of Drug Paraphernalia</u></b>
<b>16-6611(b)</b>	<b><u>Violation of Fire Regulations (see note)</u></b>
<b>29-4810</b>	<b><u>Lottery Sales to persons prohibited</u></b>

**Supplemental Notations Unclassified Misdemeanors:**

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

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

## Violations

<b>Sentence Range (Violations) V</b>	
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

<b>11-821</b>	<b><u>Criminal Trespass 3rd Degree</u></b>
<b>11-1116</b>	<b><u>Tobacco Sale Violations: Sell/Distribute to u/18 (see note)</u></b>
<b>11-1117</b>	<b><u>Tobacco Sale Violations: Fail to Post Notice to u/18 (see note)</u></b>
<b>11-1118</b>	<b><u>Tobacco Sale Violations: Dist Samples/Coupons to u/18 (see note)</u></b>
<b>11-1119</b>	<b><u>Tobacco Sale Violations: Dist by Vending Machine (see note)</u></b>
<b>11-1120</b>	<b><u>Tobacco Sale Violations: Sell from Unlawful Package (see note)</u></b>
<b>11-1315</b>	<b><u>Public Intoxication</u></b>
<b>11-1316</b>	<b><u>Out-of-State Liquor Agent Registration (see note)</u></b>
<b>11-1320</b>	<b><u>Loitering on State-Supported School Property</u></b>
<b>11-1321</b>	<b><u>Loitering</u></b>
<b>11-1323</b>	<b><u>Obstructing Public Passages</u></b>
<b>11-1330</b>	<b><u>Smoking on Bus or Trolley</u></b>
<b>11-1407</b>	<b><u>Engaging in Crap Game</u></b>
<b>11-1428</b>	<b><u>Maintaining an Obstruction</u></b>
<b>11-1461</b>	<b><u>Report of Loss, Theft of Firearm</u></b>

### Supplemental Notations for Violations:

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

<b>11-1116-11120 (penalties §11-1121)</b>	<b><u>Tobacco Sale Violations</u></b> <ul style="list-style-type: none"> <li>• Mandatory Fines: 1st offense= \$250, 2nd offense= \$500, 3rd and subsequent offenses= \$1,000</li> <li>• 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</li> </ul>
<b>11-1316</b>	<b><u>Out-of-State Liquor Agent Registration</u></b> Violations shall result in the loss of the right to register or registration for period of 6m.
<b>11-1461</b>	<b><u>Report of Loss, Theft of Firearm</u></b> <ul style="list-style-type: none"> <li>• 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.</li> <li>• 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.</li> </ul>

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## **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**

<b>21-2810</b>	<b><u>Driving After Judgment Prohibited (See Note pg 92)</u></b>
<b>21-4103(b)</b>	<b><u>Flee or Attempt to Elude (See Note pg 92)</u></b>
<b>21-4112A(c)</b>	<b><u>Unlawful Sale Traffic Control Signal Preemption Devices (See Note pg 92)</u></b>
<b>21-4175</b>	<b><u>Reckless Driving (See Note pg. 92)</u></b>
<b>21-4175A</b>	<b><u>Aggressive Driving (See Note pg. 92)</u></b>
<b>21-4176</b>	<b><u>Careless or Inattentive Driving (See Note pg. 93)</u></b>
<b>21-4176A</b>	<b><u>Operation of Vehicle Causing Death (See Note pg. 93)</u></b>
<b>21-4177 et seq.</b>	<b><u>Driving a Vehicle While Under the Influence (See Note pg. 94)</u></b>
<b>21-4201 et seq.</b>	<b><u>Leaving the Scene of an Accident (See Note pg. 98)</u></b>
<b>21-4202</b>	<b><u>Leaving the Scene of an Accident (Injury/Death) (See Note pg. 98)</u></b>
<b>23-2302</b>	<b><u>Operation of a Vessel or Boat While Under the Influence (See Note pg. 98)</u></b>

<b>21-2810</b>	<b><u>Driving After Judgment Prohibited</u></b>	
	Statutory Sentence	<ul style="list-style-type: none"> <li>Habitual Offender: (1) 1st Conviction- Mandatory Imprisonment from 90d. up to 30m. &amp; Fine up to \$1,150; (2) Prior Conviction- Mandatory Imprisonment from 180d. up to 5 yrs. &amp; Fine up to \$2,300.</li> <li>Mandatory Imprisonment not subject to suspension</li> </ul>
	Presumptive Sentence	(1) 1st Conviction: 3m. @ Level V (2) Prior Conviction: 6m. @ Level V
<b>21-4103(b)</b>	<b><u>Flee or Attempt to Elude</u></b> 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.	
<b>21-4112A(c)</b>	<b><u>Unlawful Sale Traffic Control Signal Preemption Devices</u></b> Class A Misdemeanor	
<b>21-4134(d)</b>	<b><u>Operation of vehicles upon approach of authorized emergency vehicles</u></b> Class F Felony	
<b>21-4175</b>	<b><u>Reckless Driving</u></b> Mandatory Minimum Sentences: <ul style="list-style-type: none"> <li>1st Offense: 10 – 30d. @ Level V; Fine= \$100–\$300</li> <li>Prior Conviction w/in 3 yrs.: 30 – 60d.@ Level V; Fine= \$300–1,000. Sentence may not be suspended.</li> <li>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.</li> </ul>	
<b>21-4175A</b>	<b><u>Aggressive Driving</u></b> Mandatory Minimum Sentences <ul style="list-style-type: none"> <li>1st Offense: 10-30d. @ Level V; Fine= \$100–\$300</li> <li>Prior Conviction w/in 3 yrs.:30-60d.@ Level V; Fine= \$300–1,000. Sentence may not be suspended.</li> <li>Driving privileges suspended for 30d.</li> <li>Completion of Behavior Modification course and payment of its attendant fees are mandated.</li> </ul>	

<p><b>21-4176</b></p>	<p><b><u>Careless or Inattentive Driving</u></b>  Mandatory Minimum Sentences:</p> <ul style="list-style-type: none"> <li>• 1st Offense: Fine= \$25–\$75</li> <li>• Prior Conviction w/in 3 yrs: Fine=\$50–\$95</li> <li>• (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"> <li>a. Impose a sentence that requires the convicted person to: <ol style="list-style-type: none"> <li>1. complete a traffic safety course approved by DMV</li> <li>2. Perform up to 100 hours of community service which much include activities related to driver improvement and providing public education on traffic safety;</li> </ol> </li> <li>b. Impose, but suspend on the condition that the person complete the requirements of (d)(1)a, <ol style="list-style-type: none"> <li>1. A fine of not more than \$550</li> <li>2. A suspension of driving privileges as provided in Section 2733(a)(2) of this; and</li> <li>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"> <li>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.</li> <li>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"> <li>I. grant the person an extension based on good cause shown, or</li> <li>II. impose the penalties under (d)(1)b. 1. and 2. of this section.</li> </ol> </li> </ol> </li> </ol> </li> </ol></li></ul>
<p><b>21-4176A</b></p>	<p><b><u>Operation of Vehicle Causing Death</u></b></p> <ul style="list-style-type: none"> <li>• Maximum penalty 1st Conviction: up to 30 m. imprisonment &amp;/or \$1,150 Fine</li> <li>• Prior Conviction: up to 60 m. imprisonment &amp;/or \$2,300 Fine</li> </ul>

21-4177(d)

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

Mandatory Minimum Sentences:

- **1st Offense:** (1) up to 6m. @ Level V; (2) Fine= \$500-\$1,500; (3) Completion of alcohol evaluation and program (§4177D) which may include up to 6m. confinement & a fee not in excess of maximum fine under this section; (4) 12m. DL revocation
- **2nd Offense:** (1) 60d-18m. @ Level V; (2) Fine= \$750-\$2,500; minimum sentence may not be suspended; (3) Completion of alcohol evaluation and program (§4177D) which may include up to 15m. confinement & a fee not in excess of maximum fine under this section; (4) 18 m. DL revocation if B.A.L. < .16/ 24. if B.A.L.=.16-.19/ 30m. if B.A.L. = > .20.; (5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant after first 12m. of DL revocation and for either 3 months or the remaining revocation period whichever is greater
- **3rd Offense:** (Class G Felony): (1) 1-2 yrs. imprisonment (first 3m. must be @ Level V and shall not be subject to suspension, early release, furlough or reduction of any kind);(2) Fine= \$1,500-\$5,000. (3) Completion of alcohol evaluation and program (§4177D) which may include up to 15m. confinement & a fee not in excess of maximum fine under this section; (4) 24m. DL revocation if B.A.L. < .16/ 30m. if B.A.L.=.16-.19/ 36m. if B.A.L. = >.20.; (5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant after first 12m. of DL revocation and for either 3 months or the remaining revocation period whichever is greater.
- **4th Offense:** (Class E Felony): (1) 2-5 yrs. imprisonment (first 6m. must be @ Level V and shall not be subject to suspension, early release, furlough or reduction of any kind); (2) Fine= \$3,000-\$7,000. (3) Completion of alcohol evaluation and program (4177D) which may include up to 15m confinement & a fee not in excess of maximum fine under this section. (4) 60 months revocation regardless of B.A.L. (5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant after first 12m. of DL revocation and for either 3 months or the remaining revocation period whichever is greater. Payment of associated costs is required unless indigent (4177G9e)).
- **5th Offense:** (Class E Felony) (1) 3-5 yrs. (2) Fine= \$3,500-\$10,000(3) Completion of alcohol evaluation and program (§4177D) which may include up to 15m. confinement & a fee not in excess of maximum fine under this section. (4) 60 months DL revocation regardless of B.A.L. (5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant after first 12m. of DL revocation and for either 3 months or the remaining revocation period whichever is greater; Payment of associated costs is required unless indigent (§4177G(e)).
- **6th Offense:** (Class D Felony): (1) 5-8 yrs. (2) Fine=\$5,000-\$10,000 (3) Completion of alcohol evaluation and program (4177D) which may include up to 15m. confinement & a fee not in excess of maximum fine under this section. (4) 60 months DL revocation regardless of B.A.L. (5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant after the first 12m. of DL revocation and for either 3 months or the remaining revocation period whichever is greater. Payment of associated costs is required unless indigent (4177G(e)).
- **7th or for any subsequent offense:** (Class C Felony): (1) 10-15 yrs. (2) Fine= \$10,000-\$15,000 (3) Completion of alcohol evaluation and program (4177D) which may include up to 15m. confinement & a fee not in excess of maximum fine under this section. (4) 60 months DL revocation regardless of B.A.L. (5) Ignition Interlock Device shall be installed on all vehicles registered to defendant after the first 12m of DL revocation and for either 3 months or the remaining revocation period whichever is greater. Payment of associated costs is required unless

indigent (4177G9e)).

**4177L Driving by persons under the age of 21 after consumption of alcohol; penalties [Effective until July 1, 2012]**

**(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.**

- For the fourth, fifth, sixth, seventh offense or greater, the provisions of Section 4205(b) or Section 4217 of Title 11 or any other statute to the contrary notwithstanding, the first six 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. No conviction for violation of this section for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to Section 4214 of Title 11. No offense for which sentencing pursuant to this paragraph is applicable shall be considered any underlying felony for a murder in the first degree pursuant to section 636(a)(2) of Title 11.
- Any provisions under (d)(3) may be applied upon motion of AG.
- Aggravating Factor: In addition to the above, if a person > 17 y.o.a. was in the vehicle, the following additional requirements must be added: (a) 1st offense- 40 hrs. community service benefiting children & \$230-\$1,150; (b) Prior offense involving same: 80 hrs. community service benefiting children & \$575-\$2,300.
- Revocation of driving privileges will remain in effect until (1) the minimum required period AND (2) completion of alcohol evaluation and program have been satisfied. The court shall take possession of the Defendant's driver's license upon conviction and forward it to the appropriate agency (§4177A(c))

**Discretionary Sentence Conditions:**

- For a violation of (a) or (b), the Court may order an ignition interlock device for a minimum period of 1 yr. A person violating (a) while also in violation of this section shall be sentenced to 60d. imprisonment & a fine of \$2,300.
- §4177B First Offenders: Election in Lieu of Trial
- §4177G Subsequent Offender eligibility for Interlock Ignition Device License

**11-4219. Continuous Remote Alcohol Monitoring Program.**

(a) There is hereby established for sentencing and probation purposes a Continuous Remote Alcohol Monitoring Program which shall use technology to monitor offenders for alcohol use. The program shall be administered by the Department of Correction which shall have the sole authority to determine which offenders are accepted into the program.

(b) The Board of Parole or any Court of competent jurisdiction may request and recommend, as part of conditions of release or the sentence of any person convicted under § 4177(a) of Title 21 for a first offense where the first offender election is not available, or for a subsequent offense involving a blood alcohol content of .20 or higher, a period of continuous remote alcohol monitoring not to



	<p>exceed 90 days for a first offense and 120 days for a second offense.</p> <p>(c) Any inmate incarcerated for violations of § 4177 of Title 21 and selected for participation in the program shall be released on Level IV status, subject to the conditions of the program, and those conditions imposed by the sentencing judge. The remainder of the participant's sentence of incarceration shall be suspended upon completion of the program requirements. Participants failing to satisfactorily complete the program shall be returned to the Board of Parole or the sentencing authority for resentencing.</p> <p>(d) Any offender considered for participation must agree to adhere to the conditions established for participation before being accepted into the program.</p> <p>(e) The Department of Correction shall report annually on the use of the program, and its effectiveness as a supervision mechanism. (75 Del. Laws, c. 143, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 381, §§ 1, 2; 76 Del. Laws, c. 134, § 1; 76 Del. Laws, c. 366, § 1.)</p>
<p><b>21-4177(d)</b></p>	<p><b><u>Driving Vehicle While Under the Influence(Effective July 1, 2012)</u></b></p> <ul style="list-style-type: none"> <li>• <b>1<sup>st</sup> Offense:</b> (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 &amp; to pay a fee not to exceed the maximum fine; (4) 12m DL revocation; if BAC .15-.19 Revocation 18m; if BAC &gt;.19 Revocation 24m</li> <li>• <b>2<sup>nd</sup> Offense:</b> Occurring within 10 years of prior offense: (1)60d-18m @ Level V, minimum sentence may not be suspended; (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 &gt;.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;</li> <li>• <b>3<sup>rd</sup> Offense:</b> (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 and shall participate in random breath or urine analysis during period of supervision; (4) 24m DL revocation, if B.A.C.is .15-.19, 30m, if B.A.L. &gt; .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.</li> <li>• <b>4<sup>th</sup> Offense:</b> (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 and shall participate in random breath or urine analysis during</li> </ul>

	<p>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.</p> <ul style="list-style-type: none"> <li>• <b>5<sup>th</sup> Offense:</b> (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 and shall participate in periodic, random breath or urine analysis during the 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.</li> <li>• <b>6<sup>th</sup> Offense:</b> (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 and shall participate in periodic, random breath or urine analysis during the 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.</li> <li>• <b>7<sup>th</sup> or any subsequent offense:</b> (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 and shall participate in periodic, random breath or urine analysis during the 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.</li> </ul>
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	<p><b>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:</b></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>4177L <u>Driving by persons under the age of 21 after consumption of alcohol; penalties [Effective July 1, 2012]</u></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><b>21-4201</b></p>	<p><b><u>Leaving the Scene of an Accident</u></b> Mandatory Minimum Sentence: (1) 60d.-6m. imprisonment; (2) Fine \$230-\$1,150; (3) 6m. driver's license revocation.</p>
<p><b>21-4202</b></p>	<p><b><u>Leaving the Scene of an Accident (Injury/Death)</u></b> Mandatory Minimum Sentences:</p> <ul style="list-style-type: none"> <li>• (b) Injury (unclassified misdemeanor): (1) 1-2 yrs. imprisonment; (2) Fine= \$1,000-\$2,000; (3) 1 yr. driver's license suspension</li> <li>• (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</li> </ul>
<p><b>23-2302</b></p>	<p><b><u>Operation of a Vessel or Boat While Under the Influence</u></b> Mandatory Minimums:</p> <ul style="list-style-type: none"> <li>• <b>(1) 1st Offense:</b> (1) 60d.-6m. @ Level V &amp;/or (2) Fine= \$200-\$1,000</li> <li>• <b>(2) 2nd Offense w/in 5 yrs:</b> (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)</li> <li>• <b>(3) 3rd Offense w/in 5 yrs:</b> (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</li> </ul>

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	<p>exceed a total of 15 months, and pay a fee not to exceed the maximum fine (see subsection 8)</p> <ul style="list-style-type: none"><li>• <b>(4) 4th or Subsequent Offense:</b> (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)</li><li>• <b>(5)(a) Aggravating factor-If a juvenile &lt;17 y.o.a. was on board, then:</b><ul style="list-style-type: none"><li>• 1st Offense: Additional fine= \$200-\$1,000 and 40 hrs. community service</li><li>• Subsequent Offense: Additional fine= \$500-\$2,000 and 80 hrs. community service</li></ul></li></ul>
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## SUMMARY OF DRUG OFFENSES

§ 4751A. Aggravating factors related to drug offenses.

For the purposes of this subchapter:

(1) Each of the following shall be an "aggravating factor" within the meaning of the offenses in this subchapter:

- a. The offense was committed within a protected school zone, as defined in § 4701 of this title;
- b. The offense was committed within a protected park or recreation area, or church, synagogue or other place of worship, as defined in § 4701 of this title;
- c. The offense occurred in a vehicle, as defined in § 4701 of this title;
- d. The defendant was an adult, that is, a person who had reached his or her eighteenth birthday, and the offense involved a juvenile, that is, a person who had not reached his or her eighteenth birthday, as a co-conspirator or accomplice, or as the intended or actual recipient of the controlled substances, and the defendant was more than 4 years older than the juvenile; and
- e. The defendant, during or immediately following the commission of any offense in this title:
  1. Intentionally prevented or attempted to prevent a law-enforcement officer, as defined in § 222(15) of Title 11, from effecting an arrest or detention of the defendant by use of force or violence towards the law-enforcement officer; or
  2. Intentionally fled in a vehicle from a law-enforcement officer, as defined in § 222(15) of Title 11, while the law-enforcement officer was effecting an arrest or detention of the defendant, thereby creating a substantial risk of physical injury to other persons.

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

(3) In any offense in which 1 or more aggravating factors set forth in this section are present, the factor or factors shall be alleged in the charging information or indictment, and constitute an element of the offense. When there are more aggravating factors present than are required to prove the offense, all may be alleged and proven.

[78 Del. Laws, c. 13, § 33](#); [70 Del. Laws, c. 186, § 1](#);

§ 4751B. Prior qualifying Title 16 convictions.

For the purposes of this subchapter:

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

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

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

(4) Penalties. --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[78 Del. Laws, c. 13, § 34](#); [70 Del. Laws, c. 186, § 1](#);

§ 4751C. Quantity tiers related to drug offenses.

For the purposes of this subchapter:

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

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

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

c. 5000 grams or more of marijuana, as described in § 4701(26) of this title;

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

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

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

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

h. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title; or

i. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.

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

a. 20 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 4 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 4000 grams or more of marijuana, as described in § 4701(26) of this title;

d. 20 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 20 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 20 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 250 or more doses or, in a liquid form, 25 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 50 or more doses or 10 or more grams or 10 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title;

i. 50 or more doses or 10 or more grams or 10 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title; or

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



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

- a. 15 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;
- b. 3 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;
- c. 3000 grams or more of marijuana, as described in § 4701(26) of this title;
- d. 15 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;
- e. 15 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;
- f. 15 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;
- g. 100 or more doses or, in a liquid form, 10 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;
- h. 37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title; or
- i. 37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.

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

- a. 10 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;
- b. 2 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;
- c. 1500 grams or more of marijuana, as described in § 4701(26) of this title;
- d. 10 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;
- e. 10 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;
- f. 10 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;
- g. 50 or more doses or, in a liquid form, 5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

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h. 25 or more doses or 5 or more grams or 5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title;

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

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

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

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

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

c. 175 grams or more of marijuana, as described in § 4701(26) of this title;

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

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

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

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

h. 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title; or

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

[78 Del. Laws, c. 13, § 35.](#);

§ 4767. First offenders controlled substances diversion program.

(a) Any person who:

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

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(2) Has not previously been afforded first offender treatment under this section or its predecessor, may qualify for the first offense election at the time of the person's arraignment, except that no person shall qualify for such first offense election where the offense charged under § 4763, § 4764 or § 4761(a) or (b) of this title arises from the same transaction, factual setting or circumstances as those contained in any indictment returned against the defendant alleging violation of any provisions contained within § 4752, § 4753, or § 4754 of this title.

(b) At time of arraignment any person qualifying under subsection (a) of this section as a first offender and who elects treatment under this section shall admit possession or consumption of a controlled substance by entering a plea of guilty, as a first offender. The court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the accused on probation for a period of not less than 1 1/2 years, the terms and conditions of which shall include but not be limited to:

(1) Revocation of the person's driver's license and/or privileges within this State for a period of not less than 6 months, restoration of which shall be contingent upon successful completion of all mandatory terms and conditions required of probation to be completed during the term of revocation. Upon entry of a plea of guilty, as a first offender under this section, the clerk of the court or other person designated by the court shall forthwith report that fact to the Division of Motor Vehicles for action consistent with the provisions of this subsection. The Division of Motor Vehicles may issue a conditional license during this period of revocation upon written certification by the person's probation officer that a narrowly drawn conditional license is necessary for the limited purpose of performing the terms and conditions of probation.

(2) Performance of a minimum of 20 hours of community service work monitored by the court or probation office, performance of which shall be accomplished on at least 3 separate days and shall not, in any event consist of segments lasting more than 8 hours in succession. Community service performed pursuant to the terms of this paragraph shall be in addition to all other community service ordered and no community service ordered or performed pursuant to the terms of this section shall be performed or served concurrently with any other court ordered or approved community service.

(3) Completion of a 16-hour first-offender drug rehabilitation program, licensed by the Secretary of the Department of Health and Social Services and paid for by the first offender.

(4) Other such terms and conditions as the court may impose.

(c) If a term or condition of probation is violated, or if the defendant is found to have illegally possessed or consumed any controlled substance within 1 1/2 years of the entry of a plea under this section, the probation officer shall file with the court a written report of same, and the defendant shall be brought before the court and upon determination by the court that the terms have been violated or that the defendant has possessed or consumed any such controlled substance, the court shall enter an adjudication of guilt upon the record and proceed as otherwise provided under this title.

(d) Upon fulfillment of the terms and conditions of probation, including, but not limited to, paying of all costs and fees, and performance of all required community service, the court shall discharge the person and dismiss the proceedings against the person and shall simultaneously therewith submit to the Attorney General a report thereof which shall be retained by the Attorney General for use in future proceedings, if required. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Any person who elects to be treated as a first offender under this section shall, by so doing, agree to pay the costs of the person's prosecution as a condition. There may be only 1 discharge and dismissal under this section with respect to any person.

[67 Del. Laws, c. 347, § 1](#); [70 Del. Laws, c. 186, § 1](#); [74 Del. Laws, c. 110, § 6](#); [75 Del. Laws, c. 167, § 2](#); [78 Del. Laws, c. 13 § 60](#);

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§ 4768. Medical and/or psychiatric examination and/or treatment.

After a conviction and prior to sentencing for violation of § 4761(a) or (b), § 4763, or § 4764 of this title, or prior to conviction if the defendant consents, the court may order the defendant to submit to a medical and/or psychiatric examination and/or treatment. The court may order such examination by the Department of Health and Social Services or by a private physician, hospital or clinic and the court may make such order regarding the term and conditions of such examination and/or treatment and the payment therefor by the defendant as a court in its discretion shall determine. The Department of Health and Social Services or the private physician, hospital or clinic shall report to the court within such time as the court shall order, not more than 90 days from the date of such order. After such report and upon conviction of such violation, the court shall impose sentence or suspend sentence and may impose probation and/or a requirement of future medical and/or psychiatric examination and/or treatment including hospitalization or outpatient care upon such terms and conditions and for such period of time as the court shall order.

16 Del. C. 1953, § 4765; 58 Del. Laws, c. 424, § 1; [78 Del. Laws, c. 13 § 44.](#);

## Summary of Drug Offenses- Class B Felonies

### Class B Felony (Violent)

<b>Sentence Range (Violent Category) FBV</b>	
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"><li>• (b)(1) 2 years for violent felonies; (b)(2) 1 year for all others.</li><li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li><li>• (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.</li><li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li></ul>

#### Crimes in Category:

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

#### Supplemental Notations:

<p><b>16-4752</b></p>	<p><b><u>Drug dealing-Aggravated Possession</u></b></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>
<p><b>16-4757(c)(2)</b></p>	<p><b><u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes:</u></b></p> <ul style="list-style-type: none"> <li>• 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.</li> </ul>

## Summary of Drug Offenses- Class C Felonies

### Class C Felony (Violent)

<b>Sentence Range (Violent Category) FCV</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 1 year for all</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### Crimes in Category:

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

#### Supplemental Notations:

<b>16-4753</b>	<p><b><u>Drug Dealing-Aggravated Possession</u></b></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>
<b>16-4757(c)(1)</b>	<p><b><u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes</u></b></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)

<b>Sentence Range (Nonviolent Category) FCN</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public</li> </ul>

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**Sentence Range (Nonviolent Category) FCN**

	<p>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.</p> <ul style="list-style-type: none"><li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li></ul>
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**16-4760A****Operate or Attempt to Operate a Clandestine Laboratory**

## 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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### Crimes in Category:

<b>16-4754</b>	<b><u>Drug dealing – Aggravated possession;</u>(see note)</b>
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#### Supplemental Notations:

<b>16-4754</b>	<p><b><u>Drug dealing – Aggravated possession</u></b></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)

<b>Sentence Range (Violent Category): FEV</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### Crimes in Category:

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

#### Supplemental Notations:

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## Summary of Drug Offenses- Class E Felonies

### Class E Felony (Nonviolent)

<b>Sentence Range (Nonviolent Category) FEN</b>	
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"><li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li><li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li><li>• (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.</li><li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li></ul>

#### Crimes in Category:

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

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## **Summary of Drug Offenses Class F Felonies**

### **Class F Felony (Violent)**

#### **I.) (FFV)**

<b>Sentence Range (Violent Category): FFV</b>	
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"><li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li><li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li><li>• (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.</li><li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li></ul>

#### **Crimes in Category:**

<b>16-4756</b>	<b><u>Aggravated Possession</u></b> A person who possesses a controlled substance in a Tier 1 quantity
<b>16-4761(d)</b>	<b><u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u></b> 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)

<b>Sentence Range (Nonviolent Category) FFN</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### Crimes in Category:

<b>16-4757(b)</b>	<b>Miscellaneous Drug Crimes (see note)</b>
<b>16-4759(b)(1,2,4)</b>	<b>Registrant Crimes</b> Violates (a)(1), (a)(2), or (a)(4)
<b>16-4760</b>	<b>Maintaining a Drug Property</b>

#### Supplemental Notations:

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

### **Class G Felony (Violent)**

<b>Sentence Range (Violent Category) FGV</b>	
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"> <li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>• (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.</li> <li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### **Crimes in Category:**

<b>16-4761(c)</b>	<b><u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u></b> Any person who violates subsection (a) of this section and delivers, or intends to deliver the prescription drug to another
<b>16-4774(b)</b>	<b><u>Drug paraphernalia</u></b> Manufacture and sale

#### **Supplemental Notations:**

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## **Class G Felony (Nonviolent)**

<b>Sentence Range (Nonviolent Category) FGN</b>	
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"><li>• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li><li>• (c) Consecutive sentence shall not amount to more than limitations herein.</li><li>• (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.</li><li>• (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li></ul>

### **Crimes in Category:**

<b>16-4762(d)</b>	<b>Hypodermic syringe or needle; delivering or possessing; disposal</b>
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### **Supplemental Notations:**

## Summary of Drug Offenses- Misdemeanors:

### Class A Misdemeanor

<b>Sentence Range (Controlled Substance Category) MA5</b>	
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:

<b>16-4740</b>	<b><u>Sale of Pseudoephedrine/Ephedrine</u></b>
<b>16-4759(b)</b>	<b><u>Registrant Crimes</u></b> Violates (a)(3)
<b>16-4763(a)</b>	<b><u>Possession of Controlled Substances or Counterfeit Controlled Substances</u></b> Is an aggravating factor

#### Supplemental Notations:

### Class B Misdemeanor

<b>Sentence Range (Class B Misdemeanors) MB</b>	
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:

<b>16-4761(b)</b>	<b><u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u></b> Any person who violates subsection (a) of this section and there is an aggravator
<b>16-4763(b)</b>	<b><u>Possession of Controlled Substances or Counterfeit Controlled Substances</u></b> Violates 4763(a)
<b>16-4764(a)</b>	<b><u>Possession of Marijuana</u></b> Is an aggravating factor
<b>16-4774(a)</b>	<b><u>Drug Paraphernalia</u></b> Possession

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**Supplemental Notations:**

**Unclassified Misdemeanors**

<b>Sentence Range (Unclassified Misdemeanors) UM</b>	
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**

<b>16-4761(a)</b>	<b><u>Illegal Possession and Delivery of Noncontrolled Prescription Drugs</u></b>
<b>16-4764(b)</b>	<b><u>Possession of Marijuana</u></b> Fine not more than \$575 and imprisonment not more than 3 months
<b>16-4774 (d)</b>	<b><u>Advertisement of Drug Paraphernalia</u></b>

**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)

<b>SUBSTANCE</b>	<b>TIER 1:</b>	<b>TIER 2:</b>	<b>TIER 3:</b>	<b>TIER 4:</b>	<b>TIER 5:</b>
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 II or III	N/A	≥3g or ≥30 doses	N/A	≥ 6g or ≥ 60 doses	N/A

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

a)	Offense committed within a protected school zone
b)	Offense committed within a protected park or place of worship zone
c)	Offense occurred in a vehicle
d)	<ul style="list-style-type: none"> <li>Defendant was an adult and: <ul style="list-style-type: none"> <li>• The Offense involved a juvenile as <ul style="list-style-type: none"> <li>○ A co-conspirator or accomplice, or</li> <li>○ As the intended or actual recipient of the controlled substances;</li> </ul> </li> <li>• And the defendant was more than four years older than the juvenile</li> </ul> </li> </ul>
e)	<ul style="list-style-type: none"> <li>• Defendant, during or immediately following the commission of any offense in this Title, intentionally <ul style="list-style-type: none"> <li>○ Prevented or attempted to prevent officer from making an arrest by use of violence or force; or</li> <li>○ Fled in a vehicle from a law enforcement officer, thereby creating a substantial risk of physical injury to other persons</li> </ul> </li> </ul>

- 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:**

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

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:**

<b>QUANTITY (TIER):</b>	<b>CONTROLLED SUBSTANCE</b>	<b>AGGRAVATING FACTORS:</b>	<b>NO PRIOR CONVICTIONS:</b>	<b>ONE PRIOR:</b>	<b>TWO OR MORE PRIORS:</b>
No Tier Quantity Alleged	Marijuana	0	Uncl. 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)**

<b>QUANTITY (TIER):</b>	<b>CONTROLLED SUBSTANCE</b>	<b>AGGRAVATING FACTORS:</b>	<b>NO PRIOR CONVICTIONS:</b>	<b>ONE PRIOR:</b>	<b>TWO OR MORE PRIORS:</b>
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**

<b>16 DEL. C. §:</b>	<b>OFFENSE:</b>	<b>NO PRIOR CONVICTIONS:</b>	<b>ONE PRIOR:</b>	<b>TWO OR MORE PRIORS:</b>
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 Felony	Class B Felony

<b><u>16 DEL. C. §:</u></b>	<b><u>OFFENSE:</u></b>	<b><u>NO PRIOR CONVICTIONS:</u></b>	<b><u>ONE PRIOR:</u></b>	<b><u>TWO OR MORE PRIORS:</u></b>
	(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
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.

<b><u>16 DEL. C. §:</u></b>	<b><u>OFFENSE:</u></b>	<b><u>NO PRIOR CONVICTIONS:</u></b>	<b><u>ONE PRIOR:</u></b>	<b><u>TWO OR MORE PRIORS:</u></b>
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**

	<b><u>Offense Classification:</u></b>	<b><u>Penalties:</u></b>
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"**

<b><u>SUBSTANCE</u></b>	<b><u>4-10 YEARS</u></b>	<b><u>6-12 YEARS</u></b>	<b><u>8-15 YEARS</u></b>
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

C. § 4701(14) (2011).

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## 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 <b>violent</b> felony	25 yrs	10 yrs	5 yrs	4 yrs	2.5 yrs	1.5 yrs	1 yr
E	Two or more prior <b>violent</b> 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.**

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## **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.

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**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**

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**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).

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## **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)

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Section 1335	Violation of privacy
Section 1339	Adulteration
Section 1451	Theft of a firearm

**Title 6:**

Section 7322	Securities fraud
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## **SUBSTANTIAL ASSISTANCE**

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

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

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

## **SERIOUS MEDICAL ILLNESS, INJURY, OR INFIRMITY**

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

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

## EXCEPTIONAL SENTENCES

### Special Categories:

#### Domestic Violence

The particular nature of criminal charges involving domestic violence may be considered as deserving of aggravated punishment, for example, those cases where there have been repeated incidences prior to the first formal charge in Court, and those cases where children 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
11-1101	Abandonment of Child
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	<b>Presumptive Sentence</b>	<b>Level</b>	<b>Time</b>
11-602	Menacing			
11-763	Sexual Harassment			
11-1301	Disorderly Conduct			
		Any offense	V	Up To 1 month

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## 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)

<b>Enhanced Presumptive Sentence:</b>	<b>Level</b>	<b>Time</b>
Any Non-Violent Felony G	II	12 months or more
<b>Misdemeanor Class A or B:</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



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## 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:

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

#### ESCAPE FROM LEVEL IV FACILITY

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

<b>1st offense</b>	Level V for 30 days (Title 11, §4204(k))
<b>2nd offense</b>	Level V for 90 days (Title 11, §4204(k))
<b>3rd &amp; subsequent offense</b>	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;

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**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.

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## 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)<sup>21</sup>, 4217,<sup>22</sup> 4381<sup>23</sup> and 4382<sup>24</sup> 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 <sup>st</sup> Degree
11-613	Assault 1 <sup>st</sup> Degree
11-615	Assault by Abuse
11-632	Manslaughter
11-635	Murder 2 <sup>nd</sup> Degree
11-636	Murder 1st Degree
11-1447A	Possession of a Firearm During the Commission of a Felony

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<sup>21</sup> 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.

<sup>22</sup> 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.

<sup>23</sup> Title 11, §4381: Earned good time.

<sup>24</sup> Title 11, §4382: Forfeiture of good time.

11-763	Rape 2nd Degree
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	

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## **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.

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## **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.

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## 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.

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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 2<sup>nd</sup> 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.)



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## 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.

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7. Require no contact with the victim of the crime unless otherwise approved by the Probation Officer.

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## **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.**

### **TITLE 11**

#### House Bill 35

CHAPTER 20  
FORMERLY  
HOUSE BILL NO. 35  
AS AMENDED BY  
HOUSE AMENDMENT NOS. 1, 2, 3, 4 & 5,  
HOUSE AMENDMENT NO. 6 AS AMENDED BY  
HOUSE AMENDMENT NO. 2 TO HOUSE AMENDMENT NO. 6  
& HOUSE AMENDMENT NO. 1 TO HOUSE AMENDMENT NO. 6,  
HOUSE AMENDMENT NO. 7 AS AMENDED BY  
HOUSE AMENDMENT NO. 1 TO HOUSE AMENDMENT NO. 7  
AND HOUSE AMENDMENT NOS. 8, 9 & 10

AN ACT TO AMEND TITLE 11 AND TITLE 24 OF THE DELAWARE CODE RELATING TO CRIMINAL HISTORY BACKGROUND CHECKS IN CONNECTION WITH THE SALE OR TRANSFER OF FIREARMS.

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:

§ 1448B. Criminal history record checks for sales of firearms – unlicensed persons.

(a) No unlicensed person shall sell or transfer any firearm, as defined in § 222 of this title, to any other unlicensed person without having conducted a criminal history background check through a licensed firearms dealer in accordance with § 1448A of this title and 24 Del.C. § 904A, as the same may be amended from time to time, to determine whether the sale or transfer would be in violation of federal or state law.

(b) For purposes of this section:

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

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

(3) "Transfer" means assigning, pledging, leasing, loaning, giving away, or otherwise disposing of, but does not include: (A) the loan of a firearm for any lawful purpose, for a period of 14 days or less, by the owner of said firearm to a person known personally to him or her; (B) a temporary transfer for any lawful purpose that occurs while in the continuous presence of the owner of the firearm, provided that such temporary transfer shall not exceed 24 hours in duration; (C) the transfer of a firearm for repair, service or modification to a licensed gunsmith or other person lawfully engaged in such activities as a regular course of trade or business; or (D) a transfer that occurs by operation of law or because of the death of a person

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for whom the prospective transferor is an executor or administrator of an estate or a trustee of a trust created in a will.

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

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

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

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

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

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

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

(5) Transactions in which the potential purchaser or transferee is a qualified active duty law-enforcement officer or a qualified retired law-enforcement officer, as such terms are defined in 11 *Del.C.* §1441A;

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

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

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

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

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

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

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

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of this paragraph, the terms "prospective buyer" and "prospective seller" shall include prospective transferors and prospective transferees, respectively.

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

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

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

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

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

Section 2. Amend § 1448A(b), Title 11 of the Delaware Code as follows:

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

Section 3. Amend § 1448A(c), Title 11 of the Delaware Code as follows:

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

Section 4. Amend § 1448A(e), Title 11 of the Delaware Code as follows:

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

Section 5. Amend § 1448A(f), Title 11 of the Delaware Code as follows:

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

Section 6. Amend § 1448A(h), Title 11 of the Delaware Code as follows:

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

Section 7. Amend § 1448A(i), Title 11 of the Delaware Code as follows:

(i) Notwithstanding Chapter 89 of this title, Chapter 10 of Title 24, and other Delaware laws, the SBI is authorized and directed to release records and data required by this section and by § 1448B of this title. The SBI shall not release or disclose criminal records or data except as specified in this section and in § 1448B of this title.

(j) No records, data, information or reports containing the name, address, date of birth or other identifying data of either the transferor or transferee or which contain the make, model, caliber, serial number or other identifying data of any firearm which are required, authorized or maintained pursuant to this section, § 1448B of this title or by Chapter 9 of Title 24 of this Code, shall be subject to disclosure or release pursuant to the Freedom of Information Act, 29 *Del.C.* § 10001 *et seq.*

Section 8. Amend § 904, Title 24 of the Delaware Code as follows:

(a) Any person desiring to engage in the business described in this chapter shall keep and maintain in the place of business at all times a record in accordance with this section and all applicable federal laws and regulations (including, without limitation, 18 U.S.C. §§ 921 *et seq.* and 27 C.F.R. §§ 478.121 *et seq.*). In such record the businessperson shall enter the date of the sale, the name and address of the person purchasing any deadly weapon, the number and kind of deadly weapon so purchased, the age of the purchaser, the mode of identification bearing a picture (except as provided in 11 *Del.C.* § 1448B(f)) which

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shall include but it is not limited to a driver's license, and any other information as shall be required by federal law and regulation. The record shall at all times be open for inspection by any judge, justice of the peace, police officer, constable or other peace officer of this State.

Section 8A. Amend § 904, Title 24 of the Delaware Code as follows:

(c) Notwithstanding any provision to the contrary, any inspection by a judge, justice of the peace, police officer, constable, or other peace officer of this State shall be reasonable under the circumstances existing at the time and shall only be made pursuant to and in furtherance of an open criminal investigation or during the course of a criminal prosecution.

Section 9. Amend § 904A, Title 24 of the Delaware Code as follows:

(b) As a condition of its license, any dealer holding a license pursuant to this chapter shall facilitate the transfer of a firearm, as that term is defined in § 222 of Title 11, from any unlicensed person as that term is defined in § 1448B of Title 11, upon the request of said unlicensed person, pursuant to the following procedure:

(1) The prospective buyer and seller shall jointly appear at the place of business of the dealer, during said dealer's regular hours of business, and shall inform the dealer of their desire to avail themselves of the advantages of the procedure set forth herein.

(2) The dealer shall then subject the prospective buyer to a criminal history record background check pursuant to the terms of § 1448A of Title 11.

(3) In the event that said record check reveals that the prospective buyer is prohibited from possessing, purchasing or owning a firearm pursuant to § 1448 of Title 11, the dealer shall so inform both parties of that fact and the transfer shall not take place.

(4) The dealer shall maintain a record of all criminal history background checks under this section in accordance with § 904 of this chapter.

(5) Any dealer who is asked to facilitate the transfer of a firearm pursuant to the terms of this section, may charge a reasonable fee for said service, said fee not to exceed \$30 per criminal history check performed pursuant to this procedure. Notwithstanding the foregoing, no fee may be charged for the return of a firearm to its owner in the event that the proposed transaction may not be immediately and legally completed as the result, or lack thereof, of a criminal history background check hereunder.

(6) Failure or refusal on the part of the dealer to facilitate the transfer of a firearm pursuant to the procedures set forth herein shall be adequate cause to suspend the license of said dealer for a period not to exceed 30 days per occurrence.

(d) Nothing in this section, or any other section of the Code, shall authorize or permit the State of Delaware or any agency, department or instrumentality thereof to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited

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from receiving a firearm as set forth in chapter 5 of Title 11. Any such system of registration is expressly prohibited.

(7) Subject to subchapter IV of Chapter 101 of Title 29, no license shall be restricted, suspended or revoked until a license holder has been given notice, and an opportunity to be heard in accordance with the Administrative Procedures Act [Chapter 101 of Title 29].

Section 10. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does 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.

Section 11. This Act shall have an effective date of July 1, 2013.

Approved May 08, 2013

### House Bill 36

CHAPTER 124  
FORMERLY  
HOUSE BILL NO. 36  
AS AMENDED BY  
HOUSE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO PENALTIES FOR POSSESSION AND PURCHASE OF DEADLY WEAPONS BY PERSONS PROHIBITED.

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

Section 1. Amend § 1448(e), Title 11 of the Delaware Code as follows:

§ 1448. Possession and purchase of deadly weapons by persons prohibited; penalties.

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

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

(3) Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title. For the purposes of this subsection, "violent felony" means any felony so designated by §



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4201(c) of this title, or any offense set forth under the laws of the United States, any other state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a violent felony by § 4201(c) of this title.

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

Section 2. Amend § 1448(c) of Title 11 of the Delaware Code as follows:

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

Approved July 18, 2013

### House Bill 39

CHAPTER 36  
FORMERLY  
HOUSE SUBSTITUTE NO. 1 FOR  
HOUSE BILL NO. 39  
AS AMENDED BY  
HOUSE AMENDMENT NO. 2

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

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

§ 2101. Purposes of this chapter

It is the purpose of this chapter to reform the system of bail in the various courts of this State and to empower and equip the courts to utilize a system of personal recognizance or an unsecured personal appearance bond to be used wherever feasible consistent with a reasonable assurance of the appearance of the accused and the safety of the community in connection with the release of persons accused of crime pending a final determination of the court as to the guilt of such persons.

§ 2102. Definitions

For purposes of this chapter the following definitions shall apply:

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(1) "Attorney General" includes any Deputy Attorney General or any other prosecutor of the State, county or municipality.

(2) "Bailable offense" is any offense not punishable by death.

(3) "Capital crime" includes any crime for which the punishment shall be death.

(4) "Cash personal appearance bond" is a bond of the accused promising appearance in court, secured by cash only.

(5) "Court" includes Superior Court, Court of Common Pleas, Family Court of the State, and justice of the peace.

(6) "Crime" includes any offense which is punishable by a fine or imprisonment.

(7) "Personal recognizance" is the written recognizance of the accused that the accused will obey the further direction of the court.

(8) "Record finding" is a memorandum, notation, opinion, order or other writing in the file of the case of the accused reflecting the decision made by the court.

(9) "Secured personal appearance bond" is a bond of the accused promising appearance in court, guaranteed by a surety, property, cash or other assets.

(10) "Unsecured personal appearance bond" is an undertaking by the accused promising appearance in court where, upon failure to appear, the accused will be liable for the amount of the bond, but the bond is not guaranteed by any surety or specific pledge of property or other assets.

(11) "Violent Felonies" or "violent felony" shall consist of all felonies designated as violent felonies in § 4201(c) of Title 11.

#### § 2103. Persons charged with a capital crime

(a) A capital crime shall not be bailable, and a person so charged shall be held in custody without bail until the charge be withdrawn, reduced or dismissed or until the court shall otherwise order after a trial which results in less than a conviction of a capital crime or except as provided in subsection (b) of this section.

(b) The Superior Court may admit to bail a person charged with a capital crime if, after full inquiry, the Superior Court shall determine that there is good ground to doubt the truth of the accusation, and the burden of demonstrating such doubt shall be on the accused.

#### § 2103A. Detention of youth charged with Superior Court offenses

When a child has reached that child's 16th birthday and is found to be nonamenable to the rehabilitative processes of the Family Court or is charged with an offense in Superior Court and thereafter makes application for transfer of said charges to Family Court pursuant to § 1011 of Title 10 and is denied or fails to make

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application pursuant to § 1011 of Title 10 within the required time and is therefore held over for trial in Superior Court, the youth shall be remanded to the Department of Correction if held in default of bail. When a child (youth) has been lawfully administratively remanded or transferred to the Department of Correction ("DOC"), DOC shall be exclusively responsible for all aspects of the child's (youth's) care, custody and control, including services associated with those responsibilities upon such remand and transfer. The Department of Services for Children, Youth and Their Families ("DSCYF") shall have no authority or jurisdiction of such child (youth).

§ 2104. Release on bail or recognizance of persons charged with any other crime

(a) Any person who is arrested and charged with any crime other than a capital crime shall be released either:

(1) On the person's own recognizance or

(2) Upon the execution of an unsecured personal appearance bond of the accused in an amount specified by the court or

(3) Upon the execution of a secured personal appearance bond, the amount of the bond and the nature of the surety to be determined by the court.

(4) Upon execution of a cash personal appearance bond, the amount of the bond to be determined by the court.

(b) The court shall impose the following conditions of release for any person released on bail or recognizance:

(1) Require the person to return to the court at any time upon notice and submit to the orders and processes of the court; and

(2) Prohibit the person from committing any criminal offense.

(c) The court may also impose 1 or more of the conditions of release set forth in § 2108 of this title.

(d) The determination of whether the accused shall be released under paragraph (a)(1), (a)(2), (a)(3) or (a)(4) of this section above and the conditions (other than the mandatory conditions in paragraph (b) of this section above) of the release shall be in the discretion of the court subject to this chapter. In making a release determination, or imposing conditions set forth in § 2108 of this title, the court shall employ an objective risk assessment instrument to gauge the person's risk of flight and re-arrest and the safety of the victim and the community. The risk assessment instrument shall be responsive to the needs of victims of domestic violence and sexual assault. The Statistical Analysis Center shall provide the court with a report of rates of re-

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arrest and failure to appear as required by persons released by the court. Use of the objective risk assessment instrument shall commence by December 31, 2013.

(e) If the accused has furnished surety, the court shall, at that time, review conditions and may impose any conditions as are set forth in § 2108 of this title before the accused is released, including specific consideration for the safety of the victim and the community.

(f) Any person who is arrested and thereafter released from custody pursuant to this chapter, and who subsequently:

(1) Tenders to the Superior Court a plea of guilty or nolo contendere to any felony for which a mandatory, minimum, minimum mandatory or mandatory minimum period of incarceration is required; or

(2) Is convicted upon a verdict of guilty of any felony for which a mandatory, minimum, minimum mandatory or mandatory minimum period of incarceration is required, shall immediately be remanded to the custody of the Department of Correction, and shall be incarcerated in lieu of bail until the sentence for said felony is imposed. The provisions of this subsection shall not apply to pleas or convictions for any felony set forth in Title 21.

§ 2105. Release on personal recognizance or on unsecured personal appearance bond

(a) The court shall release a person accused of a bailable crime on the person's own recognizance or upon the execution of an unsecured personal appearance bond of the accused in an amount to be determined by the court when the court is satisfied from all the circumstances and the criteria set forth in subsection (b) of this section that it is reasonably likely that the accused will appear as required before or after conviction of the crime charged and that there is no substantial risk to the safety of the community in permitting such unsecured release.

(b) In determining whether the accused is likely to appear as required and that there will be no substantial risk to the safety of the community the court shall, on the basis of available information, take into consideration the nature and circumstances of the crime charged, whether a firearm was used or possessed, the possibility of statutory mandatory imprisonment, whether the crime was committed against a victim with intent to hinder prosecution, the family ties of the accused, the accused's employment, financial resources, character and mental condition, the length of residence in the community, record of convictions, habitual offender eligibility, custody status at time of offense, history of amenability to lesser sanctions, history of breach of release, record of appearances at court proceedings or of flight to avoid prosecution or failure to appear at court proceedings.

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(c) If the court has determined that the accused shall not be released in accordance with this section, it shall make a record finding of the reason or reasons for such action and shall permit the release of the accused upon the furnishing of surety satisfactory to the court in an amount to be determined by the court.

§ 2107. Determining the amount of bail

(a) In determining the amount of bail to be required to be posted as surety under § 2105 of this title or to be required for an unsecured personal appearance bond of the accused, the court shall not require oppressive bail but shall require such bail as reasonably will assure the reappearance of the accused, compliance with the conditions set forth in the bond and the safety of the community. In fixing the amount, the court shall also take into consideration the criteria set forth in § 2105(b) of this title.

(b) In any event, if a person is charged with an offense punishable by fine only, the amount of the bail shall not exceed double the amount of the maximum fine for each charge. When a person has been convicted of an offense and only a fine has been imposed as the sentence of the court, the amount of bail shall not exceed double the amount of the fine.

(c) Notwithstanding any provision of this title to the contrary, for a person charged with committing a violent felony involving a firearm or with committing a violent felony while on probation or pretrial release, the presumption is that a cash personal appearance bond will be set.

§ 2108. Conditions for release

(a) In addition to the mandatory conditions set forth in § 2104(b) of this title, in connection with either a secured release or an unsecured release of any person the court may also impose 1 or more of the following conditions:

- (1) Place the person in the custody of a designated person or organization agreeing to supervise the person;
- (2) Place the person under the supervision of a presentence or probation officer;
- (3) Place restrictions on the travel, associations, activities, consumption of alcoholic beverages, drugs or barbiturates, or place of abode of the person during the period of release;
- (4) Require the person to have no contact or restricted contact with the victim, the victim's family, victim's residence, place of employment, school or location of offense;
- (5) Require periodic reports from the person to an appropriate agent or officer of the court including the attorney for the accused;
- (6) Require psychiatric or medical treatment of the person;
- (7) Require the person to provide suitable support for the person's family under supervision of an

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officer of the court or the Family Court, with the consent of the Family Court;

(8) Require a person who has been convicted to duly prosecute any post-conviction remedies or appeals; and if the case is affirmed or reversed and remanded, such person shall forthwith surrender to the court;

(9) Impose any other condition deemed reasonably necessary to assure appearance as required and to carry out the purpose of this chapter.

(b) In connection with either a secured release or an unsecured release of any person charged with any crime involving child sexual abuse or exploitation, the court shall also impose a condition that the person have no contact with children, except upon good cause shown, and as otherwise provided by the court, and that such condition remain in full force and effect until a nolle prosequi is filed, the case is dismissed or an adjudication of not guilty is returned, whichever shall first occur, or if the person is adjudicated guilty by way of a plea of guilty or a conviction by court or jury, at the time of sentencing, unless further made a condition of probation by the sentencing judge.

(c) In connection with either a secured release or unsecured release of any person charged with a violation of § 4177 of Title 21 which is alleged to be punishable as a felony pursuant to that section, the court shall impose a condition that the person not drive a vehicle, as defined by that section, until a nolle prosequi is filed, the case is dismissed or an adjudication of not guilty is returned, whichever shall first occur, or if the person is adjudicated guilty by way of plea of guilty or a conviction by court or jury, at the time of sentencing, unless further made a condition of probation by the sentencing judge.

§ 2109. Failure to provide recognizance, bond, or consent to conditions; contact with victim or victim's family

(a) If the accused does not provide the personal recognizance, secured or unsecured bond or if the person does not agree to meet the conditions for release, the person shall be held in the custody of the State Board of Correction until the person cures such failure or until the court otherwise orders.

(b) If the accused is committed in lieu of bail, the court may require such person, while in custody, to have no contact with the victim or the victim's family.

(c) If the accused is committed in lieu of bail, and knowingly breaches any conditions imposed in connection with that bail, each such failure or breach shall be a separate crime, and upon conviction thereof shall be punished as follows:

(1) If the person was held in connection with 1 or more charges of a felony prior to trial, or while awaiting sentence or pending appeal or certiorari after conviction of 1 or more felonies or misdemeanors, the

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person shall be guilty of a felony and punished by imprisonment of not to exceed 5 years or a fine of \$5,000, or both;

(2) If the person was held in connection with 1 or more charges of misdemeanor prior to trial, the person shall be fined not more than \$500 or imprisoned not more than 1 year, or both.

§ 2110. Modification of bail, security or conditions

(a) Either the accused or the Attorney General may apply to the court for any modification of any determination by the court as to the decision of the type of release, the amount and nature of the bond or surety, or the conditions of release. Such application shall be at such times, upon such conditions and in such manner as the Rules of Superior Court may provide.

(b) Where the court modifies any bail amount, the court shall review conditions and may impose any conditions as are set forth in § 2108 of this title, including specific considerations for the safety of the victim and the community.

§ 2111. Procedure for taking bail or implementing this chapter

Except as provided herein, the procedure for taking bail or implementing this chapter shall be as provided by the Rules of the Superior Court.

§ 2112. Bail after transfer to another court or after conviction

Once bail has been given and a charge is pending or is thereafter filed in or transferred to a court of competent jurisdiction, the latter court may continue the original bail in that court. After conviction, the court may order that the original bail stand as bail pending appeal or deny, increase or reduce bail.

§ 2113. Penalties for noncompliance with conditions of recognizance; bond or conditions

(a) If the accused shall fail to appear as required by the recognizance or bond or shall commit any material breach of the conditions set forth in § 2104(b) or § 2108 of this title, the court shall issue a warrant and cause the arrest of such person and the cancellation of any recognizance and the return to the court for a redetermination of the disposition of the accused.

(b) Upon the return of the accused before the court pursuant to subsection (a) of this section or if the accused shall not be found, the court shall act with respect to the forfeiture of any secured or unsecured bond pursuant to the Rules of the Superior Court and shall redetermine the type of release, the amount of bail, if any, and conditions of the further release of the accused. Notwithstanding any law to the contrary, no property, cash, surety or other assets shall be forfeited except upon failure of the accused to appear as required by any Court.

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(c) If the accused knowingly fails to appear as required or knowingly breaches any condition of release, each such failure or breach shall be a separate crime, and upon conviction thereof shall be punished as follows:

(1) If the person was released in connection with 1 or more charges of a felony prior to trial, or while awaiting sentence or pending appeal or certiorari after conviction of 1 or more felonies or misdemeanors, the person shall be guilty of a felony and punished by imprisonment of not to exceed 5 years or a fine of \$5,000, or both;

(2) If the person was released in connection with 1 or more charges of misdemeanor prior to trial, the person shall be fined not more than \$500 or imprisoned not more than 1 year, or both.

(d) The Justice of the Peace Court shall have jurisdiction over violations of this section if punishable as misdemeanors and if the jurisdiction over the underlying offense remains with the Justice of the Peace Court.

(e) Any person released pursuant to this chapter shall notify the court, before which the case is pending, of any changes of address or residence within 5 days of such change. Failure to make such notification will result in constructive receipt of any subpoena issued to the person by or on behalf of the court to the last address or residence given to the court by that person.

(f) Nothing in this chapter shall interfere with or prevent the exercise by any court of its power to punish for contempt.

#### § 2114. Administration of this chapter

(a) The Department of Correction shall administer such provisions of this chapter as are not exclusively the province of the judges of the respective courts of this State.

(b) The Department of Correction may make investigations relative to the release of persons charged with criminal offenses and advise and assist the courts to carry out the purposes of this chapter.

(c) The Department of Correction shall have the power necessary to carry out the purposes of this chapter, including subpoena power, and as shall be provided by the Rules of the Superior Court.

(d) The Commissioner of the Department of Corrections may employ 1 supervisor, and such assisting and clerical staff as may be necessary to carry out this chapter.

#### § 2115. Forfeiture and default of bail bonds

(a) If the accused shall fail to appear as required by any court, except the House Sergeant of the Wilmington City Police, while under a bond, and the court pursuant to this chapter or court rule finds the accused in default and forfeits the bond, the proceeds shall be forwarded to the State Treasurer and deposited in the General Fund.



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(b) All funds held by the State in any depository derived from forfeiture or default of bonds from any court, except the House Sergeant of the Wilmington City Police, shall immediately be forwarded to the State Treasurer and deposited in the General Fund.

(c) The proceeds of any bond forfeited for the accused's failure to appear in any child support proceeding shall be paid over to the payee of the child support order and applied to the child support account.

§ 2116. Revocation of bail upon subsequent arrest

(a) For the purposes of this section:

(1) "Original offense" means any violent felony which is alleged to have been committed by a person who is thereafter released from custody upon that person's own recognizance or upon the execution of a secured or unsecured personal appearance bond or a cash personal appearance bond;

(2) "Subsequent offense" means any violent felony or any similar offense set forth under the laws of another state, the United States or any territory of the United States which is alleged to have been committed by a person during the period of that person's secured or unsecured release in connection with an original offense.

(b) In connection with either a secured release or unsecured release of any person charged with any violent felony, if after such release the accused is charged by arrest, warrant, indictment or information with the commission of a subsequent offense, that person shall be brought before the Superior Court. If after a hearing, the Superior Court finds proof positive or presumption great that the accused has committed a subsequent offense during such period of release, notwithstanding any provision of this chapter or any statute or court rule to the contrary, the Court shall revoke the bail to which the person was admitted in connection with the original offense.

(c) Notwithstanding any provision of this chapter or any other statute or court rule to the contrary, whenever the accused is charged with a subsequent offense, any recognizance or bond relating to the original offense shall be temporarily revoked, and the person shall be held in lieu of bail for the original offense until such time as the Superior Court holds a hearing to determine whether there is proof positive or presumption great that the accused committed a subsequent offense during the period of release.

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(d) Notwithstanding any provision of this chapter or any statute or court rule to the contrary, any person whose bail is revoked by the Superior Court pursuant to this section shall be subject to bail on the original offense in an amount at least twice the amount of bail originally set. If the bail on the original offense was not already cash, the amount of bail may be posted only in the form of a cash personal appearance bond.

Section 2. This Act shall take effect immediately upon its enactment.

Approved June 04, 2013

Senate Bill 9

CHAPTER 37  
FORMERLY  
SENATE BILL NO. 9  
AS AMENDED BY  
SENATE AMENDMENT NO. 2  
AND  
HOUSE AMENDEMNT NO. 2

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

Section 1. Amend Section 636(b) of Title 11 of the Delaware Code as follows:

(b) Murder in the first degree is a class A felony and shall be punished:

(1) as provided in § 4209 of this title for an offense that was committed after the person had reached the person's eighteenth birthday; and

(2) as provided in § 4209A of this title for an offense that was committed before the person had reached the person's eighteenth birthday.

Section 2. Amend the catchline to Section 4209 and amend Section 4209(a) of Title 11 of the Delaware Code as follows:

§ 4209. Punishment, procedure for determining punishment, review of punishment and method of punishment for first-degree murder committed by adult offenders.

(a) Punishment for first-degree murder. -- Any person who is convicted of first-degree murder for an offense that was committed after the person had reached the person's eighteenth birthday shall be 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, said penalty to be determined in accordance with this section.

Section 3. Amend Chapter 42 of Title 11 of the Delaware Code by inserting a new Section 4209A as follows:

§ 4209A. Punishment for first-degree murder committed by juvenile offenders.

Any person who is convicted of first-degree murder for an offense that was committed before the person had reached the person's eighteenth birthday shall be sentenced to term of incarceration not less than 25 years to be served at Level V up to a term of imprisonment for the remainder of the person's natural life to be served at Level V without benefit of probation or parole or any other reduction.

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Section 4. Amend Section 4204A of Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strikethrough as follows:

§ 4204A. Confinement of youth convicted in Superior Court

(d)(1) Notwithstanding any provision of this Title to the contrary, any offender sentenced to an aggregate term of incarceration in excess of 20 years for any offense or offenses other than Murder First Degree that were committed prior to the offender's eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 20 years of the originally imposed Level V sentence.

~~(2)~~Notwithstanding any provision of this Title to the contrary, any offender sentenced to a term of incarceration for Murder First Degree when said offense was committed prior to the offender's eighteenth birthday shall be eligible to petition the Superior Court for sentence modification after the offender has served 30 years of the originally imposed Level V sentence.

(3) Notwithstanding any provision of this subsection or Title to the contrary, any offender who has petitioned the Superior Court for sentence modification pursuant to this subsection shall not be eligible to submit a second or subsequent petition until at least 5 years have elapsed since the date on which the Court ruled upon the offender's most recent petition. Further, the Superior Court shall have the discretion at the time of each sentence modification hearing to prohibit a subsequent sentence modification petition for a period of time in excess of five years if the Superior Court finds there to be no reasonable likelihood that the interests of justice will require another hearing within five years.

(4) Notwithstanding the provisions of § 4205 or § 4217 of this Title, any court rule or any other provision of law to the contrary, a Superior Court judge upon consideration of a petition filed pursuant to subsection (d) of this Section, may modify, reduce or suspend such petitioner's sentence, including any minimum or mandatory sentence, or a portion thereof, in the discretion of the court. Nothing in this Section, however, shall require the court to grant such a petitioner a sentence modification pursuant to this section.

(5) The Superior Court shall have the authority to promulgate appropriate rules to regulate the filing and litigation of sentence modification petitions pursuant to this paragraph.

Section 6. The provision of this Act creating new Section 4209A of Title 11 of the Delaware Code shall be applicable to any sentence for any offense that was committed before the offender had reached the offender's eighteenth birthday whether that sentence was imposed either before or after the enactment of this Act. The Superior Court shall provide procedures to receive petitions for resentencing from those previously sentenced for first degree murder for any offense that was committed before the person had reached his or her eighteenth birthday, such resentencing to proceed under the provisions of new Section 4209A. Nothing in this section, however, shall require the court to grant a reduction in sentence to any such offender.

Section 7. The provision of this Act creating new Section 4204A(d) of Title 11 of Title 11 of the Delaware Code shall be applicable to any term of incarceration of life imprisonment to be served at Level V for any offense that was committed before the offender had reached the offender's eighteenth birthday whether that sentence was imposed either before or after the enactment of this Act.

Section 8. The provisions of this Act shall be applicable to any person serving a sentence at Level V for any offense that was committed prior to the offender's eighteenth birthday, regardless of whether such offense was committed prior to or after enactment of this Act.

Approved June 04, 2013

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Senate Bill 16

CHAPTER 41  
FORMERLY  
SENATE BILL NO. 16  
AS AMENDED BY  
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11, CHAPTER 5 OF THE DELAWARE CODE RELATING TO THE MANDATORY REPORTING OF LOST OR STOLEN FIREARMS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE: Section 1. Amend Title 11, Chapter 5 of the Delaware Code as follows:

§ 1461. Report of Loss, Theft of Firearm.

(a) Any owner of a firearm, defined in 11 Delaware Code §222, shall report the loss or theft of the firearm within 7 days after the discovery of the loss or theft to either (1) the law enforcement agency having jurisdiction over the location where the loss or theft of the firearm occurred or (2) any State Police Troop.

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

(1) For the first offense, be guilty of a violation and be subject to a civil penalty of not less than \$75.00 nor more than \$100.00.

(2) For a second offense committed at any time after the sentencing or adjudication of a first offense, be guilty of a violation and be subject to a civil penalty of not less than \$100.00 nor more than \$250.00.

(3) For a third or subsequent offense committed at any time after the sentencing or adjudication of a second offense, be guilty of a class G felony.

Approved June 12, 2013

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## TITLE 16

### House Bill 28

CHAPTER 176  
FORMERLY  
HOUSE SUBSTITUTE NO. 1  
FOR  
HOUSE BILL NO. 28

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO CLANDESTINE LABORATORIES.

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

Section 1. Amend Subchapter IV, Chapter 47, Title 16, Delaware Code as follows:

§ 4760A. Operating or attempting to operate clandestine laboratories; cleanup; penalties.

(a) Any person who knowingly operates or attempts to operate a clandestine laboratory is guilty of a class C felony.

(b) Any person convicted of a violation of subsection (a) of this section shall be responsible for all reasonable costs, if any, associated with remediation of the site of the clandestine laboratory and any costs associated with the cleanup of any substances or materials or hazardous waste, and for the cleanup of any other site resulting from the operation or disposal of substances or materials from a clandestine laboratory.

(c) Definitions. As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

(1) "Clandestine laboratory" means any property, real or personal, on or in which a person assembles any chemicals or equipment or combination thereof which are intended to be used to or have been used to unlawfully manufacture a controlled substance or other substance in violation of the provisions of this chapter.

(2) "Cleanup" means any action reasonably necessary to contain, collect, control, identify, analyze, disassembly, treat, remove, or otherwise disperse any substances or materials in or from a clandestine laboratory, including those found to be hazardous waste and any contamination caused by those substances or materials.

(3) "Remediation" means any emergency response, act, or process to temporarily or permanently remedy and make safe.

(d) Nothing in this section shall be construed to preclude a prosecution for the same or similar activity under Chapter 47, Title 16 of this Code, the Uniform Controlled Substance Act.

Section 2. The Department of Natural Resources and Environmental Control and the Department of Health and Social Services shall develop any necessary regulations, guidelines, and processes relating to cleanup and remediation of such sites.

Approved August 27, 2013

CHAPTER 175  
FORMERLY  
HOUSE BILL NO. 130

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO REGULATION OF MANUFACTURE, DISTRIBUTION AND DISPENSING OF CONTROLLED SUBSTANCES.

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

Section 1. Amend §4740, Title 16 of the Delaware Code as follows:

§4740. Sale of pseudoephedrine and ephedrine.

(a) Beginning January 1, 2014, before completing a sale of an over-the-counter material, compound, mixture, or preparation containing any detectable quantity of pseudoephedrine or ephedrine, its salts or optical isomers, or salts of optical isomers a pharmacy or retailer shall electronically submit the information required pursuant to subsection (b) of this section to the National Precursor Log Exchange system ("NPLEx") administered by the National Association of Drug Diversion Investigators; provided that the National Precursor Log Exchange is available to pharmacies or retailers in the State without a charge for accessing the system. The pharmacy or retailer shall not complete the sale if the NPLEx system generates a stop sale alert. The system shall contain an override function that may be used by an agent of a retail establishment who is dispensing the drug product and who has a reasonable fear of imminent bodily harm if the transaction is not completed. The system shall create a record of each use of the override mechanism.

(b) The pharmacy or retailer shall maintain a written or electronic log of required information for each sale of a nonprescription product containing pseudoephedrine or ephedrine, including:

- (1) The date and time of any transaction;
- (2) The name, address, and date of birth of the person purchasing or obtaining the substance;
- (3) The type of government-issued identification provided by the person purchasing or obtaining the substance and identification number;
- (4) The government agency issuing the identification used; and
- (5) The name of the compound, mixture, or preparation and the amount.

The pharmacy or retailer shall require every person purchasing or obtaining the substance to sign a written or electronic log attesting to the validity of the information.

(c) If a pharmacy or retailer selling an over-the-counter product containing the substance experiences mechanical or electronic failure of the electronic tracking system and is unable to comply with the electronic sales tracking requirement under this section, the pharmacy or retailer shall maintain a written log or an alternative electronic record keeping mechanism until such time as the pharmacy or retailer is able to comply with the electronic sales tracking requirement.

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(d) Any material, compound, mixture, or preparation as defined in subsection (a) shall be dispensed, offered for sale, sold, or distributed only from behind a checkout counter, pharmacy counter, or in a locked storage container where the public is not permitted.

(e) A licensed pharmacist, sales clerk, or pharmacy technician shall require that any person purchasing, receiving, or otherwise acquiring any such substance shall be age 18 or older, produce a photo identification showing the date of birth of the person, and sign a written log or receipt showing the date of the transaction, name of the person, and the amount of such substance. The written log or electronic log shall be retained for at least 12 months.

(f) No person, other than pharmacy or retail establishment, shall purchase, receive, or otherwise acquire more than 9 grams of any such substance within any 30-day period.

(g) A violation of this section is a class A misdemeanor.

(h) The National Association of Drug Diversion Investigators shall forward Delaware transaction records in the National Precursor Log Exchange to the Drug Diversion Unit of the Delaware State Police weekly and provide real-time access to the National Precursor Log Exchange information through the National Precursor Log Exchange online portal to law enforcement in the State as authorized by the State Police; provided that the State Police execute a memorandum of understanding with the National Association of Drug Diversion Investigators governing access to the information; provided further that the State Police shall establish the electronic tracking system in conjunction with the State's existing narcotics tracking system no later than January 1, 2014.

Approved August 27, 2013

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## TITLE 18

### House Bill 151

CHAPTER 177  
FORMERLY  
HOUSE SUBSTITUTE NO. 1 FOR  
HOUSE BILL NO. 151  
AS AMENDED BY  
HOUSE AMENDMENT NO. 1  
AND  
HOUSE AMENDMENT NO. 2 AS AMENDED BY HOUSE AMENDMENT NO. 1  
TO HOUSE AMENDMENT NO. 2  
AND  
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO BAIL BOND AGENTS. BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 43, Subchapter II, Title 18 of the Delaware Code as follows:

§ 4331. Purpose.

This subchapter governs the qualifications and procedures for the licensing of bail agents. This subchapter shall establish the qualifications for granting licenses to bail agents, establish the procedures to be followed in determining the initial and continuing qualifications for such persons, and provide standards for such persons' authorities, duties, responsibilities and prohibitions in a manner that will provide guidance to such personnel and control over such personnel by the Commissioner for the benefit and protection of the citizens of the State.

§ 4332. Definitions.

For purposes of this chapter, the following definitions shall apply:

(a) "Bail agent" or "Bail producer" means a surety bail agent or a property bail agent. The term bail agent does not include the term "bail enforcement agent" as the same is used in Chapter 55 of Title 24. A surety bail agent may also act as a property bail agent, provided the surety bail agent complies with all provisions of this subchapter applicable to property bail agents.

(b) "Business entity" shall mean a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.

(c) "Collateral" means United States currency, United States postal money orders or cashier's checks or other property pledged as security or surety for a bail bond in connection with a judicial proceeding.

(d) "Commissioner" shall have the meaning ascribed to it in § 102 of this title.

(e) "Court" means any court of this State that has the power to set bail to enforce the appearance of a defendant in a criminal or civil proceeding.

(f) "Department" shall have the meaning ascribed to it in § 102 of this title.

(g) "Designated bail agent" or "Designated Responsible Licensed Producer" means the licensed bail



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agent who is the head or manager of a bail agent business entity that employs 1 or more licensed bail agents.

(h) "License" shall mean a document issued by the Commissioner authorizing a person to act as a bail agent. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance carrier.

(i) "Negotiate" shall mean the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a surety or property bail bond concerning any of the substantive benefits, terms or conditions of the surety or property bail bond.

(j) [Repealed.]

(k) "Person" shall mean an individual or a business entity.

(l) "Premium" is the consideration for a surety or property bail bond by whatever name called.

(m) "Property bail" means United States currency, United States postal money orders or cashier's checks, real property or other property.

(n) "Property bail agent" means any person who pledges property bail as security or surety for a bail bond in connection with a judicial proceeding and receives or is promised therefor money or other things of value. Any person who charges a fee for or makes a business of furnishing property bail in any court proceeding, or who furnishes property bail in four or more court cases in any one year whether for compensation or otherwise, shall be deemed a property bail agent and shall be subject to the provisions of this subchapter.

(o) "Revocation" shall mean recalling or taking back a license or licenses for a minimum period of 12 months. Any insurer appointments of such license shall likewise be revoked. No individual whose license is revoked shall be issued another license without first complying with all requirements for issuance of a new license under this subchapter.

(p) "Sell" means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company, a person or business entity.

(q) "Solicit" shall mean attempting to sell a surety or property bail bond or asking or urging a person to apply for a surety or bail bond bail bond.

(r) "Surety bail agent" means a person required to be licensed under the laws of this State to sell, solicit or negotiate contracts of surety bail bond insurance and appointed by a surety insurer that is authorized to transact business in this State to sell, solicit or negotiate contracts of surety bail bond insurance.

(s) "Surety insurer" shall mean an insurer having a certificate of authority from the Department to issue surety contracts or bonds to guarantee the performance of any person licensed under this subchapter.

(t) "Suspension" shall mean to bar temporarily the privileges of a bail agent. A suspension shall also include a suspension of the appointment of a surety bail agent by the surety insurer. Upon the expiration of the suspension period and upon satisfactory completion of such terms and conditions as the Commissioner has imposed pursuant to the suspension, all licenses and appointments shall be reinstated.

(u) "Termination" shall mean the cancellation of the relationship between a surety insurer and the surety bail agent or the termination of a surety bail agent's authority to transact surety insurance.

(v) "Uniform Application" shall mean the current version of the NAIC Uniform Application for

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resident producer licensing.

(w) "Uniform Business Entity Application" shall mean the current version of the NAIC Uniform Business Entity Application for resident business entities.

§ 4333. Application for license as a bail agent and licensure.

(a) A person applying for a bail agent license shall make application to the Commissioner on the Uniform Application or on forms prescribed by the Commissioner for license types and lines of authority not available on the Uniform Application and shall declare under penalty of denial, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief.

(b) In addition to compliance with this section 4333, every person seeking licensure as a surety bail agent shall comply with section 4333A of this subchapter, and every person seeking licensure as a property bail agent shall comply with section 4333B of this subchapter.

(c) Before approving the application, the Commissioner shall find that the individual:

(1) Is at least 18 years of age;

(2) Is a resident of the State of Delaware. For purposes of establishing Delaware residency, it shall be sufficient to show that the applicant maintains an office within the State of Delaware that complies with all requirements of Sections 4341 and 4346 of this Title.

(3) Has not committed any of the following acts:

(i) Provided incorrect, misleading, incomplete or materially untrue information in the license application;

(ii) Violated any insurance laws, or violated any regulation, subpoena or order of the Insurance Commissioner or of another state's Insurance Commissioner;

(iii) Obtained or attempted to obtain a license through misrepresentation or fraud;

(iv) Improperly withheld, misappropriated or converted any moneys or properties received in the course of doing insurance business;

(v) Intentionally misrepresented the terms of an actual or proposed insurance contract or application for insurance;

(vi) Pled guilty or nolo contendere to, or been found guilty of, a felony or a crime which includes an element of dishonesty or fraud or involves moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country;

(vii) Admitted or been found to have committed any insurance unfair trade practice or fraud;

(viii) Used fraudulent, coercive or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this State or elsewhere;

(ix) Had an insurance producer or bail agent license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;

(x) Forged another's name to an application for insurance or to any document related to an insurance transaction;

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(xi) Improperly used notes or any other reference material to complete an examination for an insurance license;

(xii) Knowingly accepted surety bond business from an individual who is not licensed, who's license has been suspended or revoked, or who has been barred from acting as a bail agent by any court;

(xiii) Failed to comply with an administrative or court order imposing a child support obligation; or

(xiv) Failed to pay state income tax or comply with any administrative or court order directing payment of state income tax.

(4) Has paid the fees set forth in Chapter 7 of this title;

(5) Has successfully passed the examination for the lines of authority for which the person has applied, unless specifically exempted from such examination by this subchapter;

(6) Has not been suspended or prohibited from acting as a bail agent by any court, or had a license suspended or revoked by the District of Columbia or any state or territory of the United States. The Commissioner shall verify the applicant's licensing status through the Producer Database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries; and

(d) A person applying for, or having been granted, a bail agent license, shall disclose to the Commissioner the identity of each person having or seeking to acquire a ten percent or greater financial interest in (i) the bail agent's business or (ii) any one or more bail bonds pledged by or on behalf of the applicant or licensee. Before any person may acquire or maintain a ten percent or greater financial interest in (i) a bail agent's business or (ii) any one or more bail bonds, such person must be licensed as a bail agent under this section. No applicant for a license or licensee shall allow a person to acquire or maintain a ten percent or greater financial interest in (i) a bail agent's business or (ii) any one or more bail bonds, unless the person seeking to acquire such interest is licensed as a bail agent under this subchapter.

(e) Except where prohibited by state or federal law, by submitting an application for license, the applicant shall be deemed to have appointed the Commissioner as the agent for service of process on the applicant in any action or proceeding arising in this State out of or in connection with the exercise of the license. Such appointment of the Commissioner as agent for service of process shall be irrevocable during the period within which a cause of action against the applicant may arise out of transactions with respect to subjects of insurance in this State. Process shall be served upon the Commissioner or such other person or persons as the Commissioner shall designate by rule or regulation.

(f) Each application shall further contain, at the applicant's expense, a background check of the applicant's criminal history, dated within 45 days of the application. The background check shall consist of: (1) a report of the individual's entire criminal history record from the Delaware State Police or a statement from the Delaware State Police that the State Police Central Repository contains no such information relating to that person; and (2) a report of the individual's entire federal criminal history record information from the Federal Bureau of Investigation (federal CHRI report). The Division of State Police shall be the intermediary for the purposes of this paragraph.

(g) All collateral, premiums, return premiums or other funds received in any manner by a bail agent or bail business entity shall be held in a fiduciary capacity and shall be accounted for by such bail agent or

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bail business entity.

(h) A person who has received a nonresident bail agent license under prior law, shall not be permitted to renew the bail agent's license, unless such person shall comply with all provisions of this subchapter, including without limitation the residency requirement set forth in this section.

(i) The applicant for a bail agent license shall bear all costs associated with the application or any reapplication.

(j) Upon the Department's determination that the application is complete, the applicant has passed all required examinations and is otherwise qualified for the license applied for, the Department shall thereupon issue the license.

§ 4333A. Additional Application Requirements for Surety Bail Agents.

(a) In addition to the requirements of section 4333, every applicant for a surety bail agent license shall file with the Commissioner a notice of appointment executed by a surety insurer or its authorized representative authorizing such applicant to execute undertakings of bail and to solicit and negotiate such undertakings on its behalf.

(b) An appointment of a person as a surety bail agent by a surety insurer pursuant to this subsection shall constitute certification by such insurer that, to the best of the insurer's knowledge and belief, such person is competent, financially responsible and suitable to serve as a representative of the insurer. No person shall represent to the public that such person has the authority to represent an insurer as its surety bail agent until such person has been appointed by an insurer as such agent in accordance with this section. An insurer shall be bound by the acts of such person within the scope of such person's actual authority as such insurer's agent.

(c) Each appointment shall, by its terms, continue in force until: (i) Termination of the surety bail bond agent's license; or (ii) the filing of a notice of termination with the Commissioner by the surety insurer or its representative or by such surety bail agent.

(d) Each insurer shall annually conduct an audit, for the period from January first through December thirty-first, of each of its appointed surety bail agents to ensure such agents are charging the premium rate as required by section 4347 of this subchapter. Not later than forty-five days after the closing of the year (period of each audit), each insurer shall notify the Commissioner of the failure of any surety bail bond agent to charge the premium rate approved by the Commissioner pursuant to chapter 25. Such notice shall include the name of the surety bail bond agent, the case docket number if assigned, the total amount of the bail bond, the date the bail bond was executed, the amount of the premium charged and reported to the surety insurer, the State, County and Court in which the bond was executed, the five-digit identification code assigned to the insurer by the National Association of Insurance Commissioners and the date the premium was due.

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§ 4333B. Additional Application Requirements for Property Bail Agents.

(a) In addition to the requirements of section 4333, every applicant for a property bail agent license shall file with the Commissioner a statement under oath of the assets and liabilities of the applicant.

(b) A property bail agent shall have a continuing duty (1) to advise the Commissioner in writing under oath of any material change in such property bail agent's assets or liabilities affecting such property bail agent's responsibility as a property bail agent; and (2) at any time, upon request of the Commissioner, furnish the Commissioner with a statement under oath of such property bail agent's assets and liabilities, including all bail bonds on which such property bail agent is obligated.

(c) The applicant shall file with his or her application for licensure all rates and other charges proposed for use in writing bail bonds. Such rating plan must be approved by the Commissioner prior to issuance of the license. No rate or other charge may be imposed in connection with the property bail agent's business, unless it has been approved in advance by the Commissioner.

§ 4334. Application for license as a business entity.

(a) A business entity advertising and acting as a bail agent is required to obtain a bail producer business entity insurance license. All surety bail bond contract transactions under the business entity license must be completed by a licensed bail agent of this State. Non-licensed individuals may perform tasks that are strictly clerical in nature such as assisting customers to complete applications and taking payments and providing receipts or other documentation to principal, indemnitors customers or other persons, but only under the supervision of a licensed agent who shall be responsible for any non-compliance with this subchapter by the non-licensed individual.

(b) Application for a business entity license shall be made using the Uniform Business Entity Application or on forms prescribed by the Commissioner for license types and lines of authority not available on the Uniform Business Entity Application.

(c) Before approving the application, the Commissioner shall find that:

(1) The business entity has paid the fees set forth in Chapter 7 of this title; and

(2) The business entity has designated a licensed bail agent or producer licensed under this chapter responsible for the business entity's compliance with the insurance laws, rules and regulations of this State.

(d) The Commissioner may require any documents reasonably necessary to verify the information contained in an application.

§ 4335. License renewal.

(a) A person who is licensed as a bail agent shall renew the license in accordance with the same requirements established for insurance producers under Chapters 7 and 17 of this title. As a condition of renewal, the licensee also shall certify that he or she is in compliance with all requirements set forth in this subchapter for the issuance of an initial license.

(b) In addition, such person shall be required to show that since the last renewal or initial

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application in this state, neither the person nor any business in which the person is or was an owner, partner, officer or director, or member or manager of limited liability company, has not been suspended or prohibited in this state or any other jurisdiction from acting as a bail agent by any court, or otherwise been involved in an administrative proceeding regarding any professional or occupational license, or registration at the time of renewal.

§ 4336. Bonds.

(a) At the time of the application for license as a bail agent, the applicant shall file with the Department a bond executed and issued by a surety insurer authorized to transact business in the State in the minimum amount of \$20,000, which bond shall secure the faithful performance of the applicant's duties as a bail agent. A bail agent license shall be automatically suspended if the bond is not in force or if the security referred to in subsection (c) of this section is impaired or unavailable to the Department.

(b) The bond shall have the following characteristics:

(1) The bond must be conditioned upon a full accounting and payment to the person entitled thereto of money, property or other matters coming into the licensee's possession through bail bond transactions under the license.

(2) The bond shall be in favor of the State and shall specifically authorize recovery by the Commissioner of the damages sustained if the licensee violates any of the terms of the license or the applicable laws and regulations of this State.

(3) The aggregate liability of the surety for all damages shall not exceed the amount of the bond.

(4) The bond must remain in force until released by the Commissioner, or cancelled by the surety. The surety may cancel the bond upon 30-days' written notice to the licensee and the Commissioner provided that the surety shall remain liable for any obligation arising under the bond prior to the effective date of cancellation or termination.

§ 4337. Examination for license as bail agent.

(a) Any natural person who intends to apply for a license as a bail agent, must personally take and pass a written examination of that person's competence to act as such. After passing the examination, the person may apply to the Commissioner for a bail agent license.

(b) The scope of the examination shall encompass all aspects of the bail bond business as shall be determined by the Department.

(c) The Department may make arrangements for administration and grading by an independent testing service.

(d) Any individual who fails to appear for the examination as scheduled or fails to pass the examination may reapply for a reexamination and remit all required fees and forms before being permitted to take the reexamination.

(e) All examination score reports are valid for a period of 12 months from the date of examination.

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(f) A bail agent, whose license lapses and whose license is not suspended or revoked is exempt from retaking the examination required by this section if the bail agent applies for and is reinstated within 12 months after the date of lapse. All fees and fines associated with the lapsed and reinstated license must be paid in full prior to the Department's approval of the request for reinstatement.

§ 4338. Issuance of license; notice of refusal to issue license; fees not refundable.

(a) Upon the Department's determination that the application is complete, the applicant has passed all required examinations and is otherwise qualified for the license applied for, the Department shall thereupon issue the license.

(b) A bail agent license shall remain in effect:

(1) Unless revoked or suspended;

(2) As long as the fee set forth in Chapter 7 of this title is paid and educational requirements as established by law or regulation for bail agents are met by the due date;

(3) Unless the bail agent fails to procure or maintain in full force and effect a bond required by § 4336 of this title herein; and

(4) As long as the license has been renewed in compliance with § 4335 of this subchapter.

(c) If a bail agent fails to comply with subsection (b) of this section above, the Department shall, without a hearing, deem the bail agent's license administratively lapsed until the requirements of subsection (b) of this section are met and the bail agent has satisfied all monetary and/or educational obligations and costs necessary under this subchapter to restore the license, provided that such action is taken within 1 year of the date the license is administratively suspended. However, a penalty of double the regular license fee shall be required for any renewal fee received after the due date and within the first 6 months from the due date of the renewal fee. A licensee who does not pay within 6 months of the due date but pays prior to the expiration of 12 months from the due date shall be subject to a fine of not less than \$200 and not more than \$1,000 prior to the reinstatement of the license. After 1 year, the bail agent's license shall be deemed revoked and the bail agent would be required to reapply for licensure under § 4333 of this title as a new applicant.

(d) If the applicant for a bail agent license fails to meet the requirements of this subchapter or any applicable regulation, the Department shall refuse to issue the license and shall notify the applicant of such refusal stating the grounds for the refusal. The notice of refusal shall constitute an order of the Commissioner as provided for in § 323 of this title.

(e) Any fees required to be paid pursuant to this subchapter are nonrefundable.

(f) The license shall contain the licensee's name, address, and personal identification number, and the date of issuance, the lines of authority, and any other information the Department deems necessary.

(g) Licensees shall inform the Department by any means approved by the Department of a change of address within 30 days of the change. Failure to timely inform the Department of a change in legal name or address shall result in a penalty pursuant to § 1712(d) of this title.

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§ 4339. Waiver of license fee.

A licensed bail agent who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance approved by the Commissioner may request a waiver of license fees and/or the extension of time to reinstate a license under such procedures as may be established by the Department. The bail agent may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures as a result of such military service or approved extenuating circumstance.

§ 4340. Contractual services.

(a) In order to assist in the performance of the Department's duties, the Commissioner may contract with nongovernmental entities, including the National Association of Insurance Commissioners (NAIC) or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to bail agent licensing that the Commissioner and the nongovernmental entity may deem appropriate.

(b) The Commissioner may participate, in whole or in part, with the NAIC, or any affiliates or subsidiaries the NAIC oversees, in a centralized producer license registry where bail agent licenses and appointments may be centrally or simultaneously affected for all states that require a bail agent license and participate in such centralized producer license registry. If the Commissioner finds that participation in such a centralized producer license registry is in the public interest, the Commissioner may adopt by rule any uniform standards and procedures as necessary to participate in the registry including the central collection of all fees for licenses or appointments that are processed through the registry.

§ 4341. Records.

(a) The bail agent shall maintain at that bail agent's principal place of business in this State, and transmit to the Commissioner upon request, the license issued by the Department, together with such records as may be reasonably required by the Department to: (1) Evaluate the reasonableness of rates or ensure that such rates are not excessive, inadequate or unfairly discriminatory; (2) evaluate the financial condition or trade practices of property bail agents, surety bail agents and insurers executing bail bonds; and (3) evaluate the performance of the property bail agents, surety bail agents and insurers executing bail bonds in accordance with appropriate criminal justice system goals and standards. Records shall be retained and available for inspection by the Commissioner for a period of at least 3 years after the bond has been exonerated by the courts. The records shall be open to examination by the Department at all times as provided for in Chapter 3 of this title.

(b) Each licensee, as a minimum requirement for office records shall maintain:

(1) A daily bond register which shall be the original and permanent record of all bonds or undertakings executed by the licensee, which shall state the number of the Power of Attorney form, date bond was executed, the State, County and Court in which the bond was executed, the case docket number if assigned, name of principal, amount of bond, premium charged, premium reported to surety company,



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security or collateral received, indemnity agreements, a copy of the court receipt for the property bail, disposition of bond, and date of disposition.

(2) An individual file for each principal for whom bond is made which shall contain the original application for bail bond or undertaking, copy of premium receipt, copy of collateral receipt, copy of a bond discharge if issued, security or collateral affidavit, where security or collateral is located, information as to any security or consideration received by the agency or licensee in connection with each particular bail bond or undertaking and purpose for which it was received, receipt or release executed by the person or persons posting security or collateral evidencing the return of such security or collateral and indemnity agreement as executed by any co-indemnitors.

(3) For each bail bond, policy or contract placed or countersigned by or through the licensee, names of the insurers, principals, insureds, bond or policy number, expiration date thereof, premium payable under the terms of the bond, policy or contract.

§ 4342. Transfer bonds.

A bail agent who is licensed by another state, but is not licensed as a bail agent in Delaware, may post a bail bond in Delaware only through a transfer bond posted by a bail agent licensed by the Department. Every Delaware bail agent who executes or countersigns a transfer bond shall indicate in writing on the bond the name and address of the referring bail bond agent, the transfer fee charged, the total premium charged, the total amount collected and the remaining balance owed. The Delaware licensed agent shall be responsible to assure compliance with all provisions of this subchapter with respect to the bond including but not limited to, the charging and collection of the appropriate premiums filed with and approved by the Department.

§ 4343. Termination of appointment.

(a) A surety may terminate an appointment of a surety bail agent at any time. The surety shall promptly give written notice of termination and the effective date thereof to the Department, on forms approved by the Department and to the surety bail agent if reasonably possible. The Department may require the surety to provide reasonable proof that the surety has also given such a notice to the surety bail agent unless there are valid reasons why such notice can or should not be given by the surety.

(b) Accompanying each notice of termination given to the Department, the surety shall file a statement of the cause, if any, for the termination. Any information or documents so disclosed to the Department shall be deemed a confidential document, disclosure of which shall be governed by the provisions of § 1716(f) of this title.

(c) No agreement between a surety and a surety bail agent or between an employing bail agent and a licensed bail agent shall affect the Department's termination of the appointment or license if the termination is requested by the insurer or the employing bail agent.

(d) The Department shall notify the courts upon the termination, suspension or revocation of

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a bail agent's license.

(e) A bail agent's license that is otherwise in good standing with the Department shall be immediately suspended and be subject to revocation by the Department upon notice from a court that the bail agent has been struck from the list of approved bail agents by the court or courts.

§ 4344. Bail agents and designated responsible bail agents: special requirements.

(a) A bail bond agent may be concurrently employed or licensed by a surety bail bond agent, and property bail agent or bail bond agent business entities. A bail bond agent shall not concurrently be employed or licensed by two surety bail bond agents, or two property bail bond agents or bail bond agent business entities.

(b) The designated bail agent is responsible for the acts or omissions of the bail agents employed or operating under the designated bail agent's authority only insofar as the bail agent is acting within the scope of that bail agent's employment or authority.

(c) The bail agent shall maintain that bail agent's office with that of the designated bail agent by whom he or she is employed.

(d) The bail agent's license must remain in the custody of the designated bail agent by whom he or she is employed. Upon termination of such employment as a bail agent, the designated bail agent shall give written notice of the reasons thereof to the Department.

(e),(f) [Repealed.]

§ 4345. Registration with the courts.

No bail agent may operate under a license from the Department unless the bail agent has registered with and been approved by the courts of this State according to such rules and procedures as the courts shall have established. Nothing in this subchapter shall limit the authority of the various courts of the State to regulate the manner in which bail agents conduct business within the courts of the State, including, but not limited to, imposing sanctions for violations of any laws or administrative rules established by the courts notwithstanding the fact that such bail agent may be duly licensed by the Department of Insurance.

§ 4346. Bail agent: place of business; display of licenses and fees charged; retention of records at place of business.

(a) Every bail agent shall have and maintain in this State a principal place of business accessible to the public, and identified by a sign clearly visible to the public. The address of this principal place of business must appear upon the application for a license and upon the license, when issued, and the licensee shall notify the Department in writing of any change in that address within 30 days of such change. This subsection does not prohibit a licensee from conducting business from a residence in this State, provided that it meets all other requirements applicable to offices of bail agents.

(b) The licenses of the designated bail agent, and of those bail agents employed or authorized by the designated bail agent, and the fees charged for services rendered, must be conspicuously displayed in the principal place of business in a place or area customarily open to the public.

(c) The designated bail agent and those bail agents employed or authorized to operate under the

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designated bail agent's auspices shall maintain all of their business records at the principal place of business identified in the license issued by the Department.

§ 4347. Collections and charges permitted.

(a) Surety bail bond rates are subject to the provisions of Chapter 25 of this title.

(b) It is unlawful for a bail agent to execute a bail bond without charging and collecting a premium or other charge therefor, and the premium rate or other charge may not exceed or be less than the premium rate as filed with and approved by the Department. With regard to any surety bail bond in excess of \$1,000, the total filed premium for a surety bail bond shall be at least 5% and not more than 10%. It shall be unlawful for a bail agent to post a surety bail bond without first charging and receiving at least five percent (5%) of the surety bail bond amount, and entering into a written contract signed by the parties containing all terms and conditions of the bond.

(c) It is unlawful for any surety bail agent to charge any administrative fee, service charge, company or agent fee or the like not filed and approved pursuant to Chapter 25 of this title.

(d) The bond may contain provisions to reimburse the bail agent personally, or permit the bail agent to have a right of action against the defendant or any indemnitor, for actual expenses incurred in good faith, by reason of misrepresentation, fraud or breach by the defendant or any indemnitor of any of the terms of the written agreement under which and pursuant to which the undertaking of bail or bail bond was written. If there is no written agreement, or an incomplete writing, the bail agent may seek enforcement of such legal or equitable rights against the defendant and any of the defendant's indemnitors as may be permitted by law. Such reimbursement or right of action may not exceed the principal sum of the bond or undertaking, plus any reasonable expenses that may be verified by receipt in a total amount of not more than the principal sum of the bond or undertaking, incurred in good faith by the bail agent, its agents, licensees and employees by reason of the defendant's or indemnitor's breach.

(e) Property bail agents, in addition to the requirements set forth in this section, shall not be permitted to issue a bond without first obtaining the approval of their charge or commission schedule from the Department. Likewise, any change or modification to the approved charge or commission shall be submitted to the Department for approval prior to any use thereof. Property bail agents shall be required to maintain a written disclosure statement approved by the Department, of their approved charges or commissions and shall provide a copy of said written disclosure to every prospective client prior to accepting the payment for the bond from the prospective client. It shall be unlawful for any property bail agent to charge any administrative fee, service charge, company or agent fee or the like not filed and approved by the Commissioner.

(f) The total charges or commissions for a cash bail may not be less than twenty percent (20%) or more than thirty percent (30%) of the bail amount posted by the property bail agent. It shall be unlawful for a property bail agent to post a bail without first charging and receiving at least twenty percent (20%) of the cash bail amount, and entering into a written contract signed by the parties containing all terms and conditions of the bond.

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(g) All written contracts and other documents related to a bail bond or cash bail shall be maintained by the bail agent in accordance with the record keeping requirements in Section 4341 of this chapter.

§ 4348. Collateral; limitations on transfer of collateral; fiduciary capacity; requirements for receiving title to real property as collateral; written receipt for collateral.

(a) A bail agent may accept collateral or security in connection with a bail transaction if the collateral or security is reasonable in relation to the face amount of the bond. The bail agent shall not transfer the collateral or security to any person other than a bail agent licensed pursuant to this subchapter or to a surety insurer holding a valid certificate of authority issued by the Department. The collateral shall not be transported or otherwise removed from this State, except for a transfer directly into the custody of a surety insurer holding a valid certificate of authority issued by the Department.

(b) Any person who receives the collateral:

(1) Shall be deemed to hold the collateral in a fiduciary capacity to the same extent as a bail agent; and

(2) Shall retain, return and otherwise possess the collateral in accordance with the provisions of this subchapter.

(c) The collateral or security shall be received by the bail agent in a fiduciary capacity, and, until such time as there is a default of appearance by the defendant and demand for a forfeiture of the bail, the collateral or security shall be kept separate and apart from any other funds or assets of the licensee. Any collateral or security received by the bail agent shall be returned to the person, or that person's assignee or designated representative, who deposited it with the bail agent as soon as the obligation which was secured by the collateral or security, is discharged and all fees owed to the bail agent have been paid. The bail agent or any surety insurer having custody of the collateral or security shall, immediately after the bail agent or surety insurer receives a request for return of the collateral or security from the person who deposited the collateral or security, determine whether the bail agent or surety insurer has received notice that the obligation is discharged. If the collateral or security is deposited to secure the obligation of a bond, it must be returned immediately after receipt of the request for return of the collateral or security and notice of the entry of any order by an authorized official by virtue of which liability under the bond is terminated or upon payment of all fees owed to the bail agent, whichever is later. A certified copy of the order from the court wherein the bail or undertaking was ordered exonerated shall be deemed prima facie evidence of exoneration or termination of liability.

(d) When accepting real property as collateral for a bond, it shall be unlawful for a bail agent to require a transfer of title to the real property as a condition of issuing a bail bond. The bail agent may require the defendant, or anyone agreeing to post real property on the defendant's behalf, to provide such certifications as may be necessary to establish title and unencumbered value, at the defendant's expense,

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indemnitor, or other person agreeing to post real property on the defendant's behalf, together with the appropriate security documents that may be necessary to establish a lien interest in the real property by the bail agent. It shall be unlawful for the bail agent to provide, directly or indirectly, title or lien services to the defendant for a fee or to receive money or anything of value for a referral to an independent person or entity for such service.

(e) When accepting personal property as collateral for a bond, a bail agent may not require a transfer of title to the personal property as a condition of issuing a bail bond. The bail agent may require the defendant, or anyone agreeing to post personal property on the defendant's behalf, at their expense, to provide such financing statements, motor vehicle titles with a lien stamp or the like that may be necessary to establish a lien interest in the personal property by the bail agent. It shall be unlawful for the bail agent to provide, directly or indirectly, title or lien services to the defendant for a fee or to receive money or anything of value for a referral to an independent person or entity for such service.

(f) Upon release or exoneration of the bail obligation, the bail agent shall be required to provide such release documents as may be required to discharge any lien of record obtained under subsections (d) and (e) of this section above. The bail agent shall not charge any fee for such service but may require that the defendant, indemnitor, or other person agreeing to post real property on the defendant's behalf pay any direct costs of document preparation and filing fees.

(g) If the amount of any collateral received in a bail transaction exceeds the amount of any bail forfeited by the defendant for whom the collateral was accepted, the bail agent or any surety insurer having custody of the collateral shall, immediately after the bail is forfeited, return to the person who deposited the collateral the amount by which the collateral exceeds the amount of the bail forfeited. Any collateral returned to a person pursuant to this subsection is subject to a claim for fees, if any, owed to the bail agent returning the collateral.

(h) If a bail agent accepts collateral, that bail agent shall give a written numbered receipt for the collateral. The receipt must include in detail a full account of the collateral received and a copy thereof provided to the principal and any indemnitor, or person or persons pledging the collateral.

(i) When collateral security in excess of \$5,000 cash or its equivalent is received by a surety bail bond agent, the entire amount shall be immediately forwarded to the insurer. Such collateral security may be placed in an interest-bearing account to accrue to the benefit of the person giving the collateral security, and the bail bond agent or insurer may not make any pecuniary gain on the collateral security deposited. Any such account shall be in a depository office of a financial institution (located in this State). The insurer shall be liable for all collateral received. If the bail bond agent fails to return the collateral to the person or persons pledging the collateral within 20 days after final termination of liability on the bond, the surety shall be liable for the collateral and shall return the actual collateral to the person or persons pledging the collateral or, in the event that the surety cannot locate the collateral, the surety shall pay the person or persons pledging the collateral pursuant to the provisions of this section.

(j) When collateral security in cash or its equivalent in any amount is received by a property bail

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bond agent, the entire amount shall be placed in a fiduciary account with any interest to accrue to the benefit of the person giving the collateral security, and the bail bond agent may not make any pecuniary gain on the collateral security deposited. Any such account shall be in a depository office of a financial institution located in this State.

§ 4349. Notice to law-enforcement; bail enforcement agents.

(a) After a warrant or *capias* has been issued for a defendant's failure to appear, a bail agent having knowledge of the whereabouts of the defendant shall immediately notify the law-enforcement agency closest to the defendant's location of:

- (1) The identity of the defendant;
- (2) The identity of the bail agent;
- (3) The location of the defendant where law-enforcement officers might be able to obtain custody of the defendant; and

(4) Whether the bail agent has retained a bail enforcement agent and/or notified a bail enforcement agent of the defendant's location.

(b) A bail agent may employ the services of a bail enforcement agent or similar person under such terms as may be permissible by law, regulation and/or court rule, the costs of which may be assessed to the indemnitor.

§ 4350. Prohibited acts; persons who may not be bail agents.

(a) A bail agent shall not:

(1) Suggest or advise the employment of or name for employment any particular attorney to represent the defendant.

(2) Solicit business in or about any place where prisoners are confined or in or about any court.

(3) Pay a fee or rebate or give or promise anything of value to any person in order to secure a settlement, compromise, remission or reduction of the amount of any undertaking or bail bond.

(4) Pay a fee or rebate or give anything of value to an attorney in bail bond matters, except for legal services actually rendered.

(5) Pay a fee or rebate or give or promise anything of value to the defendant or anyone in the defendant's behalf.

(6) Participate in the capacity of an attorney at a trial or hearing of a person on whose bond that bail agent is surety, except for the purposes of surrendering the defendant, making motions to set aside orders of bail forfeitures and motions to exonerate bails and protecting that bail agent's financial interest in such a bond.

(b) The following persons may not be bail agents, and shall not, directly or indirectly, receive any benefits from the execution of any bail bond:

- (1) Jailers;
- (2) Police officers;
- (3) Any person acting in a judicial capacity, including but not limited to justices, judges,

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alderman, commissioners, clerks, etc.;

(4) Sheriffs, deputy sheriffs and constables;

(5) Attorneys or persons employed in an attorney's office;

(6) Any person having the power to arrest or having anything to do with the control of federal, state, county or municipal prisoners; and

(7) Prisoners incarcerated in any jail, prison or any other place used for the incarceration of persons.

(c) A bail agent shall not sign or countersign in blank any bond, or give the power of attorney to, or otherwise authorize, anyone to countersign that bail agent's name to bonds unless the person so authorized is a licensed bail agent directly employed by the agent giving the power of attorney.

(d) A bail agent shall not advertise or hold himself or herself out to be a surety insurance company.

(e) No bail agent, bail bond business entity or bail bond property entity shall conduct any business or advertise in this State under any firm or trade name that (i) is false, misleading or deceptive, (ii) implies any connection with any government agency; or (iii) is not registered, licensed, and approved by the Department. Any advertisement shall prominently display the registered name and license number of the bail agent, bail bond business entity or bail bond property entity. No advertisement may use terms such as "discounted" rates. No bail agent may use more than two trade names.

(f) No person shall advertise or represent that it does bail bond business in this State unless the person is licensed under section 4334 of this subchapter.

§ 4351. Justification of suretyship.

A surety bail agent shall justify that bail agent's suretyship by attaching a copy of the power of attorney issued to that surety bail agent by the surety insurer to each bond.

§ 4352. Reporting of actions.

(a) A bail agent, and the bail agent's managing general agent or surety insurer, shall report to the Department in writing:

(1) Any administrative action taken against the bail agent in another jurisdiction or by another governmental agency in this State within 30 days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other relevant legal documents.

(2) Any bankruptcy proceeding, action, or order in this state or another jurisdiction concerning such bail agent or licensed business entity not later than thirty days after initiation of such proceeding, action or order. The written notice required under this subdivision shall be accompanied by all supporting documentation.

(b) A bail agent and the bail agent's managing general agent or surety insurer shall report to the Commissioner in writing not later than thirty (30) days after receiving notice of or learning that a bail agent has been charged with, arrested for, pleaded guilty or nolo contendere to, or been found guilty of, a felony or a crime which includes an element of dishonesty or fraud or involves moral turpitude, or a crime

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punishable by imprisonment of 1 year or more under the law of any state, The report shall include a copy of the initial complaint filed, the order resulting from the hearing, and any other relevant legal documents.

§ 4353. Regulations.

The Commissioner may promulgate such regulations as are necessary or proper to carry out the purposes of this subchapter.

§ 4354. Enforcement.

(a) No person shall act in the capacity of a bail agent, advertise or solicit bail bond business, perform any of the functions or duties of a bail agent, collect premiums, charge fees, or otherwise exercise or attempt to exercise powers prescribed for bail agents, unless such person is qualified, licensed and appointed as provided in this subchapter. Any person found guilty of violating this section is guilty of a class F felony.

(b) The Commissioner shall, upon receipt of an information or indictment, immediately temporarily suspend any license or appointment issued under this subchapter when the licensee has been charged with a felony or a crime which includes an element of dishonesty or fraud or involves moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country. Such suspension shall continue if the licensee has been found guilty of, or has pleaded guilty or no contest to, the crime, whether or not a judgment or conviction has been entered, during a pending appeal. A person may not effect any additional bail bonds after suspension of his or her license or appointment. However, he or she may discharge any liability on bonds effected prior to such suspension.

(c) The Commissioner shall permanently revoke the license of any bail agent who has pleaded guilty or nolo contendere to, or been found guilty of, a felony or a crime which includes an element of dishonesty or fraud or involves moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state,

(d) The Commissioner may, deny, suspend, revoke, or refuse to renew any license or appointment issued under this subchapter, and it may suspend or revoke the eligibility of any person to hold a license or appointment under this subchapter, for any violation of the laws of this state relating to bail or any violation of the insurance code or if the person at any time fails to meet all of the criteria for issuance or renewal of a license as enumerated in this subchapter.

§ 4355. Enforcement after license lapses or is surrendered.

The Commissioner shall retain authority to enforce the provisions of, and impose any penalty or remedy authorized by, this subchapter and title against any person who is under investigation for, or charged with, a violation of this chapter and title even if, while the investigation or charges are pending, such person's license or registration is surrendered or lapses by operation of law.

§ 4356. Conservation of bail agent business.

(a) If the Commissioner finds that the business of any licensed bail agent in this State has



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become financially impaired or insolvent, or has been abandoned by the licensee, or has been conducted in such a manner as to require or justify revocation of the licenses of that licensee, and if the Commissioner further finds that the conservation and administration of the business of the licensee would be in the public interest, he or she shall file in the Court of Chancery in the county in which the bail agent business is located a petition for the appointment of the Commissioner as conservator or receiver of such bail agent's business except by leave of the Court.

(b) The petition shall be verified by the Commissioner and shall set forth the facts and circumstances from which the existence of 1 or more of the grounds required under subsection (a) of this section may be determined; such petition may request that the licensee be required to show cause why the petition should not be granted.

(c) A copy of the petition and of the order to show cause, if they are issued, shall be served upon the licensee in the same manner as provided by law of this State for service of other legal process.

(d) Upon the filing of a petition and pending a hearing upon the order to show cause, the Court may, upon good cause shown and without notice to the other party, appoint the Commissioner as temporary conservator or receiver of the bail agent's business.

(e) The Commissioner shall, as conservator or receiver, be authorized and empowered to conduct and administer the affairs of the bail agent business in order to expeditiously terminate such business and, to the extent reasonably possible, to provide services and an accounting for funds to all persons previously insured or doing business with the bail agent, and to insurers who have previously been doing business through such bail agent. Subject to the Court's order, the Commissioner shall have the power to collect funds owed to the bail agent on account of insurance or other bail business transacted by him or her, and to account for and make payment of those funds to such persons as are entitled to them.

(f) The Commissioner may delegate the actual conduct and administration of the business of the bail agent and no charges for services so rendered shall be made against the funds or assets of the bail agent except by leave of the Court.

(g) Except as expressly herein provided, receivership or conservatorship shall be subject to the applicable laws of this State and to the order of any court of competent jurisdiction.

Section 2. This Act shall take effect on January 1, 2014.

Approved August 27, 2013

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## TITLE 24

### House Bill 35

CHAPTER 20  
FORMERLY  
HOUSE BILL NO. 35  
AS AMENDED BY  
HOUSE AMENDMENT NOS. 1, 2, 3, 4 & 5,  
HOUSE AMENDMENT NO. 6 AS AMENDED BY  
HOUSE AMENDMENT NO. 2 TO HOUSE AMENDMENT NO. 6  
& HOUSE AMENDMENT NO. 1 TO HOUSE AMENDMENT NO. 6,  
HOUSE AMENDMENT NO. 7 AS AMENDED BY  
HOUSE AMENDMENT NO. 1 TO HOUSE AMENDMENT NO. 7  
AND HOUSE AMENDMENT NOS. 8, 9 & 10

AN ACT TO AMEND TITLE 11 AND TITLE 24 OF THE DELAWARE CODE RELATING TO CRIMINAL HISTORY BACKGROUND CHECKS IN CONNECTION WITH THE SALE OR TRANSFER OF FIREARMS.

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:

§ 1448B. Criminal history record checks for sales of firearms – unlicensed persons.

(a) No unlicensed person shall sell or transfer any firearm, as defined in § 222 of this title, to any other unlicensed person without having conducted a criminal history background check through a licensed firearms dealer in accordance with § 1448A of this title and 24 Del.C. § 904A, as the same may be amended from time to time, to determine whether the sale or transfer would be in violation of federal or state law.

(b) For purposes of this section:

(4)“Unlicensed person” means any person who is not a licensed importer, licensed manufacturer or licensed dealer.

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

(6)“Transfer” means assigning, pledging, leasing, loaning, giving away, or otherwise disposing of, but does not include: (A) the loan of a firearm for any lawful purpose, for a period of 14 days or less, by the owner of said firearm to a person known personally to him or her; (B) a temporary transfer for any lawful purpose that occurs while in the continuous presence of the owner of the firearm, provided that such temporary transfer shall not exceed 24 hours in duration; (C) the transfer of a firearm for repair, service or modification to a licensed gunsmith or other person lawfully engaged in such activities as a regular course of trade or business; or (D) a transfer that occurs by operation of law or because of the death of a person for whom the prospective transferor is an executor or administrator of an estate or a trustee of a trust created in a will.

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

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

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

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

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

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

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

(5) Transactions in which the potential purchaser or transferee is a qualified active duty law-enforcement officer or a qualified retired law-enforcement officer, as such terms are defined in 11 *Del.C.* §1441A;

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

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

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

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

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

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

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

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

(7)The prospective buyer shall be required to submit fingerprints and other necessary

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

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

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

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

Section 2. Amend § 1448A(b), Title 11 of the Delaware Code as follows:

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

Section 3. Amend § 1448A(c), Title 11 of the Delaware Code as follows:

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

Section 4. Amend § 1448A(e), Title 11 of the Delaware Code as follows:

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

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Section 5. Amend § 1448A(f), Title 11 of the Delaware Code as follows:

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

Section 6. Amend § 1448A(h), Title 11 of the Delaware Code as follows:

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

Section 7. Amend § 1448A(i), Title 11 of the Delaware Code as follows:

(l) Notwithstanding Chapter 89 of this title, Chapter 10 of Title 24, and other Delaware laws, the SBI is authorized and directed to release records and data required by this section and by § 1448B of this title. The SBI shall not release or disclose criminal records or data except as specified in this section and in § 1448B of this title.

(m) No records, data, information or reports containing the name, address, date of birth or other identifying data of either the transferor or transferee or which contain the make, model, caliber, serial number or other identifying data of any firearm which are required, authorized or maintained pursuant to this section, § 1448B of this title or by Chapter 9 of Title 24 of this Code, shall be subject to disclosure or release pursuant to the Freedom of Information Act, 29 *Del.C.* § 10001 *et seq.*

Section 8. Amend § 904, Title 24 of the Delaware Code as follows:

(b) Any person desiring to engage in the business described in this chapter shall keep and maintain in the place of business at all times a record in accordance with this section and all applicable federal laws and regulations (including, without limitation, 18 U.S.C. §§ 921 *et seq.* and 27 C.F.R. §§ 478.121 *et seq.*). In such record the businessperson shall enter the date of the sale, the name and address of the person purchasing any deadly weapon, the number and kind of deadly weapon so purchased, the age of the purchaser, the mode of identification bearing a picture (except as provided in 11 *Del.C.* § 1448B(f)) which shall include but it is not limited to a driver's license, and any other information as shall be required by federal law and regulation. The record shall at all times be open for inspection by any judge, justice of the peace, police officer, constable or other peace officer of this State.

Section 8A. Amend § 904, Title 24 of the Delaware Code as follows:

(d) Notwithstanding any provision to the contrary, any inspection by a judge, justice of the peace, police officer, constable, or other peace officer of this State shall be reasonable under the circumstances existing at the time and shall only be made pursuant to and in furtherance of an open criminal investigation or during the

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course of a criminal prosecution.

Section 9. Amend § 904A, Title 24 of the Delaware Code as follows:

(c) As a condition of its license, any dealer holding a license pursuant to this chapter shall facilitate the transfer of a firearm, as that term is defined in § 222 of Title 11, from any unlicensed person as that term is defined in § 1448B of Title 11, upon the request of said unlicensed person, pursuant to the following procedure:

(1) The prospective buyer and seller shall jointly appear at the place of business of the dealer, during said dealer's regular hours of business, and shall inform the dealer of their desire to avail themselves of the advantages of the procedure set forth herein.

(8) The dealer shall then subject the prospective buyer to a criminal history record background check pursuant to the terms of § 1448A of Title 11.

(9) In the event that said record check reveals that the prospective buyer is prohibited from possessing, purchasing or owning a firearm pursuant to § 1448 of Title 11, the dealer shall so inform both parties of that fact and the transfer shall not take place.

(10) The dealer shall maintain a record of all criminal history background checks under this section in accordance with § 904 of this chapter.

(11) Any dealer who is asked to facilitate the transfer of a firearm pursuant to the terms of this section, may charge a reasonable fee for said service, said fee not to exceed \$30 per criminal history check performed pursuant to this procedure. Notwithstanding the foregoing, no fee may be charged for the return of a firearm to its owner in the event that the proposed transaction may not be immediately and legally completed as the result, or lack thereof, of a criminal history background check hereunder.

(12) Failure or refusal on the part of the dealer to facilitate the transfer of a firearm pursuant to the procedures set forth herein shall be adequate cause to suspend the license of said dealer for a period not to exceed 30 days per occurrence.

(d) Nothing in this section, or any other section of the Code, shall authorize or permit the State of Delaware or any agency, department or instrumentality thereof to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions, except with respect to persons prohibited from receiving a firearm as set forth in chapter 5 of Title 11. Any such system of registration is expressly prohibited.

(13) Subject to subchapter IV of Chapter 101 of Title 29, no license shall be restricted, suspended or revoked until a license holder has been given notice, and an opportunity to be heard in accordance with the Administrative Procedures Act [Chapter 101 of Title 29].

Section 10. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect

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without the invalid provision or application; and, to that end, the provisions of this Act are declared to be severable.

Section 11. This Act shall have an effective date of July 1, 2013.

Approved May 08, 2013

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## 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



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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.

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## **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 31<sup>st</sup> 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.

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

## SEX OFFENDER TIER III ASSESSMENT

### 1. Automatic designation to Tier III

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

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

- c. Any attempt to commit the previous offenses  
DE110531
- d. Any equivalent offense in any other state or US Territory.
- e. **Upon motion of the State, any person convicted of a felony, if the victim had not yet reached his or her 16<sup>n</sup> 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

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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

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## 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**

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## 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.<sup>25</sup>
- 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.

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<sup>25</sup> *Illinois v. Gates*, 462 U.S. 213, 234 (1983).

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## **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.

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## **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).<sup>26</sup>
  - **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.

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<sup>26</sup> At publication (06-30-2010), only Murder in the First Degree, 11 *Del. C.* § 636, is a capital offense in Delaware.



- 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.

## RECOMMENDED MONETARY RANGES

Offense Class	Bail Guideline	Penalty-Custody	Penalty-Fine	Notes
<b>FELONIES</b>				
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	
<b>MISDEMEANORS and VIOLATIONS</b>				
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 <sup>st</sup>	OR to \$50	0-1 year probation LI	0-\$345	Subsequent violations are within a 5-year period.
Violation – 2 <sup>nd</sup>	OR to \$100	0-1 year probation LI	0-\$690	
Violation – 3 <sup>rd</sup>	OR to \$200	0-1 year probation LI	0-\$1150	

\*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.

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

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## **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.