



SPONSOR: Rep. Bolden & Rep. Lynn & Rep. Potter & Sen. Henry
Reps. Baumbach, Keeley

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 42

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

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

Section 1. Amend § 3901, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3901. Fixing term of imprisonment; credits.

(f) Any person sentenced to serve two or more consecutive sentences prior to June 30, 2014, may petition the court to have all or part of the defendant's sentence modified, reduced, or suspended if the defendant would have been eligible to be sentenced to serve concurrent sentences under Chapter 297, Volume 79 of the Laws of Delaware. The petitioner may only file one application for relief under this subsection. The court, upon consideration of a petition filed pursuant to this subsection may modify, reduce or suspend such petitioner's sentence if the court determines that a concurrent sentence would have been appropriate at the time of the defendant's initial sentencing, pursuant to the restrictions in subsection (d) of this section, and excepting any minimum or mandatory sentence required by this title or other statutes describing said offense or offenses. If the court modifies such petitioner's sentence, the judge may impose a suspended sentence that includes a probationary term. Nothing in this section, however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section. The Superior Court shall establish rules to implement this subsection, and those rules shall also provide that all petitions filed pursuant to this subsection where the petitioner has at least one conviction for a Title 16 offense are heard first, followed by all petitions filed pursuant to this subsection where the petitioner has at least one conviction for a crime against property, followed by all other petitions. The rules shall also provide for an initial review, including review of a formal response by the Department of Justice after consulting with the victim(s), of sentence modification petitions involving crimes against persons or property, for the purpose of ensuring that victims are not inconvenienced by petitions that should be denied based upon the documents submitted; in cases not denied in this manner, all victims shall be given an opportunity to be heard. The Superior Court's review of any petitions filed pursuant to this

21 paragraph shall include a review of the applicant's prior criminal history, including arrests and convictions, a review of the
22 applicant's conduct while incarcerated, and available evidence as to the likelihood that the applicant will reoffend if
23 released, including a formal, recent risk assessment. The Superior Court shall articulate on the record the results of its
24 review and its rationale for granting or denying a petition. In all cases where sentence modifications are granted, modified
25 sentences should provide for step-down provisions to ensure successful reintegration of persons into the community. By
26 January 1, 2019, the Department of Correction shall notify any criminal defendant whose Level V sentence consists of two
27 or more concurrent sentences imposed prior to June 30, 2014. The Department of Correction shall similarly notify the
28 attorney of record, and if the attorney of record is unavailable to receive notice, the Office of Defense Services.

SYNOPSIS

This bill will allow defendants serving consecutive sentences, who were sentenced prior to the amendment of 11 Del. C. § 3901(d), to be allowed to petition the court to consider applying concurrent rather than consecutive sentences. Prior to June 30, 2014 no concurrent sentencing was allowed in the State of Delaware. The bill lays out a process similar to the review process put in place after the habitual offender laws were revised pursuant to Senate Substitute 1 for Senate Bill 163 in the 148th General Assembly.

Delaware has the highest rate of incarceration of any state in the Northeast and Mid-Atlantic region, and the fiscal costs of incarceration continue to strain the state budget. This bill provides a mechanism to review the sentences of some of the current inmate population to determine if their sentences remain appropriate under our current sentencing laws.