



SPONSOR: Rep. J. Johnson & Rep. Heffernan & Rep. Longhurst &
Rep. Lynn & Rep. Potter & Sen. Townsend & Sen. Henry
& Sen. Lawson & Sen. McDowell
Reps. Baumbach, Bentz, Brady, Paradee; Sen. Lavelle

HOUSE OF REPRESENTATIVES
149th GENERAL ASSEMBLY

HOUSE BILL NO. 305

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO CONTROLLED SUBSTANCES.

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

1 Section 1. Amend Section 4751B, Title 16 of the Delaware Code by making deletions as shown by strike through
2 and insertions as shown by underline as follows:

3 § 4751B. Prior qualifying Title 16 convictions.

4 For the purposes of this subchapter:

5 (1) A "prior qualifying Title 16 conviction" means any prior adult felony conviction for a Title 16 offense where
6 the conviction was 1 of former § 4751, § 4752, or § 4753A of this title, or any other former section of this title that was, at
7 the time of conviction, a class C or higher felony; or where the conviction was 1 of § 4752, § 4753, § 4754, § 4755, or §
8 4756 of this title, or any other felony conviction specified in the controlled substances law of any other state, local
9 jurisdiction, the United States, any territory of the United States, any federal or military reservation, or the District of
10 Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new offense occurs
11 within 5 years of the date of conviction for the earlier offense or the date of termination of all periods of incarceration or
12 confinement imposed pursuant to the conviction, whichever is the later date. For purposes of §§ 4761(a) and (b), 4763 and
13 4764 of this title, a "prior qualifying Title 16 conviction" means any prior adult conviction, including both felony and
14 misdemeanor, under this title, if the new offense occurs within 5 years of the date of conviction for the earlier offense, or
15 the date of termination of all periods of incarceration or confinement imposed pursuant to the conviction, whichever is the
16 later date.

17 (2) "Two prior qualifying Title 16 convictions" means 1 "prior qualifying Title 16 conviction," as defined in
18 paragraph (1) of this section, and an additional prior adult felony conviction ~~or a juvenile adjudication~~ for a Title 16
19 offense, where the conviction ~~or juvenile adjudication~~ was 1 of former § 4751, § 4752, or § 4753A of this title, or any other
20 former section of this title that was at the time of conviction ~~or juvenile adjudication~~ a class C or higher felony, or where
21 the conviction ~~or adjudication~~ was 1 of § 4752, § 4753, § 4754, § 4755, or § 4756 of this title, or any other felony
22 conviction ~~or juvenile adjudication~~ specified in the controlled substances law of any other state, local jurisdiction, the

23 United States, any federal or military reservation, or the District of Columbia, which is the same as, or equivalent to, an
24 offense specified in the laws of this State, if the new offense occurs within 10 years of the date of conviction ~~or juvenile~~
25 ~~adjudication~~ for the additional prior adult felony conviction ~~or juvenile adjudication~~ or the date of termination of all periods
26 of incarceration or confinement imposed pursuant to the earlier conviction ~~or juvenile adjudication~~, whichever is the later
27 date, and the sentence ~~or disposition following an adjudication of delinquency~~ for the additional prior adult felony
28 conviction ~~or juvenile adjudication~~ was imposed before the offense which is the basis for the prior qualifying Title 16
29 conviction was committed. ~~For a juvenile adjudication to count as the additional prior adult felony conviction or juvenile~~
30 ~~adjudication, the juvenile must have reached his or her sixteenth birthday by the date the criminal act was committed which~~
31 ~~forms the basis for the juvenile adjudication.~~

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

SYNOPSIS

In 2011, as part of a general overhaul of Delaware's drug laws, this provision was inserted into Title 16 to allow juvenile adjudications to count as prior qualifying offenses for purposes of increasing the sentence of certain drug offenders. Pursuant to this provision, some defendants convicted of certain drug crimes who have one prior adult drug conviction and one prior juvenile adjudication within the past 10 years face a drastic increase in sentence as follows:

A defendant convicted of "drug dealing – aggravated possession", a class D felony, will be sentenced as if he had committed a class B felony. The sentence for a class D felony is up to 8 years imprisonment. For a class B felony the sentence can be up to 25 years, and 2 years is the minimum mandatory.

A defendant convicted of aggravated possession – class E will be sentenced as if she had committed a class B felony. The penalty is elevated from a maximum of 5 years incarceration to, again, a maximum of 25 with a 2 year minimum mandatory.

A defendant convicted of aggravated possession – class F will be sentenced as though he committed a class C felony. Class C felonies are punishable by up to 15 years, rather than the maximum of 3 years for a class F.

There is no other part of the criminal code that uses a juvenile adjudication as a statutory sentence enhancement in an adult conviction. While repeat drug offenses are a legitimate concern for communities and the criminal justice system, the elevation of the punishment for a crime based on a juvenile adjudication, which was not tried before a jury, and which may be relatively remote in time is of questionable legal merit. Furthermore, in two of the above scenarios, the crime is elevated to one which requires a minimum mandatory sentence, thus reducing the discretion entrusted to judges.

This bill removes that portion of Section 4751B that allows a juvenile adjudication to be used as a second "prior qualifying Title 16 conviction." Prosecutors may still apply the sentencing enhancement for the single qualifying adult conviction that meets the criteria set out in that section, and may use the enhancement for two prior convictions where both convictions occurred when the defendant was an adult. Judges will continue to be able to consider the defendant's juvenile record as a factor in determining the appropriate sentence. Finally, where a juvenile was tried and sentenced as an adult, that conviction may still be used for the sentencing enhancement.