



SPONSOR: Rep. Longhurst & Rep. Griffith & Rep. Lynn & Sen. Gay  
Rep. Baumbach; Sen. Walsh

HOUSE OF REPRESENTATIVES  
151st GENERAL ASSEMBLY

HOUSE BILL NO. 444

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

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

Section 1. Sections §§ 6580 through 6582 of Title 11 of the Delaware Code are hereby repealed.

Section 2. Section 6. Amend Chapter 89C, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 89C. SENTENCING ACCOUNTABILITY AND GUIDELINES COMMISSION.

§ 8901C. Established.

(a) The Delaware Sentencing Accountability and Guidelines Commission is hereby established.

(b) For administrative and budgetary purposes, the Commission shall be placed within the Criminal Justice Council.

§ 8902C. Purposes of Sentencing and the Sentencing System.

(a) The general purpose of the sentencing of individual offenders is to do all of the following:

(1) Render sentencing in all cases within a range of severity proportionate to the gravity of offenses, the harms done to crime victims, and the blameworthiness of offenders.

(2) When reasonably feasible, to achieve offender rehabilitation, general deterrence, incapacitation of dangerous offenders, restitution to crime victims, preservation of families, and reintegration of offenders into the community.

(3) Render sufficient sentences, but not greater than necessary to achieve the purposes in subsections (a)(1) and (2).

(4) Avoid the use of sanctions that increase the likelihood that offenders will engage in future criminal conduct.

(b) The administration of the sentencing system should do all of the following:

(1) Preserve judicial discretion and provide for individualized sentencing.

(2) Produce sentences that are uniform in their pursuit of the purposes in § 8902C(a).

(3) Eliminate inequities in sentencing across population groups and geographic regions within the State.

(4) Ensure that adequate resources are available for carrying out sentences imposed and that rational priorities are established for the use of those resources.

(5) Promote research on sentencing policies and practices.

(6) Ensure the transparency of the sentencing and correction systems.

§ 8903C. Membership of the Sentencing Accountability and Guidelines Commission.

(a) The 11 voting members of the Commission are:

(1) Three members of the judiciary appointed by the Chief Justice.

(2) The Chief Defender of the Office of Defense Services.

(3) The Attorney General.

(4) The Secretary of the Department of Safety and Homeland Security.

(5) The Commissioner of the Department of Corrections.

(6) One private Delaware attorney primarily practicing in criminal defense appointed by the President Judge of the Superior Court.

(7) One member appointed by the Governor of the general public with experience with victim advocacy.

(8) One member appointed by the Speaker of the House of Representatives from the general public with knowledge and expertise in the area of behavioral health.

(9) One member appointed by the President Pro Tempore of the Senate from the general public with knowledge and experience in the area of prison reentry services.

(b) The nonvoting ex-officio members are:

(1) The Chief Conflicts Counsel.

(2) The Chairperson of the Delaware Police Chiefs Council.

(3) The State Court Administrator of the Administrative Office of the Courts.

(4) The Executive Director of the Criminal Justice Council.

(5) The Director of the Statistical Analysis Center.

(6) The Executive Director of the Delaware Criminal Justice Information System.

(c) Voting members serve at the pleasure of their appointing authority.

(d) Nonvoting ex-officio members may designate another individual to attend meetings.

(e) Members shall receive no salary for their service, but may be reimbursed for reasonable expenses incurred in their work for the Commission.

(f) Appointing authorities should consider the racial, ethnic, and gender diversity of the Commission's membership, and should consider representation from different geographic areas of the State.

(g) The Commission shall have the power to form advisory committees, including individuals who are not members of the Commission, to assist the Commission in its deliberations.

§ 8904C. Meetings; quorum; procedure.

(a) The Commission shall meet at least 6 times per year.

(b) 6 members shall constitute a quorum.

(c) The initial meeting shall be held no later than 90 days after enactment of this Act.

§ 8905C. Officers.

(a) The Chief Justice shall designate one member of the judiciary to serve as Chair of the Commission who shall guide the initial organization of the Commission by doing all of the following:

(1) Setting a date, time, and place for the initial meeting.

(2) Supervising the preparation and distribution of meeting notice and agenda for the initial meeting.

(3) Presiding over the initial meeting until a chair is chosen.

(b) The Chair is responsible for guiding the administration of the Commission by, at a minimum, doing all of the following:

(1) Supervising the preparation and distribution of meeting notices, agendas, minutes, correspondence, and reports of the Commission.

(2) Presiding over the meetings of the Commission.

(c) The Chief Justice shall designate one member of the judiciary to serve as the Vice Chair of the Commission who shall serve as Chair in the Chair's absence if the Chair resigns or is no longer a member of the Commission.

§ 8906C. Employees.

(a) The Commission shall select an executive director to serve at the pleasure of the Commission. The executive director's responsibilities shall include all of the following:

(1) Supervision of the activities of persons employed by the Commission.

(2) Ensure performance of all tasks assigned to the Commission.

(3) Maintain contacts with other state agencies involved in the criminal justice system and with sentencing Commissions in other jurisdictions.

(4) Complete tasks as determined by the Commission.

82           (b) The Executive Director of the Commission shall be qualified by education or experience to carry out the  
83 mission of the Commission and shall report to the Executive Director of the Criminal Justice Council.

84           (c) The Executive Director may employ such additional personnel as are necessary to fulfill the responsibilities of  
85 the Commission, subject to the approval of the Executive Director of the Criminal Justice Council, and within the limits of  
86 any appropriation made by the General Assembly.

87           § 8907C. Initial Responsibilities.

88           (a) In the first 2 years of existence, the Commission shall do all of the following:

89                   (1) Review existing sentencing guidelines and statutory penalties for each offense and consider whether such  
90 guidelines and penalties for each offense are consistent with the purposes of sentencing identified in § 8902C and the  
91 mandates provided in § 8911C.

92                   (2) Promulgate revised sentencing guidelines as provided in § 8912C.

93                   (3) Develop a correctional-population forecasting model as provided in § 8911C.

94                   (4) Develop a community corrections strategy as provided in § 8910C.

95                   (5) Recommend changes to statutes or court rules to accomplish and implement appellate review of sentences  
96 imposed that are outside of the sentencing guidelines.

97                   (6) Facilitate the development and maintenance of a statewide sentencing database in collaboration with  
98 existing state agencies.

99           (b) In discharging its responsibilities, the Commission shall do all of the following:

100                   (1) Collect and review information on the populations in all of the correctional facilities in this State,  
101 including Level 4 facilities.

102                   (2) Survey correctional facilities and programming across the State.

103                   (3) Conduct research into crime rates, criminal cases entering the court system, sentences imposed and served  
104 for particular offenses, and sentencing patterns for the state as a whole and geographic regions within the State.

105                   (4) Consult available research and data on the current effectiveness of sentences imposed and served in the  
106 jurisdiction as measured against the purposes of sentencing and the sentencing system in § 8902C.

107                   (5) Study the experiences of other jurisdictions with sentencing Commissions and guidelines.

108                   (6) Identify any potential areas of sentencing disparity relevant to racial, ethnic, gender, socioeconomic status,  
109 and geographical location.

110                   (7) Identify areas where necessary data and research are lacking concerning the operation of the criminal  
111 justice system, including sentencing.

(c)(1) On or before December 1, 2024, the Commission shall submit to the General Assembly, Governor, and Chief Justice a report of its activities for its first 2 years of existence as outlined in this section which shall include all of the following:

- a. Sentencing guidelines as described in § 8912C of this title.
- b. Correctional-population forecasting model as described § 8911C of this title.
- c. Community corrections strategy as described in § 8910C of this title.
- d. Recommendations for changes to the Delaware Code or court rules to accomplish and implement appellate review of sentences imposed that are outside of the sentencing guidelines.

(2) The report identified in subsection (c)(1) of this section shall be delivered to the Clerks of the House of Representatives and the Senate, the Chairs of the Judiciary Committees of the House of Representatives and Senate, the Governor, and the Chief Justice.

(3) The sentencing guidelines must be submitted first to the Chief Justice of the Supreme Court, and then to the General Assembly for final approval. A concurrent resolution passed by the House of Representative and Senate constitutes final approval.

§ 8908C. Continuing Responsibilities.

(a) The Commission shall do all of the following:

(1) Prepare correctional-population projections for the sentencing system at least once each year, and whenever new laws affecting sentences are proposed, as described in § 8911C.

(2) Assemble information on the effectiveness of sentences imposed and served in meeting the purposes of sentencing and sentencing system in § 8902C.

(3) Investigate the existence of possible inequities in the sentencing and corrections systems across population groups, including groups defined by race, ethnicity, gender, socioeconomic status, and geographic location.

(4) Monitor the operation of sentencing guidelines, procedural rules, or any other process affecting sentencing decisions. In performing these functions, the Commission shall do all of the following:

- a. Recommend to the Superior Court uniform standards for the quality and use of presentence reports.
- b. Review the appellate decisions regarding sentencing guidelines and sentencing.
- c. Consider revisions to sentencing guidelines.
- d. Monitor consistency of agencies engaged in the collection and verification of sentencing data.

(5) Act as a sentencing-policy resource for the State by doing all of the following:

- a. Develop manuals, forms, or other controls to attain greater consistency in sentencing.

b. Educate government officials and agencies, the courts, the Delaware bar, and the public on sentencing and the sentencing guidelines.

c. Develop and publish an annual benchbook setting forth the sentencing guidelines.

d. Produce, as needed, manuals, guides, worksheets, summaries of caselaw, and other materials the Commission deems useful to explain the proper application of the guidelines.

(6) Review other statutes affecting inmate incarcerations and propose changes to the General Assembly which shall be included in the Commission's annual report.

(7) Study the use of statutory good time credit in § 4381 of this title and recommend any statutory changes.

(8) Investigate the use of a single information system for fines and costs for use by all courts.

(9) Beginning January 1, 2025, publish to the General Assembly and Chief Justice an annual report of its activities by delivering a copy to the Clerks of the House of Representatives and the Senate, the Chairs of the Judiciary Committee of the House of Representatives and Senate, and the Chief Justice. The annual report shall include all of the following the Commission's annual correctional-population forecasting model as required by § 8911C.

(b) The Commission should do all of the following:

(1) Make full use of available data and research generated by other state agencies, and cooperate with such agencies in the development of improved information systems.

(2) Become informed about the guidelines, standards, or rules regarding the charging and plea-bargaining discretion of prosecutors, the discretionary decisions of officials over prison release dates, and the guidelines or rules of probation officers to violate probationers.

(3) Remain informed of the sentencing commissions and guidelines of other jurisdictions, study innovations in other jurisdictions that may have possible application in this state, and provide information to sentencing commissions in other jurisdictions.

§ 8909C. Sentencing guidelines biannual review.

(a) Beginning on January 1, 2026, the Commission shall submit to the Governor, the Chief Justice, the Speaker of the House of Representatives, and the President Pro Tempore of the Senate its first biannual report revising the sentencing guidelines approved by the General Assembly in 2024. Thereafter, the Commission shall cause a report to be prepared every 2 years and submitted on the first day of session of the General Assembly.

(b) The revisions specified in the Commission's biannual report required by subsection (a) of this section shall take effect and have the force and effect of law as of July 1 following submission, unless the General Assembly shall by joint resolution reject the report in its entirety within 30 days following the commencement of its session.

172           § 8910C. Community Corrections Strategy.

173           (a) The Commission shall work with the Department of Correction and the Family Services Council to develop a  
174 community corrections strategy for the State, including recommendations for legislation and legislative appropriations to  
175 implement the strategy.

176           (b) In developing a community corrections strategy, the Commission shall do all of the following:

177               (1) Review reentry initiatives and programming in the State.

178               (2) Collect and review data on the current community supervision model including all of the following:

179                   a. The number of people on community supervision in the State and in each county.

180                   b. The conditions imposed for each level of community supervision.

181                   c. The rates and reasons for violations of probation.

182                   d. The outcomes of violations of probation and any disparities among populations and geographic  
183 locations.

184               (3) Collect and review data on initiatives focused on probationers including the Governor's Task Force and  
185 Operation Safe Streets which shall include all of the following:

186                   a. The goals of the initiatives.

187                   b. The parameters of the initiatives.

188                   c. The number of people arrested and the locations where the arrest occurs.

189                   d. Any disparities in arrests among populations and geographic locations.

190               (4) The existing community corrections programs throughout the State, the number of offenders they can  
191 accommodate, and the level of resources they receive from the State.

192               (5) Review and assess the instruments used to identify both risk and need factors of probationers.

193           (b) The community corrections strategy shall consider all of the following:

194               (1) How success should be defined in community supervision.

195               (2) How success can be achieved in community supervision.

196               (3) Additional community corrections programs needed in the State and additional resources needed for  
197 existing programs.

198               (3) The categories of offenders who should be eligible for community corrections.

199               (4) The equitable distribution of funding for community corrections programs.

200               (5) Other jurisdictions that have adopted community corrections strategies.

201           § 8911C. Correctional-population forecasting model.

(a) The Commission shall work with the Department of Correction to develop a correctional-population model to project future impact on the criminal justice system including the courts and the correctional population.

(b) The Commission shall use the model at least once a year to project sentencing outcomes under existing legislation and guidelines.

(c) The Commission shall prepare an impact statement for legislation that would result in an increase in the length of prison sentences including all bills that do any of the following:

(1) Add new crimes punishable by imprisonment.

(2) Expand the period of incarcerations for existing offenses.

(3) Impose minimum or mandatory terms of incarceration.

(4) Modify the law governing the release of an offender in any way that increasing prison time.

(d) Projections under the model shall include anticipated demands upon prisons, work-release facilities, community corrections programs, and the courts.

(e) The Commissioner of the Department of Correction shall notify the Commission whenever the prison population equals or exceeds 90% of total prison capacity.

(f) When notification is made under § 8909C(d) or when any projections shows that total prison capacity will be exceeded within 2 years, the Commission may consider modifications to the sentencing guidelines in order to lower the total prison population to avoid overcrowding.

#### § 8912C. Sentencing guidelines.

(a) The sentencing guidelines shall be the presumption in the sentencing of individual offenders.

(b) The guidelines shall address the selection and severity of sanctions.

(c) The Commission shall fashion presumptive sentences to address cases within defined categories based on the Commission's collective judgment that the majority of cases falling within each category may appropriately receive a presumptive sentence.

(d) The sentencing guidelines shall set forth presumptive sentences for offenders who have been convicted of felonies and misdemeanors that specify a length of term or range of sentence lengths. Ranges of incarceration terms should be sufficiently narrow to express meaningful distinctions across categories of cases on grounds of proportionality, to promote reasonable uniformity in sentences imposed, and to facilitate reliable projections of correctional populations.

(e) The sentencing guidelines shall include all of the following:

(1) Provisions for the determination of the conditions of probation, economic sanctions and postrelease supervision.



(2) Provisions for the determination of the severity of sanctions when offenders have violated conditions of probation or postrelease supervision.

(f) The sentencing guidelines shall set forth a nonexclusive list of aggravating and mitigating factors that may be used as grounds for departure from presumptive sentences in individual cases. The Commission may quantify the effect given to specific aggravating or mitigating factors.

(g) The sentencing guidelines shall provide that a departure sentence may not be based on any factor necessarily comprehended in the elements of the offenses for which the offender has been convicted, and no finding of fact may be used more than once as a ground for departure.

(h) The sentencing guidelines shall address the imposition of sentences in cases involving multiple convictions for the same offender, whether imposed in a single proceeding or separate proceedings, or for a crime committed while serving a different sentence or awaiting trial on another offense.

(i) The sentencing guidelines should include a general presumption in favor of concurrent sentences except for those crimes for which concurrent sentencing is not permitted. For selected categories of cases, the guidelines may create presumptions in favor of consecutive sentences.

(j) The Commission may include provisions in the sentencing guidelines that address whether, under what circumstances, and to what extent, a plea agreement or sentence agreement by the parties may supply an independent basis for a departure sentence.

(k) The Commission shall consider whether to include the criminal histories of offenders as a factor in the determination of presumptive sentences, grounds for departures from presumptive sentences, or in other provisions of the guidelines.

§ 8912C. Powers of the Commission.

(a) Upon request of the Commission, each state agency and department shall make its services, personnel, and information available to the Commission in the execution of its functions.

(b) All of the following shall provide information as requested by the Commission:

(1) Law-enforcement agencies.

(2) Investigative Services Office of the Superior Court.

(3) The Department of Correction.

(4) The Department of Justice.

(5) The Office of Defense Services.

(6) The Statistical Analysis Center.

(7) The Judicial Information Center.

(c) The Commission shall take all reasonable steps to preserve the confidentiality of offenders about whom the Commission receives information under this section.

(d) Sentencing courts shall supply sentencing decisions electronically, if possible.

(e) The Commission shall have the authority to enter partnerships or agreements with organizations and agencies including academic entities and other sentencing commissions in order to perform research needed to carry out the Commission's duties.

(f) The Commission shall have authority to apply for, accept, and use gifts, grants or financial, or other aid from the federal government, the state, or foundations to accomplish the Commission's duties.

§ 8914C. Omnibus review of sentencing system.

(a) Every 5 years, the Commission shall perform an omnibus review of the sentencing system which shall include all of the following:

(1) A long-term assessment of the operation of the state's sentencing laws and guidelines in meeting the purposes of sentencing and sentencing system in § 8902C, and for their effects on the administration, efficiency, and resources of the court system.

(2) An assessment of the adequacy of correctional resources of the State to meet the overall needs, and recommendations to the General Assembly of means to address shortfalls in such resources.

(3) An analysis of areas in which necessary data and research are lacking concerning the operation of the sentencing system and the effects of criminal sentences on offenders, victims, families, and communities, including a prioritization of data and research needs.

(4) Recommendations to the General Assembly concerning any changes in the criminal code, appropriations, or rules of procedure considered necessary by the Commission.

(5) Recommendations to the Chief Justice and President Judge of the Superior Court concerning any changes in court rules or procedures considered necessary by the Commission.

(6) Other subjects as determined by the Commission.

(b) The Commission shall publish to the Governor, General Assembly, and Chief Justice a report of its activities as outlined in this section by delivering a copy to the Governor, Clerks of the House of Representatives and the Senate, and the Chief Justice.

§ 8915C. Commission funding.

291 Annually, the Commission shall submit a proposed budget to the Criminal Justice Council for review and approval  
292 by the Executive Director of the Criminal Justice Council who shall then recommend it to the General Assembly. \ The  
293 Commission's budget shall be listed as a line item within the Criminal Justice Council's funding and used for  
294 administrative expenses, payroll, and other employment costs of the Commission.

295 Section 3. Until new sentencing guidelines are in effect, the current sentencing guidelines promulgated by the  
296 Sentencing Accountability Commission shall remain in effect.

297 Section 4. This Act shall be known as the "James Johnson Sentencing Accountability Act."

#### SYNOPSIS

This Act, known as the James Johnson Sentencing Accountability Act, named for Representative JJ Johnson, makes significant changes to sentencing accountability in Delaware.

Section 1. This section repeals the provisions of Title 11 that created the Sentencing Accountability Commission.

Section 2. This section establishes the Delaware Sentencing Accounting and Guidelines Commission. This Act places the Commission within the Criminal Justice Council to give the Commission the staff and support it needs to effect its purpose. The Commission has 11 voting members, many of whom are already represented on the current sentencing commission. There are also 6 non-voting ex-officio members which include all entities in the criminal justice system. The Commission must meet at least 6 times a year and 6 members constitute a quorum. The Commission shall hire an executive director and additional personnel that are necessary to fulfill the responsibilities of the Commission.

During the first 2 years, the Commission must review the existing sentencing guidelines and statutory penalties for each criminal offense and promulgate new sentencing guidelines. The sentencing guidelines shall be the presumption in the sentencing of offenders. The guidelines will provide for a range of incarceration terms that are sufficiently narrow and proportionate to the crime. The guidelines shall also set forth a nonexclusive list of aggravating and mitigating factors. The guidelines will also provide bases for a departure from the presumptive sentence. The goal of the guidelines is to encourage judges to individualize sentencing decisions.

By December 1, 2024, the Commission must submit to the General Assembly, the Governor, and the Chief Justice a report of its activities for the first 2 years. This report shall include sentencing guidelines which must first be submitted to the Chief Justice, and then to the General Assembly for final approval by joint resolution. Thereafter, beginning on January 1, 2026, and every 2 years thereafter, the Commission shall submit a biannual report including any revisions to the sentencing guidelines to the Governor, the Chief Justice, the Speaker of the House and President Pro Tempore. The revisions will take effect and have the force and effect of law as of July 1 following submission, unless the General Assembly shall by joint resolution reject the report in its entirety within 30 days following the commencement of its session.

The Commission will also develop, in conjunction with the Department of Correction, a community corrections strategy which will consider the existing community corrections programs within the State, the number of offenders, the level or resources, and the effectiveness of community corrections. The Commission will also work with the Department of Correction to develop a correctional-population model to project the future impact on the criminal justice system including the courts and Department of Correction.

The Commission's continuing responsibilities include revising the sentencing guidelines as needed, preparing a yearly correctional-population projection, data collection that tracks criminal cases through the court system and, investigating the existence of possible inequities and the corrections systems across population groups, such as groups defined by race, gender ethnicity and geographic location. Every 5 years, the Commission shall perform an omnibus review of the sentencing system.

Section 3. This section provides that until sentencing guidelines are in effect under this Act, the current sentencing guidelines will remain in effect.

Section 4. This Act is known as the "James Johnson Sentencing Accountability Act".