



SPONSOR: Rep. J. Johnson & Sen. Townsend

HOUSE OF REPRESENTATIVES  
149th GENERAL ASSEMBLY

HOUSE BILL NO. 397

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

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

1           Section 1. Amend § 4214, Title 11 of the Delaware Code by making deletions as shown by strike through and  
2     insertions as shown by underline as follows:

3           § 4214. Habitual criminal; life sentence.

4           (f) Notwithstanding any statute, court rule or regulation to the contrary, beginning January 1, 2017, any person  
5     sentenced as an habitual criminal to a minimum sentence of not less than the statutory maximum penalty for a violent  
6     felony pursuant to subsection (a) of this section, or a life sentence pursuant to subsection (b) of this section prior to July 19,  
7     2016, shall be eligible to petition the Superior Court for sentence modification after the person has served a sentence of  
8     incarceration equal to any applicable mandatory sentence otherwise required by this section or the statutes describing said  
9     offense or offenses, whichever is greater. Absent extraordinary circumstances, the petitioner may only file 1 application for  
10    sentence modification under this section. A Superior Court Judge upon consideration of a petition filed pursuant to this  
11    subsection may modify, reduce or suspend such petitioner's sentence, excepting any minimum or mandatory sentence  
12    required by this section or the statutes describing said offense or offenses. If a Superior Court Judge modifies such  
13    petitioner's sentence, the Judge may impose a suspended sentence that includes a probationary term. Nothing in this section,  
14    however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section. For the purposes  
15    of this subsection, the "applicable mandatory sentence" shall be calculated by reference to the penalties prescribed for the  
16    relevant offense or offenses by this Code as of July 19, 2016, unless said offense has been repealed, in which case the  
17    penalties prescribed by this Code at the time of the act repealing said offense shall be controlling. The Superior Court shall  
18    establish rules to implement this subsection which are consistent with the statute, and those rules shall also provide that all  
19    petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a Title 16  
20    offense are heard first, followed by all petitions filed pursuant to this subsection where the felony establishing an inmate as  
21    a habitual offender was a crime against property, followed by all other petitions. Nothing in the rules or this subsection  
22    shall prohibit the Superior Court from hearing any petition without regard to this preferred sequence when the Department  
23    of Justice, through the personal authorization of the Attorney General, Chief Deputy Attorney General, State Prosecutor, or

24 the Chief Prosecutor of a particular county, in response to a request authorized by the Chief Defender, Chief Deputy  
25 Defender, or Chief Conflicts Counsel, or private counsel if a petitioner is not represented by the Office of Defense Services,  
26 consents to the hearing of that petition and the Superior Court determines it is in the interest of justice to do so. The rules  
27 shall also provide for an initial review, including review of a formal response by the Department of Justice after consulting  
28 with the victim or victims, of sentence modification petitions involving crimes against persons or property, for the purpose  
29 of ensuring that victims are not inconvenienced by petitions that should be denied based upon the documents submitted; in  
30 cases not denied in this manner, all victims shall be given an opportunity to be heard. The Superior Court's review of any  
31 petitions filed pursuant to this subsection shall include a review of the applicant's prior criminal history, including arrests  
32 and convictions, a review of the applicant's conduct while incarcerated, and available evidence as to the likelihood that the  
33 applicant will reoffend if released, including a formal, recent risk assessment. The Superior Court shall articulate on the  
34 record the results of its review and its rationale for granting or denying a petition. In all cases where sentence modifications  
35 are granted, modified sentences should provide for step-down provisions to ensure successful reintegration of persons into  
36 the community. By January 1, 2017, the Department of Correction shall notify any criminal defendant whose Level V  
37 sentence was imposed under a statutory sentencing regimen which was subsequently changed in a manner that reduced the  
38 sentence applicable to the defendant's convictions, including any criminal defendant who received a minimum mandatory  
39 sentence that no longer exists by virtue of the enactment of 80 Del. Laws, c. 28. The Department of Correction shall  
40 similarly notify the attorney of record, and if the attorney of record is unavailable to receive notice, the Office of Defense  
41 Services.

#### SYNOPSIS

This Act permits the Superior Court to consider petitions out of sequence where the Attorney General consents and the Court determines consideration to be in the interest of justice. To ensure this exceptional sequencing provision is employed judiciously, the Court will only consider the consent of the Attorney General authorized by Delaware Department of Justice leadership (Attorney General, Chief Deputy Attorney General, State Prosecutor, or Chief County Prosecutors) in response to requests of Office of Defense Services leadership (Chief Defender, Chief Deputy Defender, Chief Conflicts Counsel) where a petitioner is represented by the Office of Defense Services, and in all other circumstances in response to privately retained counsel. This special authorization ensures individual petitioners do not unwittingly forego or disrupt their single opportunity for sentence review and further ensures consistency in modifications to sequencing.