



SPONSOR: Rep. Longhurst & Rep. Bolden & Rep. Brady &
Rep. Dorsey Walker & Rep. Kowalko & Sen. Poore
Reps. Baumbach, Cooke, Heffernan, K. Johnson, Lynn,
Minor-Brown, Osienski; Sens. Hansen, Lockman,
McDowell, Paradee, Sokola, Townsend

HOUSE OF REPRESENTATIVES
150th GENERAL ASSEMBLY

HOUSE BILL NO. 5

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

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

Section 1. Amend Chapter 39, 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.

(d) The court shall direct whether the sentence of confinement of any criminal defendant by any court of this State
shall be made to run concurrently or consecutively with any other sentence of confinement imposed on such criminal
defendant. Notwithstanding the foregoing, no sentence of confinement of any criminal defendant by any court of this State
shall be made to run concurrently with any other sentence of confinement imposed on such criminal defendant for any
conviction of the following crimes:

Title 11, Section	Crime
606	Abuse of a pregnant female in the first degree
613	Assault in the first degree
632	Manslaughter
635	Murder in the second degree
636	Murder in the first degree
772	Rape in the second degree
773	Rape in the first degree
777A	Sex offender unlawful sexual conduct against a child
778(1), (2) or (3)	Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree
783	Kidnapping in the second degree
783A	Kidnapping in the first degree

22 803 _____ Arson in the first degree
 23 825 _____ Burglary in the second degree
 24 826 _____ Burglary in the first degree
 25 826A _____ Home invasion
 26 832 _____ Robbery in the first degree
 27 836 _____ Carjacking in the first degree
 28 1254 _____ Assault in a detention facility
 29 1447A _____ Possession of a firearm during the commission of a felony
 30 or for any sentence for possession of a firearm by a person prohibited where the criminal defendant was previously
 31 convicted of a Title 11 violent felony.
 32 1447A _____ Possession of a firearm during the commission of a felony if the firearm was used,
 33 displayed, or discharged during the commission of a Title 11 or Title 31 violent felony as set forth in Section 4201(c) of
 34 title 11.
 35 Notwithstanding the foregoing, where there are multiple victims, any sentence for each victim shall be consecutive
 36 to one another for the following crimes:
 37 Title 11, Section Crime
 38 632 _____ Manslaughter
 39 635 _____ Murder Second Degree
 40 636 _____ Murder First Degree
 41 772 _____ Rape Second Degree
 42 773 _____ Rape First Degree
 43 778(1),(2) or (3) _____ Sexual Abuse of a Child by a Person in a Position of Trust,
 44 Authority or Supervision in the First Degree
 45 Notwithstanding the foregoing, any sentence imposed upon a defendant for a conviction for assault in a detention
 46 facility, as set forth in §1254 of this title, shall be consecutive to any sentence being served by the defendant.
 47 ~~(e) For purposes of this section, "Title 11 violent felony" means any Title 11 offense identified in § 4201(c) of~~
 48 ~~this title, or any offense set forth under the laws of the United States, any other state or any territory of the United States~~
 49 ~~which is the same as or equivalent to any of the offenses designated as a Title 11 offense identified in § 4201(c) of this title.~~
 50 Section 2. Amend Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through and
 51 insertions as shown by underline as follows:

§ 1447 Possession of a deadly weapon during commission of a felony; class B felony.

(a) A person who is in possession of a deadly weapon during the commission of a felony is guilty of possession of a deadly weapon during commission of a felony.

Possession of a deadly weapon during commission of a felony is a class B felony.

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

~~(c) Any sentence imposed upon conviction for possession of a deadly weapon during the commission of a felony shall not run concurrently with any other sentence. In any instance where a person is convicted of a felony, together with a conviction for the possession of a deadly weapon during the commission of such felony, such person shall serve the sentence for the felony itself before beginning the sentence imposed for possession of a deadly weapon during such felony.~~

~~(d)~~(b) Every person charged under this section over the age of 16 years may be tried as an adult pursuant to §§ 1010 and 1011 of Title 10, notwithstanding any contrary provision of statutes governing the Family Court or any other state law.

~~(e)~~(c) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted and during which the person possessed the deadly weapon is a lesser included felony of the one originally charged.

§ 1447A. Possession of a firearm during commission of a felony; class B felony.

(a) A person who is in possession of a firearm during the commission of a felony is guilty of possession of a firearm during commission of a felony. Possession of a firearm during commission of a felony is a class B felony.

(b) A person convicted under subsection (a) of this section shall receive a minimum sentence of 3 years at Level V, notwithstanding the provisions of § 4205 (b)(2) of this title.

(c) A person conviction under subsection (a) of this section, and who has been at least twice previously convicted of a felony in this State or elsewhere, shall receive a minimum sentence of 5 years at Level V, notwithstanding the provisions of §§ 4205 (b)(2) and 4215 of this title.

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

~~(e) Any sentence imposed upon conviction for possession of a firearm during the commission of a felony shall not run concurrently with any other sentence. In any instance where a person is convicted of a felony, together with a~~

conviction for the possession of a firearm during the commission of such felony, such person shall serve the sentence for the felony itself before beginning the sentence imposed for possession of a firearm during such felony.

(d) Every person charged under this section over the age of 16 years who, following an evidentiary hearing where the Superior Court finds proof positive or presumption great that the accused used, displayed, or discharged a firearm during the commission of a Title 11 or a Title 31 violent felony as set forth in § 4201(c) of this title, shall be tried as an adult, notwithstanding any contrary provisions or statutes governing the Family Court or any other state law. The provisions of this section notwithstanding, the Attorney General may elect to proceed in Family Court.

(e) A person may be found guilty of violating this section notwithstanding that the felony for which the person is convicted and during which the person possessed the firearm is a lesser included felony of the one originally charged.

SYNOPSIS

The stacking of sentences can, and has, in some cases, result in severe prison sentences without permitting the sentencing judge any discretion as to the offender's individual circumstances or the facts of the case. In order to provide such judicial discretion, this bill reforms concurrent and consecutive sentencing. This bill provides sentencing judges with the discretion to sentence prison time concurrently when appropriate. However, this bill mandates consecutive sentences when there are multiple victims for the most serious crimes. In addition, this bill requires consecutive sentences for assault in a detention facility. Under this bill, based upon the facts and circumstances of a case, prosecutors are able to recommend and judges have the discretion to order consecutive sentences.