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HOUSE OF REPRESENTATIVES  
150th GENERAL ASSEMBLY

HOUSE BILL NO. 4

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

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

Section 1. Amend Chapter 42, Title 11 of the Delaware Code by making deletions as shown by strike through and  
insertions as shown by underline as follows:

CHAPTER 42. CLASSIFICATION OF OFFENSES; SENTENCES

§ 4201 Transition provisions.

(c) The following felonies shall be designated as violent felonies:

Title 16, Section	Crime
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1136	Abuse/Mistreatment/Neglect of a Patient
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4751	<del>Former Manufacture/Delivery/Possession With Intent to Deliver a Controlled or Counterfeit Controlled Substance, Manufacture or Delivery Causing Death</del>
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4752	<del>Former Manufacture/Delivery/Possession With Intent to Deliver a Controlled or Counterfeit Controlled Substance</del>
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4752A	<del>Former Unlawful Delivery of a Noncontrolled Substance</del>
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4753A	<del>Former Trafficking in Marijuana, Cocaine, Illegal Drugs, Methamphetamine, LSD, Designer Drugs or MDMA</del>
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4752	<del>Drug Dealing — Aggravated Possession; Class B Felony</del>
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4753	<del>Drug Dealing — Aggravated Possession; Class C Felony</del>
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4754(1)	<del>Drug Dealing — Aggravated Possession; Class D Felony</del>
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4761	<del>Former Distribution to Minors</del>
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4761(c) and (d)	<del>Illegal Delivery of Prescription Drugs</del>
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4774	<del>Delivery of Drug Paraphernalia to a Minor</del>
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Section 2. Amend Chapter 42, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4214 Habitual criminal; life sentence.

(e) Notwithstanding any provision of this title to the contrary, any minimum sentence required to be imposed pursuant to subsection (b), (c), or (d) of this section shall not be subject to suspension by the court, and shall be served in its entirety at full custodial Level V institutional setting without the benefit of probation or parole, except that any such sentence shall be subject to the provisions of §§ 4205(h), 4217, 4381 and 4382 of this title. For purposes of the computation of good time under § 4381 of this title, a life sentence imposed pursuant only to this section shall equate to a sentence of 45 years.

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

Defender, or Chief Conflicts Counsel, or private counsel if a petitioner is not represented by the Office of Defense Services, consents to the hearing of that petition and the Superior Court determines it is in the interest of justice to do so. 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 or victims, 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 subsection shall include a review of the applicant's prior criminal history, including arrests and convictions, a review of the applicant's conduct while incarcerated, and available evidence as to the likelihood that the applicant will reoffend if released, including a formal, recent risk assessment. The Superior Court shall articulate on the record the results of its review and its rationale for granting or denying a petition. In all cases where sentence modifications are granted, modified sentences should provide for step-down provisions to ensure successful reintegration of persons into the community. By January 1, 2017, the Department of Correction shall notify any criminal defendant whose Level V sentence was imposed under a statutory sentencing regimen which was subsequently changed in a manner that reduced the sentence applicable to the defendant's convictions, including any criminal defendant who received a minimum mandatory sentence that no longer exists by virtue of the enactment of 80 Del. Laws, c. 28. The Department of Correction shall similarly notify the attorney of record, and if the attorney of record is unavailable to receive notice, the Office of Defense Services.

Section 3. Amend Chapter 42, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4217 Jurisdiction over sentence retained.

(a) For purposes of this section:

(1) "Court" means the Superior Court.

(2) "Department" means the Department of Correction.

(3) "Good cause" means that the offender has shown by conduct and attitude while in custody that risk of re-offending has diminished as evidenced by the administration of a professionally accepted risk assessment instrument.

(4) "Prison overcrowding" means the number of inmates exceeds the operating capacity of a correctional facility that can be reasonably accommodated based on design, staffing, available programs, and services; and whereby, as determined by the Commissioner of the Department of Correction, a facility is incapable of fulfilling its proper function and or mission.

(5) "Serious medical illness or infirmity" includes a finding of any one of the following:

81                   a. A progressive and incurable illness that is expected to result in death within 2 years.

82                   b. A persistent or progressive illness that impedes the offender's mental or physical capacities which  
83 significantly diminishes quality of life and requires a complexity or level of care that cannot be provided in a  
84 correctional setting.

85                   c. A disease or condition where the offender is too ill or cognitively impaired to participate in  
86 rehabilitation or be aware of punishment and the level of care needed for the offender cannot be provided in a  
87 correctional setting.

88           (ab) In any case where the trial court has imposed an aggregate sentence of incarceration at Level V in excess of 1  
89 year, the court shall retain jurisdiction to modify the sentence to reduce the level of custody or time to be served under the  
90 provisions of this section.

91           (c) The following may apply for relief:

92                   (1) The Department of Correction.

93                           a. Under § 4217(d)(1) and (d)(3) at any time.

94                           b. Under § 4217(d)(2) after an offender who meets the eligibility requirements of § 4217(c)(2) has  
95 initiated a petition pursuant to § 4217(f)(2).

96                   (2) An offender only under subsection (d)(2) who satisfies one of the following:

97                           a. Is 50 years or older and has served at least 10 years at Level V.

98                           b. Has served 20 years at Level V.

99           (d) Relief may be granted for any one of the following reasons:

100                   (1) Compassionate relief due to serious medical illness or infirmity.

101                   (2) Good cause.

102                   (3) Prison overcrowding.

103           (e) The following offenders are ineligible for a sentence modification pursuant to § 4217(d)(2):

104                   (1) An offender who was sentenced before June 30, 1990.

105                   (2) An offender serving a life sentence.

106                   (3) An offender who is eligible for a sentence modification pursuant to § 4214(f).

107                   (4) An offender who is serving a sentence for a conviction of any of the following crimes in Title 11:

108                           a. § 606—Abuse of a pregnant female in the first degree.

109                           b. § 636—Murder in the first degree.

110                           c. § 772—Former Unlawful sexual penetration in the first degree or Rape in the second degree.

- d. § 773—Rape in the first degree.
- e. § 774 —Former Unlawful sexual intercourse in the second degree.
- f. § 775—Former Unlawful sexual intercourse in the first degree.
- g. § 776—Continuous sexual abuse of a child.
- h. § 777A—Sex offender unlawful sexual conduct against a child.
- i. § 778—Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree.
- j. § 783A—Kidnapping in the first degree.
- (f) The process for applying for relief under this section shall be as follows:
- (1) Petitions initiated by the Department of Correction pursuant to § 4217(d).
- a. Department of Correction shall file a petition with the Superior Court which shall include all of the following:
1. The basis for the request.
  2. The offender's eligibility for the request.
  3. Supporting materials the Department determines are needed to demonstrate to the Court that relief is warranted.
  4. For petitions filed pursuant to § 4217(d)(2) and (d)(3), the Department of Correction shall also include a plan for reintegration of the offender into the community.
- (2) Petitions initiated by an offender pursuant to § 4217(d)(2).
- a. An offender must first request that the Department file a petition on the offender's behalf using a form provided by the Department.
- b. If the Department concurs with the offender's request, the Department shall file a Petition pursuant to § 4217(f)(1).
- c. If the Department does not concur with the offender's request, the Department shall state its reasons in writing for denying the offender's request which will become part of the record of the offender's petition.
- d. The offender may file a petition with the Court pursuant to § 4217(d)(2) which shall include all of the following:
1. The Department's reasons for denying the offender's request for relief.
  2. A statement certifying the offender's eligibility to file for relief.

140 (g) Upon the filing of the petition by the Department or the offender, the Court shall appoint counsel for the  
141 offender's first petition. There shall be no right to counsel for any subsequent petition. The Court may, in its discretion,  
142 appoint counsel for an offender.

143 (h) Counsel for the offender may amend or supplement the petition that was filed.

144 (i) The Court may establish rules concerning the documentation necessary for a decision on the merits of an  
145 offender's petition.

146 (j) Any petition filed under this section shall include notice to the Department of Justice who shall notify any  
147 victim, if possible, and provide any input the victim wishes the Court to consider.

148 (k) The Court will not act on any motion without giving the State the opportunity to be heard on the petition.

149 (l) In deciding a petition filed under this section, the Court may do any of the following:

150 (1) Modify a sentence if the Court finds all of the following:

151 a. § 4217 (d)(1), (d)(2), or (d)(3) has been satisfied.

152 b. A suitable transition plan can be put in place for the offender.

153 c. Evidence showing the offender poses a low risk to public safety by a modification of sentence.

154 (2) Hold a hearing and take testimony or argument if the Court concludes that it is necessary or just in  
155 reaching a fair result.

156 (3) Request additional information or documentation if the Court concludes that it is necessary or just in  
157 reaching a fair result.

158 (3) Deny relief if it finds that other sentencing goals such as deterrence or the need for continued correctional  
159 treatment outweigh the rehabilitation of the offender.

160 (m) If the Court grants relief, the Court may also modify any other terms of the sentence as the Court deems  
161 appropriate under the circumstances.

162 (n) If the Court denies relief, the offender may not file a subsequent petition for a period of 3 years unless  
163 otherwise ordered by the Court.

164 (o) The Department shall notify an offender of the offender's eligibility to apply for relief under this section.

165 (p) The Department shall establish regulations to implement this section. The Department may not impose  
166 additional restrictions, exclusions or eligibility requirements for offenders seeking relief under this section.

167 (q) Earned good time as set forth in § 4381 of this title may not be used in determining eligibility under § 4217(c).

168 (r) At the time of initial sentencing, the Court may order that an offender be ineligible for sentence modification  
169 pursuant to this section until a specified portion of Level V has been served.

(b) The court may modify the sentence solely on the basis of an application filed by the Department of Correction for good cause shown which certifies that the release of the defendant shall not constitute a substantial risk to the community or the defendant's own self.

(c) Good cause under this section shall include, but not be limited to, rehabilitation of the offender, serious medical illness or infirmity of the offender and prison overcrowding.

(d)(1) Any application filed by the Department of Correction under this section shall be filed with the Board of Parole. The Board of Parole shall have the authority to promulgate reasonable regulations concerning the form and content of said applications. The Board of Parole may require the Department of Correction to provide it with any information in the possession of the Department reasonably necessary for the Board to assess such applications.

(2) Following the receipt of any application for modification filed by the Department of Corrections which conforms with any regulations and requirements of the Board of Parole promulgated pursuant to paragraph (d)(1) of this section, the Board of Parole shall hold a hearing under the provisions of § 4350(a) of this title for the purpose of making a recommendation to the trial court as to the approval or disapproval of the application. This hearing shall not be held unless written notice of the hearing is provided to the Attorney General's office at least 30 days prior to scheduled hearing date. A copy of the Department of Correction's application for modification shall be provided to the Attorney General's office along with written notice of the hearing date.

(3) Following the hearing described in paragraph (d)(2) of this section, the Board of Parole may reject an application for modification if it determines that the defendant constitutes a substantial risk to the community, or if it determines that the application is not based on good cause. Notwithstanding any provisions of this section to the contrary, any application rejected pursuant to this paragraph shall not be forwarded to the Superior Court, and any offender who is the subject of such rejected application shall not be the subject of a subsequent application for modification for at least 1 year, except in the case of serious medical illness or infirmity of said offender.

(4) Only in those cases where the Board by a majority vote recommends a modification of the sentence shall the application be submitted to the Court for consideration.

(e) Upon receipt of the recommendation of the Board of Parole, the court may in its discretion grant or deny the application for modification of sentence. The Court may request additional information, but need not hold further hearings on the application. The Court shall not act upon the application without first providing the Attorney General's office with a reasonable period of time to be heard on the matter. Should the Court deny the application because of a determination that the defendant constitutes a substantial risk to the community, or because it determines that the application lacks good cause,

199 the defendant who is the subject of the denied application shall not be the subject of a subsequent application for  
200 modification for at least 1 year, except in the case of serious medical illness or infirmity of the defendant.

201 (f) Notwithstanding any provision of this section to the contrary, in the case of any offender who is serving a  
202 sentence of incarceration at Level V imposed pursuant to a conviction for any crime, the Court may order that said offender  
203 shall be ineligible for sentence modification pursuant to this section until a specified portion of said Level V sentence has  
204 been served, except that no offender who is serving a sentence of incarceration at Level V imposed pursuant to a conviction  
205 for a violent felony in Title 11 shall be eligible for sentence modification pursuant to this section until the offender has  
206 served at least 1/2 of the originally imposed Level V sentence, and no offender who is serving a statutory mandatory term  
207 of incarceration at Level V imposed pursuant to a conviction for any offense set forth in Title 11 shall be eligible for  
208 sentence modification pursuant to this section during the mandatory portion of said sentence. Nothing in this paragraph  
209 shall preclude a sentence modification pursuant to this section which is based solely upon serious medical illness or  
210 infirmity of the offender.

211 (g) Nothing contained in this section shall be construed to limit the court's ability to modify a sentence within the  
212 scope of the trial court's duly promulgated rules.

213 (h) For purposes of this section, "rehabilitation" is defined as the process of restoring an individual to a useful and  
214 constructive place in society especially through some form of vocational, correctional, or therapeutic retraining.

215 Section 4. Amend Chapter 65 of Title 11 of the Delaware Code by making deletions as shown by strike through  
216 and insertions as shown by underline as follows:

217 § 6531 Treatment and rehabilitation programs.

218 (e) ~~Inmates required to participate in compulsory programs of drug or alcohol counseling or treatment established~~  
219 ~~by the Department pursuant to this section shall not be eligible for parole nor shall the Department apply for modification~~  
220 ~~of sentence until successfully completing such programs.~~ Inmates refusing to participate in such compulsory programs of  
221 drug or alcohol counseling or treatment established by the Department shall further be subject to ~~such other~~ disciplinary  
222 measures as the Commissioner shall establish by regulation.

223 § 6531A. Education programs.

224 ~~(e) Inmates required to participate in compulsory programs of education as established under this section shall not~~  
225 ~~be eligible for parole nor shall the Department of Correction apply for a modification of sentence until successfully~~  
226 ~~obtaining a high school diploma or G.E.D.~~ Inmates refusing to participate in such compulsory programs of education as  
227 established under this section shall be subject to ~~such~~ disciplinary measures as the Commissioner of Correction shall  
228 establish by regulation.



§ 6532 Work by inmates.

(j) Inmates refusing to participate in compulsory programs of employment established by the Department pursuant to this program ~~shall not be eligible for parole nor shall the Department apply for modification of sentence, and shall further~~ be subject to ~~such other~~ disciplinary measures as the Commissioner may establish by regulation.

Section 5. Sections §§ 6580 through 6582 of Title 11 of the Delaware Code are hereby repealed.

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. The Criminal Justice Council shall provide fiscal oversight as determined by the Executive Director of 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 sentences no more severe 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 to individualize 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 corrections systems.

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

(a) The 17 voting members of the Commission are:

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

(2) An attorney employed by the Office of Defense Services appointed by the Chief Defender.

(3) A Deputy Attorney General appointed by the Attorney General.

(4) Two private Delaware attorneys specializing in criminal defense appointed by the President Judge of the Superior Court.

(5) Two members of the general public appointed by the Governor.

(6) One employee of the Department of Correction appointed by the Commissioner of the Department of Corrections.

(7) The Director of the Statistical Analysis Center.

(8) A police chief appointed by the Delaware Police Chiefs Council.

(9) An individual appointed by the Speaker of the House of Representatives.

(10) An individual appointed by the President Pro Tempore of the Senate.

(11) An academic with experience in criminal-justice research appointed by the Governor.

(12) An individual responsible for the provision of prisoner reentry services appointed by the Governor.

(13) A member of the Delaware Fraternal Order of Police or Delaware State Troopers Association who shall serve as follows:

a. A member of the Delaware Fraternal Order of Police appointed by the President of the Fraternal Order of Police shall serve in odd years; and

b. A member of the Delaware State Troopers Association appointed by the President of the Delaware State Troopers Association shall serve in even years.

(b) The nonvoting ex-officio members are:

(1) The Chief Justice.

(2) The President Judge of the Superior Court.

(3) The Attorney General.

(4) The Chief Defender.

(5) The Chief Conflicts Counsel.

(6) The Commissioner of the Department of Correction.

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

290           (8) The Colonel of the Delaware State Police.

291           (9) The Chairperson of the Delaware Police Chiefs Council.

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

293           (11) The President of the Delaware State Troopers Association.

294           (12) The President of the Delaware Fraternal Order of Police.

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

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

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

298 their work for the Commission.

299           (f) Appointing authorities should consider the racial, ethnic, and gender diversity of the Commission's

300 membership, and should consider representation from different geographic areas of the State.

301           (g) The Commission shall have the power to form advisory committees, including individuals who are not

302 members of the Commission, to assist the Commission in its deliberations.

303           § 8904C. Meetings; quorum; procedure.

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

305           (b) 8 members shall constitute a quorum.

306           (c) The initial meeting shall be held no later than 60 days after enactment of this Act.

307           § 8905C Officers.

308           (a) The Chief Justice shall designate one member of the judiciary to serve as temporary chair of the Commission to

309 guide the initial organization of the Commission by doing all of the following:

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

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

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

313           (b) The voting members of the Commission shall choose a chair from among its judicial members and a vice-chair

314 from among the voting members at the initial meeting. Thereafter, beginning in 2021, in December of each year, the voting

315 members of the Commission shall elect a Chair from among its judicial members and a Vice-Chair.

316           (c) The chair is responsible for guiding the administration of the Commission by, at a minimum, doing all of the

317 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.

(d) The Vice chair 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.

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

(c) The Executive Director may employ such additional personnel as are necessary to fulfill the responsibilities of the Commission, subject to the approval of the Executive Director of the Criminal Justice Council and within the limits of any appropriation made by the General Assembly. The staff of the Commission are under the authority of and subject to the oversight and supervision of the Executive Director of the Criminal Justice Council but are staff dedicated to the Commission.

§ 8907C Initial Responsibilities.

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

(1) Review existing sentencing guidelines and promulgate changes consistent with the mandates provided in § 8911C.

(2) Develop a correctional-population forecasting model as provided in § 8910C.

(3) Develop a community corrections strategy as provided in § 8909C.

(4) Review whether appellate review of sentences imposed that are outside of the sentencing guidelines is appropriate and if so, recommend to the Supreme and Superior Courts rules and procedures to implement such review.

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

(1) Collect and review information on all correctional populations in the State.

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

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

(c) In discharging its responsibilities, the Commission should do all of the following:

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

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

(d) The Commission may also do all of the following:

(1) Advise the General Assembly of any needed additions in correctional resources.

(2) Recommend to the General Assembly any changes needed in the criminal code to best effectuate the sentencing guidelines promulgated by the Commission.

(3) Identify areas where necessary data and research are lacking concerning the operation of the criminal justice system, including sentencing, and recommend to the General Assembly the means by which the Commission or other state agencies may be empowered to address such needs.

(d) The Commission shall publish to the Governor, General Assembly, and Chief Justice a report of its activities for its first 2 years of existence 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.

#### § 8908C Continuing Responsibilities.

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

(1) Promulgate and periodically revise sentencing guidelines as needed.

(2) Prepare correctional-population projections for the sentencing system at least once each year, and whenever new laws affecting sentences are proposed, as described in § 8909C.

(3) Research and consider information systems that would track criminal cases entering the court system including all of the following:

a. Offense, offender, and victim.

b. Sentences imposed.

c. Sentencing patterns for the state as a whole and for geographic regions within the state.

d. Any other information the Commission finds to be important on the operation of the sentencing and corrections systems.

(4) Identify resources to implement the information systems identified in § 8908(C)(a)(3) and recommend to the General Assembly the means by which it could be accomplished.

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

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

(7) 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. If appellate review of sentences is implemented, 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.

(8) Facilitate the implementation of sentencing guidelines 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 bar, and the public on 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.

(9) Monitor the operation and procedures of petitions made pursuant to § 4217 of this title and their outcomes and investigate the existence of inequities in the processing and decision-making of such applications across populations groups, including groups defined by race, ethnicity, gender, and geographic location.

(10) On an annual basis, enter and track applications made pursuant to § 4217 of this title, and their outcomes and investigate the existence of possible inequities in the processing and decision-making of such applications across population groups, including groups defined by race, ethnicity, gender, and geographic location.

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

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

(13) The Commission shall publish to the Governor, General Assembly, and Chief Justice an annual report of its activities by delivering a copy to the Governor, the Clerks of the House of Representatives and the Senate, and the

Chief Justice. The annual report shall include the Commission's annual correctional-population forecasting model as required by § 8910C.

(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. Community Corrections Strategy.

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

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

(1) The existing community corrections programs throughout the State, the number of offenders they can accommodate, the level of resources they receive from the State, and available evidence of their effectiveness and efficiency in serving the purposes of sentencing and the sentencing system in § 8902C.

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

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

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

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

§ 8910C. 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 and whenever new legislation affecting criminal punishment is introduced. The Commission shall generate projections of sentencing outcomes if the proposed legislation were to take effect.

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

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

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

443 § 8911C. Sentencing guidelines.

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

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

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

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

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

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

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

458 (f) The sentencing guidelines shall set forth a nonexclusive list of aggravating and mitigating factors that may be  
459 used as grounds for departure from presumptive sentences in individual cases. The Commission may not quantify the effect  
460 given to specific aggravating or mitigating factors.

461 (g) The sentencing guidelines shall provide that a departure sentence may not be based on any factor necessarily  
462 comprehended in the elements of the offenses for which the offender has been convicted, and no finding of fact may be  
463 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.

(l) The sentencing guidelines should invite courts to individualize sentencing decisions.

§ 8912C. Effective Date of Sentencing Guidelines.

(a) The Commission shall promulgate its sentencing guidelines and submit them to the Supreme Court no later than January 1, 2022 for adoption by court rule.

(b) The goal is that the sentencing guidelines will take effect on April 1, 2022.

(c) Until new guidelines are in effect, the current guidelines created by the Sentencing Accountability Commission will remain in effect.

§ 8913C. 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.

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

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

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

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

500 § 8914C. Omnibus review of sentencing system.

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

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

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

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

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

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

515 (6) Other subjects as determined by the Commission.

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

519 Section 7. This Act is known as the "James Johnson Sentencing Reform Act."

520 Section 8. Sections 1, 2, 4, 5, 6, and 7 take effect upon the Act's enactment into law.

521 Section 9. § 4217(d)(1) and (3) of Section 3 takes effect 120 days following the Act's enactment into law.

522 Section 10. § 4217(d)(2) of Section 3 takes effect 1 year following the Act's enactment into law.

## SYNOPSIS

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

Section 1. This section strikes most drug crimes from the list of violent felonies. This change recognizes that treating drug crimes in every instance as a violent crime is unnecessary as it increases the range of penalties and the presumptive sentence. However, the highest level of drug dealing will remain on the violent felony list since those offenders are most likely high quantity drug dealers or those at the top of a distribution pyramid.

Section 2. This section makes changes to the sentence modification section of habitual criminal law to conform to current practice. The Superior Court has enacted court rules and procedures, and this section simply removes portions of the statute that have become superfluous due to the Court's rules and procedures.

Section 3. In 1989, Delaware abolished parole. Since then, there has been essentially no functioning mechanism to release an offender from Level V prior to expiration of his sentence, other than good time credit. While the current provisions of § 4217 of Title 11 have been in place since 1989, very few offenders are reviewed by the Board of Parole and the Courts each year. Under the current statutory scheme, the Department of Correction must initiate any and all applications, which then have to receive approval from the Board of Parole before finally being ruled upon by the Court. This section overhauls § 4217. It provides a functioning mechanism for the modification of the sentences of offenders who are old, sick, or have demonstrated extraordinary rehabilitation.

Under this revision, a modification can only be granted on the basis of compassionate relief due to serious medical illness or infirmity, good cause, or prison overcrowding. Good cause means the offender has shown by conduct and attitude while in custody that risk of offending has diminished as evidenced by the administration of a professional accepted risk assessment instrument. Serious medical illness or infirmity includes the offenders who have a progressive and incurable illness that is expected to result in death within 2 years, a persistent or progressive illness that impedes the offender's mental or physical capacities which significantly diminishes quality of life and requires a complexity or level of care that cannot be provided in a correctional setting, or a disease or condition where the offender is too ill or cognitively impaired to participate in rehabilitation or be aware of punishment, and the level of care needed for the offender cannot be provided in a correctional setting.

Only certain offenders would be eligible for a modification of sentence under good cause. First, an offender has to meet certain eligibility requirements which are: (1) Have served 20 years at Level V; or (2) Be over 50 and have served 10 years. Good time credit cannot be used to determine eligibility. Second, the offender cannot be serving a sentence for specific crimes, namely the most serious and most sexual offenses. Once an offender is eligible, the Department of Correction determines whether that offender meets the requirement of good cause. If the offender does, the Department will file a petition in the Superior Court on the offender's behalf. If the Department determines that the offender does not satisfy the requirement of good cause, the Department must put its decision in writing including the reason why. At that point, the offender can file a petition in Court, but must include the Department's reasons for denying the offender's request for relief. Once a petition is filed, the Court must appoint counsel for the offender's first petition. There is no right to counsel on any subsequent petition. The petition must include notice to the Department of Justice so that notification can be made to any victims who may wish to provide input to the Court. In deciding the petition, the Court may modify the sentence, but only if the Court finds that the eligibility requirements are met, there is a suitable transition plan for the offender, and evidence has been presented showing that the offender poses a low risk to public safety by a modification. The Court may hold a hearing, request additional information or documentation, or deny the petition. If the Court denies the request, the offender may not file a subsequent petition for a period of 3 years unless otherwise ordered by the Court.

Section 4. This section removes certain statutory impediments to becoming eligible for a sentence modification pursuant to § 4217. These include treatment and rehabilitation programs, education programs, and work programs. The reason for this is that many offenders cannot complete these programs, through no fault of their own, but rather because of their classification or learning disabilities. While this section removes the statutory impediments, the failure to complete required programs can be used by the Department to determine whether an offender meets the good cause standard under § 4217. In addition, the Department can utilize internal disciplinary measures for offenders who refuse to complete programs.

Section 5. This section repeals the provisions of Title 11 that created the Sentencing Accountability Commission.

Section 6. 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 17 voting members, many of whom are already represented on the current SENTAC. There are also 12 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 8 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 promulgate changes. 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.

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 of 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. The Commission will also enter and track applications made pursuant to § 4217 of Title 11 and their outcomes and investigate the existence of possible inequities in the processing and decision-making of such applications. Every 5 years, the Commission shall perform an omnibus review of the sentencing system.

The Commission shall promulgate its sentencing guidelines and submit them to the Supreme Court no later than January 1, 2022 for adoption by court rule. The goal is that the sentencing guidelines will take effect April 1, 2022. Until then, the current guidelines created by SENTAC will remain in effect.

Section 7. This Act is known as the "James Johnson Sentencing Reform Act."

Section 8. This section provides that Sections 1, 2, 4, 5, 6, and 7 take effect upon the Act's enactment into law.

Section 9. This section provides that §4217(d)(1) and (d)(3) take effect 120 days following the Act's enactment into law. This means that the only petitions that can proceed after 120 days are those petitions initiated by the Department of Correction on the grounds of serious medical illness or infirmity or prison overcrowding.

Section 10. This section provides that 4217(d)(2) takes effect 1 year following the Act's enactment into law. This means that petitions on the basis of good cause can proceed 1 year after the Act's enactment into law.