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
AS AMENDED BY
HOUSE AMENDMENT NO. 2

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~~

HD : NSW : TEH : 1031500072
LC : HVW : NMX : 5081500128
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783A Kidnapping in the first degree

~~803 Arson in the first degree~~

~~825 Burglary in the second degree~~

~~826 Burglary in the first degree~~

~~826A Home invasion~~

~~832 Robbery in the first degree~~

~~836 Carjacking in the first degree~~

1254 Assault in a detention facility

~~1447A Possession of a firearm during the commission of a felony or for any sentence for possession of a firearm by a person prohibited where the criminal defendant was previously convicted of a Title 11 violent felony.~~

1447A Possession of a firearm during the commission of a felony if the firearm was used, displayed, or discharged during the commission of a Title 11 or Title 31 violent felony as set forth in § 4201(c) of this title.

Notwithstanding the foregoing, where there are multiple victims, any sentence for each victim shall be consecutive to one another for the following crimes:

Title 11, Section.	Crime
632	Manslaughter

~~(e) For purposes of this section, "Title 11 violent felony" means any Title 11 offense identified in § 4201(c) of this title, or any offense set forth under the laws of the United States, any other state or any territory of the United States 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.~~

Section 2. Amend Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through and 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.~~

~~(f)~~(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.

~~(g)~~(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.