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Ennis & Sen. Vaughn & Sen. Sorenson;
Reps. Spence, Lee, Buckworth, Carey, D.
Ennis, Ewing, Fallon, Hudson, Lavelle,
Lofink, Maier, Oberle, Quillen, Reynolds,
Ulbrich, Valihura, Gilligan, Hall-Long,
Houghton, Keeley, Mulrooney, Williams;
Sens. Blevins, Henry, Marshall, Peterson,
Sokola, Venables, Still, Simpson, Cloutier

HOUSE OF REPRESENTATIVES

142nd GENERAL ASSEMBLY

HOUSE BILL NO. 210
AS AMENDED BY
SENATE AMENDMENT NO. 3

AN ACT TO AMEND TITLES 10, 11, 16 AND 21 OF THE DELAWARE CODE RELATING TO CERTAIN CRIMES.

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

Section 1. Amend § 613 of Title 11 of the Delaware Code by striking the phrase “class C felony” as it appears variously in the catchline and in Subsection (c) of said Section, and by inserting in lieu thereof the phrase “class B felony”.

Section 2. Amend § 632 of Title 11 of the Delaware Code by striking the phrase “class C felony” as it appears variously in the catchline and last sentence of said Section, and by inserting in lieu thereof the phrase “class B felony”.

Section 3. Amend § 635 of Title 11 of the Delaware Code by striking the phrase “class B felony” as it appears variously in the catchline and body of said statute, and by inserting in lieu thereof the phrase “class A felony”, and by striking the last sentence of said Section.

Section 4. Amend § 825 of Title 11 of the Delaware Code by redesignating the existing text of said Section as Subsection “(a)”, and by adding new Subsections “(b)” and “(c)” to said Section, to read as follows:

“(b) Notwithstanding any provision of this Section or Code to the contrary, any person convicted of Burglary in the Second Degree shall receive a minimum sentence of:

(1) one (1) year at Level V; or

- (2) three (3) years at Level V, if the conviction is for an offense that was committed within five (5) years of the date of a previous conviction for burglary first or second degree 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 such offenses, or if the conviction is for an offense that was committed within five (5) years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for burglary first or second degree conviction or for 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 such offenses.”.

Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this Title.

- (c) The sentencing provisions of subsection (b) of this section apply to attempted burglary in the second degree as well as burglary in the second degree.”.

Section 5. Amend § 826 of Title 11 of the Delaware Code by redesignating the existing text of said Section as Subsection “(a)”, and by adding new Subsections “(b)” and “(c)” to said Section, to read as follows:

- “(b) Notwithstanding any provision of this Section or Code to the contrary, any person convicted of Burglary in the First Degree shall receive a minimum sentence of:

- (1) two (2) years at Level V; or
- (2) four (4) years at Level V, if the conviction is for an offense that was committed within five (5) years of the date of a previous conviction for burglary first or second degree 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 such offenses, or if the conviction is for an offense that was committed within five (5) years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for burglary first or second degree conviction or for 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 such offenses.

Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this Title.”.

- (c) The sentencing provisions of subsection (b) of this section apply to attempted burglary in the first degree as well as burglary in the first degree.”.

Section 6. Amend § 832(b) of Title 11 of the Delaware Code by striking said subsection in its entirety, and by substituting in lieu thereof the following:

“(b) Notwithstanding any provisions of this Section or Code to the contrary, any person convicted of robbery in the first degree shall receive a minimum sentence of:

- (1) three (3) years at Level V; or
- (2) five (5) years at Level V, if the conviction is for an offense that was committed within ten (10) years of the date of a previous conviction for robbery in the first degree 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 such offense, or if the conviction is for an offense that was committed within ten (10) years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for robbery in the first degree or for 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 such offense, whichever is the later date.”.

Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this Title.

Section 7. Amend § 1448(e) of Title 11 of the Delaware Code by striking said subsection in its entirety, and by substituting in lieu thereof the following:

“(e) Notwithstanding any provision of this Section or Code to the contrary, any person who is a prohibited person as described in this Section and who knowingly possesses, purchases, owns, or controls a firearm or destructive weapon while so prohibited shall receive a minimum sentence of:

- (1) one (1) year at Level V, if the person has previously been convicted of a violent felony;
- (2) three (3) years at Level V, if the person does so within ten (10) years of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or
- (3) five (5) years at Level V, if the person has been convicted on two or more separate occasions of any violent felony.

Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this Title. For the purposes of this subsection, “violent felony” means any felony so designated by § 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 violent felony by § 4201(c) of this Title.”.

Section 8. Amend § 4201(c) of Title 11 of the Delaware Code by inserting between the phrases “1447A Possession of a Firearm During the Commission of a Felony” and “1455 Engaging in a Firearms Transaction on Behalf of Another (Subsequent Offense)” the following:

“1448(e) Possession of a Deadly Weapon by Persons Prohibited (Firearm or Destructive Weapon Purchased, Owned, Possessed or Controlled by a Violent Felon).”.

Section 9. Amend § 4205(b)(2) of Title 11 of the Delaware Code by striking the phrase “20 years” as it appears therein, and by substituting in lieu thereof the phrase “25 years”.

Section 10. Amend § 4205(b)(3) of Title 11 of the Delaware Code by striking the phrase “10 years” as it appears therein, and by substituting in lieu thereof the phrase “15 years”.

Section 11. Amend § 6712(b) of Title 11 of the Delaware Code by adding a new paragraph “(3)” thereto, to read as follows:

“(3) Burglary in the Second Degree, as set forth in § 825 of Title 11, but only if the defendant has not previously been convicted of Burglary in the Second Degree or Burglary in the First Degree, as set forth in § 826 of Title 11.”.

Section 12. Amend Subsections (d), (e) and (h) of § 6712 of Title 11 of the Delaware Code by striking the phrase “§ 4205 of this Title” as it appears variously therein, and by substituting in lieu thereof the phrase “§ 825, § 826 or § 4205 of this Title”.

Section 13. Amend Subparagraphs (a)(1)a., (a)(2)a., (a)(4)a., (a)(5)a., (a)(6)a., (a)(7)a., and (a)(9)a. of § 4753A of Title 16 of the Delaware Code by striking the phrase “3 years” as it appears variously therein, and by substituting in lieu thereof the phrase “2 years”.

Section 14. Amend Subparagraphs (a)(1) b., (a)(2) b., (a)(4) b., (a)(5) b., (a)(6) b., (a)(7) b., and (a)(9) b. of § 4753A of Title 16 of the Delaware Code by striking the phrase “5 years” as it appears variously therein, and by substituting in lieu thereof the phrase “4 years”.

Section 15. Amend Subparagraphs (a)(1) c., (a)(2) c., (a)(4) c., (a)(5) c., (a)(6) c., (a)(7) c., and (a)(9) c. of § 4753A of Title 16 of the Delaware Code by striking the phrase “15 years” as it appears variously therein, and by substituting in lieu thereof the phrase “8 years”.

Section 16. Amend § 4753A(a)(2) of Title 16 of the Delaware Code by striking the phrase “5 grams” as it appears therein, and by substituting in lieu thereof the phrase “10 grams”.

Section 17. Amend § 4753A(a)(2) a. of Title 16 of the Delaware Code by striking the phrase “5 grams” as it appears therein, and by substituting in lieu thereof the phrase “10 grams”.

Section 18. Amend § 4763(a) of Title 16 of the Delaware Code by striking the first sentence of said subsection in its entirety, and by substituting in lieu thereof the following:

“(a) *Previous convictions.* – In any case in which a defendant has previously been convicted of any offense set forth in §§ 4751, 4752, 4753A or 4761 of this Title, or of 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 such offenses, the penalties set forth in §§ 4751 – 4761 of this Title shall be increased as follows:”.

Section 19. Amend § 4763(a)(1) of Title 16 of the Delaware Code by striking the phrase “Subject to paragraph (3) of this subsection,” as it appears in the first sentence of said paragraph.

Section 20. Amend § 4763(a)(2) of Title 16 of the Delaware Code by striking the phrase “Subject to paragraph (3)” as it appears in the first sentence of said paragraph.

Section 21. Amend § 4763(a)(1) of Title 16 of the Delaware Code by striking subparagraphs c. and d. of said paragraph in their entirety, and by substituting in lieu thereof the following:

“c. § 4751 (excepting heroin or any mixture containing heroin) or § 4752, five (5) years.

d. § 4751 (heroin or any mixture containing heroin), ten (10) years.

Section 22. Amend § 4763(a)(2) of Title 16 of the Delaware Code by striking Subparagraphs a. and b. of said paragraph in their entirety, and by substituting in lieu thereof the following:

“a. § 4751 (excepting heroin or any mixture containing heroin) or § 4752, 3 years.

b. § 4751 (heroin or any mixture containing heroin), 5 years.”.

Section 23. Amend § 4763(a)(3) of the Delaware Code by striking said paragraph in its entirety.

Section 24. Amend § 4763 of Title 16 of the Delaware Code by adding a new Subsection “(d)” thereto, to read as follows:

“(d) *Substance abuse treatment* – Notwithstanding any provision of this Section, Title or Code to the contrary, the Department of Correction shall have the authority and discretion during the last 180 days of any Level V sentence imposed pursuant to this Chapter to place the defendant at Level IV.”.

Section 25. Amend § 921(2) a. of Title 10 of the Delaware Code by inserting between the phrases “unlawful sexual intercourse in the first degree,” and “kidnapping in the first degree” as they appear therein the following:

“assault in the first degree, robbery in the first degree,”.

Section 26. Amend § 921(2) b. of Title 10 of the Delaware Code by striking the phrase “robbery in the first or second” as it appears therein, and by substituting in lieu thereof the phrase “robbery in the second degree”.

Section 27. Amend § 1009 of Title 10 of the Delaware Code by adding a new Subsection “(k)” thereto, to read as follows:

“(k) Subject to the provisions governing amenability pursuant to § 1010 of this Title, the Court shall commit a delinquent child to the custody of the Department of Services for Children, Youth and Their Families if the child who has been adjudicated delinquent by this Court of one (1) or more offenses which would constitute either Possession of a Firearm During the Commission of a Felony or Robbery First Degree (where such offense involves either the display of a deadly weapon or the infliction of serious physical injury upon any person who was not a participant in the crime) were the child charged as an adult under the laws of this State. Such child is declared a child in need of mandated institutional treatment, and this Court shall commit the child so designated to the Department of Services for Children, Youth and Their Families for at least a twelve (12) month period of institutional confinement.”.

Section 28. Amend § 1010(a)(1) of Title 10 of the Delaware Code by inserting between the phrases “rape in the second degree” and “or kidnapping in the first degree” as they appear therein the following:

“, assault in the first degree, robbery in the first degree”.

Section 29. Amend § 4205 of Title 21 of the Delaware Code by creating a new Subsection “(c)” thereto to provide as follows:

“(c) (1) For offenses under this Title, except those which involve injury or death caused to another person by the person's driving or operation of the vehicle or which involve a driving under the influence-related conviction or offense as defined in § 4177B(e)(1) a. –d., the terms of imprisonment

defined in this Title may be served at Supervision Accountability Level IV as defined in § 4204(c)(4) of Title 11.

- (2) For offenses under this Title which involve injury caused to another person by the person's driving or operation of the vehicle or a driving under the influence-related conviction or offense as defined in §4177B(e)(1)a.–d., any term of imprisonment defined in this Title shall be served at Supervision Accountability Level V as defined in §4204(c)(5) of Title 11 or at Supervision Accountability Level IV as defined in §4204(c)(4) of Title 11 provided that such Level IV placement must be served in a Department of Correction facility which requires full-time residence at the facility and that the person may not be outside the confines of that facility without armed supervision.
- (3) For offenses under this Title which involve death caused to another person by the person's driving or operation of the vehicle any term of imprisonment defined in this Title shall be served at Supervision Accountability Level V as defined in § 4204(c)(5) of Title 11.”.

Section 30. Amend § 2756(a) of Title 21 of the Delaware Code by striking the phrase “from a violation of § 4177 of this Title or a local ordinance substantially conforming thereto,” and by inserting in lieu thereof the following:

“from a prior or previous driving under the influence-related conviction or offense as defined in § 4177B(e)(1)a.–d. of this Title,”.

Section 31. Amend § 2756(b) of Title 21 of the Delaware Code by striking the second sentence thereto in its entirety and by inserting in lieu thereof the following:

“In addition, for any offense under this Section, if the suspension or revocation resulted from a violation of any criminal statute pertaining to injury or death caused to another person by the person's driving or operation of a vehicle or a driving under the influence-related conviction or offense as defined in § 4177B(e)(1) a. –d. of this Title, the minimum fine shall be \$2,000 and shall not be subject to suspension and the minimum period of imprisonment shall not be subject to suspension but shall, notwithstanding any provision of this Section or Title to the contrary, be served subject to the provisions of § 4205(c)(2) of this Title.”.

Section 32. Amend § 2810 of Title 21 of the Delaware Code by striking the sentence “The periods of imprisonment required under this Section shall not be subject to suspension.” as it appears therein, and by substituting in lieu thereof the following:

“The periods of imprisonment required under this Section shall not be subject to suspension and if the judgment of the Court prohibiting the operation of a motor vehicle was based in whole or in part upon a conviction of the person for a prior or previous driving under the influence-related conviction or offense as defined in § 4177B(e)(1) a. –d., or in whole or in part upon a conviction under any criminal statute pertaining to injury or death caused to another person by the person's driving or operation of a vehicle, the period of imprisonment shall, notwithstanding any provision of this Section or Title to the contrary, be served subject to the provisions of § 4205(c)(2) of this Title.”..

Section 33. Amend Section 1010(a)(3) of Title 10 of the Delaware Code by striking the phrases “assault first degree” and “robbery first degree” as they appear therein.