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HOUSE OF REPRESENTATIVES

142nd GENERAL ASSEMBLY

HOUSE BILL NO. 210

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:

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

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

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

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

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

13           (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 this subsection 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 this subsection 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;

(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”.

97           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 §  
98   4753A of Title 16 of the Delaware Code by striking the phrase “15 years” as it appears variously therein, and by  
99   substituting in lieu thereof the phrase “8 years”.

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

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

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

106           “(a) *Previous convictions.* – In any case in which a defendant has previously been convicted of any offense set  
107           forth in §§ 4751, 4752, 4753A or 4761 of this Title, or of any offense set forth under the laws of the  
108           United States, any other state or any territory of the United States which is the same as or equivalent to  
109           any of such offenses, the penalties set forth in §§ 4751 – 4761 of this Title shall be increased as follows.”.

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

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

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

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

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

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

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

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

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

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

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

#### SYNOPSIS

This Act will ensure that Delaware’s prison space is reserved for violent offenders. The penalties currently available to punish offenders convicted of certain violent crimes are inadequate to protect society from them, and are insufficient to deter others from committing similar crimes. The prison space necessary to accommodate this toughening of our sentencing practices will be created by reallocating prison beds currently devoted to certain drug and motor vehicle offenders. Adoption of this Act is recommend by Delaware’s Sentencing Accountability Commission (SENTAC).

The changes to Delaware’s criminal sentences are summarized below:

CRIME	CURRENT SENTENCE	NEW SENTENCE
<b>Murder Second Degree</b>	10 year minimum and 20 year maximum prison sentence	15 year minimum prison sentence and maximum sentence of life imprisonment
<b>Manslaughter</b>	No minimum prison sentence and 10 year maximum prison sentence	2 year minimum and 20 year maximum prison sentence
<b>Assault First Degree</b>	No minimum prison sentence and 10 year maximum prison sentence	2 year minimum and 20 year maximum prison sentence
<b>Robbery First Degree (1<sup>st</sup> offense)</b>	Minimum 2 year prison sentence	Minimum 3 year prison sentence
<b>Robbery First Degree (2<sup>nd</sup> offense)</b>	Minimum 4 year prison sentence	Minimum 5 year prison sentence
<b>Burglary First Degree</b>	No minimum prison sentence	Minimum 2 year prison sentence
<b>Burglary First Degree( 2<sup>nd</sup> offense)</b>	No minimum prison sentence	Minimum 4 year prison sentence
<b>Burglary Second Degree (1<sup>st</sup> offense)</b>	No minimum prison sentence	Minimum 1 year prison sentence
<b>Burglary Second Degree (2<sup>nd</sup> offense)</b>	No minimum prison sentence	Minimum 3 year prison sentence
<b>Possession of a Firearm By a Person Prohibited (by a prior violent felony conviction)</b>	1 year minimum prison sentence	3 year minimum prison sentence if violent felony conviction within the preceding 10 years
<b>All Class B felonies</b>	20 year maximum prison sentence	25 year maximum prison sentence
<b>All Class C felonies</b>	10 year maximum prison sentence	15 year maximum prison sentence
<b>Trafficking in Illegal Drugs: First Weight Level</b>	3 year mandatory minimum prison sentence	2 year mandatory minimum prison sentence (excepting heroin)
<b>Trafficking in Illegal</b>	5 year mandatory minimum prison	4 year mandatory minimum prison



<b>Drugs: Second Weight Level</b>	sentence	sentence (excepting heroin)
<b>Trafficking in Illegal Drugs: Third Weight Level</b>	15 year mandatory minimum prison sentence	8 year mandatory minimum prison sentence (excepting heroin)
<b>Manufacture/Delivery/Possession with Intent to Deliver Illegal Drugs (Second Offense)</b>	15 year mandatory minimum prison sentence	3 year mandatory minimum prison sentence for all drugs except heroin; 5 year mandatory minimum prison sentence for heroin
<b>CRIME</b>	<b>CURRENT SENTENCE</b>	<b>NEW SENTENCE</b>
<b>Manufacture/Delivery/Possession with Intent to Deliver Illegal Drugs (with prior drug offense)</b>	3 year mandatory minimum prison sentence for all drugs except narcotics; 5 year mandatory minimum prison sentence for narcotics	3 year mandatory minimum prison sentence for all drugs except heroin; 5 year mandatory minimum prison sentence for heroin

In addition to the changes set forth above, the Act will also increase the minimum weight of cocaine necessary to establish the crime of Trafficking in Cocaine from 5 grams to 10 grams. In order to facilitate substance abuse treatment for those offenders most likely to need it, the Department of Correction is authorized to house any defendant serving a prison sentence for any drug offense at Level IV during the last 180 days of any such sentence.

The Department of Correction will also be authorized to house defendants convicted of most Title 21 traffic offenses at Level IV. Defendants in Title 21 cases involving injury or intoxication who are sentenced to Level V will be housed at either Level V or the Violation of Probation Center, at the discretion of the Department. Defendants in motor vehicle cases involving death who are sentenced to incarceration will continue to be housed at Level V.

The Act will combat the alarming rise in the number of armed robberies and violent assaults committed by juveniles by transferring original jurisdiction over the crimes of Robbery First Degree and Assault First Degree from the Family Court to the Superior Court. By doing so, the Act provides the Superior Court with discretion to either retain jurisdiction over such cases, thereby substantially increasing the range of available penalties, or to transfer the case back to the Family Court for prosecution. In order to provide a meaningful deterrent to the commission of armed violent crimes by juveniles, the Act also establishes a one (1) year mandatory commitment to the custody of the Department for Children, Youth and Their Families for any juvenile adjudicated delinquent in the Family Court for acts constituting the felonies of Possession of a Firearm During the Commission of a Felony or Robbery in the First Degree (where either a deadly weapon is displayed or serious physical injury is caused to the victim).