



SPONSOR: Rep. Van Sant & Rep. DiPinto &  
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Ewing, Fallon, Hudson, Keeley,  
Quillen; Sens. Simpson, Still

HOUSE OF REPRESENTATIVES

142nd GENERAL ASSEMBLY

HOUSE BILL NO. 35

AN ACT TO AMEND TITLE 16 AND TITLE 11 OF THE DELAWARE CODE RELATING TO DRUG OFFENSES.

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

1 WHEREAS, Delaware, like the rest of the nation, faces the enormous challenge of ridding our  
2 communities of the illegal drug trade;

3 WHEREAS, incarceration, while critical in many cases, imposes a huge financial burden on the  
4 State and must be utilized in a targeted and precise manner;

5 WHEREAS, Delaware must strive to utilize and maximize its limited incarceration resources for  
6 our most serious violent offenders;

7 WHEREAS, Delaware enjoys an experienced and very capable judiciary, all of whom have been  
8 empowered by the General Assembly to impose just punishment when sentencing persons convicted of  
9 crimes;

10 WHEREAS, increased judicial discretion allows the State to utilize its limited criminal justice  
11 resources in a more targeted and effective manner, thus resulting in enhanced public safety;

12 WHEREAS, Delaware's experienced judiciary is capable of distinguishing between high level  
13 drug dealers who seek profit from the illegal and violent drug trade in calculating fashion, from first time  
14 offenders acting as couriers or other less serious offenders;

15 WHEREAS, there remains a strong public policy interest in firmly holding those offenders who  
16 sell and distribute illegal drugs accountable;

17 WHEREAS, the public is most interested in policies and procedures that result in safer  
18 neighborhoods and communities;

19 WHEREAS, public safety is enhanced when offenders, who otherwise return to the community  
20 without their addictions addressed, have access to treatment programs with proven results in terms of  
21 reducing recidivism;

22 WHEREAS, public safety is enhanced by a more precise and targeted use of our criminal justice  
23 resources;

24 WHEREAS, the threat of the mandatory time held in abeyance provides significant incentives for  
25 offenders to stick with a drug treatment or other regimented program imposed by the Court;

26 WHEREAS, with this legislation, Delaware's nationally acclaimed and respected judiciary is given  
27 the authority to defer imposition of minimum mandatory sentence in certain circumstances for drug  
28 offenses, contingent upon the successful completion of a rigorous treatment program and/or successfully  
29 fulfilling other conditions deemed appropriate by the Court;

30 WHEREAS, objective criteria for deferring minimum mandatory sentences under this Act will be  
31 established by the Sentencing Accountability Commission, an entity with representatives from the  
32 Delaware State Police, the Attorney General's Office, the Judiciary, the Public Defender's Office, the  
33 Governor's Office and the Department of Correction; and

34 WHEREAS, this legislation, if implemented properly, will provide a cost effective and viable  
35 alternative to traditional incarceration, while holding offenders accountable via rigorous, mandatory  
36 programs that reduce recidivism.

37 NOW, THEREFORE:

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

39 Section 1. Amend §4753A, Title 16 of the Delaware Code by inserting as new §4753A(f) the  
40 following:

41 "(f) Notwithstanding subsections (a) or (b), or any other law, rule, or regulation to the  
42 contrary, the sentencing court may defer imposition of all or part of the minimum mandatory  
43 sentence outlined in subsection (a) if the court determines on the record that:

44 (i) the minimum mandatory sentence would be excessive in light of mitigating  
45 circumstances surrounding the case; and

(ii) the defendant agrees that any sentence or portion thereof deferred under this subsection shall be subject to and contingent upon successful completion of a rigorous drug treatment plan, job readiness program or other programs as imposed by the Court. Defendant shall remain at level V until admission to the program(s) imposed by the Court pursuant to this section.

Consistent with the criteria established by the Delaware Sentencing Accountability Commission, the Court shall state, on the record, the reasons for deferring all or part of the minimum mandatory sentence pursuant to this section. In those cases where the sentencing court has deferred imposition of all or part of the minimum mandatory sentence, the sentencing court shall enter a judgment of conviction. Upon receipt of an allegation that the defendant has failed to comply with any conditions set forth by the sentencing court, the offender will be held at level V, without bail, and brought before the sentencing court without any unnecessary delay. Upon a finding that the offender has failed to comply with a material term or condition of the sentence, the court shall at least impose the original minimum mandatory sentence previously deferred pursuant to this section and shall have the discretion to impose the full applicable statutory maximum sentence."

Section 2. Amend §4763, Title 16 of the Delaware Code by inserting a new paragraph (a)(4) to read as follows:

"(a)(4) Notwithstanding §4763(a) above, or any other law, rule, or regulation to the contrary, the sentencing court may defer imposition of all or part of the minimum mandatory sentence outlined in subsection (a) if the court determines on the record that: "(i) the minimum mandatory sentence would be excessive in light of mitigating circumstances surrounding the case; and (ii) the defendant agrees that any sentence or portion thereof deferred under this subsection shall be subject to and contingent upon successful completion of a rigorous drug treatment plan, job readiness program or other programs as imposed by the Court. Defendant shall remain at Level V until admission to the program(s) imposed by the Court pursuant to this section. Consistent with the criteria established by the Delaware Sentencing Accountability Commission, the Court shall state, on the record, the reasons for deferring all or part of the minimum mandatory sentence pursuant to this section. In those cases where the sentencing court has deferred

74 imposition of all or part of the minimum mandatory sentence, the sentencing court shall enter a  
75 judgment of conviction. Upon receipt of an allegation that the defendant has failed to comply with  
76 any conditions set forth by the sentencing court, the offender will be held at level V, without bail,  
77 and brought before the sentencing court without any unnecessary delay. Upon a finding that the  
78 offender has failed to comply with a material term or condition of the sentence, the court shall at  
79 least impose the original minimum mandatory sentence previously deferred pursuant to this  
80 section and shall have the discretion to impose the full applicable statutory maximum sentence."

81 Section 3. Amend §6581, Title 11 of the Delaware Code by adding new paragraph (c)(5) to read  
82 as follows:

83 "(c)(5) The Commission shall establish detailed, objective criteria for determining the type of  
84 mitigating circumstances which may warrant deferment below the minimum mandatory thresholds  
85 pursuant to 16 Del.C. §§4753A, 4763(a) as well as the rigorous treatment programs that shall be  
86 imposed as a condition of deferment in such cases. The criteria shall be developed within 120  
87 days of enactment of this Act. Although not exhaustive, the objective criteria for deferring the  
88 minimum mandatory sentence may include the defendant's lack of any prior criminal record, the  
89 defendant's minor role in the offense, the amount of the seized contraband, the defendant's  
90 substance and/or mental health treatment needs, the defendant's cooperation with law enforcement,  
91 plus any other extraordinary factors involved in any particular case. The Commission's criteria in  
92 terms of imposition of programming pursuant to this Act shall be established in close consultation  
93 with the Department of Correction. The criteria shall incorporate a system for determining the  
94 availability of such programs, as well as objective assessment tools designed to provide the Court  
95 the information necessary to determine the efficacy of the particular program for a particular  
96 offender including its likelihood for success and its cost effectiveness."

97 Section 4. Section 1 and Section 2 of this Act shall become effective 90 days after the effective  
98 date of the criteria established and promulgated pursuant to Section 3 of this Act. The remainder of the Act  
99 shall become effective upon enactment as law.

## SYNOPSIS

This bill provides the sentencing court with the flexibility to defer the minimum mandatory penalties in certain drug cases.

Under this bill, the minimum mandatory penalties will remain in full force and effect, unless the court deems that such penalties are excessive, in light of certain mitigating circumstances, and that an effective mandatory treatment program is a more effective use of limited resources. If the court deems it appropriate to defer the minimum mandatory thresholds, the sentence is deferred contingent upon a defendant successfully completing a rigorous substance abuse or other specified program as designated by the Court. No defendant will be released from Level V pursuant to this legislation, unless the program ordered by the Court is immediately available and has accepted the defendant for treatment. If the defendant fails to comply with the sentence as imposed by the Court pursuant to this legislation, the Court is required to impose the full minimum mandatory sentence previously deferred and has discretion to impose the full statutory maximum sentence.

The bill also requires Sentencing Accountability Commission whose current membership includes representatives from the Delaware State Police, the Attorney General's Office, the Department of Correction, the Governor's Office, the Judiciary and the Public Defender to establish objective criteria in terms of which cases are appropriate for deferring imposition of the minimum mandatory sentence, as well as the required rigorous treatment programs that must be successfully completed.