SPONSOR: Sen. Townsend & Sen. Henry & Rep. Walker
Sens. Blevins, Bushweller, Ennis, Hall-Long, Marshall, McBride, McDowell, Peterson, Poore, Sokola & Venables,
Reps. Barbieri, Baumbach, Brady, Jaques, J. Johnson, Kowalko, Mitchell, Osienski, Paradee & Ramone

DELAWARE STATE SENATE
147th GENERAL ASSEMBLY

SENATE BILL NO. 9

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CRIMINAL SENTENCES.

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

Section 1. Amend Section 636(b) of Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(b) Murder in the first degree is a class A felony and shall be punished:

(1) as provided in § 4209 of this title for an offense that was committed after the person had reached the person's eighteenth birthday; and

(2) as provided in § 4209A of this title for an offense that was committed before the person had reached the person's eighteenth birthday.

Section 2. Amend the catchline to Section 4209 and amend Section 4209(a) of Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 4209. Punishment, procedure for determining punishment, review of punishment and method of punishment for first-degree murder committed by adult offenders.

(a) Punishment for first-degree murder. -- Any person who is convicted of first-degree murder for an offense that was committed after the person had reached the person's eighteenth birthday shall be punished by death or by imprisonment for the remainder of the person's natural life without benefit of probation or parole or any other reduction, said penalty to be determined in accordance with this section.

Section 3. Amend Chapter 42 of Title 11 of the Delaware Code by inserting a new Section 4209A as follows:

§ 4209A. Punishment for first-degree murder committed by juvenile offenders.

Any person who is convicted of first-degree murder for an offense that was committed before the person had reached the person's eighteenth birthday shall be sentenced to term of incarceration not less than 25 years to be served at Level V up to

a term of imprisonment for the remainder of the person's natural life to be served at Level V without benefit of probation or parole or any other reduction.

Section 4. Amend Section 4217(f) of Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

"(f)(1) Notwithstanding any provision of this section to the contrary, in the case of any offender who is serving a sentence of incarceration at Level V imposed pursuant to a conviction for any crime, the Court may order that said offender shall be ineligible for sentence modification pursuant to this section until a specified portion of said Level V sentence has been served, except that

(2) Notwithstanding any provision of this section to the contrary no ~~No~~ offender who is serving a sentence of incarceration at Level V imposed pursuant to a conviction for a violent felony in Title 11 shall be eligible for sentence modification pursuant to this section until the offender has served at least one-half of the originally imposed Level V sentence, and no offender who is serving a statutory mandatory term of incarceration at Level V imposed pursuant to a conviction for any offense set forth in Title 11 shall be eligible for sentence modification pursuant to this section during the mandatory portion of said sentence.

(3)a. Notwithstanding any provision of this section or of this Title to the contrary, any offender sentenced to a term of incarceration of life imprisonment to be served at Level V for any offense other than murder in the first degree that was committed before the offender had reached the offender's eighteenth birthday shall be eligible for sentence modification pursuant to this section after the offender has served 25 years of the originally imposed Level V sentence.

b. Notwithstanding any provision of this section or of this Title to the contrary, the Court in its discretion and at the time of sentencing may designate in the original sentencing order that any offender sentenced to a term of incarceration of life imprisonment to be served at Level V for murder in the first degree that was committed before the offender had reached the offender's eighteenth birthday shall be eligible for sentence modification pursuant to this section after the offender has served 35 years of the originally imposed Level V sentence.

(4) Nothing in this paragraph subsection shall preclude a sentence modification pursuant to this section which is based solely upon serious medical illness or infirmity of the offender."

Section 5. Amend Section 3901(d) of Title 11 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

(d)(1) Except as provided in paragraph (2) of this subsection no sentence of confinement of any criminal defendant by any court of this State imposed for any offense shall be made to run concurrently with any other sentence of confinement imposed on such criminal defendant.

(2) Nowithstanding the provisions of paragraph (1) of this subsection to the contrary, when imposing any sentence of confinement on any criminal defendant for any offense that was committed before the criminal defendant had reached his or her eighteenth birthday the sentencing court may, in its discretion, order that such sentence run shall concurrently with any other sentence of confinement imposed on such criminal defendant, except that the provisions of this subsection shall not apply to sentences imposed for the following offenses and such sentences shall not be made to run concurrently with any other sentence of confinement:

a. Possession of a Deadly Weapon During the Commission of a Felony pursuant to Section 1447 of this Title;

b. Possession of a Firearm During the Commission of a Felony pursuant to Section 1447A of this Title; and

c. Possession of a Deadly Weapon By Persons Prohibited pursuant to Section 1448 of this Title.

Section 6. The provision of this Act creating new Section 4209A of Title 11 of the Delaware Code shall be applicable to any sentence for any offense that was committed before the offender had reached the offender's eighteenth birthday whether that sentence was imposed either before or after the enactment of this Act. The Superior Court shall provide procedures to receive petitions for resentencing from those previously sentenced for first degree murder for any offense that was committed before the person had reached his or her eighteenth birthday, such resentencing to proceed under the provisions of new Section 4209A. Nothing in this section, however, shall require the court to grant a reduction in sentence to any such offender.

Section 7. The provision of this Act creating new Section 4217(f)(3)a of Title 11 of the Delaware Code shall be applicable to any term of incarceration of life imprisonment to be served at Level V for any offense that was committed before the offender had reached the offender's eighteenth birthday whether that sentence was imposed either before or after the enactment of this Act.

Section 8. The provision of this Act creating new Section 4217(f)(3)b of Title 11 of the Delaware Code shall be applicable to any term of incarceration of life imprisonment to be served at Level V for any offense that was committed before the offender had reached the offender's eighteenth birthday whether that sentence was imposed either before or after the enactment of this Act. The Superior Court shall provide procedures to receive petitions for those previously sentenced for first degree murder for any offense that was committed before the person had reached his or her eighteenth birthday for application of the provisions of new Section 4217(f)(3)b of Title 11 of the Delaware Code to his or her sentence. Nothing in this section, however, shall require the court to grant such a petitioner sentence modification pursuant to new Section 4217(f)(3)b of Title 11 of the Delaware Code.

Section 9. The provision of this Act creating new Section 3901(d)(2) of Title 11 of the Delaware Code shall be applicable to any cumulative term of incarceration of 50 years or greater for any offense that was or offenses that were

committed before the offender had reached the offender's eighteenth birthday when that cumulative term of incarceration was imposed before the enactment of this Act. The Superior Court shall provide procedures to receive petitions from those previously sentenced to a cumulative term of 50 years or greater for any offense that was or offenses that were committed before the person had reached his or her eighteenth birthday for application of the provisions of new Section 3901(d)(2) of Title 11 of the Delaware Code to his or her sentence. Nothing in this section, however, shall require the court to grant such a petitioner sentence modification pursuant to new Section 3901(d)(2) of Title 11 of the Delaware Code.

Ssynopsis

This Act modifies Delaware's juvenile sentencing laws to bring those laws into compliance with decisions the United States Supreme Court issued in 2010 and 2012.

During its last term, the United States Supreme Court held that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile homicide offenders. Miller v. Alabama, 132 S. Ct. 2455 (2012). Instead, to pass constitutional muster, a State's sentencing system may permit a life-without-parole sentence only if it also permits the sentencer to consider youth as a mitigating circumstance and to assess whether the law's harshest term of im¬prisonment proportionately punishes an individual juvenile offender. In Delaware, there are only two statutorily-mandated alternative sentences for murder in the first degree, death and a mandatory life-without-parole term. DEL. CODE ANN. tit. 11, § 4209. Neither may now be imposed on a juvenile who commits first degree murder. This Act will bring Delaware into compliance with the Miller holding by removing juvenile offenders from the mandatory sentencing scheme for first degree murder to one which gives judges a range of options up to life imprisonment. The judge will be able to exercise his or her discretion within that range using individualized criteria suggested by the Supreme Court; such factors are already an integral part of Delaware's sentencing procedures. See, e.g., SENTAC Benchbook, 2012 (Jan. 2012) pp. 123-26 (describing aggravating and mitigating circumstances).

In a recent term, the United States Supreme Court held also that the Eighth Amendment prohibits sentencing a minor convicted of a non-homicide offense to life without the possibility of parole. Graham v. Florida, 130 S.Ct. 2011, 2034 (2010). Current Delaware law allows a sentence of life imprisonment to be imposed upon a juvenile offender for a non-homicide offense and, as parole has been abolished, such a sentence would be a natural life term with no possibility for release. This Act reorganizes and amends the provision in Delaware's Criminal Code that allows a court to retain jurisdiction to modify a sentence and reduce the level of custody or time to be served. Under this Act a juvenile offender sentenced to a life term for any offense other than first degree murder would now be eligible for sentence modification pursuant to that provision after the offender has served 25 years of the originally imposed Level V sentence. This amendment insures that any sentence imposed under Delaware law would comply with the Court's decision in Graham which provides: "A State need not guarantee the [juvenile] offender eventual release, but if it imposes a sentence of life it must provide him or her with some realistic opportunity to obtain release before the end of that term." Id. To further insure compliance with Miller v. Alabama, the Act also provides a sentencing judge discretion to designate in the original sentencing order of a juvenile convicted of first degree murder and sentenced to life, that he or she will be eligible to seek sentence modification after serving 35 years.

Lastly, the Act would permit the sentencing court to order that multiple terms of incarceration imposed upon a person for crimes committed before the person's eighteenth birthday may be served concurrently to avoid de facto life sentences in such cases.

Author: Senator Townsend