SPONSOR: Sen. Henry & Rep. Keeley, Sens. McDowell, Peterson; Reps. Baumbach, Bolden, Kowalko

DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE BILL NO. 194

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO SENTENCES FOR CERTAIN DRUG OFFENSES.

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

Section 1. Amend Chapter 42, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4222. Modification of sentences for certain drug offenses.

(a) Notwithstanding any statute, court rule, or regulation to the contrary, the Superior Court, upon its own motion or the motion of the defendant or the Department of Correction, may reduce the term of imprisonment of a defendant if either of the following apply:

(1) The offense or any elements of the offense for which the defendant is serving a term of imprisonment was changed by 78 Del. Law, c. 13.

(2) The statutory penalty applicable to the offense for which the defendant is serving a term of imprisonment was reduced by 78 Del. Law, c. 13.

(b) In deciding a motion made under subsection (a) of this section, the Superior Court shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (b)(2) of this section. The Superior Court, in determining the particular sentence to be imposed, shall consider all of the following:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant.

(2) The need for the sentence imposed to do all of the following:

a. Reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense.

b. Afford adequate deterrence to criminal conduct.

c. Protect the public from further crimes of the defendant.

d. Provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

(3) The kinds of sentences available.

(4) The kinds of sentences and the sentencing range established for the applicable category of offense committed by the applicable category of defendant as set forth by the Delaware Code.

(5) In the case of a violation of probation, parole, or supervised release, the applicable statutory penalty established by the Delaware Code.

(6) Any additional amendments to the sections amended by 78 Del. Law, c. 13 that have been entered into the Delaware Code.

(7) The need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct.

(8) The need to provide restitution to any victims of the offense.

(c)(1) In determining whether, and to what extent, a reduction in the defendant's term of imprisonment under this section is warranted, the Superior Court shall determine the following, as applicable:

a. The offense under 78 Del. Law, c. 13 that would have been applicable to the conduct for which the defendant is serving a term of imprisonment.

b. The statutory penalty under 78 Del. Law, c. 13 that would have been applicable to the offense for which the defendant is serving the term of imprisonment or to the offense determined to be applicable under paragraph (c)(1)a. of this section.

(2) In making a determination under paragraph (c)(1) of this section, the Superior Court shall substitute only the amendments made by 78 Del. Law, c. 13 for the corresponding offense or statutory penalty that applied when the defendant was sentenced and shall leave all other sentencing decisions unaffected.

(d) The Superior Court may not reduce a defendant's term of imprisonment under this section if either of the following applies:

(1) No amendments made by 78 Del. Law, c. 13 are applicable to the offense for which the defendant is serving a term of imprisonment.

(2) No amendments made by 78 Del. Law, c. 13 reduce the statutory penalty applicable to the offense for which the defendant is serving a term of imprisonment or to the offense determined to be applicable under paragraph (c)(1)a. of this section.

(e)(1) Except as provided in paragraph (e)(2) of this section, the Superior Court may not under this section reduce the defendant's term of imprisonment to a term that is less than the minimum of the statutory penalty provided by 78 Del. Law, c. 13.

(2) If the term of imprisonment imposed on a defendant was less than the term of imprisonment provided by the statutory penalty applicable to the offense at the time of sentencing pursuant to a government motion to reflect the defendant's substantial assistance to authorities, a reduction comparably less than the statutory penalty provided by 78 Del. Law, c. 13 may be appropriate.

(f) The Superior Court may not reduce a defendant's term of imprisonment to less than the term of imprisonment that the defendant has already served.

(g) The Superior Court may not order a reduced term of imprisonment based on this section unless the effective date of the Court's order is January 1, 2017, or later.

(h) Absent extraordinary circumstances, the defendant or the Department of Correction may file only one motion for sentence modification under this section.

(i) By [6 months following the date of enactment of this Act], the Department of Correction shall notify any defendant to which this section applies of the opportunity for a sentence modification under this section. The Department of Correction shall similarly notify the attorney of record for that defendant. If the attorney of record is unavailable to receive notice, the Department of Correction shall notify the Office of Defense Services.

SYNOPSIS

In 2011, House Bill No. 19, otherwise known as the Ned Carpenter Act, 78 Del. Law, c. 13, overhauled the statutory penalties for drug offenses. Notably, it drastically reduced the mandatory minimum sentences for many drug offenses. These changes paralleled the changes made by the federal government and many other states to their respective sentencing provisions.

However, the Ned Carpenter Act did not make the new statutory penalties retroactive. By contrast the federal government and several states, including California, New York, and Michigan, have made their new sentencing provisions for drug offenses retroactive, enabling inmates sentenced under the prior sentencing provisions to apply for resentencing.

Since Delaware has not done the same, there are many inmates in Delaware's prisons who are serving long terms of incarceration, even though the current statutory penalties would almost certainly have provided them with far shorter sentences. This Act rectifies this by providing that the new statutory penalties established by the Ned Carpenter Act apply retroactively and allowing such inmates to petition the Superior Court for a reduced sentenced.

Author: Senator Henry