SPONSOR: Sen. Peterson & Rep. J. Johnson & Rep. M. Smith
Sens. Henry, Townsend; Rep. Potter

DELAWARE STATE SENATE
148th GENERAL ASSEMBLY

SENATE SUBSTITUTE NO. 1

FOR

SENATE BILL NO. 163

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO HABITUAL OFFENDERS.

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

Section 1. Amend § 4214 of Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4214 Habitual criminal; life sentence

(a) Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent violent felony, or attempt to commit such a violent felony, as defined in Section 4201(c), or 4 times convicted of any felony under the laws of this State, and/or any other state, United States or any territory of the United States, is declared to be an habitual criminal and the court, upon the State's petition, shall impose the applicable minimum sentence pursuant to (b), (c) or (d) of this section and may, in its discretion, impose a sentence of up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(b) Any person who has been 3 times convicted of a felony under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a 4th or subsequent felony, which is the person's first Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title, shall receive a minimum sentence of one-half of the statutory maximum penalty provided elsewhere in this title, unless the maximum statutory penalty is life in which case the minimum sentence shall be 30 years, for the 4th or subsequent felony which forms the basis of the States petition to have the person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(c) Any person who has been 2 times convicted of a felony under the laws of this State, and/or any other state, United States or any territory of the United States, and 1 time convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as

defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a 4th or subsequent violent felony, or attempt to commit such a violent felony, as defined by § 4201(c) of this title, shall receive a minimum sentence of the statutory maximum penalty provided elsewhere in this title for the 4th or subsequent felony which forms the basis of the State's petition to have the person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(d) Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a 3rd or subsequent felony which is a violent felony, or an attempt to commit such a violent felony, as defined in § 4201(c), shall receive a minimum sentence of the statutory maximum statutory penalty provided elsewhere in this title for the 3rd or subsequent violent felony which forms the basis of the State's petition to have the person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

(e) Notwithstanding any provision of this title to the contrary, any sentence imposed pursuant to (b), (c), or (d) of this section shall not be subject to suspension by the court, and shall be served in its entirety at full custodial Level V institutional setting without the benefit of probation or parole, except that any such sentence shall be subject to the provisions of §§ 4205(h), 4381 and 4382 of this title. For purposes of the computation of good time under § 4381 of this title, a life sentence imposed pursuant only to § 4214 of this title shall equate to a sentence of 45 years.

(f) Notwithstanding any statute, court rule or regulation to the contrary, any person sentenced as an habitual criminal prior to the date of enactment of this section shall be eligible to petition the Superior Court for sentence modification after the person has served a sentence of incarceration equal to any applicable mandatory sentence otherwise required by this section or the statutes describing said offense or offenses, whichever is greater. Absent extraordinary circumstances, the petitioner may only file one application for sentence modification under this section. A Superior Court Judge upon consideration of a petition filed pursuant to this subsection may modify, reduce or suspend such petitioner's sentence, excepting any minimum or mandatory sentence required by this section or the statutes describing said offense or offenses. If a Superior Court judge modifies such petitioner's sentence, the judge may impose a suspended sentence that includes a probationary term. Nothing in this section, however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section. For the purposes of this subsection, the "applicable mandatory sentence" shall be calculated by reference to the penalties prescribed for the relevant offense or offenses by this Code as of the date of enactment of this section, unless said offense has been repealed, in which case the penalties prescribed by this Code at the time of the Act repealing said offense shall be controlling. The Superior Court shall establish rules to implement this

subsection which are consistent with the statute, and those rules shall also provide that all petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a Title 16 offense are heard first, followed by all petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a crime against property, followed by all other petitions. The rules shall also provide for an initial review, including review of a formal response by the Department of Justice after consulting with the victim(s), of sentence modification petitions involving crimes against persons or property, for the purpose of ensuring that victims are not inconvenienced by petitions that should be denied based upon the documents submitted; in cases not denied in this manner, all victims shall be given an opportunity to be heard. The Superior Court's review of any petitions filed pursuant to this paragraph shall include a review of the applicant's prior criminal history, including arrests and convictions, a review of the applicant's conduct while incarcerated, and available evidence as to the likelihood that the applicant will reoffend if released. In all cases where sentence modifications are granted, modified sentences should provide for step-down provisions to ensure successful reintegration of persons into the community. By January 1, 2017, the Department of Correction shall notify any criminal defendant whose Level V sentence was imposed under a statutory sentencing regimen which was subsequently changed in a manner that reduced the sentence applicable to the defendant's convictions. The Department of Correction shall similarly notify the attorney of record, and if the attorney of record is unavailable to receive notice, the Office of Defense Services.

~~(a) Any person who has been 3 times convicted of a felony, other than those which are specifically mentioned in subsection (b) of this section, under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony of this State is declared to be an habitual criminal, and the court in which such fourth or subsequent conviction is had, in imposing sentence, may in its discretion, impose a sentence of up to life imprisonment upon the person so convicted. Notwithstanding any provision of this title to the contrary, any person sentenced pursuant to this subsection shall receive a minimum sentence which shall not be less than the statutory maximum penalty provided elsewhere in this title for the fourth or subsequent felony which forms the basis of the State's petition to have the person declared to be an habitual criminal except that this minimum provision shall apply only when the fourth or subsequent felony is a Title 11 violent felony, as defined in § 4201(c) of this title. Notwithstanding any provision of this title to the contrary, any sentence of life imprisonment imposed pursuant to this subsection shall not be subject to suspension by the court, and shall be served in its entirety at a full custodial Level V institutional setting without the benefit of probation, parole, earned good time or any other reduction. Notwithstanding any provision of this title to the contrary, any sentence of less than life imprisonment imposed pursuant to this subsection shall not be subject to suspension by the court, and shall be served in its entirety at a full custodial Level V institutional setting~~

~~without the benefit of probation or parole, except that any such sentence shall be subject to the provisions of §§ 4205(h), 4217, 4381 and 4382 of this title.~~

~~(b) Any person who has been 2 times convicted of a felony or an attempt to commit a felony hereinafter specifically named, under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony hereinafter specifically named, or an attempt to commit such specific felony, is declared to be an habitual criminal, and the court in which such third or subsequent conviction is had, in imposing sentence, shall impose a life sentence upon the person so convicted unless the subsequent felony conviction requires or allows and results in the imposition of capital punishment. Such sentence shall not be subject to the probation or parole provisions of Chapter 43 of this title.~~

~~Such felonies shall be:~~

| ~~*Section*~~ | ~~*Crime*~~ |
|---|---|
| ~~803~~ | ~~Arson in the first degree~~ |
| ~~826~~ | ~~Burglary in the first degree~~ |
| ~~825~~ | ~~Burglary in the second degree~~ |
| ~~826A~~ | ~~Home Invasion~~ |
| ~~636~~ | ~~Murder in the first degree~~ |
| ~~635~~ | ~~Murder in the second degree~~ |
| ~~632~~ | ~~Manslaughter~~ |
| ~~783~~ | ~~Kidnapping in the second degree~~ |
| ~~783A~~ | ~~Kidnapping in the first degree~~ |
| ~~606~~ | ~~Abuse of a pregnant female in the first degree~~ |
| ~~613~~ | ~~Assault in the first degree~~ |
| ~~[Former] 615~~ | ~~Assault by abuse~~ |
| ~~Former 763~~ | ~~Rape in the second degree~~ |
| ~~Former 764~~ | ~~Rape in the first degree~~ |
| ~~Former 766~~ | ~~Sodomy in the first degree~~ |
| ~~832~~ | ~~Robbery in the first degree~~ |
| ~~836~~ | ~~Carjacking in the first degree~~ |
| ~~Former 771~~ | ~~Unlawful sexual penetration in the second degree~~ |

~~Former 772 Unlawful sexual penetration in the first degree~~

~~Former 773 Sexual intercourse in the third degree~~

~~Former 774 Unlawful sexual intercourse in the second degree~~

~~Former 775 Unlawful sexual intercourse in the first degree~~

~~771 Rape in the third degree~~

~~772 Rape in the second degree~~

~~773 Rape in the first degree~~

~~778(1), (2) or (3) Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the First Degree~~

~~1447A Possession of a firearm during the commission of a felony~~

~~*Title 16, Section* *Crime*~~

~~Former 4751 Manufacture, delivery or possession with intent to manufacture or deliver a narcotic drug~~

~~Former 4752 Manufacture, delivery or possession with intent to manufacture or deliver nonnarcotic, controlled substance~~

~~Former 4752A Unlawful delivery or attempt to deliver noncontrolled substance~~

~~Former 4753A Trafficking in marijuana, cocaine, illegal drugs or methamphetamine.~~

~~4752 Drug dealing – aggravated possession; class B felony~~

~~4753 Drug dealing – aggravated possession; class C felony~~

~~4754 Drug dealing – aggravated possession; class D felony~~

~~4755 Aggravated possession; class E felony~~

~~Notwithstanding any provision of this title to the contrary, any sentence imposed pursuant to this subsection shall not be subject to suspension by the court, and shall be served in its entirety at a full custodial Level V institutional setting without benefit of probation, parole, earned good time or any other reduction.~~

~~(c) Any person who has been convicted for an offense which occurred within this State prior to July 1, 1973, of any of the hereinafter enumerated crimes shall be considered as having been convicted previously of the crimes specified in subsection (b) of this section for purposes of the operation of this section and § 4215 of this title. Any person convicted under the laws of another state, the United States or any territory of the United States of any felony the same as or equivalent to any of the above or hereinafter named felonies is an habitual offender for the purposes of this section and § 4215 of this title.~~

~~Such felonies include:~~

~~Arson in the first degree,~~

~~Burglary in the first degree,~~

~~Burglary in the second degree,~~

~~Murder in the first degree,~~

~~Murder in the second degree,~~

~~Manslaughter except involuntary,~~

~~Manslaughter by motor vehicle,~~

~~Assault with intent to murder,~~

~~Poisoning with intent to murder,~~

~~Kidnapping,~~

~~Abducting child under 12 years,~~

~~Kidnapping child under 15 years,~~

~~Maiming by lying in wait,~~

~~Maiming without lying in wait,~~

~~Rape,~~

~~Assault with intent to commit rape,~~

~~Robbery,~~

~~Assault with intent to commit robbery.~~

~~(d) A conviction of rape or kidnapping under either § 763 or § 783 of this title, as the same existed and were defined prior to the amendment of this section, shall be considered a prior conviction for the purpose of the effectiveness and applicability of this subsection, this section and § 4215 of this title.~~

## SYNOPSIS

This Act makes changes to the existing habitual criminal statute by focusing penalties on Title 11 felonies, eliminating a mandatory minimum sentence of life imprisonment, and providing a mechanism for those convicted under existing law to petition the court for a sentence modification.

This Act provides for enhanced penalties for habitual criminals convicted of multiple felonies and distinguishes between Title 11 violent felonies and all other Title 11 felonies.

Under this Act, a person is declared a habitual criminal upon conviction of a third Title 11 violent felony or a fourth Title 11 felony of any kind. If a person is convicted of a Title 11 felony that is designated as a violent felony, and has prior convictions of three felonies of any kind, the person will receive a minimum mandatory sentence equal to one half the statutory maximum penalty allowed for the final conviction. If however, one of the three prior felonies is a Title 11 felony that is designated as a violent felony, the person will receive a minimum mandatory sentence equal to the statutory maximum penalty allowed for the final conviction If a person is convicted of a third Title 11 felony that is designated as a violent felony, the person will receive a minimum mandatory sentence equal to the statutory maximum penalty allowed for the final conviction There is no provision requiring a mandatory life sentence, though the judge has discretion to impose a life sentence for any person declared a habitual criminal.

This Act further provides an opportunity for those who were convicted under the existing law to apply for a sentence modification once the person has served any applicable minimum mandatory sentence. Such applications for sentence modifications will be subject to court rules promulgated by the Superior Court in accordance with the requirements of the statute.

Author: Senator Peterson