



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

DELAWARE STATE SENATE  
148th GENERAL ASSEMBLY

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, Title 11 of the Delaware Code by deleting it in its entirety and by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4214. Habitual criminal sentencing.

(a) A person is declared to be an habitual criminal when that person has previously been 2 times convicted of a Title 11 violent felony, as defined in § 4201(c) of this title, or 3 times convicted of any Title 11 felony under the laws of this State, or any other state, the United States, or any territory of the United States.

(b) Upon conviction for a third or subsequent Title 11 violent felony, as defined in § 4201(c) of this title, a person shall receive as a minimum sentence the average maximum sentence for the Title 11 violent felonies, as defined in § 4201(c) of this title, that form the basis for the State's petition to have the person declared to be an habitual criminal, up to life in prison. In calculating the average of the maximum penalties, a maximum penalty of life shall be computed as 50 years.

(c) Notwithstanding any provision of this title to the contrary, upon conviction for a fourth or subsequent felony, a person with fewer than 3 Title 11 violent felonies, as defined in § 4201(c) of this title, shall receive a minimum sentence of 5 years, up to life in prison.

(d) Any person sentenced as an habitual criminal under a prior version of this section who was sentenced in excess of the minimum sentences specified in this section shall have the right to petition the Superior Court for sentence modification after the person has served a sentence of incarceration equal to the statutory minimum penalty of any applicable mandatory sentence otherwise required by the law describing the offense or offenses. Notwithstanding any statute, court rule, or regulation to the contrary, a Superior Court judge, upon consideration of a petition filed under this subsection, may modify, reduce, or suspend such petitioner's sentence, except for any minimum or mandatory sentence required by the law describing the offense or offenses. Nothing in this subsection shall require the court to grant a petitioner a sentence modification under this section. The Superior Court shall have the authority to promulgate appropriate rules to

23 regulate the filing and litigation of sentence modification petitions under this subsection, provided those rules are not in  
24 derogation of the substantive rights granted by this subsection. For the purpose of this subsection, the “applicable  
25 mandatory sentence” shall be calculated by reference to the penalties prescribed for the relevant offense or offenses as of  
26 the effective date of this Act.

#### 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 felonies or a fourth Title 11 felony of any kind. Conviction of a third or subsequent Title 11 violent felony carries a maximum penalty of up to life in prison and a minimum penalty of the average maximum sentences for the underlying Title 11 felonies. 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 petition for a sentence modification once the person has served any applicable minimum mandatory sentence. Such petitions for sentence modifications will be subject to court rules promulgated by the Superior Court.

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