

SS1 for SB37 (with SA1)
Mandatory vs Discretionary Misdemeanors in Title 11

Any crime that involves **domestic violence or a child or vulnerable adult victim is eligible only for discretionary expungement**, regardless of what category it would otherwise be in. For all other misdemeanors, a person is eligible under the following categories only if the misdemeanor conviction (or combined misdemeanor and violations relating to the same case) is the **ONLY** conviction on the person's record.

Subchapter II: Offenses against the Person

The following misdemeanors are eligible for discretionary expungement only after receiving a pardon:

- § 628A Vehicular assault in the second degree; class A misdemeanor.
- § 766 Incest; class A misdemeanor.
- § 767 Unlawful sexual contact in the third degree; class A misdemeanor.
- § 791 Acts constituting coercion; class A misdemeanor.

Otherwise, eligibility is as follows:

Mandatory

- § 601 Offensive touching; unclassified misdemeanor; class A misdemeanor.
- § 602 Menacing; unclassified misdemeanor.
- § 603 Reckless endangering in the second degree; class A misdemeanor.
- § 611 Assault in the third degree; class A misdemeanor.
- § 614 Abuse of a sports official; class A misdemeanor.
- § 621 Terroristic threatening. [usually misdemeanor]
- § 625 Unlawfully administering drugs; class A misdemeanor. (Except when charged in conjunction with a sexual offense, as defined in § 761(f) of this title - in which case it is excluded from mandatory.)
- § 627 Prohibited acts as to substances releasing vapors or fumes; unclassified misdemeanor.
- § 628 Vehicular assault in the third degree; class B misdemeanor.
- § 652 Self-abortion; class A misdemeanor.
- § 653 Issuing abortifacient articles; class B misdemeanor.
- § 781 Unlawful imprisonment in the second degree; class A misdemeanor.
- § 785 Interference with custody; class A misdemeanor.

Discretionary

§625 Unlawfully administering drugs, (when charged in conjunction with a sexual offense, as defined in § 761(f) of this title).

§ 763 Sexual harassment

§ 764 Indecent exposure in the second degree

§ 765 Indecent exposure in the first degree

Subchapter III: Offenses involving Property

Discretionary

§ 820 Trespassing with intent to peer or peep into a window or door of another

§ 841B Organized retail crime.

§ 916 Home improvement fraud

§ 917 New home construction fraud

Mandatory

§ 804 Reckless burning or exploding; class A misdemeanor.

§ 805 Cross or religious symbol burning; class A misdemeanor.

§ 811 Criminal mischief; classification of crime; defense.

§ 812 Graffiti and possession of graffiti implements; class A misdemeanor; class B misdemeanor.

§ 813 Theft of property from a cemetery.

§ 822 Criminal trespass in the second degree; unclassified misdemeanor.

§ 823 Criminal trespass in the first degree; class A misdemeanor.

840 Shoplifting; class G felony; class A misdemeanor.

§ 840A Use of illegitimate retail sales receipt or Universal Product Code Label.

§ 841 Theft; ~~class B felony; class D felony; class F felony; class G felony;~~ class A misdemeanor; restitution.

§ 848 Misapplication of property; ~~class G felony;~~ class A misdemeanor.

§ 849 Theft of rented property; class A misdemeanor or ~~class G felony.~~

§ 850 Use, possession, manufacture, distribution and sale of unlawful telecommunication and access devices. [misdemeanor under (b)(1)]

§ 851 Receiving stolen property; ~~class G felony;~~ class A misdemeanor.

§ 852A Selling stolen property; class A misdemeanor; ~~class G felony.~~

§ 853 Unauthorized use of a vehicle; class A misdemeanor.

§ 858 Unlawful operation of a recording device.

§ 861 Forgery; ~~class F felony; class G felony;~~ class A misdemeanor; restitution required.

§ 871 Falsifying business records; class A misdemeanor.

§ 873 Tampering with public records in the second degree; class A misdemeanor.

§ 877 Offering a false instrument for filing; class A misdemeanor.

§ 881 Bribery; class A misdemeanor.

§ 882 Bribe receiving; class A misdemeanor.

- § 891 Defrauding secured creditors; class A misdemeanor.
- § 892 Fraud in insolvency; class A misdemeanor.
- § 893 Interference with levied-upon property; class A misdemeanor.
- § 900 Issuing a bad check; class A misdemeanor; ~~class G felony~~.
- § 903 Unlawful use of payment card; ~~class G felony~~; class A misdemeanor.
- § 906 Deceptive business practices; class A misdemeanor.
- § 907 Criminal impersonation; class A misdemeanor.
- § 907C Impersonation as a member or veteran of the United States Armed Forces, class A misdemeanor.
- § 909 Securing execution of documents by deception; class A misdemeanor.
- § 910 Debt adjusting; class B misdemeanor.
- § 914 Use of consumer identification information.
- § 915 Use of payment card information.
- § 915A Credit and debit card transaction receipts; unclassified misdemeanor.
- § 918 Ticket scalping.
- § 921 Sale of transferred recorded sounds; class A misdemeanor.
- § 922 Improper labeling; class G felony. [in some cases is a misdemeanor]
- § 926 Trademark counterfeiting. [some misdemeanor scenarios]
- § 939 Penalties. [computer crime in 4th degree is misdemeanor]

Subchapter IV: Offenses Relating to Marriage

No misdemeanors

Subchapter V: Offenses Relating to Children and Vulnerable Adults

Discretionary

- § 1102 Endangering the welfare of a child; class A misdemeanor; ~~class E or G felony~~.
- § 1103 Child abuse in the third degree
- § 1105 Crime against a vulnerable adult
- § 1107 Endangering children; unclassified misdemeanor
- § 1113 Criminal nonsupport and aggravated criminal nonsupport
- § 1114 Body-piercing, tattooing or branding; consent for minors; civil and criminal penalties

Mandatory

- § 1114A Tongue-splitting; class A misdemeanor; class B misdemeanor (unless minor)

Eligible only after pardon

- § 1106 Unlawfully dealing with a child

Subchapter VI: Offenses against public administration

Discretionary

- § 1205 Giving unlawful gratuities
- § 1206 Receiving unlawful gratuities
- § 1207 Improper influence
- § 1211 Official misconduct

- § 1212 Profiteering
- § 1221 Perjury in the third degree
- § 1233 Making a false written statement
- § 1250 Offenses against law-enforcement animals
- § 1256 Promoting prison contraband
- § 1257 Resisting arrest
- § 1257A Use of an animal to avoid capture
- § 1271 Criminal contempt
- § 1271A Criminal contempt of a domestic violence protective order
- § 1273 Unlawful grand jury disclosure

Mandatory

- § 1241 Refusing to aid a police officer; class B misdemeanor.
- § 1243 Obstructing fire-fighting operations; class A misdemeanor.
- § 1244 Hindering prosecution; class A misdemeanor. [~~class G felony~~]
- § 1245 Falsely reporting an incident; class A misdemeanor. [~~class G felony~~]
- § 1245A Providing a false statement to law enforcement; ~~class G felony~~; class A misdemeanor.
- § 1246 Compounding a crime; class A misdemeanor.
- § 1248 Obstructing the control and suppression of rabies.
- § 1249 Abetting the violation of driver's license restrictions.
- § 1251 Escape in the third degree; class A misdemeanor.
- § 1260 Misuse of prisoner mail; class A misdemeanor; ~~class G felony~~.

Subchapter VII: Offenses against Public Health, Order and Decency

Discretionary

- § 1304. Hate crime
- § 1313 Malicious interference with emergency communication
- § 1332 Abusing a corpse
- § 1335 Violation of privacy
- § 1341 Lewdness
- § 1343 Patronizing a prostitute
- § 1355 Permitting prostitution
- § 1443 Carrying a concealed dangerous instrument
- § 1445 Unlawfully dealing with a dangerous weapon
- § 1456 Unlawfully permitting a minor access to a firearm
- § 1457. Possession of a weapon in a Safe School and Recreation Zone

Mandatory

- § 1301 Disorderly conduct; unclassified misdemeanor.
- § 1303 Disorderly conduct; funeral or memorial service. [class A misdemeanor; class F felony]

§ 1311 Harassment; class A misdemeanor.

§ 1315 Public intoxication; unclassified misdemeanor; violation.

§ 1322 Criminal nuisance; unclassified misdemeanor.

§ 1324 Obstructing ingress to or egress from public buildings; unclassified misdemeanor.

§ 1325 Cruelty to animals; class A misdemeanor; ~~class F felony~~.

§ 1325A The unlawful trade in dog or cat by-products; class B misdemeanor; class A misdemeanor, penalties.

§ 1327 Maintaining a dangerous animal; ~~class E felony~~; ~~class F felony~~; class A misdemeanor.

§ 1331 Desecration; class A misdemeanor.

§ 1333 Trading in human remains and Associated Funerary Objects.

§ 1334 Unlawful use of an unmanned aircraft system; unclassified misdemeanor; class B misdemeanor; class A misdemeanor.

§ 1340 Desecration of burial place.

§ 1342 Prostitution; class B misdemeanor.

§ 1365 Obscene literature harmful to minors; class A misdemeanor.

§ 1366 Outdoor motion picture theaters.

§ 1367 Unauthorized promotion of boxing, mixed martial arts or of a combative sports or combative sports entertainment or combative fighting match, contest, or event; class A misdemeanor.

§ 1368 Unauthorized participation in a boxing, mixed martial arts or in a combative sports or combative sports entertainment or combative fighting match, contest, or event; class A misdemeanor.

§ 1401 Advancing gambling in the second degree; class A misdemeanor.

§ 1402 Foreign lotteries; prima facie evidence; class A misdemeanor.

§ 1403 Advancing gambling in the first degree; class A misdemeanor.

§ 1404 Providing premises for gambling; class A misdemeanor; unclassified misdemeanor.

§ 1405 Possessing a gambling device; class A misdemeanor.

§ 1406 Being concerned in interest in keeping any gambling device; class A misdemeanor.

§ 1411 Unlawfully disseminating gambling information; class A misdemeanor.

§ 1428 Maintaining an obstruction; class A misdemeanor; a violation.

§ 1444 Possessing a destructive weapon; ~~class E felony~~ [Subsection (f) is effective until Jan. 1, 2020] [bump stock and trigger crank possession is misdemeanor for first offense]

§ 1446 Unlawfully dealing with a switchblade knife; unclassified misdemeanor.

§ 1448A Criminal history record checks for sales of firearms. [improper criminal history check or intentional dissemination; wilful or intentional sale or delivery in violation of section is misdemeanor]

§ 1448B Criminal history record checks for sales of firearms — Unlicensed persons. [knowing sale or transfer in violation is Class A misdemeanor]

§ 1452 Unlawfully dealing with knuckles-combination knife; class B misdemeanor.

§ 1453 Unlawfully dealing with martial arts throwing star; class B misdemeanor.

§ 1460 Possession of firearm while under the influence.

§ 1472 Penalties. [for cheating at video lottery and related offenses; some misdemeanors]

May 14, 2019

RE: House Bill 5

Dear Members of the General Assembly:

As a retired member of the Delaware Judiciary, I write to you in support of House Bill 5 regarding concurrent and consecutive sentencing for criminal convictions. This bill restores judicial discretion in criminal sentencing, allowing judges to craft sentences that fit the facts and circumstances of each case before them. This change addresses the challenge of the stacking of mandatory minimum sentences on top of one another.

The Delaware Judiciary is among the finest in the country. With a robust nomination and screening process, we have a well-qualified, experienced, and intelligent judiciary able to use discretion responsibly. Judges are selected for their judgment—their ability to evaluate information and make reasoned decisions, weighing competing interests. We should give our judiciary the opportunity to exercise that judgment.

It is certainly important that there be consistency across the judicial system. Therefore the proposal to revamp the Delaware Sentencing Accountability Commission is an important complement to this bill. That will provide for guided discretion and greater alignment across judges in the Delaware court system.

The bill still allows for sentences to be given consecutively, but at the discretion of judges who are well-informed about the specifics of the case. In particular, the bill requires sentences to be given consecutively when there are multiple victims of the most serious crimes, which is appropriate.

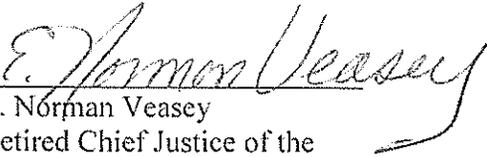
It is important to note that the most serious crimes come with significant amounts of prison time. Therefore, sentences do not need to be stacked to ensure that someone receives an

Members of the General Assembly
May 14, 2019
Page 2

appropriate and adequate prison sentence. Class B felonies provide for sentences up to 25 years in prison, while Class A felonies come with a sentence of 15 years to life.

Accordingly, I believe that the restoration of judicial discretion in deciding whether to impose consecutive or concurrent sentences in appropriate cases will have a positive effect on our criminal justice system. I would very much appreciate your support for the passage of House Bill 5.

Respectfully,


E. Norman Veasey
Retired Chief Justice of the
Delaware Supreme Court



800 N. State Street
Suite 401
Dover, DE 19901
302 984-6035
www.potteranderson.com

Myron T. Steele
Partner
Attorney at Law
msteele@potteranderson.com
302 984-6030 Direct Phone

May 14, 2019

Dear Members of the General Assembly:

As retired members of the Delaware Judiciary, we write to you in support of House Bill 5 regarding concurrent and consecutive sentencing for criminal convictions. This bill restores judicial discretion in criminal sentencing, allowing judges to craft sentences that fit the facts and circumstances of each case before them. This change addresses the challenge of the stacking of mandatory minimum sentences on top of one another.

The Delaware Judiciary is among the finest in the country. With a robust nomination and screening process, we have a well-qualified, experienced, and intelligent judiciary able to use discretion responsibly. Judges are selected for their judgement- their ability to evaluate information and make reasoned decisions weighing competing interests. We should give our judiciary the opportunity to exercise that judgement.

It is certainly important that there is consistency across the judicial system, and therefore the proposal to revamp the Delaware Sentencing Accountability Commission is an important compliment to this bill. That will provide for guided discretion and greater alignment across judges in the court.

The bill still allows for sentences to be given consecutively, but at the discretion of judges who are well-informed about the specifics of the case. The bill requires sentences to be

given consecutively when there are multiple victims of the most serious crimes which is appropriate.

It is important to note that the most serious crimes come with significant amounts of prison time. Therefore, sentences do not need to be stacked to ensure that someone receives an appropriate and adequate prison sentence. Class B felonies provide for sentences up to 25 years in prison, while Class A felonies come with a sentence of 15 years to life.

In conclusion, we believe that the restoration of judicial discretion will have a positive effect on our criminal justice system. We encourage you to support the passage of House Bill 5.

Respectfully,

A handwritten signature in black ink, appearing to read "Myron T. Steele". The signature is written in a cursive style with a large initial "M" and several loops.

Myron T. Steele
Retired member of the Delaware Supreme
Court, Superior Court, and Court of Chancery

Delaware General Assembly
House Judiciary Committee

May 14, 2019

Dear Members of the General Assembly:

As retired members of the Delaware Judiciary, we write to you in support of House Bill 5 regarding concurrent and consecutive sentencing for criminal convictions. This bill restores judicial discretion in criminal sentencing, allowing judges to craft sentences that fit the facts and circumstances of each case before them. This change addresses the challenge of the stacking of mandatory minimum sentences on top of one another.

The Delaware Judiciary is among the finest in the country. With a robust nomination and screening process, we have a well-qualified, experienced, and intelligent judiciary able to use discretion responsibly. Judges are selected for their judgement- their ability to evaluate information and make reasoned decisions weighing competing interests. We should give our judiciary the opportunity to exercise that judgement.

It is certainly important that there is consistency across the judicial system, and therefore the proposal to revamp the Delaware Sentencing Accountability Commission is an important compliment to this bill. That will provide for guided discretion and greater alignment across judges in the court.

The bill still allows for sentences to be given consecutively, but at the discretion of judges who are well-informed about the specifics of the case. The bill requires sentences to be given consecutively when there are multiple victims of the most serious crimes which is appropriate.

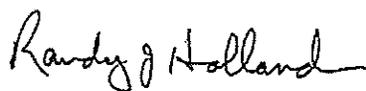
It is important to note that the most serious crimes come with significant amounts of prison time. Therefore, sentences do not need to be stacked to ensure that someone receives an appropriate and adequate prison sentence. Class B felonies provide for sentences up to 25 years in prison, while Class A felonies come with a sentence of 15 years to life.

In conclusion, we believe that the restoration of judicial discretion will have a positive effect on our criminal justice system. We encourage you to support the passage of House Bill 5.

Sincerely,



Henry duPont Ridgely
Retired member of the Delaware Supreme Court and Delaware's Superior Court



Randy J. Holland
Retired Supreme Court Justice



Southern Delaware Alliance for Racial Justice

... ending racism and its corrosive consequences

P.O. Box 306, Lewes, DE 19958 info@sdarj.org www.sdarj.org

STATEMENT ON HOUSE BILL NUMBER 5 BEFORE THE HOUSE JUDICIARY COMMITTEE MAY 15, 2019

Good afternoon Chairman Lynn and members of the Judiciary Committee. My name is Bruce Bolander. I am a resident of Lewes and am here today on behalf of the Southern Delaware Alliance for Racial Justice, a non-partisan organization based in Lewes whose mission is educating, informing, and advocating for racial justice, equality, and fair opportunity. We appreciate the opportunity to speak to you today about House Bill Number 5.

This Bill takes an important step toward giving judges more discretion in imposing sentences and restoring some balance to the plea bargaining process that resolves most criminal cases. Under current Delaware law too many crimes carry mandatory consecutive sentences, leaving judges no discretion to impose concurrent sentences. Prosecutors can bring charges for multiple crimes, each of which requires a consecutive sentence, for the same criminal conduct. As a result, too many defendants risk an extremely long sentence if they reject a plea bargain and are found guilty after a trial.

The policy goals behind this Bill are also consistent with the Attorney General's new charging policy of avoiding multiple charges for the same conduct, as set forth in her February 15, 2019 memorandum to her deputies and staff.

This Bill strikes a fair balance between restoring sentencing discretion to judges where appropriate and thereby reducing the unfair advantage prosecutors currently have in the charging process, on the one hand, and maintaining mandatory consecutive sentences for the most serious crimes, on the other hand.

We urge the Judiciary Committee to act favorably on the Bill so that it can be voted on promptly by the full House.

On behalf of the Alliance, I thank the Committee for its attention.

Subject: SB 5 and the House Judiciary Committee

Dear members of the House Judiciary Committee,

I am writing to express my support of HB 5, which I understand is scheduled for a hearing tomorrow at 12:30pm. Because my church in Wilmington has a weekly Eucharist at that time, I am unable to attend. Please consider this email my presence in support of this bill which would restore discretion to judges when it comes to unfair stacking of charges.

As a priest of the Episcopal Church, I understand the nature of sin—that which moves us away from God and neighbor. When people break the law, there are consequences. My Christian faith also teaches me that there is **always** opportunity for redemption and restoration. I am strongly in favor of a criminal justice system that moves us more toward restorative justice, and I believe that this bill moves us in that direction.

I ask that you do your part in moving this bill toward becoming a law.

In peace,

The Rev. Charles Lane Cowen
Associate Rector, Trinity Episcopal Parish
302.652.8605 x1013—office
254.760.0434--cell

SENATE BILL 38

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO VICTIM-OFFENDER MEDIATION.

What is the Victim-Offender Mediation Committee?

The Victim-Offender Mediation Committee (“Committee”) was established by the 138th General Assembly in 1996. The Committee includes the Department of Justice, the Office of Defense Services, the Criminal Justice Council, and the Judiciary. It is responsible for selecting vendors that provide mediation services statewide to the Court of Common Pleas and to the Family Court. Based on criteria developed by the Department of Justice and the Courts, litigants have an opportunity to voluntarily resolve predominantly criminal dispute through mediation, rather than going to trial. Of the 505 statewide cases that agreed to mediate their dispute in FY 18, 474 were successfully resolved.

Why are changes needed?

There have been no significant changes to the statute since 1996. The composition of the Committee and the nature of the services provided by vendors selected to provide victim-offender mediation services, however, has evolved since the program’s inception in 1996. For example, the Court of Common Pleas is the principal beneficiary of the program but is not a Committee member.

What does this bill do?

This Act updates the composition of the Committee; renames the Committee to acknowledge the broader scope of services that may be provided by vendors selected by the Committee to run alternative case resolution services; updates criteria used to select vendors and reporting requirements; and makes additional corrections to conform to the Delaware Legislative Drafting Manual.

HB 5

In the 1970's and 1980's, the US Congress and many state legislatures passed laws that forced judges to give fixed prison terms to those convicted of specific crimes, most often drug offenses. The sentencing guidelines were crippling terms to be served consecutively in order to remove the bad element off the streets. The idea then was that these harsh, draconian sentences would deter crime and catch those at the top of the drug trade.

It didn't work.

Instead this heavy-handed approach simply filled prisons with low-level offenders- resulting in over-capacity prison populations and higher costs for tax payers because of the extended stays. And sentencing guidelines tie the hands of judges. In the absence of judicial discretion, control over sentencing shifts to prosecutors who decide whether an offender gets charged in a way to either trigger a mandatory sentence or consecutive sentences. When a prosecutor brings multiple charges, the resulting sentencing can result in decades in prison.

Delaware's hands are not clean from this practice. And although Delaware relaxed its mandatory minimum of a life sentence for Title 11 felonies, there is still residual effects of offenders that serve 20-30 years because of stacked sentencing. And the multiple convictions strung together result in double and triple fines upon release because each conviction carries the full weight of a day in court even if they only appear once. One client of The Way Home was convicted of manslaughter, served 36 years with multiple convictions. He was charged the full array of mandated court costs and fees twice because of each conviction. It totaled over \$200.00. He is 87. He can't work. He has yet to collect Social Security. And what is worse, he has 18 years left of probation because he did not complete his full term. None of this makes sense. And none of this serves as rehabilitation or as a crime deterrent. The Way Home fully supports SB 5

and recognizes that this piece of legislation restores fair treatment, and adjusts the scales of justice that were so weighted down with sledge-hammers instead of gavels.

Paulette Rappa
The Way Home - Director

Testimony in Support of HB 5

My name is Jack Guerin and I'm with the Unitarian Universalist Delaware Advocacy Network or UUDAN which is a member of the Smart Justice Coalition. We support HB 5 which would reform concurrent and consecutive sentencing by providing sentencing judges with the discretion to sentence prison time concurrently when appropriate.

Until 2014, Delaware was the only state that forced judges to impose consecutive sentences when a defendant is found guilty of more than one crime.

When sentences run consecutively, defendants must finish serving the sentence for one offense before they start serving the sentence for any other offense. If a defendant is convicted of multiple crimes that carry lengthy prison terms, the difference between consecutive and concurrent sentences can be tremendous.

In 2014, as a way of reducing prison overcrowding, Gov. Jack Markell proposed a bill (HB 312) giving Delaware judges the discretion to impose concurrent vs. consecutive sentences. However, this reform bill was gutted by an amendment requiring that judges continue to impose consecutive sentences for a variety of felonies that often result in long prison sentences.

The latest report from the Bureau of Justice Statistics finds that Delaware now ranks third in the nation in prison overcrowding at 150% of design capacity exceeded by only Alabama and Nebraska.

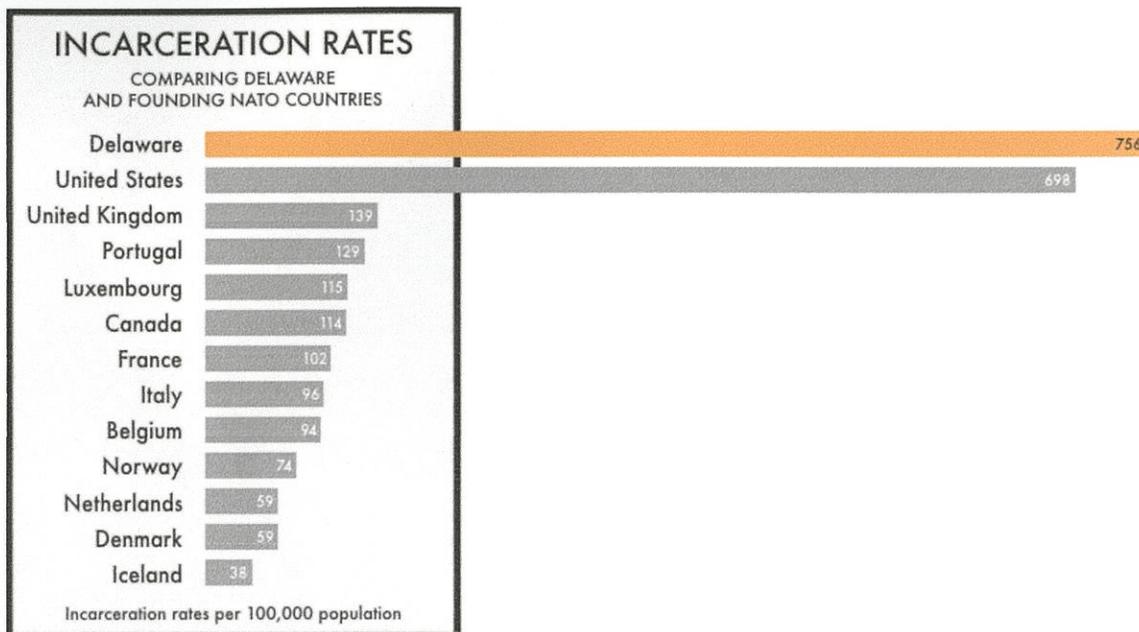
We urge committee members to advance the cause of justice reform in Delaware by reporting out HB 5 for a vote in the House of Representatives.



The League of Women Voters of Delaware Supports HB 5

One of the most significant policy positions of the League of Women Voters related to criminal justice reform is the elimination of mandatory minimum sentencing. We believe judges should have more discretion. Currently, prosecutors often “stack” charges relating to the same conduct that carry mandatory minimums. This can result in quite lengthy sentences. And, this appears to be a very significant factor in Delaware’s high rate of incarceration.

According to a study by the Prison Policy Initiative, if Delaware were a country, we would have an incarceration rate of 756 per 10,000 population. Here is a chart showing Delaware’s incarceration rates compared with the founding NATO countries. As you can see, Delaware is way off the chart, even worse than the U.S. rate, which, itself is higher than any other country in the world.¹



Source: <https://www.prisonpolicy.org/global/2018.html>

HB 5 would reform concurrent and consecutive sentencing by providing sentencing judges with the discretion to sentence prison time concurrently when appropriate.

According to Attorney General Kathy Jennings, in a statement at a meeting of the Southern Delaware Alliance for Racial Justice last night (May 14 in Lewes), HB 5 would make a huge difference in the length of sentences. We interpret her comments to mean that this bill could very significantly help achieve our goal of reducing the incarceration rate in Delaware.

We urge you to release and seek speedy enactment of HB 5 that would reform concurrent and consecutive sentencing by providing sentencing judges with the discretion to sentence prison time concurrently when appropriate.

¹ <https://prisonpolicy.org/global/2018.html>

Testimony in Support of HB 5

My name is Ivonne Antongiorgi and I'm with the Unitarian Universalist Delaware Advocacy Network or UUDAN which is a member of the Smart Justice Coalition. We support HB 5 which would start to reduce the long prison sentences in Delaware which exceed the national average by about 50% leading to prison overcrowding and high incarceration rates.

As Unitarian Universalists, our first principle is "The inherent worth and dignity of every person". I want to read a statement written by Charles Dickens after visiting Eastern State Penitentiary.

"I believe that very few men are capable of estimating the immense amount of torture and agony that this dreadful punishment, prolonged for years, inflicts upon the sufferers... I am only the more convinced that there is a depth of terrible endurance in it which none but the sufferers themselves can fathom, and which no man has a right to inflict upon his fellow-creature. I hold this slow and daily tampering with the mysteries of the brain to be immeasurably worse than any torture of the body...because its wounds are not upon the surface, and it extorts few cries that human ears can hear; therefore I the more denounce it, as a secret punishment which slumbering humanity is not roused up to stay."

We urge you to report out this important bill to reduce mass incarceration in Delaware.

Good afternoon, and thank you for this opportunity to testify in favor of HB 5. My name is Donna Shand, and I am speaking today on behalf of Delaware United, a local grassroots advocacy group.

I would like to commend the Smart Justice Coalition and the Attorney Generals office for the work they are doing to reform Delaware's criminal justice system. I'd also like to thank Representative Longhurst and the other sponsors and co-sponsors of this important legislation.

One of the more dramatic effects of relying more heavily on concurrent sentencing, rather than consecutive, is the balance which is brought back to the practice of plea bargaining.

Currently, our criminal legal system is tipped heavily in favor of seeking plea bargains, many of which are made under the duress of threats of severe prison sentences created by possible consecutive sentencing.

As we have heard in stories related to this practice in previous committee hearings, this has even led to innocent people going to prison for fear of taking their chance in court and facing decades of jail time for a crime they didn't commit.

House Bill 5 will dramatically reduce the number of cases in which stacking is possible. This restores sentencing discretion to judges and allows

defendants to test the strength of the state's case at trial without risking a draconian outcome if they are found guilty.

Additionally, it is often thought that longer prison terms reduce crime. However, in an online article, the Pew Memorial Trust cites a study which found that long prison terms do not actually reduce crime rates. An analysis of data from three states—Florida, Maryland, and Michigan—found little or no evidence that longer prison terms prevented crimes in the community during the period of incarceration, nor did they keep offenders from committing crimes once released from prison.

In sum, for many offenders, longer prison terms boost taxpayer costs but add little to no overall reduction in crime. There are many other well-documented factors that have a larger impact on crime statistics.

This bill will help ensure that our legal standard remains “innocent until proven guilty.” Restoring sentencing discretion to judges can lead to increasing the fairness of our criminal justice system by potentially reducing the frequency of excessively severe prison terms and by preventing individuals charged with crimes from plea-ing out simply out of fear.

Thank you.

LYNN,
35

CAN NOT SUPPORT THE BILL

BECAUSE OF THE 13 OFFICES WHICH
WILL BE REMOVED FROM THE SECTION
OF THE CODE.

FOR BACKGROUND:

I HAVE SPENT 22 PLUS YEARS IN
ADULT CORRECTIONS AND 4 PLUS YEARS
IN JUVENILE CORRECTIONS

ROBERT D. OVERMAN, III

SENATE BILL 38

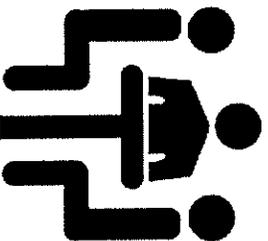
AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE
RELATING TO VICTIM-OFFENDER MEDIATION

The Victim-Offender Mediation Committee Mediation Program

The Victim-Offender Mediation Committee (“Committee”) was established by the 138th General Assembly in 1996.

The Committee is responsible for selecting vendors that provide mediation services statewide to the Court of Common Pleas and to the Family Court, mostly in criminal matters.

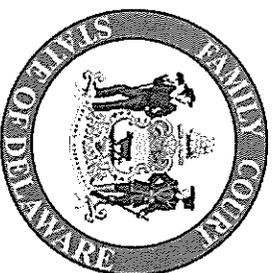
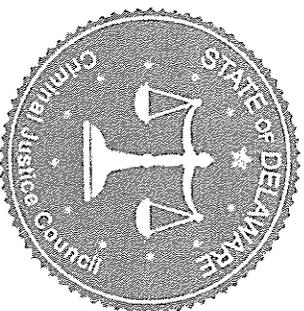
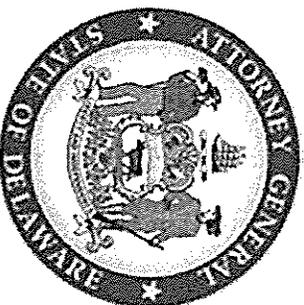
The mediation is a voluntary program—both sides have to agree to mediate—and a successful mediation means that there will be no trial.



The Victim-Offender Mediation Committee Composition

The Committee includes:

- The Attorney General
- The Chief Defender
- The Criminal Justice Council
- The Judiciary, including:
 - The Chief Magistrate
 - The Chief Judge of Family Court
 - State Court Administrator



The Victim-Offender Mediation Committee: Proposed Amendments

The proposed bill would change the Committee's composition to reflect the agencies that should be making program decisions.

- Times have changed since the statute was first enacted. Back in 1996, the Justice of the Peace Court was appointed as a committee member—not the Court of Common Pleas. Today, the program primarily serves litigants in the Court of Common Pleas, not the Justice of the Peace Court.

The bill also changes the name of the program to recognize that there are other forms of alternative resolution available, not just mediation.

- This is to allow the Committee to expand the program and utilize the alternative resolution model best suited to accommodate the particular needs of each case.