SENTAC

Delaware Sentencing Accountability Commission

Benchbook 2013*

***INCLUDES RELEVANT LEGISLATION OF THE 146th GENERAL ASSEMBLY**

SUMMARY OF PRESUMPTIVE SENTENCES			
Crime Classification	**Presumptive Sentence**	**Statutory**	**Page Ref.**
Felonies			
Class A (Other than Murder)	15 yrs @ Level V	15 yrs. to Life	28
Class B	2 to 5 yrs (1st 2 yrs @ Level V)	2 to 25 yrs	31
Class C (Violent)	Up to 30 m @ Level V	up to 15 yrs	37
Class C (Nonviolent)	Up to 1 yr @ Level V	up to 15 yrs	41
Class D (Violent)	Up to 2 yrs @ Level V	up to 8 yrs	43
Class D (Nonviolent)	Up to 12 m @ Level II or III	up to 8 yrs	47
Class E (Violent)	Up to 15 m @ Level V	up to 5 yrs	49
Class E (Nonviolent)	Up to 12 m @ Level II	up to 5 yrs	53
Class F (Violent)	Up to 9 m @ Level V	up to 3 yrs	57
Class F (Nonviolent)	Up to 12 m for Title 11; Up to 18 m for Title 16 @ Level II	up to 3 yrs	60
Class G (Violent)	Up to 6 m @ Level V Title 16, §§4767,4768: 3-9 m @ Level V	up to 2 yrs	64
Class G (Nonviolent)	Up to 12 m @ Level II	up to 2 yrs	67
Misdemeanors			
Class A (Violent) MA1	Up to12 m @ Level II	up to 1 yr	72
Class A (Escape) MA2	Up to 3 m @ Level IV	up to 1 yr	74
Class A (Property) MA3	Up to 12 m @ Level I	up to 1 yr	75
Class A (Order/Decency) MA4	Up to 12 m @ Level I	up to 1 yr	77
Class A (Controlled Substance)	16-4764: FOP Minimum 12 m @ Level I (7/12/05) 1stOffense 12m @Level II	up to 1 yr	80
Class B	Fine, Costs & Restitution	up to 6 m.	81
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SUMMARY OF ACCEPTANCE OF RESPONSIBILITY GUIDELINES			
Crime Classification	**Presumptive Sentence**	**Acceptance of Responsibility Guideline**	**Page**
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Class C (non-violent)	Up to 1 yr. @ Level V	Up to 9 mos. @ Level V	41
Class D (violent)	Up to 2 yrs. @ Level V	Up to 18 mos. @ Level V	43
Class D (non-violent)	Up to 12 mos. @ II or III	Up to 9 mos. @ II or III	47
Class E (violent)	Up to 15 mos. @ Level V	Up to 11 mos. @ Level V	49
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Class F (violent)	Up to 9 mos. @ Level V	Up to 7 mos. @ Level V	57
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Class G (violent)	Up to 6 mos. @ Level V	Up to 4 mos. at Level V	64
Class G (non-violent)	Up to 12 mos. @ Level II	Up to 9 mos. @ Level II	67
Misdemeanors			
Class A (violent)	Up to 12 mos. @ Level II	Up to 9 mos. @ Level II	72
Class A (escape)	Up to 3 mos. @ Level IV	Up to 2 mos. @ Level IV	74
Class A (property)	Up to 12 mos. @ Level I	Up to 9 mos. @ Level I	75
Class A (order/decency)	Up to 12 mos. @ Level I	Up to 9 mos. @ Level I	77
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CRIME	*CLASS*	*STATUTE*	*PAGE*
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Video Lottery Cheat Device >$1500<$50000	Class G Felony (Nonviolent)	11-1471(a)(b)(d)(e)(l)	69
Video Lottery Cheat Device >$99,999.99	Class C Felony (Violent)	11-1471(c)(f)(g)(h)(i)(j)	44

CRIME	*CLASS*	*STATUTE*	*PAGE*
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Violation of Fire Regulations	Unclassified Misdemeanors	16-6611(b)	85
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INTRODUCTION

The Delaware Sentencing Accountability Commission (hereinafter referred to as "SENTAC") was created under Title 11, §6580 of the Delaware Code. The overall purpose of the creation of the Commission was to establish a system that emphasizes accountability of the offender to the criminal justice system and accountability of the criminal justice system to the public. In fulfillment of that purpose, the Commission created the sentencing guidelines embodied in this Benchbook. Said guidelines were approved of and implemented by Administrative Directive Seventy-Six of the Supreme Court of Delaware.[1] The guidelines are designed to ensure certainty and consistency of punishment commensurate with the seriousness of the offense and with due regard for resource availability and cost. However, it should be noted that Delaware's sentencing guidelines are voluntary, non-binding, and as such, in the absence of constitutional violations, are not generally subject to appeal.[2]

This Benchbook is designed to assist sentencing judges, prosecutors and defense attorneys in the formulation of sentences that are consistent with the goals of sentencing reform promulgated by SENTAC. Contained within are recommended sentencing ranges and statutory mandates for each offense. The overall sentencing philosophy of the General Assembly and SENTAC is that offenders should be sentenced to the least restrictive and most cost-effective sanction possible given the severity of the offense, the criminal history of the offender and the focus, which is, above all, to protect the public's safety. Other goals in order of priority include: (1) Incapacitation of the violence-prone offender; (2) restoration of the victim as nearly as possible to the victim's pre-offense status, and (3) rehabilitation of the offender. (64 Del. Laws, c. 402 § 1)

This Benchbook is revised annually to reflect legislative changes since the passage of the Truth in Sentencing Act of 1989.

How to Use This Book

The Table of Contents appears in the front of the book and will serve to guide you to the basic categories within this book. Appearing directly after the Table of Contents is an alphabetical listing of the offenses, their classifications and the corresponding page numbers. Prior to the actual specific categories is a summary of the broad offense categories and their general respective presumptive sentences. Following that you will find the recommended sentences and sentencing mandates for each particular crime in the offense category itself. The general offense categories have been listed in the Table of Contents.

In general, presumptive sentences are based on the classification of the offense, and whether it is violent or non-violent in nature. The majority of crimes have been divided into violent and non-violent categories based upon legislative determination (Title 11, §4201(c)). The recommended penalties for violent crimes are more severe than those prescribed for non-violent crimes in the same class. All Class A Felonies have been designated as violent. All other felony classifications have been separated into violent and non-violent offenses. Whenever appropriate, sentences should reflect the objective of rehabilitation by including specific conditions of probation designed to aid in the treatment and/or vocational training of the offender.

Class A Misdemeanors have been divided into five general categories by SENTAC: Violent MA1, Escape MA2, Property MA3, Order & Decency MA4, and Controlled Substances MA5. The presumptive sentencing pages

[1] Sept. 15th, 1987
[2] *Siple v State*, 701 A.2d 79, 82-83 (Del. 1997)

for misdemeanors share the same format as the felony offenses. Please note that some sentences require a period of time at one level to be followed by a period of time at another level. (For example: the presumptive sentence for the second conviction of a class A violent misdemeanor is up to 6 months at Level III AND up to 6 months at Level II.) The maximum fine is also included for misdemeanor offenses.

The recommended sentencing range for a particular crime classification, when aggravating or mitigating factors are not present, can be found at the beginning of the crime category. Crimes are listed in order of statute number with respect to title and section numbers, appearing as they would in the Delaware Code. When a particular offense requires specific treatment as mandated by the legislature a notation will be attached to said offense and supplementary notations will follow at the end of a given category. The presumptive sentencing range for a first conviction generally represents 25% of the statutory maximum; while serious aggravating factors may increase the penalty up to 100% of the statutory maximum. However, examples of common aggravated sentences as a result of prior criminal history, excessive cruelty or commission of the offense while under the control of the Department of Correction are contained in the box following the listing of statutes included within the offense category.

Within the Table of Contents you will find a Summary of Drug Offenses that gathers all of the drug offenses in one section of the book for ease of reference. The drug offenses are also listed in their respective offense level classifications. In addition, there is a listing of Aggravating and Mitigating Factors. You will also find the topic "Exceptional Sentences" and under that category are considerations that would take a sentence out of the normal range. Those topics include: (A) Special categories of (1) Domestic Violence and (2) Escape, (3) Juveniles Being Sentenced As Adults; and (B) Habitual Criminal sentences.

Aggravating and mitigating factors are to be used to explain a sentence imposed either above or below the presumptive sentence. Other factors, which do not appear on this list, may be utilized at the discretion of the sentencing judge. Although the increased or decreased penalties for most aggravating/mitigating circumstances are not specified, the "up to 25%" increase/decrease guide should be utilized whenever suitable.

When an offender is sentenced on multiple charges, only the primary charge should carry an enhanced penalty based on prior criminal history. All other charges should receive penalties consistent with or lower than the presumptive sentence for the offense, unless aggravated by some factor specific to the individual charge. In this way, judges can impose serious penalties when necessary and construct meaningful probation sentences to follow incarceration. It should be noted that all sentences that impose a period of incarceration of one or more years at Level V, require that the court must include as part of its sentence a six-month "Reintegration Period" at Custodial Supervision Level IV (quasi-incarceration), III, or II.[3]

Following the Exceptional Sentences category are recommendations on the sentences appropriate for Violations of Probation. The reporting of these proceedings, along with aggravating factors, should follow the same procedures as for new offenses.

[3] Title 11, §4204 (l)

General Sentencing Information:

Levels of Supervision:

There are five levels of supervision in the Delaware criminal justice system as defined according to Title 11, §4204 and SENTAC policy.[4] They are as follows:

Level I	***Unsupervised:*** Fine or Administrative Supervision, i.e. criminal record checks, checks to determine compliance with program completion, certification of payment of financial obligations, etc.
Level II	***Field supervision***: 1 to 50 hours of supervision per month. This may be accomplished by office visits or field visits and/or the imposition of special conditions such as payment of a fine.
Level III	***Intensive supervision***: 1 hr./day and no more than 56 hrs./wk. Level is supervised by officers carrying limited caseloads to allow sufficient time for full follow up. It may include sentencing options such as community service, payment of a fine, day reporting, curfews, etc.
Level IV	***Quasi-Incarceration or Partial Confinement:*** Offender is placed under house arrest with electronic monitoring, a halfway house, a restitution center, a residential treatment facility, &/or a reentry program. As a result, supervision should amount to approximately 9 or more hours daily.
Level V	***Incarceration or Full Confinement:*** Commitment to the Department of Correction for a period of incarceration with or without the imposition of a fine as provided by law.

Probationary Sentences:

A. Maximum Probationary Sentences:

1. The period of probation for violent felonies[5] is limited to 24 months.[6]
2. The period of probation for Title 16 felonies[7] is limited to 18 months.[8]\
3. The period of probation for all other offenses is limited to 1 year.[9]

B. Multiple Sentences:

In most cases, if an offender is serving more than one sentence as a result of convictions in more than one case, the offender shall not serve a consecutive period of probation or suspension in excess of the above time limitations. Instead, such probation shall be deemed to run concurrently with the previously imposed sentence of probation. However, the limitations of this section shall not apply to a sentence imposed for a conviction involving an offense committed while the offender was on probation or suspension of sentence.10

[4] *Master Plan for Effective Sentencing Reform in Delaware*, SENTAC (May 1' 1986).
[5] Title 11, §4201(c)
[6] Title 11, §4333 (b)(1)
[7] Title 16 (Health and Safety)
[8] Title 11, §4333 (b)(2)
[9] Title 11, §4333 (b)(3)
[10] Title 11, §4333 (c)

C. Exceptions to the General Rules

1.) The above limits do not apply to sex offenses[11] if the sentencing court determines on the record that a longer period of probation will reduce the likelihood of re-offending.[12]

2.) The above limits shall not apply to Title 11 violent felonies[13] if the sentencing court determines on the record that public safety will be enhanced as a result.[14]

3.) Limits may be exceeded if additional time is necessary in order to collect restitution, but must be served at Accountability Level I.[15]

4.) Limits may be exceeded by up to 90 days if more substance abuse treatment time is needed.[16]

5.) Total probation time cannot exceed maximum commitment time, or one year, whichever is greater.[17]

6.) Limits do not apply to the Title 11, §4204(l) sentences which provide for a six-month transition period from Level V incarceration to a lower level of supervision. The six-month transition period may be in excess of the maximum statutory sentence of imprisonment.[18]

7.) Portions of a sentence designated to be served at Accountability Level IV (quasi-incarceration) are not considered a "period of probation or suspension of sentence" as used in this section.[19]

8.) Ex Post Facto Considerations. The above sections, A, B and C (1-4), are inapplicable to sentences imposed prior to June 1, 2003 unless an application has been made to the Court by the Department of Correction for sentence modification based upon good cause and an order is entered to that effect.[20]

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[11] Title 11, §761: 763 Sexual harassment, 764 Indecent Exposure 2d°, 765 Indecent Exposure 1st°, 766 Incest, 767 Unlawful Sexual Contact 3rd°, 768 Unlawful Sexual Contact 2d°, 769 Unlawful Sexual Contact 1st°, 770-773 Rape, 776 Sexual Extortion, 777 Bestiality, 778 Continuous Sexual Abuse of a Child, 779 Dangerous Crime Against a Child, 780 Female Genital Mutilation, 1108 Sexual Exploitation of a Child, 1109 Unlawful Dealing in Child Pornography, 1110 Subsequent Convictions of 1108 and 1109, 1111 Possession of Child Pornography, 1112 Sexual Offenders/Prohibitions from School Grounds, 1112A Sexual Solicitation of a Child
[12] Title 11, §4333 (d)(1)
[13] Title 11, §4201 (c)
[14] Title 11, §4333 (d)(2)
[15] Title 11, §4333 (d)(3)
[16] Title 11, §4333 (e)
[17] Title 11, §4333 (f)
[18] Title 11, §4333 (g)(1)
[19] Title 11, §4333 (g)(2)
[20] Title 11, §4333 (j)

A Word of Caution:

Please remember that under the Truth in Sentencing Act, there is no parole, and all Level V sentences will be served with only very limited good time possibilities. This means that instead of serving from 25% to 50% of the sentence, a minimum of 75% will be served prior to release.

It should be noted that, absent extraordinary reasons, any Level IV (quasi-incarceration) sentence should only be imposed as an alternative to incarceration. Any person sentenced to Level IV (quasi-incarceration) should be held at Level V until space is available. If an individual can be held at Level III while awaiting Level IV (quasi-incarceration), please consider whether a Level III sentence might not be more appropriate.

SENTAC STATEMENT OF POLICY

1. The purposes of the Sentencing Standards are as follows: (a) To incapacitate, through incarceration, the violence prone offender and (b) To avoid, in so far as possible, the incarceration of the non-violent offender for the purposes of:
   - Enabling the offender to make any ordered restitution in a more timely manner.
   - Enabling participation in programs aimed at rehabilitation of the offender.
   - Conserving the limited incarceration facilities for use by violent felons.

2. For the purposes of sentencing, a violence-prone offender is defined as one for whom the current most serious offense is a crime included in the current list of violent crimes. (See definition sheets)

3. For the purposes of sentencing, only those offenses adjudicated at age 14 or older shall be counted in prior history.

4. For the purposes of sentencing, a conviction-free period of ten (10) years after final release from incarceration, or from date of sentence if only probation at levels I thru IV was ordered, shall be sufficient to "wash" the criminal history prior to that date. Felony A and Felony B crimes are excluded from this policy and should always be considered at time of sentencing.

5. In an instance where an offender, who is awaiting sentencing after conviction, is brought before the court and convicted of additional charges, the sentencing order may include all the offenses in a single order. The earlier unsentenced offenses shall not be considered in the prior history of the later offenses unless the later offenses occurred in the period after conviction on the earlier offenses.

6. When it can be determined that two or more prior convictions were the result of a single incident, only one conviction per incident shall be considered for criminal history purposes in reaching a decision on the appropriate guideline. (Example: Conviction on same date of Robbery 2 <u>and</u> Possession of Deadly Weapon During Commission of Felony = 1 prior violent Felony.)

   In addition to its normal definition, convictions for a single incident shall include all convictions resulting from a single indictment or information.

7. When sentencing on multiple charges, prior criminal history should be considered only in determining the guideline for the "lead" or most serious offense. Sentences for other current charges shall be calculated based on zero criminal history.
   a. Whenever a defendant is sentenced on multiple offenses to probation, the level of probation should be the same for all concurrent sentences. Senate Bill 50, codified as 11 Delaware Code Section 4333(c) makes with narrow exceptions, all periods of probation concurrent. Section 4333(b) also, with exceptions, places limits on the length of probation. If an offender is sentenced to different levels of probation, Probation and Parole places him or her in the highest level of probation imposed and that classification applies to all sentences imposed even at different levels. Title 11 Section 4333(i) empowers the Department of Correction to evaluate

offenders after 60 days from the date of sentence. Such evaluation is to determine the appropriate level of probation within Level 3, 2, or 1.
This new policy does not apply to Level 1 – Restitution Only.

8. When sentencing on multiple charges and the lead offense is a violent felony, time for other current violent felonies will be added to Level V time.

9. When considering multiple charges, a violent felony shall be considered to be the most serious offense, for sentence calculation purposes, even though non-violent felonies of higher classification are present.

10. When ordering a sentence, the Judge will order the offender to a specific initial level of supervision (Assessment of Risk). The judge may recommend a specific treatment program. The DOC will make every effort to assign the offender, or procure admittance into, the recommended program, or equivalent, as slots become available.

11. In those cases where the Court would consider a level IV alternative to Level V incarceration and no vacancy exists, the judge should sentence the offender to Level IV, with the proviso that the offender be held at Levels V, IV, and III at the discretion of the Court until a Level IV facility becomes available.

12. All probation sentences handed down at one time (levels I, II, and III) should in the normal case be imposed to run concurrently.

13. Traffic offenses as listed in Del.C, Title 21, with the exception of section 2810, Driving after Judgment Prohibited, will not currently come under the purview of the Sentencing Standards. However, in the interest of conserving expensive and limited prison space for the violent and proven incalcitrant offender, it is strongly recommended that Title 21 offenders not be given a sentence to Level V incarceration unless they have previously been sentenced to, and failed at, supervision in Level III and Level IV, or unless incarceration is mandated by law.

14. Repetitive criminal history, as an aggravating factor, is defined as conviction or adjudication for the same or similar offense on two or more previous occasions. This policy is subject to the limitations outlined in Policy Nos. 3 and 4, and to the limitations outlined in the various misdemeanor presumptive sentencing standards.

15. Excessive cruelty, as an aggravating factor, is defined as those facts surrounding the commission of a violent felony, which demonstrate such a callousness and cruelty towards the victim of the offense as to shock the conscience of the court.

16. Aggravating factors for the use of Level V as sanction for the non-violent categories of misdemeanor should be limited to objective factors, such as: Vulnerability of victim due to age or impairment Lack of Amenability – If offender is or was already at or above the presumptive Level of Supervision.

17. When an offender is released from incarceration by any means (good time credits, conditional release, etc.) the release will be to the highest level specified by the court, or by statute, for any unserved sentence, or portion thereof. If no level has been specified, release will be to Level II by default.

18. The supervisory levels (Level IV [Quasi-Incarceration]; Level III [Intensive Supervision]; etc.) refer to the perceived risk and resultant control to be exercised over the individual. An offender may, as a result of evaluation, be assigned to any type of treatment program without affecting the supervision level. Therefore, a change in supervisory level does not require a change in treatment program.

19. For purposes of determining conformance to standard, the final sentence, after any suspensions, is the determinant factor. For example, if a given sentence is 2 years at Level V suspended for 2 years at Level II, the Level II sentence is the portion which will actually be served and, therefore, the portion which will be considered as conforming (or not conforming) to the standard.

20. In those instances involving non-violent felonies, where a decision to incarcerate, with appropriate aggravating factors, has been made, the sentence should be UP TO, but NOT IN EXCESS of, 25% of the statutory maximum for the crime.

21. In those instances involving misdemeanors, where, due to stated aggravating factors, a decision has been reached that a sentence to incarcerate is unavoidable; the sentence should not exceed the "recommended maximum" as noted in the standards.

22. In instances when a non-TIS sentence to Level V is followed by a sentence to Level IV and/or Level III supervision, the Board of Parole may grant parole as follows:

    a. Parole to the highest level specified by the original sentencing order. Should a violation occur during the parole period, the offender would be returned before the Board of Parole for violation of parole. Upon successful completion of the required period, the Department may, if appropriate, move the offender pursuant to Policy No. 26, if such a move is not in conflict with the Board of Parole Order. (Revised 9/22/98)
    b. Offenders released upon reaching their short-time release date (conditional release) shall be released to serve the balance of the Level V sentence (i.e. conditional release supervision period) to the next highest level specified by the original court order or other subsequent sentencing order. If appropriate, the Department may move the offender pursuant to Policy No. 26, if such a move is not in conflict with the Board of Parole Order.
    c. If a paroled or mandatory-released offender is serving a court-ordered Level IV or III sentence and the unexpired portion of the Level V sentence is less than one (1) year, the Board of Parole, upon application by the Department of Correction, may issue an order discharging the offender from the balance of the Level V sentence, once an equivalent period has been successfully served at Level IV or III.

23. In those cases where an offender is subject to sentences for more than one offense, and when the combined sentence to intermediate sanction at level IV is in excess of one year, including any work release time on a sentence of incarceration, the Department of Correction shall, absent specific objections from the judge(s), be permitted to move the offender, after one year, to a lower level of supervision, providing the offender has met, and continues to meet, the regulations and any special conditions placed upon him/her by the courts. Any lapse in meeting those conditions shall be grounds for a return to completion of the Level IV sentence without recourse to the courts. In like manner, combined sentences to Level III in excess of twelve months shall be subject to movement to a lower level. Such movements, both up and down, will have no effect on the overall length of sentence, except when a formal violation report is filed with the court.

24. Any person failing to return to a Level IV facility shall be deemed to be on escape status. The facility shall cause a warrant to be issued charging the offender with Escape After Conviction and identifying him as a Level IV escapee. Any such person arrested on the warrant shall be returned to the original sentencing court for both a violation hearing and the new charge.

25. Where a defendant is directly sentenced to Level IV Work Release Center, residential treatment, or home confinement and has awaited placement pending slot availability at Level V for a period of 90 days or one half of the Level IV sentence (whichever is less), the Department of Correction shall make appropriate sentence modification recommendations to the sentencing Judge.

26. Level IV, work release center or halfway house, is deemed quasi-incarceration. A defendant serving a sentence at Level IV, work release or halfway house, i.e., quasi-incarceration, is entitled to earn "good time credits" pursuant to 11 Del. C s4381(b) and (c).

27. It is further the policy of SENTAC that individuals sentenced to Level IV (any variation), who must serve a term at Level V awaiting placement at Level IV, shall, during the time served with good conduct at Level V, be awarded good time pursuant to 11 Del. C. S4381(b)(2).

28. Any person arrested on a charge of escape from any Correctional facility, including both Level V and Level IV facilities, should be returned by the court to a Level V secured facility pending such hearings as may ensue from the charge.

29. With regard to sentences of incarceration conditioned by section 4204(k) of Title 11, as amended in 1997, it shall be understood that such sentences are to be served in their entirety at level V, and that there shall be no diminution of such sentence by any of the normally available early release devices, including (but not limited to) good time credits, furlough, work release or community transition. Because such sentences add significant complexity to the management of the population of incarcerated offenders, and, if used indiscriminately, would substantially increase the prison population, Section 4204(k) should be used by judges only in exceptional circumstances.

30. Since imposition of a sentence pursuant to 11 Del C., sec 4204(k) is, in effect, a departure from the presumptive sentencing guidelines; the reason for use of Sec 4204(k) must be stated on the record and included in the sentencing order. When Section 4204(k) is used with a sentence for an escape-related offense, the reasons for its use are self explanatory and need not be stated on the record or sentencing order.

31. For any Title 16 offense in which no fine is imposed, the Court shall consider imposing a SARTEP (Substance Abuse, Rehabilitation, Treatment, Education and Prevention Fund) civil penalty not to exceed $300.

32. There is a significant cost benefit to the Court, police agencies, attorneys, Department of Correction, the victim and the public in general when a defendant resolves a case early in the criminal process and admits his or her involvement. As such, the Commission, in recognition of these efficiencies, reduces the guideline sentence by 25% when a defendant pleads guilty to the offense and resolves the matter 30 days prior to the scheduled trial. This guideline will only apply when there has been an admission of guilt and is not applicable to Robinson or nolo contendere pleas.

Please familiarize yourself with the above policies and follow them, insofar as possible, in each and every case. If questions should arise, contact either a member of the Commission or the SENTAC staff, Ron Keen, at (302) 577-8728 or Ronald.Keen@state.de.us .

MEMBERS OF THE SENTENCING ACCOUNTABILITY COMMISSION

Description of Commissioner Position	Commission Member:
Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years;	**Chair: Honorable William C. Carpenter, Jr.**
Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years;	**Honorable T. Henley Graves**
Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years;	**Honorable Alan G. Davis**
Four members of the judiciary appointed by the Chief Justice, 2 of whom shall be initially appointed for a 2-year term and 2 of whom shall be appointed to a 4-year term; provided, that each succeeding term for all 4 of such members shall be 4 years;	**Honorable Andrea L. Rocanelli**
The Attorney General or the Attorney General's designee;	**Honorable Joseph R. Biden III**
The Public Defender or the Public Defender's designee;	**Honorable Brendan J. O'Neill**
The Commissioner of Corrections or the Commissioner of Corrections' designee;	**Honorable Carl Danberg**
Members-at-large, each of whom shall, by training or experience, possess a knowledge of Delaware sentencing practices 1 by the Pres. Pro Tempore of the Senate	**Honorable Jerome O. Herlihy**
Members-at-large, each of whom shall, by training or experience, possess a knowledge of Delaware sentencing practices, 2 to be appointed by the Governor	**Martin W. Johnson, III Chief Delaware Police Chief's Council**
Members-at-large, each of whom shall, by training or experience, possess a knowledge of Delaware sentencing practices, 1 by the Speaker of the House	**Colonel Nathaniel McQueen**
Members-at-large, each of whom shall, by training or experience, possess a knowledge of Delaware sentencing practices, 2 to be appointed by the Governor.	**James D. Wilson Jr., Ed. D.**

Class A Felony

Violent (FAV):

Sentence Range (Violent Category) FAV (Exclusive of 1st Degree Murder (11-4209))	
Statutory Range	15 yrs to life (First 15 yrs @ Level V may not be suspended. 11-4205(d))
Presumptive Sentence	15 yrs @ Level V
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-634	**Child Murder by Abuse/Neglect 1st Degree** (a) Reckless: Death of Vt<14 y.oa. by (1) abuse/ neglect/ (2) previous pattern
11-635	**Murder 2nd Degree (see note)** (1) Reckless:Cruel,Wicked,DepravedIndiff/ (2) Neg: Comm.Fel
11-636	**Murder1st Degree (see note)** (a)(1)Intentional/ (2)Reckless:Comm.Fel/ (3)Causes Suicide by Force/ (4)Reckless: Death LEO, CO, FF/ (5)Death Detonation/ (6)Prevent Arrest
11-773	**Rape 1st Degree (see note)** (a)(1)W/out Consent & SeriousInjury/ (2)Comm.Crime/ (3)DeadlyW/ (4)Principle-Accomp/ (5)Vt<12,D>18/ (6)Vt<16 & D=Trust
11-777A(e)(3)	**Sex Offender Unlawful Sexual Conduct Against a Child (see note)**
11-778(f)(1)	**Sexual Abuse of a Child by a person in a position of trust, authority, or supervision in the first degree (see note)**
11-787 b(2)(c), b(4), c	**Trafficking of Persons and Involuntary Servitude (see note)**
11-1304	**Hate Crime (Underlying Offense: Class A Felony) (see note)**
11-1339	**Adulteration: Death**
16-1136(a)	**Abuse/Neglect of Patient: Death**
31-3913(c)	**Abuse/Neglect of Infirm Adult: Death**

Sentences For Prior Criminal History Categories	
Offense committed while on release or pending trial or sentencing	15 to 25 yrs @ Level V
Two or more prior felonies	15 to 25 yrs @ Level V
One prior violent Felony	15 to 25 yrs @ Level V
Two or more prior violent Felonies	15 to Life @ Level V
Excessive Cruelty	15 to Life @ Level V

Supplemental Notations for Class A Felonies:

11-4381(a) Probation is not available for offenders sentenced to life.
All sentences for over 1 year at Level V require a six-month reintegration at Levels IV (quasi-incarceration), III, OR II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for the rehabilitation fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-635	**Murder 2nd Degree. Reclassified in 6/2003**
11-636	**Murder1st Degree** • 4209(d)(1): The following sentence was added in regard to sentencing by the court: The jury's recommendation concerning whether the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist shall be given such consideration as deemed appropriate by the Court in light of the particular circumstances or details of the commission of the offense and the character and propensities of the offender as found to exist by the Court. The jury's recommendation shall not be binding upon the Court. • 4209(d)(4): After the Court determines the sentence to be imposed, it shall set forth in writing the findings upon which its sentence is based. If a jury is impaneled, and if the Court's decision as to whether the aggravating circumstances found to exist outweigh the mitigating circumstances found to exist differs from the jury's recommended finding, the Court shall also state with specificity the reasons for its decision not to accept the jury's recommendation.
11-773	**Rape 1st Degree** • (c) A person convicted under this section shall be sentenced to life without benefit of probation, parole or other reduction if: (1) vt<16+serious injury, (2) permanent disfigures or disables (3) 3 or more vts or (4) prior conviction of unlawful sexual intercourse 1st degree, rape 1st or 2nd degree or equivalent offense • 11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) If the vt is <14 yoa, then the min. man. is 25 years at Level V up to life (7/26/06)
11-777A(e)(3)	**Sex Offender Unlawful Sexual Conduct Against a Child** • (e)(3) If the underlying sexual offense is a class A or B felony, the crime of sex offender unlawful sexual conduct against a child shall be the dame grade as the underlying offense, and the minimum sentence of imprisonment required for the underlying offense shall be doubled.

11-778(f)(1)	**<u>Sexual Abuse of a Child by a person in a position of trust, authority, or supervision in the first degree:</u>** b. Notwithstanding any law to the contrary, a person convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in this subsection shall be sentenced to life imprisonment without benefit of probation, parole or any other reduction if: • 1. at the time of the offense the person inflicts serious physical injury on the victim; or • 2. the person intentionally causes serious and prolonged disfigurement to the victim permanently, or intentionally destroys, amputates or permanently disables a member of the victim's body; or • 3. the person is convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in this subsection against 3 or more separate victims; or • 4. the person has previously been convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree, unlawful sexual intercourse in the first degree, rape in the second degree or rape in the first degree, or any equivalent offense under the laws of this State, any other state or the United States.
11-787 b(2)(C), b(4), c	**<u>Trafficking of Persons and Involuntary Servitude</u>** • (b)(2)(C) Sexual servitude of a minor in which overt force or threat was involved is a Class A felony. • (b)(4)Trafficking of persons for use of body parts. A person is guilty of trafficking of persons for use of body parts when a person knowingly (i) recruits, entices, harbors, provides or obtains by any means, another person, intending or knowing that the person will have body parts removed for sale or (ii) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of this Section. Such person shall be guilty of a Class A felony. Nothing contained herein shall be construed as prohibiting the donation of an organ by an individual at a licensed medical facility after giving an informed voluntary consent. • (c) Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution, including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or of Title 19 of the Delaware Code, whichever is greater.
11-1304(b)(4)	**<u>Hate Crime (Underlying Offense: Class A Felony)</u>** If the underlying offense is a Class A Felony, the minimum sentence of incarceration shall be doubled.

Class B Felony

I.) Violent (FBV)

Sentence Range (Violent Category) FBV	
Statutory Range	2 to 25 yrs (First 2 yrs @ Level V may not be suspended. 11-4205(d))
Presumptive Sentence	2 – 5 yrs
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category

11-606	**Abuse of Pregnant Female 1st Degree** Intentionally causes termination through violence without consent
11-613	**Assault 1st Degree (see note)** (a)(1) Intentional: Serious Injury & DW/ (2)Perm.Disfiguremt/ (4)Comm.Fel+SeriousInjury/ (5)Serious Injury: LEO, FF, (6) Medical Personnel, (7)>62y.o.a (a)(3) Recklessly: Serious Injury/ (4)Comm.Fel+SeriousInjury
11-632	**Manslaughter (see note)** (1)Recklessly: Death/ (2)Intent=Serious Injury: Death/ (3)Intentionally: Death but Extreme Emotion/ (4)Non-therapeutic Abortion: Death/ (5)Intentionally Causes Suicide
11-633	**Child Murder by Abuse/Neglect 2nd Degree** (a)Negligently: Death of Vt<14 y.o.a. by (1)abuse, neglect/ (b)previous pattern
11-771	**Rape 3rd Degree (see note) (7/26/06)** (a)(1) Intercourse: vt<16 & D>10 yrs older/ vt<14 & D=19+ y.o.a. (a)(2) Penetration: (a) w/out consent; Comm.fel; SeriousInjury/ (b) vt<16,Comm.Fel.; injury (a)(3) Intercourse or penetration, V>16, V<18, defendant at least 4 yrs older than victim and in a position of trust, authority, or supervision over the child, or is an invitee of a person who stands in a position of trust, authority or supervision over the child.
11-772	**Rape 2nd Degree (see note) (7/26/06)** (a)(1)Intercourse w/out consent/ (2)Penetration: (a) w/out consent & serious injury/ (b) w/out consent & Comm.Crime/ (c)vt<16 & Serious Injury/ (d) w/out consent & DW or threat/ (e)vt<16 & DW or threat/ (f) w/out consent & Principle-accomp/ (g)vt<12 & D+18+/ (h) vt < 16 & D= trust
11-776	**Continuous Sexual Abuse of Child (see note) (7/26/06)**
11-777	**Dangerous Crime Against Child (see note) (7/26/06)**
11-777A(e)(2),(e)(3)	**Sex Offender Unlawful Sexual Conduct Against a Child (see note)**

11-778(f)(2)	**Sexual Abuse of a Child by a person in a position of trust authority or supervision in the first degree** The minimum sentence for a person convicted of sexual abuse of a child by a person in a position of trust authority or supervision in the first degree as set forth in subsection (b) of this section shall be 10 years at Level V.
11-778(f)(3)	**Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the 1st deg:** As set forth in subsection (c) of this section is a class B felony.
11-783A	**Kidnapping 1st Degree** Unlawful restraint w/out voluntary release of vt unharmed prior to trial to: (1) hold vt for ransom/ (2) use vt as hostage/ (3) Comm.fel/ (4) injure or sexually abuse vt/ (5) terrorize vt or 3d party/ (6) take child<16
11-826(a)(2)	**Burglary 1st Degree (Vt> 62 y.o.a.) (see note)** (a) Dwelling at night (1) armed/ (2) causes injury to nonparticipant
11-826A	**Home Invasion (see note)**
11-832	**Robbery 1st Degree (see note)** (a)(1)injury to nonparticip/ (2) DW or threat of/ (3)armed & use or threat/ (4)vt>62)
11-836(a)(4-6)	**Carjacking 1st Degree** (a)(4)DW or threat/ (5)Injury/ (6)Vt>62 or <14 y.o.a
11-1108	**Sexual Exploitation of Child (see note)**
11-1109	**Dealing in Child Pornography**
11-1110	**Unlawful Dealing Child Pornography (2nd offense of 11- 1109)**
11-1253	**Escape After Conviction (Special Escape Category May Apply)(see note)** Injury
11-1254(b)	**Assault in Detention Facility w/Serious Injury (see note)**
11-1304(b)(3)	**Hate Crime (Underlying Offense: Class C Felony)**
11-1304(b)(4)	**Hate Crime (Underlying Offense: Class B Felony) (see note)**
11-1447	**Possession of Deadly Weapon during Commission of a Felony (see note)**
11-1447A	**Possession of Firearm during Commission of a Felony (see note)**
11-1448(e)(2)	**Poss/Purchase Firearm/Destructive Weapon by Prohibited Person w/Prior Conviction of Violent Felony (see note)**
11-1449	**Wearing Body Armor during Commission of a Felony (see note)**
11-1503	**Racketeering (see note)**
16-4752	**Drug dealing – Aggravated possession**
16-4757(c)(2)	**Misc. Drug Crimes, Solic. of Multiple Prescrip. Drug Crimes (see note)**

II.) Nonviolent (FBN)

Crimes in Category

11-787 b(1)(A), b(1)(B),b(2)(B), b(3), c	**Trafficking of persons and involuntary servitude (see note)**
11-841(3)(b)	**Theft (> $100,000) (see note)**
11-913A(c)(3)	**Health Care Fraud** (Intended loss > $100,000/ Provider (see note)
11-917(d)(3)	**New Home Construction Fraud (Loss > $100,000)**
11-1103B	**Child Abuse in the First Degree**
31-610(a)(3)	**Traffick in Food Stamps (Firearms/Ammunition/Cont. Substances) (see note)**

Sentences For Prior Criminal History Categories	
Offense committed while on release or pending trial/sentencing	Up to 10 yrs at Level V
Two or more prior felonies	Up to 10 yrs at Level V
One prior violent Felony	Up to 10 yrs at Level V
Two or more prior Violent Felonies	Up to 25 yrs at Level V
Excessive Cruelty	Up to 25 yrs at Level V

Supplemental Notations For Class B Felony (Violent):

If crime is a secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims' fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-613	**Assault 1st Degree. Reclassified in 6/2003**
11-632	**Manslaughter. Reclassified in 6/2003**
11-771 **11-771(a)(2)**	**Rape 3rd Degree** • (c) If a child is born as a result of offense and remains in the custody of the vt or vt's family, timely child support payments ordered by Family Ct shall be a condition of probation • 11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) If the vt is <14 yoa, then the min. man. is 25 years at Level V up to life (7/26/06)
11-772	**Rape 2nd Degree** • (c) Minimum mandatory sentence: 10 yrs at Level V but see below. • 11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) If the vt is <14 yoa, then the min. man. is 25 years at Level V up to life(7/26/06)
11-776	**Continuous Sexual Abuse of Child** 11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) If the vt is <14 yoa, then the min. man. is 25 years at Level V up to life (7/26/06)
11-777	**Dangerous Crime Against Child** • (b) Mandatory Minimum for 2nd offense= life imprisonment. • (c) Defendants sentenced pursuant to this statute shall be not be eligible for suspension of sentence, probation, pardon or release from confinement on any basis until sentence is served. • 11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) If the vt is <14 yoa, then the min. man. is 25 years at Level V up to life (7/26/06)
11-777A(e)(2), (e)(3)	**Sex Offender Unlawful Sexual Conduct Against a Child** • (e)(2) If the underlying sexual offense is a Class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony. • (e)(3) If the underlying sexual offense is a class A or B felony, the crime of sex offender unlawful sexual conduct against a child shall be the same grade as the underlying offense, and the minimum sentence of imprisonment required for the underlying offense shall be doubled.

11-826(a)(2)	**<u>Burglary 1st Degree (Vt> 62 y.o.a.)</u>** • (b) Minimum Mandatory Sentences: (b)(1) 2 yrs at Level V or (b)(2) 4 yrs at Level V if within 5 yrs of the date of a previous conviction for Burglary of the 1st or 2nd degree, or the date of release from said conviction. The provisions of §4215 (Previous Conviction Enhancement) shall not be applicable. • (c) Sentencing provisions equally applicable to Attempt First Conviction — 24 m. to 48 m. @ Level V On release pending trial/sentence — 36 m. to 60 m. @ Level V 2 or more Prior Felonies — 48 m. to 96 m. @ Level V 1 Prior Violent Felony — 48 m. to 96 m. @ Level V 2 or more Prior Violent Felonies — 60 m. to 120 m. @ Level V Excessive Cruelty — 60 m. to 120 m. @ Level V
11-826A	**<u>Home Invasion</u>** • (b)(1)a. Minimum sentence of 6 years at Level V. • (b)(1)b. 8 years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for home invasion or burg. 1st or 2nd degree or if the conviction is for an offense that was committed within 5 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for home invasion or burglary 1st or burg. 2nd degree. • (b)(2) Notwithstanding the provisions of par. (b)(1) of this section or Code to the contrary, any person convicted of home invasion where the other person present in the dwelling, who is not a participant in the crime, is a person 62 yoa or older shall receive a minimum sentence of: a. 7 years at Level V; or b. 9 yrs at Lev. V, if the conviction is for an offense that was committed within 5 yrs of the date of a prev. conviction for home invasion or burg. 1st or 2nd degree or if the conviction is for an offense that was committed within 5 yrs of the date of termination of all periods of incarceration or confinement imposed pursuant to a prev. conv. for home invasion or burg. 1st or 2nd deg. conviction.
	<u>Robbery 1st Degree</u> • (b) Min. Mand. sentence of (1) 3 yrs at Level V or (2) 5 yrs at Level V if the conviction is for an offense that was committed within 10 years of the date of a prev. conviction or termination of the date of confinement from such prev. conviction, whichever date is later. Sentence not subject to terms of §4215 (Prev. Conv. Enhancement) • (c) Sentencing provisions equally applicable to Attempt. • Original jurisdiction over juveniles charged with Robbery 1st shifted to Superior Court with reverse amenability available. 1 year mandatory commitment for Robbery 1st involving weapons or serious physical injury or for PFDCF in Family Court.
11-1108	**<u>Sexual Exploitation of Child</u>** Any person convicted of a 2nd or subseq. Viol. shall be sentenced to life.(Title 11, §1110)
11-1253	**<u>Escape After Conviction</u>** Any sentence imposed shall not run concurrently with any other sentence.

11-1254(b)	**<u>Assault in Detention Facility w/Serious Injury</u>** • Minimum Mandatory Sentence: 3 yrs at Level V to begin immediately upon sentencing. • Such sentence shall not be susp. nor shall the Defendant be eligible for parole or prob. • Original sentence causing confinement temporarily suspended and continues only after the sentence for this conviction has been completed.

11-1304(b)(4)	**Hate Crime (Underlying Offense: Class B Felony)** If the underlying offense is a Class B Felony, the minimum sentence of incarceration shall be doubled.
11-1447	**Possession of Deadly Weapon during Commission of a Felony** • (b) Any sentence imposed shall not be subject to suspension, good time, parole or probation. • (c) Any sentence imposed shall not run concurrently. The sentence imposed shall be served following the imposition of a sentence for the conviction of the felony offense. • (d) Juveniles over the age of 16 shall be tried as an adult, with reverse amenability available.
11-1447A	**Possession of Firearm during Commission of a Felony** • (b) Minimum Mandatory Sentence= 3 years at Level V • (c) If conviction represents 3rd felony conviction= minimum mandatory sentence= 5 years at Level V • (d) Any sentence imposed shall not be subject to suspension, good time, parole or probation. • (f) Juveniles over the age of 15 shall be tried as an adult, with reverse amenability available
11-1448(e)(2)	**Poss/Purchase Firearm/Destructive Device by Prohibited Person w/Prior Conviction of Violent Felony** • Mandatory Minimum Sentence- (e)(2): a. 4 yrs at Level V; or b. 6 yrs at Level V, if the person causes such injury or death within 10 yrs of the date of conviction for any violent felony or the date of termination of all periods of incarceration or confinement imposed pursuant to said conviction, whichever is the later date; or c. 10 yrs at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.
11-1449	**Wearing Body armor during Commission of a Felony** • Minimum Mandatory Sentence= 3 years at Level V which shall not be subject to suspension, parole or probation • Any sentence shall not run concurrently. • The sentence imposed shall be served following the imposition of a sentence for the conviction of the felony offense • Juveniles over the age of 16 shall be tried as an adult, with reverse amenability available
11-1503	**Racketeering** • 1504(a): Minimum fine= $25,000 • 1504(b): Mandatory forfeiture of property; Superior Ct shall authorize seizure by AG • 1504(c): In lieu of fine, Defendant may be ordered to pay 3x gross value gained or gross loss caused, whichever is greater, together with investigation, prosecution and court costs reasonably incurred.
16-4752	**Drug dealing – Aggravated possession** (1) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 4 quantity; (2) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 2 quantity, and there is an aggravating factor; (3) Possesses a controlled substance in a Tier 5 quantity; (4) Possesses a controlled substance in a Tier 3 quantity, and there is an aggravating factor; or (5) Possesses a controlled substance in a Tier 2 quantity as defined in any of Section 4751C(4)a.-i., of this title and there are two aggravating factors.

Supplemental notations for Class B Felony (Non-violent)

11-787(b)(1)(A), 11-787(b)(1)(B), 11-787(b)(2)(B), 11-787(b)(3) 11-787(c)	**Trafficking of persons and involuntary servitude** • (b)(1)(A) by causing or threatening to cause physical harm to any person which is a class B felony; • (b)(1)(B) by physically restraining or threatening to physically restrain another person which is a class B felony; • (b)(2)(B) sexual servitude of a minor in which the minor had not attained the age of 14 years and which did not involve overt force or threat is a class B felony; • (b)(3) Trafficking of persons for forced labor or services. A person is guilty of trafficking of persons for forced labor or services when a person knowingly (i) recruits, entices, harbors, transports, provides or obtains by any means, another person, intending or knowing that the person will be subjected to forced labor or services; or (ii) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of this Section. Trafficking of persons for forced labor or services is a class B felony. • (c) Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution, including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or of Title 19 of the Delaware Code, whichever is greater.
11-841(3)(b)	**Theft (> $100,000)** 841 (d): Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.
11-913A(c)(3)	**Health Care Fraud** (Intended loss > $100,000/ provider 913 (c)(4) Fine may be up to 5x pecuniary benefit sought or obtained.
16-4757(c)(2)	**Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes:** A person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30-day period to violate any provision of subsection (a) of 4757 and there is an aggravating factor in connection with at least one of the times.
31-610(a)(3)	**Trafficking in Food Stamps (Firearms/Ammunition/Controlled Substances)** May be suspended from the Food Stamp Program for 18 months more than suspension mandated by the Federal Food Stamp Act

Class C Felony (Violent)

I.) (FCV)

Sentence Range (Violent Category) FCV	
Statutory Range	0 to 15 years @ Level V
Presumptive Sentence	Up to 30 months @ Level V
Acceptance of Responsibility	Up to 22 months @ Level V
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category

11-605	**Abuse of Pregnant Female 2nd Degree** Recklessly causes termination through violence without consent
11-612 (11)	**Assault 2nd Degree** The person recklessly or intentionally causes physical injury to a law enforcement officer, security officer, fire policeman, fire fighter, paramedic, or emergency medical technician in the lawful performance of their duties by means of an electronic control device shall be a class c felony.
11-630A	**Vehicular Homicide in the First Degree (see note)** DUI & Criminally Negligent Driving: death
11-770	**Rape 4th Degree** (a)(1) vt<16/ (2) vt<18 & D=30+, unless married/ (3)penetration (a)w/out consent or (b) vt<16/ vt>16 but< 18 & D= trust
11-777A(e)(2)	**Sex Offender Unlawful Sexual Conduct Against a Child (see note)**
11-778(f)(4)	**Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree: (see note)**
11-783	**Kidnapping 2nd Degree** Unlawful restraint w/ voluntary release of vt unharmed prior to trial to: (1) hold vt for ransom/ (2) use vt as hostage/ (3) Comm.fel/ (4) injure or sexually abuse vt/ (5) terrorize vt or 3d party/ (6) take child<16
11-803	**Arson 1st Degree** Intentionally damage bldg by fire/explosion w/knowledge that bldg is either: (1) occupied or (2) it is within reason that it would have been
11-825	**Burglary 2nd Degree (Vt> 62 y.o.a.) (see note)** (a)(1) Dwelling/ (a)(2) Bldg + (a) DW or (b) Injury to nonparticipant
11-826	**Burglary 1st Degree (see note)** (a) Dwelling at night (1) armed/ (2) causes injury to nonparticipant
11-836(a)(1– 3)	**Carjacking 1st Degree** (a)(1) Class D Felony or higher/ (2) DUI/ (3) Drug Offense
11-1105	**Crime Against a Vulnerable Adult (see note)**
11-1112A	**Child Sex Solicitation**

11-1253	**Escape After Conviction (Special Escape Category May Apply)(see note)** Force/Threat/Deadly Weapon
11-1304(b)(3)	**Hate Crime (Underlying offense: Class D Felony)**
11-1312	**Stalking w/ Deadly Weapon (see note)**
11-1353	**Promoting Prostitution 1st Degree** (1) Compels or profits by force or intimidation/ (2) Profits by prostitute < 16 y.o.a
11-1455	**Firearm Transaction on Behalf of Another (Prior Conviction)**
16-1136(a)	**Abuse/Neglect of patient in Facility** (serious physical injury, sexual penetration, sexual intercourse)
16-4753	**Drug dealing – Aggravated Possession;(see note)**
16-4757(c)(1)	**Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes (see note)**
31-3913(b)	**Exploitation of Infirm Adult (>$50,000/Prior Conviction)**

Sentences For Prior Criminal History Categories	
While on release or pending trial or sentencing	Up to 5 years @Level V
Two or more prior felonies	Up to 5 years @ Level V
One prior Violent felony	Up to 5 years @ Level V
Two or more prior violent felonies	Up to 10 years @ Level V
Excessive cruelty	Up to 10 years @ Level V

Supplemental Notations for Class C Violent Felonies

If crime is secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims' fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
11-616(c)(3) Gang Participation: Conviction for a Class C Felony as a result of gang participation shall be sentenced as a Class B Felony under Title 11, §4205.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-630A	**Vehicular Homicide 1st Degree** • (b) Minimum mandatory sentence = 2 years which shall not be subject to suspension, probation, parole, furlough, work release or supervised custody for the first 18 m. • Every person >16 y.o.a., shall be treated as an adult, subject to reverse amenability provisions, except that mandatory minimum sentences in (b) shall not apply. Incarceration, if ordered, shall be initially served in juvenile facility until 18 y.o.a and then shall continue in an adult facility.
11-777A(e)(2)	**Sex Offender Unlawful Sexual Conduct Against a Child** • (e)(2) If the underlying sexual offense is a Class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony.
11-778(f)(4)	**Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first 16-476O** as set forth in subsection (d) (intentionally engages in sexual intercourse or sexual penetration with a child and the Victim >16 <18) of this section is a class C felony.

11-825	**<u>Burglary 2nd Degree (Vt> 62 y.o.a.)</u>** • (b) Minimum Mandatory Sentences: (1) 1 yr. at Level V or (2) 3 yrs at Level V if within 5 yrs of the date of a previous conviction for Burglary of the 1st or 2nd degree, or the date of release from said conviction. The provisions of §4215 (Previous Conviction Enhancement) shall not be applicable. • (c) Sentencing provisions equally applicable to Attempt **First Conviction** 12 m. to 36 m. @ Level V **On release pending trial/sentence** 18 m. to 36 m. @ Level V **2 or more Prior Felonies** 36 m. to 72 m. @ Level V **1 Prior Violent Felony** 36 m. to 72 m. @ Level V **2 or more Prior Violent Felonies** 48 m. to 96 m. @ Level V **Excessive Cruelty** 48 m. to 96 m. @ Level V
11-826	**<u>Burglary 1st Degree</u>** • (b) Minimum Mandatory Sentences: (b)(1) 2 yrs at Level V or (b)(2) 4 yrs at Level V if within 5 yrs of the date of a previous conviction for Burglary of the 1st or 2nd degree, or the date of release from said conviction. The provisions of §4215 (Previous Conviction Enhancement) shall not be applicable. • (c) Sentencing provisions equally applicable to Attempt • Presumptive sentences: **First Conviction** 24 m. to 48 m. @ Level V **On release pending trial/sentence** 36 m. to 60 m. @ Level V **2 or more Prior Felonies** 48 m. to 96 m. @ Level V **1 Prior Violent Felony** 48 m. to 96 m. @ Level V **2 or more Prior Violent Felonies** 60 m. to 120 m. @ Level V **Excessive Cruelty** 60 m. to 120 m. @ Level V
11-1105	**<u>Crime Against a Vulnerable Adult</u>** For this offense to be a class C felony, the underlying offense must be a class D felony. See page 114 for listing of qualifying underlying offenses for this statute. "Vulnerable Adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation, the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.
11-1253	**<u>Escape After Conviction</u>** Any sentence imposed shall not run concurrently with any other sentence.
11-1312	**<u>Stalking w/ Deadly Weapon</u>** • (6) If act(s) has been previously prohibited by court order or sentence, minimum mandatory sentence = 6 m. at Level V; the first 6 m. of sentence shall not be subject to suspension • (7) If convicted of stalking w/in 5 yrs of prior stalking conviction, minimum mandatory sentence = 1 yr at Level V; the first year of sentence shall not be subject to suspension

16-4753	**<u>Drug dealing – Aggravated Possession;</u>** (1) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 2 quantity; (2) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance, and there is an aggravating factor; (3) Possesses a controlled substance in a Tier 4 quantity as defined in any of Section 4751C(2)a.-i. of this title; (4) Possesses a controlled substance in a Tier 2 quantity, as defined in any of Section 4751C(4)a.-i. of this title; and there is an aggravating factor; or (5) Possesses a controlled substance in a Tier 1 quantity, and there are 2 aggravating factors;
16-4757(c)(1)	**<u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes</u>** (1) A person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30 day period to violate any provision or subsection of 4757(a).

Class C Felony (Nonviolent)

II.) (FCN)

Sentence Range (Nonviolent Category) FCN	
Statutory Range	0 to 15 years @ Level V
Presumptive Sentence	Up to 1 yr @ Level V
Acceptance of Responsibility	Up to 9 months @ Level V
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category

11-503	**Criminal Solicitation 1st Degree** Solicit to commit Class A Felony + Solicited <18 & D>18/Solicited<15 & D= 3+ yrs older
11-787(b)(1)(C)(b)(2)(A)	**Trafficking of persons and involuntary servitude (see note)**
11-841(3)(b)	**Theft (> $100,000) (see note)**
11-907B(b)	**Criminal Impersonation of a Police Officer w/Injury or Felonies (see note)**
11-913A(c)(3)	**Health Care Fraud (Intended loss>$100,000/Provider)(see note)**
11-1458	**Removing Firearm from a Law Enforcement Officer**
11-1471(c)(f)(g)(h)(i)(j)	**Video Lottery Cheat Device >$99,999.99**
16-2513(b)	**Conceal/Destroy/Falsify/Forge Document Which Results in False Authorization of Maintenance Medical Treatment for Life Prolongation**
31-1003	**Benefit by False Representation >$10,000 (see note)**
31-1004(2)	**Falsify Reimbursement Report >$10,000 (see note)**
31-1006	**Unlawful Conversion of Benefits >$10,000 (see note)**

Sentences For Prior Criminal History Categories	
Repetitive Criminal History	Up to 24 months @ Level V
Lack of amenability to lesser sanctions	Up to 24 months @ Level V

Supplemental Notations for Class C Nonviolent Felonies

If crime is a secondary offense, use non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
11-616(c)(3) Gang Participation: Conviction for a Class C Felony as a result of gang participation shall be sentenced as a Class B Felony under Title 11, §4205.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-787 **(b)(1)(C)** **(b)(2)(A)**	**Trafficking of persons and involuntary servitude** • (b)(1)(C) by abusing or threatening to abuse the law or legal process which is a class C felony; • (b)(2)(A) sexual servitude of a minor in which the minor was between the ages of 14 and 18 years and which did not involve overt force or threat is a class C felony. • (c) Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution, including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or of Title 19 of the Delaware Code, whichever is greater.
11-841(3)(b)	**Theft (>$100,000)** 841(d): Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.
11-907B(b)	**Criminal Impersonation of a Police Officer w/Injury or Felonies** During the commission of the offense: (1) causes injury to a nonparticipant or (2) commits a Class A or Class B Felony or any sexual offense as defined in Title 11, §761(d)
11-913A(c)(3)	**Health Care Fraud (Intended loss>$100,000/Provider)** 913(c)(4): Fine may be up to 5x pecuniary benefit sought or obtained.
31-1003 **31-1004(2)** **31-1006**	**Benefit by False Representation** **Falsify Reimbursement Report** **Unlawful Conversion of Benefits** • 31-1007(d): Every provider convicted under this chapter shall make full restitution of money, goods or services or of the value of same plus interest at the rate of 1.5% per month for the period from the date upon which payment was made to the date upon which repayment is made to the State • 31-1007(e): Provider shall not be eligible for participation in Delaware Public Assistance Program, subject to certain exceptions.

Class D Felony (Violent)

I.) (FDV)

Sentence Range (Violent Category) FDV	
Statutory Range	0 to 8 years @ Level V
Presumptive Sentence	Up to 2 years @ Level V
Acceptance of Responsibility	Up to 18 months @ Level V
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-607(3)	**Strangulation (see note)**
11-612	**Assault 2nd Degree** (a)Intentionally: (1) Serious Injury/ (2)Injury w/DW/ (3) Injures LEO, FF, CO/ (4) Medical personnel/ (5) Vt>62/ (6)Assaults LEO w/spray/ (7)Uses spray commit crime/ Injures State Employee/ (9) Injures Pregnant Female/ (10) Injures Vt< 6 y.o.a. (a)Recklessly: (1) Serious Injury/ (2)Injury w/DW/ (5)Vt>62/ (9) Injures Pregnant Female/ (10) Injures Vt< 6 y.o.a.
11-630	**Vehicular Homicide 2nd Degree (see note)** (a)(1) Criminally negligent driving: death/ (2) DUI + Negligent driving:death
11-631	**Criminally Negligent Homicide**
11-769	**Unlawful Sexual Contact 1st Degree** Causing physical injury/using deadly weapon or threat of
11-775	**Bestiality**
11-777A(e)(2)	**Sex Offender Unlawful Sexual Conduct Against a Child (see note)**
11-778(f)(5)	**Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree: (see note)**
11-778A(d)(1)	**Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree: (see note)**
11-802	**Arson 2nd Degree** Intentionally damage unoccupied bldg by fire/explosion
11-825	**Burglary 2nd Degree (see note)** (a)(1) Dwelling/ (a)(2) Bldg + (a) DW or (b) Injury to nonparticipant
11-835(b)(2)	**Carjacking 2nd Degree** (a)Risk of Death or Serious Injury/(b)Compels Lawful Occupant to Leave/(c) Reckless Operation
11-846	**Extortion (Vt>62 y.o.a.)**
11-1105	**Crime Against a Vulnerable Adult (see note)**
11-1109	**Dealing in Child Pornography (see note)**
11-1250(c)	**Assault 1st Degree on Law Enforcement Animal** Intentionally or Recklessly causes Death or Serious Injury
11-1253	**Escape After Conviction** (Special Escape Category May Apply)(see note)

11-1254(a)	**Assault in Detention Facility: Injury (see note)**
11-1254(c)	**Assault in Detention Facility: Bodily Emissions (see note)**
11-1304(b)(3)	**Hate Crime (Underlying Offense: Class E Felony)**
11-1338	**Mfr/Transfer/Use/Poss/Transport Bomb/Incendiary Device/ Molotov Cocktail/Explosive (see note)**
11-1442	**Carrying Concealed Deadly Weapon (Firearm) (see note)**
11-1448(e)(1)	**Poss/Purchase Firearm/Destructive Weapon by Prohibited Person w/Prior Conviction of Violent Felony (see note)**
11-1459	**Possession of a Firearm with Altered Serial Number**
11-3533	**Aggravated Intimidation of Witness &/or Victim (see note)**
16-4754	**Drug dealing – Aggravated possession;(see note)**
31-3913(b)	**Exploitation of Infirm Adult ($10,000 – $50,000)**
31-3913(c)	**Abuse of Infirm Adult: Bodily Harm**

Sentences For Prior Criminal History Categories	
While on release or pending trial or sentencing	Up to 4 yrs @ Level V
Two or more prior felonies	Up to 4 yrs @ Level V
One Prior violent felony	Up to 4 yrs @ Level V
Two or more prior violent felonies	Up to 8 yrs @ Level
Excessive Cruelty	Up to 8 yrs @ Level V

Supplemental Notations for Class D Violent Felonies

If crime is a secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
11-616(c)(2) Gang Participation: Conviction for a Class D Felony as a result of gang participation shall be sentenced as a Class C Felony under Title 11, §4205.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-607(3)	**Strangulation** • If person used or attempted to use a deadly weapon or dangerous instrument while committing the offense; or • The person caused serious physical injury to the other person while committing the offense; or • The person has previously been convicted of strangulation
11-630	**Vehicular Homicide 2nd Degree** • (b) Mandatory minimum sentence for violation of (a)(2) DUI: 1 yr. which shall not be subject to suspension, probation, parole, furlough, work release or supervised custody during the 1st year. • (c) Persons 16 y.o.a. or older, shall be treated as an adult except that mandatory minimum sentence shall not apply & any period of incarceration shall be served at a juvenile facility until 18 y.o.a. at which time the person shall be transferred to an • adult facility to continue their sentence

<table>
<tr><td>11-777A(e)(2)</td><td><u>Sex Offender Unlawful Sexual Conduct Against a Child</u>
• (e)(2) If the underlying sexual offense is a Class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony.</td></tr>
<tr><td>11-778(f)(5)</td><td><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree</u>
as set forth in subsection (e)(engages in an act of sexual extortion as defined in Section 774 of this chapter, and the victim is <16) is a class D Felony.</td></tr>
<tr><td>11-778A(d)(1)</td><td><u>Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree</u>
as set forth in subsection (a)(intentionally has sexual contact with a child <16 or causes the child to have sexual contact with the person or a third person and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child) is a class D felony.</td></tr>
<tr><td>11-825</td><td><u>Burglary 2nd Degree</u>
• Minimum Mandatory Sentences: (b)(1) 1 yr at Level V or (b)(2) 3 yrs at Level V if within 5 yrs of the date of a previous conviction for Burglary of the 1st or 2nd degree, or the date of release from said conviction. The provisions of §4215 (Previous Conviction Enhancement) shall not be applicable.
• (c) Sentencing provisions equally applicable to Attempt
• Minimum Presumptive Sentences:
<table>
<tr><td>1st Conviction</td><td>12 to 36 m @ Level V</td></tr>
<tr><td>While on Release or pending Trial</td><td>18 to 36 m @ Level V</td></tr>
<tr><td>Two or more prior felonies</td><td>36 to 72 m @ Level V</td></tr>
<tr><td>One Prior Violent Felony</td><td>36 to 72 m @ Level V</td></tr>
<tr><td>Two or more prior violent felonies</td><td>48 to 96 m @ Level V</td></tr>
<tr><td>Excessive cruelty</td><td>48 to 96 m @ Level V</td></tr>
</table></td></tr>
<tr><td>11-1105</td><td><u>Crime Against a Vulnerable Adult</u>
For this offense to be a class D felony, the underlying offense must be a class E felony. See page 114 for listing of qualifying underlying offenses for this statute.
"Vulnerable Adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation, the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.</td></tr>
<tr><td>11-1109</td><td><u>Dealing in Child Pornography</u>
2nd or subsequent conviction shall be guilty of a Class B Felony (Title 11, §1110).</td></tr>
<tr><td>11-1253</td><td><u>Escape After Conviction</u>
Any sentence imposed shall not run concurrently with any other sentence.</td></tr>
<tr><td>11-1254(a)</td><td><u>Assault in Detention Facility: Injury</u>
• Minimum Mandatory Sentence: 2 years at Level V to begin immediately upon sentencing.
• Such sentence shall not be suspended nor shall the Defendant be eligible for parole or probation. Original sentence causing confinement temporarily suspended and continues only after the sentence for this conviction has been completed

.</td></tr>
</table>

11-1254(c)	**Assault in Detention Facility: Bodily Emissions** • Minimum Mandatory Sentence: 1 yr at Level V to begin immediately upon sentencing. • Such sentence shall not be suspended nor shall the Defendant be eligible for parole or probation. • Original sentence causing confinement temporarily suspended and continues only after the sentence for this conviction has been completed. • The Defendant shall be tested for communicable diseases and the costs assessed as costs upon conviction. Results are to be communicated to the AG, the Victim, the Defendant and the medical care provider for D.O.C.
11-1338	**Mfr/Transfer/Use/Poss/Transport Bomb/Incendiary Device/ Molotov Cocktail/Explosive** Any person over 16 y.o.a. who violates this section shall be charged as an adult.
11-1442	**Carrying Concealed Deadly Weapon (Prior conviction < 5 yrs)** • Weapon is a firearm

11-1448(e)(1)	**Poss/Purchase Firearm/Destructive Device by Prohibited Person w/Prior Conviction of Violent Felony** • Mandatory Minimum Sentence- (e)(1): 1 yr at Level V if previously convicted of a violent felony or (e)(2): 3 yrs at Level V if offense occurs within 10 yrs of the conviction or incarceration for any violent felony, whichever is later or (e)(3): 5 yrs at Level V if the person has been convicted on 2 or more separate occasions of any violent felony. The provisions of §4215 (Previous Conviction Enhancement) shall not be applicable.
11-3533	**Aggravated Intimidation of Witness &/or Victim** 11-3534: Sentencing provisions equally applicable to Attempt
16-4754	**Drug dealing – Aggravated possession** (1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance; (2) Possesses a controlled substance in a Tier 3 quantity; or (3) Possesses a controlled substance in a Tier 1 quantity, and there is an aggravating factor

Class D Felony (Nonviolent)

II.) (FDN)

Sentence Range (Nonviolent Category) FDN	
Statutory Range	0 to 8 years @ Level V
Presumptive Sentence	Up to 12 months @ Level II or III
Acceptance of Responsibility	Up to 9 months at Level II or III
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-841(c)(3)(a)	**Theft ($50,000-$99,999) (see note)**
11-850(b)(3)	**Unlawful Telecommunication Device (>2 prior convictions/ 50+ devices) (see note)**
11-854	**Identity Theft (see note)**
11-913A(c)(2)	**Health Care Fraud (see note)** Intended loss = $50,000-$99,999/ Pattern of claims when offender is provider
11-917(d)(2)	**New Home Construction Fraud** Loss = $50,000-$99,999
11-932	**Unauthorized Computer Access (>$10,000) (see note)**
11-933	**Theft Computer Services (>$10,000) (see note)**
11-934	**Interruption Computer Services (>$10,000) (see note)**
11-935	**Misuse Computer System Information (>$10,000) (see note)**
11-936	**Destruction Computer Equipment (>$10,000) (see note)**
11-937	**Unauthorized Electronic Mail (>$10,000) (see note)**
11-938	**Fail to Cease Electronic Communication (>$10,000) (see note)**
11-939	**Computer Offense Penalties (>$10,000) (see note)**
11-951	**Money Laundering**
11-1223	**Perjury 1st Degree** Material, False Testimony
11-1448(c)(1 of a1-a8)	**Poss/Purchase Firearm/Ammunition by Prohibited Person**
11-1448(a)(5)	**Poss/Purchase Firearm/Ammunition by Prohibited Person (see note)**
11-1457(j)(3)	**Poss. Weapon in Safe School/Recreation Zone (Underlying Offense: Class E Fel.) (see note)**

Sentences For Prior Criminal History Categories	
Repetitive Criminal History	Up to 24 months @ Level V
Lack of amenability to lesser sanctions	Up to 24 months @ Level V

Supplemental Notations for Class D Nonviolent Felonies:

If crime is a secondary offense, use non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
11-616(c)(2) Gang Participation: Conviction for a Class D Felony as a result of gang participation shall be sentenced as a Class C Felony under Title 11, §4205.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-841(c)(3)(a)	**Theft ($50,000-$99,999)** Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.
11-850(b)(3)	**Unlawful Telecommunication Device (>2 prior convictions/ 50+ devices)** • (b)(4) A prior conviction shall consist of convictions upon separate indictments or criminal complaints • (b)(7) All fines shall be imposed for each unlawful telecommunication or access device • (b)(8)Restitution shall be ordered in the manner prescribed by §4106 • (b)(9) The court may order forfeiture of unlawful device(s)
11-854	**Identity Theft** Restitution shall be ordered for monetary loss including documented loss of wages and reasonable attorney's fees
11-913A(c)(2)	**Health Care Fraud** 913A(c)(4) Fine may be up to 5x pecuniary benefit sought or obtained.
11-932 **11-933** **11-934** **11-935** **11-936** **11-937** **11-938** **11-939**	**Unauthorized Computer Access** **Theft Computer Services** **Interruption Computer Services** **Misuse Computer System Information** **Destruction Computer Equipment** **Unauthorized Electronic Mail** **Fail to Cease Electronic Communication** **Computer Offense Penalties** • (f) In lieu of fine, Court may order Defendant to pay an amount up to double the proceeds from the offense. Record shall reflect findings as to the proceeds gained. • (g) Amounts may be aggregated to determine degree of crime. • (h) Value shall be (1) market value at time of offense or (2) cost of replacement. If value cannot be established, it shall be $250 or (i) in the case of private personal data, $500.
11-1448(a)(5)	**Poss/Purchase Firearm/Ammunition by Prohibited Person** • (f)(1) Any juvenile 14 y.o.a or older convicted under (a)(5) shall for a 1st offense, receive a minimum sentence of 6 m. at Level V, or, for a 2nd or subsequent offense, 1 yr of Level V, which shall not be suspended. §§4205(b) and 4215 shall not be applicable to this subsection. • (g) In addition, said juvenile shall be ordered after a first conviction to view a film/slide presentation related to the damage and injury caused by a gun and must meet with a victim of or family of a deceased victim of violent crime.
11-1457	**Poss. Weapon in Safe School/Recreation Zone** (Underlying Offense: Class E Fel.) (j)(3) If the underlying offense is a class e felony the crime shall be a class d felony. (j)(5) An elementary or secondary school student shall be expelled for 180d.

Class E Felony (Violent)

I.) (FEV)

Sentence Range (Violent Category): FEV	
Statutory Range	0 to 5 years @ Level V
Presumptive Sentence	Up to 15 m. @ Level V
Acceptance of Responsibility	Up to 11 months @ Level V
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-513	**Conspiracy 1st Degree** Conspires to Commit Class A Felony
11-602(b)	**Aggravated Menacing (Display Deadly Weapon)**
11-604	**Reckless Endangering 1st Degree** Conduct likely to cause death
11-607(1)	**Strangulation**
11-774	**Sexual Extortion**
11-777A(e)(2)	**Sex Offender Unlawful Sexual Conduct Against a Child (see note)**
11-831	**Robbery 2nd Degree** (a)Theft w/force to (1) overcome resistance/(2)compel owner's cooperation
11-835	**Carjacking 2nd Degree** Intentional Theft Occupied Motor Vehicle by Coercion/Duress
11-846	**Extortion**
11-1105	**Crime Against a Vulnerable Adult (see note)**
11-1304(b)(3)	**Hate Crime (Underlying Offense: Class F Felony)**
11-1339	**Adulteration (Injury/Illness)**
11-1444	**Possess Destructive Weapon (see note)**
11-1445(5)	**Unlawful Dealing with Dangerous Weapon** Enabling Felony/Class A Misdemeanor/Drug Crime
16-4755	**Aggravated possession** Possession of a controlled substance in a Tier 2 quantity as defined in 4751C(4)a.-i.
16-4774(c)	**Delivery Drug Paraphernalia to Minor**
31-3913(b)	**Exploitation of Infirm Adult (>$5,000/<$10,000)**

Sentences For Prior Criminal History Categories	
While on release or pending trial or sentencing	Up to 30 m. @ Level V
Two or more prior felonies	Up to 30 m. @ Level V
One prior violent felony	Up to 30 m. @ Level V
Two or more prior violent felonies	Up to 5 yrs @ Level V

Supplemental Notations For Class E Violent Felonies:

If crime is a secondary offense, use non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
11-616(c)(3) Gang Participation: Conviction for a Class C Felony as a result of gang participation shall be sentenced as a Class B Felony under Title 11, §4205.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-777A(e)(2)	**<u>Sex Offender Unlawful Sexual Conduct Against a Child</u>** • (e)(2) If the underlying sexual offense is a Class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony.
11-1105	**<u>Crime Against a Vulnerable Adult</u>** For this offense to be a class E felony the underlying offense must be a class F felony. See page 114 for listing of qualifying underlying offenses for this statute. "Vulnerable Adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation, the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.
11-1444	**<u>Possess Destructive Weapon</u>** • 11-1457(b)(1&2)&(j)(4): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class D Violent Felony. • 11-1457(j)(5):If the Defendant is an elementary or secondary school student, in addition to other penalties, the student shall be expelled for not less than 180 d.

Class E Felony (Nonviolent)

II.) (FEN)

Sentence Range (Nonviolent Category) FEN	
Statutory Range	0 to 5 years @ Level V
Presumptive Sentence	Up to 12 m. @ Level II
Acceptance of Responsibility	Up to 9 months @ Level II
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-503	**Criminal Solicitation 1st Degree** Solicit to commit Class A Felony
11-780	**Female Genital Mutilation**
11-787(b)(1)(D),c	**Trafficking of persons and involuntary servitude (see note)**
11-841B(c)	**Theft: Organized Retail Crime; class A misd; class E felony (see note)**
11-841(c)(3)(a)	**Theft ($50,000– $99,999) (see note)**
11-876	**Tamper w/ Public Record 1st Degree** With Intent to Defraud
11-907B	**Criminal Impersonation Police Officer**
11-913A(c)(2)	**Health Care Fraud (see note)** Intended loss= $50,000– $99,999/ Pattern of Claims When Offender is Provider
11-926(d)(3)	**Trademark Counterfeiting (2+Conv/Mfr/>1,000/>$10,000+) (7/7/05)**
11-932	**Unauthorized Computer Access ($5,000–$9,999) (see note)**
11-933	**Theft Computer Services ($5,000–$9,999) (see note)**
11-934	**Interruption Computer Services ($5,000–$9,999) (see note)**
11-935	**Misuse Computer System Information ($5,000–$9,999) (see note)**
11-936	**Destruction Computer Equipment ($5,000–$9,999) (see note)**
11-937	**Unauthorized Electronic Mail ($5,000–$9,999) (see note)**
11-938	**Fail to Cease Electronic Communication ($5,000–$9,999) (see note)**
11-939	**Computer Offense Penalties ($5,000–$9,999) (see note)**
11-1100	**Dealing in Children**
11-1101	**Abandonment of Child (<than 14 yrs of age)**
11-1102(b)(1)	**Endanger Welfare of Child: Death**
11-1201	**Bribery of a Public Servant**
11-1203	**Receiving a Bribe by a Public Servant**
11-1239	**Wearing Disguise during Felony**
11-1248	**Obstruct Rabies Control during Emergency**
11-1261	**Bribery of a Witness**
11-1262	**Receiving a Bribe by a Witness**
11-1263	**Tamper with a Witness**

11-1263A(a)(2)	**Interfere with Child Witness** Fail to Produce
11-1263A(a)(3)(b)	**Interfere with Child Witness** Bribes Another: Fail to Produce
11-1263A(a)(4)(b)	**Interfere with Child Witness** Threaten Another: Fail to Produce
11-1264	**Bribery of a Juror**
11-1265	**Receiving a Bribe by a Juror**
11-1326(a)	**Animals; fighting and baiting (see note)**
11-1327(c)(1)	**Dangerous Animal: Death of Person**
11-1352	**Promoting Prostitution 2nd Degree** (1)Manages or Owns Business w/2+ prostitutes/ (2)Profits by prostitute < 18 y.o.a
11-1361	**Providing Obscenity to Minor (see note)**
11-1457(j)(3)	**Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class F Felony) (see note)**
11-1471(c)(f)(g)(h)(i)(j)	**Video Lottery Cheat Device >50,000<100,000**
11-3532	**Intimidation of a Witness &/or Victim**
16-4758	**Unlawful dealing in a counterfeit or purported controlled substance**
31-610(a)(1)	**Transfer/Alter/Possess Food Stamps ($500>) (see note)**
31-1003	**False Representation for Benefits ($500–$9,999) (see note)**
31-1004(2)	**Falsify Reimbursement Report ($500–$9,999) (see note)**
31-1004(3)	**Misrepresentation to Qualify as Provider (see note)**
31-1004(4)	**Misrepresentation as to Operation of Provider/Facility (see note)**
31-1005	**Kickback Schemes (see note)**
31-1006	**Unlawful Conversion of Benefits ($500–$9,999) (see note)**

Sentences For Prior Criminal History Categories	
Repetitive Criminal History	Up to 15 m. @ Level V
Lack of amenability to lesser sanctions	Up to 15 m. @ Level V

Supplemental Notations for Class E Nonviolent Felonies:

If crime is a secondary offense, use non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
11-616(c)(3) Gang Participation: Conviction for a Class C Felony as a result of gang participation shall be sentenced as a Class B Felony under Title 11, §4205.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-787 (b) (1) (D), c	**Trafficking of persons and involuntary servitude** • (b)(1)(D) by knowingly destroying, concealing, removing, confiscating or possessing any actual or purported passport or other immigration document, or any other actual or purported government identification document of another person which is a class E felony; • (c) Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution, including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or of Title 19 of the Delaware Code, whichever is greater.
11-841B(c)	**Theft: Organized Retail Crime; class A misdemeanor; class E felony** In addition to the provisions of Section 841(c) and (d) of this chapter, if a defendant has two or more times been convicted of Theft: Organized Retail Crime, the offense of Theft: Organized Retail Crime is a class E felony.
11-841(c)(3)(a)	**Theft ($50,000–$99,999)** Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.
11-913A(c)(2)	**Health Care Fraud** (c)(4): Fine may be up to 5x pecuniary benefit sought or obtained.
11-932 **11-933** **11-934** **11-935** **11-936** **11-937** **11-938** **11-939**	**Unauthorized Computer Access** **Theft Computer Services** **Interruption Computer Services** **Misuse Computer System Information** **Destruction Computer Equipment** **Unauthorized Electronic Mail** **Fail to Cease Electronic Communication** **Computer Offense Penalties** • (f) In lieu of fine, Court may order Defendant to pay an amount up to double the proceeds from the offense. Record shall reflect findings as to the proceeds gained. • (g) Amounts may be aggregated to determine degree of crime. • (h) Value shall be (1) market value at time of offense or (2) cost of replacement. If value cannot be established, it shall be $250 or (i) in the case of private personal data, $500.
11-1326(a)	**Animals; fighting and baiting** • All animals, equipment, devices, and money involved in a violation of this section must be forfeited to the State. Animals so forfeited must be disposed of in a humane manner. • A person convicted of a violation of this section is prohibited from owning or possessing any animal or fowl for 15 years after conviction.
11-1361	**Providing Obscenity to Minor** • If the obscenity involved live conduct, the business or establishment shall be closed for 6 m. • (c) Minimum mandatory sentence for 2nd or subsequent conviction within 5 yrs.: (1) $5,000 fine ($10,000 if the Defendant is an organization), (2) imprisonment for a minimum of 9 m. which shall not be suspended or reduced, (3) probation for 2 yrs. and (4) the establishment shall be closed for 2 yrs.

11-1457	**<u>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class F Felony)</u>** (j)(4) An elementary or secondary school student shall be expelled for 180d.
31-610(a)(1)	**<u>Transfer/Alter/Possess Food Stamps ($500>)</u>** May be suspended from the Food Stamp Program for 18 months more than suspension mandated by the Federal Food Stamp Act
31-1003 **31-1004(2)** **31-1004(3)** **31-1004(4)** **31-1005** **31-1006**	**<u>Benefit by False Representation</u>** **<u>Falsify Reimbursement Report</u>** **<u>Misrepresentation to Qualify as Provider</u>** **<u>Misrepresentation as to Operation of Provider/Facility</u>** **<u>Kickback Schemes</u>** **<u>Unlawful Conversion of Benefits</u>** • 31-1007(d): Every provider convicted under this chapter shall make full restitution of money, goods or services or of the value of same plus interest at the rate of 1.5% per month for the period from the date upon which payment was made to the date upon which repayment is made to the State • 31-1007(e): Provider shall not be eligible for participation in Delaware Public Assistance Program, subject to certain exceptions.

Class F Felony (Violent)

I.) (FFV)

Sentence Range (Violent Category): FFV	
Statutory Range	0 to 3 years @ Level V
Presumptive Sentence	Up to 9 m. @ Level V
Acceptance of Responsibility	Up to 7 months at Level V
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-617(b)(2)	**Criminal Youth Gang: Recruitment/Retention:Violence or Threat (7/10/06)**
11-629	**Vehicular Assault 1st Degree** DUI & criminally negligent driving: Serious Injury
11-645	**Promoting Suicide**
11-768	**Unlawful Sexual Contact 2nd Degree** Vt<16 y.o.a.
11-777A(e)(2)	**Sex Offender Unlawful Sexual Conduct Against a Child (see note)**
11-778A(d)(2)	**Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree: (see note)**
11-1105	**Crime Against a Vulnerable Adult (see note)**
11-1256	**Promoting Prison Contraband** Deadly Weapon, mobile phone, cellular phone or other prohibited electronic device
11-1302	**Riot**
11-1304(b)(3)	**Hate Crime (Underlying Offense: Class G Felony)**
11-1312	**Stalking (see note)** Causing Fear/Defendant=21+ y.o.a. & Vt= <14 y.o.a., def. viol. N.c. ord. w/vic, or vic >62, or thrt of death or serious phys. inj. to vic. or another person, serious phys. inj. to vic.
16-4756	**Aggravated Possession** A person who possesses a controlled substance in a Tier 1 quantity
16-4761(d)	**Illegal Possession and Delivery of Noncontrolled Prescription Drugs** Any person who delivers or intends to deliver prescription drug and there is an aggravator

Sentences for Prior Criminal History Categories	
While on release or pending trial or sentencing	Up to 18 Months @ Level V
Two or more prior felonies	Up to 18 months @ Level V
One prior violent felony	Up to 18 Months @ Level V
Two or more prior violent felonies	Up to 36 Months @ Level V

Supplemental Notations for Class F Violent Felonies:

If crime is a secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-777A(e)(2)	**Sex Offender Unlawful Sexual Conduct Against a Child** • (e)(2) If the underlying sexual offense is a Class C, D, E, F, or G felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony.
11-778A(d)(2)	**Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree;** as set forth in subsection (b)(1)(Is a male who intentionally exposes his genitals or buttocks to a child who <16 under circumstances in which he knows his conduct is likely to cause annoyance, affront, offense or alarm when the person is at least 4 years older than the child and he stands in a position of trust, authority or supervision over the child or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child): or (2)(Is a female who intentionally exposes her genitals, breast or buttocks to a child <16 under circumstances in which she knows her conduct is likely to cause annoyance, affront, offense or alarm when the person is at least 4 years older than the child and she stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.) is a class F felony.
11-1105	**Crime Against a Vulnerable Adult** For this offense to be a class F felony, the underlying offense must be a class G felony. See page 114 for listing of qualifying underlying offenses for this statute. "Vulnerable Adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.
11-1312	**Stalking** • (6) If act(s) has been previously prohibited by court order or sentence, minimum mandatory sentence = 6 m. at Level V; the first 6 m. of sentence shall not be subject to suspension • (7) If convicted of stalking w/in 5 yrs of prior stalking conviction, minimum mandatory sentence = 1 yr at Level V; the first year of sentence shall not be subject to suspension

Class F Felony (Nonviolent)

II.) (FFN)

Sentence Range (Nonviolent Category) FFN	
Statutory Range	0 to 3 years @ Level V
Presumptive Sentence	Up to 12 m. for Title 11 offenses; up to 18 months for Title 16 offenses @ Level II
Acceptance of Responsibility	Up to 9 months @ Level II for Title 11 offenses Up to 14 months @ Level II for Title 16 offenses
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-502	**Criminal Solicitation 2nd Degree (see note)** Solicit to commit Felony
11-621(a)(2)	**Terroristic Threat (see note)** False Stmt likely to: (a)evacuation/ (b)serious inconvenience/ (c)terror + School or Care Facility
11-621(a)(3)	**Terroristic Threat (see note)** Intent to Cause Belief of Substance Exposure: Death/Serious Injury
11-622	**Hoax Device**
11-651	**Abortion**
11-787(b)(1)(E) c	**Trafficking of persons and involuntary servitude (see note)**
11-824	**Burglary 3rd Degree (see note)** Building
11-828	**Possess Burglary Tools**
11-840A	**Use of Illegitimate Sales Receipt/UPC Label (15+ Receipts/ UPC Labels/ $1,500+)**
11-841(c)(2)	**Theft (see note)** $1500+/vt= 62+ y.o.a./Infirm/Disabled
11-841C(b)	**Theft: Theft of a blank prescription form or pad**
11-850(b)(2)	**Unlawful Telecommunication Device (Previous Conviction/ 10-49 Devices)**
11-860	**Possess Shoplifters Tools**
11-861(b)(1)	**Forgery 1st Degree (see note)** Money/Stamps/Stocks/Bonds etc.
11-903	**Unlawful Use Credit Card** Vt= 62+ y.o.a & >$1,500
11-922(c)	**Improper Labeling (PriorConv 100>) (see note) (7/10/06)**
11-1101	**Abandonment of Child (14 yrs of age or older)**
11-1111	**Possession of Child Pornography**
11-1112(a)(2)	**Sex Offender (Loiter w/in 500 ft School)**
11-1222	**Perjury 2nd Degree** Written, Material False Stmt Intended to Mislead Public Servant

11-1263A(a)(1)	**Interfere with Child Witness** Complainant removed from jurisdiction
11-1263A(a)(3)(a)	**Interfere with Child Witness** Bribe to cause Complainant's removal from jurisdiction
11-1263A(a)(4)(a)	**Interfere with Child Witness** Threat to cause Complainant's removal from jurisdiction
11-1271A(b)(c)	**Crim. Contempt Dom Violence Pro. Order (PFA) (see note)**
11-1303(3)(b)	**Disorderly Conduct: Funeral/Memorial Service (Prior Conv) (6/1/06)**
11-1325	**Cruelty to Animals (see note)** Cruelly or Unnecessarily kills or seriously injures under (b)(4) or (5)
11-1326(b)(c)	**Fighting/Baiting Animals (see note)**
11-1327(c)(2)	**Dangerous Animal: Serious Injury to Person**
11-1351	**Promoting Prostitution 3rd Degree** Profit from prostitution
11-1448	**Poss/Purchase Deadly Weapon (Other than Destructive Weapon/ Firearm/Ammunition) by Prohibited Person**
11-1448(f)(1)(a)(5)	**Poss/Purchase Deadly Weapon (Other than Destructive Weapon/Firearm/Ammunition) by Prohibited Person (see note)**
11-1448(a)(9)	**Poss/Purchase Deadly Weapon (semi-automatic, or automatic firearm, or a handgun, who at the same time possesses a controlled substance in violation of Title 16 Section 4763 or 4764)**
11-1450	**Receiving Stolen Firearm**
11-1451	**Theft of firearm**
11-1454	**Giving Firearm to Person Prohibited**
11-1455	**Firearm Transaction on Behalf of Another (1st Offense)**
11-1457(j)(3)	**Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class G Felony) (see note)**
16-4757(b)	**Miscellaneous Drug Crimes (see note)**
16-4759(b)(1,2,4)	**Registrant Crimes** Violates (a)(1),)a)(2), or (a)(4)
16-4760	**Maintaining a Drug Property**
21-4134(d)	**Operation of vehicles on approach of authorized emergency vehicles**

Standard Sentences for Prior Criminal History Categories	
Repetitive criminal history	Up to 9 m. @ Level V
Lack of amenability at lesser sanctions	Up to 9 m. @ Level V

Supplemental Notations for Class F Nonviolent Felony:

If crime is a secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-502	**<u>Criminal Solicitation 2nd Degree</u>** Class F Felony unless the solicitor is 18 y.o.a. or older and the solicited is >18 y.o.a. or unless the solicitor is more than 3 yrs older than the solicited, who is less than 15 y.o.a. in which case, this crime is a Class D Felony.
11-621(a)(2)	**<u>Terroristic Threat</u>** • (c)(1) Mandatory fine: $1,000–$2,500 which cannot be suspended and a minimum of 100 hrs community service • If the defendant is 17 y.o.a. or > & it is a first offense = Class A Misd
11-621(a)(3)	**<u>Terroristic Threat</u>** (d) Mandatory fine: $2,000 which shall not be suspended
11-787(b)(1)(E), c	**<u>Trafficking of persons and involuntary servitude</u>** • (b)(1)(E) by using blackmail, or using or threatening to cause financial harm to, or by using financial control over any person which is a class F felony. • (c) Restitution is mandatory under this Section. In addition to any other amount of loss identified, the court shall order restitution, including the greater of (1) the gross income or value to the defendant of the victim's labor or services or (2) the value of the victim's labor as guaranteed under the minimum wage and overtime provisions of the Fair Labor Standards Act (FLSA) or of Title 19 of the Delaware Code, whichever is greater.
11-824	**<u>Burglary 3rd Degree</u>** Presumptive sentences: First Conviction – Quasi Incarceration (Level IV) for 3 Mo. Repetitive Criminal History – Level V for 3 to 12 Mo. Lack of amenability to Lesser Sanction – Level V for 3 to 12 Mo.
11-841(c)(2)	**<u>Theft</u>** Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.
11-850(b)(2)	**<u>Unlawful Telecommunication Device</u>** • (b)(4) A prior conviction shall consist of convictions upon separate indictments or criminal complaints (b)(7) All fines shall be imposed for each unlawful telecommunication or access device • (b)(8)Restitution shall be ordered in the manner prescribed by §4106 • (b)(9) The court may order forfeiture of unlawful device(s)
11-861	**<u>Forgery 1st Degree</u>** (c) Restitution for resultant losses to all parties.
11-922(c)	**<u>Improper Labeling (PriorConv 100 >)</u>** 11-924A: Court must order the forfeiture & destruction or other disposition of (1) all articles on which the conviction is based and (2) all implements, devices, materials & equipment used or intended to be used in the mfr of the recordings on which the conviction is based.

11-1271A(b)(c)	**<u>Criminal Contempt of a Domestic Violence Protection Order (PFA)</u>** • (b) Unless any of the elements set forth in subsection (c) of this section are met, in which case the offense shall be a class F felony. • (c) A person is guilty of felony criminal contempt of a domestic violence protection order if: 1. Such contempt resulted in physical injury; or 2. Such contempt involved use/threat use/weapon
11-1325	**<u>Cruelty to Animals</u>** (d) The Defendant shall not own or possess any animal for 15 yrs following conviction (but see exceptions). Violation of this condition is punishable by a mandatory $5,000 fine and forfeiture of the animal.
11-1326(b)(c)	**<u>Fighting/Baiting Animals</u>** • (c) All animals, equipment, and money shall be forfeited to the State. Animals shall be humanely disposed of. • (e) The Defendant shall not own or possess any animal for 15 yrs following conviction.
11-1448(f)(1)(a)(5)	**<u>Poss/Purchase Deadly Weapon by Prohibited Person</u>** • Poss Destructive Weapon (No Prior Conviction) should be filed under §1338 • (f)(1) Any juvenile 14 y.o.a or older convicted under (a)(5) shall for a 1st offense, receive a minimum sentence of 6 m. at Level V, or, for a 2nd or subsequent offense, 1 yr of Level V, which shall not be suspended. §§4205(b) and 4215 shall not be applicable to this subsection. • (g) In addition, said juvenile shall be ordered after a first conviction to view a film/slide presentation related to the damage and injury caused by a gun and must meet with a victim of or family of a deceased victim of violent crime.
11-1457	**<u>Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class G Felony)</u>** • 11-1457(b)(4)&(j)(3): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class E Felony. • 11-1457(j)(4):If the Defendant is an elementary or secondary school student, in addition to other penalties, the student shall be expelled for not less than 180 d. • (j)(4) An elementary or secondary school student shall be expelled for 180d.

16-4757(b)	**<u>Miscellaneous Drug Crimes 16-4757(a)</u>** (1)To distribute as a registrant controlled substance classified in Schedule I or II except pursuant to an order form as required by Section 4738 of this chapter; (2)To use in the course of manufacture, distribution, prescribing, dispensing, or research of a controlled substance, a registration number which is fictitious, revoked, suspended, expired or issued to another person; (3)To acquire or obtain or attempt to acquire or obtain, possession of a controlled substance or prescription drug by misrepresentation, fraud, forgery, deception or subterfuge; (4)To furnish false or fraudulent material information in or omit any material information from, any application, report or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; (5)To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance; (6)To acquire or attempt to or obtain possession of a controlled substance by theft; (7)To prescribe, or administer to another, any anabolic steroid, as defined in Section 4718(f) of this title, for the purposes of increasing human muscle weight or improving human performance in any form of exercise, sport, or game.

Class G Felony (Violent)

I.) (FGV)

Sentence Range (Violent Category) FGV	
Statutory Range	0 to 2 years @ Level V
Presumptive Sentence	Up to 6 m. @ Level V For 16-4767 & 16-4768: 3 to 9 m. @ Level V
Acceptance of Responsibility	Up to 4 months @ Level V
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-614	**Abuse of Sports Official (Prior Conv) (see note)**
11-617(b)(1)	**Criminal Youth Gang: Recruitment (7/10/06)**
11-777A(e)(2)	**Sex Offender Unlawful Sexual Conduct Against a Child (see note)**
11-778A(d)(3)	**Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree (see note)**
11-782	**Unlawful Imprisonment 1st Degree** Risk of Serious Injury
11-1105	**Crime Against a Vulnerable Adult (see note)**
11-1304(b)(2)	**Hate Crime (Underlying Offense: Class A, B or C Misdemeanor)**
11-1312(a)	**Stalking**
11-1445(4)	**Unlawfully Dealing with a Dangerous Weapon**
16-1136(a)	**Abuse/Neglect of Patient: Sexual Contact**
16-1136(b)	**Exploit Patient's Resources ($1000+)**
16-4761(c)	**Illegal Possession and Delivery of Noncontrolled Prescription Drugs** Any person who violates subsection (a) of this section and delivers, or intends to deliver the prescription drug to another
16-4774(b)	**Drug paraphernalia** Manufacture and sale
31-3913(b)	**Exploitation of Infirm Adult ($500- $4,999)**

Sentences for Prior Criminal History Categories	
While on release or pending trial or sentence	Up to 12 months @ Level V
Two or more prior felonies	Up to 12 months @ Level V
One prior violent felony	Up to 12 months @ Level V
Two or more prior violent felonies	Up to 24 months @ Level V

Supplemental Notations for Class G Violent Felony:

If crime is a secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All criminal fines require 18% surcharge for Victims fund
All Drug crimes require additional 15% surcharge for rehabilitation fund
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-614	**Abuse of Sports Official (Prior Conv)** Mandatory Penalty: fine=>$1,000/<$2,350 & prohibition from participation/attending an organized sporting event for >3 m./<12 m.
11-777A(e)(2)	**Sex Offender Unlawful Sexual Conduct Against a Child** • (e)(1) If the underlying sexual offense is a Class C, D, E, F, or G, felony, the crime of sex offender unlawful sexual conduct against a child shall be a felony one grade higher than the underlying offense except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class B felony.
11-778A(d)(3)	**Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the second degree** as set forth in subsection (c)(Suggests, solicits, requests, commands, importunes or otherwise attempts to induce a child <16 to have sexual contact or sexual intercourse or unlawful sexual penetration with the person or a third person, knowing that the person is thereby likely to cause annoyance, affront, offense or alarm to the child or another when the person is at least 4 years older than the child and the person stands in a position of trust authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.) is a class G felony.
11-1105	**Crime Against a Vulnerable Adult** For this offense to be a class G felony, the underlying offense must be a class A misdemeanor. See page 114 for listing of qualifying underlying offenses for this statute. "Vulnerable Adult" means a person 18 years of age or older, who by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation the term "vulnerable adult includes any adult for whom a guardian or the person or property has been appointed.

Class G Felony (Nonviolent)

II.) (FGN)

Sentence Range (Nonviolent Category) FGN	
Statutory Range	0 to 2 years @ Level V
Presumptive Sentence	Up to 12 m. @ Level II
Acceptance of Responsibility	Up to 9 months @ Level II
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

11-512	**Conspiracy 2nd Degree** Conspires to commit Felony
11-621(a)(1)	**Terroristic Threat (Vt= 62+ y.o.a.) (see note)**
11-621(a)(2)	**Terroristic Threat (see note)** False Stmt likely to cause: (a) evacuation/ (b) serious inconvenience/ (c) terror
11-626	**Unlawful Administration Controlled Substance/Narcotic**
11-785	**Interfere w/Custody** Removal from State
11-801	**Arson 3rd Degree** Recklessly damage unoccupied bldg by fire/explosion
11-804	**Reckless Burning ($1500+ Damage)**
11-811(b)(1)	**Criminal Mischief ($5000+ Loss/Substantial Interruption) (see note)**
11-812(a)(2)	**Graffiti and Possession of Graffiti Implements ($1500+ damage) (see note)**
11-840	**Shoplift ($1500+)**
11-841	**Theft (see note) $1500+**
11-841A	**Theft: Motor Vehicle (6/20/06)**
11-841C(a)	**Possession of a blank prescription form or pad**
11-848	**Misapplication of Property ($1500+)**
11-849	**Theft of Rental Property ($1500+)**
11-851	**Receive Stolen Property ($1500+/2 prior convictions)**
11-852A	**Selling Stolen Property; class G felony (see note)**
11-859	**Larceny of Livestock (see note)**
11-861(b)(2)	**Forgery 2nd Degree (see note)** Deed/Will/Commercial Instrument/Public Record/Tokens/Prescriptions
11-862	**Possess Forgery Devices**
11-878	**Issue False Certificate**
11-900	**Issue Bad Check ($1500+)**
11-903	**Unlawful Use Credit Card** Vt= 62+ y.o.a or >$1,000
11-907A	**Criminal Impersonation (Accident Related) (see note)**

11-908	**Unlawful Concealing Will**
11-911	**Fraudulent Conveyance of Public Lands**
11-912	**Fraudulent Receipt of Public Lands**
11-913	**Insurance Fraud**
11-913A	**Health Care Fraud (see note)**
11-916	**Home Improvement Fraud** $1500+/vt=62+y.o.a./Prior Conviction
11-917(d)(1)	**New Home Construction Fraud ($1,500–$49,999)**
11-920	**Transfer of Recorded Sounds**
11-922(b)	**Improper Labeling (1st Offense 100 >) (see note) (7/10/06)**
11-926(d)(2)	**Trademark Counterfeiting(PriorConv/100-999/$2,000–$9,999) (7/7/05)**
11-932	**Unauthorized Computer Access ($500–$999) (see note)**
11-933	**Theft Computer Services ($500–$999) (see note)**
11-934	**Interruption Computer Services ($500–$999) (see note)**
11-935	**Misuse Computer System Information ($500–$999) (see note)**
11-936	**Destruction Computer Equipment ($500–$999) (see note)**
11-937	**Unauthorized Electronic Mail ($500–$999) (see note)**
11-938	**Fail Cease Electronic Communication ($500–$999) (see note)**
11-939	**Computer Offense Penalties ($500–$999) (see note)**
11-951(f)	**Money Laundering**
11-1001	**Bigamy**
11-1102(b)(2)	**Endanger Welfare of Child: Serious Injury**
11-1102(b)(3)	**Endanger Welfare of Child: Sex Offense**
11-1112(a)(1)	**Sex Offender (Residing w/in 500 ft of School)**
11-1103A	**Child Abuse in the Second Degree**
11-1113	**Aggravated Criminal Non-Support (see note)** Prior Conviction/ Delinquent as to Full Amt/ $10,000+
11-1114A(c)	**Tongue Splitting (Prior conviction)**
11-1206	**Receiving Unlawful Gratuity (value > $1,000)**
11-1240	**Terroristic Threat to Public Officials/Servants**
11-1244(b)	**Hinder Prosecution of a Felony**
11-1245	**False Report Incident/Child Abduction (Prior Conv) (see note) (6/30/05)**
11-1249	**Abetting Driver's License Violation (Prior Conviction/Death)**
11-1252	**Escape 2nd Degree** (Spec. Esc. Cat. May Apply) Esc. From detention facil. Or cust. Of DHSS or DOC
11-1257(a)	**Resisting Arrest With Violence (6/27/06)**
11-1257A	**Use Animal to Avoid Capture** Prevent Prosecution/Injures L.E.O
11-1259	**Sexual Relations in Detention Facility**
11-1260	**Misuse of Prisoner Mail (Prior Conviction)**
11-1263A(a)(1)	**Interfere with Child Witness** Removal from Jurisdiction
11-1263A(a)(3)(a)	**Interfere with Child Witness** Bribes to Cause Removal from Jurisdiction
11-1263A(a)(4)(a)	**Interfere with Child Witness** Threatens to Cause Removal from Jurisdiction
11-1269	**Tampering with Physical Evidence**
11-1312	**Aggravated Harassment** Only applies to offenses prior to 11/1/08; statute repealed, now only Harassment
11-1312	**Stalking (see note)**
11-1326(b)	**Fighting/Baiting Animals (see note)** Knowledge and Presence during Preparation

11-1335(a)(6)-(7)	**Violation of Privacy** Prurient Recording w/out Consent
11-1339	**Adulteration**
11-1361	**Obscenity (see note)**
11-1442	**Carry Concealed Deadly Weapon**
11-1446A	**Undetectable Knives (Mfr/Import/Sell/Possess) (6/30/06)**
11-1448A(l)	**Firearm Sale Violation: False Statement/Information**
11-1448A(m)	**Firearm Sale Violation (Second Offense)**
11-1471(a)(b)(d)(e)(l)	Video Lottery Cheat Device (Prior Conviction w/in 3 yrs)
11-1471(c)(f)(g)(h)(i)(j)	**Video Lottery Cheat Device >$1500<$50000**
11-2109(c)(1)	**Breach of Conditions of Bail (see note)**
11-2113(c)(1)	**Breach of Release Conditions (Felony/Prior Conviction Crime)(see note)**
11-4120(k)	**Sex Offender (Fail to Register)**
11-4121(t)	**Sex Offender (Fail to Comply with Registration Mandates)**
11-8562(b)	**Provide False Child Abuser Information**
16-3111(a)	**Crimes Regarding Vital Records (see note)**
16-4762(d)	**Hypodermic syringe or needle; delivering or possessing; disposal**

Sentences For Prior Criminal History Categories	
Repetitive Criminal History	Up to 6 m. @ Level V
Lack of Amenability to Lesser Sanctions	Up to 6 m. @ Level V

Supplemental Notations for Class G Nonviolent Felony:

If crime is a secondary offense, use the non-aggravated presumptive.
All sentences for over 1 yr @ Level V require 6 month reintegration at Levels IV (quasi-incarceration), III, or II.
All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-621(a)(1) **11-621(a)(2)**	**Terroristic Threat (Vt= 62+ y.o.a.)** **Terroristic Threat** • (c)(1) Mandatory fine: $1,000–$2,500 which cannot be suspended and a minimum of 100 hrs community service • If the defendant is 17 y.o.a. or younger, the offense is a Class A Misdemeanor
11-811(b)(4)	**Criminal Mischief** • If the act is committed along a Delaware byway, as defined in 17 Del. C. Section 101(a)(9), the court shall impose a minimum mandatory fine of at least $500.

11-812(a)(2)	**Graffiti and Possession of Graffiti Implements** The penalty for graffiti shall include a minimum fine of not less than $1,000 which shall not be subject to suspension, restitution for damages to the property and 250 hours of community service, at least half of which shall be served removing graffiti on public property. The minimum fine and community service hours shall be doubled for a second or subsequent conviction of an act of graffiti. The minimum fine shall also be doubled, and may not be suspended, for a first, second, or subsequent conviction of an act of graffiti which is performed on or along a Delaware byway, as defined in 17 Del. C. Section 101(a)(9).

11-841	**Theft** (d): Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.
11-852A	**Selling Stolen Property** value of the resold property is $1,000 or more, or unless the seller has been convicted 2 or more times of Selling Stolen Property
11-859	**Larceny of Livestock** Minimum sentence of imprisonment, if any, not subject to suspension,, probation or parole during 1st 6 m.
11-861(b)(2)	**Forgery 2nd Degree** (c) Restitution for resultant losses to all parties.
11-907A	**Criminal Impersonation (Accident Related)** (1) If Defendant pretended to be someone other than the driver, upon conviction, driving privileges are to be suspended by DMV for 2 yrs.
11-913A	**Health Care Fraud** 913(c)(4): Fine may be up to 5x pecuniary benefit sought or obtained.
11-922(b)	**Improper Labeling (1st Offense 100 >)** 11-924A: Court must order the forfeiture & destruction or other disposition of (1) all articles on which the conviction is based and (2) all implements, devices, materials & equipment used or intended to be used in the mfr of the recordings on which the conviction is based.
11-932 **11-933** **11-934** **11-935** **11-936** **11-937** **11-938** **11-939**	**Unauthorized Computer Access** **Theft Computer Services** **Interruption Computer Services** **Misuse Computer System Information** **Destruction Computer Equipment** **Unauthorized Electronic Mail** **Fail to Cease Electronic Communication** **Computer Offense Penalties** • (f) In lieu of fine, Court may order Defendant to pay an amount up to double the proceeds from the offense. Record shall reflect findings as to the proceeds gained. • (g) Amounts may be aggregated to determine degree of crime. • (h) Value shall be (1) market value at time of offense or (2) cost of replacement. If value cannot be established, it shall be $250 or (i) in the case of private personal data, $500.
11-1113	**Aggravated Criminal Non-Support** • Court may ("shall" in the event support order entered) order any fine to be paid for the support of the entitled person • (j) Restitution shall be ordered in the amount of the total accrued arrearages
11-1245	**False Report Incident/Child Abduction (Prior Conviction)** Minimum Mandatory sentence: Fine= $500 or for (3)(d): $1,000, which cannot be suspended + 100 hrs community service + reimbursement to the State/government agency for costs of investigation and/or response
11-1312	**Stalking** • (6) If act or acts include conduct which has previously been prohibited by a then-existing court order or sentence shall receive a minimum sentence of 6 months incarceration at Level V which shall not be subject to suspension. • (7) Any person who is convicted of stalking within 5 years of a prior conviction of stalking shall receive a minimum sentence of 1 year incarceration at Level V which shall not be subject to suspension.
11-1326	**Fighting/Baiting Animals. (c)** All animals, equipment, devices, and money shall be forfeited to the State. Forfeited animals shall be disposed of humanely.

11-1361	**<u>Obscenity</u>** • If the obscenity involved live conduct, the business or establishment shall be closed for 6 m. • (c) Minimum mandatory sentence for 2nd or subsequent conviction within 5 yrs.: (1) $5,000 fine ($10,000 if the Defendant is an organization), (2) imprisonment for a minimum of 9 m. which shall not be suspended or reduced, (3) probation for 2 yrs. and (4) the establishment shall be closed for 2 yrs.
11-1442	**<u>Carrying Concealed Deadly Weapon (1st conviction)</u>** • 11-1457(b)(1)&(j)(3): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class F NonViolent Felony. • 11-1457(j)(4):If the Defendant is an elementary or secondary school student, in addition to other penalties, the student shall be expelled for not less than 180 d.
11-1472	**<u>Video Lottery Cheat Device</u>** Any instrumental materials shall be forfeited to the Delaware State Police, including but not limited to vehicles used for storage.
11-2109(c)(1)	**<u>Breach of Conditions of Bail</u>** Maximum Penalty: Imprisonment =<5yrs &/or Fine =<$5,000
11-2113(c)(1)	**<u>Breach of Release Conditions</u>** (Felony/Prior Conviction Crime). Maximum Penalty: Imprisonment= <5yrs &/or Fine= <$5,000
16-3111(a)	**<u>Crimes Regarding Vital Records</u>** Maximum Penalty: Imprisonment= 5 yrs or less; Fine= $10,000

Class A Misdemeanors

I.) Violent (MA1)

Sentence Range (Violent Category) MA1	
Statutory Range	0 to 1 yr @ Level V and up to $2,300 Fine
Presumptive Sentence	1st offense: Up to 12 m. @ Level II 2nd offense w/in 2 yrs: Up to 6 m. @ Level III & Up to 6 m. @ Level II 3rd offense w/in 5 yrs: Up to 3 m. @ Level V & Up to 9 m @ Level II
Acceptance of Responsibility	Up to 9 months @ Level II

Crimes in Category

11-603	**Reckless Endangering 2nd Degree** (Special DV Category May Apply) Refer to Pg. 105
11-611	**Assault 3rd Degree** (Special DV Category May Apply) Refer to Pg. 105
11-614	**Abuse of Sports Official (1st Offense)** Refer to Pg. 105
11-621(a)(1)	**Terroristic Threatening** (Special DV Category May Apply) Refer to Pg. 105
11-766	**Incest** (Special DV Category May Apply) Refer to Pg. 105
11-767	**Unlawful Sexual Contact 3rd Degree** (SpecialDVCategory May Apply) Refer to Pg. 105
11-777A(e)(1)	**Sex Offender Unlawful Sexual Conduct Against a Child (see note)**
11-1105	**Crime Against a Vulnerable Adult (see note)**
11-1103	**Child Abuse in the Third Degree**
11-1250(b)	**Assault 2d Degree Against Law enforcement Animal** Reckless: Risk of injury
11-1271A	**Criminal Contempt: DV Protective Order** (SpecialDVCategory May Apply) (see note) Refer to Pg. 105
11-1304(b)(1)	**Hate Crime** (Underlying Offense: Violation or Unclassified Misdemeanor)
11-1443	**Carrying Concealed Dangerous Instrument**
16-1136(a)	**Abuse/Neglect of Patient in Residential Facility**
31-3913(a)	**Abuse/Neglect of Infirm Adult**

Supplemental Notations Violent Class A Misdemeanors:

All Criminal fines require 18% surcharge for Victims fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-777A(e)(1)	**Sex Offender Unlawful Sexual Conduct Against a Child** • (e)(1) If the underlying sexual offense is a misdemeanor, the crime of sex offender sexual conduct against a child shall be a class G felony except where the child against whom a sexual offense is committed is a child younger than 12 years of age in which case the crime of sex offender unlawful sexual conduct against a child shall be a class c felony.

11-1105	**<u>Crime Against a Vulnerable Adult</u>** For this offense to be a class A misdemeanor the underlying offense must be a class B misdemeanor. See page 114 for listing of qualifying underlying offenses for this statute. "Vulnerable Adult" means a person 18 years of age or older who, by reason of isolation, sickness, debilitation, mental illness or physical, mental or cognitive disability, is easily susceptible to abuse, neglect, mistreatment, intimidation, manipulation, coercion or exploitation. Without limitation the term "vulnerable adult" includes any adult for whom a guardian or the person or property has been appointed.
11-1271A	**<u>Criminal Contempt of a Dom Viol Protection Order</u>** Class A Misd, Class F felony • (c) Mandatory minimum sentence of 15 days imprisonment if contempt resulted in: (1) injury, (2) threat of Deadly Weapon or (3) 2 prior convictions this section • (d) Minimum sentence shall not be subject to suspension, probation, parole, furlough, or suspended custody

Class A Misdemeanors

II.) Escape (MA2)

Sentence Range (Escape Category) MA2	
Statutory Sentence	0 to 1 yr @ Level V and up to $2,300 fine
Presumptive Sentence	Up to 3 m. in quasi-incarceration (Level IV) Recommended Maximum: Up to 1 m. @ Level V
Acceptance of Responsibility	Up to 2 months @ Level IV

Crimes in Category

11-1251	**Escape 3rd Degree** (Special Escape Category May Apply) Escape from custody including nonsecure facilities of DYRS

Supplemental Notations for Class A Misdemeanors (Escape):

All Criminal fines require 18% surcharge for Victims fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

Class A Misdemeanors

III.) Property (MA3)

Sentence Range (Property Category) MA3	
Statutory Sentence	0 to 1 yr @ Level V and up to $2,300 fine
Presumptive Sentence	1st Offense: Up to 12 m. @ Level I 2nd w/in 18 m: Up to 6 m. @ Level II 3rd w/in 3 yrs: Up to 3 m. @ Level IV (quasi-incarceration) & 0 to 9m. @ Level II Recommended Maximum: 15 days @ Level V
Acceptance of Responsibility	Up to 9 months @ Level I

Crimes in Category

11-804	**Reckless Burning/Exploding (< $1500)**
11-805	**Cross or Religious Symbol Burning**
11-811(b)(2)(4)	**Criminal Mischief (>$1000-<$5000) (see note)**
11-812(a)(2)	**Graffiti and Possession of Graffiti Implements (<$1500 damage) (see note)**
11-813	**Theft of Property from a Cemetery**
11-823	**Criminal Trespass 1st Degree** Dwelling/Animal Shelter, i.e. barn, stable
11-840	**Shoplifting (<$1500)**
11-840A	**Use of Illegitimate Sales Receipt/UPC Label (<1500)**
11-841	**Theft (<$1500) (see note)**
11-841B	**Theft: Organized Retail Crime (V<62, not infirm, value < $1,000)**
11-848	**Misapplication of Property (< $1500)**
11-849	**Theft of Rental Property (< $1500)**
11-851	**Receiving Stolen Property (< $1500)**
11-852A	**Selling Stolen Property (<$1000)**
11-853	**Unauthorized Use of a Vehicle**
11-858(a)(2)	**Unlawful Operation Recording Device (Motion Picture) (see note) (6/28/06)**
11-861(b)(3)	**Forgery 3rd Degree (see note)**
11-891	**Defrauding Secured Creditors**
11-892	**Fraud in Insolvency**
11-900	**Issue Bad Check (< $1500)**
11-903	**Unlawful Use Credit Card (< $1500)**
11-906	**Deceptive Business Practices**
11-916	**Home Improvement Fraud (< $1500)**
11-917(d)	**New Home Construction Fraud (<$1,500)**
11-918	**Ticket Scalping (Prior Conviction)**
11-926(d)(1)	**Trademark Counterfeiting** (No priors/<100 items/<$2,000) (7/7/05)
11-932	**Unauthorized Computer Access (<$500) (see note)**
11-933	**Theft Computer Services (<$500) (see note)**
11-934	**Interruption Computer Services (<$500) (see note)**
11-935	**Misuse Computer System Information (<$500) (see note)**
11-936	**Destruction Computer Equipment (<$500) (see note)**
11-937	**Unauthorized Electronic Mail (<$500) (see note)**
11-938	**Fail Cease Electronic Communication (<$500) (see note)**
11-939	**Computer Offenses Penalties (<$500) (see note)**
11-1472	**Video Lottery Cheat Device**

16-1136(b)	**Exploit Patient's Resources (<$1000)**
31-1003	**False Statement to Obtain Benefits (<$500) (see note)**
31-1004(1)	**False Benefit Reimbursement Statement (<$500) (see note)**
31-1006	**Unlawful Conversion of Benefits (<$500) (see note)**
31-3913(b)	**Exploitation of Infirm Adult (<$500)**

Supplemental Notations for Class A Misdemeanors: Property

All Criminal fines require 18% surcharge for Victims fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-811(b) **(2)(4)**	**Criminal Mischief** • (4) If the act is committed along a Delaware byway, as defined in 17 Del. C. Section 109(a)(9), the court shall impose a minimum mandatory fine of at least $500.
11-812(a)(2)	**Graffiti and Possession of Graffiti implements** The penalty for graffiti shall include a minimum fine of not less than $1,000 which shall not be subject to suspension, restitution for damages to the property and 250 hours of community service, at least half of which shall be served removing graffiti on public property. The minimum fine and community service hours shall be doubled for a second or subsequent conviction of an act of graffiti. The minimum fine shall also be doubled, and may not be suspended, for a first, second, or subsequent conviction of an act of graffiti which is performed on or along a Delaware byway, as defined in 17 Del. C. Section 101(a)(9).
11-841	**Theft** (d): Full restitution required for victim's monetary losses. Consider community service &/or curfew for a juvenile defendant.
11-858(a)(2)	**Unlawful Operation Recording Device (Motion Picture)** Notwithstanding any law to the contrary, may include a max. fine of $50,000
11-861(b)(3)	**Forgery 3rd Degree** (c) Restitution for resultant losses to all parties.
11-932 **11-933** **11-934** **11-935** **11-936** **11-937** **11-938** **11-939**	**Unauthorized Computer Access** **Theft Computer Services** **Interruption Computer Services** **Misuse Computer System Information** **Destruction Computer Equipment** **Unauthorized Electronic Mail** **Fail to Cease Electronic Communication** **Computer Offense Penalties** • (f) In lieu of fine, Court may order Defendant to pay an amount up to double the proceeds from the offense. Record shall reflect findings as to the proceeds gained. • (g) Amounts may be aggregated to determine degree of crime. • (h) Value shall be (1) market value at time of offense or (2) cost of replacement. If value cannot be established, it shall be $250 or (i) in the case of private personal data, $500.

31-1003 **31-1004(1)** **31-1006**	**False Statement to Obtain Benefits** **False Benefit Reimbursement Statement** **Unlawful Conversion of Benefits** • 31-1007(d): Every provider convicted under this chapter shall make full restitution of money, goods or services or of the value of same plus interest at the rate of 1.5% per month for the period from the date upon which payment was made to the date upon which repayment is made to the State • 31-1007(e): Provider shall not be eligible for participation in Delaware Public Assistance Program, subject to certain exceptions.

Class A Misdemeanors

IV.) Order & Decency (MA4)

Sentence Range (Order & Decency Category) MA4	
Statutory Sentence	0 to 1 yr @ Level V and up to $2,300 fine
Presumptive Sentence	1st Offense: Up to 12 m. @ Level I 2nd w/in 18 m.: Up to 12m. @ Level II 3rd w/in 3 yrs.: Up to 6m. @ Level III & 0 to 6m. @ Level II Recommended Maximum Up to 15d. @ Level V
Acceptance of Responsibility	Up to 9 months @ Level I
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category

11-501	**Criminal Solicitation 3rd Degree** Solicit to commit misdemeanor
11-511	**Conspiracy 3rd Degree** Conspires to commit misdemeanor
11-601(a)(1)	**Offensive Touching** Vt= LEO, FF, CO, Medical personnel
11-601(a)(2)	**Offensive Touching (see note)** Bodily Emissions
11-625	**Unlawfully Administer Drugs**
11-628A	**Vehicular Assault 2nd Degree** (1) Criminal negligence: serious injury/ (2) DUI: injury
11-652	**Self Abortion**
11-765	**Indecent Exposure 1st Degree** Vt= <16 y.o.a.
11-781	**Unlawful Imprisonment 2nd Degree** (Special DVCategory May Apply) Knowingly restrain Refer to Pg. 105
11-785	**Interference with Custody** (Special DV Category May Apply) Refer to Pg. 105
11-791	**Coercion** (Special DV Category May Apply)
11-871	**Falsifying Business Records**
11-873	**Tampering w/ Public Records 2nd Degree**
11-877	**Offering False Instrument for Filing**
11-881	**Bribery**
11-882	**Receiving a Bribe**
11-893	**Interference Levied-Upon Property**
11-907	**Criminal Impersonation**
11-909	**Execution of Document by Deception**

11-918	**Ticket Scalping**
11-921	**Sale Transferred Recorded Sound**
11-1102	**Endanger Welfare of Child** (Special DV Category May Apply) Refer to Pg. 105
11-1105	**Endanger Welfare of Incompetent**
11-1113(a)	**Aggravated Criminal Non-support (Prior Conviction) (see note)**
11-1114	**Body Piercing & Tattoos** (Prior Conviction)
11-1114A(a)	**Tongue Splitting 1st Degree**
11-1205	**Give Unlawful Gratuity**
11-1206	**Receive Unlawful Gratuity (value < $1,000)**
11-1207	**Improper Influence**
11-1211	**Official Misconduct**
11-1212	**Profiteering**
11-1221	**Perjury 3rd Degree** False statement under oath
11-1233	**Make False Written Statement**
11-1243	**Obstructing Firefighting**
11-1244	**Hinder Prosecution of Misdemeanor**
11-1245	**False Report Incident/Child Abduction (see note) (6/30/05)**
11-1246	**Compound a Crime**
11-1249	**Abetting Violation of Driver's License**
11-1256	**Promote Prison Contraband**
11-1257(b)	**Resist Arrest Without Violence**
11-1257A	**Use of Animal to Avoid Capture**
11-1260	**Misuse of Prisoner Mail**
11-1266	**Tampering w/Juror**
11-1267	**Misconduct by Juror**
11-1271(2–8)	**Criminal Contempt** (2)Breach of peace/ (3) Intentional disobedience/ (4)Refusal of Oath/to Answer/ (5)Publish false proceedings/ (6)Refuse Jury Service/ (7)Juror fail to attend trial/ (8)Defendant's failure to appear for criminal proceedings
11-1303(3)(a)	**Disorderly Conduct: y/Funeral/Memorial Service (6/1/06)**
11-1311	**Harassment**
11-1325	**Cruelty to Animals (see note)**
11-1325A(b)	**Trade in Dog/Cat By-Products (Flesh) (see note)**
11-1327	**Dangerous Animal** Injury to Person/Serious Injury or Death Animal
11-1331	**Desecration**
11-1332	**Abusing a Corpse**
11-1335(a)(1–5, 8)	**Violation of Privacy (6/30/06)** (1)Trespass to eavesdrop/ (2) Installs recording device in private place/ (3)Installs/uses recording device outside private place/ (4) Intercepts/ (5) Divulges private communication/ (8) Installs in MV electronic/mechanical tracking device
11-1340	**Desecration of Burial Place (see note)**
11-1365	**Obscene Literature Harmful to Minors**
11-1401	**Advancing Gambling 2nd Degree** Unlawful(ly) (1)Sell/dispose/PWI lottery policy or similar/ (2)Device to do same/ (3)Interest in lottery policy writing or in selling/disposing policy or similar/ (4)Device to do same
11-1402	**Foreign Lotteries**

11-1403	**Advancing Gambling 1st Degree** Unlawful(ly) (1)Keeping "books"/ (2)Owner/occupant property for purpose of bookkeeping/ (3)Recording bets/ (4)Place bets
11-1404	**Providing Premises for Gambling (Prior Conviction w/in 5 yrs)**
11-1405	**Possession Gambling Device**
11-1406	**Interest in Keeping Gambling Device**
11-1411	**Unlawful Dissemination Gambling Information**
11-1428	**Maintaining an Obstruction (Prior Conviction w/in 2 yrs)**
11-1448A(k)	**Improper Request/Dissemination Criminal History Check**
11-1448A(m)	**Firearm Sale Violation**
11-1456	**Allow Unlawful Access to Firearm by Minor**
11-1457(j)(1)	**Possession Weapon in Safe School/Recreation Zone (Underlying Offense: Class B Misdemeanor) (see note)**
11-1471(a)(b)(d)(e)(l)	**Video Lottery Cheat Device** (first offense)
11-1471(c)(f)(g)(h)(i)(j)	**Video Lottery Cheat Device <1500**
11-8522	**Refusal to Permit Photo or Fingerprints**
11-8523(a)	**Refusal/Neglect/Hinder Report**
11-8523(d)	**Unlawful Use of Criminal History Record Information**
11-8562(a)	**Fail to Obtain Child Sex Abuser Information**
16-1136(c)	**Fail to Correct Abuse/Neglect of Patient in Residential Facility**
29-4830(f)(1)(f)(2)	**Standards of Licensing**
29-4831(a)(b)	**Prohibition on employment of persons or service agencies w/o a license**
29-4836(a)(b)	**Penalties for wagering by excluded persons**
31-610(a)(2)	**Transfer/Alter/Possess Food Stamps (<$500) (see note)**

Supplemental Notations for Class A Misdemeanors (Order & Decency):

All Criminal fines require 18% surcharge for Victims fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-601(a)(2)	**Offensive Touching** (b) The Defendant shall be tested for communicable diseases, the costs of which are to be assessed as costs of conviction. The results are to be provided to the AG, the victim, the Defendant and the D.O.C. medical provider
11-1113(a)	**Aggravated Criminal Non-support (Prior Conviction)** • Court may ("shall" in the event support order entered) order any fine to be paid for the support of the entitled person • (j) Restitution shall be ordered in the amount of the total accrued arrearages
11-1245	**False Report Incident/Child Abduction** Minimum Mandatory sentence: Fine= $500 or for (3)(d): $1,000, which cannot be suspended + 100 hrs community service + reimbursement to the State/government agency for costs of investigation and/or response
11-1325	**Cruelty to Animals** (c) The Defendant shall not own or possess any animal for 5 yrs following conviction (but see exceptions). Violation of this condition is punishable by a mandatory $1,000 fine and forfeiture of the animal.
11-1325A	**Trade in Dog/Cat By-Products** (c) Defendant shall: (1) be prohibited from possessing dog/cat for 15 yrs after conviction (but see exceptions),(2) pay a fine of $2,500 and (3) forfeit any dog/cat.

11-1340	**Desecration of Burial Place** Mandatory Minimum Fine= >$1,000 up to $10,000.
11-1457	**Possession Weapon in Safe School/Recreation Zone** (Underlying Offense: Class B Misdemeanor). (j)(4) An elementary or secondary school student shall be expelled for 180d.
31-610(a)(2)	**Transfer/Alter/Possess Food Stamps (<$500)** • May be suspended from the Food Stamp Program for 18 months more than suspension mandated by the Federal Food Stamp Act

Class A Misdemeanors

V.) Controlled Substances (MA5)

Sentence Range (Controlled Substance Category) MA5	
Statutory Sentence	0 to 1 yr @ Level V and up to $2,300 fine
Presumptive Sentence	1st Offense w/16-4764 First Offender Program: Minimum 12 m. @ Level I (7/12/05) 1st Offense: 12 m. @ Level II 2nd Offense w/in 2 Years: 6 m. @ Level III & 6m. @ Level II 3rd Offense w/in 3 Years: 6 m. @ Level V
Acceptance of Responsibility	Up to 9 months @ Level II

Crimes in Category

16-4740	**Sale of Pseudoephedrine/Ephedrine (6/14/05)**
16-4759(b)	**Registrant Crimes** Violates (a)(3)
16-4763(a)	**Possession of Controlled Substances or Counterfeit Controlled Substances** Is an aggravating factor

Supplemental Notations for Class A Misdemeanors (Controlled Substances):

All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Any violations of Title 16, §§4751-4761: 16-4763(c) If Defendant moved to this State in order to commit offense penalty shall be increased by 1 yr at Level V
Any offenses under Title 16, Chapter 47: 16-4763(d) Substance Abuse Treatment: Upon request of D.O.C. the Defendant may be placed during last 180 d. of Level V sentence in quasi-incarceration @ Level IV
Costs of prosecution may be ordered. (Title 11, §4204(i))

Class B Misdemeanors

Sentence Range (Class B Misdemeanors) MB	
Statutory Sentence	0 to 6m. @ Level V and up to $1,150 fine
Presumptive Sentence	1st &/or 2nd offense: Fine, Costs, Restitution Only 3rd Offense w/in 2 yrs: up to 6m. @ Level I or II

Crimes in Category

11-628	**Vehicular Assault 3rd Degree (see note)** Criminal negligence: physical injury
11-653	**Issuing Abortion Articles**
11-812(b)(1)	**Possession of Graffiti Implements (see note)**
11-820	**Trespass with Intent to Peep**
11-858(a)(2)	**Unlawful Operation Recording Device (Still Photograph) (6/28/06)**
11-910	**Debt Adjusting**
11-918	**Ticket Scalping**
11-1106	**Unlawful Dealing with Child**
11-1113(a)	**Criminal Non-support (see note)**
11-1114	**Body Piercing & Tattoos**
11-1114A(b)	**Tongue Splitting 2nd Degree** Performed by doctor/dentist and recipient is: (1)under the influence/ (2)minor w/out legal guardian's consent
11-1241	**Refusing to Aid Police Officer**
11-1248	**Obstructing Control of Rabies**
11-1271(1)	**Criminal Contempt** Disorderly Behavior
11-1273	**Unlawful Grand Jury Disclosure**
11-1313	**Malicious Interference with Emergency Communications**
11-1325A(a)	**Trade in Dog/Cat Byproducts (Fur/Hair)**
11-1333	**Trading in Human Remains/Funerary Objects**
11-1341	**Lewdness**
11-1342	**Prostitution**
11-1355	**Permitting Prostitution**
11-1452	**Unlawful Dealing with Knuckles-Combination Knife (see note)**
11-1453	**Unlawful Dealing with Martial Arts Throwing Star (see note)**
11-1457(j)(2)	**Poss. Weapon in Safe School/Recreation Zone** (Underlying Offense: Unclassified Misdemeanor)(see note)
16-4761(b)	**Illegal Possession and Delivery of Noncontrolled Prescription Drugs** Any person who violates subsection (a) of this section and there is an aggravator
16-4763(b)	**Possession of Controlled Substances or Counterfeit Controlled Substances** Violates 4763(a)
16-4764(a)	**Possession of Marijuana** Is an aggravating factor
16-4774(a)	**Drug Paraphernalia** Possession

Supplemental Notations Class B Misdemeanors:

All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-812 (b)(1)	**Possession of Graffiti Implements** Min. fine of not less than $500 which shall not be subject to suspension, restitution for damages to property and 100 hours of community service, at least half of which shall be served removing graffiti on public property. The minimum fine and community service hours shall be doubled for a second or subsequent conviction of possession of graffiti implements. The minimum fine shall also be doubled, and may not be suspended, for a first, second, or subsequent conviction of an act of graffiti which is performed along a Delaware byway, as defined in 17 Del. C. Section 101(a)(9).
11-1113	**Criminal Non-support** • Court may ("shall" in the event support order entered) order any fine to be paid for the support of the entitled person • (j) Restitution shall be ordered in the amount of the total accrued arrearages
11-1452 **11-1453**	**Unlawful Dealing with Knuckles-Combination Knife** **Unlawful Dealing with Martial Arts Throwing Star** • 11-1457(b)(5&6)&(j)(1): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class A Misdemeanor. • 11-1457(j)(4):If the Defendant is an elementary or secondary school student, in addition to other penalties, the student shall be expelled for not less than 180 d.
11-1457	**Poss. Weapon in Safe School/Recreation Zone** (Underlying Offense: Unclass Misdemeanor) (j)(4) An elementary or secondary school student shall be expelled for 180d.

Unclassified Misdemeanors

Sentence Range (Unclassified Misdemeanors) UM	
Statutory Sentence	Up to 30d. @ Level V and up to $575 fine
Presumptive Sentence	1st or 2nd offense: Fine, Costs, Restitution Only 3rd Offense w/in 2 yrs:0 to 6m. @ Level I or II

Crimes in Category

11-601	**Offensive Touching** (Special DV Category May Apply) Refer to Pg. 105
11-602	**Menacing** (Special DV Category May Apply) Refer to Pg. 105
11-627	**Substances Releasing Vapors or Fumes**
11-763	**Sexual Harassment** (Special DV Category May Apply) Refer to Pg. 105
11-764	**Indecent Exposure 2nd Degree**
11-811(b)(3)(4)	**Criminal Mischief (<$1000) (see note)**
11-822	**Criminal Trespass 2nd Degree** Building/ Real Property + Fenced/ Enclosed
11-850(b)(1)	**Unlawful Telecommunication Device (see note)**
11-914	**Unlawful Use of Consumer Identification Information**
11-915	**Unlawful Use of Credit Card Information**
11-915A	**Unlawful Printing Credit Card Receipt**
11-922	**Improper Labeling (<100) (see note) (7/10/06)**
11-925	**Video Privacy Protection**
11-1107	**Endangering Children**
11-1250(a)	**Harassment of Law Enforcement Animal**
11-1301	**Disorderly Conduct** (Special DV Category May Apply) Refer to Pg. 105
11-1315	**Public Intoxication** (3rd Offense w/in 1 Year)
11-1322	**Criminal Nuisance**
11-1324	**Obstructing Ingress/Egress at Public Building**
11-1343	**Patronizing a Prostitute (see note)**
11-1404	**Providing Premises for Gambling**
11-1445 (1-3)	**Unlawful Dealing with Dangerous Weapon** (1) Possess/Sell BB/Air gun or ammunition for same/ (2)Unlawfully transfer to u/16 a BB/Air gun/ (3)Parent permits u/16 to have FA, BB/ Air/ Spear gun unsupervised
11-1446	**Unlawful Dealing with Switchblade (see note)**
11-1907(c)	**Fail to Answer Summons (see note)**
11-2109(c)(2)	**Breach of Conditions of Bail (see note)**
11-2113	**Breach Conditions of Release (Misdemeanor) (see note)**
11-6562A	**Furnishing Contraband**
16-2513(a)	**Threat/Coerce/Intimidate to W/D Medical Treatment (see note)**
16-3111(b)	**Violations Concerning Vital Statistics Records (see note)**
16-4761(a)	**Illegal Possession and Delivery of Noncontrolled Prescription Drugs**
16-4764(b)	**Possession of Marijuana** Fine not more than $575 and imprisonment not more than 3 months
16-4774 (d)	**Advertisement of Drug Paraphernalia**
16-6611(b)	**Violation of Fire Regulations (see note)**
29-4810	**Lottery Sales to persons prohibited**

Supplemental Notations Unclassified Misdemeanors:

All Criminal fines require 18% surcharge for Victims fund.
All Drug crimes require additional 15% surcharge for rehabilitation fund
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-811(b)(3)(4)	**Criminal Mischief** • (4) If the act is committed along a Delaware byway, as defined in 17 Del. C. Section 101(a)(9), the court shall impose a minimum mandatory fine of at least $500.
11-850(b)(1)	**Unlawful Telecommunication Device** • Punishable by up to 1 yr at Level V; Fine up to $10,000 • (b)(7) All fines shall be imposed for each unlawful telecommunication or access device • (b)(8) Restitution shall be ordered in the manner prescribed by §4106 • (b)(9) The court may order forfeiture of unlawful device(s)
11-922	**Improper Labeling (<100)** 11-924A: Court must order the forfeiture & destruction or other disposition of (1) all articles on which the conviction is based and (2) all implements, devices, materials & equipment used or intended to be used in the mfr of the recordings on which the conviction is based.
11-1343	**Patronizing a Prostitute** • (b) Minimum Mandatory Fine= $500, which shall not be suspended • (c)/(d) For a prior conviction w/in 5 yrs, any vehicle used in connection shall be seized
11-1446	**Unlawful Dealing with Switchblade** • 11-1457(b)(3)&(j)(2): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class B Misdemeanor. • 11-1457(j)(4):If the Defendant is an elementary or secondary school student, in addition to other penalties, the student shall be expelled for not less than 180 d.
11-1907	**Fail to Answer Summons** Maximum penalty: 30 d. imprisonment &/or $100 fine.
11-2109(c)(2)	**Breach of Conditions of Bail** Maximum penalty: Imprisonment= < 1yr.&/or Fine <$500
11-2113	**Breach Conditions of Release (Misdemeanor)** Maximum penalty: 1 yr. imprisonment &/or $500 fine.
16-2513(a)	**Threat/Coerce/Intimidate to W/D Medical Treatment** Mandatory penalty: >$500/<$1,000 fine; >30 d. /<90 d. imprisonment
16-3111(b)	**Violations Concerning Vital Statistics Records** Maximum penalty: Fine up to $1,000; Imprisonment up to 1 yr.
16-6611(b)	**Violation of Fire Regulations** • Reckless violation-Maximum penalty: up to 10 d. imprisonment &/or up to $100 fine. • Each & every day the violation continues after notification shall be deemed a separate offense

Violations

Sentence Range (Violations) V	
Statutory Sentence	1st offense: Up to $345 2nd offense (same violation): Up to $690 3rd offense (same viol. W/in 5 yrs): Up to $1150
Presumptive Sentence	1st or 2nd offense: Fine, Costs, Restitution Only 3rd Offense w/in 2 yrs: Up to 6m. @ Level I

Crimes in Category

11-821	**Criminal Trespass 3rd Degree**
11-1116	**Tobacco Sale Violations: Sell/Distribute to u/18 (see note)**
11-1117	**Tobacco Sale Violations: Fail to Post Notice to u/18 (see note)**
11-1118	**Tobacco Sale Violations: Dist Samples/Coupons to u/18 (see note)**
11-1119	**Tobacco Sale Violations: Dist by Vending Machine (see note)**
11-1120	**Tobacco Sale Violations: Sell from Unlawful Package (see note)**
11-1315	**Public Intoxication**
11-1316	**Out-of-State Liquor Agent Registration (see note)**
11-1320	**Loitering on State-Supported School Property**
11-1321	**Loitering**
11-1323	**Obstructing Public Passages**
11-1330	**Smoking on Bus or Trolley**
11-1407	**Engaging in Crap Game**
11-1428	**Maintaining an Obstruction**

Supplemental Notations for Violations:

All Criminal fines require 18% surcharge for Victims fund.
Restitution shall be ordered for losses to victim. (Title 11, §4106)
Costs of prosecution may be ordered. (Title 11, §4204(i))

11-1116-11120 (penalties §11-1121)	**Tobacco Sale Violations** • Mandatory Fines: 1st offense= $250, 2nd offense= $500, 3rd and subsequent offenses= $1,000 • Prior conviction w/in 12 m.: Defendant's license to sell tobacco may be suspended for up to 6m. w/out refund of registration fees
11-1316	**Out-of-State Liquor Agent Registration** Violations shall result in the loss of the right to register or registration for period of 6m.

Title 21 and Title 23 Offenses

These offenses are not covered by Truth in Sentencing but are provided as a reference for commonly prosecuted motor vehicle offenses.

Crimes In Category

21-2810	**Driving After Judgment Prohibited**
21-4103(b)	**Flee or Attempt to Elude**
21-4112A(c)	**Unlawful Sale Traffic Control Signal Preemption Devices**
21-4175	**Reckless Driving**
21-4175A	**Aggressive Driving**
21-4176A	**Operation of Vehicle Causing Death**
21-4177 et seq.	**Driving a Vehicle While Under the Influence**
21-4201 et seq.	**Leaving the Scene of an Accident**
21-4202	**Leaving the Scene of an Accident (Injury/Death)**
23-2302	**Operation of a Vessel or Boat While Under the Influence**

<table>
<tr><td>21-2810</td><td><u>Driving After Judgment Prohibited</u>
<table>
<tr><td>Statutory Sentence</td><td>• Habitual Offender: (1) 1st Conviction- Mandatory Imprisonment from 90d. up to 30m. & Fine up to $1,150; (2) Prior Conviction- Mandatory Imprisonment from 180d. up to 5 yrs. & Fine up to $2,300.
• Mandatory Imprisonment not subject to suspension</td><td></td></tr>
<tr><td>Presumptive Sentence</td><td>(1) 1st Conviction: 3m. @ Level V (2) Prior Conviction: 6m. @ Level V</td><td></td></tr>
</table></td></tr>
<tr><td>21-4103(b)</td><td><u>Flee or Attempt to Elude</u>
Class G Felony. 1st Conv: Min.Man. fine of $575 which may not be suspended. Subsequent Conv.: Min.Man. fine of $1150 which may not be suspended.</td></tr>
<tr><td>21-4112A(c)</td><td><u>Unlawful Sale Traffic Control Signal Preemption Devices</u>
Class A Misdemeanor</td></tr>
<tr><td>21-4134(d)</td><td><u>Operation of vehicles upon approach of authorized emergency vehicles</u>
Class F Felony</td></tr>
<tr><td>21-4175</td><td><u>Reckless Driving</u>
Mandatory Minimum Sentences:
• 1st Offense: 10 – 30d. @ Level V; Fine= $100–$300
• Prior Conviction w/in 3 yrs.: 30 – 60d.@ Level V; Fine= $300–1,000. Sentence may not be suspended.
• If charge is result of DUI reduction: Completion of course required under §4177D and payments of its attendant fees are mandated. The court must notate the record that the conviction was alcohol-related and, as result, shall be reflected upon Defendant's motor vehicle record.</td></tr>
<tr><td>21-4175A</td><td><u>Aggressive Driving</u>
Mandatory Minimum Sentences
• 1st Offense: 10-30d. @ Level V; Fine= $100–$300
• Prior Conviction w/in 3 yrs.:30-60d.@ Level V; Fine= $300–1,000. Sentence may not be suspended.
• Driving privileges suspended for 30d.
• Completion of Behavior Modification course and payment of its attendant fees are mandated.</td></tr>
</table>

21-4176	**<u>Careless or Inattentive Driving</u>** Mandatory Minimum Sentences: • 1st Offense: Fine= $25–$75 • Prior Conviction w/in 3 yrs: Fine=$50–$95 • (d)(1) In addition to any other penalty if the court determines that the commission of that offense contributed to the serious physical injury of a vulnerable user of a public right of way, the court shall: a. Impose a sentence that requires the convicted person to: 1. complete a traffic safety course approved by DMV 2. Perform up to 100 hours of community service which much include activities related to driver improvement and providing public education on traffic safety; b. Impose, but suspend on the condition that the person complete the requirements of (d)(1)a, 1. A fine of not more than $550 2. A suspension of driving privileges as provided in Section 2733(a)(2) of this; and 3. Set a hearing date up to one year from the date of sentencing. At that Hearing, the court shall: A. If the person has successfully completed the requirements described in paragraph (d)(1)(a) of this section, dismiss the penalties imposed under (d)(1)b. 1. and 2 of this section. B. If the person has not successfully completed the requirements Described in (d)(1)(a) of this section, either I. grant the person an extension based on good cause shown, or II. impose the penalties under (d)(1)b. 1. and 2. of this section.
21-4176A	**<u>Operation of Vehicle Causing Death</u>** • Maximum penalty 1st Conviction: up to 30 m. imprisonment &/or $1,150 Fine • Prior Conviction: up to 60 m. imprisonment &/or $2,300 Fine

21-4177(d)	**<u>Driving a Vehicle While Under the Influence(Effective until July 1, 2012)</u>** Mandatory Minimum Sentences: • **1st Offense:** (1) up to 6m. @ Level V; (2) Fine= $500-$1,500; (3) Completion of alcohol evaluation and program (§4177D) which may include up to 6m. confinement & a fee not in excess of maximum fine under this section; (4) 12m. DL revocation • **2nd Offense:** (1) 60d-18m. @ Level V; (2) Fine= $750-$2,500; minimum sentence may not be suspended; (3) Completion of alcohol evaluation and program (§4177D) which may include up to 15m. confinement & a fee not in excess of maximum fine under this section; (4) 18 m. DL revocation if B.A.L. < .16/ 24. if B.A.L.=.16-.19/ 30m. if B.A.L. = > .20.; (5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant after first 12m. of DL revocation and for either 3 months or the remaining revocation period whichever is greater • **3rd Offense:** (Class G Felony): (1) 1-2 yrs. imprisonment (first 3m. must be @ Level V and shall not be subject to suspension, early release, furlough or reduction of any kind);(2) Fine= $1,500–$5,000. (3) Completion of alcohol evaluation and program (§4177D) which may include up to 15m. confinement & a fee not in excess of maximum fine under this section; (4) 24m. DL revocation if B.A.L. < .16/ 30m. if B.A.L.=.16-.19/ 36m. if B.A.L. = >.20.; (5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant after first 12m. of DL revocation and for either 3 months or the remaining revocation period whichever is greater. • **4th Offense:** (Class E Felony): (1) 2-5 yrs. imprisonment (first 6m. must be @ Level V and shall not be subject to suspension, early release, furlough or reduction of any kind); (2) Fine= $3,000–$7,000. (3) Completion of alcohol evaluation and program (4177D) which may include up to 15m confinement & a fee not in excess of maximum fine under this section. (4) 60 months revocation regardless of B.A.L. (5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant after first 12m. of DL revocation and for either 3 months or the remaining revocation period whichever is greater. Payment of associated costs is required unless indigent (4177G9e)). • **5th Offense:** (Class E Felony) (1) 3-5 yrs. (2) Fine= $3,500–$10,000(3) Completion of alcohol evaluation and program (§4177D) which may include up to 15m. confinement & a fee not in excess of maximum fine under this section. (4) 60 months DL revocation regardless of B.A.L. (5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant after first 12m. of DL revocation and for either 3 months or the remaining revocation period whichever is greater; Payment of associated costs is required unless indigent (§4177G(e)). • **6th Offense:** (Class D Felony): (1) 5-8 yrs. (2) Fine=$5,000–$10,000 (3) Completion of alcohol evaluation and program (4177D) which may include up to 15m. confinement & a fee not in excess of maximum fine under this section. (4) 60 months DL revocation regardless of B.A.L. (5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant after the first 12m. of DL revocation and for either 3 months or the remaining revocation period whichever is greater. Payment of associated costs is required unless indigent (4177G(e)). • **7th or for any subsequent offense:** (Class C Felony): (1) 10-15 yrs. (2) Fine= $10,000–$15,000 (3) Completion of alcohol evaluation and program (4177D) which may include up to 15m. confinement & a fee not in excess of maximum fine under this section. (4) 60 months DL revocation regardless of B.A.L. (5) Ignition Interlock Device shall be installed on all vehicles registered to defendant after the first 12m of DL revocation and for either 3 months or the remaining revocation period whichever is greater. Payment of associated costs is required unless

indigent (4177G9e)).

4177L Driving by persons under the age of 21 after consumption of alcohol; penalties [Effective until July 1, 2012]

(a) Whoever, being under the age of 21 years, drives, operates or has actual physical control of a vehicle, an off-highway vehicle or a moped while consuming or after having consumed alcoholic liquor shall have that person's driver's license and/or privileges revoked for a period of 2 months for the first offense and not less than 6 months nor more than 12 months for each subsequent offense. If the underage person does not have a driver's license and/or privileges, the person shall be fined $200 for the first offense and not less than $400 nor more than $1,000 for each subsequent offense.

- For the fourth, fifth, sixth, seventh offense or greater, the provisions of Section 4205(b) or Section 4217 of Title 11 or any other statute to the contrary notwithstanding, the first six months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough, or reduction of any kind. No conviction for violation of this section for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to Section 4214 of Title 11. No offense for which sentencing pursuant to this paragraph is applicable shall be considered any underlying felony for a murder in the first degree pursuant to section 636(a)(2) of Title 11.
- Any provisions under (d)(3) may be applied upon motion of AG.
- Aggravating Factor: In addition to the above, if a person > 17 y.o.a. was in the vehicle, the following additional requirements must be added: (a) 1st offense- 40 hrs. community service benefiting children & $230-$1,150; (b) Prior offense involving same: 80 hrs. community service benefiting children & $575-$2,300.
- Revocation of driving privileges will remain in effect until (1) the minimum required period AND (2) completion of alcohol evaluation and program have been satisfied. The court shall take possession of the Defendant's driver's license upon conviction and forward it to the appropriate agency (§4177A(c))

Discretionary Sentence Conditions:

- For a violation of (a) or (b), the Court may order an ignition interlock device for a minimum period of 1 yr. A person violating (a) while also in violation of this section shall be sentenced to 60d. imprisonment & a fine of $2,300.
- §4177B First Offenders: Election in Lieu of Trial
- §4177G Subsequent Offender eligibility for Interlock Ignition Device License

11-4219. Continuous Remote Alcohol Monitoring Program.

(a) There is hereby established for sentencing and probation purposes a Continuous Remote Alcohol Monitoring Program which shall use technology to monitor offenders for alcohol use. The program shall be administered by the Department of Correction which shall have the sole authority to determine which offenders are accepted into the program.

(b) The Board of Parole or any Court of competent jurisdiction may request and recommend, as part of conditions of release or the sentence of any person convicted under § 4177(a) of Title 21 for a first offense where the first offender election is not available, or for a subsequent offense involving a blood alcohol content of .20 or higher, a period of continuous remote alcohol monitoring not to

	exceed 90 days for a first offense and 120 days for a second offense. (c) Any inmate incarcerated for violations of § 4177 of Title 21 and selected for participation in the program shall be released on Level IV status, subject to the conditions of the program, and those conditions imposed by the sentencing judge. The remainder of the participant's sentence of incarceration shall be suspended upon completion of the program requirements. Participants failing to satisfactorily complete the program shall be returned to the Board of Parole or the sentencing authority for resentencing. (d) Any offender considered for participation must agree to adhere to the conditions established for participation before being accepted into the program. (e) The Department of Correction shall report annually on the use of the program, and its effectiveness as a supervision mechanism. (75 Del. Laws, c. 143, § 1; 70 Del. Laws, c. 186, § 1; 75 Del. Laws, c. 381, §§ 1, 2; 76 Del. Laws, c. 134, § 1; 76 Del. Laws, c. 366, § 1.)
21-4177(d)	**Driving Vehicle While Under the Influence(Effective July 1, 2012)** • **1st Offense:** (1) up to 12m @ Level V; (2) Fine= $500-$1,500;(3) Completion of alcohol evaluation and program (4177)(d)(12)(f) not to exceed a total of 15m & to pay a fee not to exceed the maximum fine; (4) 12m DL revocation; if BAC .15-.19 Revocation 18m; if BAC >.19 Revocation 24m • **2nd Offense:** Occurring within 10 years of prior offense: (1)60d-18m @ Level V, minimum sentence may not be suspended; (2) Fine = $750-$2,500;(3) Completion of alcohol evaluation and program (4177)(d)(12)(f);(4) 18m DL revocation; if BAC is .15-.19 Revocation 24m; if BAC >.19 Revocation 30m.(5) Ignition Interlock Device shall be installed on all vehicles registered to Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period; • **3rd Offense:** (Class G Felony) (1) 1y-2y @ Level V, first 3m shall not be suspended but shall be served at Level V and shall not be subject to any early release, furlough, or reduction of any kind; Sentencing court may suspend up to 9 months of any minimum sentence, provided however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program as set forth in 4177(d)(9);(2) Fined not more than $5,000; (3) Completion of alcohol abstinence program of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device and shall participate in random breath or urine analysis during period of supervision; (4) 24m DL revocation, if B.AC.L.is .15-.19, 30m, if B.A.L. > .19, 36m; (5) An intensive inpatient or outpatient drug and alcohol treatment program of not less than 3 months; (6) Ignition Interlock Device shall be installed on all vehicles registered to the Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period. • **4th Offense:** (Class E Felony) (1) 2y-5y at Level V, first 6 months shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind; Sentencing court may suspend up to 18 months of any minimum sentence, provided, however, that any sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol treatment program as set forth in 4177(d)(9); (2) Fined not more than $7,000; (3) Completion of alcohol abstinence program of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device and shall participate in random breath or urine analysis during

	period of supervision; (4) 60m revocation; (5) An intensive inpatient or outpatient drug and alcohol treatment program for a period of not less than 3 months; (6) Ignition Interlock Device shall be installed on all vehicles registered to the Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period. • **5th Offense:** (Class E Felony) (1) 3y-5y at Level V, at least one-half of any minimum sentence shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to one-half of any minimum sentence set forth in this section provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section; (2) Fined not more than $10,000; (3) Completion of alcohol abstinence program of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device and shall participate in periodic, random breath or urine analysis during the period of supervision; (4) 60m revocation; (5) An intensive inpatient or outpatient treatment program for a period of not less than 3 months; (6) Ignition Interlock Device shall be installed on all vehicles registered to the Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period. • **6th Offense:** (Class D Felony) (1) 4y-8y at Level 5, at least half of any minimum sentence shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to one-half of any minimum sentence set forth in this section provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section; (2) Fined not more than $10,000; (3) Completion of alcohol abstinence program of not less than 90 days of sobriety as measured by a transdermal continuous alcohol monitoring device and shall participate in periodic, random breath or urine analysis during the period of supervision; (4) 60m DL revocation; (5) An intensive inpatient or outpatient treatment program for a period of not less than 3 months; (6) Ignition Interlock Device shall be installed on all vehicles registered to the Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period. • **7th or any subsequent offense:** (Class C Felony) (1) 5y-15y at Level V, at least half of any minimum sentence shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to one-half of any minimum sentence set forth in this section, provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section; (2) Fined not more than $15,000; (3) Completion of alcohol abstinence of not less than 90 days of sobriety as measured by a transdermal continuous monitoring device and shall participate in periodic, random breath or urine analysis during the period of supervision; (4) 60m revocation; (5) An intensive inpatient or outpatient treatment program of not less than 3 months; (6) Ignition Interlock Device shall be installed on all vehicles registered to the Defendant 12 months from the effective date of the revocation and shall remain installed for the remainder of the revocation period.

	4177(d)(10) In addition to the penalties otherwise authorized by this subsection, any person convicted of a violation of subsection (a) of this section, committed while a person who has not yet reached the person's seventeenth birthday is on or within the vehicle shall: a. For the first offense, be fined an additional minimum of $500 and not more than an additional $1,500 and sentenced to perform a minimum of 40 hours of community service in a program benefiting children. b. For each subsequent like offense, be fined an additional minimum of $750 and not more than an additional $2,500 and sentenced to perform a minimum of 80 hours of community service in a program benefiting children. 4177L Driving by persons under the age of 21 after consumption of alcohol; penalties [Effective July 1, 2012] (a) Whoever, being under the age of 21 years, drives, operates or has actual physical control of a vehicle, an off-highway vehicle or a moped while consuming or after having consumed alcoholic liquor shall have that person's driver's license and/or privileges revoked for a period of 2 months for the first offense and not less than 6 months nor more than 12 months for each subsequent offense. If the underage person does not have a driver's license and/or privileges, the person shall be fined $200 for the first offense and not less than $400 nor more than $1,000 for each subsequent offense.
21-4201	**Leaving the Scene of an Accident** Mandatory Minimum Sentence: (1) 60d.-6m. imprisonment; (2) Fine $230-$1,150; (3) 6m. driver's license revocation.
21-4202	**Leaving the Scene of an Accident (Injury/Death)** Mandatory Minimum Sentences: • (b) Injury (unclassified misdemeanor): (1) 1-2 yrs. imprisonment; (2) Fine= $1,000–$2,000; (3) 1 yr. driver's license suspension • (c) Death (class E felony): (1) 1 yr. minimum imprisonment of which the first 6m. may not be suspended; (2) 2 yr. driver's license suspension
23-2302	**Operation of a Vessel or Boat While Under the Influence** Mandatory Minimums: • **(1) 1st Offense:** (1) 60d.-6m. @ Level V &/or (2) Fine= $200–$1,000 • **(2) 2nd Offense w/in 5 yrs:** (1) 60d.-18m. @ Level V and (2) Fine= $500–$2,000; minimum sentence may not be suspended and (3) completion of a program of education or rehabilitation which may include inpatient program and followed by such other programs as established by the training facility, not to exceed a total of 15 months, and pay a fee not to exceed the maximum fine (see subsection 8) • **(3) 3rd Offense w/in 5 yrs:** (Class G Felony): (1) 1-2 yrs. @ Level V (first 3m. must be @ Level V and shall not be subject to suspension, early release, furlough or reduction of any kind) and (2) Fine= $1,000-$3,000 and (3) completion of a program of education or rehabilitation which may include inpatient program and followed by such other programs as established by the training facility, not to

	exceed a total of 15 months, and pay a fee not to exceed the maximum fine (see subsection 8) • **(4) 4th or Subsequent Offense:** (Class E Felony): (1) 2-5 yrs. @ Level V (first 6m. must be @ Level V and shall not be subject to suspension, early release, furlough or reduction of any kind) and (2) Fine: $2,000-$6,000 and (3) completion of a program of education or rehabilitation which may include inpatient program and followed by such other programs as established by the training facility, not to exceed a total of 15 months, and pay a fee not to exceed the maximum fine (see subsection 8) • **(5)(a) Aggravating factor-If a juvenile <17 y.o.a. was on board, then:** • 1st Offense: Additional fine= $200-$1,000 and 40 hrs. community service Subsequent Offense: Additional fine= $500-$2,000 and 80 hrs. community service

SUMMARY OF DRUG OFFENSES

§ 4751A. Aggravating factors related to drug offenses.

For the purposes of this subchapter:

(1) Each of the following shall be an "aggravating factor" within the meaning of the offenses in this subchapter:

a. The offense was committed within a protected school zone, as defined in § 4701 of this title;

b. The offense was committed within a protected park or recreation area, or church, synagogue or other place of worship, as defined in § 4701 of this title;

c. The offense occurred in a vehicle, as defined in § 4701 of this title;

d. The defendant was an adult, that is, a person who had reached his or her eighteenth birthday, and the offense involved a juvenile, that is, a person who had not reached his or her eighteenth birthday, as a co-conspirator or accomplice, or as the intended or actual recipient of the controlled substances, and the defendant was more than 4 years older than the juvenile; and

e. The defendant, during or immediately following the commission of any offense in this title:

1. Intentionally prevented or attempted to prevent a law-enforcement officer, as defined in § 222(15) of Title 11, from effecting an arrest or detention of the defendant by use of force or violence towards the law-enforcement officer; or

2. Intentionally fled in a vehicle from a law-enforcement officer, as defined in § 222(15) of Title 11, while the law-enforcement officer was effecting an arrest or detention of the defendant, thereby creating a substantial risk of physical injury to other persons.

(2) When the aggravating factors "protected school zone" and "protected park, recreation area, church, synagogue or other place of worship" of paragraphs (1)a. and (1)b. of this section are both present, both may be alleged and proven, but they shall only count as 1 aggravating factor in determining which offense the defendant committed.

(3) In any offense in which 1 or more aggravating factors set forth in this section are present, the factor or factors shall be alleged in the charging information or indictment, and constitute an element of the offense. When there are more aggravating factors present than are required to prove the offense, all may be alleged and proven.

78 Del. Laws, c. 13, § 33; 70 Del. Laws, c. 186, § 1.;

§ 4751B. Prior qualifying Title 16 convictions.

For the purposes of this subchapter:

(1) A "prior qualifying Title 16 conviction" means any prior adult felony conviction for a Title 16 offense where the conviction was 1 of former § 4751, § 4752, or § 4753A of this title, or any other former section of this title that was, at the time of conviction, a class C or higher felony; or where the conviction was 1 of § 4752, § 4753, § 4754, § 4755, or § 4756 of this title, or any other felony conviction specified in the controlled substances law of any other state, local jurisdiction, the United States, any territory of the United States, any federal or military reservation, or the District of Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new offense occurs within 5 years of the date of conviction for the earlier offense or the date of termination of all periods of incarceration or confinement imposed pursuant to the conviction, whichever is the later date. For purposes of §§ 4761(a) and (b), 4763 and 4764 of this title, a "prior qualifying Title 16 conviction" means any prior adult conviction, including both felony and misdemeanor, under this title, if the new offense occurs within 5 years of the date of conviction for the earlier offense, or the date of termination of all periods of incarceration or confinement imposed pursuant to the conviction, whichever is the later date.

(2) "Two prior qualifying Title 16 convictions" means 1 "prior qualifying Title 16 conviction", as defined in paragraph (1) of this section, and an additional prior adult felony conviction or a juvenile adjudication for a Title 16 offense, where the conviction or juvenile adjudication was 1 of former § 4751, § 4752, or § 4753A of this title, or any other former section of this title that was at the time of conviction or juvenile adjudication a class C or higher felony, or where the conviction or adjudication was 1 of § 4752, § 4753, § 4754, § 4755, or § 4756 of this title, or any other felony conviction or juvenile adjudication specified in the controlled substances law of any other state, local jurisdiction, the United States, any federal or military reservation, or the District of Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new offense occurs within 10 years of the date of conviction or juvenile adjudication for the additional prior adult felony conviction or juvenile adjudication or the date of termination of all periods of incarceration or confinement imposed pursuant to the earlier conviction or juvenile adjudication, whichever is the later date, and the sentence or disposition following an adjudication of delinquency for the additional prior adult felony conviction or juvenile adjudication was imposed before the offense which is the basis for the prior qualifying Title 16 conviction was committed. For a juvenile adjudication to count as the additional prior adult felony conviction or juvenile adjudication, the juvenile must have reached his or her sixteenth birthday by the date the criminal act was committed which forms the basis for the juvenile adjudication.

(3) In any offense involving a "prior qualifying Title 16 conviction" or "2 prior qualifying Title 16 convictions", the prior qualifying Title 16 conviction or convictions, including any juvenile adjudication, shall be proved in accordance with § 4215 of Title 11.

(4) Penalties. --

a. In any case in which a defendant has a "prior qualifying Title 16 conviction", the defendant shall be sentenced as follows:

1. A defendant convicted of § 4753(1) of this title shall be sentenced as though the defendant was convicted of § 4752(2) of this title.

2. A defendant convicted of § 4753(4) of this title shall be sentenced as though the defendant was convicted of § 4752(5) of this title.

3. A defendant convicted of § 4754(1) of this title shall be sentenced as though the defendant was convicted of § 4753(2) of this title.

4. A defendant convicted of § 4754(2) of this title shall be sentenced as though the defendant was convicted of § 4752(4) of this title.

5. A defendant convicted of § 4754(3) of this title shall be sentenced as though the defendant was convicted of § 4753(5) of this title.

6. A defendant convicted of § 4755 of this title shall be sentenced as though the defendant was convicted of § 4753(4) of this title.

7. A defendant convicted of § 4756 of this title shall be sentenced as though the defendant was convicted of § 4754(3) of this title.

8. A defendant convicted of § 4757(c)(1) of this title shall be sentenced as though the defendant was convicted of § 4757(c)(2) of this title.

9. A defendant convicted of § 4761(a) of this title shall be sentenced as though the defendant was convicted of § 4761(b) of this title.

10. A defendant convicted of § 4761(c) of this title shall be sentenced as though the defendant was convicted of § 4761(d) of this title.

11. A defendant convicted of § 4763(b) of this title shall be sentenced as though the defendant was convicted of § 4763(c) of this title.

12. A defendant convicted of § 4764(b) of this title shall be sentenced as though the defendant was convicted of § 4764(a) of this title.

b. In any case in which a defendant has "2 prior qualifying Title 16 convictions", the defendant shall be sentenced as follows:

1. A defendant convicted of § 4754(1) of this title shall be sentenced as though the defendant was convicted of § 4752 of this title.

2. A defendant convicted of § 4755 of this title shall be sentenced as though the defendant was convicted of § 4752(5) of this title.

3. A defendant convicted of § 4756 of this title shall be sentenced as though the defendant was convicted of § 4753(5) of this title.

78 Del. Laws, c. 13, § 34; 70 Del. Laws, c. 186, § 1.;

§ 4751C. Quantity tiers related to drug offenses.

For the purposes of this subchapter:

(1) "Tier 5 Controlled Substances Quantity" means:

a. 25 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 5 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 5000 grams or more of marijuana, as described in § 4701(26) of this title;

d. 25 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 25 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 25 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 500 or more doses or, in a liquid form, 50 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title; or

i. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.

(2) "Tier 4 Controlled Substances Quantity" means:

a. 20 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 4 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 4000 grams or more of marijuana, as described in § 4701(26) of this title;

d. 20 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 20 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 20 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 250 or more doses or, in a liquid form, 25 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 50 or more doses or 10 or more grams or 10 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title;

i. 50 or more doses or 10 or more grams or 10 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title; or

j. 60 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 6 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.

(3) "Tier 3 Controlled Substances Quantity" means:

a. 15 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 3 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 3000 grams or more of marijuana, as described in § 4701(26) of this title;

d. 15 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 15 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 15 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 100 or more doses or, in a liquid form, 10 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title; or

i. 37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.

(4) "Tier 2 Controlled Substances Quantity" means:

a. 10 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 2 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 1500 grams or more of marijuana, as described in § 4701(26) of this title;

d. 10 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 10 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 10 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 50 or more doses or, in a liquid form, 5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 25 or more doses or 5 or more grams or 5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title;

i. 25 or more doses or 5 or more grams or 5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title; or

j. 30 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 3 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.

(5) "Tier 1 Controlled Substances Quantity" means:

a. 5 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;

b. 1 gram or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

c. 175 grams or more of marijuana, as described in § 4701(26) of this title;

d. 5 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;

e. 5 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;

f. 5 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;

g. 25 or more doses or, in a liquid form, 2.5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this title; or

i. 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title.

78 Del. Laws, c. 13, § 35.;

§ 4767. First offenders controlled substances diversion program.

(a) Any person who:

(1) Has not previously been convicted of any offense under this chapter or under any statute of the United States or of any state thereof relating to narcotic drugs, marijuana, or stimulant, depressant, hallucinogenic drug or other substance who is charged through information or indictment with possession or consumption of a controlled substance under § 4763 or § 4764 or § 4761(a) or (b) of this title; and

(2) Has not previously been afforded first offender treatment under this section or its predecessor, may qualify for the first offense election at the time of the person's arraignment, except that no person shall qualify for such first offense election where the offense charged under § 4763, § 4764 or § 4761(a) or (b) of this title arises from the same transaction, factual setting or circumstances as those contained in any indictment returned against the defendant alleging violation of any provisions contained within § 4752, § 4753, or § 4754 of this title.

(b) At time of arraignment any person qualifying under subsection (a) of this section as a first offender and who elects treatment under this section shall admit possession or consumption of a controlled substance by entering a plea of guilty, as a first offender. The court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the accused on probation for a period of not less than 1 1/2 years, the terms and conditions of which shall include but not be limited to:

(1) Revocation of the person's driver's license and/or privileges within this State for a period of not less than 6 months, restoration of which shall be contingent upon successful completion of all mandatory terms and conditions required of probation to be completed during the term of revocation. Upon entry of a plea of guilty, as a first offender under this section, the clerk of the court or other person designated by the court shall forthwith report that fact to the Division of Motor Vehicles for action consistent with the provisions of this subsection. The Division of Motor Vehicles may issue a conditional license during this period of revocation upon written certification by the person's probation officer that a narrowly drawn conditional license is necessary for the limited purpose of performing the terms and conditions of probation.

(2) Performance of a minimum of 20 hours of community service work monitored by the court or probation office, performance of which shall be accomplished on at least 3 separate days and shall not, in any event consist of segments lasting more than 8 hours in succession. Community service performed pursuant to the terms of this paragraph shall be in addition to all other community service ordered and no community service ordered or performed pursuant to the terms of this section shall be performed or served concurrently with any other court ordered or approved community service.

(3) Completion of a 16-hour first-offender drug rehabilitation program, licensed by the Secretary of the Department of Health and Social Services and paid for by the first offender.

(4) Other such terms and conditions as the court may impose.

(c) If a term or condition of probation is violated, or if the defendant is found to have illegally possessed or consumed any controlled substance within 1 1//i2 years of the entry of a plea under this section, the probation officer shall file with the court a written report of same, and the defendant shall be brought before the court and upon determination by the court that the terms have been violated or that the defendant has possessed or consumed any such controlled substance, the court shall enter an adjudication of guilt upon the record and proceed as otherwise provided under this title.

(d) Upon fulfillment of the terms and conditions of probation, including, but not limited to, paying of all costs and fees, and performance of all required community service, the court shall discharge the person and dismiss the proceedings against the person and shall simultaneously therewith submit to the Attorney General a report thereof which shall be retained by the Attorney General for use in future proceedings, if required. Discharge and dismissal under this section shall be without adjudication of guilt and is not a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Any person who elects to be treated as a first offender under this section shall, by so doing, agree to pay the costs of the person's prosecution as a condition. There may be only 1 discharge and dismissal under this section with respect to any person.

67 Del. Laws, c. 347, § 1; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 110, § 6; 75 Del. Laws, c. 167, § 2; 78 Del. Laws, c. 13 § 60.;

§ 4768. Medical and/or psychiatric examination and/or treatment.

After a conviction and prior to sentencing for violation of § 4761(a) or (b), § 4763, or § 4764 of this title, or prior to conviction if the defendant consents, the court may order the defendant to submit to a medical and/or psychiatric examination and/or treatment. The court may order such examination by the Department of Health and Social Services or by a private physician, hospital or clinic and the court may make such order regarding the term and conditions of such examination and/or treatment and the payment therefor by the defendant as a court in its discretion shall determine. The Department of Health and Social Services or the private physician, hospital or clinic shall report to the court within such time as the court shall order, not more than 90 days from the date of such order. After such report and upon conviction of such violation, the court shall impose sentence or suspend sentence and may impose probation and/or a requirement of future medical and/or psychiatric examination and/or treatment including hospitalization or outpatient care upon such terms and conditions and for such period of time as the court shall order.

16 Del. C. 1953, § 4765; 58 Del. Laws, c. 424, § 1; 78 Del. Laws, c. 13 § 44.;

Summary of Drug Offenses- Class B Felonies

Class B Felony (Violent)

Sentence Range (Violent Category) FBV	
Statutory Range	2 to 25 Years (First 2 yrs @ Level V may not be suspended. 11-4205(d)
Presumptive Sentence	2 – 5 yrs;
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4752	**Drug dealing – Aggravated possession (see note)**
16-4757(c)(2)	**Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes (see note)**

Supplemental Notations:

16-4752	**<u>Drug dealing-Aggravated Possession</u>** (1) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 4 quantity; (2) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 2 quantity, and there is an aggravating factor; (3) Possesses a controlled substance in a Tier 5 quantity; (4) Possesses a controlled substance in a Tier 3 quantity, and there is an aggravating factor; or (5) Possesses a controlled substance in a Tier 2 quantity as defined in any of Section 4751C(4)a.-i., of this title and there are two aggravating factors.
16-4757(c)(2)	**<u>Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes:</u>** • A person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30-day period to violate any provision of subsection (a) of 4757 and there is an aggravating factor in connection with at least one of the times.

Summary of Drug Offenses- Class C Felonies

Class C Felony (Violent)

Sentence Range (Violent Category) FCV	
Statutory Range	0 to 15 years @ Level V
Presumptive Sentence	Up to 30 months @ Level V
Acceptance of Responsibility	Up to 22 mos. @ Level V
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 1 year for all • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4753	**Drug dealing – Aggravated Possession;(see note)**
16-4757(c)(1)	**Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes (see note)**

Supplemental Notations:

16-4753	**Drug Dealing-Aggravated Possession** (1) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance in a Tier 2 quantity; (2) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance, and there is an aggravating factor; (3) Possesses a controlled substance in a Tier 4 quantity as defined in any of Section 4751C(2)a.-i. of this title; (4) Possesses a controlled substance in a Tier 2 quantity, as defined in any of Section 4751C(4)a.-i. of this title; and there is an aggravating factor; or (5) Possesses a controlled substance in a Tier 1 quantity, and there are 2 aggravating factors;
16-4757(c)(1)	**Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes** (1) A person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more times within a 30 day period to violate any provision or subsection of 4757(a).

Summary of Drug Offenses- Class D Felonies

Class D Felony (Violent)

Sentence Range (Violent Category) FDV	
Statutory Range	0 to 8 years @ Level V
Presumptive Sentence	Up to 2 years @ Level V
Acceptance of Responsibility	Up to 18 mos. @ Level V
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4754	**Drug dealing – Aggravated possession;(see note)**

Supplemental Notations:

16-4754	**Drug dealing – Aggravated possession** (1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance; (2) Possesses a controlled substance in a Tier 3 quantity; or (3) Possesses a controlled substance in a Tier 1 quantity, and there is an aggravating factor

Summary of Drug Offenses- Class E Felonies

Class E Felony (Violent)

Sentence Range (Violent Category): FEV	
Statutory Range	0 to 5 years @ Level V
Presumptive Sentence	Up to 15 m. @ Level V
Acceptance of Responsibility	Up to 11 mos. @ Level V
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4755	**Aggravated Possession** Possession of a controlled substance in a Tier 2 quantity as defined in 4751C(4)a.-i.
16-4774(c)	**Delivery Drug Paraphernalia to Minor**

Supplemental Notations:

Summary of Drug Offenses- Class E Felonies

Class E Felony (Nonviolent)

Sentence Range (Nonviolent Category) FEN	
Statutory Range	0 to 5 years @ Level V
Presumptive Sentence	Up to 12 m. @ Level II
Acceptance of Responsibility	Up to 9 mos. @ Level II
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4758	**Unlawfully dealing in a counterfeit or purported controlled substance**

Supplemental Notations:

Summary of Drug Offenses Class F Felonies

Class F Felony (Violent)

I.) (FFV)

Sentence Range (Violent Category): FFV	
Statutory Range	0 to 3 years @ Level V
Presumptive Sentence	Up to 9 m. @ Level V
Acceptance of Responsibility	Up to 7 months at Level V
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4756	**Aggravated Possession** A person who possesses a controlled substance in a Tier 1 quantity
16-4761(d)	**Illegal Possession and Delivery of Noncontrolled Prescription Drugs** Any person who delivers or intends to deliver prescription drug and there is an aggravator

Summary of Drug Offenses- Class F Felonies

Class F Felony (Nonviolent)

Sentence Range (Nonviolent Category) FFN	
Statutory Range	0 to 3 years @ Level V
Presumptive Sentence	Up to 12 m. for Title 11 offenses; up to 18 months for Title 16 offenses @ Level II
Acceptance of Responsibility	Up to 9 mos. @ Level II for Title 11 offenses Up to 14 mos. @ Level II for Title 16 offenses
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4757(b)	**Miscellaneous Drug Crimes (see note)**
16-4759(b)(1,2,4)	**Registrant Crimes** Violates (a)(1),)a)(2), or (a)(4)
16-4760	**Maintaining a Drug Property**

Supplemental Notations:

16-4757(b)	**Miscellaneous Drug Crimes 16-4757(a)** (1)To distribute as a registrant controlled substance classified in Schedule I or II except pursuant to an order form as required by Section 4738 of this chapter; (2)To use in the course of manufacture, distribution, prescribing, dispensing, or research of a controlled substance, a registration number which is fictitious, revoked, suspended, expired or issued to another person; (3)To acquire or obtain or attempt to acquire or obtain, possession of a controlled substance or prescription drug by misrepresentation, fraud, forgery, deception or subterfuge; (4)To furnish false or fraudulent material information in or omit any material information from, any application, report or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter; (5)To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance; (6)To acquire or attempt to or obtain possession of a controlled substance by theft; (7)To prescribe, or administer to another, any anabolic steroid, as defined in Section 4718(f) of this title, for the purposes of increasing human muscle weight or improving human performance in any form of exercise, sport, or game.

Summary of Drug Offenses- Class G Felonies

Class G Felony (Violent)

Sentence Range (Violent Category) FGV	
Statutory Range	0 to 2 years @ Level V
Presumptive Sentence	Up to 6 m. @ Level V. For 16-4767 & 16-4768: 3 - 9 m. @ Level V.
Acceptance of Responsibility	Up to 4 mos. @ Level V
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4761(c)	**Illegal Possession and Delivery of Noncontrolled Prescription Drugs** Any person who violates subsection (a) of this section and delivers, or intends to deliver the prescription drug to another
16-4774(b)	**Drug paraphernalia** Manufacture and sale

Supplemental Notations:

Class G Felony (Nonviolent)

Sentence Range (Nonviolent Category) FGN	
Statutory Range	0 to 2 years @ Level V
Presumptive Sentence	Up to 12 m. @ Level II
Acceptance of Responsibility	Up to 9 mos. @ Level II
Probation or Suspension of Sentence (11-4333)	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others. • (c) Consecutive sentence shall not amount to more than limitations herein. • (d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if public safety requires, or (3) if restitution remains unpaid at the end of the term. Additional probation for restitution purposes must be served at Level I. Record must be noted accordingly. • (e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.

Crimes in Category:

16-4762(d)	**Hypodermic syringe or needle; delivering or possessing; disposal**

Supplemental Notations:

Summary of Drug Offenses- Misdemeanors:

Class A Misdemeanor

Sentence Range (Controlled Substance Category) MA5	
Statutory Sentence	0 to 1 yr @ Level V and up to $2,300 fine
Presumptive Sentence	1st Offense w/16-4764 First Offender Program Minimum 18 m. @ Level I(7/12/05) 1st Offense 12 m. @ Level II 2nd Offense w/in 2 Years: 6 m. @ Level III & 6m. @ Level II 3rd Offense w/in 3 Years: 6 m. @ Level V
Acceptance of Responsibility	Up to 9 mos @ Level II

Crimes in Category:

16-4740	**Sale of Pseudoephedrine/Ephedrine**
16-4759(b)	**Registrant Crimes** Violates (a)(3)
16-4763(a)	**Possession of Controlled Substances or Counterfeit Controlled Substances** Is an aggravating factor

Supplemental Notations:

Class B Misdemeanor

Sentence Range (Class B Misdemeanors) MB	
Statutory Sentence	0 to 6m. @ Level V and up to $1,150 fine
Presumptive Sentence	1st &/or 2nd offense: Fine, Costs, Restitution Only 3rd Offense w/in 2 yrs: up to 6m. @ Level I or II

Crimes in Category:

16-4761(b)	**Illegal Possession and Delivery of Noncontrolled Prescription Drugs** Any person who violates subsection (a) of this section and there is an aggravator
16-4763(b)	**Possession of Controlled Substances or Counterfeit Controlled Substances** Violates 4763(a)
16-4764(a)	**Possession of Marijuana** Is an aggravating factor
16-4774(a)	**Drug Paraphernalia** Possession

Supplemental Notations:

Unclassified Misdemeanors

Sentence Range (Unclassified Misdemeanors) UM	
Statutory Sentence	Up to 30d. @ Level V and up to $575 fine
Presumptive Sentence	1st or 2nd offense: Fine, Costs, Restitution Only 3rd Offense w/in 2 yrs:0 to 6m. @ Level I or II

Crimes in Category

16-4761(a)	**Illegal Possession and Delivery of Noncontrolled Prescription Drugs**
16-4764(b)	**Possession of Marijuana** Fine not more than $575 and imprisonment not more than 3 months
16-4774 (d)	**Advertisement of Drug Paraphernalia**

Supplemental Notations:

Revisions to Controlled Substances Act

Guide to HB-19 (revised October 4, 2011)

Overview

Contents of this Guide to HB-19:

Below are several tables that graphically relate charges under the revised drug offense regime. In order of appearance, they include:

1. Quantity thresholds by substance and tier;
2. Applicable aggravating factors;
3. Qualifying prior convictions;
4. Simple and aggravated possession offenses by quantity tier;
5. Drug dealing and manufacturing offenses by quantity tier;
6. Revised Title 16 offenses by section number;
7. Applicable penalties by offense classification.

CONTROLLED SUBSTANCE QUANTITY TIERS (16 DEL. C. § 4751C)

SUBSTANCE	TIER 1:	TIER 2:	TIER 3:	TIER 4:	TIER 5:
Cocaine	≥5g	≥10g	≥15g	≥20g	≥ 25g
Morphine / Opium / Heroin	≥1g	≥2g	≥3g	≥4g	≥ 5g
Marijuana	≥175g	≥1,500g	≥3,000g	≥4,000g	≥ 5,000g
Methamphetamine	≥5g	≥10g	≥15g	≥20g	≥ 25g
Amphetamine	≥5g	≥10g	≥15g	≥20g	≥ 25g
PCP	≥5g	≥10g	≥15g	≥20g	≥ 25g
LSD	≥2.5 ml or ≥25 doses	≥5 ml or ≥50 doses	≥10 ml or ≥100 doses	≥25 ml or ≥250 doses	≥ 50ml or ≥ 500 doses
Designer Drug	≥2.5 ml or ≥2.5g or ≥12.5 doses	≥5 ml or ≥5g or ≥25 doses	≥7.5 ml or ≥7.5g or ≥37.5 doses	≥10 ml or ≥10 g or ≥50 doses	≥ 12.5ml or ≥ 12.5g or ≥62.5 doses
Ecstasy (MDMA)	≥2.5 ml or ≥2.5g or ≥12.5 doses	≥5 ml or ≥5g or ≥25 doses	≥7.5 ml or ≥7.5g or ≥37.5 doses	≥10 ml or ≥10g or ≥50 doses	≥ 12.5ml or ≥ 12.5g or ≥62.5 doses
Prescription Drug: Narcotic Schedule II or III	N/A	≥3g or ≥30 doses	N/A	≥ 6g or ≥ 60 doses	N/A

"Dose" is defined by 16 DEL. C. § 4701(14) (2011).**AGGRAVATING FACTORS** (16 DEL. C. § 4751A)

a)	Offense committed within a protected school zone
b)	Offense committed within a protected park or place of worship zone
c)	Offense occurred in a vehicle

d)	Defendant was an adult and:
	• The Offense involved a juvenile as
	  ○ A co-conspirator or accomplice, or
	  ○ As the intended or actual recipient of the controlled substances;
	• And the defendant was more than four years older than the juvenile

e)	• Defendant, during or immediately following the commission of any offense in this Title, intentionally
	  ○ Prevented or attempted to prevent officer from making an arrest by use of violence or force; or
	  ○ Fled in a vehicle from a law enforcement officer, thereby creating a substantial risk of physical injury to other persons

- If both "Protected School Zone" and "Protected Park or Place of Worship Zone" are present as Aggravating Factors, then both may be alleged and proven, but together they count only as one.

QUALIFYING PRIOR CONVICTIONS (16 DEL. C. § 4751B)	
IF CHARGED WITH A FELONY:	
One Qualifying Prior:	**Two or More Qualifying Priors:**
Within previous 5 years from date of offense, Defendant has:	Has One Qualifying Prior (see left); **AND**
• Adult felony conviction under former Title 16 sections 4751, 4752, or 4753A; **OR**	Within previous 10 years has an additional adult felony conviction or juvenile adjudication for:
• Adult felony conviction under any former Title 16 section that was a Class C Felony or higher; **OR**	• Former Title 16 sections 4751, 4752, or 4753A; **OR**
• Conviction under current Title 16 sections 4752, 4753, 4754, 4755, or 4756; **OR**	• Any former Title 16 section that was a Class C Felony or higher; **OR**
• Conviction under controlled substance law of any other U.S. jurisdiction that is same as or equivalent to any offense under Delaware law.	• Current Title 16 sections 4752, 4753, 4754, 4755, or 4756; **OR**
	• Controlled substance law of any other U.S. jurisdiction that is same as or equivalent to any offense under Delaware law.

Note: if charged with a misdemeanor, one qualifying prior is as above, but also includes any convictions under sections 4761(a), 4761(b), 4763, or 4764, if within previous five years.

SIMPLE & AGGRAVATED POSSESSION:					
QUANTITY (TIER):	**CONTROLLED SUBSTANCE**	**AGGRAVATING FACTORS:**	**NO PRIOR CONVICTIONS:**	**ONE PRIOR:**	**TWO OR MORE PRIORS:**
No Tier Quantity Alleged	Marijuana	0	Unclass. Misd. § 4764(a) ≤ $575 & Imprisoned ≤ 3 months	Class B Misd. § 4751B(d)(1)(L)	"
		≥ 1	Class B Misd. § 4764(b)	"	"
	Not Marijuana	0	Class B Misd. § 4763(b)	Class A Misd. § 4751B(d)(1)(K)	"
		≥ 1	Class A Misd. § 4763(c)	"	"
Tier 1	All Substances	0	Class F Felony § 4756	Class D Felony § 4751B(d)(1)(G)	Class C Felony § 4751B(d)(2)(C)
		1	Class D Felony § 4754(3)	Class C Felony § 4751B(d)(1)(E)	"
		≥ 2	Class C Felony § 4753(5)	"	"
Tier 2	All Substances	0	Class E Felony § 4755	Class C Felony § 4751B(d)(1)(F)	Class B Felony § 4751B(d)(2)(B)
		1	Class C Felony § 4753(4)	Class B Felony § 4751B(d)(1)(B)	"
		≥ 2	Class B Felony § 4752(5)	"	"
Tier 3	All Substances	0	Class D Felony § 4754(2)	Class B Felony § 4751B(d)(1)(D)	"
Tier 3 or Tier 4	All Substances	≥ 1	Class B Felony § 4752(4)	"	"
Tier 4	All Substances	0	Class C Felony § 4753(3)	Class B Felony § 4751B(d)(1)(D)	"
Tier 5	All Substances	≥ 0	Class B Felony § 4752(3)	"	"

DRUG DEALING / MANUFACTURING (OR POSSESSION W/INTENT FOR EITHER)					
QUANTITY (TIER):	**CONTROLLED SUBSTANCE**	**AGGRAVATING FACTORS:**	**NO PRIOR CONVICTIONS:**	**ONE PRIOR:**	**TWO OR MORE PRIORS:**
No Tier Quantity Alleged or Tier 1	All Substances	0	Class D Felony § 4754(1)	Class C Felony § 4751B(d)(1)(C)	Class B Felony § 4751B(d)(2)(A)
		≥ 1	Class C Felony § 4753(2)	"	Class B Felony § 4751B(d)(2)(A)
Tier 2 or Tier 3	All Substances	0	Class C Felony § 4753(1)	Class B Felony § 4751B(d)(1)(A)	"
		≥ 1	Class B Felony § 4752(2)	"	"
Tier 4 or Tier 5	All Substances	≥ 0	Class B Felony § 4752(1)	"	"

REVISED TITLE 16 OFFENSES BY SECTION NUMBER				
16 DEL. C. §:	**OFFENSE:**	**NO PRIOR CONVICTIONS:**	**ONE PRIOR:**	**TWO OR MORE PRIORS:**
4752	(1): Deliver / Mfg. Tier 4 or Tier 5	Class B Felony	"	"
	(2): Deliver / Mfg. Tier 2 or Tier 3 + Aggravator	Class B Felony	"	"
	(3): Poss. Tier 5	Class B Felony	"	"
	(4): Poss. Tier 3 or Tier 4 + Aggravator	Class B Felony	"	"
	(5): Poss. Tier 2 + 2x Aggravators	Class B Felony	"	"
4753	(1): Deliver / Mfg. Tier 2 or Tier 3	Class C Felony	Class B Felony	"
	(2): Deliver / Mfg. No Tier or Tier 1 + Aggravator	Class C Felony	"	Class B Felony
	(3): Poss. Tier 4	Class C Felony	Class B Felony	"
	(4): Poss. Tier 2 + Aggravator	Class C Felony	Class B Felony	"

16 Del. C. §:	Offense:	No Prior Convictions:	One Prior:	Two or More Priors:
	(5): Poss. Tier 1 + 2x Aggravators	Class C Felony	"	"
4754	(1): Deliver / Mfg. No Tier or Tier 1	Class D Felony	Class C Felony	Class B Felony
	(2): Poss. Tier 3	Class D Felony	Class B Felony	"
	(3): Poss. Tier 1 + Aggravator	Class D Felony	Class C Felony	"
4755	Poss. Tier 2	Class E Felony	Class C Felony	Class B Felony
4756	Poss. Tier 1	Class F Felony	Class D Felony	Class C Felony
4757	(a)(3) Unlawfully Obtaining Poss. of a Controlled Substance or Prescription Drug	Class F Felony	Class D Felony	Class C Felony
	(a)(6)Unlawfully Obtaining Possession of a Controlled Substance or Prescription Drug by Theft	Class F Felony	Class D Felony	Class C Felony
	(a)(7): Admin. of Steroids for Performance	Class F Felony	"	"
	(c)(1): Solicitation of Multiple Prescription Drug Crimes	Class C Felony	Class B Felony	"
	(c)(2): Solicitation of Multiple Prescription Drug Crimes + Aggravator	Class B Felony	"	"
4758	(a): Deliver / Mfg. Counterfeit or Purported Ctrl. Sub.	Class E Felony	"	"
4760	Maint. a Drug Property	Class F Felony	"	"
4761	(a): Illegal Poss. of Non-Ctrl. Prescription Drug	Unclass. Misd.	Class B Misd.	"
	(b): Illegal Poss. of Non-Ctrl. Prescription Drug + Aggravator	Class B Misd.	"	"
	(c): Illegal Poss. & Deliver of Non-Ctrl. Prescription Drug	Class G Felony	Class F Felony	"
	(d): Illegal Poss. & Deliver of Non-Ctrl. Prescription Drug + Aggravator	Class F Felony	"	"
4763	(b): Poss. / Consume Ctrl. Sub. Not Marijuana	Class B Misd.	Class A Misd.	"
	(c): Poss. / Consume Ctrl. Sub.	Class A Misd.	"	"

16 DEL. C. §:	OFFENSE:	NO PRIOR CONVICTIONS:	ONE PRIOR:	TWO OR MORE PRIORS:
	Not Marijuana + Aggravator			
4764	(a): Poss. / Consume Marijuana + Aggravator	Class B Misd.	"	"
	(b): Poss. / Consume Marijuana	Unclass Misd.; Fine ≤ $575 & Imprisoned ≤ 3 months	Class B Misd.	"
4774	(a): Use / Poss. w/Intent to Use Drug Paraphernalia	Class B Misd.	"	"

PENALTIES BY OFFENSE CLASSIFICATION

	Offense Classification:	Penalties:
Felonies	Class B	2 to ≤ 25 years @ Lvl. 5
	Class C	≤ 15 years @ Lvl. 5
	Class D	≤ 8 years @ Lvl. 5
	Class E	≤ 5 years @ Lvl. 5
	Class F	≤ 3 years @ Lvl. 5
	Class G	≤ 2 years @ Lvl. 5
Misdemeanors	Class A	≤ 1 year @ Lvl. 5 and ≤ $2,300 fine
	Class B	≤ 6 months @ Lvl. 5 and ≤ $1,150 fine
	Unclassified	≤ 30 days @ Lvl. 5 and ≤ $575 fine; unless otherwise defined by statute (e.g. § 4764(b))
Additional Penalties	All Violations of 16 DEL. C. §§ 4752-4764 (2011)	6 mo. license suspension

SENTAC CONTROLLED SUBSTANCE "SUPER WEIGHTS"

SUBSTANCE	4-10 YEARS	6-12 YEARS	8-15 YEARS
Cocaine	≥100g	≥250g	≥500g
Morphine / Opium / Heroin	≥20g	≥50g	≥100g
Marijuana	≥15,000g (33 lbs.)	≥37,500g (83 lbs.)	≥75,000g (165 lbs.)
Methamphetamine	≥100g	≥250g	≥500g
Amphetamine	≥100g	≥250g	≥500g
PCP	≥100g	≥250g	≥500g
LSD	≥50 ml or ≥500 doses	≥125ml or ≥1,250 doses	≥250 ml or ≥ 2,500 doses
Designer Drug	≥50 ml or ≥50 g or ≥250 doses	≥125ml or ≥125g or ≥625 doses	≥250 ml or ≥250g or ≥1,250 doses
Ecstasy (MDMA)	≥50 ml or ≥50 g or ≥250 doses	≥125ml or ≥125G or ≥625 doses	≥250 ml or ≥250g or ≥1,250 doses
Prescription Drug: Narcotic Schedule II or III	≥30g or ≥300 doses	≥75g or ≥750 doses	≥150g or ≥1,500 doses

C. § 4701(14) (2011).

AGGRAVATING AND MITIGATING FACTORS

The standard sentence range is presumed to be appropriate for the typical criminal case. The court may impose a sentence outside the standard sentence range for that offense if it finds that there are substantial and compelling reasons justifying an exceptional sentence.

The following aggravating and mitigating circumstances for exceptional sentences are provided as examples and are not intended to be exclusive reasons for departure. An aggravating or mitigating circumstance, whether listed below or not, shall only apply if it does not reflect the statutory language defining the current offense, or constitute an element thereof.

When an exceptional sentence is decreed, the governing factor(s) leading to the exceptional sentence must be stated for the record, and should be identified in the sentencing order or on the sentencing worksheet.

Aggravating Factors:

A1	Excessive Cruelty
A2	Prior Violent Criminal Conduct
A3	Repetitive Criminal Conduct
A4	Need for Correctional Treatment
A5	Undue Depreciation of Offense
A6	Major Economic Offense or Series of Offenses
A7	Prior Abuse of Victim
A8	Custody Status at Time of Offense
A9	Lack of Remorse
A10	Betrayal of Public Trust
A11	Supervision to Monitor Restitution
A12	Lack of Amenability
A13	Vulnerability of Victim
A14	Statutory Aggravation
A15	Statutory Habitual Offender
A16	Child Domestic Violence Victim
A17	Offense Against a Child
A18	Sentenced to Time Already Served Only

Mitigating Factors:

M1	Victim Involvement
M2	Voluntary Redress or Treatment
M3	Under Duress or Compulsion
M4	Inducement By Others
M5	Physical/Mental Impairment
M6	Concern for Victim by Non-Principal
M7	No Prior Convictions
M8	Treatment Need exceeds Need for Punishment
M9	Could Lose Employment
M10	Statutory Mitigation
M11	Assistance to Prosecution
M12	Mental Retardation
M13	Other

Description of AGGRAVATING FACTORS For Exceptional Sentences

Violent Felonies Only:

EXCESSIVE CRUELTY

a. Those facts surrounding the commission of a violent felony which demonstrate such a callousness and cruelty towards the victim as to shock the conscience of the Court.
b. Allowable Penalty: Up to the statutory maximum for the instant offense.

PRIOR VIOLENT CRIMINAL CONDUCT

a. Defendant has demonstrated, by his prior criminal history, a propensity for violent criminal conduct. (SEE POLICY NO. 4)
b. Recommended Penalties:
    1. With two or more prior, separate violent felonies --Up to the statutory maximum.
    2. With one prior violent felony -- up to 50% of the statutory maximum.

Summary: Standard Prior History Categories for Violent Felonies

Category	Factor	Fel A	Fel B	Fel C	Fel D	Fel E	Fel F	Fel G
A	One or less prior felonies	Presumptive Sentence						
B	While on release or pending trial/sentencing	Level V for up to the time shown below:						
		25 yrs	10 yrs	5 yrs	4 yrs	2.5 yrs	1.5 yrs	1 yr
C	Two or more prior felonies	25 yrs	10 yrs	5 yrs	4 yrs	2.5 yrs	1.5 yrs	1 yr
D	One prior **violent** felony	25 yrs	10 yrs	5 yrs	4 yrs	2.5 yrs	1.5 yrs	1 yr
E	Two or more prior **violent** felonies	Life	25 yrs	15 yrs	8 yrs	5 yrs	3 yrs	2 yrs
F	Excessive Cruelty	Life	25 yrs	15 yrs	8 yrs	5 yrs	3 yrs	2 yrs

If violent crime is a secondary offense, use up to the presumptive sentence.

Aggravated Prior History Sentences at Level V for Nonviolent Felonies								
H	Repetitive criminal history	NA	NA	24 months	Up this number of months:			
					24	15	9	6
J	Lack of amenability to lesser sanctions	NA	NA	24 months	Up to this number of months:			
					24	15	9	6

If nonviolent crime is a secondary offense, use the nonaggravated presumptive sentence.

Any Offense:

REPETITIVE CRIMINAL CONDUCT

Definition: Repetitive Criminal Conduct is conviction or adjudication for the same or similar offense on two or more previous, separate occasions. (SEE POLICY NO. 16)

NEED FOR CORRECTIONAL TREATMENT

The defendant is in need of correctional treatment which can be most effectively provided if he is placed in total confinement.

UNDUE DEPRECIATION OF OFFENSE

It would unduly depreciate the seriousness of the offense to impose a sentence of other than total confinement.

MAJOR ECONOMIC OFFENSE OR SERIES OF OFFENSES:

Identified by a consideration of any of the following factors:

a. The offense involved multiple victims or multiple incidents per victim;
b. The offense involved attempted or actual monetary loss substantially greater than typical for the offense;
c. The offense involved a high degree of sophistication or planning, or occurred over a lengthy period of time;
d. The defendant used his/her position of trust, confidence or fiduciary responsibility to facilitate the offense.

PRIOR ABUSE OF VICTIM:

On prior occasions, the defendant has harassed, threatened, or physically abused the victim of the current offense.

CUSTODY STATUS AT TIME OF OFFENSE:

The offender was on bail, early release from incarceration, or was serving a sentence in other than Level V at the time the offense was committed.

LACK OF REMORSE

The offender has demonstrated a total lack of remorse or acceptance of responsibility with regard to the offense.

BETRAYAL OF PUBLIC TRUST

The offender, in attempting to gain, or while holding, public office by appointment or election, betrayed the Public Trust by his or her unlawful conduct.

SUPERVISION TO MONITOR RESTITUTION

A long period of supervision is necessary to monitor the offender's restitution responsibilities. Penalty Note: Applicable to sentences involving less than Level V time only.

LACK OF AMENABILITY

The defendant has demonstrated a lack of amenability to lesser restrictive sanctions through violation of a prior period of probation, or a failure to meet the conditions of a prior or current period of probation.

VULNERABILITY OF VICTIM

The Defendant knew, or should have known, that the victim of the offense was particularly vulnerable or incapable of resistance due to extreme youth, advanced age, disability, or ill health.

STATUTORY AGGRAVATION

The current offense carries with it a statutory minimum mandatory period of incarceration which exceeds the sentencing guidelines.

STATUTORY HABITUAL OFFENDER

The Court, on motion, determined the defendant to be an habitual offender under the provisions of 11 Del.C., s4214, thus calling for a sentence of incarceration which exceeds the sentencing guidelines.

CHILD DOMESTIC VIOLENCE VICTIM

The person who is a victim in domestic violence is a child.

OFFENSE AGAINST A CHILD

The victim in the offense was a child under 16 years old.

CRIMES COMMITTED AGAINST PERSONS 62 YEARS OF AGE OR OLDER

An additional penalty of $100.00 shall be imposed on all crimes committed against persons 62 years of age or older. The penalty assessment shall be placed in a special fund called the Senior Trust Fund.

Description of MITIGATING FACTORS for Exceptional Sentences

VICTIM INVOLVEMENT:

To a significant degree, the victim was an initiator, willing participant, aggressor, or instigator of the incident.

VOLUNTARY REDRESS OR TREATMENT:

Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained, or, before detection, he voluntarily sought professional help for drug/alcohol treatment, or for any other recognized compulsive behavioral disorders related to the offense.

UNDER DURESS OR COMPULSION:

The defendant committed the crime under duress, coercion, emotional distress, threat or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

INDUCEMENT BY OTHERS:

The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

PHYSICAL/MENTAL IMPAIRMENT:

The offender, because of physical or mental impairment, lacked substantial capacity for judgment when the offense was committed. The voluntary use of intoxicants (drugs or alcohol) does not fall within the purview of this circumstance.

CONCERN FOR VICTIM BY NON-PRINCIPAL:

The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

NO PRIOR CONVICTIONS

TREATMENT NEED EXCEEDS NEED FOR PUNISHMENT:

The offender is in greater need of an available treatment program than of punishment through incarceration.

COULD LOSE EMPLOYMENT:

The offender is gainfully employed and will more than likely lose his/her job if the sentencing standard is imposed.

STATUTORY MITIGATION

ASSISTANCE TO PROSECUTION:

Defendant rendered substantial assistance to Authorities in the investigation and/or prosecution of this or other crimes.

MENTAL RETARDATION

a. Defendant is "significantly sub average in general intellectual function" (usually interpreted as an IQ score of 70 or less); AND
b. "has deficits in adaptive behavior" (has insufficient life skills to get along without constant assistance from others); AND
c. "manifested the above handicaps during the developmental period". (usually interpreted as having experienced the onset of handicap at the age of 21 or younger).

QUALIFYING UNDERLYING OFFENSES FOR TITLE 11 SECTION 1105:
Crime Against a Vulnerable Adult:

Title 11:

Section 601.	Offensive touching
Section 602(a)	Menacing
Section 602(b)	Aggravated Menacing
Section 603	Reckless endangering in the second degree
Section 604	Reckless endangering in the first degree
Section 605	Abuse of a pregnant female in the second degree
Section 606	Abuse of a pregnant female in the first degree
Section 611	Assault in the third degree
Section 612	Assault in the second degree
Section 621	Terroristic threatening
Section 622	Hoax device
Section 625	Unlawfully administering drugs
Section 626	Unlawfully administering controlled substance or narcotic drugs
Section 645	Promoting suicide
Section 763	Sexual harassment
Section 764	Indecent exposure in the second degree
Section 766	Incest
Section 767	Unlawful sexual contact in the third degree
Section 769	Unlawful sexual contact in the first degree
Section 770	Rape in the fourth degree
Section 776	Sexual extortion
Section 780	Female genital mutilation
Section 781	Unlawful imprisonment in the second degree
Section 782	Unlawful imprisonment in the first degree
Section 783	Kidnapping in the second degree
Section 791	Acts constituting coercion
Section 803	Criminal mischief
Section 825	Burglary in the second degree
Section 831	Robbery in the second degree
Section 835	Carjacking in the second degree
Section 841	Theft, except subsection (c)(3)b.
Section 841A	Theft of a motor vehicle
Section 842	Theft; lost or mislaid property
Section 843	Theft; false pretense
Section 844	Theft; false promise
Section 846	Extortion
Section 848	Misapplication of property
Section 853	Unauthorized use of a vehicle
Section 854	Identity theft
Section 861	Forgery
Section 903	Unlawful use of credit card
Section 909	Securing execution of documents by deception
Section 914	Use of consumer identification information
Section 916	Home improvement fraud
Section 917	New home construction fraud, except (d)(3)
Section 1001	Bigamy
Section 1311	Harassment
Section 1312	Stalking, except (d)(1) and (d)(2)

Section 1335	Violation of privacy
Section 1339	Adulteration
Section 1451	Theft of a firearm

Title 6:

Section 7322	Securities fraud

SUBSTANTIAL ASSISTANCE

Title 11 Section 4220. Modification, suspension or reduction of sentence for substantial assistance.

(a) The Attorney General may move the sentencing court to modify, reduce or suspend the sentence of any person who is convicted of any crime or offense specified in this Code, and who provides substantial assistance in the identification, arrest or prosecution of any other person for a crime or offense specified in this Code, in the laws of the United States, or any other state or territory of the United States.
(c) The provisions of Sections 4204(d) or 4217 of this Title, any court rule or any other provision of law to the contrary notwithstanding, a judge of the Court that is imposing or that has imposed a sentence, upon hearing a motion filed pursuant to subsection (a) of this section, may modify, reduce or suspend that sentence, including any minimum mandatory, or a portion thereof, if the Court finds that the person rendered such substantial assistance.

SERIOUS MEDICAL ILLNESS, INJURY, OR INFIRMITY

Title 11 Section 4221. Modification, deferral, suspension or reduction of sentence for serious medical illness, injury, or infirmity.

Notwithstanding any provision of law to the contrary, a Court may modify, defer, suspend or reduce a minimum or mandatory sentence of one year or less, or a portion thereof, required, where the court finds by clear and convincing evidence, or by stipulation of the State, that the person to be sentenced suffers from a serious medical illness, injury or infirmity with continuing treatment needs which make incarceration inappropriate and that such person does not constitute a substantial risk to the community.

EXCEPTIONAL SENTENCES

Special Categories:

Domestic Violence

The particular nature of criminal charges involving domestic violence may be considered as deserving of aggravated punishment, for example, those cases where there have been repeated incidences prior to the first formal charge in Court, and those cases where children the witnesses or victims of domestic violence. If aggravating circumstances are present, the following recommendations are presented below. If the guidelines in this category are used, the sentencing order/worksheet must identify the charge as "Domestic Violence Involved".

Class A Misdemeanors

Statutory Range - 0 To 1 Years

11-603	Reckless Endangering 2nd Degree
11-611	Assault 3rd Degree
11-621	Terroristic Threatening
11-766	Incest
11-767	Unlawful Sexual Contact 3rd Degree
11-781	Unlawful Imprisonment 2nd Degree
11-785	Interference with Custody
11-791	Coercion
11-1101	Abandonment of Child
11-1102	Endangering Welfare of Child
11-1271A	Criminal Contempt: DV Protection Order
11-1311	Harassment

Presumptive Sentence	Level	Time
1st Offense	V	Up To 1 Month
2nd Offense w/in 2 years	V	Up to 2 Months
3rd Offense w/in 5 years	V	Up To 3 Months

Unclassified Misdemeanors

Statutory Range - 0 to 30 days

11-601	Offensive Touching
11-602	Menacing
11-763	Sexual Harassment
11-1301	Disorderly Conduct

Presumptive Sentence	Level	Time
Any offense	V	Up To 1 month

Enhanced Penalties applicable when:

Children are present during the crime OR are victims of the offense against a co-defendant if a conspirator was under the age of 14 and the codefendant was 4 or more years older than the child at the time of the crime. (Enhanced penalty for ANY crime)

Enhanced Presumptive Sentence:	**Level**	**Time**
Any Non-Violent Felony G	II	12 months or more
Misdemeanor Class A or B:		
1st Offense	V	1 to 2 months
2nd Offense in 2 years	V	2 to 3 months
3rd Offense in 5 years	V	3 or more months
Any Unclassified Misdemeanor	V	1 or more months

EXCEPTIONAL SENTENCES

Special Categories:

Escape

Due to the peculiar nature of escape charges, which may be considered as deserving aggravated punishment even though they are primarily non-violent in nature, the following recommendations are presented:

11-1251	**Escape 3rd Degree**	0 to 1 m @ Level V
11-1252	**Escape 2nd Degree**	0 to 3 m @ Level V
11-1253	**Escape After Conviction (Class D Felony Violent)**	0 to 2 yrs @ Level V
11-1253	**Escape After Conviction (Force/Threat/DW)(Class C Fel Violent)**	1 to 3 yrs @ Level V
11-1253	**Escape After Conviction (Injury)(Class B Felony Violent)**	2 to 5 yrs @ Level V

ESCAPE FROM LEVEL IV FACILITY
(Applies to all Half-Way House and Residential Treatment facilities)

1st offense	Level V for 30 days (Title 11, §4204(k))
2nd offense	Level V for 90 days (Title 11, §4204(k))
3rd & subsequent offense	Level V for 180 days (Title 11, §4204(k))

Presumptive penalty for a first escape from Home Confinement is a lateral assignment to a Half-way House facility.

Sentencing Orders and worksheets should reflect the status as a Level IV Escape.

Policy 31: Any person arrested on a charge of escape from any Correctional facility, including both Level V and Level IV facilities, should be returned by the court to a Level V secured facility pending such hearings as may ensue from the charge. Persons charged with such escapes should not be released on bond.

Juvenile Offenders Being Sentenced as Adults

A juvenile offender for purposes of SENTAC is a person who was under the age of 18 at the time of the commission of the offense and who is thereafter prosecuted and convicted as an adult in either Superior Court or the Court of Common Pleas.

Sentencing judges should consider each juvenile offender's chronological age and the existence or non-existence of the following factors. These factors may provide for a departure from the standard sentencing range.

Individualized Sentencing Factors for Juvenile Offenders:

Age and developmental attributes
The juvenile offender's chronological age and developmental attributes including immaturity, impetuosity, and failure to appreciate risks and consequences;

Family and home environment
The effects the juvenile offender's family and home environment have produced;

Familial or Peer Pressure
The juvenile offender committed the crime under, or was otherwise unable to extricate his- or herself from, the negative influence of familial or peer pressure;

Mental health and medical history

The juvenile offender's mental health and medical history including any diagnoses or treatments;

Academic history and learning capacity

The juvenile offender's academic history and learning capacity including any special education records, psychoeducational testing results and remedial services provided;

Circumstances of the offense / Juvenile's Participation

The circumstances of the offense, including the extent of the juvenile offender's participation, his or her behavior during the criminal episode, whether the juvenile offender was instrumental in planning the offense, and the sophistication of the offense;

Level of sophistication

The juvenile offender's sophistication, or lack of sophistication in dealing with the criminal justice system;

Rehabilitation

The juvenile offender's potential for rehabilitation;

Other factors

Any other factor related to the juvenile offender's chronological age, immaturity, impetuosity, ability to assess risk, or anything about the offense itself that could be relevant in determining the appropriate sentence.

Exceptional Sentences:

Habitual Criminal

§4214(a)- 3 Prior Felony Convictions

- If an offender has been convicted three times of a felony, other than those mentioned in subsection (b), and is thereafter convicted of a subsequent felony, that offender is declared to be an habitual criminal.
- The Court May, In Its Discretion, Sentence the Offender to any sentence up to life imprisonment.
- The Court Shall Sentence the Offender to a minimum sentence of the statutory maximum for the fourth or subsequent felony when it is a Title 11 Violent Felony as defined in §4201.
- A life sentence under this section shall be served in its entirety at a full custodial Level V institutional setting and is not subject to Suspension, Probation, Parole, Earned Good Time or any other reduction.
- A sentence for less than life under this section shall be served in its entirety at a full custodial Level V institutional setting and is not subject to Suspension, Probation, or Parole except the provisions contained within §§4205(h)[21], 4217,[22] 438[23] and 438[24] of this title.

§4214(b)- 2 Prior Specifically Enumerated Felony Convictions

- If an offender has been convicted two times of a specifically enumerated felony or its equivalent or an attempt of the same, and who shall be subsequently convicted of another of the enumerated felonies, that offender is declared to be an habitual criminal.
- The Court Shall Sentence the Offender to Life unless the sentence of Death has been imposed.
- A life sentence under this section 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.
- A life sentence under this section shall not be subject to the Probation or Parole provisions of Chapter 43 of this Title.

11-606	Abuse of a Pregnant Female 1st Degree
11-613	Assault 1st Degree
11-615	Assault by Abuse
11-632	Manslaughter
11-635	Murder 2nd Degree
11-636	Murder 1st Degree
11-763	Rape 2nd Degree

[21] Title 11, §4205(h): D.O.C. may house inmates at a Level IV halfway house or work-release for the last 180d. of sentence.
[22] Title 11, §4217: D.O.C. may apply to Parole Board who may approve and thereafter apply to Court for modification based on good cause, i.e. exceptional rehabilitation, serious illness or overcrowding.
[23] Title 11, §4381: Earned good time.
[24] Title 11, §4382: Forfeiture of good time.

11-764	Rape 1st Degree
11-766	Sodomy 1st Degree
11-771	Rape 3rd Degree
11-772	Rape 2nd Degree
11-773	Rape 1st Degree
11-778(a)(b)(c)	Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the first degree
11-783	Kidnapping 2nd Degree
11-783A	Kidnapping 1st Degree
11-803	Arson 1st Degree
11-825	Burglary 2nd Degree
11-826	Burglary 1st Degree
11-832	Robbery 1st Degree
11-836	Carjacking 1st Degree
16-4751	Manufacture/Deliver/PWID Narcotic
16-4752	Manufacture/Deliver/PWID Nonnarcotic Controlled Substance
16-4752A	Unlawful Delivery/Attempt Noncontrolled Substance
16-4753A	Trafficking in Marijuana, Cocaine, Illegal Drugs or Methamphetamine

- (c) A person who was convicted prior to July 1, 1973 of any of the hereinafter enumerated crimes shall be considered an habitual criminal as described in subsection (b) and shall be sentenced accordingly:

Arson 1st Degree	Kidnapping
Burglary 1st Degree	Abducting Child Under 12 y.o.a.
Burglary 2nd Degree	Kidnapping Child Under 15 y.o.a.
Murder 1st Degree	Maiming by Lying in Wait
Murder 2nd Degree	Rape
Manslaughter (except involuntary)	Assault w/Intent to Commit Rape
Manslaughter by Motor Vehicle	Robbery
Assault w/Intent to Murder	Assault w/Intent to Commit Robbery
Poisoning w/Intent to Murder	

VIOLATION OF PROBATION SENTENCING POLICY

When a violation of probation hearing is held and determination is made that the offender is guilty of the violation and probation is to be revoked, it is presumed that the offender may move up only one SENTAC level from his/her current level.

AGGRAVATING CIRCUMSTANCES

An offender may have his/her level of supervision raised more than one level if any of the following aggravating circumstances exists:

A. Conviction of a new offense which was a felony, a violent misdemeanor, or an offense requiring a mandatory sentence.
B. The violation is a violation of a special treatment condition , e.g., offender willfully refuses to attend the ordered program and, as a result of such refusal, poses a substantial threat to the community or himself. Confinement in this instance should be short-term and could consist of either a Level IV (quasi-incarceration) or a Level V (incarceration), situation until treatment is arranged.
C. The offender has demonstrated willful failure to make court-ordered payments, and no other alternatives are possible, or those alternatives would depreciate the seriousness of the offense.
D. The offender is found to be in possession of a weapon, leading to the violation, and the offender has a past history of violence, drug trafficking or weapons violations.
E. The behavior of the offender represents an immediate threat to the community or an identified victim.
F. The behavior of the offender is repetitive and flagrantly defies the authority of the court.

Length of Level V Sentences - SENTAC Standard

When a period of incarceration is determined to be the sanction of choice for a violation of probation, a Level V sanction should be in accordance with the current SENTAC standard presumptive sentence for the original crime for which the probation is being served. If the presumptive sentence is less than level V, the sentence for violation of probation should be UP TO 25% of the statutory maximum.

Effective June 30, 1990, all Violation of Probation sentences must be designated as to whether they are "Truth in Sentencing" or "Non TIS" sentences. A defendant who had an original non-TIS sentence and is violated may not be given a TIS sentence for the violation, unless he specifically agrees thereto, and the sentence is given in relation to TIS guidelines. Designation is imperative so that DOC can maintain proper records on the time to be served, goodtime credits, and parole eligibility.

1. Sentencing orders (and worksheet forms) should refer to all violations as "Violation of Level ___ ", where the blank contains the current level designation.

2. In addition to the above designation, all violation orders, regardless of specific format, should contain the following information:
   - Client name, Effective date of sentence, Original offense, Type of action: i.e. terminated, continued, modified, or revoked as defined above. New sentence Level(s) and time(s), TIS or NON-TIS status, Aggravating factor(s): if necessary due to a two- level (or more) increase, or a longer than standard sentence length at Level V.

Glossary of Violation of Probation Terms:

Continuation
An order may be entered continuing a probationer on probation where there has been a finding of a violation of probation or a finding that there has been no established violation of probation, and the same conditions remain in place after the finding is entered.

Discharge as Unimproved
An order may be entered discharging a probationer as unimproved upon recommendation of the probation officer or at the discretion of the Court, when the Court determines that continued supervision of the probationer is unlikely to have a beneficial effect, even though one or more terms of the probation order have not been fulfilled.

Modification
An order modifying probation may be ordered when the Court finds that a violation has occurred and the probationer should be should be kept at the same level or placed at a lower level with additional, more restrictive requirements or altered requirements to more realistically assist the management of the supervision of the probationer.

Probation
As referenced in this section, shall be any sentence of supervision at a level less than incarceration at Level V which is imposed in lieu of, or in addition to, any sentence to said Level V as a result of conviction for any criminal offense.

Repetitive Behavior
The offender persists, after notice, in actions which constitute a pattern of behavior which repeats a past record of non-amenability to community sanctions.

Revocation
An order revoking probation may be entered when it is the intention of the Court to raise the level of intensity of supervision after finding that probation has been violated.

Substantial Risk
The threat of repetitive violations or causing physical injury to self or others is high.

Willful Failure to Pay
A failure to pay a monetary obligation despite the availability of resources with which to pay the obligation, or the refusal to take steps to obtain the resources to pay the obligation.

THE MATERIALS IN THE FOLLOWING SECTIONS ARE NOT SENTAC POLICY BUT ARE PROVIDED FOR THE CONVENIENCE OF USERS

WORK RELEASE POLICY (Department of Correction/Bureau of Prisons)

A program permitting an inmate of proper custody status to work in the community at paid employment. The inmate is still assigned to a Halfway House/Work Release Center when not working or participating in extracurricular programs. Inmates meeting the following standards may be given consideration.

Inmates within 36 months to short-time release date and 9 months to parole eligibility. (Non- TIS offenders only.)

Inmates convicted of a violent crime against person(s) and served more than a year at Level V must have a mental evaluation prior to being considered for the program.

MDT must review and recommend placement.

Inmates with minor open charges can be approved and will be expected to clear the charges; i.e., motor vehicle offenses.

Inmates serving a sentence for a third DUI offense occurring within 5 years from a prior offense are not eligible for work release during the first 3 months of the sentence imposed.

Inmates serving a sentence for a fourth or subsequent offense occurring any time after 3 prior offenses are not eligible for work release during the first 6 months of the original sentence imposed.

Truth In Sentencing Inmates

1. Sentenced to one year or more under Truth in Sentencing if they are in the last 180 days of their sentence.

2. Truth in Sentencing inmates sentenced to less than 1 year provided, however, the first 5 days be served at Level V, may be classified to work release, unless the court states otherwise.

Inmates serving a Level V sentence with a Level IV sentence to follow.

Inmates must not have had any Class I or major conduct offenses within the last 6 months prior to consideration.

Inmates in the following categories **will not** be given consideration in this program due to either statutory or departmental/bureau policy.

1. Class A Felons, those committed as a Habitual Criminal or those previously convicted of two or more offenses listed herein on page 8 or 9 until within six months of the date of release from custody.

2. Any offender convicted of a sex offense, including but not limited to offenders convicted of any of the following offenses: Unlawful sexual contact in the First or Second Degree, Unlawful sexual penetration in the First, Second, or Third Degree, Unlawful sexual intercourse in the First, Second, or Third Degree, Sexual Extortion, Continuous sexual abuse of a child, Dangerous crimes against a child, Sexual exploitation of a child, Unlawfully dealing in material depicting a child in a prohibited sexual act, or Subsequent convictions of Sec. 1108 or Sec. 1109.

3. Inmates with detainer, unless the detaining authority has given specific written approval for work release.

4. Inmates serving a sentence under 4204K, unless the sentencing judge specifies that work release is allowed.

5. Inmates convicted of escape after conviction or escape 2nd and are never eligible for work release.

Inmates serving minimum mandatory sentences for trafficking are not eligible until the mandatory portion of their sentence is completed. Those serving minimum mandatory sentences for other offenses are eligible after serving 50%t of the minimum mandatory, unless minimum term is set by statute. (Non TIS offenders only.)

Conditions of Supervision

1. You must not commit a new criminal offense or moving motor vehicle offense during the supervision period.
2. You must report any new arrest, conviction, or police contact within 72 hours to your Supervising Officer.
3. You must report to your Supervising Officer at such times and places as directed, and permit the Probation/Parole Officer to enter your home and/or visit places of employment.
4. You must have authorization from your Supervising Officer to leave the State of Delaware or your approved state of residence.
5. You must report any changes of residence and/or employment within 72 hours to you Supervising Officer.
6. You must have written approval from your Supervising Officer to own, possess, or be in control of any firearm or deadly weapon. (NOTE: Del. Code Title 11, Section 1448 prohibits purchase, possession, ownership, or control of any deadly weapon by persons convicted of a felony, crime of violence, drug offense, or commitment for a mental disorder.)
7. You are not to possess or consume a controlled substance or other dangerous drugs unless prescribed lawfully. You are subject to random testing as directed by your Supervising Officer.
8. You must pay a supervision fee as required by State Law in accordance with a schedule as established by the Department of Correction.
9. You must comply with any Special Conditions imposed at any time by your Supervising Officer, the Court and/or the Board of Parole.
10. You must not quit a job, training program, or school without prior approval of your Supervising Officer.
11. You must be employed full-time or active in job training or school on a full-time basis. If not, you must attend a Job Search Program or perform Community Service on a schedule established by the Supervising Officer.
12. You must participate in 0-35 hours of community service each week as directed by your Supervising Officer.
13. You must abide by a curfew established by your Supervising Officer.

Sex Offender Additional Standard Conditions of Supervision

The following additional standard conditions of probation may be required by the Department of Correction in the supervision of defendants who have been convicted of a sex offense or those whose criminal record reflects a prior conviction of such offenses. The Commission expects the Department of Correction to review the needs of each individual defendant and impose only those additional conditions needed to appropriately supervise the defendant.

1. Participate in sex offender assessment, evaluation, and treatment as determined by the Department of Correction. The offenders will be financially responsible for all examinations and treatment unless the Department of Correction finds the offender is financially unable to pay.
2. Prohibit access or possession of sexually explicit and/or obscene material unless approved by the Probation Officer.
3. Comply with all statutory requirements imposed upon individuals convicted of a sex offense including but not limited to compliance with 11 Del. Code Section 8510 requiring the submission of photographs, fingerprints and identification, sex offender registration (11 Del. Code Section 4120), community notification (11 Del. Code Section 4121), and DNA collection (29 Del. Code Section 4713) and limitations regarding contact with school zones (11 Del. Code Section 1112).
4. Prohibit contact or residing with children under the age of 18 unless approved by the Probation Officer.
5. Prohibit access, possession or control over or use of a computer device, modem or network interface device. Any device or storage medium of an offender whose use has been approved by the Department of Correction is subject to random examination by the Probation Officer to determine compliance with this requirement. Using a computer modem or network interface device for any purpose which might further sexual activity is strictly prohibited. If violation of this provision is found, the Department of Correction may seize the computer, related equipment and storage devices.
6. To require submission to polygraph testing to assist in the treatment and supervision of the offender. The failure of a polygraph test alone may not be a basis to violate the offender's probation.

7. Require no contact with the victim of the crime unless otherwise approved by the Probation Officer.

LEGISLATIVE UPDATE

TITLE 11

HB 277 - Synopsis

This Act creates the criminal offense of home invasion as a new and separate crime in Delaware's criminal code. Home invasion occurs when a person enters or remains unlawfully in someone else's home, engages in or attempts to engage in certain crimes of violence against an occupant of the home, and causes physical injury to an occupant or is armed with a deadly weapon. Home invasion is a class B felony.

This new crime is an offense in part derived from and an aggravated form of Delaware's current burglary offenses. Thus, in order to assure consistency with the provisions of the Code that define the current burglary offenses with which one would be charged, any provision of the Code that uses the term "burglary" without further specification to define a word, phrase, sentencing aggravator or other provision of the Code that is otherwise applicable to the offense of "burglary" without further specification shall also be applicable to the offense of home invasion as defined in this Act, unless the statute defining such word, phrase, sentencing aggravator or provision or a statute directly related thereto expressly provides that the statute is not applicable to the offense of home invasion.

§ 826A. Home invasion; class B felony.

(a) A person is guilty of home invasion when the person knowingly enters or remains unlawfully in a dwelling with intent to commit a violent felony therein, and:

(1) That dwelling is occupied by another person who is not a participant in the crime; and

(2) When, in effecting entry or when in the dwelling or in immediate flight therefrom, the person or another participant in the crime engages in the commission of, or attempts to commit, any of the following felonies:

a. Robbery in any degree;

b. Assault in the first or second degree;

c. Murder in any degree;

d. Manslaughter;

e. Rape in any degree;

f. Kidnapping in any degree; and

(3) When, in effecting entry or when in the dwelling or in immediate flight therefrom, the person or another participant in the crime:

a. Is armed with explosives or a deadly weapon; or

b. Causes physical injury to any person who is not a participant in the crime.

Home invasion is a class B felony.

(b)(1) Notwithstanding any provision of this section or Code to the contrary, any person convicted of home invasion shall receive a minimum sentence of:

a. Six years at Level V; or

b. Eight years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for home invasion or burglary first or second degree or if the conviction is for an offense that was committed within 5 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for home invasion or burglary first or second degree conviction.

(2) Notwithstanding the provisions of paragraph (b)(1) of this section or any provision of this section or Code to the contrary, any person convicted of home invasion where the other person present in the dwelling, who is not another participant in the crime, is a person 62 years of age or older shall receive a minimum sentence of:

a. Seven years at Level V; or

b. Nine years at Level V, if the conviction is for an offense that was committed within 5 years of the date of a previous conviction for home invasion or burglary first or second degree or if the conviction is for an offense that was committed within 5 years of the date of termination of all periods of incarceration or confinement imposed pursuant to a previous conviction for home invasion or burglary first or second degree conviction.

Any sentence imposed pursuant to this subsection shall not be subject to the provisions of § 4215 of this title.

(c) The sentencing provisions of subsection (b) of this section apply to attempted home invasion as well as home invasion.

78 Del. Laws, c. 252, § 1.;

§ 827. Multiple offenses.

A person may be convicted both of burglary or home invasion and of the offense which it was the purpose of the person's unlawful entry to commit or for an attempt to commit that offense.

11 Del. C. 1953, § 827; 58 Del. Laws, c. 497, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 252, § 6.;

HB 185 - Synopsis

This Act raises the penalties for the three property crimes that have enhancements for property losses in excess of $50,000 and $100,000. *When the loss is in excess of $50,000, the crime would be a class D felony (0 to 8 years imprisonment) instead of a class E felony (0 to 5 years imprisonment) or class F felony (0 to 3 years imprisonment). When the loss is in excess of $100,000, the crime would be a class B felony (2 to 25 years imprisonment) instead of a class C felony (0 to 15 years imprisonment).*

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

(a) A person is guilty of theft when the person takes, exercises control over or obtains property of another person intending to deprive that person of it or appropriate it. Theft includes the acts described in this section, as well as those described in §§ 841A-846 of this title.

(b) A person is guilty of theft if the person, in any capacity, legally receives, takes, exercises control over or obtains property of another which is the subject of theft, and fraudulently converts same to the person's own use.

(c)(1) Except where a victim is 62 years of age or older, or an "adult who is impaired" as defined in § 3902(2) of Title 31, or a "person with a disability" as defined in § 3901(a)(2) of Title 12, theft is a class A misdemeanor unless the value of the property received, retained or disposed of is $1,500 or more, in which case it is a class G felony.

(2) Where a victim is 62 years of age or older, or an "adult who is impaired" as defined in § 3902(2) of Title 31, or a "person with a disability" as defined in § 3901(a)(2) of Title 12, theft is a class G felony unless the value of the property received, retained or disposed of is $1,500 or more, in which case it is a class F felony.

(3) Notwithstanding paragraphs (c)(1) and (2) of this section:

a. Where the value of the property received, retained or disposed of is more than $50,000 but less than $100,000, theft is a class D felony;

b. Where the value of the property received, retained or disposed of is $100,000 or more, theft is a class B felony.

(d) Upon conviction, the sentencing judge shall require full restitution to the victim for any monetary losses suffered and shall consider the imposition of community service and/or an appropriate curfew for a minor.

11 Del. C. 1953, § 841; 58 Del. Laws, c. 497, § 1; 60 Del. Laws, c. 590, § 2; 65 Del. Laws, c. 497, § 3; 67 Del. Laws, c. 130, § 8; 69 Del. Laws, c. 315, § 1; 70 Del. Laws, c. 186, § 1; 70 Del. Laws, c. 209, § 1; 70 Del. Laws, c. 364, §§ 1, 2; 73 Del. Laws, c. 126, §§ 10, 11; 76 Del. Laws, c. 98, § 3; 77 Del. Laws, c. 133, § 3; 78 Del. Laws, c. 179, §§ 83-91, 371; 78 Del. Laws, c. 353, §§ 1, 2.;

§ 913A. Health care fraud; class B felony; class D felony; class G felony.

(a) A person is guilty of health care fraud when the person knowingly:

(1) Presents or causes to be presented any fraudulent health care claim to any health care benefit program; or

(2) Engages in a pattern of presenting or causing to be presented fraudulent health care claims to any health care benefit program.

(b) For the purpose of this section:

(1) "Fraudulent health care claim" means any statement, whether written, oral or in any other form, which is made as part of or in support of a claim or request for payment from any health care benefit program when such statement knowingly contains false, incomplete or misleading information concerning any fact or thing material to such claim.

(2) "Health care benefit program" means any plan or contract, whether public or private, under which any medical benefit, equipment, medication or service is provided to any individual. "Health care benefit program" also includes any individual or entity who is providing a medical benefit, equipment, medication or service for which payment may be made under a plan or contract for the provision of such benefits or services.

(3) "Health care professional," "health care practice," "health care facility" or "health care services" includes but is not limited to any person who or entity which, for payment, practices in or employs the procedures of medicine, surgery, chiropractic, podiatry, dentistry, optometry, psychology, social work, pharmacy, nursing, physical therapy or any other field concerned with the maintenance or restoration of the health of the body or mind.

(4) "Health care provider" means any health care professional, an owner or operator of a health care practice or facility, any person who creates the impression that the person or the person's practice or facility can provide health care services, or any person employed or acting on behalf of any of the aforementioned persons.

(5) "Pattern of presenting or causing to be presented" means 3 or more instances of conduct that constitute presenting or causing to be presented fraudulent health care claims.

(c)(1) Except as provided in paragraphs (2) and (3) of this subsection, health care fraud is a class G felony.

(2) Health care fraud is a class D felony if the elements of subsection (a) of this section are met and if:

a. The intended loss to the health care benefit program is more than $50,000 but less than $100,000;

b. The offender is a health care provider at the time of the offense or offenses; or,

c. The conduct constitutes a pattern of presenting or causing to be presented fraudulent health care claims.

(3) Health care fraud is a class B felony if the elements of subsection (a) of this section are met and if:

a. The intended loss to the health care benefit program is $100,000 or more; or

b. The offender is a health care provider at the time of the offense or offenses and the conduct constitutes a pattern of presenting or causing to be presented fraudulent health care claims.

(4) In addition to the penalties otherwise authorized by this subsection, a person convicted under this section may be subject to a fine of up to 5 times the pecuniary benefit obtained or sought to be obtained through the person's violation of this section.

(d) A conviction is not required for an act of presenting or causing presentation of a fraudulent health care claim to be used in prosecution of a matter under this section, including an act used as proof of a pattern as defined in paragraph (b)(3) of this section. A conviction for any act of presenting or causing presentation of fraudulent health care claims, including one which may be relied upon to establish a pattern of presenting or causing presentation of a fraudulent health care claim, does not preclude prosecution under this section. Prosecution under this section does not preclude prosecution under any other section of the Code.

72 Del. Laws, c. 337, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 353, §§ 3-5.;

§ 917. New home construction fraud; class B felony; class D felony; class G felony; class A misdemeanor.

(a) For the purpose of this section, the following definitions shall apply:

(1) A "dwelling" means a building which is usually occupied by a person lodging therein at night but shall not include a mobile home as defined in § 7003(11) of Title 25.

(2) A "home buyer" means a person who intends to enter into a new home construction contract for himself or herself or on behalf of any person.

(3) A "new home contractor" means any person who offers or provides new home construction services as a general contractor or a subcontractor and shall, in addition, include, but not be limited to, an architect, engineer or real estate broker or agent.

(4) "New home construction" means the erection, installation or construction of a dwelling on a fixed foundation on land which is owned or purchased by a home buyer.

(5) A "new home construction contract" is any agreement, whether written or oral, between a new home contractor and a home buyer whereby the new home contractor agrees to provide new home construction services in exchange for a payment of money.

(6) "Payment of money" means tender of money or other consideration of value by a home buyer or by any lending institution on behalf of the home buyer to a new home contractor as part of a new home construction contract.

(7) For the purpose of this section, land is "purchased" by a home buyer when the home buyer acquires it by sale, negotiation, mortgage, pledge, lien, gift or any other transaction creating an interest in the property prior to the formation of the new home construction contract, or if the home buyer is to purchase the land as part of the new home construction contract.

(b) A person is guilty of new home construction fraud who, with the intent specified in § 841 of this title, enters into a new home construction contract and:

(1) Uses or employs any false pretense or false promise as those acts are defined in §§ 843 and 844 of this title; or

(2) Receives payments and intentionally fails to use said payment or payments for the purpose or purposes identified in the new home construction contract and/or diverts said payment or payments to a use or uses other than the erection, installation or construction of the dwelling identified therein; or

(3) Receives payment or payments and fails to provide that person's own true name or provides a false name, address or phone number of the business offering said new home construction services.

(c) For new home construction fraud under this section, it shall be prima facie evidence of the intent specified in § 841 of this title that the new home contractor:

(1) Has been previously convicted under this section, § 916 of this title, or § 3505 of Title 6 within 10 years of the first payment under the new home construction contract in question; or

(2) Is currently subject to any administrative order, judgment or injunction under Chapter 25 of Title 6 relating to new home construction or home improvements (as defined in paragraph (a)(4) of this section).

(d) New construction fraud is a class A misdemeanor, unless:

(1) The loss to the home buyer is $1,500 or more but less than $50,000, in which case it is a class G felony;

(2) The loss to the home buyer is at least $50,000 but less than $100,000, in which case it is a class D felony; or

(3) The loss to the home buyer is $100,000 or more, in which case it is a class B felony.

(e) For the purpose of calculating the amount of the loss to the home buyer, the loss shall be deemed to be the lesser of the total of all payments actually made by the home buyer or the cost to the home buyer to complete the new home construction according to the terms of the original new home construction contract, whether or not said new home is actually completed.

71 Del. Laws, c. 46, § 1; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 133, § 12; 78 Del. Laws, c. 353, §§ 6- 8.;

SB 234 - Synopsis

This bill establishes the offense of Child Abuse. These new statutes combine current statutes and redefine physical injury and serious physical injury to reflect the medical realities of pain and impairment suffered by children. A new section provides special protection to infants, toddlers and children who have disabilities. The statute also expands the state of mind necessary for certain offenses against children allowing for more effective prosecution of parents who subject their children to abuse by others and fail to protect their children. The bill also re-numbers the definitional section making clear that the definitions apply to all crimes in the subchapter.

§ 1103. Child abuse in the third degree; class A misdemeanor.

(a) A person is guilty of child abuse in the third degree when:

(1) The person recklessly or intentionally causes physical injury to a child through an act of abuse and/or neglect of such child; or

(2) The person recklessly or intentionally causes physical injury to a child when the person has engaged in a previous pattern of abuse and/or neglect of such child.

(b) This offense shall be a class A misdemeanor.

78 Del. Laws, c. 406, § 3.;

§ 1103A. Child abuse in the second degree; class G felony.

(a) A person is guilty of child abuse in the second degree when:

(1) The person intentionally or recklessly causes physical injury to a child who is 3 years of age or younger; or

(2) The person intentionally or recklessly causes physical injury to a child who has significant intellectual or developmental disabilities

(3) The person intentionally or recklessly causes physical injury to a child by means of a deadly weapon or dangerous instrument.

(b) This offense shall be a class G felony.

78 Del. Laws, c. 406, § 3.;

§ 1103B. Child abuse in the first degree; class B felony.

A person is guilty of child abuse in the first degree when the person recklessly or intentionally causes serious physical injury to a child:

(1) Through an act of abuse and/or neglect of such child; or

(2) When the person has engaged in a previous pattern of abuse and/or neglect of such child.

Child abuse in the first degree is a class B felony.

72 Del. Laws, c. 197, § 1; 78 Del. Laws, c. 406, § 3.;

TITLE 21

HB 134 - Synopsis

This Act removes incarceration as a possible sentence for certain less serious offenses in chapters 41 and 42 of the Motor Vehicle Code including Following Too Closely (§ 4123), Unlawful Use of a Controlled-Access Highway (§ 4126), Speeding (§ 4169), Careless or Inattentive Driving (§ 4176), and for offenses for which penalties are not specified as part of the statute (§ 4205) (which would include Failure to Stop at a Stop Sign (§ 4164)). The courts will still be able to impose incarceration, when warranted, in the more serious chapter 41 traffic offenses, such as Overtaking and Passing a School Bus, Reckless Driving, Aggressive Driving, Operation of a Vehicle Causing Death, and Driving Under the Influence. The Act also lowers the maximum penalties for each of the provisions other than Speeding. According to data from the first half of 2008, there were nearly 6,000 convictions for Following Too Closely, Unlawful Use of a Controlled Access Highway, and Careless or Inattentive Driving, and no fine greater than $50 was imposed in any of the nearly 6,000 cases.

§ 4123. Following too closely.

(a) The driver of a vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.

(b) The driver of any truck or vehicle drawing another vehicle when traveling upon a roadway outside of a business or residence district, and which is following another vehicle, shall, whenever conditions permit, leave sufficient space, but not less than 300 feet, so that an overtaking vehicle may enter and occupy such space without danger, except that this shall not prevent a motor vehicle drawing another vehicle from overtaking and passing any vehicle or combination of vehicles. Whoever violates this subsection shall, for the first offense, be fined not less than $28.75 nor more than $75. For each subsequent like offense within 2 years, the person shall be fined not less than $57.50 nor more than $95.

(c) Vehicles being driven upon any roadway outside of a business or residence district in a caravan or motorcade, whether or not towing other vehicles, shall be so operated as to allow sufficient space between each such vehicle or combination of vehicles so as to enable any other vehicle to enter and occupy such space without danger. This provision shall not apply to funeral processions.

21 Del. C. 1953, § 4123; 54 Del. Laws, c. 160, § 1; 60 Del. Laws, c. 701, § 23; 62 Del. Laws, c. 140, § 1; 68 Del. Laws, c. 9, § 24; 78 Del. Laws, c. 208, §§ 1-3.;

§ 4126. Unlawful use of controlled-access highways; penalties.

(a) On any state highway designated by the Department of Transportation as a "controlled-access highway," no person shall:

(1) Drive a vehicle over, upon or across any curb, central dividing section or other separation or dividing line;

(2) Make a left turn or a semicircular or u-turn except through an opening provided for that purpose in the dividing curb section, separation or line;

(3) Drive any vehicle except in the proper lane provided for that purpose in the proper direction in said lane;

(4) Drive any vehicle from a local service road except through an opening provided for that purpose in the dividing curb or dividing section or dividing line which separates such service road from the controlled-access facility proper;

(5) Drive a vehicle onto or from any controlled-access roadway except at such entrances and exits as are established;

(6) Back a vehicle upon any shoulder or roadway;

(7) Operate or drive a bicycle, except where appropriately marked by the Department of Transportation;

(8) Operate or drive any nonmotorized vehicle or wagon;

(9) Lead or participate in a parade;

(10) Lead or participate in a convoy or procession, either walking or riding, except a riding funeral procession which proceeds at the prevailing rate of speed and which does not prevent or interfere with the entrance into or exit off of the controlled access highway by others;

(11) Walk as a pedestrian except to contact aid in the event of an accident, breakdown or other emergency;

(12) Operate a vehicle of any type or kind prohibited by traffic-control devices at the entrances;

(13) Disobey the restriction stated on any traffic-control device erected at the entrances.

(b) Whoever violates subsection (a) of this section shall for the first offense be fined not less than $25 nor more than $75. For each subsequent like offense, the person shall be fined not less than $50 nor more than $95. Justices of the peace shall have original jurisdiction to hear, try and finally determine alleged violations of this section.

21 Del. C. 1953, § 4126; 54 Del. Laws, c. § 160, § 1; 57 Del. Laws, c. 670, § 13A; 58 Del. Laws, c. 381; 60 Del. Laws, c. 700, § 4; 60 Del. Laws, c. 701, § 26; 65 Del. Laws, c. 503, § 15; 67 Del. Laws, c. 90, § 1; 68 Del. Laws, c. 9, § 25; 69 Del. Laws, c. 243, § 1; 70 Del. Laws, c. 186, § 1; 78 Del. Laws, c. 208, §§ 4-6.;

§ 4169. Specific speed limits; penalty.

(a) Where no special hazard exists, the following speeds shall be lawful, but any speed in excess of such limits shall be absolute evidence that the speed is not reasonable or prudent and that it is unlawful:

All types of vehicles:

(1) 25 miles per hour in any business district;

(2) 25 miles per hour in any residential district;

(3) 20 miles per hour at all school zones where 20 mph regulatory signs are posted and state the time periods or conditions during which the speed limit is in effect; such conditions may include when children are present or while 1 or more warning lights flash;

(4) 50 miles per hour on 2-lane roadways;

(5) 55 miles per hour on 4-lane roadways and on divided roadways.

(b) Whenever the Department of Transportation shall determine, on the basis of engineering studies and traffic investigations or upon the basis of a federal law or directive by the Congress or the President, that a maximum speed limit set pursuant to subsection (a) of this section in any particular place on the state maintained highway system is greater or less than is reasonable or safe, the Department shall declare a reasonable and safe maximum limit thereat, which limit shall be effective when posted. Such maximum limit may be declared to be effective either part or all of the time and differing limits may be established for different times of the day, for different types of vehicles, for different weather conditions and when other significant factors differ. Such maximum limits may be posted on fixed or variable signs. Any speed in excess of such displayed limits shall be absolute evidence that the speed is not reasonable or prudent and that it is unlawful.

(c) Penalties for violation of this section are as follows:

(1) Whoever violates this section shall for the first offense be fined $20. For each subsequent offense, the person shall be fined $25. A subsequent violation, before being punishable as such, shall have been committed within 24 months after the commission of the prior offense.

(2) Any person violating this section who exceeds the maximum speed limit by more than 5 miles per hour but less than 16 miles per hour shall pay an additional fine of $1 per mile, if such violation is a first offense, or $2 per mile, if such violation is a subsequent offense, for each mile in excess of the maximum speed limit.

(3) Any person violating this section who exceeds the maximum speed limit by more than 15 miles per hour but less than 20 miles per hour shall pay an additional fine of $2 per mile, if such violation is a first offense, or $3 per mile, if such violation is a subsequent offense, for each mile in excess of the maximum speed limit.

(4) Any person violating this section who exceeds the maximum speed limit by more than 19 miles per hour shall pay an additional fine of $3 per mile, if such violation is a first offense, or $4 per mile, if such violation is a second offense, for each mile in excess of the maximum speed limit.

(d) The Department of Transportation shall designate a maximum speed limit of 65 miles per hour for all portions of Delaware State Route 1 located between the Red Lion Creek and the Appoquinimink River. Such maximum limits may be posted on fixed or variable signs. Any speed in excess of such displayed limits shall be absolute evidence that the speed is not reasonable or prudent and that it is unlawful.

21 Del. C. 1953, § 4169; 54 Del. Laws, c. 160, § 1; 55 Del. Laws, c. 362, §§ 1, 2; 56 Del. Laws, c. 172; 56 Del. Laws, c. 302; 57 Del. Laws, c. 670, §§ 13A, 13C; 60 Del. Laws, c. 700, § 7; 61 Del. Laws, c. 458, § 1; 65 Del. Laws, c. 503, § 18; 66 Del. Laws, c. 333, § 1; 70 Del. Laws, c. 186, § 1; 72 Del. Laws, c. 403, § 1; 75 Del. Laws, c. 323, § 1; 77 Del. Laws, c. 411, § 2; 78 Del. Laws, c. 208, § 7.;

§ 4176. Careless or inattentive driving.

(a) Whoever operates a vehicle in a careless or imprudent manner, or without due regard for road, weather and traffic conditions then existing, shall be guilty of careless driving.

(b) Whoever operates a vehicle and who fails to give full time and attention to the operation of the vehicle, or whoever fails to maintain a proper lookout while operating the vehicle, shall be guilty of inattentive driving.

(c) Whoever violates this section shall for the first offense be fined not less than $25 nor more than $75. For each subsequent like offense occurring within 3 years of a former offense, the person shall be fined not less than $50 nor more than $95.

(d)(1) In addition to any other penalty imposed for an offense committed under this section, if the finder of fact determines that the commission of that offense contributed to the serious physical injury of a vulnerable user lawfully in the public right-of-way, the court shall:

a. Impose a sentence that requires the person convicted of the offense to:

1. Complete a traffic safety course approved by the Delaware Division of Motor Vehicles;

2. Perform up to 100 hours of community service, which must include activities related to driver improvement and providing public education on traffic safety;

b. Impose, but suspend on the condition that the person complete the requirements of paragraph (d)(1)a. of this section,

1. A fine of not more than $550, and

2. A suspension of driving privileges as provided in § 2733(a)(2) of this title; and

3. Set a hearing date up to 1 year from the date of sentencing. At that hearing, the court shall:

A. If the person has successfully completed the requirements described in paragraph (d)(1)a. of this section, dismiss the penalties imposed under paragraphs (d)(1)b.1. and 2. of this section.

B. If the person has not successfully completed the requirements described in paragraph (d)(1)a. of this section, either: I. Grant the person an extension based on good cause shown, or II. Impose the penalties under paragraphs (d)(1)b.1. and 2. of this section.

(2) The police officer issuing the citation for an offense under this section shall note on the citation if the cited offense contributed to the serious physical injury of a vulnerable user of the public right-of-way. If so noted, the person receiving the citation shall not be permitted to use the voluntary assessment process otherwise permitted under § 709 of this title.

(3) As used herein, "vulnerable user of a public right-of-way" means:

a. A pedestrian, including those persons actually engaged in work upon a highway, or in work upon utility facilities along a highway, or engaged in the provision of emergency services within the right-of-way; or

b. A person riding an animal; or

c. A person operating any of the following on a public right-of-way, crosswalk, or shoulder of the highway:

1. A farm tractor or similar vehicle designed primarily for farm use;

2. A skateboard;

3. Roller skates;

4. In-line skates;

5. A scooter;

6. A moped;

7. A bicycle; or

8. A motorcycle.

21 Del. C. 1953, § 4175A; 56 Del. Laws, c. 305; 60 Del. Laws, c. 701, § 47; 65 Del. Laws, c. 503, § 20; 68 Del. Laws, c. 9, § 31; 70 Del. Laws, c. 186, § 1; 77 Del. Laws, c. 464, § 1; 78 Del. Laws, c. 208, §§ 8-10.;

§ 4205. Penalties.

(a) Whoever violates this chapter or Chapter 41 of this title shall for the first offense be fined not less than $25 nor more than $75. For each subsequent like offense, the person shall be fined not less than $57.50 nor more than $95. All second offenses, before being punishable as such, shall have been committed within 12 months after the commission of the first offense unless otherwise specifically provided.

(b) Subsection (a) of this section shall not apply to violations for which penalties are prescribed elsewhere in this chapter or Chapter 41 of this title.

(c) [Deleted.]

21 Del. C. 1953, § 4211; 54 Del. Laws, c. 160, § 1; 65 Del. Laws, c. 503, § 21; 68 Del. Laws, c. 9, § 40; 70 Del. Laws, c. 186, § 1; 74 Del. Laws, c. 106, § 29; 74 Del. Laws, c. 345, § 9; 78 Del. Laws, c. 208, §§ 11-13.;

SEX OFFENDER REGISTRATION PROVISIONS

Please review Title 11 Section 4121 for the complete Sex Offender information-

(f)(1) Any person designated, as a sex offender pursuant to this section shall comply with the registration provisions of Section 4120 of this title as follows:

a. For life, if the sex offender is designated to Assessment Tier III, or if the person is designated to Assessment Tier I or II, and has previously been convicted of any of the offenses specified in subparagraphs (a)(4)a., c. or d. of this section; or

b. For 25 years following the sex offender's release from Level V custody, or for 25 years following the effective date of any sentence to be served at Level IV or below, if the person is designated to Risk Assessment Tier II, and is not otherwise required to register for life pursuant to this subsection, except that any time spent at any subsequent period of Level V custody shall not be counted against such 25 year period.

c. For 15 years following the sex offender's release from Level V custody, or for 15 years following the effective date of any sentence to be served at Level IV or below, if the person is designated to Assessment Tier I, and is not otherwise required to register for life pursuant to this subsection period of Level V custody shall not be counted against such 15 year period.

(2) Notwithstanding any provision in this section to the contrary:

a. Any sex offender designated to Assessment Tier III may petition to the Superior Court for redesignation to Assessment Tier II if 25 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and the offender has successfully completed an appropriate sex offender treatment program certified by the State, and has not been convicted of any crime (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole, or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 25 years have elapsed from the date of the subsequent conviction or finding of a violation, during which time no additional convictions or findings of violation can have occurred. Notwithstanding any provision of this section or Section 4120 of this title to the contrary, any sex offender who is redesignated from Assessment Tier III to Assessment Tier II shall continue to comply with the registration and re-registration requirements imposed by Section 4120(g) upon Tier III offenders for life. Any re-designation from Assessment Tier III to Assessment Tier II shall not release the offender from the requirement of lifetime registration or address verification every 90 days pursuant to Section 4120 (g)(1)(a) of this title and subsection (f)(1) of this section.

b. Any sex offender designated to Assessment Tier II may petition the Superior Court for redesignation to Assessment Tier I if the victim was not a child under 18 years of age and 10 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no level IV or V sentence was imposed, and the offender has successfully completed an appropriate sex offender treatment program certified by the State and has not been convicted of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 10 years have

elapsed from the date of the subsequent conviction or finding of violation, during which time no additional convictions or findings of violation can or have occurred.

c. Any sex offender designated to Assessment Tier I may petition the Superior Court for relief from designation as a sex offender, and from all obligations imposed pursuant to this section and Section 4120 of this title, if 10 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and if the offender has successfully completed an appropriate sex offender treatment program certified by the State and has not been convicted of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole, or conditional release to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 10 years have elapsed from the date of the subsequent conviction or finding of violation, during which time no additional convictions or findings of violation can or have occurred.

d. The Superior Court shall not grant a petition for redesignation or relief filed pursuant to this subsection unless:

    a. The sex offender establishes, by a preponderance of the evidence, that the public safety no longer requires preservation of the original designation; and

    b. The Court provides the Attorney General with notice of the petition and with reasonable period of time to be heard upon the matter.

When considering a petition for redesignation, the Court shall weigh all the relevant evidence, which bears upon the character and propensities of the offender, and the facts and circumstances of his or her prior offenses. The Court may in its discretion hold a hearing on the petition. If the Court grants the petition, it shall promptly enter the information concerning the redesignation into the DELJIS system.

Delaware State Police Bureau of Identification closest to your location.

A. The Delaware State Police shall mail a non-forwardable letter to the last known address of the person. Mailing address will be done in batch and sent 30 days prior to the re-registration date.

B. For example, if registration date is March 15, a letter will be mailed out in February stating you must respond prior to March 31st that year. Listed below are the time limits for Sex Offender registration-

Tier Level 1 – Once a year in person

Tier Level 2 – Twice a year in person (every 6 months)

Tier Level 3 - Four times a year, quarterly, in person

Note: **Reporting times are based on the offender's date of initial registration.**

Homeless Sex Offender reporting Requirements

Tier Level 1 – Report in person every 90 days for verification

Tier Level 2 – Report in person every 30 days for verification

Tier Level 3 – Report in person every 7 days for verification

Reporting locations are as follows- Offenders must report to State Bureau of Identification Dover, or State Bureau of Identification Northern location which is Delaware State Police Troop # 2. Currently we have no reporting location in Sussex County.

C. Once the court has found a person guilty of a Megan's Law felony offense, Title 11 Section 4120 of the Delaware Code, the offenders Driver's License must be relinquished to the applicable court. The court will issue a temporary operator's license, directing that person to report to the Division of Motor Vehicle for a replacement Driver's License with the code under restrictions: "Y" indicating sex offender. The person will pay $5.00 to the Division of Motor Vehicles for the replacement license. The Division of Motor Vehicles will receive an automated notification generated by CJIS advising that the offender will be appearing to have another photo taken and a new restriction coded operator's license issued. Note, upon a person being removed from the registration requirement, the Division of Motor Vehicle shall issue a license without the sex offender code printed at no charge. The sentencing court shall forward to the Division all licenses that it receives, along with a copy of the Sentencing Order.

Note: This section was passed to bring Delaware into compliance with Title 42 United States Code, Section 14071, The Jacob Wetterling Crimes Against Children and Sexually Violent Offender registration program by September 13, 1997 compliance deadline.

SEX OFFENDER TIER III ASSESSMENT

1. Automatic designation to Tier III

a. DE110773 Rape First Degree
DE110772 Rape Second Degree
DE110771 Rape Third (if involved a child under 12, or offense involved force or threat of Physical Violence)
DE110769 Unlawful Sexual Contact First Degree
DE110772 Unlawful Sexual Penetration First Degree (repealed in 1998)
DE110771 Unlawful Sexual Penetration Second Degree (repealed in 1998)
DE110775 Unlawful Sexual Intercourse Second Degree (repealed in 1998)
DE110774 Unlawful Sexual Intercourse First Degree (repealed in 1998)
DE110778 Continuous Sexual Abuse of a Child
DE111108 Sexual Exploitation of a Child

b. DE1107830004 Kidnapping First Degree*
DE110783A004 Kidnapping Second Degree*

***If the purpose of the crime was to facilitate the commission of any offense designated as a sexual offense where the defendant is not a parent, step parent or guardian of the victim.**

c. Any attempt to commit the previous offenses
DE110531

d. Any equivalent offense in any other state or US Territory.

e. **Upon motion of the State, any person convicted of a <u>felony</u>, if the victim had not yet reached his or her 16h birthday AND if the sentencing court determines by a preponderance of the evidence, after it weighs all relevant evidence which bears upon the particular facts and circumstances of the offense and the character and propensities of the offender, that public safety will be enhanced.**

DE110761 (currently definitions only) Sexual Assault 7/1/73-7/9/86
DE110762 (currently provisions applic. to sex offenses) Sexual Miscond. 7/1/73- 7/9/86
DE110764 Indecent Exposure Second Degree – If Second Conviction within 5yrs
DE110765 Indecent Exposure First Degree
DE110766 Incest
DE110767 Unlawful Sexual Contact Third Degree
DE110768 Unlawful Sexual Contact Second
DE110770 Rape Fourth Degree
DE110771 Rape Third Degree
DE110776 Sexual Extortion
DE110777 Bestiality
DE110779 Dangerous Crime Against a Child
DE111108 Sexual Exploitation of a Child
DE111109 Unlawfully Dealing in Child Pornography

DE111110 Subsequent Conviction of 1108 or 1109
DE111111 Possession of Child Pornography
DE111112A Sexual Solicitation of a Child

SEX OFFENDER TIER II ASSESSMENT

1. Automatic Designation to Tier II

a. DE110771 Rape Third Degree (if does NOT involve a child under 12, or offense involved force or threat of Physical Violence)
DE110770 Rape Fourth Degree
DE110770 Unlawful Sexual Penetration Third Degree (repealed in 1998)
DE110773 Unlawful Sexual Intercourse Third Degree (repealed in 1998)
DE110768 Unlawful Sexual Contact Second Degree
DE110776 Sexual Extortion
DE110777 Bestiality
DE110779 Dangerous Crime Against a Child
DE111109 Unlawfully Dealing in Child Pornography
DE111111 Possession of Child Pornography
DE111112A Sexual Solicitation of a Child
DE110762 (Currently Provisions applic. to sex offenses) Sexual Miscond. 7/1/73- 7/9/86
DE111361 Providing Obscene Materials to Minors

b. Any attempt to commit the previous offenses
DE110531

c. Any equivalent offense in any other state or U.S. Territory

d. **Upon motion of the State, a person convicted of any sexual offense, if the sentencing court determines by a preponderance of the evidence, after it weighs all relevant evidence, which bears upon the particular facts and circumstances or details of the commission of the offense and the character and propensities of the offender, that public safety will be enhanced.**

DE110761 (currently definitions only) Sexual Assault DE110762 (currently provisions applic. to sex offenses) Sexual Miscond. 7/1/73-7/9/86
DE110764 Indecent Exposure Second Degree – If Second Conviction within 5 yrs
DE110765 Indecent Exposure First Degree
DE110766 Incest
DE110767 Unlawful Sexual Contact Third Degree
DE111108 Sexual Exploitation of a Child
DE111110 Subsequent Conviction of 1108 or 1109
DE111111 Possession of Child Pornography
DE111321(5) Loitering in Public Place to Solicit
DE111352(2) Promotes/Profits from Prostitution of a Person under 18 years
DE111353(3) Promotes/Profits from Prostitution of a Person under 16 years

SEX OFFENDER TIER I ASSESSMENT

Any sex offender not otherwise designated to Assessment Tier II or III:

a. DE110764 Indecent Exposure Second Degree – If Second Conviction within 5 yrs
DE110765 Indecent Exposure First Degree
DE110766 Incest
DE110767 Unlawful Sexual Contact Third Degree
DE110780 Female Genital Mutilation
DE111100 Dealing in Children
DE111112 Sexual Offender who Resides or Loiters within 500 feet of school
DE111335(a)(6) or (7) Violation of Privacy

Conviction for a second Tier 3 or Tier 2 offense will be designated Tier 3.

Conviction for a subsequent Tier 1 offense occurs within 5 years of previous conviction, sex offender will be placed in Tier 2 when convicted again.

Also all sex offenders will be raised to Level Tier 3 once they are wanted persons. They will also be reduced back to their original Tier Level Assessment once the Warrant/Capias has been cleared.

- **The entire Sex Offender Training Manual can be found at:**

http://server.deljis.state.de.us

Click on the Training heading and scroll down to the DELJIS Sex Offender Training Manual

BAIL

THE BAIL GUIDELINES AND POLICY STATEMENTS ARE THOSE OF THE JUSTICE OF THE PEACE COURTS AND NOT THE SENTENCING ACCOUNTABILITY COMMISSION. THEY ARE PROVIDED HERE AS A CONVENIENCE FOR USERS.

Recognizing that the setting of bail is an important and delicate exercise of judicial discretion, but that such discretion is restrained by both constitutional and statutory limitations, a "totality of the circumstances test" is adopted as bail policy to assist Delaware judicial officers in making logical, appropriate, bail setting decisions. This policy has been adopted for the following reasons:

- Presumptive bail under Delaware law is to release upon a defendant's own recognizance or upon an unsecured appearance bond.

- Delaware law requires judicial officers to consider **all** legally relevant circumstances and criteria in reaching a bail decision.

- Departure from presumptive release upon OR or unsecured bail is permissible **only** if a totality of the circumstances analysis determines that secured bail is necessary to (a) ensure the defendant's appearance to answer charges and/or (b) to ensure the safety of any victims or witnesses or the community.

- In considering and weighing legally relevant factors, the judicial officer must balance the rights of the defendant:
  to be presumed innocent,
  to be at liberty while awaiting trial,
  to develop a defense,
  to provide financial and other support for family, and
  to preclude pressure to resolve the case to escape confinement with the State's interests:
  to ensure the defendant appears to answer to criminal charges,
  to protect victims, witnesses, and the community, and
  to ensure the proper administration of justice.

- A totality of the circumstances analysis requires a judicial officer to focus on **all** the factors legally relevant to a bail decision, not on a single factor, such as nature of the charged offense.

- A totality of the circumstances analysis requires and permits a judicial officer to make, "…a balanced assessment of the relative weights" of all the various factors legally relevant to a bail decision.[25]

- A totality of the circumstances analysis gives a judicial officer broad, comprehensive discretion to fit bail to each case as the factors of each case warrant.

[25] *Illinois v. Gates*, 462 U.S. 213, 234 (1983).

THE BAIL DECISION – APPROPRIATE STEPS

1. REVIEW

Review the charging document and/or case file; criminal, traffic, capias and/or payment history information relating to the defendant and the offense; the Recommended Monetary Ranges; and any Special Case Procedures.

2. RECORD INITIAL FINDINGS

a. Record applicable aggravating and/or mitigating factors.
b. Review the list of bail conditions that may be imposed.
c. Determine the flight and/or safety risks involved, using a totality of the circumstances approach.
d. Determine whether imposition of bail conditions may reduce risk, and to what extent.
e. Record findings.

Risk of Flight: Will defendant appear as directed? If uncertain, or if it is apparent the defendant will not appear, are there any bail conditions that will abate the risk?

Safety of the Victim and/or Community: Does the defendant present a danger to any victim(s) and/or the community? If uncertain, or if it is apparent the defendant will endanger the safety of the victim and/or the community, are there any bail conditions that will abate the risk?

3. WEIGH AND ANALYZE FOR FINAL DECISION

a. Consider and weigh all applicable factors, the conclusions reached regarding flight risk and safety risk, and possible bail conditions that may abate any risk. Using a totality-of-the-circumstances approach, determine the bail type.
b. Using the same approach, determine bail amount for each charge. Also consider that the total bail amount for the entire case should be reasonable under all the circumstances; and that bail amount for each charge should be within the Recommended Monetary Range for the offense classification **unless** exceptional, articulable factors exist. If the bail amount is outside the Range, record additional justification.

4. SELECT AND RECORD BAIL CONDITIONS

a. Bail conditions should be reasonably related to the instant offense or the underlying circumstances of the offense.
b. May be used as an alternative to secured bail, where appropriate.
c. Record all conditions.

THE BAIL DECISION – BASIC CONSIDERATIONS

- **PRESUMPTION:** Judges are required to release defendants on their own recognizance **OR** on unsecured bail **unless** factors to the contrary ("aggravating factors") exist. Judges **MUST** record the reasons for secured or cash bail.
    - **Exception:** Capital crimes. 11 *Del. C.* §§ 2101 and 2105(a). [26]
- **BAIL TYPE:** Shall be based on a totality-of-the-circumstances analysis of all mitigating and aggravating factors.
    - **Bail type** should not be based solely on the nature of the charge(s).
    - **Secured Bail** may be considered reasonable only if aggravating factors exist. Establish and record all applicable factors.
    - **Cash Bail** is a more restrictive type of secured bail. Therefore, cash bail should be carefully considered and reserved for the most serious or unusual circumstances, the presence of which must be recorded.
    - **Mixed Bail Types**: Avoid setting secured and unsecured/OR bail on the same case. Bail for non-incarcerable offenses may be set at $1 secured each **IF** the overall case **bail type** is secured.
- **BAIL AMOUNT:** Shall be based on a totality-of-the-circumstances (TOTC) analysis of all aggravating and mitigating factors.
    - The accompanying monetary ranges are recommendations for bail amount based on the **nature** of the offense as indicated by the *Delaware Code* offense classification. "Nature of offense" is only one of many relevant bail factors and shall not be the sole basis for the bail decision. Use these ranges in conjunction with other relevant bail factors.
    - The vast majority of bail decisions should fall within the recommended monetary ranges. Reasons for departing from the ranges must be documented.
    - Bail **amounts** shall be set *by charge*. While bail is set by charge, the total amount for bail for the case must be reasonable under all the circumstances.

[26] At publication (06-30-2010), only Murder in the First Degree, 11 *Del. C.* § 636, is a capital offense in Delaware.

RECOMMENDED MONETARY RANGES

Offense Class	Bail Guideline	Penalty-Custody	Penalty-Fine	Notes
FELONIES				
Murder 1 11 *Del. C.* § 636	Hold Without Bail* (11 *Del. C.* § 2103)	Death or Natural Life	no cap	Capital Offense Non-Bailable
Felony Class A	$40,000 to $100,000	M/M 15 years to Life	no cap	
Felony Class B	$20,000 to $60,000	M/M 2 to 25 years	no cap	
Felony Class C	$5,000 to $20,000	0-15 years	no cap	
Felony Class D	$2,500 to $10,000	0-8 years	no cap	
Felony Class E	$1000 to $6,000	0-5 years	no cap	
Felony Class F	$500 to $3,000	0-3 years	no cap	
Felony Class G	$500 to $2,000	0-2 years	no cap	
MISDEMEANORS and VIOLATIONS				
Misdemeanor Class A	OR to $1,000	0-1 year	0-$2300	
Misdemeanor Class B	OR to $200	0-6 months	0-$1150	
Misdemeanor (unclassified)	OR to $100	0-30 days	0-$575	
Violation – 1st	OR to $50	0-1 year probation LI	0-$345	Subsequent violations are within a 5-year period.
Violation – 2nd	OR to $100	0-1 year probation LI	0-$690	
Violation – 3rd	OR to $200	0-1 year probation LI	0-$1150	

See special case procedures and considerations for issues related to special case types.

*Only Murder 1 under 11 *Del. C.* § 636(a)(1) through (6) is a capital offense as of this publication Murder 1 does not include Attempted Murder.

SPECIAL CASE PROCEDURES & CONSIDERATIONS

The following represents a concise, but not comprehensive, outline of circumstances and case types requiring consideration of factors that may not have been appropriate to consider at the time the case bail was set initially, or factors that, due to the nature of the case, may require exceptionally close examination.

Capiases/Warrants & Rule 9 Warrants

- Failure to Appear: Original case bail; bail recommendation of issuing court; known practices of issuing court (for instance, Superior Court FTA Trial Capias may contain a high cash bail recommendation based on that Court's rigorous trial-setting practices and notice to defendants); FTA capias history; history of escape or resisting arrest convictions.
- Failure to Pay: Amount owed; history of FTP capiases on the case; whether Work Referral or Wage Assignment has been ordered but not defendant failed to follow order; history of FTP capiases on all cases; amounts owed to all courts at time of arrest on FTP capias.
- Rule 9 Warrants: Treat similar to new charges with bail set for first time, absent any recommendation from Superior Court.

Domestic Violence - PFA Violations

- Intimate Partners: (Husband/Wife; Ex-Spouses; Boyfriend/Girlfriend and ex; Same-sex relationships) – Use DV Lethality Screening Tool to assess risk – Do not underestimate results; recent separation of parties increases risk dramatically—loss of control may trigger violence.
- Other Family Members: Threats of violence or suicide; prior incidents of violence and escalating violence; sexual assault; whether instant offense involves injury; access to weapons; substance abuse; mental health issues; employment issues.
- PFA Violations: History of violations and violation of no contact orders (breach of release).

Drugs

- Offense occurred in Protected Area or in an area used as a Base of Operations
- Force or high-speed flight via motor vehicle was used to escape apprehension
- History includes prior Title 16 convictions and/or violent offenses
- Instant Offense carries mandatory penalty and/or quantity of drug indicates serious drug dealing;
- Minors are involved in offense as accomplices or as targeted customer; or offense involves death or injury to user/customer

Fugitives

- Nature of offense alleged to have been committed in foreign jurisdiction & bail guideline for comparable Delaware offense
- Circumstances of defendant's apprehension

Motor Vehicle & DUI

- DUI: Classification of offense as felony or misdemeanor – based on defendant's conviction history; alleged BAC at time of offense; circumstances of defendant's apprehension (accident, risky driving, injury or death to others, property damage); history of defendant's compliance with substance abuse treatment and/or rehabilitation previously ordered by court; indications of long-term substance abuse – Use mandatory bail condition if required [11 *Del. C.* § 2108(c)].
- Motor Vehicle: Imperative to remember that secured bail may not be ordered as initial bail for non-jailable offenses. A driver's license may be used as a form of secured bail provided defendant is given a receipt.

Sexual Offenses

- Child Victim: Require that the defendant have no contact with children except upon good cause shown and as provided by the Court [mandatory bail condition as required by 11 *Del. C.* § 2108(b)].
- Registered Sex Offenders: Require the defendant to register if defendant is charged with failing to register as a sex offender [mandatory bail condition as required by 11 *Del. C.* § 4120(4)].

Truancy

Adult Offender:

- Original Truancy charge: Truancy charges are criminal offenses if adult offender and may be treated as such for bail purposes.
- FTA Capias/FTP Capias/Contempt of Court: Set unsecured or secured based on circumstances

Juvenile Offender:

- Original Truancy charge: Truancy charges are civil offenses if juvenile offender; all restrictions on incarcerating juveniles pursuant to 10 *Del. C.* § 1007 apply to such cases.
- FTA Capias: Secured bail may only be set if the conditions imposed by 10 *Del. C.* § 1007 are met.
- FTP Capias: A capias may not be issued for a juvenile for FTP. Such a capias may be issued for the juvenile's parent or other responsible who co-signed any payment agreement. Thus, if presented with a FTP capias issued on a juvenile, set unsecured bail.
- Contempt of Court: If based on the underlying truancy matter, bail may be secured or unsecured depending on the circumstances and only if the conditions imposed by 10 *Del. C.* § 1007 are met.

Violation of Probation – Contempt of Court – Breach of Release

- If returned to other than issuing court, give great deference to recommendation of issuing court.
- VOP: Consider any facts available showing VOP is substantive or for collection of monies owed only. Consult probation officer if available. Review underlying offense and original sentence imposed. Consider prior VOPs on same or other cases.
- COC (often issued for FTP matters): Consider amount of monies owed, defendant financial resources, age of case, payments made to date if any, and history of prior FTP capiases on instant case and other cases.
- Breach of Release: Consider type of breach involved – breach of no-contact order, and nature of alleged unlawful contact are generally the most serious, although bail conditions can be breached in other ways than violation of a no-contact order.

Weapons Charges

- Take special notice of any prior act of violence or weapons charge.
- Determine if the defendant has a history of mental illness or is otherwise a person prohibited.
- Consider the underlying circumstances surrounding the use, display or threat to use the weapon and the impact on public or victim's safety.
- Even if release is unlikely as a result of the bail decision, consider whether a condition of bond requiring relinquishment of weapons is an appropriate under the circumstances.