



# Delaware Sentencing Accountability Commission Benchbook 2018\*

\*INCLUDES RELEVANT LEGISLATION OF THE FIRST SESSION OF THE 149th GENERAL ASSEMBLY

Crime Classification	Presumptive Sentence	Statutory	Page Ref.
Felonies	· · · · · · · · · · · · · · · · · · ·		<b>U</b>
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 3 yrs	60
	Up to 18 m for Title 16 @ Level II		
Class G (Violent)	Up to 6 m @ Level V	up to 2 yrs	64
	Title 16, §§4767,4768: 3-9 m @ Level V		
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	up to 1 yr	80
	(7/12/05)		
	1stOffense 12m @Level II		
Class B	Fine, Costs & Restitution	up to 6 m.	81
Unclassified	Fine, Costs & Restitution	up to 30 d	83
Violations	Fine, Costs & Restitution	\$0 to \$345	85
Habitual Criminal	Up to Life	Up to Life	143
Violation of Probation	1 Level Higher	1 Level Higher	156

SUMMARY OF ACCEPTANCE OF RESPONSIBILITY GUIDELINES				
Crime Classification	Presumptive Sentence	Acceptance of Responsibility Guideline	Page	
Felonies				
Class C (violent)	Up to 30 mos. @ Level V	Up to 22 mos. @ Level V	37	
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	
Class E (non-violent)	Up to 12 mos. @ Level II	Up to 9 mos. @ Level II	53	
Class F (violent)	Up to 9 mos. @ Level V	Up to 7 mos. @ Level V	57	
Class F (non-violent)	Up to 12 mos. @ L II for T	Up to 9 mos. @ L II for T 11	60	
	11	Up to 14 mos. @ L II for T 16		
	Up to 18 mos. @ L II T 16			
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	

SUMMARY OF PRESUMPTIVE SENTENCES			
Class A (order/decency)	Up to 12 mos. @ Level I	Up to 9 mos. @ Level I	77
Class A (con. sub.)	Up to 12 mos. @ Level II	Up to 9 mos. @ Level II	80

# TABLE OF CONTENTS

INDEX OF OFFENSES	5
	22
SENTAC STATEMENT OF POLICY	27
MEMBERS OF THE SENTAC ACCOUNTABILITY COMMISSION	33
SUMMARY OF PRESUMPTIVE SENTENCES	
CLASS A FELONY	34
CLASS B FELONY (VIOLENT)	38
CLASS B FELONY (NON-VIOLENT)	45
CLASS C FELONY (VIOLENT)	47
CLASS C FELONY (NON-VIOLENT)	52
CLASS D FELONY (VIOLENT)	54
CLASS D FELONY (NON-VIOLENT)	58
CLASS E FELONY (VIOLENT)	61
CLASS E FELONY (NON-VIOLENT)	63
CLASS F FELONY (VIOLENT)	68
CLASS F FELONY (NON-VIOLENT)	70
CLASS G FELONY (VIOLENT)	75
CLASS G FELONY (NON-VIOLENT)	77
CLASS A MISDEMEANORS	
I.) Violent (MA1)	83
II.) Escape (MA2)	<u>85</u>
III.) Property (MA3)	86
IV.) Order & Decency (MA4)	<u>89</u>
V.) Controlled Substances (MA5)	93
CLASS B MISDEMEANORS	94
UNCLASSIFIED MISDEMEANORS	96
VIOLATIONS	99
TITLE 21 AND TITLE 23 OFFENSES	100
SUMMARY OF DRUG OFFENSES	111
AGGRAVATING AND MITIGATING FACTORS	132
QUALIFYING UNDERLYING OFFENSES FOR TITLE 11 SECTION 1105	137
SUBSTANTIAL ASSISTANCE	138
MODIFICATION DUE TO SERIOUS MEDICAL ILLNESS, INJURY, OR INFIRMITY	138
EXCEPTIONAL SENTENCES	139
SPECIAL CATEGORIES:	
Domestic Violence	139
Escape	141
Juveniles Being Sentenced as Adults	142
HABITUAL CRIMINAL	143
PROBATION BEFORE JUDGMENT	153
VIOLATION OF PROBATION SENTENCING POLICY	156
MATERIALS PROVIDED FOR CONVENIENCE OF USERS	
WORK RELEASE POLICY	<u>158</u>
PROBATION CONDITIONS OF SUPERVISION	160
SEX OFFENDER REGISTRATION PROVISIONS	
DELJIS SEX OFFENDER MANUAL TIER ASSESSMENTS	<u>165</u>
BAIL GUIDELINES	168
LEGISLATIVE UPDATE	174

# **INDEX OF OFFENSES**

CRIME	CLASS	STATUE	PAGE
Abandonment of Child (14 yrs of age or older)	Class F Felony (Nonviolent)	11-1101	71
Abandonment of Child ( <than 14="" age)<="" of="" td="" yrs=""><td>Class E Felony (Nonviolent)</td><td>11-1101</td><td>63</td></than>	Class E Felony (Nonviolent)	11-1101	63
Abetting Driver's License Violation (Prior Conviction/Death)	Class G Felony (Nonviolent)	11-1249	78
Abetting Violation of Driver's License	Class A Misdemeanors	11-1249	90
Abortion	Class F Felony (Nonviolent)	11-651	70
Abuse of Infirm Adult: Bodily Harm	Class D Felony (Violent)	31-3913(c)	55
Abuse of Pregnant Female 1st Degree	Class B Felony	11-606	38
Abuse of Pregnant Female 2nd Degree	Class C Felony (Violent)	11-605	47
Abuse of Sports Official (1st Offense)	Class A Misdemeanors	11-614	83
Abuse of Sports Official (Prior Conv)	Class G Felony (Violent)	11-614	75
Abuse/Neglect of Infirm Adult	Class A Misdemeanors	31-3913(a)	83
Abuse/Neglect of Infirm Adult: Death	Class A Felony	31-3913(c)	34
Abuse/Neglect of patient in Facility	Class C Felony (Violent)	16-1136(a)	48
Abuse/Neglect of Patient in Residential Facility	Class A Misdemeanors	16-1136(a)	83
Abuse/Neglect of Patient: Death	Class A Felony	16-1136(a)	34
Abuse/Neglect of Patient: Sexual Contact	Class G Felony (Violent)	16-1136(a)	75
Abusing a Corpse	Class A Misdemeanors	11-1332	91
Act of Intimidation	Class D Felony (NV)	11-3532	58
Adulteration	Class G Felony (Nonviolent)	11-1339	79
Adulteration (Injury/Illness)	Class E Felony (Violent)	11-1339	61
Adulteration: Death	Class A Felony	11-1339	34
Advancing Gambling 1st Degree	Class A Misdemeanors	11-1403	91
Advancing Gambling 2nd Degree	Class A Misdemeanors	11-1401	91
Advertise. Drug Parapher. Until 12/18/15	Unclassified Misdemeanors	16-4774 (d)	97
Advertise. Drug Parapher. Effect. 12/18/15	Unclassified Misdemeanor	16-4774(e)	97
Aggravated Criminal Non-Support	Class G Felony (Nonviolent)	11-1113	78
Aggravated Crim. Non-support (Prior conv.)	Class A Misdemeanors	11-1113(a)	90
Aggravated Harassment	Class G Felony (Nonviolent)	11-1312	79
Aggravated Intimidation of Witness &/or Victim	Class D Felony (Violent)	11-3533	39
Aggravated Menacing (Display Deadly Weapon)	Class E Felony (Violent)	11-602(b)	61
Aggravated possession	Class E Felony (NV)	16-4755	64
Aggravated Possession	Class F Felony (NV)	16-4756	71
Aggressive Driving	Title 21 and Title 23 Offenses	21-4175A	100
Allow Unlawful Access to Firearm by Minor	Class A Misdemeanors	11-1456	91
Animals; fighting and baiting	Class E Felony (Nonviolent)	11-1326(a)	64
Arson 1st Degree	Class C Felony (Violent)	11-803	47
Arson 2nd Degree	Class D Felony (Violent)	11-802	54
Arson 3rd Degree	Class G Felony (Nonviolent)	11-801	77
Assault 1st Degree on Law Enforcement			
Animal	Class D Felony (Violent)	11-1250(c)	55

CRIME	CLASS	STATUE	PAGE
Assault 1st Degree. Reclassified in 6/2003	Class B Felony	11-613	38
Assault 2d Degree Against Law enforcement			
Animal	Class A Misdemeanors	11-1250(b)	83
Assault 2nd Degree	Class C Felony (Violent)	11-612 (11)	47
Assault 2nd Degree	Class D Felony (Violent)	11-612	54
Assault 3rd Degree	Class A Misdemeanors	11-611	83
Assault in Detention Facility w/Serious	Class D Falany	11 10F 1/b)	20
Injury	Class B Felony	11-1254(b)	39
Assault in Detention Facility: Bodily	Class D Folony (Violant)	11 10E4(a)	FF
Emissions	Class D Felony (Violent)	11-1254(c)	55
Assault in Detention Facility: Injury	Class D Felony (Violent)	11-1254(a)	55
Background Checks for Child Serving	Class G Felony (non-	31-310(c)	79
Entities	violent)	31-310(0)	19
Background Checks for Child Serving	Class A Misdemeanor (Non-	31-310(a)	91
Entities	Violent)		71
Benefit by False Representation	Class E Felony (Nonviolent)	31-1003	64
Benefit by False Representation >\$10,000	Class C Felony (Nonviolent)	31-1003	52
Bestiality	Class D Felony (Violent)	11-775	54
Bigamy		11-1001	78
Body Piercing & Tattoos	Class A Misdemeanors	11-1114	90
Body Piercing & Tattoos	Class B Misdemeanors	11-1114	94
Breach Conditions of Release	Unclassified Misdemeanors	11-2113	97
(Misdemeanor)	oficiassified Misdeffieations		77
Breach of Conditions of Bail	Class G Felony (Nonviolent)	11-2109(c)(1)	79
Breach of Conditions of Bail	Unclassified Misdemeanors	11-2109(c)(2)	97
Breach of Release Conditions (Felony/Prior Conviction Crime)	Class G Felony (Nonviolent)	11-2113(c)(1)	79
Bribery	Class A Misdemeanors	11-881	90
Bribery of a Juror	Class E Felony (Nonviolent)	11-1264	64
Bribery of a Public Servant	Class E Felony (Nonviolent)	11-1201	63
Bribery of a Witness	Class E Felony (Nonviolent)	11-1261	64
Burglary 1st Degree	Class C Felony (Violent)	11-826	48
Burglary 1st Degree (Vt> 62 y.o.a.)	Class B Felony	11-826(a)(2)	39
Burglary 2nd Degree	Class D Felony (Violent)	11-825	54
Burglary 2nd Degree (Vt> 62 y.o.a.)	Class C Felony (Violent)	11-825	48
Burglary 3rd Degree	Class F Felony (Nonviolent)	11-824	70
Careless or Inattentive Driving	Title 21 & Title 23 Offenses	21-4176	100
Carjacking 1st Degree	Class B Felony	11-836(a)(4-6)	39
Carjacking 1st Degree	Class C Felony (Violent)	11-836(a)(1-3)	48
Carjacking 2nd Degree	Class D Felony (Violent)	11-835(b)(2)	55
Carjacking 2nd Degree	Class E Felony (Violent)	11-835	61
Carry Concealed Deadly Weapon	Class G Felony (Nonviolent)	11-1442	79
Carrying Concealed Dangerous Instrument	Class A Misdemeanors	11-1443	83
			55
Carry Concealed Deadly Weapon (Firearm) Child Abuse in the First Degree	Class D Felony (Violent) Class B Felony	11-1442 11-1103B	45
			45 78
Child Abuse in the Second Degree	Class G Felony (Nonviolent)	11-1103A	
Child Abuse in the Third Degree	Class A Misdemeanors	11-1103	83
Child Murder by Abuse/Neglect 1st Degree	Class A Felony	11-634	34
Child Murder by Abuse/Neglect 2nd Degree	Class B Felony	11-633	38
Coercion	Class A Misdemeanors	11-791	89
Compound a Crime	Class A Misdemeanors	11-1246	90

CRIME	CLASS	STATUE	PAGE
Computer Offense Penalties (\$5,000- \$9,999)	Class E Felony (Nonviolent)	11-939	63
Computer Offense Penalties (\$500-\$999)	Class G Felony (Nonviolent)	11-939	78
Computer Offense Penalties (>\$10,000)	Class D Felony (Nonviolent)	11-939	58
Computer Offenses Penalties (<\$500)	Class A Misdemeanors	11-939	87
Conceal/Destroy/Falsify/Forge Document Which Results in False Authorization of Maintenance Medical Treatment for Life Prolongation	Class C Felony (Nonviolent)	16-2513(b)	52
Conspiracy 1st Degree	Class E Felony (Violent)	11-513	61
Conspiracy 2nd Degree	Class G Felony (Nonviolent)	11-512	77
Conspiracy 3rd Degree	Class A Misdemeanors	11-511	89
Continuous Sexual Abuse of Child (7/26/06)	Class B Felony	11-776	38
Crime Against a Vulnerable Adult	Class C Felony (Violent)	11-1105	48
Crime Against a Vulnerable Adult	Class D Felony (Violent)	11-1105	55
Crime Against a Vulnerable Adult	Class E Felony (Violent)	11-1105	61
Crime Against a Vulnerable Adult	Class F Felony (Violent)	11-1105	68
Crime Against a Vulnerable Adult	Class G Felony (Violent)	11-1105	75
Crime Against a Vulnerable Adult	Class A Misdemeanors	11-1105	83
Crimes Regarding Vital Records	Class G Felony (Nonviolent)	16-3111(a)	79
Criminal Contempt	Class A Misdemeanors	11-1271(2-8)	90
Criminal Contempt	Class B Misdemeanors	11-1271(1)	94
Criminal Contempt of a Domestic Violence Protection Order (PFA)	Class F Felony (Nonviolent)	11-1271A(b)(c)	71
Criminal Contempt: DV Protective Order	Class A Misdemeanors	11-1271A	83
Criminal Impersonation	Class A Misdemeanors	11-907	90
Criminal Impersonation (Accident Related)	Class G Felony (Nonviolent)	11-907A	78
Criminal Impersonation of a Police Officer w/Injury or Felonies		11-907B(b)	52
Criminal Impersonation Police Officer	Class E Felony (Nonviolent)	11-907B	63
Criminal Impersonation of a member or veteran of U.S. Armed Forces	Class A Misdemeanor (NV)	11-907C	90
Criminal Mischief (\$5000+ Loss/Substantial Interruption)	Class G Felony (Nonviolent)	11-811(b)(1)	77
Criminal Mischief (<\$1000)	Unclassified Misdemeanors	11-811(b)(3)(4)	96
Criminal Mischief (>\$1000-<\$5000)	Class A Misdemeanors	11-811(b)(2)(4)	86
Criminal Non-support	Class B Misdemeanors	11-1113(a)	94
Criminal Nuisance	Unclassified Misdemeanors	11-1322	96
Criminal Solicitation 1st Degree	Class C Felony (Nonviolent)	11-503	52
Criminal Solicitation 1st Degree	Class E Felony (Nonviolent)	11-503	63
Criminal Solicitation 2nd Degree	Class F Felony (Nonviolent)	11-502	70
Criminal Solicitation 3rd Degree	Class A Misdemeanors	11-501	89
Criminal Trespass 1st Degree	Class A Misdemeanors	11-823	86
Criminal Trespass 2nd Degree	Unclassified Misdemeanors	11-822	96
Criminal Trespass 3rd Degree	Violations	11-821	99
Criminal Youth Gang: Recruitment (7/10/06)	Class G Felony (Violent)	11-617(b)(1)	75
Criminal Youth Gang: Recruitment/Retention:Violence or Threat (7/10/06)	Class F Felony (Violent)	11-617(b)(2)	68

CRIME	CLASS	STATUE	PAGE
Criminally Negligent Homicide	Class D Felony (Violent)	11-631	54
Cross or Religious Symbol Burning	Class A Misdemeanors	11-805	86
Cruelty to Animals	Class F Felony (Nonviolent)	11-1325	71
Cruelty to Animals	Class A Misdemeanors	11-1325	90
Dangerous Animal	Class A Misdemeanors	11-1327	90
Dangerous Animal: Death of Person	Class E Felony (Nonviolent)	11-1327(c)(1)	64
Dangerous Animal: Serious Injury to Person	Class F Felony (Nonviolent)	11-1327(c)(2)	71
Dangerous Crime Against Child (7/26/06)	Class B Felony	11-777	39
Dealing in Child Pornography	Class B Felony	11-1109	39
Dealing in Children	Class E Felony (Nonviolent)	11-1100	63
Debt Adjusting	Class B Misdemeanors	11-910	94
Deceptive Business Practices	Class A Misdemeanors	11-906	86
Defrauding Secured Creditors	Class A Misdemeanors	11-891	86
Del. Drg Parapher. to Minor (unt. 12/18/15)	Class E Felony (Violent)	16-4774(c)	61
Del. Drg. Parapher. To Minor (eff. 12/18/15)	Class E Fel. (Viol.)	16-4774(d)	61
Desecration	Class A Misdemeanors	11-1331	90
Desecration of Burial Place	Class A Misdemeanors	11-1340	<u> </u>
		11-1340	91
Destruction Computer Equipment (\$5,000- \$9,999)	Class E Felony (Nonviolent)	11-936	63
Destruction Computer Equipment (\$500- \$999)	Class G Felony (Nonviolent)	11-936	78
Destruction Computer Equipment (<\$500)	Class A Misdemeanors	11-936	87
Destruction Computer Equipment (>\$10,000)	Class D Felony (NV)	11-936	58
Disclosure Personal History Information eff. 4/7/16	Class G Felony (NV)	31-311(c)	79
Disorderly Conduct	Unclassified Misdemeanors	11-1301	96
Disorderly Conduct: Funeral/Memorial Service (Prior Conv) (6/1/06)	Class F Felony (Nonviolent)	11-1303(3)(b)	71
Disorderly Conduct: y/Funeral/Memorial Service (6/1/06)	Class A Misdemeanors	11-1303(3)(a)	90
Driving a Vehicle While Under the Influence	Title 21 and Title 23 Offenses	21-4177 et seq.	100
Driving a Vehicle While Under the Influence	Class G Felony (NV) 3 <sup>rd</sup> Offense	21-4177 et. Seq.	79
Driving a Vehicle While Under the Influence	Class E Felony (NV) 4 <sup>th</sup> Offense	21-4177 et. Seq.	64
Driving a Vehicle While Under the Influence	Class E Felony (NV) 5 <sup>th</sup> Offense	21-4177 et. Seq.	64
Driving a Vehicle While Under the Influence	Class D Felony (NV) 6 <sup>th</sup> Offense	21-4177 et. Seq.	59
Driving a Vehicle While Under the Influence	Class C Felony (NV) 7 <sup>th</sup> or any subsequent offense	21-4177 et. Seq.	52
Driving After Judgment Prohibited	Title 21 & Title 23 Offenses	21-2810	101
Driving In Violation of Conditional License	Title 21	21-2742	101
Drug dealing - Aggravated possession	Class B Felony (Violent)	16-4752	39
Drug Dealing (Resulting in Death)	Class B Felony (Violent)	16-4752B	39
Drug dealing - Aggravated Possession;	Class C Felony (Violent)	16-4753	48
Drug dealing - Aggravated possession;	Class D Felony (Violent)	16-4754(1)	55
Drug dealing- Aggravated Possession;	Class D Felony (NV)	16-4754 (2)or (3)	58

CRIME	CLASS	STATUE	PAGE
Drug Parapher. (Del. to minor)until12/18/15		16-4774 (c)	61
Drg. Parapher. (Del. to minor) eff. 12/18/15	<b>3 1 1</b>	16-4774 (d)	61
Drug paraphernalia (Manufacture or sale)	Class G Felony (NV)	16-4774(b)	75
Drug Paraphernalia (Poss.) until 12/18/15	Class B Misdemeanor (NV)	16-4774(a)	95
Drug Paraphernalia (Poss.) after 12/18/15	Class B Misdemeanor(NV)	16-4774(a)	95
Endanger Welfare of Child	Class A Misdemeanors	11-1102	90
Endanger Welfare of Child: Death	Class E Felony (Nonviolent)	11-1102(b)(1)	63
Endanger Welfare of Child: Serious Injury	Class G Felony (Nonviolent)	11-1102(b)(2)	78
Endanger Welfare of Child: Sex Offense		11-1102(b)(3)	78
Endanger Welfare of Incompetent	Class A Misdemeanors	11-1105	90
Endangering Children	Unclassified Misdemeanors	11-1107	96
Engaging in Crap Game	Violations	11-1407	99
Escape 2nd Degree		11-1252	78
Escape 3rd Degree	Class A Misdemeanors	11-1251	85
Escape After Conviction	Class D Felony (Violent)	11-1253	55
Escape After Conviction (injury)(Special Esc.			
Cat. May Apply)	Class B Felony	11-1253	39
Escape After Conviction (Special Escape			
Category May Apply)	Class C Felony (Violent)	11-1253	48
Execution of Document by Deception	Class A Misdemeanors	11-909	90
Exploit Patient's Resources (\$1000+)	Class G Felony (Violent)	16-1136(b)	75
Exploit Patient's Resources (<\$1000)	Class A Misdemeanors	16-1136(b)	87
Exploitation of Infirm Adult (\$10,000 -			
\$50,000)	Class D Felony (Violent)	31-3913(b)	55
Exploitation of Infirm Adult (\$500- \$4,999)	Class G Felony (Violent)	31-3913(b)	75
Exploitation of Infirm Adult (<\$500)	Class A Misdemeanors	31-3913(b)	87
Exploitation of Infirm Adult			(1
(>\$5,000/<\$10,000)	Class E Felony (Violent)	31-3913(b)	61
Exploitation of Infirm Adult (>\$50,000/Prior	Class C Folony (Violant)	21 2012/b)	40
Conviction)	Class C Felony (Violent)	31-3913(b)	48
Extortion	Class E Felony (Violent)	11-846	61
Extortion (Vt>62 y.o.a.)	Class D Felony (Violent)	11-846	55
Fail Cease Electronic Communication (\$500-	Class G Felony (Nonviolent)	11-938	78
\$999)	class & Felolity (Notivioletit)	11-930	70
Fail Cease Electronic Communication	Class A Misdemeanors	11-938	87
(<\$500)			
Fail to Answer Summons	Unclassified Misdemeanors	11-1907(c)	97
Fail to Cease Electronic Communication	Class E Felony (Nonviolent)	11-938	63
(\$5,000-\$9,999)		11-750	05
Fail to Cease Electronic Communication	Class D Felony	11-938	58
(>\$10,000)	(Nonviolent)	11 750	50
Fail to Correct Abuse/Neglect of Patient in	Class A Misdemeanors	16-1136(c)	91
Residential Facility		. ,	
Fail to Obtain Child Sex Abuser Information	Class A Misdemeanors	11-8562(a)	91
False Benefit Reimbursement Statement (<\$500)	Class A Misdemeanors	31-1004(1)	87
False Report Incident/Child Abduction	Class A Misdemeanors	11-1245	90
(6/30/05)			70
False Report Incident/Child Abduction (Prior Conv) (6/30/05)	Class G Felony (Nonviolent)	11-1245	78
False Representation for Benefits (\$500-	Class E Felony (Nonviolent)	31-1003	64
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CRIME	CLASS	STATUE	PAGE
\$9,999)		STATUL	TAOL
False Statement to Obtain Benefits (<\$500)	Class A Misdemeanors	31-1003	87
Falsify Reimbursement Report (\$500-			07
\$9,999)	Class E Felony (Nonviolent)	31-1004(2)	64
Falsify Reimbursement Report >\$10,000	Class C Felony (Nonviolent)	31-1004(2)	52
Falsifying Business Records	Class A Misdemeanors	11-871	90
Female Genital Mutilation	Class E Felony (Nonviolent)	11-780	63
Fighting/Baiting Animals	Class F Felony (Nonviolent)	11-1326(b)(c)	71
Fighting/Baiting Animals. (c)	Class G Felony (Nonviolent)	11-1326	79
Firearm Sale Violation	Class A Misdemeanors	11-1448A(f)	91
Firearm Sale Violation (Second Offense)		11-1448A(e)	79
Firearm Sale Violation: False			
Statement/Information	Class G Felony (Nonviolent)	11-1448A(f)	79
Firearm Transaction on Behalf of Another			
(1st Offense)	Class F Felony (Nonviolent)	11-1455	71
Firearm Transaction on Behalf of Another			
(Prior Conviction)	Class C Felony (Violent)	11-1455	48
Flee or Attempt to Elude	Title 21 and Title 23 Offen.	21-4103(b)	100
Forced labor	Class C Felony (Violent)	11-787(b) (2)	47
Forced labor (victim is a minor)	Class B Felony	11-787(b)(2)	39
Foreign Lotteries	Class A Misdemeanors	11-1402	91
Forgery 1st Degree	Class F Felony (Nonviolent)	11-861(b)(1)	70
Forgery 2nd Degree	Class G Felony (Nonviolent)	11-861(b)(2)	78
Forgery 3rd Degree	Class A Misdemeanors	11-861(b)(3)	86
Fraud in Insolvency	Class A Misdemeanors	11-892	86
Fraudulent Conveyance of Public Lands	Class G Felony (Nonviolent)	11-911	78
Fraudulent Receipt of Public Lands		11-912	78
Furnishing Contraband	Unclassified Misdemeanors	11-6562A	97
Gang Participation	Class F (Nonviolent)	11-616 (b)	70
Give Unlawful Gratuity	Class A Misdemeanors	11-1205	90
Giving Firearm to Person Prohibited	Class F Felony (Nonviolent)	11-1454	71
Graffiti and Possession of Graffiti			
Implements (\$1500+ damage)	Class G Felony (Nonviolent)	11-812(a)(2)	77
Graffiti and Possession of Graffiti		11.010(.)(0)	
Implements (<\$1500 damage)	Class A Misdemeanors	11-812(a)(2)	86
Harassment	Class A Misdemeanors	11-1311	90
Harassment of Law Enforcement Animal	Unclassified Misdemeanors	11-1250(a)	96
Hate Crime	Class A Misdemeanors	11-1304(b)(1)	83
Hate Crime (Underlying Offense: Class A			
Felony)	Class A Felony	11-1304(b)(4)	34
Hate Crime (Underlying Offense: Class A, B		11 100 1 (1) (0)	75
or C Misdemeanor)	Class G Felony (Violent)	11-1304(b)(2)	75
Hate Crime (Underlying Offense: Class B		11, 1004(h)(4)	20
Felony)	Class B Felony	11-1304(b)(4)	39
Hate Crime (Underlying Offense: Class C		11, 1004(h)(0)	20
Felony)	Class B Felony	11-1304(b)(3)	39
Hate Crime (Underlying offense: Class D		11 1204/6/20	40
Felony)	Class C Felony (Violent)	11-1304(b)(3)	48
Hate Crime (Underlying Offense: Class E	Class D Eclapy (Victor)	11 1204/61/21	
Felony)	Class D Felony (Violent)	11-1304(b)(3)	55
Hate Crime (Underlying Offense: Class F	Class E Felony (Violent)	11-1304(b)(3)	61

CRIME	CLASS	STATUE	PAGE
Felony)		001	
Hate Crime (Underlying Offense: Class G			
Felony)	Class F Felony (Violent)	11-1304(b)(3)	68
Health Care Fraud	Class D Felony (NV)	11-913A(c)(2)	58
Health Care Fraud	Class G Felony (Nonviolent)	11-913A	78
Health Care Fraud (Intended loss >	Class B Felony	11-913A(c)(3)	45
\$100,000/ Provider	3		
Hinder Prosecution of a Felony		11-1244(b)	78
Hinder Prosecution of Misdemeanor	Class A Misdemeanors	11-1244	90
Hoax Device	Class F Felony (Nonviolent)	11-622	70
Home Improvement Fraud	Class G Felony (Nonviolent)	11-916	78
Home Improvement Fraud (< \$1500)	Class A Misdemeanors	11-916	86
Home Invasion	Class B Felony	11-826A	39
Hypodermic syringe or needle; delivering or possessing; disposal	Class G Felony (Nonviolent)	16-4762(d)	79
Identity Theft	Class D Felony (NV)	11-854	58
Illegal Possession and Delivery of Noncontrolled Prescription Drugs	Class F Felony (Violent)	16-4761(d)	68
Illegal Possession and Delivery of Noncontrolled Prescription Drugs	Class G Felony (Violent)	16-4761(c)	75
Illegal Possession and Delivery of Noncontrolled Prescription Drugs	Class B Misdemeanors	16-4761(b)	94
Illegal Possession and Delivery of Noncontrolled Prescription Drugs	Unclassified Misdemeanors	16-4761(a)	97
Improper Influence	Class A Misdemeanors	11-1207	90
Improper Labeling (<100) (7/10/06)	Unclassified Misdemeanors	11-922	96
Improper Labeling (1st Offense 100 >) (7/10/06)		11-922(b)	78
Improper Labeling (PriorConv 100>) (7/10/06)	Class F Felony (Nonviolent)	11-922(c)	71
Improper Request/Dissemination Criminal History Check	Class A Misdemeanors	11-1448A(e)	91
Incest	Class A Misdemeanors	11-766	83
Indecent Exposure 1st Degree	Class A Misdemeanors	11-765	89
Indecent Exposure 2nd Degree	Unclassified Misdemeanors	11-764	96
Insurance Fraud	Class G Felony (Nonviolent)	11-913	78
Interest in Keeping Gambling Device	Class A Misdemeanors	11-1406	91
Interfere w/Custody	Class G Felony (Nonviolent)	11-785	77
Interfere with Child Witness	Class E Felony (Nonviolent)	11-1263A(a)(2)	64
Interfere with Child Witness	Class E Felony (Nonviolent)	11- 1263A(a)(3)(b)	64
Interfere with Child Witness	Class E Felony (Nonviolent)	11- 1263A(a)(4)(b)	64
Interfere with Child Witness	Class F Felony (Nonviolent)	11-1263A(a)(1)	71
Interfere with Child Witness	Class F Felony (Nonviolent)	11- 1263A(a)(3)(a)	71
Interfere with Child Witness	Class F Felony (Nonviolent)	11- 1263A(a)(4)(a)	71
Interfere with Child Witness	Class G Felony (Nonviolent)	11-1263A(a)(1)	78
Interfere with Child Witness	Class G Felony (Nonviolent)	11- 1263A(a)(3)(a)	79

CRIME	CLASS	STATUE	PAGE
Interfere with Child Witness	Class G Felony (Nonviolent)	11-	79
		1263A(a)(4)(a)	19
Interference Levied.Upon Property	Class A Misdemeanors	11-893	90
Interference with Custody	Class A Misdemeanors	11-785	89
Interrupt. Computer Serv (\$5,000-\$9,999)	Class E Felony (Nonviolent)		63
Interrupt. Computer Services (\$500-\$999)	Class G Felony (Nonviolent)	11-934	78
Interruption Computer Services (<\$500)	Class A Misdemeanors	11-934	87
Interruption Computer Services (>\$10,000)	Class D Felony (NV)	11-934	58
Intimidation of a Witness &/or Victim	Class ED Felony (NV)	11-3532	58
Issue Bad Check (\$1500+)	Class G Felony (Nonviolent)		78
Issue Bad Check (< \$1500)	Class A Misdemeanors	11-900	86
Issue False Certificate	Class G Felony (Nonviolent)		78
Issuing Abortion Articles	Class B Misdemeanors	11-653	94
Kickback Schemes	Class E Felony (Nonviolent)	31-1005	64
Kidnapping 1st Degree	Class B Felony	11-783A	39
Kidnapping 2nd Degree	Class C Felony (Violent)	11-783	47
Larceny of Livestock	Class G Felony (Nonviolent)	11-859	78
Leaving the Scene of an Accident	Title 21 & Title 23 Offenses	21-4201 et seq.	100
Leaving the Scene of an Accident	Title 21 and Title 23	21-4202	100
(Injury/Death)	Offenses	21-4202	100
Lewdness	Class B Misdemeanors	11-1341	94
Loitering	Violations	11-1321	99
Loitering on State.Supported School Prop.	Violations	11-1320	99
Lottery Sales to persons prohibited	Unclassified Misdemeanors	29-4810	97
Maintaining a Drug Property	Class F Felony (Nonviolent)	16-4760	71
Maintaining an Obstruction	Violations	11-1428	99
Maintaining an Obstruction (Prior Conviction w/in 2 yrs)	Class A Misdemeanors	11-1428	91
Make False Written Statement	Class A Misdemeanors	11-1233	90
Malicious Interference with Emergency			
Communications	Class B Misdemeanors	11-1313	94
Manslaughter	Class B Felony	11-632	38
Menacing	Unclassified Misdemeanors	11-602	96
Mfr/Transfer/Use/Poss/Transport			
Bomb/Incendiary Device/ Molotov Cocktail/Explosive	Class D Felony (Violent)	11-1338	55
Misapplication of Property (\$1500+)	Class G Felony (Nonviolent)	11-848	77
Misapplication of Property (< \$1500)	Class A Misdemeanors	11-848	86
Misc. Drug Crimes, Solic. of Multiple	Class B Felony (Non		
Prescrip. Drug Crimes	violent)	16-4757(c)(2)	45
Miscellaneous Drug Crimes	Class F Felony (Nonviolent)	16-4757(b)	71
Miscellaneous Drug Crimes, Solicitation of	Class C Felony (Non-		
Multiple Prescription Drug Crimes	Violent)	16-4757(c)(1)	48
Misconduct by Juror	Class A Misdemeanors	11-1267	90
Misrepresentation as to Operation of Provider/Facility	Class E Felony (Nonviolent)	31-1004(4)	64
Misrepresentation to Qualify as Provide	Class E Felony (Nonviolent)	31-1004(3)	64
Misuse Computer System Information	Class E Felony (Nonviolent)	11-935	63
(\$5,000-\$9,999)	<b>.</b>	11.025	70
Misuse Computer System Information	Class G Felony (Nonviolent)	11-935	78

CRIME	CLASS	STATUE	PAGE
(\$500-\$999)			
Misuse Computer System Information			
(<\$500)	Class A Misdemeanors	11-935	87
Misuse Computer Syst. Inform. (>\$10,000)	Class D Felony (NV)	11-935	58
Misuse of Prisoner Mail	Class A Misdemeanors	11-1260	90
Misuse of Prisoner Mail (Prior Conviction)	Class G Felony (Nonviolent)		78
Money Laundering	Class D Felony (NV)	11-951	58
Money Laundering	Class G Felony (Nonviolent)		78
Murder 2nd Degree	Class A Felony	11-635	34
Murder1st Degree	Class A Felony	11-636	34
Neglect of Duty	Class F Felony (NV)	16-107(e)3	71
New Home Construction Fraud (\$1,500-		10-107(8)3	/1
•	Class G Felony (Nonviolent)	11-917(d)(1)	78
\$49,999) New Home Construction Fraud (<\$1,500)	Class A Misdemeanors	11-917(d)	86
New Home Construction Fraud (<\$1,500)		11-917(u)	00
\$100,000)	Class B Felony	11-917(d)(3)	45
New Home Construction Fraud Loss =	Class D Felony		
\$50,000-\$99,999	(Nonviolent)	11-917(d)(2)	58
Obscene Literature Harmful to Minors	Class A Misdemeanors	11-1365	91
Obscenity	Class G Felony (Nonviolent)		79
Obstruct Rabies Control during Emergency	Class E Felony (Nonviolent)	11-1248	64
Obstructing Control of Rabies	Class B Misdemeanors	11-1248	94
Obstructing Firefighting	Class A Misdemeanors	11-1243	90
Obstructing Ingress/Egress at Public Bldg.	Unclassified Misdemeanors	11-1324	96
Obstructing Public Passages	Violations	11-1323	99
Offensive Touching	Class A Misdemeanors	11-601(a)(1)	89
Offensive Touching	Unclassified Misdemeanors	11-601	96
Offensive Touching	Class A Misdemeanors	11-601(a)(2)	91
Offering False Instrument for Filing	Class A Misdemeanors	11-877	90
Official Misconduct	Class A Misdemeanors	11-1211	90
Operate or Attempt to Operate a	Class C Feleny (Nervislant)	1/ 47/04	F 2
Clandestine Laboratory	Class C Felony (Nonviolent)	16-4760A	52
Operation of a Vessel or Boat While Under	Title 21 and Title 23		100
the Influence	Offenses	23-2302	100
Operation of Vehicle Causing Death	Tit. 21 and Tit. 23 Offenses	21-4176A	100
Operation of vehicles on approach of			74
authorized emergency vehicles	Class F Felony (Nonviolent)	21-4134(d)	71
Out-of-State Liquor Agent Registration	Violations	11-1316	99
Patronizing a Prostitute	Unclassified Misdemeanors	11-1343	96
Patronizing a victim of sexual servitude			
(adult victim)	Class D Felony (Violent)	11-787(b)(4)	54
Patronizing a victim of sexual servitude			
(victim is a minor)	Class C Felony (Violent)	11-787(b)(4)	47
Penalties for wagering by excluded persons	Class A Misdemeanors	29-4836(a)(b)	91
Perjury 1st Degree	Class D Felony (NV)	11-1223	58
Perjury 2nd Degree	Class F Felony (Nonviolent)	11-1222	71
Perjury 3rd Degree	Class A Misdemeanors	11-1221	90
Permitting Prostitution	Class B Misdemeanors	11-1355	
			94
Personal History Disclosure	Class G Felony (NV)	31-311(c)	79
Poss. Weapon in Safe School/Recreation	Class B Misdemeanors	11-1457(j)(2)	94
Zone (Underlying offense is unclassified			

CRIME	CLASS	STATUE	PAGE
misd.)			
Poss. Weapon in Safe School/Recreation	Class D Felony		50
Zone (Underlying Offense: Class E Fel.)	(Nonviolent)	11-1457(j)(3)	58
Poss. Weapon in Safe School/Recreation	Class D Felony		50
Zone (Underlying Offense: Class D Fel.)	(Nonviolent)	11-4757(j)(4)	58
Possession Weapon in Safe			
School/Recreation Zone (Underlying	Class A Misdemeanors	11-1457(j)(1)	90
Offense: Class B Misdemeanor)		0, ( )	
Possession Weapon in Safe			
School/Recreation Zone (Underlying	Class E Felony (Nonviolent)	11-1457(j)(3)	63
Offense: Class F Felony)			
Possession Weapon in Safe			
School/Recreation Zone (Underlying	Class F Felony (Nonviolent)	11-1457(j)(3)	70
Offense: Class G Felony)	_	_	
Poss/Purchase Deadly Weapon (Other than		11-	
Destructive Weapon/Firearm/Ammunition)	Class F Felony (Nonviolent)	1448(f)(1)(a)(5)	71
by Prohibited Person			
Poss/Purchase Firearm/Ammunition by	Class D Felony	11-1448(c)(1 of	58
Prohibited Person	(Nonviolent)	a1-a8)	00
Poss/Purchase Firearm/Ammunition by	Class D Felony		
Prohibited Person	(Nonviolent)	11-1448(a)(5)	58
Poss/Purchase Firearm/Destructive Weapon			
by Prohibited Person w/Prior Conviction of	Class B Felony	11-1448(e)(2)	39
Violent Felony			
Poss/Purchase Firearm/Destructive Weapon			
by Prohibited Person w/Prior Conviction of	Class C Felony (Violent)	11-1448(e)(1)	48
Violent Felony			
Possess Burglary Tools	Class F Felony (Nonviolent)	11-828	70
Possess Destructive Weapon	Class E Felony (Violent)	11-1444	61
Possess Forgery Devices	Class G Felony (Nonviolent)	11-862	78
Possess Shoplifters Tools	Class F Felony (Nonviolent)	11-860	70
Possession Gambling Device	Class A Misdemeanors	11-1405	91
Poss. of a blank prescription form or pad	Class G Felony (Nonviolent)	11-841C(a)	77
Poss. of a Firearm with Altered Serial	Class D Felony (Violent)	11-1459	55
Number	<b>,</b>		
Possession of Child Pornography	Class F Felony (Nonviolent)	11-1111	71
Possession of Controlled Substances or	Class A Misdemeanors	16-4763(a)	93
Counterfeit Controlled Substances		10-4705(a)	/3
Possession of Controlled Substances or	Class B Misdemeanors	16-4763(b)	94
Counterfeit Controlled Substances		10-4703(b)	74
Possession of Deadly Weapon during	Class B Felony	11-1447	39
Commission of a Felony			57
Possession of Firearm during Commission of	Class B Felony	11-1447A	39
a Felony	3		
Possession of Graffiti Implements	Class B Misdemeanors	11-812(b)(1)	94
Possession of Marijuana until 12/18/15	Class B Misdemeanors	16-4764(a)	94
Possess. Marijuana <18 (Aggrav. Factor)	Class B Misd.	16-4764(a)	94
Possess Marijuana >18 other than personal	Class B Misd.	16 1761(2)	94
use quantity		16-4764(a)	94
Possession of Marijuana (until 12/18/15	Unclassified Misdemeanors	16-4764(b)	97

CRIME	CLASS	STATUE	PAGE
Possession of Marijuana (effect. 12/18/15)	Unclassified Misdemeanor	16-4764 (b)	97
Possession of Marijuana (effect. 12/18/15)	Unclassified Misdemeanor	16-4764(c)	97
Profiteering	Class A Misdemeanors	11-1212	90
Prohibition on employment of persons or			
service agencies w/o a license	Class A Misdemeanors	29-4831(a)(b)	91
Promote Prison Contraband	Class A Misdemeanors	11-1256	90
Promoting Prison Contraband	Class F Felony (Violent)	11-1256	68
Promoting Prostitution 1st Degree	Class C Felony (Violent)	11-1353	48
Promoting Prostitution 2nd Degree	Class E Felony (Nonviolent)	11-1352	64
Promoting Prostitution 3rd Degree	Class F Felony (Nonviolent)	11-1351	71
Promoting Sexual Solicitation of a Child	Class B Felony (Violent)	11-1112B(g)	39
Promoting Sexual Solicitation of a Child	Class C Felony (Violent)	11-1112B(f)	48
Promoting Suicide	Class F Felony (Violent)	11-645	68
Prostitution	Class B Misdemeanors	11-1342	94
Provide False Child Abuser Information	Class G Felony (Nonviolent)	11-8562(b)	79
Providing Obscenity to Minor	Class E Felony (Nonviolent)	11-1361	64
Providing Premises for Gambling	Unclassified Misdemeanors	11-1404	96
Providing Premises for Gambling (Prior Conviction w/in 5 yrs)	Class A Misdemeanors	11-1404	91
Public Intoxication	Unclassified Misdemeanors	11-1315	96
Public Intoxication	Violations	11-1315	99
Public posting or displaying program participant's actual address, telephone or image on the internet	Class D Felony (NV)	11-9616A	58
Publicly posting or displaying program participant's actual address, telephone number or image on the internet	Class G Felony (NV)	11-9616A	79
Publicly posting or displaying program participant's actual address, telephone number or image on the internet	Class A Misdemeanor (NV)	11-9616A	87
Racketeering	Class B Felony	11-1503	39
Rape 1st Degree	Class A Felony	11-773	34
Rape 2nd Degree (7/26/06)	Class B Felony	11-772	38
Rape 3rd Degree	Class B Felony	11-771, 11- 771(a)(2)	38
Rape 4th Degree	Class C Felony (Violent)	11-770	47
Receive Stolen Property (\$1500+/2 prior convictions)	Class G Felony (Nonviolent)	11-851	77
Receive Unlawful Gratuity (value < \$1,000)	Class A Misdemeanors	11-1206	90
Receiving a Bribe	Class A Misdemeanors	11-882	90
Receiving a Bribe by a Juror	Class E Felony (Nonviolent)	11-1265	64
Receiving a Bribe by a Public Servant	Class E Felony (Nonviolent)	11-1203	63
Receiving a Bribe by a Witness	Class E Felony (Nonviolent)	11-1262	64
Receiving Stolen Firearm	Class F Felony (Nonviolent)	11-1450	71
Receiving Stolen Property (< \$1500)	Class A Misdemeanors	11-851	86
Receiving Unlawful Gratuity (value > \$1,000)	Class G Felony (Nonviolent)	11-1206	78
Reckless Burning (\$1500+ Damage)	Class G Felony (Nonviolent)	11-804	77
Reckless Burning/Exploding (< \$1500)	Class A Misdemeanors	11-804	86
Reckless Driving	Title 21 & Title 23 Offenses	21-4175	100

CRIME	CLASS	STATUE	PAGE
Reckless Endangering 1st Degree	Class E Felony (Violent)	11-604	61
Reckless Endangering 2nd Degree	Class A Misdemeanors	11-603	83
Refusal to Permit Photo or Fingerprints	Class A Misdemeanors	11-8522	91
Refusal/Neglect/Hinder Report	Class A Misdemeanors	11-8523(a)	91
Refusing to Aid Police Officer	Class B Misdemeanors	11-1241	94
Registrant Crimes	Class F Felony (Nonviolent)	16- 4759(b)(1,2,4)	71
Registrant Crimes	Class A Misdemeanors	16-4759(b)	93
Removing Firearm from a L E Officer	Class C Felony (Nonviolent)	11-1458	52
Report of Loss, Theft of Firearm	Violations	11-1461	99
Report of Loss, Theft of Firearm (3rd or subsequent offense)	Class G Felony (Nonviolent)		79
Resist Arrest Without Violence	Class A Misdemeanors	11-1257(b)	90
Resisting Arrest With Violence (6/27/06)	Class G Felony (violent)	11-1257(a)	75
Riot	Class F Felony (Violent)	11-1302	68
Robbery 1st Degree	Class B Felony	11-832	39
Robbery 2nd Degree		11-831	61
	Class E Felony (Violent)		
Sale Pseudoephedrine/Ephedrine (6/14/05)	Class A Misdemeanors	16-4740	93
Sale Transferred Recorded Sound	Class A Misdemeanors	11-921	90
Self Abortion	Class A Misdemeanors	11-652	89
Selling Stolen Property (<\$1000)	Class A Misdemeanors	11-852A	86
Selling Stolen Property; class G felony	Class G Felony (Nonviolent)	11-852A	77
Sex Offender (Fail to Comply with Registration Mandates)	Class G Felony (Nonviolent)	11-4121(t)	79
Sex Offender (Fail to Register)	Class G Felony (Nonviolent)	11-4120(k)	79
Sex Offender (Loiter w/in 500 ft School)	Class F Felony (Nonviolent)	11-1112(a)(2)	71
Sex Offender (Reside w/in 500 ft of School)	Class G Felony (Nonviolent)	11-1112(a)(1)	78
Sex Offender Unlawful Sexual Conduct Against a Child	Class A Felony	11-777A(e)(5)	34
Sex Offender Unlawful Sexual Conduct Against a Child	Class B Felony	11- 777A(e)(2),(e)(3 )	39
Sex Offender Unlawful Sexual Conduct Against a Child	Class C Felony (Violent)	11-777A(e)(2)	47
Sex Offender Unlawful Sexual Conduct Against a Child	Class D Felony (Violent)	11-777A(e)(2)	54
Sex Offender Unlawful Sexual Conduct Against a Child	Class E Felony (Violent)	11-777A(e)(2)	61
Sex Offender Unlawful Sexual Conduct Against a Child	Class F Felony (Violent)	11-777A(e)(2)	68
Sex Offender Unlawful Sexual Conduct Against a Child	Class G Felony (Violent)	11-777A(e)(2)	75
Sex Offender Unlawful Sexual Conduct Against a Child	Class A Misdemeanors	11-777A(e)(1)	83
Sexual Abuse of a Child by a person in a position of trust authority or supervision in the first degree	Class B Felony	11-778(2)	39
Sexual Abuse of a Child by a person in a position of trust, authority or supervision in the 1st degree	Class B Felony	11-778(3)	39

CRIME	CLASS	STATUE	PAGE
		STITUE	, , 102
Sexual Abuse of a Child by a person in a			
position of trust, authority or supervision in		44 770(0(4)	47
the first 16-4760	Class C Felony (Violent)	11-778(f)(4)	47
Sexual Abuse of a Child by a person in a			
position of trust, authority or supervision in	Class D Felony (Violent)	11-778(5)	54
the first degree:	-		
Sexual Abuse of a Child by a person in a			
position of trust, authority or supervision in	Class G Felony (Violent)	11-778A(3)	75
the second degree			
Sexual Abuse of a Child by a person in a			
position of trust, authority or supervision in	Class D Felony (Violent)	11-778A(1)	54
the second degree:			
Sexual Abuse of a Child by a person in a			
position of trust, authority or supervision in	Class F Felony (Violent)	11-778A(2)	68
the second degree;			
Sex. Abuse of a Child by a person in a pos.	Class A Felony	11-778(1)	34
of trust, autho., or supervision in 1 <sup>st</sup> . degree		. ,	
Sexual Exploitation of Child	Class B Felony	11-1108	39
Sexual Extortion	Class E Felony (Violent)	11-774	61
Sexual Harassment	Unclassified Misdemeanors	11-763	96
Sexual Relations in Detention Facility	Class G Felony (Nonviolent)	11-1259	78
Sexual servitude	Class C Felony (Violent)	11-787(b) (3)	47
Sexual servitude (victim is a minor)	Class B Felony	11-787(b)(3)	39
Sexual Solicitation of a Child	Class B Felony	11-1112A (h)	39
Sexual Solicitation of a Child	Class C Felony (Violent)	11-1112A	48
Shoplift (\$1500+)	Class G Felony (Nonviolent)	11-840	77
Shoplifting (<\$1500)	Class A Misdemeanors	11-840	86
Smoking on Bus or Trolley	Violations	11-1330	99
Stalking	Class G Felony (Violent)	11-1312(a)	75
Stalking	Class F Felony (Violent)	11-1312	68
Stalking w/ Deadly Weapon	Class C Felony (Violent)	11-1312	48
Standards of Licensing	Class A Misdemeanors	29-	91
		4830(f)(1)(f)(2)	(1
Strangulation	Class E Felony (Violent)	11-607(a)(1)	61
Strangulation	Class D Felony (Violent)	11-607(a)(3)	54
Substances Releasing Vapors or Fumes	Unclassified Misdemeanors	11-627	96
Tamper w/ Public Record 1st Degree	Class E Felony (Nonviolent)	11-876	63
Tamper w/Biological Sample	Class D Felony (NV)	29-4713(d)	59
Tamper with a Witness	Class E Felony (Nonviolent)	11-1263	64
Tampering w/ Public Records 2nd Degree	Class A Misdemeanors	11-873	90
Tampering w/Juror	Class A Misdemeanors	11-1266	90
Tampering with Physical Evidence	Class G Felony (Nonviolent)	11-1269	79
Terroristic Threat	Class A Misd. (NV)	11-621(a)(1)	83
Terroristic Threat	Class A Misd. (NV)	11-621(a)(2)	83
Terroristic Threat	Class E Felony (Nonviolent)	11-621(a)(2)a	63
Terroristic Threat	Class F Felony (Nonviolent)	11-621(a)(3)	70
Terroristic Threat	Class G Felony (Nonviolent)	11-621(a)(2)b	77

CRIME	CLASS	STATUE	PAGE
Terroristic Threat (daycare, nursery,			
preschool, kindergarten, elem. Second. Or	Class F Felony (NV)	11-621 (a)(2)b	70
voc. School, long term care facility in which		11-021 (d)(2)D	70
elderly persons are housed)			
Terroristic Threat	Class G Felony (NV)	11-621(a)(2)c	77
Terroristic Threat (daycare, nursery,			
preschool, kindergarten, elem. second, or			70
voc. school, long term care facility in which	Class F Felony (NV)	11-621(a)(2)c	70
elderly persons are housed			
Terroristic Threat (Vt= 62+ y.o.a.)	Class G Felony (Nonviolent)	11-621(a)(1)	77
Terroristic Threat to Public			
Officials/Servants	Class G Felony (Nonviolent)	11-1240	78
Theft \$1500+ and			
v = 62 + /impaired/disabled/veteran	Class F Felony (Nonviolent)	11-841(c)(2)	70
	Class C Feleny (Nenvielent)	11-841	
Theft \$1500+	Class G Felony (Nonviolent)		77
Theft (\$50,000-\$99,999)	Class D Felony (NV)	11-841(c)(3)(a)	58
Theft (<\$1500)	Class A Misdemeanors	11-841	86
Theft (> \$100,000)	Class B Felony	11-841(3)(b)	45
Theft Computer Services (\$5,000-\$9,999)	Class E Felony (Nonviolent)	11-933	63
Theft Computer Services (\$500-\$999)	Class G Felony (Nonviolent)	11-933	78
Theft Computer Services (<\$500)	Class A Misdemeanors	11-933	87
Theft Computer Services (>\$10,000)	Class D Felony (NV)	11-933	58
Theft of firearm	Class F Felony (Nonviolent)	11-1451	71
Theft of Property from a Cemetery	Class A Misdemeanors	11-813	86
Theft of Rental Property (\$1500+)	Class G Felony (Nonviolent)	11-849	77
Theft of Rental Property (< \$1500)	Class A Misdemeanors	11-849	86
Theft: Motor Vehicle (6/20/06)	Class G Felony (Nonviolent)	11-841A	77
Theft: Organized Retail Crime (V<62, not			
infirm, value < \$1,000)	Class A Misdemeanors	11-841B	86
Theft: Organized Retail Crime; class A misd;			
class E felony	Class E Felony (Nonviolent)	11-841B(c)	63
Theft: Theft of a blank prescription form or			
	Class F Felony (Nonviolent)	11-841C(b)	70
pad Threat/Coerce/Intimidate to W/D Medical			
	Unclassified Misdemeanors	16-2513(a)	97
Treatment		11.010	
Ticket Scalping	Class A Misdemeanors	11-918	90
Ticket Scalping	Class B Misdemeanors	11-918	94
Ticket Scalping (Prior Conviction)	Class A Misdemeanors	11-918	86
		11-1116-11120	
Tobacco Sale Violations	Violations	(penalties 11-	99
		1121)	
Tobacco Sale Violation: Dist by Vend Mach	Violations	11-1119	99
Tobacco Sale Violations: Dist	Violations	11-1118	99
Samples/Coupons to u/18	VIOIATIONS	11-1110	99
Tobacco Sale Violations: Fail to Post Notice	Violations	11 1117	00
to u/18	Violations	11-1117	99
Tobacco Sale Violations: Sell from Unlawful	Violations	11 1100	
Package	Violations	11-1120	99
Tobacco Sale Violations: Sell/Distribute to			
	Violations	11-1116	99

CRIME	CLASS	STATUE	PAGE
Tongue Splitting (Prior conviction)	Class G Felony (Nonviolent)	11-1114A(c)	78
Tongue Splitting 1st Degree	Class A Misdemeanors	11-1114A(a)	90
Tongue Splitting 2nd Degree	Class B Misdemeanors	11-1114A(b)	94
Trade in Dog/Cat By-Products (Flesh)	Class A Misdemeanors	11-1325A(b)	90
Trade in Dog/Cat Byproducts (Fur/Hair)	Class B Misdemeanors	11-1325A(a)	94
Trademark Counterfeiting	Class A Misdemeanors	11-926(d)(1)	86
Trademark Counterfeiting (2+Conv/Mfr/>1,000/>\$10,000+) (7/7/05)	Class E Felony (Nonviolent)	11-926(d)(3)	63
Trademark Counterfeiting(PriorConv/100- 999/\$2,000-\$9,999) (7/7/05)	Class G Felony (Nonviolent)	11-926(d)(2)	78
Trading in Human Remains/Funerary Objects	Class B Misdemeanors	11-1333	94
Traffick in Food Stamps (Firearms/Ammunition/Cont. Substances)	Class B Felony	31-610(a)(3)	45
Trafficking an individual Vict. Adult & no Agg. Circ.	Class C Felony (Violent)	11-787(b) (1)	47
Trafficking an Individual Forced Labor (Vict. Adult, & no Agg. Circ.	Class C Felony (V)	11-787(b)(2)	47
Trafficking an Individual Sexual Servitude (Vict. Adult & no Agg. Circ.)	Class C Felony (V)	11-787(b)(3)	47
Trafficking an individual (Vict. <18 or Agg. Circ.	Class B Felony (V)	11-787(b)(1)	39
Trafficking an Individual Forced Labor (Vict. <18 or Agg. Circ.)	Class B Felony (V)	11-787(b)(2)	39
Trafficking an Individual Sexual Servitude (Vict. < 18, or Agg. Circ.)	Class B Felony (V)	11-787(b)(3)	39
Trafficking an Individual Vict. <18, & Agg. Circ.	Class A Felony (V)	11-787(b)(1)	34
Trafficking an Individual Forced Labor Vict. <18 & Agg. Circ.	Class A Felony (V)	11-787(b)(2)	34
Trafficking an Individual Sexual Servitude Vict. <18 & Agg. Circ.	Class A Felony (V)	11-787(b)(3)	34
Transfer of Recorded Sounds	Class G Felony (Nonviolent)	11-920	78
Transfer/Alter/Possess Food Stamps (\$500>)	Class E Felony (Nonviolent)	31-610(a)(1)	64
Transfer/Alter/Possess Food Stamps (<\$500)	Class A Misdemeanors	31-610(a)(2)	91
Trespass with Intent to Peep	Class B Misdemeanors	11-820	94
Unauthorized Computer Access (\$5,000- \$9,999)	Class E Felony (Nonviolent)	11-932	63
Unauthorized Computer Access (\$500-\$999)	Class G Felony (Nonviolent)	11-932	78
Unauthorized Computer Access (<\$500)	Class A Misdemeanors	11-932	86
Unauthorized Computer Access (>\$10,000)	Class D Felony (NV)	11-932	58
Unauthor. Electronic Mail (\$5,000-\$9,999)	Class E Felony (Nonviolent)	11-937	63
Unauthorized Electronic Mail (\$500-\$999)	Class G Felony (Nonviolent)	11-937	78
Unauthorized Electronic Mail (<\$500)	Class A Misdemeanors	11-937	87
Unauthorized Electronic Mail (>\$10,000)	Class D Felony (	11-937	58
Unauthorized Use of a Vehicle	Class A Misdemeanors	11-853	86

CRIME	CLASS	STATUE	PAGE
Undetectable Knives	Class C. Eslamy (Namyislant)	11 144/4	70
(Mfr/Import/Sell/Possess) (6/30/06)	Class G Felony (Nonviolent)	11-1440A	79
Unlawful Administration Controlled	Class C Folony (Nonviolant)	11 404	77
Substance/Narcotic	Class G Felony (Nonviolent)	11-020	//
Unlawful Concealing Will	Class G Felony (Nonviolent)	11-908	78
Unlawful Conver. of Benefits (\$500-\$9,999)	Class E Felony (Nonviolent)	31-1006	64
Unlawful Conversion of Benefits (<\$500)	Class A Misdemeanors	31-1006	87
Unlawful Conversion of Benefits >\$10,000	Class C Felony (Nonviolent)	31-1006	52
Unlawful Dealing Child Pornography (2nd	Class B Felony	11-1110	39
offense of 11. 1109)	Class & Feloliy	11-1110	39
Unlawful dealing in a counterfeit or	Class E Felony (Nonviolent)	16-4758	64
purported controlled substance	<b>.</b>	10-4756	04
Unlawful Dealing with Child	Class B Misdemeanors	11-1106	94
Unlawful Dealing with Dangerous Weapon	Class E Felony (Violent)	11-1445(5)	61
Unlawful Dealing with Dangerous Weapon	Unclassified Misdemeanors	11-1445 (1-3)	96
Unlawful Dealing with Knuckles-Comb. Knife	Class B Misdemeanors	11-1452	94
Unlawful Dealing with Martial Arts Throwing		11 1/52	04
Star	Class B Misdemeanors	11-1453	94
Unlawful Dealing with Switchblade	Unclassified Misdemeanors	11-1446	95
Unlawful Dissemination Gambling Inform.	Class A Misdemeanors	11-1411	91
Unlawful Dissemination of DNA Database	Class A Misdamaanara	20.4712(k)(1)	01
Information	Class A Misdemeanors	29-4713(k)(1)	91
Unlawful Grand Jury Disclosure	Class B Misdemeanors	11-1273	94
Unlawful Imprisonment 1st Degree	Class G Felony (Violent)	11-782	75
Unlawful Imprisonment 2nd Degree	Class A Misdemeanors	11-781	89
Unlawful Operation Recording Device (Motion Picture) (6/28/06)	Class A Misdemeanors	11-858(a)(2)	86
Unlawful Operation Recording Device (Still Photograph) (6/28/06)	Class B Misdemeanors	11-858(a)(2)	94
Unlawful Printing Credit Card Receipt	Unclassified Misdemeanors	11-915A	96
Unlawful Sale Traffic Control Signal	Title 21 and Title 23		
Preemption Devices	Offenses	21-4112A(c)	100
Unlawful Sexual Contact 1st Degree	Class D Felony (Violent)	11-769	54
Unlawful Sexual Contact 2nd Degree	Class F Felony (Violent)	11-768	68
Unlawful Sexual Contact 3rd Degree	Class A Misdemeanors	11-767	83
Unlawful Telecommunication Device	Unclassified Misdemeanors	11-850(b)(1)	96
Unlawful Telecommunication Device (>2	Class D Felony		
prior convictions/ 50+ devices)	(Nonviolent)	11-850(b)(3)	58
Unlawful Telecommunication Device (Previous Conviction/ 10-49 Devices)	Class F Felony (Nonviolent)	11-850(b)(2)	70
Unlawful Use Credit Card	Class F Felony (Nonviolent)	11-903	71
Unlawful Use Credit Card	Class G Felony (Nonviolent)	11-903	78
Unlawful Use Credit Card (< \$1500)	Class A Misdemeanors	11-903	86
Unlawful Use of Consumer IdentInformation		11-914	96
Unlawful Use of Credit Card Information	Unclassified Misdemeanors	11-915	96
Unlawful Use Crim. Hist. Record Information		11-8523(d)	90 91
Unlawful Use Unmanned Aircraft System	Unclassified Misdemeanor	11-1480 (1 <sup>st</sup> off)	91
		11-1480 (1 01)	
Unlawful Use Unmanned Aircraft System	Class B Misdemeanor	subseq. Offense)	94
Unlawful Use Unmanned Aircraft System	Class A Misdemeanor	11-1480	91
		(physical injury	

CRIME	CLASS	STATUE	PAGE
		to person or	
		dam. to prop)	
Unlawfully Acting as a Bail Bond Agent	Class F Felony (Nonviolent)	18-4354	71
Unlawfully Administer Drugs	Class A Misdemeanors	11-625	89
Unlawfully Dealing with a Dang. Weapon	Class G Felony (Violent)	11-1445(4)	75
Use Animal to Avoid Capture	Class G Felony (Nonviolent)	11-1257A	78
Use of Animal to Avoid Capture	Class A Misdemeanors	11-1257A	90
Use of Illeg Sales Receipt/UPC Lab.(<1500)	Class A Misdemeanors	11-840A	86
Use of Illegitimate Sales Receipt/UPC Label (15+ Receipts/ UPC Labels/ \$1,500+)	Class F Felony (Nonviolent)	11-840A	70
Vehicular Assault 1st Degree	Class F Felony (Violent)	11-629	68
Vehicular Assault 2nd Degree	Class A Misdemeanors	11-628A	89
Vehicular Assault 3rd Degree	Class B Misdemeanors	11-628	94
Vehicular Homicide 2nd Degree	Class D Felony (Violent)	11-630	54
Vehicular Homicide in the First Degree	Class C Felony (Violent)	11-630A	47
Video Lottery Cheat Device	Class G Felony (Nonviolent)	11- 1471(a)(b)(d)(e) (l)	79
Video Lottery Cheat Device	Class A Misdemeanors	11- 1471(a)(b)(d)(e) (l)	91
Video Lottery Cheat Device <1500	Class A Misdemeanors	11- 1471(c)(f)(g)(h)( i)(j)	91
Video Lottery Cheat Device >\$1500<\$50000	Class G Felony (Nonviolent)	11- 1471(c)(f)(g)(h)( i)(j)	79
Video Lottery Cheat Device >\$99,999.99	Class C Felony (Nonviolent)	11- 1471(c)(f)(g)(h)( i)(j)	52
Video Lottery Cheat Device >50,000<100,000	Class E Felony (Nonviolent)	11- 1471(c)(f)(g)(h)( i)(j)	64
Video Privacy Protection	Unclassified Misdemeanors	11-925	96
Violation of Fire Regulations	Unclass. Misdemeanors	16-6611(b)	97
Violation of Privacy	Class G Felony (Nonviolent)	11-1335(a)(6)- (7)	79
Violation of Privacy (6/30/06)	Class A Misdemeanors	11-1335(a)(1-5, 8)	91
Violations Concerning Vital Stat. Records	Unclassified Misdemeanors	16-3111(b)	97
Wearing Body Armor dur. Comm. of a Fel .	Class B Felony	11-1449	39
Wearing Disguise during Felony	Class E Felony (Nonviolent)	11-1239	64

## 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.<sup>1</sup> 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.<sup>2</sup>

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,

<sup>1</sup> Sept. 15<sup>th</sup>, 1987

<sup>&</sup>lt;sup>2</sup> Siple v State, 701 A.2d 79, 82-83 (Del. 1997)

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 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.<sup>3</sup>

<sup>&</sup>lt;sup>3</sup> Title 11, §4204 (l)

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.

# **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.<sup>4</sup> They are as follows:

Level I	<b>Unsupervised:</b> 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	<i>Field supervision</i> : 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	<i>Intensive supervision</i> : 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	<b>Quasi-Incarceration or Partial Confinement:</b> 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	<i>Incarceration or Full Confinement:</i> 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<sup>5</sup> is limited to 24 months.<sup>6</sup>
- 2. The period of probation for Title 16 felonies<sup>7</sup> is limited to 18 months.<sup>8</sup>\
- 3. The period of probation for all other offenses is limited to 1 year.<sup>9</sup>

#### 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

<sup>&</sup>lt;sup>4</sup> Master Plan for Effective Sentencing Reform in Delaware, SENTAC (May 1'1986).

<sup>&</sup>lt;sup>5</sup> Title 11, §4201(c)

<sup>&</sup>lt;sup>6</sup> Title 11, §4333 (b)(1)

<sup>&</sup>lt;sup>7</sup> Title 16 (Health and Safety)

<sup>&</sup>lt;sup>8</sup> Title 11, §4333 (b)(2)

<sup>&</sup>lt;sup>9</sup> Title 11, §4333 (b)(3)

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

#### C. Exceptions to the General Rules

- 1.) The above limits do not apply to sex offenses<sup>11</sup> if the sentencing court determines on the record that a longer period of probation will reduce the likelihood of re-offending.<sup>12</sup>
- 2.) The above limits shall not apply to Title 11 violent felonies<sup>13</sup> if the sentencing court determines on the record that public safety will be enhanced as a result.<sup>14</sup>
- 3.) Limits may be exceeded if additional time is necessary in order to collect restitution, but must be served at Accountability Level I.<sup>15</sup>
- 4.) Limits may be exceeded by up to 90 days if more substance abuse treatment time is needed.<sup>16</sup>
- 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(I) 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.<sup>18</sup>
- 7.) Portions of a sentence designated to be served at Accountability Level IV (guasiincarceration) 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

<sup>&</sup>lt;sup>10</sup> Title 11, §4333 (c)

<sup>&</sup>lt;sup>11</sup> 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 <sup>12</sup> Title 11, §4333 (d)(1)

<sup>&</sup>lt;sup>13</sup> Title 11, §4201 (c)

<sup>&</sup>lt;sup>14</sup> Title 11, §4333 (d)(2)

<sup>&</sup>lt;sup>15</sup> Title 11, §4333 (d)(3)

<sup>&</sup>lt;sup>16</sup> Title 11, §4333 (e)

<sup>&</sup>lt;sup>17</sup> Title 11, §4333 (f)

<sup>&</sup>lt;sup>18</sup> Title 11, §4333 (g)(1)

<sup>&</sup>lt;sup>19</sup> Title 11, §4333 (g)(2)

by the Department of Correction for sentence modification based upon good cause and an order is entered to that effect.  $^{20}$ 

#### 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.

<sup>20</sup> Title 11, §4333 (j)

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 and 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.
- 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:
  - 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.
- 33. Per the passage of House Bill 312 (147<sup>th</sup> Delaware General Assembly), which amends Title 11 Section 3901 (d) The court shall direct whether the sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently or consecutively with any other sentence of confinement on such criminal defendant. Notwithstanding the foregoing, no sentence of confinement of any criminal defendant by any court of this State shall be made to run concurrently criminal defendant.

Title 11 Section	Crime
803	Arson in the First Degree
826	Burglary in the first degree
825	Burglary in the second degree
826A	Home Invasion
636	Murder in the first degree
635	Murder in the second degree
632	Manslaughter
783	Kidnapping in the second degree
783A	Kidnapping in the first degree
606	Abuse of a pregnant female in the first degree
613	Assault in the First Degree
832	Robbery in the first degree
836	Carjacking in the first degree
772	Rape in the second degree
773	Rape in the first degree
777A	Sex offender unlawful sexual conduct against a child
778(1), (2), or (3)	Sexual Abuse of a Child by a Person of Trust, Authority, or
	Supervision in the First Degree
1254	Assault in a detention facility
1447A	Possession of a firearm during the commission of a felony
	Or for any sentence for Possession of a Firearm by a Person
	Prohibited where the criminal defendant was previously convicted of a Title 11 violent felony.
	(e) For purposes of this section, "Title 11 violent felony" means any Title 11 offense identified in Section 4201(c) of this title, or any offense set forth under the laws of the United States, any other

state or any territory of the United States which is the same as or equivalent to any of the offenses designated as a Title 11 offense identified in Section 4201(c) of this title.

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, Romie Griesmer, at (302) 577-8962 or <u>Rosemarie.Griesmer@state.de.us</u>.

# 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 Kenneth S. Clark Jr.
The Attorney General or the Attorney General's designee;	Honorable Matthew Denn
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 Perry Phelps
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	Timothy G. Willard Esq.
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	Vacant
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)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

# 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-	Sex Offender Unlawful Sexual Conduct Against a Child (see note)
777A(e)(5)	
11-778(1)	Sexual Abuse of a Child by a person in a position of trust, authority, or
	supervision in the first degree (see note)
11-	Trafficking of Persons and Involuntary Servitude (see note)
787(b)(1)	
11-	Trafficking of Persons and Involuntary Servitude (see note)
787(b)(2)	
11	Trafficking of Persons and Involuntary Servitude (see note)
787(b)(3)	
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)	

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 Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement
11-636	<ul> <li>Murder 1st Degree         <ul> <li>4209(a) Punished by death (presently ruled unconstitutional) or by imprisonment for the remainder of the person's natural life, without benefit of probation or parole, or any other reduction.</li> <li>If the defendant had not reached 18<sup>th</sup> birthday when the offense was committed, spec. attention should be given to 11 Del Code, sect. 4209A &amp; sect. 4217(f).</li> <li>Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement</li> </ul> </li> </ul>
11-773	<ul> <li>Rape 1st Degree</li> <li>(c) A person convicted under this section shall be sentenced to life without benefit of probation, parole or other reduction if: (1) vt&lt;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</li> <li>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 &lt;14 yoa, then the min. man. is 25 yrs at Lev V up to life (7/26/06)</li> <li>Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement</li> </ul>

11	Say Offender Unlawful Sayuel Conduct Against a Child
11- 777A(e)(5)	<ul> <li>Sex Offender Unlawful Sexual Conduct Against a Child</li> <li>(e)(5) 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.</li> <li>Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement</li> <li>11-4205A: (1) If prior conviction for Class A or B felonious sex offense (or similar from another state) or (2) If the victim is &lt; 14 years of age, then the min. man. Is 25 years at Level V up to life.</li> </ul>
11-778(f)(1)	Sexual Abuse of a Child by a person in a position of trust, authority, or
	<ul> <li>supervision in the first degree:</li> <li>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: <ul> <li>1. at the time of the offense the person inflicts serious physical injury on the victim; or</li> <li>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</li> <li>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</li> <li>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.</li> <li>Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement</li> <li>11-4205A: (1) If prior conviction for Class A or B felonious sex offense (or similar from another state) or (2) If the victim is &lt; 14 years of age, then the min. man. Is 25 years at Level V to life</li> </ul> </li> </ul>
11-787(b)(1)	Trafficking an individual. Victim is a minor AND Aggravating
11-787(D)(1)	<ul> <li>Trafficking an individual- Victim is a minor AND Aggravating Circumstance present.</li> <li>An aggravating circumstance during the commission of an offense under paragraph (b)(1)-(3) occurs when: <ul> <li>a. the person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless;, or</li> <li>b. the person used or threatened use of force against, abduction of, serious harm to, or a physical restraint of the victim</li> </ul> </li> </ul>

11-787(b)(2)	Forced Labor-Victim is a minor AND Aggravating Circumstance
	present.
	Aggravating Circumstance:
	An aggravating circumstance during the commission of an offense under
	paragraph (b)(1)-(3) occurs when:
	• a. the person recruited, enticed, or obtained the victim from a shelter
	designed to serve victims of human trafficking, victims of domestic
	violence, victims of sexual assault, runaway youth, foster children, or
	the homeless, or
	<ul> <li>b. the person used or threatened use of force against, abduction of,</li> </ul>
	serious harm to, or physical restraint of the victim
11-787(b)(3)	Sexual Servitude-Victim is a minor AND Aggravating Circumstance
	present.
	Aggravating Circumstance:
	An aggravating circumstance during the commission of an offense under
	paragraph (b)(1)-(3) occurs when:
	<ul> <li>a. the person recruited, enticed, or obtained the victim from a shelter</li> </ul>
	designed to serve victims of human trafficking, victims of sexual assault,
	runaway youth, foster children, or the homeless, or
	<ul> <li>b. the person used or threatened use of force against, abduction of</li> </ul>
	serious harm to, or physical restraint of the victim
11-	Hate Crime (Underlying Offense: Class A Felony)
1304(b)(4)	If the underlying offense is a Class A Felony, the minimum sentence of
	incarceration shall be doubled.

# Class B Felony (Violent)

## I.) (FBV)

Sentence Range (Vie	olent 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 @ Level V
Probation or Suspension of Sentence (11-4333)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

11-606	Abuse of Pregnant Female 1st Degree (see note)
	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
44.774	pattern
11-771	Rape 3rd Degree (see note) (7/26/06)
	<ul> <li>(a)(1) Intercourse: vt&lt;16 &amp; D&gt;10 yrs older/ vt&lt;14 &amp; D=19+ y.o.a.</li> <li>(a)(2) Penetration: (a) w/out consent; Comm.fel; SeriousInjury/ (b)</li> </ul>
	vt<16,Comm.Fel.; injury
	(a)(3) Intercourse or penetration, V>16, V<18, defendant at least 4 yrs
	older than v 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 2 <sup>nd</sup> Degree (See note)
11-776	Continuous Sexual Abuse of Child (See note)

11-777	Dangerous Crime Against Child (see note) (7/26/06)
11-	Sex Offender Unlawful Sexual Conduct Against a Child (see note)
777A(e)(2),(e)(3)	
11-778(2)	Sexual Abuse of a Child by a person in a position of trust authority
	or supervision in the first degree (see note)
	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(3)	Sexual Abuse of a Child by a person in a position of trust, authority
	or supervision in the 1st degree (see note)
	As set forth in subsection (3) of this section is a class B felony.
11-783A	Kidnapping 1st Degree (see note)
	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
11-787(b)(1)	Trafficking an individual (victim is a minor) (see note)
11-787(b)(2)	Forced labor (victim is a minor) (see note)
11-787(b)(3)	Sexual servitude (victim is a minor) (see note)
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)(5) threatens death upon another while committing Robbery 2 <sup>nd</sup> .
	Deg.
11-836(a)(4-6)	Carjacking 1st Degree (see note)
	(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)
11-1112A (h)	Sexual Solicitation of a Child
11-1112B(g)	Promoting Sexual Solicitation of a Child
11-1253	Escape After Conviction (injury)(Special Esc. Cat. May Apply)(see
	note)
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)
11-3533	Aggravated Act of Intimidation (see note)
16-4752	Drug dealing – Aggravated possession
16-4752B	Drug Dealing (Resulting in Death)

#### Supplemental Notations For Class B Felony (Violent):

If crime is a secon	dary offense, use the non-aggravated presumptive	
	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.	
	require 18% surcharge for Victims' fund.	
	quire additional 15% surcharge for rehabilitation fund	
	e ordered for losses to victim. (Title 11, §4106)	
Costs of prosecuti	on may be ordered. (Title 11, §4204(i))	
44 (0)		
11-606	Abuse of a pregnant female in the first degree	
	Per Title 11 Section 3901 (d) No sentence of confinement may run concurrently with any	
	other sentence of confinement	
11-613	Assault 1st Degree. Reclassified in 6/2003	
	Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any	
	other sentence of confinement	
11-632	Manslaughter. Reclassified in 6/2003	
	Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any	
	other sentence of confinement	
11-771	Rape 3rd Degree	
11-771(a)(2)	• (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)	
	• Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with	
	any other sentence of confinement	
11-776	Continuous Sexual Abuse of a 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.	
11-777	Dangerous Crime Against Child	
	• (b) Mandatory Minimum for 2nd offense= life imprisonment.	

(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)	<ul> <li>Sex Offender Unlawful Sexual Conduct Against a Child</li> <li>(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.</li> <li>(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.</li> <li>Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement.</li> <li>11-4205A: (1) If prior conv. for Class A or B felonious sex offense (or similar from another state) or (2) if the victim is &lt;14 years of age, then the min. man.is 25 years at Level V up to life.</li> </ul>
11-778(2)	Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement 11-4205A: (1) If prior conviction for Class A or B felonious sex offense (or similar from another state) or (2) If the victim is <14 years of age, then the min. man. Is 25 years at Level V to life
11-778(3)	Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement

	T
11-783A	Kidnapping in the first degree
	Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any
	other sentence of confinement
11-787(b) (1)	Trafficking an individual -Victim is a minor OR Aggravating Circumstance
	present.
	Aggravating Circumstance:
	An aggravating circumstance during the commission of an offense under paragraph (b)(1)-
	(3) occurs when:
	• a. the person recruited, enticed, or obtained the victim from a shelter designed to
	serve victims of human trafficking, victims of domestic violence, victims of sexual
	assault, runaway youth, foster children, or the homeless; or
	<ul> <li>b. the person used or threatened use of force against, abduction of, serious harm</li> </ul>
	to or physical restraint of the victim
	If BOTH minor victim and aggravating circumstance, it is a Class A Felony
11-787(b) (2)	Forced labor Victim is a minor OR Aggravating Circumstance present.
	Aggravating Circumstance:
	An aggravating circumstance during the commission of an offense under paragraph (b)(1)-
	(3) occurs when:
	• the person recruited, enticed, or obtained the victim from a shelter designed to
	serve victims of human trafficking, victims of domestic violence, victims of sexual
	assault, runaway youth, foster children, or the homeless, or
	• b. the person used or threatened use of force against, abduction of, serious harm
	to, or physical restraint of the victim
	If BOTH minor victim and aggravating circumstance, it is a Class A Felony

11-787(b) (3)	<ul> <li>Sexual servitude Victim is a minor or Aggravating Circumstance present. Aggravating Circumstance: An aggravating circumstance during the commission of an offense under paragraph (b)(1)-(3) occurs when: <ul> <li>a. the person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless, or</li> <li>b. the person used or threatened use of force against, abduction of, serious harm to, or physical restraint of the victim</li> </ul> </li> <li>If BOTH minor victim and aggravating circumstance, it is a Class A Felony</li> </ul>
11-826(a)(2)	Burglary 1st Degree (Vt > 62 y.o.a.)         • (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         2 or more Prior Violent Felonies       60 m. to 120 m. @ Level V         2 or more Prior Violent Felonies       60 m. to 120 m. @ Level V         Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement of confinement
11-826A	<ul> <li>Home Invasion</li> <li>(b) (1)a. Minimum sentence of 6 years at Level V.</li> <li>(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. 1<sup>st</sup> or 2<sup>nd</sup> 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.</li> <li>(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: <ul> <li>a. 7 years at Level V; or</li> <li>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. 1<sup>st</sup> or 2<sup>nd</sup> degree or 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. 1<sup>st</sup> or 2<sup>nd</sup> degree or 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. 1<sup>st</sup> or 2<sup>nd</sup> degree or if the conviction is for an offense that was committed within 5 yrs of the date of a prev. conv. for home invasion or burg. 1<sup>st</sup> or 2<sup>nd</sup> 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. conv.</li> </ul></li></ul>

11-832	<ul> <li>Robbery 1st Degree</li> <li>(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)</li> <li>(c) Sentencing provisions equally applicable to Attempt.</li> <li>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.</li> <li>Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement</li> </ul>
11-836(a)(4-6)	Per Title 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement
11-1108	Sexual Exploitation of Child
	Any person convicted of a 2nd or subseq. Viol. shall be sentenced to life.(Title 11, §1110)
11-1253	Escape After Conviction
	Any sentence imposed shall not run concurrently with any other sentence.

11-1254(b)	<ul> <li><u>Assault in Detention Facility w/Serious Injury</u></li> <li>Minimum Mandatory Sentence: 3 yrs at Level V to begin immediately upon sentencing.</li> <li>Such sentence shall not be susp. nor shall the Defendant be eligible for parole or prob.</li> <li>Original sentence causing confinement temporarily suspended and continues only after the sentence for this conviction has been completed.</li> <li>Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with</li> </ul>
	any other sentence of confinement
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	<ul> <li>Possession of Deadly Weapon during Commission of a Felony</li> <li>(b) Any sentence imposed shall not be subject to suspension, good time, parole or probation.</li> <li>(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.</li> <li>(d) Juveniles over the age of 16 shall be tried as an adult, with reverse amenability available.</li> </ul>
11-1447A	<ul> <li>Possession of Firearm during Commission of a Felony</li> <li>(b) Minimum Mandatory Sentence= 3 years at Level V</li> <li>(c) If conviction represents 3rd felony conviction= minimum mandatory sentence= 5 years at Level V</li> <li>(d) Any sentence imposed shall not be subject to suspension, good time, parole or probation.</li> <li>(f) Juveniles &gt; 15 shall be tried as an adult, with reverse amenability available</li> <li>Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement</li> </ul>

11-1448(e)(2)	Poss/Purchase Firearm/Destructive Device by Prohibited Person w/Prior
	Conviction of Violent Felony
	<ul> <li>Mandatory Minimum Sentence-(e)(2): a. 4 years at Level V; or</li> </ul>
	<ul> <li>b. 6 years at Level V, if the person causes such injury or death within 10 years 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</li> </ul>
	• C. Ten years at Level V, if the person has been convicted on 2 or more separate occasions of any violent felony.
	<ul> <li>Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement</li> </ul>
11-1449	Wearing Body armor during Commission of a Felony
	<ul> <li>Minimum Mandatory Sentence= 3 years at Level V which shall not be subject to suspension, parole or probation</li> <li>Any sentence shall not run concurrently.</li> </ul>
	<ul> <li>The sentence imposed shall be served following the imposition of a sentence for the conviction of the felony offense</li> <li>Juveniles over the age of 16 shall be tried as an adult, with reverse amenability</li> </ul>
	available
11-1503	<ul> <li>Racketeering</li> <li>1504(a): Minimum fine= \$25,000</li> <li>1504(b): Mandatory forfeiture of property; Superior Ct shall authorize seizure by AG</li> <li>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.</li> </ul>
11-3533	Aggravated Act of Intimidation Per 11-3534 a person attempting to commit 11-3533 is guilty of the offense without regard to the success or failure of the attempt.
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)ai., of this title and there are two aggravating factors.

# Class B Felony (Nonviolent)

### II.) (FBNV)

Statutory Range	2 to 25 yrs (First 2 yrs @ Level V may not be suspended. 11-4205(d))
Presumptive	2-5 yrs @ Level 5
Sentence	
Probation or	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16
Suspension of	offenses; (b)(3) 1 year for all others.
Sentence	(c) Consecutive sentence shall not amount to more than limitations
(11-4333)	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(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	
16-4757(c)2	Miscellaneous Drug Crimes (see note)	
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	Up to 10 yrs at Level V	
trial/sentencing		
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 (Non-violent)

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 m			
	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	Up to 22 months @ Level V	
Responsibility		
Probation or	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses;	
Suspension of	(b)(3) 1 year for all others.	
Sentence	• (c) Consecutive sentence shall not amount to more than limitations herein.	
(11-4333)	<ul> <li>(d) Limitations shall not apply to: (1) sex offenses, (2) violent felonies if publi 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. Recor</li> </ul>	
	<ul> <li>must be noted accordingly.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>	

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 (see note)		
	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		
11-787(b)(1)	Trafficking an individual (No Aggravating Circumstance victim is an adult) and		
	<u>no Aggrav. Circ. (see note)</u>		
11-787(b)(2)	Forced Labor (No Aggravating Circumstance and victim is an adult) (see note)		
11-787(b)(3)	Sexual Servitude (No Aggravating Circumstance and victim is an adult		
	<u>(see note)</u>		
11-787(b)(4)	Patronizing a victim of sexual servitude (see note)		
11-803	Arson 1st Degree (see note)		
	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	Sexual Solicitation of a Child	
11-1112B(f)	Promoting Sexual Solicitation of a Child	
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	
11-1448(e)(1)	Poss/Purchase Firearm/Destructive Weapon by Prohibited Person w/Prior	
	Conviction of Violent Felony (see note)	
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

Sentences for Filor criminal filstory 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	
	<ul> <li>(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.</li> </ul>	
	• 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)	<ul> <li>Sex Offender Unlawful Sexual Conduct Against a Child</li> <li>(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.</li> </ul>
	<ul> <li>11-4205A: (1) If prior conviction for Class A or B felonious sex offense ( or similar from another state) or (2) If the victim is &lt;14 years of age, then the min. man. Is 25 years at Level V up to life.</li> </ul>
11-778(f)(4)	Sexual Abuse of a Child by a person in a position of trust, authority or
	supervision in the first 16-4760 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.
11-787(b) (1)	Trafficking an individual If either minor victim or aggravating circumstance, it is a Class B Felony Aggravating Circumstance:
	An aggravating circumstance during the commission of an offense under paragraph (b)(1)- (3) occurs when:
	<ul> <li>a. the person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless; or</li> <li>b. the person used or threatened use of force against, abduction of, serious harm to or physical restraint of the victim.</li> </ul>
11-787(b) (2)	to or physical restraint of the victim <u>Forced labor</u> If either minor victim or aggravating circumstance, it is a Class B Felony Aggravating Circumstance:
	<ul> <li>An aggravating circumstance during the commission of an offense under paragraph (b)(1)-(3) occurs when:</li> <li>the person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless, or</li> <li>b. the person used or threatened use of force against, abduction of, serious harm to, or physical restraint of the victim</li> </ul>
11-787(b) (3)	Sexual servitude (No Aggravating Circumstance and victim is an adult)
	If either minor victim or aggravating circumstance, it is a Class B Felony
	Aggravating Circumstance: An aggravating circumstance during the commission of an offense under paragraph (b)(1)- (3) occurs when:
	<ul> <li>a. the person recruited, enticed, or obtained the victim from a shelter designed to serve victims of human trafficking, victims of domestic violence, victims of sexual assault, runaway youth, foster children, or the homeless, or</li> <li>b. the person used or threatened use of force against, abduction of, serious harm to, or physical restraint of the victim</li> <li>If an aggravating circumstance occurred, the classification of the offense under paragraph</li> </ul>
11-787 (b)(4)	<ul> <li>(b) (1)-(3) is elevated one felony grade higher than the underlying offense.</li> <li>Patronizing a victim of sexual servitude-Victim is a minor</li> </ul>
11-787 (b)(4) 11-803	Arson in the first degree
	Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement

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11-825	within 5 yrs of the date of a previo	• •
11-826	Burglary 1st Degree	
	• (b) Minimum Mandatory Sentences:	(b)(1) 2 yrs at Level V or (b)(2) 4 yrs at Level vious conviction for Burglary of the 1st or 2nd
		m said conviction. The provisions of §4215
	(Previous Conviction Enhancement) s	
	(c) Sentencing provisions equally app	plicable to Attempt
	Presumptive sentences:     First Conviction	$24 \text{ m}$ to $40 \text{ m}$ @ Lovel $\mathcal{M}$
	On release pending trial/sentence	24 m. to 48 m. @ Level V 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
	Per Title 11 Section 3901(d) No	
	sentence of confinement may run	
	concurrently with any other sentence of	
	confinement	
11-1105	Crime Against a Vulnerable Adult	
	5	underlying offense must be a class D felony.
	See page 114 for listing of qualifying underly	s of age or older who, by reason of isolation,
		sical, mental or cognitive disability, is easily
		ent, intimidation, manipulation, coercion or
		Inerable adult" includes any adult for whom a
	guardian or the person or property has been appointed.	
11-1253	Escape After Conviction	
44 4040	Any sentence imposed shall not run concurre	ntly with any other sentence.
11-1312	Stalking w/ Deadly Weapon	phibited by court order or sentence, minimum
		el V; the first 6 m. of sentence shall not be
	subject to suspension	s, met e in et sentende shan het be
		5 yrs of prior stalking conviction, minimum
	-	el V; the first year of sentence shall not be
	subject to suspension	

11-1448 (e)(1)	Poss/Purchase Firearm/Destructive Device by Prohibited Person w/Prior		
	Conviction of Violent Felony		
	Mandatory Minimum Sentence- (e)(1)a: 3 yrs at Level V if previously convicted of a violent felony or (e)(1)b.: 5 yrs at Level V if offense occurs within 10 yrs of the conviction or incarceration for any violent felony, whichever is later or (e)(1)c.: 10 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.		
	Per Title 11 Section 3901(d) No sentence of confinement may run concurrently		
	with any other sentence of confinement		
16-4753	Drug dealing – Aggravated Possession;		
10-4755	(1) Manufactures, delivers, or possesses with intent to manufacture or deliver a		
	controlled substance in a Tier 2 quantity;		
	<ul> <li>(2) Manufactures, delivers, or possesses with intent to manufacture or deliver a controlled substance, and there is an aggravating factor;</li> <li>(3) Possesses a controlled substance in a Tier 4 quantity as defined in any of Section</li> </ul>		
	4751C(2)ai. of this title; (4) Descenses a controlled substance in a Tier 2 quantity, as defined in any of Section		
	(4) Possesses a controlled substance in a Tier 2 quantity, as defined in any of Section		
	4751C(4)ai. 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).		

# Class C Felony (Nonviolent)

## II.) (FCN)

Sentence Range (Nonviolent Category) FCN		
Statutory Range	0 to 15 years @ Level V	
Presumptive Sentence	Up to 1 year at Level 5	
Presumptive Sentence DUI	2.5 yr. minimum term of imprisonment. (see note)	
Acceptance of Responsibility	Up to 9 months @ Level V	
Probation or Suspension of Sentence (11-4333)	<ul> <li>(b) (1) 2 years for violent felonies; (b) (2) 18 months for Title 16 offenses; (b) (3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>	

11-503	Criminal Solicitation 1st Degree
	Solicit to commit Class A Felony + Solicited <18 & D>18/Solicited <15 & D= 3+ yrs
	older
11-907B(b)	Criminal Impersonation of a Police Officer w/Injury or Felonies (see
	note)
11-1458	Removing Firearm from a Law Enforcement Officer
11-	Video Lottery Cheat Device >\$99,999.99
1471(c)(f)(g)(h)(i)(j)	
16-2513(b)	Conceal/Destroy/Falsify/Forge Document Which Results in False
	Authorization of Maintenance Medical Treatment for Life Prolongation
16-4760A	Operate or Attempt to Operate a Clandestine Laboratory
21-4177(d)	Drive Vehicle While Under the Influence (7 <sup>th</sup> or any subsequent offense)
	(see note)
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))	

11-907B(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)	
21-4177(d)	Drive Vehicle While Under the Influence (7 <sup>th</sup> or any subsequent offense)(TIS)	
	• 7 <sup>th</sup> 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 or through periodic breath or urine analysis. In	
	addition to such monitoring the offender shall participate in periodic, random	
	breath or urine analysis during the entire 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.	
31-1003	Benefit by False Representation	
31-1004(2)	Falsify Reimbursement Report	
31-1006	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	Up to 18 months @ Level V	
Responsibility		
Probation or	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3)	
Suspension of	1 year for all others.	
Sentence	• (c) Consecutive sentence shall not amount to more than limitations herein.	
(11-4333)	<ul> <li>(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.</li> </ul>	
	<ul> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>	

11-607(a)(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)Physical injury to an operator of an ambulance, a rescue squad member,
	paramedic, licensed medical doctor, Licensed Practical Nurse or Registered Nurse while
	the nurse is performing a work related duty.(6) Vt>62/ (7)Assaults LEO w/spray/ (8)Uses
	spray commit crime/(9) Injures State Employee/ (10) Injures Pregnant Female/
	(11)Person 18 yoa or older 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 2 <sup>nd</sup> 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	<u>Bestiality</u>
11-777A(e)(2)	Sex Offender Unlawful Sexual Conduct Against a Child (see note)
11-778(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(1)	Sexual Abuse of a Child by a person in a position of trust, authority or
	supervision in the second degree: (see note)
11-787(b)(4)	Patronizing a victim of sexual servitude (adult victim)
11-802	Arson 2nd Degree
	Intentionally damage unoccupied bldg by fire/explosion
11.005	Dunalana (and Damas (and note)
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)	
11-1250(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)	
11-1459	Possession of a Firearm with Altered Serial Number	
16-4754(1)	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(a)(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	

11-777A(e)(2)	Sex Offender Unlawful Sexual Condu	
		fense is a Class C, D, E, F, or G felony, the crime
		onduct against a child shall be a felony one grade
	0 , 0	se except where the child against whom a sexual
		younger than 12 years of age in which case the
		sexual conduct against a child shall be a class B
	felony.	
		entence of confinement may run concurrently with
	any other sentence of confinemer	
	· · · ·	for Class A or B felonious sex offense (or similar
	from another state) or (2) If the	victim is <14 years of age, then the min. man. Is
	25 years at Level V up to life.	
11-778(f)(5)	Sexual Abuse of a Child by a pe	erson in a position of trust, authority or
	supervision in the first degree	
	as set forth in subsection (e)(engages in	n an act of sexual extortion as defined in Section
	774 of this chapter, and the victim is <16	
11-778A(1)	Sexual Abuse of a Child by a pe	erson in a position of trust, authority or
	supervision in the second degree	
	as set forth in subsection (a)(intentionally	has sexual contact with a child <16 or causes the
	child to have sexual contact with the per	son or a third person and the person stands in a
		over the child, or is an invitee or designee of a
		authority or supervision over the child) is a class D
	felony.	
11-825	Burglary 2nd Degree	
		entence of confinement may run concurrently with
	any other sentence of confinement	5
		(b)(1) 1 yr at Level V or (b)(2) 3 yrs at Level V if
		evious conviction for Burglary of the 1st or 2nd
		from said conviction. The provisions of §4215
	(Previous Conviction Enhancemen	
	(c) Sentencing provisions equally	
	Minimum Presumptive Sentences:	
	1st Conviction	12 to 36 m @ Level V
	While on Release or pending Trial	18 to 36 m @ Level V
	Two or more prior felonies	36 to 72 m @ Level V
	One Prior Violent Felony	36 to 72 m @ Level V
		48 to 96 m @ Level V
	Two or more prior violent felonies	
11 1105	Excessive cruelty	48 to 96 m @ Level V
11-1105	Crime Against a Vulnerable Adult	
		e underlying offense must be a class E felony. See
	page 114 for listing of qualifying underlying	
		ears of age or older who, by reason of isolation,
		physical, mental or cognitive disability, is easily
		atment, intimidation, manipulation, coercion or
		"vulnerable adult" includes any adult for whom a
	guardian or the person or property has be	een appointed.
11-1253	Escape After Conviction	
	Any sentence imposed shall not run concu	irrently with any other sentence.

11-1254(a)	<ul> <li>Assault in Detention Facility: Injury         <ul> <li>Minimum Mandatory Sentence: 2 years at Level V to begin immediately upon sentencing.</li> <li>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</li> </ul> </li> </ul>
	<ul> <li>Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement</li> </ul>
11-1254(c)	<ul> <li>Assault in Detention Facility: Bodily Emissions</li> <li>Minimum Mandatory Sentence: 1 yr at Level V to begin immediately upon sentencing.</li> <li>Such sentence shall not be suspended nor shall the Defendant be eligible for parole or probation.</li> <li>Original sentence causing confinement temporarily suspended and continues only after the sentence for this conviction has been completed.</li> <li>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.</li> <li>Per Title 11 Section 3901(d) No sentence of confinement may run concurrently with any other sentence of confinement</li> </ul>
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.         Any person over 16 y.o.a.         Molotov
11-1442	Carrying Concealed Deadly Weapon (Prior conviction < 5 yrs)     Weapon is a firearm

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
Presumptive Sentence DUI	2 year minimum term of imprisonment (see note)
Acceptance of Responsibility	Up to 9 months at Level II or III
Probation or Suspension of Sentence (11-4333)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

11-	Theft (\$50,000-\$99,999) (see note)
841(c)(3)(a)	
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	Poss/Purchase Firearm/Ammunition by Prohibited Person
of a1-a8)	
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)
11-1457(j)(4)	Poss. Of a Weapon in a Safe School and Recreation Zone ; Class D Felony (see
	<u>note)</u>
11-3532	Act of Intimidation (see note)
11-9616A	Public Posting Individual's Confidential Information (see note)
16-4754(2)(3)	Drug Dealing Aggravated Possession

21-4177(d)	Drive Vehicle While Under the Influence (6 <sup>th</sup> offense) (see note)
29-4713(d)	Tamper w/Biological Sample

### 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-	Theft (\$50,000-\$99,999)
841(c)(3)(a)	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
	<ul> <li>(b)(8)Restitution shall be ordered in the manner prescribed by §4106</li> </ul>
	<ul> <li>(b)(9) The court may order forfeiture of unlawful device(s)</li> </ul>
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	Unauthorized Computer Access
11-933	Theft Computer Services
11-934	Interruption Computer Services
11-935	Misuse Computer System Information
11-936	Destruction Computer Equipment
11-937	Unauthorized Electronic Mail
11-938	Fail to Cease Electronic Communication
11-939	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.
	<ul> <li>(g) Amounts may be aggregated to determine degree of crime.</li> </ul>
	• (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)	<ul> <li>Poss/Purchase Firearm/Ammunition by Prohibited Person         <ul> <li>(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.</li> <li>(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.</li> </ul> </li> </ul>
11-1457(j)(3)	Poss. Weapon in Safe School/Recreation Zone
	<ul> <li>(Underlying Offense: Class E Fel.)</li> <li>(j)(3) If the underlying offense is a class d or e felony the crime shall be a class d felony.</li> <li>(j)(5) An elementary or secondary school student shall be expelled for 180d.</li> </ul>
11-1457(j)(4)	Poss. Weapon in Safe School/Recreation Zone
	(jj)(4) Underlying Offense is a Class D felony
	(j)(5) An elementary or secondary school student shall be expelled for 180 days
11-3532	Act of Intimidation
	Per 11-3534 a person attempting to commit 11-3532 is guilty of the offense without regard
	to the success or failure of the attempt
11-9616A	Public posting or displaying program participants actual address, telephone
11-70104	number, or image on the internet
	Violation results in serious physical injury to the program participant or a member of
04 4477(1)	program participant's household
21-4177(d)	<ul> <li>Drive Vehicle While Under the Influence (6<sup>th</sup> offense)(TIS)</li> <li>6<sup>th</sup> 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 or through periodic breath or urine analysis. In addition to such monitoring the offender shall participate in periodic, random breath or urine analysis during the entire 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.</li> </ul>

# 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)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

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(a)(1)	<u>Strangulation</u>
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
16-4774(c)	Delivery Drug Paraphernalia to Minor (until 12/18/15)
16-4774(d)	Delivery Drug Paraphernalia to Minor (effective 12/18/15)
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) Sex Offender Unlawful Sexual Conduct Against a Child	
<ul> <li>(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</li> </ul>	

	<ul> <li>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.</li> <li>11-4205A: (1) If prior conviction for Class A or B felonious sex offense (or similar from another state) or (2) If the victim is &lt; 14 years of age, then the min. man. Is 25 years at Level V up to life.</li> </ul>
11-1105	Crime Against a Vulnerable Adult
	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	Possess Destructive Weapon
	• 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
Presumptive Sentence 4 <sup>th</sup> DUI	6 month minimum term of imprisonment (see note)
Presumptive Sentence 5 <sup>th</sup> DUI	1.5 year minimum term of imprisonment (see note)
Acceptance of Responsibility	Up to 9 months @ Level II
Probation or Suspension of Sentence (11-4333)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

11-503	Criminal Solicitation 1st Degree
11 303	Solicit to commit Class A Felony
11-621(a)(2)a	Terroristic Threat
	Knowing that the statement or statements are likely to cause evacuation of a
	building, place of assembly, or facility of public transportation (see note)
11-780	Female Genital Mutilation
11-841B(c)	Theft: Organized Retail Crime; class A misd; class E felony (see note)
11-876	Tamper w/ Public Record 1st Degree
	With Intent to Defraud
11-907B	Criminal Impersonation Police Officer
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="" age)<="" of="" td="" yrs=""></than>
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-	Video Lottery Cheat Device >50,000<100,000
1471(c)(f)(g)(h)(i)(j)	
16-4755	Aggravated possession
	Possession of a controlled substance in a Tier 2 quantity as defined in 4751C(4)ai.
16-4758	Unlawful dealing in a counterfeit or purported controlled substance
21-4177(d)	Driving Vehicle While Under the Influence (4 <sup>th</sup> offense) (see note)
21-4177(d)	Driving Vehicle While Under the Influence (5 <sup>th</sup> offense) (see note)
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))

11-621(a)(2)a	Terroristic Threat
	1.Pay a fine of not less than \$1,000 nor more than \$2,500 which fine cannot be
	suspended
	2. Be sentenced to perform a minimum of 100 hours of community service
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.
11-932	Unauthorized Computer Access
11-933	Theft Computer Services
11-934	Interruption Computer Services
11-935	Misuse Computer System Information
11-936	Destruction Computer Equipment
11-937	Unauthorized Electronic Mail
11-938	Fail to Cease Electronic Communication
11-939	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.
	<ul> <li>(g) Amounts may be aggregated to determine degree of crime.</li> </ul>
	• (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 (j)(3)	Poss. Weapon in Safe School/Recreation Zone)
	(j)(5) An elem. or secondary school student shall be expelled for 180 days

21-4177 (d)	Driving Vehicle While Under the Influence (4 <sup>th</sup> Offense)(TIS)
	• 4 <sup>th</sup> 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 or through
	periodic breath or urine analysis. In addition to such monitoring the offender
	shall participate in random breath or urine analysis during the entire 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.
21-4177(d)	Driving Vehicle While Under the Influence (5 <sup>th</sup> Offense)(TIS)
	• 5 <sup>th</sup> 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 or through periodic breath or urine analysis. In addition to
	such monitoring the offender shall participate in periodic, random breath or
	urine analysis during the entire 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.

31-610(a)(1)	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
31-1003	Benefit by False Representation
31-1004(2)	Falsify Reimbursement Report
31-1004(3)	Misrepresentation to Qualify as Provider
31-1004(4)	Misrepresentation as to Operation of Provider/Facility
31-1005	Kickback Schemes
31-1006	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 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)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

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(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, cellular phone, prohibited electronic device, illegal narcotic or look-a-
	like, prescription medication, or item that could be used to facilitate escape
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/serious phys. inj. to vic. or another person, serious phys. inj. to vic.
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)	<ul> <li>Sex Offender Unlawful Sexual Conduct Against a Child         <ul> <li>(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.</li> <li>11-4205A: (1) If prior conviction for Class A or B felonious sex offense (or similar from another state) or (2) If the victim is &lt;14 years of age, then the min. man. Is 25 years at Level V to life.</li> </ul> </li> </ul>
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	<u>Crime Against a Vulnerable Adult</u> 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	<ul> <li>Stalking</li> <li>(6) If act(s) has been prev. prohibit. by crt order or sentence, min. mand. Sent. = 6 m. at Lev. V; the first 6 m. of sentence shall not be subject to suspension</li> <li>(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</li> </ul>

# 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	Up to 9 months @ Level II for Title 11 offenses
Responsibility	Up to 14 months @ Level II for Title 16 offenses
Probation or	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses;</li> </ul>
Suspension of	(b)(3) 1 year for all others.
Sentence	(c) Consecutive sentence shall not amount to more than limitations
(11-4333)	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.

11-502	Criminal Solicitation 2nd Degree (see note)
	Solicit to commit Felony
11-616(b)	Gang Participation
11-621(a)(2)b	Terroristic Threat (see note)
	False Stmt likely to: (a)evacuation/ (b)serious inconvenience/ (c)terror
	+ School or Care Facility
11-621(a)(2)c	Terroristic Threat
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
11-824	Burglary 3rd Degree (see note)
	Building
11-828	Possess Burglary Tools
11-840A	Use of Illegitimate Sales Receipt/UPC Label (15+ Receipts/ UPC Labels/
	<u>\$1,500+)</u>
11-841(c)(2)	Theft (see note)
	\$1500+ and V= 62+ y.o.a./Impaired/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)
11-850(0)(2)	Possess Shoplifters Tools
11-861(b)(1)	Forgery 1st Degree (see note)
11-001(0)(1)	Money/Stamps/Stocks/Bonds etc.
	ן ואטווכא אנמווףא אנטגאא סטוועא פוני.

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-	Poss/Purchase Deadly Weapon (Other than Destructive
1448(f)(1)(a)(5)	Weapon/Firearm/Ammunition) by Prohibited Person (see note)
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)
16-107(e)3	Neglect of Duty (see note)
16-4756	Aggravated Possession
	A person who possesses a controlled substance in a Tier 1 quantity
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
18-4354	Unlawfully Acting as a Bail Bond Agent
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	Criminal Solicitation 2nd Degree
	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)b	Terroristic Threat
	• (c)(1) Mandatory fine: \$1,000-\$2,500 which cannot be suspended and a
	minimum of 100 hrs community service
	<ul> <li>If the defendant is 17 y.o.a. or &gt; &amp; it is a first offense = Class A Misd</li> </ul>
11-621(a)(3)	Terroristic Threat
	(d) Mandatory fine: \$2,000 which shall not be suspended
11-824	Burglary 3rd Degree
	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)	Theft
	Full restitution required for victim's monetary losses. Consider community service &/or
	curfew for a juvenile defendant.
11-850(b)(2)	Unlawful Telecommunication Device
	• (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
	<ul> <li>(b)(8)Restitution shall be ordered in the manner prescribed by §4106</li> </ul>
	• (b)(9) The court may order forfeiture of unlawful device(s)
11-861	Forgery 1st Degree
	(c) Restitution for resultant losses to all parties.
11-922(c)	Improper Labeling (PriorConv 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.

11-1271A(b)(c)	Criminal Contempt of a Domestic Violence Protection Order (PFA)			
	• (b) Unless any of the elements set forth in subsection (c) of this section			
	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	Cruelty to Animals			
	(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)	Fighting/Baiting Animals			
<ul> <li>(c) All animals, equipment, and money shall be forfeited to the State. Anim be humanely disposed of.</li> <li>(e) The Defendant shall not own or possess any animal for 15 yrs</li> </ul>				
			conviction.	
		11-	Poss/Purchase Deadly Weapon by Prohibited Person	
1448(f)(1)(a)(5)	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 convi				
	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				
<ul> <li>Class G Felony)</li> <li>11-1457(b)(4)&amp;(j)(3): If the violation occurs within a Safe School and Recreation of the string shall become a Class E Felony.</li> </ul>				
			Zone, the crime shall become a Class E Felony.	
	<ul> <li>11-1457(j)(5): If the Defendant is an elementary or secondary school student, in addition to other panelties, the student shall be expelled for not less than 190 d</li> </ul>			
16 107(2)(2)	addition to other penalties, the student shall be expelled for not less than 180 d			
16-107(e)(3) <u>Neglect of Duty:</u>				
Term of imprisonment not to exceed 3 years.				

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.

# Class G Felony (Violent)

## I.) (FGV)

Sentence Range	e (Violent Category) FGV	
Statutory Range	0 to 2 years @ Level V	
Presumptive	Up to 6 m. @ Level V	
Sentence	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)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>	

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(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)	
11-1257(a)	Resisting Arrest with Force or Violence	
11-1304(b)(2)	Hate Crime (Underlying Offense: Class A, B or C Misdemeanor)	
11-1312(a)	<u>Stalking</u>	
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	
21 2012/b)	Evaluitation of Infirm Adult (\$500, \$4,000)	
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	
	<ul> <li>(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.</li> <li>11-4205A: (1) If prior conviction for Class A or R felonious sex offense (or similar from another state) or (2) If the victim is &lt; 14 years of age, then the min. man. Is</li> </ul>	
	25 years at Level V to life.	
11-778A(d)(3)		
	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	<u>Crime Against a Vulnerable Adult</u> 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
Presumptive Sentence DUI	3 month minimum term of imprisonment (see note)
Acceptance of Responsibility	Up to 9 months @ Level II
Probation or Suspension of Sentence (11-4333)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

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)b, or c	Terroristic Threat (see note)	
	False statement likely to cause (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	<u>Shoplift (\$1500+)</u>	
11-841	Theft (see note) \$1500+, or V = 62+ y.o.a./Impaired/Disabled	
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		
11-935	Interruption Computer Services (\$500–\$999) (see note)	
11-936	Misuse Computer System Information (\$500–\$999) (see note)	
11-937	Destruction Computer Equipment (\$500–\$999) (see note)	
	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	<u>Receiving Unlawful Gratuity (value &gt; \$1,000)</u>	
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	
11-1257A	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	

11-1263A(a)(3)(a)	Interfere with Child Witness Bribes to Cause Removal from Jurisdiction	
11-1263A(a)(4)(a)	Interfere with Child Witness	
11-1203A(a)(4)(a)	Threatens to Cause Removal from Jurisdiction	
11-1269	Tampering with Physical Evidence	
11-1312	Aggravated Harassment	
11 1012	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	
(9)(c)& (9)(d)	Prurient Recording w/out Consent	
11-1339	Adulteration	
11-1361	Obscenity (see note)	
11-1442	Carry Concealed Deadly Weapon (see note)	
11-1446A	Undetectable Knives (Mfr/Import/Sell/Possess) (6/30/06)	
11-1448A(f)	Firearm Sale Violation: False Statement/Information	
11-1448A(e)	Firearm Sale Violation (Second Offense)	
11-1461	Report of Loss, Theft of Firearm (3 <sup>rd</sup> or subsequent offense)	
11-	Video Lottery Cheat Device	
1471(a)(b)(d)(e)(l)	(Prior Conviction w/in 3 yrs)	
11-	Video Lottery Cheat Device >\$1500<\$50000	
1471(c)(f)(g)(h)(i)(j)		
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	
11-9616A	Public posting or displaying program participant's actual address,	
	telephone number, or image on the internet	
	Violation results in physical injury to the program participant or a member of the	
	program participant's household	
16-3111(a)	Crimes Regarding Vital Records (see note)	
16-4762(d)	Hypodermic syringe or needle; delivering or possessing; disposal	
16-4774 (b)	Manufacture and sale of drug paraphernalia (until 12/18/15)	
16-4774(c)	Manufacture and sale paraphernalia (effective 12/18/15)	
21-4177(d)	Driving While Under the Influence (3 <sup>rd</sup> offense) (see note)	
31-309(c)	Background Checks for child serving entities	
31-311(c)	Personal History Disclosure (effective 4/7/16)	

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)	Terroristic Threat (Vt = 62 + y.o.a.)
11-621(a)(2)b or c	Terroristic Threat
	<ul> <li>(c)(1) Mandatory fine: \$1,000-\$2,500 which cannot be suspended and a minimum of 100 hrs community service</li> <li>If the defendant is 17 y.o.a. or younger, the offense is a Class A Misdemeanor</li> <li>If the place at which the risk of evacuation, serious inconvenience or terror is created is a daycare facility, nursery or preschool, kindergarten, elementary, secondary or vocational-technical school, or any long-term care facility in which elderly persons are housed, it is a class F felony.</li> </ul>
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	<u>Theft</u>
	(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	Unauthorized Computer Access
11-933	Theft Computer Services
11-934	Interruption Computer Services
11-935	Misuse Computer System Information
11-936	Destruction Computer Equipment
11-937	Unauthorized Electronic Mail
11-938	Fail to Cease Electronic Communication
11-939	Computer Offense Penalties
	<ul> <li>(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.</li> </ul>
	<ul> <li>(g) Amounts may be aggregated to determine degree of crime.</li> <li>(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.</li> </ul>
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
	<ul> <li>(j) Restitution shall be ordered in the amount of the total accrued arrearages</li> </ul>
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
	<ul> <li>(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.</li> <li>(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.</li> </ul>
11-1326	Fighting/Baiting Animals. (c)
11-1320	All animals, equipment, devices, and money shall be forfeited to the State. Forfeited animals shall be disposed of humanely.
11-1361	<u>Obscenity</u>
	<ul> <li>If the obscenity involved live conduct, the business or establishment shall be closed for 6 m.</li> <li>(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.</li> </ul>
11-1442	Carrying Concealed Deadly Weapon
	<ul> <li>11-1457(b)(1)&amp;(j)(3): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class F NonViolent Felony.</li> <li>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.</li> </ul>
11-2109(c)(1)	Breach of Conditions of Bail Maximum Penalty: Imprisonment not to exceed 5 years and/or a fine of \$5,000.00
11-2113(c)(1)	Breach of Release Conditions (Felony/Prior Conviction Crime). Maximum Penalty: Imprisonment not to exceed 5 years and/or a fine of \$5,000.00.
16-3111(a)	Crimes Regarding Vital Records
	Maximum Penalty: Imprisonment= 5 yrs or less; Fine= \$10,000

21-4177(d)	Driving While Under the Influence (3 <sup>rd</sup> offense)(TIS)
	• 3 <sup>rd</sup> 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 or through periodic breath or urine
	analysis. In addition to such monitoring the offender shall participate in
	random breath or urine analysis during the entire period of supervision; (4)
	24m DL revocation, if B.AC.L.is .1519, 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.

## 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	

11-603	Reckless Endangering 2nd Degree
	(Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of Contents
11-611	Assault 3rd Degree
	(Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of Contents
11-614	Abuse of Sports Official (1st Offense)
11-621(a)(1)	Terroristic Threatening
	(Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of Contents
	Fine minimum of \$1,000 up to \$2,000 which cannot be suspended.
	Sentenced to a minimum of 100 hrs. community service
11-621(a)(2)	Terroristic Threat
	First offense where person is 17 years old or younger
	Fine minimum of \$1,000 up to \$2,000 which cannot be suspended
	Also perform a minimum of 100 hrs. of community service
11-766	Incest
	(Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of Contents
11-767	Unlawful Sexual Contact 3rd Degree
	(SpecialDVCategory May Apply)Refer to Exceptional Sentence Listing in Table of Contents
11-777A(e)(1)	Sex Offender Unlawful Sexual Conduct Against a Child (see note)
11-777A(e)(3)	Sex Offender Unlawful Sexual Conduct Against a Child (see note)
11-1103	Child Abuse in the Third Degree
11-1105	Crime Against a Vulnerable Adult (see note)
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 Exceptional Sentence Listing in Table of
	Contents
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
	<ul> <li>(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.</li> <li>11-4205: (1) If prior conviction for Class A or B felonious sex offense (or similar from another state) or (2) If the victim is &lt;14 years of age then the min. man. Is 25 years at Level V up to life.</li> </ul>
11-777A(e)(3)	Sex Offender Unlawful Sexual Conduct Against a Child
	• (e)(3) If the underlying sexual offense is a misdemeanor and the victim is under 18
	years of age and has a cognitive disability, the crime of sex offender unlawful
	sexual conduct against a child is a Class C felony.
	<ul> <li>11-4205: (1) If prior conviction for Class A or B felonious sex offense (or similar from another state) or (2) If the victim is &lt;14 years of age, then the min. man. Is</li> </ul>
	25 years at Level V up to life.
11-1105	Crime Against a Vulnerable Adult
	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	Criminal Contempt of a Dom Viol Protection Order
	<ul> <li>Class A Misd, Class F felony</li> <li>(c) Mandatory minimum sentence of 15 days imprisonment if contempt resulted in:</li> </ul>
	(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

## 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))

## 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	Up to 9 months @ Level I
Responsibility	

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 and v<62, not Impaired/Disabled) (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)

11 022	That Computer Services (<\$500) (cos 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)
11-9616A	Public posting or displaying program participant's actual address, telephone
	number, or image on the internet
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)	Criminal Mischief
(2)(4)	• (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	Unauthorized Computer Access
11-933	Theft Computer Services
11-934	Interruption Computer Services
11-935	Misuse Computer System Information
11-936	Destruction Computer Equipment
11-937	Unauthorized Electronic Mail
11-938	Fail to Cease Electronic Communication
11-939	Computer Offense Penalties
	<ul> <li>(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.</li> </ul>
	• (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	False Statement to Obtain Benefits
31-1004(1)	False Benefit Reimbursement Statement
31-1006	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.

## IV.) Order & Decency (MA4)

Sentence Range (Or	Sentence Range (Order & Decency Category) MA4	
Statutory Sentence	0 to 1 yr @ Level V and up to \$2,300 fine	
Presumptive	1st Offense: Up to 12 m. @ Level I	
Sentence	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	Up to 9 months @ Level I	
Responsibility		
Probation or	• (b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1	
Suspension of	year for all others.	
Sentence	(c) Consecutive sentence shall not amount to more than limitations herein.	
(11-4333)	• (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.	

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 2 <sup>nd</sup> 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 Exceptional Sentence Listing in Table of Contents
11-785	Interference with Custody
	(Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of
	Contents
11-791	Coercion
	(Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of
	Contents

11-871	Falsifying Business Records
11-873	Tampering w/ Public Records 2nd Degree
11-877	Offering False Instrument for Filing
11-881	<u>Bribery</u>
11-882	Receiving a Bribe
11-893	Interference Levied-Upon Property
11-907	Criminal Impersonation
11-907C	Criminal Impersonation of a member or veteran of U.S. Armed Forces
	(See note)
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 Exceptional Sentence Listing in Table of
	Contents
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	Promoting 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
	(Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of
	Contents
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)
11 1000(4)(1 0, 0)	(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(e)	Improper Request/Dissemination Criminal History Check
11-1448A(f)	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-	Video Lottery Cheat Device <1500
1471(c)(f)(g)(h)(i)(j)	
11-1480	Unlawful Use of an Unmanned Aircraft System (Physical injury to
	person and/or damage to property)
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
29-4713(k)(1)	Unlawful Dissemination of DNA Database Information
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)
31-310(a)	Background Checks for Child Serving Entities

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
11-907(C)	Criminal Impersonation of a member or veteran of the U.S. Armed Forces
	<ul> <li>Minimum fine of not less than \$1,000.00 which shall not be suspended</li> </ul>
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

## 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):

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	

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)	<u>Criminal Non-support (see note)</u>	
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)	
11-1480	Unlawful Use of Unmanned Aircraft System (2 <sup>nd</sup> Offense)	
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 (until 12/18/15)	
16-4764(a)	Possession of Marijuana (effective 12/18/15)	
	Under the age of 18	
	Is an aggravating factor	
16-4764(a)	Possession of Marijuana (effective 12/18/15)	
	18 or older and aggravating factor	
	And possesses other than a personal use quantity	

16-4774(a)	Drug Paraphernalia (reference 16-4771(a)) (Until 12/18/15)	
	Possession	
16-4774(a)	Drug Paraphernalia, (reference 16-4771(a)) Possession (effective 12/18/15)	

## 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 ImplementsMin. fine of not less than \$500 which shall not be subject to suspension, restitutionfor damages to property and 100 hours of community service, at least half of whichshall be served removing graffiti on public property. The minimum fine andcommunity service hours shall be doubled for a second or subsequent conviction ofpossession 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	<ul> <li>Criminal Non-support</li> <li>Court may ("shall" in the event support order entered) order any fine to be paid for the support of the entitled person</li> <li>(j) Restitution shall be ordered in the amount of the total accrued arrearages</li> </ul>
11-1452	Unlawful Dealing with Knuckles-Combination Knife
11-1453	<ul> <li>Unlawful Dealing with Martial Arts Throwing Star</li> <li>11-1457(b)(5&amp;6)&amp;(j)(1): If the violation occurs within a Safe School and Recreation Zone, the crime shall become a Class A Misdemeanor.</li> <li>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.</li> </ul>
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	

11-601	Offensive Touching	
	(Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of	
	Contents	
11-602	Menacing	
	(Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of	
	Contents	
11-627	Substances Releasing Vapors or Fumes	
11-763	Sexual Harassment	
	(Special DV Category May Apply)Refer to Exceptional Sentence Listing in Table of	
	Contents	
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 Exceptional Sentence Listing in Table of	
	Contents	
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 1400	Helensful Hele of Hereined Almonth Constant (1 <sup>st</sup> Officer a)	
11-1480	Unlawful Use of Unmanned Aircraft System (1 <sup>st</sup> Offense)	

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 (Effective 12/18/15)	
	Under the age of 18	
	Fine not more than \$100	
16-4764(b)	Possession of Marijuana (Effective 12/18/15)	
	18 years of age or older;	
	More than personal use of quantity of 16-4714(d)(19);	
	Fine not more than \$575 and imprisonment not more than 3 months or both	
16-4764(c)	Possession of Marijuana (Effective 12/18/15)	
	18 years of age to less than 21 years of age;	
	Possess or use in private of personal use quantity of 16-4714(d)(19) substance; second	
	or subsequent offense	
16-4764(b)	Possession of Marijuana (Until 12/18/15)	
	Fine not more than \$575 and imprisonment not more than 3 months or both	
16-4764 (d)	Possession of Marijuana (effective 12/18/15)	
	18 years of age or older	
	Personal use quantity of controlled substance or counterfeit controlled substance	
	In an area accessible to the public or in a moving vehicle	
	Fined not more than \$200, imprisoned not more than 5 days or both	
16-4774 (d)	Advertisement and Promotion of Drug Paraphernalia (Until 12/18/15)	
16-4774(e)	Advertisement and Promotion of Drug Paraphernalia (Effective 12/18/15)	
16-6611(b)	Violation of Fire Regulations (see note)	
29-4810	Lottery Sales to persons prohibited	

## Supplemental Notations Unclassified Misdemeanors:

All Criminal fines r	require 18% surcharge for Victims fund.	
	quire additional 15% surcharge for rehabilitation fund	
	e ordered for losses to victim. (Title 11, §4106)	
	on may be ordered. (Title 11, §4204(i))	
11-	Criminal Mischief	
811(b)(3)(4)	• (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	
	<ul> <li>Punishable by up to 1 yr at Level V; Fine up to \$10,000</li> </ul>	
	• (b)(7) All fines shall be imposed for each unlawful telecommunication or access	
	device	
	<ul> <li>(b)(8) Restitution shall be ordered in the manner prescribed by §4106</li> </ul>	
	<ul> <li>(b)(9) The court may order forfeiture of unlawful device(s)</li> </ul>	
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	
44 4040	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	
	<ul> <li>(c)/(d) For a prior conviction w/in 5 yrs, any vehicle used in connection shall be seized</li> </ul>	
11-1446	Unlawful Dealing with Switchblade	
11-1440	<ul> <li>11-1457(b)(3)&amp;(j)(2): If the violation occurs within a Safe School and Recreation Zone,</li> </ul>	
	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 not to exceed 1 year or a fine of \$500.00 or both.	
11-2113	Breach Conditions of Release (Misdemeanor)	
	Maximum penalty: Not to exceed 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.      Fach & event day the violation participation of the rectification shall be deemed a concrete	
	• 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 Liguor 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
11-1461	Report of Loss, Theft of Firearm

### 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	Tobacco Sale Violations	
(penalties §11-1121)	<ul> <li>Mandatory Fines: 1st offense= \$250, 2nd offense= \$500, 3rd and</li> </ul>	
	subsequent offenses= \$1,000	
	<ul> <li>Prior conviction w/in 12 m.: Defendant's license to sell tobacco may be</li> </ul>	
	suspended for up to 6m. w/out refund of registration fees	
11-1316	Out-of-State Liguor Agent Registration	
	Violations shall result in the loss of the right to register or registration for period of	
	6m.	
11-1461	Report of Loss, Theft of Firearm	
	• For the first offense be guilty of a violation and be subject to a civil penalty	
	of not less than \$75.00 nor more than \$100.00.	
	• For a second offense committed at any time after the sentencing or	
	adjudication of a first offense, be guilty of a violation and be subject to a	
	civil penalty of not less than \$100.00 nor more than \$250.00.	

## 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.

21-2742	Driving In Violation of Conditional License
21-2810	Driving After Judgment Prohibited (See note)
21-4103(b)	Flee or Attempt to Elude (See Note)
21-4112A(c)	Unlawful Sale Traffic Control Signal Preemption Devices (See Note)
21-4175	Reckless Driving (See Note)
21-4175A	Aggressive Driving (See Note pg)
21-4176	Careless or Inattentive Driving (See Note)
21-4176A	Operation of Vehicle Causing Death (See Note)
21-4176E	Operation of Vehicle Causing Serious Physical Injury to Vulnerable User
21-4177 et seq.	Driving a Vehicle While Under the Influence (See Note for 4177 (d) and
	<u>4177A</u>
21-4201 et seq.	Leaving the Scene of an Accident (See Note)
21-4202	Leaving the Scene of an Accident (Injury/Death) (See Note)
23-2302	Operation of a Vessel or Boat While Under the Influence (See Note)

21-2742	Driving In Violation of C	Conditional License
	Unclassified Misdemean	or. Fine \$28.75- \$230.
21-2810	Driving After Judgment Prohibited	
	Statutory Sentence	<ul> <li>Habitual Offender: (1) 1st Conviction- Mandatory Imprisonment from 90d. up to 30m. &amp; Fine up to \$1,150; (2) Prior Conviction- Mandatory Imprisonment from 180d. up to 5 yrs. &amp; Fine up to \$2,300.</li> <li>Mandatory Imprisonment not subject to</li> </ul>
		suspension
	Presumptive Sentence	(1) 1st Conviction: 3m. @ Level V (2) Prior Conviction:
		6m. @ Level V
24 4402(b)		_
21-4103(b)		<u>e</u> Min.Man. fine of \$575 which may not be suspended. Subsequent 150 which may not be suspended.
21-4112A(c)	Unlawful Sale Traffic Co	ontrol Signal Preemption Devices
	Class A Misdemeanor	
21-4134(d)	Operation of vehicles up Class F Felony	pon approach of authorized emergency vehicles
21-4175	Reckless Driving	
	Mandatory Minimum Sente	nces:
		30d. @ Level V; Fine= \$100-\$300
		//in 3 yrs.: 30 - 60d.@ Level V; Fine= \$300-1,000. Sentence
	may not be susper	
		of DUI reduction: Completion of course required under §4177D 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.
21-4175A	<ul> <li>Aggressive Driving Mandatory Minimum Sentences</li> <li>1st Offense: 10-30d. @ Level V; Fine= \$100-\$300</li> <li>Prior Conviction w/in 3 yrs.:30-60d.@ Level V; Fine= \$300-1,000. Sentence may not be suspended.</li> <li>Driving privileges suspended for 30d.</li> <li>Comp. of Behav. Mod. course and pmt. of its attendant fees are mandated.</li> </ul>

21-4176	Careless or Inattentive Driving
	Mandatory Minimum Sentences:
	• 1st Offense: Fine= \$25-\$75
	<ul> <li>Prior Conviction w/in 3 yrs: Fine=\$50-\$95</li> </ul>
	L.
21-4176A	Operation of Vehicle Causing Death
	<ul> <li>Maximum penalty 1st Conviction: up to 30 m. imprisonment &amp;/or \$1,150 Fine</li> </ul>
	<ul> <li>Prior Conviction: up to 60 m. imprisonment &amp;/or \$2,300 Fine</li> </ul>
21-4176E	Operation of Vehicle Causing Serious Injury to Vulnerable User
	Violation
	• Fine \$550, Suspension up to 1 year, Traffic Safety Course, 10-100 hours
	community service
	<ul> <li>Court may impose, but suspend up to \$500 of the fine and the imposition of the</li> </ul>
	suspension on the condition that the person complete the requirements the
	remaining conditions; and the Court set a hearing date within one year from the
	date of sentencing. At that Hearing, the court shall:
	A. If the person has successfully completed the remaining
	requirements, dismiss the additional penalties suspended.
	B. If the person has not successfully completed the remaining
	requirements, either
	i. grant the person an extension based on good cause
	shown, or
	ii. impose the penalties suspended.
21-	Driving Vehicle While Under the Influence
4177(d)(15)	<ul> <li>Notwithstanding any law to the contrary, the phrase "all crimes" as used in the</li> </ul>
	Truth in Sentencing Act of 1989 shall include felonies under this section of the
	Delaware Code, and any amendments thereto.

1 <u>, 2012)</u>
1,500;(3) Completion of xceed a total of 15m & to
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<ul> <li>pay a fee not to exceed the maximum fine; (4) 12m DL revocation; if BAC .1519 Revocation 18m; if BAC &gt; .19 Revocation 24m</li> <li>2<sup>nd</sup> Offense: Occurring within 10 years of prior offense: (1)60d-18m @ Level V, minimum sentence may not be suspended; The sentencing Court may suspend the minimum sentence set forth in this subsection upon the condition that the offender shall successfully complete the Court of Common Pleas Driving Under the Influence Treatment Program. (2) Fine = \$750-\$2,500;(3) Completion of alcohol evaluation and program (4177)(d)(12)(f);(4) 18m DL revocation; if BAC is .1519 Revocation 24m; if BAC &gt; .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;</li> </ul>
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.
<b>4177L</b> 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.
4177(d) Driving a vehicle while under the influence or with a prohibited alcohol or drug content; ( Effective until fulfillment of 79 Del. Laws, c. 396, section 5)
(d) Whoever is convicted of a violation of subsection (a) of this section shall:
(1) For the first offense, be fined not less than \$500 nor more than \$1,500 or imprisoned not more than 12 months or both. Any period of imprisonment imposed under this paragraph may be suspended.
(2) For a second offense occurring at any time within 10 years of a prior offense, be fined not less than \$750 nor more than \$2,500 and imprisoned not less than 60 days nor more than 18 months. The minimum sentence for a person sentenced under this paragraph may not be suspended. The sentencing Court may suspend the minimum sentence set forth in this subsection upon the condition that the

offender shall successfully complete the Court of Common Pleas Driving U	nder the
Influence Treatment Program.	

(3) For a third offense occurring at any time after 2 prior offenses, be guilty of a class G felony, be fined not more than \$5,000 and be imprisoned not less than 1 year nor more than 2 years. The provisions of § 4205(b)(7) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 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. The sentencing court may suspend up to 9 months of any minimum sentence set forth in this paragraph 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.

(4) For a fourth offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not more than \$7,000, and imprisoned not less than 2 years nor more than 5 years. The provisions of § 4205(b)(5) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6 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. The sentencing court may suspend up to 18 months of any minimum sentence set forth in this paragraph 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.

(5) For a fifth offense occurring any time after 4 prior offenses, be guilty of a class E felony, be fined not more than \$10,000 and imprisoned not less than 3 years nor more than 5 years.

(6) For a sixth offense occurring any time after 5 prior offenses, be guilty of a class D felony, be fined not more than \$10,000 and imprisoned not less than 4 years nor more than 8 years.

(7) For a seventh offense occurring any time after 6 prior offenses, or for any subsequent offense, be guilty of a class C felony, be fined not more than \$15,000 and imprisoned not less than 5 years nor greater than 15 years.

(8) For the fifth, sixth, seventh offense or greater, the provisions of § 4205(b) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, at least 1/2 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 1/2 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. No conviction for a violation of this section, for which a sentence is imposed pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section, shall be considered a predicate felony for conviction or sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph (d)(3) or (d)(4) of this section is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.

(9) Any minimum sentence suspended pursuant to paragraph (d)(3), (d)(4), or (d)(8) of this section shall be upon the condition that the offender shall complete a

	program of supervision which shall include:
	a. A drug and alcohol abstinence program requiring that the offender maintain a period of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device. In addition to such device, the offender shall participate in periodic, random breath or urine analysis during the entire period of supervision.
	b. An intensive inpatient or outpatient drug and alcohol treatment program for a period of not less than 3 months. Such treatment and counseling may be completed while an offender is serving a Level V or Level IV sentence.
4177(d)	c. Any other terms or provisions deemed appropriate by the sentencing court or the Department of Correction.
	(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.
	<ul> <li>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.</li> </ul>
	c. Violation of this paragraph shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of subsection (a) of this section. Nothing in this paragraph shall prevent conviction for a violation of both subsection (a) of this section and any offense as defined elsewhere by the laws of this State.
	d. Violation of or sentencing pursuant to this paragraph shall not be considered as evidence of either comparative or contributory negligence in any civil suit or insurance claim, nor shall a violation of or sentencing pursuant to this paragraph be admissible as evidence in the trial of any civil action.
	(11) A person who has been convicted of prior or previous offenses of this section, as defined in § 4177B(e) of this title, need not be charged as a subsequent offender in the complaint, information or indictment against the person in order to render the person liable for the punishment imposed by this section on a person with prior or previous offenses under this section. However, if at any time after conviction and before sentence, it shall appear to the Attorney General or to the sentencing court that by reason of such conviction and prior or previous convictions, a person should be subjected to paragraph (d)(3), (d)(4), (d)(5), (d)(6) or (d)(7) of this section, the Attorney General shall file a motion to have the defendant sentenced pursuant to those provisions. If it shall appear to the satisfaction of the court at a hearing on the motion that the defendant falls within paragraph (d)(3), (d)(4), (d)(5), (d)(6) or (d)(7) of this section, the court shall enter an order declaring the offense for which the defendant is being sentenced to be a felony and shall impose a sentence accordingly.
	<ul> <li>(12) The Court of Common Pleas and Justice of the Peace Courts shall not have jurisdiction over offenses which must be sentenced pursuant to paragraph (d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8) or (d)(9) of this section</li> </ul>

#### <u>4177 Driving a vehicle while under the influence or with a prohibited alcohol or</u> <u>drug content; evidence; arrests; and penalties [Effective upon fulfillment of 79</u> <u>Del. Laws, c. 396, § 5]</u>

(d) Whoever is convicted of a violation of subsection (a) of this section shall:

(1) For the first offense, be fined not less than \$500 nor more than \$1,500 or imprisoned not more than 12 months or both. Any period of imprisonment imposed under this paragraph may be suspended.

(2) For a second offense occurring at any time within 10 years of a prior offense, be fined not less than \$750 nor more than \$2,500 and imprisoned not less than 60 days nor more than 18 months. The minimum sentence for a person sentenced under this paragraph may not be suspended. The sentencing Court may suspend the minimum sentence set forth in this subsection upon the condition that the offender shall successfully complete the Court of Common Pleas Driving Under the Influence Treatment Program.

(3) For a third offense occurring at any time after 2 prior offenses, be guilty of a class G felony, be fined not more than \$5,000 and be imprisoned not less than 1 year nor more than 2 years. The provisions of § 4205(b)(7) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 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. The sentencing court may suspend up to 9 months of any minimum sentence set forth in this paragraph 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.

(4) For a fourth offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not more than \$7,000, and imprisoned not less than 2 years nor more than 5 years. The provisions of § 4205(b)(5) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6 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. The sentencing court may suspend up to 18 months of any minimum sentence set forth in this paragraph 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.

(5) For a fifth offense occurring any time after 4 prior offenses, be guilty of a class E felony, be fined not more than \$10,000 and imprisoned not less than 3 years nor more than 5 years.

(6) For a sixth offense occurring any time after 5 prior offenses, be guilty of a class D felony, be fined not more than \$10,000 and imprisoned not less than 4 years nor more than 8 years.

(7) For a seventh offense occurring any time after 6 prior offenses, or for any subsequent offense, be guilty of a class C felony, be fined not more than \$15,000 and imprisoned not less than 5 years nor greater than 15 years.

	(8) For the fifth, sixth, seventh offense or greater, the provisions of § 4205(b) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, at least 1/2 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 1/2 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. No conviction for a violation of this section, for which a sentence is imposed pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section, shall be considered a predicate felony for conviction or sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph (d)(3) or (d)(4) of this section is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.
	(9) Any minimum sentence suspended pursuant to paragraph (d)(3), (d)(4), or (d)(8) of this section shall be upon the condition that the offender shall complete a program of supervision which shall include:
	a. A drug and alcohol abstinence program requiring that the offender maintain a period of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device or through periodic breath or urine analysis. In addition to such monitoring, the offender shall participate in periodic, random breath or urine analysis during the entire period of supervision.
4177(d)	b. An intensive inpatient or outpatient drug and alcohol treatment program for a period of not less than 3 months. Such treatment and counseling may be completed while an offender is serving a Level V or Level IV sentence.
	c. Any other terms or provisions deemed appropriate by the sentencing court or the Department of Correction.
	(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.
	<ul> <li>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.</li> </ul>
	c. Violation of this paragraph shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of subsection (a) of this section. Nothing in this paragraph shall prevent conviction for a violation of both subsection (a) of this section and any offense as defined elsewhere by the laws of this State.
	d. Violation of or sentencing pursuant to this paragraph shall not be considered as evidence of either comparative or contributory negligence in any civil suit or insurance claim, nor shall a violation of or sentencing pursuant to this paragraph be admissible as evidence in the trial of any civil action.
	(11) A person who has been convicted of prior or previous offenses of this section,

as defined in § 4177B(e) of this title, need not be charged as a subsequent offender in the complaint, information or indictment against the person in order to render the person liable for the punishment imposed by this section on a person with prior or previous offenses under this section. However, if at any time after conviction and before sentence, it shall appear to the Attorney General or to the sentencing court that by reason of such conviction and prior or previous convictions, a person should be subjected to paragraph (d)(3), (d)(4), (d)(5), (d)(6) or (d)(7) of this section, the Attorney General shall file a motion to have the defendant sentenced pursuant to those provisions. If it shall appear to the satisfaction of the court at a hearing on the motion that the defendant falls within paragraph (d)(3), (d)(4), (d)(5), (d)(6) or (d)(7) of this section, the court shall enter an order declaring the offense for which the defendant is being sentenced to be a felony and shall impose a sentence accordingly.

(12) The Court of Common Pleas and Justice of the Peace Courts shall not have jurisdiction over offenses which must be sentenced pursuant to paragraph (d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8) or (d)(9) of this section.

# <u>4177A Revocation of license for violation of § 4177 of this title [Effective until fulfillment of 79 Del. Laws, c. 396, § 5]</u>

(a) The Secretary shall forthwith revoke the driver's license and/or driving privileges of any person convicted of a violation of § 4177 of this title or any offense under the laws of any state or of the United States or local jurisdiction or the District of Columbia which prohibits driving under the influence of drugs. Such revocation shall be for a period of:

(1) *First offense.* — 12 months; except that if the offender's blood alcohol concentration was between .15-.19 the revocation period shall be 18 months, or if the offender's blood alcohol concentration was .20 or greater or the offender refused a chemical test, the period of revocation shall be 24 months.

(2) *Second offense.* — 18 months; except that if the offender's blood alcohol concentration was between .15-.19 the revocation period shall be 24 months, or if the offender's blood alcohol concentration was .20 or greater, or the offender has refused a chemical test, the revocation period shall be 30 months.

(3) *Third offense.* — 24 months; except that if the offender's blood alcohol concentration was between .15-.19 the revocation period shall be 30 months, or if the offender's blood alcohol concentration was .20 or greater, or the offender has refused a chemical test, revocation period shall be 36 months.

(4) *Fourth or further subsequent offenses.* — 60 months regardless of the blood alcohol concentration.

(b) Any person sentenced under § 4177(d) of this title shall have the person's driver's license and/or driving privileges revoked by the Secretary until the person has satisfactorily completed a program established pursuant to § 4177D of this title; provided however, that successful completion of the Court of Common Pleas

	Driving Under the Influence Treatment Program shall satisfy this requirement.
	(c) The Secretary shall have power and authority to refuse to issue a driver's license to any individual whose driver's license or driving privilege was revoked pursuant to this section until such person has satisfied the Secretary that the person has been of good behavior for the entire period of the revocation and until the person has complied with all applicable provisions of this section. If the Secretary refuses to issue a driver's license after the period of revocation has ended and after all fines and/or fees are paid, the applicant may appeal to the Superior Court of the county of residence
	<u>4177A Revocation of license for violation of § 4177 [Effective upon fulfillment of 79 Del. Laws, c. 396, § 5]</u>
	(a) The Secretary shall forthwith revoke the driver's license and/or driving privileges of any person convicted of a violation of § 4177 of this title or any offense under the laws of any state or of the United States or local jurisdiction or the District of Columbia which prohibits driving under the influence of alcohol or drugs. Such revocation shall be for a period of:
	(1) <i>First offense.</i> — 12 months; except that if the offender's blood alcohol concentration was between .1519 the revocation period shall be 18 months, or if the offender's blood alcohol concentration was .20 or greater or the offender refused a chemical test, the period of revocation shall be 24 months.
	(2) Second offense. — 18 months; except that if the offender's blood alcohol concentration was between .1519 the revocation period shall be 24 months, or if the offender's blood alcohol concentration was .20 or greater, or the offender has refused a chemical test, the revocation period shall be 30 months.
	(3) <i>Third offense.</i> — 24 months; except that if the offender's blood alcohol concentration was between .1519 the revocation period shall be 30 months, or if the offender's blood alcohol concentration was .20 or greater, or the offender has refused a chemical test, the revocation period shall be 36 months.
	(4) <i>Fourth or further subsequent offenses.</i> — 60 months regardless of the blood alcohol concentration.
	(b) Any person sentenced under § 4177(d) of this title shall have the person's driver's license and/or driving privileges revoked by the Secretary until the person has satisfactorily completed a program established pursuant to 4177D of this title and complied with the ignition interlock device requirements set forth in §§ 4177C and 4177G of this title; provided however, that successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program shall satisfy this requirement.
4177A	(c) The Secretary shall have power and authority to refuse to issue a driver's license to any individual whose driver's license or driving privilege was revoked pursuant to this section until such person has satisfied the Secretary that the person has been of good behavior for the entire period of the revocation and until the person has complied with all applicable provisions of this section. If the Secretary refuses to issue a driver's license after the period of revocation has ended and after all fines and/or fees are paid, the applicant may appeal to the

	Superior Court of the county of residence.
21-4201	Leaving the Scene of an Accident
	Mandatory Minimum Sentence: (1) 60d6m. imprisonment; (2) Fine \$230-\$1,150; (3) 6m.
21 4202	driver's license revocation. Leaving the Scene of an Accident (Injury/Death)
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) 60d6m. @ Level V &/or (2) Fine= \$200-\$1,000
	• (2) 2nd Offense w/in 5 yrs: (1) 60d18m. @ 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)
	<ul> <li>(5)(a) Aggravating factor-If a juvenile &lt;17 y.o.a. was on board, then:</li> </ul>
	• 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- Class B Felonies

## Class B Felony (Violent)

## Sentence Range (Violent Category) FBV

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	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 1 year for all others.</li> </ul>	
Suspension of	• (c) Consecutive sentence shall not amount to more than limitations	
Sentence	herein.	
(11-4333)	• (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)
16-4752B	Drug Dealing-(Resulting in Death)

#### Supplemental Notations:

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)ai., of this title and there are two aggravating factors.

## Class B Felony (Non-Violent)

16-	Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes (see
4757(c)(2)	note)

#### Supplemental Notations:

16-	Miscellaneous Drug Crimes, Solicitation of Multiple Prescription Drug Crimes:
4757(c)(2)	• 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	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 1 year for all</li> </ul>	
Sentence	• (c) Consecutive sentence shall not amount to more than limitations	
(11-4333)	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)

#### 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)ai. of this title;
	(4) Possesses a controlled substance in a Tier 2 quantity, as defined in any of Section
	4751C(4)ai. 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;

## Class C Felony (Non-violent)

Sentence Range (Non	violent 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)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>
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

16-4760A	Operate or Attempt to Operate a Clandestine Laboratory
	subsection of 4757(a).
	other persons 3 or more times within a 30 day period to violate any provision or

## 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	Up to 18 mos. @ Level V
Responsibility	
Probation or Suspension of Sentence (11-4333)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### Crimes in Category:

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 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 (Non-violent)

Sentence Range (Nor	nviolent Category) FDN
Statutory Range	0 to 8 years @ Level V
Presumptive Sentence	Up to 12 months @ Level II or III
Presumptive Sentence DUI	2 year minimum term of imprisonment can be suspended pursuant to Title 21 Section (d)9 with a treatment program at Level 4 or Level 5 for a long term treatment program
Acceptance of Responsibility	Up to 9 months at Level II or III
Probation or Suspension of Sentence (11-4333)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

## 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)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### Crimes in Category:

16-4774(d) Delivery Drug Paraphernalia to Minor
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### 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)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

Crimes in Category:

16-4755	Aggravated Possession
	Possession of a controlled substance in a Tier 2 quantity as defined in 4751C(4)ai.
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)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### Crimes in Category:

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 14 mos. @ Level II for Title 16 offenses
Probation or Suspension of Sentence (11-4333)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

Crimes in Category:

16-4756	Aggravated Possession
	A person who possesses a controlled substance in a Tier 1 quantity
16-4757(b)	Miscellaneous Drug Crimes (see note)
16-	Registrant Crimes
4759(b)(1,2,4)	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 (Violen	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)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>		

#### 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

#### 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)	<ul> <li>(b)(1) 2 years for violent felonies; (b)(2) 18 months for Title 16 offenses; (b)(3) 1 year for all others.</li> <li>(c) Consecutive sentence shall not amount to more than limitations herein.</li> <li>(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.</li> <li>(e) Limitations may be exceeded for a 90-day period to ensure the completion of a court-ordered substance abuse program.</li> </ul>

#### Crimes in Category:

16-4762(d)	Hypodermic syringe or needle; delivering or possessing; disposal
16-4774(c)	Drug paraphernalia
	Manufacture and sale

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
16-4774(a)	Drug Paraphernalia

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), (c), (d)	Possession of Marijuana
	<ul> <li>Under 18, possess, use or consume, any quantity – up to \$100 fine</li> </ul>
	<ul> <li>18-21, possess, personal use quantity, second or subsequent offense – up to \$100 fine</li> </ul>
	<ul> <li>18-21, use or consume, personal use quantity, in private, second of subsequent offense – up to \$100 fine</li> </ul>
	<ul> <li>18 or over, personal use quantity, use or consume in area accessible to public or moving vehicle – up to \$200 fine, 5 days Level V or both</li> </ul>
	<ul> <li>18 or over, more than personal use quantity, possess use or consume – up to \$575, 3 months Level V, or both</li> </ul>
16-4774(d)	Advertisement of Drug Paraphernalia

<u>Civil Violations</u> (not criminal offenses subject to TIS; included for informational purposes)

### **Crimes in Category**

16-4761(a)	Illegal Possession and Delivery of Noncontrolled Prescription Drugs
16-4764(c)	<ul> <li>Possession of Marijuana <ul> <li>18-21, possess personal use quantity, first offense – up to \$100 civil penalty</li> <li>18-21, use or consume personal use quantity in private, first offense – up to \$100 civil penalty</li> <li>21+ possess, personal use quantity – up to \$100 civil penalty</li> <li>21+ use or consume, in private, personal use quantity – up to \$100 civil penalty</li> <li>penalty</li> </ul> </li> </ul>
16-4774(b)	<ul> <li>Possession of Drug Paraphernalia for Personal Use Quantity Marijuana</li> <li>Up to \$100 civil penalty</li> <li>Note: can receive civil penalty only for paraphernalia <i>or</i> for marijuana</li> </ul>

## **Revisions to Controlled Substances Act**

Guide to HB-19 (2011) & HB 39 (2015)

#### <u>Overview</u>

Below are several tables that graphically relate charges under the revised drug offense scheme:

- 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. Marijuana possession;
- 6. Drug dealing and manufacturing offenses by quantity tier;
- 7. Revised Title 16 offenses by section number;
- 8. Applicable penalties by offense classification.

CONTROLLED SUBSTANCE QUANTITY TIERS (16 DEL. C. § 4751C)						
<u>Substance</u>	<u>Tier 1</u> :	<u>Tier 2</u> :	<u>Tier 3</u> :	<u>Tier 4</u> :	<u>Tier 5</u> :	
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	
РСР	≥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	
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	
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	
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)	<ul> <li>Defendant was an adult and:</li> <li>The Offense involved a juvenile as <ul> <li>A co-conspirator or accomplice, or</li> <li>As the intended or actual recipient of the controlled substances;</li> </ul> </li> <li>And the defendant was more than four years older than the juvenile</li> </ul>
e)	<ul> <li>Defendant, during or immediately following the commission of any offense in this Title, intentionally         <ul> <li>Prevented or attempted to prevent officer from making an arrest by use of violence or force; or</li> <li>Fled in a vehicle from a law enforcement officer, thereby creating a substantial risk of physical injury to other persons</li> </ul> </li> </ul>

 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.

IF CHARGED WITH A FELONY:	
One Qualifying Prior:	Two or More Qualifying Priors:
1) "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; <b>OR</b>	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; <b>OR</b>	<ul> <li>Former Title 16 sections 4751, 4752, or 4753A; OR</li> </ul>
• Conviction under current Title 16 sections 4752, 4753, 4754, 4755, or 4756; <b>OR</b>	<ul> <li>Any former Title 16 section that was a Class C Felony or higher; OR</li> </ul>
Conviction under controlled substance law of any other U.S. jurisdiction that is same as or equivalent to any offense under Delaware law.	<ul> <li>Current Title 16 sections 4752, 4753, 4754, 4755, or 4756; OR</li> </ul>
	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:	<u>NO PRIOR</u> CONVICTIONS:	ONE PRIOR:	TWO OR MORE PRIORS:		
No Tier Quantity	All Substances EXCEPT	0	Class B Misd. § 4763(b)	Class A Misd. § 4763(c) (§4751B(4)(a)(11))	Class A Misd. §4763(c) (§4751B(4)(a)(11))		
Alleged	Marijuana (for marijuana see next chart)	≥1	Class A Misd. § 4763(c)	Class A Misd. § 4763(c)	Class A Misd. § 4763(c)		
		0	Class F Felony § 4756	Class D Felony § 4754(3)	Class C Felony §4753 (5) (§4751B(4)(b)(3))		
Tier 1	All Substances	1	Class D Felony § 4754 (3)	Class C Felony § 4753(5) (§4751B(4)(a)(5))	Class C Felony §4753(5) (§4751B(4)(a)(5))		
		≥2	Class C Felony § 4753(5)	Class C Felony §4753(5)	Class C Felony §4753(5)		
	All Substances	0	Class E Felony § 4755	Class C Felony §4753(4) (§4751B(4)(a)(6))	Class B Felony §4752(5) (§4751B(4)(b)(2))		
Tier 2		1	Class C Felony § 4753(4)	Class B Felony §4752(5) (§4751B(4)(a)(2))	Class B Felony §4752(5) (§4751B(4)(a)(2))		
		≥2	Class B Felony § 4752(5)	Class B Felony § 4752(5)	Class B Felony §4752(5)		
Tier 3	All Substances	0	Class D Felony § 4754(2)	Class B Felony §4752(4) (§4751B(4)(a)(4))	Class B Felony §4752(4) (§4751B(4)(a)(4))		
Tier 3 or Tier 4	All Substances	≥1	Class B Felony § 4752 (4)	Class B Felony §4752(4)	Class B Felony §4752(4)		
Tier 4	All Substances	0	Class C Felony § 4753(3)	Class C Felony §4753(3)	Class C Felony §4753(3)		
Tier 5	All Substances	≥0	Class B Felony §4752(3)	Class B Felony § 4752(3)	Class B Felony §4752(3)		

MARIJUANA POSSESSION						
<u>AGE</u>	<u>QUANTITY</u>	<u>ACTION</u>	CONDITION	<u>STATUTORY</u> <u>REFERENCE AND</u> <u>PENALTY</u>	<u>COURT</u>	
Under 18	Any	Possess, use or consume		Unclassified Misd. (4764(b)) (up to \$100)	Family Court	
Under 18	Any	Possess, use or consume	Aggravating factor	B Misd. (4764(a))	Family Court	
18-21	Personal Use <sup>21</sup>	Possess		1 <sup>st</sup> : Civ. Pen. (4764(c)) 2 <sup>nd</sup> or Subseq.: Uncl. Misd. \$100	JP Court	
18-21	Personal Use	Use or Consume	Private	1 <sup>st</sup> : Civ.Pen.\$100 (4764(c)) 2 <sup>nd</sup> or Subseq.: Uncl. Misd. \$100	JP Court	
21+	Personal Use	Possess		Civ. Penalty \$100 (4764(c))	JP Court	
21+	Personal Use	Use or Consume	Private	Civ. Penalty \$100 (4764(c))	JP Court	
18+	Personal Use	Use or consume	Area Accessible to Public <sup>22</sup> or Moving Vehicle	Uncl. Misd. (4764(d)) ( up to \$200, 5 days or both)	ССР	
18+	More than personal use	Possess, use or consume		Uncl. Misd. (4764(b)) ( up to \$575, 3 mos, or both	ССР	
18+	More than personal use	Possess, use or consume	Aggravating factor	B Misd. (4764(a))	ССР	

Note: the jurisdiction listed above is non-exclusive (except for Family Court). Superior Court continues to have jurisdiction over any adult Title 16, Chapter 47 violation. 16 Del. C. §4795(a

<sup>&</sup>lt;sup>21</sup> "Personal use quantity shall mean one ounce or less of marijuana in the form of leaf marijuana. Leaf marijuana means the dried leaves and flowering tops of the plant cannabis sativa." 16 *Del. C.* § 4701(33).

<sup>&</sup>lt;sup>22</sup> Areas accessible to the public include "sidewalks, streets, alleys, parking lots, parks, playgrounds, stores, restaurants, and any other areas to which the general public is invited," outdoor locations within 10 feet of such areas, and outdoor locations within "10 feet from the entrances, exits, windows that open, or ventilation intakes of any public or private building." 16 Del. C. § 4764(d).

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

<u>6 DEL.</u> <u>C. §</u>	OFFENSE:	NO PRIOR CONVICTIONS:	ONE PRIOR:	TWO OR MORE PRIORS:
0.3	(1): Del./Mfg./PWI Tier 4 or Tier 5	Class B Felony	Class B Felony	Class B Felony
4752	(2): Del/ Mfg./PWI Tier 2 or Tier 3 + Aggravator	Class B Felony	Class B Felony	Class B Felony
	(3): Poss. Tier 5	Class B Felony	Class B Felony	Class B Felony
	(4): Poss. Tier 3 or Tier 4 + Aggravator	Class B Felony	Class B Felony	Class B Felony
	(5): Poss. Tier 2 + 2x Aggravators	Class B Felony	Class B Felony	Class B Felony
	(1): Del./Mfg./PWI Tier 2 or Tier 3	Class C Felony	Class B Felony	Class B Felony
4753	(2): Del./Mfg./PWI + Aggravator	Class C Felony	Class C Felony	Class C Felony
	(3): Poss. Tier 4	Class C Felony	Class C Felony	Class C Felony
	(4): Poss. Tier 2 + Aggravator	Class C Felony	Class B Felony	Class B Felony
	(5): Poss. Tier 1 +2x Aggravators	Class C Felony	Class C Felony	Class C Felony
	(1): Del./Mfg./PWI No Tier or Tier 1	Class D Felony	Class C Felony	Class B Felony
4754	(2): Poss. Tier 3	Class D Felony	Class B Felony	Class B Felony
	(3): Poss. Tier 1 + Aggravator	Class D Felony	Class C Felony	Class C Felony
4755	Possession Tier 2	Class E Felony	Class C Felony	Class B Felony
4756	Possession Tier 1	Class F Felony	Class D Felony	Class C Felony

<u> 6 DEL. C.</u> <u>§:</u>	<u>OFFENSE:</u>	NO PRIOR CONVICTION:	ONE PRIOR:	TWO OR MOR
	(a)(3): Unlawfully Obtaining Poss. of a Controlled Substance or Prescription Drug	Class F Felony	Class F Felony	Class F Felony
4757	(a)(6): Unlawfully Obtaining Poss. of a Controlled Substance or Prescription Drug by Theft	Class F Felony	Class F Felony	Class F Felony
4757	(a)(7): Admin. of Steroids for Performance	Class F Felony	Class F Felony	Class F Felony
	(c)(1): Solicitation of Multiple Prescription Drug Crimes	Class C Felony	Class B Felony	Class B Felony
	(c)(2): Solicitation of Multiple Prescription Drug Crimes + Aggravator	Class B Felony	Class B Felony	Class B Felony
4758	(a): Deliver/Mfg./PWI Counterfeit or Purported Controlled Substance	Class E Felony	Class E Felony	Class E Felony
4760	Maintain a Drug Property	Class F Felony	Class F Felony	Class F Felony
	(a): Illegal Possession of Non- Ctrl. Prescription Drug	Unclassified Misdemeanor	Class B Misdemeanor	Class B Misdemeanor
4761	(b): Illegal Poss. of Non-Ctrl. Pres. Drug + Aggravator	Class B Misdemeanor	Class B Misdemeanor	Class B Misdemeanor
4701	(c): Illegal Possession & Delivery of Non-Ctrl. Prescription Drug	Class G Felony	Class F Felony	Class F Felony
	(d): Illegal Possession & Delivery of Non-Ctrl Prescription Drug + Aggravator	Class F Felony	Class F Felony	Class F Felony

### REVISED TITLE 16 OFFENSES BY SECTION NUMBER (CONTINUED)

#### **REVISED TITLE 16 OFFENSES BY SECTION NUMBER (CONTINUED (2))** 16 DEL. C. **OFFENSE:** NO PRIOR **ONE PRIOR: TWO OR MORE** PRIORS: **CONVICTIONS:** S: (b): Poss./ Consume Ctrl. Class B Class A Class A Substance Not Marijuana Misdemeanor Misdemeanor Misdemeanor 4763 (c): Poss./ Consume Ctrl. Class A Class A Class A Substance Not Marijuana + Misdemeanor Misdemeanor Misdemeanor Aggravator (a): Poss. /Consume More than Class B Class B Class B Personal Use Quantity Marijuana Misdemeanor Misdemeanor Misdemeanor + Aggravator (b): 18 and over Possession / Unclass. Misd.; Class B Class B Consume More than Personal Juveniles - \$100 Misdemeanor Misdemeanor 4764 Use Quantity Marijuana OR fine Under 18 Possession / Consume Adults – Fine $\leq$ Any Quantity \$575 & Imprisoned $\leq 3$ months (a): Use / Possession with / Class B Class B Class B Intent to Use Drug Paraphernalia Misdemeanor Misdemeanor Misdemeanor (b): Use / Possession with / \$100 Civil \$100 Civil Penalty \$100 Civil Penalty Intent to Use Drug Paraphernalia Penalty 4774 for Personal Use Quantity Marijuana

PENALTIES BY OFFENSE CLASSIFICATION				
	OFFENSE CLASSIFICATION	PENALTIES		
	Class B	2 to ≤ 25 years @ Level 5		
	Class C	≤ 15 years @ Level 5		
Estados	Class D	≤ 8 years @ Level 5		
Felonies	Class E	≤ 5 years @ Level 5		
	Class F	≤ 3 years @ Level 5		
	Class G	≤ 2 years @ Level 5		
	Class A	$\leq$ 1 year @ Level 5 and $\leq$ \$ 2,300 fine		
Misdemeanors	Class B	$\leq$ 6 months @ Level 5 and $\leq$ \$1,150 fine		
	Unclassified	$\leq$ 30 days @ Level 5 and $\leq$ \$575 fine; unless otherwise defined by statute (e.g., §§ 4764(b), (c), & (d))		

## PENALTIES BY OFFENSE CLASSIFICATION

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SENTAC CONTROLLED SUBSTANCE "SUPER WEIGHTS"						
<b>SUBSTANCE</b>	<u>4-10 YEARS</u>	<u>6-12 YEARS</u>	<u>8-15 YEARS</u>			
Cocaine	≥100g	≥250g	≥500g			
Morphine / Opium / Heroin	≥20g	≥50g	≥100g			
Marijuana	≥15,000g (33 lbs.)	≥37,500g (83 lbs.)	≥ <b>75,000g</b> (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			

• "Dose" is defined by 16 DEL. 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.

Category	Factor	Fel A	Fel B	Fel C	Fel D	Fel E	Fel F	Fel G
A	One or less prior felonies	Presumptiv	ve Sentence					
В	While on release or pending trial/sentencing	Level V for 25 yrs	r up to the t 10 yrs	ime shown 5 yrs	below: 4 yrs	2.5 yrs	1.5 yrs	1 yr
С	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 <b>violent</b> 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

#### Summary: Standard Prior History Categories for Violent Felonies

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

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

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. 14)

#### 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

S S	ection 1312 ection 1335 ection 1339 ection 1451	Stalking, except (d)(1) and (d)(2) Violation of privacy Adulteration 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 are 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
11-1102	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	Presumptive Sentence	Level	Time	
11-602	Menacing	Any offense	V	Up To 1 month	
11-763	Sexual Harassment				
11-1301	Disorderly Conduct				

### 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		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 hisor 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.

#### Habitual Criminal

#### § 4214 Habitual criminal; life sentence

(a) Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title, or any person who has been 3 times convicted of any felony under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony is declared to be an habitual criminal. The court, upon the State's petition, shall impose the applicable minimum sentence pursuant to (b), (c) or (d) of this section and may, in its discretion, impose a sentence of up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment. <u>Under no circumstances may the sentence imposed pursuant to this section as a habitual offender.</u>

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

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

under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent Title 11 violent felony, or attempt to commit such a violent felony, as defined by § 4201(c) of this title, shall receive a minimum sentence of the statutory maximum penalty provided elsewhere in this title for the 4<sup>th</sup> or subsequent felony which forms the basis of the State's petition to have the person declared to be an habitual criminal, up to life imprisonment, unless the felony conviction allows and results in the imposition of capital punishment.

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

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

(f) Notwithstanding any statute, court rule or regulation to the contrary, beginning January 1, 2017, any person sentenced as an habitual criminal <u>to a minimum sentence of not less than the</u> <u>statutory maximum penalty for a violent felony pursuant to 4214(a) of this title, or a life sentence</u> <u>pursuant to 4214(b) of this title prior to July 19, 2016, shall be eligible to petition the Superior Court</u> for sentence modification after the person has served a sentence of incarceration equal to any applicable mandatory sentence otherwise required by this section or the statutes describing said

offense or offenses, whichever is greater. Absent extraordinary circumstances, the petitioner may only file one application for sentence modification under this section. A Superior Court Judge upon consideration of a petition filed pursuant to this subsection may modify, reduce or suspend such petitioner's sentence, excepting any minimum or mandatory sentence required by this section or the statutes describing said offense or offenses. If a Superior Court judge modifies such petitioner's sentence, the judge may impose a suspended sentence that includes a probationary term. Nothing in this section, however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section. For the purposes of this subsection, the "applicable mandatory sentence" shall be calculated by reference to the penalties prescribed for the relevant offense or offenses by this Code as of the date of enactment of this section, unless said offense has been repealed, in which case the penalties prescribed by this Code at the time of the Act repealing said offense shall be controlling. The Superior Court shall establish rules to implement this subsection which are consistent with the statute, and those rules shall also provide that all petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a Title 16 offense are heard first, followed by all petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a crime against property, followed by all other petitions. The rules shall also provide for an initial review, including review of a formal response by the Department of Justice after consulting with the victim(s), of sentence modification petitions involving crimes against persons or property, for the purpose of ensuring that victims are not inconvenienced by petitions that should be denied based upon the documents submitted; in cases not denied in this manner, all victims shall be given an opportunity to be heard. The Superior Court's review of any petitions filed pursuant to this paragraph shall include a review of the applicant's prior criminal history, including arrests and convictions, a review of the applicant's conduct while incarcerated, and available evidence as to the likelihood that the applicant will reoffend if released, including a formal, recent risk assessment. The Superior Court shall articulate on the record the results of its review and its rationale for granting or denying a petition. In all cases where sentence modifications are granted, modified sentences should provide for step-down provisions to ensure successful reintegration of persons into the community. By January 1, 2017, the Department of Correction shall notify any criminal defendant whose Level V sentence was imposed under a statutory sentencing

regimen which was subsequently changed in a manner that reduced the sentence applicable to the defendant's convictions, including any criminal defendant who received a minimum mandatory sentence that no longer exists by virtue of the enactment of Chapter 28, Volume 80 of the Laws of Delaware. The Department of Correction shall similarly notify the attorney of record, and if the attorney of record is unavailable to receive notice, the Office of Defense Services.

## SUPERIOR COURT OF DELAWARE SPECIAL RULE OF PROCEDURE 2017-1 FOR REVIEW OF <u>A REQUEST TO MODIFY A HABITUAL OFFENDER SENTENCE</u>

## (a) Scope of rule.

(1) Nature of proceeding. This rule governs the procedure on a petition by a person in custody and serving the Level V term of a sentence of this court imposed under 11 *Del. C.* § 4214 prior to July 19, 2016, when the petition seeks exercise of the court's jurisdiction to modify that sentence pursuant to 11 *Del. C.* § 4214(f) as enacted by 80 Del. Laws ch. 321 (2016) and clarified by 81 Del. Laws ch. 6 (2017).

(2) Exclusiveness of remedy. A petition under this rule shall be limited to a request for modification of a sentence pursuant to 11 *Del. C.* § 4214(f) when that sentence was imposed under the provisions of 11 *Del. C.* § 4214 extant prior to July 19, 2016, and when that sentence comprised a minimum sentence of not less than the statutory maximum penalty for a violent felony imposed under then-extant 11 *Del. C.* § 4214(a) or a life sentence under then-extant 11 *Del. C.* § 4214(b). The remedy afforded by this rule may not be sought by a motion for post-conviction relief or in any manner other than as provided herein. The availability of relief under this rule, however, shall not be construed to limit the court's ability to modify a sentence pursuant to Superior *Court Criminal Rule 35 or 11 <i>Del. C.* § 4217 where the requirements thereof are met.

## (b) Appointment of counsel.

The Office of Defense Services shall represent the petitioner in

proceedings under this rule unless the petitioner privately retains an attorney. It shall be the duty of the assigned or retained attorney to prepare and present a petition and other filings that comply with the provisions of this rule and 11 *Del. C.* § 4214(f). Upon entry of a final order, the assigned or retained attorney's continuing duty shall be as provided in Supreme Court Rule 26.

### (c) Initial Review and Certificate of Eligibility.

(1) Certificate of Eligibility required. Unless a judge of this court issues a certificate of eligibility, a petition seeking exercise of the court's jurisdiction to modify a sentence pursuant to 11 *Del. C.* § 4214(f), as enacted by 80 Del. Laws ch. 321 (2016) and clarified by 81 Del. Laws ch. 6 (2017), shall not be filed with the court.

(2) Request for certificate of eligibility to be filed by attorney of record. A request for a certificate of eligibility to file a petition to modify a sentence pursuant to 11 *Del. C.* § 4214(f) may only be filed under these rules by the petitioner's attorney of record, who has been privately retained by the petitioner or assigned by the Office of Defense Services. The court will not consider a pro se request for a certificate of eligibility or any other pro se filing under this rule unless the petitioner has been granted permission to proceed pro <u>se</u>.

(3) Content of request for certificate of eligibility. The request for certificate of eligibility shall:

- (i) specify the date on which the petitioner will meet or has met the time-served eligibility requirements set forth in 11 *Del. C.* § 4214(f) and all grounds for the belief that the petitioner will meet or has met the time-served eligibility requirements on that date; and
- (ii) include as an attachment thereto any notification of timeserved eligibility from the Department of Correction provided for by 11 *Del. C.* § 4214(f) that has been received by the petitioner or the attorney; and
- (iii) be supported by specific averments that the attorney has conducted a diligent review of the petitioner's sentencing history and that there is a good faith basis to believe that:
  - a. the petitioner is serving a sentence imposed under the provisions of 11 *Del. C.* § 4214 extant prior to July

<u>19, 2016, and that sentence consists of a minimum</u> sentence of not less than the statutory maximum penalty for a violent felony imposed under previous <u>11 Del. C. § 4214(a) or a life sentence under previous</u> <u>11 Del. C. § 4214(b); and</u>

- b. the petitioner meets the time-served eligibility requirements set forth in 11 *Del. C.* § 4214(f); and
- <u>c. a petition may be heard because the felony</u> <u>establishing the petitioner as a habitual offender is one</u> for which review is then-permitted as provided for in <u>11 Del. C. § 4214(f) and subdivision (d)(11) of this</u> <u>rule.</u>

(4) Place and time of filing request for certificate of eligibility. A request for a certificate of eligibility shall be filed in the office of the Prothonotary in the county in which the judgment of sentence was entered and shall be served upon the office of the Attorney General in the county of application. A request for a certificate of eligibility shall be filed no earlier than 120 days prior to the date on which the petitioner meets the time-served eligibility requirements set forth in 11 *Del. C.* § 4214(f).

(5) Response to request for certificate of eligibility. The Attorney General shall file a written response to the request for certificate of eligibility within 30 days of the filing of the request. The response to the request for a certificate of eligibility shall be supported by specific averments that the Attorney General has conducted a diligent review of the petitioner's sentencing history and that there is a good faith basis to believe that:

- (i) the petitioner either is or is not serving a sentence imposed under the provisions of 11 *Del. C.* § 4214 extant prior to July 19, 2016, that consists of a minimum sentence of not less than the statutory maximum penalty for a violent felony imposed under previous 11 *Del. C.* § 4214(a) or a life sentence under previous 11 *Del. C.* § 4214(b); and
- (ii) the petitioner either does meet or does not meet the timeserved eligibility requirements set forth in 11 *Del. C.* § 4214(f); and
- (iii) a petition may or may not be heard because the felony establishing the petitioner as a habitual offender is one for

which review is then-permitted as provided for in 11 *Del. C.* § 4214(f) and subdivision (d)(11) of this rule.

(6) Disposition of request for certificate of eligibility. A request for a certificate of eligibility may be considered without presentation, hearing, or argument unless otherwise ordered by the court. The court shall set forth on the record the reasons for granting or denying the request for a certificate of eligibility.

(7) Provision of materials to petitioner upon the grant of a certificate of eligibility. If, but only if, the court grants a certificate of eligibility to file a petition to modify a sentence pursuant to 11 *Del. C.* § 4214(f), the Department of Correction and the Department of Justice shall, consistent with a memorandum of understanding entered for the express purpose of facilitating the lawful and efficient transfer of materials and information required for consideration of a petition under 11 *Del. C.* § 4214(f) and this rule, provide to the petitioner's attorney of record, who has been privately retained by the petitioner or assigned by the Office of Defense Services, access to such materials and information.

### (d) Petition for modification of sentence imposed under provisions of 11 *Del. C.* § 4214 extant prior to July 19, 2016.

(1) *Form of petition.* An application under this rule shall be made by a petition for sentence modification.

(2) Filing of petition. Consistent with the provisions of 11 Del. C. § 4214(f), no petition shall be filed under these rules except by the petitioner's attorney of record, who has been privately retained by the petitioner or assigned by the Office of Defense Services. The court will not consider a pro se petition or any other pro se filing under this rule unless the petitioner has been granted permission to proceed pro se.

(3) *Content of petition*. The petition shall:

(i) <u>specify all grounds for sentence modification that are available</u> <u>to the petitioner under 11 *Del. C.* § 4214(f);</u>

- (ii) <u>set forth in summary form the facts supporting each of</u> <u>the grounds thus specified;</u>
- (iii) <u>set forth a complete accounting of the petitioner's prior</u>

criminal history, including all arrests and convictions;

- (iv) set forth a complete history of the petitioner's conduct while incarcerated as derived from the materials and information provided by the Department of Correction under subdivision (c)(7) of this rule:
- (v) provide all available evidence as to the likelihood that the petitioner will not reoffend if released;
- (vi) provide the results of a formal risk assessment conducted by the Department of Correction no more than three years prior to the filing of the petition; and
- (vii) provide any other facts or circumstances that should be considered by the court when determining whether sentence modification is appropriate.

(4) Multiple judgments of sentence. If judgments of sentence under the prior provisions of 11 *Del. C.* § 4214 were entered on more than one offense at the same time because of joinder of offenses in one indictment, in one plea of guilt, or in one trial, the petitioner may seek modification of each such judgment of sentence in the petition. If other judgments of sentence were entered on one or more offenses at the same time and in the same sentencing order as a judgment of sentence under the prior provisions of 11 *Del. C.* § 4214 because of joinder of offenses in one indictment, in one plea of guilt, or in one trial, the Court may, notwithstanding any contrary provision of Superior Court Criminal Rule 35 or 11 *Del. C.* § 4217, consider modification of each such judgment of sentence to which 11 *Del. C.* § 4214 was not applied. Judgments entered at different times shall not be challenged in one petition but only by separate petitions.

(5) *Time of filing.* No petition shall be filed prior to January 1, 2017. A petition may not be filed until a judge of this court issues a certificate of eligibility under subdivision (c) of this rule. The court will consider a repetitive petition under this rule only in extraordinary circumstances.

(6) Place of filing. A petition shall be filed in the office of the Prothonotary in the county in which the judgment of sentence was entered and shall be served upon the office of the Attorney General in the county of application. (7) Response to the petition. The Attorney General shall file a written response to the petition at a time specified by the court. That written response shall:

- (i) specify all grounds for the Attorney General's support of or opposition to the petition;
- (ii) <u>set forth in summary form the facts supporting or</u> <u>basis for objecting to each of the grounds thus specified;</u>
- (iii) verify, and supplement when necessary, the petitioner's prior criminal history, including all arrests and convictions;
- (iv) verify the history of the petitioner's conduct while incarcerated;
- (v) provide all available evidence as to the likelihood that the petitioner will reoffend if released;
- (vi) provide the Attorney General's position regarding the results of the formal risk assessment conducted and filed with the petition; and
- (vii) be supported by specific averments that the Attorney General has conducted a diligent review of the matter and that, if the petition involves a crime against a person or property the Attorney General has consulted with the victim as provided for in 11 *Del. C.* § 4214(f).

The court shall not act upon the petition without first providing the Attorney General with an opportunity to be heard on the matter. A petition for modification of sentence under this rule may be considered without presentation, hearing, or argument unless otherwise ordered by the court. In no case, however, shall the petition be considered in a manner inconsistent with the provisions of 11 *Del. C.* § 4214(f) and this rule. In any case in which presentation, hearing or argument is had on the petition, a victim shall be given an opportunity to provide a victim impact statement in a manner consistent with the provisions of 11 *Del. C.* §§ 4331(d), (e), and (f).

(8) *Summary dismissal.* If it plainly appears from the petition and the record of prior proceedings in the case that the petitioner is not entitled to

relief or that the requirements of this rule have not been met, the court may enter an order for the petition's summary dismissal and cause the petitioner's attorney and the petitioner to be notified.

(9) Disposition of petition. The court may in its sole discretion grant or deny the petition for modification of sentence. Notwithstanding the provisions of 11 *Del. C.* § 4214 or § 4217, any court rule or any other provision of law to the contrary, the court upon consideration of a petition properly filed pursuant to this rule may modify, reduce, or suspend the petitioner's sentence imposed. In no instance, however, may the court modify, reduce, or suspend any portion of any applicable mandatory sentence as defined by 11 *Del. C.* § 4214(f). If the court modifies, reduces or suspends the petitioner's sentence, the court shall include a transition period of custodial supervision at either Level IV, III or II as provided for by 11 *Del. C.* § 4204(I). Nothing in this rule or in 11 *Del. C.* § 4214 shall require the court to grant sentence modification to a petitioner.

(10) Record of disposition. Whenever the court disposes of a petition, the

court shall set forth on the record the results of its review and its reasons for granting or denying the petition.

(11) Sequence of consideration of petitions. To the extent possible, consistent with the provisions of 11 *Del. C.* § 4214(f), all petitions filed under this rule where the felony establishing an inmate as a habitual offender was a Title 16 offense shall be heard first, followed by all petitions filed where the felony establishing an inmate as a habitual offender was a crime against property, followed by all other petitions.

Effective November 8, 2017 (To be cited as "Del. Super. Ct. Spec. R. 2017-1 " and must be applied to all 11 *Del. C.* § 4217(f) sentence modification requests pending or filed on or after November 8, 2017.)

§ 4218 Probation before judgment.

(a) Subject to the limitations set forth in this section, for a violation or misdemeanor offense under Title 4, 7, or 11, or for any violation or misdemeanor offense under Title 21 which is designated as a motor vehicle offense subject to voluntary assessment by § 709 of Title 21, or a violation of § 2702 of Title 14, or for violations of § 4166(d) of Title 21, or for violations of § 4172 of Title 21, or for a violation of a county or municipal code, or for a misdemeanor offense under § 4764, § 4771 or § 4774 of Title 16, a court exercising criminal jurisdiction after accepting a guilty plea or nolo contendere plea may, with the consent of the defendant and the State, stay the entry of judgment, defer further proceedings, and place the defendant on "probation before judgment" subject to such reasonable terms and conditions as may be appropriate. The terms and conditions of any probation before judgment shall include the following requirements: (i) the defendant shall provide the court with that defendant's current address; (ii) the defendant shall appear if summoned at any hearing convened for the purpose of determining whether the defendant has violated or fulfilled the terms and conditions of probation before judgment. The terms and conditions may include any or all of the following:

- (1) Ordering the defendant to pay a pecuniary penalty;
- (2) Ordering the defendant to pay court costs to the State;
- (3) Ordering the defendant to pay restitution;
- (4) Ordering the defendant to perform community service;
- (5) Ordering the defendant to refrain from contact with certain persons; and

(6) Ordering the defendant to conduct themselves in a specified manner. The length of the period of probation before judgment shall be fixed by the court, but in no event shall the total period of probation before judgment exceed the maximum term of commitment provided by law for the offense or 1 year, whichever is greater.

- (b) This section may not be substituted for:
  - (1) Section 1024 of Title 10. First offenders domestic violence diversion program;
  - (2) Section 900A of this title. Conditional discharge for issuing a bad check as first offense; or
  - (3) Section 4177B of Title 21. First offenders; election in lieu of trial.

(c) (1) Notwithstanding any provision of this section to the contrary, no person shall be admitted to probation before judgment if: a. The person is currently serving a sentence of incarceration, probation, parole or early release of any type imposed for another offense; b. The person is charged with any offense set forth in this title, and has previously been convicted of any violent felony; c. The person is charged with any offense set forth in this title, and has previously been convicted of any nonviolent felony within 10 years of the date of the commission of the alleged offense; d. The person is charged with any offense set forth in this title, and has previously been convicted of any misdemeanor offense within 5 years of the date of the commission of the alleged offense; e. The person is charged with any offense set forth in Title 4 or 7, and has been previously convicted of any offense set forth in Title 4 or 7 within 5 years of the date of the commission of the alleged offense; f. The person is currently charged with any offense set forth in § 709 of Title 21, and has been previously convicted of any offense set forth in Title 21 within 5 years of the date of the commission of the alleged offense; g. The person is currently charged with a violation of § 2702 of Title 14 and has been previously convicted of a violation of 2702 of Title 14 within 5 years of the date of the alleged offense; or Title 11 - Crimes and Criminal Procedure Page 255 h. The person is charged with a violation of a county or municipal code provision and has previously been convicted of a violation of another county or municipal code provision within 5 years of the date of the commission of the alleged offense. i. The person is charged with an offense involving a motor vehicle and holds a commercial driver license (CDL).

(2) For the purposes of this subsection, the following shall also constitute a previous conviction: a. A conviction under the laws of another state, the United States, or any territory of the United States of any offense which is the same as, or equivalent to, any offense specified in paragraph (c)(1) of this section; b. An adjudication of delinquency; or c. Any adjudication, resolution, disposition or program set forth in § 4177B(e)(1) of Title 21.

(d) This section shall not be available to any person who has previously been admitted to probation before judgment for any offense within 5 years of the current offense.

(e) Nothing in this section shall be construed to permit probation before judgment for a violation of a county or municipal code that would not be permitted for the corresponding state code offense.

(f) Upon a violation of a term or condition of the Court's order of probation before judgment, the Court may enter judgment and proceed with disposition of the person as if the person had not been placed on probation before judgment.

(g) Upon fulfillment of the terms and conditions of probation before judgment, the Court shall enter an order discharging the person from probation. The burden shall be upon the defendant to demonstrate that the terms and conditions of probation have been fulfilled. The discharge is the final disposition of the matter. Discharge of a person under this section shall be without judgment of conviction and is not a conviction for purposes of any disqualification or disability imposed by law because of conviction of a crime.

(h) Notwithstanding any provision of this section to the contrary, the court shall not admit a defendant to probation before judgment nor otherwise apply any provision of this section unless the defendant first gives written consent to the court permitting any hearing or proceeding pursuant to this section to occur in the defendant's absence if:

(1) Timely notice of the hearing or proceeding is sent or delivered to the address provided by the defendant pursuant to subsection (a) of this section; and

(2) The defendant fails to appear at said proceeding. In the event that a defendant fails to appear at any hearing or proceeding pursuant to this section, the court may proceed in the defendant's absence if it first finds that timely notice of the hearing or proceeding was sent or delivered to the address provided by the defendant pursuant to subsection (a) of this section. Nothing in this subsection shall limit the power of the Court to hold a hearing to determine whether a defendant is in violation of the terms of that defendant's probation. (i) Notwithstanding the provisions of subsection (a) of this section to the contrary, in any case in which the Delaware Department of Justice does not intend to enter its appearance, the consent of the State shall not be required prior to placing a defendant on "probation before judgment." Notwithstanding the foregoing, except for the offenses under Title 21 to which this section applies, the Attorney General or other prosecuting authority may advise the court of aggravating circumstances in opposition to placing a defendant on "probation before judgment."

## 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 <u>felony</u>, a <u>violent misdemeanor</u>, 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, <u>unless</u> he specifically agrees thereto, and the sentence is given in relation to TIS guidelines. <u>Designation is imperative so that DOC can maintain proper records on the time to be served, goodtime\_credits, and parole eligibility.</u>

- 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 <u>will not</u> 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 2<sup>nd</sup> 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.

#### (a) 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 provide sex offenders a written notice of when to return.
- B. 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, or Sussex County, Thurman Adams State Service Center, 546 S. Bedford Street, Room 202, Georgetown DE.. Hours of operation for the Georgetown location are Monday-Thursday 8:30AM-3:30PM. No appointment necessary.

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) 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 16<sup>h</sup> 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 Incest DE110766 Unlawful Sexual Contact Third Degree DE110767 DE110768 Unlawful Sexual Contact Second Rape Fourth Degree DE110770 Rape Third Degree DE110771 Sexual Extortion DE110776 DE110777 Bestiality Dangerous Crime Against a Child DE110779 DE111108 Sexual Exploitation of a Child Unlawfully Dealing in Child Pornography DE111109

DE11110 Subsequent Conviction of 1108 or 1109DE11111 Possession of Child PornographyDE111112A 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.
- Delaware law requires the Court to employ an objective risk assessment instrument to gauge a person's risk of flight and re-arrest.
- 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.<sup>23</sup>
- 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.

<sup>&</sup>lt;sup>23</sup> Illinois v. Gates, 462 U.S. 213, 234 (1983).

### THE BAIL DECISION - APPROPRIATE STEPS

#### 1. <u>Review</u>

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. <u>COMPLETE RISK ASSESSMENT INSTRUMENT IF APPLICABLE TO CHARGES</u>

- a. The Risk Assessment Instrument will be used for all initial charges for the following case types: Felony, Misdemeanor A, Title 16, DUI and any alcohol related charges and any domestic violence charges.
- b. The Risk Assessment Instrument will also be completed in any case where the defendant is detained, regardless of the charge.
- c. Complete the scoring of the Risk Assessment Instrument.

#### 3. WEIGH AND ANALYZE FOR FINAL DECISION

- a. Consider the score of the Risk Assessment Instrument, if applicable. There exists a presumption that defendant's falling into the "high risk" category will be detained and that defendant's falling into the "low risk" will not be detained. If these presumptions are overridden, this override must be recorded on the Risk Assessment Instrument.
- 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).<sup>24</sup>
  - When Using the Risk Assessment Instrument: There exists a presumption that defendant's falling into the "high risk" category will be detained and that defendant's falling into "low risk" will not be detained. If these presumptions are overridden, this override must be recorded on the Risk Assessment Instrument.
- **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.

<sup>&</sup>lt;sup>24</sup> 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 <i>Del. C.</i> § 636	Hold Without Bail <sup>*</sup> (11 <i>Del. C.</i> § 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		
	RS and VIOLATIO				
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 – 1 <sup>st</sup>	OR to \$50	0-1 year probation LI	0-\$345	Subsequent violations are within	
Violation – 2 <sup>nd</sup>	OR to \$100	0-1 year probation LI	0-\$690	a 5-year period.	
Violation – 3 <sup>rd</sup>	OR to \$200	0-1 year probation LI	0-\$1150		

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

<sup>\*</sup>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.

#### Revocation of Bail Following a Violent Felony

 If a defendant is alleged to have committed a violent felony while released on recognizance or bond from a previous violent felony, the original recognizance or bond must be revoked (11 <u>Del.C.</u> 2116(c)).

#### 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 nonjailable offenses.

#### 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.

## LEGISLATIVE UPDATE

Compilation of changes affecting the Benchbook from the First Session of the 149th General Assembly listed by Title. The changes herein listed have also been included under the Classifications and Notations and take into account all House and Senate amendments and substitutions.

### CHAPTER 168 FORMERLY HOUSE BILL NO. 123 AS AMENDED BY HOUSE AMENDMENT NO. 1

## AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO THE CRIME OF PROMOTING PRISON CONTRABAND

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

Section 1. Amend § 1256, Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 1256. Promoting prison contraband; class F felony; class A misdemeanor.

A person is guilty of promoting prison contraband when:

(1) The person knowingly and unlawfully introduces any contraband into a detention facility; or

(2) The person possesses with intent to deliver any contraband to any person confined within a detention facility; or

(3) Being a person confined in a detention facility, the person knowingly and unlawfully makes, obtains or possesses any contraband.

Promoting prison contraband is a class A misdemeanor except that if the prison contraband is a deadly weapon or any mobile phone, cellular telephone, or other prohibited electronic device of any kind any prohibited electronic device not specifically authorized or approved by the Commissioner or designee, any illegal narcotic or look-a-like substance, any prescription medication, or any item or article that could be used to facilitate an escape, it is a class F felony.

Approved September 8, 2017

#### CHAPTER 6 FORMERLY HOUSE BILL NO. 18

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

WHEREAS, the General Assembly enacted legislation in 2016 (Senate Substitute 1 for Senate Bill 163) that was designed to ensure fairness in the minimum mandatory sentences associated with the state's habitual offender statute; and

WHEREAS, questions have arisen regarding the legislature's intent to focus upon the minimum mandatory sentences imposed by the habitual offender statute, as opposed to those sentences where sentencing judges have complete discretion with respect to sentencing; and

WHEREAS, the General Assembly also wishes to clarify that in enacting S.S. 1 for S.B. 163, it did not intend to reduce any specific minimum mandatory sentences that already exist for specific crimes.

#### NOW, THEREFORE:

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

Section 1. Amend § 4214(a), Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4214. Habitual criminal; life sentence.

(a) Any person who has been 2 times convicted of a Title 11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title under the laws of this State, and/or any comparable violent felony as defined by another state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent Title11 violent felony, or attempt to commit such a violent felony, as defined in § 4201(c) of this title, or any person who has been 3 times convicted of any felony under the laws of this State, and/or any other state, United States or any territory of the United States, and who shall thereafter be convicted of a subsequent felony is declared to be an habitual criminal. The court, upon the State's petition, shall impose the applicable minimum sentence pursuant to subsection (b), (c) or (d) of this section and may, in its discretion, impose a sentence of up to life imprisonment, unless the felony conviction allows and results in the imposition of capital

punishment. <u>Under no circumstances may the sentence imposed pursuant to this section be less than the</u> minimum sentence provided for by the felony prompting the person's designation as a habitual offender.

Section 2. Amend § 4214(e), Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

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

Section 3. Amend § 4214(f), Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

(f) Notwithstanding any statute, court rule or regulation to the contrary, beginning January 1, 2017, any person sentenced as an habitual criminal to a minimum sentence of not less than the statutory maximum penalty for a violent felony pursuant to 4214(a) of this title, or a life sentence pursuant to 4214(b) of this title prior to July 19, 2016, shall be eligible to petition the Superior Court for sentence modification after the person has served a sentence of incarceration equal to any applicable mandatory sentence otherwise required by this section or the statutes describing said offense or offenses, whichever is greater. Absent extraordinary circumstances, the petitioner may only file 1 application for sentence modification under this section. A Superior Court Judge upon consideration of a petition filed pursuant to this subsection may modify, reduce or suspend such petitioner's sentence, excepting any minimum or mandatory sentence required by this section or the statutes describing said offense or offenses. If a Superior Court Judge modifies such petitioner's sentence, the Judge may impose a suspended sentence that includes a probationary term. Nothing in this section, however, shall require the Court to grant such a petitioner a sentence modification pursuant to this section. For the purposes of this subsection, the "applicable mandatory sentence" shall be calculated by reference to the penalties prescribed for the relevant offense or offenses by this Code as of July 19, 2016, unless said offense has been repealed, in which case the penalties prescribed by this Code at the time of the act repealing said offense shall be controlling. The Superior Court shall establish rules to implement this subsection which are consistent with the statute, and those rules shall also provide that all petitions filed pursuant to this

subsection where the felony establishing an inmate as a habitual offender was a Title 16 offense are heard first, followed by all petitions filed pursuant to this subsection where the felony establishing an inmate as a habitual offender was a crime against property, followed by all other petitions. The rules shall also provide for an initial review, including review of a formal response by the Department of Justice after consulting with the victim or victims, of sentence modification petitions involving crimes against persons or property, for the purpose of ensuring that victims are not inconvenienced by petitions that should be denied based upon the documents submitted; in cases not denied in this manner, all victims shall be given an opportunity to be heard. The Superior Court's review of any petitions filed pursuant to this

subsection shall include a review of the applicant's prior criminal history, including arrests and convictions, a review of the applicant's conduct while incarcerated, and available evidence as to the likelihood that the applicant will reoffend if released, including a formal, recent risk assessment. The Superior Court shall articulate on the record the results of its review and its rationale for granting or denying a petition. In all cases where sentence modifications are granted, modified sentences should provide for step-down provisions to ensure successful reintegration of persons into the community. By January 1, 2017, the Department of Correction shall notify any criminal defendant whose Level V sentence was imposed under a statutory sentencing regimen which was subsequently changed in a manner that reduced the sentence applicable to the defendant's convictions, including any criminal defendant who received a minimum mandatory sentence that no longer exists by virtue of the enactment of 80 Del. Laws, c. 28. The Department of Correction shall similarly notify the attorney of record, and if the attorney of record is unavailable to receive notice, the Office of Defense Services.

Approved April 13, 2017

#### CHAPTER 155 FORMERLY HOUSE BILL NO. 206

## AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO DRIVER'S LICENSE REVOCATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Two-thirds of all members elected to each house thereof concurring therein):

Section 1. Amend § 2742, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(i) If a person's driver's license is revoked pursuant to subsections (b) or (c) of this section and the person has not yet been adjudicated guilty and sentenced to the charge of Driving Under the Influence, the Justice of the Peace Court may request in writing that the Division of Motor Vehicles issue a conditional license to the revoked driver as a condition of pretrial release pursuant to Sections 2108 or 2112 of Title 11 if the person is subject to continuous sobriety monitoring.

(1) When the Division of Motor Vehicles receives a request from the Justice of the Peace Court to issue a conditional license to a revoked driver, the Division may issue a conditional license during the period of revocation provided the person's driver's license is not suspended, revoked, denied, or otherwise unavailable for any other violation of the law of any jurisdiction that would prohibit the issuance of the conditional license unless it is determined by the Secretary of Transportation or the Secretary's designee that the individual is eligible for reinstatement. This conditional license only permits the driver to operate a motor vehicle to travel to and from work, school, medical appointments, any Court, or any appointments related to the driver's continuous sobriety monitoring.

(2) If at any point the revoked driver ceases to be subject to continuous sobriety monitoring, the Justice of the Peace Court must promptly notify the Division of Motor Vehicles of the change in the revoked driver's status. The Division of Motor Vehicles must direct such person to surrender said conditional license to the Division of Motor Vehicles and the Division of Motor Vehicles will restore the full revocation of the driver's license for the remainder of the term of the revocation.

(3) If at any point the Justice of the Peace Court determines, in its discretion, that the revoked driver is no longer entitled to a conditional license, the Justice of the Peace Court must promptly notify the Division of Motor Vehicles of that determination. The Division of Motor Vehicles must direct such

person to surrender said conditional license to the Division of Motor Vehicles and must restore the full revocation of the driver's license for the remainder of the term of the revocation.

(4) Any person whose driver's license has been revoked and to whom a conditional license has been issued under this chapter, and who drives any motor vehicle upon the highways of this State contrary to the conditions placed upon such conditional license during the period of such conditional license, is guilty of an unclassified misdemeanor, and, upon conviction thereof, shall be fined not less than \$28.75 or more than \$230. The Division, upon receiving a record of conviction of any person operating a motor vehicle in violation of the conditional license to the Division of Motor Vehicles and must notify the Justice of the Peace Court of the cancellation of the conditional license.

Section 2. This Act takes effect following the date of publication in the Register of Regulations of a notice that

both of the following have occurred:

(1) The creation of a continuous sobriety monitoring program

(2) The Office of Highway Safety has provided notice to the Registrar of Regulations that the contingency in paragraph (1) has been fulfilled.

Approved August 30, 2017

#### CHAPTER 195 FORMERLY SENATE BILL NO. 78 AS AMENDED BY SENATE AMENDMENT NO. 1

## AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO RULES OF THE ROAD.

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

Section 1. Amend Subchapter IX, Chapter 41, Title 21 of the Delaware Code by making

deletions as shown by strike through and insertions as shown by underline as follows:

<u>§ 4176E. Operation of a vehicle causing serious physical injury to a vulnerable user.</u>

- (a) <u>As used in this section, "vulnerable user" means any of the following:</u>
- (1) <u>A pedestrian that is lawfully on or within a highway, crosswalk, improved or unimproved</u> <u>shoulder of a highway, or sidewalk.</u>
- (2) <u>An individual actively engaged in work upon a highway, in work upon utility facilities upon or along a highway, or in the provision of emergency services upon, within, or adjacent to a highway.</u>
- (3) <u>An individual riding an animal or driving an animal-drawn carriage, or a passenger of the individual, lawfully on or within a highway or improved or unimproved shoulder of a highway.</u>

(4) An individual operating or a passenger on or in any of the following, when any of the following

is lawfully on or within a highway, crosswalk, improved or unimproved shoulder of a highway, or sidewalk:

- a. A farm tractor or similar vehicle designed primarily for farm use.
- b. A skateboard.
- c. Roller skates.
- d. In-line skates.

e. A scooter.

f. A moped.

g. A bicycle or a device that is an extension of a bicycle, such as an extend-a-bike, a bicycle trailer, or a child's bicycle seat.

h. A motorcycle.

i. A nonmotorized or motorized wheelchair.

j. An electric personal assistive mobility device.

(b) A person is guilty of operation of a vehicle causing serious physical injury to a vulnerable user when, in the course of driving or operating a motor vehicle or OHV in violation of any provision of this chapter other than § 4177 of this title, the person's driving or operation of the vehicle or OHV causes serious physical injury, as defined in § 222 of Title 11, to a vulnerable user.

(c) The Superior Court has original and exclusive jurisdiction over a violation of this section by a person 18 years of age or older. Notwithstanding any provision of law to the contrary, an offense which is within the original or exclusive jurisdiction of another court and which may be joined properly with a violation of this section is deemed to be within the original and exclusive jurisdiction of the Superior Court.

(d) A person who violates this section is guilty of a violation. Unless suspended under subsection (e) of this section, the Superior Court must impose upon a person convicted under this section all of the following:

(1) A fine of \$550.

(2) A suspension of the person's license or driving privileges, or both, for up to 1 year.

(3) A requirement that the person complete a traffic safety course approved by the Division of Motor Vehicles.

(4) A requirement that the person perform not less than 10, nor more than 100, hours of community service which must include activities related to driver improvement and providing public education on traffic safety.

(e) The Superior Court may suspend up to \$500 of the fine and the imposition of the suspension of the person's license or driving privileges, or both. Any sentence suspended under this subsection must be suspended on the condition that the person completes the remaining provisions of the sentence. If any sentence is suspended, the Superior Court shall set a hearing date at a time within 1 year of the date of sentencing. At that hearing, the Superior Court shall do one of the following:

(1) If the person has successfully completed the requirements described in paragraphs (d)(3) and (d)(4) of this section, dismiss the penalties suspended under this subsection.

(2) If the person has not successfully completed the requirements described in paragraphs (d)(3) and (d)(4) of this section do one of the following:

a. Grant the person an extension based on good cause shown. The Court may not grant more than <u>1 extension for good cause shown.</u>

b. Impose those portions of the sentence suspended under subsection (e) of this section.

# (f) Nothing in this section is deemed to preclude prosecution under any other provision of this chapter.

Section 2. Amend § 4176, Title 21 of the Delaware Code by making by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4176. Careless or inattentive driving.

(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

e. 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.

Approved October 5, 2017