



SPONSOR: Rep. Minor-Brown & Sen. Pinkney &
Rep. Dorsey Walker & Rep. S. Moore
Reps. Baumbach, Heffernan; Sen. S. McBride

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 37

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO PUBLIC HEALTH EMERGENCY CREDITS.

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

1 Section 1. Amend Chapter 42, Title 11 of the Delaware Code by making deletions as shown by strikethrough and
2 insertions as shown by underline as follows:

3 § 4205. Sentence for felonies.

4 (f) Any term of Level V incarceration imposed under this section must be served in its entirety at Level V, reduced
5 only for earned "good time" as set forth in § 4381 or "public health emergency credit" as set forth in § 4384 of this title.

6 § 4206. Sentence for misdemeanors.

7 (e) Any term of Level V incarceration imposed under this section must be served in its entirety at Level V, reduced
8 only for earned "good time" as set forth in § 4381 or "public health emergency credit" as set forth in § 4384 of this title.

9 § 4214 Habitual criminal; life sentence

10 (e) Notwithstanding any provision of this title to the contrary, any minimum sentence required to be imposed
11 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
12 entirety at full custodial Level V institutional setting without the benefit of probation or parole, except that any such
13 sentence shall be subject to the provisions of §§ 4205(h), 4381, ~~and 4382~~, and 4384 of this title. For purposes of the
14 computation of good time under § 4381 of this title, a life sentence imposed pursuant only to this section shall equate to a
15 sentence of 45 years.

16 Section 2. Amend Chapter 43, Title 11 of the Delaware Code by making deletions as shown by strike through and
17 insertions as shown by underline as follows:

18 § 4384. Public Health Emergency Credit.

19 (a) Whenever a public health state of emergency, pursuant to Chapter 31 of Title 20 of the Delaware Code, has
20 been declared by the Governor, and is in effect, public health emergency credits shall be applied to reduce any sentence of
21 incarceration if the public health emergency arises as a result of a communicable or infectious disease.

22 (b) Public health emergency credits shall be awarded to any inmate in the custody of the Department of Correction
23 in a Level 4 or Level 5 facility who is serving a sentence or receiving credits applicable to a sentence.

24 (c) Public Health Emergency Credits awarded pursuant to this section shall reduce the term of the inmate's
25 sentence, including any statutory mandatory minimum term at the rate of 182 days for each month, or portion thereof
26 served during the declared emergency. An inmate shall not be awarded public health emergency credits in excess of 365
27 days for any declared emergency.

28 (d) Any person who was in the custody of the Department of Correction during the COVID-19 State of Emergency
29 declared on March 12, 2020, and continuing thereafter shall receive public health emergency credits in accordance with this
30 section.

31 (e) Within 60 days of the effective date of this Act, the Department of Correction shall provide a to the President
32 Judge of Superior Court, the Chief Defender, the Attorney General, and the Chairs of the Corrections Committee of the
33 House of Representatives and Senate a list of the offenders who have received a public health emergency credit for the
34 Public Health Emergency declared by the Governor on March 12, 2020.

SYNOPSIS

Delaware, like the rest of the country and the world, has been struggling with the COVID-19 pandemic since March of 2020. The worst outbreaks have occurred in facilities where people live and/or work in tight communal settings – long-term care facilities, prisons, and meat processing plants. There is no real way to prevent an outbreak and the spread of a highly contagious disease inside a prison where inmates share cells, communal recreation and dining spaces, and in some instances reside in large bunk rooms. Furthermore, the COVID-19 pandemic has severely disrupted the operations of the prisons as they struggle with staff shortages due to illness and quarantines, and curtail activities to reduce opportunities for community spread within the prison.

This bill seeks to address both the COVID-19 pandemic as well as any future public health emergency that impacts prison operations and conditions by creating a “public health emergency credit” that would automatically be awarded when a public health emergency is declared. Credits would be awarded at the rate of 6 months for every month served during the public health emergency up to a maximum reduction in sentence of 1 year. This has the practical effect of moving forward release dates for inmates whose release would come within the next year regardless of the emergency. This will reduce the prison population in an orderly and fair manner, relieving pressure on staff and creating better conditions for those inmates who remain incarcerated to socially distance and control the spread of infectious disease. By applying additional credit towards sentence completion, this legislation also recognizes that the conditions of confinement during a public health emergency like the current one can be considered significantly more punishing – since visitation, communications, programming, and recreation are all significantly negatively impacted by the emergency conditions and modifications to operations.