

THE IMPROVED DELAWARE CRIMINAL CODE

Justice and Equality Demand an Improved Criminal Code

- **Equality Can Only Be Achieved If the Criminal Code Facilitates the Equal Treatment of Equally Serious Crimes**
 - **Similar Crimes Should Be Treated Similarly, Punished Equally**
 - **Identical Conduct Should Not Be Subject to Double Charging—“Stacking”—that Unfairly Pressures Defendants to Plead Guilty**
 - **Mandatory Minimum Sentences Should Be Imposed Only in the Most Serious of Cases and Should Not Unfairly Penalize Poor Defendants**
 - **Habitual Offender Statutes Should Be Consistent and Reasonable**
 - **Meaningful Criminal Justice Reform Cannot Occur Without Code Reform**
-

Equality Can Only Be Achieved If the Criminal Code Facilitates Equal Treatment of Equally Serious Crimes

- It has been 45 years since the current Delaware Criminal Code was established. When first enacted, that Code ranked offenses from most serious to least serious in a logical way, based on the harm caused by the offense and the offender's state of mind. That Code was based on the nationally respected Model Penal Code.
- Since 1973, Delaware's Criminal Code has exploded in length and complexity, growing to more than four times its original size, making it almost impossible for a citizen to read and comprehend, and confusing for even seasoned police officers, attorneys, and judges.
- The addition of hundreds of pages of new crimes and punishments since 1973 has largely ignored the original structure and logic of the Code, adding needless complexity, redundancy, and inconsistency. For example:
 - Offenses of similar severity can have very different sentencing ranges. The crime of Bribery is a Class E Felony punishable by up to 5 years in prison; but elsewhere in the Code, the nearly identical crime of making Unlawful Gratuities is a Class A Misdemeanor punishable by up to only 1 year in prison.
 - The fact that something is a Class A Felony in the current Code does not tell you the crime's possible sentencing range. Because there are so many different mandatory minimum sentences (discussed more below), there are in reality seven possible sentencing ranges for a Class A Felony.
 - Factors like vulnerability of the victim and recidivism are given different sentencing weight in similar contexts without rational reasons. Stealing \$1,000 from a 62-year-old person can result in an enhanced penalty under one charge, but not under a nearly identical crime.
 - Likewise, prior offenses are not treated consistently. In some cases, a repeated conviction on one specific charge—like Maintaining a Dwelling for Illegal

Gambling or making a straw purchase of a firearm—can result in double or triple the usual punishment. By contrast, a repeat conviction for other equally serious offenses—like Third Degree Assault and providing a firearm to a convicted felon—do not result in any enhanced punishment.

- The Improved Code addresses these problems:
- Instead of having felony or misdemeanor levels with multiple effective sentencing ranges created by many different mandatory minimums, each level or “grade” of offense under the Improved Code has a single sentencing range that applies to all offenses within the grade. The point of classifying crimes in a grade is to identify crimes of similar seriousness. By creating a consistent sentencing range for each grade, sentencing guidelines can be created that have more teeth and better ensure equal treatment of similarly situated defendants.
- Similarly, the Improved Code promotes fair and equal treatment by recognizing the importance of punishing repeat offenders and of protecting vulnerable victims, but doing so in a proportionate, rational, and consistent way. Rather than inconsistently using the factors of repeat offending or victimizing a vulnerable person, the Improved Code gives those factors heavy but consistent weight as to all crimes to which they apply.

Similar Crimes Should Be Treated Similarly, Punished Equally

- If being equal before the law means anything, it must mean that the law itself should try to treat similarly serious (or similarly minor) crimes equally. When a criminal code is overly complex and redundant, it creates a great deal of discretion. Use of that discretion can result in some defendants, particularly those without the resources for the best defense, receiving harsher punishment than other defendants in a similar situation. A simple and fair criminal code promotes equality for all defendants because there is less room to favor or disfavor defendants for inappropriate reasons like race, gender, or wealth.
- The Improved Criminal Code promotes equality by putting in place a fair and sensible grading table that ranks offenses in order from the most serious—

intentional homicide—to the least serious—loitering—based on rational factors like the degree of harm caused and the defendant’s state of mind. This is a return to the simplicity and reasonableness of the current code when it first became law.

- Put simply, the proposed Improved Criminal Code promotes equality by reducing the opportunity to punish defendants differently for similar conduct.

**Identical Conduct Should Not Be Subject to Double Charging—“Stacking”—
that Unfairly Pressure Defendants to Plead Guilty**

- Redundancy in the current Code means the same conduct can be punished multiple times under different crimes, enabling overcharging, a practice known as “charge stacking.” For example:
 - A single break-in can be charged as both a Home Invasion and a Burglary.
 - A single car robbery can be charged as both Robbery and Carjacking.
- In these situations, a defendant knows that a jury can split the difference and convict on the burglary counts and acquit on the home invasion counts and still leave him convicted. This “compromise” result is common, and happens even though (as a practical matter) there is no genuine basis to distinguish between the two sets of charges. But the compromise still leaves the defendant convicted. This known possibility puts pressure on defendants to plea bargain for reasons that are not legitimate.
- The Improved Code retains charges like Home Invasion and Carjacking by making the fact that a burglary involved home invasion the most serious form of Burglary, and by making the robbery of a car by force, or carjacking, a very serious form of Robbery. Thus, the Code’s structure results in one charge that most accurately describes the offense, not multiple “stacked” charges.

Mandatory Minimum Sentences Should Be Imposed Only in the Most Serious Cases and Should Not Unfairly Penalize Poor Defendants Caught Up as Foot Soldiers in the Drug Trade or in Property Crimes

- For 45 years, the answer to most problems in criminal justice has been to add more crimes and add harsher punishments to the ones that already exist. This has resulted in an explosion of mandatory minimum prison sentences.
- The overuse of these mandatory minimums has dramatically grown prison populations and, in particular, has contributed to racial disparities. For example, data shows that white people are as likely to use illegal drugs as people of color. And yet, people of color are poorer on average and are more likely to be involved in the illegal drug supply chain in order to make a living. In addition, their neighborhoods are often the targets for enforcement of drug laws. Mandatory minimums in these cases only contribute to the over-incarceration of people of color.
- The Improved Criminal Code proposes a fairer system for mandatory minimum sentences. It is toughest on offenses that hurt other people the most, and it is more tempered on other types of crime. The Improved Criminal Code would only impose mandatory minimums where they are truly deserved—for defendants who:
 - Commit crimes of violence;
 - Commit crimes with guns;
 - Commit sex offenses; or
 - Operate at the top levels of the drug trade, selling large amounts of harmful narcotics (like heroin).
- Imposing mandatory minimum sentences on foot soldiers in the drug trade and on lower-level property offenders encourages them to become more serious offenders by forcing them to spend long periods of time in prison alongside more hardened, violent offenders. A fairer system would reduce or remove these mandatory minimums, giving defendants a better chance to turn their lives around and become productive, law-abiding citizens. The Improved Criminal Code adopts precisely this approach.

Habitual Offender Statutes Should Be Consistent and Reasonable

- The current criminal Code does not have a general provision that treats felony crimes more seriously for repeat offenders in a consistent way. Grade aggravators are sprinkled throughout the current Code, leading to inconsistencies and inequities.
 - Some crimes have double or triple grade increases for repeat offending that can dramatically increase punishment. For example, maintaining a dwelling for illegal gambling carries a possible 30 days in prison for a first offense — but carries a penalty of up to a year in prison for a second offense within five years.
 - The one generally applicable provision in the current Code increasing punishment for repeat offending is the controversial and complicated Habitual Offender statute, which is inconsistent in its application because it treats “violent felonies” more harshly but then defines “violent felonies” in an Orwellian way to include non-violent drug crimes. For example, if someone had previous convictions for three thefts (each only punishable by up to 2 years in prison), and was then convicted of dealing drugs (normally punishable by up to 8 years in prison), the person could be sentenced to life imprisonment.
- The Improved Criminal Code contains a single, simple provision that increases the punishment available for felons who have previously been convicted of two felonies that are equal to, or more serious than, the current charge. This means that if a defendant has previously been convicted of two assaults, and is then convicted of another assault or a sex crime, that defendant would face a serious increase in punishment for recidivism. But if a defendant had been convicted of two assaults, and years later was convicted of misdemeanor shoplifting or low-level drug dealing, they would not face additional punishment. Why? Because although these offenses are wrong, they do not warrant the heavy imposition of an upward adjustment. Thus, the Improved Criminal Code is much fairer and consistent in its approach, resulting in more proportionality and equality in its application.

Meaningful Criminal Justice Reform Cannot Occur Without Code Reform

- You are only as strong as your core, and the Criminal Code is the core of the Criminal Justice System. From the start of a criminal case to its end, fair and consistent rules should apply. However:
 - You cannot make fair charging and bail decisions if the Code on which those decisions must be made is not fair.
 - You cannot have consistently fair trials if the Code allows for overcharging that pressures defendants to plead guilty rather than exercise their constitutional right to a fair trial and pushes juries to make “compromise verdicts” that do not result in justice.
 - You cannot have consistently fair sentencing guidelines if the offenses in the Code are not ranked sensibly by their seriousness and if each offense does not have the same sentencing range as other similar offenses.
- The Improved Code fixes these problems by:
 - Providing the basis for police and prosecutors to make easier and fairer charging decisions.
 - Reducing the pressure on defendants to plead guilty for the wrong reasons.
 - Increasing police and prosecutorial accountability by requiring them to pursue only the most accurate charge.
 - Providing the basis for fair and rational sentencing guidelines and promoting greater equality and by treating similar offenses equally.