



SPONSOR: Rep. George & Sen. Blevins, & Sen. McDowell, & Sen. Sorenson  
Reps. Blakey, Bolden, Hudson, Jaques, J. Johnson, Q. Johnson, Keeley, Kowalko, Lavelle, Manolakos, Miro, Mitchell, Mulrooney, Ramone, Schooley, Scott, B. Short, Walker, Sens. DeLuca, Hall-Long, Venables

HOUSE OF REPRESENTATIVES

146th GENERAL ASSEMBLY

HOUSE BILL NO. 19  
AS AMENDED BY  
HOUSE AMENDMENT NO. 1  
AND  
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 10, 11, 16 AND 21 OF THE DELAWARE CODE RELATING TO DRUG-INVOLVED OFFENSES.

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

WHEREAS, drug dealers are a significant threat to society; and

WHEREAS, drug dealing is significantly associated with violent crime; and

WHEREAS, a substantial percentage of homicides in Delaware are related to drug dealing; and

WHEREAS, drug dealers who deal in substantial quantities of drugs are a greater threat to society than those who deal in lesser quantities of drugs; and

WHEREAS, Delaware's drug offenses have been revised and amended in piecemeal fashion over the last thirty years; and

WHEREAS, the General Assembly has concluded that it is necessary to enact this comprehensive revision of Delaware's drug offenses.

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

Section 1. Amend § 1010(a)(3), Title 10 of the Delaware Code by striking the phrase "trafficking in marijuana, cocaine, illegal drugs, methamphetamine, L.S.D. or designer drugs (where the child is alleged to have committed acts constituting a violation of either subparagraph b. or c. of paragraph (1), (2), (3), (4), (5), (6) or (7) of §

4753A(a) of Title 16, or a violation of § 4753A(a)(8)a.)” where it appears in said paragraph and substituting in lieu thereof the phrase “§ 4752 and § 4753 of Title 16”.

Section 2. Amend § 7111(d), Title 10 of the Delaware Code by striking the phrase “within a drug-free zone within the meaning of §§ 4767 and 4768 of Title 16” and substituting in lieu thereof the phrase “within a protected park, recreation area, church, synagogue, or place of worship within the meaning of § 4701(40) of Title 16, or within a protected school zone within the meaning of § 4701(41) of Title 16.”

Section 3. Amend § 222, Title 11 of the Delaware Code by striking the number “4701(24)” where it appears in the subsection containing the definition of “narcotic drug” and substituting in lieu thereof the number “4701(27)”.

Section 4. Amend § 616(a)(2)k, Title 11 of the Delaware Code by striking the phrase “4751, 4752, 4753A, 4755, 4756, 4761, 4761A” where it appears in said subparagraph and substituting in lieu thereof the phrase “4752, 4753, 4754, 4755, 4756, 4757(c)”.

Section 5. Amend § 1448, Title 11 of the Delaware Code by renumbering paragraph (a)(9) as paragraph (a)(10) and by inserting a new subsection (a)(9) in lieu thereof, reading as follows: “(9) Any person, if the deadly weapon is a semi-automatic or automatic firearm, or a handgun, who, at the same time, possesses a controlled substance in violation of §§ 4763, or 4764 of Title 16.”, and by striking the designation “(a)(9)a” as it appears in renumbered subsection (a)(10), and inserting in lieu thereof the designation “(a)(10)a”.

Section 6. Amend § 1448(c), Title 11 of the Delaware Code by inserting the phrase “and the violation is one of subsections (a)(1) through (a)(8),” after the phrase “said deadly weapon is a firearm or ammunition for a firearm,” and before the phrase “in which case” .

Section 7. Amend § 2323(3), Title 11 of the Delaware Code by striking the phrase “4753, 4754, 4757 and 4758” where it appears in said subsection and substituting in lieu thereof the phrase “4761(a) or (b), 4763, 4764”.

Section 8. Amend § 4201(c), Title 11 of the Delaware Code, by inserting in the word “Former” in the following locations in said subsection:

- (i) after the number “4751” and before the word “Manufacture”;
- (ii) after the number “4752” and before the word “Manufacture”;
- (iii) after the number “4752A” and before the word “Unlawful”;
- (iv) and after the number “4753A” and before the word “Trafficking”;
- (v) after the number “4761” and before the word “Distribution”,

Section 9. Further Amend §4201(c), Title 11 of the Delaware Code by striking the phrase “MOMA” and inserting in lieu thereof the phrase “MDMA” and by inserting the following after the phrase “Methamphetamine, LSD, Designer Drugs or MDMA” where it appears in said subsection:

“4752 Drug Dealing. Aggravated Possession

4753 Drug Dealing. Aggravated Possession

4754 Drug Dealing. Aggravated Possession

4755 Aggravated Possession

4756 Aggravated Possession”.

Section 10. Further Amend § 4201(c), Title 11 of the Delaware Code by striking the phrase “4754A Possession and Delivery of a Noncontrolled Prescription Drug”, and by inserting the phrase “4761(c) & (d) Illegal Delivery of Prescription Drugs” after the phrase “Distribution to Minors”, and by striking in their entirety the following items, where they appear on the list in said subsection:

“4767 Distribution, Delivery, or Possession of a Controlled Substance within 1,000 Feet of School Property

4768 Distribution, Delivery, or Possession of a Controlled Substance within 300 Feet of a Park or Recreation Area”.

Section 11. Amend § 4214(b), Title 11 of the Delaware Code by inserting the word “Former” in the following locations in said subsection:

i. after the words “Title 16, Section Crime” and before the phrase “4751 Manufacture, delivery or possession”.

ii. after the phrase “a narcotic drug” and before the number “4752”

iii. after the phrase “nonnarcotic, controlled substance” and before the number “4752A”

iv. after the phrase “noncontrolled substance” and before the number “4753A”.

Section 12. Further amend § 4214(b), Title 11 of the Delaware Code by inserting the following after the phrase “Trafficking in marijuana, cocaine, illegal drugs or methamphetamine” where it appears in said subsection:

“4752 Drug Dealing. Aggravated Possession

4753 Drug Dealing. Aggravated Possession

4754 Drug Dealing. Aggravated Possession

4755 Aggravated Possession.”.

Section 13. Amend § 4218(b)(3), Title 11 of the Delaware Code, by striking the number “4764” where it appears in said subsection and substituting in lieu thereof the number “4767”.

Section 14. Amend § 4376(a), Title 11 of the Delaware Code, by striking the number “4764” as it appears in said subsection and substituting in lieu thereof the number “4767”.

Section 15. Amend § 6703, Title 11 of the Delaware Code, by striking in its entirety the following phrase: “delivering drug paraphernalia to a minor; delivery or distribution of narcotics within 1000 feet of a school; delivery or distribution of narcotics within 300 feet of a park; delivery or manufacture of narcotics causing death; delivery or manufacture or possession with intent to deliver narcotics (non-use); delivery or manufacture or possession with intent to deliver narcotics listed on schedule I or schedule II; delivery of narcotics to minor under 16 years of age; delivery of narcotics to minor; delivery of non-narcotic drugs to a minor under 16 years of age; delivery or distribution of non-narcotic drugs within 1000 feet of a school; delivery or distribution of non-narcotic drugs within 300 feet of parkland; delivery or manufacture or possession with intent to deliver a non-narcotic controlled substance; delivery or possession with intent to deliver a prescription body-building drug;”.

Section 16. Further amend § 6703, Title 11 of the Delaware Code by striking the following phrases in their entirety where they appear in said Section:

(i) “trafficking in drugs;”;

(ii) “manufacture or delivery or possession with intent to deliver any schedule I or schedule II narcotic; manufacture or delivery or possession with intent to deliver non-narcotics;” and

(ii) “trafficking in illegal drugs; unlawful delivery of a controlled substance;”.

Section 17. Amend § 6712(b), Title 11 of the Delaware Code by striking paragraphs (1) and (2) in their entirety and inserting in lieu thereof the following:

“(1) Any offense in Title 16 relating to manufacture, delivery, or possession of controlled substances or prescription drugs, but not including §§ 4752 - 56 of Title 16, except as set forth below; or

(2) Drug Dealing or Aggravated Possession as set forth in §§ 4752 – 56 of Title 16, but only if the weight of the illegal substance possessed is less than the minimum required for a Tier 3 Controlled Substances Quantity, as defined in

§ 4751C(c) of Title 16; or”.

Section 18. Further amend § 6712, Title 11 of the Delaware Code, by striking the words “mandatory minimum” as they appear in subsections (d) and (e).

Section 19. Further amend § 6712, Title 11 of the Delaware Code, by striking the phrase “§ 4751, § 4752, § 4753A or § 4763” where it appears in subsections (d), (e), and (h), and inserting in lieu thereof in each instance the following: “§ 4752”.

Section 20. Further Amend Title 11 of the Delaware Code by inserting a new Section 6581A reading as follows:

“§ 6581A. Additional Duties of the Commission.

The Delaware Sentencing Accountability Commission (SENTAC) is hereby directed, pursuant to § 6581(j) of this Title, to modify or amend its Benchbook, so that the sentencing guidelines set forth in the Benchbook recommend that, in cases in which the weight of the controlled substance significantly exceeds the Tier 2 Controlled Substances Quantity and in which there is a conviction pursuant to § 4752 of Title 16, a sentence guideline range that is commensurate with the seriousness of the offense.”

Section 21. Amend § 4701(5), Title 16 of the Delaware Code by striking the existing definition of “Anabolic steroid” where it appears in said subsection and inserting the following in lieu thereof: “‘Anabolic steroid’ means any of the controlled substances defined in § 4718(f) of this Chapter.”.

Section 22. Amend § 4701(6), Title 16 of the Delaware Code by inserting the following after the first sentence of said subsection: “For purposes of the crimes set forth in subchapter IV and V of this Chapter, and of forfeiture set forth in § 4784 of this Chapter, ‘controlled substance’ includes ‘designer drug’, as defined in subsection (9) of this Section.”.

Section 23. Amend § 4701(7), Title 16 of the Delaware Code by striking the definition heading “Counterfeit substance” where it appears in said subsection and inserting in lieu thereof the definition heading “Counterfeit controlled substance.”

Section 24. Amend § 4701(9), Title 16 of the Delaware Code by inserting a third sentence after the existing sentences of said subsection, reading as follows: “‘Designer drug’ does not include any substance that was manufactured, delivered or dispensed in conformance with an approved new drug application, or an exemption for investigating use within the meaning of § 505 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 355), or that was manufactured, delivered or dispensed in conformance with a registration issued by the Attorney General of the United States within the meaning of §§ 301-304 of the Federal Controlled Substances Act (21 U.S.C. §§ 821-824).”.

Section 25. Amend § 4701, Title 16 of the Delaware Code by inserting a new definition of “Dose” where it should appear alphabetically in said Section, reading as follows: “ ‘Dose’ means an amount or unit of a compound,

mixture, or preparation containing a controlled substance that is separately identifiable and in a form that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual. A dose includes, but is not limited to, a pill, a capsule, a tablet, or a vial.”, and by renumbering the existing subsections accordingly to preserve the alphabetical order of the definitions contained therein.

Section 26. Further amend § 4701, Title 16 of the Delaware Code by deleting the word “Chilams” where it appears in the existing subparagraph (16)(l)(11) under the defined term “Drug paraphernalia”, and inserting in lieu thereof the word “Chillums”.

Section 27. Further amend § 4701, Title 16 of the Delaware Code by inserting the following new definition subsections where they should appear alphabetically in said Section, and by renumbering the existing subsections accordingly to preserve the alphabetical order of the definitions contained therein:

“(23) ‘Lawful Prescription or Order’ means a prescription or order that is issued for a legitimate medical purpose by a licensed and registered practitioner pursuant to a “patient-practitioner relationship” as defined in this Section, that is not obtained by misrepresentation, fraud, forgery, deception or subterfuge, and is distributed or dispensed in conformity with § 4739 of this Title.”.

“(24) ‘Licensed Practitioner’ means any individual who is authorized by law to prescribe drugs in the course of professional practice or research in any state.”.

“(31) ‘Patient-practitioner relationship’ means, with respect to prescribing drugs for a patient, that the practitioner is a licensed practitioner who:

a. Has conducted at least 1 in-person medical evaluation of the patient and performed a medical history and physical examination sufficient to establish a diagnosis and to identify underlying conditions of, or contraindications to, the treatment recommended or provided; or

b. Personally knows the patient and the patient’s general health status through an existing patient-practitioner relationship; or

c. Provides treatment in consultation with or upon referral of another practitioner who has an existing patient-practitioner relationship with the patient and who has agreed to supervise the patient’s treatment, including follow-up care and use of the prescribed medications; or

d. Provides treatment to the patient through an on-call or cross-coverage situation for another practitioner who has an existing patient-practitioner relationship with the patient; or

e. Provides continuing medications on a short-term basis for a new patient prior to the first appointment; or

f. Provides treatment based upon admission orders for a newly hospitalized patient.”.

“(37) ‘Prescription drug’ means any drug required by federal or state law or regulation to be dispensed only by or on the prescription of a practitioner licensed to prescribe drugs, or which is restricted to use by practitioners only.”.

“(38) ‘Prescription drug order’ means any written or verbal order of a practitioner for a prescription drug.”

“(40) ‘Protected park recreation area, church, synagogue or other place of worship’ means (a) any building, structure, athletic playing field, playground, or other land contained on the property of any park or recreation area owned, operated or utilized by any county or municipality, or by the State, or by any board, commission, department, agency, corporation or organization thereof, or in any ‘parkland’ as defined in § 8110(a)(2) of Title 9 or any church, synagogue or other place of worship, or (b) any area accessible to the public located within 300 feet of the property of any park or recreation area owned, operated or utilized by any county or municipality, or by the State, or by any board, commission, department, agency, corporation or organization thereof, or in any ‘parkland’ as defined in § 8110(a)(2) of Title 9 or any church, synagogue or place of worship, or any parked vehicle located within 300 feet of the property of any park or recreation area owned, operated or utilized by any county or municipality, or by the State, or by any board, commission, department, agency, corporation or organization thereof, or in any ‘parkland’ as defined in § 8110(a)(2) of Title 9 or any church, synagogue or place of worship. For the purposes of this section an ‘area accessible to the public’ shall include sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants, and any other outdoor locations such as front porches or front yards.”.

“(41) ‘Protected school zone’ means (a) any building, structure, athletic playing field, playground, or other land contained on the property of a public or private kindergarten, elementary, secondary, or vocational-technical school, or (b) any area accessible to the public located within 300 feet of the property of a public or private kindergarten, elementary, secondary, or vocational-technical school, or any parked vehicle located within 300 feet of the property of a public or private kindergarten, elementary, secondary, or vocational-technical school. For the purposes of this section, an ‘area accessible to the public’ shall include sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants, and any other outdoor locations such as front porches or front yards.”.

“(42) ‘Purported Controlled Substance’ means any substance that is: (a) expressly or impliedly represented to be a controlled substance; or (b) expressly or impliedly represented to be of such nature that another person will be able to distribute or use the substance as a controlled substance.”.

Section 28. Further amend § 4701, Title 16 of the Delaware Code by deleting the Section number “4757(f)(2)” as it appears in the subsection containing the defined term “Secretary” and inserting in lieu thereof the Section number “4762(f)(2)”.

Section 29. Further amend § 4701, Title 16 of the Delaware Code by inserting a new subsection (47) reading as follows:

“(47) ‘Vehicle’ shall have the same definition as that set forth in § 101(80) of Title 21.”.

Section 30. Amend § 4743, Title 16 of the Delaware Code by striking the existing subsections (8) and (10) in their entirety, renumbering existing subsection (9) as subsection (8), and by deleting the punctuation mark “;” at the end of the renumbered subsection (8) and inserting in lieu thereof the punctuation mark “.”.

Section 31. Further amend § 4743, Title 16 of the Delaware Code by striking the existing subsections (11) and (12) in their entirety.

Section 32. Amend § 4751, Title 16 of the Delaware Code by striking said Section in its entirety.

Section 33. Amend Title 16 of the Delaware Code by inserting a new § 4751A, reading, as follows:

“§4751A. Aggravating Factors Related to Drug Offenses.

For the purposes of this subchapter:

(a) Each of the following shall be an ‘Aggravating Factor’ within the meaning of the offenses in this subchapter:

- (1) the offense was committed within a protected school zone, as defined in § 4701 of this Title;
- (2) the offense was committed within a protected park or recreation area, or church, synagogue or other place of worship, as defined in § 4701 of this Title;
- (3) the offense occurred in a vehicle, as defined in § 4701 of this Title;
- (4) the defendant was an adult, that is, a person who had reached his or her 18th birthday, and the offense involved a juvenile, that is, a person who had not reached his or her 18th birthday, as a co-conspirator or accomplice, or as the intended or actual recipient of the controlled substances, and the defendant was more than four years older than the juvenile; and
- (5) the defendant, during or immediately following the commission of any offense in this Title:



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

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

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

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

Section 34. Amend Title 16 of the Delaware Code by inserting a new § 4751B, reading, as follows:

“§ 4751B. Prior Qualifying Title 16 Convictions.

For the purposes of this subchapter:

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

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

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

(d) Penalties.

(1) In any case in which a defendant has a 'prior qualifying Title 16 conviction,' the defendant shall be sentenced as follows:

(A) A defendant convicted of § 4753(a) of this Title shall be sentenced as though the defendant was convicted of § 4752(b) of this Title.

(B) A defendant convicted of § 4753(d) of this Title shall be sentenced as though the defendant was convicted of § 4752(e) of this Title.

(C) A defendant convicted of § 4754(a) of this Title shall be sentenced as though the defendant was convicted of § 4753(b) of this Title.

(D) A defendant convicted of § 4754(b) shall be sentenced as though the defendant was convicted of § 4752(d) of this Title.

(E) A defendant convicted of § 4754(c) of this Title shall be sentenced as though the defendant was convicted of § 4753(e) of this Title.

(F) A defendant convicted of § 4755 of this Title shall be sentenced as though the defendant was convicted of § 4753(d) of this Title.

(G) A defendant convicted of § 4756 of this Title shall be sentenced as though the defendant was convicted of § 4754(c) of this Title.

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

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

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

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

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

(2) In any case in which a defendant has ‘two prior qualifying Title 16 convictions,’ the defendant shall be sentenced as follows:

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

(B) A defendant convicted of § 4755 of this Title shall be sentenced as though the defendant was convicted of § 4752(e) of this Title.

(C) A defendant convicted of § 4756 of this Title shall be sentenced as though the defendant was convicted of § 4753(e) of this Title.”.

Section 35. Amend Title 16 of the Delaware Code by inserting a new § 4751C, reading as follows:

“§ 4751C. Quantity Tiers Related to Drug Offenses.

For the purposes of this subchapter:

(a) ‘Tier 5 Controlled Substances Quantity’ means:

(1) 25 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this Title;

(2) 5 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this Title, or of any mixture containing any such substance;

(3) 5000 grams or more of marijuana, as described in § 4701(26) of this Title;

(4) 25 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this Title;

(5) 25 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this Title;

(6) 25 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this Title;

(7) 500 or more doses or, in a liquid form, 50 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this Title;

(8) 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this Title; or

(9) 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of 3,4-methylenedioxyamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this Title.

(b) ‘Tier 4 Controlled Substances Quantity’ means:

(1) 20 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this Title;

(2) 4 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this Title, or of any mixture containing any such substance;

(3) 4000 grams or more of marijuana, as described in § 4701(26) of this Title;

(4) 20 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this Title;

(5) 20 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this Title;

(6) 20 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this Title;

(7) 250 or more doses or, in a liquid form, 25 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this Title;

(8) 50 or more doses or 10 or more grams or 10 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this Title;

(9) 50 or more doses or 10 or more grams or 10 milliliters or more of 3,4-methylenedioxyamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this Title; or

(10) 60 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 6 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.

(c) ‘Tier 3 Controlled Substances Quantity’ means:

(1) 15 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this Title;

(2) 3 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this Title, or of any mixture containing any such substance;

(3) 3000 grams or more of marijuana, as described in § 4701(26) of this Title;

(4) 15 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this Title;

(5) 15 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this Title;

(6) 15 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this Title;

(7) 100 or more doses or, in a liquid form, 10 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this Title;

(8) 37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this Title; or

(9) 37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this Title.

(d) 'Tier 2 Controlled Substances Quantity' means:

(1) 10 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this Title;

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

(3) 1500 grams or more of marijuana, as described in § 4701(26) of this Title;

(4) 10 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this Title;

(5) 10 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this Title;

(6) 10 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this Title;

(7) 50 or more doses or, in a liquid form, 5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this Title;

(8) 25 or more doses or 5 or more grams or 5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this Title;

(9) 25 or more doses or 5 or more grams or 5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this Title; or

(10) 30 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or 3 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.

(e) 'Tier 1 Controlled Substances Quantity' means:

(1) 5 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this Title;

- (2) 1 gram or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this Title, or of any mixture containing any such substance;
- (3) 175 grams or more of marijuana, as described in § 4701(26) of this Title;
- (4) 5 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this Title;
- (5) 5 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this Title;
- (6) 5 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this Title;
- (7) 25 or more doses or, in a liquid form, 2.5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this Title;
- (8) 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of a designer drug or any mixture containing any such substance, as described in § 4701(9) of this Title; or
- (9) 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this Title.”.

Section 36. Amend Title 16 of the Delaware Code by inserting a new § 4751D, reading, as follows:

“§ 4751D. Knowledge of Weight or Quantity Not an Element of the Offense; Proof of Weight or Quantity.

(a) In any prosecution under this subchapter, in which the weight or quantity of a controlled substance is an element of the offense, the State need not prove that the defendant had any knowledge as to the weight or quantity of the substance possessed. The State need only prove that the defendant knew that the substance was possessed; and, that the substance was that which is alleged, and that the substance weighed a certain amount or was in a certain quantity.

(b) In any prosecution under this subchapter, in which the quantity of a controlled substance is an element of the offense, and the controlled substance is alleged to be a prescription drug as defined in § 4701(37) of this Title, and the alleged prescription drug consists of multiple doses that appear to be substantially identical, evidence that a chemist or other qualified witness properly tested one dose, and found the presence of a controlled substance, shall be prima facie evidence that the ‘substantially identical doses’ each contained the controlled substance that is a prescription drug for purposes of determining whether the State has proven the number of doses

constituting the Tier quantities set forth in § 4751C(b)(10) or § 4751C(d)(10) of this Title. Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting evidence offered pursuant to this subsection.”.

Section 37. Amend § 4752 and § 4752A, Title 16 of the Delaware Code by striking said Sections in their entirety.

Section 38. Amend Title 16 of the Delaware Code by inserting a new § 4752, reading as follows:

“§ 4752. Drug Dealing. Aggravated Possession. Class B Felony.

Except as authorized by this chapter, any person who:

- (a) manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 4 quantity;
- (b) manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 2 quantity, and there is an aggravating factor;
- (c) possesses a controlled substance in a Tier 5 quantity;
- (d) possesses a controlled substance in a Tier 3 quantity, and there is an aggravating factor; or
- (e) possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(d)(1) – (9), and there are two aggravating factors, shall be guilty of a Class B felony.”.

Section 39. Amend § 4753 and § 4753A, Title 16 of the Delaware Code by striking said Sections in their entirety.

Section 40. Amend Title 16 of the Delaware Code by inserting a new § 4753, reading as follows:

“§ 4753. Drug Dealing. Aggravated Possession. Class C Felony.

Except as authorized by this chapter, any person who:

- (a) manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 2 quantity;
- (b) manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance, and there is an aggravating factor;
- (c) possesses a controlled substance in a Tier 4 quantity as defined in any of § 4751C(b)(1) – (9) of this Title;
- (d) possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(d)(1) – (9) of this Title; and there is an aggravating factor; or



(e) possesses a controlled substance in a Tier 1 quantity, and there are two aggravating factors, shall be guilty of a Class C felony.”.

Section 41. Amend § 4754 and § 4754A, Title 16 of the Delaware Code by striking said Sections in their entirety.

Section 42. Amend Title 16 of the Delaware Code by inserting a new § 4754, reading as follows:

“§ 4754. Drug Dealing. Aggravated Possession. Class D Felony.

Except as authorized by this Chapter, any person who:

(a) manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance;

(b) possesses a controlled substance in a Tier 3 quantity; or

(c) possesses a controlled substance in a Tier 1 quantity, and there is an aggravating factor, shall be guilty of a Class D felony.”.

Section 43. Amend § 4768, Title 16 of the Delaware Code by striking said Section in its entirety.

Section 44. Amend Title 16 of the Delaware Code by renumbering the existing § 4765 as § 4768, and by striking the phrase “§ 4753 or 4754” and inserting in lieu thereof the phrase “§§ 4761(a) or (b), 4763, or 4764”.

Section 45. Amend Title 16 of the Delaware Code by renumbering the existing § 4759 as § 4765, and by amending the renumbered § 4765 by striking the second sentence of said Section in its entirety.

Section 46. Amend Title 16 of the Delaware Code by:

(i) renumbering the existing § 4755 as § 4759:

(ii) striking the caption “Prohibited Acts E; penalties.” and inserting in lieu thereof the caption “Registrant Crimes.”;

(iii) inserting the word “or” after the semi-colon at the end of subsection (a)(3);

(iv) striking the phrase “; or” where it appears at the end of subsection (a)(4) and substituting in lieu thereof the punctuation mark “.”;

(v) striking subsection (a)(5) in its entirety; and

(vi) by striking the phrase “(a)(4) or (a)(5)” where it appears in subsection (b), and substituting in lieu thereof the phrase, “or (a)(4)”.

Section 47. Amend Title 16 of the Delaware Code by inserting a new § 4755, reading as follows:

“§ 4755. Aggravated Possession. Class E Felony.

Except as authorized by this Chapter, any person who possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(d)(1) – (9) of this Chapter, shall be guilty of a Class E felony.”.

Section 48. Amend § 4762, Title 16 of the Delaware Code by striking said Section in its entirety.

Section 49. Amend Title 16 of the Delaware Code by inserting a new § 4766, reading as follows:

“§ 4766. Conviction of Lesser Offense.

In any prosecution for any violation of the following sections of this Chapter, the defendant may be convicted under any 1 of the following respective Sections of this Chapter in accordance with the table set forth below establishing lesser included offenses:

- (1) The lesser included offenses under § 4752 are §§ 4753, 4754, 4755, 4756, 4758, 4763, and 4764.
- (2) The lesser included offenses under § 4753 are §§ 4754, 4755, 4756, 4758, 4763, and 4764.
- (3) The lesser included offenses under § 4754 are §§ 4755, 4756, 4758, 4763, and 4764.
- (4) The lesser included offenses under § 4755 are §§ 4756, 4763, and 4764.
- (5) The lesser included offenses under § 4756 are §§ 4763 and 4764.”.

Section 50. Amend Title 16 of the Delaware Code by renumbering the existing § 4757, as § 4762, and by striking the second sentence of subsection (c) in its entirety.

Section 51. Amend Title 16 of the Delaware Code by: (i) renumbering the existing § 4756 as § 4757; (ii) striking the caption “Prohibited acts; penalties” and inserting in lieu thereof the caption “Miscellaneous Drug Crimes. Class B, C, & F Felony.”; (iii) inserting the phrase “or prescription drug” after the phrase “controlled substance” where it appears in subsection (a)(3); (iv) striking the phrase “robbery, burglary or” as it appears in subsection (a)(6); (v) striking the sentence in existing subsection (a)(7) in its entirety and substituting in lieu thereof the following: “To prescribe, or administer to another, any anabolic steroid, as defined in § 4718(f) of this Chapter, for the purposes of increasing human muscle weight or improving human performance in any form of exercise, sport, or game.”.

Section 52. Further amend renumbered § 4757, Title 16 of the Delaware Code, by inserting the phrase “subsections (a)(1) through (a)(7) of” between the word “violates” and the word “this” as they appear in subsection (b) of said Section.

Section 53. Further amend renumbered § 4757, Title 16 of the Delaware Code, by inserting a new subsection (c), reading as follows:

“(c) Solicitation of Multiple Prescription Drug Crimes; Penalties.

(1) Any person who solicits, directs, hires, employs, or otherwise uses one or more other persons three or more times within a thirty day period to violate any provision of paragraph (a) shall be guilty of a class C felony.

(2) Any person who solicits, directs, hires, employs, or otherwise uses one or more other persons three or more times within a thirty day period to violate any provision of paragraph (a), and there is an aggravating factor in connection with at least one of the times shall be guilty of a class B felony.

(3) Paragraphs (1) & (2) of this subsection shall constitute an offense if any of the defendant's conduct or any of the violations of subsection (a) occur within Delaware, or as otherwise provided pursuant to § 204 of Title 11.”.

Section 54. Amend Title 16 of the Delaware Code by inserting a new § 4756, reading as follows:

“§ 4756. Aggravated Possession. Class F Felony.

Except as authorized by this chapter, any person who possesses a controlled substance in a Tier 1 quantity shall be guilty of a Class F felony.”.

Section 55. Amend § 4758, Title 16 of the Delaware Code by striking the existing Section in its entirety and by inserting a new § 4758, reading, as follows:

“§ 4758. Unlawful Dealing in a Counterfeit or Purported Controlled Substance. Class E Felony.

(a) Any person who knowingly manufactures, delivers, attempts to manufacture or deliver, or possesses with the intent to manufacture or deliver a counterfeit or purported controlled substance shall be guilty of a Class E Felony.

(b) It is no defense to prosecution under this section that the substance actually is a controlled substance or that the accused believed the substance was a controlled substance.”.

Section 56. Amend § 4760, Title 16 of the Delaware Code by striking said Section in its entirety and inserting a new § 4760 reading as follows:

“§ 4760. Maintaining a Drug Property. Class F felony.

Any person who is the owner, landlord, or tenant of a property, including a dwelling, a building, a store or a business, and who knowingly consents to the use of the property by another for the manufacture of, delivery of, or possession with the intent to manufacture or deliver, controlled substances, shall be guilty of a class F felony.”.

Section 57. Amend §§ 4761 and 4761A, Title 16 of the Delaware Code by striking said Sections in their entirety and by inserting a new § 4761, reading as follows:

“§ 4761. Illegal Possession and Delivery of Non-Controlled Prescription Drugs.

(a) Any person who knowingly or intentionally possesses, uses or consumes any prescription drug that is not a controlled substance but for which a prescription is required shall be guilty of an unclassified misdemeanor, unless:

1. The possession, use or consumption of such substance was by a person who obtained the substance directly from, or pursuant to, a valid prescription or order of a licensed practitioner;

2. The possession or transfer of such substance was for medical or scientific use or purpose by persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:

i. Pharmacists

ii. Practitioners

iii. Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

iv. Hospitals that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

v. Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

vi. Common carriers.

vii. Manufacturers, wholesalers, and distributors.

viii. Law enforcement officers for bona fide law enforcement purposes in the course of an active criminal investigation.

3. The possession or transfer is otherwise authorized by this Chapter.

(b) Any person who violates subsection (a) of this Section, and there is an aggravating factor, shall be guilty of a class B misdemeanor.

(c) Any person who violates subsection (a) of this Section, and delivers, or intends to deliver the prescription drug to another, shall be guilty of a class G felony.

(d) Any person who violates subsection (b) of this Section, and delivers, or intends to deliver the prescription drug to another, shall be guilty of a class F felony.

(e) Affirmative Defenses.

1. In any prosecution under this section, it is an affirmative defense that the prescription drug was possessed by the person while transporting the prescription drug to a member of the person's household who possessed a valid prescription for the drug, and the prescription was in the original container in which it was dispensed or packaged, a pill box, or other daily pill container.

2. In any prosecution under this section, it is an affirmative defense that the prescription drug was possessed or consumed within the residence of the person, that a member of the person's household possessed a valid prescription for the drug, that the possession or consumption by the person was for the purpose of treating an illness and that the drug in question was approved for the specific illness.

(f) Proof. In any prosecution under this section, proof that a substance is a particular prescription drug may be inferred from its labeling and any representations on the substance. Proof by testimony from a scientist is not required.”.

Section 58. Amend § 4763, Title 16 of the Delaware Code by striking said Section in its entirety and by inserting a new § 4763, reading as follows:

“§ 4763. Possession of Controlled Substances or Counterfeit Controlled Substances. Class A or B Misdemeanor.

(a) It shall be unlawful for any person to knowingly or intentionally possess, use, or consume a controlled substance or a counterfeit controlled substance (except a controlled substance or counterfeit controlled substance classified in subsection (d)(19) of § 4714 of this Title) unless (a) the possession, use or consumption of such substance was by a person who obtained the substance directly from or pursuant to, a lawful prescription or order; or (2) the possession or transfer of such substance was for medical or scientific use or purpose by persons included in any of the following classes, or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance of their official duties:

i. Pharmacists

ii. Practitioners

iii. Persons who procure controlled substances in good faith and in the course of professional practice only, by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research, teaching, or testing, and not for resale.

iv. Hospitals and healthcare facilities that procure controlled substances for lawful administration by practitioners, but only for use by or in the particular hospital.

v. Officers or employees of state, federal, or local governments acting in their official capacity only, or informers acting under their jurisdiction.

vi. Common carriers.

vii. Manufacturers, wholesalers, and distributors.

viii. Law enforcement officers for bona fide law enforcement purposes in the course of an active criminal investigation.

(3) The possession or transfer is otherwise authorized by this Chapter.

(b) Any person who violates subsection (a) of this Section shall be guilty of a Class B misdemeanor.

(c) Any person who violates subsection (a) of this Section, and there is an aggravating factor, shall be guilty of a Class A misdemeanor.”.

Section 59. Amend § 4767, Title 16 of the Delaware Code by striking said Section in its entirety.

Section 60. Amend § 4764, Title 16 of the Delaware Code by striking said Section in its entirety and inserting a new § 4767, reading as follows:

“§ 4767. First Offenders Controlled Substances Diversion Program.

(a) Any person who:

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

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

(b) At time of arraignment any person qualifying under subsection (a) of this Section as a first offender and who elects treatment under this section shall admit possession or consumption of a controlled substance by entering a plea of guilty, as a first offender. The court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the accused on probation for a period of not less than 1 ½ years, the terms and conditions of which shall include but not be limited to:

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

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

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

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

(c) If a term or condition of probation is violated, or if the defendant is found to have illegally possessed or consumed any controlled substance within 1 ½ years of the entry of a plea under this section, the probation officer shall file with the court a written report of same, and the defendant shall be brought before the court and upon determination by the court that the terms have been violated or that the defendant has possessed or consumed any such controlled substance, the court shall enter an adjudication of guilt upon the record and proceed as otherwise provided under this Title.

(d) Upon fulfillment of the terms and conditions of probation, including, but not limited to, paying of all costs and fees, and performance of all required community service, the court shall discharge the person and dismiss the proceedings against the person and shall simultaneously therewith submit to the Attorney General a report thereof which shall be retained by the Attorney General for use in future proceedings, if required. Discharge and dismissal under this Section shall be without adjudication of guilt and is not a conviction for purposes of this Section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime. Any person who elects to be

treated as a first offender under this section shall, by so doing, agree to pay the costs of the person's prosecution as a condition. There may be only 1 discharge and dismissal under this Section with respect to any person.”.

Section 61. Amend Title 16 of the Delaware Code by enacting a new § 4764, reading as follows:

“§ 4764. Possession of Marijuana. Class B or Unclassified Misdemeanor.

(a) Any person who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in subsection (d)(19) of § 4714 of this Title, except as otherwise authorized by this Chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor.

(b) Any person who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in subsection (d)(19) of § 4714 of this Title, except as otherwise authorized by this Chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$575 and imprisoned not more than 3 months.”.

Section 62. Amend § 4771, Title 16 of the Delaware Code by striking subsection (c) in its entirety.

Section 63. Amend § 4771, Title 16 of the Delaware Code by inserting the phrase “, as defined in § 4701(17) of this Title” after the words “drug paraphernalia” and before the punctuation mark “.” as they appear in subsection (a), and by inserting the phrase “, as defined in § 4701(17) of this Title,” after the words “drug paraphernalia” and before the word “knowing” as they appear in subsection (b).

Section 64. Amend § 4774, Title 16 of the Delaware Code by striking the phrase “class A misdemeanor” as it appears in subsection (a) and inserting in lieu thereof the phrase “class B misdemeanor”.

Section 65. Amend § 4784, Title 16 of the Delaware Code by: (i) striking the phrase “trafficking in” as it appears in subsection (a)(4); (ii) striking the word “Uniform” as it appears in subsection (a)(4)a; (iii) striking the phrase “§§ 4753, 4754, 4757 and 4758” as it appears in subsection (a)(4)c and inserting in lieu thereof the phrase “§§ 4761(a) or (b), 4763, or 4764”; (iv) striking the number “4701” in subsection (a)(6) and inserting in lieu thereof the number “4701(17)”; and (v) striking the phrase “§ 4753, § 4754, § 4754A, § 4755, § 4757 or § 4758” in subsection (a)(8)c and inserting in lieu thereof the phrase “§§ 4759, 4761(a) or (b), 4763 or 4764”.

Section 66. Amend § 4791, Title 16 of the Delaware Code by striking said Section in its entirety and inserting in lieu thereof a new § 4791 reading as follows:

“§ 4791. Pending proceedings.

(a) Prosecution for any violation of law occurring prior to the effective date of any amendment to this Chapter is not affected or abated by any amendment to this Chapter.



(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of any amendment to this Chapter are not affected by any amendment to this Chapter.

(c) All administrative proceedings pending under prior laws which are superseded by any amendment to this Chapter shall be continued and brought to a final determination in accord with the laws or rules in effect prior to the effective date of any amendment to this Chapter.

(d) This Chapter and any amendments thereto apply to any violation of law, seizure and forfeiture, injunctive proceeding, administrative proceeding or investigation which occurs or is commenced following the effective date of this Chapter and any amendments thereto.”.

Section 67. Amend § 4794, Title 16 of the Delaware Code by striking the word “Uniform” as it appears therein.

Section 68. Amend § 4795, Title 16 of the Delaware Code by:

(i) striking the number “4754(b)” as it appears in paragraph (b)(1) and inserting in lieu thereof the number “4764”;

(ii) striking the phrase “(2) Section 4757(c) of this title;” as it appears in subsection (b);

(iii) renumbering “(3)” as “(2)”; and (iv) striking the phrase “, except that the Municipal Court of the City of Wilmington shall have original jurisdiction concurrent with the Court of Common Pleas for such violations by person 18 years of age or older occurring within the City of Wilmington”.

Section 69. Amend § 2707, Title 21 of the Delaware Code, by striking the number “4764” each time it appears in said Section and substituting in lieu thereof each time the number “4767”.

Section 70. Amend § 4177K, Title 21 of the Delaware Code, by striking in their entirety subsections (a) and (b), by renumbering the existing subsections (c) and (d) as subsections (b) and (c), and by inserting a new subsection (a) reading as follows:

“(a) Except as provided by § 1012 of Title 10, any person who pleads guilty to or is convicted of, including a guilty plea or conviction pursuant to § 4767 of Title 16, a violation of §§ 4752-64 of Title 16, or any drug offense under Chapter 5 of Title 11 or under any law of the United States, any state of the United States or any local jurisdiction or the District of Columbia, or who is adjudicated delinquent as a result of acts which would constitute such offenses if committed by an adult, shall, in addition to any and all other penalties provided by law, have the person's driver's license and/or driving privileges revoked by the Secretary for a period of 6 months from the date of sentencing.”.

Section 71. If any provision of this Act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application; and, to that end, the provisions of this Act are declared to be severable.

Section 72. This Act shall be take effect at 12:01 a.m. on the first day of the fifth full month after which it is enacted into law.

Section 73. This legislation shall be known as the “Ned Carpenter Act.”.