

CHAPTER 217
FORMERLY
SENATE BILL NO. 47
AS AMENDED BY
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLES 11 AND 16 OF THE DELAWARE CODE RELATING TO CONTROLLED SUBSTANCES.

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

Section 1. Amend § 4701, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(45) ~~“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: sidewalk; streets; parking lots; parks; playgrounds; stores and restaurants; and any other outdoor locations such as front porches or front yards.~~

(46) ~~“Protected school zone” means either of the following:~~

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~~ school.

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:~~ includes: sidewalks; streets; parking lots; parks; playgrounds; stores and restaurants; and any other outdoor locations such as front porches or front yards.

Section 2. Amend § 4751A, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4751A. Aggravating factors related to drug offenses.

For the purposes of this subchapter:

(1) Each of the following ~~shall be~~ is an “aggravating factor” within the meaning of the offenses in this subchapter:

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

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

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

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

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

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

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

~~(2) When the aggravating factors "protected school zone" and "protected park, recreation area, church, synagogue or other place of worship" of paragraphs (1)a. and (1)b. of this section are both present, both may be alleged and proven, but they shall only count as 1 aggravating factor in determining which offense the defendant committed. When a defendant is alleged to have committed an offense under this subchapter with an aggravating factor under paragraph (1)e.1. of this section, the defendant may be charged with resisting arrest under § 1257 or the offense to which the aggravating factor applies, but not both.~~

~~(3) In any offense in which 1 or more aggravating factors set forth in this section are present, the factor or factors shall be alleged in the charging information or indictment, and constitute an element of the offense. When there are more aggravating factors present than are required to prove the offense, all may be alleged and proven. For an aggravating factor under paragraph (1)a. of this section to be charged, a defendant must commit the conduct of an offense under this subchapter in a protected school zone. The aggravating factor under paragraph (1)a. of this section may not be charged if a defendant commits the conduct of an offense under this subchapter outside a protected school zone but is arrested in a protected school zone.~~

Section 3. Amend § 4751B, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4751B. Prior qualifying Title 16 convictions.

~~For the purposes of this subchapter:~~

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

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

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

~~(4) Penalties.—~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 4. Amend § 4751C, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4751C. Quantity tiers related to drug offenses

For the purposes of this subchapter:

(1) "~~Tier 5~~ Tier 3 Controlled Substances Quantity" means:

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

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

c. 5000 grams or more of marijuana, as described in § 4701(27) of this title;

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

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

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

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

h. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance; or

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

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

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

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

~~c. 4000 grams or more of marijuana, as described in § 4701(27) of this title;~~

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

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

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

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

~~h. 50 or more doses or 10 or more grams or 10 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance;~~

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

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

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

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

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

~~e. 3000 grams or more of marijuana, as described in § 4701(27) of this title;~~

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

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

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

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

~~h. 37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance; or~~

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

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

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

- b. 2 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;
- c. 1500 grams or more of marijuana, as described in § 4701(27) of this title;
- d. 10 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;
- e. 10 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;
- f. 10 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;
- g. 50 or more doses or, in a liquid form, 5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;
- h. 25 or more doses or 5 or more grams or 5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance;
- i. 25 or more doses or 5 or more grams or 5 milliliters or more of 3,4-methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such substance, as described in § 4714(d)(21) of this title; or
- j. ~~30 or more~~ 60 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a prescription drug, or ~~3 grams~~ 6 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a prescription drug.

~~(5)~~ (3) "Tier 1 Controlled Substances Quantity" means:

- a. 5 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this title;
- b. 1 gram or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin, as described in § 4714 of this title, or of any mixture containing any such substance;
- c. 175 grams or more of marijuana, as described in § 4701(27) of this title;
- d. 5 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of this title;
- e. 5 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of this title;
- f. 5 grams or more of phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of this title;
- g. 25 or more doses or, in a liquid form, 2.5 milligrams or more of lysergic acid diethylamide (LSD), or any mixture containing such substance, as described in § 4714(d)(9) of this title;

h. 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of any substance as described in § 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of any mixture containing any such substance; or

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

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

Section 5. Amend § 4751D, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline 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 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(2)j. or (4)j. of this title~~ § 4751C(2)j. or (3)j. 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.

(c) The identity or composition of a controlled substance, or a mixture containing a controlled substance, may be established by utilizing a hypergeometric sampling plan or other scientifically accepted methodology.

Section 6. Amend § 4752, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4752. ~~Drug dealing—Aggravated possession~~ Drug dealing or possession; class B felony.

~~Except as authorized by this chapter, any person who:~~

~~(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 4 quantity;~~

~~(2) 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;~~

~~(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 § 4751C(4)a. i., of this title, and there are 2 aggravating factors,~~
~~shall be guilty of a class B felony.~~

(a) Except as authorized by this chapter, it is unlawful for any person to do any of the following:

(1) Manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance in a Tier 3 quantity.

(2) Possess a controlled substance in a Tier 3 quantity.

(3) Manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance in a Tier 2 quantity and an aggravating factor applies.

(b) Violation of subsection (a) of this section is a class B felony.

Section 7. Amend § 4753, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4753. ~~Drug dealing—Aggravated possession; class C felony.~~ Drug dealing or possession; class C or E felony.

~~Except as authorized by this chapter, any person who:~~

~~(1) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a Tier 2 quantity;~~

~~(2) Manufactures, delivers, or possesses with the 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 § 4751C(2)a. i. of this title;~~

~~(4) Possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a. i. of this title; and there is an aggravating factor; or~~

~~(5) Possesses a controlled substance in a Tier 1 quantity, and there are 2 aggravating factors,~~
~~shall be guilty of a class C felony.~~

(a) Except as authorized by this chapter, it is unlawful for any person to do any of the following:

(1) Manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance in a Tier 2 quantity.

(2) Possess a controlled substance in a Tier 2 quantity.

(b)(1) Violation of subsection (a)(1) of this section is a class C felony.

(2) Violation of subsection (a)(2) of this section is a class E felony.

Section 8. Amend § 4754, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4754. ~~Drug dealing—Aggravated possession; class D felony.~~

~~Except as authorized by this chapter, any person who:~~

~~(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, shall be guilty of a class D felony.~~

(a) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with the intent to manufacture or deliver a controlled substance.

(b) Violation of subsection (a) of this section is a class D felony.

Section 9. Amend § 4755, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline 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(4)a. i. of this title, shall be guilty of a class E felony. [Repealed.]~~

Section 10. Amend § 4756, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4756. ~~Aggravated possession; class F felony.~~ Drug possession; class G or 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.~~

(a) Except as authorized by this chapter, it is unlawful for any person to possess a controlled substance in a Tier 1 quantity.

(b) Violation of subsection (a) of this section is a class G felony.

Section 11. Amend § 4757, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4757. Miscellaneous drug crimes; class C or F felony.

(a) It is unlawful for any person knowingly or intentionally:

(1) To distribute as a registrant a controlled substance classified in Schedule I or II, except pursuant to an order form as required by § 4738 of this chapter;

(2) To use in the course of the manufacture, distribution, prescribing, dispensing or research of a controlled substance, or to use for the purpose of acquiring or obtaining 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; or

(7) To prescribe, or administer to another, any anabolic steroid, as defined in § 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.

(b) Any person who violates paragraphs (a)(1) through (a)(7) of this section upon conviction shall be guilty of a class F felony.

(c) Solicitation of multiple prescription drug crimes; penalties. —

(1) Any 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 this section shall be guilty of a class C felony.

~~(2) Any 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 this section, and there is an aggravating factor in connection with at least 1 of the times shall be guilty of a class B felony. [Repealed.]~~

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

Section 12. Amend § 4761, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4761. Illegal possession and delivery of noncontrolled 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:

a. Pharmacists.

b. Practitioners.

c. 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.

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

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

f. Common carriers.

g. Manufacturers, wholesalers, and distributors.

h. 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. [Repealed.]~~

~~(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. A violation of subsection (a) of this section by a person who delivers or intends to deliver the prescription drug to another is 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. A violation of subsection (a) of this section by a person who delivers or intends to deliver the prescription drug to another and an aggravating factor applies, is 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 13. Amend § 4763, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4763. Possession of controlled substances or counterfeit controlled substances; class ~~A~~ or 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. [Repealed.]~~

Section 14. Amend § 4764, Title 16 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 4764. Possession of marijuana; class B misdemeanor, unclassified misdemeanor, or civil violation [For application of this section, see 80 Del. Laws, c. 38, § 6]

~~(a) Any person under the age of 18 who knowingly or intentionally possesses, uses, or consumes a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor. Any person 18 years of age or older who knowingly or intentionally uses, consumes, or possesses other than a personal use quantity of a controlled substance or a counterfeit controlled substance classified in § 4714(d)(19) of this title, except as otherwise authorized by this chapter, and there is an aggravating factor, shall be guilty of a class B misdemeanor. [Repealed.]~~

Section 15. Amend § 4766, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline 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 of this title.~~

~~(2) The lesser included offenses under § 4753 are §§ 4754, 4755, 4756, 4758, 4763, and 4764 of this title.~~

~~(3) The lesser included offenses under § 4754 are §§ 4755, 4756, 4758, 4763, and 4764 of this title.~~

~~(4) The lesser included offenses under § 4755 are §§ 4756, 4763, and 4764 of this title.~~

~~(5) The lesser included offenses under § 4756 are §§ 4763 and 4764 of this title. [Repealed.]~~

Section 16. Amend § 4767, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline 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)~~, or § 4761(a) 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~~ § 4752 or § 4753 of this title.

Section 17. Amend § 4771, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4771. Drug paraphernalia [For application of this section, see 80 Del. Laws, c. 38, § 6]

(a) It is unlawful for any person to use, or possess with intent to use, drug paraphernalia as defined in § 4701(17) of this title. Except that any person charged under ~~§ 4764 (a), (b), or (d) of this title~~ § 4764(b) or (d) of this title, or assessed a civil penalty under § 4764(c) of this title, shall not also be charged with this offense if in possession of drug paraphernalia pertaining to the use of marijuana.

Section 18. Amend § 4795, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4795. Jurisdiction [For application of this section, see 80 Del. Laws, c. 38, § 6]

(b) The provisions of subsection (a) of this section or any other law to the contrary notwithstanding, the Court of Common Pleas shall have original jurisdiction over any violation of the following by persons 18 years of age or older:

(1) ~~Section 4761(a) and (b) of this title~~ Section 4761(a) of this title.

(2) Section 4763 of this title.

(3) ~~Section 4764(a), (b), and (d) of this title~~ Section 4764(b) and (d) of this title.

(4) Section 4771 of this title, except where jurisdiction over the civil penalty resides in the Justice of the Peace Court pursuant to subsection (c) of this section.

Section 19. Amend § 616, Title 11 of the Delaware Code by making deletions as shown by strikethrough and insertions as shown by underline as follows:

§ 616. Gang participation.

(a) Definitions. — The following terms shall have the following meaning as used in this section.

(1) "Criminal street gang" means any ongoing organization, association, or group of 3 or more persons, whether formal or informal, having as 1 of its primary activities the commission of 1 or more of the criminal acts enumerated in paragraph (a)(2) of this section, having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.

(2) "Pattern of criminal gang activity" means the commission of attempted commission of, conspiracy to commit, solicitation of, or conviction of 2 or more of the following criminal offenses, provided that at least 1 of these offenses occurred after July 1, 2003, and that the last of those offenses occurred within 3 years after a prior offense, and provided that the offenses were committed on separate occasions, or by 2 or more persons:

a. Assault, as defined in § 612 or § 613 of this title.

b. Any criminal acts causing death as defined in §§ 632—636 of this title.

c. Any criminal acts relating to sexual offenses defined in §§ 768—780 of this title.

d. Any criminal offenses relating to unlawful imprisonment or kidnapping which are defined in §§ 782—783A of this title.

e. Any criminal acts of arson as defined in §§ 801—803 of this title.

f. Any criminal acts relating to burglary which are defined in §§ 824—826A of this title.

g. Any criminal acts relating to robbery which are defined in §§ 831 and 832 of this title.

h. Any criminal acts relating to theft or extortion which are defined in § 841, § 849 or § 851 of this title, provided that such acts meet the requirements of felony offenses under said sections.

i. Any criminal acts relating to riot, unlawful disruption, hate crimes, stalking or bombs which are defined in § 1302, former § 1303 [repealed], § 1304, § 1312A or § 1338 of this title, provided that such acts meet the requirements of felony offenses under said sections.

j. Any criminal acts involving deadly weapons or dangerous instruments which are defined in § 1442, § 1444, §§1447—1448, § 1449, § 1450, § 1451, § 1454 or § 1455 of this title.

k. Any criminal acts involving controlled substances which are defined by §§ 4752, 4753, ~~4754, 4755, 4756~~, or 4757(c) of Title 16.

Section 20. Amend § 6712, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6712. First offender boot camp diversion program.

~~(a) Subject to the provisions of this section and notwithstanding any other law, rule or regulation to the contrary, any person convicted upon a plea of guilty or otherwise convicted of any of the offenses set forth in subsection (b) of this section may petition the court to defer further sentencing proceedings, and to divert the offender to the boot camp program. In addition, the Department of Correction may petition the court on behalf of any person in its custody who has been convicted of an offense set forth in subsection (b) of this section, for a sentence modification suspending the remainder of the offender's Level V sentence, and diverting such person to the boot camp diversion program ("modify and divert"). The Attorney General shall receive prior notice of all such applications and be provided an opportunity to be heard. Any offender diverted pursuant to this subsection shall be subject to the terms and conditions of this section. No person shall be eligible for boot camp pursuant to this section if the Attorney General's Office, upon written motion, opposes such boot camp diversion pursuant to paragraph (c)(2) of this section.~~

~~(b) Subject to the provisions of this section, certain persons convicted of the following offenses shall be potentially eligible for diversion to the boot camp inmate training program:~~

~~(1) Any offense in Title 16 relating to manufacture, delivery, or possession of controlled substances or prescription drugs, but not including §§ 4752-4756 of Title 16, except as set forth below; or~~

~~(2) Drug dealing or aggravated possession as set forth in §§ 4752-4756 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(3) of Title 16; or~~

~~(3) Burglary in the second degree, as set forth in § 825 of this title, but only if the defendant has not previously been convicted of burglary in the second degree or burglary in the first degree, as set forth in § 826 of this title.~~

~~(c) Notwithstanding any other provision of this section, no person shall be diverted to the boot camp program pursuant to this section or to otherwise utilize the provisions of this section, if:~~

~~(1) Such person has previously been incarcerated as an adult pursuant to a sentence imposed for a criminal conviction for any offenses set forth in Title 11 or 16, or any equivalent offense set forth under the laws of this State, any other state, or the United States or any territory thereof, and was previously sentenced to a term of more than 1 year of Level V incarceration, which was not suspended.~~

~~(2) The Attorney General's Office, upon written motion, opposes the Diversion. Such motion shall clearly articulate the specific reasons for such opposition.~~

~~(3) The Attorney General's Office offers the Boot Camp Diversion Program as part of a proposed plea agreement, the appellant rejects the offer, and the appellant is subsequently convicted after trial.~~

~~(d) Subject to the provisions of this section, and notwithstanding any other law, rule or regulation to the contrary, if the sentencing court chooses to grant the petition to defer or to modify and divert, as set forth in subsection (a) of this section, the sentencing court shall enter a judgment of conviction; and shall then defer sentencing, or modify the imposition of the remainder of any Level V sentence, including any Level V sentence otherwise required by § 4752 of Title 16, or by § 825, § 826 or § 4205 of this title or by any other law. The court shall then remand the offender to the custody of the Department of Correction upon the condition that the offender shall complete a program of supervision which shall include:~~

~~(1) Placement in a boot camp facility with a substance abuse treatment program for a period of not less than 6 months, to be followed by supervision at Level IV or III, or both, for a period of 1 and 1/2 years;~~

~~(2) A requirement that, while at supervision Level IV or III, the offender comply with the terms of a curfew, said terms to be imposed by either the sentencing court or the Department of Correction. The terms of said curfew may include mandated compliance with certain geographical limitations, prohibitions or restrictions;~~

~~(3) A requirement that, while at supervision Level IV or III, the offender participate in substance abuse treatment which shall include periodic, random urine surveillance during the entire period of supervision at Level IV or III, or both;~~

~~(4) Payment of the costs of prosecution, and payment of a \$500 civil penalty to the Substance Abuse Rehabilitation, Education and Prevention Fund; and~~

~~(5) Any other terms or provisions deemed appropriate by the sentencing court or the Department of Correction.~~

~~(e) Whenever the court defers or modifies a sentence pursuant to this section, it shall inform the offender of the sentence to be imposed or reinstated in the event that the offender fails to comply with any of the terms of supervision or probation imposed pursuant to this section. Such term of imprisonment shall not be less than any~~

~~applicable sentence mandated for the offense or offenses of which the offender was convicted, as set forth in § 4752 of Title 16, or § 825, § 826 or § 4205 of this title. Failure of the court to comply with this subsection shall not preclude the sentencing court from complying with any of the other provisions of this section.~~

~~(f) Whenever the court defers further sentencing proceedings pursuant to this section, it shall have the authority to remand the offender to the custody of the Department of Correction at Accountability Level III, IV or V until such offender is placed in a boot camp facility.~~

~~(g) The Department of Correction shall closely monitor all participants in this program, and shall ensure that those program participants at supervision Level IV or III shall be monitored by officers specifically assigned to such duties. The Department of Correction shall at all times have on duty no fewer than 8 probation officers (2 for each county and 2 for the City of Wilmington) who shall promptly respond to police agencies as requested for the purpose of taking custody of any person who is believed to have violated the terms or conditions of that person's program of supervision or probation at the boot camp, or at Level IV or III. Pursuant to Chapter 43 of this title such probation officer shall promptly file a probation violation report setting forth the nature and circumstances of the alleged violation with the appropriate court.~~

~~(h) Upon receipt of an allegation that an offender has violated the terms of that offender's supervision, the sentencing court shall cause the offender to be brought before it without unnecessary delay. Upon a finding that the offender has violated any of the terms or conditions of supervision or probation at the boot camp or at Level IV or Level III, the court shall proceed to sentencing on all charges for which sentencing was originally deferred pursuant to this section, and shall impose not less than the full applicable Level V sentence mandated for the offense or offenses of which the offender was convicted, as set forth in § 4752 of Title 16, or § 825, § 826 or § 4205 of this title. If the offender had already been sentenced and the sentence was modified pursuant to this section, the offender shall serve the remainder of that original sentence. No credit time shall be given for any time spent in boot camp, Level IV or Level III. Failure of the sentencing court to comply with the sentencing provisions of this subsection shall constitute an illegal sentence within the meaning of Chapter 99 of Title 10.~~

~~(i) Upon conclusion of the period of supervision and probation imposed pursuant to this section, the court may find that the offender has successfully completed the program, and, if it does, it shall discharge the offender from probation.~~

~~(j) Prior to the release of any offender from the boot camp to supervision Level IV or III, the Department of Correction shall enter into the DELJIS criminal history system information identifying the offender as a first offender drug felon. [Repealed.]~~

Section 21. This Act takes effect 90 days after its enactment into law.

Approved September 16, 2019