

CHAPTER 167  
FORMERLY  
HOUSE BILL NO. 168  
AS AMENDED BY  
HOUSE AMENDMENT NO. 1, HOUSE AMENDMENT NO. 2 AS AMENDED BY HOUSE AMENDMENT NO. 1 TO  
HOUSE AMENDMENT NO. 2  
AND  
HOUSE AMENDMENT NO. 3

AN ACT TO AMEND TITLE 21 OF THE DELAWARE CODE RELATING TO DRIVING A VEHICLE WHILE UNDER THE INFLUENCE.

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

Section 1. Amend § 4177(c)(6)b., Title 21 of the Delaware Code by striking the number “20” as it appears in that subparagraph and substituting in lieu thereof “.15”.

Section 2. Amend § 4177(d)(1), Title 21 of the Delaware Code by striking the phrase “6 months or both, and shall be required to complete an alcohol evaluation and a course of instruction and/or rehabilitation program pursuant to § 4177D of this title, which may include confinement for a period not to exceed 6 months, and pay a fee not to exceed the maximum fine.” as it appears in that paragraph and by substituting in lieu thereof the phrase “12 months or both.”

Section 3. Amend § 4177(d)(2), Title 21 of the Delaware Code by inserting the phrase “occurring at any time within 10 years of a prior offense” between the phrases “second offense” and “, be fined not less than \$750” as they appear in that paragraph.

Section 4. Amend § 4177(d)(3), Title 21 of the Delaware Code by striking that paragraph in its entirety and by substituting in lieu thereof the following:

“(3) For a third offense occurring at any time after two (2) prior offenses, be guilty of a class G felony, be fined not more than \$5,000 and be imprisoned not less than 1 year nor more than 2 years. The provisions of § 4205(b)(7) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to 9 months of any minimum sentence set forth in this paragraph provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section.”

Section 5. Amend § 4177(d)(4), Title 21 of the Delaware Code by striking the phrase “less than \$3,000 nor” as it appears in that paragraph.

Section 6. Amend § 4177(d)(5), Title 21 of the Delaware Code by striking the phrase “less than \$3,500 nor” as it appears in that paragraph.

Section 7. Amend § 4177(d)(4), Title 21 of the Delaware Code by adding a second sentence thereto to read as follows:

“The provisions of § 4205(b)(5) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to 18 months of any minimum sentence set forth in this paragraph provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section.”

Section 8. Amend § 4177(d)(6), Title 21 of the Delaware Code by striking the phrase “less than \$5,000 nor” as it appears in that paragraph.

Section 9. Amend § 4177(d)(6), Title 21 of the Delaware Code by striking the phrase “5 years” as it appears in that paragraph and by substituting in lieu thereof the phrase “4 years”.

Section 10. Amend § 4177(d)(7), Title 21 of the Delaware Code by striking the phrase “less than \$10,000 nor” as it appears in that paragraph.

Section 11. Amend § 4177(d)(7), Title 21 of the Delaware Code by striking the phrase “10 years” as it appears in that paragraph and by substituting in lieu thereof the phrase “5 years”.

Section 12. Amend § 4177(d)(8) and (d)(9), Title 21 of the Delaware Code by striking the current language of those paragraphs in its entirety and by substituting in lieu thereof the following:

“(8) For the fifth, sixth, seventh offense or greater, the provisions of § 4205(b) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, at least one-half of any minimum sentence shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to one-half of any minimum sentence set forth in this section provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section. No conviction for a violation of this section, for which a sentence is imposed pursuant to this paragraph or paragraphs (d)(3) or (d)(4) of this section, shall be considered a predicate felony for conviction or sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph or paragraphs (d)(3) or (d)(4) of this section is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.

(9) Any minimum sentence suspended pursuant to paragraphs (d)(3), (d)(4), or (d)(8) of this section shall be upon the condition that the offender shall complete a program of supervision which shall include:

a. A drug and alcohol abstinence program requiring that the offender maintain a period of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device. In addition to such device, the offender shall participate in periodic, random breath or urine analysis during the entire period of supervision.

b. An intensive inpatient or outpatient drug and alcohol treatment program for a period of not less than 3 months. Such treatment and counseling may be completed while an offender is serving a Level V or Level IV sentence.

c. Any other terms or provisions deemed appropriate by the sentencing court or the Department of Correction.”

Section 13. Amend § 4177(d)(11), Title 21 of the Delaware Code by striking the phrase “paragraph (d)(3) or (4)” as it appears each time in that paragraph and by substituting in lieu thereof the phrase “paragraphs (d)(3), (4), (5), (6), or (7)”.

Section 14. Amend § 4177(d)(12), Title 21 of the Delaware Code by striking the phrase “paragraph (d)(3), (4) or (9)” as it appears in that paragraph and by substituting in lieu thereof “paragraphs (d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8) or (d)(9)”.

Section 15. Amend § 4177(e) and (f), Title 21 of the Delaware Code by striking the current language of those subsections in its entirety and by substituting in lieu thereof the following:

“(e) In addition to any penalty for a violation of subsection (a) of this section, the Court shall, for any individual with an alcohol concentration of .15 or more or who refused a chemical test, prohibit the person convicted from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device; the terms of installation of the device and licensing of the individual to drive shall be as set forth in § 4177C of this Title. A person who is prohibited from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device under this Title at the time of an offense under subsection (a) of this section shall, in addition to any other penalties provided under law, pay a fine of \$2,000 and be imprisoned for 60 days.

(f) In addition to any penalty for a violation of subsection (a) of this section, the Court shall order the person to complete an alcohol evaluation and to complete a program of education or rehabilitation pursuant to § 4177D of this Title which may include inpatient treatment and be followed by such other programs as established by the treatment facility, not to exceed a total of 15 months and to pay a fee not to exceed the maximum fine.”

Section 16. Amend § 4177(h)(1), Title 21 of the Delaware Code by inserting the phrase “or the presence or concentration of any drug” between the phrases “alcohol concentration” and “pursuant to this section” as they appear in such subsection.

Section 17. Amend § 4177(h)(1)d., Title 21 of the Delaware Code by inserting the phrase “, drugs or both” between the phrases “contained the alcohol” and “therein stated” as they appear in such subsection.

Section 18. Amend § 4177(h)(2)c., Title 21 of the Delaware Code by inserting the phrase “or the presence or concentration of any drug” between the phrases “alcohol concentration” and “within the meaning” as they appear in such subsection.

Section 20. Amend § 4177A(a)(2), Title 21 of the Delaware Code by striking the number “24” as it appears for the first time in that subsection and by inserting in lieu thereof the number “18”.

Section 21. Amend § 4177B(a)(6), Title 21 of the Delaware Code by striking the phrase “§ 4177(d)(9)” as it appears in that paragraph and by inserting in lieu thereof the phrase “§ 4177(d)(10)”.

Section 22. Amend § 4177B(a), Title 21 of the Delaware Code by inserting the word “shall” between the phrases “may defer further proceedings and” and “place the accused on probation” as they appear in that subsection.

Section 23. Amend § 4177B(e)(2)a., Title 21 of the Delaware Code by striking the number “5” as it appears in that subparagraph and by substituting in lieu thereof the number “10”.

Section 24. Amend § 4177B(e)(2)b., Title 21 of the Delaware Code by striking the current language of that subparagraph in its entirety and by substituting in lieu thereof the following:

“b. For sentencing pursuant to § 4177(d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8) or (d)(9) of this title there shall be no time limitation and all prior or previous convictions or offenses as defined in paragraph (1) of this subsection shall be considered for sentencing.”

Section 25. Amend § 4177B(e)(2)c., Title 21 of the Delaware Code by striking that subsection in its entirety and by redesignating § 4177B(e)(2)d. as § 4177B(e)(2)c.

Section 26. Amend § 4177B(f)(1), Title 21 of the Delaware Code by striking the number “5” as it appears in that paragraph and by substituting in lieu thereof the number “10”.

Section 27. Amend § 4177B(f)(3), Title 21 of the Delaware Code by striking the current language of that paragraph in its entirety and by substituting in lieu thereof the following:

“(3) Paragraph (a)(4) of this section. However, if a person has a blood alcohol concentration of .15 or greater, § 4177C(c) of this title shall apply. A person with a blood alcohol concentration of .15 or greater shall not be permitted to participate in the FOE-IID program pursuant to § 4177B(g) of this title.”

Section 28. Amend § 4177C(c), Title 21 of the Delaware Code by striking the phrase “FOE-IID Diversion pursuant to § 4177B(g) of this title, and is enrolled in a course of instruction and/or program of rehabilitation pursuant to §§ 4177B(g) and 4177D” as it appears in that subsection and substituting in lieu thereof the phrase “First Offenders Election pursuant to § 4177B of this title, and is enrolled in a course of instruction and/or program of rehabilitation pursuant to § 4177D”.

Section 29. Amend § 4177L, Title 21 of the Delaware Code by inserting new subsections (d) and (e) as follows:

“(d) In addition to any penalty for a violation of subsection (a) of this section, the Court shall order the person to complete a drug and alcohol evaluation and to complete a program of education or rehabilitation pursuant to § 4177D of this title.”

Section 30. Amend § 4177M, Title 21 of the Delaware Code by designating the current language of that section in its entirety as subsection (a) thereof and by inserting new subsections (b) and (c) as follows:

“(b) In addition to any penalty for a violation of subsection (a) of this section, the court shall order the person to complete a drug and alcohol evaluation and to complete a program of education or rehabilitation pursuant to § 4177D of this title.”

Section 33. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall 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 34. Sections 1, 16, 17, 18, 20, 22, 26, 31 and 32 of this Act shall take effect upon its enactment into law. Sections 2 through 15 and Sections 21, 23, 24, 25, 27, 28, 29 and 30 of this Act shall take effect with respect to all crimes, offenses and violations which are committed after 11:59 p.m. on June 30, 2012.

Section 35. In no case shall the repeal or amendment of any statute or statutory provision by this Act have the effect of releasing or extinguishing any penalty, forfeiture or liability incurred under such statute or statutory provision, and such statute or statutory provision shall be treated as remaining in full force and effect for the purpose of sustaining any proper action or prosecution for enforcement of such penalty, forfeiture or liability. Any action, case, prosecution trial or other legal proceeding in progress under or pursuant to any statute or statutory provision repealed or amended by this Act shall be preserved and shall not become illegal or terminated irrespective of the stage of such proceedings. For the purpose of such proceedings, the prior law shall remain in full force and effect.”

Approved August 03, 2011