



SPONSOR: Rep. Lynn & Rep. Mitchell & Sen. Hansen
Reps. Baumbach, Brady

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE BILL NO. 51

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, Title 21 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4177. Driving a vehicle while under the influence or with a prohibited alcohol or drug content; evidence; arrests; and penalties.

(d) Whoever is convicted of a violation of subsection (a) of this section shall:

(9) Any minimum sentence suspended pursuant to paragraph (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 or through periodic breath or urine analysis. In addition to such monitoring, 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 as approved by the Court or the Department of Correction.

1. Such treatment and counseling may be completed either while an offender is serving a ~~Level V or Level IV sentence~~ any level of supervision as defined by § 4204(c)(2) through (5) of Title 11 or after arrest but before adjudication of the offense.

2. Notwithstanding paragraph (d)(9)b.1. of this section, the offender must complete the required drug and alcohol treatment program within 9 months from the date the offender is sentenced or from the date of release following a Level V or Level IV sentence.

3. If an offender fails to complete the required drug and alcohol treatment program as required under paragraph (d)(9)b.2. of this section, the Court shall impose the portion of the minimum sentence suspended by

the Court under paragraphs (d)(3), (d)(4), or (d)(8) of this section for the offender's participation in the program.

4. On petition by the offender, or the Department of Correction, filed before the expiration of the 9-month period under paragraph (d)(9)b.2. of this section, the Court may, for good cause shown, extend the 9-month period to accommodate the completion of the required drug and alcohol treatment program.

SYNOPSIS

This Act clarifies Delaware's driving under the influence ("DUI") law related to intensive inpatient or outpatient drug and alcohol treatment for felony DUI offenders. The current law has resulted in differing interpretations regarding treatment; specifically, whether treatment must be completed while incarcerated (Level V) or at home confinement (Level IV), rather than at community supervision (Level III or Level II). This has resulted in extending incarceration for some offenders or requiring out-of-state offenders to reside in Delaware to complete the mandated drug and alcohol abstinence program and drug and alcohol treatment program under § 4177(d)(9) of Title 21.

Specifically, this Act clarifies when the required intensive inpatient or outpatient drug and alcohol treatment, as approved by the Court or the Department of Correction, can take place. The required program may be completed while the offender is on any level of supervision, not just Level V or IV. The treatment program may also be completed by an offender after arrest and prior to adjudication. permits the Superior Court to sentence felony DUI offenders to commence intensive treatment at any level of supervision, including community supervision. This Act also requires offenders to complete treatment within 9 months of the date of sentence or the date of release from Level V or Level IV, unless the Superior Court has granted the offender an extension for good cause. If an offender does not complete the treatment as required, the Superior Court must impose the portion of the minimum sentence suspended by the Court for the offender's participation in the program.