



SPONSOR: Rep. George & Sen. Blevins & Sen. McDowell & Sen. Sorenson
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HOUSE OF REPRESENTATIVES
146th GENERAL ASSEMBLY

HOUSE BILL NO. 19

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:

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

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

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

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

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

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

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

11 Section 1. Amend § 1010(a)(3), Title 10 of the Delaware Code by striking the phrase "trafficking in marijuana,
12 cocaine, illegal drugs, methamphetamine, L.S.D. or designer drugs (where the child is alleged to have committed acts
13 constituting a violation of either subparagraph b. or c. of paragraph (1), (2), (3), (4), (5), (6) or (7) of § 4753A(a) of Title
14 16, or a violation of § 4753A(a)(8)a.)" where it appears in said paragraph and substituting in lieu thereof the phrase "§ 4752
15 and § 4753 of Title 16".

16 Section 2. Amend § 7111(d), Title 10 of the Delaware Code by striking the phrase "within a drug-free zone within
17 the meaning of §§ 4767 and 4768 of Title 16" and substituting in lieu thereof the phrase "within a protected park or
18 recreation area within the meaning of § 4701(40) of Title 16, or within a protected school zone within the meaning of §
19 4701(41) of Title 16."

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

22 Section 4. Amend § 616(a)(2)k, Title 11 of the Delaware Code by striking the phrase “4751, 4752, 4753A, 4755,
23 4756, 4761, 4761A” where it appears in said subparagraph and substituting in lieu thereof the phrase “4752, 4753, 4754,
24 4755, 4756, 4757(c)”.

25 Section 5. Amend § 1448, Title 11 of the Delaware Code by renumbering paragraph (a)(9) as paragraph (a)(10)
26 and by inserting a new subsection (a)(9) in lieu thereof, reading as follows: “(9) Any person, if the deadly weapon is a
27 semi-automatic or automatic firearm, or a handgun, who, at the same time, possesses a controlled substance in violation of
28 §§ 4763, or 4764 of Title 16.”, and by striking the designation “(a)(9)a” as it appears in renumbered subsection (a)(10), and
29 inserting in lieu thereof the designation “(a)(10)a”.

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

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

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

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

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

- 45 “4752 Drug Dealing. Aggravated Possession
- 46 4753 Drug Dealing. Aggravated Possession
- 47 4754 Drug Dealing. Aggravated Possession
- 48 4755 Aggravated Possession
- 49 4756 Aggravated Possession”.

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

54 “4767 Distribution, Delivery, or Possession of a Controlled Substance within 1,000 Feet of School Property
55 4768 Distribution, Delivery, or Possession of a Controlled Substance within 300 Feet of a Park or Recreation
56 Area”.

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

- 59 i. after the words “Title 16, Section Crime” and before the phrase “4751 Manufacture, delivery or
60 possession”.
- 61 ii. after the phrase “a narcotic drug” and before the number “4752”
- 62 iii. after the phrase “nonnarcotic, controlled substance” and before the number “4752A”
- 63 iv. after the phrase “noncontrolled substance” and before the number “4753A”.

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

66 “4752 Drug Dealing. Aggravated Possession
67 4753 Drug Dealing. Aggravated Possession
68 4754 Drug Dealing. Aggravated Possession
69 4755 Aggravated Possession.”.

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

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

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

80 drugs within 1000 feet of a school; delivery or distribution of non-narcotic drugs within 300 feet of parkland; delivery or
81 manufacture or possession with intent to deliver a non-narcotic controlled substance; delivery or possession with intent to
82 deliver a prescription body-building drug;”.

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

85 (i) “trafficking in drugs;”;

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

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

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

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

93 (2) Drug Dealing or Aggravated Possession as set forth in §§ 4752 – 56 of Title 16, but only if the weight of the
94 illegal substance possessed is less than the minimum required for a Tier 3 Controlled Substances Quantity, as defined in
95 § 4751C(c) of Title 16; or”.

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

98 Section 19. Further amend § 6712, Title 11 of the Delaware Code, by striking the phrase “§ 4751, § 4752,
99 § 4753A or § 4763” where it appears in subsections (d), (e), and (h), and inserting in lieu thereof in each instance
100 the following: “§ 4752”.

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

102 “§ 6581A. Additional Duties of the Commission.

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

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

111 Section 22. Amend § 4701(6), Title 16 of the Delaware Code by inserting the following after the first sentence of
112 said subsection: “For purposes of the crimes set forth in subchapter IV and V of this Chapter, and of forfeiture set forth in
113 § 4784 of this Chapter, ‘controlled substance’ includes ‘designer drug’, as defined in subsection (9) of this Section.”.

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

117 Section 24. Amend § 4701(9), Title 16 of the Delaware Code by inserting a third sentence after the existing
118 sentences of said subsection, reading as follows: “‘Designer drug’ does not include any substance that was manufactured,
119 delivered or dispensed in conformance with an approved new drug application, or an exemption for investigating use within
120 the meaning of § 505 of the Federal Food, Drug and Cosmetic Act (21 U.S.C. § 355), or that was manufactured, delivered
121 or dispensed in conformance with a registration issued by the Attorney General of the United States within the meaning of
122 §§ 301-304 of the Federal Controlled Substances Act (21 U.S.C. §§ 821-824).”.

123 Section 25. Amend § 4701, Title 16 of the Delaware Code by inserting a new definition of “Dose” where it should
124 appear alphabetically in said Section, reading as follows: “ ‘Dose’ means an amount or unit of a compound, mixture, or
125 preparation containing a controlled substance that is separately identifiable and in a form that indicates that it is the amount
126 or unit by which the controlled substance is separately administered to or taken by an individual. A dose includes, but is
127 not limited to, a pill, a capsule, a tablet, or a vial.”, and by renumbering the existing subsections accordingly to preserve the
128 alphabetical order of the definitions contained therein.

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

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

135 “(23) ‘Lawful Prescription or Order’ means a prescription or order that is issued for a legitimate medical purpose
136 by a licensed and registered practitioner pursuant to a “patient-practitioner relationship” as defined in this Section, that is

137 not obtained by misrepresentation, fraud, forgery, deception or subterfuge, and is distributed or dispensed in conformity
138 with § 4739 of this Title.”.

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

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

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

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

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

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

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

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

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

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

158 “(40) ‘Protected park or recreation area’ means (a) any building, structure, athletic playing field, playground, or
159 other land contained on the property of any park or recreation area owned, operated or utilized by any county or
160 municipality, or by the State, or by any board, commission, department, agency, corporation or organization thereof, or in
161 any ‘parkland’ as defined in § 8110(a)(2) of Title 9, or (b) any area accessible to the public located within 300 feet of the
162 property of any park or recreation area owned, operated or utilized by any county or municipality, or by the State, or by any
163 board, commission, department, agency, corporation or organization thereof, or in any ‘parkland’ as defined in § 8110(a)(2)
164 of Title 9, or any parked vehicle located within 300 feet of the property of any park or recreation area owned, operated or
165 utilized by any county or municipality, or by the State, or by any board, commission, department, agency, corporation or
166 organization thereof, or in any ‘parkland’ as defined in § 8110(a)(2) of Title 9. For the purposes of this section an ‘area

167 accessible to the public' shall include sidewalks, streets, parking lots, parks, playgrounds, stores and restaurants, and any
168 other outdoor locations such as front porches or front yards.”.

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

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

179 Section 28. Further amend § 4701, Title 16 of the Delaware Code by deleting the Section number “4757(f)(2)” as
180 it appears in the subsection containing the defined term “Secretary” and inserting in lieu thereof the Section number
181 “4762(f)(2)”.

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

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

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

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

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

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

192 “§4751A. Aggravating Factors Related to Drug Offenses.

193 For the purposes of this subchapter:

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

195 (1) the offense was committed within a protected school zone, as defined in § 4701 of this Title;

196 (2) the offense was committed within a protected park or recreation area, as defined in § 4701 of this Title;

197 (3) the offense occurred in a vehicle, as defined in § 4701 of this Title;
198 (4) the defendant was an adult, that is, a person who had reached his or her 18th birthday, and the offense
199 involved a juvenile, that is, a person who had not reached his or her 18th birthday, as a co-conspirator or accomplice, or as
200 the intended or actual recipient of the controlled substances, and the defendant was more than four years older than the
201 juvenile; and

202 (5) the defendant, during or immediately following the commission of any offense in this Title:

203 (i) intentionally prevented or attempted to prevent a law enforcement officer, as defined in § 222(15) of Title
204 11, from effecting an arrest or detention of the defendant by use of force or violence towards the law enforcement officer;
205 or

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

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

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

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

216 “§ 4751B. Prior Qualifying Title 16 Convictions.

217 For the purposes of this subchapter:

218 (a) A ‘Prior Qualifying Title 16 Conviction’ means any prior adult felony conviction for a Title 16 offense
219 where the conviction was one of former §§ 4751, 4752, or 4753A of this Title, or any other former section of this Title that
220 was, at the time of conviction, a class C or higher felony; or where the conviction was one of §§ 4752, 4753, 4754, 4755, or
221 4756 of this Title, or any other felony conviction specified in the controlled substances law of any other state, local
222 jurisdiction, the United States, any territory of the United States, any federal or military reservation, or the District of
223 Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new offense occurs
224 within 5 years of the date of conviction for the earlier offense or the date of termination of all periods of incarceration or
225 confinement imposed pursuant to the conviction, whichever is the later date. For purposes of §§ 4761(a) & (b), 4763 and
226 4764 of this Title, a ‘Prior Qualifying Title 16 Conviction’ means any prior adult conviction, including both felony and

227 misdemeanor, under this Title, if the new offense occurs within 5 years of the date of conviction for the earlier offense, or
228 the date of termination of all periods of incarceration or confinement imposed pursuant to the conviction, whichever is the
229 later date.

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

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

248 (d) Penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

284 “§ 4751C. Quantity Tiers Related to Drug Offenses.

285 For the purposes of this subchapter:

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

- 287 (1) 25 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this
288 Title;
- 289 (2) 5 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including
290 heroin, as described in § 4714 of this Title, or of any mixture containing any such substance;
- 291 (3) 5000 grams or more of marijuana, as described in § 4701(26) of this Title;
- 292 (4) 25 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any
293 mixture containing any such substance, as described in § 4716(d)(3) of this Title;
- 294 (5) 25 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or
295 of any mixture containing any such substance, as described in § 4716(d)(1) of this Title;
- 296 (6) 25 grams or more of phencyclidine, or of any mixture containing any such substance, as described in
297 § 4716(e)(5) of this Title;
- 298 (7) 500 or more doses or, in a liquid form, 50 milligrams or more of lysergic acid diethylamide (LSD), or any
299 mixture containing such substance, as described in § 4714(d)(9) of this Title;
- 300 (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
301 containing any such substance, as described in § 4701(9) of this Title; or
- 302 (9) 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of 3,4-
303 methylenedioxyamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any
304 mixture containing such substance, as described in § 4714(d)(21) of this Title.
- 305 (b) ‘Tier 4 Controlled Substances Quantity’ means:
- 306 (1) 20 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this
307 Title;
- 308 (2) 4 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including
309 heroin, as described in § 4714 of this Title, or of any mixture containing any such substance;
- 310 (3) 4000 grams or more of marijuana, as described in § 4701(26) of this Title;
- 311 (4) 20 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any
312 mixture containing any such substance, as described in § 4716(d)(3) of this Title;
- 313 (5) 20 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of
314 any mixture containing any such substance, as described in § 4716(d)(1) of this Title;
- 315 (6) 20 grams or more of phencyclidine, or of any mixture containing any such substance, as described in
316 § 4716(e)(5) of this Title;

317 (7) 250 or more doses or, in a liquid form, 25 milligrams or more of lysergic acid diethylamide (LSD), or any
318 mixture containing such substance, as described in § 4714(d)(9) of this Title;

319 (8) 50 or more doses or 10 or more grams or 10 milliliters or more of a designer drug or any mixture
320 containing any such substance, as described in § 4701(9) of this Title;

321 (9) 50 or more doses or 10 or more grams or 10 milliliters or more of 3,4-methylenedioxymethamphetamine
322 (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such
323 substance, as described in § 4714(d)(21) of this Title; or

324 (10) 60 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a
325 prescription drug, or 6 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a
326 prescription drug.

327 (c) 'Tier 3 Controlled Substances Quantity' means:

328 (1) 15 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this
329 Title;

330 (2) 3 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including
331 heroin, as described in § 4714 of this Title, or of any mixture containing any such substance;

332 (3) 3000 grams or more of marijuana, as described in § 4701(26) of this Title;

333 (4) 15 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any
334 mixture containing any such substance, as described in § 4716(d)(3) of this Title;

335 (5) 15 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of
336 any mixture containing any such substance, as described in § 4716(d)(1) of this Title;

337 (6) 15 grams or more of phencyclidine, or of any mixture containing any such substance, as described in
338 § 4716(e)(5) of this Title;

339 (7) 100 or more doses or, in a liquid form, 10 milligrams or more of lysergic acid diethylamide (LSD), or any
340 mixture containing such substance, as described in § 4714(d)(9) of this Title;

341 (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
342 containing any such substance, as described in § 4701(9) of this Title; or

343 (9) 37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of 3,4-
344 methylenedioxymethamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any
345 mixture containing such substance, as described in § 4714(d)(21) of this Title.

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

- 347 (1) 10 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this
348 Title;
- 349 (2) 2 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including
350 heroin, as described in § 4714 of this Title, or of any mixture containing any such substance;
- 351 (3) 1500 grams or more of marijuana, as described in § 4701(26) of this Title;
- 352 (4) 10 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any
353 mixture containing any such substance, as described in § 4716(d)(3) of this Title;
- 354 (5) 10 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of
355 any mixture containing any such substance, as described in § 4716(d)(1) of this Title;
- 356 (6) 10 grams or more of phencyclidine, or of any mixture containing any such substance, as described in
357 § 4716(e)(5) of this Title;
- 358 (7) 50 or more doses or, in a liquid form, 5 milligrams or more of lysergic acid diethylamide (LSD), or any
359 mixture containing such substance, as described in § 4714(d)(9) of this Title;
- 360 (8) 25 or more doses or 5 or more grams or 5 milliliters or more of a designer drug or any mixture containing
361 any such substance, as described in § 4701(9) of this Title;
- 362 (9) 25 or more doses or 5 or more grams or 5 milliliters or more of 3,4-methylenedioxymethamphetamine
363 (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any mixture containing such
364 substance, as described in § 4714(d)(21) of this Title; or
- 365 (10) 30 or more substantially identical doses of a narcotic Schedule II or III controlled substance that is a
366 prescription drug, or 3 grams or more of any mixture that contains a narcotic Schedule II or III controlled substance that is a
367 prescription drug.
- 368 (e) 'Tier 1 Controlled Substances Quantity' means:
- 369 (1) 5 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this
370 Title;
- 371 (2) 1 gram or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including heroin,
372 as described in § 4714 of this Title, or of any mixture containing any such substance;
- 373 (3) 175 grams or more of marijuana, as described in § 4701(26) of this Title;
- 374 (4) 5 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any
375 mixture containing any such substance, as described in § 4716(d)(3) of this Title;

376 (5) 5 grams or more of amphetamine, including its salts, optical isomers and salt of its optical isomers, or of
377 any mixture containing any such substance, as described in § 4716(d)(1) of this Title;

378 (6) 5 grams or more of phencyclidine, or of any mixture containing any such substance, as described in
379 § 4716(e)(5) of this Title;

380 (7) 25 or more doses or, in a liquid form, 2.5 milligrams or more of lysergic acid diethylamide (LSD), or any
381 mixture containing such substance, as described in § 4714(d)(9) of this Title;

382 (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
383 containing any such substance, as described in § 4701(9) of this Title; or

384 (9) 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of 3,4-
385 methylenedioxyamphetamine (MDMA), its optical, positional and geometric isomers, salts and salts of isomers, or any
386 mixture containing such substance, as described in § 4714(d)(21) of this Title.”.

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

388 “§ 4751D. Knowledge of Weight or Quantity Not an Element of the Offense; Proof of Weight or Quantity.

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

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

400 § 4751C(b)(10) or § 4751C(d)(10) of this Title. Nothing in this subsection precludes the right of any party to
401 introduce any evidence supporting or contradicting evidence offered pursuant to this subsection.”.

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

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

404 “§ 4752. Drug Dealing. Aggravated Possession. Class B Felony.

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

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

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

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

416 “§ 4753. Drug Dealing. Aggravated Possession. Class C Felony.

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

- 418 (a) manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a
419 Tier 2 quantity;
- 420 (b) manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance, and
421 there is an aggravating factor;
- 422 (c) possesses a controlled substance in a Tier 4 quantity as defined in any of § 4751C(b)(1) – (9) of this Title;
- 423 (d) possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(d)(1) – (9) of this
424 Title; and there is an aggravating factor; or
- 425 (e) possesses a controlled substance in a Tier 1 quantity, and there are two aggravating factors, shall be guilty
426 of a Class C felony.”.

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

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

429 “§ 4754. Drug Dealing. Aggravated Possession. Class D Felony.

430 Except as authorized by this Chapter, any person who:

- 431 (a) manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance;
- 432 (b) possesses a controlled substance in a Tier 3 quantity; or
- 433 (c) possesses a controlled substance in a Tier 1 quantity, and there is an aggravating factor,
434 shall be guilty of a Class D felony.”.

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

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

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

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

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

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

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

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

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

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

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

451 “§ 4755. Aggravated Possession. Class E Felony.

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

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

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

456 “§ 4766. Conviction of Lesser Offense.

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

460 (1) The lesser included offenses under § 4752 are §§ 4753, 4754, 4755, 4756, 4758, 4763, and 4764.

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

462 (3) The lesser included offenses under § 4754 are §§ 4755, 4756, 4758, 4763, and 4764.

463 (4) The lesser included offenses under § 4755 are §§ 4756, 4763, and 4764.

464 (5) The lesser included offenses under § 4756 are §§ 4763 and 4764.”.

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

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

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

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

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

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

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

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

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

488 “§ 4756. Aggravated Possession. Class F Felony.

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

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

493 “§ 4758. Unlawful Dealing in a Counterfeit or Purported Controlled Substance. Class E Felony.

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

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

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

500 “§ 4760. Maintaining a Drug Property. Class F felony.

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

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

506 “§ 4761. Illegal Possession and Delivery of Non-Controlled Prescription Drugs.

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

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

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

514 i. Pharmacists

515 ii. Practitioners

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

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

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

523 vi. Common carriers.

524 vii. Manufacturers, wholesalers, and distributors.
525 viii. Law enforcement officers for bona fide law enforcement purposes in the course of an active criminal
526 investigation.

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

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

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

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

534 (e) Affirmative Defenses.

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

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

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

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

547 “§ 4763. Possession of Controlled Substances or Counterfeit Controlled Substances. Class A or B Misdemeanor.

548 (a) It shall be unlawful for any person to knowingly or intentionally possess, use, or consume a controlled
549 substance or a counterfeit controlled substance (except a controlled substance or counterfeit controlled substance classified
550 in subsection (d)(19) of § 4714 of this Title) unless (a) the possession, use or consumption of such substance was by a
551 person who obtained the substance directly from or pursuant to, a lawful prescription or order; or (2) the possession or
552 transfer of such substance was for medical or scientific use or purpose by persons included in any of the following classes,

553 or the agents or employees of such persons, for use in the usual course of their business or profession or in the performance
554 of their official duties:

555 i. Pharmacists
556 ii. Practitioners
557 iii. Persons who procure controlled substances in good faith and in the course of professional practice only,
558 by or under the supervision of pharmacists or practitioners employed by them, or for the purpose of lawful research,
559 teaching, or testing, and not for resale.

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

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

564 vi. Common carriers.

565 vii. Manufacturers, wholesalers, and distributors.

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

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

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

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

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

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

575 “§ 4767. First Offenders Controlled Substances Diversion Program.

576 (a) Any person who:

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

581 (2) Has not previously been afforded first offender treatment under this section or its predecessor, may
582 qualify for the first offense election at the time of the person's arraignment, except that no person shall qualify for such first

583 offense election where the offense charged under § 4763, § 4764 or § 4761(a) or (b) of this Title arises from the same
584 transaction, factual setting or circumstances as those contained in any indictment returned against the defendant alleging
585 violation of any provisions contained within §§ 4752, 4753, or 4754 of this Title.

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

591 (1) Revocation of the person's driver's license and/or privileges within this State for a period of not less than
592 6 months, restoration of which shall be contingent upon successful completion of all mandatory terms and conditions
593 required of probation to be completed during the term of revocation. Upon entry of a plea of guilty, as a first offender under
594 this section, the clerk of the court or other person designated by the court shall forthwith report that fact to the Division of
595 Motor Vehicles for action consistent with the provisions of this subsection. The Division of Motor Vehicles may issue a
596 conditional license during this period of revocation upon written certification by the person's probation officer that a
597 narrowly drawn conditional license is necessary for the limited purpose of performing the terms and conditions of
598 probation.

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

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

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

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

613 (d) Upon fulfillment of the terms and conditions of probation, including, but not limited to, paying of all
614 costs and fees, and performance of all required community service, the court shall discharge the person and dismiss the
615 proceedings against the person and shall simultaneously therewith submit to the Attorney General a report thereof which
616 shall be retained by the Attorney General for use in future proceedings, if required. Discharge and dismissal under this
617 Section shall be without adjudication of guilt and is not a conviction for purposes of this Section or for purposes of
618 disqualifications or disabilities imposed by law upon conviction of a crime. Any person who elects to be treated as a first
619 offender under this section shall, by so doing, agree to pay the costs of the person's prosecution as a condition. There may
620 be only 1 discharge and dismissal under this Section with respect to any person.”.

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

622 “§ 4764. Possession of Marijuana. Class B or Unclassified Misdemeanor.

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

626 (b) Any person who knowingly or intentionally possesses, uses, or consumes a controlled substance or a
627 counterfeit controlled substance classified in subsection (d)(19) of § 4714 of this Title, except as otherwise authorized by
628 this Chapter, shall be guilty of an unclassified misdemeanor and be fined not more than \$575 and imprisoned not more than
629 3 months.”.

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

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

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

637 Section 65. Amend § 4784, Title 16 of the Delaware Code by: (i) striking the phrase “trafficking in” as it appears
638 in subsection (a)(4); (ii) striking the word “Uniform” as it appears in subsection (a)(4)a; (iii) striking the phrase “§§ 4753,
639 4754, 4757 and 4758” as it appears in subsection (a)(4)c and inserting in lieu thereof the phrase “§§ 4761(a) or (b), 4763,
640 or 4764”; (iv) striking the number “4701” in subsection (a)(6) and inserting in lieu thereof the number “4701(17)”; and (v)
641 striking the phrase “§ 4753, § 4754, § 4754A, § 4755, § 4757 or § 4758” in subsection (a)(8)c and inserting in lieu thereof
642 the phrase “§§ 4759, 4761(a) or (b), 4763 or 4764”.

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

645 “§ 4791. Pending proceedings.

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

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

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

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

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

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

658 (i) striking the number “4754(b)” as it appears in paragraph (b)(1) and inserting in lieu thereof the number
659 “4764”;

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

661 (iii) renumbering “(3)” as “(2)”;

662 (iv) striking the phrase “, except that the Municipal Court of the City of
663 Wilmington shall have original jurisdiction concurrent with the Court of Common Pleas for such violations by person 18
664 years of age or older occurring within the City of Wilmington”.

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

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

669 “(a) Except as provided by § 1012 of Title 10, any person who pleads guilty to or is convicted of, including a
670 guilty plea or conviction pursuant to § 4767 of Title 16, a violation of §§ 4752-64 of Title 16, or any drug offense under
671 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
672 District of Columbia, or who is adjudicated delinquent as a result of acts which would constitute such offenses if committed

673 by an adult, shall, in addition to any and all other penalties provided by law, have the person's driver's license and/or
674 driving privileges revoked by the Secretary for a period of 6 months from the date of sentencing.”.

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

678 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
679 enacted into law.

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

SYNOPSIS

This Act is the product of the ‘Drug Law Revisions Committee.’ This Act repeals a significant portion of the existing criminal drug laws. In their place, this Act creates three main drug crimes – Drug Dealing (that is, delivery or manufacture, or possession with intent to deliver or manufacture); Aggravated Possession (that is, possession of amounts generally indicative of drug dealing but where drug dealing need not be proved); and Possession. Each of the crimes would have multiple levels of seriousness depending upon a number of aggravating factors, which would include proximity to a school or a park, presence in a vehicle, prior record, reaching a threshold weight of drugs, involvement of children in the offense, or resisting arrest with force or violence. None of the crimes would equate ‘possession’ and ‘possession with intent to deliver’ as do the present Possession within 1000 Feet of a School, Possession within 300 Feet of a Park, and Maintaining a Dwelling or Vehicle.

Section-by-Section Analysis of Substantive Revisions:

Sections 1, 2, 3, 4, 7, 13, 14, 23, 26, 28, 29, 30, 31, 44, 45, 65, 67, 68, and 69, of the Act make technical and conforming changes to the law.

Sections 5 and 6. These sections create a new subsection (a)(9) to § 1448 of Title 11, which would create a class F felony for a person who possesses a handgun or semi-automatic or automatic firearm at the same time as the person possesses a controlled substance.

Sections 8, 9 and 10. Certain felonies are defined in the Criminal Code as ‘violent felonies.’ The new drug dealing and aggravated possession statutes are included as ‘violent felonies.’ Convictions under the former statutes that counted as ‘violent felonies’ will continue to count as ‘violent felonies,’ except that statutes in which ‘simple possession’ of a controlled substance could count as a ‘violent felony’– present §§ 4754A (possession and delivery of a non-controlled prescription drug), 4767 (possession within 1000 feet of a school), and 4768 (possession within 300 feet of a park) -- would be repealed.

Sections 11 and 12. The drug crimes that would make for subsection (b) ‘habitual criminal’ eligibility pursuant to § 4214(b) of Title 11 would include §§ 4752, 4753, 4754, and 4755, and would roughly correspond to the statutes that establish eligibility under the present law.

Sections 15 to 19. The boot camp provisions are modified so that a drug conviction (§ 6703) will not be an absolute prohibition against DOC placing a convicted inmate in a boot camp program. They are also modified so that First Offender boot camp diversion (§ 6712) is available to charged defendants on roughly the same basis as at present.

Section 20. This section directs the Delaware Sentencing Accountability Commission to develop sentencing guidelines for cases involving controlled substances significantly exceeding the minimums required for new § 4752 of Title 16. It is anticipated that this could be completed by the effective date of this Act.

Section 21. The definition of anabolic steroids in § 4701(5) is changed to be consistent with the definition set forth in § 4718(f) of Title 16.

Section 22. The definition of 'controlled substance' is expanded to include 'designer drugs.' Under present law, because "designer drugs" were not included in the definition of 'controlled substance,' Trafficking in designer drugs was prohibited, but Delivery, Manufacture, and Possession were not.

Section 24. The provision (16 Del. C. § 4753A(a)(8)b) that excepted certain designer drugs from being prohibited is moved to the definitional section.

Section 25. This section defines 'dose,' which is currently undefined.

Section 27. The definition of 'Lawful Prescription or Order' is added at the request of the Board of Pharmacy. The definitions of 'licensed practitioner,' 'patient-practitioner relationship,' 'prescription drug,' and 'prescription drug order,' in the Safe Internet Pharmacy Act subchapter, at § 4743, are moved to the definitional section (§§ 4701(24), (31), (37), and (38)) so that the terms could be used not only in the Internet Pharmacy Act but throughout chapter 47.

Section 27. The aggravating factor 'Protected Park or Recreation Area' is modified from the present Possession within 300 Feet of a Park or a Place of Worship. This section continues to provide for a protective zone around parks and recreation areas, designed to protect children. It becomes an aggravating factor. The protective zone around places of worship, as it is less focused on the protection of children, is eliminated if the place of worship does not have a school or recreation area.

Section 27. The aggravating factor 'Protected School Zone' is modified from the present Possession within 1000 Feet of a School to be limited to within 300 feet. This is the distance used in the Possession within 300 Feet of a Park statute. The reason the size of the protective zone is reduced is that "1000 Feet" creates too large of a protected zone for the zone to act as a deterrent to drug dealing near schools.

Section 27. The definition of 'Purported Controlled Substance' is derived from existing § 4752A's prohibition against 'unlawful delivery of a noncontrolled substance' upon the representation that the substance being delivered is a controlled substance.

Section 32. This section repeals 16 Del. C. § 4751. Under §§ 4751(a) & (b), Delivery of a Narcotic Drug is currently a class C felony if the narcotic drug is Schedule I or II (as are cocaine, heroin, and oxycodone), and a class E felony if the narcotic drug is Schedule III, IV, or V. This Act would make Delivery illegal under §§ 4752, 4753, and 4754, where it would be a class B, C, or D felony, depending upon the weight of the drugs, and the presence or absence of aggravating factors. Section 4751(c) – Delivery Causing Death -- which has been charged once in the last four years, would be repealed. When facts giving rise to such a charge occur in the future, the case could be charged as Delivery and, if appropriate, Criminally Negligent Homicide. Even if there were no homicide charge available, the Court could take the death into account in sentencing on the Delivery. Section 4751(d), which provides for mandatory minimum sentences of 6 and 12 years for "nonaddicts" convicted of § 4751, and which is not used, would be repealed.

Section 33. The section sets forth five aggravating factors – (1) Protected School Zone; (2) Protected Park Zone; (3) Vehicle; (4) Juvenile Co-conspirator; and (5) Resisting Arrest Force or Violence. The first four are modified from present drug law. The fifth is new. It is based on the idea that a drug defendant who resists arrest with force or violence represents a more serious societal problem than one who does not. While resisting arrest with force or violence is already a crime (11 Del. C. § 1257(a)), it is a class G felony, which will generally have no sentencing consequences when paired with a drug felony. The aggravating factor is designed to address the drug defendant who fights the law enforcement officer making an arrest, and the drug defendant who flees in a vehicle at high speeds. A person could be convicted of both a drug offense with this aggravating factor and a separate charge of § 1257. The State will need to charge any aggravating factor, and will need to prove the aggravating factor as an element of the offense. Since the aggravating factors for a protected school zone and for a protected park or recreation area are similar in intent, if they are both present in the same case, they would be counted as one aggravating factor rather than two.

Section 34. This section addresses prior qualifying drug convictions, which would be used to enhance sentences. The definition of a prior qualifying Title 16 conviction includes the main Delaware felony drug offenses, and equivalent offenses from other jurisdictions. For the offense to count as an enhancement, there is a 'recency' requirement of five years, which is measured in the same way as in other Delaware statutes, such as robbery 1st or possession of a firearm by a prohibited person. For misdemeanor charges, a prior qualifying drug conviction includes prior drug misdemeanors, again with the 'recency' requirement. When the defendant has a prior qualifying drug conviction, the new drug crime's seriousness will be raised in a manner similar to the effect of an 'Aggravating Factor.' A prior qualifying drug conviction will not need to be charged. Instead, it will, if contested, need to be proved at sentencing. This section also defines 'two

prior qualifying Title 16 convictions' so that the first conviction would have to occur and be sentenced before the offense that generates the second conviction occurs. Drug sales often involve teenage defendants, and it is not unusual for a drug dealer to have a juvenile adjudication. If a defendant has a juvenile adjudication for drug conduct occurring after he or she turned 16, the adjudication was within ten years of the present offense, and it would count as a 'qualifying conviction' if committed by an adult, then it would count as the first of the two 'convictions' that would give a person 'two prior qualifying Title 16 convictions.'

Section 35. This section creates Tier Weights for various drugs. Most of the drugs have five tier weights. As the tier weights increase, the potential penalties increase. The 'Tier 2' weights are generally consistent with the minimum trafficking weights of current law. The tier weights for "narcotic Schedule II or III controlled substances that are a prescription drug" is new. Prescription drugs are dangerous. The Medical Examiner's Office reports that in 2008, there were 125 overdose deaths from prescription drugs, more than half the total of all drug overdose deaths in the State. This Act identifies a substantial prescription drug dealer primarily by the number of pills in the dealer's possession.

Section 36. In part, this section continues present law, that is, when the weight of the drugs is an element of the offense, the State does not have to prove the defendant had any knowledge of the weight. In part, this provision creates new law, that is, when a 'Tier weight' is being established by the number of substantially identical pills present, the State makes out a prima facie case upon proof that one such substantially identical pill contained the alleged controlled substance. The defendant would be free to seek an order to have additional pills tested at the defendant's expense.

Section 37. This section repeals 16 Del. C. § 4752. Under § 4752, Delivery of a non-narcotic drug is a Class E felony. Under the proposal, Delivery would be prohibited under §§ 4752, 4753, and 4754, and would be a class B, C, or D felony, depending upon the weight of the drugs, and the presence or absence of aggravating factors. Existing § 4752(b) & (c) makes prescription or delivery or administration of anabolic steroids for enhancing human athletic performance a class E felony. It appears to target medical professionals, athletic trainers, and dealers. This Act treats dealers in anabolic steroids the same as dealers in other drugs. For the medical professionals and trainers, the prohibition against prescription or administration of anabolic steroids for the purpose of enhancing human athletic performance would be moved (by Section 51) to § 4756(a)(7), where it would be a class F felony.

Section 37. This section also repeals 16 Del. C. § 4752A, Unlawful Delivery of noncontrolled substance. By Section 55, this Act enacts a new 16 Del. C. § 4758, which would take the place of § 4752A. Individuals illegally sell both street and prescription drugs. Other individuals sell counterfeit drugs (fake drugs [that may or may not contain a controlled substance] that look like prescription drugs) or 'beat' drugs (fake drugs that may pass for street drugs). Under present law, delivery of counterfeit drugs is included within §§ 4751 & 4752 and carries the same penalties as the sale of the actual drugs, but delivery of "beat" drugs is prohibited by § 4752A, and while carrying the same penalties as the sale of the actual drugs, is a class D felony, notwithstanding that the sale of the real drug could be a class C or E felony. The new § 4758 combines the prohibition against the delivery of counterfeit and 'beat' drugs in one statute, and makes the penalty the same for each, that is, a class E felony, one grade less than delivery of the real drug.

Sections 38, 40, 42, 47 and 54. These sections enact the new laws against Drug Dealing and Aggravated Possession -- 16 Del. C. §§ 4752, 4753, 4754, 4755 & 4756. The structure of these new laws would be pyramidal, where each lower grade of the offense would be a 'lesser-included offense' of one or more of the higher grades of the offense. Section 4752 defines the offenses that are class B felonies, for which the sentence would be 'not less than 2 years up to 25 years to be served at Level V.' 11 Del. C. § 4205(a)(2). The first-time offender who has what would be the minimum amount of drugs required for a trafficking conviction under today's laws, with no other aggravating factors, would not face a minimum-mandatory sentence, as he or she would under the trafficking law. Such an offender, however, is relatively rare among trafficking defendants. The Aggravated Possession offenses only apply to street drugs. This Act recognizes that people addicted to prescription drugs may obtain prescription drugs (legally or illegally) and hoard them in significant quantities, which is not a common practice for users of street drugs. Thus, the Aggravated Possession felonies only apply to street drugs, since, if applied to prescription drugs, they might well result in an unacceptably large percentage of the cases being charged against addicts who are going to use the prescription drugs themselves.

Sections 39 and 41. These sections repeal 16 Del. C. §§ 4753 & 4754. Sections 58 and 61 enact 16 Del. C. §§ 4763 & 4764. Present law makes unlawful possession of a narcotic controlled substance a class A misdemeanor, and unlawful possession of a non-narcotic controlled substance a class B misdemeanor. The new § 4763 combines both laws, and makes the simplest form of unlawful possession a class B misdemeanor. Where there is an aggravating factor, including a prior possession of drugs conviction within five years of the offense, the unlawful possession offense would become a class A misdemeanor. The only controlled substance not covered by § 4763 would be marijuana, the possession of which is prohibited by the new § 4764. It would have a lesser penalty structure than § 4763, but with adult jurisdiction

for the offenses in the Court of Common Pleas, as is the case under present law.

Section 39. This section also repeals 16 Del. C. § 4753A -- the trafficking laws, which date from thirty years ago. The trafficking laws are the most serious drug offenses under Delaware law, but there is no requirement that the State prove that the defendant has the intent to deliver, and thus some portion of the public and the federal government regard these statutes as 'possession' laws that unfairly target drug users. For example, under the federal Sentencing Guidelines, a Delaware Delivery, or Possession with Intent to Deliver, conviction is considered to be 'a controlled substances offense' that results in a significantly higher sentencing guideline for a repeat drug offender or a gun offender, but Trafficking is not so considered. Thus, in many cases, a federal defendant who has been convicted of Trafficking is going to get a significantly shorter sentence than an otherwise similar defendant who has been convicted under Delaware law of Delivery or Possession with Intent to Deliver. This Act would, in effect, replace Trafficking with Aggravated Possession (as set forth in §§ 4752(c), (d) & (e), 4753(c), (d) & (e), 4754(b) & (c), 4755, and 4756), which would be lesser offenses than Drug Dealing offenses with the same weight of drugs.

Section 41. This section repeals 16 Del. C. § 4754A, Illegal Possession and Delivery of Non-Controlled Prescription Drugs. Section 57 enacts 16 Del. C. § 4761, which would address the same conduct. There are presently some prescription drugs that are not controlled substances, but which are abused, e.g., 'soma' and 'tramadol.' These drugs may in due course become controlled substances, but other drugs will likely be developed, not be controlled substances, and will also be abused. Thus, the new statute replaces a presently-existing one, and both are designed to prohibit the illegal possession or delivery of non-controlled prescription drugs. The proposed statute adjusts the penalties downward, recognizing that the statute is addressing prescription drugs that by definition have not been classified as controlled substances.

Section 43. This section repeals Possession of Controlled Substance within 300 feet of a Park. The present statute is a class G felony, is frequently charged, and there are frequent convictions under it. In 2008, it was charged in 583 cases, and was the most serious charge in 82 of them. It is, however, poorly constructed to enhance the protection of children. If a drug dealer is not deterred by the more serious laws he or she is violating, the dealer also is not going to be deterred by this less serious law. Making 'a protected park or recreation area' an aggravating factor for drug offenses should be a more effective method of encouraging drug dealers and drug users to avoid parks or recreation areas than having a separate statute.

Section 46. This section repeals Maintaining a Dwelling or Vehicle. Section 56 enacts a new statute for people with control of a dwelling or business who permit others to use it for drug dealing. Maintaining a Dwelling or Vehicle is a frequently charged statute. In 2008, it was charged in 2046 cases, and was the most serious charge in 416 of them. The present law is broad enough to make the possession of a marijuana joint or a single bag of heroin in a home or a car a class F felony. If the defendant has a shotgun or a hunting rifle near the joint or the bag, the defendant can also be charged with the three year minimum-mandatory Possession of a Firearm During the Commission of a Felony. Repeal of Maintaining a Dwelling or Vehicle would make 'simple possession' amounts of drugs in a home or a car a misdemeanor rather than a felony. The present law traces back to a misdemeanor enacted in 1935. It appears that the original impetus for the law was to make it a crime to operate an 'opium den' or the equivalent. In the modern day, this would be equivalent of criminalizing the operation of a 'crack house' or a 'stash house.' This Act maintains that distinction. The person who operated the drug house should be able to be prosecuted for Drug Dealing under §§ 4752 through 4756. If there were a person who controlled the property and was knowingly complicit in another's drug business, the property controller would be liable under the statute enacted by section 56 -- § 4760 -- Maintaining a Drug Property.

Sections 48 and 49. Sections 48 and 49 allow, for most drug crimes, a single defendant to be charged with the highest grade of offense applicable to the defendant's crime. No other drug dealing, aggravated possession, or simple possession crimes would be charged. The intent is to give the Court the ability to charge the jury (or to consider, if the Court is the fact-finder), within constitutional limits, any lesser grade offense supported by evidence introduced at trial. If there were a conspiracy or a weapon or a drug paraphernalia charge, those charges would be additional.

Section 50. This provides for the repeal of the unclassified misdemeanor in 16 Del. C. § 4757(c) of Possession of a Hypodermic Syringe without Having a Doctor's Certificate in Possession. A hypodermic syringe can be drug paraphernalia, depending upon the circumstances. When a hypodermic needle is drug paraphernalia, it will remain prohibited by virtue of 16 Del. C. §§ 4771 & 4774.

Sections 51, 52, and 53. Section 51 amends 'Miscellaneous Drug Crimes' to combine subsections (a)(3) & (a)(7) of § 4756, which had substantial overlap, into new subsection (a)(3). No substantive change is intended. New subsection (a)(7) was added, and is derived from the anabolic steroids provisions of existing § 4752. [See Synopsis to section 37].

The section deletes robbery and burglary from § (a)(6), on the theory that robbery and burglary already have their own crimes, which would apply perfectly well to robbery or burglary of drugs. On the other hand, theft depends upon the dollar value of the items stolen, and thus keeping a separate theft of a controlled substance as a felony offense is appropriate. Section 53 adds new subsection (c), which would make it a crime to solicit, direct, hire, employ, or otherwise use one or more other persons three or more times within a 30 day period to obtain prescription drugs by fraudulent means or theft. This crime would cover one person used three times; one person used two times and a second person used once; or three persons each used once. This crime would essentially target the prescription drug kingpin, who stays behind the scenes while sending an associate or associates to try to fill fraudulent prescriptions.

Section 55. This section repeals Keeping Drugs in Original Container. The Department of Justice decided in 2008 that the law as written was un-prosecutable. The law states that if a person has been prescribed a prescription drug, the person must keep it in its original container. If the person does not, it is a class A misdemeanor. However, if the person has a prescription, that is a defense to the charge. Section 55 also enacts a new § 4758, which is discussed in the Synopsis to section 37.

Section 56. This section repeals 16 Del. C. § 4760, which is unnecessary, since 11 Del. C. § 209 places the same limitations on the State's ability to prosecute a drug crime already prosecuted by another state or the United States. Section 56 also enacts a new § 4760, which is discussed in the Synopsis to section 46.

Section 57. This section repeals Distribution to persons under 21 years of age and Purchase of Drugs from Minors. The statutes were charged five times during the last three years, and none of the cases involved the minimum-mandatory provisions of the statutes. The likely reason that they are not charged is that they substantially overlap with the Delivery statutes, and, in the one regard that they do not overlap, conviction is nearly impossible without having a 15 year-old or younger drug user or drug dealer testifying as a State's witness. For the rare cases where proof of the involvement of a juvenile is feasible, that would now be covered as an 'aggravating factor.' Section 57 also enacts new § 4761, which is discussed in the Synopsis to section 41.

Section 58. This section repeals 16 Del. C. § 4763. Subsections (a)(1), (b), and (d) of § 4763 are either unnecessary, or superfluous in light of other provisions of this Act. Subsection (a)(2) provides for mandatory minimum terms for defendants convicted of Delivery who have a prior Delivery or Trafficking conviction. Repeat drug dealers are good candidates for incarceration, and repeal of this statute gives the judiciary greater discretion to identify which defendants should be incarcerated and for how long. Thus, (1) one recent prior drug felony conviction will be the equivalent of an aggravating factor, subjecting a repeat offender to a higher grade of offense; and (2) two recent prior drug felony convictions will be the basis for a new Drug Dealing charge being a class B felony in all circumstances. Subsection (c) of § 4763 is never charged. The new law enacted by section 58 is discussed in the Synopsis to sections 39 and 41.

Section 59. This section repeals Possession of Controlled Substance within 1,000 feet of a School. The present law is a class G felony, is frequently charged, and there are frequent convictions under it. In 2008, it was charged in 458 cases, and was the lead charge in 68 of them. It is, however, poorly constructed to enhance the protection of children. It is not a deterrent to a drug dealer, who, if he or she is not deterred by the more serious laws he or she is violating, is not going to be deterred by this less serious law. In addition, the signs stating 'drug free school zone' are usually posted on school property and not around the border of the 'bubble.' There is no actual notice being given to drug dealers that might cause them to be less likely to deal near a school.

Section 60. There is no substantive change to the First Offenders Controlled Substances Diversion Program.

Section 61. This section enacts § 4764, which is discussed in the Synopsis to sections 39 and 41.

Sections 62 and 63. These sections delete the lengthy recitation about what constitutes drug paraphernalia, which is also set forth in § 4701(17). There is no substantive change.

Section 64. In keeping with the penalties for possession of a controlled substance, possession of drug paraphernalia is re-graded from a class A misdemeanor to a class B misdemeanor.

Section 70. This section changes the current system for revocation of driver's licenses for convicted drug defendants. The current system is that a misdemeanor conviction results in a 2 year suspension, and a felony conviction results in a 3 year suspension. There was no evidence that a potential drug offender is deterred by the threat of having a driver's license suspended. On the other hand, the lengthy suspensions, which could easily exceed the amount of time the defendant is under criminal justice supervision, are counterproductive to the defendants' attempts to become productive

citizens, as it is hard to look for, or get, a job without a driver's license. Delaware has the harshest laws in the country in regard to the length of suspension. Federal law requires a minimum of a six months suspension unless the Governor submits to the Secretary of Transportation a written certification that the Governor is opposed to such a law and the Governor certifies that the Legislature has adopted a resolution expressing its opposition to such a law. Twenty-three states, not including Delaware, have done this. Thus, the section provides for the federally-required minimum of a 6 months suspension.

Section 72. This Act shall take effect at 12:01 a.m. on the first day of the fifth full month after the Act is enacted into law. If, for example, this Act was enacted on January 15, 2011, it would take effect at 12:01 a.m. on June 1, 2011. It will take a minimum of three months to make all the necessary adjustments that would be required to implement the changes made by these revisions to the drug laws.