



SPONSOR: Sen. Henry & Rep. Mitchell  
Sens. Ennis, Lavelle, Walsh; Reps. Hudson, Jaques,  
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DELAWARE STATE SENATE  
149th GENERAL ASSEMBLY

SENATE BILL

AN ACT TO AMEND THE DELAWARE CODE RELATING TO CONTROLLED SUBSTANCE OFFENSES.

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

1 Section 1. Amend § 4751A, Title 16 of the Delaware Code by making deletions as shown by strike through and  
2 insertions as shown by underline as follows:

3 ~~§ 4751A. Aggravating factors related to drug offenses.~~

4 ~~For the purposes of this subchapter:~~

5 ~~(1) Each of the following shall be an "aggravating factor" within the meaning of the offenses in this~~  
6 ~~subchapter:~~

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

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

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

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

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

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

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

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

25           ~~(3) In any offense in which 1 or more aggravating factors set forth in this section are present, the factor or~~  
26 ~~factors shall be alleged in the charging information or indictment, and constitute an element of the offense. When there~~  
27 ~~are more aggravating factors present than are required to prove the offense, all may be alleged and proven.~~

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

30           § 4751B. Prior qualifying Title 16 convictions.

31           For the purposes of this subchapter:

32           (1) A "prior qualifying Title 16 conviction" means any prior adult felony conviction for a Title 16 offense  
33 where the conviction was 1 of former § 4751, § 4752, or § 4753A of this title, or any other former section of this title  
34 that was, at the time of conviction, a class C or higher felony; or where the conviction was 1 of § 4752, § 4753, § 4754,  
35 § 4755, or § 4756 of this title, or any other felony conviction specified in the controlled substances law of any other  
36 state, local jurisdiction, the United States, any territory of the United States, any federal or military reservation, or the  
37 District of Columbia, which is the same as, or equivalent to, an offense specified in the laws of this State, if the new  
38 offense occurs within 5 years of the date of conviction for the earlier offense or the date of termination of all periods of  
39 incarceration or confinement imposed pursuant to the conviction, whichever is the later date. For purposes of §§  
40 4761(a) and (b), 4763 and 4764 of this title, a "prior qualifying Title 16 conviction" means any prior adult conviction,  
41 including both felony and misdemeanor, under this title, if the new offense occurs within 5 years of the date of  
42 conviction for the earlier offense, or the date of termination of all periods of incarceration or confinement imposed  
43 pursuant to the conviction, whichever is the later date.

44           (2) "Two prior qualifying Title 16 convictions" means 1 "prior qualifying Title 16 conviction", as defined in  
45 paragraph (1) of this section, and an additional prior adult felony conviction or a juvenile adjudication for a Title 16  
46 offense, where the conviction or juvenile adjudication was 1 of former § 4751, § 4752, or § 4753A of this title, or any  
47 other former section of this title that was at the time of conviction or juvenile adjudication a class C or higher felony, or  
48 where the conviction or adjudication was ~~1 of § 4752, § 4753, § 4754, § 4755, or § 4756 of this title~~ a felony  
49 conviction or adjudication under this title relating to controlled substances, or any other felony conviction or juvenile  
50 adjudication specified in the controlled substances law of any other state, local jurisdiction, the United States, any  
51 federal or military reservation, or the District of Columbia, which is the same as, or equivalent to, an offense specified

52 in the laws of this State, if the new offense occurs within 10 years of the date of conviction or juvenile adjudication for  
53 the additional prior adult felony conviction or juvenile adjudication or the date of termination of all periods of  
54 incarceration or confinement imposed pursuant to the earlier conviction or juvenile adjudication, whichever is the later  
55 date, and the sentence or disposition following an adjudication of delinquency for the additional prior adult felony  
56 conviction or juvenile adjudication was imposed before the offense which is the basis for the prior qualifying Title 16  
57 conviction was committed. For a juvenile adjudication to count as the additional prior adult felony conviction or  
58 juvenile adjudication, the juvenile must have reached his or her sixteenth birthday by the date the criminal act was  
59 committed which forms the basis for the juvenile adjudication.

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

63 (4) Penalties.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

96                   3. A defendant convicted of § 4756 of this title shall be sentenced as though the defendant was  
97 convicted of § 4753(5) of this title.

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

100                   § 4751C. Quantity tiers related to drug offenses [Effective June 16, 2017]

101                   For the purposes of this subchapter:

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

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

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

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

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

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

112 f. 25 grams or more of phencyclidine, or of any mixture containing any such substance, as described in §  
113 4716(e)(5) of this title;

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

116 h. 62.5 or more doses or 12.5 or more grams or 12.5 milliliters or more of any substance as described in §  
117 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this  
118 title, or of any mixture containing any such substance; or

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

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

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

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

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

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

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

132 f. ~~20 grams or more of phencyclidine, or of any mixture containing any such substance, as described in §~~  
133 ~~4716(e)(5) of this title;~~

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

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

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

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

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

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

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

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

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

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

155 f. ~~15 grams or more of phencyclidine, or of any mixture containing any such substance, as described in §~~  
156 ~~4716(e)(5) of this title;~~

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

159 h. ~~37.5 or more doses or 7.5 or more grams or 7.5 milliliters or more of any substance as described in §~~  
160 ~~4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this~~  
161 ~~title, or of any mixture containing any such substance; or~~

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

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

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

168 b. ~~2 grams or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including~~  
169 ~~heroin, as described in § 4714 of this title, or of any mixture containing any such substance;~~

170 c. ~~1500 grams or more of marijuana, as described in § 4701(27) of this title;~~

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

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

175 f. 10 grams or more of phencyclidine, or of any mixture containing any such substance, as described in §  
176 4716(e)(5) of this title;

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

179 h. 25 or more doses or 5 or more grams or 5 milliliters or more of any substance as described in § 4714 of  
180 this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this title, or of  
181 any mixture containing any such substance;

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

185 j. ~~30 or more~~ 60 or more substantially identical doses of a narcotic Schedule II or III controlled substance  
186 that is a prescription drug, or ~~3 grams~~ 6 grams or more of any mixture that contains a narcotic Schedule II or III  
187 controlled substance that is a prescription drug.

188 (5) "Tier 1 Controlled Substances Quantity" means:

189 a. 5 grams or more of cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of this  
190 title;

191 b. 1 gram or more of any morphine, opium or any salt, isomer or salt of an isomer thereof, including  
192 heroin, as described in § 4714 of this title, or of any mixture containing any such substance;

193 c. 175 grams or more of marijuana, as described in § 4701(27) of this title;

194 d. 5 grams or more of methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any  
195 mixture containing any such substance, as described in § 4716(d)(3) of this title;

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

198 f. 5 grams or more of phencyclidine, or of any mixture containing any such substance, as described in §  
199 4716(e)(5) of this title;

200 g. 25 or more doses or, in a liquid form, 2.5 milligrams or more of lysergic acid diethylamide (LSD), or  
201 any mixture containing such substance, as described in § 4714(d)(9) of this title;

202 h. 12.5 or more doses or 2.5 or more grams or 2.5 milliliters or more of any substance as described in §  
203 4714 of this title that is not otherwise set forth in this section, a designer drug as described in § 4701(9) of this  
204 title, or of any mixture containing any such substance; or

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

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

211 Section 4. Amend § 4751D, Title 16 of the Delaware Code by making deletions as shown by strikethrough and  
212 insertions as shown by underline as follows:

213 § 4751D. Knowledge of weight or quantity not an element of the offense; proof of weight or quantity [Effective  
214 June 16, 2017]

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

219 (b) In any prosecution under this subchapter, in which the quantity of a controlled substance is an element of the  
220 offense, and the controlled substance is alleged to be a "prescription drug" as defined in § 4701 of this title, and the alleged  
221 prescription drug consists of multiple doses that appear to be substantially identical, evidence that a chemist or other  
222 qualified witness properly tested one dose, and found the presence of a controlled substance, shall be prima facie evidence  
223 that the "substantially identical doses" each contained the controlled substance that is a prescription drug for purposes of  
224 determining whether the State has proven the number of doses constituting the Tier quantities set forth in ~~§ 4751C(2)j. or~~  
225 ~~(4)j. of this title § 4751C(4)j. or (5)j. of this title.~~ Nothing in this subsection precludes the right of any party to introduce  
226 any evidence supporting or contradicting evidence offered pursuant to this subsection.

227 (c) In any prosecution under this subchapter, evidence that a chemist, or other qualified witness, employed a  
228 scientifically accepted methodology to determine the composition of a quantity of a controlled substance, or a mixture  
229 containing a controlled substance, is prima facie evidence that the entire quantity contained the controlled substance, or a



230 mixture containing a controlled substance. The identity or composition of a controlled substance, or a mixture containing a  
231 controlled substance, may be established through hypergeometric probability distribution or scientifically accepted  
232 methodology.

233 (d) The weight, quantity, identity or composition of a controlled substance or a mixture containing a controlled  
234 substance established through scientifically accepted methodology is deemed the actual weight, quantity, identity, or  
235 composition without regard to any margin of error or confidence level inherent in such testing.

236 Section 5. Amend § 4752, Title 16 of the Delaware Code by making deletions as shown by strikethrough and  
237 insertions as shown by underline as follows:

238 § 4752. ~~Drug dealing—Aggravated possession~~ Drug dealing or possession; class B felony.

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

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

242 ~~(2) Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance in a~~  
243 ~~Tier 2 quantity, and there is an aggravating factor;~~

244 ~~(3) Possesses a controlled substance in a Tier 5 quantity;~~

245 ~~(4) Possesses a controlled substance in a Tier 3 quantity, and there is an aggravating factor; or~~

246 ~~(5) Possesses a controlled substance in a Tier 2 quantity, as defined in any of § 4751C(4)a. i., of this title. and~~  
247 ~~there are 2 aggravating factors,~~

248 ~~shall be guilty of a class B felony.~~

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

250 (1) Manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance in a Tier 2 or  
251 Tier 3 quantity.

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

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

254 (2) Violation of subsection (a) of this section by a person who has previously been convicted of violating  
255 subsection (a) of this section, or an equivalent section of this title requiring proof of the same amount and type of  
256 controlled substances as subsection (a) of this section, is a class B felony and the person must receive a minimum  
257 mandatory sentence of 4 years at Level V.

258           (3) Violation of subsection (a) of this section by a person who at the time of the violation was within a  
259 protected school zone, as defined in § 4701 of this title, is a class B felony and the person must receive a minimum  
260 mandatory sentence of 4 years at Level V.

261           Section 6. Amend § 4753, Title 16 of the Delaware Code by making deletions as shown by strikethrough and  
262 insertions as shown by underline as follows:

263           § 4753. ~~Drug dealing—Aggravated possession; class C felony~~ Drug dealing or possession; class B, C, or D felony.

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

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

267           (2) ~~Manufactures, delivers, or possesses with the intent to manufacture or deliver a controlled substance, and~~  
268 ~~there is an aggravating factor;~~

269           (3) ~~Possesses a controlled substance in a Tier 4 quantity as defined in any of § 4751C(2)a. i. of this title;~~

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

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

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

275           (1) Manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.

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

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

278           (2) Violation of subsection (a) of this section by a person who has a prior qualifying Title 16 conviction is a  
279 class C felony.

280           (3) Violation of subsection (a) of this section by a person who has 2 prior qualifying Title 16 qualifying  
281 convictions is a class B felony.

282           (4) Violation of subsection (a) of this section by a person who at the time of the violation was within a  
283 protected school zone, as defined in § 4701 of this title, is a class C felony.

284           (5) Violation of subsection (a) of this section by a person has a prior qualifying Title 16 conviction and who at  
285 the time of the violation was within a protected school zone, as defined in § 4701 of this title, is a class B felony.

286           Section 7. Amend § 4754, Title 16 of the Delaware Code by making deletions as shown by strikethrough and  
287 insertions as shown by underline as follows:

288 § 4754. Drug dealing—Aggravated possession; class D felony.

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

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

291 (2) Possesses a controlled substance in a Tier 3 quantity; or

292 (3) Possesses a controlled substance in a Tier 1 quantity, and there is an aggravating factor,

293 shall be guilty of a class D felony.

294 Section 8. Amend § 4755, Title 16 of the Delaware Code by making deletions as shown by strikethrough and  
295 insertions as shown by underline as follows:

296 ~~§ 4755. Aggravated possession; class E felony.~~

297 ~~Except as authorized by this chapter, any person who possesses a controlled substance in a Tier 2 quantity, as~~  
298 ~~defined in any of § 4751C(4)a. i. of this title, shall be guilty of a class E felony.~~

299 Section 9. Amend § 4756, Title 16 of the Delaware Code by making deletions as shown by strikethrough and  
300 insertions as shown by underline as follows:

301 ~~§ 4756. Aggravated possession; class F felony~~ Drug possession; class D, E, F felony.

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

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

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

307 (2) Violation of subsection (a) of this section by a person who has a prior qualifying Title 16 conviction or  
308 who at the time of the violation was within a protected school zone, as defined in § 4701 of this title, is a class E  
309 felony.

310 (3) Violation of subsection (a) of this section by a person who has 2 prior qualifying Title 16 convictions or  
311 who has a prior qualifying Title 16 conviction and who at the time of the violation was within a protected school zone,  
312 as defined in § 4701 of this title, is a class D felony.

313 Section 10. Amend § 4757, Title 16 of the Delaware Code by making deletions as shown by strikethrough and  
314 insertions as shown by underline as follows:

315 § 4757. Miscellaneous drug crimes; class B, C and F felony.

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

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

319 (2) To use in the course of the manufacture, distribution, prescribing, dispensing or research of a controlled  
320 substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is  
321 fictitious, revoked, suspended, expired or issued to another person;

322 (3) To acquire or obtain or attempt to acquire or obtain, possession of a controlled substance or prescription  
323 drug by misrepresentation, fraud, forgery, deception or subterfuge;

324 (4) To furnish false or fraudulent material information in or omit any material information from, any  
325 application, report or other document required to be kept or filed under this chapter, or any record required to be kept  
326 by this chapter;

327 (5) To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or  
328 reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of  
329 the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance;

330 (6) To acquire or attempt to or obtain possession of a controlled substance by theft; or

331 (7) To prescribe, or administer to another, any anabolic steroid, as defined in § 4718(f) of this title, for the  
332 purposes of increasing human muscle weight or improving human performance in any form of exercise, sport, or game.

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

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

336 (1) Any person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more  
337 times within a 30-day period to violate any provision of subsection (a) of this section shall be guilty of a class C felony.

338 ~~(2) Any person who solicits, directs, hires, employs, or otherwise uses 1 or more other persons 3 or more~~  
339 ~~times within a 30-day period to violate any provision of subsection (a) of this section, and there is an aggravating factor~~  
340 ~~in connection with at least 1 of the times shall be guilty of a class B felony.~~

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

344 Section 11. Amend § 4761, Title 16 of the Delaware Code by making deletions as shown by strikethrough and  
345 insertions as shown by underline as follows:

346 § 4761. Illegal possession and delivery of noncontrolled prescription drugs.

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

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

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

354 a. Pharmacists.

355 b. Practitioners.

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

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

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

363 f. Common carriers.

364 g. Manufacturers, wholesalers, and distributors.

365 h. Law-enforcement officers for bona fide law-enforcement purposes in the course of an active criminal  
366 investigation.

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

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

370 ~~(c) Any person who violates subsection (a) of this section, and delivers, or intends to deliver the prescription drug~~  
371 ~~to another, shall be guilty of a class G felony. A violation of subsection (a) of this section by a person who delivers or~~  
372 ~~intends to deliver the prescription drug to another is a class G felony.~~

373 ~~(d)(1) Any person who violates subsection (b) of this section, and delivers, or intends to deliver the prescription~~  
374 ~~drug to another, shall be guilty of a class F felony. A violation of subsection (a) of this section by a person who delivers or~~  
375 ~~intends to deliver the prescription drug to another and who has a prior qualifying Title 16 conviction is a class F felony.~~

376                   (2) A violation of subsection (a) of this section by a person who delivers or intends to deliver the prescription  
377 drug to another within a protected school zone, as defined in § 4701 of this title, is a class F felony.

378                   (e) Affirmative defenses. —

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

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

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

389                   Section 12. Amend § 4763, Title 16 of the Delaware Code by making deletions as shown by strikethrough and  
390 insertions as shown by underline as follows:

391                   § 4763. Possession of controlled substances or counterfeit controlled substances; class A or B misdemeanor.

392                   ~~(e) Any person who violates subsection (a) of this section, and there is an aggravating factor, shall be guilty of a~~  
393 ~~class A misdemeanor.~~

394                   Section 13. Amend § 4764, Title 16 of the Delaware Code by making deletions as shown by strikethrough and  
395 insertions as shown by underline as follows:

396                   § 4764. Possession of marijuana; class B misdemeanor, unclassified misdemeanor, or civil violation [For  
397 application of this section, see 80 Del. Laws, c. 38, § 6]

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

404                   Section 14. Amend § 4766, Title 16 of the Delaware Code by making deletions as shown by strike through and  
405 insertions as shown by underline as follows:

406 § 4766. Conviction of lesser offense.

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

410 ~~(1) The lesser included offenses under § 4752 are §§ 4753, 4754, 4755, 4756, 4758, 4763, and 4764 of this~~  
411 ~~title.~~

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

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

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

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

416 Section 15. Amend § 4767, Title 16 of the Delaware Code by making deletions as shown by strike through and  
417 insertions as shown by underline as follows:

418 § 4767. First offenders controlled substances diversion program.

419 (a) Any person who:

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

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

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

432 § 4771. Drug paraphernalia [For application of this section, see 80 Del. Laws, c. 38, § 6]

433 (a) It is unlawful for any person to use, or possess with intent to use, drug paraphernalia as defined in § 4701(17)  
434 of this title. Except that any person charged under ~~§ 4764 (a), (b), or (d) of this title~~ § 4764(b) or (d) of this title, or assessed

435 a civil penalty under § 4764(c) of this title, shall not also be charged with this offense if in possession of drug paraphernalia  
436 pertaining to the use of marijuana.

437 Section 17. Amend § 4795, Title 16 of the Delaware Code by making deletions as shown by strike through and  
438 insertions as shown by underline as follows:

439 § 4795. Jurisdiction [For application of this section, see 80 Del. Laws, c. 38, § 6]

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

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

443 (2) Section 4763 of this title.

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

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

447 Section 18. Amend § 616, Title 11 of the Delaware Code by making deletions as shown by strikethrough and  
448 insertions as shown by underline as follows:

449 § 616. Gang participation.

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

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

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

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

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

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

462 d. Any criminal offenses relating to unlawful imprisonment or kidnapping which are defined in §§ 782—  
463 783A of this title.

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



- 465 f. Any criminal acts relating to burglary which are defined in §§ 824—826A of this title.
- 466 g. Any criminal acts relating to robbery which are defined in §§ 831 and 832 of this title.
- 467 h. Any criminal acts relating to theft or extortion which are defined in § 841, § 849 or § 851 of this title,
- 468 provided that such acts meet the requirements of felony offenses under said sections.
- 469 i. Any criminal acts relating to riot, unlawful disruption, hate crimes, stalking or bombs which are defined
- 470 in § 1302, former § 1303 [repealed], § 1304, § 1312A or § 1338 of this title, provided that such acts meet the
- 471 requirements of felony offenses under said sections.
- 472 j. Any criminal acts involving deadly weapons or dangerous instruments which are defined in § 1442, §
- 473 1444, §§1447—1448, § 1449, § 1450, § 1451, § 1454 or § 1455 of this title.
- 474 k. Any criminal acts involving controlled substances which are defined by §§ 4752, 4753, ~~4754, 4755,~~
- 475 ~~4756, or 4757(c)~~ of Title 16.

476 Section 19. Amend § 4201, Title 11 of the Delaware Code by making deletions as shown by strike through and

477 insertions as shown by underline as follows:

478 § 4201. Transition provisions.

479 (c) The following felonies shall be designated as violent felonies:

480	Title 16, Section	Crime
481	1136	Abuse/Mistreatment/Neglect of a Patient
482	4751	Former Manufacture/Delivery/Possession With Intent to Deliver a Controlled
483		or Counterfeit Controlled Substance, Manufacture or Delivery Causing Death
484	4752	Former Manufacture/Delivery/Possession With Intent to Deliver a Controlled
485		or Counterfeit Controlled Substance
486	4752A	Former Unlawful Delivery of a Noncontrolled Substance
487	4753A	Former Trafficking in Marijuana, Cocaine, Illegal Drugs, Methamphetamine,
488		LSD, Designer Drugs or MDMA
489	4752	<u>Former Drug Dealing — Aggravated Possession; Class B Felony</u>
490	4753	<u>Former Drug Dealing — Aggravated Possession; Class C Felony</u>
491	4754(1)	<u>Former Drug Dealing — Aggravated Possession; Class D Felony</u>
492	4761	Former Distribution to Minors
493	<u>4752</u>	<u>Drug Dealing or Possession; Class B Felony</u>
494	<u>4753</u>	<u>Drug Dealing or Possession; Class B, C, or D Felony</u>

495            4761(c) and (d)                            Illegal Delivery of Prescription Drugs  
496            4774    Delivery of Drug Paraphernalia to a Minor  
497            Section 20. Amend § 6712, Title 11 of the Delaware Code by making deletions as shown by strikethrough and  
498 insertions as shown by underline as follows:  
499            § 6712. First offender boot camp diversion program.  
500            (b) Subject to the provisions of this section, certain persons convicted of the following offenses shall be potentially  
501 eligible for diversion to the boot camp inmate training program:  
502                    (1) Any offense in Title 16 relating to manufacture, delivery, or possession of controlled substances or  
503 prescription drugs, but not including ~~§§ 4752-4756 of Title 16~~ §§ 4752, 4753, or 4756 of Title 16, except as set forth  
504 below; or  
505                    (2) ~~Drug dealing or aggravated possession as set forth in §§ 4752-4756 of Title 16~~ Drug dealing or possession,  
506 as set forth in §§ 4752, 4753, or 4756 of Title 16, but only if the weight of the illegal substance possessed is less than  
507 the minimum required for a Tier 3 Controlled Substances Quantity, as defined in ~~§ 4751C(3) of Title 16~~ § 4751C(1) of  
508 Title 16; or  
509                    (3) Burglary in the second degree, as set forth in § 825 of this title, but only if the defendant has not  
510 previously been convicted of burglary in the second degree or burglary in the first degree, as set forth in § 826 of this  
511 title.  
512            Section 21. This Act takes effect 90 days after its enactment into law.

#### SYNOPSIS

This Act addresses issues identified following the enactment of the Ned Carpenter Act, 78 Del. Laws, ch. 13, in 2011. Specifically, Sections 1 through 14 of this Act do the following:

- (1) Simplify Delaware's controlled substance laws by reducing the number of weight Tiers that are used to categorize the severity of controlled substance offenses.
- (2) Eliminate aggravating factors, some of which may cause Delaware's controlled substance laws to be applied unfairly, while maintaining enhanced sentencing for those who violate Delaware's controlled substance laws within a protected school zone.
- (3) Provide enhanced minimum mandatory sentences for those who repeatedly commit the highest level drug dealing offenses.
- (4) Provide statutory guidance for the weighing and sampling procedures used at criminal trials for controlled substances.

Sections 15 through 20 of this Act make conforming amendments to the Delaware Code based on changes made by Sections 1 through 14 of this Act.

This Act takes effect 90 days after its enactment into law. This Act also makes technical corrections to conform existing law to the guidelines of the Delaware Legislative Drafting Manual.

A companion Act, Senate Bill No. 33, codifies one of the aggravating factors eliminated by this Act, § 4751A(1)e.2. of Title 16, as a separate crime.

Author: Senator Henry