

State DUI Laws: Delaware

Legal Blood Alcohol Content Level: .08

Automatic Suspension of License for Failure of Blood Alcohol Test or Refusal to Submit to Test: Yes

Ignition Interlock Requirement upon Conviction: Yes

Felony Conviction for Repeat Offenses: Yes

Delaware Code Annotated

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

(a) No person shall drive a vehicle:

(1) When the person is under the influence of alcohol;

(2) When the person is under the influence of any drug;

(3) When the person is under the influence of a combination of alcohol and any drug;

(4) When the person's alcohol concentration is .08 or more; or

(5) When the person's alcohol concentration is, within 4 hours after the time of driving .08 or more. Notwithstanding any other provision of the law to the contrary, a person is guilty under this subsection, without regard to the person's alcohol concentration at the time of driving, if the person's alcohol concentration is, within 4 hours after the time of driving .08 or more and that alcohol concentration is the result of an amount of alcohol present in, or consumed by the person when that person was driving.

(b) In a prosecution for a violation of subsection (a) of this section:

(1) The fact that any person charged with violating this section is, or has been, legally entitled to use alcohol or a drug shall not constitute a defense.

(2) a. No person shall be guilty under subsection (a)(5) of this section when the person has not consumed alcohol prior to or during driving but has only consumed alcohol after the person has ceased driving and only such consumption after driving caused the person to have an alcohol concentration of .08 or more within 4 hours after the time of driving.

b. No person shall be guilty under subsection (a)(5) of this section when the person's alcohol concentration was .08 or more at the time of testing only as a result of the consumption of a sufficient quantity of alcohol that occurred after the person ceased driving and before any sampling which raised the person's alcohol concentration to .08 or more within

4 hours after the time of driving.

(3) The charging document may allege a violation of subsection (a) without specifying any particular subparagraph of subsection (a) and the prosecution may seek conviction under any of the subparagraphs of subsection (a).

(c) For purposes of subchapter III of Chapter 27 of this title, this section and § 4177B of this title, the following definitions shall apply:

(1) "Alcohol concentration of .08 or more" shall mean:

a. An amount of alcohol in a sample of a person's blood equivalent to .08 or more grams of alcohol per hundred milliliters of blood; or

b. An amount of alcohol in a sample of a person's breath equivalent to .08 or more grams per two hundred ten liters of breath.

(2) "Chemical test" or "test" shall include any form or method of analysis of a person's blood, breath or urine for the purposes of determining alcohol concentration or the presence of drugs which is approved for use by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, the Delaware State Police Crime Laboratory, any state or federal law enforcement agency, or any hospital or medical laboratory. It shall not, however, include a preliminary screening test of breath performed in order to estimate the alcohol concentration of a person at the scene of a stop or other initial encounter between an officer and the person.

(3) "Drive" shall include driving, operating, or having actual physical control of a vehicle.

(4) "Vehicle" shall include any vehicle as defined in § 101(48) of this title, any off-highway vehicle as defined in § 101(54) of this title and any moped as defined in § 101(53) of this title.

(5) "While under the influence" shall mean that the person is, because of alcohol or drugs or a combination of both, less able than the person would ordinarily have been, either mentally or physically, to exercise clear judgment, sufficient physical control, or due care in the driving of a vehicle.

(6) "Alcohol concentration of .16 or more" shall mean:

a. An amount of alcohol in a sample of a person's blood equivalent to .16 or more grams of alcohol per hundred milliliters of blood; or

b. An amount of alcohol in a sample of a person's breath equivalent to 20 or more grams per two hundred ten liters of breath.

(7) "Drug" shall include any substance or preparation defined as such by Title 11 or Title 16 or which has been placed in the schedules of controlled substances pursuant to Chapter 47 of Title 16. "Drug" shall also include any substance or preparation having the property of releasing vapors or fumes which may be used for the purpose of producing a condition of intoxication, inebriation, exhilaration, stupefaction or lethargy or for the purpose of dulling the brain or nervous system.

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

(1) For the first offense, be fined not less than \$ 230 nor more than \$ 1,150 or imprisoned not more than 6 months or both, and shall be required to complete an alcohol evaluation and a course of instruction and/or rehabilitation program pursuant to § 4177D of this title, which may include confinement for a period not to exceed 6 months, and pay a fee not to exceed the maximum fine. Any period of imprisonment imposed under this paragraph may be suspended.

(2) For a second offense, be fined not less than \$ 575 nor more than \$ 2,300 and imprisoned not less than 60 days nor more than 18 months. The minimum sentence for a person sentenced under this paragraph may not be suspended.

(3) For a third offense, be guilty of a class G felony, be fined not less than \$ 1,000 nor more than \$ 3,000 and imprisoned not less than 1 year nor more than 2 years. The provisions of § 4205(b)(7) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. No conviction for violation of this section for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.

(4) For a fourth or subsequent offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not less than \$ 2,000 nor more than \$ 6,000 and imprisoned not less than 2 years nor more than 5 years. The provisions of § 4205(b)(5) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 6 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. No conviction for violation of this section for which a sentence is imposed pursuant to this paragraph shall be considered a predicate felony conviction for sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph is applicable shall be considered any underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.

(5) The provisions of paragraphs (3) and (4) of this subsection and the provisions of subdivision (e)(2) of § 4177B of this title notwithstanding, the Attorney General may move the sentencing court to apply the provisions of paragraph (3) of this subsection to any person who would otherwise be subject to a conviction and sentencing pursuant to paragraph (4) of this subsection.

(6) In addition to the penalties otherwise authorized by this subsection, any person convicted of a violation of subsection (a) of this section, committed while a person who has not yet reached the person's 17th birthday is on or within the vehicle shall:

a. For the first offense, be fined an additional minimum of \$ 230 and not more than an additional \$ 1,150 and sentenced to perform a minimum of 40 hours of community service in a program benefiting children.

b. For each subsequent like offense, be fined an additional minimum of \$ 575 and not more than an additional \$ 2,300 and sentenced to perform a minimum of 80 hours of community service in a program benefiting children.

c. Violation of this paragraph shall be considered as an aggravating circumstance for sentencing purposes for a person convicted of a violation of subsection (a) of this section. Nothing in this paragraph shall prevent conviction for a violation of both subsection (a) of this section and any offense as defined elsewhere by the laws of this State.

d. Violation of or sentencing pursuant to this paragraph shall not be considered as evidence of either comparative or contributory negligence in any civil suit or insurance claim, nor shall a violation of or sentencing pursuant to this paragraph be admissible as evidence in the trial of any civil action.

(7) A person who has been convicted of prior or previous offenses of this section, as defined in § 4177B(e) of this title, need not be charged as a subsequent offender in the complaint, information or indictment against the person in order to render the person liable for the punishment imposed by this section on a person with prior or previous offenses under this section. However, if at any time after conviction and before sentence, it shall appear to the Attorney General or to the sentencing court that by reason of such conviction and prior or previous convictions, a person should be subjected to paragraph (3) or (4) of this subsection, the Attorney General shall file a motion to have the defendant sentenced pursuant to those provisions. If it shall appear to the satisfaction of the court at a hearing on the motion that the defendant falls within paragraph (3) or (4) of this subsection, the court shall enter an order declaring the offense for which the defendant is being sentenced to be a felony and shall impose a sentence accordingly.

(8) The Court of Common Pleas and Justice of the Peace Courts shall not have jurisdiction over offenses which must be sentenced pursuant to paragraph (3), (4) or (5) of this subsection.

(e) In addition to any penalty for the violation of subsection (a) or subsection (b) of this section, the court may prohibit a person convicted under either subsection from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device; and such prohibition shall be for a period of not less than 1 year. A person who is prohibited from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device under this subsection at the time of an offense under subsection (a) of this section shall, in addition to any other penalties provided under law, pay a fine of \$ 2,000 and be imprisoned for 60 days.

(f) In addition to the penalties prescribed in paragraphs (2), (3) and (4) of subsection (d) of this section, anyone convicted of a subsequent like offense shall be ordered to complete an alcohol evaluation and complete a program of education or rehabilitation which may include inpatient treatment and be followed by such other programs as established by the training facility, not to exceed a total of 15 months and pay a fee not to exceed the maximum fine.

(g) For purposes of a conviction premised upon subsection (a) of this section, or any proceeding pursuant to this Code in which an issue is whether a person was driving a vehicle while under the influence, evidence establishing the presence and concentration of alcohol or drugs in the person's blood, breath or urine shall be relevant and admissible. Such evidence may include the results from tests of samples of the person's blood, breath or urine taken within 4 hours after the time of driving or at some later time. In any proceeding, the resulting alcohol or drug concentration reported when a test, as defined in subsection (c)(2) of this section, is performed shall be deemed to be the actual alcohol or drug concentration in the person's blood, breath or urine without regard to any margin of error or tolerance factor inherent in such tests.

(1) Evidence obtained through a preliminary screening test of a person's breath in order to estimate the alcohol concentration of the person at the scene of a stop or other initial encounter between a law enforcement officer and the person shall be admissible in any proceeding to determine whether probable cause existed to believe that a violation of this Code has occurred. However, such evidence may only be admissible in proceedings for the determination of guilt when evidence or argument by the defendant is admitted or made relating to the alcohol concentration of the person at the time of driving.

(2) Nothing in this section shall preclude conviction of an offense defined in this Code based solely on admissible

evidence other than the results of a chemical test of a person's blood, breath or urine to determine the concentration or presence of alcohol or drugs.

(3) A jury shall be instructed by the court in accordance with the applicable provisions of this subsection in any proceeding pursuant to this Code in which an issue is whether a person was driving a vehicle while under the influence of alcohol or drugs or a combination of both.

(h) (1) For the purpose of introducing evidence of a person's alcohol concentration pursuant to this section, a report signed by the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist who performed the test or tests as to its nature is prima facie evidence, without the necessity of the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist personally appearing in court:

- a. That the blood delivered was properly tested under procedures approved by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, or the Delaware State Police Crime Laboratory;
- b. That those procedures are legally reliable;
- c. That the blood was delivered by the officer or persons stated in the report; and,
- d. That the blood contained the alcohol therein stated.

(2) Any report introduced under paragraph (1) of this subsection must:

a. Identify the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist as an individual certified by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner, the Delaware State Police Crime Laboratory or any county or municipal police department employing scientific analysis of blood, as qualified under standards approved by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner or the Delaware State Police Crime Laboratory to analyze the blood;

b. State that the person made an analysis of the blood under the procedures approved by the Forensic Sciences Laboratory, Office of the Chief Medical Examiner or the Delaware State Police Crime Laboratory; and,

c. State that the blood, in that person's opinion, contains the resulting alcohol concentration within the meaning of this section.

Nothing in this subsection precludes the right of any party to introduce any evidence supporting or contradicting the evidence contained in the report entered pursuant to paragraphs (1) and (2) of this subsection.

(3) For purposes of establishing the chain of physical custody or control of evidence defined in this section which is necessary to admit such evidence in any proceeding, a statement signed by each successive person in the chain of custody that the person delivered it to the other person indicated on or about the date stated is prima facie evidence that the person had custody and made the delivery stated, without the necessity of a personal appearance in court by the person signing the statement, in accordance with the same procedures outlined in § 4331(3) of Title 10.

(4) In a criminal proceeding, the prosecution shall, upon written demand of a defendant filed in the proceedings at least 15 days prior to the trial, require the presence of the Forensic Toxicologist, Forensic Chemist, State Police Forensic Analytical Chemist, or any person necessary to establish the chain of custody as a witness in the proceeding. The chain of

custody or control of evidence defined in this section is established when there is evidence sufficient to eliminate any reasonable probability that such evidence has been tampered with, altered or misidentified.

(i) In addition to any other powers of arrest, any law enforcement officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section, regardless of whether the alleged violation was committed in the presence of such officer. This authority to arrest extends to any hospital or other medical treatment facility located beyond the territorial limits of the officer's jurisdiction provided there is probable cause to believe that the violation of this section occurred within the officer's jurisdiction. This authority to arrest also extends to any place where the person is found within 4 hours of the alleged driving of a vehicle if there is reason to believe the person has fled the scene of an accident in which that person was involved, and provided there is probable cause to believe that the violation of this section occurred within the officer's jurisdiction.

(j) Any court in which a conviction of or guilty plea to a driving under the influence offense shall include the blood alcohol concentration of the defendant (if any is on record) when forwarding notice of said conviction or guilty plea to the Division of Motor Vehicles.

21 Del. C. § 4177A. Revocation of license for violation of § 4177

(a) The Secretary shall forthwith revoke the driver's license and/or driving privileges of any person convicted of a violation of § 4177 of this title or any offense under the laws of any state or of the United States or local jurisdiction or the District of Columbia which prohibits driving under the influence of drugs. Such revocation shall be for a period of:

(1) First offense -- 12 months.

(2) Second offense -- 18 months; except that if the offender's blood alcohol concentration was between .16-.19 the revocation period shall be 24 months, or if the offender's blood alcohol concentration was .20 or greater the revocation period shall be 30 months.

(3) Third or subsequent offense -- 24 months; except that if the offender's blood alcohol concentration was between .16-.19 the revocation period shall be 30 months, or if the offender's blood alcohol concentration was .20 or greater revocation period shall be 36 months.

(b) Any person sentenced under subsection (d) of § 4177 of this title shall have the person's driver's license and/or driving privileges revoked by the Secretary until the person has satisfactorily completed a program established pursuant to § 4177D of this title.

(c) For purposes of this section, the Secretary may authorize the judges of the various courts of the State to act as the Secretary's agent for purpose of revocation of licenses. Upon conviction of a violation pursuant to § 4177 of this title, the court shall take immediate possession of any driver's license issued by any state and forthwith forward it to the Secretary. The driver's license of a nonresident shall be mailed to the licensing authority which issued the license.

(d) The Secretary shall have power and authority to refuse to issue a driver's license to any individual whose driver's license or driving privilege was revoked pursuant to this section until such person has satisfied the Secretary that the person has been of good behavior for the entire period of the revocation and until the person has complied with all applicable provisions of this section. If the Secretary refuses to issue a driver's license after the period of revocation has ended and after all fines and/or fees are paid, the applicant may appeal to the Superior Court of the county of residence.

21 Del. C. § 4177B. First offenders; election in lieu of trial

(a) Any person who:

(1) Has never had a previous or prior conviction or offense as defined in subsection (e)(1) of this section;

(2) Had not accumulated 3 or more moving violations within 2 years of the date of the offense in question on the person's driving record according to the records of the Division of Motor Vehicles of the person's state of residence; and

(3) Was not, with respect to the offense in question, involved in an accident resulting in injury to any person other than the person's own self; and

(4) Did not have an alleged alcohol concentration of .16 or more at the time of driving or within 4 hours of driving; and

(5) Was not driving without a valid license or under a suspended or revoked license at the time of the offense in question.

(6) Is not subject to the enhanced penalties of § 4177(d)(5) for carrying a child on or within that person's vehicle while driving under the influence.

May qualify for the first offense election at the time of arraignment. The court, without entering a judgment of guilt and with the consent of the accused, may defer further proceedings and place the accused on probation upon terms and conditions, including enrollment in a course of instruction or program of rehabilitation established pursuant to § 4177D of this title. If the accused elects to apply, the application shall constitute a waiver of the right to speedy trial. If the person elects not to apply, or if is not accepted, the person shall promptly be arraigned for a violation of § 4177 of this title. If a person applies for or accepts the first offense election under this section, such act shall constitute agreement to pay the costs of prosecution for the case, and the court shall assess such costs and impose them as a condition of probation. If a person accepts the first offense election under this section, such action shall constitute a waiver of the right to an administrative hearing as provided for in § 2742 of this title and shall act to withdraw any request previously made therefor. If a person accepts the first offense election under this section, and the person has taken a chemical test pursuant to § 2741 of this title, such person may also elect at that time to participate in the First Offense Election -- Ignition Interlock Device Diversion described in subsection (g) of this section. For the purposes of this section, costs of prosecution are court costs as established by the appropriate court schedules; and

(b) If a term or condition of probation is violated, including failure to appear for evaluation at an assigned evaluating agency, the person shall be brought before the court, or if the person fails to appear before the court, in either case, upon a determination by the court that the terms have been violated, the court shall enter an adjudication of guilt and proceed as otherwise provided under § 4177 of this title.

(c) Upon fulfillment of the terms and conditions of probation, including satisfactory completion of the course of instruction and/or program of rehabilitation, and payment of all fees, the court shall discharge the person and the proceedings against the person and shall simultaneously with said discharge and dismissal submit to the Division of Motor Vehicles a written report specifying the name of the person and the nature of the proceedings against the person which report shall be retained by the Division of Motor Vehicles for further proceedings, if required.

(d) The driver's license and/or driving privileges of a person applying for enrollment in an education or rehabilitation program pursuant to subsection (a) of this section shall forthwith be revoked by the Secretary for a period of 1 year. If

the person is accepted into the education or rehabilitation program the period of revocation shall be for 1 year from the date of the initial revocation. If the person is not accepted for enrollment, or if the person is found by the court to be in violation of the terms of enrollment, the revocation under this section shall continue until sentence is imposed. This revocation shall not be concurrent with or part of any period of revocation established under any other provisions of this subchapter.

(e) (1) Prior or previous conviction or offense. -- For purposes of §§ 2742, 4177 and 4177B of this title the provisions of § 4215A of Title 11 shall not be applicable but instead the following shall constitute a prior or previous conviction or offense:

a. A conviction or other adjudication of guilt or delinquency pursuant to § 4175(b) or § 4177 of this title, or a similar statute of any state or local jurisdiction, any federal or military reservation or the District of Columbia;

b. A conviction or other adjudication of guilt or delinquency under a criminal statute encompassing death or injury caused to another person by the person's driving where driving under the influence or with a prohibited alcohol concentration was an element of the offense, whether such conviction was pursuant to a provision of this Code or the law of any state, local jurisdiction, any federal or military reservation or the District of Columbia;

c. Participation in a course of instruction or program of rehabilitation or education pursuant to § 4175(b), § 4177 or § 4177B of this title, or a similar statute of any state, local jurisdiction, any federal or military reservation or the District of Columbia, regardless of the existence or validity of any accompanying attendant plea or adjudication of guilt;

d. A conditional adjudication of guilt, any court order, or any agreement sanctioned by a court requiring or permitting a person to apply for, enroll in or otherwise accept first offender treatment or any other diversionary program under this section or a similar statute of any state, local jurisdiction, any federal or military reservation or the District of Columbia.

(2) Time limitations. -- For the purpose of determining the applicability of enhanced penalties pursuant to § 4177 of this title, the time limitations on use of prior or previous convictions or offenses as defined by this subsection shall be:

a. For sentencing pursuant to § 4177(d)(2) of this title, the 2nd offense must have occurred within 5 years of a prior offense;

b. For sentencing pursuant to § 4177(d)(3) of this title, the 3rd offense must have occurred within 5 years of the 1st offense to be calculated for sentencing;

c. For sentencing pursuant to § 4177(d)(4) of this title there shall be no time limitation and all prior or previous convictions or offenses as defined in paragraph (1) of this subsection shall be considered for sentencing under § 4177(d)(4);

d. For any subsection that does not have a time limitation prescribed, all prior or previous convictions or offenses as defined in paragraph (1) of this subsection shall be considered.

(3) Computation of time limitations. -- For the purpose of computing the periods of time set out in § 2742, § 4177 or § 4177B of this title, the period shall run from the date of the commission of the prior or previous offense to the date of the commission of the charged offense. However, in any case in which the prior offense is defined in subparagraph (1)c. or (1)d. of this subsection, the date of the driving incident which caused the adjudication or program participation shall be

the date of the prior or previous offense.

(4) Separate and distinct offenses. -- For the purpose of determining the applicability of enhanced penalties pursuant to § 4177 of this title, prior or previous convictions or offenses used to determine eligibility for such enhanced penalties must be separate and distinct offenses; that is, each must be successive to the other with some period of time having elapsed between sentencing or adjudication for an earlier offense or conviction and the commission of the offense resulting in a subsequent conviction.

(5) Challenges to use of prior offenses. -- In any proceeding under § 2742, § 4177 or § 4177B of this title, a person may not challenge the validity of any prior or previous conviction, unless that person first successfully challenges the prior or previous conviction in the court in which the conviction arose and provides written notice of the specific nature of the challenge in the present proceeding to the prosecution at least 20 days before trial.

(f) The Attorney General may move the sentencing court to apply this section to any person who would otherwise be disqualified from consideration under this section because of the applicability of:

(1) Subsection (a)(1), if any prior offense as defined in subsection (e) of this section is not within 5 years of the offense for which the person is being sentenced; or

(2) Subsections (a)(2)--(a)(6) of this section.

In the event of such a motion by the Attorney General, the court may in its discretion apply the terms of this section to that person.

(g) First Offense Election -- Ignition Interlock Device Diversion. -- If a person accepts the first offense election under this section, such person may also elect at that time to participate in the First Offense Election -- Ignition Interlock Device (FOE-IID) Diversion as part of his or her probation. If a person elects to participate in the FOE-IID Diversion, such act shall constitute an agreement to all terms and conditions contained in the Ignition Interlock Device Program set forth in § 4177F of this title and the participant shall waive the right to an administrative hearing as provided for in § 2742 of this title or shall withdraw any request previously made therefor. Failure to comply with any part of this section or § 4177F of this title shall be considered a violation of the participant's probation for the purposes of subsection (b) of this section.

21 Del. C. § 4177C. Conditional licenses; reinstatement of license

(a) Any person who, as a first offender, is enrolled in a course of instruction and/or program of rehabilitation pursuant to § 4177B of this title shall be permitted to apply for a conditional license under the following terms:

(1) Satisfactory completion of at least 16 hours of instruction and/or rehabilitation;

(2) Payment of all fees under the schedule adopted by the Secretary;

(3) At least 90 days have elapsed since the day the revoked license reached the motor vehicle office.

(b) Notwithstanding §§ 4177A and 4177B of this title, any person sentenced pursuant to § 4177 of this title or who elects to enroll in a course of instruction or program of rehabilitation pursuant to § 4177B of this title, who has satisfactorily completed a course and/or program established pursuant to § 4177D of this title, shall be permitted to apply for a driver's license under the following terms:

(1) Payment of all fees under the schedule adopted by the Secretary;

(2) For a person sentenced for a first offense pursuant to § 4177 of this title or who elected to enroll in a course of instruction or program of rehabilitation pursuant to § 4177B of this title, at least 6 months have elapsed since the day the revoked license reached the motor vehicle office.

(3) For a person sentenced for a second offense pursuant to § 4177 of this title, at least 18 months have elapsed since the effective date of revocation of that person's driver's license and the person has satisfactorily completed the Subsequent Offense Ignition Interlock Program pursuant to § 4177G of this title; and

(4) For a person sentenced for a third or greater offense pursuant to § 4177 of this title, at least 24 months have elapsed since the effective date of revocation of that person's driver's license and the person has satisfactorily completed the Subsequent Offense Ignition Interlock Program pursuant to § 4177G of this title.

(c) Notwithstanding § 4177F of this title, any person subject to a period of voluntary revocation pursuant to § 4177F(f)(1) who has satisfactorily completed a course and/or program established pursuant to § 4177D of this title, shall be permitted to apply for a driver's license under the following terms:

(1) Payment of all fees under the schedule adopted by the Secretary;

(2) At least 5 months have elapsed since the day an IID was installed on the person's motor vehicle.

(d) Notwithstanding any other provision to the contrary, any person whose alcohol concentration is less than .08 (l) who is convicted of a first offense pursuant to § 4177 of this title, (2) who makes a first offense election pursuant to § 4177B of this title, or (3) whose license is revoked for a first offense pursuant to Chapter 27 of this title, where it is not established that the person was under the influence of any other intoxicating substance, shall be granted a conditional license immediately upon application, and shall not be required to complete a course of instruction established under § 4177D of this title. Nothing in this subsection shall be read to imply that an individual with an alcohol concentration of less than .08 is under the influence of alcohol.

21 Del. C. § 4177D. Courses of instruction; rehabilitation programs

The Secretary of Safety and Homeland Security, through the Office of Highway Safety shall establish courses of instruction and programs of rehabilitation for persons whose drivers' licenses have been revoked for operating a vehicle while under the influence of intoxicating liquor or drugs. The Secretary of Safety and Homeland Security shall administer such courses and programs and adopt rules and regulations therefor, and shall establish a schedule of fees for enrollment in such courses and programs which shall not exceed the maximum fine imposed for the offense as set forth in § 4177 of this title.

21 Del. C. § 4177E. Issuance of conditional license upon revocation of driver's license

(a) In the event of a revocation of a driver's license pursuant to § 4177B of this title, the Department may issue a conditional license during the period of revocation upon application by the applicant upon a form prescribed by the Department and sworn to by the applicant, provided that the applicant sets forth in said application that the revocation of such license has created an extreme hardship, that no prior conditional license has been issued within the preceding 12

months, that there have been no other such prior revocations, and if all other requirements contained in § 4177C of this title have been satisfactorily complied with.

(b) The Department, upon receiving a record of conviction of any person upon a charge of operating a motor vehicle in violation of the conditions imposed upon said conditional license during the period of such conditional license, shall immediately extend the period of such revocation for an additional like period and shall forthwith direct such person to surrender said conditional license to the Department.

(c) Any person whose driver's license has been revoked and to whom a conditional license has been issued, under this chapter, and who drives any motor vehicle upon the highways of this State contrary to the conditions placed upon such conditional license during the period of such conditional license, upon conviction thereof, shall be fined not less than \$ 28.75 or more than \$ 230.

21 Del. C. § 4177F. Ignition Interlock Device Program

(a) Application. -- The Division of Motor Vehicles may offer, on a voluntary basis, participation in the Ignition Interlock Device Program under this section to eligible persons who submit a written application on the forms designated by the Division.

(b) Definitions. -- For the purpose of this section:

(1) "Ignition interlock device" (IID) or "approved device" shall mean ignition equipment approved by the Director of the Division of Motor Vehicles pursuant to this section, designed to prevent a motor vehicle from being operated by a person who has consumed alcoholic beverages.

(3) "Service provider" means a legal entity which the Director of the Division of Motor Vehicles finds complies with the requirements of this section and approves to install IIDs on participants' motor vehicles.

(4) "Offender" means a person whose license or driving privileges have been revoked for violating § 4177 of this title. Notwithstanding any contrary provision of law, a person who elects to apply and is accepted for probation under § 4177B of this title shall be an "offender" convicted of an "offense" for the purposes of this section.

(5) "Participant" means an offender who is eligible to and does participate in the Ignition Interlock Program pursuant to this section.

(6) "Lockout" means any time a participant attempts to use a motor vehicle equipped with an IID and any percentage of alcoholic beverages is measured on said device.

(c) IID Standards. -- The Division of Motor Vehicles shall establish the required calibration settings and shall provide standards for the certification, installation, setting, repair and removal of the IIDs.

(d) Eligibility. -- An offender who has taken a chemical test required pursuant to § 2741 of this title and has accepted the first offense election pursuant to § 4177B of this title, or who has no prior offense who refuses a chemical test required pursuant to § 2741 of this title, shall be eligible to receive an IID pursuant to this section if the offender meets the following conditions:

- (1) The offender must have had a valid Delaware driver's license at the time of the offense in question;
 - (2) Following revocation, the offender must complete an alcohol evaluation, provide proof of enrollment in a course of instruction and/or program of rehabilitation and pay all associated fees;
 - (3) The offense in question may not involve death or serious physical injury to any person;
 - (4) The offender's driving privileges or license must not be currently suspended, revoked, denied or unavailable for any other violations of the law of any jurisdiction;
 - (5) The offender's driving privileges or license must not be revoked pursuant to § 1009 of Title 10 or a like provision of another jurisdiction;
 - (6) The offender must either own the motor vehicle to be installed with the IID or file the notarized approval of installation by the motor vehicle owner with the Division of Motor Vehicles;
 - (7) The offender must not have participated in an IID program within the immediate past 5 years or a like program in any other jurisdictions;
 - (8) The offender must provide proof of insurance for the vehicle on which the IID will be installed. The proof of insurance must verify that the offender is permitted to drive the specific motor vehicle in question regardless of ownership of the vehicle;
 - (9) The court, whether upon a motion by the Attorney General or otherwise, shall not have designated the offender ineligible to be a participant; and
 - (10) The offender shall meet any other eligibility criteria established by regulations of the Division of Motor Vehicles.
- (e) Installment payment of costs; indigent program. -- The Division of Motor Vehicles shall establish a payment plan for participants. The plan shall be administered by the service provider and the participant shall make all payments under the plan to the service provider. The initial payment shall include the installation cost and 2 months' lease for a minimum charge and a minimum down payment of \$ 180. The participant shall thereafter make payments every 2 months for the lease of the equipment in the amount of \$ 110 until the balance is paid. The Division may increase the minimum amount by regulation. Any taxes due shall be payable in addition to minimum amounts at the time of each payment.
- The Division shall further develop and implement an indigent plan for impoverished persons, which shall be available on a lottery basis. For every 20 devices installed at regular prices, at least 1 device shall be provided at approximately half price under this program.
- (f) Program duration; suspension of sentence. -- A participant's license revocation imposed by law shall automatically be suspended upon the participant's entry into the IID Program and shall be suspended for the duration thereof. By entering the program, the participant consents, among the other conditions of the program, to a voluntary period of license revocation, to wit:
- (1) If the revocation period suspended is 12 months, and the participant has elected the FOE-IID Diversion pursuant to § 4177B(f) of this title, the participant's voluntary revocation period is 12 months and the participant may receive an IID license after 1 month.

(2) If the revocation period suspended is 12 months, and the participant has no prior offense but has refused a chemical test required pursuant to § 2741, the participant's voluntary revocation period is 14 months, and the participant may receive an IID license after 2 months.

(3), (4) [Deleted.]

The participant shall receive credit towards the voluntary revocation period for the revocation time served prior to entry into the IID program.

(g) IID license; driving record. -- An offender's driving record maintained by the Division of Motor Vehicles shall indicate any voluntary revocation period to be served under the IID program. The Division of Motor Vehicles shall issue an IID license to an otherwise eligible participant. Each of the IID license, the registration of the vehicle on which the IID is installed and the participant's driving record maintained by the Division of Motor Vehicles shall indicate that the participant shall not operate any motor vehicle except when equipped with an Ignition Interlock Device.

(h) Conditions of participation.

(1) A participant shall be disqualified from further participation in the IID Program for failure to comply with any of the following:

- a. The participant shall abide by the terms of the offender's lease with the service provider as approved by the Division of Motor Vehicles;
- b. The participant shall be driven to the service provider by a licensed driver for installation of the IID;
- c. The participant shall comply with Division of Motor Vehicles regulations concerning IID license restrictions;
- d. The participant shall not attempt, nor allow or cause an attempt to bypass, tamper with, disable or remove the IID or its wires in connection;
- e. The participant offender shall not attempt to operate a motor vehicle without possessing registration and an IID license which complies with subsection (g) of this section;
- f. The participant shall not violate any section of this title relating to the use, possession or consumption of alcohol or intoxicating substances;
- g. The participant shall not fail to pay any and all fines whatsoever assessed during participation in the program pursuant to this title;
- h. The participant shall accumulate no more than 5 points per year;
- i. The offender shall continue to meet all eligibility criteria identified in subsection (d) of this section, and specifically, shall successfully complete the course of instruction and/or program of rehabilitation referred to in item (2) of subsection (d) of this section;
- j. The participant shall provide satisfactory proof to the Division of Motor Vehicles that an approved IID has been

installed; and

k. The participant shall comply with any participation regulations implemented by the Division of Motor Vehicles pursuant to this paragraph.

(2) A participant may be disqualified from further participation in the IID Program for failure to comply with any of the following:

a. The participant shall not fail or refuse to take random tests at such times and by such means as the Division of Motor Vehicles requires;

b. The participant shall keep scheduled monitoring appointments with the Division and the service provider; and

c. The participant shall be required to report to the service provider on a bi-monthly basis for service of the approved IID.

(i) Disqualification. -- The Secretary of the Department of Transportation, upon 10 days prior notice by certified mail, may disqualify a participant at any time upon a determination by the Secretary that the participant has failed to comply with any of the requirements of subsection (h) of this section. Upon disqualification, the revocation suspended at the time the participant entered the IID program pursuant to subsection (f) of this section shall automatically be reimposed.

(j) Discharge. -- At the time a participant completes the duration of the IID program without disqualification by the Secretary, the revocation suspended at the time the participant entered the IID program shall automatically be discharged.

21 Del. C. § 4177G. Subsequent Offense Ignition Interlock Device Program

(a) Participation. -- All persons convicted of a subsequent offense must participate in the Subsequent Offense Ignition Interlock Device Program.

(b) Definitions. -- For the purpose of this section:

(1) "Ignition interlock device" (IID) or "approved device" shall mean ignition equipment approved by the Director of the Division of Motor Vehicles pursuant to this section, designed to prevent a motor vehicle from being operated by a person who has consumed alcoholic beverages.

(2) "Service provider" means a legal entity which the Director of the Division of Motor Vehicles finds complies with the requirements of this section and approves to install IIDs on participants' motor vehicles.

(3) "Subsequent offense" means a conviction for a second, third, fourth or greater offense pursuant to § 4177 of this title.

(4) "Subsequent offender" means a person convicted of a second, third, fourth or greater offense pursuant to § 4177 of this title.

(5) "Lockout" means any time a subsequent offender attempts to use a motor vehicle equipped with an IID and any

percentage of alcoholic beverages is measured on said device.

(c) IID Standards. -- The Division of Motor Vehicles shall establish the required calibration setting and shall provide standards for the certification, installation, setting, repair and removal of the IIDs.

(d) Requirements.

(1) A person convicted of a subsequent offense shall, 12 months from the effective date of revocation of that person's driver's license, install an ignition interlock device in all motor vehicles registered in the name of that person for the remainder of the revocation time period as provided in § 4177A(a) of this title. If at anytime after the 12 months have elapsed but before the end of the revocation period, the person registers a motor vehicle(s) in the person's name, that person shall immediately install an ignition interlock device in such vehicle(s).

(2) A person covered under paragraph (1) of this subsection must have the ignition interlock device installed in all motor vehicles in that person's name for at least 3 months before that person can have that person's own driver's license reinstated. If the 3-month time period for having an installed ignition interlock device exceeds the revocation period, reinstatement of that person's driver license cannot occur until after the 3-month time period for having an installed ignition interlock device has passed.

(e) Installment payment of costs; indigent program. -- The Division of Motor Vehicles shall establish a payment plan for all persons obtaining an IID under this section. The plan shall be administered by the service provider(s) and the person obtaining the IID shall make all payments under the plan to the service providers(s). The initial payment shall include the installation cost and 2 months' lease for a minimum charge and a minimum down payment of \$ 180. The person obtaining an IID shall thereafter make payments every 2 months for the lease of the equipment in the amount of \$ 110 until the balance is paid. The Division may increase the minimum amount by regulation. Any taxes due shall be payable in addition to minimum amounts at the time of each payment. The Division shall further develop and implement an indigent plan for impoverished persons, which shall be available on a lottery basis. For every 20 devices installed at regular prices, at least 1 device shall be provided at approximately half price under this program.

(f) Subsequent offender IID license.

(1) All persons convicted of a subsequent offense shall, 12 months from the effective date of the revocation of their driver's license, be eligible for a subsequent offender IID license if the following conditions are met:

a. The subsequent offender must have had a valid Delaware driver's license at the time of the offense that caused the revocation;

b. The subsequent offender has had an IID placed on all vehicles registered in that person's name pursuant to subsection (d) of this section;

c. The subsequent offender must have completed an alcohol evaluation and enrolled in a course of instruction and/or a program of rehabilitation and paid all associated fees;

d. The subsequent offender's driving privileges or license must not be currently suspended, revoked, denied or unavailable for any other violations of the law of any jurisdiction;

e. The subsequent offender's driving privilege or license must not be revoked pursuant to § 1009 of Title 10 or a like provision of another jurisdiction;

f. The subsequent offender must install an IID in all motor vehicles that person will operate;

g. The subsequent offender must either own the motor vehicle in which the IID is to be installed or file the notarized approval of installation by the motor vehicle owner with the Division of Motor Vehicles;

h. The subsequent offender must provide proof of insurance for the vehicle on which the IID will or has been installed. The proof of insurance must verify that the offender is permitted to drive the specific motor vehicle in question regardless of ownership of the vehicle;

i. The court, whether upon a motion by the Attorney General or otherwise, shall not have designated the subsequent offender ineligible to have a subsequent offender IID license; and

j. The subsequent offender shall meet any other eligibility criteria established by regulations of the Division of Motor Vehicles.

(2) A subsequent offender shall lose the privilege of having a subsequent offender IID license for failure to comply with any of the following:

a. The subsequent offender shall abide by the terms of the subsequent offender's lease with the service provider as approved by the Division of Motor Vehicles;

b. The subsequent offender shall comply with the Division of Motor Vehicles regulations concerning subsequent offender IID license restrictions;

c. The subsequent offender shall not attempt, nor allow or cause an attempt to bypass, tamper with, disable or remove the IID or its wires in connection;

d. The subsequent offender shall not attempt to operate a motor vehicle without possessing registration and a subsequent offender IID license which complies with subsection (f) of this section;

e. The subsequent offender shall not violate any section of this title relating to the use, possession or consumption of alcohol or intoxicating substances;

f. The subsequent offender shall accumulate no more than 5 points per year;

g. The subsequent offender shall continue to meet all eligibility criteria identified in paragraph (1) of this subsection;

h. The subsequent offender shall provide proof to the Division of Motor Vehicles that an approved IID has been installed;

i. The subsequent offender shall not fail or refuse to take random tests at such times and by such means as the Division of Motor Vehicle requires;

j. The subsequent offender shall keep scheduled appointments with the Division and the service provider; and

k. The subsequent offender shall be required to report to the service provider on a bimonthly basis for service of the approved IID.

(3) Disqualification. -- The Secretary of the Department of Transportation, upon 10 days' prior notice by certified mail, may rescind a person's subsequent offender IID license upon a determination by the Secretary that the person has failed to comply with any of the requirements of this section. The rescission of a subsequent offender IID license does not relieve a person from meeting the requirements of subsection (d) of this section.

21 Del. C. § 4177H. Certification and approval of devices

(a) The Division of Motor Vehicles shall adopt and publish rules setting forth the requirements for obtaining certification of an ignition interlock device. No ignition interlock device shall be certified unless it meets the requirements specified and published by the Division. Such requirements shall include provisions for setting a calibration range which complies with § 4177F of this title and any other applicable law; and which shall include, but not be limited to, specifications that the device:

(1) Does not impede the safe operation of the vehicle;

(2) Has features that make circumvention difficult, but which do not interfere with the normal use of the vehicle; and

(3) Resists tampering, and shows evidence of tampering if tampering is attempted.

(b) The cost of certification shall be borne by each manufacturer of an ignition interlock device who desires to have such device certified in this State.

21 Del. C. § 4177J. Drinking while driving prohibited

(a) No person shall consume an alcoholic beverage while driving a motor vehicle upon the highways of this State. "Consume," as used in this subsection, shall mean the ingestion of a substance containing alcohol while in the act of operating a motor vehicle in the presence of, or in the view of, a police officer.

(b) Whoever violates this section shall be fined for the first offense not less than \$ 25 nor more than \$ 200. For each subsequent like offense occurring within 1 year of the previous offense, the person shall be fined not less than \$ 50 nor more than \$ 400.

21 Del. C. § 4177L. Driving by persons under the age of 21 after consumption of alcohol; penalties

(a) Whoever, being under the age of 21 years, drives, operates or has actual physical control of a vehicle, an off-highway vehicle or a moped while consuming or after having consumed alcoholic liquor shall have that person's driver's license and/or privileges revoked for a period of 2 months for the first offense and not less than 6 months nor more than 12 months for each subsequent offense. If the underage person does not have a driver's license and/or privileges, the person shall be fined \$ 200 for the first offense and not less than \$ 400 nor more than \$ 1,000 for each subsequent offense.

(b) In any proceeding under this section, evidence may be admitted of the amount of alcohol in the blood or breath of such underage person as determined by a specimen taken within 4 hours of the time when such person is alleged to have driven, operated or been in control of a vehicle after having consumed alcoholic liquor as shown by an analysis of that person's breath, blood, urine, or saliva. Evidence that there was at the time of the test an alcohol concentration of .02 or more in that person's blood or breath is per se evidence that the person had consumed alcoholic liquor. "Alcohol concentration of .02 or more in that person's blood or breath" shall mean (1) an amount of alcohol in a sample of a person's blood equivalent to .02 or more grams of alcohol per hundred milliliters of blood; or (2) an amount of alcohol in a sample of a person's breath equivalent to .02 or more grams per 210 liters of breath. This provision shall not preclude a conviction based upon other admissible evidence.

(c) In addition to any other powers of arrest, any police officer is hereby authorized to arrest without a warrant any person who the officer has probable cause to believe has violated the provisions of this section, regardless of whether the alleged violation was committed in the presence of such officer.

21 Del. C. § 2732. Mandatory revocation or suspension of license

(a) The Department shall forthwith revoke the license or driving privileges or both of any person upon receiving a record of the conviction, or adjudication of delinquency by Family Court for acts which would constitute such an offense if committed by an adult, of such person of any of the following crimes:

(1) a. Upon a conviction of manslaughter, under § 632 of Title 11, if the manslaughter resulted directly from the use of a motor vehicle, or upon conviction of vehicular homicide first degree, pursuant to § 630A of Title 11, the license or driving privileges or both of the person so convicted shall be revoked for a period of 4 years.

b. Upon a conviction of vehicular homicide second degree, pursuant to § 630 of Title 11, or upon a conviction for criminally negligent homicide if the homicide resulted directly from the use of a motor vehicle, the license or driving privileges or both of any person so convicted shall be revoked for a period of 3 years.

(2) a. Upon conviction for assault first degree, pursuant to § 613 of Title 11 or assault second degree, pursuant to § 612 of Title 11, if the assault resulted directly from the use of a motor vehicle or upon a conviction of vehicular assault first degree, pursuant to § 629 of Title 11, the license or driving privileges or both of any person so convicted shall be revoked for a period of 2 years.

b. Upon conviction for vehicular assault second degree, pursuant to § 628 of Title 11, the license or driving privileges or both of any person so convicted shall be revoked for a period of 1 year.

(3) Driving a vehicle while under the influence of intoxicating liquor or narcotic drug;

(4) Perjury or the making of a false affidavit to the Department under this chapter or any other law of this State requiring the registration of motor vehicles or regulating their operation on highways;

(5) Any crime punishable as a felony under the motor vehicle laws of this State or any other felony in the commission of which a motor vehicle is used;

(6) Conviction or forfeiture of bail upon 3 charges of reckless driving all within the preceding 12 months; but no license shall be revoked by reason of any conviction or convictions upon the charge of overloading any vehicle as provided in §

4502 of this title;

(7) A conviction of a driver of a motor vehicle involved in an accident resulting in the death or injury of another person upon a charge of failing to stop and disclose the driver's identity at the scene of the accident;

(8) A conviction of attempting to flee or elude a police officer after having received a visual or audible signal from the officer as provided in § 4103(b) of this title.

(b) Upon receiving a record of the failure of a convicted person to pay a fine, costs or both as described in § 2731(b) of this title, or to timely complete a course of instruction pursuant to § 4175A or § 4177D of this title, the Department or its successor, shall:

(1) If the convicted person is a resident of this State, forthwith suspend the convicted person's license until the fine, costs or both have been paid, or the court finds that the person has completed the necessary course of instruction and paid all applicable fees; and

(2) If the convicted person is a nonresident of this State, forthwith suspend the convicted person's driving privileges in this State and immediately advise the Motor Vehicle Administrator of the state wherein the convicted person is a resident that the convicted person has failed to pay a fine, costs or both, or to timely complete a course of instruction pursuant to § 4175A or § 4177D of this title, and requesting that the convicted person's license to drive be suspended until the fine, costs or both have been paid, or the court finds that the person has completed the necessary course of instruction and paid all applicable fees.

(c) The Division shall forthwith revoke the license or driving privileges, or both, of any child upon notification by the Family Court of the State pursuant to § 1009 of Title 10.

(d) Upon receipt of notification from the Family Court pursuant to § 516(g) of Title 13, or notice from the Director of the Division of Child Support Enforcement pursuant to § 2216 of Title 13 regarding the suspension of a license because of such person's child support delinquency, the Department shall forthwith suspend such person's commercial driver license or license to operate a motor vehicle. The provisions of §§ 516(g) and 2216 of Title 13 shall supersede any provisions of this title to the contrary with respect to any matter relating to the denial or suspension of a license under § 516(g) or § 2216 of Title 13. The Department shall create and maintain a record showing a suspended driving status for a person whose license is suspended pursuant to this subsection. A license so suspended shall remain suspended until the person obtains written certification from the Family Court or the Director of the Division of Child Support Enforcement or his or her designee that the grounds for suspension of the license under § 516(g) or § 2216 of Title 13 no longer exist. No occupational license may be issued in any case in which a license has been suspended pursuant to § 516(g) or § 2216 of Title 13.

(e) The Department shall forthwith suspend the license or driving privileges, or both, of any person who has been expelled from a public school upon receipt of notice from the superintendent of schools for the school district in which such school is located, that such person has been expelled. No insurer may increase the premiums charged for, or reduce the coverage provided by, any policy of vehicle insurance, as defined in § 906(a)(1) of Title 18, solely as a result of the suspension of a person's license or driving privileges under this subsection.

(f) The convictions included in subsections (a) and (b) of this section shall be deemed to include convictions for any violation of this title or a local ordinance or regulation substantially conforming to a state statutory provision.

(g) Upon receiving a record that a person has been given a Uniform Traffic Complaint and Summons indicating that a voluntary assessment may be made and that such person: 1) has failed to pay the voluntary assessment within 30 days from the date of arrest; and 2) has not notified the court or voluntary assessment center within 30 days from the date of arrest, in writing, that he or she wishes to request a hearing on the charge(s) stated in the Uniform Traffic Complaint and Summons; or 3) has failed to appear at trial on such charge(s) on the time and date required by the court, or 4) has failed to pay the fine on such charge(s) in accordance with a deferred payment order, the Department or its successor shall 1) if the person is a resident of this State, forthwith suspend the person's license until the person provides evidence to the Department that the fine has been paid or that the person has appeared before the court and made arrangements to take care of the charge(s) or has been adjudicated not guilty; and 2) if the person is a nonresident of this State, the Department may suspend the person's driving privileges in this State and immediately advise the motor vehicle administrator of the state wherein the person is a resident that the person's license to drive be suspended until the person provides evidence that the fine has been paid or that the person has appeared before the court and made arrangements to take care of the charge(s) or has been adjudicated not guilty.

21 Del. C. § 2740. Consent to submit to chemical test; probable cause; test required

(a) Any person who drives, operates or has in actual physical control a vehicle, an off-highway vehicle, or a moped within this State shall be deemed to have given consent, subject to this section and §§ 4177 and 4177L of this title to a chemical test or tests of that person's blood, breath and/or urine for the purpose of determining the presence of alcohol or a drug or drugs. The testing may be required of a person when an officer has probable cause to believe the person was driving, operating or in physical control of a vehicle in violation of §§ 4177 and 4177L or § 2742 of this title, or a local ordinance substantially conforming thereto.

(b) The testing shall be required of a person when an officer has probable cause to believe the person was driving, operating or in physical control of a vehicle in violation of § 4177 or § 2742 of this title or a local ordinance substantially conforming thereto and was involved in an accident which resulted in a person's death. In the event of a fatal accident if the officer does not believe that probable cause exists to require testing, then the officer shall file a written report outlining the reasons for that determination.

21 Del. C. § 2734. Appeal

Any person denied a license or whose license has been revoked by the Department, except where such revocation is mandatory under this chapter, may appeal to the Court of Common Pleas in the county wherein such person resides. In the case of revocation, such appeal shall not operate as a stay. An appeal of a suspension of a license pursuant to § 516(g) or § 2216 of Title 13 shall be only as provided in Title 13.

21 Del. C. § 2735. New license after revocation; exception

Except as otherwise provided in § 2732 of this title, a person whose license is revoked under this chapter shall not be entitled to apply for or receive a new license to drive until the expiration of 1 year from the date such former license was revoked.

§ 2741. Administration of test; refusal to take test

(a) At the time a chemical test specimen is required, the person may be informed that if testing is refused, the person's driver's license and/or driving privilege shall be (1) revoked for a period of at least 1 year if a violation of § 4177 is alleged; or (2) revoked for a period of at least 2 months if a violation of § 4177L is alleged. The test(s) shall be administered by qualified personnel, as defined in § 2746 of this title, at the direction of the police officer who shall designate which of the tests shall be administered.

(b) If there are reasonable grounds to believe that there is impairment by a drug or drugs which are not readily subject to detection by a breath test, a blood and/or urine test may be required even after a breath test has been administered.

(c) The fact that the police officer offered or required a person to submit to a preliminary screening test of the person's breath in order to estimate the alcohol concentration of the person's blood, at the scene of the stop or other initial encounter between the officer and the person, shall have no bearing upon the implied consent provisions of this chapter. Refusal to take such a preliminary screening test shall not be deemed an implied consent violation nor shall the taking of such a test satisfy the requirements of the implied consent law.

21 Del. C. § 2742. Revocation; notice; hearing

(a) If a person refuses to permit chemical testing, after being informed of the penalty of revocation for such refusal, the test shall not be given but the police officer shall report the refusal to the Department. The police officer may, however, take reasonable steps to conduct such chemical testing even without the consent of the person if the officer seeks to conduct such test or tests without informing the person of the penalty of revocation for such refusal and thereby invoking the implied consent law.

(b) (1) Upon certification by the police officer that there existed probable cause to believe that the person had been acting in violation of § 4177 of this title or a local ordinance substantially conforming thereto and that the person refused to submit to a chemical test after being informed of the penalty of revocation for such refusal, the Secretary shall revoke the person's driver's license and/or driving privilege for a period of 1 year for a person with no previous violation of § 4177 of this title or this section or a similar statute of any state or the District of Columbia or local government, within 5 years of the date of the charge in question; 18 months' revocation for a person with 1 previous violation of such statutes as described above; and 24 months' revocation for a person with 2 or more previous violations of such statutes as described above.

(2) Upon certification by the police officer that there existed probable cause to believe that the person had been acting in violation of § 4177L of this title or a local ordinance substantially conforming thereto and that the person refused to submit to a chemical test after being informed of the penalty of revocation for such refusal, the Secretary shall revoke the person's driver's license and/or driving privilege for a period of 2 months for a person with no previous violation of § 4177L of this title or this section or a similar statute of any state or the District of Columbia or local government; 6 months for a person with a previous violation of such statutes as described above; and 12 months revocation for a person with 2 or more previous violations of such statutes as described above.

(c) Except in those cases wherein the police officer acts pursuant to subsection (b) of this section:

(1) Upon certification by the police officer that there existed probable cause to believe that the person was in violation of § 4177 of this title or a local ordinance substantially conforming thereto and the person was arrested on that occasion for a violation of § 4177 of this title or a local ordinance substantially conforming thereto or for violation of a criminal statute dealing with injury or death caused to another person by the person's driving or operation of the vehicle, if driving

under the influence is included as an element of such charge, the Secretary shall revoke the person's driver's license and/or driving privilege for a period of 3 months for a first time DUI offender, 1 year for a second DUI offender, or 18 months for more than 2 DUI offenses. For purposes of this subsection, a DUI offender shall include anyone who has previously committed a first offense as defined in § 4177B(e) or lost their license pursuant to this section and any person convicted of a violation of § 4177 of this title or similar statutes of any state or the District of Columbia or local government within 5 years of the date of the charge in question, a revocation within 5 years of said date for an implied consent violation or a revocation within 5 years of said date under this subsection.

(2) Upon certification by the police officer that there existed probable cause to believe that the person was in violation of § 4177L of this title or a local ordinance substantially conforming thereto, and the person was arrested on that occasion for a violation of § 4177L of this title or a local ordinance substantially conforming thereto, the Secretary shall revoke the person's driver's license and/or driving privileges for a period of 2 months for the first offense under said section or from 6 to 12 months for each subsequent offense pursuant to said section.

(d) No revocation under subsection (b) or (c) of this section is effective until the Secretary or a police officer or other person acting on the Secretary's behalf notifies the person of revocation and allows the person a 15-day period to request of the Secretary in writing a hearing as herein provided. If no request is filed in writing with the Division of Motor Vehicles within the 15-day period, the order of revocation becomes effective. If a request for a hearing is filed, a revocation is not effective until the final decision of the hearing officer resulting in a decision adverse to the person. Notwithstanding the foregoing provisions of this section, if no request is filed within the 15-day period, but the person has entered the FOE-IID Diversion pursuant to § 4177B(g) of this title, no revocation herein imposed shall be inconsistent with any revocation imposed by participation in the FOE-IID Diversion.

(e) On behalf of the Secretary, the police officer offering a chemical test or directing the administration of a chemical test shall serve immediate notice of revocation on a person who refuses to permit chemical testing after being informed of the penalty of revocation for such refusal, or on a person who is arrested on that occasion, either for a violation of § 4177 or § 4177L of this title or a local ordinance substantially conforming thereto or for violation of a criminal statute dealing with injury or death caused to another person by the person's driving or operation of the vehicle, if driving under the influence is included as an element of such charge. The officer shall take the Delaware license or permit of the driver in any such case and issue a temporary license effective only for 15 days with a provision for an additional period if a written request for a hearing is received by the Division of Motor Vehicles within the 15-day period. The police officer shall send the person's driver's license or permit to the Secretary along with the certificate required by subsection (b) or (c) of this section.

(f) The hearing under this section shall be before the Secretary or the Secretary's designee. The scope of the hearing shall cover the issues of:

(1) With respect to subsections (b) and (c) of this section, whether the police officer had probable cause to believe the person was in violation of § 4177 or § 4177L of this title or a local ordinance substantially conforming thereto.

(2) With respect to subsection (c)(1) of this section, whether by a preponderance of the evidence it appears that the person was in violation of § 4177 of this title or a local ordinance substantially conforming thereto. For purposes of this subsection an alcohol concentration of .08 or more pursuant to testing provided for in this section, or § 4177 of this title, or a positive indication of the presence of drugs, shall be conclusive evidence of said violation.

(3) With respect to subsection (c)(2) of this section, whether by a preponderance of the evidence it appears that the

person was in violation of § 4177L of this title or a local ordinance substantially conforming thereto. For purposes of this subsection an alcohol concentration of .02 or more pursuant to the testing referred to in this section shall be conclusive evidence of said violation.

(4) With respect to subsection (b) of this section, whether the person refused to permit the test after being informed of the penalty of revocation for such refusal.

(g) The hearing specified in this section shall be scheduled within 30 days following the filing of the request for a hearing.

(h) In addition to the revocation authorized by this section, the Secretary shall require attendance of the person whose license is revoked at a course of instruction or rehabilitation program established under § 4177D of this title.

21 Del. C. § 2743. Duration of revocation

(a) Any revocation pursuant to § 2742(b)(1) of this title shall be for a period of 1 year, 18 months or 24 months as appropriate, from the effective date of the revocation.

(b) Any revocation pursuant to § 2742(c)(1) of this title shall be for a period of 3 months, 1 year or 18 months, as appropriate, from the effective date of the revocation.

(c) The Secretary shall not issue a driver's license to anyone who has been found in violation of § 2742(b)(1) or (c)(1) of this title until:

- (1) They have satisfactorily completed a program established under § 4177D of this title; and
- (2) Have paid all fees under the schedule adopted by the Secretary; and
- (3) The individual has had a favorable character investigation conducted by the Division of Motor Vehicles.

(d) Any revocation pursuant to § 2742(b)(2) of this title shall be for a period of 2 months, 6 months or 12 months as appropriate, from the effective date of the revocation.

(e) Any revocation pursuant to § 2742(c)(2) of this title shall be for a period of 2 months, 6 months or 12 months as appropriate, from the effective date of the revocation.

(f) If, after expiration of the period of revocation and upon compliance with subsection (c) of this section, the Secretary refuses to issue a driver's license, the applicant may appeal the Secretary's denial to the Court of Common Pleas in the county wherein the applicant resides.

(g) Notwithstanding subsection (a) of this section, upon satisfactory completion of a program established under § 4177D of this title a person who is a first offender and meets the criteria specified in § 4177B(a) and whose license has been revoked pursuant to § 2742(b) of this title shall be permitted to apply for a driver's license under the following terms:

- (1) Payment of all fees under the schedule adopted by the Secretary;
- (2) At least 6 months have elapsed since the date of the revoked license or temporary license, whichever is later,

reached the Division of Motor Vehicles;

(3) The individual has had a favorable character investigation conducted by the Division of Motor Vehicles.

21 Del. C. § 2744. Appeal

The decision of the Secretary shall be final and not subject to judicial review or appeal, unless the Secretary rules against the person at a hearing requested by such person in which event the person may appeal to the Court of Common Pleas, but the appeal shall not operate as a stay of the revocation of that person's license, permit or privilege to drive.

21 Del. C. § 2745. Results of test available upon request

Upon request of any person submitting to a chemical test under this subchapter the result of such test shall be made available to that person, unless that person has entered a plea of guilty to the charge made against that person.

21 Del. C. § 2746. Persons qualified to administer tests

Only duly licensed physicians, registered nurses, licensed practical nurses or other persons trained in medically accepted procedures for the drawing of blood and employed by a hospital or other health care facility, acting at the request of a police officer, may withdraw blood from a person submitting to a chemical test under this subchapter. This limitation shall not apply to obtaining a specimen of breath or urine as to which qualified personnel shall include a police officer as well as the above personnel. Notwithstanding any other provision of law to the contrary, it shall not be necessary in any proceeding under this Code to produce evidence that a person who has withdrawn blood from a person submitting to a chemical test under this title was qualified to do so as defined in this section. Notwithstanding any other provision of law to the contrary, it shall not be necessary to present the testimony of, or certification by, a person who has withdrawn blood from a person pursuant to this section in order to establish chain of physical custody of such evidence.

21 Del. C. § 2747. Alternate tests; physical incapacity

If for any reason a person is physically unable to supply enough breath or complete the chemical test, that person shall submit to such other chemical tests as authorized by this subchapter as the police officer shall elect, subject to the requirements of § 2746 of this title. Any person who is unconscious or who is otherwise in a condition rendering that person incapable of refusal shall be deemed not to have withdrawn the consent provided in § 2740 of this title and any test may be performed as provided in § 2746 of this title.

21 Del. C. § 2749. Refusal to submit as admissible in evidence

Upon the trial of any action or proceeding arising out of the acts alleged to have been committed by any person while in violation of § 4177 or § 4177L of this title or local ordinance substantially conforming thereto, the court may admit evidence of the refusal of such person to submit to a chemical test of breath, blood or urine under this subchapter.

21 Del. C. § 2750. Admissibility in evidence of results of chemical test

(a) Upon the trial of any action or proceeding arising out of acts alleged to have been committed by any person while under the influence of alcohol, a drug or drugs, with respect to any chemical test taken by or at the request of the State, the court shall admit the results of a chemical test of the person's breath, blood or urine according to normal rules of

search and seizure law. The informing or failure to inform the accused concerning the implied consent law shall not affect the admissibility of such results in any case, including a prosecution for a violation of § 4177 of this title. The informing of an accused concerning the implied consent law shall only have application and be relevant at a hearing concerning revocation of the driver's license of said person for a violation of the implied consent law. Nothing contained in this section shall be deemed to preclude the admissibility of such evidence when such evidence would otherwise be admissible under the law relative to search and seizure law such as when such evidence has been obtained by valid consent or other means making the obtaining of the evidence legal under the Fourth Amendment.

(b) The doctor-patient privilege shall not apply to the disclosure to law-enforcement personnel nor the admissibility into evidence in any criminal proceeding of the results of a chemical test of a person's blood, breath or urine for the purpose of determining the alcohol or drug content of that person's blood irrespective of whether such test was done at the request of a treating physician, other medical personnel or a peace officer.

21 Del. C. § 2756. Driving vehicle while license is suspended or revoked; penalty

(a) Any person whose driver's license or driving privileges have been suspended or revoked and who drives any motor vehicle upon the highways of this State during the period of suspension or revocation shall for the 1st offense be fined not less than \$ 500 nor more than \$ 1,000 and be imprisoned not less than 30 days nor more than 6 months. For each subsequent like offense, such person shall be fined not less than \$ 1,000 nor more than \$ 4,000 and in addition be imprisoned not less than 60 days nor more than 1 year. However, for a 1st offense under this section, if the suspension or revocation resulted from a prior or previous driving under the influence-related conviction or offense as defined in § 4177B(e)(1)a.-d. of this title, the minimum fine shall be \$ 600. For purposes of this section a subsequent offense shall be defined as one occurring within 3 years of a former offense.

(b) The minimum fine for a 1st or subsequent offense shall not be subject to suspension. The minimum period of imprisonment for a subsequent offense shall not be subject to suspension. In addition, for any offense under this section, if the suspension or revocation resulted from a violation of any criminal statute pertaining to injury or death caused to another person by the person's driving or operation of a vehicle or a driving under the influence-related conviction or offense as defined in § 4177B(e)(1)a.-d. of this title, the minimum fine shall be \$ 2,000 and shall not be subject to suspension and the minimum period of imprisonment shall not be subject to suspension but shall, notwithstanding any provision of this section or title to the contrary, be served subject to the provisions of § 4205A(b) of this title.

(c) (1) With respect to any vehicle used in connection with a violation of this section, while the permit or license of the operator was revoked for violation of § 2742 or 4177 of this title or pursuant to § 2732 of this title, the Court, at the time of sentencing the operator for violating this section, may, upon motion by the State, order the said vehicle be impounded for at least 90 days for the first violation of this section, and for at least 1 year for a subsequent violation, provided that a public or private secure storage area may be obtained by the arresting police agency for said vehicle. The court shall permit any party with a legal or equitable interest in the vehicle an opportunity to show cause why the impoundment of such vehicle should cease. Prior to release of said vehicle, the person to whom the vehicle is released shall pay all reasonable towing and storage fees connected therewith. The State and the arresting police agency shall not be liable for any expenses incurred in connection with the towing and storage of said vehicle.

(2) In lieu of impoundment, the number plate or registration plate of any vehicle used in connection with a violation of this section, while the permit or license of the operator was revoked for violation of § 4177 or 2742 of this title or pursuant to § 2732 of this title, shall be surrendered to the Department for at least 90 days for the first violation of this section, and for at least 1 year for a subsequent violation. The court shall permit any party with a legal or equitable

interest in the vehicle an opportunity to show cause why the surrender of said plate should cease.

(d) Notwithstanding the foregoing, if the judge determines that the sole reason that an individual's license was suspended is failure to pay a fine for a traffic offense which is eligible for voluntary assessment (whether or not the voluntary assessment procedure was offered or used), the provisions of subsections (a) to (c) of this section shall not apply and the penalties of § 2701(e) of this title shall apply, which penalties may be suspended.

11 Del. C. § 1102

§ 1102. Endangering the welfare of a child; class E or G felony

(a) A person is guilty of endangering the welfare of a child when:

(1) Being a parent, guardian or any other person who has assumed responsibility for the care or supervision of a child less than 18 years old the person:

a. Knowingly acts in a manner likely to be injurious to the physical, mental or moral welfare of the child; or

b. Intentionally does or fails to do any act, with the result that the child becomes a neglected child; or

(2) The person knowingly contributes to the delinquency of any child less than 18 years old by doing or failing to do any act with the result, alone or in conjunction with other acts or circumstances, that the child becomes a delinquent child; or

(3) The person knowingly encourages, aids, abets or conspires with the child to run away from the home of the child's parents, guardian or custodian; or the person knowingly and illegally harbors a child who has run away from home; or

(4) The person commits any violent felony, or reckless endangering second degree, assault third degree, terroristic threatening, or unlawful imprisonment second degree against a victim, knowing that such felony or misdemeanor was witnessed by a child less than 18 years of age who is a member of the person's family or the victim's family.

(5) The person commits the offense of Driving Under the Influence as set forth in § 4177 of Title 21, or the offense of Operating a Vessel or Boat Under the Influence as set forth in § 2302 of Title 23, and during the commission of the offense knowingly permits a child less than 18 years of age to be a passenger in or on such vehicle, vessel or boat.

(6) The person commits any offense set forth in Chapter 47 of Title 16 in any dwelling, knowing that any child less than 18 years of age is present in the dwelling at the time.

(b) Endangering the welfare of a child shall be punished as follows:

(1) When the death of a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class E felony;

(2) When serious physical injury to a child occurs while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class G felony;

(3) When a child becomes the victim of a sexual offense as defined in § 761(d) of this title while the child's welfare was endangered as defined in subsection (a) of this section, endangering the welfare of a child is a class G felony;

(4) In all other cases, endangering the welfare of a child is a class A misdemeanor.

(c) For the purpose of imposing the penalties prescribed in subdivision (b)(1), (b)(2) or (b)(3) of this section, it is not necessary to prove the person's state of mind or liability for causation with regard to the resulting death of or physical injury to the child or sexual offense against the child, notwithstanding the provisions of § 251, § 252, § 261, § 262, § 263 or § 264 of this title, or any other statutes to the contrary.