Reckless Driving; Driving While Intoxicated

§ 4175 Reckless driving.

(a) No person shall drive any vehicle in wilful or wanton disregard for the safety of persons or property, and this offense shall be known as reckless driving.

(b) Whoever violates subsection (a) of this section shall for the first offense be fined not less than $100 nor more than $300, or be imprisoned not less than 10 nor more than 30 days, or both. For each subsequent like offense occurring within 3 years of a former offense,
the person shall be fined not less than $300 nor more than $1,000, or be imprisoned not less than 30 nor more than 60 days, or both.

No person who violates subsection (a) of this section shall receive a suspended sentence. However, for the first offense, the period of imprisonment may be suspended. Whoever is convicted of violating subsection (a) of this section and who has had the charge reduced from the violation of § 4177(a) of this title shall, in addition to the above, be ordered to complete a course of instruction or program of rehabilitation established under § 4177D of this title and to pay all fees in connection therewith. In such cases, the court disposing of the case shall note in the court's record that the offense was alcohol-related or drug-related and such notation shall be carried on the violator's motor vehicle record.

§ 4177 Driving a vehicle while under the influence or with a prohibited alcohol or drug 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;

(6) When the person's blood contains, within 4 hours of driving, any amount of an illicit or recreational drug that is the result of the unlawful use or consumption of such illicit or recreational drug or any amount of a substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug prior to or during driving.

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

(1) Except as provided in paragraph (b)(3)b. of this section, 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 paragraph (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 paragraph (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)a. No person shall be guilty under paragraph (a)(6) of this section when the person has not used or consumed an illicit or recreational drug prior to or during driving but has only used or consumed such drug after the person has ceased driving and only such use or consumption after driving caused the person's blood to contain an amount of the drug or an amount of a substance or compound that is the result of the use or consumption of the drug within 4 hours after the time of driving.
b. No person shall be guilty under paragraph (a)(6) of this section when the person has used or consumed the drug or drugs detected according to the directions and terms of a lawfully obtained prescription for such drug or drugs.
c. Nothing in this subsection nor any other provision of this chapter shall be deemed to preclude prosecution under paragraph (a)(2) or (a)(3) of this section.
(4) The charging document may allege a violation of subsection (a) of this section without specifying any particular paragraph of subsection (a) of this section and the prosecution may seek conviction under any of the paragraphs of subsection (a) of this section.
(c) For purposes of subchapter III of Chapter 27 of this title and this subchapter, 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 100 milliliters of blood; or
b. An amount of alcohol in a sample of a person's breath equivalent to .08 or more grams per 210 liters of breath.
(2) "Alcohol concentration of .15 or more" shall mean:
a. An amount of alcohol in a sample of a person's blood equivalent to .15 or more grams of alcohol per 100 milliliters of blood; or
b. An amount of alcohol in a sample of a person's breath equivalent to .15 or more grams per 210 liters of breath.
(3) "Alcohol concentration of .20 or more" shall mean:
a. An amount of alcohol in a sample of a person's blood equivalent to .20 or more grams of alcohol per 100 milliliters of blood; or
b. An amount of alcohol in a sample of a person's breath equivalent to .20 or more grams per 210 liters of breath.
(4) "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, Division of Forensic Science, 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.
(5) "Drive" shall include driving, operating, or having actual physical control of a vehicle.
(6) "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.
(7) "Illicit or recreational drug" as that phrase is used in paragraph (a)(6) of this section means any substance or preparation that is:
a. Any material, compound, combination, mixture, synthetic substitute or preparation which is enumerated as a Schedule I controlled substance under § 4714 of Title 16; or
b. Cocaine or of any mixture containing cocaine, as described in § 4716(b)(4) of Title 16; or
c. Amphetamine, including its salts, optical isomers and salt of its optical isomers, or of any mixture containing any such substance, as described in § 4716(d)(1) of Title 16; or
d. Methamphetamine, including its salt, isomer or salt of an isomer thereof, or of any mixture containing any such substance, as described in § 4716(d)(3) of Title 16; or
e. Phencyclidine, or of any mixture containing any such substance, as described in § 4716(e)(5) of Title 16; or
f. A designer drug as defined in § 4701 of Title 16; or
g. A 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, stupefaction or lethargy or for the purpose of dulling the brain or nervous system.
(8) "Unlawful use or consumption" as that phrase is used in paragraph (a)(6) of this section means that the person used or consumed a drug without legal authority to do so as provided by Delaware law. This Code describes the procedure by which a person may lawfully obtain, use or consume certain drugs. In a prosecution brought under paragraph (a)(6) of this section, the State need not present evidence of a lack of such legal authority. In a prosecution brought under paragraph (a)(6) of this section, if a person claims that such person lawfully used or consumed a drug, it is that person's burden to show that person has complied with and satisfied the provisions of this Code regarding obtaining, using or consumption of the drug detected.
(9) "Substance or compound that is the result of the unlawful use or consumption of an illicit or recreational drug" as that phrase is used in paragraph (a)(6) of this section shall not include any substance or compound that is solely an inactive ingredient or inactive metabolite of such drug.
(10) "Vehicle" shall include any vehicle as defined in § 101(82) of this title, any off-highway vehicle as defined in § 101(41) of this title and any moped as defined in § 101(33) of this title.
(11) "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.
(d) Whoever is convicted of a violation of subsection (a) of this section shall:
(1) For the first offense, be fined not less than $500 nor more than $1,500 or imprisoned not more than 12 months or both. Any period of imprisonment imposed under this paragraph may be suspended.
(2) For a second offense occurring at any time within 10 years of a prior offense, be fined not less than $750 nor more than $2,500 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. The sentencing Court may suspend the minimum sentence set forth in this subsection upon the condition that the offender shall successfully complete the Court of Common Pleas Driving Under the Influence Treatment Program in which the offender shall complete a minimum of 30 days of community service.

(3) For a third offense occurring at any time after 2 prior offenses, be guilty of a class G felony, be fined not more than $5,000 and be imprisoned not less than 1 year nor more than 2 years. The provisions of § 4205(b)(7) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, the first 3 months of the sentence shall not be suspended, but shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to 9 months of any minimum sentence set forth in this paragraph provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section.
(4) For a fourth offense occurring any time after 3 prior offenses, be guilty of a class E felony, be fined not more than $7,000, 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. The sentencing court may suspend up to 18 months of any minimum sentence set forth in this paragraph provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section.
(5) For a fifth offense occurring any time after 4 prior offenses, be guilty of a class E felony, be fined not more than $10,000 and imprisoned not less than 3 years nor more than 5 years.
(6) For a sixth offense occurring any time after 5 prior offenses, be guilty of a class D felony, be fined not more than $10,000 and imprisoned not less than 4 years nor more than 8 years.
(7) For a seventh offense occurring any time after 6 prior offenses, or for any subsequent offense, be guilty of a class C felony, be fined not more than $15,000 and imprisoned not less than 5 years nor greater than 15 years.
(8) For the fifth, sixth, seventh offense or greater, the provisions of § 4205(b) or § 4217 of Title 11 or any other statute to the contrary notwithstanding, at least 1/2 of any minimum sentence shall be served at Level V and shall not be subject to any early release, furlough or reduction of any kind. The sentencing court may suspend up to 1/2 of any minimum sentence set forth in this section provided, however, that any portion of a sentence suspended pursuant to this paragraph shall include participation in both a drug and alcohol abstinence program and a drug and alcohol treatment program as set forth in paragraph (d)(9) of this section. No conviction for a violation of this section, for which a sentence is imposed pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section, shall be considered a predicate felony for conviction or sentencing pursuant to § 4214 of Title 11. No offense for which sentencing pursuant to this paragraph or paragraph (d)(3) or (d)(4) of this section is applicable shall be considered an underlying felony for a murder in the first degree charge pursuant to § 636(a)(2) of Title 11.
(9) Any minimum sentence suspended pursuant to paragraph (d)(3), (d)(4), or (d)(8) of this section shall be upon the condition that the offender shall complete a program of supervision which shall include:
a. A drug and alcohol abstinence program requiring that the offender maintain a period of not less than 90 consecutive days of sobriety as measured by a transdermal continuous alcohol monitoring device or through periodic breath or urine analysis. In addition to such monitoring, the offender shall participate in periodic, random breath or urine analysis during the entire period of supervision.

b. An intensive inpatient or outpatient drug and alcohol treatment program for a period of not less than 3 months. Such treatment and counseling may be completed while an offender is serving a Level V or Level IV sentence.
c. Any other terms or provisions deemed appropriate by the sentencing court or the Department of Correction.
(10) 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 seventeenth birthday is on or within the vehicle shall:
a. For the first offense, be fined an additional minimum of $500 and not more than an additional $1,500 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 $750 and not more than an additional $2,500 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.
(11) 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 (d)(3), (d)(4), (d)(5), (d)(6) or (d)(7) of this section, 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 (d)(3), (d)(4), (d)(5), (d)(6) or (d)(7) of this section, 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.
(12) The Court of Common Pleas and Justice of the Peace Courts shall not have jurisdiction over offenses which must be sentenced pursuant to paragraph (d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8) or (d)(9) of this section.
(13) **[Effective until June 30, 2016]** Section 5303 of Title 11 notwithstanding, where the Court of Common Pleas and Justice of the Peace Courts have concurrent jurisdiction over a violation of this section, either the State or the accused may elect within 20 days of arraignment in the Justice of the Peace Court to have the case tried by the Court of Common Pleas. If an offense or criminal case within the exclusive jurisdiction of a justice of the peace or alderman or mayor of any incorporated city of town, except the City of Newark, is or may be joined properly with a violation of this section which has been transferred upon the election of the State or the accused, such offense or criminal case shall be within the jurisdiction of the Court of Common Pleas.

(14) If a person enters a guilty plea in a court of competent jurisdiction to a violation of subsection (a) of 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.
(15) Notwithstanding any law to the contrary, the phrase "all crimes" as used in the Truth in Sentencing Act of 1989 shall include felonies under this section, and any amendments thereto.
(e) In addition to any penalty for a violation of subsection (a) of this section, the court shall prohibit the person convicted from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device; the terms of installation of the device and licensing of the individual to drive shall be as set forth in § 4177C and § 4177G of this title. A person who is prohibited from operating any motor vehicle unless such motor vehicle is equipped with a functioning ignition interlock device under this title at the time of an offense under subsection (a) of this section shall, in addition to any other penalties provided under law, pay a fine of $2,000 and be imprisoned for 60 days.
(f) In addition to any penalty for a violation of subsection (a) of this section, the court shall order the person to complete an alcohol evaluation and to complete a program of education or rehabilitation pursuant to § 4177D of this title which may include inpatient treatment and be followed by such other programs as established by the treatment facility, not to exceed a total of 15 months and to pay a fee not to exceed the maximum fine; provided however, that successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program shall satisfy this requirement.
(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 paragraph (c)(3) 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 or the presence or concentration of any drug 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 Division of Forensic Science, 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, drugs or both therein stated.
(2) Any report introduced under paragraph (h)(1) of this section must:
a. Identify the Forensic Toxicologist, Forensic Chemist or State Police Forensic Analytical Chemist as an individual certified by the Division of Forensic Science, 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 Division of Forensic Science, 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 Division of Forensic Science or the Delaware State Police Crime Laboratory; and,
c. State that the blood, in that person's opinion, contains the resulting alcohol concentration or the presence or concentration of any drug 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 (h)(1) and (2) of this section.
(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.

§ 4177A Revocation of license for violation of § 4177 of this title.
(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 alcohol or drugs. Such revocation shall be for a period of:
(1) *First offense.* — 12 months; except that if the offender's blood alcohol concentration was between .15-.19 the revocation period shall be 18 months, or if the offender's blood alcohol concentration was .20 or greater or the offender refused a chemical test, the period of revocation shall be 24 months.
(2) *Second offense.* — 18 months; except that if the offender's blood alcohol concentration was between .15-.19 the revocation period shall be 24 months, or if the offender's blood alcohol concentration was .20 or greater, or the offender has refused a chemical test, the revocation period shall be 30 months.
(3) *Third offense.* — 24 months; except that if the offender's blood alcohol concentration was between .15-.19 the revocation period shall be 30 months, or if the offender's blood alcohol concentration was .20 or greater, or the offender has refused a chemical test, the revocation period shall be 36 months.
(4) *Fourth or further subsequent offenses.* — 60 months regardless of the blood alcohol concentration.
(b) Any person sentenced under § 4177(d) 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 and complied with the ignition interlock device requirements set forth in §§ 4177C and 4177G of this title; provided however, that successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program shall satisfy this requirement.
(c) 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.

§ 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 paragraph (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 .15 or more at the time of driving or within 4 hours of driving;

(5) Was not driving without a valid license or under a suspended or revoked license at the time of the offense in question; and
(6) Is not subject to the enhanced penalties of § 4177(d)(10) of this title 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 shall 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. For the purposes of this section, costs of prosecution shall be $250 and any additional 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 and shall be effective as of the date of sentencing for a period of 1 year.
(e)(1) *Prior or previous conviction or offense.* — For purposes of §§ 2742 and 4177 of this title and this section 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) of this title, § 4177 of this title or this section, 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 second offense must have occurred within 10 years of a prior offense;
b. For sentencing pursuant to § 4177(d)(3), (d)(4), (d)(5), (d)(6), (d)(7), (d)(8) or (d)(9) of this title there shall be no time limitation and all prior or previous convictions or offenses as defined in paragraph (e)(1) of this section shall be considered for sentencing.
c. For any subsection that does not have a time limitation prescribed, all prior or previous convictions or offenses as defined in paragraph (e)(1) of this section shall be considered.
(3) *Computation of time limitations.* — For the purpose of computing the periods of time set out in § 2742 of this title, § 4177 of this title or this section, 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 paragraph (e)(1)c. or d. of this section, 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 of this title, § 4177 of this title or this section, 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) Paragraph (a)(1) of this section, if any prior offense as defined in subsection (e) of this section is not within 10 years of the offense for which the person is being sentenced; or
(2) Paragraphs (a)(2), (a)(3), (a)(4), (a)(5) and (a)(6) of this section.
(3) [Repealed.]
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) [Repealed.]

§ 4177C Ignition interlock licenses; reinstatement of license.
(a) Any person who has entered a first offense election pursuant to § 4177B of this title shall be immediately eligible to apply for an ignition interlock device license under the following terms:
(1) All licenses have been surrendered to the Division of Motor Vehicles prior to issuance of the IID (ignition interlock device) license.
(2) The person has installed an IID on a minimum of 1 vehicle owned or operated by the individual or may have the device installed on a vehicle owned by another person if there are no vehicles owned by the offender.
(b) Any person who, as a first offender is sentenced pursuant to § 4177(d) of this title, and is enrolled in a course of instruction and/or program of rehabilitation pursuant to 4177D of this title shall be eligible to apply for an IID license under the following terms:
(1)a. At least 30 days has elapsed since the effective date of the revocation if the person's blood alcohol concentration was below .15; or
b. At least 45 days has elapsed since the effective date of the revocation if the person's blood alcohol concentration was .15 or greater.
(2) All licenses have been surrendered to the Division of Motor Vehicles prior to issuance of the IID license.
(3) The person has installed an IID on a minimum of 1 vehicle owned or operated by the individual or may have the device installed on a vehicle owned by another person if there are no vehicles owned by the offender.
(c) Any person who, as a second or subsequent offender is sentenced pursuant to § 4177(d) of this title, shall be eligible to apply for an IID license under the following terms:
(1)a. For a person sentenced as a second offender pursuant to § 4177(d) of this title, at least 60 days have elapsed since the effective date of the revocation;
b. For a person sentenced as a third offender pursuant to § 4177(d) of this title, at least 90 days have elapsed since the effective date of the revocation;
c. For a person sentenced as a fourth or subsequent offender pursuant to § 4177(d) of this title, at least 6 months have elapsed since the effective date of the revocation.
(2) The person is enrolled in or has satisfactorily completed a course of instruction and/or program of rehabilitation pursuant to § 4177D of this title.
(3) All licenses have been surrendered to the Division of Motor Vehicles prior to issuance of the IID license.
(4) The person has installed an IID on all vehicles owned or operated by the individual or may have the device installed on a vehicle owned by another if there are no vehicles owned by the offender.
(d) *Reinstatement of license.* — Notwithstanding §§ 4177A and 4177B of this title, any person who has satisfactorily completed a course and/or program established pursuant to § 4177D of this title, shall be permitted to apply for reinstatement of their driver's license and/or driving privilege under the following terms:
(1) Payment of all fees under the schedule adopted by the Secretary;
(2) For a person who elected to enroll in a course of instruction or program of rehabilitation pursuant to § 4177B of this title, at least 4 months have elapsed since the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.

(3) For a person sentenced for a first offense pursuant to § 4177 of this title, whose blood alcohol concentration was below .15, at least 12 months have elapsed since the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.
(4) For a person sentenced for a first offense pursuant to § 4177 of this title, whose blood alcohol concentration was .15 to .19, at least 17 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.
(5) For a person sentenced for a first offense pursuant to § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 23 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.
(6) For a person sentenced for a second offense pursuant to § 4177 of this title, at least 16 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.
(7) For a person sentenced for a second offense pursuant to § 4177 of this title, whose blood alcohol concentration was .15 to .19, at least 22 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.
(8) For a person sentenced for a second offense pursuant to § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 28 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.
(9) For a person sentenced for a third offense pursuant to § 4177 of this title, at least 21 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.
(10) For a person sentenced for a third offense pursuant to § 4177 of this title, whose blood alcohol concentration was .15 to .19, at least 27 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.
(11) For a person sentenced for a third offense pursuant to § 4177 of this title, whose blood alcohol concentration was .20 or greater, at least 33 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.
(12) For a person sentenced for a fourth or further subsequent offense pursuant to § 4177 of this title, at least 54 months have elapsed since the day the IID was installed on the vehicle or vehicles and the ignition interlock license was issued.
(e) Notwithstanding any other provision to the contrary, any person whose alcohol concentration is less than .08 (1) 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.
(f) Notwithstanding any other provision to the contrary, any person charged with a driving under the influence offense who has been permitted to participate in the Court of Common Pleas Driving Under the Influence Treatment Program, and is enrolled in a program of rehabilitation and treatment, pursuant to § 4177(f) or § 4177D of this title, supervised by that Court shall be eligible to have a conditional license in accordance with this subsection. A person may enter the Treatment Program without seeking a conditional license. If the person chooses to obtain a conditional license, or has any registered vehicles, the person shall be required to have an ignition interlock device installed on all vehicles registered in that person's name. Alternatively,

the person has the option to have the device installed on a vehicle or vehicles owned by another person, with the permission of that person, if there are no vehicles registered in the name of the offender. The ignition interlock device shall be immediately installed on eligible vehicles following the effective date of entry into the Driving Under the Influence Treatment Program. The ignition interlock device shall remain installed on the vehicle or vehicles for a minimum period of 12 months from the effective date of revocation or longer if the Court directs. That offender may be eligible to apply for an ignition interlock device license under the following terms:
(1) At least 30 days have elapsed since the effective date of the revocation;
(2) All licenses have been surrendered to the Division of Motor Vehicles prior to issuance of the IID (Ignition Interlock Device) license; and
(3) The participant is not in violation of any terms of the Court of Common Pleas DUI Treatment Program.
(g) Notwithstanding §§ 4177A and 4177B of this title, any person who has successfully completed and graduated from the Court of Common Pleas Driving Under the Influence Treatment Program, shall be permitted to apply for reinstatement of their driver's license and/or driving privilege under the following terms:
(1) Payment of all fees under the schedule adopted by the Secretary;
(2) Payment of all court fines, costs and fees; and
(3) At least 12 months have elapsed since the day the ignition interlock device was installed on the vehicle or vehicles and the ignition interlock license was issued or since the day driving privileges were revoked if no conditional license was sought.

§ 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. Successful completion of the Court of Common Pleas Driving Under the Influence Treatment Program shall be considered equivalent to a course of instruction and/or rehabilitation approved under this section.

§ 4177G Ignition Interlock Device Program.
(a) *Participation.* — All persons convicted of an offense must participate in the Ignition Interlock Device Program as specified herein.
(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) "Lockout" means any time an offender attempts to use a motor vehicle equipped with an IID and any percentage of alcoholic beverages is measured on said device.
(3) "Offender" means a person who has accepted a first offender election pursuant to 4177B of this title or been convicted of violating § 4177 of this title.

(4) "Offense" means a first offenders election pursuant to § 4177B of this title or a conviction pursuant to § 4177 of this title.
(5) "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.
(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) Every offender shall be subject to the ignition interlock requirements of this section and § 4177C of this title during any period of revocation imposed for an offense. If at any time 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) Except as otherwise provided in § 4177C of this title for first offenders, a person covered under paragraph (d)(1) of this section must have the ignition interlock device installed in all motor vehicles that the person owns or operates, or both, for the required minimum periods as specified in § 4177C(d) of this title prior to the reinstatement of that person's driver's license.
(3) An offender's driving record maintained by the Division of Motor Vehicles shall indicate any 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 such vehicle is equipped with an IID.
(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 provider(s). 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) *IID license.* —
(1) All persons convicted of an offense shall be eligible for an IID license as set forth in § 4177C of this title if the following conditions are met:
a. The offender must be a Delaware resident;
b. The offender has had an IID installed on a minimum of 1 vehicle owned or operated, or both, by the individual; provided, however, that a person convicted of a second, third, fourth or greater offense pursuant to § 4177 of this title must have an IID installed on each of the motor vehicles owned or operated, or both, by the individual;
c. 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 that would prohibit the issuance of the IID, unless it is determined by the Secretary of Transportation or the Secretary's designee that the individual is eligible for reinstatement;
d. The offender's driving privilege or license must not be revoked pursuant to § 1009 of Title 10 or a like provision of another jurisdiction;
e. The offender must install an IID in all motor vehicles that person will operate;

f. The 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;
g. The 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;
h. The offender shall meet any other eligibility criteria established by § 4177C of this title or by regulations of the Division of Motor Vehicles.
(2) An offender shall lose the privilege of having an IID license for failure to comply with any of the following:
a. The 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 offender shall comply with the Division of Motor Vehicles regulations concerning offender IID license restrictions;
c. The 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 offender shall not attempt to operate a motor vehicle without possessing registration and an IID license which complies with this section;
e. The offender shall not violate any section of this title relating to the use, possession or consumption of alcohol or intoxicating substances;
f. The offender shall accumulate no more than 5 points per year;
g. The offender shall continue to meet all eligibility criteria identified in paragraph (f)(1) of this section;
h. The offender shall provide proof to the Division of Motor Vehicles that an approved IID has been installed prior to being issued an IID license;
i. The 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 offender shall keep scheduled appointments with the Division and the service provider; and
k. The offender shall be required to report to the service provider on a bimonthly basis for service of the approved IID.
(3) *Extension of program participation.* — The Secretary of the Department of Transportation or the Secretary's designee shall extend the participant's revocation period and/or participating requirement in the IID program upon a determination by the Secretary or the Secretary's designee that the participant has failed to comply with the requirements of subsection (d) of this section for the following actions:
a. Each BAC reading of .05 or above;
b. Running retest violation;
c. Each missed monitoring appointment;
d. Start up violation; IE lock-out failure;
e. Tampering with or bypassing the interlock system;
f. Intentional circumvention of the interlock system or program requirements; or
g. Any other noncompliance of program requirements specified in paragraph (f)(2) of this section as deemed by the Secretary or the Secretary's designee.
A 2-month extension shall be required for any combination of 3 of the above actions. A 4-month extension shall be required for any combination of 5 of the above actions. A 6-month extension

shall be required for any combination of 8 of the above actions. An additional 1 month shall be required for each action listed greater than 8.
(4) *Disqualification.* — The Secretary of the Department of Transportation, or the Secretary's designee 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 paragraph (f)(3)g. of this section. Upon disqualification, the ignition interlock device must remain on the vehicle for the balance of the period required based on the revocation and above extensions, however, no driving authority will be granted during this remaining period. The participant will be responsible for all fees for the device during this period.