

DELAWARE CODE ANNOTATED
TITLE 11. CRIMES AND CRIMINAL PROCEDURE
PART IV. PRISONS AND PRISONERS
CHAPTER 67. BOOT CAMP INTENSIVE INCARCERATION

§ 6712. First offender boot camp diversion program

(a) Subject to the provisions of this section and notwithstanding any other law, rule or regulation to the contrary, any person convicted upon a plea of guilty or otherwise convicted of any of the offenses set forth in subsection (b) of this section may petition the court to defer further sentencing proceedings, and to divert the offender to the boot camp program. In addition, the Department of Correction may petition the court on behalf of any person in its custody who has been convicted of an offense set forth in subsection (b) of this section, for a sentence modification suspending the remainder of the offender's Level V sentence, and diverting such person to the boot camp diversion program ("modify and divert"). The Attorney General shall receive prior notice of all such applications and be provided an opportunity to be heard. Any offender diverted pursuant to this subsection shall be subject to the terms and conditions of this section. No person shall be eligible for boot camp pursuant to this section if the Attorney General's Office, upon written motion, opposes such boot camp diversion pursuant to subsection (c)(2) of this section.

(b) Subject to the provisions of this section, certain persons convicted of the following offenses shall be potentially eligible for diversion to the boot camp inmate training program:

- (1) Manufacture, delivery or possession with intent to deliver of a controlled or counterfeit controlled substance, as set forth in §§ 4751 and 4752 of Title 16; or
- (2) Trafficking in marijuana, cocaine, illegal drugs, methamphetamines, LSD or designer drugs as set forth in § 4753A of Title 16, but only if the weight of the illegal substance possessed is:
 - a. Less than 15 pounds, for a person convicted pursuant to § 4753A(a)(1) of Title 16; or
 - b. Less than 15 grams, for a person convicted pursuant to § 4753A(a)(2), (3), (4), (5) or (6) of Title 16; or
 - c. Less than 100 doses, or in a liquid form less than 15 milligrams, for a person convicted pursuant to § 4753A(a)(7) of Title 16.
- (3) Burglary in the second degree, as set forth in § 825 of this title, but only if the defendant has not previously been convicted of burglary in the second degree or burglary in the first degree, as set forth in § 826 of this title.

(c) Notwithstanding any other provision of this section, no person shall be diverted to the boot camp program pursuant to this section or to otherwise utilize the provisions of this section, if:

- (1) Such person has previously been incarcerated as an adult pursuant to a sentence imposed for a criminal conviction for any offenses set forth in Title 11 or 16, or any equivalent offense set forth under the laws of this State, any other state, or the United States or any territory thereof, and was previously sentenced to a term of more than 1 year of Level V incarceration, which was not suspended.
- (2) The Attorney General's Office, upon written motion, opposes the Diversion. Such motion shall clearly articulate the specific reasons for such opposition.

(3) The Attorney General's Office offers the Boot Camp Diversion Program as part of a proposed plea agreement, the appellant rejects the offer, and the appellant is subsequently convicted after trial.

(d) Subject to the provisions of this section, and notwithstanding any other law, rule or regulation to the contrary, if the sentencing court chooses to grant the petition to defer or to modify and divert, as set forth in subsection (a) of this section, the sentencing court shall enter a judgment of conviction; and shall then defer sentencing, or modify the imposition of the remainder of any Level V sentence, including any mandatory minimum Level V sentence otherwise required by § 4751, § 4752, § 4753A or § 4763 of Title 16, or by §§ 825, 826 or 4205 of this title or by any other law. The court shall then remand the offender to the custody of the Department of Correction upon the condition that the offender shall complete a program of supervision which shall include:

(1) Placement in a boot camp facility with a substance abuse treatment program for a period of not less than 6 months, to be followed by supervision at Level IV or III, or both, for a period of 1 and 1/2 years;

(2) A requirement that, while at supervision Level IV or III, the offender comply with the terms of a curfew, said terms to be imposed by either the sentencing court or the Department of Correction. The terms of said curfew may include mandated compliance with certain geographical limitations, prohibitions or restrictions;

(3) A requirement that, while at supervision Level IV or III, the offender participate in substance abuse treatment which shall include periodic, random urine surveillance during the entire period of supervision at Level IV or III, or both;

(4) Payment of the costs of prosecution, and payment of a \$500 civil penalty to the Substance Abuse Rehabilitation, Education and Prevention Fund; and

(5) any other terms or provisions deemed appropriate by the sentencing court or the Department of Correction.

(e) Whenever the court defers or modifies a sentence pursuant to this section, it shall inform the offender of the sentence to be imposed or reinstated in the event that the offender fails to comply with any of the terms of supervision or probation imposed pursuant to this section. Such term of imprisonment shall not be less than any applicable mandatory minimum sentence mandated for the offense(s) of which the offender was convicted, as set forth in §§ 4751, 4752, 4753A or 4763 of Title 16, or §§ 825, 826 or 4205 of this title. Failure of the court to comply with this subsection shall not preclude the sentencing court from complying with any of the other provisions of this section.

(f) Whenever the court defers further sentencing proceedings pursuant to this section, it shall have the authority to remand the offender to the custody of the Department of Correction at Accountability Level III, IV or V until such offender is placed in a boot camp facility.

(g) The Department of Correction shall closely monitor all participants in this program, and shall ensure that those program participants at supervision Level IV or III shall be monitored by officers specifically assigned to such duties. The Department of Correction shall at all times have on duty no fewer than 8 probation officers (2 for each county and 2 for the City of Wilmington) who shall promptly respond to police agencies as requested for the purpose of taking custody of any person who is believed to have violated the terms or conditions of his or her program of supervision or probation at the boot camp, or at Level IV or III. Pursuant to Chapter 43 of this

title such probation officer shall promptly file a probation violation report setting forth the nature and circumstances of the alleged violation with the appropriate court.

(h) Upon receipt of an allegation that an offender has violated the terms of his or her supervision, the sentencing court shall cause the offender to be brought before it without unnecessary delay. Upon a finding that the offender has violated any of the terms or conditions of supervision or probation at the boot camp or at Level IV or Level III, the court shall proceed to sentencing on all charges for which sentencing was originally deferred pursuant to this section, and shall impose not less than the full applicable Level V sentence mandated for the offense(s) of which the offender was convicted, as set forth in §§ 4751, 4752, 4753A or 4763 of Title 16, or §§ 825, 826 or 4205 of this title. If the offender had already been sentenced and the sentence was modified pursuant to this section, the offender shall serve the remainder of that original sentence. No credit time shall be given for any time spent in boot camp, Level IV or Level III. Failure of the sentencing court to comply with the sentencing provisions of this subsection shall constitute an illegal sentence within the meaning of Chapter 99 of Title 10.

(i) Upon conclusion of the period of supervision and probation imposed pursuant to this section, the court may find that the offender has successfully completed the program, and, if it does, it shall discharge the offender from probation.

(j) Prior to the release of any offender from the boot camp to supervision Level IV or III, the Department of Correction shall enter into the DELJIS criminal history system information identifying the offender as a first offender drug felon.