

# AN ACT TO AMEND THE DELAWARE CODE RELATING TO THE DELAWARE CRIME PREVENTION AND REHABILITATION ACT

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

## SECTION 1. TITLE

This Act shall be known as the DELAWARE CRIME PREVENTION AND REHABILITATION ACT

## SECTION 2. FINDINGS AND DECLARATIONS

The State Legislature of Delaware in 2014 hereby finds and declares the following:

(a) This Act will implement the mission statement for our state's criminal justice system as expressed in the Delaware Code: "To provide for the treatment, rehabilitation and restoration of offenders as useful, law-abiding citizens within the community."

(b) Our nation incarcerates five times the number of prisoners than any other of the thirty developed nations and our Delaware rate of prison incarcerations is among the highest in our states;

(c) Our State Department of Corrections and criminal justice system processes and is responsible for incarcerating approximately 20,000 offenders annually and releasing into our communities approximately the same number;

(d) We have 7000 incarcerated in our prisons which are over-crowded by approximately 400 prisoners;

(e) For years there is a planned prison expansion project on the agenda for 900 beds at a 2013 projected cost of \$450million. or a cost of approximately \$500,000 PER BED; In 2000, the construction cost per bed was \$200,000.

(f) The average annual incarceration cost for each prisoner in 2013 was \$36,000 with a total incarceration cost that year of \$256 million dollars;

(g) The rate of return to prison or recidivism for prisoners in 2013 is 80% within three years after being released. Seventy-one percent of those returning to prison commit additional serious crimes in our communities and with this recidivism rate, an extra annual incarceration cost of approximately \$80 million dollars. These figures do not include the cost of arrest, pretrial and trial or the cost to citizen victims and property;

(h) Approximately 80% of our state's offender population are substance abusers and without treatment 70% become repeat offenders;

(i) Approximately 25% of convicted offenders have a mental health need that requires treatment;

(j) Studies show that between 15 to 27 percent of prisoners expect to go to homeless shelters upon release from prison;

(k) Ninety seven percent of all incarcerated prisoners will eventually be released back into our communities;

(l) One out of every thirteen dollars in our total state budget goes into our ineffective criminal justice system and that amount is ever-increasing for taxpayers;

(m) A startling statistic is that 85% of our youth in correctional facilities will go on to enter the adult criminal system;

(n) More people are addicted by and die from legally prescribed pain killer drugs than illegal drugs;

(o) A nationwide research study by the national Legal Action Council showed that Delaware is 47th among our 50 states in prisoner re-entry efforts;

(p) Act will abolishes our draconian mandatory minimum sentencing laws for drug offenders and gives our very competent Judges sentencing discretion;

(q)While completing each court-ordered individualized treatment and rehabilitation program, each client remains in the community and participates in all activities of family and society;

(p) After successfully completing the court-ordered individualized treatment and rehabilitation program, and given the time stated in the Act to prove he/she has remained drug and crime free, each client has her/his record expunged and faces future life without the felony or misdemeanor yoke that helps cause future crimes;

(q) The above given costly information, in both human and taxpayer fund terms, provides evidence for the understanding, enactment and implementation of this sensible proposed Delaware Crime Prevention and Rehabilitation Act;

(r) This Delaware Act is modeled after a similar California Act that treats non-violent alcohol and drug offenders as a health problem and not a criminal one. Fifteen years of program and cost effective research findings document that their community-based Treatment and Rehabilitation Centers have successfully served these non-violent offenders at ONE-TENTH the cost, orr \$3,600 per year instead of \$36,000 for each year of serving in prison;

(s) After implementation of their Act, California was able to close two prisons and eliminate another from their planning list;

(t) Our Delaware Act expands services in the community-based Treatment and Rehabilitation Centers to serve four additional groups who can utilize the Center's programs, services and resources. This expansion can be funded at ONE-THIRD of our 2013 cost per year for each incarcerated prisoner of \$36,000 or at an average of 12,000 per client'

(u) These Center's programs, services and resources can be used to serve others as follows: as a resource for incarcerated citizens needing transitional support for successful community re-entry; for other citizens needing treatment and rehabilitation for alcohol and drug addiction and related physical and mental health aberrations and for other non-

violent offenders our Judges believe should receive an individualized court-ordered treatment and rehabilitation program; With the Act giving our very competent Judges sentencing discretion, non-violent, low level offenders now in prison could be released under probation and given court-ordered individualized treatment and rehabilitation programs to be completed in a community-based Treatment and Rehabilitation Center;

(v) These Centers will involve and utilize all relevant private and public individual and organization resources to maximize efforts to help each person served become a healthy, restored citizen in keeping with our criminal state's criminal justice system's mission statement as stated in the Delaware Code;

(w) Specific services offered by these community-based Centers include the following: treatment for addiction and all mental and physical health aberrations; individual and family counseling; job counseling, training and placement; adult and other education programs; and for the small per cent who will need additional support, for a year will receive housing, food, clothing, transportation and other necessities of daily living, much less than the \$36,000 cost per year for prison placement;

(a) To return our Delaware Department of Corrections and criminal justice system to its original statement of purpose and responsibility in our Delaware Code: "To provide for the treatment, rehabilitation and restoration of offenders as useful, law-abiding citizens within the community." Loss of freedom, isolation and separation from family and friends is destructive, costly punishment for any human being. This sensible original purpose and responsibility of our Department of Corrections will be restored by assuring that every convicted person is provided an individualized treatment and rehabilitation program that enables each person to improve her/his personal adequacy, social competency and economic efficiency. This Act is designed to reform our current rigid, costly, ineffective, counterproductive approach focused on a type of security that damages and destroys rehabilitation hope and motivation and leads to increased, costly crime rates. Mere survival should not be the goal of our incarcerated offenders with 97 percent destined to return to our communities.

(b) To abolish all mandatory minimum sentencing laws in our state for non-violent drug offenders and return sentencing discretion to our Judges involved in courts that try drug offenders. Our Delaware Judges are ranked among the most competent in the nation and should be given the respect and authority to be the key decision-makers in facilitating the program and cost effective success of this Act.

(c) To expand the current Drug Courts within our Superior Court system into more comprehensive programming Treatment and Rehabilitation Courts. These Courts will work closely with accessible comprehensive community-based Treatment and Rehabilitation Centers located in each of our three counties according to established need. The comprehensive array of treatment and rehabilitative programs and services, either directly provided or obtained elsewhere by each Center, will include the following:

- . Comprehensive substance abuse treatment programs, a key component of rehabilitation programs within Rehabilitation Centers and juvenile correction facilities, jails and prisons;
- . Academic and vocational education programs, from functional literacy to college courses;
- . Job counseling, training and placement;
- . Family-based connections, counseling and treatment programs as this involvement with family and children are the main reasons offenders are rehabilitated;
- . Needed physical and mental health treatment services;
- . Mentoring programs; and
- . For the small per cent who need them, daily living support including housing, food, clothing, transportation and other necessities of life for those who need this support. This economic support can be given for up to a year at a cost much less than the approximately \$3,000 per month cost of incarceration.

(d) These Treatment and Rehabilitation Centers will be operated according to standards and certification requirements established by our Delaware Health and Social Services Department. This will ensure staff who render services within each center are properly qualified and licensed according to state requirements and that staff outside the centers who provide services meet the same standards. These Treatment and Rehabilitation Centers will be administered and operated by the Delaware Health and Social Services Department or this Department will have the responsibility for supervising centers operated under contract with qualified nonprofit organizations. The fifteen years of research-based experience with the similar California Act will provide valuable information in developing our Delaware guidelines and standards for these community-based Delaware Treatment and Rehabilitation Centers.

(e) Four groups of offenders will be served by these Treatment and Rehabilitation Centers and a fifth group of every addicted citizen who needs these Center's programs, services and resources. One group will be those released from prisons and youth correctional programs who need an individualized treatment and rehabilitation program and/or economic and other support for transitioning from prison back into the community. If these centers' programs and services are needed by released prisoners on probation and transitioning into communities, the court will require an individualized treatment and rehabilitation program developed by a Treatment and Rehabilitation Center be successfully completed as a condition of probation. This community rehabilitation plan will be developed in collaboration with staff involved in the offender's rehabilitation plan within the jail or prison. Use of the Treatment and Rehabilitation Centers' programs and

resources can extend for a year unless unusual circumstances require a longer rehabilitation period.

The key group of offenders involved in these Treatment and Rehabilitation Centers' programs will be non-violent, low level alcohol and drug offenders that this Act mandates be placed on probation with the court requirement to prevent incarceration each offender must successfully complete a court-ordered individualized treatment and rehabilitation program to be developed by a Treatment and Rehabilitation Center, approved by the court and monitored by probation staff. Non-violent status is defined as an arrest and conviction that does not involve the possession and threat of a gun or other weapon used to render physical violence. The Act will require a close working relationship between the courts, our Department of Corrections, Department of Health and Social Services, the probation department, Treatment and Rehabilitation Centers and our state's city, county and local governments. The state and all county/local governments will be asked to identify and change any existing laws or policies which restrict the full implementation of this Act. At each county and local level, coalitions of public and private organizations should be formed to offer understanding and support for the crime prevention and rehabilitation benefits from this Act.

Another important group of Delaware citizens who can fully access and utilize the programs and services of these community-based Treatment and Rehabilitation Centers are those with serious alcohol and drug addictions that include associated mental and physical aberrations. This will be an important, desperately needed additional program and cost effective resource this Act will provide our eligible citizens, their families and tax payers.

With this Act giving our Judges sentencing discretion, many other non-violent offenders can be given an individualized court-ordered treatment and rehabilitation program to be completed in a community-based Treatment and Rehabilitation Center instead of being incarcerated at ten times the cost of community treatment.

A fifth important group this Act will serve are the non-violent, low level drug offenders now in prison who Judges, given sentencing discretion by this Act, can release on probation and be given a court-ordered individualized program to be completed in these Treatment and Rehabilitation Centers. Served as a valid health challenge in these sensible Treatment and Rehabilitation Centers at ONE-THIRD the cost of prison incarceration will save both lives and a huge amount of taxpayer's dollars..

(f) This Act requires that our Department of Corrections provide the same array of treatment and rehabilitative programs and services in our state's jails and prisons that are provided in our community-based Rehabilitation Centers. This will require a close working relationship between our jails, prisons, Courts within our Superior Courts and the Treatment and Rehabilitation Centers. This expanded, cost-effective reform will restore the original purpose and responsibility of our Corrections Department "to provide for the treatment, rehabilitation and restoration of offenders as useful, law-abiding citizens within the community." This change from a rigid, draconian security approach to a facilitative proven program and cost effective treatment and rehabilitative direction will require thorough orientation and continuous training of staff at all levels within the Department of Corrections, but especially for staff who interact with prisoners or clients on an ongoing basis. The State Legislature will establish an oversight and monitoring coalition to ensure that the requirements of this program and cost effective act are properly implemented. This coalition should have representatives from members of the State Legislature, Governor's office, state departments of Health and Social Services, Corrections, Education, Housing and Labor and from community organizations involved in business, education, health care, drug and crime prevention, religion and minority group activities.

(g) This Delaware Crime Prevention and Rehabilitation Act is aligned with the excellent 2007 federal act entitled "Second Chance Act of 2007: Community Safety Through Recidivism Prevention." Of special note is the realization that this act was both developed and enacted under the key leadership of former Delaware Senator Joseph R. Biden, Jr. This federal act includes grant funds for many of the rehabilitation components to be provided under our state act for youth and adult correctional facilities and the community-based Treatment and Rehabilitation Centers.

(h) This Act will establish a Research Office at the University of Delaware to conduct continuous research on the program and cost effective benefits of the Act's implementation. This research will study which rehabilitation components in both our prisons and Rehabilitation Centers had more impact on offender prevention and rehabilitation experiences .This is but one example of how research can help all treatment and rehabilitation programs improve. Another example of meaningful research will be to work with the State Labor Department, State Chamber of Commerce and other private/public sources projecting future job needs in our state and sharing this information with our Department of Corrections, Department of Health and Social Services and Treatment and Rehabilitation Centers to both influence and maximize the job counseling, training and placement of offenders served by these agencies. Periodic reports of program and cost effective research and other research findings will be provided our State Legislature, Governor's office, Department of Corrections, Department of Health and Social Services, Treatment and Rehabilitation Centers, state's news media and the general public.

In this research office will be staff responsible for writing grants in collaboration with staff in our youth and adult correctional facilities and our Rehabilitation Centers. This will be for grants offered by the 2007 federal act, Foundations

and all private and public sources within our state and nation that provide grant monies available for successful grant proposals.

(i) All individuals and agencies seeking state or state-approved grant funds related to treatment, rehabilitation and restoration programs and services covered by this Act must meet the following requirements of the Act: Agree to meet the standards and staff qualifications established for programs and services to be provided within our prisons and county-based Treatment and Rehabilitation Centers; Agree to be monitored by appropriate prison staff and Treatment and Rehabilitation Center staff; and agree to work with the Research Office established by this Act at the University of Delaware to determine the program and cost effectiveness of programs and services the grant funds are provided with public tax and private monies.

(j) The best evidence that this Delaware Act will cause program and cost effective changes in our state's criminal justice system is the documented success of the similar California Substance Abuse and Crime Prevention Act. This California Act legally mandated, as does the Delaware Act, that all non-violent drug offenders not be incarcerated in jail or prison but be treated in Drug Treatment Centers established throughout their state. These offenders were viewed as health and rehabilitation clients, not prisoners to be incarcerated. These California Drug Treatment Centers included rehabilitative components other than drug treatment but not as complete an array of rehabilitation programs and services as will be provided by implementation of this Delaware Crime Prevention and Rehabilitation Act. The California Act created a Research Office at the University of California at Los Angeles to conduct ongoing statewide research to determine the program and cost effective results from the Act. The following are some of their research findings:

- . Over 700 community-based Treatment and Rehabilitation Centers licensed, 140,000 receiving treatment and 60,000 having completed their treatment programs. This was 10 times the number previously served in treatment programs;
- . A 71 percent drop in drug use among those who completed the treatment program;
- . Approximately twice as many were employed after completing treatment than were prior to treatment;
- . A 32 percent reduction in number of prisoners serving time in jails and prisons for drug offenses;
- . For every dollar invested in the program, taxpayers saved over two dollars;
- . Their statewide Act diverted 140,000 Californians from incarceration, placing them instead in treatment and rehabilitation programs. Average annual treatment and rehabilitation cost per person was \$3,600 in 2013 while a year in prison costs their taxpayers tax payers \$36,000. Expanded numbers from other groups served in our Delaware Centers will cost approximately 33 per cent of the annual cost of prison incarceration or \$12,000 as compared to the aforementioned \$36,000 each year for each incarcerated prisoner; and

- . The California Act caused the closing of a women's prison and rendered unnecessary the construction of a new men's prison, causing taxpayer savings of \$500 million.

#### SECTION 4. REMOVAL OF OFFENDERS' RECORDS AND FINES

(1) As ordered and practiced by the similar California Act, this Delaware Act will require that non-violent drug and other non-violent offenders who successfully complete their court-ordered community-based drug treatment and other rehabilitation requirements, and have substantially complied with the conditions of probation, be allowed to petition the court for dismissal of charges. When approved, the conviction on which probation was based shall be set aside and the court shall dismiss the indictment or information against the defendant. In addition, the arrest on which the conviction was based shall be deemed to have never occurred. Except as provided in subsection (4)(5) below, the defendant thereafter shall be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

(2) All incarcerated non-violent drug offenders who serve their prison terms, successfully meet all probation requirements which may include an in-prison and community transition treatment and rehabilitation program, and completes at least three years of successful community re-entry as a useful, law-abiding citizen, may petition the court for dismissal of charges. When approved, the conviction on which the prison sentence and probation were based shall be set aside and the court shall dismiss the indictment or information against the defendant. All records against the defendant shall be removed. Except as provided in subsection (4)(5) below, these defendants thereafter shall be released from all penalties and disabilities resulting from the offense of which he or she has been convicted.

(3) This Act will prohibit the court from levying fines which follow released prisoners into the community and create an additional unrealistic burden to successful community re-entry as economic survival is the main challenge they face. For former released prisoners who have met the requirements of subsection (2), previous fines levied will be eliminated. This is yet another sensible contribution to crime prevention and less costly rehabilitation of offenders.

(4) Except as provided below in subsection (5), after an indictment or information is dismissed pursuant to subsections (1)(2), the defendant may indicate in response to any question concerning her or his prior criminal record that he or she was never arrested or convicted of the offense. Except as provided below, a record pertaining to an arrest or conviction under this section shall not, without the defendant's consent, be used in any way that could result in the denial of any employment, benefit, license or certificate.

(5) Regardless of her or his successful completion of court requirements and community re-entry as described in subsections (1)(2) above, the arrest and conviction on which probation or incarceration were based may be recorded and disclosed in response to any peace officer application request or any law enforcement inquiry. Expunged records will not apply to convicted sexual predators. Dismissal of an indictment or information under this section does not relieve a defendant of the obligation to disclose the arrest and conviction in response to any direct question contained in any questionnaire or application for public office, for a position as peace officer or licensure by any state or local agency.

## SECTION 5. DEFINITIONS

(a) The term "non-violent drug possession offense" means the unlawful possession, use or transportation for personal use of any controlled substance or the offense of being under the influence of a controlled substance. The term "non-violent drug possession offense" shall not include possession for sale, production or manufacturing of any controlled substance.

(b) The term "drug treatment program" means a licensed and/or certified community drug treatment program as provided by or through the Treatment and Rehabilitation Centers. This program may include one or more of the following: outpatient treatment, half-way house treatment, associated mental or physical aberrations treatments, narcotic replacement therapy, drug education or prevention courses and/or limited inpatient or residential drug treatment as needed to address special detoxification, relapse situations or severe dependency.

(c) The term "successful completion of treatment" means that a defendant who has had drug treatment imposed as a condition of probation has completed the required individualized course of drug treatment and rehabilitation and, as a result, there is reasonable cause to believe that the defendant will not abuse controlled substances in the future.

## SECTION 6. POSSESSION OF CONTROLLED SUBSTANCES; PROBATION; EXCEPTIONS.

(a) Notwithstanding any other provision of law and except as provided in subdivision (b), any person convicted of a non-violent drug possession offense shall receive probation and will be ordered by the court to successfully complete an individualized court-approved drug treatment and/or broader rehabilitation plan developed by the appropriate Treatment and Rehabilitation Center.

As a condition of probation the required treatment and rehabilitation plan may include treatment and rehabilitation program components and services in addition to drug treatment. A court may not impose incarceration as an additional condition of probation. Aside from the limitations imposed in this subdivision, the trial court is not otherwise limited in the type of probation conditions it may impose.

The trial judge may require any person convicted of a non-violent drug possession offense who is reasonably able to do so to contribute to the cost of her/his placement in a drug treatment program or broader rehabilitation plan developed by the appropriate Treatment and Rehabilitation Center.

(b) Subdivision (a) shall not apply to:

(1) Any defendant who has previously been convicted of one or more serious or violent felonies, unless the non-violent drug possession offense occurred after a period of 5 years in which the defendant remained free of both prison custody and the commission of an offense which results in (a) a felony conviction other than a non-violent drug possession offense or (b) a misdemeanor conviction involving physical injury or the threat of physical injury to another person.

(2) Any defendant who, in addition to one or more non-violent drug possession offenses, has been convicted in the same proceeding of a misdemeanor not related to the use of drugs or any felony.

(3) Any defendant who:

(A) While using a firearm, unlawfully possesses any amount of (1) a substance containing either cocaine base, cocaine, heroin, methamphetamine, or (2) a liquid, non-liquid, plant substance or hand-rolled cigarette, containing phencyclidine.

(B) While using a firearm, is unlawfully under the influence of cocaine base, cocaine, heroin, methamphetamine or phencyclidine.

(4) Any defendant who refuses drug treatment as a condition of probation.

(5) Any defendant who (a) has two separate convictions for non-violent drug possession offenses, (b) has participated in two separate courses of drug treatment pursuant to subdivision (a) and (c) is found by the court, by clear and convincing evidence, to be resistive to any and all forms of available drug treatment. Notwithstanding any other provision of law, the

court shall sentence such defendants to 30 days in jail.

(c) Within 7 days of a court order imposing probation under subdivision (a), the probation department shall notify the Treatment and Rehabilitation Center and drug treatment provider designated to provide drug treatment under subdivision (a). Within 30 days of receiving that notice, the treatment provider shall provide a treatment plan and forward it to the probation department. On a quarterly basis after the defendant begins the drug treatment program, the treatment provider shall prepare and forward a progress report to the probation department.

(1) If at any point during the course of drug treatment the treatment provider notifies the probation department that the defendant is resistive to the drug treatment being provided, but may be amenable to other drug treatment or related programs, the probation department may ask the court to modify the terms of probation to ensure that the defendant receives the alternative drug treatment or program.

(2) If at any point during the course of drug treatment the treatment provider notifies the probation department that the defendant is resistive to the drug treatment provided and all other forms of drug treatment, the probation department may move to revoke probation. At the revocation hearing, unless the defendant proves by a preponderance of the evidence that there is a drug treatment program to which he/she is amenable, the court may revoke probation.

(3) Drug treatment services and any other rehabilitation components provided by subdivision (a) as a required condition of probation may not exceed 12 months, provided, however, that additional aftercare services as a condition of probation may be required for up to six months.

(d) Violation of Probation

(1) If probation is revoked, the court may incarcerate the defendant.

(2) Non-drug related probation violations.  
or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of evidence that the defendant poses a danger to the safety of others. If the court does not revoke probation, it may intensify or alter the drug treatment or broader rehabilitation plan.

(B) Where a defendant receives probation under subdivision (a) and for the second time violates probation either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of evidence either that the defendant poses a danger to the safety of others or is resistive to drug treatment.

Where a defendant receives probation under subdivision (a) and violates that probation either by being arrested for an offense that is not a non-violent drug possession offense, or by violating a non-drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The court may modify or revoke probation if the alleged violation is proved.

(3) Drug related probation violations.

(A) Where a defendant receives probation under subdivision (a), and violates that probation either by being arrested for a non-violent drug possession offense court may consider, to the extent relevant, whether the defendant (1) has committed a serious violation of rules at the drug treatment program, (2) has repeatedly committed violations of program rules that inhibit the defendant's ability to function in the program, or (3) has continually refused to participate in the program or asked to be removed from the program. If the court does not revoke probation, it may intensify or alter the treatment plan requirements.

(C) Where a defendant receives probation under subdivision (a), and for the third time violates the probation either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, defendant is not eligible for continued probation under subdivision (a).

(D) Where a defendant on probation at the effective date of this act for a non-violent drug possession offense violates that probation either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of probation, and the state moves to revoke probation, the court shall conduct a hearing to determine if probation shall be revoked. The court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of evidence that the defendant poses a danger to the safety of others. If the court does not revoke

probation, it may modify probation and impose as an additional condition of participation in a Treatment and Rehabilitation Center drug treatment program.

(E) Where a defendant on probation at the effective date of this act for a non-violent drug possession offense violates that probation a second time either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a second time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. The court shall revoke probation if the alleged probation violation is proved and the state proves by a preponderance of evidence either that the defendant poses a danger to the safety of others or is unamenable to drug treatment. If the court does not revoke probation, it may modify probation and impose as an additional condition participation in a Treatment and Rehabilitation Center drug treatment program and other components in a broader rehabilitation plan.

(F) Where a defendant on probation at the effective date of this act for a non-violent drug offense violates probation for a third time either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of probation, and the state moves for a third time to revoke probation, the court shall conduct a hearing to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under subdivision (a).

## SECTION 7. POSSESSION OF CONTROLLED SUBSTANCES; PROBATION; EXCEPTIONS.

(a) Notwithstanding any other provision of law, and except as provided in subdivision (b), offenders in probation status may not be suspended or revoked for commission of a non-violent drug possession offense or for violating any drug-related condition of parole..

As an additional condition of probation for all such offenses or violations, the probation department shall require participation and completion of a drug treatment program. Completion of other rehabilitation program components may be imposed as additional probation conditions.

The probation department may require any person on probation who commits a non-violent drug possession offense or violates any drug-related condition of probation, and who is reasonably able to do so, to contribute to the cost of their own placement in a drug treatment program.

(b) Subdivision (a) shall not apply to:

(1) Any offender on probation who has been convicted of one or more serious or violent felonies.

(2) Any offender on probation who, while on probation commits one or more non-violent drug possession offenses and is found to have concurrently committed a misdemeanor not related to the use of drugs or any felony.

(3) Any offender on probation who refuses drug treatment as a condition of probation.

(c) Within 7 days of a finding that an offender on probation has either committed a non-violent drug possession offense or violated any drug-related condition of probation, the probation department shall notify the treatment provider designated to provide drug treatment under subdivision (a). Within 30 days thereafter the treatment provider shall prepare a drug treatment plan and forward it to the appropriate court and the probation department responsible for supervising the offender on probation.. On a quarterly basis after the offender on probation begins drug treatment, the treatment provider shall prepare and forward a progress report to these entities and responsible individuals.

(1) If at any point during the course of drug treatment the treatment provider notifies the probation department that the offender on probation is unamenable to the drug treatment provided, but amenable to other drug treatments or related programs, the probation department may act to modify the terms of probation to ensure that the offender on probation receives the alternative drug treatment or rehabilitation program.

(2) If at any point during the course of drug treatment the treatment provider notifies the probation department that the offender on probation is unamenable to the drug treatment provided and all other forms of drug treatment, the probation department may act to revoke probation.. At the revocation hearing, probation may be revoked unless the offender on probation proves by a preponderance of evidence that there is a drug treatment program to which he/she is amenable.

(3) Drug treatment services provided by subdivision (a) as a required condition of probation may not exceed 12 months, provided, however, that additional aftercare services as a condition of probation may be required for up to 6 months.

(d) Violation of Probation.

(1) If probation is revoked pursuant to the provisions of this subdivision, the defendant may be incarcerated without regard to the provisions of this section.

(2) Non-drug related probation violations.

When an offender on probation receives drug treatment under subdivision (a), and during the course of drug treatment violates probation either by being arrested for an offense other than a non-violent drug possession offense, or by violating a non drug-related condition of probation, and the probation department acts to revoke probation, a hearing shall be conducted to determine whether probation shall be revoked. Probation may be modified or revoked if the probation violation is proved.

(3) Drug related parole violations

(A) Where an offender on probation receives drug treatment under subdivision (a), and during the course of drug treatment violates probation either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of probation, and the probation department acts to revoke probation, a hearing shall be conducted to determine whether probation should be revoked. Probation shall be revoked where the probation violation is proved and a preponderance of the evidence establishes that the defendant poses a danger to the safety of others. If probation is not revoked, the conditions of probation may be intensified to achieve the goals of drug treatment.

(B) Where an offender on probation receives drug treatment under subdivision (a), and during the course of drug treatment for the second time violates that probation either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of probation, and the probation department acts for a second time to revoke probation, a hearing shall be conducted to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under any provision of this section and may be re-incarcerated.

(C) Where an offender on probation already on probation at the effective date of this act violates probation either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of probation, and the probation department acts to revoke probation, a hearing shall be conducted to determine whether probation shall be revoked. Probation shall be revoked where the probation violation is proved and a preponderance of evidence establishes that the defendant poses a danger to the safety of others. If probation is not revoked, the conditions of probation may be modified to include participation in a drug treatment program as provided in subdivision (a). This paragraph will not apply to any defendant who at the effective date of this act has been convicted of one or more serious or violent felonies.

(D) Where an offender on probation already on probation at the effective date of this act violates probation for the second time either by being arrested for a non-violent drug possession offense, or by violating a drug-related condition of probation, and the probation department acts for a second time to revoke probation, a hearing shall be conducted to determine whether probation shall be revoked. If the alleged probation violation is proved, the defendant is not eligible for continued probation under any provision of this section and may be re-incarcerated.

## SECTION 8. DELAWARE CRIME PREVENTION AND REHABILITATION CENTERS FUND

In the state's budget year following passage of this Act will be a special fund known as the Delaware Crime Prevention and Rehabilitation Centers Fund. This fund, appropriated by our State Legislature will be assigned by our State Treasury to our Delaware Department of Health and Social Services. The sole purpose of this fund will be to fund the start-up cost, expansion and operations of the community-based Treatment and Rehabilitation Centers created by this Act.

The State Legislature, Governor's office and the Department of Corrections shall ensure that the annual budget for the Department of Corrections has ample funds to provide the comprehensive treatment and rehabilitation program presented in this Act to every one of the 97% of prisoners who will return to our communities.

Once the start up costs are completed, our state will experience even more program and cost effective success than has been demonstrated by a less comprehensive similar rehabilitation act in California. Not only will these investments save millions of tax funds each year but will morally return our criminal justice system to its original purpose and responsibility "to provide for the treatment, rehabilitation and restoration of offenders as useful, law-abiding citizens within the community."

By this Act returning all sentencing decisions to Judges, many other changes for program and cost effectiveness are possible. A sentence could be made with provision for earlier release based on good behavior and successful progress on

an in-prison individualized treatment and rehabilitation plan. A requirement of probation could then be assignment to a community-based Treatment and Rehabilitation Center where the rehabilitation plan is completed within a year at much less cost than incarceration. What common sense, logical reasoning or evidence that longer periods of loss of freedom, isolation or separation from family and children and years in a security-focused environment better prepares an offender for successful reentry into the community?

All funds appropriated for community-based Treatment and Rehabilitation Centers shall be distributed annually to these programs.

Any funds remaining in monies allocated to Treatment and Rehabilitation Centers shall be carried over into the subsequent fiscal year's budget for these centers.

#### Evaluation Process

An ongoing outside evaluation process shall be conducted by a Research Office established at the University of Delaware. This ongoing research will include, but not be limited to, the following: a study of the implementation process; a review of lower incarceration rates; reductions in crimes; reduced prison and jail construction, reduced annual costs, reduced welfare costs; impact on offenders children and families; the adequacy of funds provided; and any other impacts or issues that can be identified.

#### Audit of Expenditures

The State Legislature and the Governor's office will be responsible for having proper audits performed for both the treatment and rehabilitation programs provided within our jails and prisons and rehabilitation programs conducted by and through the community-based Treatment and Rehabilitation Centers.

#### Local Governments Authority to Control Location of Community-Based Rehabilitation Centers

Notwithstanding any other provision of law, no Rehabilitation Center or drug treatment component may receive any funds from the Delaware Crime Prevention and Rehabilitation Centers Fund unless the program agrees to make its facilities subject to valid local government zoning ordinances and development agreements.

#### SECTION 9. EFFECTIVE DATE OF ACT

The provisions of this Act shall become effective at the beginning of the budget year that follows passage of the Act.

#### SECTION 10. AMENDMENTS

This Act may be amended only by a roll call vote of two-thirds of the membership of both houses of the State Legislature. All amendments to this Act shall be to further the Act and shall be consistent with its purpose.

#### SECTION 11. SEVERABILITY

If any provision of this Act or the application thereof to any person or circumstances is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect other provisions or applications of this initiative which can be given effect without the invalid or unconstitutional provision or application, and to this end the provisions of this law are severable.

#### SYNOPSIS: DELAWARE CRIME PREVENTION AND REHABILITATION ACT

The primary goal of this Act will be to align our state's criminal justice system to its original statement of purpose given in our Delaware Code: "To provide for the treatment, rehabilitation and restoration of offenders as useful, law-abiding citizens within the community;"

The Act will abolish all costly, ineffective, counterproductive mandatory minimum sentencing requirements for non-violent drug offenders and returns sentencing discretion to our state's very competent Judges;

Modeled after a similar California Act, it will provide community-based Treatment and Rehabilitation Centers in each county based on need to serve non-violent and low level drug offenders as health challenges and not criminals to be incarcerated;

The development and administration of these community-based Treatment and Rehabilitation Centers in our three counties will be by our State Department of Health and Social Services in collaboration with the relevant state, county and city private and public agencies discussed in the Act;

Fifteen years of program and cost effective research on the effects of the similar California Act documents that their

non-violent drug offenders have been served at ONE-TENTH the annual cost of prison incarceration;

Based on these California research findings, savings of tax funds will be more than enough to fully fund all needed, properly staffed County-based Treatment and Rehabilitation Centers and all programs, services and cost effective resources provided by this Delaware Act; These Centers will serve non-violent drug offenders and four other groups needing their programs, services and resources at ONE-THIRD the Delaware 2013 per prisoner cost of \$36, 000, or an average annual cost of \$12,000.

Drug Courts and Judges within our Superior Courts will give each offender a court-ordered individualized treatment and rehabilitation program each must successfully complete in a community-based Treatment and Rehabilitation Center;

After successfully completing their court-ordered treatment and rehabilitation program, and proving for three years each is drug and crime free, all non-violent and low level drug offenders will have their records of arrest and court conviction expunged;

All of the 97 percent of incarcerated prisoners who return to our communities and need it will be provided an individualized treatment and rehabilitation program by these community based Treatment and Rehabilitation Centers;

The programs and services of these community-based Centers will be a resource for released prisoners who need them to successfully transition back into successfully community life as a useful, law-abiding citizen;

The Centers' programs and services can be utilized by other seriously addicted citizens who need their assistance in overcoming their addiction and related mental aberrations;

Our very competent Judges, given sentencing discretion by this Act. can release non-violent convicted drug offenders from prison and , place them on probation, and sentence them to a court-ordered individualized treatment and rehabilitation program to be completed in one of the Centers;

In addition to drug addiction treatment and related mental and physical aberrations, other services will be provided as follows: individual counseling; family counseling; functional adult, college and trade school training; and job counseling, training and placement;

The vast majority Of persons being served by these community-based Centers in each county will continue to live a normal life in their homes and communities as they complete their court-ordered individualized treatment and rehabilitation program; The small per cent needing support for daily living will be provided, for a year, this support which includes the following: housing, food, clothing, transportation and other necessities needed for daily living. And at far less cost than the \$36,000 yearly cost of prison incarceration;

The administration and staff of these Centers will work closely with all relevant private and public resources that include the courts, parole department, government public safety departments, all levels of government and all resources that can and should be utilized and orchestrated for maximum contributions to the Centers' overall program goals;

Judges, given sentencing discretion by this Act, can give a court-ordered individualized treatment and rehabilitation program to other non-violent offenders to successfully complete in a Treatment and Rehabilitation Center; and

This Act will effectively both stop and reverse the insanity of our continued costly, totally lost "War on Drugs" which has overcrowded our jails and prisons while increasing crime in our communities. It will provide healthful future hope and release our victim fellow human beings from the vicious, devastating tentacles of dope.

Researched and authored by Dr. Floyd E. McDowell, Sr. of Bear, Delaware. Glad to answer any questions about this Act by contact at (302) 832-2799 or via email at [flydmcdwill@verizon.net](mailto:flydmcdwill@verizon.net).