

CHAPTER 175
FORMERLY
SENATE BILL NO. 153

AN ACT TO AMEND THE DELAWARE CODE RELATING TO CRIMES AND CRIMINAL PROCEDURE INVOLVING CHILDREN.

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

Section 1. Amend § 1002, Title 10 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1002. Delinquent child not criminal; prosecution limited.

Except as provided in § 1010 of this title, no child shall be deemed a criminal by virtue of an allegation or adjudication of delinquency, nor shall a child be charged with or prosecuted for a crime in any other court. In this Court the nature of the hearing and all other proceedings shall be in the interest of rather than against the child. Except as otherwise provided, there shall be no proceedings other than appellate proceedings in any court other than this Court in the interest of a child alleged to be dependent, neglected, or delinquent. ~~However, if a child reaches its eighteenth birthday prior to an adjudication on a charge of delinquency arising from acts which would constitute a felony were the child charged as an adult under the laws of this State, then the Family Court shall retain jurisdiction for the sole purpose of transferring the matter to the Superior Court for prosecution as an adult. Any such transfer under this section shall not be subject to § 1011 of this title.~~

Section 2. Amend § 761, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 761. Definitions generally applicable to sexual offenses.

(h) "Sexual offense" means any offense defined by ~~§§ 763-780 and §§ 1108-1112A, 1352(2) and 1353(2)~~ §§ 763 through 780, § 783(4), § 783(6), § 783A(4), § 783A(6), § 787(b)(3), § 787(b)(4), § 1100A, §§ 1108 through 1112B, § 1335(a)(6), § 1335(a)(7), § 1352(2), and § 1353(2), and § 1361(b) of this title.

Section 3. Amend § 777, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 777. Dangerous crime against a child, definitions, sentences.

(a) A "dangerous crime against a child" ~~is defined as~~ means any criminal sexual conduct against a minor under the age of 14 years as defined in §§ 770-773, § 777A, §§ 778 through 778A, or §§ ~~1108-1112A~~ 1108 through 1112B of this title. For purposes of this section only, and § 762(a) of this title to the contrary notwithstanding, the defendant may use as an affirmative defense that the defendant believed that the victim of the crime was over the age of 16 years of age.

Section 4. Amend § 777A, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 777A. Sex offender unlawful sexual conduct against a child.

(b) For purposes of this section, ~~the term "sex offender" shall mean any person registered or required to be registered pursuant to §§ 4120(b)(1) and 4121(a)(4) of this title, or the laws of any other state, the United States or any territory of the United States~~ means as defined in § 4121(a)(4) of this title.

(d) For purposes of this section, ~~the term "child" shall mean~~ means any individual who has not reached that child's eighteenth birthday. If the underlying sexual offense involves an offense defined by §§ ~~1108, 1109, 1110, 1111 and 1112A~~ 1108 through 1112B of this title, ~~the term "child" shall also mean~~ also means any individual who is intended by the defendant to appear to be 14 years of age or less. A sex offender who knowingly possesses any material prohibited by § 1111 of this title is committing an offense against a child for purposes of this section.

Section 5. Amend § 1100, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1100. Definitions relating to children.

When used in this subchapter:

(2) "Child" shall mean any individual less than 18 years of age. For the purposes of §§ 1108, 1109, 1110, ~~1111 and 1112A~~ and 1111 of this title, "child" shall also mean any individual who is intended by the defendant to appear to be 14 years of age or less.

Section 6. Amend § 1102, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

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

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

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

Section 7. Amend § 1112, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1112. Sexual offenders; prohibitions from school zones.

(b) For purposes of this section, the following definitions shall apply:

(4) ~~"Sexual offender" shall mean any person who:~~

~~a. Has been convicted in this State of the commission or attempt to commit any sexual offense upon a child under 16 years of age under § 767, § 768, § 769, § 770, § 771, § 772, § 773, § 776, § 777, § 777A, § 778, § 778A, § 1108, § 1109, § 1111, and/or § 1112A of this title; or~~

~~b. Has been discharged or paroled from a penal institution where that person was confined because of the commission or attempt to commit 1 or more of the offenses enumerated in paragraph (b)(4)a. of this section; or~~

~~c. Has been adjudged guilty but mentally ill under § 401 of this title or not guilty by reason of insanity under § 401 of this title for the commission or attempt to commit 1 or more of the offenses enumerated in paragraph (b)(4)a. of this section; or~~

~~d. Has been convicted in any other state of any offense which, if committed or attempted in this State, would have been punishable as 1 or more of the offenses enumerated in paragraph (b)(4)a. of this section.~~ "Sex offender" means as defined in § 4121(a)(4) of this title.

Section 8. Amend § 3513, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 3513. Hearsay exception for child victim's or witness's out-of-court statement of abuse.

(a) An out-of-court statement made by a child victim or witness who is under 11 years of age at the time of the proceeding concerning an act that is a material element of the offense relating to sexual abuse, physical injury, serious physical injury, death, abuse or neglect as described in any felony delineated in subpart A, B or D of subchapter II of Chapter 5 of this title, or in any of the felonies delineated in § 782, § 783, § 783A, § 787, § 1100A, § 1102, § 1108, § 1109, ~~§ 1111 or § 1112A~~ § 1111, § 1112A, § 1112B, § 1335(a)(6), § 1335 (a)(7), § 1353(2), or § 1361(b) of this title or in any attempt to commit any felony delineated in this paragraph that is not otherwise

admissible in evidence is admissible in any judicial proceeding if the requirements of subsections ~~(b)-(f)~~ (b) through (f) of this section are met.

Section 9. Amend § 4121, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4121. Community notification of sex offenders on probation, parole, conditional release or release from confinement.

(a) When used in this subchapter:

(4) "Sex offender" means any person who is, or has been:

a. Convicted of any of the offenses specified in §§ 765 through 780, § 787(b)(3)-(4), § 1100A, §§ 1108 through ~~1112A~~ 1112B, § 1335(a)(6), § 1335(a)(7), § 1352(2), § 1353(2) or § 1361(b) of this title, or of any attempt or conspiracy to commit any of the aforementioned offenses; or

c. Convicted or adjudicated delinquent of any offense specified in the laws of another state, commonwealth, territory, or other jurisdiction of the United States requiring registration in that jurisdiction, or a conviction or adjudication in any foreign government, which is the same as, or equivalent to, any of the offenses set forth in paragraph (a)(4)a., (a)(4)b. or (a)(4)d. of this section; or convicted of any federal or military offense enumerated in 42 U.S.C. § 16911(5)(A)(iii) and (iv); or

d. Convicted or adjudicated delinquent of a violation of § 783(4) or § 783(6) or § 783A(4) or § 783A(6) of this title; or

e. Charged by complaint, petition, information or indictment with any of the offenses set forth in paragraph (a)(4)a., (a)(4)b., (a)(4)c. or (a)(4)d. of this section, and who thereafter pleads guilty to any offense included in the originally charged offense, as provided in § 206 of this title, if the person is thereafter designated as a sex offender by the sentencing judge pursuant to subsection ~~(e)~~ (c) of this section; or

f. Convicted or adjudicated delinquent of any of the offenses set forth in paragraph (a)(4)a., (a)(4)b., (a)(4)c. or (a)(4)d. of this section, or of any offense which is the same as or equivalent to such offenses as the same existed and were defined under the laws of this State existing at the time of such conviction; or

(d) Sex offenders shall be assigned to a Risk Assessment Tier as follows, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register:

(1) *Risk Assessment Tier III.* — Any sex offender convicted or adjudicated delinquent of any of the following offenses shall be designated by the court to Risk Assessment Tier III:

b. Kidnapping in the first or second degree, if ~~the a~~ a purpose of the crime was to ~~facilitate the commission of any offense set forth in paragraph (a)(4) or (a)(6) [sic] of this section~~ take or entice any child less than 18 years of age from the custody of the child's parent, guardian, or lawful custodian, where the defendant is not a parent, step ~~parent~~ parent, or guardian of the victim, to inflict physical injury upon the victim, or to violate or abuse the victim sexually; or

Section 10. Amend § 9401, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9401. Definitions.

As used in this chapter, unless the context otherwise requires:

(2) "Crime" means an act or omission committed by a person, whether or not competent or an adult, which, if committed by a competent adult, is punishable by incarceration and which violates 1 or more of the following sections of this title:

OFFENSES RELATING TO CHILDREN AND INCOMPETENTS

1101. Abandonment of child; class A misdemeanor.

1102. Endangering the welfare of a child; class A misdemeanor.

1103. Child abuse in the third degree; class A misdemeanor.

1103A. Child abuse in the second degree; class G felony.

1103B Child abuse in the first degree; class B felony.

1105. Crime against a vulnerable adult; class A misdemeanor or higher.

1108. Sexual exploitation of a child; class B felony.

1112A. Sexual ~~Solicitation~~ solicitation of a ~~Child~~ child; class C felony; class B felony.

1112B. Promoting sexual solicitation of a child; class C felony; class B felony.

Approved September 03, 2015