

CHAPTER 123  
FORMERLY  
HOUSE BILL NO. 182  
AS AMENDED BY  
HOUSE AMENDMENT NOS. 1 & 2

AN ACT TO AMEND TITLES 10 AND 11 RELATING TO CERTAIN OFFENSES.

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

Section 1. Amend Section 1009(c), Title 10 of the Delaware Code as follows:

§1009. Adjudication; disposition following adjudication; commitment to custody of Department of Services for Children, Youth and Their Families; effect.

(c) Following an adjudication in which the Court declares that a child is delinquent, it may:

(18) Order any and all registrations or relief therefrom as required under § 4123 of Title 11 where the juvenile has been adjudicated delinquent of an offense that would otherwise render the juvenile a sex offender under § 4121(a)(4) of Title 11.

Section 2. Amend subchapter III, Chapter 41 of Title 11 of the Delaware Code as follows:

Subchapter III. Sex Offender Management and Public Safety

Section 3. Amend Section 4120, Title 11 of the Delaware Code as follows:

§4120. Registration of sex offenders.

(b) (1) Any sex offender who is released, discharged or paroled from any Level IV or Level V facility or other custodial institution after that sex offender has completed a sentence imposed following a conviction for any offense specified in § 4121(a)(4) of this title shall be required to register as a sex offender, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register. The registration shall be completed during the Level IV or V sentence, but not more than 90 days, nor less than 45 days, prior to the offender's release, discharge or parole. The registration information shall be collected from the sex offender by the agency having custody over the sex offender at the time specified herein for registration. This subsection shall apply to any sex offender who is sentenced to serve any portion of the sex offender's sentence at Level IV or V, unless such sentence is suspended in its entirety, in which case subsection (c) of this section shall apply. The registration required by this subsection shall be required whenever the sex offender is released from any Level V facility to any Level IV facility, and again when the offender is released from the Level IV facility.

(2) If an offender is released to a treatment program by the Division of Youth Rehabilitative Services and the date of release could not have been determined 45 days prior to release, registration shall be completed within 48 hours of determining the release date, or upon release, whichever is earlier, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register.

(3) If an offender is attending school, the offender shall inform the principal of the school upon enrollment of the offender's registration, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register.

(c) Any sex offender who is sentenced to Level IV home confinement, or to a period of probation at Level III or below, or who is required to pay a fine of any amount following a conviction for any offense specified in § 4121(a)(4) of this title shall be required to register as a sex offender, unless pursuant to § 4123 of this title, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register. The registration information shall be collected from the sex offender by the sentencing court following the conviction, but no later than the time of sentencing.

(f) (3) Whenever a sex offender who is required to register re-registers pursuant to this subsection, notification shall be provided pursuant to the requirements of § 4121 of this title.

(4) Any agency or court which collects information from a sex offender pursuant to this section shall, at the time of registration, provide written notice to the sex offender of the offender's duty to re-register pursuant to this section. The written notice shall also inform the offender that if the offender changes residence to another State, such new address must be registered with the Delaware State Police, with the law enforcement agency having jurisdiction over the offender's new residence, and that the offender must comply with any sex offender

registration requirement in the new state of residence. The written notice shall also inform the offender that the offender must also comply with any sex offender registration requirement in any state where the offender is employed, carries on a vocation, or is a student. The written notice shall be provided on forms provided by the Superintendent of the Delaware State Police. Receipt of this written notice shall be acknowledged by the sex offender, who shall sign the original copy of the written notice. The original copy of the written notice shall be forwarded to the Superintendent of the Delaware State Police along with the registration form. Failure of the registering agency to provide such written notice shall not constitute a defense to any prosecution based upon a violation of this section.

(k) A warrant shall issue for any sex offender required to register who knowingly or recklessly fails to register or re-register or provide verification on the date on which it is required pursuant to this section or § 4121 of this title or to otherwise comply with any of the provisions of this section or § 4121 of this title, and any sex offender doing so shall be guilty of a class G felony.

Section 4. Amend Section 4120A, Title 11 of the Delaware Code as follows:

§4120A. Sex Offender Management Board.

Section 5. Amend Section 4121, Title 11 of the Delaware Code as follows:

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

(b) Upon a person's conviction or adjudication of delinquency or at the time of sentencing for any offense set forth in paragraph (a)(4)a., (a)(4)b., (a)(4)d., (a)(4)e., (a)(4)f., or (a)(4)g. of this section, the court shall inform the person that the person shall be designated as a sex offender and that a Risk Assessment Tier will be assigned to that person by the court, unless pursuant to § 4123, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register.

(c) Following the sentencing of a person convicted or adjudicated delinquent for any offense described in paragraph (a)(4)e. of this section, or following a finding by the sentencing court that the person has violated the terms of that person's own probation or parole as set forth in paragraph (a)(4)f. of this section, the sentencing court shall assign the defendant to the Risk Assessment Tier applicable for the originally charged offense, unless pursuant to § 4123, the Family Court has not required a juvenile adjudicated delinquent of a sex offense to register.

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

(e) (1) Any person designated as a sex offender who is required to register pursuant to this section shall comply with the registration provisions of § 4120 of this title as follows:

Section 6. Amend Chapter 41 of Title 11 of the Delaware Code as follows:

§4123. Juveniles Adjudicated Delinquent of Sex Offenses.

(a) Notwithstanding any law, rule or regulation to the contrary, this section shall apply to any sex offender who was a juvenile on the date of the offense and adjudicated delinquent by the Family Court.

(b) Prior to sentencing any juvenile adjudicated delinquent of a sex offense, Family Court shall order and receive a comprehensive evaluation, risk assessment and treatment recommendations for said juvenile by a certified mental health professional who specializes in the evaluation and/or treatment of juvenile sex offenders. If said juvenile is already in treatment at the time of adjudication, the current treatment provider may provide the evaluation, risk assessment and treatment recommendations required above.

(c) Following receipt by Family Court and the parties of the comprehensive evaluation, risk assessment and treatment recommendations required by subsection (b) of this section, Family Court shall conduct a sentencing hearing in which the Court shall address appropriate treatment for the juvenile, and the registration and community notification requirements for the juvenile as follows:

(1) If the juvenile was at least fourteen (14) years old on the date of the sex offense, and was adjudicated delinquent of any of the offenses enumerated in §§ 770(a)(3)a. where "without the victim's consent" has the definition specified in 761(j) of this title, 771-778, 780, 783 or 783A if the purpose of the crime was to violate or abuse the victim sexually, 787(b)(2), or 1100A of this title, or if the victim of the felony level offense was 5 years

old or younger, or of conspiracy, under §§512 and 513 of this Title, or attempt, under § 531 of this title, to commit any of those enumerated offenses, the juvenile shall be immediately registered as a sex offender as prescribed by § 4120 of this title, and the community shall be provided notification as prescribed by § 4121 of this title. Family Court shall have no discretion to modify these registration or community notification requirements.

(2) If the juvenile does not fit the criteria set forth in paragraph (c)(1) above, the Family Court shall have the discretion to relieve the juvenile of registration and community notification requirements or to assign such juvenile to a lower tier than that prescribed by § 4121 of this title if the Court determines by a preponderance of the evidence that such juvenile is not likely to pose a threat to public safety if relieved of the requirements or assigned to a lower tier. In making this determination, the Family Court shall consider all relevant factors, including:

- a. the risk the juvenile poses to the victim, the community and to other potential victims;
- b. the nature and circumstances of the offense;
- c. the impact on the victim, including the effects of registration and community notification;
- d. the comprehensive evaluation, risk assessment and treatment recommendations or outcomes for the juvenile required by subsection (b) of this Section;
- e. the likelihood of successful rehabilitation, if known; and
- f. the adverse impact of public registration on the juvenile and the rehabilitative process.

(d) Any juvenile who does not fit the criteria set forth in paragraph (c)(1) above and has been registered as a sex offender, may through his or her parent or guardian, or upon becoming an adult, petition Family Court for a registry review hearing as set forth below. Provided, however, that the prohibition involving offenses where the victim was five years old or younger shall not apply to this section. Family Court shall hold the hearing at either the conclusion of treatment or two years from date of adjudication, whichever comes first. Family Court may maintain the current tier designation for the adjudicated offense pursuant to § 4121, or where it appears by a preponderance of the evidence after consideration of the factors set forth in paragraph (c)(2) above that modification will not pose a threat to public safety, the Court may relieve the person of all registration and notification requirements or assign the person to a lower tier. All such petitions shall be filed in the Family Court in the county in which such case was adjudicated. The provisions of this paragraph shall be applicable whether the sex offender registration occurred prior to or after enactment of this statute and in the case of adjudication occurring more than 2 years prior to the effective date of this statute the Family Court shall hold the review hearing as soon as practicable after receiving a petition.

(e) If a juvenile does not fit the criteria of (c)(1) of this section, the decision of the Family Court with regard to registration may be appealed by the State or the juvenile.

Section 7. This Act becomes effective 90 days after its enactment into law.

Approved July 18, 2013